



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland

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

Agenda

Planning and Regulation Reports **Ordinary Council Meeting** **Thursday 12 December 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.

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

SUBMITTED BY: Director



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

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

RECOMMENDATION:

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

REPORT:

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

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

DA No.	DA13/0189
Description of Development:	22 lot subdivision and associated intersection upgrade to Creek Street and Tweed Coast Road
Property Address:	Lot 156 DP 628026 No. 40 Creek Street, Hastings Point
Date Granted:	25/11/2013
Development Standard to be Varied:	Clause 20(2)(a) - Minimum Lot Size 40ha
Zoning:	7(a) Environmental Protection (Wetlands and Littoral Rainforests)
Justification:	The application seeks consent to vary from the 40ha development standard for land zoned 7(a) under Clause 20(2)(a) for proposed lots 7 and 14. Lot 7 will have 3785m ² zoned 2(e) and 2117m ² zoned 7(a) land. Lot 14 will have 0.913ha zoned 2(e) and 10.827ha zoned 7(a) land.
Extent:	The application seeks consent to vary from the 40ha development standard for land zoned 7(a) under Clause 20(2)(a) for proposed lots 7 and 14. Lot 7 will have 3785m ² zoned 2(e) and 2117m ² zoned 7(a) land. Lot 14 will have 0.913ha zoned 2(e) and 10.827ha zoned 7(a) land.
Authority:	Director-General of the Department of Planning and Infrastructure

DA No.	DA13/0587
Description of Development:	Dwelling
Property Address:	Lot 503 DP 1174455 No. 169 Overall Drive, Pottsville
Date Granted:	7/11/2013
Development Standard to be Varied:	CI32B(4)(b) - Overshadowing
Zoning:	2(a) Low Density Residential
Justification:	Area of the coastal reserve affected comprises a grassed area and coastal dune vegetation. The shadow will have minimal impact on any areas used by the public for formal recreational activities and Council has approved many dwellings along the Tweed Coast that have similar minor overshadowing encroachments.
Extent:	Shadow diagrams show the dwelling will overshadow the adjacent foreshore reserve to the east. A SEPP 1 objection was submitted with the application.
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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22 [PR-CM] Update on Council's Animal Management Practices

SUBMITTED BY: Regulatory Services



Supporting Community Life

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
 - 1.1.2 Create a sustainable, social and environmentally aware community through education?????
-

SUMMARY OF REPORT:

In response to a Notice of Motion, Council resolved the following at its meeting of 16 May 2013:

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

As an initial response to this resolution, a Councillors Workshop was held on 5 September 2013 for which Council officers presented an explanation of a range of animal management matters, including the current operational approach to the NSW Companion Animals Act 1998, Companion Animals Regulation 2010, and Council's Companion Animals Management Plan (adopted by Council on 16 March 2010); more specific advice on Council's current procedures for dealing with dog complaints, the management of off-leash dog areas, and Council's Pound operations at Stotts Creek.

The officers have since further investigated the dog complaint practices of other councils, including the Gold Coast Council. In this regard, it is further reported that the Regulatory Services Unit responded to more than 1000 customer requests relating to animals, during the 2012 calendar year, and 448 of these were complaints of barking dogs. The Unit investigates the majority of these complaints, and investigations can be both complex and time consuming. Relative to the activities of other councils, including the Gold Coast City Council, it is considered that Council provides a thorough, timely and comprehensive response to complaints of this nature, and that community needs for appropriate companion animal management is currently being achieved.

It was also considered a good opportunity to identify within this report the recent changes to *The Companion Animals Act* that have been introduced by the NSW State Government, and as a consequence animal registration fees, which Council collects on behalf of NSW State Government, increase as of 1 January 2014. It is recommended that these changes, to registration fees, be adopted by Council.

RECOMMENDATION:

That Council:

1. **Receives and notes the information presented in this report in terms of Council's current animal management practices; and**
2. **Adopts the changes to fees listed in the *'The Companion Animals Amendment Act 2013'*, and amend Item 77 of the Fees and Charges 2013/2014 Revenue Policy document accordingly and notes that these are fees set by legislation and do not require the 28 day advertising period.**

REPORT:

Background

In response to a Notice of Motion, Council resolved the following at its meeting of 16 May 2013:

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

As an initial response to this resolution, a Councillors Workshop was held on 5 September 2013 for which Council officers presented an explanation of a range of animal management matters, including the current operational approach to the NSW Companion Animals Act 1998, Companion Animals Regulation 2010, and Council's Companion Animals Management Plan (adopted by Council on 16 March 2010); more specific advice on Council's current procedures for dealing with dog complaints, the management of off-leash dog areas, and Council's Pound operations at Stotts Creek.

The officers have since further investigated the dog complaint practices of other councils, including the Gold Coast Council.

This report further addresses the above issues, as well as more recent changes to the NSW Companion Animals Act.

Nuisance Animal Management

Council's Regulatory Services Unit (Rangers) responds to a range of customer complaints in relation to animals. Most of the complaints are about nuisance dogs, and can be regulated under the provisions of the *NSW Companion Animals Act 1998* (the *Act*) and *Companion Animals Regulation 2008* (the *Regs*).

The *Act* describes nuisance dogs as:

- (a) *is habitually **at large**, or*
- (b) *makes a noise, by **barking** or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises, or*
- (c) *repeatedly **defecates** on property (other than a public place) outside the property on which it is ordinarily kept, or*
- (d) *repeatedly **runs at or chases** any person, animal (other than vermin and, in relation to an animal, otherwise than in the course of droving, tending, working or protecting stock) or vehicle, or*
- (e) ***endangers the health of any person or animal** (other than vermin and, in relation to an animal, otherwise than in the course of droving, tending, working or protecting stock), or*
- (f) ***repeatedly causes substantial damage** to anything outside the property on which it is ordinarily kept*

Complaints to Council

In the 2012 calendar year, Council Rangers responded to more than 1000 animal complaints, comprised of 106 'dog attacks', 448 'barking dogs' and 591 'roaming dogs'. Each of the complaints is investigated, and the more serious the complaint the greater the level of investigation and follow-up action required.

Nuisance Dog Investigation

Nuisance dog investigation is carried out in accordance with Council's responsibilities under the *Act* and *Regs*, and with consideration given to Tweed Shire Council's Companion Animals Management Plan – Policy (version 1).

Investigations can be triggered by one complaint or complainant only, and investigation can initially involve attempts by Council staff to substantiate the complaint by conducting 'door knocks' of adjacent and nearby properties. Complaint investigations can be complex and time consuming, but in order to gather sufficient information (to take further action) must be thorough.

As such, Council Rangers are required to gather evidence, which can involve all of the following:

- Providing affected parties with information in relation to their legal rights and responsibilities;
- Conducting interviews and taking witness statements;
- Gathering photographs and other supportive information such as 'barking dog diaries'; and
- Collating evidence and preparing court documents.

Where a clear breach of the law (*prima facie*) can be demonstrated, further action is considered, and all parties are advised of Council's proposed action.

Investigation Example

A 'barking dog' investigation would typically require the following:

- i. Single complaint received and CRM lodged.
- ii. Ranger will doorknock adjacent properties to (attempt) substantiate the complaint.
- iii. Provide 'barking dog diaries' for the recording of supportive evidence.
- iv. Issue a letter to the owner of the dog advising that a complaint was made, and that Council is investigating (Information, on controlling barking dogs, is provided to the owner of the dog at this stage).
- v. If the complaint is substantiated and there has been no improvement in animal behaviour, a Notice of Council's intention to issue a Nuisance Dog Order is sent to the owner.
- vi. Any representations received from the animal owner (why the Order should not be issued) are considered.
- vii. A Nuisance Dog Order is issued with terms of compliance. The Order remains in force for six months.
- viii. Breaches of the Order are investigated, and penalty infringements or cautions are issued where proven.
- ix. Multiple breaches of the Order result in the matter being referred to the Local Court.
- x. Court briefs are drafted by Regulatory Services staff, and forwarded to Council's solicitors for the mention or hearing. The court may or may not impose further penalties as a consequence of a successful prosecution.

Conclusions Relating to Current Practice

No change is proposed to the way in which Council staff manages *Nuisance Animal* complaints and investigations. Current procedures satisfy our obligations under the 'Act' and 'Regs', and also concur with regulatory action taken by neighbouring Councils.

Note: Other Councils, including Gold Coast City Council and Byron Shire Council, require two independent complainants (i.e. from different properties) to lodge complaints prior to commencing investigative action.

Animal Registration Fees

Council is authorised to register companion animals (cats and dogs) under the provisions of the *NSW Companion Animals Act 1998* (the 'Act') and *Companion Animals Regulation 2008* (the 'Regs'). Council charges a fee for this service, and collects registration fees in accordance with section 17 of the *Act*. Animal registration income (fees) is transferred to NSW State Government, and registration details are entered into the NSW Companion Animals Register.

State Government reimburses Council for the registration fees collected on its behalf. Under the current system eighty percent (80%) of this money is refunded to Council to part fund Companion Animal Management.

Recent changes to legislation, *The Companion Animals Amendment Act 2013* (the 'Amendment Act'), has been adopted by NSW Parliament, and the 'Amendment Act' alters the 'Act' and the 'Regs'. Changes include increases to animal registration fees, and are listed in Schedule 2 of 'Amendment Act'.

The 'Amendment Act' changes registration fees as of 1 January 2014. It is recommended that Council adopts the new fees, and amends Item 77 of the Fees and Charges 2013/2014 Revenue Policy document accordingly.

Note: A revenue reduction will result if the new charges are not adopted, as NSW State Government will continue to collect a percentage of revenue based on the new charges.

OPTIONS:

The officers recommend that Council:

1. Receives and notes the information presented in this report in terms of Council's current animal management practices; and
2. Adopts the changes to fees listed in the '*The Companion Animals Amendment Act 2013*', and amend Item 77 of the Fees and Charges 2013/2014 Revenue Policy document accordingly.

CONCLUSION:

NSW Legislative changes require a minor change to Council's Fees and Charges 2013/2014 Revenue Policy document.

Over 1000 'animal complaints' were received in the 2012 Calendar year, which placed a high demand on the staff of the Regulatory Services Unit. Response to complaints often requires complex investigation in order to substantiate a complaint, and to ensure that Council fulfils its obligations under the *NSW Companion Animals Act*. It is considered that Council staff provide a thorough, timely and comprehensive response to this type of complaint, and that community needs for appropriate companion animal management is being achieved.

No change to existing animal complaint handling procedure or policy is proposed.

COUNCIL IMPLICATIONS:

a. Policy:

No changes - Companion Animals Management Version 1.0.

b. Budget/Long Term Financial Plan:

No impact if changes to fees is adopted as per the legislative changes.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

23 [PR-CM] Alcohol Free Zones

SUBMITTED BY: Building and Environmental Health



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
-

SUMMARY OF REPORT:

Alcohol-free zones were previously established by Council in 2009 over specified public roads, footpaths and public carparks for the Murwillumbah Town Centre, Tweed Heads, Tweed Heads South, Salt, Cabarita Beach and Kingscliff for a period of 4 years. The declaration of these zones has expired.

This report provides for the re-establishment of the previous alcohol-free zones following appropriate public consultation in accordance with the provisions of *Section 644, 644A and 646* of the *Local Government Act 1993*.

RECOMMENDATION:

That Council:

1. Approves the establishment and timeframes of alcohol-free zones in accordance with section 644B of the Local Government Act 1993, within the Tweed Heads, Tweed Heads South, Kingscliff, Salt, Cabarita Beach and Murwillumbah areas over roads, footpaths and public carparks for a maximum period of four years expiring no later than 1 December 2017 as follows:

TWEED HEADS

- Wharf Street between Bay Street and the Queensland border;
- Bay Street, east of Wharf Street to John Follent Park; and
- Chris Cunningham Park public carpark.

24 hours per day, all days

TWEED HEADS SOUTH

- Public car park adjoining South Tweed Swimming Pool, Home and Community Care (HACC) and skate park.

24 hours per day, all days

KINGSCLIFF

- Marine Parade between Turnock Street and Cudgen Creek;
- Turnock Street between Marine Parade and Pearl Street;
- Pearl Street between Turnock Street and Seaview Street;
- Seaview Street between Pearl Street and Marine Parade; and
- Lions Park and Faulks Park public car parks and the public carpark adjoining Kingscliff Memorial Park.

24 hours per day, all days

SALT

- Bells Boulevard.

Between the hours of 4pm December 31 to 10am January 1

CABARITA BEACH

- Pandanus Parade; and
- Public carpark between Palm Avenue and Pandanus Parade.

24 hours per day, all days

MURWILLUMBAH

- Queensland Road between 'Harry Williams Gate' of the Murwillumbah Showgrounds and Murwillumbah Street;
- Public car park area near Mount Saint Patricks School on Queensland Road;
- Bent Street between Queensland Road and Church Street;
- Church Street between Bent Street and Queen Street;
- Alice Street between Queen Street and Church Street;
- Church Lane;
- Police Lane;
- Bruce Lane;
- Queen Street between Murwillumbah Street and Church Street;
- Murwillumbah Street between Nullum Street and Queen Street;
- Wharf Street between Queen Street and Tumbulgum Road;
- Proudfoots Lane;
- Public car parks between Wollumbin Street and Proudfoots Lane;
- Commercial Road between Wharf Street and King Street;
- King Street between Commercial Road and Brisbane Street;
- Public carpark between Lavender Lane and King Street;
- Lavender Lane;
- Brisbane Street between Murwillumbah Street and Condong Street;
- Condong Street between Brisbane Street and Nullum Street;

- **Nullum Street between Condong Street and Murwillumbah Street;**
- **Wollumbin Street between Nullum Lane and Commercial Road;**
- **Nullum Lane between Wollumbin Street and Byangum Road;**
- **Byangum Road between Nullum Lane and Muwillumbah Street;**
- **Alma Street between Commercial Road and Tweed Valley Road;**
- **Tumbulgum Road between Wharf Street and Racecourse Road;**
- **Public carparks adjoining Tweed Shire Council civic centre and swimming pool;**
- **Sunnyside Lane;**
- **Factory Lane between King Street and Wollumbin Street;**
- **Budd Park public carpark;**
- **Knox Park public carpark; and**
- **Red Cross Hall public carpark.**

24 hours per day, all days

Excluding those businesses approved by Council for the purposes of footpath dining whilst those businesses are trading.

2. **Delegates to the General Manager authority to vary or suspend the zones for special circumstances.**
3. **Provides a copy of the established zones to the NSW Police Force Local Area Commander and officers in charge of Tweed Heads, Kingscliff and Murwillumbah Police Stations, any liquor licensees and secretaries of registered clubs whose premises border on, or adjoin or are adjacent, to the zones and the Tweed Byron Aboriginal Land Council.**

REPORT:

The object of alcohol-free zones is an early intervention measure to prevent the escalation of irresponsible street drinking to incidents involving serious crime.

The drinking of alcohol is prohibited in an alcohol-free zone that has been established by a council. Public places that are public roads, footpaths or public carparks may be included in a zone. Alcohol-free zones promote the use of these roads, footpaths and carparks in safety and without interference from irresponsible street drinkers.

Council approved footpath alfresco dining areas are not included within the alcohol-free zones. These areas are clearly delineated by Council placed footpath markers. However businesses operating outside of these markers will expose their patrons to the regulatory provisions.

To validly establish an alcohol-free zone a council must comply with the procedures in sections 644 to 644C of the *Local Government Act 1993* (the *Act*) and the *Ministerial Guidelines on Alcohol-Free Zones (Guidelines), 2009*.

In October 2009 Council resolved to establish specified streets and public carparks within Murwillumbah Town Centre, Tweed Heads, Tweed Heads South, Salt, Cabarita Beach and Kingscliff as alcohol-free zones. The resolution was for a period of 4 years only in accordance with the maximum period specified within the *Act*. Whilst the *Act* prevents an extension of time for the operation of an alcohol-free zone, a zone can be re-established after a phase of public consultation and advertising.

The preparation of a proposal was prepared (see Attachment 1 for public exhibition material), and a public consultation period of 30 days was undertaken to satisfy the requirements of Sections 644 and 644A of the *Act*. As a result of this consultation, six written submissions were received, media coverage and a number of telephone enquiries taken.

Two letters of support were received and one submission questioning inconsistency of signage however this relates to park alcohol prohibition signage and does not refer to the alcohol free zones for roads and public car parks. The submission has been referred to Recreational Services.

One submission of objection was received:

"I am writing in response to the recent notice in the paper regarding proposed alcohol no go zones in the Tweed Shire, specifically Kingscliff.

I do not agree that greater restrictions are needed. I am a current resident of Kingscliff and have not found there to be a problem with alcohol causing any danger. Kingscliff is a lovely community who enjoy meeting with family and friends in the beautiful surrounding outdoor areas we have available to us. At times when I meet with my family and friends for birthdays or special occasions we may have a wine or beer to celebrate. This does not hurt anyone, cause disruption and we always take our rubbish with us. I do not see the need to place restrictions on the lifestyle we currently lead that does not hurt or interfere with anyone around us. Please explain why you feel the need to place such restrictions?

Again, I would like to be heard as a resident and on behalf of 2 other family households in Kingscliff, we disagree with the need for proposed alcohol no go zones. I hope the council listens to us and does not feel the need to spend valuable time and money on making this change."

No changes to the current arrangements are proposed. The re-establishment of the zones within previously identified trouble spots provide officers of the NSW Police Force with regulatory options to control irresponsible street drinking and the related issues of crime, public nuisance and litter.

One submission supports the proposal and requests the extension of the alcohol prohibition notices within Park Areas. The submission has been referred to Recreational Services for further consideration.

The NSW Police Force has also requested additional signage to better identify existing alcohol prohibited areas within John Follent Park and Keith Curren Park. The submission has been referred to Recreational Services for further consideration.

The nominated areas are as follows:

TWEED HEADS

- Wharf Street between Bay Street and the Queensland border;
- Bay Street, east of Wharf Street to John Follent Park; and
- Chris Cunningham Park public carpark.

24 hours per day, all days

TWEED HEADS SOUTH

- Public car park adjoining South Tweed Swimming Pool, HACC and skate park.

24 hours per day, all days

KINGSCLIFF

- Marine Parade between Turnock Street and Cudgen Creek;
- Turnock Street between Marine Parade and Pearl Street;
- Pearl Street between Turnock Street and Seaview Street;
- Seaview Street between Pearl Street and Marine Parade; and
- Lions Park and Faulks Park public carparks and the public carpark adjoining Kingscliff Memorial Park.

24 hours per day, all days

SALT

- Bells Boulevard.

Between the hours of 4pm December 31 to 10am January 1

CABARITA BEACH

- Pandanus Parade; and
- Public carpark between Palm Avenue and Pandanus Parade.

24 hours per day, all days

MURWILLUMBAH

- Queensland Road between 'Harry Williams Gate' of the Murwillumbah Showgrounds and Murwillumbah Street;
- Public car park area near Mount Saint Patricks School on Queensland Road;

- Bent Street between Queensland Road and Church Street;
- Church Street between Bent Street and Queen Street;
- Alice Street between Queen Street and Church Street;
- Church Lane;
- Police Lane;
- Bruce Lane;
- Queen Street between Murwillumbah Street and Church Street;
- Murwillumbah Street between Nullum Street and Queen Street;
- Wharf Street between Queen Street and Tumbulgum Road;
- Proudfoots Lane;
- Public carparks between Wollumbin Street and Proudfoots Lane;
- Commercial Road between Wharf Street and King Street;
- King Street between Commercial Road and Brisbane Street;
- Public carpark between Lavender Lane and King Street;
- Lavender Lane;
- Brisbane Street between Murwillumbah Street and Condong Street;
- Condong Street between Brisbane Street and Nullum Street;
- Nullum Street between Condong Street and Murwillumbah Street;
- Wollumbin Street between Nullum Lane and Commercial Road;
- Nullum Lane between Wollumbin Street and Byangum Road;
- Byangum Road between Nullum Lane and Muwillumbah Street;
- Alma Street between Commercial Road and Tweed Valley Road;
- Tumbulgum Road between Wharf Street and Racecourse Road;
- Public carparks adjoining Tweed Shire Council civic centre and swimming pool;
- Sunnyside Lane;
- Factory Lane between King Street and Wollumbin Street;
- Budd Park public carpark;
- Knox Park public carpark; and
- Red Cross Hall public carpark.

24 hours per day, all days

Within Tweed Shire the enforcement of alcohol-free zones is the responsibility of the NSW Police Force. The power to seize and tip out or otherwise dispose of alcohol without the need to issue a warning applies within an alcohol-free zone. The re-establishment of Alcohol-free Zones will provide the NSW Police Force with options beyond their existing 'move on' powers.

In accordance with the *Guidelines* maps of all established areas will be provided on Council's Website and publicly advertised by notice through the Tweed Link newspaper. All established alcohol-free zones will not operate until seven days after publication of the notice AND until the roads, footpaths and public car parks affected are adequately signposted.

OPTIONS:

To refuse the proposal, or amend the proposal following further community consultation.

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.

Proposals for the Establishment of Alcohol-Free Zones 2013 –
Public Exhibition Material (ECM 3232238)

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24 [PR-CM] Draft Tweed Development Control Plan - Section A17

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/A17



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 updates Council on the progress of the draft Tweed Development Control Plan - Section A17 - Business Development, Enterprise Corridor and Business Park Zones (draft DCP), which is currently being prepared in association with the recent rezoning of the Boyds Bay Business Park.

The rezoning of the site, comprising of Lot 10 DP 1084319, in 2012 was to facilitate a change in use from the previous Boyds Bay Garden World retail nursery to permit other commercial and bulky-goods retail business. The rezoning of the site was coupled with a site specific clause in the *Tweed Local Environmental Plan 2000* (Clause 53G) requiring the making of a Development Control Plan (DCP) for the site prior to any grant of development approval.

Whilst preparing the draft DCP it was observed that many aspects of the DCP's provisions and objectives have a broader application than to this site alone and that it would be more efficient to expand the application of the DCP to cover the business development, enterprise corridor and business park zones collectively. Therefore, the draft DCP has been structured with a two part format. Part 1 provides provisions generic to all business and enterprise corridor development zones and Part 2 provides those that are specific to nominated key sites. Written in this way the DCP can be readily tailored to suit the needs of Clause 53G for this site without unnecessarily imposing those requirements on other unrelated sites.

The purpose of the DCP is to facilitate a high quality and more sustainable form of development design for commercial and business development. Tweed does not presently have a comparative DCP fulfilling this function.

This report concludes that the draft DCP provides an opportunity to advance the Council's broader strategic planning objectives within its existing framework and that the draft DCP is suitable for a public exhibition.

RECOMMENDATION:

That:

- 1. The public exhibition of draft Tweed Development Control Plan, Section A17 – Business Development, Enterprise Corridor and Business Park Zones, be undertaken for a minimum period of 30 days, in accordance with section 74E of the Environmental Planning Assessment Act 1979.**
- 2. Following public exhibition a further report is to be submitted to Council detailing the content and response to submissions received.**

REPORT:

Following the preparation and exhibition of a planning proposal (PP10/0001) for the Boyds Bay Garden World site (the Site) Council resolved its meeting of 17 July 2012 to forward the final proposal to the Department of Planning and Infrastructure (DP&I) to be made. The amendment took effect on 16 November 2012, rezoning the site (Lot 10 DP 1084319) from 1(a) Rural to 3(c) Commerce and Trade.

FIGURE 1 - THE SITE - LOT 10 DP 1084319



Locality Plan

Lot 10 DP 1084319
Parkes Drive, Tweed Heads West

Figure 1

<p>Disclaimer: While it is our aim to ensure the accuracy of this data, Council does not warrant or accept any liability for any errors, omissions or inaccuracies in this data. Council is not responsible for any loss or damage, including consequential loss, arising from the use of this data. Council is not responsible for any loss or damage, including consequential loss, arising from the use of this data. Council is not responsible for any loss or damage, including consequential loss, arising from the use of this data.</p>	<p>Cadastral: 25 November 2013 © Land and Property Management Authority (LPA) A Tweed Shire Council Boundaries shown should be considered approximate only.</p>	<p>0 50 100m 1:5,000</p>	<p>0 50 100m 1:5,000</p>	<p>City and Cultural Centre 5 Yarrakung Road Murrumbidgee NSW 2666 PO Box 816 Murrumbidgee NSW 2666 P (02) 6478 2400 F (02) 6478 2472 P (02) 6478 2479 W www.tweedshire.nsw.gov.au E planning@tweedshire.nsw.gov.au</p>
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The amendment to the *Tweed Local Environmental Plan 2000* (Amendment No.93) was comprised of two elements, with the first being the zoning map amendment. The second part related to a new site specific clause (Clause 53G), which requires the making of a DCP for the site, consistent with the detailed terms of the clause, prior to any grant of development approval.

A copy of the draft DCP is provided as Attachment 1. This report details the content and scope of the draft DCP and how it satisfies Council's resolution and the provisions of Clause 53G.

The Role of the Draft DCP

The planning proposal (LEP Amendment) for the site was pursued by the then proponent as a mixed use business park. The detailed evaluation comprised both of their commitment to a multi-purpose business park and of the opportunities and constraints provided by the site. Ultimately, whilst the site had clear commercial advantage because of its proximity to key public infrastructure (roads & airport) and good exposure to the more heavily populated catchments it was also heavily constrained by that infrastructure. It was evident that the constrained traffic capacity within the surrounding road network and airport operation requirements would severely impact the ability of the site to yield a level of development that might otherwise be obtained on a comparative site without those limitations. Consequently, it was a necessary precondition of a rezoning that a DCP be prepared to coordinate a manageable and appropriate level/kind of development. The new Clause 53G would provide that regulation.

In preparation of the draft DCP, Council officers' undertook a process of detailed literature review, case study analysis, internal workshops and interviews with industry experts. It was revealed through this process that many of the aims, objectives and development controls required of the DCP would be universal to a range of commercial and business zones and as such possess a much wider application than the Boyds Bay site alone.

Guiding best practice solutions for commercial business park development and premises is not presently catered for specifically in the Tweed. The draft DCP provides an efficient opportunity to manage both the DCP requirements of Clause 53G as well as introducing provisions for specific commercial and business development zones.

The draft DCP has been designed with a two part structure, with Part 1 providing those provisions generic to all business development, business park and enterprise corridor zones, and Part 2 those that are specific to nominated key sites. Written in this way the DCP can be readily tailored to suit the needs of Clause 53G for this site, or the specific needs of any other subsequent site, without unnecessarily imposing those requirements on other unrelated sites.

Part 1 is tailored to relate to the B5 - Business Development, B6 - Enterprise Corridor and B7 - Business Park zones, as provided within the Standard Instrument Order 2006 and as utilised within the draft Tweed Local Environmental Plan 2012. Further detail regarding these zones is provided further in this report.

The overarching aims and objectives of the draft DCP are as follows:

Aims

- 1. Contribute to the growth and character of Tweed Shire's business and enterprise precincts.*
- 2. Facilitate coordinated business and enterprise precincts which maximise employment opportunities through site efficiency and amenity.*

3. *Facilitate the development of sites that minimises underutilisation or sterilisation of land through poor site planning, design and unsuitable land uses.*
4. *Achieve an attractive and sustainable built form which responds to the features of the site and the Tweed's subtropical climate.*

Objectives

1. *Encourage establishing employment and land uses synergies and integration by supporting built form variety, diversity and co-location of infrastructure.*
2. *Establish efficient site planning, land use and built form through an investigative site analysis process.*
3. *Ensure the underutilisation of land is minimised by establishing an integrated suite of design controls and requiring applicants undertake a site specific analysis and design response.*
4. *Establish a high quality built form character and urban environment through best practice site planning and urban design provisions.*
5. *Establish specific urban design provisions that create human scale outcomes, attractive streetscapes and moderating building mass for large floorplate development.*
6. *Encourage the inclusion of design features that provide high quality environments for staff and customers.*
7. *Ensure comfortable microclimates are created through adequate landscaping and the provision of water sensitive urban design.*
8. *Ensure that development with an interface to zone or precinct boundaries responds to potential external conflicts that arise from a land use and built form change.*
9. *Encourage the implementation of active and passive design processes that sustainably respond to the sites climatic conditions.*
10. *Encourage the integration of fine-grain, ancillary and supplementary land uses within business and enterprise zones.*

To facilitate achieving the aims and objectives, design controls have been drafted relating to a number of design themes, including:

- Site Design - Including site analysis, urban design and cut and fill.
- Building Design - Including responding to climate, forms and materials, overshadowing, views and visual amenity.
- Building Envelope - Including site coverage, setbacks and building heights.
- Landscaping.
- Ancillary Buildings and Structures - Including neighbourhood shops, child care, signs, fences etc.

Part 2 of the draft DCP provides additional planning framework that is specific to the Boyds Bay site, and comprises specific aims, objectives and controls for the site. The draft DCP specifies the aim of the Boyds Bay Business Park as follows:

Support an integrated design approach that establishes a variety of complementary business park land uses which respond to site constraints with quality urban and building design within a business park setting.

The development controls seek to maximise the use of the site as a highly co-ordinated "stand alone" destination, whilst responding to a variety of constraints, including flooding, traffic capacity and restrictions relating to the operation of the Gold Coast Airport.

The combination of Part 1 and 2 of the draft DCP is considered to satisfy the requirements of Clause 53G, and if adopted, enables the site to be developed in accordance with Council's strategic vision.

The B5 - Business Development, B6 - Enterprise Corridor and B7 - Business Park zones

As discussed previously, the draft DCP applies to all development within the B5 - Business Development (B5), B6 - Enterprise Corridor (B6) and B7 - Business Park (B7) zones. The referred zones are provided within the Standard Instrument Order 2006 (SI Order) and both the B5 and B7 zones are utilised within the draft Tweed Local Environmental Plan 2012 (draft Tweed LEP).

The SI Order objective of the B5 zone is *to enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.* In addition to the SI Order mandated objectives, the draft Tweed LEP identifies the following additional objectives:

- *To provide for retailing activities that are not suited to, or desirable in, the other business zones or that serve the needs of the other businesses in zone.*
- *To accommodate a wide range of employment generating uses and associated support facilities including light industrial, transport and storage activities.*

The draft Tweed LEP has utilised the B5 zone as a 'rollover' of the 3(c) Commerce and Trade zone from the Tweed LEP 2000. As such, the B5 zone is largely confined to the area of South Tweed Heads and Murwillumbah.

The SI Order objectives of the B6 zone are:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*

The B6 zone is yet to be used within the draft Tweed LEP as no directly translating zone is present within the Tweed LEP 2000. Nonetheless, opportunities to utilise the zone have been identified at a desktop level and the zone may be pursued within future LEP amendments. In light of the similarities in objectives of the zone to the B5 and B7 zones, it is considered appropriate that the draft DCP apply to any land that may be zoned B6 in the future.

The SI Order objectives of the B7 zone are:

- *To provide a range of office and light industrial uses.*
- *To encourage employment opportunities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

In addition to the SI Order mandated objectives, the draft Tweed LEP identifies the following additional objectives:

- *To encourage a range of compatible uses, including residential, recreational and community facilities to maximise cross utilisation of urban infrastructure.*
- *To encourage and promote good urban design through integration of all buildings, structures and landscaped areas with strong visual and aesthetic appeal.*

The Site represents the only use of the B7 zone within the draft Tweed LEP. Despite its limited application, like the B6 zone, the strategic potential of the B7 zone to possess a wider application has been identified at a desktop level and may be pursued further post the making of the draft Tweed LEP. As with the B6 zone, in light of the similarities in objectives of the zone to the B5 and B6 zones, it is considered appropriate that the draft DCP apply to any land that may be zoned B7 in the future.

Further commentary on each of the zones discussed above can be found within the draft DCP (Attachment 1) and the NSW Department of Planning & Infrastructure's LEP practice note PN 11-002 - Preparing LEPs using the Standard Instrument: standard zones (provided as Attachment 2).

OPTIONS:

1. Endorse the public exhibition of the draft DCP; or
2. Defer public exhibition for a Councillor workshop.

Council officers recommend Option 1.

CONCLUSION:

The draft DCP is being prepared as a necessary precondition under Clause 53G of the Tweed LEP 2000 to the approval of any development of the land. Further, the aims and objectives developed for the Boyds Bay DCP were noted as having a broader application to the commercial and business zones more generally.

Subsequently, the format of the DCP was restructured to capitalise on a more efficient use of Council's resources by developing a draft DCP that dealt with these zones more broadly and at the same time meeting the needs of Clause 53G for the Boyds Bay site through site specific provisions.

As discussed within the report, the draft DCP has two major parts, with the first providing high level guidance on design across the B5 - Business Development, B6 - Enterprise Corridor and B7 - Business Park zones and with the second part tailoring site specific guidelines. The Part 2, site specific section will include provisions for the Boyds Bay site and is adaptable for later use as new key commercial and business parks or enterprise corridors are identified.

Designing the format of the DCP with this two part format will enable Council to provide design guidance for commercial and business development where it does not currently exist.

In so far as the Boyds Bay site the draft DCP recognises the development constraints and commitments identified during the preparation of the planning proposal and plan making process. In particular, the draft DCP responds to the specific legal requirements of Clause

53G of the Tweed LEP 2000. Amongst those challenges the draft DCP responds to traffic capacity and Gold Coast Airport operation constraints, creating a 'stand alone' destination that embodies high quality urban design and ensuring that future development adequately responds to the neighbouring residential lands.

The draft DCP has been prepared on the basis of extensive literature review, case study analysis, internal workshops and interviews with industry experts. The project has reached a stage where the aims, objectives, and controls within the draft DCP need to be 'tested' for their level of acceptance within the broader community.

The draft DCP is suitable for public exhibition.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Council's resource expenditure relating to the preparation of the DCP and in connection with requirement of Clause 53G of the Tweed LEP pertaining to Lot 10 DP 1084319 is subject to Council's adopted Fees and Charges. The remainder of the project is not considered to have any significant budget implications.

c. Legal:

The draft DCP is being prepared in accordance with all required statutory requirements under the *Environmental Planning and Assessment Act 1979*.

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: Draft Tweed Development Control Plan - Section A17 - Business Development, Enterprise Corridor and Business Park Zone (ECM 3232039)

Attachment 2: NSW Department of Planning & Infrastructure's LEP practice note PN 11-002 - Preparing LEPs using the Standard Instrument: standard zones (ECM 3232040)

25 [PR-CM] Development Application DA13/0246 for a Three Storey Dwelling and In-Ground Swimming Pool at Lot 598 DP 1076975 No. 40 Marsupial Drive, Pottsville

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: DA13/0246 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

Council at its meeting of 21 November 2013 resolved as follows:

"RESOLVED that Council defers this application for a Workshop and a report to be provided to the December 2013 meeting."

A workshop was held on 28 November 2013. The report is now presented to Council for determination.

Original Report

Council is in receipt of a development application seeking approval for the construction of a new three storey, four bedroom dwelling house with an attached double garage and swimming pool located at Lot 598 DP 1076975 No. 40 Marsupial Drive, Pottsville.

The site is a battleaxe allotment which forms part of a residential subdivision and surrounding properties cater to a combination of existing dwelling houses, dwelling houses under construction and vacant land. The proposal presents potential amenity issues typical of in-fill development on a battle-axe allotment.

The application was notified to immediately adjacent and surrounding property owners (8 letters) and exhibited for a period of 14 days from Tuesday 28 May to Tuesday 11 June 2013. Council received a total of seven submissions of objection to the proposal from five individuals and one submission of support. The main reasons for objection are loss of views, overshadowing, overlooking, and incompatible building height, bulk and scale. To address objector concerns the applicant submitted a revised design which is the subject of this report.

The proposal is a largely compliant design with two departures from the design controls of Section A1 of the Tweed Development Control Plan. The proposal is otherwise consistent with the other matters of consideration including the Tweed Local Environmental Plan 2000, the Draft Tweed Local Environmental Plan 2012 and the Tweed Development Control Plan

2008, amongst others. Whilst the application attracted a number of objections, the application was assessed on its merits and it is recommended for approval, subject to conditions.

RECOMMENDATION:

That Development Application DA13/0246 for a three storey dwelling and in-ground swimming pool at Lot 598 DP 1076975 No. 40 Marsupial Drive, Pottsville be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.

[GEN0015]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

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

Should adjustments be required to the sewer manhole, then application shall be made to Council's Community and Natural Resources Division for approval of such works.

[GEN0155]

4. In accordance with the Restrictions as to User applying to the land, the applicant/owner shall comply with the following.

- (a) All trees of the *Banksia integrifolia* species greater than 125mm diameter at a height of 1.5 metres above ground level and those trees in the Koala Management Plan approved by the Council, and being koala home range trees, primary browse trees and other trees identified in the map detailing the location of koala usage trees which are utilised by koalas as a component of normal ranging patterns, are not to be removed from the lot.
- (b) A minimum clearance of 300 mm shall be maintained between the underside of any fence and the natural ground level except for swimming pool fences which shall maintain a maximum ground clearance of 100 mm.
- (c) All swimming pools installed on each lot burdened shall possess a stout rope (minimum fifty (50) mm diameter) and one end of the rope must be secured to a stable pool side fixture and the other end must trail in the pool at all times.
- (d) This property is burdened as to the type of plant species that can be planted and those that cannot. The owner is directed to conform with the plant species list contained in Part 5.4 *Koala Beach Landscape Species List* of Tweed DCP Section B21 *Pottsville Locality Based Development Code*.
- (e) No dogs or cats shall be kept either permanently or temporarily on each lot burdened or at the Koala Beach Estate.

[GEN0280]

5. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

6. **Bushfire Asset Protection Zones**

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities.

Bushfire asset protection zones are to be maintained around the house site at all times to the satisfaction of the NSW Rural Fire Service.

[GEN0320]

7. **Bushfire Water and Utilities**

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities.

The occupier of the property is to participate in the Static Water Supply Project initiative of NSW Fire Brigade and make available the water in the swimming pool for use as a static water supply for fire fighting purposes by NSW Fire Brigade or Rural Fire Service.

[GEN0325]

8. **Bushfire Design and Construction**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

Construction shall comply with Australian Standard AS3959-2009 'Construction of buildings in Bush Fire-prone areas', Bushfire attack Level (BAL) 12.5 for dwelling.

All Class 10 structures as defined per the Building Code of Australia 2006 attached to or within 10 metres of the habitable building shall be constructed to the same level of construction required for the habitable building in accordance with the requirements of planning for bushfire protection 2006 and AS3959-2009 'Construction of buildings in Bush Fire-prone areas'.

[GEN0335]

9. Any surface rainwater which is intercepted by retaining walls shall not be directed onto adjoining properties and shall be conveyed through the subject allotment to the street kerb and gutter.

[GENNS01]

10. The mature eucalyptus tree positioned on the south-east corner of the allotment shall not be removed by the development. Precautions are to be taken during construction to protect the tree including as appropriate barriers around the drip line of the tree and preventing the parking and storing of materials inside the barrier.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

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

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

[PCC1325]

13. Prior to the issue of a construction certificate a plan of the swimming pool showing the proposed cut and fill levels including retaining walls and interface with the adjoining property boundaries is to be submitted to the Principal Certifying Authority. The plan is to demonstrate no retaining walls or batters exceeding a slope of 1:2 (v:h) or height of 500mm within 900mm of the boundary for cut and 1.5m for fill. The plan must demonstrate suitable means for the drainage and disposal of overflow water to ensure it is not directed onto adjoining properties.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

14. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
- (ii) notified the principal certifying authority of any such appointment, and
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

15. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

16. Residential building work:

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

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

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

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

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

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

17. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council.

[PCW0245]

18. All roof waters are to be disposed of through properly jointed pipes to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2.

[PCW1005]

DURING CONSTRUCTION

19. **Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:**

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

20. **The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.**

[DUR0245]

21. **All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).**

[DUR0375]

22. **Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.**

[DUR0395]

23. **The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.**

[DUR0405]

24. **It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.**

[DUR0415]

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

[DUR0445]

26. **All cut or fill on the property is to be battered at an angle not greater than 1:2 (v:h) within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.**

Please note timber retaining walls are not permitted.

[DUR0835]

27. **The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.**

[DUR0905]

28. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution.
- Dust during filling operations and also from construction vehicles.
- Material removed from the site by wind.

[DUR1005]

29. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

[DUR1945]

31. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.2 -2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.
- (e) Once your pool or spa is complete please register it at www.swimmingpoolregister.nsw.gov.au.

[DUR2075]

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

[DUR2085]

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

[DUR2185]

34. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;

- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

35. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

- 36. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**

[DUR2545]

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

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

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

[DUR2705]

- 39. Upon completion of the first floor joists a survey certificate is to be provided to the Principal Certifying Authority verifying the development has been constructed to the first floor levels as nominated on the approved plans.**

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0205]

- 41. Prior to the issue of an occupation certificate,**

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and

(iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and

(iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

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

[POC0355]

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

[POC0435]

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

[POC0905]

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

[POC1045]

46. Prior to issue of an occupation certificate, a survey certificate is to be provided to the Principal Certifying Authority verifying the development has been constructed to the ridge height level as nominated on the approved plans.

[POCNS01]

USE

47. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

48. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

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

[USE0505]

50. Swimming Pools (Building)

(a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due

regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).

- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

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

[USE1305]

REPORT:

Applicant: Parameter Designs
Owner: Mr Andrew L Haywood
Location: Lot 598 DP 1076975 No. 40 Marsupial Drive, Pottsville
Zoning: 2(c) Urban Expansion
Cost: \$520,000

Background:

The site

The site is a battle-axe shaped allotment with an area of 1,080 square metres.

The battle-axe site with the driveway handle excluded, or the actual building component of the site, falls from north-east (R.L. 44.99 metres AHD) to south-west (R.L. 41.09 metres AHD) over a distance of 37 metres with a resultant south-west aspect.

The site is vacant and forms part of a 230 lot residential subdivision being Stages 5 and 6 of Koala Beach. The Koala Beach estate has undulating topography and the locality includes various residential designs including single, two and three storey buildings.

The site being a battle-axe allotment is immediately surrounded by six properties.

The proposal

The application seeks approval for the construction of a three storey, 9 metre high dwelling house with attached double garage and in ground swimming pool.

The dwelling house comprises a double garage and formal entry on the ground floor, three bedrooms, bathroom, laundry, kitchen and living spaces including a verandah and deck on the first floor, and the master bedroom and ensuite on the second floor.

The proposal comprises a combination of cladding materials including timber, colorbond wall sheeting and roofing and rendered board.

The proposal has been amended since the original submission of the development application to reduce the size of the proposed south facing verandah.

Surrounding properties and development

The following table outlines surrounding property locations in relation to the subject site and their development status. It details the other applications that have already been determined in the immediate area. The table assists Council to:

- Establish the context of surrounding development;
- Consider the proposal's consistency with that development in light of all relevant development standards and controls applicable to the site and the proposal as outlined in this report; and
- Consider the cumulative impact of the proposal should it be duplicated in the immediate locality.

Lot No	Address	Location	Development status
596	44 Marsupial Drive	SW	Site is vacant and Council recently approved DA13/0407 for a two storey, 7.7m high dwelling with attached double garage.
597	42 Marsupial Drive	W	Site is vacant and Council is not in receipt of a development application.
599	38 Marsupial Drive	S	The site is currently subject to construction of a two storey, 9m high dwelling approved by Council under DA12/0466.
600	36 Marsupial Drive	S	Site improvements include a two storey, 8m high dwelling approved by Council under DA07/1315.
603	2 Melia Close	E	Site improvements include a two storey, 8.5m high dwelling approved by Council under DA08/0219.
605	4 Melia Close	N	Site improvements include a two storey, 8m high dwelling approved by Council under DA05/0517.
606	5 Melia Close	N	Site is vacant and Council is not in receipt of a development application.

* Storey as per the definition of the Tweed LEP 2000.

** Building height as per definition of Section A1 of Tweed DCP 2008.

Public submissions

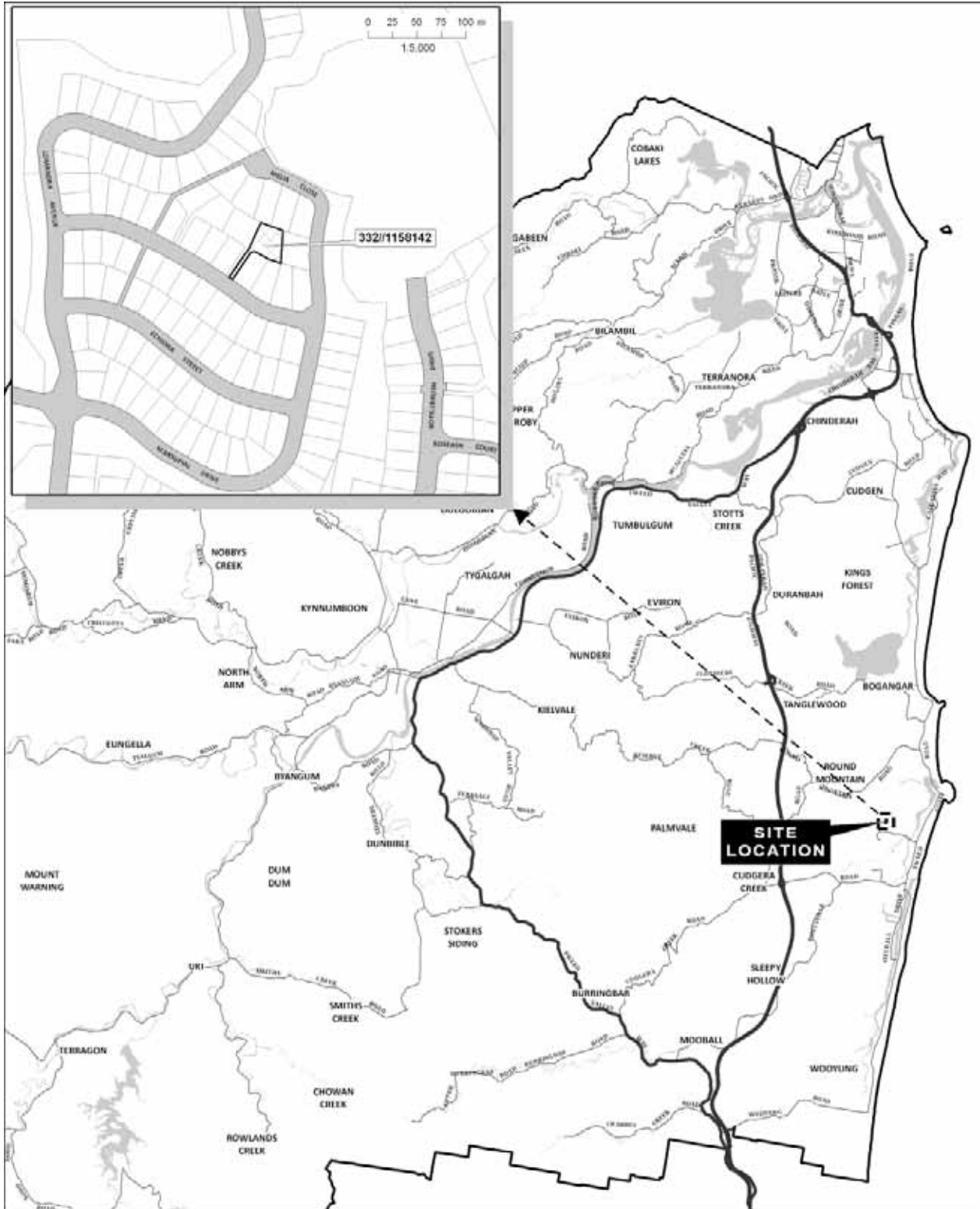
The application was notified to adjacent and surrounding property owners (8 letters) and exhibited for a period of 14 days from Tuesday 28 May to Tuesday 11 June 2013. Council received a total of seven submissions of objection to the proposal from five individuals and one submission of support. The main reasons for objection are loss of views, overshadowing, overlooking, and incompatible building height, bulk and scale.

Statutory consideration

The proposal requires the lodgement and determination of a development application pursuant to the Environmental Planning and Assessment Act 1979 (the Act) and has been considered by Council under Section 79C of the Act, including relevant planning and urban design matters and public submissions the subject of this report.

The proposal is reasonable development having regard to the matters listed under Section 79C including the Tweed Local Environmental Plan 2000, the Draft Tweed Local Environmental Plan 2012 and the Tweed Development Control Plan 2008, amongst others. Whilst the application attracted a number of objections, it is recommended for approval.

SITE DIAGRAM:



Locality Plan
 Lot 598 DP 1076975
 No. 40 Marsupial Drive, Pottsville

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including interest on unrecouped amounts) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and it is the user's sole responsibility and responsibility to ensure that it is used for the intended purpose and prior to any construction or other activity. The information contained on this document remains the property of Tweed Shire Council and is not to be used for any other purpose without the written consent of Tweed Shire Council.

Cadastral: 28 October, 2013
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 Boundaries shown should be considered approximate only.

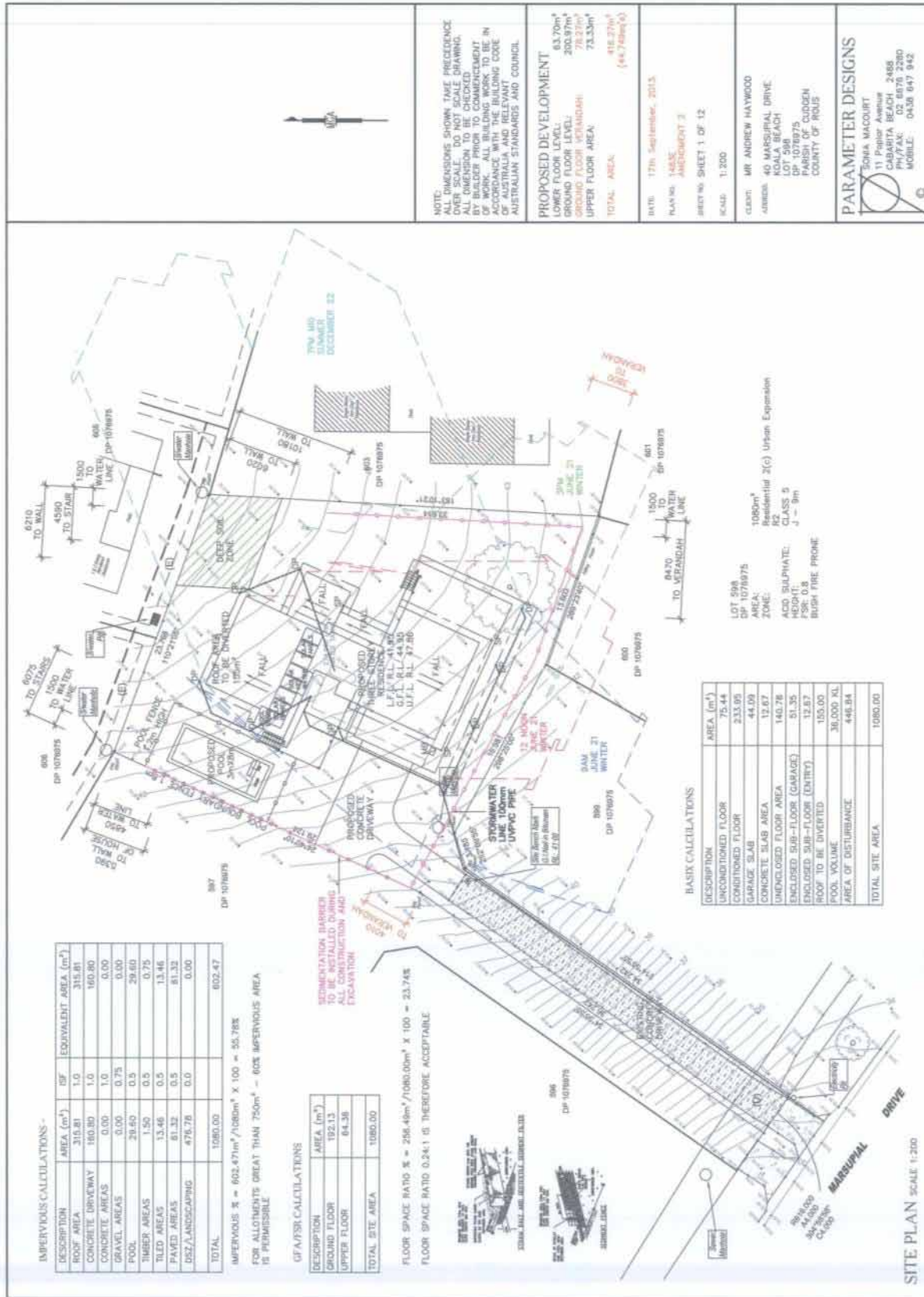


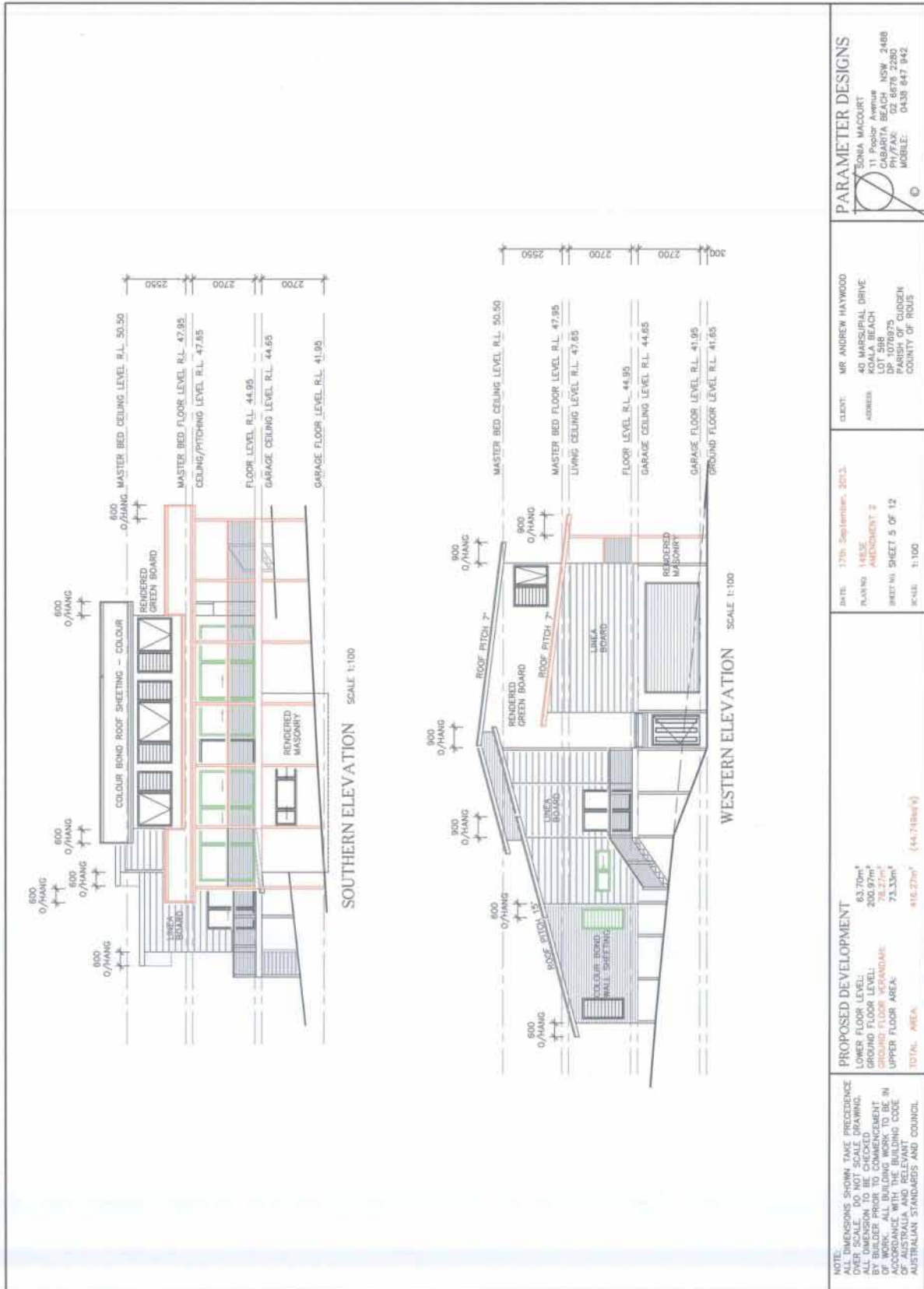
Civic and Cultural Centre
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 Tweed Heads NSW 2486
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DEVELOPMENT/ELEVATION PLANS:





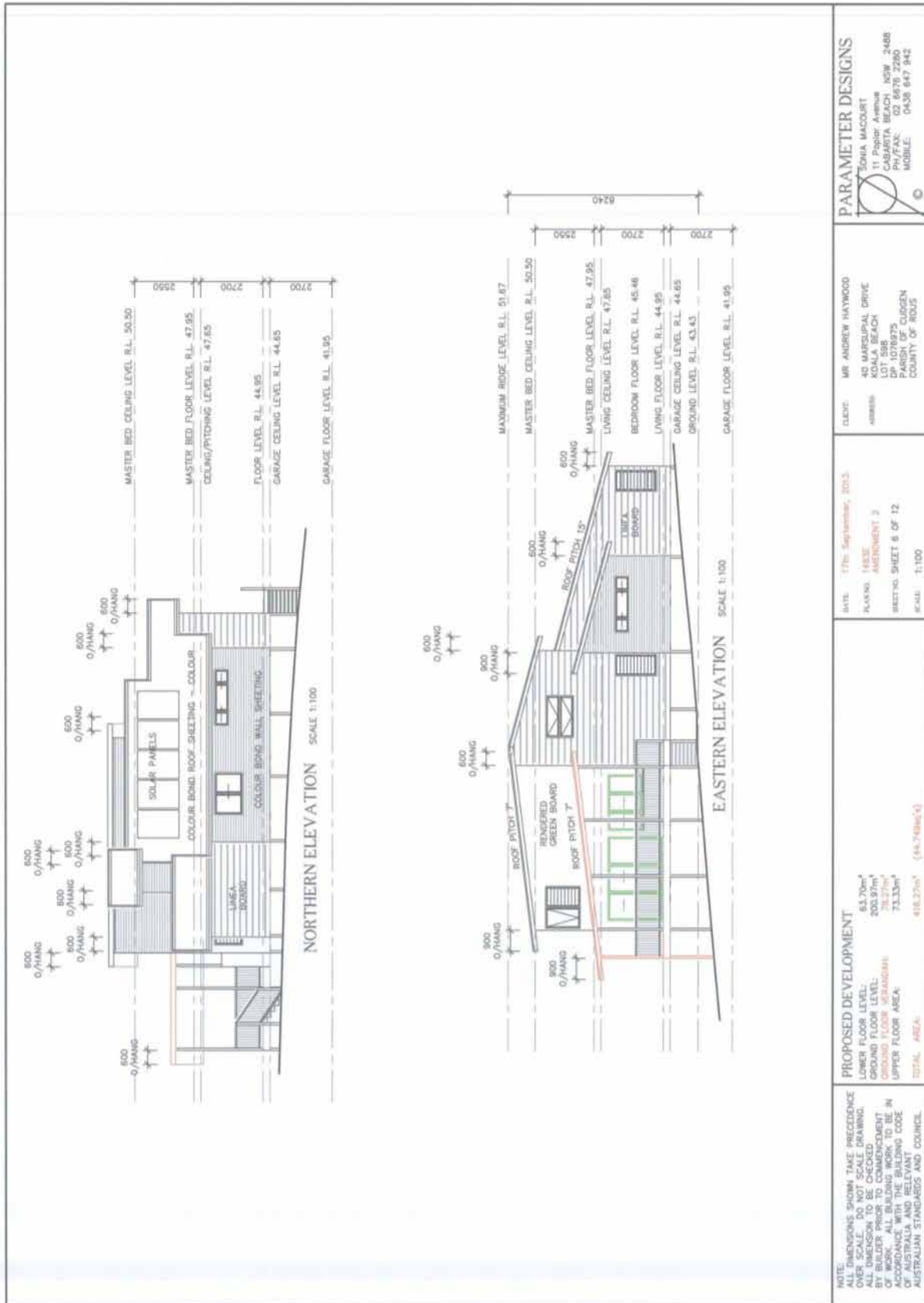
PARAMETER DESIGNS
 TONIA MACCOURT
 11 BUCKINGHAM
 CABARITA BEACH NSW 2488
 PH/FAX: 02 6676 2280
 MOBILE: 0438 847 842

CLIENT: MR ANDREW HAYWOOD
 401 MARSHALL DRIVE
 KOALA BEACH
 LOT 598
 DP 1076875
 PARISH OF CUDDEN
 COUNTY OF ROUS

DATE: 17th September 2013
 PLANING: HES
 ARCHITECT: 2
 SHEET NO: SHEET 5 OF 12
 SCALE: 1:100

PROPOSED DEVELOPMENT
 LOWER FLOOR LEVEL: 63.70m²
 GROUND FLOOR LEVEL: 200.87m²
 UPPER FLOOR LEVEL: 78.27m²
 UPPER FLOOR AREA: 73.33m²
 TOTAL AREA: 416.27m² (44,718sq ft)

NOTE: DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSIONS TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. DRAWING TO BE CONSIDERED IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL.



Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

The Aims of the TLEP 2000 are to give effect to strategic plans and principles that will shape the natural and built environment of the Tweed Shire into the future. The proposal is not contrary to these outcomes.

Clause 5 - Ecologically Sustainable Development

An objective of the TLEP 2000 is to promote development that is consistent with four principles of ecologically sustainable development, namely the precautionary principle, inter-generational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

The proposal has been considered against these four principles and is satisfactory.

Clause 8 - Consent Considerations

The TLEP 2000 sets out the consent considerations when determining a development application.

8(1) The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:

- (a) It is satisfied that the development is consistent with the primary objective of the zone within which it is located, and
- (b) It has considered those other aims and objectives of this plan that are relevant to the development, and
- (c) It is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

To address Clause 8(1)(a) the primary objective of the 2(c) zone is:

To identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.

The proposal is residential development and is an acceptable response in regard to the constraints of the site. The development is consistent with the primary objective of the zone.

The secondary objectives of the 2(c) zone have also been considered and the development is satisfactory.

To address Clause 8(1)(b) this report considers those other aims and objectives of the TLEP 2000 that are relevant to the development.

To address Clause 8(1)(c) this report in its entirety considers the cumulative impact of the proposal including its interaction with the built and natural environment, inclusive of existing site opportunities and constraints being views, proximity to neighbouring properties, orientation and topography, and bushfire. In

response to the aims, objectives and controls of planning instruments and documents applicable to the site and these issues the proposal is acceptable development.

In *Hasting Point Progress Association Inc v Tweed Shire Council and Anor; Hastings Point Progress Association Inc v Tweed Shire Council and Ors* [2008] NSWLEC 180 Justice Pain provided “Assessment of cumulative impact requires that the impact of similar developments to the one proposed and the accumulation of such development and successive developments of a similar type on the community or locality be conducted. The issue of whether a development establishes a precedent is also required. It follows that it is not sufficient to assess the impact of the single development on the locality and community...” [103].

Based on the proposal’s acceptableness under the TLEP 2000 and other planning provisions applicable to the site and proposal, if the proposal was accumulated successively in the community, locality or catchment or on the area of Tweed as a whole, the outcome would also be acceptable and any precedent that is set is also acceptable. The Tweed historically through the implementation of its planning instrument and controls has provided for three storey residential developments in the localities and communities of the Shire, including on sloping sites, the proposal being consistent with this approach should be supported.

Clause 15 - Essential Services

Essential services are available to the site.

Clause 16 - Height of Building

The site has a statutory height limit under the TLEP 2000 of three storeys and the proposal complies with this standard.

The objective of Clause 16 has also been considered which is to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

To address this objective the proposal has also been considered against the Draft TLEP 2012 and Section A1 of the Tweed Development Control Plan – Part A as it relates to dwelling houses as a further measure to assess the appropriateness of the height and scale of the development. These considerations are detailed by this report and the proposal is considered acceptable. Therefore in addition to compliance with the three storey statutory height limit applicable to the site the height and scale of the proposal is also appropriate.

Clause 39A - Bushfire protection

Clause 39A of the TLEP 2000 requires Council to take into account matters with the objective to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The site is bushfire prone land. In accordance with Clause 39A of the TLEP 2000 Council has had regard to provisions of *Planning for Bushfire Protection 2006*. The proposed dwelling has been assessed as having a Bushfire Attack Level of 12.5. Conditions of consent are recommended to ensure the development complies with the provisions of *PBP 2006*.

State Environmental Planning Policy No 71 – Coastal Protection

Clause 8 of this Policy requires Council to consider various matters when considering development on land mapped as being located within the coastal zone. The proposal has been considered against the matters for consideration, including, amongst others:

- Retaining and improving existing public access to and along the coastal foreshore for pedestrians or persons with a disability;
- Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability;
- The suitability of development given its type, location and design and its relationship with the surrounding area;
- Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.

The proposal is satisfactory in regard to the Clause 8 *Matters for consideration* of the policy.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

This policy requires development applications for certain development, including new dwelling houses, to be supported by a BASIX certificate and the imposition of a condition of consent requiring implementation of the statement of commitments listed in that certificate. The application is supported by a BASIX certificate and a condition of consent is recommended.

SEPP (North Coast Regional Environmental Plan) 1988

Clause 43: Residential development

Clause 43 of the NCREP requires Council to not grant consent to development for residential purposes unless, amongst other things:

- It is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land;
- It is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

The proposal is satisfactory having regard to Clause 43.

An erosion and sediment control plan will be implemented prior to, during and post construction.

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

Draft Tweed Local Environmental Plan 2012

The proposal complies with the relevant provisions of the Draft TLEP as follows.

2.3 Zone objectives and Land Use Table

Pursuant to the Draft LEP the site is zoned R2 Low Density Residential. Dwelling houses are permitted with consent in the zone and the proposal is consistent with the objectives of the zone.

4.3 Height of buildings

The objectives of clause 4.3 include as are relevant to the proposal and site:

- To establish the maximum height for which a building can be designed;
- To ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity;
- To limit the impact of the height of a building on the existing natural and built environment;
- To prevent gross overshadowing impacts on the natural and built environment.

The Draft LEP sets a maximum building height for the site of 9.0 metres. The proposal pursuant to the definition of building height included in the Draft TLEP is 9.0m.

4.4 Floor space ratio

The site has a FSR standard of 0.8. The FSR is calculated to be approximately 0.33 and complies.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Part A of Section A1 of the Tweed DCP applies to dwelling houses and the proposal has been considered against the design themes within this Part.

Each design theme is split into an explanation of the design criteria, where relevant the over-arching planning and design principles, a range of objectives and design controls. Where a proposal meets the design controls of the relevant design theme the proposal is deemed to comply. Nevertheless the design controls are a guideline and the DCP acknowledges there may be other acceptable solutions.

A detailed assessment of the proposal against the relevant design themes is available on Council's system and the proposal is largely compliant with the design controls. The proposal includes two departures from the design controls as follows.

Non-compliance with Design theme-Preliminary for context and site analysis

A site analysis plan was not provided with the development application. Despite this the application is acceptable for the following reasons:

- The development application was received by Council on the 20 May 2013. Version 1.6 of Section A1 of the Tweed DCP, which introduced the requirements for a site analysis as a design control, became effective on the 21 May 2013 and while it is noted there are no savings provisions for development applications lodged prior to the effective commencement of a DCP, Council officers have been encouraged to apply a pragmatic approach in the period of transition between the previous and new Section A1. This approach is consistent with application of new and amended DCP sections previously adopted by Council.

- It is apparent the design has considered the site's opportunities and constraints and the submitted site plan addresses several of the requirements of a site analysis pursuant to the DCP.

Non-compliance with Design theme 3-Building envelope controls for rear setback

The design control for the rear setback is 12m as the proposal has a building height greater than 4.5m. The proposal incorporates a rear setback of 6m which does not comply.

The variation to the rear setback design control has been considered against the relevant planning principle and objectives of the design theme related to rear setbacks. The proposed rear setback is acceptable for the following reasons:

- The proposed rear setback provides adequate space for landscaping and open space.
- It is noted the privacy of the proposal's rear open space could be impacted from the second storey south facing balcony of the dwelling on the rear adjoining allotment. This is an expected outcome of developing a sloping battleaxe allotment on the low side of existing development and a 12m setback would not alter the outcome.
- There is sufficient space within the rear setback of the proposal site for landscaping and will allow visual screening to mitigate the privacy impact.
- It is reasonable to expect that the proposal's western and south-eastern sides will be primarily utilised for private open space given they cater to the swimming pool and verandah/decks, hence the proposal will maintain suitable private open space.
- If Council pursued compliance with the design control it may lead to further detriment of the south adjoining allotments of the subject site by reducing the setback of the proposal from those lot boundaries.
- The proposed rear setback from the rear adjoining allotments will not impact sunlight access and ventilation.
- Shadow diagrams submitted in support of the application indicate compliance with the design controls for solar access of the DCP and therefore the shadow impact of the proposed rear setback is acceptable.
- The proposal complies with the applicable side setback design controls.

In addition to the above two non-compliances the public submissions received by Council objecting to the proposal also raised a number of issues relating to Section A1 of the Tweed DCP. A report by exception having regard to those issues and the proposal's compliance with the design themes is provided below.

Design theme-Preliminary for Views and Vistas

The proposal will impact the existing views from the adjacent eastern property Lot 603, namely the views of the mountain range north of Mount Warning.

The Tweed DCP Section A1 states "building siting and height is, as far as is practical, to be designed to minimise the impact on views from surrounding properties, and follow the Planning Principles of view sharing between properties."

The Planning Principles reference *Tenacity Consulting v Waringah [2004] NSWLEC 140* in which Senior Commissioner Roseth adopts a four step process to

assess whether view sharing is reasonable. This process has been followed to assess the proposal.

1. Assessment of views to be affected:

Lot 603 currently enjoys primary views to the south-east including the Pacific Ocean and adjoining coastal foreshore and Cape Byron in the distance from south and east facing decks part of the building. The house at Lot 603 also has views to the south-west over the western boundary including Mount Warning and nearby mountains. The view that would be affected is dependent on the vantage point as there a number of vantage points on Lot 603 including the side yard, middle of house deck, western end of the south facing deck and bedrooms. The view from these vantage points is assessed as valuable.

2. The part of the property the views are obtained:

The views of these mountains is obtained from the side boundary including the yard, middle deck, western end of the south facing deck and bedrooms of Lot 603 from both a standing and sitting position. Lot 603 would maintain views of Mount Warning between the subject building on Lot 598 and the building under construction on Lot 599 from the western end of the south facing balcony. The views of the mountains north of Mount Warning would be lost from the other vantage points. Roseth SC states "The expectation to retain side views...is often unrealistic" [27].

3. Assess the extent of impact

Roseth SC states "this should be done for the whole of the property, not just for the view that is affected" [28]. Lot 603, if the proposal proceeds, will maintain views of Mount Warning to the west via a view corridor between two houses and will continue to enjoy views of the Ocean, coastal foreshore and Cape Byron in the distance. The impact is therefore considered minor.

4. The reasonableness of the proposal that is causing the impact

The proposal has the potential to cause detrimental impacts because it is infill development on a battle-axe site. Nevertheless the proposal complies with the majority of design controls for dwellings and the aims and objectives of the Tweed LEP 2000. The proposal is therefore reasonable development.

An amended design to fully mitigate the impacts i.e. single storey dwelling would not only fail in its ability to provide the applicant with the same development potential and amenity but would not reduce the view loss to Lot 603.

The proposal is therefore reasonable development that will have a minor impact on valuable views from the side boundary of Lot 603. The view sharing in this instance, in particular maintenance of views of Mount Warning, is reasonable.

Design Theme 1-Introduction (General)

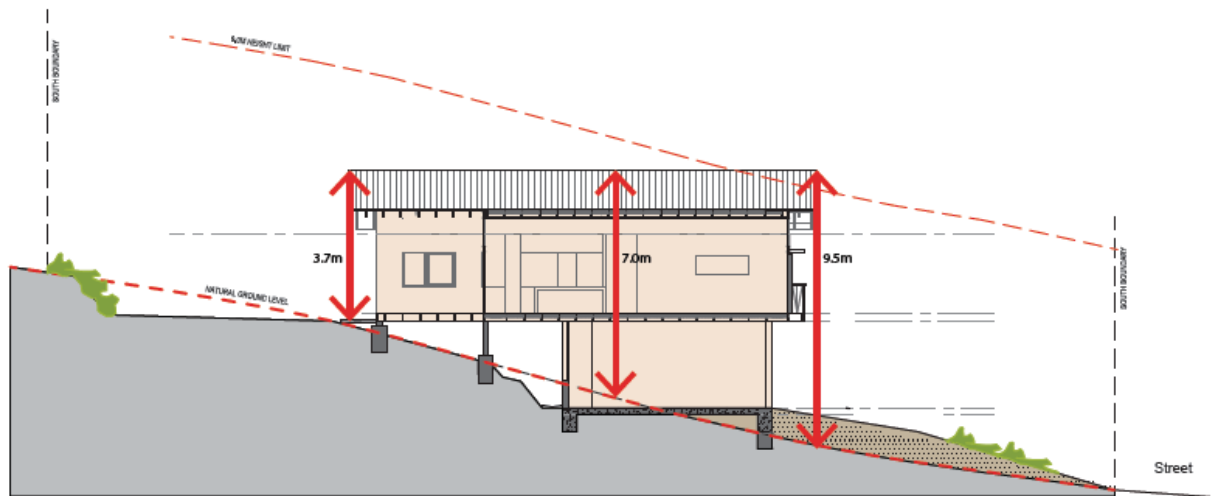
Surrounding dwellings each consist of a variation of material finishes, articulated elevations and roof forms, and the proposal will contribute to this character.

The subject allotment, as well as adjacent allotments, is burdened by a Section 88B restriction on use that dictates building materials and finishes. The proposal complies with the restrictions and will ensure consistency with the character of surrounding dwellings.

Surrounding existing dwellings comprise single and two-storey split level residences as follows:

Lot No	Height – storeys*	Height – metres**
596 (proposed)	2	7.7m
597	Vacant	
599 (u/c)	2	9m
600	2	8m
603	2	8.5m
605	2	8m
606	Vacant	
Average	2	8.24m

* Definition of storey per Tweed LEP 2000



Building Height Measurement - Building height is the height of a building at any point of a building and is the vertical distance between the existing ground level and the highest point of the building.

** Definition of building height per Tweed DCP Section A1.

The proposal has a height of 3 storeys/9m. While the proposal includes an additional storey to the immediately surrounding dwellings, the overall height is not a significant inconsistency with the height of those dwellings (0.76m difference to the average). It is also noted that existing 3 storey dwellings occur within the wider Koala Beach locality. In consideration of these points the proposal is consistent with the scale of surrounding dwellings.

Design theme 2-Site design for Landscaping, deep soil zones and external living areas

The existing eucalyptus tree located on the SE corner of the allotment is to be retained by the proposal through the imposition of a recommended condition of consent.

Design theme 3-Building envelope controls for front and side setbacks

3.1 Setbacks

The site is a battle-axe allotment. Section A1 of the Tweed DCP refers to State Environmental Planning Policy (SEPP-Exempt and Complying Development Codes) in order to define battle-axe. Section A1 does not define front, rear and side setbacks for battle-axe allotment purposes. Council's assessing officer has therefore adopted the definition from SEPP-Exempt and Complying Development

Codes for the purposes of this assessment which states under CI3.20(4): "For the purpose of calculating setbacks for a battle-axe lot, the setback on the opposite side of the lot to the rear setback is taken to be a side setback."

The design control for side setbacks is 1.5m and the proposal includes a minimum setback of 3.8m from the nearest adjoining property boundary. Compliance with the design control would allow the proposal to encroach a further 2.3m toward the nearest adjoining boundary and therefore complies.

Design Theme 4 – Building design

4.3 Solar Access and Natural Ventilation

The shadow diagrams submitted in support of the application indicate the proposal will restrict sunlight to a principle area of private open space of the southern adjoining allotment by 100% at 9am, 30% at 12 noon and <5% at 3pm on June 21, therefore the proposal will not restrict sunlight to the principle area of private open space of the adjoining allotment by more than 50% between 12 noon and 3pm on June 21, or 3 hours. The proposal therefore complies with the DCP.

Lot 600 has north facing solar panels. Shadow diagrams supporting the proposal do not indicate overshadowing of these therefore the proposal complies.

4.5 Visual and Acoustic Privacy

The site and surrounding properties have south-east and south-west views which all surrounding existing development has been designed to capture by including internal and external living spaces on the south elevations, and the proposal is consistent. The Koala Beach locality varies in levels from R.L. 40 metres AHD to less than R.L. 10 metres AHD. The main component of the subject site itself falls at a grade of approximately 10%. In consideration of the localities and site's topography and orientation, the potential for overlooking is unavoidable in this part of the Tweed.

The design control states external private open space located within 4m of a property boundary may require visual screening. The proposal complies because:

- The setback between the proposed verandah and Lot 599 exceeds 4.0m.
- The setback between the proposed verandah and Lot 600 is 3.8m and includes an existing mature tree which will aid in visual privacy and precludes the requirement for additional visual screening.
- There is over 14m distance between the proposed verandah and the adjacent dwelling houses which provides a good opportunity for inter-allotment landscaping and visual screening to minimise the potential for overlooking.
- The site being a battle-axe has six neighbouring properties and there is a resultant potential for the proposal to impact the acoustic privacy of those properties. However ordinary residential use of the proposed external living areas is not expected to detrimentally impact the adjoining properties.

A2-Site Access and Parking Code

The proposal provides access and car parking that satisfies the controls for dwelling houses pursuant to Section A2 of the Tweed DCP.

A11-Public Notification of Development Proposals

The development application was notified and exhibited for a period of 14 days from Tuesday 28 May to Tuesday 11 June 2013. Council received a total of seven submissions of objection to the proposal from five individuals and one submission of support.

The objections focused on loss of views, overshadowing, overlooking and visual impacts related to the building's bulk and scale.

Copies of the objection letters were provided to the applicant who responded by amending the original design as well as outlining reasons why the proposal should proceed, which has been considered during assessment of the application.

A response to the objections is included below in this report.

B10-Koala Beach

The proposal is consistent with the aims and environmental design elements of Section B10 of the Tweed DCP. A detailed assessment of the proposal against Section B10 of the Tweed DCP is available on Council's system.

B21-Pottsville Locality Based Development Code

The proposal complies with Section B21 of the Tweed DCP, particularly the area specific strategy for Koala Beach.

The DCP describes the existing condition of Koala Beach pictorially. An example is provided below and the proposal will contribute to this condition.

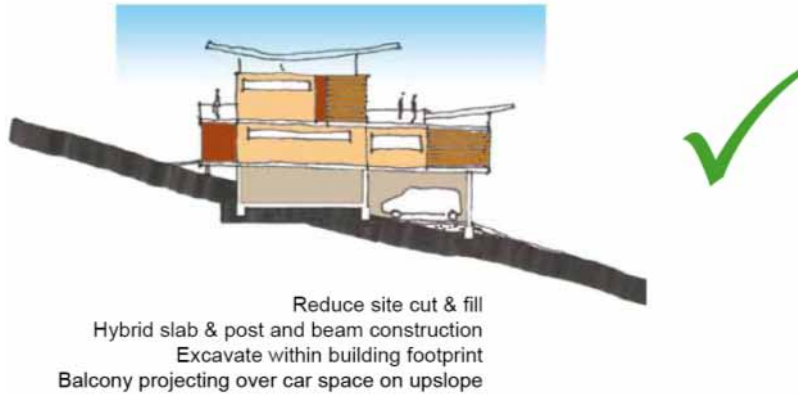


The proposal also meets the strategy and development control and implementation requirements in that:

- The proposal complies with the built form controls.

- The proposal provides adequate space for landscaping for shade and screening.
- The proposal minimises cut and fill by incorporating a hybrid slab / post and beam structure. The DCP provides the following reference for new development and the proposal complies.

Hybrid Slab / Post & Beam



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

Clause 92(a) Government Coastal Policy

The NSW Coastal Policy 1997 applies to land within one kilometre landward of the open coast high water mark and one kilometre of coastal rivers, lakes, lagoons, estuaries and islands. The subject site's proximity to the coast and Mooball Creek means the policy applies to the land. The policy requires that the environment including water quality, habitat and conservation values are assessed and mitigation measures put in place to protect them.

The proposal is not contrary to the policy's requirements and no specific mitigation measures are warranted.

No other matter prescribed by the EP&A Regulation is applicable to the proposal.

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

The subject site is located approximately 990 metres from Mooball Creek and 1.5 kilometres from the ocean and the aims and objectives of the *Tweed Shire Coastline Management Plan 2005* and *Tweed Coast Estuaries Management Plan 2004* have been considered. The proposal is not detrimental to these Plans.

(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/Building Height and Scale

Existing immediately surrounding development to the subject site comprises two storey dwellings. There are examples of single, two and three storey development in the Koala Beach locality.

While the height in storeys as defined by the Tweed LEP 2000 of the proposal differs to immediately surrounding development the proposal has been assessed as having a consistent overall actual height to those developments. In consideration of the proposal's general compliance with the controls in force in

Tweed Shire the difference in storey height between the proposal and surrounding houses is not considered to hinder the application proceeding.

Overshadowing

The proposal will cause overshadowing of the immediately adjacent properties located to the south of the subject site. This is a result of the site and locality's topography and orientation. The design response of the proposal meets the objectives and relevant controls related to this issue and the proposal should therefore proceed.

Overlooking

The site is a battle-axe allotment surrounded by several existing dwelling houses. Infill development of the site presents typical issues related to visual privacy including the potential for overlooking. The proposal has been assessed as being largely compliant with the relevant development controls aimed at mitigating privacy impacts. There are also opportunities to provide visual screening between allotments to further protect privacy. The proposal is therefore supported.

(c) Suitability of the site for the development

Topography

The proposal has addressed Council's requirements for a sloping site by designing a hybrid slab and post and beam structure that maintains the natural topography of the land.

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

Public notification 28 May 2013 to 11 June 2013

Following notification of the development application to surrounding properties Council received seven objections to the development from five individuals and one submission of support. A summary of the submissions and responses are provided below.

Council has provided extensive opportunities for objectors to address Council regarding the development application including the ability to review the amended design drawings submitted by the applicant following receipt of the original objections. The individual who submitted the majority of objections has maintained through correspondence that the current design does not comply with Council's adopted DCP and conditions should be included to mitigate impacts.

Summary of submission	Response
<p><i>Overlooking and significant visual and acoustic privacy issues emanating from the proposed elevated deck and southern elevation of bifold doors and windows which look directly into rear yard and living space (Refer DCP A1 4.5 Visual and acoustic privacy P1, P3, O3, C1, C2, C3, C4).</i></p>	<p>The site and surrounding properties have south-east and south-west views which all surrounding existing development has been designed to capture by including internal and external living spaces on the south elevations, and the proposal is consistent. In conjunction with the site's slope and orientation, there is potential for overlooking.</p> <p>In order to mitigate the visual privacy impact from potential overlooking, and the acoustic privacy impact, the applicant has revised the</p>

Summary of submission	Response
	<p>original design which has increased the setback between the verandah and Lot 599 to 4.0m and Lot 600 to 3.8m. This increase has resultantly reduced the narrowest portion of the verandah adjacent to Lot 599 to 1.2m which the applicant maintains will reduce usage of this side of the verandah and the Eastern portion of the verandah will incur primary external usage.</p> <p>The revised setback means the distance between the verandah and the southern houses is 14.8m to Lot 600's dwelling and 16m to Lot 599's dwelling. This distance allows for inter-allotment landscaping and visual screening to minimise the potential for overlooking.</p> <p>An existing mature eucalyptus tree on the SE portion of the site should be retained through the imposition of a condition of consent which will assist with minimising amenity impacts between the proposal and Lot 600.</p>
<p><i>Inappropriate building setback to rear boundary of adjacent properties considering the overall height, bulk and mass of the proposed building (3.1 Setbacks P2, O3, O4, O5, C1, C2, C19).</i></p>	<p>The site is a battleaxe allotment and pursuant to the definition adopted by Council contained within SEPP (Exempt and Complying Development Codes) the boundaries between the site and adjacent eastern, southern and western properties are side boundaries.</p> <p>The proposed design complies with the side setback controls. A variation to the rear setback control between the site and the northern property is required for the design, and has been assessed as being acceptable. In response to the objectives mentioned by the objector, the proposal provides appropriate separation between dwellings, minimises the potential for overlooking and overshadowing, and allows landscaping between the buildings and maintenance of the adjoining southern properties' rear yard landscape zone.</p>
<p><i>Incompatible building height, scale and mass and visual bulk in compatible with adjoining development which would result in significant amenity impacts (Refer DCP A1 3.2 Building Height P1, P5, O1, O2 and</i></p>	<p>The proposal has an overall height of 9.0m which is acceptable under the DCP.</p> <p>The proposal includes articulated elevations, a combination of material finishes and a low roof pitch.</p> <p>The proposal's resultant height, scale, mass</p>

Summary of submission	Response
<i>Building Form O1, C1).</i>	and visual bulk is acceptable and compatible with adjoining development.
<i>Overshadowing impacts particularly during winter months (Refer DCP A1 4.3 Solar Access and Natural Ventilation P1, O2).</i>	The shadow diagrams submitted in support of the application indicate the proposal complies with the controls for solar access and natural ventilation of Section A1 of the DCP.
<i>Non-compliance with requirements of DCP A1 to prepare and lodge a site analysis which documents the opportunities and constraints, and demonstrates how the proposal has been designed to mitigate potential amenity impacts (Refer DCP A1 – 3.0 - Context and Site Analysis C1).</i>	The application was not supported by a site analysis that met all of the relevant details suggested by the DCP. The revised design nevertheless has given consideration to the opportunities and constraints of the site.
<i>Noncompliance with passive design principles and controls (Refer DCP A1 4.2 Passive Design P1, P10, O1, C1).</i>	It is noted primary living spaces are located where they will maximise access to the south-east and south-west vistas on the southern elevation of the building. All habitable rooms will be provided access to fresh air and living spaces maintain access to prevalent winds. The design incorporates 600mm eaves and will aid shading of western and eastern walls. While a site analysis did not accompany the application the opportunities and constraints of the site have been balanced by the design.
<i>It is unclear whether the existing eucalyptus tree (Koala Food tree) located close to the southern boundary will be retained.</i>	The subject tree has been identified as a Grey Ironbark (<i>Eucalyptus siderophloia</i>) by Council's Natural Resource Management Unit. While the tree is not a preferred Koala Food tree it's retention is recommended through the imposition of a condition of consent because the tree is likely to assist potential amenity impacts between allotments as well as providing food and shelter for other fauna species.
<i>The building would cause loss of views from neighbouring properties.</i>	The view loss and view sharing from the proposal has been assessed as being reasonable.
<i>Three storey development breaches the Koala Beach covenant requirements.</i>	The Section 88B Instrument burdening the allotment restricts dwelling house development to a maximum height of 10m between the natural ground level and the ridge line, and the proposal complies with this restriction.

Summary of submission	Response
<i>Three storey dwelling would create a larger and wider projection of shade and fall from the sun on surrounding residences.</i>	Shadow diagrams submitted in support of the application indicate the overshadowing of adjacent properties meets the design controls for residential development.
<i>The proposal is supported as changes to the setback of house or the third storey would impact rear development views and cause additional overshadowing.</i>	The proposal currently complies with the side setback, view sharing and overshadowing controls. The impacts from the departure from the rear setback control are able to be mitigated and are acceptable.
<i>As the applicant has failed to justify how overlooking and visual impacts will be mitigated as demonstrated on a site analysis, and given part of the deck will be within 4.0m of the southern boundary, privacy screening along this elevation would be required.</i>	Privacy screening is not warranted as the side setback distances comply with the design controls of the DCP and there is adequate space for inter-allotment landscaping and screening within the subject properties to ameliorate potential visual privacy impacts. In addition privacy screening would be an unreasonable obstruction of the primary view direction of the subject site.
<i>To mitigate privacy impacts, the balustrade should be made of solid material.</i>	This is not warranted given the proposal complies with the side setback controls and opportunities are available to ameliorate visual privacy impacts between allotments.
<i>To mitigate privacy impacts, the amount of glazing along this elevation should be reduced.</i>	There will remain adequate opportunities for visual screening between allotments and this is not warranted.
<i>The third storey should be redesigned to be further north to reduce the overshadowing impacts to south adjoining allotments.</i>	The predicted overshadowing impacts are acceptable under the Tweed DCP.
<i>The third storey should be redesigned to be further north to reduce the impacts of height and visual bulk to south adjoining allotments.</i>	The proposal complies with the design controls for building height and form of the Tweed DCP.

(e) Public interest

There are two opposing views regarding the development application.

The first is the applicant's interest in maintaining their right to develop a dwelling house that maximises the opportunities of the site including the statutory height limit of three storeys.

The second is that of five surrounding property owners who maintain the proposal will have detrimental impacts to their amenity.

Despite these different views the development application has been assessed on its merits. The proposal sought is acceptable in consideration of the primary standards and controls applicable to the site and type of development, namely the Tweed Local Environmental Plan 2000, Draft Tweed Local Environmental Plan 2012 and Tweed Development Control Plan 2008. Accordingly the application is recommended for approval.

OPTIONS:

That Council:

1. Approves the development application, subject to conditions; or
2. Refuses the development application, providing appropriate reasons.

Council officers recommend Option 1.

CONCLUSION:

The site has constraints related to its configuration, topography and proximity to neighbours and opportunities in terms of its orientation toward views. The assessment of the application indicates the proposed design has maximised the opportunities while satisfactorily addressing the constraints which is demonstrated by its compliance with the Tweed LEP, Draft Tweed LEP and Tweed DCP. The proposal and surrounding property development is located on the side of a hill and there are predicted amenity impacts that could be reasonably anticipated given the topography of the Koala Beach locality and these have the opportunity to be mitigated. The application is therefore recommended for approval subject to conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court which would incur financial costs to Council in defence.

Should the applications be approved there is potential for the objector to lodge an appeal against the adequacy of the processing of the application which would incur financial costs to Council in defence.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

26 [PR-CM] Development Application DA13/0132 for a Change of Use to Surfboard Manufacturing, Extension of Mezzanine Level and Associated Signage at Lot 19 SP 80033 No. 19/23-25 Ourimbah Road, Tweed Heads

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0132 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:

In November 2012 Council received a complaint that Superbrand (a surf board manufacturing business) had started to occupy Unit 19, 23-25 Ourimbah Road, Tweed Heads without development approval. In addition the complaints raised the issue of fumes associated with the business and that such fumes were having an impact on their health. These complaints have continued to date.

The subject Development Application was lodged in April 2013 seeking approval for the ongoing use of the site for the surfboard manufacturing business, the ongoing use of the already constructed mezzanine level and the ongoing use of already installed signage.

Since 19 April 2013 Council Officers have been requesting the applicant provide an Air Quality Impact Assessment Report prepared by a suitably qualified air quality investigation consultant in accordance with the NSW Office of Environment & Heritage's Approved Methods for Modelling and Assessment of Air Pollutants in New South Wales.

Council explained to the applicant that if the effects of air pollution originating from this operation are not examined by a suitably qualified air quality investigation consultant, Council is not undertaking due diligence in terms of legislative requirements and health, safety and welfare of those who could be put at risk from the works being carried out at this business.

Since lodgement of the Development Application the applicant has been making amendments to the premises to try to improve the issue of odour and fumes escaping the premises. This has occurred following Work Cover Authority of NSW getting involved.

However Council's previous experience over many years in dealing with environment and health issues concerning industries where NSW WorkCover has also been involved, has revealed that WorkCover addresses issues that relate to the health and safety of employees in the work place only. Environment and health issues or impacts that are external to the operation of an industry such as noise, air pollution or offsite migration of contaminants for example are to be resolved by the Appropriate Regulatory Authority. Therefore as Council's

concerns relate to possible air pollution impacts that are external to the workplace operations of this particular industry, it cannot be assumed that by resolving any NSW WorkCover issues, the subject industry has complied or indeed negated Council's requirement for the provision of an Air Quality Impact Assessment Report.

In September 2013 Council had still not received the requested Air Quality Impact Assessment Report and accordingly it was considered prudent to report this matter to Council based on the information submitted within the original application which resulted in an initial recommendation for refusal.

Since September 2013 Council has deferred determination of the application to enable the applicant time to prepare and lodge the requested Air Quality Assessment Report.

On 8 November 2013 Council received the final Air Quality Assessment Report that Council staff had been requesting since April 2013. This report has been reviewed by Council staff. The report concludes that the emission levels experienced by neighbouring properties are within acceptable limits and therefore on this basis the application is now considered to warrant a recommendation for approval.

RECOMMENDATION:

That Development Application DA13/0132 for a change of use to surfboard manufacturing, extension of mezzanine level and associated signage at Lot 19 SP 80033; No. 19/23-25 Ourimbah Road TWEED HEADS be approved (under staff delegation when the necessary owners consent is received) subject to the following conditions:

GENERAL

1. The development shall be carried out in accordance with:

- **The Statement of Environmental Effects; and**
 - **The mitigation options and conclusions of the Air Quality Assessment for Superbrand Surfboard Manufacturing Facility, Tweed Heads prepared by Air Noise Environment Pty Ltd dated 7 November 2013 (Document Ref: /Network/Projects/3445/Reporting/3445 report03.odt) which are summarised as follows:**
 - * **Rooftop stacks are changed to allow the vertical dispersion of pollutants as per table 5.4 of the report;**
 - * **Seal the length of the ceiling/wall joints to minimise the potential for Volatile Organic Compounds to pass into the adjacent units; and**
 - * **Completely remove or effectively seal the old ventilation duct work in the glassing room to minimise the potential for Volatile Organic Compounds to escape the enclosed glassing room; and**
 - **Plan Nos 1 and 2 as marked prepared by the applicant and dated April 2013.**
- except where varied by the conditions of this consent.**

[GEN0005]

- 2. Within 60 days of the date of this consent the applicant is to lodge with Council a Building Certificate (together with the prescribed fee) for approval for the mezzanine floor extension constructed without Council approval. The**

application is to be supported by structural engineering details detailing the structural adequacy of the structure.

[GENNS01]

3. Within 60 days of the date of this consent the applicant is to lodge an application with Council or a Certifying Authority an Occupation Certificate. Such Occupation Certificate is not be issued until all conditions of this consent have been satisfied.

[GENNS01]

4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

5. The premises is to have two parking spaces allocated to it at all times to accommodate the proposed surfboard manufacturing business.

[GENNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

6. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:

5.6 Trips @ \$844 per Trips **\$4,726**

(\$815 base rate + \$29 indexation)

S94 Plan No. 4

Sector1_4

[POC0395/PSC0175]

7. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted

Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP4:	0.112 ET @ \$12575 per ET	\$1,408.40
Sewer Tweed Heads:	0.112 ET @ \$6042 per ET	\$676.70

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

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

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

[POC0675/PSC0165]

8. A person must not use the whole or any part of the building (within the meaning of Section 109H(4)) unless an Occupation Certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

9. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

USE

10. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

11. Hours of operation of the business are restricted to the following hours:

- * 8.00am to 5.00pm - Mondays to Fridays
- * No operations are to be carried out on Saturdays, Sundays or Public Holidays
- * All deliveries and pickups relating to the business are to occur within the approved hours

[USE0185]

12. All plant and equipment installed or used in or on the premises:

- (a) Must be maintained in a proper and efficient condition, and
- (b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

13. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.

[USE1035]

14. All containers, whether or not empty, which contain or once contained potentially contaminated materials, parts and the like shall be effectively sealed and stored to the satisfaction of Council's General Manager or delegate.

[USE1045]

15. The development shall be carried out in accordance with the mitigation options and conclusions of the Air Quality Assessment for Superbrand Surfboard Manufacturing Facility, Tweed Heads prepared by Air Noise Environment Pty Ltd dated 7 November 2013 (Document Ref: /Network/Projects/3445/Reporting/3445report03.odt).

All works as specified in the mitigation options and conclusions of the Air Quality Assessment for Superbrand Surfboard Manufacturing Facility, Tweed Heads prepared by Air Noise Environment Pty Ltd dated 7 November 2013 (Document Ref: /Network/Projects/3445/Reporting/3445report03.odt) shall be carried out to the satisfaction of the General Manager or delegate within 30 days from the development consent being issued, provided that the General Manager or delegate may extend the time period for the carrying out of works to a date that may be determined by the General Manager or delegate.

Written confirmation of compliance with all mitigation options and conclusions of the Air Quality Assessment for Superbrand Surfboard Manufacturing Facility, Tweed Heads prepared by Air Noise Environment Pty Ltd dated 7 November 2013 (Document Ref: /Network/Projects/3445/Reporting/3445report03.odt) from a suitably qualified and practicing air quality investigation consultant shall be submitted to the satisfaction of Council's General Manager or delegate within 30 days of the works being completed.

[USENS01]

16. Upon receipt of an air quality/odour complaint that Council deems to be reasonable, the operator/owner shall submit to Council an air quality assessment carried out by a suitably qualified and practicing air quality investigation consultant. The assessment shall be submitted to Council within a time frame as specified by Council's General Manager or delegate. The air quality assessment report shall include recommendations for air quality attenuation and be submitted to the satisfaction of the General Manager or delegate. The owner/operator shall implement the recommendations of the air quality assessment within a time frame as specified by Council's General Manager or delegate.

[USENS02]

REPORT:

Applicant: SuperBrand (Mr Adam Fletcher)
Owner: Chashell Pty Ltd
Location: Lot 19 SP 80033 No. 19/23-25 Ourimbah Road, Tweed Heads
Zoning: 4(a) Industrial and Uncoloured Land
Cost: \$15,000

Background:

Council first received a complaint about SuperBrand (surfboard manufacturer) operating from Unit 19, 23 -25 Ourimbah Road, Tweed Heads, without approval in November 2012.

Following this complaint Council advised the applicant that a Development Application was required for the land use as Unit 19 had never received a first use approval as required by DA05/1332 which approved the industrial unit complex.

The Development Application was then subsequently lodged on 2 April 2013.

Between November 2012 and April 2013 when the application was lodged Council received numerous complaints about the business in regards to odour (toxic resin fumes), health implications (red itchy eyes, headaches etc), lack of filtration and air locks, and poor work practices.

The subject application now seeks consent for:

- § Change of Use (first use) of the premises for a surfboard manufacturing business (SuperBrand). The business has been operating at the subject unit without consent since November 2012.
- § Extension of existing mezzanine by 112m² for the purposes of manufacturing, storage and office space (this work has been done without approval and would require the lodgement of a Building Certificate to validate the construction standard).
- § Use of equipment such as air compressor (stored in room under stairs), a hand-operated sander, a cordless power drill and dust extraction unit.
- § Hours of operation – 8am to 5pm Mondays to Fridays excluding Public Holidays.
- § Up to ten employees.
- § Minimal signage consisting of one flush wall sign measuring 6m x 1m.

The application was supported by a Statement of Environmental Effects, a Building Code of Australia report by a private certifier, a certificate from Naros Air Conditioning and Sheet Metal certifying that the mechanical ventilation has been installed in accordance with the Australian Standard and an engineering report certifying the construction standard of the mezzanine level.

The subject site is located in an established industrial area, within the Ourimbah Road Industrial precinct. The subject site comprises of an industrial unit complex, which contains 24 actual units (Stage 1) and plans for 16 further individual units (Stage 2). It is a corner allotment and as such has dual site entry.

The proposal is for the first approved use of Strata Unit 19 and has a total current Gross Floor Area of 213m² (165 ground/48 mezzanine). The factory unit is of concrete tilt up construction with an insulated metal roof.

The adjoining property to the west of the site is a bus depot and the adjoining property to the east of the subject site is vacant, however was approved as stage two of DA05/1335 for

factory units in conjunction with the approval for the subject site (stage 1). DA12/0552 also approved a different development over that part of the site previously allocated for Stage 2. The different use authorises a car rental facility in association with the Gold Coast Airport. Neither Stage 2 of DA05/1332 nor DA12/0552 have been acted upon to date.

Residential development to the south is separated from the subject site by a 7m wide vegetated corridor.

Internal of the site the adjoining businesses are a Summit Press Printing (Strata Unit 18) and a naturopathic business where essences are tested and mixed (Strata Unit 20).

As soon as the development application was lodged the primary issue with the application was in relation to the emissions (smell) that the business was emitting that adjoining businesses were experiencing.

Therefore on 19 April 2013 Council Officers specifically requested the applicant to undertake an Air Quality Impact Assessment Report prepared by a suitably qualified air quality investigation consultant in accordance with the NSW Office of Environment & Heritage's Approved Methods for Modelling and Assessment of Air Pollutants in New South Wales.

The air quality investigation was required to incorporate the existing operations and include air sampling for odour causing substances external to the premises (with particular attention to neighbouring units in the immediate vicinity of the premises) that are associated with the surfboard manufacturing process (eg styrene etc) as well as investigating the adequacy of the existing mechanical ventilation system for removing odours/air impurities etc prior to discharge to the external environment, not purely in relation to the indoor air quality within the premises where the manufacturing is being carried out.

The report was required to include appropriate recommendations necessary to demonstrate that the surfboard manufacturing process can be carried out without causing an odour nuisance to any adjoining premises.

On 1 May 2013 the applicant provided Council with a copy of a quote for the required report from Air Noise Environment which came to a cost of \$5,900.

On 9 May 2013 the applicant questioned the need for the requested report due to the cost of the report and the extent of works that SuperBrand had done to try to mitigate impacts to neighbouring businesses (reviewed the roof cavity and filled obvious gaps between businesses, and installed whirly birds to ensure ventilation overnight).

As a result of the applicant's letter of 9 May 2013 Council Officers (from planning and environmental health) arranged a site visit to inspect both the subject property and the adjoining businesses affected by the smell.

The site visit occurred on 21 May 2013. Council Officer's first met with the adjoining business owners (on both sides of SuperBrand) who complained that the smell coming from the SuperBrand Surfboard Manufacturing business at times was unbearable. They complained that the smell was bad while the boards were being applied with resin but also first thing in the morning after the premises had been closed up over night. The complainants also were concerned that best practices were not being adopted and the protective clothing was not being worn by the staff at Superbrand.

After meeting with the complainants Council staff met with the applicant and had a tour of the premises and were shown what processes occurred within the premises. Generally upstairs was being used for office space, storage space and to shape and sand the boards, while downstairs the resin was being applied to the boards on a floor covered in sand. The sand would then get thrown in the bin when it got too clogged with spilt resin. During the inspection there was one staff member applying resin to a couple of boards. There was

capacity for additional boards and additional staff in this area. Council Officers witnessed the front roller doors being left open which seemed to be contributing to the smell of the resin leaving the premises and affecting neighbouring businesses.

On 23 May 2013 SuperBrand were reported to WorkCover Authority of NSW by an individual. WorkCover staff visited the site and issued the applicant with a list of Notices to ensure compliance with the WorkCover legislation. WorkCover have stated as follows:

"I write to confirm WorkCover NSW investigated a complaint in the name of Superbrand Pty Ltd at unit 19-25 Ourimbah Road Tweed Heads on 23/5/2013. As a result of this investigation directions were given to instigate remedial measures to ensure compliance with Work Health & Safety Legislation in particular Section 19 of the Work Health & Safety Act 2011. Subsequent visits were made to the premises to ensure compliance on two (2) occasions. In addressing the before mentioned matters the organisation fully cooperated with WorkCover to achieve the required outcome."

Whilst Council is pleased that WorkCover are now satisfied with the premises from their legislative perspective Council Officers have stated that:

"Previous experience over many years in dealing with environment and health issues concerning industries where NSW WorkCover has also been involved, has revealed that WorkCover addresses issues that relate to the health and safety of employees in the work place only. Environment and health issues or impacts that are external to the operation of an industry such as noise, air pollution or offsite migration of contaminants for example are to be resolved by the Appropriate Regulatory Authority. Therefore as Council's concerns relate to possible air pollution impacts that are external to the workplace operations of this particular industry, it cannot be assumed that by resolving any NSW WorkCover issues, the subject industry has complied or indeed negated Council's requirement for the provision of an Air Quality Impact Report."

On 30 May 2013 Council receives a complaint that states:

"These premises have been used to manufacture surfboards for approx 60 months and the fumes, being resin fumes, from these activities are unbearable. During this time, many of my employees have needed to leave work after inhaling the fumes, even as early as 10 minutes after commencing work. Symptoms being experienced include nausea, headache, eye irritation and blood shot eyes. There is also a constant white dust that has been released from the premises into the common property of the complex, i.e. car park. Clients which have visited our premises have also experienced eye irritation and noted the strong fumes that present in our premises. During this time, constant contact has been made with the tenants of the said premises and we had been advised that the appropriate actions were being taken to minimise any of these issues including appropriate extraction fans to be installed. We believe these fans have been installed, however the fumes are still prevalent."

On 5 June 2013 Council staff wrote to the applicant reinforcing the need for the Air Quality Impact Assessment Report. Section 79C of the Environmental Planning & Assessment Act 1979 requires Council to consider the likely impacts of the development and the site suitability. Council does not have a policy on air quality however there are many resources available that have guided Council in this matter including:

- Warringah Council - The Business of Air Quality guidelines
- Department of Sustainability, Environment, Water, Population and Communities - National Pollutant Inventory
- NSW Office of Environment & Heritage's Local Government Air Quality Toolkit

- NSW Office of Environment & Heritage's Approved Methods for Modelling and Assessment of Air Pollutants in New South Wales
- NSW Office of Environment & Heritage's Environmental Information for the Composites Industry

These guidelines explain that Fibreglass Reinforced Products (FRP's) create emissions of volatile organic compound (VOC's) emissions and odours. The mains sources of such pollution are:

- Poor ventilation, filtration and discharge of particulates, dust, VOCs and odours. This is often caused by inappropriate stack and ventilation system configurations, fugitive emissions and inefficient air circulation and filtration.
- Poor housekeeping practices such as failure to place lids on containers and general poor storage and handling of containers.
- Poorly maintained equipment and equipment malfunction or failure. Maintenance of filtration systems and spray, sanding or polishing equipment contributes greatly to overspray, inefficient product use and emission of particulates, dust, VOCs and odours.
- The technical ability of personnel manufacturing FRPs can sometimes be low.
- Poor tool or equipment clean up. Commonly used cleaning products often contain solvent and are hazardous due to high flammability and chlorine content. Acetone, toluene, xylene and various alcohols are of particular concern. Emulsifiers and citrus based solvents may also be toxic.

Council explained to the applicant that if the effects of air pollution originating from this operation are not examined by a suitably qualified air quality investigation consultant, Council is not undertaking due diligence in terms of legislative requirements and health, safety and welfare of those who could be put at risk from the works being carried out at this business.

On 9 July 2013 the applicant submitted a revised a copy of a quote for the required report from Air Noise Environment which came to a cost of \$8,100.

On 10 July 2013 Council agreed that the proposed methodology seemed sound provided recommendations were made to remove paths that would allow emissions between businesses and that the site audits occurred during worst case scenario conditions.

On 12 July 2013 the applicant advised Council as follows:

".. I have been advised by the directors of Superbrand Pty Ltd that they are prepared to meet the costs of the Impact Assessment Report if Council can provide a preliminary approval for the development application, subject to the outcome of the report.

If Council is unable to provide preliminary development approval then Superbrand Pty Ltd requires some degree of comfort that Council will not allow its activities to be continually impinged by a vexatious complainant that has clearly driven the processes of Council in this development application."

On 8 August 2013 Council responded as follows:

*"Council **cannot** give any guarantee (or in principal approval) that by undertaking the requested Air Quality Impact Assessment Report you will be granted an approval. To do so would be unlawful and contrary to the Environmental Planning & Assessment Act 1979 and Council's Code of Conduct.*

Council has been requesting an Air Quality Impact Assessment Report since 19 April 2013. To date Council has been very lenient in allowing extra time for you to provide such a report. However such leniency cannot continue indefinitely. Please advise Council within 14 days of when the requested Air Quality Impact Assessment Report will be submitted to Council.

Upon receipt of the requested report a determination of your application will be made. If an approval is issued you will be held to comply with the conditions of consent imposed on you in regards to air quality (probably as recommended within the air quality report), hours of operations and any other standard conditions. If you were to breach any such conditions Council would follow this up as a compliance matter.

If an approval was issued and Council still received complaints about the business operations from neighbours each individual complaint would be assessed on its merits having regard to the conditions imposed on the consent. Council would act on complaints if they had merit.

Your letter of 12 July 2013 also asks why Superbrand are being asked to provide the Air Quality Impact Assessment Report when other surfboard manufacturers have not been asked to do the same thing.

Over recent years Council has been receiving more and more complaints about air pollution from various businesses including surfboard manufacturers and accordingly Council has been undertaking more vigorous assessments of potential air pollution causing activities against best practice guidelines.

I can assure you that Council are requesting the Air Quality Impact Assessment Report to satisfy the legislative requirements and Council Officers concerns not just as a result of the complaints received in regards to your business. I can also advise that Council Officers have been to your site on numerous occasions and experienced a strong smell coming from the premises, thus necessitating the Air Quality Impact Assessment Report..."

On 20 August 2013 the applicant responded to the above with disappointment and an indication that further quotes are being sought for the work.

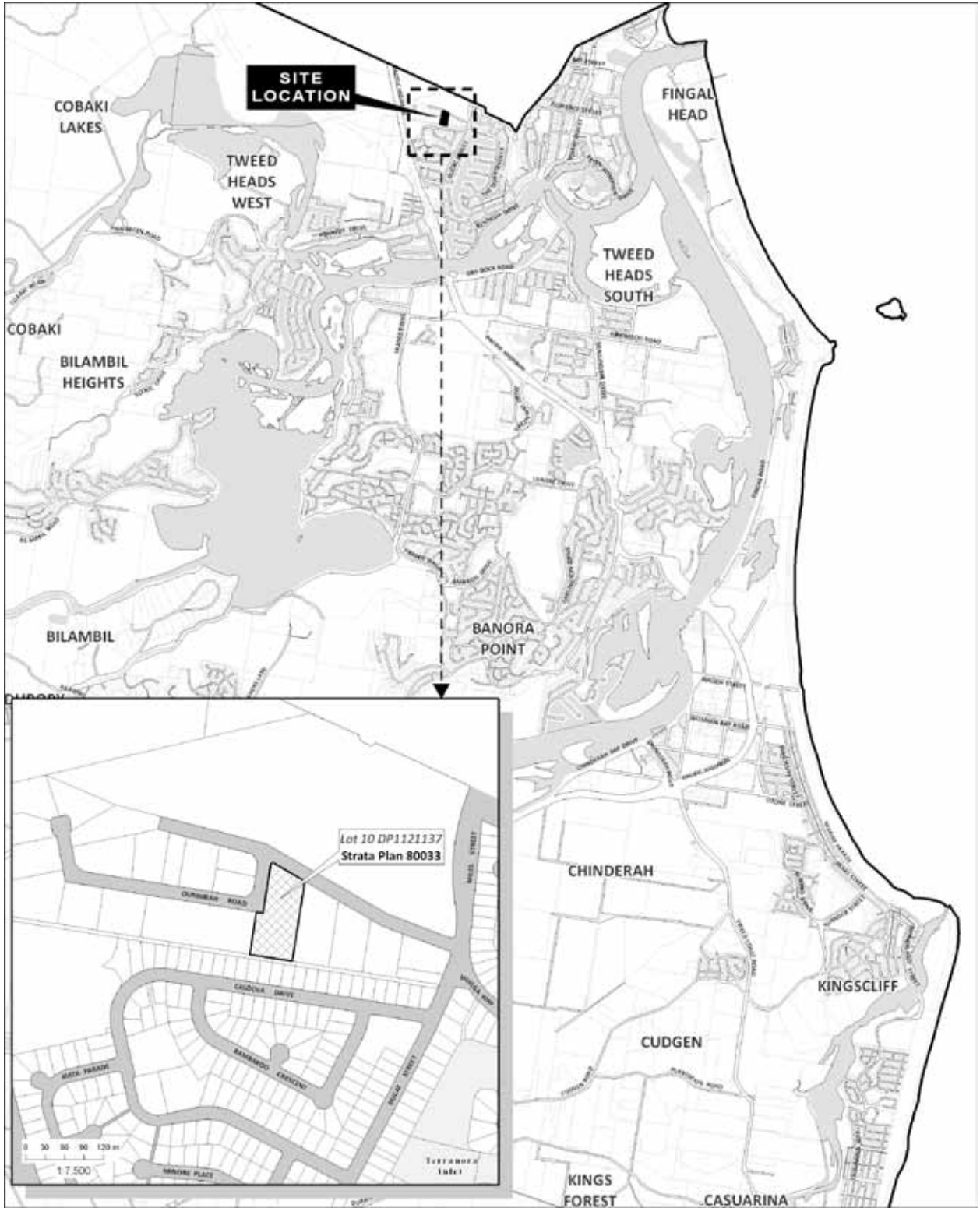
On 28 August 2013 the applicant made representations to the elected Councillors again questioning the need for the requested Air Quality Impact Assessment.

Accordingly it was considered prudent to report this matter to Council based on the information submitted within the application.

Based on the information originally submitted by the applicant Council Officers were originally unable to recommend approval of the application as the applicant has not demonstrated that the business will not have an impact on adjoining businesses.

However on 8 November 2013 Council received the final Air Quality Assessment Report that Council staff had been requesting since April 2013. This report has been reviewed by Council staff. The report concludes that the emission levels experienced by neighbouring properties are within acceptable limits and therefore on this basis the application is now considered to warrant a recommendation for approval.

SITE DIAGRAM:



Locality Plan

Lot 19 SP 80033 (Lot 10 DP1121137)
No. 19/23-25 Ourimbah Road, Tweed Heads

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council does not warrant, represent or guarantee the accuracy or reliability of any particular information and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages including indirect or consequential damages and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general public and is to be considered indicative and approximate only. It should not be used for any construction purposes and prior to any construction a 'Call before you Dig' request must be made by calling 1311. The information contained on this document remains valid for 30 days only from the date of supply.

03/09/2013
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Boundaries shown should be considered approximate only.



Map prepared: Municipal Services Branch
Boundary Colors: Shaded, Extract of Australia 1:100,000 Map 104 of Northern, Date 11/01/03

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2 Turbulence Road
Mandurah WA 6150 2484

PO Box 816
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T (02) 9470 2400 | 1300 252 872
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W www.tweed.nsw.gov.au
E planning@tweed.nsw.gov.au



Mapart: 22/09/13 11:01:00 AM 10/12/13 11:01:00 AM 10/12/13 11:01:00 AM

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DEVELOPMENT/ELEVATION PLANS:

Unit 19 and its associated car parking spaces:

Sheet No. 3 of 6 Sheets

SP80033

WARNING: CREATING OR FOLDING WILL LEAD TO REJECTION

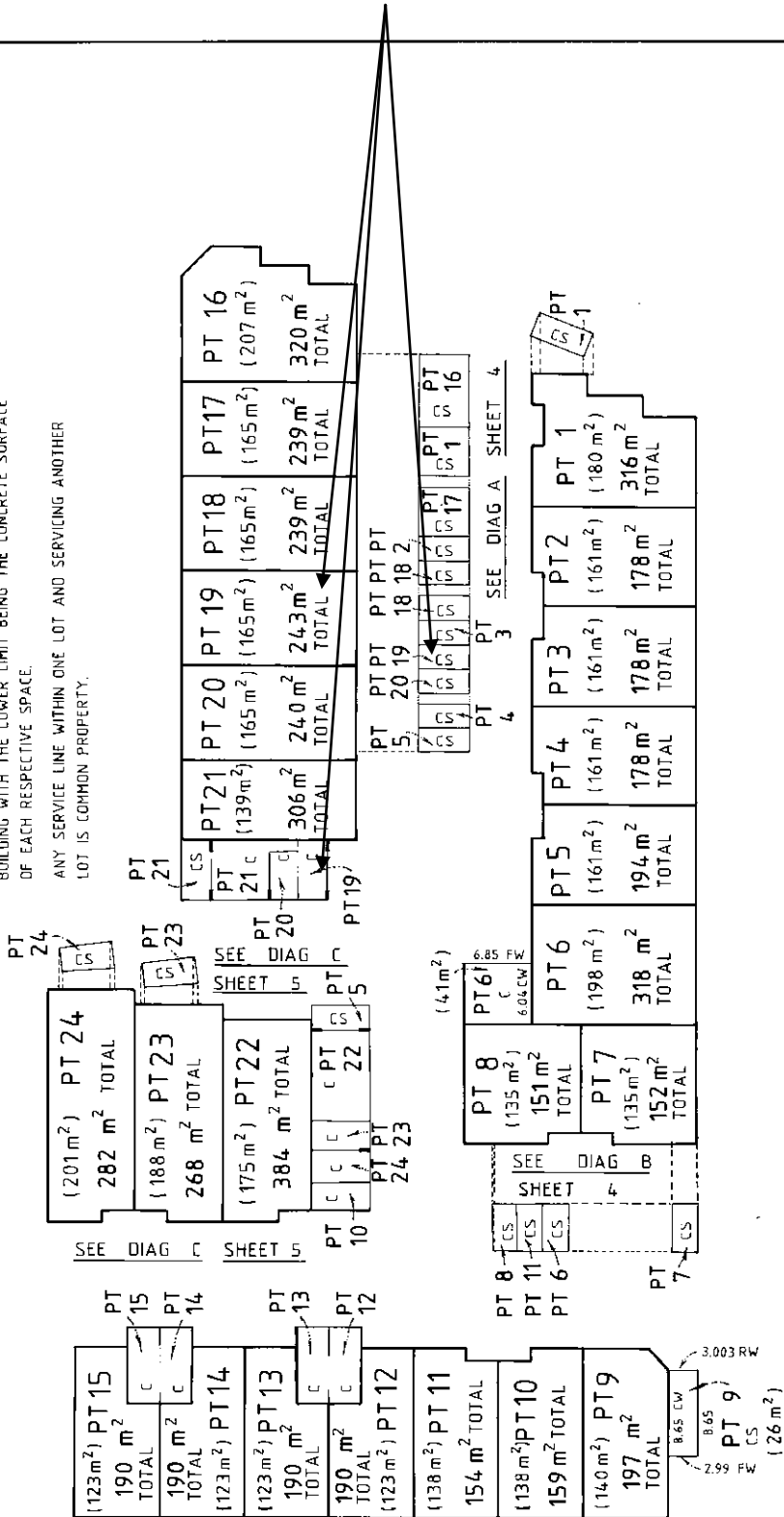
FW ... DENOTES FROM FACE OF WALL AT RIGHT ANGLES TO WALL
 CW ... DENOTES FROM CORNER OF WALL ALONG FACE OF WALL
 RW ... DENOTES FROM CORNER OF WALL AT RIGHT ANGLES TO WALL

C ... DENOTES CARPORT
 CS ... DENOTES CAR SPACE

CAR SPACES ARE LIMITED IN HEIGHT TO 4 ABOVE THE UPPER SURFACE OF THE GROUND FLOOR OF THE ADJACENT BUILDING WITH THE LOWER LIMIT BEING THE CONCRETE SURFACE OF EACH RESPECTIVE SPACE.
 ANY SERVICE LINE WITHIN ONE LOT AND SERVICING ANOTHER LOT IS COMMON PROPERTY.

STRATA PLAN FORM 2

MDA



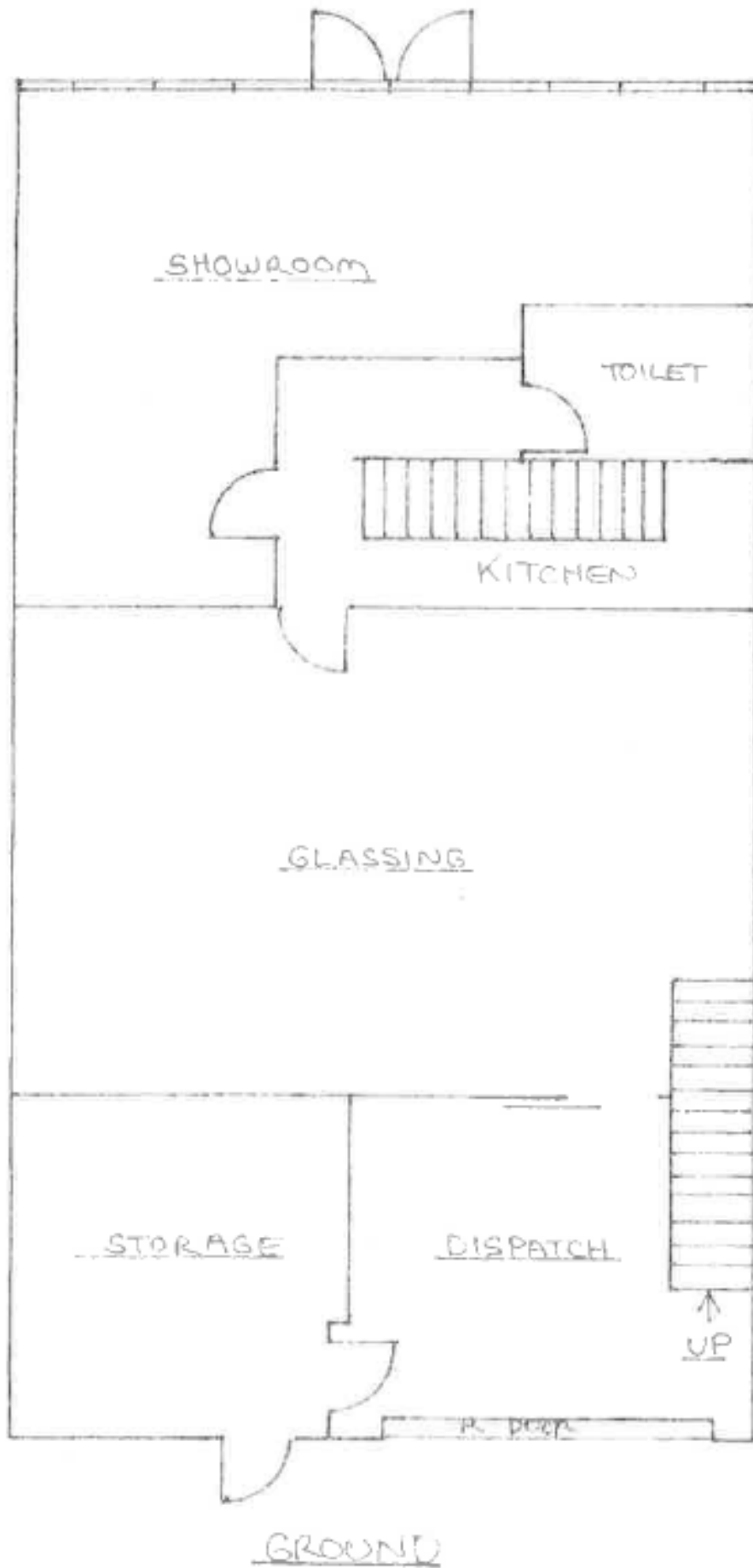
GROUND FLOOR

Lengths are in metres

Reduction Ratio 1: 400

Registered Surveyor
 SURVEYOR'S REFERENCE: 05593 TH

Box:e-IDS /Doc:SP 008033 P /Rev:18-Jan-2008 /Sta:OK-OK /Prt:19-Jan-2008 02:10 /Pgs:ALL /Seq:3 of 6
 WARNING : Electronic Document Supplied by LPI NSW for Your Internal Use Only.





Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*.

Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

The subject development application is considered suitable given the application has been supported by an Air Quality Impact Assessment Report which demonstrates the business can operate without negatively affecting others within the Ourimbah Road, Industrial development area.

Clause 5 - Ecologically Sustainable Development

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

The subject proposal is considered consistent with the above criteria, as the development is not likely to have significant ramifications for ecologically sustainable development.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 4(a) Industrial, the primary objective of which is to *provide land primarily used for industrial development and to facilitate economic activity and employment generation*.

It is anticipated that developments such as this are located within Industrial Zones. Given the applicant has now demonstrated that his business practices can occur without negatively affecting others particularly by way of smell the application is considered suitable for a recommendation for approval.

Clause 11 - Zone Objectives

The site is zoned 4(a) Industrial which has the following objective:

To provide land primarily used for industrial development and to facilitate economic activity and employment generation.

The secondary objective is *to allow non industrial development which either provides a direct service to industrial activities and their workforce or which due to its type, nature or scale is inappropriate to be located in another area.*

The proposed development is considered capable of compliance with these objectives given the submitted Air Quality Impact Assessment Report recommends the necessary building modifications and work practices to mitigate the impacts associated with the proposed surfboard manufacturing business.

The site also has a small slither of land unzoned. The original Development Application which approved the industrial sheds addressed this zoning and authorised the sites layout. No further assessment is considered necessary in this instance.

Clause 15 - Essential Services

All essential services are made available to the subject site.

Clause 16 - Height of Building

The subject site exhibits a 3 storey height limit. The proposal development is to occur within an existing 2 storey configuration and does not exceed the 3 storey limit.

Clause 17 - Social Impact Assessment

Having regard to Tweed DCP Section A13 the proposed development would not require the lodgement of a Socio Economic Impact Assessment.

The proposal is not considered to generate any significant social impact.

Clause 35 - Acid Sulfate Soils

The subject site is mapped on Councils GIS system as being affected by acid sulfate soils (Class 3). The application is for the first approved use of the tenancy and does not propose any excavation of the natural ground surface. Therefore no Acid Sulfate Soils Management Plan is required.

Clause 47 – Advertising Signage

Clause 47 relates to signage and aims to regulate the impact of signage throughout the Shire.

The proposal involves one flush wall signage panel associated with the factory unit tenancy which is consistent with that supplied for other tenancies within the complex.

Total signage area equates to 6m² which is acceptable.

The signage is considered to be compatible with the existing signage at the industrial complex. It is moderate in scale and does not project above the top of the tilt-up panel concrete wall.

The signage is not illuminated and is located entirely within the signage panel designated for the tenancy. Overall, signage is considered compliant with Clause 47 of the LEP.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B - Coastal Lands

The subject site is located on lands to which the NSW Coastal Policy 1997 applies. This proposal is considered compliant with the provisions of the NSW Coastal Policy, the Coastline Management Manual and the North Coast Design Guidelines. The manufacturing unit will not obstruct public foreshore access or result in overshadowing of the nearby beach or open space areas. This has also been considered previously in the original development application approving the complex (DA05/1335).

The proposal is considered to comply with Clause 32B of the SEPP NCREP 1988.

Clause 47 – Principles for Commercial and Industrial Development

The location of an industrial factory unit in an existing industrial zone in Tweed Heads is in accordance with the objectives of this clause in that it maintains the integrity of the main business area in this location, and provides for creation of an additional business on land which is zoned for such a purpose. It also strengthens the multi-functionality of the industrial area by its proximity to other industrial operations. All relevant services are available to the site and the site is located in proximity to existing local and regional road networks.

The proposal is considered capable of compliance with the strategic aims and objectives contained generally within the North Coast Regional Environmental Plan 1988 given the submitted Air Quality Impact Assessment Report which recommends the necessary building modifications and work practices to mitigate the impacts associated with the proposed surfboard manufacturing business.

SEPP 64 – Advertising and Signage

There are no specific provisions for 'business identification signs' within this SEPP. The SEPP deals with 'Wall Advertisements' and states that there should only be one per elevation of a building. However, this is not the definition of the proposed signage.

An assessment against Schedule 1 of the SEPP indicates that the proposed signage (flush wall sign) is compatible with the industrial/commercial character of the area, it does not detract from the amenity of any special areas, it does not jeopardise any views or vistas, and is of an appropriate form and scale for the streetscape and the subject building. There is no illumination and no safety hazards as such.

Therefore, the proposal is considered to comply with the provisions of SEPP 64.

State Environmental Planning Policy No. 71 – Coastal Protection

The subject site is located on land to which the above policy applies. However, the site is not identified as a sensitive coastal location under the policy, and therefore a referral to the Department of Planning and Infrastructure is not required.

As the proposal is for the first approved use of an industrial unit, the matters for consideration under SEPP71 have already been considered as part of the approval for the existing factory building (DA05/1335).

The proposal is considered to generally comply with the provisions of SEPP 71.

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

The Draft Tweed Local Environmental Plan (LEP 2012) was placed on re-exhibition in late 2012/early 2013. The post exhibition version of the Draft Tweed LEP 2012 with amendments as resolved by Council on 31 May 2013 has been forwarded to Parliamentary Counsel via the Department of Planning and Infrastructure.

As such, the Draft Tweed Local Environmental Plan is considered to be “certain and imminent” in terms of previous legal precedent and as such has determining weight.

The Draft LEP proposes to re-zone the subject site to IN1: General Industrial.

There is a 10m height limit and the minimum allotment size for this draft zone is 2000m².

The building has already been approved under a separate application and the proposal does not modify the building externally.

The proposed factory for the use of surfboard manufacturing is described as ‘Industry’ which, within the draft IN1 zone is a permissible form of development under Item 3.

Please note that the unzoned land portion of the site is draft zoned IN1 as well.

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

Tweed Development Control Plan Section A2 – Site Access and Parking code

Tenancy 19 has a proposed GFA of 325m² (165m² at ground level + 160m² at the increased mezzanine which is used for manufacturing, storage and office space).

The tenancy was defined as “industrial” and allocated 2 spaces under SP80033 (one being a car space outside the tenancy and the second being a car port outside Lot 21).

The tenancy increases the GFA from 213m² (excluding car spaces) to 325m² (excluding car spaces) and would require one additional car space for the increased GFA on the mezzanine level.

DA05/1335 used the “industry” rate under DCP A2 (1 space/100m² GFA). The application approved 106 spaces based on a GFA of 7788m² (28 surplus spaces). The Section 96 for this consent approved 91 spaces (based on a GFA of 8141sqm, resulting in a surplus of 10 spaces for the entire site).

DA12/0552 approved a different development (car rental facility associated with gold coast airport) over the Stage 2 part of DA05/1335.

Neither Stage 2 of DA05/1332 nor DA12/0552 has been built to date which means that Stage 1 of DA05/1332 may be a standalone development without the surplus spaces as indicated above.

If Stage 1 of DA05/1332 becomes a standalone development the total approved GFA would be 5019m² requiring 40 spaces on site (1 per 100m² less 20% for ESD). There are 41 spaces shown on the Strata Plan for this section of the site (SP80033). Therefore **1 space credit**.

The following is a list of DA’s that have been approved over Stage 1:

- DA07/0832 – Strata Unit 11 - Salt Packaging – Warehouse (required less parking than allocated so +.92 spaces back into car parking pool). Therefore **1.92 spaces credit**.
- DA08/0183 – Strata Unit 21 – Storage Equipment Tweed Byron Aboriginal Land Council – Industry (required the same parking as approved by DA05/1332). Therefore **1.92 spaces credit**.
- DA08/0449 – Strata Unit 24 – Dance Studio (Recreational Facility) – car parking assessment deemed acceptable due to hours of operation. Therefore **1.92 spaces credit**.
- DA11/0163 – Strata Unit 9 – Surfboard Manufacturing Business - (required the same parking as approved by DA05/1332 but one extra space given increased GFA). Therefore **0.92 spaces credit**.
- DA12/0010 – Strata Unit 12 – Alcohol Distribution - (required the same parking as approved by DA05/1332). Therefore **0.92 spaces credit**.
- DA12/0608 – Strata Unit 8 – Printing Company (required the same parking as approved by DA05/1332 but one extra space given increased GFA). Therefore **0.08 short**.

As such, there is no carparking credit left on site if only Stage 1 proceeds. Each application would need to be addressed on its merits in regards to car parking.

The applicant has stated as follows in regards to the shortfall of car parking:

- *There are 7 unallocated car spaces located in the front of the subject premises;*
- *The development is of a low key nature;*
- *The demand for parking generated by the development is minor. The majority of the contact with the customer is made via e-mail, and the boards are sold out of surf shop contacts within the locality;*
- *The proposed mezzanine development is to be used for non traffic generating use being storage of surfboards. The need for storage of the surfboard is high, and additional room is needed away from the manufacturing machinery;*
- *The development would not generate any heavy vehicle traffic or create any demand for additional delivery vehicles;*
- *The industrial complex is well served with car parking spaces. Numerous site inspections have been undertaken at the complex and parking has been readily available on all site visits;*
- *The site contains two road frontages and ample on street parking in close proximity to the premises.*

The above comments are not entirely concurred with. The mezzanine level is predominantly used for the manufacturing of the boards, sanding and shaping the boards. This use generates staff and is not just storage space.

The complex does not appear well serviced with car parking spaces. Given the car spaces are allocated to businesses many of the spaces are taken up by employees and visitors coming to the site are often forced to find parking on the street which is not always readily available due to the busy nature of the area.

In regards to this application the applicant has indicated that the business employees up to 10 employees (as detailed verbally at Council's site visit in May 2013). The industry car parking rate of 1 space for every 100m² is a combined staff and customer average.

The subject site could not adequately cater for staff and customers if every business employed staff of those numbers. However as this is an average and the application triggers the extra parking for the additional mezzanine level there is an argument to support the development despite the technical short fall of the one on site car parking space.

It should also be noted the majority of the units within the complex are still operating without first use development consent as required by DA05/1332 and if they were all made to lodge development applications Council may find additional mezzanines have been built without consideration for the additional parking that this would generate.

Given the above assessment and having regard to the fact that the premises has two parking spaces allocated to it the proposed first use application is considered acceptable on parking grounds based on merit.

DCP A4 – Advertising Signs Code

The applicant has noted that signage will comprise of a single 6m² signage panel above the factory unit tenancy. This is consistent with all of the other factory units within the complex.

Signage on the above flush wall signage panel must not exceed the background dimensions of the panel. As the proposed signage does not exceed the background dimensions, and does not exceed the maximum number of five signs per premises, the proposed signage is considered to be consistent with the provisions of the DCP.

A standard condition will apply to cater for any possible changes to signage that may occur in the future.

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

Clause 92(a) Government Coastal Policy

The proposed development will not negatively impact upon the Government Coastal Policy.

Clause 92(b) Applications for demolition

No demolition is proposed within this application, therefore Clause 92(b) is not applicable

Clause 93 Fire Safety Considerations

The application proposes a change of use (first approved use) and the construction of a mezzanine level. The mezzanine level has been constructed without approval and would require a Building Certificate to legitimise its construction.

Clause 94 Buildings to be upgraded

The building could comply with the Building Code of Australia subject to suitable conditions of consent if Council wanted to approve the development.

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

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by this management plan. Therefore, no further assessment is required.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by this management plan. Therefore, no further assessment is required.

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

The subject site is not located within an area that is affected by this management plan. Therefore, no further assessment is required.

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

Context and Setting

The proposed development will be situated within an established industrial area in Ourimbah Road, Tweed Heads. The proposed development comprises of the use of an existing industrial unit for surfboard manufacturing and storage. The application is considered capable of support given a suitable Air Quality Impact Assessment report has now been received as detailed below.

Odour

To understand the issue surrounding odour below is the extract from Council's letter to the applicant dated 5 June 2013:

Council has reviewed the Policy Documents which provide guidelines for the assessment of similar businesses.

Below is a summary of that Policy Information

Section 79C (1) of the Environmental Planning and Assessment Act 1979 states that 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:

- (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, and*
- (d) any submissions made in accordance with this Act or the regulations.*

Further, as per Section 4.7 of Council's Development Application Guide the applicant is required to show that the proposal will not cause or be affected by air or noise emissions. To date your application has not adequately addressed air pollution concerns.

Although Council does not have a policy on air quality, there are many resources available including:

- Warringah Council - The Business of Air Quality guidelines*

- *Department of Sustainability, Environment, Water, Population and Communities - National Pollutant Inventory*
- *NSW Office of Environment & Heritage's Local Government Air Quality Toolkit*
- *NSW Office of Environment & Heritage's Approved Methods for Modelling and Assessment of Air Pollutants in New South Wales*
- *NSW Office of Environment & Heritage's Environmental Information for the Composites Industry*

Warringah Council has developed "The Business of Air Quality" guidelines that provide minimum standards of controls for air quality relevant to businesses. The program was a partnership between Warringah Council and the NSW State Government designed to educate local industrial and light manufacturing businesses on air quality pollution issues and details the best ways for individual businesses to undertake a wide range of manufacturing processes while minimising their air pollution emissions. The guidelines and other educational materials have been made available for use by all councils in NSW.

In Section 5.5 - Fibreglass Reinforced Products (FRPs) and Composites Production, best practice guidelines have been outlined. The industry FRPs (note the use of this term includes composites production, structural products made of a combination of different types of materials where the performance of a finished composite is far stronger than that of any of the individual components) are used in the manufacture of a diverse range of products including boats, surfboards, bathroom fixtures, swimming pools, building materials, sporting equipment, appliances, storage tanks and piping, simulated marble products and motor vehicles. The versatility of FRPs in manufacturing has allowed for development of new applications for FRPs.

The guide explains that the FRP industry is experiencing significant growth. New products continue to be developed and produced for greater durability and strength. However this growth has triggered serious environmental and health concerns, particularly in businesses unwilling to upgrade to new more efficient technologies.

The main emissions of concern in FRP manufacture are volatile organic compound (VOC) emissions and odours. These can have adverse impacts offsite if a business is poorly managed or controlled. Odour is the most common cause of complaint for businesses producing FRPs.

Particulate and dust emissions are also a concern particularly during the moulding and finishing processes. Activities such as grinding, polishing and sanding and the cutting of matting for use in the laminating process can create excessive particulate and dust emissions.

The main sources of pollution in FRP manufacture include:

- *Poor ventilation, filtration and discharge of particulates, dust, VOCs and odours. This is often caused by inappropriate stack and ventilation system configurations, fugitive emissions and inefficient air circulation and filtration.*

- *Poor housekeeping practices such as failure to place lids on containers and general poor storage and handling of containers.*
- *Poorly maintained equipment and equipment malfunction or failure. Maintenance of filtration systems and spray, sanding or polishing equipment contributes greatly to overspray, inefficient product use and emission of particulates, dust, VOCs and odours.*
- *The technical ability of personnel manufacturing FRPs can sometimes be low.*
- *Poor tool or equipment clean up. Commonly used cleaning products often contain solvent and are hazardous due to high flammability and chlorine content. Acetone, toluene, xylene and various alcohols are of particular concern. Emulsifiers and citrus based solvents may also be toxic.*

The most common VOC used in the manufacture of FRPs is styrene (ethenylbenzene). Styrene is a highly volatile monomer which is used in polyester and vinyl resins. Most of the resins and catalysts used in the manufacture of FRPs are also highly flammable.

The NSW Office of Environment & Heritage's Environmental Information for the Composites Industry advises that extraction systems that simply dilute the concentration of styrene in the exhaust by adding air do not reduce the total VOC emission. A significant reduction in styrene emissions can be achieved by reducing emissions at the source.

It is noted that the Department of Sustainability, Environment, Water, Population and Communities' National Pollutant Inventory advises that styrene affects the central nervous and respiratory systems, including depression, concentration problems, muscle weakness, fatigue, unsteadiness, narcosis, defatting dermatitis, and nausea. Exposure may also irritate the nose, throat, and eyes, including severe eye injuries. The International Association for Research into Cancer (IARC) classifies styrene as 'possibly carcinogenic to humans (Group 2B)'. It enters the body by absorption into the blood through the lungs, stomach, skin or eyes.

It is noted that the complainants have advised of headaches, nausea, and also skin, eye and throat irritations from pollutants exiting the subject site directly into their units and in common areas.

As per Section 2.3 of the Local Government Air Quality Toolkit (Module 3: Guidance note—Composite structural products), a sense of smell cannot be used to judge whether the exposure is of concern with respect to toxicity. People complaining about chemical odours may well be seeking assurances that the level of exposure is not hazardous to their health. In situations where there is any doubt about possible health implications, an assessment of potential impacts should be carried out using the techniques described in the NSW Office of Environment & Heritage's Approved methods for the modelling and assessment of air pollutants in NSW (2005). The technical assessment described in this document will generally require specialist input.

It's clear that you have spent considerable funds trying to rectify the problems experienced by occupants of the neighbouring units however the works undertaken to date by the applicant have been improvised. The complainants are still being affected by the operation of the unauthorised use.

If the effects of air pollution originating from this operation are not examined by a suitably qualified air quality investigation consultant, Council is not undertaking due diligence in terms of legislative requirements and health, safety and welfare of those who could be put at risk from the works being carried out at this business.

You are therefore required to submit the following information for review and approval prior to your application being determined. Failure to provide such information will likely result in a recommendation for refusal of the development application.

- 1. An Air Quality Impact Assessment Report prepared by a suitably qualified air quality investigation consultant in accordance with the NSW Office of Environment & Heritage's Approved Methods for Modelling and Assessment of Air Pollutants in New South Wales shall be submitted to Council's Environmental Health Officer for consideration.*

The air quality investigation shall incorporate the existing operations and include air sampling for odour causing substances external to the premises (with particular attention to neighbouring units in the immediate vicinity of the premises) that are associated with the surfboard manufacturing process (eg styrene etc) as well as investigating the adequacy of the existing mechanical ventilation system for removing odours/air impurities etc prior to discharge to the external environment, not purely in relation to the indoor air quality within the premises where the manufacturing is being carried out.

The report shall include appropriate recommendations necessary to demonstrate that the surfboard manufacturing process can be carried out without causing an odour nuisance to any adjoining premises.

Council initially received an Air Quality Assessment for Superbrand Surfboard Manufacturing Facility, Tweed Heads - Final prepared by Air Noise Environment Pty Ltd dated 25 October 2013. The assessment appeared to cover the further information requested by Council however errors were noted and the original laboratory data was not provided.

This was discussed directly with staff from Air Noise Environment on 7 November 2013. They agreed that the report needed to be amended and a new version provided along with the calculation workings and laboratory data.

An Air Quality Assessment for Superbrand Surfboard Manufacturing Facility, Tweed Heads - Final prepared by Air Noise Environment Pty Ltd dated 7 November 2013 and associated data was received directly from Air Noise Environment (ANE) via email on 7 November 2013.

Air quality criteria utilised within the assessment include:

- Exposure Standards for Atmospheric Contaminants in the Occupational Environment (1999) published by the National Occupational Health and Safety Commission (NOHSC); and
- NSW Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (2005).

The NOHSC provides criteria for the occupational criteria and these have been used in assessing potential air quality impacts inside the neighbouring units. The NSW Approved Methods provides criteria for sensitive receptor environments. These criteria have been used for assessing potential air quality impacts inside the neighbouring units and at surrounding residential dwellings.

ANE advise that the results of the air quality sampling inside the neighbouring units were below the detection limit, indicating compliance with the occupational exposure criteria, and for toluene, ethylbenzene, and styrene against ambient air quality criteria for sensitive receptors. Benzene and Xylenes were also below the detection limit however as their detection limit is higher than the air quality criteria for sensitive receptors, whether they comply remains inconclusive. ANE have advised that during sampling no paint or styrene odours were observed inside these units however additional improvements could be made to further minimise potential impacts including sealing the length of the ceiling/wall joints and removing the old ventilation duct work in the glassing room.

Further, based on the air modelling, there is a potential for styrene concentrations to exceed the criteria at surrounding residential receptors. ANE advises that compliance is predicted provided the configuration and emission parameters of the two existing roof top stacks are changed. Recommendations to mitigate potential VOCs at nearby receptors include reconfiguration of the existing rooftop stacks and reducing the stack diameter to increase velocity.

The report and calculations were discussed with Mr Samuel Wong of ANE on 18 November 2013. Sample tube volumes vary between locations. The volume collected is used to calculate the concentration of volatile organic compounds (VOCs) at each sampling point. This detail was provided as raw data calculations to Council however it was noted that the raw data differs slightly from those represented within the report. Mr Wong advised that the original data has been rounded up to provide Council with the methodology. Original data has been used in the report and is correct.

The toluene concentration at the spray painting stack (Table 4.2) was also questioned in relation to the time weighted average occupational exposure limit in Table 3.1. Mr Wong has advised that this is an occupational exposure limit not an emission limit and compliance is not required due to its location on the roof of the site. Sampling undertaken within neighbouring units 18 and 20 has shown that VOC concentrations are below detection limits and therefore comply with the occupational exposure limits. This concentration was however used in air dispersion modelling for predicted concentrations at sensitive receptors.

Therefore the report appears to address the further information request and justifies a recommended for approval subject to the premises complying with the recommendations of the Air Quality Impact Assessment and the now recommended conditions of consent.

Waste

Waste generated from the business is dust from sanding the surfboards which is collected in two dust extraction units located on the upper floor where the dust is collected in bags and disposed of in bins on the site. Standard conditions could be applied.

Noise and Vibration

A previous application for a surfboard manufacturing business (within a different unit) was supported by a Noise Impact Assessment Report. No such report has been provided for this application although noise has not appeared to be an issue for adjoining businesses. Standard conditions of consent are now recommended in regards to noise.

(c) Suitability of the site for the development

Surrounding Land Uses/Development

The subject site is zoned 4(a) Industrial and is within an established industrial area. The subject site is zoned to facilitate industrial uses which includes surfboard manufacturing. The surrounding development is predominately Industrial and specialist developments that due to their type nature or scale are suited to an Industrial zoning. This development has now demonstrated that it will not have an unreasonable impact on adjoining businesses by way of odour (air quality) and can now be conditionally approved.

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

Under Tweed DCP Section A11 – Public Notification of Development Proposals the proposal was not required to be advertised or notified for public comment. However, given the compliance history associated with this application Council Officers alerted the complainant about the development and invited comments based on the application as displayed on Council's Online DA Tracker.

Accordingly Council has received objections from two neighbouring businesses. The nature of the complaints are summarised below:

Council has received written objections from the two adjoining businesses.

The first objection states as follows:

"With reference to the above application number, please acknowledge this letter as an objection to this application. I am the director of the business located adjacent to the above premises and the owner of XXXX. At no time were we consulted in this application to commence a surfboard manufacturing business directly adjacent to us.

It should be noted that the owner's consent provided with the application does not meet legal requirements in that the consent from the unit owner and the Body Corporate only relate to the construction of the mezzanine, whereas the application is clearly for the establishment of the Surfboard Manufacturing Use, The use of the premises is not addressed in the Owners Consent letters or Body Corporate minutes.

These premises have been used to manufacture surfboards for approx 60 months and the fumes, being resin fumes, from these activities are unbearable. During this time, many of my employees have needed to leave work after inhaling the fumes, even as early as 10 minutes after commencing work. Symptoms being experienced include nausea, headache, eye irritation and blood shot eyes. There is also a constant white

dust that has been released from the premises into the common property of the complex, ie carpark. Clients which have visited our premises have also experienced eye irritation and noted the strong fumes that present in our premises. During this time, constant contact has been made with the tenants of the said premises and we had been advised that the appropriate actions were being taken to minimise any of these issues including appropriate extraction fans to be installed. We believe these fans have been installed, however the fumes are still prevalent.

We are a business that has been present in the local community for approximately 15 years and feel that our concerns should be heard."

Council Assessment:

In regards to owners consent the owner's consent letter stated:

"Chashell Pty Ltd Superannuation Fund is the owner of the above lot, and Chashell Pty Ltd as trustee for the fund, hereby gives consent to the current tenant Superbranded Pty Ltd to construct a mezzanine within Lot 19."

Owners Consent needs to reflect consent for the ongoing use of the premises, the mezzanine construction, and signage. Any determination notice will not be issued until such consent is obtained.

In regards to the odour complaints it is noted that substantial works have been undertaken to minimise odour. Given the contents of the Air Quality Impact Assessment report the application is now considered suitable for approval subject to the recommended conditions of consent.

The second objection comprises multiple e-mails of complaint (dating back to November 2012) regarding the subject business and the issues raised are summarised as follows:

Comments dated 12 Feb 2012:

- *There are toxic resin fumes leaching into our tenancy which are causing illness, red eyes and flushed skin.*
- *The adjoining tenant on the other side has advised that he experiences red eyes and can detect resin fumes when he attends his office in the morning.*
- *There is no filtration on the extraction unit that extracts resin fumes from the said premises...and these toxic fumes are just pumped into the atmosphere.*
- *There is no air lock between the "glassing room" and the outside car park...the door to the said room is left open at all times therefore allowing fumes to escape into the public area and be carried by the wind in any direction.*
- *Some staff do not seem to be wearing any protective clothing and/or breathing apparatus...I would think this would be a serious work cover issue*
- *The storage of "Highly Flammable" resin in just an open area adjacent to the roller door and can be viewed from the car park...if there was a spill there is no facility for containment and is a serious fire risk.*
- *The fumes from the resins used are highly toxic and are accumulative and are life threatening.*

Comments dated 12 Feb 2013:

- *Question..what filters are used and where? (when used)..how are these filters cleaned?..how are these filters disposed of when passed their use by?...what controls are in place with the disposal of toxic byproducts e.g. the sand from the floor (used in the glassing room) and other associated materials*
- *The emissions from the manufacturing process ie. blank shaping/sanding, fibreglass, resin and catalyst are all contributing to the carbon footprint and greenhouse gases.*
- *As a point of reference...James Hardy and the asbestos cover up was a sleeping giant!!...whilst a different business, the materials used in the manufacture and glassing of surfboards are toxic and a threat to human health.. this may well be another sleeping giant!?*

Comments dated 16 April 2013:

- *Their statement ... “the additional mezzanine area is solely for storage purposes” is not true and correct. Please refer to site plan “level one“ ...and as I would expect, councils physical inspection.*
- *I do not accept that the Mechanical Ventilation system installed is sufficient or adequate for the safe operation of the subject business.*
- *Site Access and Parking: The applicants statement is totally untrue, incorrect and farcical. The said business at any one time occupies up to 7 or more parking spaces depending on their work load on that day. The site does not provide excess car parking spaces. There are NOT “seven ‘unallocated’ car spaces located in front of the subject premises” The development is NOT of a low -key nature. The demand for parking generated by the development is greatly increased. Who conducted the numerous site inspections?...when and who by? Ask any owner or tenant regarding the parking problems created by the said business and the above will be confirmed.*
- *I draw your attention to the statement by Coastline Building Cert Div ...”Health and amenity” point three...Natural ventilation via a roller door is totally inadequate and there should be some form of air lock dividing the public and the operation. I do not accept their statement “the requirements applicable to the surfboard manufacturing industry having regard workplace health and safety etc etc” is at all adequate and within any accepted safety levels.*

Comments dated 14 May 2013:

- *We are having a very serious problem with resin fumes leaching into our premises from #19...I have also advised the landlord of the said premises...that the matter is now becoming critical...also the car parking is causing extreme stress with a number of unit holders...due to the staff of unit 19 occupying any spot they like!!.....*

Comments dated 14 May 2013:

- *We are having a very serious problem with resin fumes leaching into our premises from #19...I have also advised the landlord of the said premises...that the matter is now becoming critical...also the car parking is*

causing extreme stress with a number of unit holders...due to the staff of unit 19 occupying any spot they like!!.....

Council Assessment:

In regards to the odour complaints it is noted that substantial works have been undertaken to minimise odour. Given the contents of the Air Quality Impact Assessment report the application is now considered suitable for approval subject to the recommended conditions of consent.

Many comments above also relate to possible Work Cover matters which Work Cover have now stated as being satisfactory for their legislation.

(e) Public interest

Given the application now incorporates an Air Quality Impact Assessment Report that Council considers sufficient to mitigate impact the proposal is considered to be generally in accordance with the general public interest specifically having regard to the sites industrial zoning.

Developer Contributions

The original Development Application which approved the factory units levied contributions based on the approved floor areas and the use of the units as factories (dry industrial).

Whilst the proposed application would be categorised in the same manner the additional floor area for the mezzanine level (112m²) must now be calculated as follows:

Water – Dry Industrial Rate 0.001ET per m² – 112 X 0.001 = 0.112 ET = \$1,408

Sewer - Dry Industrial Rate 0.001ET per m² – 112 X 0.001 = 0.112 ET = \$677

Road (TRCP) – Light Industry 5 daily trips per 100m² of GLA – 1.12 x 5 = 5.6 = \$4,726

S94 Plan No. 18 – Council Administration – N/A

Total = \$6,811.10

OPTIONS:

1. Approve the application in accordance with the recommended conditions of consent (when the required owners consent is obtained).
2. Refuse the Development Application with reasons for refusal.

Council officers recommend Option 1.

CONCLUSION:

The subject application is now considered a suitable development for the site given the air quality assessment demonstrates that the business practices of the proposed surfboard manufacturing can operate without adversely affecting the adjoining properties.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

If Council were to refuse the development application the applicant would have a right of appeal to the NSW Land & Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

27 [PR-CM] Development Application DA13/0362 for the erection of a shed for use as Tweed Heads Community Men's Shed at Lot 1 DP 1082080 No. 4 Park Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE NUMBER: DA13/0362 Pt1



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
-

SUMMARY OF REPORT:

Council is in receipt of a Development Application to establish a community men's shed on a portion of the subject site known as Recreation Reserve. The proposal includes the construction of a 280m² metal clad shed within which to facilitate the proposed use.

The proposed floor plan will allow for functional operational areas within the confines of the shed. Car parking, drainage works and identification signage are associated with the application.

The facility is to be operated by a not-for-profit organisation and monitored by a Co-ordinator. It will be exclusively operated to encourage the social and cultural well-being of men within the Tweed Heads locality in a similar capacity to the Murwillumbah Community Men's Shed located at Bray Park.

The applicant states:

"The Tweed Heads Community Men's Shed will enhance the well-being, health and quality of life of men by providing a fully equipped workshop and activities, projects and hobbies that they can work on for their own enjoyment or for the benefit of the community at large. Men will share skills and information to enhance adult learning opportunities and help combat isolation and depression."

The proposed use responds to a recognised demand for such a facility in the Tweed Heads area.

The development application is to be reported to Council with regard to the sensitive nature of the proposal due to its location within a residential locality, and also with regard to Council's additional role as advocate for such a facility. Strong objections received during the exhibition period maintain that the proposal will result in a negative impact upon adjoining residential land uses.

The proposal is best defined as 'community facility' in accordance with the Tweed City Centre Local Environmental Plan 2012 and is permissible with consent in the RE1 Public Recreation zone.

The proposal was required to be placed on public exhibition. Nine objections were received during the exhibition period with 23 letters of support received following conclusion of the exhibition period. Matters raised within the submissions have been considered in the assessment of the proposal and addressed by the applicant.

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

RECOMMENDATION:

That Development Application DA13/0362 for the erection of a shed for use as Tweed Heads Community Men's Shed at Lot 1 DP 1082080 No. 4 Park Street, Tweed Heads be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and:

- **Drawing No. BLG01-1 Issue B (General Notes and Locality/Site Plan) as amended in red, prepared by Tweed Shire Council and dated 16 October 2013.**
- **Drawing No. BLG01-3 Issue A (Floor Plan), prepared by Tweed Shire Council and dated August 2012.**
- **Drawing No. BLG01-4 Issue A (Elevations) as amended in red, prepared by Tweed Shire Council and dated August 2012.**
- **Drawing No. BLG01-5 Issue A (Sections) as amended in red, prepared by Tweed Shire Council and dated August 2012.**
- **Drawing No. BLG01-6 Issue A (Kitchen/Toilet Details), prepared by Tweed Shire Council and dated August 2012.**
- **Drawing No. BLG01-7 Issue A (Carpark Details), prepared by Tweed Shire Council and dated August 2012.**
- **Tree Removal Plan dated 8 October 2013.**

except where varied by the conditions of this consent.

[GEN0005]

2. Additional advertising structures/signs to the building identification sign to be the subject of a separate development application (where statutorily required).

[GEN0065]

3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

4. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

5. The colour of the walls and roof of the shed shall be *Pale Eucalypt* or a similar earthy, muted colour, subject to approval by the General Manager or delegate.

[GENNS01]

6. All landscaping work is to be completed in accordance with the approved plans within 3 months of the date of issue of any occupation certificate.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. The developer shall provide 11 car parking spaces including 3 bicycle spaces and parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

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

The parallel car parking bays are to be 6.3m long. This will need to be shown on a revised car parking plan.

[PCC0065]

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

[PCC0285]

9. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

This plan is to include a detailed plant schedule that will suitably screen the entire west and north elevations of the shed. It is also to include a detailed plant schedule to integrate with parking areas. Plantings are to reach a minimum height of 2.6m at maturity.

[PCC0585]

10. The footings, floor slab and frame are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

11. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

[PCC1065]

12. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

13. A construction certificate application for works that involve any of the following:
- connection of a private stormwater drain to a public stormwater drain
 - installation of stormwater quality control devices
 - erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

14. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

15. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or

erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

16. Prior to the issue of a Construction Certificate, the Principal Certifying Authority shall be provided with a list of construction materials for the roof/ceiling, walls, windows and doors including internal walls and doors indicating compliance with the Rw requirements for these materials as specified in the Noise Level Impact Assessment Report prepared by Craig Hill Acoustics and dated 13 June 2013.

[PCCNS01]

17. Gravitational access to the sewer is required for the building. Details are to be submitted to the General Manager or delegate for approval prior to the issue of a construction certificate.

[PCCNS02]

18. Final building identification signage detail where statutorily required is to be submitted to the satisfaction of the General Manager or delegate prior to the issue of a construction certificate.

[PCCNS03]

19. Prior to the issue of a construction certificate, amended plans shall be submitted to the satisfaction of the General Manager or delegate reducing the roof pitch to 10 degrees and maintaining wall height of 2.6m.

[PCCNS04]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

21. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

22. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

23. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council.

[PCW0245]

24. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

25. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

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

[PCW1005]

27. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

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

[DUR0015]

30. The provision of 11 car parking spaces including 3 bicycle spaces and parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DUR0085]

31. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm.

No work to be carried out on Sundays or Public Holidays.

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

32. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L_{Aeq, 15 min} noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

- 33. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.**

[DUR0245]

- 34. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).**

[DUR0375]

- 35. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.**

[DUR0395]

- 36. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.**

[DUR0405]

- 37. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.**

[DUR0415]

- 38. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.**

[DUR0415]

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

[DUR0445]

- 40. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.**

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

41. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited. [DUR0815]
42. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate. [DUR0985]
43. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate. [DUR0995]
44. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
 - Dust during filling operations and also from construction vehicles.
 - Material removed from the site by wind.
- [DUR1005]
45. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate. [DUR1015]
46. Landscaping of the site shall be carried out in accordance with the approved landscaping plans. [DUR1045]
47. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. [DUR1685]
48. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia. [DUR1705]
49. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility. [DUR1725]
50. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured

against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

51. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

[DUR2185]

53. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

54. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

55. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

56. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

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

[DUR2505]

58. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

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

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

60. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

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

[POC0205]

62. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

63. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

- (a) **Tweed Road Contribution Plan:**
7 Trips @ \$844 per Trips \$5908
(\$815 base rate + \$29 indexation)
S94 Plan No. 4
Sector1_4
- (b) **Extensions to Council Administration Offices
& Technical Support Facilities**
0.2166 ET @ \$1860.31 per ET \$402.94
(\$1759.9 base rate + \$100.41 indexation)
S94 Plan No. 18

[POC0395]

64. **A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.**

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP4:	0.1 ET @ \$12575 per ET	\$1257.50
Sewer Banora:	0.15 ET @ \$6042 per ET	\$906.30

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

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

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

[POC0675]

65. **Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.**

[POC0985]

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

[POC1045]

67. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

USE

68. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

69. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

[USE0145]

70. Hours of operation of the facility are restricted to the following hours:

Workshop Activities and Meeting Room Activities

- * 8.00am to 5.00pm - Mondays to Fridays
- * 8.00am to 1.00pm - Saturdays
- * No operations (inclusive of workshop and meeting room activities) are to occur on Sundays or Public Holidays
- * All deliveries and pickups relating to the facility are to occur within the approved hours.

[USE0185]

71. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

72. A post construction noise assessment report from a suitably qualified acoustic consultant shall be prepared and submitted to the satisfaction of the General Manager or his delegate in respect to noise likely to be generated by the activities associated with the operations of the Men's Shed.

The assessment report shall include any recommended noise amelioration measures to be carried out by the applicant and shall specifically consider the recommendations and requirements as contained within the Acoustic Impact Assessment provided by Craig Hill Acoustics Reference:130613/1 and dated June 13 2013. The report shall be submitted within a period not exceeding 60 days of the date of the commencement of operation of the Men's Shed.

The applicant shall carry out any such recommendations as provided within the post construction noise assessment report to the satisfaction of the General Manager or his delegate within 30 days from the date of the post construction acoustic assessment, provided that the General Manager or his delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or his delegate.

[USE0295]

73. The development shall be carried out in accordance with the provisions and all requirements of the Noise Level Impact Assessment prepared by Craig Hill Acoustics and dated 13 June 2013.

[USE0305]

74. All commercial/industrial/residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.

[USE0875]

75. The use of power tools or machinery external to the confines of the building is strictly prohibited.

[USENS01]

76. The kitchen facilities and the premises in general are not to be used for the handling or preparation of food for sale as defined under the provisions of the NSW Food Act 2003.

[USENS02]

77. Activities at the premise shall be supervised by suitably qualified staff at all times.

[USENS03]

78. No residential accommodation shall be provided to clients at the premise.

[USENS04]

REPORT:

Applicant: Tweed Heads Community Men's Shed Inc.
Owner: Tweed Shire Council
Location: Lot 1 DP 1082080 No. 4 Park Street, Tweed Heads
Zoning: RE1 Public Recreation
Cost: \$70,000

Background:

Council is in receipt of a development application for the erection of a shed for use as Tweed Heads Community Men's Shed with associated identification signage, drainage works and car parking on a parcel of land zoned RE1 Public Recreation. The proposal aims to create a suitable, secure facility to offer daytime recreational services to men within the Shire.

The Subject Site

Recreation Reserve has a total land area of 39630m² with frontage to Park Street, Recreation Street, Brett Street, Florence Street and Adelaide Street. Apart from offering open space and a level playing field for recreation and sporting activities, the reserve accommodates several *community buildings*, as they were defined under the Tweed LEP 2000.

The Recreation Street Public Reserve Plan of Management was adopted by Council in July 2004. It refers to two management units: one for sports grounds and the other relating to community facilities. The Plan provides for the leasing of the land in accordance with the *Local Government Act 1993*.

Existing buildings/uses on the site include:

- . Police Citizens Youth Club (PCYC)
- . Tweed Heads Community Pre-School
- . Twin Towns Playgroup
- . Tweed Heads Bridge Club
- . Northern Rivers Child Care Centre
- . Cooloon Childrens Centre
- . Council shed (outdoor staff use)
- . Public amenities

The *child care centre* use of the site now relies on existing use rights as it is prohibited under the Tweed City Centre LEP 2012 in the RE1 zone. *Recreation facility (indoor)* use is permitted with consent.

An internal access road extends from Florence Street to Park Street with a link to Recreation Street. Car parking for patrons of the reserve is generally provided at each end of the access link. Parking is also associated with the community buildings located on the site.

Existing topography generally separates the western boundary of the reserve with Adelaide Street. Differences in ground levels (from the area nominated for the location of the shed) range from 2m to the property boundary of 1 Adelaide Street to 10m to the property boundary of 13 Adelaide Street. Properties adjoining the southern boundary of the reserve are 2m to 5m lower than the site nominated for the shed.

Mature vegetation is located along the Adelaide Street boundary. However, some of this vegetation is proposed to be removed to accommodate the shed which will increase visibility from Adelaide Street residences.



Figure 1: Recreation Reserve – site and surrounds

History of the Subject Site

The site has a history of structures being located on the periphery of the playing field.

In 1962, several structures were located on the site in the north west corner, along the southern boundary and on the western boundary adjacent to Adelaide Street. The structure adjacent to Adelaide Street appears to have been large with ancillary buildings on each side. The inner access road was unsealed but clearly defined. Remnant vegetation was located along the northern half of the boundary with Adelaide Street and in the north east corner where Recreation Street intersects with Florence Street.

By 1976, the structure in the north-west corner had been replaced by a much larger building, aligned along the Adelaide Street boundary requiring removal of remnant vegetation. Ancillary buildings associated with the central structure had been removed and the amenities block had been constructed nearby. An additional structure had been located in the south west corner adjacent to that along the southern boundary. No additional plantings had been undertaken.

In 1995, substantial perimeter landscaping had taken place around the playing field to the Recreation Street, Florence Street and Park Street frontages. Some internal plantings lined the inner access road. The steeper Adelaide Street road reserve was sparsely planted and the building pad for the previous central building was visible and had not been turfed. The two structures along the southern boundary had been removed and in their place stood the current Bridge Club and Twin Towns Playgroup building along with a fenced area to the

north as a children's play area. The large Cadagi Tree inside the fencing may have been planted in the 1980's.

The inner access road had been sealed but parking areas were still informal and unmarked. The Cooloon Children's Centre had been constructed in the south east corner with dense landscaping to the rear. A hard surface basketball/netball court had been added in the north-west corner adjacent to the Florence/Adelaide Street frontages.

By 2001, car parking areas were formalised at the southern end of the site. The Council shed had been constructed south of the amenities block within the area previously occupied by the central building.

2007 aerial imagery indicates that the sports court in the north-west corner of the site had been replaced by an addition to the adjacent building. The Northern Rivers Family Preschool building had been constructed at the southern end of the playing field. Additional plantings to the west of the Council shed were visible.

In 2009, the circular playground area within the playing field had been established and by 2012, landscaping to the Adelaide Street frontage had noticeably matured.

History of Proposal

The applicant has secured funding for the proposal under the NSW Community Building Partnership (CBP) program. Council forwarded a letter of support for the initiative to the Department of Premier and Cabinet on 4 November 2011 and a lease has been offered to the applicant for the location of the Tweed Heads Community Men's Shed within Recreation Reserve.

On 6 September 2012, Council's Development Assessment Unit (DAU) provided advice to the applicant with regard to permissibility of the proposal. The applicant was advised to liaise with Council's Recreation Services Unit (RSU) to obtain owner's consent prior to lodgement of a development application. Owner's consent to lodge the development application was granted on 5 July 2013 and the application was lodged on 10 July 2013.

On 10 September 2012, a Temporary Sports Fields Licence Agreement was issued to the applicant by RSU for use of the existing Council shed for Men's Shed 'meetings and community activity planning' until 9 September 2013.



Figure 2: Existing Council shed utilised for Men's Shed activities

A subsequent agreement was issued 2 September 2013, expiring 9 September 2014. Both licenses were issued to facilitate Men's Shed activities without the benefit of the relevant development consent.

In correspondence dated 28 June 2013, the applicant requested an exemption for the proposed development from charges being levied with regard to S94 Contribution Plan No 4 (TRCP) on the basis that it be considered an Eligible Business Enterprise (EBE) in accordance with Council's 5 September 2001 resolution:

22. Tweed Road Development Contribution - Small Business Contributions

GT1/S94/4 Pt4

163

Cr Lawrie

Cr Youngblutt

RESOLVED that Eligible Business Enterprises be excluded from the need to make TRCCP payments. Eligible Business Enterprises are defined as retail, commercial and light industrial, change of use, activities to be established in rented premises with a gross floor area of less than 1,000m². Professional chambers are included in the definition. Final determination of the eligibility of a business into this category will be at the discretion of the Director Development Services.

Figure 3: Council's 5 September 2001 resolution

The applicant states that the proposed development is not a business enterprise but that the Men's Shed will have a Business Plan 'to ensure long-term viability and sustainability'. The applicant puts forth that the proposal is a change of use which is a fundamental requirement of an EBE.

The EBE exemption has been consistently applied to small businesses that lease/rent existing premises for retail, commercial, professional or light industrial activities where a change of use application is required. Intensification of a previous use may precipitate the need for additional TRCP contribution charges to be levied. The resolution provides financial relief and incentive for small businesses that need to relocate in this manner.

The proposal is not defined as a change of use. It is defined as a first use within a new structure. Section 64 water and sewer charges are applicable for connection to Council's infrastructure. In addition, TRCP and Plan 18 (Council Administration) charges apply, consistent with assessment of new community facility development proposals.

Consent was granted on 14 July 2011 for similar activities within the Murwillumbah Community Men's Shed as a *change of use application to an existing community building* (DA11/0123). In this case, the proposal constituted an EBE for the purposes of TRCP and no charges were levied in this respect.

Proposal

The applicant seeks consent for the erection of a shed for use as Tweed Heads Community Men's Shed. The proposal includes:

- Demolition of existing Council owned shed
- Incorporation of existing shed slab into new shed slab
- Construction of a metal clad shed with a floor area of 280m²
- Removal of five recent Council plantings within the reserve to accommodate the shed
- Removal of mature Cadagi tree (*eucalyptus torelliana*) within Twin Towns Playgroup playground area

- A floor plan including general workshop and craft areas, office, computer rooms, kitchen, meeting room, wc and store rooms
- Access by way of disabled ramps as well as steps (disabled wc cubicle provided)
- Realignment of existing drain line
- Associated car parking (11 spaces)
- Associated building identification signage (3m x 1m) – no plan supplied.

Design of the metal clad shed enables easy and cost effective maintenance. Access and parking to the proposed shed is from Park Street along the internal road.

The applicant states:

"Day to day management of the Shed is the responsibility of the Co-ordinator, who will have both the technical and social skills to develop a safe and happy environment where men are welcome to work a project of their choice in their own time and where the only 'must' is to observe safe working practices."

The shed is to be used by the community for hobby and social uses and will be operated by a not-for-profit organisation, and monitored by a Co-ordinator.

Substantial landscaping will be required in order to mitigate the visual impact of the shed. The applicant has also agreed to lower the roof pitch from 25 degrees to 10 degrees in order to reduce the bulk and height of the shed. Careful consideration will be required with regard to the nominated 'green' colour of the shed. 'Pale Eucalypt' with solar absorptance of 0.597 is classified as a dark colour and has been recommended. It is the lightest of the 'green' options and will blend well with surrounding buildings and landscape.

Significant acoustic treatments to the shed will be required in order to satisfactorily contain noise from internal activities. A Noise Level Impact Assessment was provided by the applicant that sets out these requirements.

Summary

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding residential and community development, amenity issues and an assessment against relevant clauses of the Tweed City Centre LEP 2012, the proposed erection of a shed for use as Tweed Heads Community Men's Shed is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval subject to imposition of the recommended conditions of consent.

SITE DIAGRAM:



Locality Plan
 Lot 1 DP 1082080
 No. 4 Park Street, Tweed Heads

Excludes: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Tid before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 20 days only from the date of supply.

Cadastral 20/11/2013
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 Tweed Shire Council.
 Boundaries shown should be
 considered approximate only.

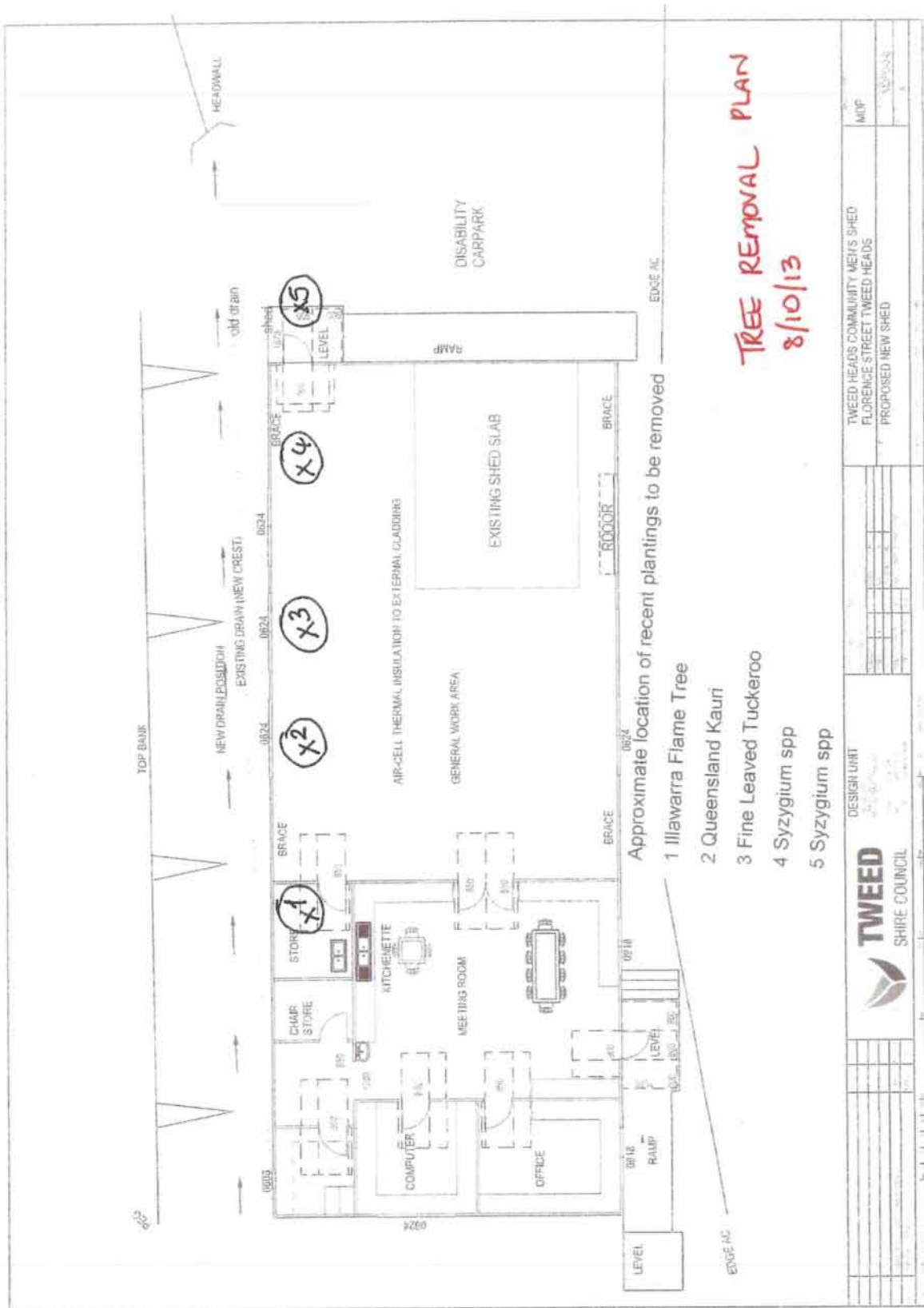
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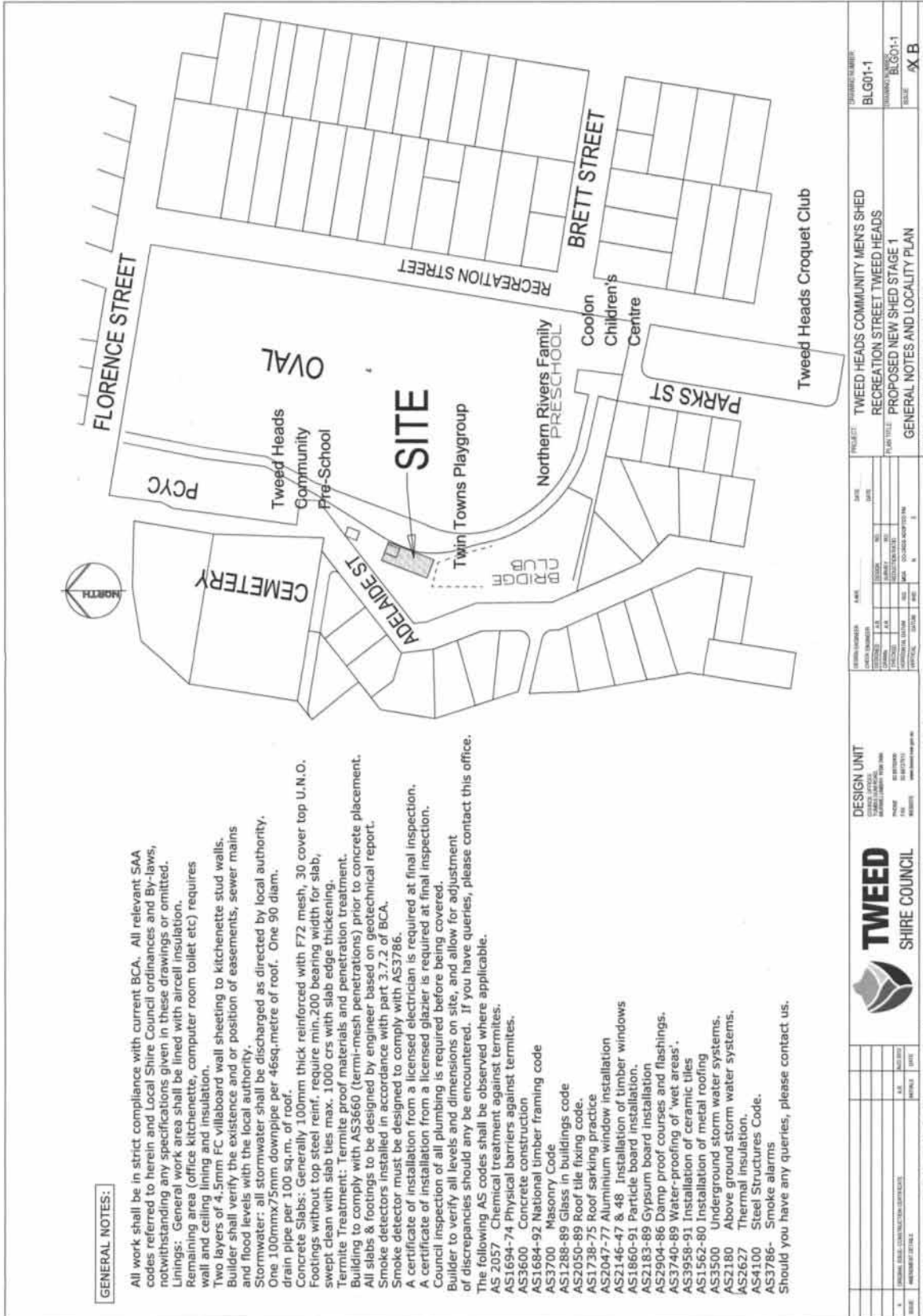
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 Horizontal Datum: Geoid
 Vertical Datum: Geoid
 GDA
 Geoid: Datum of Australia 1984
 Map Scale of Australia, June 96

Civic and Cultural Centre
 3 Tunbulgum Road
 Maristhumbah NSW 2454
 PO Box 816
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 T | (02) 6670 2400 | 1300 292 872
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 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:





GENERAL NOTES:

All work shall be in strict compliance with current BCA. All relevant SAA codes referred to herein and Local Shire Council ordinances and By-laws, notwithstanding any specifications given in these drawings or omitted.

Linings: General work area shall be lined with airtight insulation.

Remaining area (office kitchenette, computer room toilet etc) requires wall and ceiling lining and insulation.

Two layers of 4.5mm FC villaboard wall sheeting to kitchenette stud walls.

Builder shall verify the existence and or position of easements, sewer mains and flood levels with the local authority.

Stormwater: all stormwater shall be discharged as directed by local authority.

One 100mmx75mm downpipe per 46sq.metre of roof. One 90 diam. drain pipe per 100 sq.m. of roof.

Concrete Slabs: Generally 100mm thick reinforced with F72 mesh, 30 cover top U.N.O. Footings without top steel reinf. require min.200 bearing width for slab, swept clean with slab ties max. 1000 crs with slab edge thickening.

Termite Treatment: Termite proof materials and penetration treatment.

Building to comply with AS3660 (termi-mesh penetrations) prior to concrete placement.

All slabs & footings to be designed by engineer based on geotechnical report.

Smoke detectors installed in accordance with part 3.7.2 of BCA.

Smoke detector must be designed to comply with AS3786.

A certificate of installation from a licensed electrician is required at final inspection.

A certificate of installation from a licensed glazier is required at final inspection.

Council inspection of all plumbing is required before being covered.

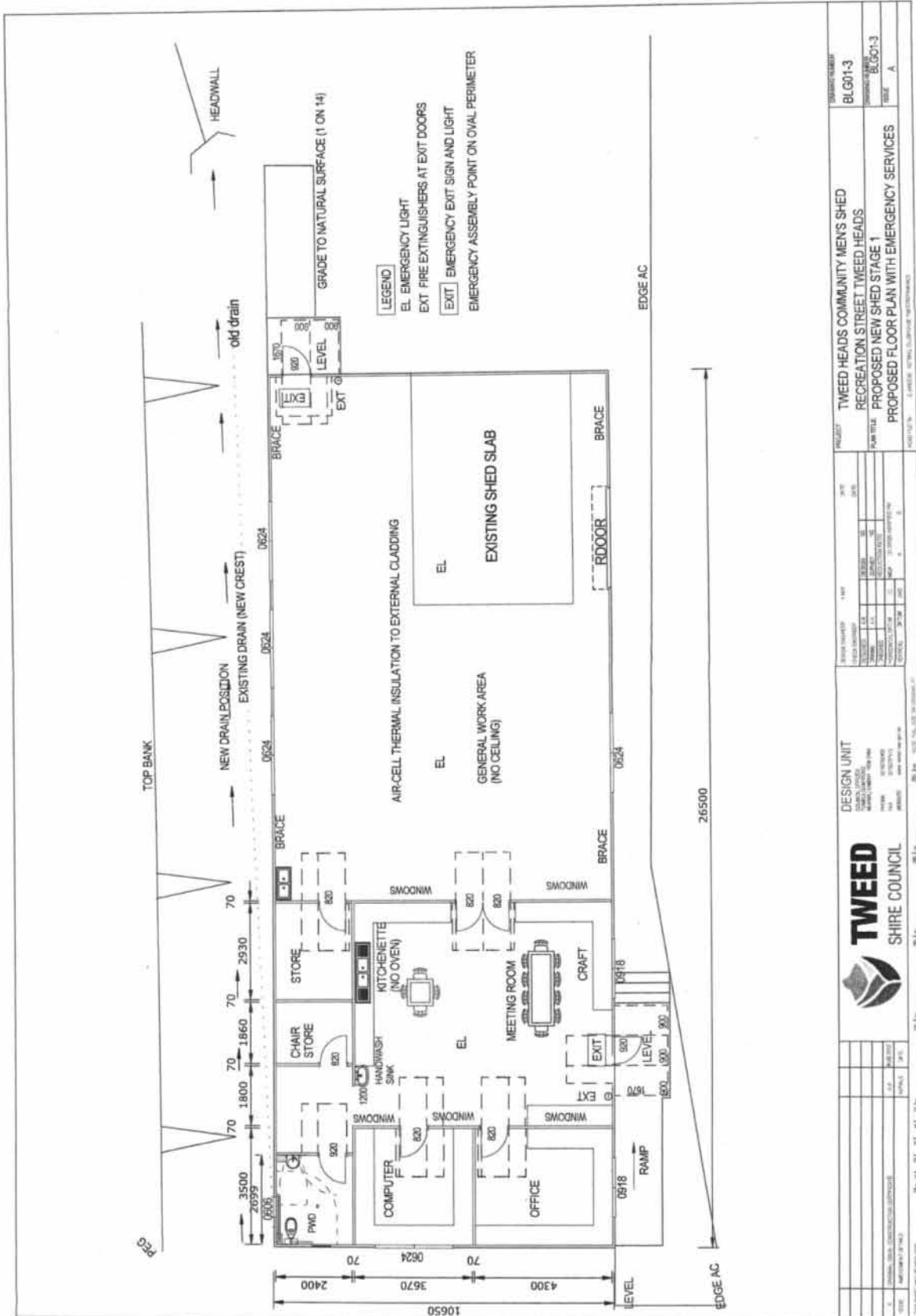
Builder to verify all levels and dimensions on site, and allow for adjustment of discrepancies should any be encountered. If you have queries, please contact this office.

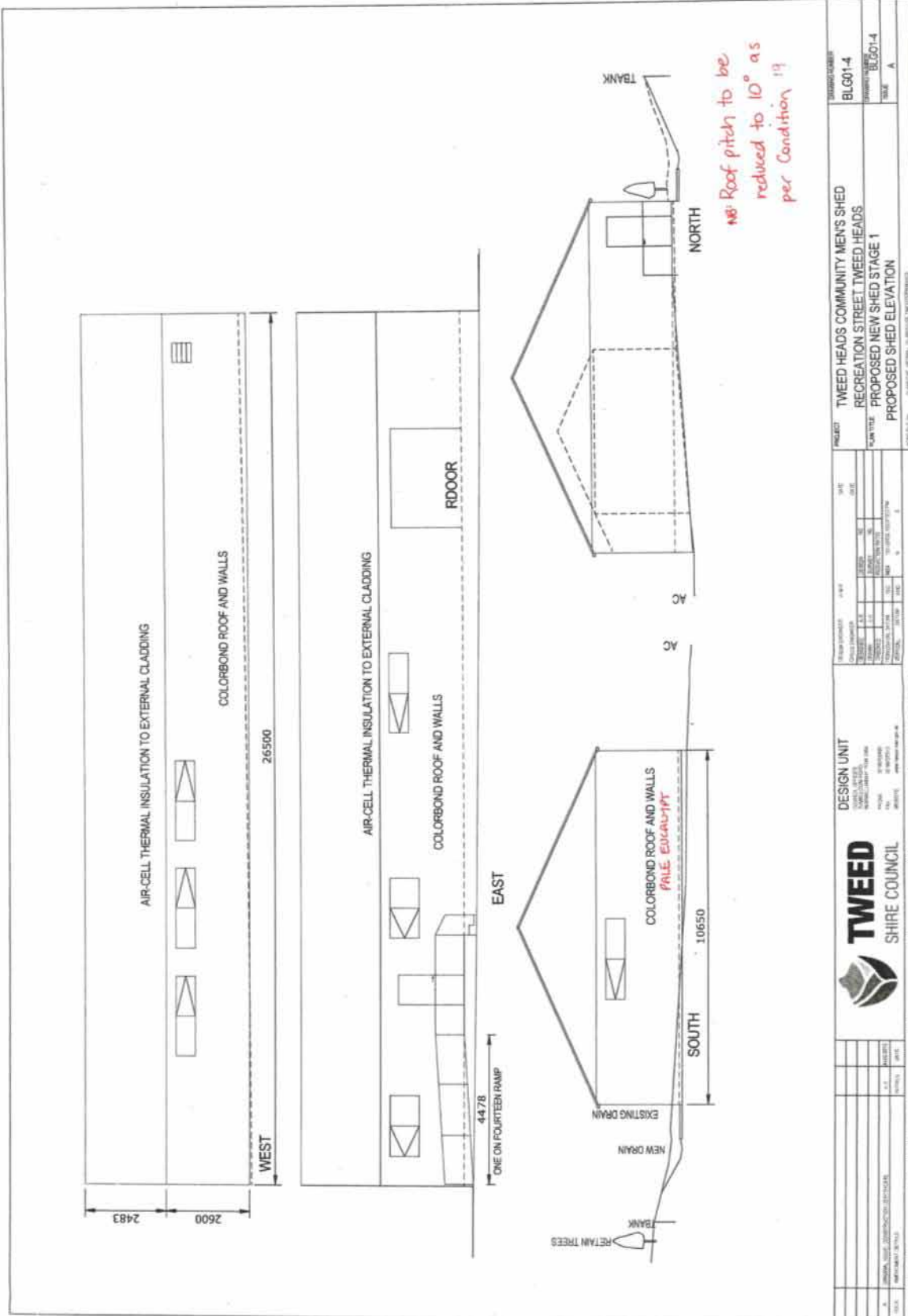
The following AS codes shall be observed where applicable.

- AS 2057 Chemical treatment against termites.
- AS1694-74 Physical barriers against termites.
- AS3600 Concrete construction
- AS1684-92 National timber framing code
- AS3700 Masonry Code
- AS1288-89 Glass in buildings code
- AS2050-89 Roof tile fixing code.
- AS1738-75 Roof sarking practice
- AS2047-77 Aluminium window installation
- AS2146-47 & 48 Installation of timber windows
- AS1860-91 Particle board installation.
- AS2183-89 Gypsum board installation
- AS2904-86 Damp proof courses and flashings.
- AS3740-89 Water-proofing of 'wet areas'.
- AS3958-91 Installation of ceramic tiles
- AS1562-80 Installation of metal roofing
- AS3500 Underground storm water systems.
- AS2180 Above ground storm water systems.
- AS2627 Thermal insulation.
- AS4100 Steel Structures Code.
- AS3786- Smoke alarms

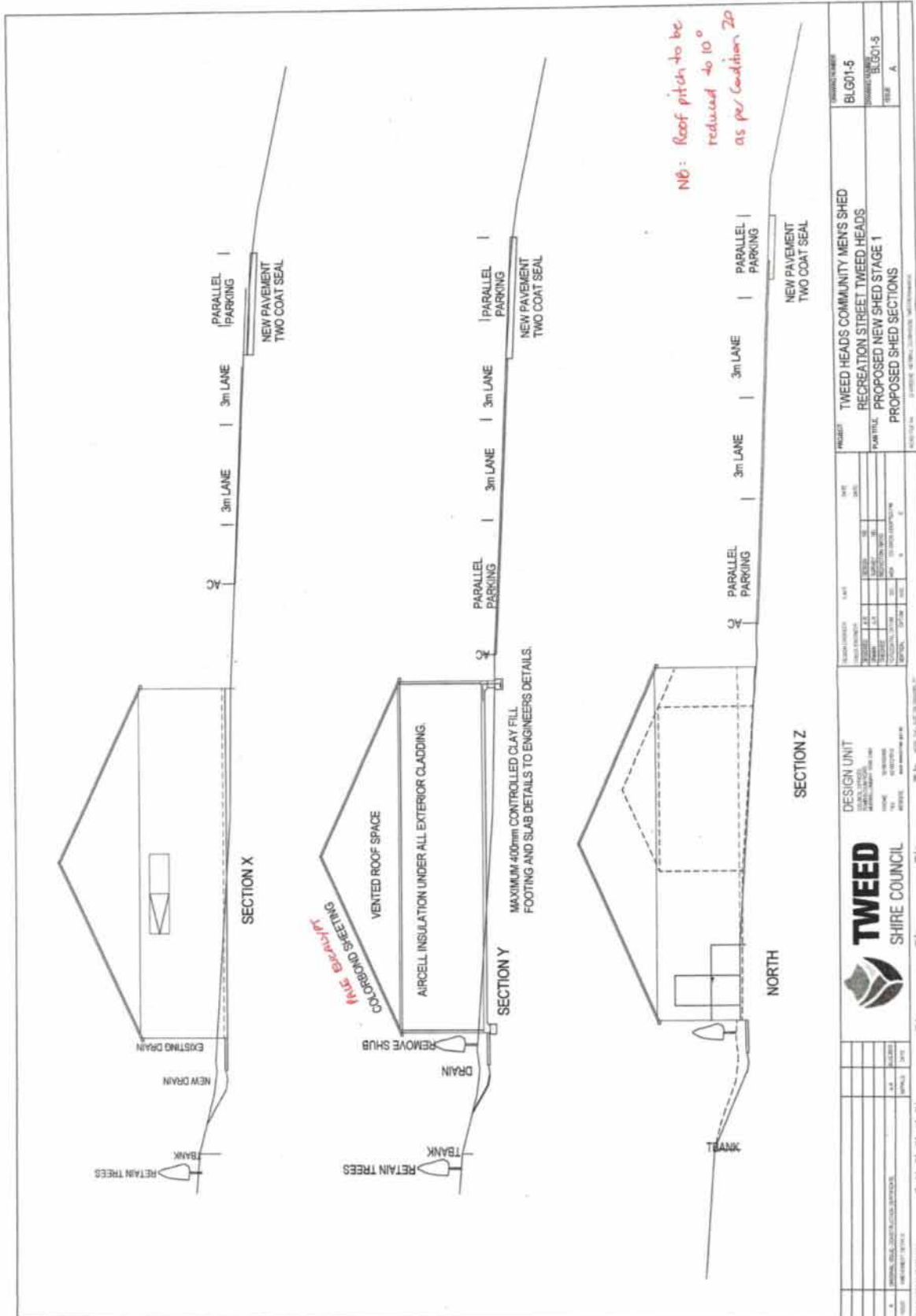
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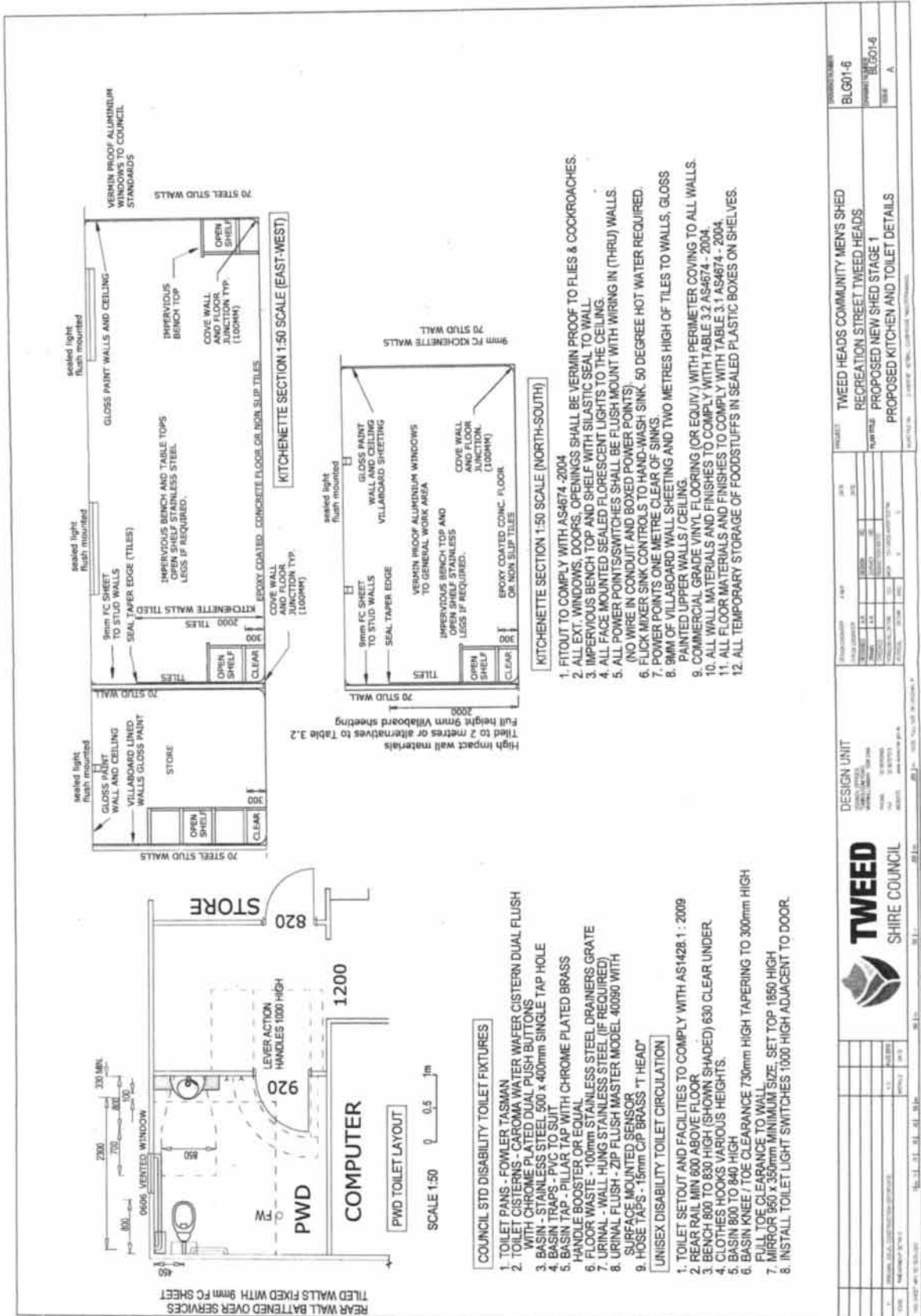
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DATE	DATE	TWEED HEADS COMMUNITY MEN'S SHED		BLG01-1	
DESIGNED BY	DATE	RECREATION STREET TWEED HEADS		DRAWING TITLE	
CHECKED BY	DATE	PROPOSED NEW SHED STAGE 1		BLG01-1	
APPROVED BY	DATE	GENERAL NOTES AND LOCALITY PLAN		SCALE	
				A B	



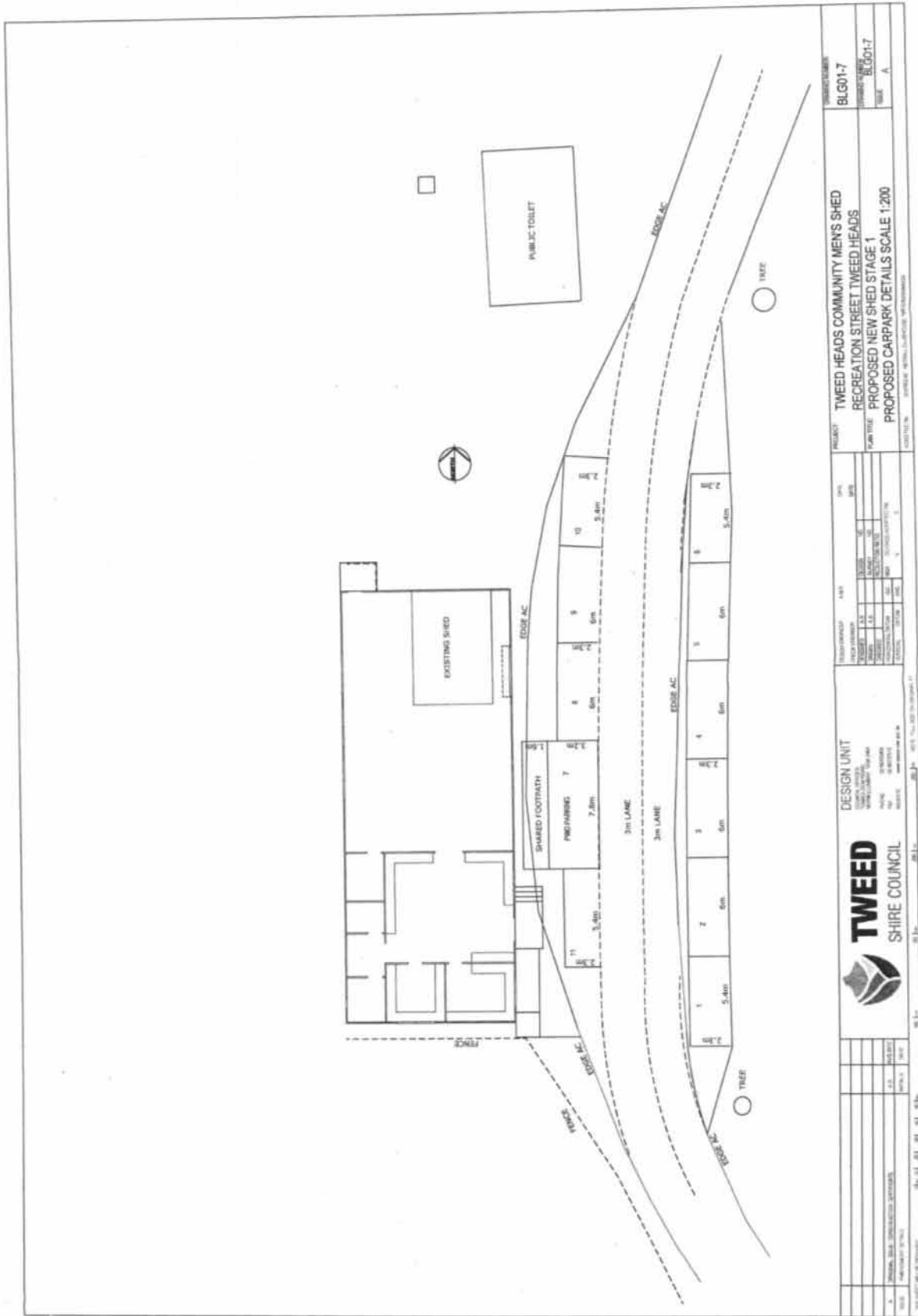


PROJECT		TWEED HEADS COMMUNITY MEN'S SHED	
PROJECT NUMBER		BLG01-4	
PROJECT TITLE		RECREATION STREET TWEED HEADS	
PROJECT DESCRIPTION		PROPOSED NEW SHED STAGE 1	
PROPOSED SHEED ELEVATION		BLG01-4	
DRAWN BY		A	
CHECKED BY		A	
DATE		12/12/13	
SCALE		1:100	
SHEET NUMBER		1	
SHEET TOTAL		1	
DRAWING NUMBER		BLG01-4	
DRAWING TITLE		PROPOSED NEW SHED STAGE 1	
DRAWING DESCRIPTION		PROPOSED SHEED ELEVATION	
DRAWING DATE		12/12/13	
DRAWING SCALE		1:100	
DRAWING SHEET NUMBER		1	
DRAWING SHEET TOTAL		1	
DRAWING NUMBER		BLG01-4	
DRAWING TITLE		PROPOSED NEW SHED STAGE 1	
DRAWING DESCRIPTION		PROPOSED SHEED ELEVATION	
DRAWING DATE		12/12/13	
DRAWING SCALE		1:100	
DRAWING SHEET NUMBER		1	
DRAWING SHEET TOTAL		1	





DESIGN UNIT		PROJECT		DRAWING NO.	
TWEED SHIRE COUNCIL		TWEED HEADS COMMUNITY MENS SHED		BL001-6	
RECREATION STREET TWEED HEADS		PROPOSED NEW SHED STAGE 1		BL001-6	
PROPOSED KITCHEN AND TOILET DETAILS		DATE		REV. A	
DRAWN BY: [Name]		CHECKED BY: [Name]		DATE: [Date]	
SCALE: 1:50		PROJECT NO: [Number]		SHEET NO: [Number]	



Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed City Centre Local Environmental Plan 2012

Clause 1.2 - Aims of the Plan

This Plan aims to make local environmental planning provisions for land in Tweed City Centre in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

The particular aims of this Plan are as follows:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents,*
- (b) to promote employment, residential, recreational, arts, social, cultural and tourism opportunities in Tweed City Centre,*
- (c) to encourage the responsible sustainable management and conservation of Tweed City Centre's natural and environmentally sensitive areas, the built environment and cultural heritage,*
- (d) to promote development that is consistent with the principles of ecologically sustainable development,*
- (e) to promote the economic revitalisation of Tweed City Centre,*
- (f) to strengthen Tweed City Centre as a multi functional and innovative regional centre that encourages employment and economic growth,*
- (g) to protect and enhance the vitality, identity and diversity of Tweed City Centre,*
- (h) to facilitate building design excellence appropriate to a regional city in Tweed City Centre.*

The proposed shed will facilitate a new 'recreational activity' use in an open space area that contains a number of community buildings. The building design is limited by budget constraints and does not meet the building standard set by large permanent structures located within the reserve.

Subject to recommended conditions of consent that mitigate visual impact of the large shed within the reserve and to adjoining residential uses (colour, landscaping, roof pitch), the proposal is considered to be consistent with the aims of the plan.

Clause 2.3 – Land Use Table

The subject land is within the RE1 Public Recreation zone. The proposed development is defined as a *community facility* is permitted with consent.

The objectives of the zone are:

- To enable land to be used for public open space or recreational purposes.*
- To provide a range of recreational settings and activities and compatible land uses.*

- *To protect and enhance the natural environment for recreational purposes.*

Use of the shed incorporates land being used for recreational purposes with provision of a range of activities that are compatible *as long as these activities are undertaken inside the shed.*

Construction of the shed is to incorporate suitable insulation and acoustic treatment to mitigate noise impact.

Associated landscaping is required that will screen the unarticulated expanse of metal comprising the shed's side and rear elevations in an attempt to enhance the natural environment.

In addition, the roof pitch is to be lowered considerably. This will increase visibility from Adelaide Street residences over the shed to open space areas and reduce the bulk of the building when viewed from other aspects.

Subject to recommended conditions of consent, the proposal is considered to be consistent with the aims and objectives of the land use table.

Clause 2.7 – Demolition requires development consent

The proposal includes the demolition of the existing Council shed currently located in the area nominated for the new shed.

This work may only be carried out with development consent.

Clause 4.3 – Height of Buildings

Objectives 1(b) and 1(f) of this clause are as follows:

1(b) – to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

1(f) – to limit the impact of the height of a building on the existing natural and built environment.

Despite a 10m building height restriction on this site, existing buildings maintain a low profile (generally single storey) with low pitch roofs and are benched into the site where possible to reduce impact.

Current plans for the proposed shed include a 25 degree pitch roof above a wall plate height of 2.6m. Fill is required on the north east corner of the shed which will increase the wall plate height above existing ground level by 600mm to 3.2m.

A 25 degree pitch roof height increases the overall height of the shed by 2.483m to 5.083m (or 5.683m in the north east corner). The steep roof pitch is unnecessary and is part of a non-specific template design. The applicant has agreed to reduce the roof pitch of the shed to 15 or 10 degrees which is more consistent with existing buildings.

A 15 degree pitch roof height increases the overall height of the shed by 1.483m to 4.083m (or 4.683m in the north east corner).

A 10 degree pitch roof height increases the overall height of the shed by 0.983m to 3.583m (or 4.183 in the north east corner).

Lowering the roof pitch to 10 degrees will significantly reduce the structure's impact upon the general locality and in particular, to Adelaide Street residences. A recommended condition of consent requires the applicant to submit amended

plans detailing this reduction in roof pitch prior to the issue of a construction certificate.

Clause 4.4 – Floor Space Ratio

A floor space ratio has not been nominated for the subject site. As such, this clause is not applicable.

Clause 5.5 – Development within the Coastal Zone

The proposal is located within the coastal zone, however, as the site is located 315m from the Terranora inlet within an existing urbanised area the proposal is considered not to impact upon the coast zone.

Existing public access to the coastal foreshore remains unchanged.

The proposal is considered suitable in relation to the surrounding area in terms of type, location and scale (subject to recommended conditions of consent).

The development will not impede access to the foreshore.

Effluent and stormwater will not impact on the foreshore as the proposed shed will connect to reticulated water and sewer.

The development will not be impacted by coastal hazards or impact on coastal hazards or increase the risk of coastal hazards in relation to any other land.

Clause 5.9 – Preservation of Trees or Vegetation

The proposed development is within the Tree Preservation Order 2011 - Koala Habitat Study Area. The proposal is located within an area that is partially vegetated.

In order to accommodate the shed, it is proposed to remove one mature Cadagi tree from the adjacent children's playground. It is also proposed to remove a row of five trees that were planted by Council several years ago and have reached a considerable state of maturity.

None of these trees are defined as Koala Habitat Trees. As such, this clause is satisfied.

Clause 6.1 – Acid Sulfate Soils

Class 2 and 5 Acid Sulfate Soils are identified on the subject site. The specific site area within which the shed will be located contains Class 5 Acid Sulfate Soils.

The objective of this clause is *to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*

Excavations for services will not result in depths below 5.0m AHD nor will the excavations result in the lowering of the water table or any adjoining Class 1, 2, 3 or 4 land within 500m of the site.

Clause 6.2 – Flood Planning

A portion of the eastern side of the site is located within the Flood Planning Map as being prone to PMF. The site for the shed is located within the western side of the site. It is therefore considered that this clause is not impacted upon as a result of this application.

Schedule 2 Exempt Development

State Environmental Planning Policy (Exempt and Complying Codes) 2008 specifies exempt development under that Policy. The Policy has State-wide application. The *replacement* of building identification signage or the content of such a sign is development specified for this code.

Schedule 2 of the Tweed City Centre LEP 2012 contains additional exempt development not specified in that Policy.

Signs, advertising structures and displays

(6) Building identification signs must comply with the following:

- (a) maximum size – 1m² in a residential zone or 1.5m² in all other zones,
- (b) maximum height – 1.8m in a residential or environment protection zone,
- (c) must not be illuminated in a residential or environment protection zone,
- (d) must be located wholly within the property boundaries of the land to which the sign relates, or flush mounted to the front fence or front wall of a building so long as the sign does not protrude beyond the physical limits of that fence or building,
- (e) only one sign per premises.

A signage plan was not supplied. However, the Statement of Environmental Effects (SEE) describes the proposed signage as being for building identification purposes for the proposed community facility within Recreation Reserve. Dimensions of the proposed signage (to read *Tweed Heads Community Men's Shed*) are 3m (width) by 1m (height) with an area of 3m².

The proposed signage is not considered exempt development in accordance with Schedule 2.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

SEPP No. 64 – Advertising and Signage

An assessment against SEPP No. 64 takes into account the dimensions and location of the building identification signage without the benefit of a signage plan being submitted.

A building identification sign is defined in Clause 4 of the SEPP as follows:

A sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertising of produces, goods or services.

The proposed signage will be located in an open space area. Clause 3(1) of the SEPP sets out relevant aims of the policy to the proposal which includes ensuring that signage:

- (i) is compatible with the desired amenity and visual character of an area, and
- (ii) provides effective communication in suitable locations, and
- (iii) is of high quality design and finish.

Given that a signage plan has not been supplied, it is difficult to assess the impact of a 3m wide by 1m high sign on a large structure within an open space reserve.

The desired amenity and visual character of the area is subdued and low key. A smaller sign (1.5m² as per Schedule 2 of the Tweed City Centre LEP 2012) may provide just as effective communication when placed on the front elevation to identify the structure to the general public within the reserve.

It is not possible to determine the level of design or finish of the signage. As such, signage as proposed is not consistent with the aims of SEPP 64.

Schedule 1 of the SEPP sets out assessment criteria with which to assess a signage proposal as follows:

Assessment Criteria		Assessment
1	Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which is it proposed to be located? Is the proposal consistent with a particular theme for outdoor advertising in the area of locality?	A reduction in size of the proposed signage is required in this high profile location that does not have the benefit of landscaping space to the front elevation of the building.
2	Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site is a special open space area. The shed is large and is in a high position within the subject site. More discreet signage on the front elevation of the shed is warranted in this open space location.
3	Views and vistas Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas?	There is a direct view across the site from Park Street and Recreation Street. The proposed shed will dominate this space due to its size. Signage scaled to be consistent with the building's size is not appropriate. A smaller sign located at the shed's access ramp is considered sufficient. N/A

Assessment Criteria		Assessment
	Does the proposal respect the viewing rights of other advertisers?	
4	Streetscape, setting or landscape	<p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p> <p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> <p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p> <p>Does the proposal screen unsightliness?</p> <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p> <p>Does the proposal require ongoing vegetation management?</p>
		<p>As above, the scale of the proposed sign is larger than necessary to identify a community building within an open space reserve.</p> <p>A discreet contribution to the visual interest of the landscape is required in this location.</p> <p>N/A</p> <p>N/A</p> <p>No</p> <p>No</p>
5	Site and building	<p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building or both?</p>
		<p>As above, the scale of the proposed sign is larger than necessary to identify a community building within an open space reserve.</p> <p>The proposed signage should not be able to be seen from a distance (eg. across the reserve).</p> <p>A discreet addition to the site and building is required in this location.</p>

Assessment Criteria		Assessment	
6	Associated devices and logos with advertisements and advertising structures	Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Unable to be determined from the information provided.
7	Illumination	<p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians?</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Can the intensity of the illumination be adjusted if necessary?</p> <p>Is the illumination subject to a curfew?</p>	Unable to be determined from the information provided.
8	Safety	<p>Would the proposal reduce the safety for any public road?</p> <p>Would the proposal reduce the safety for pedestrians, particularly children by obscuring sightlines from public areas?</p>	Unable to be determined from the information provided.

The size of the proposed building identification sign is not appropriate in this location and is not supported. A recommended condition of consent will require further detail of associated signage to be submitted prior to the issue of a construction certificate if statutorily required.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality. It will not restrict public access to the foreshore.

SEPP (Exempt and Complying Development Codes) 2008

State Environmental Planning Policy (Exempt and Complying Codes) 2008 specifies exempt development under that Policy. The Policy has State-wide application. The *replacement* of building identification signage or the content of such a sign is development specified for this code.

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

There are no draft environmental planning instruments relevant to this proposal.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Eleven car parking spaces are intended to be provided inclusive of a disabled parking space. With reference to AS 2890.31 Section 2.4.4(a) and Figure 2.5 the lengths of the parking spaces are insufficient. For a laneway width (centreline to edge) of 3.0m the required car park length for internal car parks is 6.3m and not 6m as shown on drawing BLG01-7.

The disabled parking space meets Council Standards.

Council's Development Control Plan (DCP) Section A2 does not define car parking requirements for community facilities. The table below summarises parking requirements for several uses based on a floor area of 280m² – with the 'Public Building' category considered to be the nearest appropriate land use:

Site Use	Car Parks		Heavy Vehicle	Bicycle		
Factory	1/100m ² GFA	3	1/200m ² GFA	1	-	0
Public Building	1/40m ² GFA	7	1/200m ² GFA	1	1/100m ² GFA	3
Industry	1/100m ² GFA	3	MIN 1	1	-	0
Home Industry	assess on merits		MIN 1	1	assess on merits	

In consideration of the submitted information, the proposed 11 car spaces are deemed to be sufficient. There is no need for a designated heavy vehicle parking space as deliveries will mostly be via personal vehicles or utilities, as mentioned in the SEE. There is however a requirement to provide bicycle parking sufficient to cater for three (3) bicycles.

Car parking construction and linemarking will be a requirement imposed by consent conditions.

While the proposed shed would be capable of providing work space for up to 16 people at a time, it is not necessary to provide for that number of car spaces. The shed is located within proximity to bus routes. In addition, there is an expectation that clientele will car-pool and arrive on foot or by bicycle.

The Shed's Supervisor/Co-ordinator will be expected to manage and 'book' work/training space so that clientele numbers/intensity of use does not exceed the above-mentioned limit. Available parking spaces will need to be managed accordingly.

A3-Development of Flood Liable Land

A portion of the eastern side of the site is located within the Flood Planning Map as being prone to PMF. The site for the shed is located within the western side of the site. It is therefore considered that this clause is not impacted upon as a result of this application.

A4-Advertising Signs Code

One sign is required to identify the shed for its community facility purpose. As stated previously in this report, the size of the sign has been included in the SEE but relevant plans have not been supplied.

Assessment against SEPP 64 indicates that the proposed 3m² sign could be reduced in size in order to meet the 'low-key' requirements of a special open space area.

DCP A4 does not specifically address building identification signage within open space areas on public buildings. Minimisation of visual impact of signage is a key objective of locating signs within a residential or rural area. Ensuring that signs are in character with the existing and likely future amenity of the locality is important in scenic/environmental locations.

Should the applicant choose to provide further detail at construction certificate stage, quantitative figures within this DCP for the calculation of signage areas per business will not apply in this location. Instead, a qualitative assessment will be required.

A10-Exempt and Complying Development

DCP A10 does not include building identification signs within the RE1 zone as exempt development.

A13-Socio-Economic Impact Assessment

A Socio-Economic impact assessment is not required for a recreation facility with an area less than 1000m².

B2-Tweed City Centre

DCP B2 is a site specific DCP relating to Tweed Heads. The subject land is located within the Ridgeline and Razorback Precinct, generally west of Recreation Street. Development within this precinct is predominantly single detached dwellings stepping up the escarpment to take advantage of easterly views.

Building form is not defined in the DCP for the subject site and there are no specific controls that are relevant to the proposed development. Maintaining the ability for existing dwellings to take advantage of easterly views can be accommodated by reducing the roof pitch of the proposed shed.

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

The existing shed owned by Council, previously used by outdoor staff in connection with the reserve, is to be demolished to make way for the proposed shed. The slab will be retained.

Clause 93 Fire Safety Considerations

The building satisfies the provisions of the Building Code of Australia in relation to separation from fire source features, therefore the external metal cladding is adequate.

The floor area of the building does not mandate illuminated exit signs, emergency lighting or fire hose reels. However, the submitted plans propose to install exit signs and emergency lighting.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

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

This plan relates to the Cobaki and Terranora Broadwater and is therefore not applicable to the proposed development.

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

Context and Setting

The proposed development is located adjacent to the internal access road within a landscaped, open space setting between Twin Towns Playgroup and the amenities building.



Figure 4: context of proposed shed site

Earthworks

The site is generally flatly graded with a minor fall to the east. The internal access road across the frontage falls to the north.

Some site regrading will be required, necessitating some cut and fill to provide a flat surface for the shed's slab foundation as indicated on the submitted cross-sections. The extent of earthworks will be minimal with a maximum of 600mm fill in the NE corner of the proposed shed. The SEE indicates that there will be no imported fill.

Stormwater Quality Management

The shed site is within a larger parkland setting and accordingly does not have an individual lawful point of discharge. The existing Council shed and nearby amenities block discharge their roofwater to ground which works its way down to the oval. Sheet stormwater runoff from the existing driveway also runs off to the oval.

A grass V-drain (catch drain) exists on the western side of the existing shed which will need to be relocated as part of the minor site levelling works for the new shed. This open drain could be utilised as a legal point of discharge.

This proposal will only create a minor increase in discharge in the driveway area, due to creation of six parallel car spaces abutting the existing driveway. The use of a pollution control device such as a Humeceptor is not required for such a small increase in paved area. The pollutant load coming from the driveway can be effectively treated by downstream vegetation and grassy areas.

Driveway runoff will continue to sheet flow down to the existing oval where this water will disperse across the recreational area until it infiltrates into the ground. Roofwater will likely be run to ground and also discharge to the oval. Roofwater runoff does not require treatment prior to discharge from the site.

Stormwater management will be subject to submission of a Section 68 stormwater approval and standard erosion control conditions will be imposed as recommended conditions of consent.

Waste

The SEE states that waste will be mainly of a household nature with recycling being a 'cornerstone of activities at the Shed'.

Recommended conditions of consent require appropriate arrangements for the storage and removal of garbage and other waste materials.

Noise

A Noise Level Impact Assessment Report (NIA) has been submitted with the Application. This Report recommends specific sound shell treatments and noise attenuation measures to be installed within the building.

The Applicant advises that they intend to implement all recommendations of the Noise Report. However, the submitted plans do not reflect the construction requirements as recommended in the NIA.

It is important that the recommended building sound shell treatments are incorporated in the building construction and a condition has been recommended to that effect.

All activities at the Shed are to comply with recommendations within the NIA.

Visual Impact/Amenity

The proposed shed is a large structure with an area of 280m². The design of the shed is simple with few openings and little articulation. The shed has minimal visual appeal. It contrasts strongly with permanent structures at the southern end of the site such as the Northern Rivers Child Care Centre and the Tweed Bridge Club / Twin Towns Playgroup.



Figure 5: Northern Rivers Child Care Centre



Figure 6: Tweed Bridge Club / Twin Towns Playgroup

The proposed shed occupies an elevated, central position within the reserve which had previously been occupied by a large structure in the 1960's and 1970's and is currently occupied by the Council shed.



Figure 7: perspective of shed site from Adelaide Street road reserve (Google Imagery)



Figure 8: perspective of shed site from Recreation Street across reserve (Google Imagery)

A considerable reduction in roof height has been recommended (as previously discussed in this report) along with substantial landscaping to the rear and sides of the shed as the front of the shed will be occupied by new hardstand parking areas with no space for plantings.

The current shed colour is close to 'Wilderness Green' which is a stronger green that makes an obvious contrast with vegetation. 'Pale Eucalypt' has been recommended as this muted colour will blend well with existing structures and vegetation and present more favourably from adjacent residential development and from within the reserve.

Operation Times

The proposed hours of operation are 8.00am to 5.00pm Monday to Friday and 8.00am to 1.00pm Saturday with no operation on Sundays. These hours are considered acceptable based upon the provisions of the Noise level Impact Assessment Report and the noise attenuation measures that are contained within the Report and shall apply to workshop and meeting room activities.

A condition has been recommended requiring that no power tools or machinery is to be used external to building.

Traffic Generation

Levying of Section 94 Plan 4 (TRCP) contribution charges are applicable to the proposal. Plan 4 does not contain an equivalent trip rate for community facilities/public buildings. A traffic survey is generally required in order to ascertain an appropriate trip rate for such uses.

The applicant did not provide a traffic survey but states that the facility will have approximately 16 persons attending *at any time during the day*.

Given the activities that are likely to be undertaken within the shed it is the most appropriate trip rate to be used for calculation of contributions is the light industrial rate of 5 trips per 100m² which equates to 14 trips with a 50% discount for shared trips which results in a total of 7 trips.

(c) Suitability of the site for the development

Surrounding Land uses/Development

Within the reserve which is zoned for public recreation, surrounding land uses include child care establishments and indoor recreation facilities. Beyond the reserve, land use is predominantly residential.

Access, Transport and Traffic

The internal driveway that will provide access to the development is of centre seal construction and varying width. It is flatly graded but with fall to the north. There is a narrow gravel shoulder along the eastern side. The seal on the eastern side will be widened for car park construction.

The internal driveway extends from Florence Street to Park Street and will provide through access to the proposed development. The driveway is of varying width: approximately 9.3m wide in the vicinity of the shed but between 5.5m and 6.5m wide elsewhere within the site.

The proposal will create additional traffic. However the existing road network will be able to cater for this minor increase.

Existing bus routes are within close proximity of the site, with 'Surfside' bus routes 603, 605 and 607 close by. Council's GIS shows bus routes 603 and 604 run along Wharf Street which is located approximately 400m from the site.

Some patrons are likely to cycle, walk or ride a mobility scooter to the site. The existing driveway caters for such access even though a designated pathway or cycleway does not exist in the park.

Flora and Fauna

Retention of visual amenity from within the reserve and from the Adelaide Street frontage relies heavily on adequate landscaping of the site around the shed.

The applicant proposes to remove a mature 'Cadagi' tree, a north Queensland native rainforest tree which is known widely to be a pest in other areas. This tree was promoted in the 1980's as a shade tree but it causes a number of problems in the environment. It impacts upon local native stingless bee populations, develops mould on leaves, affects those with asthma and allergies and can cause problems with its roots.



Figure 9: Cadagi tree within playground area

Despite the positive shading and visual appeal of this tree, the tree has been dropping branches. It is best replaced with a local native species in a suitable location elsewhere on the site.

Five other Council planted trees (2-3m in height) currently located along the existing drain line are proposed to be removed:

- 1 x Illawarra Flame Tree (local native species)
- 1 x Queensland Kauri (non-local native species)
- 1 x Fine Leaved Tuckeroo (local native species)
- 2 x Syzygium spp (local native species)

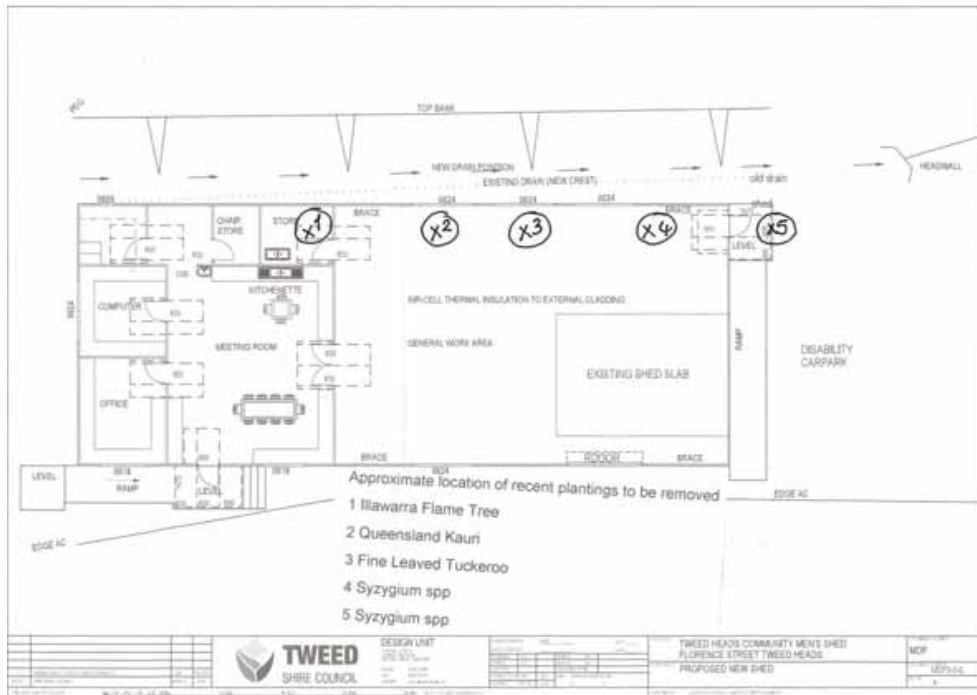


Figure 10: submitted plan for removal of five trees



Figure 11: Five Council planted trees to be removed

Satisfactory landscaping along the perimeter of the shed (sides and rear) is crucial with regard to retention of visual amenity and reduction of bulk and scale of the shed from both within and external to the site.

A recommended condition of consent requires a detailed landscaping plan to be submitted prior to the issue of construction certificate. The applicant will need to negotiate with Council's Recreation Services Unit in order for this condition to be complied with.

Water Supply

Council's reticulated potable water supply is available to the area. However it is unknown whether a new connection will be provided either from Adelaide Street at the rear or whether an existing internal water service could be used.

Section 64 contribution charges are applicable to the proposal. Council's Water Unit has supplied rates consistent with that provided by the applicant in the SEE.

Sewer

Council's piped effluent disposal infrastructure is available within the area. A new connection will be required for this development and Section 64 contribution charges will be levied.

A sewer man hole is located adjacent to the nearby public toilets. From this man hole a sewer pipe can be installed, running parallel to Adelaide Street to service the proposed shed.

Contamination

A site inspection revealed that the shed is proposed to be erected at the same location as the existing small shed, with the existing slab to be incorporated into the design of the new building.

As such, there is no pre-demolition termite report required.

A check of Council's aerial photos (1976, 1996) revealed that the site has been used in conjunction with the existing oval. There are no known cattle tick dip sites within 200m of the site nor does Council have any record of the site being contaminated.

Preparation of Food

Discussion with the applicant revealed that the proposed kitchenette will not be used for the preparation of food for sale. A condition has been recommended in this regard.

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

Public:

The proposal was notified for a period of 14 days from Wednesday 31 July to Wednesday 14 August 2013. During this time, a total of nine submissions were received. 23 letters of support were received following conclusion of the exhibition period.

Matters raised within the nine submissions objecting to the development include:

- Inappropriate bulk, scale and height
- 'Backyard shed for enthusiastic hobbyist' reference is misleading

- Other 'Men's Sheds' are located in industrial/commercial locations not sensitive to noise
- Unnecessary vegetation removal
- Impact upon property values
- Proximity to two child care centres and children's playground
- Females are excluded – shed does not serve the community at large
- Alternative site available near the pool at South Tweed
- Industrial size shed suited to an Industrial Estate not residential area
- Limited parking/heavy delivery vehicles/traffic overflow
- Noise impact – levels well above acceptable levels for a residential/recreational area
- Unlikely that large roller door on eastern elevation would be closed each time a power tool is used
- Unacceptable hours of operation
- Grant money only covers slab and shell – will this result in an unfinished building?
- Visual impact – terrible eyesore – incompatible with parkland/residential setting
- Poor building design – no architectural merit/not suited to parkland setting
- Primary activities (sawing, drilling, woodworking, planing, engine repairs) not compatible with parkland setting
- No social benefit from locating shed in park that could not be achieved from siting the shed in an industrial location
- Cumulative impact of large buildings and incompatible uses being located in parkland setting
- Inconsistency with RE1 zone objectives
- Residential views over the reserve from Adelaide Street will be affected.

Objector comments:

- *The Men's Shed organisation has future plans to extend the shed to the toilet block.*
- *The shed operates 2 days a week at present and regularly has up to 15 cars in the space where the proposed shed and designated parking will be. It is anticipated that the shed will have high usage but the DA contends that many users will come by public transport. On the evidence of the number of cars parked there currently, this contention is highly unlikely.*
- *Traffic issues are not confined to users of the shed. There is a prospect of trailers and trucks pulling up to deliver and receive equipment such as engines, lawnmowers etc. that the users of the*

shed will be working on in the workshop area. Even with the limited space available to shed activities at present, there have been as many as 4 lawnmowers being worked on outside the shed.

- The ground between the proposed shed and Adelaide Street is described in the DA as "steeply sloping" (5.1.3) – I do not have engineering qualifications but contend that a common sense view of the slope would not describe the slope as "steep".*
- I am advised by the president of the organisation that all internal fitting and external works and landscaping will be completed by the users of the shed. Presumably material costs will have to be fund-raised. There is a very strong likelihood that fundraising of this magnitude could take a considerable time. Ongoing and drawn-out building works in such a public open space has both general security implications and potential disturbance impacts on neighbours.*
- The noise report which accompanied the application clearly concludes that the shed must be enclosed with the activities at the site 'managed' and that ear protection should be used when operating equipment. These statements indicate that the development has the potential to create significant noise. Noise attenuation which relies on 'site management' is highly undesirable in a location where peace and quiet is paramount.*
- A review of the Men's Sheds in the Gold Coast indicate that they are generally located in industrial areas. Other Men's Sheds are located in areas which have a large separation from dwellings such as school sites. None of the sheds are located in public parks.*
- Ample industrial or commercial buildings would be suitable for this industrial type use. Industrial/commercial buildings within the Industry and Machinery Drive area are well serviced with public transport and the area contains many sheds which would be more suitable for noisy activities.*
- I would contend that a more appropriate location would be somewhere of a more industrial nature with less congested access, more surrounding space for users to gather and socialise outdoors, and with the capacity to leave doors open with no worry about the impact of noise on neighbours.*
- The applicant should not be given the right to build an incompatible development simply because they are a not-for-profit organisation.*

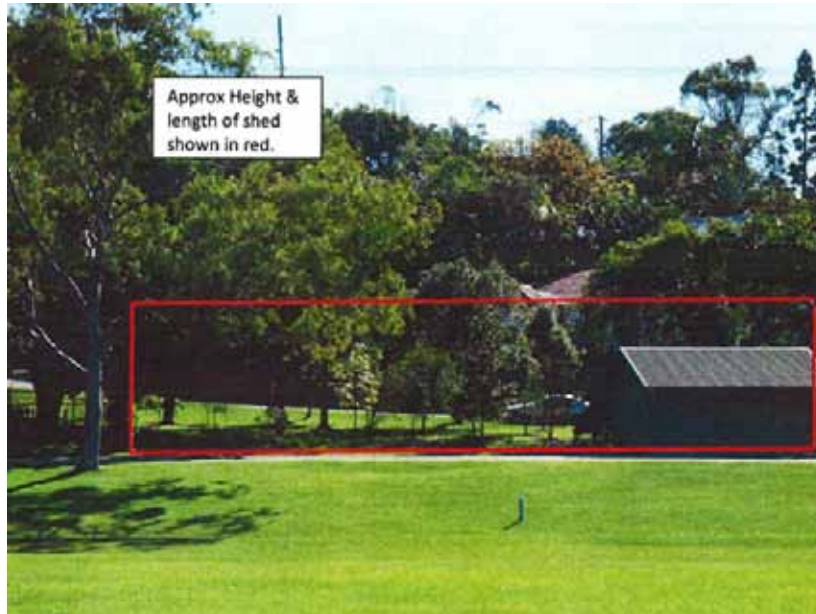


Figure 12: photo montage supplied by objector



Figure 13: view of existing shed from Adelaide Street supplied by objector

The applicant has addressed the submissions as follows:

Issue	Applicant Response
Building Design	The design philosophy for the shed is set out in section 3.2.1 of the SEE. The existing buildings within the reserve are of varying design and age. The Recreation Street Reserve (Reserve) is perhaps unique in the Shire as it accommodates a number of community uses around the perimeter that are housed in a variety of building styles and materials. Moreover, these buildings are generally commensurate with the size of the proposed Shed.
Impact on Views	Hoping to produce a cross-section to indicate no views lost.

Issue	Applicant Response
Tree Removal	<p>A number of trees have to be removed to accommodate the Shed, but only those that are on the lease area or immediately abut the lease. A total of five immature trees will be removed on the western boundary of the lease to accommodate the shed, all of which will be replaced with similar. One mature tree (a cadagi tree within the lease of the adjoining pre-school) will be removed. The tree is not an endemic local native, the pre-school have concerns about the tree and Council officers have agreed that it is appropriate to remove it. There are a number of other mature trees to the west of the lease within the reserve that are unaffected by the proposed Shed.</p> <p>Replacement trees will be planted within 6 months of the completion of the erection of the shell of the building (i.e. walls and roof).</p> <p>In addition to any aesthetic considerations there are significant social and community values arising from the establishment of the Shed on the land.</p>
Use of Building	<p>The layout of the shed has been designed to accommodate a wide variety of interests. The men's Shed is not simply about making/repairing things. Activities concerning the broader interests, health and welfare of its members are likely to be found at any shed. This may include craftwork and computer classes in which social interaction and engagement between members is paramount.</p> <p>No one is excluded from a men's shed as long as they are willing to abide by the rules.</p>
Hours of Operation	<p>The hours of operation are no different from any of the existing activities in the reserve:</p> <ol style="list-style-type: none"> 1. PCYC: 8.30am – 8.30pm on Monday to Friday, 8.30 – 4.00pm on Saturday, with markets on two Sundays a month. 2. Tweed Head Community Pre-school: 9.00am – 3pm, Monday to Friday. 3. Twin Towns Playgroup: 9.30 am – 11.30am, Monday to Thursday. 4. Bridge Club: Playing time 10am -1pm, Monday to Saturday. 5. Northern Rivers family Day Care: unknown. 6. Coloon Children's centre: 7.45am – 6pm, Monday to Friday. 7. Tweed Heads Croquet Club: playing days Monday, Tuesday, Thursday, Saturday.

Issue	Applicant Response
	<p>It is noted that activity at any of these venues may commence before the nominated opening time. However, in the interests of the amenity of neighbours, the Shed is prepared to adjust the proposed hours.</p>
<p>Future Extension of Shed</p>	<p>Any concerns at the impact of further extensions to the shed should be addressed at the time of any DA for such an extension and not before. Any population increase in the area is more than likely going to reinforce the need for such a facility as the Shed easily accessible by that population. It is also to be noted that the Shed is inclusive of men of all ages.</p>
<p>Alternative Sites</p>	<p>The Shed acknowledges the difficulties imposed by the nature and location of the site. However, this is the only site that has been made available to the Shed. Furthermore, given its location and existing activities at the Reserve it is not considered that these difficulties are detrimental to the proposed development.</p>
<p>Details of Alternative Sites</p>	<p>Before the current shed was made available the THCMS Board of Management conducted an extensive survey in partnership with TSC and State MP Geoff Provest of possible sites in the Tweed Heads area (including Banora Point). Criteria used to identify suitability included access to public transport. A site was identified at Heffron Street (Lot 519/DP 755740), administered by the Crown. However, Council advised that this site was marked for other activities and subsequently directed the THCMS to the Park Street site. A lease has been prepared for this site with council's legal officer and owner's consent received from the acting general manager. Please note that the grants awarded under the NSW State's Community Builders Program can only be accessed for a new build and not for leasing or renting a premise.</p>
<p>Parking</p>	<p>The provision of parking is addressed in section 4.8.2 of the SEE. Council's parking code requires a total of 7 spaces whether the proposed building is identified as a public building or a commercial premise (if industrial the requirement would be less). The proposal is to provide for a total of 11 spaces (4 spaces greater than the code requirements).</p> <p>Moreover, the proposed lease has been specifically designed in conjunction with Council to ensure safety within the reserve and also maximise the parking for the shed.</p> <p>As detailed in the SEE not all members are expected to drive to the shed. A system of car sharing has been</p>

Issue	Applicant Response
	<p>instigated.</p> <p>Finally, it is not anticipated that the shed will on any one day be as popular as at present. As the shed is only open one day a week all members tend to visit the shed on that day.</p>
Noise	<p>The SEE includes a comprehensive Noise Level Impact Assessment that includes a number of recommendations, to which the Shed has agreed. The Assessment concludes that based on on-site managed activities, no unreasonable noise is expected to occur that may affect residents.</p> <p>On a matter of detail, the Assessment's recommendation in respect of the roller door highlighted for specific attention in the objections allow for it to be open during activities.</p> <p>At this stage no comments have been received from Council in respect of concerns at the Assessment itself, the impact of shed activities or any mitigation measures.</p>
Unacceptable Location	<p>The use of the land for a Men's Shed is no different to any of the other community uses within the Park. They all fulfil essential local community needs.</p> <p>The proposed shed is located within a Council reserve, which includes a number of buildings used for community purposes. Moreover, Council's plan of management for the reserve specifically identifies that such uses are acceptable within the Reserve.</p> <p>The proponents of the shed have identified and addressed potential impacts.</p> <p>The assertion that there are no social benefits arising from locating the Shed within the Reserve is strongly refuted. This location provides a far more accessible location than any industrial location within the Tweed Heads area (assuming such a location is feasible).</p>
Building Completion	<p>The THCMS is now in receipt of two grants under the NSW State Government's Community Builders Program – the first is for \$58,000 and the second for \$23,446, both conditional on a long-term lease being signed and Development Approval granted. The grants will enable the building of the Shed to the dimensions specified in the DA, and for the fit-out. There will be no delay in commencing operations once the Shed is erected and fitted out.</p> <p>In addition, the Shed has:</p> <ul style="list-style-type: none"> a) Introduced a \$25 membership fee – to assist with public liability insurance and other overheads

Issue	Applicant Response
	<p>b) received a grant of \$5000 from the Commonwealth Government for equipment and training.</p> <p>c) received a grant of \$560 from Tweed Shire Council for equipment.</p> <p>d) applied for a grant under the ClubsNSW program to support the THCMS in the building of a large Shed.</p>
Cumulative Impact	<p>As noted throughout, this Reserve is perhaps unique in the Shire in view of the number and range of community uses and building around the perimeter (and hence the general level of activity). This situation is acknowledged in the Recreation Street Public Reserve Plan of Management.</p> <p>The Plan allocates the subject land within that part of the reserve nominated as Management Unit 2: Community Facilities/Police & Community Youth Club /Child Care Centres.</p> <p>The Plan of management states that <i>“The core objectives for management of community land categorised as general community use are to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:</i></p> <p>(a) <i>in relation to public recreation and the physical, cultural, social & intellectual welfare or development of individual members of the public, and</i></p> <p>(b) <i>in relation to purposes for which a lease, license or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities)”.</i></p>
Zoning	<p>The zone objectives of Tweed City Centre LEP 2013 (TCCLEP) is dealt with in sections 4.7.1 and 4.7.2 of the SEE. The TCCLEP requires that the consent authority must have regard to the zone objectives. The Reserve accommodates a range of community and recreational activities, which are acknowledged by the Plan of Management for the Reserve.</p> <p>The activities to be undertaken at the Shed are recreational and will add considerably to the range of those activities offered at the Reserve. The use of the Shed is in line with the existing activities and developments at the Reserve.</p> <p>It is submitted that the proposed development meets the objectives of the Zone.</p> <p>The proposed use is not industrial but constitutes a</p>

Issue	Applicant Response
	<p>community facility. Section 79C requires Council to take into consideration when determining this application a number of matters.</p> <p>The SEE has demonstrated that any likely adverse environmental impacts can be appropriately managed. But more particularly it identifies significant social and community benefits arising from the development of the Shed; benefits moreover for the wider Tweed community. There is the danger that this critical element of the proposed development is being lost sight of and this is acknowledged in a number of letters of support. Consequently, there is considerable public benefit to be gained from the approval of the development.</p>

Council assessment of submissions

Issues raised within the submissions have been addressed elsewhere in this report. Additional information has been provided below with regard to clarify traffic and noise impact matters following receipt of submissions.

Traffic

The proposed 11 car parking spaces are considered appropriate subject to the Supervisor/Co-ordinator in charge of the shed activities fulfilling the role of 'booking' work spaces to limit the number of clientele at any one time.

The existing driveway is of varying width and is approximately 9.3m wide for the shed's frontage. This section is satisfactory and parallel car parking can be accommodated.

The narrowing of the driveway elsewhere within the site is not a matter that can be taken up or addressed as part of this application.

Noise

Noise issues can be broadly grouped into the following:

- General excessive noise from operation of power tools and activities associated with repair work proposed to be undertaken within the shed and how this will be managed;
- The excessive hours of operation proposed for the shed;
- The possibility of repair work being undertaken outside of the confines of the shed leading to excessive noise; and,
- Concern with noise associated with deliveries.

The applicant submitted a Noise Level Impact Assessment (NIA) prepared by Craig Hill Acoustics (reference: Men's Shed 130613/1) and dated 13 June 2013.

The Acoustic Impact Assessment states:

The purpose of this report is to examine noise impact from the proposed Men's Shed at Park Street, Tweed Heads.

Activities on the site will include light woodwork and light metalwork consistent with those done by a 'back-yard' hobbist.

Equipment installed will be light duty and operating infrequently during opening hours.

The general area will be used for a variety of activities including craft activities such as leather work and electronics projects where assembly and soldering type work would be done as well as small woodworking and metal working activities.

The office and meeting room areas would be of a passive nature where computer classes and meetings would be held.

Hours of operations: 8am – 5pm Monday to Friday, 8am -1pm Saturday.

There may be times when meetings will be held in the evening, but no machinery will be operated.

The nearest noise sensitive properties are:

North: PCYC / Daycare 50m, Residents 140m

South: Daycare centre 6m play area – Indoor 12m, Residents 150m.

East: Day Care 75m, Residents 150m

West: Residents 25m

It should be noted that the proposed hours of operation as specified in the NIA from those as proposed in the DA Statement of Environmental Effects as follows:

- Start time of 8am as opposed to 7.30am Monday to Friday, and
- Finish time of 1.00pm rather than 2.00pm on Saturdays.

The NIA has considered noise sources and noise levels that will be generated by the use of a variety of power tools likely to be utilised in association with activities as proposed within the shed.

The NIA has identified the likely noise sensitive receivers and their proximity to the shed.

The NIA has considered the proposed operating hours (relative to the note above).

The NIA includes on site noise measurements and relates these to the appropriate assessment criteria for the proposed development (NSW EPA Industrial Noise Policy).

Based upon the assessment carried out the NIA has identified that it will be necessary for certain noise attenuation measures to be included to ensure that the identified noise sensitive receivers are not subjected to unreasonable levels of noise.

These attenuation measures include:

- sound shell treatments to be incorporated into the construction of the shed
- various noise attenuation measures to be installed within the shed
- on site management provisions such as keeping doors and windows closed when power tools are being operated, and
- the need for ventilation to be installed.

It should be noted that the roller door on the eastern elevation may only be open during power tool operation if work stations for bench and drop saw, router and electric plane are specifically treated to reduce the predominate high frequencies at the source. Details of such treatment are discussed in Section 6.1 of the NIA (Noise from Inside the Premises).

The proposed hours of operation are not considered unreasonable as they relate to daytime criteria as contained in the NSW Industrial Noise Policy which advises that for assessment purposes, Day period is from 7.00am to 6.00pm Monday to Saturday.

It is not proposed for the shed to be utilised in evening or night periods.

It should also be noted that the noise measurement period in the NIA was carried out between 6 and 11 June 2013 which included a Saturday as well as week days.

If the sound shell, internal treatments and on site management measures are adopted the NIA concludes the following:

Based on the above listed noise sources and on site managed activities, no unreasonable noise is expected to occur at nearby noise sensitive residents.

The NIA was considered as being satisfactory in its consideration of the likely noise level impacts associated with the proposal. Provided that the noise attenuation measures are adopted and installed, the identified noise sensitive receivers should not experience unreasonable noise.

It is noted that Section 5.1.1 of the Statement of Environmental Effects contains the following commitment by the applicant in relation to the adoption of the recommendations for noise attenuation measures as contained within the Noise Impact Assessment:

These recommendations will be incorporated into the Shed.

A number of conditions have been recommended to be imposed on any Development Consent issued to address noise level impact.

These conditions relate to:

- further detail required (construction, operation) to comply with the NIA;
- provision of amenity of the locality;
- restriction of operation hours;
- compliance with the NIA, and
- prohibition of external use of power tools/machinery.

It is considered that the imposition of these conditions (together with other recommended standard conditions) will also address other general concerns raised within the submissions relating to deliveries and the conducting of repairs outside the confines of the shed.

It should be noted that the times of operation as contained within the NIA have been incorporated into the condition relating to hours of operation.

In consideration of the submissions it is considered that the following additional condition is to be included on any Development Consent issued:

A post construction noise assessment report from a suitably qualified acoustic consultant shall be prepared and submitted to the satisfaction of the General Manager or his delegate in respect to noise likely to be generated by the activities associated with the operations of the Men's Shed.

The assessment report shall include any recommended noise amelioration measures to be carried out by the applicant and shall specifically consider the recommendations and requirements as contained within the Acoustic Impact Assessment provided by Craig Hill Acoustics Reference:130613/1 and dated June 13 2013. The report shall be submitted within a period not exceeding 60 days of the date of the commencement of operation of the Men's Shed.

The applicant shall carry out any such recommendations as provided within the post construction noise assessment report to the satisfaction of the General Manager or his delegate within 30 days from the date of the post construction acoustic assessment, provided that the General Manager or his delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or his delegate.

Letters of support

23 letters of support were received following conclusion of the exhibition period (14 August 2013) from 4 September 2013 to 8 November 2013.

Of the 23 letters, two were received from properties adjacent to the reserve. The balance of letters were received from addresses in Tweed Heads, Tweed Heads South, West Tweed Heads, Coolangatta, Banora Point, Kingscliff and Tumbulgum.

The letters of support are not 'site specific'. Sentiments apply to the granting of approval for the shed in general based on a positive impact within the community. The letters of support provide positive statements about general activities planned within the shed and social/cultural benefits to community members. They do not discuss serious planning matters or refer to the impacts of locating the shed within a public reserve.

(e) Public interest

The proposed development, generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan, is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general subject to application of the recommended conditions of consent.

OPTIONS:

1. Approve the development application in accordance with the officer's recommendation;
or
2. Refuse the development application with reasons.

Council officers recommend Option 1.

CONCLUSION:

The proposed erection of a shed for use as Tweed Heads Community Men's Shed is generally consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts subject to the imposed conditions of development consent. It is considered that the site is suitable for the development.

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. Craig Hill Acoustics: Noise Level Impact Assessment *Men's Shed* dated 13 June 2013 (ECM 3225529)

Attachment 2. Recreation Street Public Reserve Plan of Management: adopted by Council 7 July 2004 (ECM 3225530)

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28 [PR-CM] Development Application DA13/0328 for Creation of Staged Storage Units (112 Units) and Conversion of Existing Light Industrial Building to Storage Units (24) with Associated Site Filling and Earthworks in Addition to Existing Lawful Development (Light industry) at Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0328 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations

SUMMARY OF REPORT:

The proposed development modifies light industrial use of the site to create a staged storage unit facility. A total of 136 self-storage units with a floor area of 2116m² are proposed over six stages to operate on a commercial basis with reduced light industrial activities to be retained on the site.

Compliance matters remain outstanding regarding the existing light industrial land use. The majority of these matters may be resolved satisfactorily subject to the recommended conditions of consent should the proposed development proceed inclusive of all stages.

The site is currently zoned 1(a) Rural. The development is defined as 'storage unit' under the current Tweed Local Environmental Plan 2000 (TLEP 2000). Whilst the proposed 'storage unit' use is permissible under the 1(a) Rural zone subject to consideration of Clause 8(2), it is prohibited under the proposed RU2 Rural Landscape zone of the Draft Tweed Local Environmental Plan 2013 as 'storage premises'. This definition includes self-storage units.

There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publically exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

Following an earlier public exhibition, Council at its meeting of 31 May 2013 resolved to adopt the exhibited Draft Tweed LEP 2012 (draft LEP), subject to certain changes. The modified draft LEP has been referred to the Department of Planning and Infrastructure, and gazettal of the plan is expected within a short timeframe.

As such, increased weighting of the draft LEP has been given in the determination of the subject development application and despite future prohibition of the proposed use under

this instrument, the application is recommended for approval. The subject land is not suitable for primary industry or agricultural purposes and the proposed use does not impact upon the continuation of an existing light industrial use or adjoining rural uses.

The development application has been referred to Council to determine given the current legal status which does not preclude Council from granting consent to the Development Application. It should be noted that approval of the application would result in Existing Use Rights being relied upon once the draft LEP is gazetted.

The proposal includes a SEPP 1 objection with regard to Clause 24 of the TLEP 2000 (setbacks to designated roads) which may be determined by way of assumed concurrence. Advice received recently from the Department of Infrastructure and Planning granted an extension to the exemption from reporting such an objection to the full elected Council to 31 December 2013.

The SEPP 1 objection is required because a portion of existing Building F does not comply with the 30m development standard contained within Clause 24. The masonry office component of Building F is located 25.701m from Pottsville Mooball Road which represents a 14.33% or 4.299m variation to the development standard.

The objective of the proposal is to further increase the availability of self storage facilities within the locality due to steady demand for such services within the urban areas of Cabarita, Bogangar, Hastings Point, Koala Beach, Pottsville Beach, Pottsville Waters, Black Rocks and Seabreeze estates.

Extension to an existing self storage facility on rural land at 942 Cudgera Creek Road, Cudgera Creek was approved 21 February 2012. Council was not clear at that stage as to whether land currently designated for industrial use in the Pottsville area (Pottsville Employment Land) would be made available to the public for that purpose in the future.

Future development of Pottsville Employment Land now relies on connection to Council's reticulated waste water system and lodgement of a subdivision application for an industrial-based business park within a five year period from the date an LEP amendment is made with regard to Planning Proposal PP11/0002.

Accordingly, whilst acknowledging that the 1(a) Rural zoning of the subject site is not ideal for the location of storage units, there are few amenity issues and no displacement of agricultural activities. Other suitably zoned locations for such use within vicinity of the Shire's southern townships may not become available for at least another five years.

The proposal was required to be placed on public exhibition. Five letters of objection were received during the exhibition period. 22 letters of support were included at Annexure 4 to the Statement of Environmental Effects.

It is considered that the application is suitable for approval subject to recommended conditions and resolution of compliance matters regarding existing and ongoing operations on the site.

RECOMMENDATION:

That:

- A. Development Application DA13/0328 for creation of staged storage units (112 units) and conversion of existing light industrial building to storage units (24) with associated site filling and earthworks in addition to existing lawful development (light industry) at Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow be approved subject to the following conditions:**

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and:**
 - **Site Plan Stage 1 & 2 Edition A prepared by John McLean and dated 2 April 2013**
 - **Site Plan Stage 3 & 4 Edition A prepared by John McLean and dated 2 April 2013**
 - **Site Plan Stage 5 & 6 Edition A prepared by John McLean and dated 2 April 2013**
 - **Landscaping Plan Edition A prepared by John McLean and dated 2 April 2013**
 - **Proposed Blocks A, B, C, D Edition A prepared by John McLean and dated 2 April 2013**
 - **Proposed Blocks A, B, C, D Section A-A Edition A prepared by John McLean and dated 2 April 2013**
 - **Proposed Block E Edition A prepared by John McLean and dated 2 April 2013**
 - **Proposed Block E Section B-B Edition A prepared by John McLean and dated 2 April 2013**
 - **Proposed Alteration to South Building Edition A prepared by John McLean and dated 2 April 2013-11-25**
 - **Proposed Alterations to South Building Section C-C Edition A as amended in red, prepared by John McLean and dated 2 April 2013**
 - **Proposed Use of Northern Building Stage 6 of Development Edition A prepared by John McLean and dated 26 November 2013,**

except where varied by the conditions of this consent.

[GEN0005]
2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]
3. **Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]
4. **A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.**

Should adjustments be required to the sewer manhole, then application shall be made to Council's Community and Natural Resources Division for approval of such works.

[GEN0155]
5. **The development is to be carried out in accordance with Councils Development Design and Construction Specifications.**

[GEN0265]

6. In accordance with Section 79BA of the Environmental Planning and Assessment Act 1979, the applicant is to ensure compliance with the specifications and requirements of Planning for Bushfire Protection 2006.

[GENNS03]

7. Any on-site signage shall be directed towards Pottsville Road and not the Pacific Highway.

[GENNS04]

8. Approved signage does not include internal or external illumination, moving graphics or signage elements that flash, flicker or are animated in any way.

[GENNS05]

9. All access to the site shall be from Pottsville Road. Direct access to the highway is not permitted.

[GENNS06]

10. Any structure utilised for light industrial purposes shall be designed, constructed and operated in accordance with the Noise Level Impact Assessment issued in association with such use on the site, prepared by Craig Hill Acoustics and dated December 2006.

[GENNS07]

11. All light industrial activities on the site shall comply with the Site Management Plan for Industrial Site at Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow issued in association with such use on the site, prepared by Southern Cross University and dated August 2008 to the satisfaction of the General Manager or delegate.

[GENNS08]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

12. The developer shall provide parking spaces as detailed on Sheet 10 (Development Plans) Version A Project P1205 prepared by Bitzios Consulting and dated 26 March 2013 including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of any construction certificate for Stage 1.

[PCC0065]

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

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

The bond will be refunded, if not expended, when the final Occupation Certificate is issued for Stage 6.

[PCC0275]

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

[PCC0285]

15. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate for the relevant stage, details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

16. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval prior to the issue of a construction certificate for Stage 1.

[PCC0485]

17. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimise the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval prior to the issue of any construction certificate for the relevant stage.

[PCC0675]

18. Prior to the issue of a construction certificate for Stage 1, application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

- (a) Vehicular access in accordance with Section 5.3 of Tweed Shire Councils Driveway Access to Property Design Specification to be bitumen sealed.
- (b) Minimum dimensional requirements for the driveway are 7m at the base and 13m at the kerb line.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

19. Permanent stormwater quality treatment shall be provided prior to the issue of a construction certificate for Stage 1 in accordance with the following:

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

20. A construction certificate application for works that involve any of the following:

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC1145]

21. Erosion and Sediment Control shall be provided prior to the issue of a construction certificate for Stage 1 in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

22. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate for Stage 1.

[PCC1195]

23. Prior to the issue of a construction certificate for Stage 1, the applicant is required to lodge an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

Any approval to install an on site sewage treatment and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the HMC Environmental Consulting Pty Ltd On-site Sewage Management Design Report (reference: 2013.018 OSSM) dated May 2013 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

[PCC1285]

24. Prior to the issue of a construction certificate for Stage 1, Development Consent No. T4/1762 shall be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.

[PCCNS01]

25. Details of associated signage are to be submitted to the satisfaction of the General Manager or delegate prior to the issue of a construction certificate for Stage 1.

[PCCNS02]

26. Prior to the issue of a construction certificate for Stage 1, an application for a final inspection report to verify the satisfactory installation of all plumbing and drainage (with payment of any prescribed inspection fee) is to be submitted to Council for approval.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

28. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
29. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
30. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

31. All imported fill material shall be from an approved source. Prior to commencement of filling operations (for any stage) details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of any occupation certificate (for any stage).

[PCW0375]

32. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

33. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

35. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

36. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

37. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

38. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

39. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

40. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

41. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

42. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

43. **No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**
[DUR0985]
44. **The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of an Occupation Certificate for the relevant stage.**
[DUR0995]
45. **All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:**
- **Noise, water or air pollution.**
 - **Dust during filling operations and also from construction vehicles.**
 - **Material removed from the site by wind.**
- [DUR1005]
46. **The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.**
[DUR1015]
47. **All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.**
[DUR1025]
48. **Landscaping of the site shall be carried out in accordance with the approved landscaping plans.**
[DUR1045]
49. **Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**
[DUR1795]
50. **Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.**
[DUR1875]
51. **During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act**
-

1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

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

[DUR2185]

- 53. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.**

[DUR2445]

- 54. All works shall be carried out in accordance with the Site Works Management Plan prepared by HMC Environmental Consulting Pty Ltd Report number HMC2013.018 CL dated May 2013 and revised 14 August 2013.**

[DURNS01]

- 55. All imported material shall be from an approved source and free of any contamination. Documentary evidence of the fill source and that the material is free of any contamination shall be maintained on site and provided to Council upon request.**

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 56. Prior to issue of any occupation certificate for any stage, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.**

[POC0005]

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

[POC0205]

- 58. The building (any stage of development) is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building (any stage of development) to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.**

[POC0225]

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

[POC0355]

60. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first) for the relevant stage, all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of any occupation certificate for the relevant stage. The contribution shall be based on the following formula:-

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

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

\\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

Stage 1

(a) Tweed Road Contribution Plan:

1.584 Trips @ \$1330 per Trips \$2107
(\$1284 base rate + \$46 indexation)

S94 Plan No. 4

Sector8_4

(b) Extensions to Council Administration Offices

& Technical Support Facilities

0.1803 ET @ \$1860.31 per ET \$335.41

(\$1759.9 base rate + \$100.41 indexation)

S94 Plan No. 18

Stage 2

(a) Tweed Road Contribution Plan:

1.584 Trips @ \$1330 per Trips \$2107

(\$1284 base rate + \$46 indexation)

S94 Plan No. 4

Sector8_4

(b) Extensions to Council Administration Offices

& Technical Support Facilities

0.1803 ET @ \$1860.31 per ET \$335.41

(\$1759.9 base rate + \$100.41 indexation)

S94 Plan No. 18

Stage 3

(a) Tweed Road Contribution Plan:

1.584 Trips @ \$1330 per Trips \$2107

(\$1284 base rate + \$46 indexation)

S94 Plan No. 4

Sector8_4

(b) Extensions to Council Administration Offices

& Technical Support Facilities

0.1803 ET @ \$1860.31 per ET \$335.41

(\$1759.9 base rate + \$100.41 indexation)

S94 Plan No. 18

Stage 4

(a) Tweed Road Contribution Plan:

1.584 Trips @ \$1330 per Trips \$2107

(\$1284 base rate + \$46 indexation)

S94 Plan No. 4

Sector8_4

(b) Extensions to Council Administration Offices

& Technical Support Facilities

0.1803 ET @ \$1860.31 per ET \$335.41

(\$1759.9 base rate + \$100.41 indexation)

S94 Plan No. 18

Stage 5

(a) Tweed Road Contribution Plan:

1.056 Trips @ \$1330 per Trips **\$1404**
 (\$1284 base rate + \$46 indexation)

S94 Plan No. 4

Sector8_4

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

0.1227 ET @ \$1860.31 per ET **\$228.26**
 (\$1759.9 base rate + \$100.41 indexation)

S94 Plan No. 18

Stage 6

(a) Tweed Road Contribution Plan:

8.464 Trips @ \$1330 per Trips **\$11257**
 (\$1284 base rate + \$46 indexation)

S94 Plan No. 4

Sector8_4

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

0.2618 ET @ \$1860.31 per ET **\$487.03**
 (\$1759.9 base rate + \$100.41 indexation)

S94 Plan No. 18

[POC0395]

61. All landscaping work is to be completed in accordance with the approved plans prior to the issue of any occupation certificate for Stage 1.

[POC0475]

62. Prior to the issue of any occupation certificate for Stage 1, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

63. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications prior to the issue of any occupation certificate for Stage 1.

[POC0755]

64. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from

Councils General Manager or his delegate must be issued prior to the issue of any Occupation Certificate for Stage 1.

[POC0865]

- 65. Prior to the issue of any occupation certificate for Stage 1, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.**

[POC0985]

- 66. Prior to the occupation of any building and prior to the issue of any occupation certificate for Stage 1, approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.**

[POC1040]

USE

- 67. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.**

[USE0125]

- 68. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.**

[USE0145]

- 69. Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act, the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.**

[USE0155]

- 70. Hours of operation of the light industry business are restricted to the following hours:**

- * 7:00am to 6:00pm - Mondays to Friday**
- * 7:00am to 5:00pm - Saturday**
- * No operations are to be carried out on Sundays or Public Holidays**
- * All deliveries and pickups relating to the light industrial business shall be restricted to 7:00am to 5:00pm - Monday to Friday.**

Hours of operation of the storage unit business are restricted to the following hours:

- * 7:00am to 6:00pm - Mondays to Friday**
- * 7:00am to 5:00pm - Saturday/Sunday**
- * No operations are to be carried out on Public Holidays**
- * All deliveries and pickups relating to the storage unit business are to occur within the approved hours.**

[USE0185]

- 71. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.**

[USE0225]

72. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

73. Any vehicles that remain on site for periods in excess of five minutes are required to switch off their engines.

[USE0255]

74. No buildings on site shall facilitate or be used or adapted for separate residential habitation or occupation.

[USE0465]

75. All landscaping completed in accordance with the approved plans shall be maintained in perpetuity to the satisfaction of the General Manager or delegate.

[USENS01]

76. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the EPA.

[USENS02]

77. All manufacturing and maintenance activities are to be conducted within a building designated for light industrial purposes (as opposed to storage unit purposes) on the approved plans.

[USENS03]

78. Sand blasting shall not be conducted at the premise.

[USENS04]

79. Windows, doors and any other openings in the north, east or south walls of a building designated for manufacturing are not permitted to be open at any time whilst manufacturing processes are being conducted.

[USENS05]

80. The LAeq (15min) noise level emitted from any activity undertaken in association with light industrial use shall not exceed the background noise level (LA90) by more than 5dBA at the boundary of any affected residence during the permitted hours of operation.

[USENS06]

- B. Council commences compliance action with regard to outstanding matters associated with DA06/1275.01.

REPORT:

Applicant: Mr JA McLean
Owner: Mr John A McLean & Mrs Anne M McLean
Location: Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow
Zoning: 1(a) Rural
Cost: \$400,000

Background:

Council is in receipt of a development application that seeks consent for creation of staged storage units (112 units) and conversion of an existing light industrial building to storage units (24) with associated site filling and earthworks in addition to existing lawful development (light industry) on a parcel of land zoned 1(a) Rural.

The Subject Site

The subject land is described as Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow and has a total area of 2.821 hectares. It is located within a regionally significant farmland corridor, however the site has been utilised for light industrial purposes rather than agriculture since the early 1980's and has been developed since at least 1962.



Figure 1: 1962 historic aerial imagery



Figure 2: 1996 historic aerial imagery

The land “straddles” Pottsville Road, with a large triangular shaped parcel of land of approximately 2.811 hectares occurring on the western side of Pottsville Road and a small irregular shaped parcel of approximately 100m² located on the eastern side of Pottsville Road.

Development has been approved wholly on the larger parcel of land on the western side of Pottsville Road.



Figure 3: May 2012 aerial imagery

The land has frontage to Pottsville Road of approximately 390m and the Pacific Highway of approximately 362m with vehicular access from Pottsville Road only.

Current improvements include two galvanized iron sheds an attached cavity brick office building and associated amenities, located on a large fill pad area. Such facilities are used by the “McLean Agquip Pty Ltd – Manufacturers of AustQuip agricultural equipment, cane transport equipment, cattle feed mixers and cotton and broadacre Equipment”. Vehicular access to the site exists from Pottsville Road. A car parking area exists to the east of the existing sheds. The site is fenced. Power and reticulated water are available to the site.

The site is located in an area generally characterised as rural, although it is immediately adjoined by the Pacific Highway to the west and Pottsville Road to the east.

Adjoining land to the south is vacant rural land currently utilised for grazing.

The Proposed Development

- Retention and continuation of light industry operations in the existing northern building (396m²) as per DA06/1275.01 but with modified floor plan.
- Additional sheds for commercial storage (112 units).
- Change of use of the existing southern light industrial building to commercial storage (24 units).
- Site filling and earthworks to achieve levelling for buildings and car parking and manoeuvring areas.

- Driveways/car parking.
- Landscaping.

The staging plan for a total of 136 units with a total floor area of 2116m² is as follows:

- Stage 1: one shed with 24 storage units (Block A) – 360m²
- Stage 2: one shed with 24 storage units (Block B) - 360m²
- Stage 3: one shed with 24 storage units (Block C) - 360m²
- Stage 4: one shed with 24 storage units (Block D) - 360m²
- Stage 5: one shed with 16 storage units (Block E) – 216m²
- Stage 6: convert existing light industrial Building to 24 storage units (Block F) – 460m²

The development will generate up to five full-time equivalent employment positions.

Details of associated signage are required to be submitted prior to the issue of a construction certificate for Stage 1.

History

On 31 May 1982 Council approved T4/1762 (over then Lot 1 in DP608495 – 8.691ha) to enable use of the then site for the establishment of a truck depot and vehicle maintenance area. Since this time the allotment has been split to cater for the Pacific Highway. Lot 1 DP 608495 is now the Pacific Highway and the subject site is Lot 201 in DP 1002166 with a land area of 2.821ha.

In 1999 the ABI Group (an engineering and construction group) leased the land from the Road Transport Authority (RTA) for the purpose of a roadworks construction depot to facilitate construction of the Pacific Highway.

In 2006 the applicant was conducting an Agricultural Equipment Business from Byron Bay. The applicant lodged DA06/1275 on 2 November 2006 which sought approval to enable the applicant to relocate his business from Byron Bay to the subject site.

DA06/1275 sought utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage. The applicant then stated that the business specialised in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment.

The development had two main components:

1. The manufacturing of agricultural equipment business specialising in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment (defined as “light industry”, a Clause 8(2) matter under Tweed LEP 2000);
2. Depot component with provision of secure storage of plant and machinery, including earthmoving, construction and agricultural equipment. Maintenance of this equipment also carried out (defined as “depot” and permissible in the rural zone).

The development was staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.

It was acknowledged that such use would involve electrical machinery that could constitute a noise source for adjoining residences.

The applicant moved into the subject site without the benefit of development consent and following noise complaints Council Officers inspected the premises and discovered that manufacturing works on a cane bin had been undertaken. Subsequently a \$600 Penalty Infringement Notice (PIN) was issued on 26 March 2007, with the applicant advised that work was to cease immediately.

The matter was originally reported to the then Council Administrators on 17 April 2007. The Council Report recommended that the application be refused. However, the Council resolved as follows:

- "1. Council notes there is an existing approval for a truck depot and truck maintenance area on the site with minimal conditions to address noise attenuation and hours of operation, which can be recommenced without any further approval from Council.*
- 2. Council delegates authority to the General Manager to determine this application subject to conditions to address noise, traffic, site contamination, etc; including a condition which restricts the approval for a maximum of twelve (12) months from the date of issue of approval, if appropriate."*

Subsequently, an approval was issued under Delegated Authority on 1 May 2007. Of significance is Condition 7 which stated that:

- "7. This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000."*

DA06/1275.01, lodged 29 April 2008 sought to make the following changes to the aforementioned development consent:

- Deletion of condition 7 with no time limitation imposed on the Development Consent.
- Amendment of the approved plans as follows:
 - Removal of the new amenity building.
 - Removal of the new besser block office building and hallway.
 - Removal of the new strong room.
 - The ceiling height of the old building no longer proposed to be raised and the floor space not extended.
 - Refinement of car parking arrangement and numbers with car parking number matching that required by the Tweed DCP 2007.
 - Alteration of site drainage to reflect observed site conditions.
- As a consequence of the proposed changes detailed above, the applicant claimed that a Construction Certificate would no longer be required and as such the applicant suggested that conditions 8, 14, 18, 21, 24, 25, 26, 27, 28, 35-49, 65, 66 & 77 to 83 be deleted from the Development Approval.
- Review the reasonableness of the following conditions having regard to the 12 month limited consent. Conditions 10 and 50 (relating to engineering plans), Conditions 11 and 17 (relating to a S138 Application), Condition 23 (relating to S94 Contributions), Conditions 19 and 69 (relating to the disposal of roof waters) and Condition 89 (relating to the surrender of T4/1762).

The proposed amendment raised issues regarding the status of the existing consent, the permissibility of the proposed amendments and the overall site suitability of the proposed development as proposed.

Both the original application and the Section 96 Application generated community opposition (including a letter of opposition from the Environmental Defender's Office and an enquiry from the NSW Ombudsman's Office) and the issues raised in the various submissions needed to be considered as part of the application.

At the Council meeting of 21 September 2010, Council resolved to approve the substantial amendments to DA06/1275 for Manufacturing Sheds, Depot, Office and Storage.

Compliance Matters

Development consent conditions 11A, 17A, 23.1, 24.1, 24.2, 24.3, 24.5, 24.7, 24.8, 24.9.1, 24.9.2 of DA06/1275.01 have not been complied with and remain outstanding. They read as follows:

11A. Any works to be carried out within the adjoining road reserve is subject to a Section 138 application and approval being issued by Tweed Shire Council as the road authority.

Application for these works and receipt of approval is to be within 3 months of DA06/1275.01 approval notice.

17A. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

The applicant shall provide a Basic Right Turn BAR treatment for a right turn movement from Pottsville-Mooball Road into the development in accordance with figure 6.37 of Austroads 2005, intersection at Grade.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Road works/furnishings*
- Stormwater drainage*
- Water and sewerage works*
- Sediment and erosion control plans*
- Location of all services/conduits*
- Traffic control plan*
- The applicant to prepare engineering plans and lodge the plans with Tweed Shire Council within 3 months of receiving development approval.*
- The applicant to complete the works within six (6) months of receiving the S138 approval.*

23.1. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Within 3 months of approval of DA06/1275.01 all Section 94 Contributions must be paid.

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

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

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

(a) *Tweed Road Contribution Plan:* *\$13,500*
S94 Plan No. 4 (Version 4.0)
Sector8a_4

- 24.1. Within 3 months of approval of DA06/1275.01 all exiting essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.*
- 24.2. Within 3 months of approval of DA06/1275.01 a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.*
- 24.3. Within 3 months of approval of DA06/1275.01 Development Consent No. T4/1762 is to be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*
- 24.5. The existing spoon drain on the northern side of the northern building shall be converted to piped stormwater drainage to the satisfaction of the General Manager or his delegate within 30 days of the date of this amended consent. The piped stormwater drain shall be covered with imported material from an approved source that is free of any contamination. Existing materials at the base or sides of the spoon drain shall not be disturbed or excavated. Sediment and erosion controls shall be placed during these works which is effective in preventing the transport of any sediment material outside the property boundary.*
- 24.7. Not more than 60 days from the date of this consent the applicant is required to lodge an application to install an onsite sewerage management system under section 68 of the Local Government Act, 1993 pay the appropriate fee and be issued with an approval.*
- 24.8. Not more than 120 days from the date of this consent the existing on site sewage management system shall be upgraded in accordance with any Section 68 approval issued by Council. The on site sewage treatment and disposal system installed shall comply with the recommended on site sewage treatment and disposal methods outlined in the amended On-site Sewage Management Design Report, HMC August 2009 including all recommendations of that report or to the satisfaction of the General Manager or his delegate.*
- 24.9.1. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his*

delegate within one (1) month of the amended consent being issued. The landscaping plan is to include landscaping along the southern and eastern property boundaries.

24.9.2. All landscaping work is to be completed in accordance with the approved plans within three (3) months of the landscaping plan being approved and maintained into the future.

Non-compliance with development consent conditions is a serious matter. Operations have continued at this site without the initiation of compliance action by Council to the ongoing financial and operational benefit of the applicant.

Furthermore, Council has not received payment for Section 94 Plan No. 4 charges that were levied for traffic movements into and out of the site.

These matters may be resolved satisfactorily by way of conditions of consent should the proposed development proceed inclusive of all stages.

It is recommended that the matters be addressed in whatever way possible within the assessment of the current development application with lawful conditions carried over and applied and resolution achieved prior to the issue of construction certificates and occupation certificates relevant to each stage of the proposed development.

Regulation of a concurrent, reduced and ongoing light industrial use of the site in the current assessment is possible as the floor area and configuration of the smaller existing shed will need to be modified to cater for the conversion of the larger existing shed to storage units in the last stage of development.

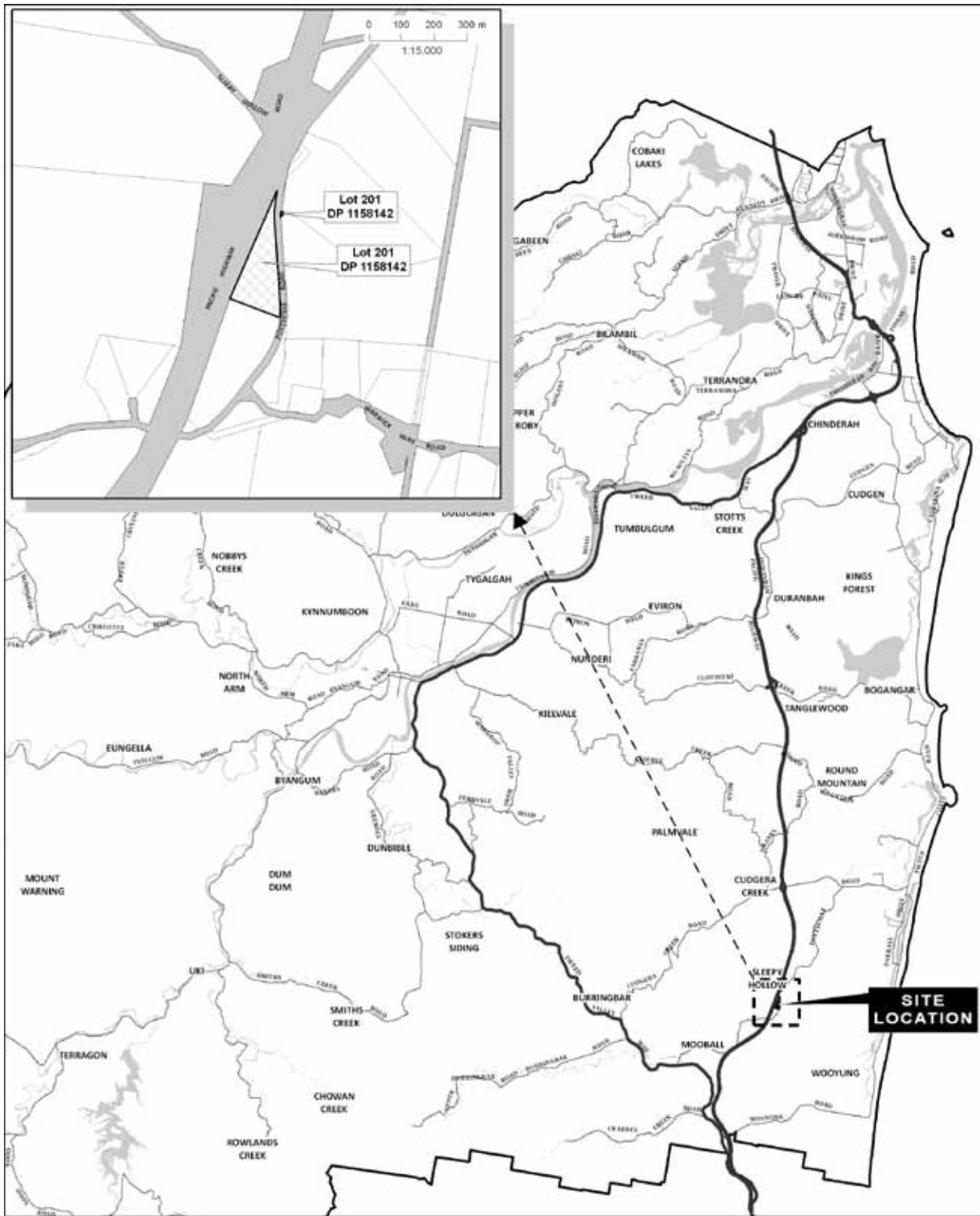
It is recommended that compliance matters be pursued regardless of whether the current development application is refused or approved as the applicant may not proceed with the proposal inclusive of all stages.

Summary

An assessment in accordance with current Tweed LEP 2000 controls indicates that the proposal has merit in planning terms.

The development is prohibited by the draft LEP. A predominantly agricultural, environmental or rural industry use of the land is consistent with the objectives of the RU2 Rural Landscape zone. However, this parcel of land is not suitable for such uses. It is therefore recommended that the development be approved subject to recommended conditions of consent and resolution of compliance matters with regard to existing and ongoing operations on the site.

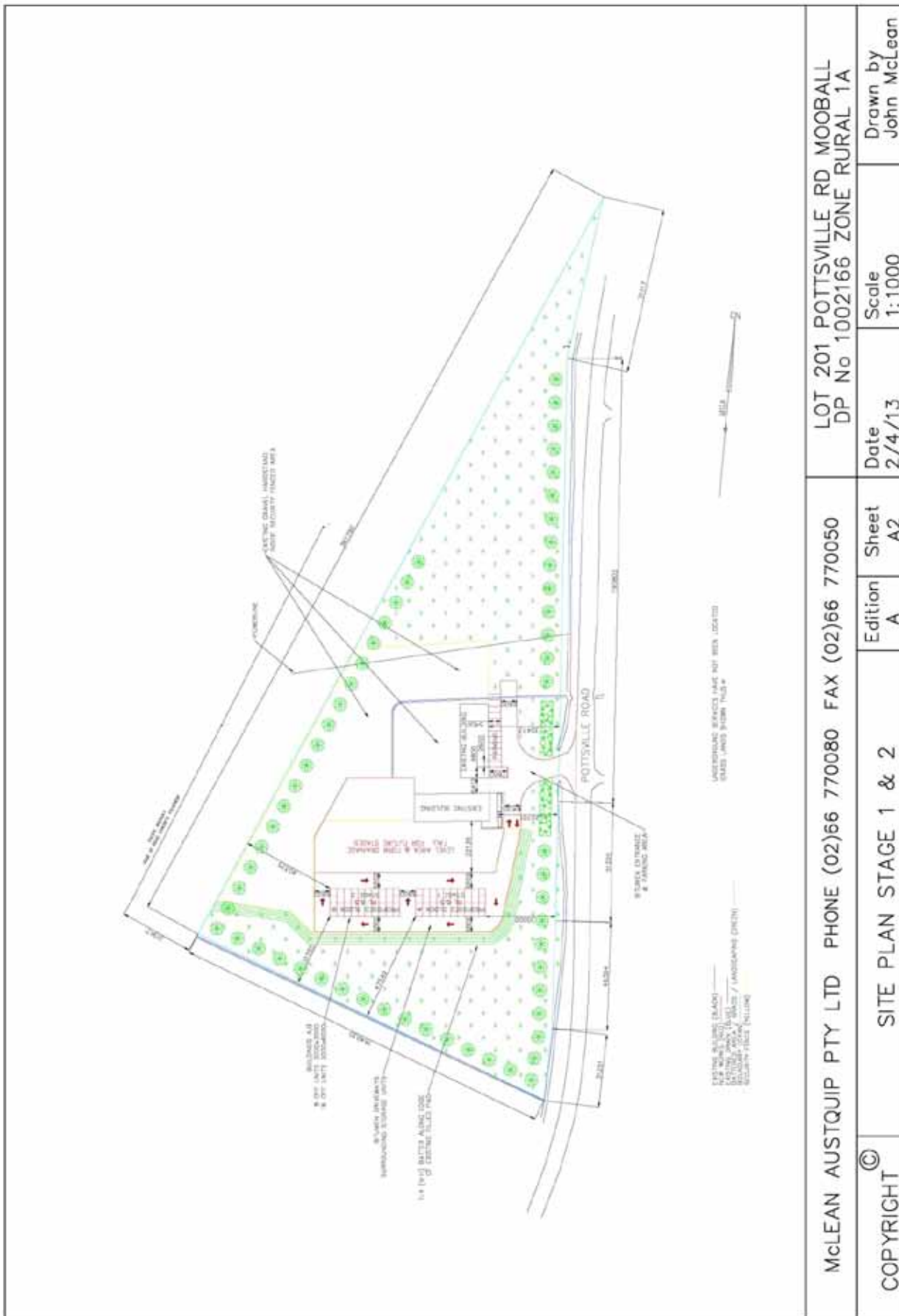
SITE DIAGRAM:



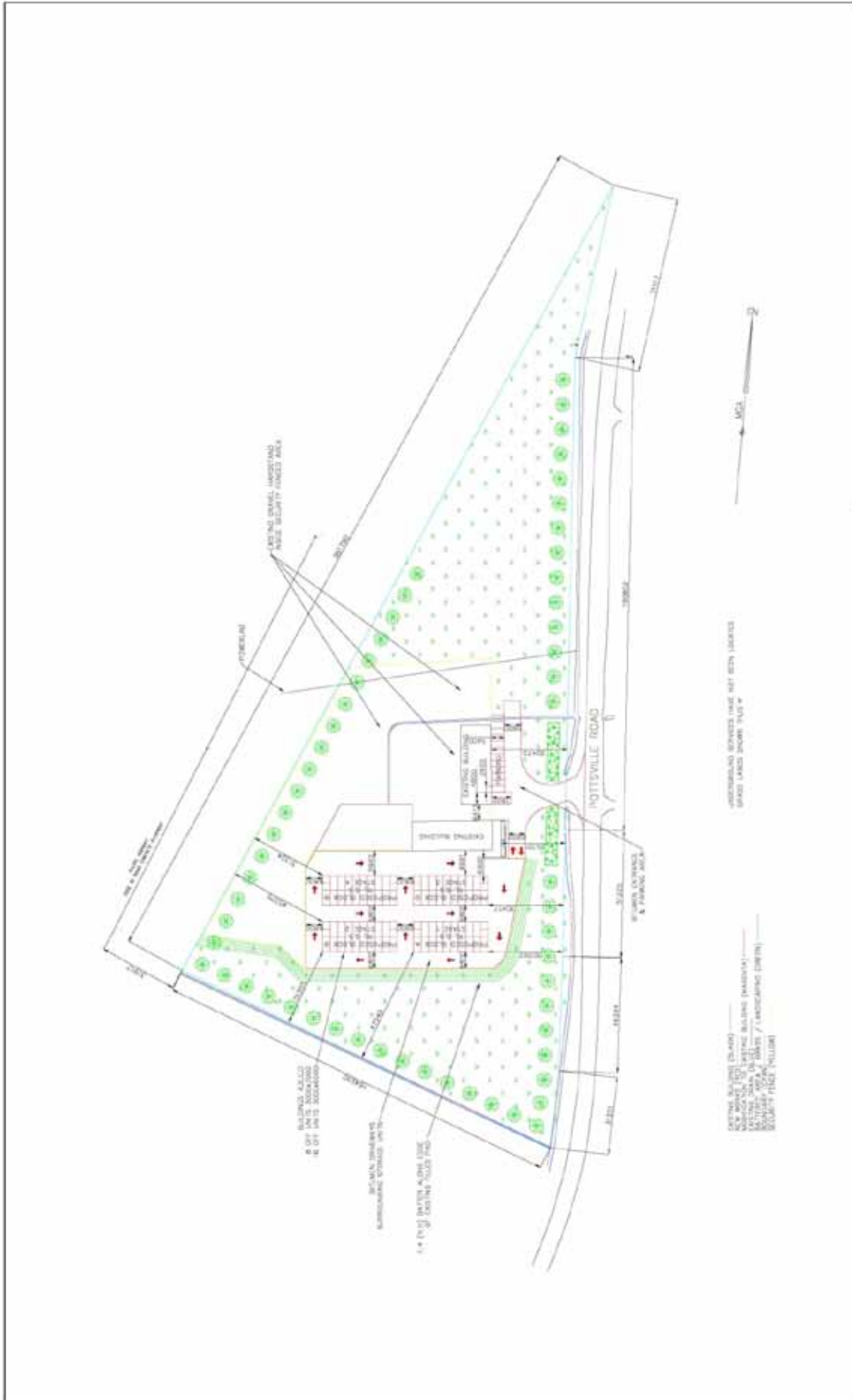
Locality Plan
 Lot 201 DP 1002166
 Pottsville Road, Sleepy Hollow

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reasons. This information is supplied for the general public and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any transaction a 'Call before you Dig' enquiry must be made by calling 811. The information contained on this document remains valid for 120 days only from the date of supply.</small></p>	<p><small>Calendar: 20 November, 2013 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>Civil and Cultural Centre 3 Tambourine Road Murwillumbah NSW 2434 PO Box 916 Murwillumbah NSW 2434 T (02) 6479 2400 1300 292 872 F (02) 6479 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</small></p>
<p><small>Scale: 1:160,000 @ A4 Portrait 0 1 2 3 4 Km 000 000 000 METRES GDA Map Projection: National Spatial Reference System Horizontal Datum: Geoid 1996 Vertical Datum: Mean Sea Level Date of Issue: 12/11/2013</small></p>		 <p>TWEED SHIRE COUNCIL</p>

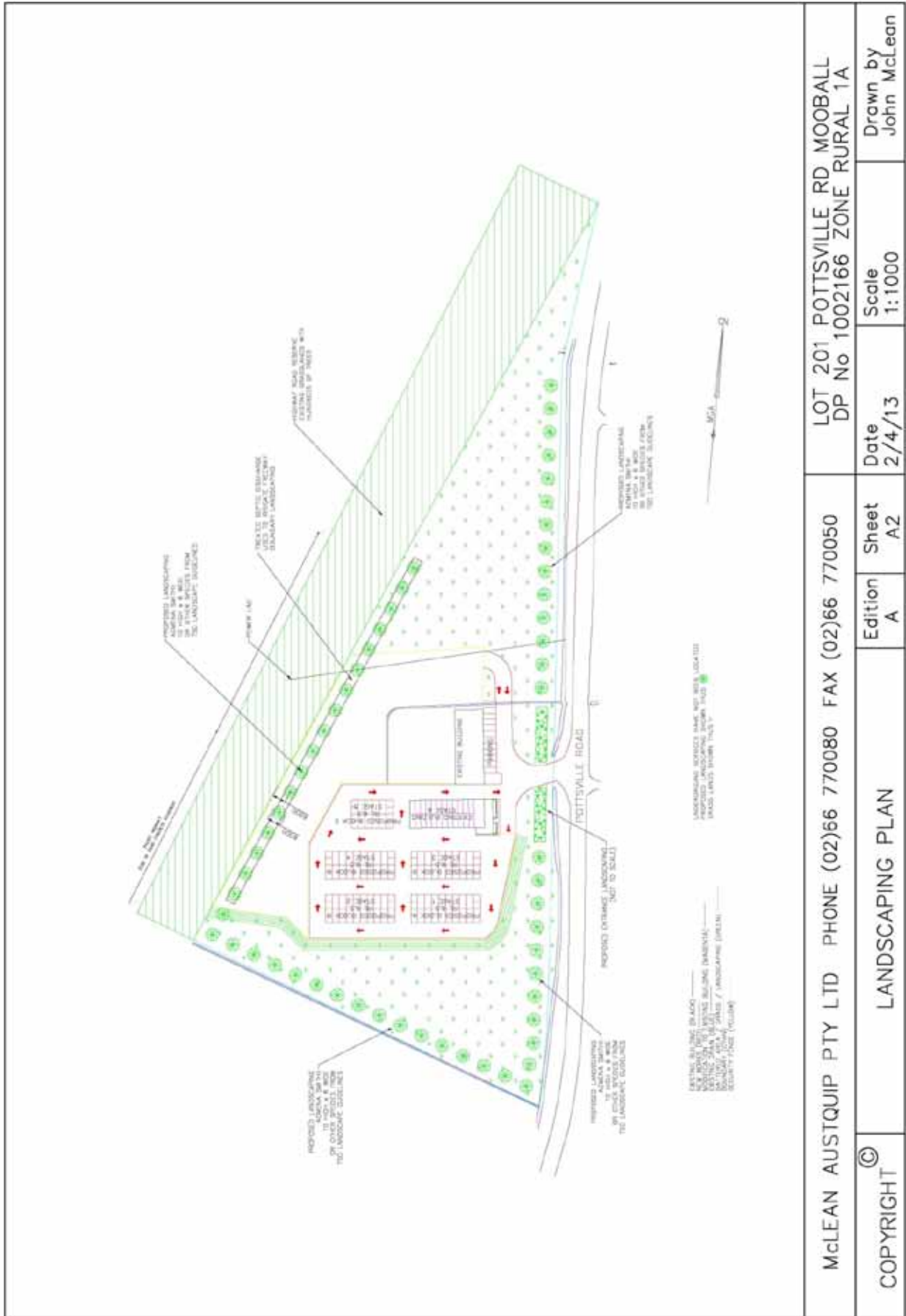
DEVELOPMENT/ELEVATION PLANS:

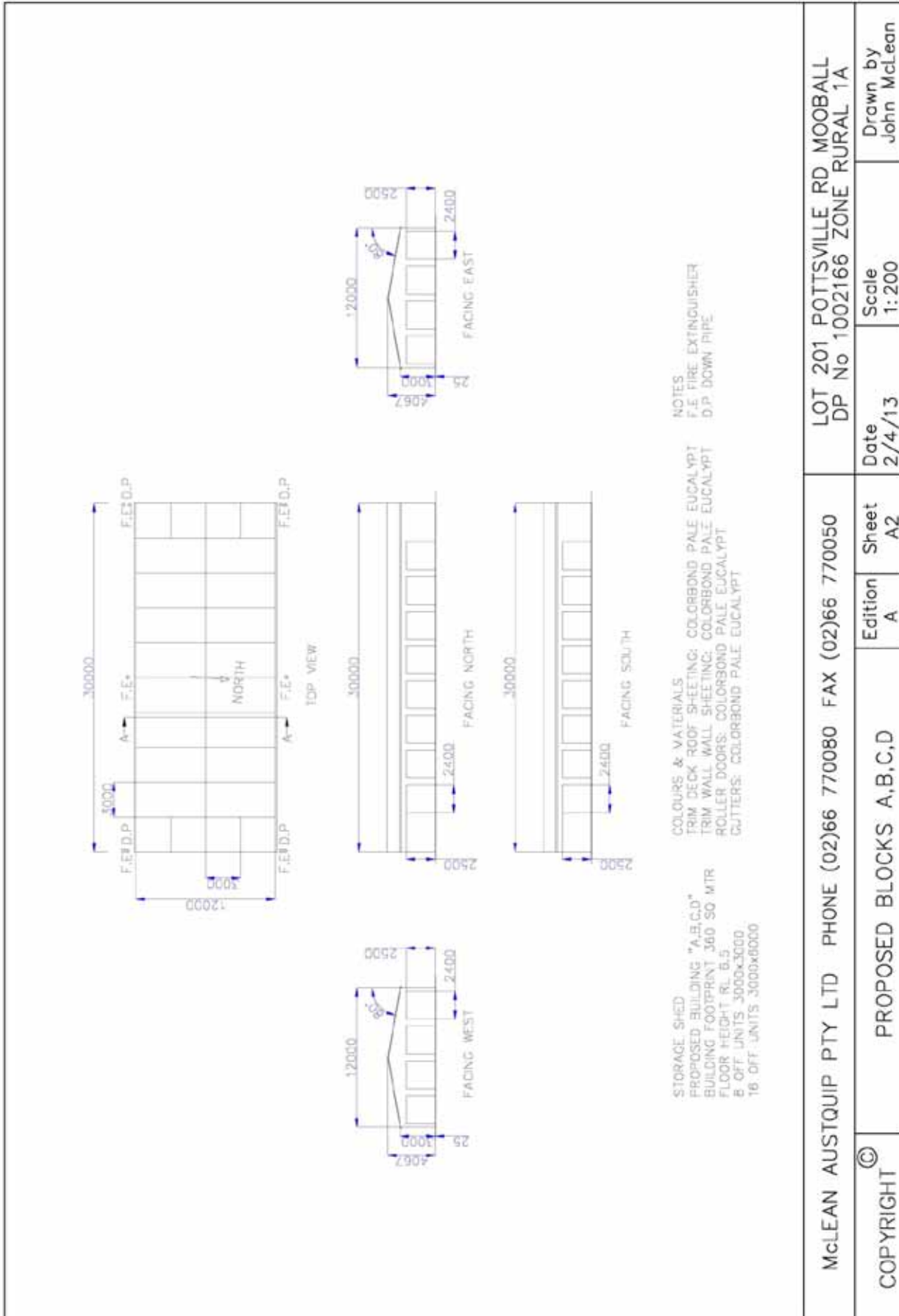


McLEAN AUSTQUIP PTY LTD PHONE (02)66 770080 FAX (02)66 770050		LOT 201 POTTSVILLE RD MOOBALL DP No 1002166 ZONE RURAL 1A	
COPYRIGHT © SITE PLAN STAGE 1 & 2		Date 2/4/13	Scale 1:1000
		Edition A	Drawn by John McLean
		Sheet A2	

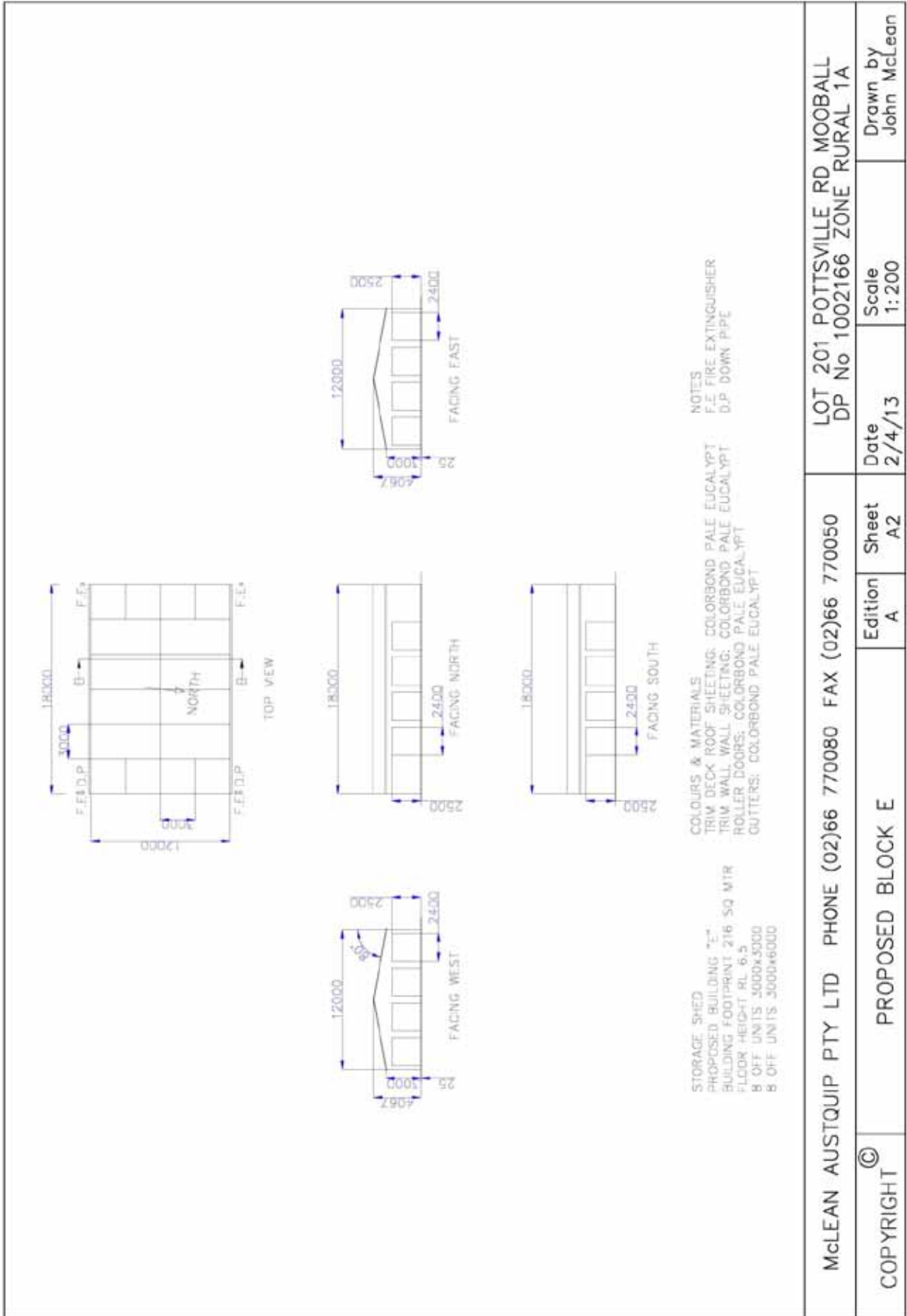


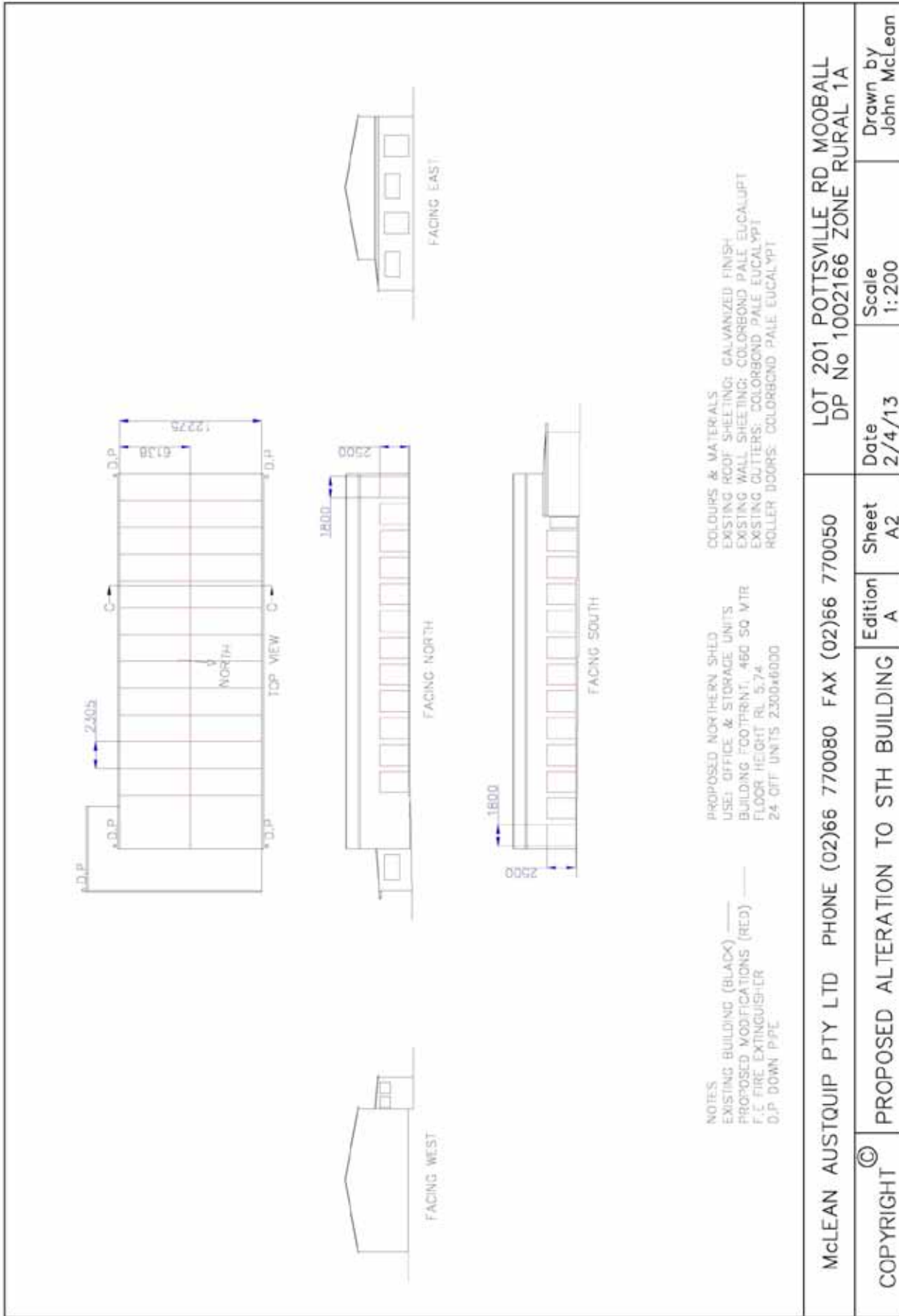






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COPYRIGHT ©	PROPOSED BLOCKS A,B,C,D	Date 2/4/13	Scale 1:200
		Sheet A2	Drawn by John McLean



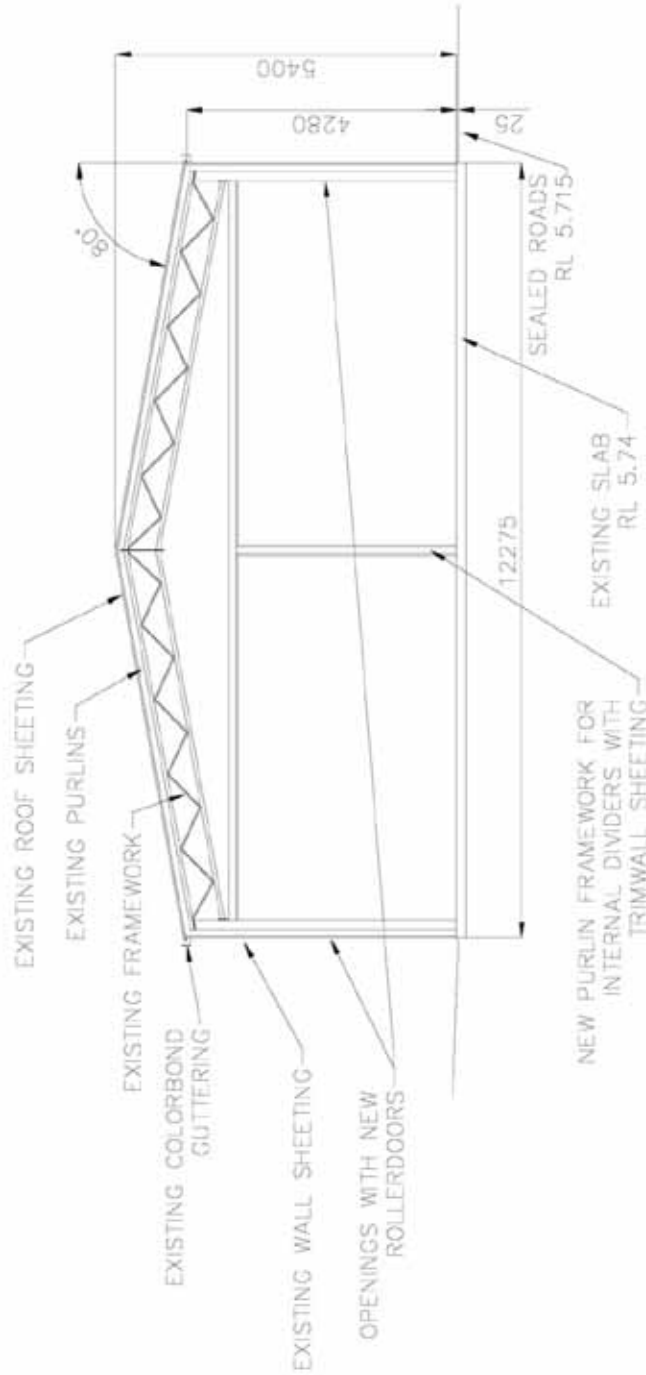


NOTES
 EXISTING BUILDING (BLACK) —
 PROPOSED MODIFICATIONS (RED) —
 F.E FIRE EXTINGUISHER
 O.P. DOWN P.P.E

PROPOSED NORTHERN SHED
 USE: OFFICE & STORAGE UNITS
 BUILDING FOOTPRINT: 460 SQ MTR
 FLOOR HEIGHT RL 5.74
 24 OFF UNITS 2300x6000

COLOURS & MATERIALS
 EXISTING ROOF SHEETING: GALVANIZED FINISH
 EXISTING WALL SHEETING: COLORBOND PALE EUCALYPT
 EXISTING CUTTERS: COLORBOND PALE EUCALYPT
 ROLLER DOORS: COLORBOND PALE EUCALYPT

McLEAN AUSTQUIP PTY LTD PHONE (02)66 770080 FAX (02)66 770050		LOT 201 POTTSVILLE RD MOOBALL DP No 1002166 ZONE RURAL 1A	
COPYRIGHT ©	PROPOSED ALTERATION TO STH BUILDING	Sheet A2	Date 2/4/13
		Edition A	Scale 1:200
			Drawn by John McLean



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LOT 201 POTTSVILLE RD MOOBALL
DP No 1002166 ZONE RURAL 1A

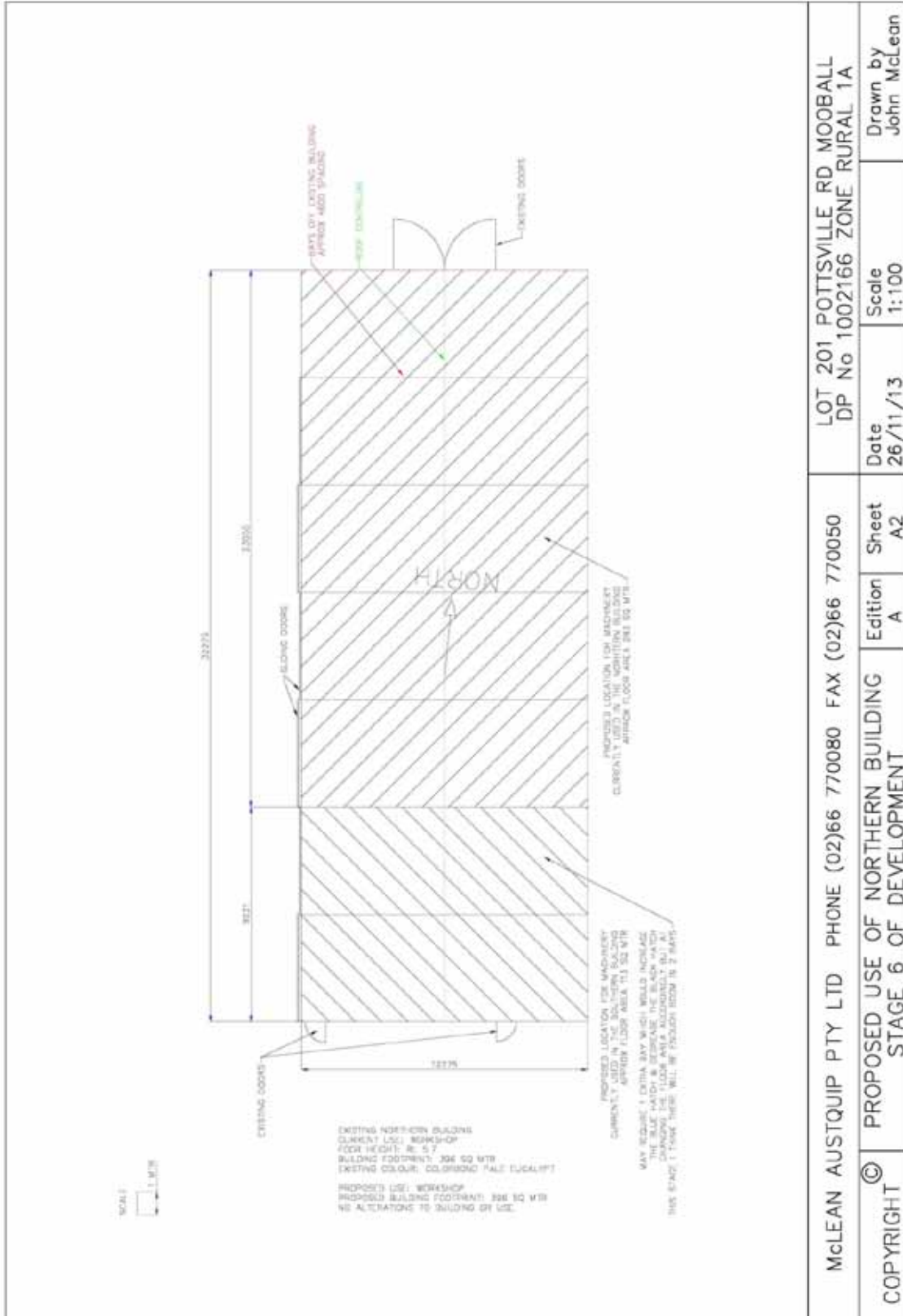
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PROPOSED ALTERATIONS TO STH BUILDING
SECTION C-C

Date
2/4/13

Scale
1:50

Drawn by
John McLean



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 LOT 201 POTTSVILLE RD MOOBALL
 DP No 1002166 ZONE RURAL 1A

PROPOSED USE OF NORTHERN BUILDING
 STAGE 6 OF DEVELOPMENT

Date 26/11/13
 Scale 1:100
 Drawn by John McLean

Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and rural residential amenity qualities. The storage unit proposal represents a reduction in intensity of potentially noisy light industrial activities on site.

Clause 5 - Ecologically Sustainable Development

The development raises no specific concerns or implications in respect of ecologically sustainable development.

Clause 8 - Consent Considerations

The subject land is zoned 1(a) Rural under the provisions of the Tweed LEP 2000.

The proposal is defined as:

- a "storage unit" which is permissible with Council's consent (Item 3) subject to satisfying the provisions of Clause 8(2) of the Tweed LEP 2000.

Clause 8(2) - "storage unit" - provides as follows:

- (2) The consent authority may grant consent to development specified in Item 3 of the Table to Clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:
 - (a) the development is necessary for any one of the following reasons:
 - (i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,
 - (ii) it meets an identified urgent community need,
 - (iii) it comprises a major employment generator, and
 - (b) there is no appropriate site on which the development is permitted with development consent (other than as advertised development) in reasonable proximity, and
 - (c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and
 - (d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

A summary of the points made by the applicant addressing Clause 8(2) matters is provided below:

- *The proposed use needs to be in the locality in which it is proposed because it is conveniently located to Mooball, Burringbar, Cabarita*

Beach/Bogangar and Pottsville Beach and the only other storage sheds available are at Murwillumbah and Pottsville. The proposed use is complementary to and supportive of, the existing light industrial use and it will provide the local catchment with convenient facilities including the local farming community.

- *There is no other appropriate site available in the locality as the subject land is the only suitable site because of its small area and its existing use for light industrial purposes. Proposed storage uses will diversify the existing use and assist with integrated and deficient management of both activities.*

Existing industrial areas in Murwillumbah and Chinderah are remote from the Tweed Coast Villages and the Mooball/Burringbar area and are therefore not appropriate for storage type units. Similarly, storage units in a 2(d) Village zone are not considered to be appropriate given that it is predominantly a residential zone.

- *Having regard to the scale and siting of the proposed storage units, generous setbacks and landscaping and external cladding materials and colours (pale green Colorbond) it is considered that the development will not be inconsistent with the scale and character of existing and future lawful development in the immediate area.*
- *The development will be consistent with the aims of Tweed Local Environmental Plan 2000 in that it will make efficient use of existing infrastructure and developed land and thus avoid conflicts with environmental and residential amenity values of other land.*

It would also positively contribute to sustainable economic development of the Shire through a continuing integral role with the Tweed sugar cane industry and servicing local rural and urban residents.

The development would not be inconsistent with the objectives of the Rural 1(a) zone in that it will enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development. The proposed storage units will assist in serving the needs of the local rural community.

In addition, the development would not be inconsistent with the objective of protecting rural character and amenity in that the development will utilise land and infrastructure that already exists and has been utilised for light industrial purposes for approximately 30 years. Similarly, due to the current use of the land the proposed storage units would not be inconsistent with expectations of likely amenity in the locality.

An assessment of the proposal concludes that given the continuing absence of any suitably zoned land in the area (refer to discussion of Pottsville Employment Land elsewhere in this report) and in light of the points raised by the applicant above, it is considered that the proposal is satisfactory in meeting the provisions of Clause 8(2).

The location of the proposed storage units with associated landscaping on the subject site reduces the impact and intensity of existing light industrial operations upon the amenity of the area. The location, current land use and overall characteristics of the site are considered to support the applicant's claim that the

land is suitable in accommodating the proposal – despite the zoning of the land and the requirements of Clause 8(2).

Clause 11 - Zone Objectives

The site is zoned 1(a) Rural as per the Tweed LEP 2000.

1(a) Rural Zone

Primary objectives for the 1(a) Rural zone include:

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

Secondary objectives for the 1(a) Rural zone include:

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

On balance, the proposal satisfies the abovementioned objectives for the 1(a) zone in that:

- the proposal does not detract from the rural character or amenity of the locality;
- the proposal does not impact upon adjoining land that may be utilised primarily for agricultural or natural resource utilisation purposes;
- the development proposed is not suitable in or near the urban/village area of Pottsville, and
- the development utilises the same site upon which there is already similar development, thus preventing unnecessary development of a new site.

Clause 15 - Essential Services

Council's reticulated potable water supply is available to the area, with an existing pipe line running parallel to Pottsville Road. However, the site will capture rain water for use and store it in rainwater tanks.

Council's piped effluent disposal infrastructure is not available within the area. HMC Environmental Consulting has outlined the best sewerage disposal system within the SEE.

Electricity services are currently provided to the area via Country Energy infrastructure. Recommended conditions of consent shall require the applicant to provide services in accordance with the standards of the supply authority.

The fire management plan by Bush Fire Certifiers, recommends electrical lines be underground.

Telecommunication services are currently provided to the area via Telstra infrastructure.

Clause 16 - Height of Building

The proposal does not contravene the imposed three-storey height restriction on the subject site. The maximum height of the five proposed buildings is 4.067m. Maximum height of the existing building is 5.85m.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The proposed works are being undertaken on Class 3 acid sulfate soils (ASS). Class 3 specified works include those beyond 1 metre below the natural ground surface or works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface.

Annexure 13 of the SEE includes a Preliminary Acid Sulfate Soil Assessment report conducted by a suitably qualified person. As stated in the conclusion of the report *'A review of the site elevation, proposed maximum depth of excavation, geological setting, ASS planning & risk mapping indicates it is unlikely that ASS would be intercepted during earthworks associated with the proposed development at Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow. No further ASS investigation or management plan is required.'*

The report is considered adequate in accordance with the NSW Acid Sulfate Guidelines 1998 and no further consideration is necessary.

Other Specific Clauses

Clause 22 – Development near Designated Roads

The development is not likely to constitute a traffic hazard or materially reduce the capacity or efficiency of the Pottsville Mooball Road. Through traffic movement will not be impeded.

No new access is proposed and the development is not sensitive to traffic noise. Due to the nature of the existing and proposed uses, the development needs to be in close proximity to the designated road.

Landscape and scenic qualities of the area will not be impacted. Careful consideration of landscaping and bulk/scale/colour of the buildings has been undertaken.

Clause 24 – Setbacks to Designated Roads

A 30m setback is required for the proposed storage unit buildings. The masonry office component of Building F is located 25.701m from Pottsville Mooball Road which represents a 14.33% or 4.299m variation to the development standard.

As such a SEPP 1 objection has been lodged in association with this application. Please refer to the assessment of this matter elsewhere in this report.

Clause 34 – Flooding

The site is partially flood prone with a design flood level of 5.7m AHD and a PMF level of 6.0m AHD. The Pacific Highway embankment shields the site from upstream flood water, diverting it to the culvert to the North. The finished floor

level of the proposed storage units is 6.5m AHD, which is above PMF level. The level of the existing buildings is approximately 5.75m AHD, one of which is to be converted into storage units.

The proposal involves significant filling to facilitate the additional storage units. The area to be filled is outside the modelled 1% AEP flood extents and can be considered flood fringe. Filling in this area will have minimal impact on the flood behaviour of the surrounding area. The proposed filling is considered acceptable.

Clause 39 – Remediation of Contaminated Land

Please refer to a discussion of contaminated land under the heading "SEPP 55".

Clause 39A – Bushfire Protection

The northern end of the site is rated by Council's GIS system as vegetation Category 2 bushfire prone land. A bushfire assessment was carried out by Bush Fire Certifiers who stated that the proposed development complies with all aspects of Planning of Bushfire Protection 2006 based on their recommendations, one of which is a 10m inner asset protection zone. This is easily achievable.

Clause 54 – Tree Preservation Order

The 2011 TPO (Bushland and Koala Habitat) applies to the site. The proposal does not require the removal of vegetation. As such, this clause is satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

The history of the use of the site constitutes light industrial activities dating back to 1982.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon any nearby agricultural activities.

Clause 47 Principles for Commercial and Industrial Development

Clause 47(2) requires consideration that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas.

The subject site is accessed from a designated road that runs adjacent to the Pacific Motorway. The site is a few kilometres from the urban outskirts of Pottsville village. As such, there are no issues with regard to accessibility to the site and the proposal satisfies this clause.

SEPP No. 1 - Development Standards

The applicant has lodged an objection under SEPP No.1 to Clause 24 of the Tweed LEP which requires a 30m setback to a designated road. The principal objective of the development standard is to ensure that a satisfactory standard of visual amenity and traffic safety is maintained along designated roads.

The proposed use of existing Building F (Stage 6) as storage units does not comply with the 30m development standard contained in Clause 24 relating to setbacks to designated roads. The masonry office component of Building F is located 25.701m from Pottsville Road. It is noted that the Pacific Highway is not a designated road as it post-dates Tweed LEP 2000.

The applicant contends that no increase in nominal setbacks is required. The applicant submits that under the circumstances, the objective of the relevant standard will be satisfied despite the proposed non compliance with the minimum numerical set back requirement of 30m as expressed in the clause.

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

The applicant has raised the following arguments in support of the variation sought:

- *The principal objective of the standard is to maintain the visual amenity of the road and streetscape, minimise noise impacts on adjoining uses, minimise distractions to drivers by inappropriate uses and to facilitate potential future road widening.*
- *Following construction of the Yelgun to Chinderah Pacific Highway Deviation and connection of the Tweed Coast Villages to the Highway via Cudgera Road, Pottsville Road from Cudgera Road to Tweed Valley Way has considerably reduced traffic. Therefore, a minor reduction in the setback is of no consequence and in any case the existing light industrial buildings are located 25.701m to 30.473m from the Pottsville Road alignment.*
- *In relation to the Pacific Highway (which is not a designated road) a setback of 30m is achieved to the storage units and that setback will be landscaped to soften visual impacts, minimise driver distraction and in addition there will be no night lighting or other activities which might create a driver distraction or visual impacts. In the circumstances, it is therefore submitted that the proposed setbacks achieve the objectives of the development standard.*
- *Compliance with the setback development standards would preclude the efficient use of the site, which because of its area, shape and land use history, is not suitable for agriculture but is suitable for light industry and storage purposes.*
- *In this case, strict compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use an development of land in accordance with the zoning of that land and its physical capabilities.*
- *The proposed setbacks substantially achieve the objectives of the development standard.*
- *Exhibited draft Tweed Local Environmental Plan 2012 does not include provisions relating to designated roads nor does it include setback requirements as a development standard.*
- *The existing buildings do not comply with the development standards.*

- *The proposed storage units are not susceptible to traffic noise and do not comprise permanent work stations or uses which are likely to generate conflicts with the designated roads.*

The applicant concludes that *upholding of the Objection would be consistent with the aims of SEPP 1 in that strict compliance with the setbacks development standard would unreasonably preclude the appropriate development of the site in accordance with the planning controls that apply to the site.*

Assessment of the applicant's submission:

The following assessment of the SEPP No. 1 objection is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard, are achieved notwithstanding non-compliance with the standard that has been adopted.

The objective of Clause 24 of the Tweed LEP is achieved despite the variation to the development standard pertaining to minimum setback from a designated road. The objectives of this clause ensure there are no detrimental impacts to visual amenity and traffic safety along the designated road.

The proposed development is logical and consistent with existing development on the land. It does not compromise visual amenity or traffic safety along Pottsville Road.

The applicant's submission in relation to being well founded is supported.

2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal provides for an additional use to the site and represents an orderly, economic use of the land. There is no evidence of an unreasonable burden on public infrastructure being created.

It is not considered that the granting of this application would hinder the attainment of such objectives.

3. It is also important to consider:

- a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
- b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 24 of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

No public benefit issues are adversely affected by not being able to maintain the development standard in this case. The existing building maintains a 25.701m setback from Cudgera Creek Road and is already non-compliant. The degree of non-compliance will not be increased.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised and specific for the ongoing use of the land. As such, the granting of this application is unlikely to impact upon public benefit.

Having regard to the minor extent of the variation sought and in light of the comments raised by the applicant and outlined above, it is considered that a departure from the development standard requiring a 30m setback is acceptable in this instance.

SEPP No. 55 - Remediation of Land

A search of Council records indicates that during prior assessment of development applications DA06/1275 and DA06/1275.01 the proposed site was considered as being contaminated.

A Remedial Action Plan (RAP) and Site Validation Report (report Number E6403, E6404, E6445, E6538, and E6862) prepared by Graham Lancaster and Lee O'Conner of Southern Cross University and dated February 2007 was submitted to Council and considered adequate.

The site was remediated and achieved the standard of 'Commercial and Industrial' use as per the *Notice of Completion of Remediation Work for the Property of Barry McLean located at Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow*, dated 8 April 2007 with the use of commercial/industrial not exceeding the health investigation levels (HILs) as stated in the National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999.

Recently the National NEPM 1999 was reviewed and changes have occurred to the HILs. A review of the existing remediated contaminant levels indicates that the site does not exceed the current values for HIL D Commercial/Industrial as indicated at Table 1(A) 1 of Volume 2 of the revised National Environment Protection (Assessment of Site Contamination) Measure 2013 (NEPM 2013).

The applicant has submitted with the SEE a detailed Site Works Management Plan prepared by HMC Environmental Consulting Pty Ltd (report number HMC2013.018 CL dated May 2013). The site works management plan (SWMP) adequately addresses contaminated land issues for the proposed activities on site and was prepared by a suitably qualified contaminated lands consultant.

A review was made comparing plans of the proposed works including excavation works of the OSSM with the RAP plans noting the location of the remediated hot spots. It is considered that the excavation works will not adversely impact the current capping of the recognised remediated hot spot areas.

Given the above information it is considered that contaminated land can be managed for the proposed development.

SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of denser residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

The Draft Tweed Local Environmental Plan 2012 (draft LEP) was placed on exhibition in late 2012/early 2013. The post exhibition version of the draft LEP with amendments as resolved by Council on 31 May 2013 has been forwarded to Parliamentary Counsel via the Department of Planning and Infrastructure.

As such, the draft LEP is considered to be "certain and imminent" in terms of previous legal precedent and as such has determining weight.

A recent article published in a Planning Institute of Australia (PIA) NSW Newsletter (June 2013) from Gadens Lawyers noted the following with respect to the determining weight of a draft LEP:

"Question: I would like to understand why a Draft LEP is highly relevant to the assessment of a DA when the draft LEP is 'certain and imminent', and what exactly that means?"

The starting point is that s.79C of the Act expressly requires a consent authority, when assessing any development application, to take into consideration the provisions of any draft planning instrument (for example, an LEP or SEPP) that "is or has been the subject of public consultation" and that has been notified. However taking something into account is one thing - the remaining question is how much weight or emphasis to place on that EPI's provisions when it is only a draft document, and may well be quite inconsistent with a current and in-force LEP.

*In that regard, the Courts have developed a body of caselaw to the effect that a Draft LEP will be given greater weight when it is "certain and imminent". Funnily enough, this phrase does not appear anywhere in the Act or Regulations, nor in any savings or transitional provisions that we are aware of, and although it is bandied about by judges, commissioners, lawyers, and government authorities, you'd have to search hard to find its source of origin. It actually dates back to a 1980 Judgment (*Balgownie Pty Ltd v Shoalhaven City Council* (1980), which well and truly predates s.79C of the Act. In that matter, the Court had some limited regard to a draft proposal to rezone the site, but only because it was said to be "the latest and best informed expert opinion" relating to the site.*

It is therefore surprising that this has morphed into a general principle that any draft LEP that is 'certain or imminent' should be given considerable weight in the s.79C balancing act (in fact, the courts have used confusing terminology here too, referring variously to "significant weight", or "some weight", or "considerable weight" or "due force" or "determining weight" -

see the discussion of this in Blackmore Design Group v North Sydney (2000)).

Nevertheless, what is clear is that the weight to be attributed to a draft environmental planning instrument will be greater if there is a greater certainty that it will be adopted (Terrace Tower Holdings Pty Ltd v Sutherland Shire Council (2003)). Where the LEP has been exhibited and sent by the council to the Minister for approval and gazettal, it will often be given great weight, even more than the existing and in force LEP.

But is that approach fair and correct? The answer is probably not. It can be very hard to predict when an LEP is 'certain' and 'imminent', because this depends on the future decision of the Minister and his staff at the Department. For example, our team at Gadens was involved in an appeal in the Warringah local government area in 2011 where the Court ruled that a change to the zoning of the site was certain and imminent and should be given 'determinative weight', and refused the DA. About a month later, the Minister made the LEP but carved out the site as a 'deferred' matter (its zoning did not change). The Court and Council's assessment that the proposed rezoning was 'certain' and 'imminent' had been dead wrong. But such a task is inherently uncertain because it relies on predictions as to a decision of the Minister that has not yet been made.

Notwithstanding 'certainty and imminence', a consent authority may of course grant consent to a development application which does not comply with the draft instrument. As the Court said in the Blackmore Design Group v North Sydney Council matter:

"In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith [or "antipathetic thereto]."

The draft zone for the subject site is RU2: Rural Landscape.

Objectives of the RU2 zone include the following:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- **To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.**

The proposed creation of staged storage units (112 units) and conversion of existing light industrial building to storage units (24) with associated site filling and earthworks is defined as *Storage Premises*.

Storage premises means a building or placed used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail

premises on the same parcel of land, and includes self-storage units, but does not include a heavy industrial storage establishment or a warehouse or distribution centre.

Which is a prohibited use in the draft zone by its exclusion from Items 2 and 3.

In light of the above advice regarding determining weight of the draft LEP, it is considered that approval of the proposed development is an appropriate course of action. This recommendation takes into account:

- Existing and ongoing light industrial use of the site;
- Improvement of the site: substantial perimeter landscaping, new fencing, removal of yard clutter and subdued colour schedule;
- Retention of economic viability of the existing business;
- Compatibility of the proposed storage premises use with the existing use, and
- The unsuitability of the land to cater for the objectives of the draft zoning with regard to utilisation of the land for agricultural or primary industry purposes.

The draft LEP has been exhibited and sent by Council to the Minister for approval and gazettal. Approval of the development would result in creating Existing Use Rights for the development, which generally is not considered to be good planning practice. In this instance, the site is considered suited to ongoing light industrial and commercial uses.

Provisions for setbacks to higher order roads are no longer contained within the LEP and SEPP 1 - Development Standards will no longer apply. Similar setback standards are located within the SEPP (Infrastructure) 2007 and this instrument will be referred to for compliance with setback requirements to designated roads.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Item I16 of this DCP requires:

Parking space of 0.5/staff or a minimum of two (2) parking spaces. Parking is to be provided adjacent to each unit and aisle widths are to be sufficient to accommodate parking plus through traffic.

The applicant's traffic generation assessment states that five full time employees will work on site, therefore three car parks are required on site to cater for employees.

12 car parks are provided which is more than sufficient. In addition, parking must be provided adjacent to each unit and aisles are to be sufficiently wide enough to accommodate parking plus through traffic. There is no requirement for bicycle parking.

From the proposed plans it appears one disabled car park is supplied, which is sufficient. The park measures 4.8m wide and 7.8m long. This includes the shared area of 2.4m wide by 5.4m long. Further detail will be required with regard to appropriate line marking and placement of a bollard is required as set out in AS2890.6, 2.2.1, Figure 2.2 to distinguish the two areas.

A3-Development of Flood Liable Land

The site is partially flood prone with a design flood level of 5.7m AHD and a PMF level of 6.0m AHD. The Pacific Highway embankment shields the site from upstream flood water, diverting it to the culvert to the North. The finished floor level of the proposed storage units is 6.5m AHD, which is above PMF level. The level of the existing buildings is approximately 5.75m AHD, one of which is to be converted into storage units.

The proposal involves significant filling to facilitate the additional storage units. The area to be filled is outside of the modelled 1% AEP flood extents and can be considered flood fringe. Filling in this area will have minimal impact on the flood behaviour of the surrounding area. The proposed filling is considered acceptable.

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

Clause 92(a) Government Coastal Policy

The subject land is not affected by the coastal policy.

Clause 92(b) Applications for demolition

No demolition is proposed as part of this proposal.

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

The proposal does not impact upon coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The proposal does not impact upon coastline management strategies.

Tweed Coast Estuaries Management Plan 2004

The proposal does not impact upon estuaries management strategies.

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

The proposal does not impact upon coastal zone management strategies for Cobaki and Terranora Broadwater.

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

Development Trip Generation (TRCP)

Background

As discussed previously in this report, TRCP charges remain outstanding in association with DA06/1275.01. Site credit for the 1982 approved 'general heavy industry' use was applied to these calculations. Site credit took into account the use of 333.3m² floor area at a rate of 1.5 trips per 100m² which amounted to five trips.

The current development application proposes to change the use of the larger existing (southern) shed (460m²) in Stage 6 to create 24 storage units. The smaller existing (northern) shed (396m²) is proposed to be retained for light industrial purposes with a modified floor plan that intensifies workshop use.

Change of use to the southern shed and modification of the northern shed floor plan has been factored into TRCP contribution calculations. Site credit for the 1982 approved 'general heavy industry' use has been applied to the latest calculations which supersede those of DA06/1275.01 and remedy compliance matters in this respect.

Calculation of storage unit use charges

An applicant for a previous development application approved for storage units within the Tweed Shire supplied a development traffic analysis that included a summary of findings of the (still current) *2010 Australian Self Storage Demand Study* issued by the Self Storage Association of Australasia.

This study was helpful in determining an up-to-date trip rate for storage unit facilities, as Council's Tweed Road Contribution Plan does not include an applied rate for such specific purpose. An average daily visit rate per unit was calculated from the survey results as 0.053, equating to a conservative trip generation rate of 0.11 trips per unit per day.

This rate has been applied previously to the approval of a similar development application within the Pottsville locality and endorsement of the rate has been confirmed by Council's Traffic Engineers.

As such, a rate of 0.11 trips per unit per day has been applied to the current proposal for 136 units which amounts to a total trip rate per day of 14.96.

Calculation of light industry use charges

The applicant proposes to use the smaller existing (northern) shed with a floor area of 396m² for the purposes of workshop activities. In accordance with the proposed floor plan provided, five bays with a floor area of 283m² will be utilised for the location and use of machinery currently used in the northern building. Two bays with a floor area of 113m² will be utilised for the location and use of machinery currently used in the southern shed.

As such, a rate of 5 trips per 100m² of floor area has been applied to this part of the current proposal which amounts to 19.8 trips.

Total Trip Rate

Therefore, the trip rate for both uses on site amounts to 34.76. A reduction of 40% is applied for employment generating developments (which this is). Trip rate is reduced to 20.856.

With existing credit of 5 trips applied, total trips for this component, payable prior to the issue of an occupation certificate for Stage 6 amount to 15.856.

Contribution charges have been broken down into six stages consistent with the staged nature of the development application, thus providing economic relief for the applicant.

Water Use (S64)

When Lot 201 DP 1002166 was registered on 16 August 1999, it was as a result of a Torrens Title land acquisition by the Roads Transport Authority (RTA). Tweed Shire Council was the consent authority. From 1999 to 2006, the land was leased from the RTA and utilised as a roadworks construction depot to facilitate construction of the Pacific Highway.

Credit for the existing building footprint was granted in the assessment of DA06/1275 and a small charge was imposed for additional building works. DA06/1275.01 deleted those building works and Section 64 charges were no longer applicable based on meter readings since Council's Water Unit has determined that no additional Section 64 charges will apply to the addition of a storage unit use on the site.

Earthworks

Bulk earthworks proposed for the site will comprise mostly of imported fill to provide a suitable surface for the building pad and driveways. The RL for the structures will be 6.5m AHD. Contamination hotspots were identified and remediated in previous years by removing contaminated soil, mixing contaminated soil with uncontaminated soil and/or by capping the remediated soil with clean fill. The four remediated hot spots were covered with clean fill up to 1m in depth. HMC's survey of the land identified hot spot HA 6 to be beneath the proposed storage sheds in Stages 1 and 2. They make note that the RL in the vicinity of HA 6 is <6m but the fill is to be to 6.3 AHD, thereby leaving the remediated hot spot undisturbed. In addition a bitumen road and/or concrete pad footing will seal the area.

Stormwater

The site's lawful point of discharge (LPOD) will not change with the new development. The LPOD are the drains running along the eastern boundary, parallel to Pottsville Road, and also the drain running along the Southern boundary. Stormwater runoff is also permitted to be discharged into the grassy areas to the north and south of the development as long as the quality of the water is maintained.

The proposal includes a large area of hardstand. The applicant proposes to treat hardstand stormwater quality using 'Enviropod' pit baskets and the (modified) existing swale. This treatment train is deemed appropriate for the site conditions.

No mitigation of peak stormwater discharge is proposed. The applicant assumes that the downstream drainage is capable of catering for the increase in runoff. The site offers some informal detention. No additional onsite detention is required.

The proposed development involves considerable concrete works, adversely changing the site's infiltration capabilities. As a result a considerable increase in surface water runoff will occur. Rainwater discharged onto the northern and southern portions of the property will have ample surface area to infiltrate soil. Any water discharged into a LPOD or these infiltration points must meet Council's clean water requirements.

Erosion and Sediment Control

Construction

A number of measures should be implemented to reduce soil erosion and achieve discharge water quality in compliance with Council Design Specification D7 Stormwater Quality. Best management practices should be implemented according to the Department of Housing Manual 'Managing Urban Stormwater, Soils and Construction' (2004 'Blue Book'). These measures include hay bales, silt fencing and diversion channels which should be placed in accordance with the

proposed management plan during both the construction and re-vegetation phases.

Cozens Regan Williams Prove's Erosion and Sediment Control Plan, outlines a suitable construction phase stormwater quality management plan. It encompasses the requirements set out in Council's Design Specification D7.

Operational

Development of commercial areas generally increases concentrations of suspended solids, nitrogen and phosphorous in stormwater runoff if untreated compared to an undeveloped catchment. Pollutants from commercial areas generally comprise of gross pollutants (trash and sediments), biological pollutants (decaying vegetable matter and animal excreta), nutrients (nitrogen and phosphorus) and hydrocarbons (oil and fuel).

The provisions of the "Tweed Urban Stormwater Quality Management Plan" need to be satisfied for the operational phase of the project. For this project in particular, consideration must be given to the car park area, which would be subject to periodic cleaning.

Council's Development Design Specification D7 – Stormwater Quality defines acceptable performance criteria for stormwater quality treatment in the operational phase of development. The water treatment measures are deemed to comply with the performance criteria in the Tweed Urban Stormwater Management Plan. For parking areas, driveways and other hard stand areas treatment is required. The water management section of HMC's Site Works Management Plan outlines the proposed gross pollutant trap to be two oil and grit separators (enviropods) which are to be installed in the two new collection surface drains.

Cozens Regan Williams Prove's Stormwater Management Plan outlines a suitable construction phase stormwater quality management plan. It encompasses the requirements set out in Council's Design Specification D7. Standard Section 68 conditions are to be included in recommended conditions of consent for operational phase pollution control.

Amenity

The proposed works have the potential to cause noise and dust impacts at adjacent premises during construction. The proposed use of the development is for storage sheds. It is considered that any potential impacts from the use or during construction may be managed by applying appropriate standard conditions.

(c) Suitability of the site for the development

Roads, Access, Traffic

The development outlines a road network providing customer access to the storage sheds. The carriageway width is 6.9m in most areas and up to 9.981m in one area. The narrowest width is 6.514m which is sufficient space to satisfy Council's Design Specification A2, because it is for a straight section of road and a heavy vehicle could easily pass a parked car.

No detail has been provided for the internal road network gradients to ensure minimum grades are addressed. Given the size of the site and the amount of fill

proposed, it is envisaged that grade compliance can be achieved. Construction certificate application is to provide detailed gradients.

Council specifications require a width of the combined entrance and exit at the roadway curb to be 13m and 7m at the boundary. The proposal does not identify widths of the driveway entrance/exit. A condition will be applied for the submission of a Section 138 application for the minimum commercial driveway criteria to be provided and satisfied.

Informal Referral to Roads and Maritime Services (RMS)

The application was referred to RMS on 25 July and 27 August 2013 for comment given that the site has extensive frontage to the Pacific Highway on the western boundary.

A final response from the RMS was received on 14 October 2013 requesting consideration of the following during assessment:

- To reduce distraction to motorists using the Pacific Highway it is requested that any signage or onsite advertising of the services provided be directed towards Pottsville Road and not the Pacific Highway.

A recommended condition of consent regulates associated signage to this effect.

- Suitable screening between the onsite activities and the highway would be beneficial to reduce distraction to highway motorists.

A landscaping plan has been submitted that provides a suitable visual buffer between the site and the highway which has been recommended for approval.

- Controlled access conditions apply to this section of highway. Direct access to the highway should not be permitted; all access to the site should be from Pottsville Road.

The applicant proposes to use the existing access from Pottsville Road. There is no intent to gain access from the highway.

On-Site Sewage Management (OSSM)

The property is not serviced by reticulated sewer. The applicant submitted an On-site Sewage Management Design Report (reference: 2013.018 OSSM) dated May 2013 and prepared by HMC Environmental Consulting Pty Ltd. The application is for the installation of a new NSW Health accredited domestic aerated wastewater treatment system (AWTS) as recommended in the OSSM Design Report. The existing septic tank, holding well and absorption trench are to be decommissioned.

The plans attached to the OSSM Design report do not provide a location of the proposed AWTS. HMC provided an additional On-Site Sewage Management Design – Land Application Area (LAA) plan indicating the location of the AWTS. Further to this, HMC has provided an additional plan with the layout of the pipes leading to the land application area. The plan indicates that the remediated hot spots (capping) are not within the area being excavated for OSSM.

A site assessment of the proposed land has been conducted by the Environmental Health Unit. It appears that the land application area will be suitable for the proposed site in relation to requirements of the Environment &

Health Protection Guidelines - onsite sewage management for single households 1998.

It is considered that the proposed OSSM is capable of supporting the proposed storage sheds.

Pottsville Employment Land

Lot 12 DP 1015369 constitutes Pottsville Employment Land. The site is located on the eastern side of the Pacific Motorway with access from Kudgeree Avenue and Pottsville Road, Cudgera Creek and is approximately 2.4kms north of the proposed storage unit site.

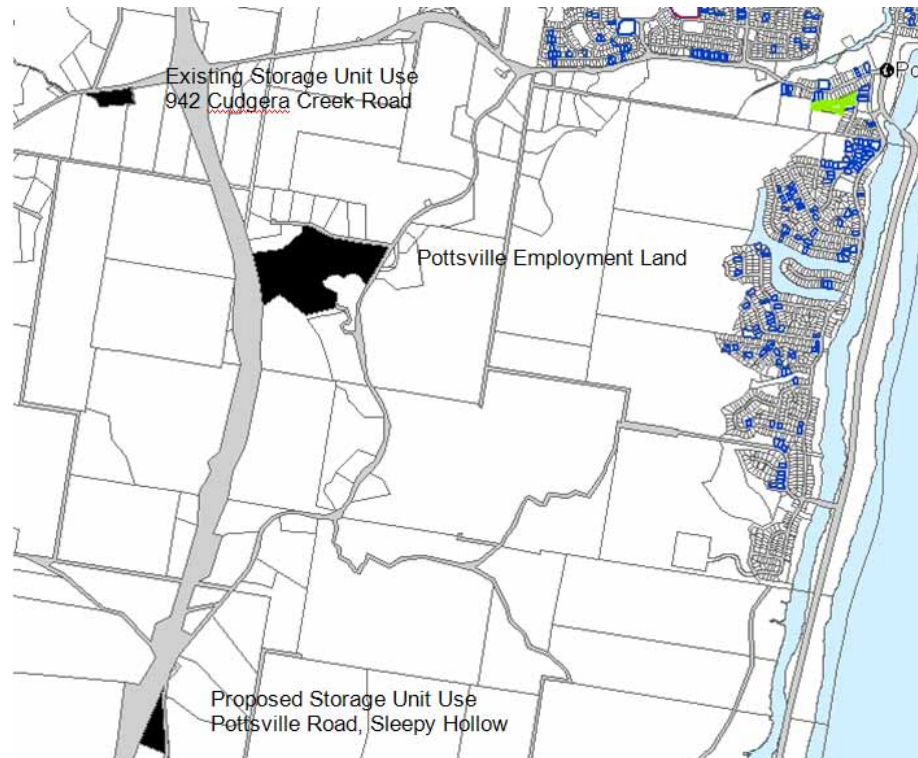


Figure 4: Proximity of Pottsville Employment Land to existing and proposed storage unit uses

Following the resolution made in respect of Pottsville Employment Land (Item 32) at the Council meeting of 21 November 2013, it is clear that the lodgement of a development application for subdivision of the land for an industrial-based business park at Lot 12 DP 1015369 could be at least another five years away subject to certainty of access to Council's Hastings Point Waste Water Treatment Plant on Round Mountain Road.

The allocation (and connection) of waste water disposal capacity within the Council's system...is limited to a period of five years from the making of the amendment to the Tweed Local Environmental Plan within which time a development application for the subdivision of the land for an industrial-based business park must be lodged with Council.

The Council report (Item 32) states:

Based on the Proponent's stated intentions about bringing the development of the site to the market place in a very short timeframe, it is reasonable to place a limitation of 5 years from the date the LEP amendment is made.

This will provide the Proponent of any successor a clear 5 year opportunity to lodge a development application for an industrial-based business park.

Within that timeframe the Proponent will have the certainty of access to the Council's WWTP and that beyond that timeframe either a fresh request must be made, assuming that it is not reallocated in the meantime, or that a private scheme under the Water Industry Competition Act 2006 will need to be secured.

Based on the above, it would be unreasonable to assume that land currently designated for industrial use in the Pottsville area (Pottsville Employment Land) will be made available to the public for that purpose in the near future. As such, the current proposal for storage units at Lot 201 DP 1002166 is recommended for approval.

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

The proposal was notified to adjoining properties in accordance with DCP A11 – Public Notification of Development Proposals and Clause 8(3) of the Tweed LEP for a period of 14 days from Wednesday 10 July to Wednesday 24 July 2013. During this time, five submissions were received.

Issues raised include the following:

1. Non-compliance with previous consent;
2. visual amenity – site currently an 'eyesore';
3. No demand or community need for more storage sheds in the area;
4. Water pollution: non-compliance with regard to the current on-site sewerage management facility compromises adjoining primary industry's (beef farming) main watering source for livestock;
6. Drainage information is insufficient;
7. Traffic movement information is insufficient;
8. Change of rural zoning'
9. Increased traffic with no turning lane into the development has been proposed;
10. Proposal should be located in an industrial estate;
11. Incorrect statements within the application documentation;
12. Proposal is an attempt to delete conditions of DA06/1275.01 that have not been complied with and Stage 6 should be a Section 96 amendment to DA06/1275.01;
13. Stringent conditions should apply to landscaping;
14. Disturbances will result from people accessing the storage sheds late at night; and
15. The site is contaminated and poses a risk to adjoining farmland.

Positive comment within one submission reads as follows:

"We believe that the proposed business, creation of staged storage units and conversion of existing light industrial building to storage units is a positive direction and is a needed resource within the shire. Furthermore, it will expectantly create a more aesthetically appealing environment, compared to the one that currently exists."

The applicant responded to the key issues raised within the submissions as follows:

"Key Issue 1 - Compliance with Previous Conditions

This issue is addressed in the Statement of Environmental Effects and the approach contained within that document is considered to be reasonable and balanced and provides an equitable outcome for both the community and the landowner.

Key Issue 2 - Untidy Site

The site will be tidied up and landscaped as part of the current Development Application after it is approved.

Key Issue 3 - Demand for Storage Units

The proposed development will be built in stages and clearly, if there is no demand after the initial stage is constructed, no further stages will be constructed as this is a simple matter of the marketplace dictating demand. Our preliminary research indicates that there is strong demand for further units in the locality.

Key Issue 4 - Adequacy of Existing On Site Sewerage Treatment System

This issue is addressed in detail in the Statement of Environmental Effects and Annexures. In summary, a new system will be installed compliant with contemporary requirements.

Key Issue 5 relates to adequate units being available for current demand. Refer to applicant's comments under Key Issue 3.

Key Issue 6 - Roof and Other Drainage

The Engineering Plans and Report accompanying the Statement of Environmental Effects clearly demonstrate how stormwater will be collected and disposed of to a legal point of discharge.

Key Issue 7 - Manoeuvring for Prime Movers and Pantechinans

This is clearly not required as the storage units will be served by light rigid vehicles or conventional sedans and utilities. The conversion of the existing southern corrugated iron building will, of course, be the subject of a Construction Certificate when all structural issues, compliance and loadings will be addressed in accordance with normal procedures.

Key Issue 8 - Change of Rural Zoning

It should be noted that this application does not seek any change to the existing Rural 1(a) zoning of the land within which the proposed development is permissible, subject to complying with certain prerequisite criteria which are addressed in the Statement of Environmental Effects.

Key Issue 9 - Increased Traffic

Negligible increase in traffic will occur and will largely be limited to small rigid vehicles and utilities accessing the storage units which are clearly not designed for heavy vehicle access.

Key Issue 10 – Industrial Estate location required

- *It is well known there is a shortage of industrial land in the Pottsville area and on the Tweed Coast in general. Currently there is no suitable industrial land available in the Pottsville/Tweed Coast area other than my site.*

Key Issue 11 – Incorrect Statements

- *I am not trying to fudge breaches of compliance. I am putting everything on the table as outlined...in the statement of environmental effects. At this point I cannot change what happened in the past.*

Key Issue 12 – Section 96 to DA06/1275.01 required

- *There is no point in addressing the development applications separately because works carried out as per DA06/1275.01 would need to be redone or changed for compliance with DA13/0328. Some of the conditions detailed in DA06/1275.01 may be changed or become redundant.*

Key Issue 13 – Landscaping

- *As a result of the proposed landscaping, all passing motorists or neighbours will see a dense row of trees once the landscaping is established. The site will be well maintained and kept in a clean and tidy manner.*

Key Issue 14 – Disturbances at night

- *There will be no disturbances late at night because neither the current use or the proposed use are open late at night as per the operating hours detailed in DA06/1275.01 and DA13/0328. The current use and the proposed development have far less of an impact on the local residents than the previously approved truck depot uses which have no limits on operating hours.*

Key Issue 15 – Contaminated Land

- *There have been some contamination issues. Council is aware of this and the site has been remediated. The majority of works will involve filling and not cutting. There will be a capping layer of clean imported fill placed over any exposed areas which are cut in the levelling process. The proposed development will mean an improvement to the protective capping layer as the previously remediated and capped land will be permanently sealed by the building slabs created for the storage units and the sealed access roadways which are proposed.*

The following issues were raised in one of the submissions. The applicant's solicitor provided a response to these issues on the applicant's behalf, which is summarised below each dot point.

- DA06/1275/DA06/1275.01 consent has lapsed (ultra vires of Council)
There is no evidence to suggest that the consent for manufacturing sheds, depot, office and storage which issued on 1 May 2007 has lapsed and to the contrary the evidence is that building, engineering or construction work relating to the building, subdivision or work was physically commenced on the subject land on 8 May 2007.

The Statement of Environmental Effects lodged with DA13/0328 helpfully sets out those earlier conditions of consent which have been deleted, complied with, and not complied with.

- Works on the site and use of the site are not authorised

The suggestion by the (submission) that there have been unlawful works or that the works undertaken pursuant to the existing development consents attached to this land "are likely to have been undertaken without consent" without providing evidence of the same should be dismissed.

- The proposal does not meet the aims and objectives of the TLEP

It is quite clear that the development proposed in this instance is permissible within Zone 1(a) Rural and it does fulfil several of the secondary objectives of the Zone in that it is another type of development relying on the natural value of the land and in this regard the land comprises a small pocket in a rural zone which has not enjoyed any agricultural use for in excess of 30 years and has in fact been used as a truck depot, road transport terminal and for light industry.

The point is that this development is not in an area required for long-term urban expansion and it fulfils the secondary objectives of the Zone in that it will not create unnecessary fragmentation or development of land which may be needed for long-term urban expansion.

- The proposal should be set back a minimum of 50m from Pottsville Road

The submission fails to appreciate that industrial buildings currently exist upon the site, that they existed before the Tweed LEP 2000 came into effect and accordingly, the 50m setbacks for buildings used for industries (other than offensive or hazardous industries) set out in the table pursuant to clause 24(3) of the Tweed LEP 2000 have no relevance.

The letter fails to address at all the proper SEPP No. 1 Objection to the 30m Development Standard relating to building F proposed within Stage 6 of the development.

- The draft LEP has determining weight.

The author of the SEE correctly opines that the Draft Plan does not have determining weight.

*The current version of s. 79C(1)(a)(ii) is different to that considered by the Court of Appeal 10 years ago and the savings provision in the Draft Plan does not direct the Council to treat the new plan as a draft instrument or as a proposed instrument and is quite clear in stating that a development application made before the commencement of the Plan which has not been finally determined before such commencement **must be determined as if the new Plan had not commenced.** (Our emphasis).*

Adopting a purposeful and common sense reading of the savings provision the Council is not required to have any regard to the new Plan and in fact is required to determine this application as if the new Plan had not commenced. That is the clear and unambiguous direction within clause 1.8A of the Draft Plan.

The provisions of the Draft Tweed Local Environmental Plan 2012 including the proposal that the subject land is to be zoned RU2 Rural Landscape are not relevant to the Council's determination of this development application.

Council Assessment

Issues raised within the submissions have been reviewed as part of the proposal's assessment process. Details regarding these issues are addressed within the body of this report.

Overall, it is considered that the applicant has provided application documentation that satisfies statutory requirements and that the development, on this particular site, has merit in planning terms subject to compliance with recommended conditions of development consent.

Recommended conditions of development consent regulate the proposed development, address outstanding compliance matters with regard to current and ongoing light industrial use and allow Council to take enforcement action at each stage of development should it be necessary.

Council's policy regarding determining weight of the draft LEP conflicts with the applicant's statement.

As detailed elsewhere in this report:

There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publically exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

Following an earlier public exhibition, Council at its meeting of 31 May 2013 resolved to adopt the exhibited Draft Tweed LEP 2012 (draft LEP), subject to certain changes. The modified draft LEP has been referred to the Department of Planning and Infrastructure, and gazettal of the plan is expected within a short timeframe.

Council adoption of the draft Plan marked an important milestone in the statutory weighting given to the draft LEP in current development applications, regardless of whether or not that they had been lodged with Council before the May 2013 resolution.

As such, the draft LEP is required to be considered in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

(e) Public interest

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be in the interest of the general public subject to resolution of compliance matters regarding existing and ongoing operations on the site.

OPTIONS:

That Council:

1. Approves the development application with conditions and commences compliance action for DA06/1275.01; or
2. Refuses the development application with reasons and commences compliance action for DA06/1275.01.

It is also recommended that a resolution be made regarding pursuit of compliance matters associated with DA06/1275.01 in the following instances:

- Should DA13/0328 be refused, or
- Should the applicant not proceed with DA13/0328 if approved, or
- Should Stage 6 of DA13/0328 not proceed if approved.

CONCLUSION:

Creation of staged storage units (112 units) and conversion of an existing light industrial building to storage units (24) with associated site filling and earthworks in addition to existing lawful development (light industry) is recommended for conditional approval. Clause 8(2) considerations have been addressed and found to be satisfactory subject to certain conditions of consent.

Whilst it is acknowledged that approving industrial uses in rural zones is not to be encouraged, it is considered that history of existing light industrial use and attributes of the subject site make it acceptable in this instance. Of particular relevance in this regard is the site's proximity to the Pacific Highway and the Tweed Coast villages as well as the already highly disturbed nature of the site. These characteristics, the current lack of suitably zoned land within proximity and the draft future prohibition of storage premises use within the 1(a) rural zone ensure that the proposal does not set any kind of precedent for similar industrial development in other rural locations.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may seek to lodge an appeal against a Council determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

29 [PR-CM] Development Application DA13/0201 for a Telecommunications Facility at Lot 1 DP 397082 No. 80 Depot Road, Kings Forest

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0201 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
-

SUMMARY OF REPORT:

The subject application seeks consent for the construction of a 'NextG' Telstra Mobile Telecommunications Base Station inclusive of a 30m high monopole, triangular headframe, two panel antennas, equipment shelter and 2.4m high chain-link security fence with double access gates within the former garbage depot site on Depot Road, Kings Forest.

The telecommunications facility is proposed adjacent to 'Precinct 3' (Community Facilities/Education) of the Kings Forest Residential Township. Concept Plan approval for MP06_0318 was issued by the Department of Planning and Infrastructure on 11 August 2013 as consent for Kings Forest Project Application No. 1 (MP08_0194). The approved Concept Plan nominates the site for a State School.

A formal submission was received from the Department of Education and Communities on 5 November 2013. The Department does not support the proposal for a telecommunications facility. The submission requests that Council adopt a precautionary approach, in line with the Department's policy, in order to avoid a community sensitive location.

The Department has a preference for a distance of at least 500 metres from the boundary of the property known as 'Precinct 3'. The proposed location for the telecommunications facility is approximately 20 metres from the boundary with Lot 1 DP 781633, 86 Melaleuca Road, Kings Forest which contains 'Precinct 3'. Further, a 500 metre buffer from the boundary of the property known as 'Precinct 3' excludes the location of a telecommunications facility on any portion of the subject site.

The location of telecommunications facilities rely on compliance with the provisions of SEPP (Infrastructure) 2007. The proposal generally complies with the provisions of Clause 115(3) of the SEPP. However, the proposal conflicts with the approved Concept Plan for the Kings Forest Residential Township and stands to render the future government school site unsuitable.

Two written submissions were lodged objecting to the proposal within the two-week exhibition period in May 2013.

It is therefore recommended that the application be refused.

RECOMMENDATION:

That Development Application DA13/0201 for a telecommunications facility at Lot 1 DP 397082 No. 80 Depot Road, Kings Forest be refused for the following reasons:

- 1. The development application is contrary to Clause 4 of the Tweed Local Environmental Plan 2000, in that the proposed development does not meet the aims of the plan.**
- 2. The development application is contrary to Clause 8(1) of the Tweed Local Environmental Plan 2000, in that the proposed development will have an unacceptable cumulative impact on the Kings Forest locality.**
- 3. The development application is not consistent with and is not supported by Department of Education and Communities policy regarding the installation of mobile telecommunication facilities within proximity to education facility sites.**
- 4. Accordingly, the development application is not considered to be in the public interest.**

REPORT:

Applicant: Service Stream Mobile Communications
Owner: Tweed Shire Council
Location: Lot 1 DP 397082 No. 80 Depot Road, Kings Forest
Zoning: 5(a) Garbage Depot
Cost: \$250,000

Background:

The subject site is legally described as Lot 1 DP 397082 located at 80 Depot Road, Kings Forest. The site has an area of 8.094 hectares, is zoned 5(a) Special Uses (Garbage Depot) and is bounded by land zoned 2(c) Urban Expansion. The site is adjacent to the Kings Forest Residential Township development, west of Casuarina.

History

At its meeting of 24 January 2012, Council resolved to enter into a lease with Telstra Corporation Limited for an area of approximately 33m² at the subject site.

Council correspondence granting owner's consent for the applicant to lodge a development application was issued on 24 September 2012.

Upon lodgement of the application, preliminary assessment revealed a substantial increase in the proposed lease area.

At its meeting of 20 June 2013, Council resolved to rectify an error and increase the lease area to 80m² (consistent with the subject application), thereby re-issuing owner's consent for the application to be lodged and allowing further consideration of the proposal.

Sports fields, an associated access road, carparking, lighting, amenities building/clubhouse and sewer rising main were approved on the same site by way of DA09/0836 on 9 September 2011.

DA09/0186 approved the placement of approximately 50,000m³ of clean fill on the subject site on 26 June 2009 in order to achieve levels required for the abovementioned future sports fields.

In June 2013 during assessment of the subject application, an alternative site was offered to the applicant for the location of the telecommunications facility within the Kings Forest development at the north western tip of Precinct 9 (residential). As far as Council is aware, the applicant has not accepted the offer.

The Subject Site

The site is accessed via Depot Road, Cudgen and has an approximate land area of 8.094 hectares. The site is bounded by residential, agricultural protection and environmental protection land.

A wetland system borders the site to the west and south and is identified as SEPP 14 Coastal Wetlands. The site is identified as a subregional fauna corridor and is adjacent to a regional fauna corridor to the east.

A large scale residential subdivision known as 'Kings Forest Residential Township' is planned to the east, south and west of the site. Of note is the location of Precinct 3, a community facilities/education precinct adjoining the proposed site to the east.



Figure 1: Kings Forest Precincts adjacent subject site



The area of the site upon which the telecommunications facility is proposed is identified as contaminated land (asbestos) on Council's GIS mapping system, as highlighted in red below.



Figure 2: Contaminated area of site

No Aboriginal heritage sites are recorded or have been declared in or near the subject site.

The Proposed Development

The subject application was lodged in May 2013 and seeks consent for the construction of monopole (telecommunications facility) and associated infrastructure to provide improved NextG capacity in the Kings Forest locality and surrounding rural/residential areas. The Telstra proposal comprises the following:

- One 30m high monopole (maximum height including antennas is 31.6m/RL 41.6m AHD);

- Two Telstra panel antennas (2.63m and 2.09m long) mounted on a triangular headframe at Centre Line 30.0m (with the capacity to increase the number of antennas to 6 in the future at 29.3m, 30.0m and 30.9m);
- Equipment Shelter on elevated concrete piers;
- 2.4m high chain link security fencing around the proposed compound;
- 3m wide double access gates;
- 3m wide access track; and
- Minimal clearing for the access track and lease area.

The construction phase (approximately five weeks) will require three to six workers on site and an average of four to six vehicle movements. Operational visits to the site will be minimal and approximately only 4 to 6 times a year for maintenance purposes.

The complex will take up a lease area of approximately 10.0m x 8.0m (80m²).

The primary purpose of this proposal is to provide coverage for future residential development at Kings Forest. Of 10 sites investigated in Duranbah and Kings Forest, only two owners were willing to lease land for the location of the facility. One of two possible sites was considered unsuitable (zoning, visual impact, radio frequency objectives) and the preferred option was Council owned land at 80 Depot Road, Kings Forest.

Existing telecommunications facilities are located at Kingscliff (Telstra – approximately 3.3kms from the proposed site), Mantra Resort (Optus – approximately 2.5kms from the proposed site) and Casuarina (Telstra – approximately 2.2km from the proposed site).

The applicant states that there were no viable co-location opportunities in the area deemed appropriate or in a location to provide sufficient network coverage capacity.

Prior to lodgement of the development application, the applicant undertook community consultation as follows:

- Four-page A5 flyer dated 9 November 2012 distributed by door knock and letter drop to approximately 45 residences offering the opportunity to provide comment or questions no later than Friday 23 November 2012. One comment and one objection was received.
- Ad in the Tweed Border Mail (7 and 14 November 2012), Tweed Gold Coast Sun (8 and 15 November 2012), Tweed Link (6 and 13 November 2012) summarising the proposal and inviting written submissions by 23 November 2012.

Maximum estimated RF EME levels at 1.5m above ground level and within a 136.96m distance from the two (2) proposed antennas at 80 Depot Road in 360 degree circular bands is 0.27%. No figures were given to estimate RF EME levels with an additional six panel antennas installed in the future as proposed.

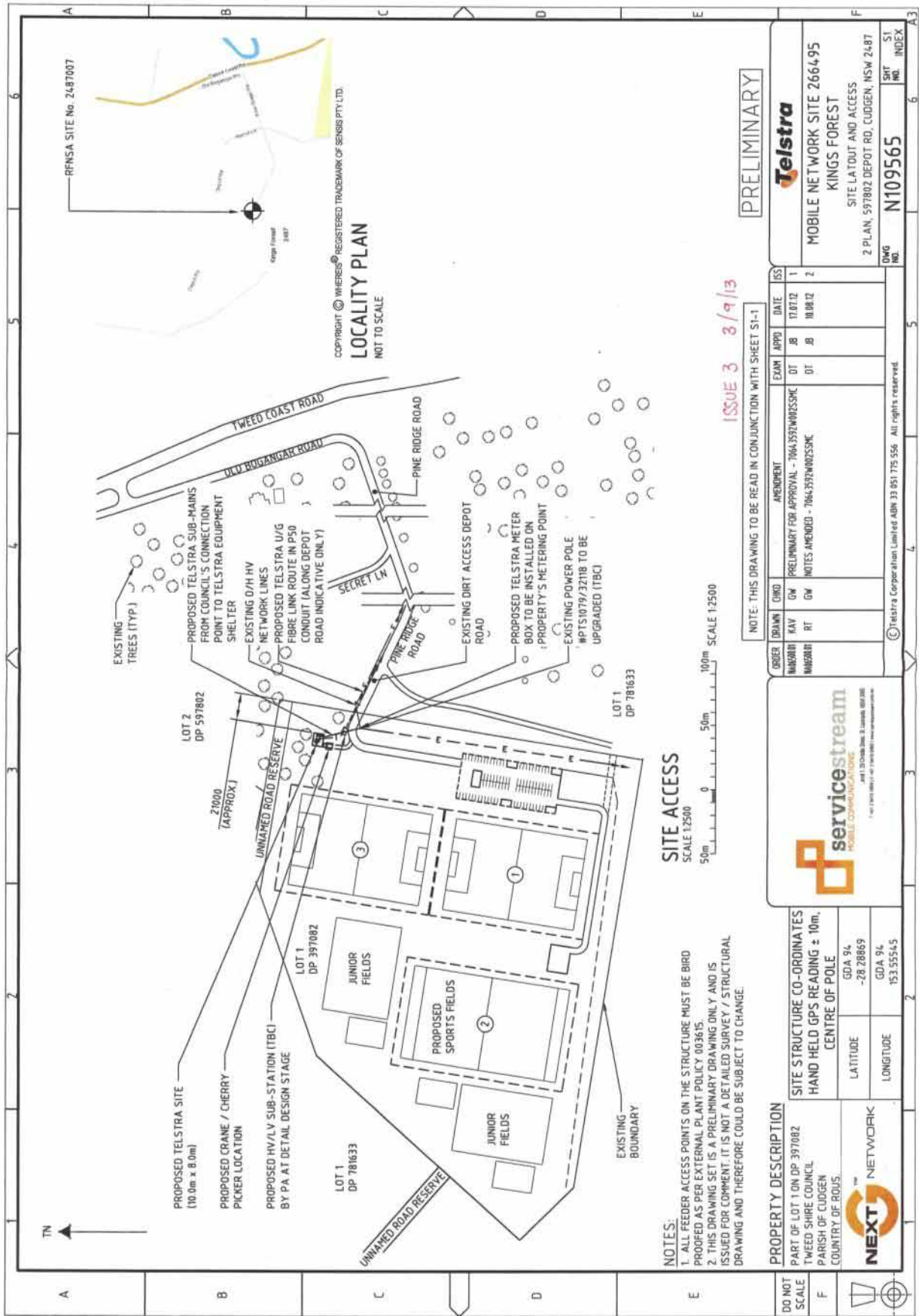
SITE DIAGRAM:

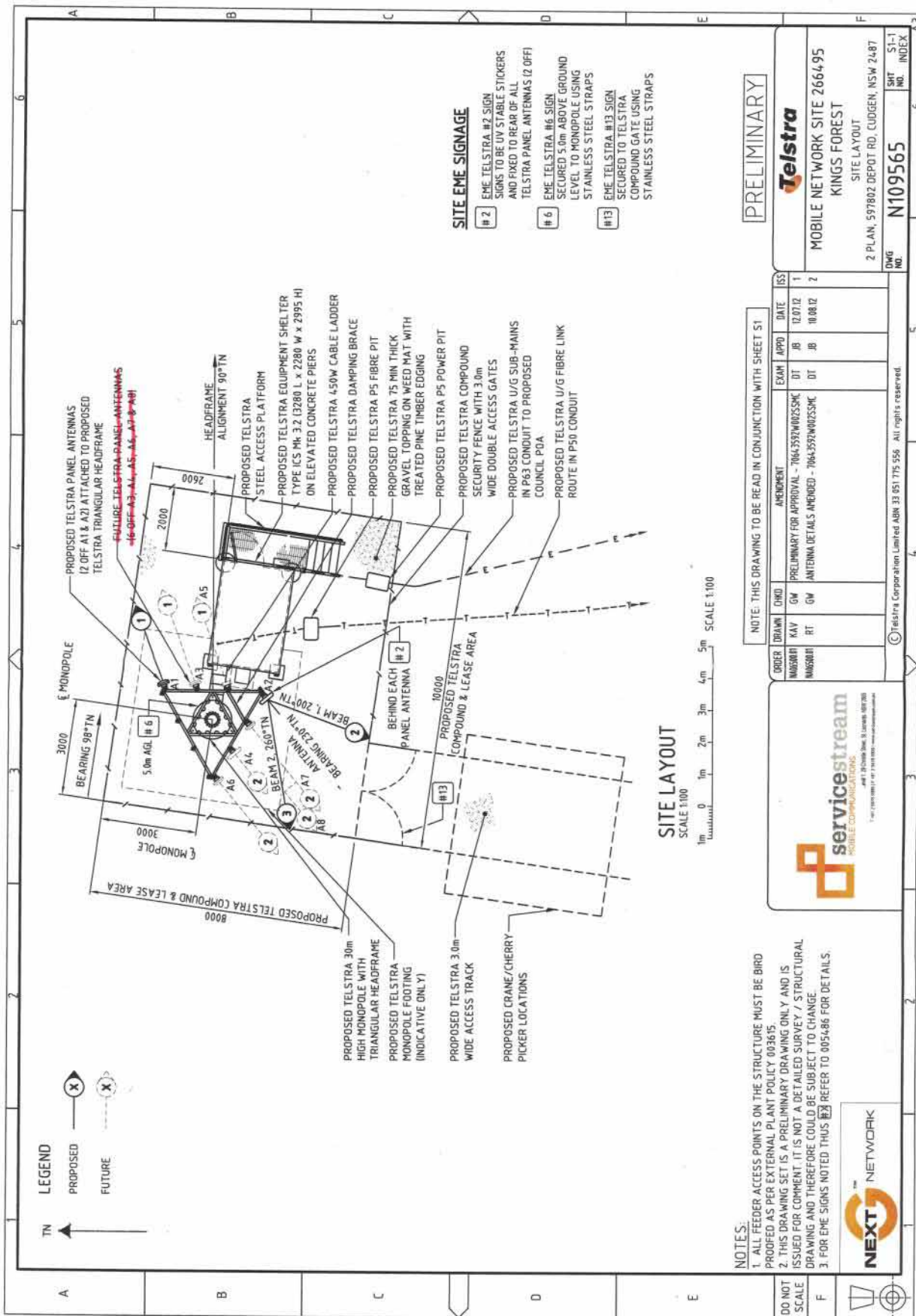


Locality Plan
 Lot 1 DP 397082
 No. 80 Depot Road, Kings Forest

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, as to the accuracy, reliability, completeness or suitability for any particular purpose and discharge of responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is provided for the general guidance and is to be considered indicative and illustrative only. It should not be used for legal or construction purposes and prior to any transactions a 'Due Diligence Visit' enquiry must be made by calling 1100. The information contained on this document remains valid for 120 days only from the date of issue.</small></p>	<p>0 1 2 Km 1:75,000 A4 Portrait 100 METRE SCALE 400 METRE GRID</p> <p>GOA State Projection: National Spatial Reference System <small>Geographic Co-ordinates: GDA94, datum of Australia 1984 1984. Area: 100 of 100,000,000 sq. m.</small></p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2486</p> <p>PO Box 816 Murwillumbah NSW 2486</p> <p>T (02) 6670 2400 1300 292 672 F (02) 6670 2829 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>
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DEVELOPMENT/ELEVATION PLANS:





LEGEND

- PROPOSED
- FUTURE

SITE EME SIGNAGE

- #2 EME TELSTRA #2 SIGN
SIGNS TO BE UV STABLE STICKERS
AND FIXED TO REAR OF ALL
TELSTRA PANEL ANTENNAS (2 OFF)
- #6 EME TELSTRA #6 SIGN
SECURED 5.0m ABOVE GROUND
LEVEL TO MONOPOLE USING
STAINLESS STEEL STRAPS
- #13 EME TELSTRA #13 SIGN
SECURED TO TELSTRA
COMPOUND GATE USING
STAINLESS STEEL STRAPS

NOTE: THIS DRAWING TO BE READ IN CONJUNCTION WITH SHEET S1

- NOTES:**
1. ALL FEEDER ACCESS POINTS ON THE STRUCTURE MUST BE BIRD PROOFED AS PER EXTERNAL PLANT POLICY 003615.
 2. THIS DRAWING SET IS A PRELIMINARY DRAWING ONLY AND IS ISSUED FOR COMMENT. IT IS NOT A DETAILED SURVEY / STRUCTURAL DRAWING AND THEREFORE COULD BE SUBJECT TO CHANGE.
 3. FOR EME SIGNS NOTED THIS REFER TO 005486 FOR DETAILS.

ORDER	DRAWN	CHKD	AMENDMENT	EXAM	APPRD	DATE	ISS
MNS0001	KAV	GW	PRELIMINARY FOR APPROVAL - 7064352W02SSHC	DT	JB	12.07.12	1
MNS0001	RT	GW	ANTENNA DETAILS AMENDED - 7064352W02SSHC	DT	JB	10.08.12	2



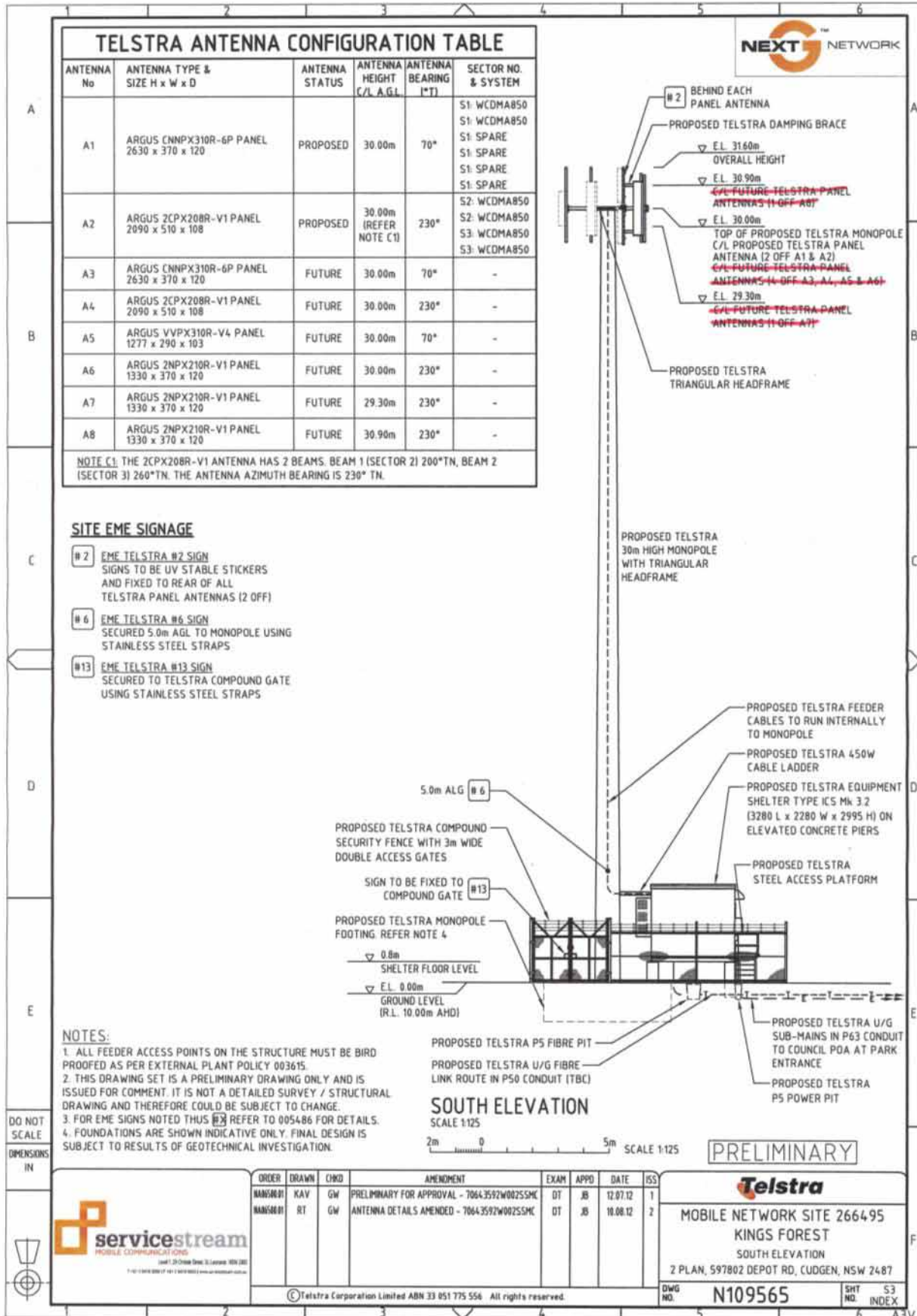
NOTES:

DO NOT SCALE

F



PRELIMINARY	
Telstra	
MOBILE NETWORK SITE 266495	
KINGS FOREST	
SITE LAYOUT	
2 PLAN, 597802 DEPOT RD, CUDJING, NSW 2487	
DWG NO.	N109565
SHT NO.	S1-1
INDEX	INDEX



Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”

The proposal is incompatible with an approved future use of adjacent land for community facility/education purposes. As such, the proposal will have a detrimental impact on sustainable future economic development of the area and warrants refusal.

Clause 5 - Ecologically Sustainable Development

The objective of the TLEP 2000 is to promote development that is consistent with the four principles of ecological sustainable development as follows:

- a) not creating irreversible environmental damage;
- b) the environment is maintained for the benefit of future generations;
- c) the biological diversity and ecological integrity is retained and a fundamental consideration;
- d) the environmental qualities of the locality are retained.

The subject site and surrounding locality is recognised for its high conservation and biodiversity value. Council’s Natural Resource Management (NRM) Unit has advised that the development should not be refused on an ecological basis.

Therefore on the basis of the submitted information it is considered that the proposal would be consistent with the objective of this clause.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 5(a) Special Uses (Garbage Depot), the primary objective of which is to:

Identify land which is developed or is proposed to be developed, generally by public bodies for community facilities and services, roads, railways, utilities and similar things.

The proposed telecommunications facility is considered consistent with the primary objective of the zone in that the land is to be utilised for a telecommunications utility facility.

Other aims and objectives of this plan that are relevant have been considered and addressed within this report.

The development is considered to have an unacceptable cumulative impact on the community, locality or catchment (Kings Forest Residential Township). Future use of 'Precinct 3' (Community Facilities / Education) will be affected by its being carried out which will impact upon the area of Tweed as a whole.

Clause 11 - Zone Objectives

The subject site is located within the 5(a) Special Uses (Garbage Depot) zone.



Figure 3: Tweed LEP 2000 zoning

The primary objective of that zone and consistency of the proposal with that objective has been outlined above. The secondary objective provides flexibility in the development of the land, particularly if it is not yet or is no longer required for the relevant special use.

The site is no longer utilised for the relevant special purpose and is intended to be utilised in the future for the purpose of public recreation (sports fields).

The proposed development is defined as a 'Telecommunications Facility' under the provisions of the TLEP 2000. The proposed development is **only permissible** within the 5(a) zone if it is a 'use which is compatible with adjacent uses allowed (with or without consent) in adjacent zones'.

Regardless of permissibility within the 5(a) or adjacent zone(s), telecommunications facilities are assessed for compliance against the provisions of SEPP (Infrastructure) 2007 and not local zoning.

Clause 15 - Essential Services

The proposed development does not require the provision of water or sewerage. An electricity supply is available via an underground route from the nearest source.

Clause 16 - Height of Building

The site is identified on Council's Building Heights Map as being affected by a three storey height limit. The proposed structure has a total height of 31.6 metres

(note: as per definition pursuant to TLEP 2000, the structure cannot be measured by storeys as there is no space between two floors). Therefore, the proposal complies with Clause 16 of the TLEP 2000.

Clause 17 - Social Impact Assessment

Section A13 of Council DCP, identifies the types of developments that require a social impact assessment, the proposed telecommunication tower is not identified as an item requiring social impact assessment.

The proposal did receive submissions objecting to the proposal in the proposed location. Issues raised in submissions are addressed elsewhere in this report.

Clause 34 – Flooding

The subject site is affected by the Probable Maximum Flood level (PMF). There are no requirements for the creation of a refuge or an evacuation route for this type of development. As such, this clause is satisfied.

Clause 35 - Acid Sulfate Soils

The land is classified as Class 3 on the Acid Sulfate Soil Planning Maps. The applicant did not address construction requirements, any potential disturbance of ASS or likely dewatering requirement.

Council requested provision of a preliminary assessment in July 2013 which was not supplied.

Clause 39 – Remediation of Contaminated Land

Council requested provision of a contaminated land investigation report in July 2013 addressing matters such as landfill activities, soil contamination, dewatering activities, cap disturbance and gas ingress/migration of buildings and utility trenches.

The applicant submitted a Report on Preliminary Site Investigation (Project 80360.00) prepared by Douglas Partners dated October 2013.

The report concluded that the proposed development is not within the area of and would not compromise the landfill cap.

The report indicated groundwater was intercepted during investigations but did not address whether dewatering activities were required as per Council's request.

The report identified that materials at depth are contaminated and therefore any excavated soil is required to be appropriately managed.

The report indicates that methane is present in the soil gas at the site as a result of the migration of buried landfill material. Whilst the current proposal for the equipment shelter will be placed on piers eliminating the potential for gas accumulation in the enclosed structures, service pits will need to be suitably vented to prevent the potential accumulation of landfill gas. The report also recommends that additional work, health and safety measures will need to be considered during construction.

Clause 39A – Bushfire Protection

The subject site is identified as being prone to bushfire.



Figure 4: location of proposed site within 30-100m buffer to Category 1 vegetation

The applicant has noted that the site would be unmanned when operational and hence would not pose a threat to human life in the event of a bushfire. As the proposal is not a habitable building, the applicant suggests that referral to the NSW Rural Fire Service (RFS) is not required.

Council has previously received comments from the NSW RFS in Sydney in relation to other telecommunications facilities that have been assessed, noting the following:

'RFS has a draft policy for telecommunications towers in bush fire prone areas. When the RFS is asked for comment on new towers:

- A 10m APZ (asset protection zone) shall be provided around the tower, buildings and associated infrastructure.*

In this case the equipment shelter.

- The equipment shelter shall comply with section 8 (BAL 40) Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas'.*

Clause 54 – Tree Preservation Order (TPO)

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The 2004 TPO applies to the adjacent site to the north.

The proposal does not require removal of koala habitat trees but does propose removal of several slash pines. This has been included in the proposal and there are no concerns raised regarding the removal of such vegetation. As such, this clause is satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

SEPP No. 14 - Coastal Wetlands

The subject site is mapped on Councils GIS systems as being affected by the 100m buffer to SEPP 14 wetlands which occur to the west and north of the site, as hatched in blue below. Assessment of the proposal with regard to SEPP 14 is not required and the development application is not identified as designated development.



Figure 5: location of proposed site within 100m buffer to coastal wetlands

Therefore SEPP 14 is not applicable and the development application is not considered to be designated development.

SEPP No. 44 - Koala Habitat Protection

SEPP 44 aims to encourage the conservation and management of natural vegetation areas that provide core or potential habitat for koalas to ensure permanent free-living populations will be maintained over their present range.

Core koala habitat refers to an area of land with a resident population of koalas, evidence attributes such as breeding females and recent sightings of and historical records of a population.

Potential koala habitat refers to areas of native vegetation where the trees of the types listed in Schedule 2 of SEPP 44 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

The site itself has been cleared of vegetation but is adjacent to primary and secondary habitat land. A SEPP 44 assessment was required to be provided as part of a Flora and Fauna assessment.



Figure 6: proximity of primary (orange) and secondary (green) koala habitat to proposed site

Potential koala habitat in proximity to the proposed development was surveyed for use by koalas. Three sites at or greater than 500m from the proposed base station on the northern and eastern periphery of the study area indicated use by koalas, with results reflecting existing knowledge about the distribution of core koala habitat in the area.

No core koala habitat exists in the immediate vicinity of the proposed base station. The report indicates that any tree removal will be restricted to exotic species and given the mobile nature of the species, the proposed development was not considered to be a concern for this species.

As such, the proposal is consistent with SEPP 44 and there is no requirement for a plan of management.

SEPP No 55 – Remediation of Land

In order to comply with this legislation and in addition to matters discussed previously in this report (Clause 39 – Remediation of Contaminated Land), the applicant would need to submit a Remediation Action Plan (RAP), a revised Construction Management Plan and an Environmental Management Plan for approval prior to any operation of the facility.

SEPP No 71 – Coastal Protection

The subject land is identified as being within the SEPP 71 boundary. Part of the southern portion of the site is a sensitive coastal location.

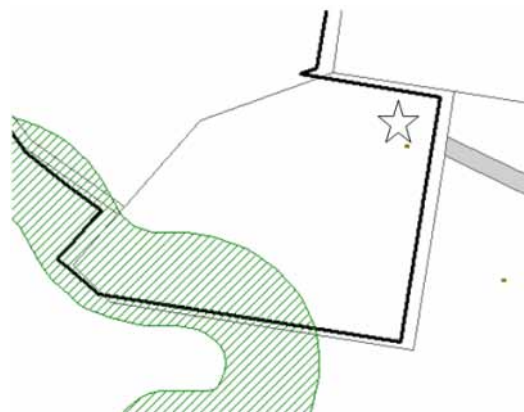


Figure 7: sensitive coastal location in south west portion of site

The site does not adjoin and will not restrict public access to the coastal foreshore. The development is generally consistent with the zone objectives of TLEP 2000, the requirements of relevant Council DCPs and consistent with ESD principles and objectives. It is therefore considered that the proposal satisfies the matters for consideration under SEPP 71.

SEPP (Major Development / Major Projects)

In November 2006, the Kings Forest site was designated as a State Significant Site as an amendment to the Major Projects SEPP.

Following the State Significant Site declaration and the inclusion of Kings Forest in Schedule 3 of the Major Projects SEPP, the Minister was requested to authorise lodgement of a Concept Plan for the urban and recreational development of the site.

On 9 January 2007, the Minister authorised a Concept Plan for the Kings Forest site and the Director-General's Environmental Assessment Requirements (DGRs) were issued in August 2007.

The Department of Planning accepted the Environmental Assessment (EA) prepared for the Concept Plan and placed the EAR on exhibition from 17 December 2008 until 19 February 2009.

The subject site was included within the Kings Forest State Significant Site area and was identified as a future sports field.

The proposed secondary use for the site as a mobile phone base station conflicts with implementation of the approved Concept Plan for Precinct 3 of the Kings Forest Residential Township and State Significant Site.

SEPP (Infrastructure) 2007

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

115 Development permitted with consent

- (1) *Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.*
- (2) *(Repealed)*
- (3) *Before determining a development application for development to which this clause applies, **the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities** that are issued by the Director-General for the purposes of this clause and published in the Gazette.*

The guidelines referred to in Clause 115(3) of the SEPP are found within the *NSW Telecommunications Facilities Guideline Including Broadband July 2010*. Section 2 of the Guideline is specific to site selection, design, construction and operation principles for telecommunications facilities and **requires development carried out under Clause 115 of the SEPP to be consistent with the principles set out in the Guideline** in order to follow best practice.

NSW Telecommunications Facilities Guideline Including Broadband

Principle 1: *A telecommunications facility is to be designed and sited to minimise visual impact.*

Principle 2: *Telecommunications facilities should be co-located wherever practical.*

Principle 3: *Health standards for exposure to radio emissions will be met.*

Principle 4: *Minimise disturbance and risk, and maximise compliance.*

Principle 1 (Visual Impact)

- (d) *Ancillary facilities associated with the telecommunications facility should be screened or housed, using the same colour as the prevailing background to*

reduce its visibility, including the use of existing vegetation where available, or new landscaping where possible and practical.

- (e) *A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.*
- (h) *The relevant local government authority must be consulted where the pruning, lopping or removal of any tree or other vegetation would contravene a Tree Preservation Order applying to the land or where a permit or development consent is required.*

Although the proposed location is adjacent to existing vegetation, the proposed facility (being a total of 31.6m in height) will be visible above the tree line. The applicant states that the facility will be 'mostly screened from the surrounding residential areas'.



Figure 8: Photomontage from SEE taken from the intersection of Depot Road and Secret Lane

Little information was provided upon application with regard to the impact upon vegetation and fauna. A report provided 4 September 2013 states that several slash pines are to be removed to make way for the proposal. Removal of vegetation has been assessed as part of the application.

The proposal is generally consistent with Principle 1 of the NSW Telecommunications Facilities Guidelines.

Principle 2 (Co-location)

- (e) *If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.*

Note: Co-location is 'not practicable' where there is no existing tower or other suitable telecommunications facility that can provide equivalent site technical specifications including meeting requirements for coverage objectives, radio traffic capacity demands and sufficient call quality.

The applicant has stated that co-location on other communications towers had been considered. No existing facilities or structures in the local area were deemed appropriate or in a location to provide sufficient network coverage capacity. Therefore, the proposed development is considered to be consistent with Principle 2 of the Guidelines.

Principle 3 (Health Standards)

- (a) *A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.*
- (b) *An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate compliance with the Mobile Phone Networks Code.*

An EME report has been submitted detailing the estimated maximum cumulative EME levels produced by the proposal. Council's Environmental Health Unit is satisfied that the proposed development is well within emissions standards. Therefore, the proposed development is considered to be consistent with Principle 3 of the Guidelines.

Principle 4 (Minimise disturbance)

- (k) *Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.*
- (l) *The likelihood of impacting on threatened species and communities should be identified in consultation with relevant state or local government authorities and disturbance to identified species and communities avoided wherever possible.*

Additional information has been provided in the form of a Flora and Fauna Survey report by ecological consultants Biolink Pty Ltd on work carried out over a 10-day period in August 2013. Survey work focused on an area within a 500m radius of the proposed base station and was supported by a search of the NSW Wildlife Atlas database for threatened species records within 5km of the site.

The report identified three hollow-bearing Scribbly Gum *Eucalyptus racemosa* within the study area, which were targeted during microchiropteran call detection surveys. 22.5 hours of survey effort recorded at least five species of microchiropteran bat including confident identifications of two threatened species, Little Bent-wing Bat *Miniopterus australis* and Yellow-bellied Sheath-tail Bat *Saccolaimus flaviventris*, with nine and two passes recorded, respectively.

Overall, microchiropteran activity was low, and the levels of activity recorded in the vicinity of the hollow-bearing trees indicated that local, resident populations do not currently utilise the site. Whilst it is acknowledged that some localised impact may occur in the form of avoidance behaviour by microchiropterans, any such impact is likely to be non-significant for purposes of s5A of the EP&A Act.

As discussed earlier in this report, potential koala habitat in proximity to the proposed development was surveyed for use by koalas. Three sites at or greater than 500m from the proposed base station on the northern and eastern periphery of the study area indicated use by koalas, with results reflecting existing knowledge about the distribution of core koala habitat in the area.

No core koala habitat exists in the immediate vicinity of the proposed base station. The report indicates that any tree removal will be restricted to exotic species, and given the mobile nature of the species, the proposed development was not considered to be a concern for this species.

A similar conclusion was made regarding the threatened Grey-headed Flying Fox *Pteropus poliocephalus*, Spotted Harrier *Circus assimilis* and Grass Owl *Tyto longimembris* which were either recorded during this assessment or known to occur adjacent to the site.

Whilst not considered significant, the report does raise some concern for potential indirect and long-term effects of EME on the smaller organisms such as the Wallum Froglet (recorded by this study and known to occur in lands to the south) and insect communities (food source for microbats and birds).

In this regard, it is noted that the applicant's additional information presents no further examination of alternative sites in the locality.

It is possible that locating the tower on a different site in the Kings Forest vicinity may further reduce concerns surrounding any residual ecological impact. It is noted that recent correspondence from an objector considers Kings Forest Precinct 9 as containing a suitable alternative location.

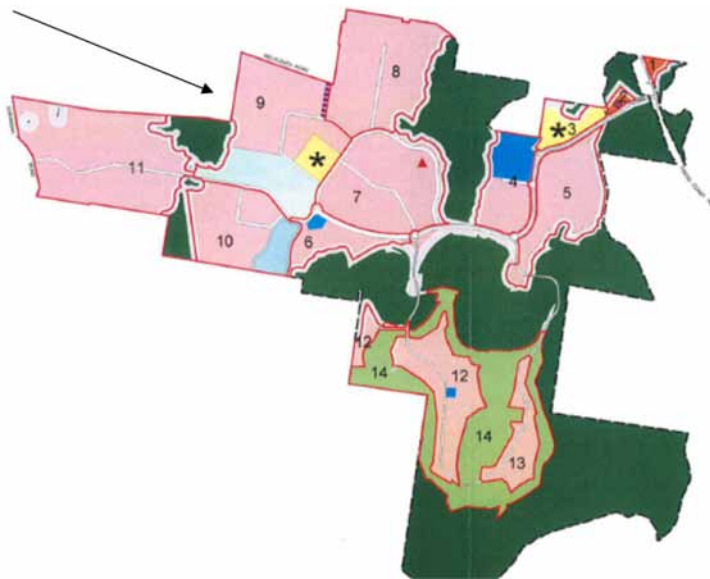


Figure 9: Kings Forest Precinct Plan (21 August 2012)

Conclusion:

The proposed development is considered to be *generally* consistent with the four principles set out in the NSW Telecommunications Facilities Guidelines. Therefore, the proposal *generally* complies with the provisions of Clause 115(3) of the Infrastructure SEPP.

Telecommunications Act 1997

As detailed within the previous assessment, Part 1 of Schedule 3 of the Telecommunications Act authorises a carrier to enter on land and exercise any of the following powers:

- Inspect the land
- Install a facility

- Maintain a facility

A Carrier's power to install a facility is contingent upon:

- a) The Carrier being authorised to do so by a Facility Installation Permit, or
- b) The facility being a low-impact facility (as defined by the *Telecommunications (Low Impact Facilities) Determination 1997* (as amended), or
- c) The facility being temporary and used for a defence organisation for defence purposes, or
- d) If other conditions are satisfied in relation to the facility concerned.

The proponent (Telstra) does not hold a Facility Installation Permit and the proposed development is not a temporary facility for use by a defence organisation or for defence purposes. Further, as the proposal involves the installation of a 30m monopole it does not constitute a low-impact facility under the *Telecommunications (Low-Impact Facilities) Determination 1997* (as amended).

On this basis the proponent is not empowered to undertake the proposed works without approval under NSW legislation and therefore must obtain development consent from Tweed Shire Council.

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

The Draft Tweed Local Environmental Plan 2012 (DLEP) was placed on exhibition in late 2012/early 2013. The post exhibition version of the DLEP 2012 with amendments as resolved by Council on 31 May 2013 has been forwarded to Parliamentary Counsel via the Department of Planning and Infrastructure.

As such, the Draft Tweed Local Environmental Plan is considered to be "certain and imminent" in terms of previous legal precedent and as such has determining weight.

The subject site is proposed to be zoned RE1 – Public Recreation in the Draft Tweed Local Environmental Plan 2012.

The proposed telecommunication facility is prohibited in this zone. Any telecommunications facility would have to rely on compliance with the provisions of the Infrastructure SEPP in order to be permissible in this zone.



Figure 10: Draft Tweed LEP 2012 zoning

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposed land use (telecommunications facility) is not identified within the policy, therefore a strict development standard is not available to use. The applicant states that *the facility will be unmanned and remotely operated on a day to day basis and only visited for maintenance 2-6 times per year.*

It is apparent from the proposed plans that the site could accommodate adequate onsite parking in front of the compound.

A3-Development of Flood Liable Land

The site is identified as Probable Maximum Flood affected. To overcome any possible flood concerns, the equipment shelter has been raised on concrete piers. As the proposal is not for residential development, there are no further concerns.

A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section. The proposal was advertised and notified to adjoining owners for 14 days from 15 May to 29 May 2013. Two submissions were received as a result of this process which are discussed elsewhere in this report.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals whilst protecting the essential values of the coast. This application does not represent an integrated approach to providing community facilities and public infrastructure as highlighted by the plan in order to meet the requirements of future communities.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is not considered that the proposed telecommunications facility contradicts the objectives of the Government Coastal Policy.

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

The proposal does not impact upon coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The proposal does not impact upon coastline management strategies.

Tweed Coast Estuaries Management Plan 2004

The proposal does not impact upon estuaries management strategies.

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

The proposal does not impact upon coastal zone management strategies for Cobaki and Terranora Broadwater.

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

Public Health and Safety

The applicant submitted an EME Environmental Report as required by the Guideline. It shows the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the ACMA and the Electromagnetic Radiation Standard. The Report is formatted in compliance with the Industry Code C564:2011 Mobile Phone Base Station Deployment (Mobile Phone Networks Code).

Neither the SEE nor the EME Environmental Report discussed the requirement for a specific buffer surrounding the facility. Clarification of buffer requirements was requested of the applicant, specifically whether a 200m buffer to any school building is or is not required, as this was raised in a submission objecting to the development.

The applicant stated that "the proposed facility is approximately 90m away from the proposed location of the school boundary". Scaled from submitted plans, the distance between the 80m² facility site and the boundary with adjacent land is approximately 20m.

Documentation provided by the applicant indicates:

"Regulations are in place to limit the strength and level of the radio frequency signals in the environment from all radio transmitters including Telstra's mobile network base stations. They are not based on distance, or creating exclusion zones for residential or other sensitive areas. That is why from a public health perspective telecommunications facilities are permissible in any environment, including on apartment buildings and hospitals, and even within school grounds.

and:

The concept of "exclusion zones" for schools and residential areas is not supported by the WHO (World Health Organisation) or ARPANSA (Australian Radiation Protection and Nuclear Safety Agency) as an effective precautionary measure to reduce the general public's exposure to radiofrequency EME."

Fact sheets dated March 2008 and published by the Mobile Carriers Forum were provided by the applicant. Information on the fact sheet *Do Exclusion Zones actually work?* does not include any recommendation for buffer zones from mobile phone base stations and states that "there is no science-based reason to set up exclusion zones around such areas".

It is noted that both submissions object to the lack of buffer distance from the proposed facility to Precinct 3.

The Department of Education and Communities provided a formal submission to Council regarding the proposal on 5 November 2013. Lack of support for the proposal is based on implementation of a precautionary approach, based on departmental policy (similar to the *Industry Code – Mobile Phone Base Station Deployment*), that avoids location of mobile phone base stations within proximity to community sensitive land uses.

The Department has a preference for a distance of at least 500 metres from the boundary of the property known as 'Precinct 3'. Further, a 500 metre buffer from the boundary of the property known as 'Precinct 3' excludes the location of a telecommunications facility on any portion of the subject site.

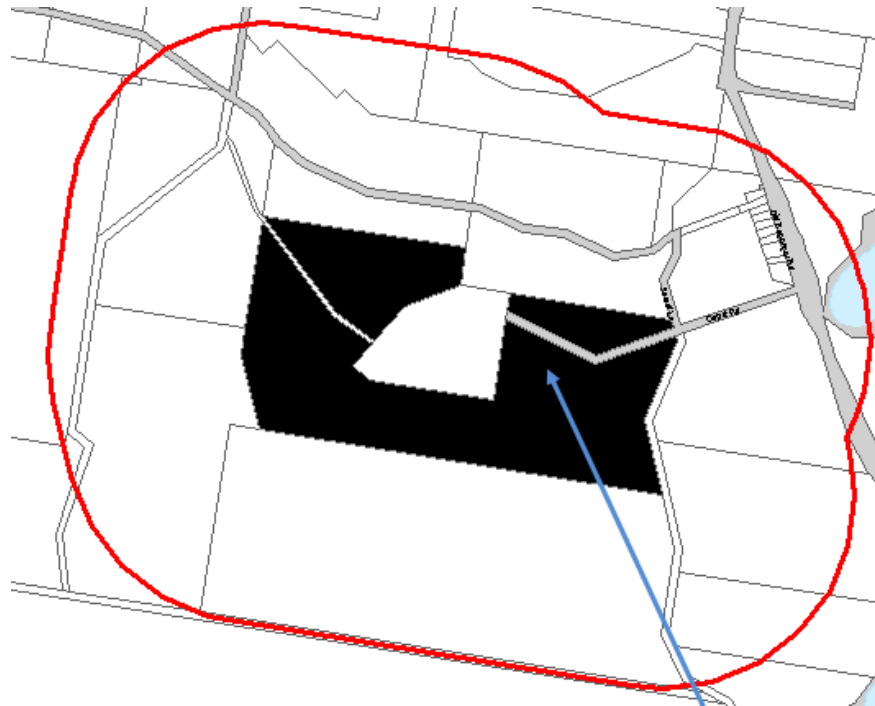


Figure 11: 500m buffer around Lot 1 DP 781633 and 'Precinct 3'

As such, the proposal is not consistent with State government policy intended to ensure student / staff public health and safety is protected / maintained via adequate separation of special and sensitive land uses.

Amenity

The nominated construction period is from four to six weeks. Operation of the premises will not require day to day attendance of staff. However an air-conditioning unit is proposed to be installed and operational to service the equipment shelter. Issues include future potential noise and light spill nuisance.

Visual Impact

The proposed monopole is 30m in height and located on generally flat ground. Some level of screening is afforded to the development from existing mature tree species that are currently located to the north of the proposed site.

The proponents have advised that there would be 'minimal potential visual impact' as a result of the proposed development, however it is expected that any impact could be addressed by the incorporation of specific measures into the design of the facility such as slim-line form, neutral colour and landscaping.

A certain level of visual impact will arise as a result of the proposed development.

(c) Suitability of the site for the development

Contamination

The site history includes use as a landfill. The bulk of the site has been capped and future intended use is as a sports ground. A report prepared for Tweed Shire Council, Assessment of Remediation Options and Remediation Action Plan

prepared by Coffey dated 30 June 2003 indicates a cap of 0.5m thickness exists within the subject area.

The report states:

“protection of gas ingress and/or ventilation will be required for any buildings and other facilities that may be located on or adjacent to the site in the future, due to the potential for ingress and accumulation of landfill gas. Additionally, there is a need to minimise the opportunities for gas to ingress and migrate offsite via subsurface utility trenches and pipes. The provision of gas management measures to buildings and services constructed on land immediately adjacent to the landfill should be a development approval condition of any future development.”

As discussed elsewhere in this report, the applicant has addressed contamination issues in a report provided to Council 18 October 2013. Council's Environmental Health Unit has reviewed the information provided as satisfactory.

Proximity to Precinct 3 of Kings Forest

As discussed elsewhere in this report, proximity of the telecommunications facility to Precinct 3 (Community Facilities / Education) within the approved Kings Forest Residential Township Concept Plan will compromise future development of the land for the purposes of a government state school as the site will then not comply with the following Department of Community and Education policies:

- Mobile Telecommunications Facilities

While the Department cannot state a specific separation distance between a proposed mobile telecommunications facility and a school or TAFE campus, the Department has a preference for a distance of at least 500 metres from the boundary of the property.

Figure 12: excerpt from DEC Mobile Telecommunications Facilities policy

- Advisory Notes for Developers and Consent Authority for Master Planning New Education Facility Sites

Land use	Not located within or immediately adjacent to:
	<ol style="list-style-type: none">1. In close proximity to special uses such as: airports, correction centre, electricity substations, mobile phone towers, contaminated lands, sewage treatment plants, sewage systems, electrical transmission lines, waste disposal facility, waste, treatment or resource management facilities, waste or resource transfer station, water recycling facility, water supply system, wind farms and the like (preferable to be 500m to 2km away).2. Inappropriate retail and commercial development such as: bottle shops, brothels, home occupation (sex services), methadone clinics, pubs, registered clubs, restricted premises, sex service premises or the like3. Development with potential undesirable impacts or risks such as: heavy industry, airport flight paths, bulky goods premises, crematorium, depots, freight transport facility, hazardous or offensive development, hostel, hotel or motel accommodation, intensive agriculture, mining and extraction industries, tourist and visitor accommodation, vehicle repair workshops or the like
	<i>Reason: Ensure student and staff/personnel security and health are protected and maintained. Ensure no rezoning.</i>

Figure 13: excerpt from DEC Advisory Notes (highlighted)

Co-location with Sports Field Use

Council's Recreational Services Unit stated no objection to the co-location of the telecommunications facility use with the sports field use (primary land use). The telecommunications facility is identified as a secondary use.

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

The proposal was advertised and notified to adjoining properties in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 15 May to Wednesday 29 May 2013. During this time, two submissions were received.

Concerns were also raised before the application was advertised and after the applicant had supplied further information to support the proposal.


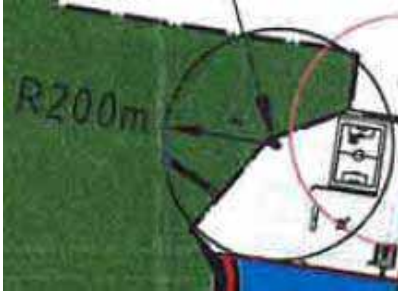
Issues raised include the following:

- Contamination
- Koala Habitat
- Visual Impact
- Human health
- Required buffer distance
- Environmental value / health
- Noise
- Premature development
- Conflict of interest
- Alternative sites available

Although forwarded copies of the submissions on 3 July, 2013, the applicant chose not to respond directly to the matters raised.

Objection	Response
<p>A geotechnical survey needs to be carried out to assess risk as the site is classified as contaminated land. Siting of the monopole is adjacent a dam. Stormwater from the site travels via dams straight into wetlands on our property. Saturation of the ground poses an environmental threat to adjacent land.</p>	<p>Geotechnical report provided to Council 18 October 2013 and assessed by the Environmental Health Unit as satisfactory.</p>
<p>Koala habitat trees are planned to be planted just north of the lease area via the Koala Connection Program.</p>	<p>Existing screening vegetation will be removed in association with this project. Impact upon future koala population not determined.</p>

Objection	Response
<p>The proposal does not respond appropriately to its rural landscape setting. Screening trees (mature pines) in the supplied photomontage are planned to be removed and replaced with Koala food trees. The structure is in full view from all other angles. Replanting will take into account species best for Koalas, not for screening value. Essential Energy also has restrictions on vegetation height within proximity to power lines.</p>	<p>A landscaping plan was not supplied by applicant.</p>
<p>The monopole will be highly visible from about 70% of our property including present house site and planned future house site.</p>	<p>Visibility issues addressed elsewhere in this report.</p>
<p>Health concerns from electromagnetic energy generated from the facility.</p>	<p>Council's Environmental Health Unit has assessed the proposed development in terms of EME requirements.</p> <p>The Department of Education and Communities does not support the proposal because it does not meet the required minimum 500m buffer from a future educational facility.</p>
<p>The close proximity of the sports fields and the planned educational facilities should be taken into account with regard to Electromagnetic Field Radiation. The existing power line should be calculated into total EMF radiation levels.</p>	<p>As above.</p>
<p>The present powerline at the entrance to the site is not in service and has not been for many years.</p>	<p>The applicant would need to liaise with Council with regard to the provision of electricity to the site.</p>
<p>Air conditioning units for the facility will be going 24/7. This is in contradiction to the intention of creating and improving a Koala/wildlife corridor adjacent to the monopole.</p>	<p>Council's Environmental Health Unit has assessed the proposed development in terms of air conditioning noise.</p>
<p>There is a multitude of endangered species around this site.</p>	<p>A Flora and Fauna report was provided 4 September 2013, assessed by Council's NRM Unit and found to be satisfactory.</p>
<p>The DA for the monopole is premature. Development of the land could be decades away. Why has the DA been submitted at such an early stage in a sensitive location? Which area will this really service?</p>	<p>The concept plan for the Kings Forest Residential Township has been approved. The proposal conflicts with a sensitive land use in Precinct 3 and has been recommended for refusal.</p>

Objection	Response
Why is there no ecological buffer on Lot 1 DP 397082?	This is a matter relating to the assessment of DA09/0836 for the sports fields development.
Conflict of Interest – Council accepting lease money and giving approval.	DA's are submitted over Council land subject to external lease arrangements. The Development Assessment Unit retains objectivity in assessing such proposals.
Telstra have advised us that there is no budget for landscaping.	Landscaping would be required of the applicant should any approval be granted.
Telstra have advised us that elevated positions around Kings Forest would be preferred for several reasons including radiofrequency objectives, reduced height and reduced visual impact. We feel that choice of the proposed site could well be biased through principles of cost reduction and contractual issues rather than suitability of the site.	An alternative site has been offered in Precinct 9 of the Kings Forest development. Council is not aware of the applicant's motives for the current site selection.
LEDA have advised use that they are willing to discuss alternative sites which we feel are available.	An alternative site has been offered in Precinct 9 of the Kings Forest development.
<p>The location of the proposal will significantly impact on the development potential of Precinct 3, particularly having regard to the requirement for a 200m buffer.</p> 	<p>The applicant has not relied upon any distance related policy for the siting of the facility.</p> <p>The Department of Education and Communities does not support the proposal as it does not meet the required minimum 500m distance from the boundary of Precinct 3.</p>
<p>Siting of the facility on the western side of the subject land would eliminate any potential adverse impacts by way of buffers to Precinct 3.</p> 	<p>Siting the facility on the western side of the subject land does not comply with DEC's minimum 500m distance policy from the boundary of Precinct 3.</p>

Following submission of further information by the applicant on 4 September 2013, the objectors were given the opportunity to provide additional comment.

Money generated from the lease will pay for the Kingscliff Soccer Club's ground maintenance.	Manager Recreation Services advised that the grounds would be maintained with or without the lease in place.
The Flora and Fauna report was done in a very limited timeframe which can cloud results. There was no mention of the Glossy Black Cockatoo or habitat for threatened species (Wallum Sedge Frog, microbats). Dry weather conditions have influenced insect activity.	The Flora and Fauna report was provided 4 September 2013, assessed by Council's NRM Unit and found to be satisfactory.
The planned Koala Corridor to the north and Acid Frog Compensation habitat to the east are both within the range of highest radiation around this Monopole. Reference made to a previous Biolink report by the same author deems a negative impact upon these species.	Council's assessment of the Flora and Fauna report does not raise these issues as problematic.
All of the previous comments regarding visual impact still apply. What exactly is the height of the structure including the fill? The Casuarina monopole was reduced from 30m to 20m in response to objections.	Height of the structure located upon fill will be RL 41.6m AHD.
EME levels increase due to future antennas and co-location of other carriers once the facility has been established. Additional sources of EME should be taken into account.	Additional and future sources of EME have not been taken into account by the applicant.
The EME figures do not give any clarification on EME levels in planned Koala corridor trees once established.	This is consistent with application documentation.
Asbestos guidelines should be observed prior to earthworks being undertaken.	Suitable conditions of consent would apply should an approval be granted.

<p>The Department of Education and Communities indicates that in terms of land use, school sites should not be located within or immediately adjacent to, inter alia, mobile phone towers.</p> <p>The proposed facility will be approximately 50m from the nearest part of the community facility Precinct No. 3 shown on the approved Kings Forest Revised Concept Plan and Precinct Plan.</p> <p>The proposed siting of the facility is inconsistent with the Department's guideline. If the facility were to be approved and erected, Precinct 3 would not be suitable for a school.</p>	<p>The Department of Education and Communities does not support the proposal as it does not meet the required minimum 500m distance from the boundary of Precinct 3.</p>
<p>An alternative site on the western side of the sports fields is the more logical and suitable in the circumstances.</p>	<p>Council will not consider this alternative location.</p> <p>Siting the facility on the western side of the subject land does not comply with DEC's minimum 500m distance policy from the boundary of Precinct 3.</p>
<p>Any decision by Council in respect of this DA which might compromise implementation of the Concept Plan and the Project Approval would be inappropriate and unnecessary given that there are suitable alternative sites within the Depot Road sports fields and Precinct 9.</p>	<p>Council will not consider an alternative location within the sports fields site.</p> <p>Siting the facility on the western side of the subject land does not comply with DEC's minimum 500m distance policy from the boundary of Precinct 3.</p>

(e) Public interest

Council currently has no specific policies in relation to telecommunication tower developments. The proposal is a permissible form of development in the 5(a) zone and therefore can be assessed by Council.

Concerns with regard to health risks are considered within the body of this report and are supported by the formal submission from the Department of Education and Communities.

Strict guidelines have been put in place by the Department with regard to master planning new education facility sites. The Concept Plan nominating 'Precinct 3' for a future government educational facility within Kings Forest Residential Township has been approved. Development of the State Significant Site would be negatively impacted if the telecommunications facility were approved in this location.

It is therefore considered that the development will negatively impact on matters relating to the public interest and sustainable future economic development of the Shire.

OPTIONS:

That Council:

1. Refuses the development application; or
2. Provides in-principle approval and submits a further report to the January 2014 Council Meeting with recommended conditions of consent.

The officers recommend Option 1.

CONCLUSION:

In general it is considered that the proposed telecommunication facility is suitable with regard to design and community need.

However, the location of the telecommunications facility adjacent to a future government school site is not appropriate. Its proximity compromises implementation of an approved sensitive land use and would render the site unsuitable for its intended purpose as an educational facility.

For this reason the proposal is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. DEC submission (ECM 3222659)
 2. DEC Advisory Notes for Developers and Consent Authority for Master Planning New Education Facility Sites (ECM 3222660)
 3. Clause 4.1 Site Selection (Industry Code C564:2011 Mobile Phone Base Station Deployment) *Communications Alliance Ltd 2011* (ECM 3222662)
 4. Report from Telstra in response to submission by DEC (ECM 3222665)
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30 [PR-CM] Development Application DA13/0124 for Seven Townhouses at Lot 4 DP 801038 No. 18-20 Cupania Court, Tweed Heads West

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0124 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
-

SUMMARY OF REPORT:

Council is in receipt of an application for a seven townhouse development at the above address. The proposal was originally submitted as an eight townhouse development, however, following a meeting between the applicant and Council officers, it was agreed to remove one of these units in order to allow an adequately sized vegetation retention and rehabilitation area to the east of the site.

Amended plans demonstrating a seven townhouse development are to be submitted to satisfy a deferred commencement approval on the site.

The subject development has been advertised for a period of 14 days, during which time approximately 66 submissions were received, which have been detailed elsewhere in this report. The application has been called up for determination at a full Council Meeting by Councillor Milne. The proposed development is recommended for conditional deferred commencement approval.

RECOMMENDATION:

That Development Application DA13/0124 for seven townhouses at Lot 4 DP 801038 No. 18-20 Cupania Court, Tweed Heads West be approved subject to the following conditions:

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 12 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.

1. The '8 semi detached townhouses' plans prepared by Planit Consulting dated September 2013 are to be amended, and provided to Council for endorsement, to incorporate the following changes prior to the consent being operational, namely:
 - (a) Delete all references to proposed Residence 8;
 - (b) Relocate the eastern turn-around car-parking facility to take the position of former Residence 8. The eastern fire truck turning area shall immediately adjoin Residence 7; and
 - (c) The area extending to the eastern boundary from the north-south aligned boundary of Residence 7 and including the area made available from the deletion of Residence 8 and repositioned fire truck turning area shall be described as 'Environmental Covenant Area - A' to be rehabilitated and managed as a natural area for conservation purposes in perpetuity.
2. The applicant shall amend the Geotechnical Report being Report on Slope Stability Analysis & Retention Wall Modelling Rev. 0 dated 10 September 2013 prepared by Douglas Partners as follows:
 - (a) Remove all structures necessary to manage slope stability hazard from the area identified as 'Environmental Covenant Area A' pursuant to deferred layout amendment conditions detailed above; and
 - (b) Provide engineering certification that the amended geotechnical structure design, made necessary to avoid disturbance within 'Environmental Covenant Area A', meets all engineering design standards and requirements.
3. The applicant shall amend the Bushfire Management Plan being Bushfire Assessment Report 100B Rev. A Lot 4 DP801038 dated 13 December 2012 prepared by Peter Thornton as follows:
 - (a) The plan shall contemplate long term restoration of the area described as 'Environmental Covenant Area - A' to re-establish the pre-clearing vegetation community and provide recommendations necessary to ensure bushfire risks are appropriately managed during the long-term operational phase of development without compromising restoration effort nor requiring any vegetation management works to occur within the 'Environmental Covenant Area - A'; and
 - (b) Demonstrate that required landscape planting will not be impacted by measures necessary to manage bushfire during the long-term operational phase of the development.
4. The applicant shall amend the Statement of Landscape Intent, Sheets 1 to 4, 18 Cupania Court Tweed Heads West dated February 2013 prepared by Planit Consulting to show a single row of 'Advanced' 45 Litre local rainforest buffer trees installed at a minimum spacing of three metres along the entire length of the northern site boundary.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Approved Plans under Schedule A of this consent, except where varied by the conditions of this consent.

[GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]
4. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]
5. The owner is to ensure that the proposed buildings are constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]
6. The proposed development is to be undertaken in accordance with the recommendations contained within the approved Bushfire Threat Assessment Report, prepared by a suitably accredited bushfire consultant.
7. The development's internal driveway must comply with section 4.1.3.(2) of 'Planning for Bush Fire Protection 2006'. The access is to be adequately sign posted, clearly stating that no parking is permitted within the Reversing Bay.

[GENNS01]
8. Earthworks and regrading:
 - (a) Any regrading or reshaping of the site must comply with Council's Design Specification D6 - *Site Regrading*.
 - (b) The southern retaining wall must be located a minimum of 900mm from the southern property boundary and cannot exceed a height of 1.5m at any point.
 - (c) The development must at no time result in additional runoff or ponding occurring within neighbouring properties.
 - (d) All 'uncontrolled' filling over the site shall be removed and where required for site regrading, the filling will be re-compacted under Level 1 supervision.

[GENNS02]

9. Stormwater Management shall be in general accordance with the Site Based Stormwater Management Plan prepared by Terrane Engineering Civil Consultants dated March 2013, except where varied by the following and the conditions of this consent.
- (a) The cut off drain above the southern retaining wall shall be sized to capture the associated Q100 ARI storm event, generally in accordance Drawing No. 1649-SK31 Rev A, prepared by Terrane Engineering Civil Consultants dated 12.09.13.
 - (b) The required On Site Detention (OSD) must include a Discharge Control Pit (DCP) compliant with the standards of the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook". Note, Permissible Site Discharge (PSD) and Site Storage Requirements (SSR) as referenced in the handbook are not supported by Tweed Shire Council.
 - (c) All roof-water and overflow from rainwater tanks must discharge into the OSD Tank.
 - (d) The OSD tank is to be utilised for detention purposes only.
 - (e) Where physically achievable, stormwater shall be treated in accordance with Council's Design Specification D7 - *Stormwater Quality*, prior to discharge into the OSD Tank to minimise the potential for blockages. Stormwater must however be treated prior to discharge into the public realm.

All connecting drainage systems, including guttering, down pipes, rainwater tank overflows and driveway inlet pits, shall be sized to capture and convey the 100 ARI year storm. Details are to be submitted with the S68 stormwater application.

[GENNS03]

10. Erosion and Sediment Control shall be designed, installed and maintained in accordance with Tweed Shire Council Development Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
11. In the event of any future subdivision of the proposed development, any external living areas which are within 4 metres of a side boundary are to be suitably screened to the written satisfaction of Councils General Manager or delegate prior to the issue of a subdivision certificate.

[GENNS04]

12. The 'Environmental Covenant Area - A' must be the subject of an ecological restoration program undertaken in accordance with an approved Habitat Restoration Plan and managed as a natural area for conservation purposes in perpetuity.
13. The approved development shall not result in any clearing of native vegetation within the areas identified as 'Environmental Covenant Area - A' as described in this consent, without prior approval from Council's General Manager or delegate.
14. Monitoring of the effectiveness of environmental repair, enhancement and maintenance works must be undertaken by an independent and suitably qualified and experienced bush regenerator at yearly intervals following

initiation of the Habitat Restoration Plan (HRP) works. Reports of this monitoring must provide the basis for the person issuing certification for the bond or bank guarantee and must be annually submitted to Council as evidence. Any supplementary or approved adaptive management works deemed necessary by the independent bush regenerator during the life of the HRP must be undertaken once the need is identified.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

15. The developer shall provide 2 parking spaces per unit plus 2 Visitor Parking Spaces in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

The Visitor Parking Spaces must be appropriately sign-posted and line marked in accordance with Council's Construction Specification C261.

[PCC0065]

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

[PCC0285]

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

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

18. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

19. The Construction Certificate Application shall include a certificate of adequacy of design in accordance with AS 4678 and Council's Development Design and Construction Specifications, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

Please note timber retaining walls are not permitted.

[PCC0475]

20. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

21. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following (but not limited to) required works:

- Construction of a Tweed Shire Council compliant access off Cupania Court.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic Control Plan (as applicable)

[PCC0895]

22. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) It is encouraged that the stormwater and site works incorporate Water Sensitive Design Principles and where practical, integrated water cycle management, as proposed by "Water By Design", an initiative for best practice by the South East Queensland Healthy Waterways Partnership.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:

- (i) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any site works being undertaken.
- (ii) Runoff from all hardstand areas, (including driveway and hardstand landscaping areas and excluding roof areas) must be treated to remove oils, sediments and gross pollutants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 - *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
- (iii) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

23. Medium density/integrated developments, including developments containing four or more attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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

[PCC1185]

24. Prior to the issue of a Construction Certificate, applications shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for the following works (as applicable, but not limited to);
- a. water,
 - Provision of a Bulk meter. The meter is to be installed by Council at the Developer's expense,
 - b. sewerage, including;
 - Provision of a compliant house connection,
 - c. drainage works, including;
 - the connection of a private stormwater drain to a public stormwater drain,
 - the installation of stormwater quality control devices,
 - erosion and sediment control works.

[PCC1195]

25. If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying

Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

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

[PCC1325]

- 26. Prior to the issue of a Construction Certificate, the Applicant must submit to (and receive approval from) the PCA, a detailed report from a suitably qualified Geotechnical/Structural Engineering confirming that the proposed development (including the protective wall along the northern property boundary):**
- (a) will provide geotechnical stability to the proposed development,**
 - (b) will prevent any upslope advancement of any down-slope (off-site) slip failures and detail amelioration measure should a down-slope failure occur (including access requirements),**
 - (c) will not jeopardise the geotechnical stability or structural integrity of neighbouring property, including the existing Boulder Retaining Wall to the south,**
 - (d) complies with applicable Australian Standards (AS 4678-2002) and the provisions of Council's Design Specification D6 - *Site Regrading*.**

[PCCNS01]

- 27. A Habitat Restoration Plan is required to be prepared by a person qualified in Bushland Regeneration or Ecological Restoration and with knowledge and experience in local vegetation community (e.g. rainforest) for the area described as 'Environmental Covenant Area - A' on the approved plans. The restoration plan shall be submitted and approved by Council's General Manager or delegate prior to issue of any construction certificate and shall include:**
- (a) An appraisal of the present condition of remnant vegetation;**
 - (b) A plan overlaying an aerial photograph of the site which divides the area into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate;**
 - (c) A management strategy for each of the zones, including the approach, methods and techniques to be used for vegetation restoration;**
 - (d) Schedule of local native plant species to be used for planting (if appropriate);**
 - (e) Program of works to be undertaken to remove invasive weed species;**
 - (f) Schedule of timing of proposed works;**
 - (g) Maintenance, monitoring and reporting schedule with developer commitment for a period not less than five (5) years and;**
 - (h) An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of the Council's General Manager or delegate for such change.**

- 28. Prior to the issue of a Construction Certificate an ecological report, prepared by a suitably qualified person, is to be submitted for the written approval of Council's General manager or delegate demonstrating that development works**

proposed as part of this application, including soldier piling geotechnical works, will not impact on any vegetation (including root systems) on adjoining properties.

29. Prior to the issue of a Construction Certificate, amended plans are to be submitted to Council for the written approval of the General Manager or delegate demonstrating visual treatment to the exposed sealed blockwork proposed to the sites western elevation.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

31. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

32. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

33. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

34. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

35. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

36. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a

"shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

37. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

DURING CONSTRUCTION

38. All proposed works are to be carried out in accordance with the conditions of development consent, approved Management Plans, approved Construction Certificate, approved Bushfire Threat Assessment Report, drawings and specifications.

[DUR0005]

39. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

40. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

41. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

42. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

43. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the

Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

44. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

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

[DUR0445]

46. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a Level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

47. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

48. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

49. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

50. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

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

[DUR0995]

52. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution.
- Dust during filling operations and also from construction vehicles.
- Material removed from the site by wind.

[DUR1005]

53. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

54. Landscaping of the site shall be carried out in accordance with the approved Landscaping Plan.

[DUR1045]

55. All operations must comply with the fauna and flora protection measures as outlined in the section titled Vegetation Management Plan in *Attachment F - Vegetation Assessment dated 11 September prepared by Planit Consulting* and as amended by conditions of this consent. In the event that any threatened species, populations, ecological communities or their habitats not addressed in the report are discovered during operations appropriate Plans of Management for those species must be formulated to the satisfaction of the General Manager or delegate and/or the Department of Environment and Climate Change. No further site clearing will take place until the Plan(s) of Management is/are approved.

[DUR1215]

56. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

57. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to any use or occupation of the buildings.

[DUR1875]

58. Where existing kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

58. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

59. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains, unless approved otherwise by Council.

[DUR1945]

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

[DUR2185]

61. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

62. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

63. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

64. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

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

[DUR2505]

66. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

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

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

68. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

69. Air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DUR2835]

70. Works are to be undertaken in accordance with the recommendations of the endorsed Geotechnical Engineering's report.

[DURNS01]

71. The following activities are not permitted within the area described as 'Environmental Covenant Area - A' on the approved plan/s:

- (a) Storage and mixing of materials;**
- (b) Vehicle parking;**
- (c) Liquid disposal;**
- (d) Machinery repairs and /or refuelling;**
- (e) Construction of site office or shed;**
- (f) Combustion of any material;**
- (g) Stockpiling of soil, rubble or debris;**
- (h) Any filling or excavation including trenching, topsoil skimming and/or surface excavation, unless otherwise approved by Council's General Manager or delegate; and**
- (i) Unauthorised application of pesticides, herbicides or chemicals.**

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

72. Prior to issue of an Occupation Certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

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

[POC0205]

74. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and**

- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

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

[POC0355]

76. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:

20.8 Trips @ \$2937 per Trips \$61090

(\$2836 base rate + \$101 indexation)

S94 Plan No. 4

Sector4_4

(b) Open Space (Casual):

6 ET @ \$543 per ET \$3258

(\$502 base rate + \$41 indexation)

S94 Plan No. 5

(c) Open Space (Structured):

6 ET @ \$622 per ET \$3732

(\$575 base rate + \$47 indexation)

S94 Plan No. 5		
(d) Shirewide Library Facilities:		
6 ET @ \$838 per ET		\$5028
(\$792 base rate + \$46 indexation)		
S94 Plan No. 11		
(e) Bus Shelters:		
6 ET @ \$64 per ET		\$384
(\$60 base rate + \$4 indexation)		
S94 Plan No. 12		
(f) Eviron Cemetery:		
6 ET @ \$123 per ET		\$738
(\$101 base rate + \$22 indexation)		
S94 Plan No. 13		
(g) Community Facilities (Tweed Coast - North)		
6 ET @ \$1389 per ET		\$8334
(\$1305.6 base rate + \$83.4 indexation)		
S94 Plan No. 15		
(h) Extensions to Council Administration Offices & Technical Support Facilities		
6 ET @ \$1860.31 per ET		\$11161.86
(\$1759.9 base rate + \$100.41 indexation)		
S94 Plan No. 18		
(i) Cycleways:		
6 ET @ \$473 per ET		\$2838
(\$447 base rate + \$26 indexation)		
S94 Plan No. 22		
(j) Regional Open Space (Casual)		
6 ET @ \$1091 per ET		\$6546
(\$1031 base rate + \$60 indexation)		
S94 Plan No. 26		
(k) Regional Open Space (Structured):		
6 ET @ \$3830 per ET		\$22980
(\$3619 base rate + \$211 indexation)		
S94 Plan No. 26		

[POC0395]

77. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify

that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

78. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP3: 4.4 ET @ \$12575 per ET \$55330

Sewer Banora: 6 ET @ \$6042 per ET \$36252

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

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

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

[POC0675]

79. Prior to the issue of an Occupation Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

80. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of all retaining structures.

[POC0805]

81. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act.

[POC0860]

82. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

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

[POC1045]

84. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm that a Transferring Grant has been completed to include Tweed Shire Council as the benefiting party to the existing *easement to drain sewage 2 wide and variable*, over the subject site, which currently only benefits Lot 5 & 6.

[POCNS01]

85. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation Certificate.

[POCNS02]

86. Prior to the issue of an Occupation Certificate a certificate prepared by a qualified Geotechnical Engineer is to be provided to the PCA confirming that works have been undertaken in accordance with the recommendations of the endorsed Geotechnical Engineering's report and that the development is geotechnically stable and does not jeopardise the geotechnical stability or structural integrity of any neighbouring property.

[POCNS03]

87. Environmental restoration works shall be completed to a level specified in the approved Habitat Restoration Plan prior to issue of the occupation certificate and shall be maintained at all times in accordance with the approved Plan.

88. The following restrictions as to use of the land under Section 88B of the *Conveyancing Act* are to be created to Council's satisfaction:

a. Restriction as to user regarding 'Environmental Covenant Area - A' - this area must be subject to an approved ecological restoration program (undertaken in accordance with an approved habitat restoration plan) and managed as a natural area for conservation purposes in perpetuity.

Burden: Part Lot 4 DP 801038. Benefit: Tweed Shire Council

b. Restriction as to user regarding 'Environmental Covenant Area - A'. The following activities are not permitted within this area.

- i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this approval;
- ii. Erection of any fixtures or improvements, including buildings or structures;
- iii. Construction of any trails or paths;
- iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area;
- v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the Covenant Area; and
- vi. Performance of any other acts which may have detrimental impact on the values of the Covenant Area. The area must be managed in accordance with the approved habitat restoration plan for the life of the development and the use of the premises.

Burden: Part Lot 4 DP 801038 Benefit: Tweed Shire Council

89. A cash bond or bank guarantee to ensure that the approved Habitat Restoration Plan ('HRP') is implemented and completed must be lodged with Council prior to the issue of occupation certificate unless all ecological restoration works have been completed in accordance with the approved HRP to the satisfaction of Council's General Manager or delegate. The amount of such bond will be based on the cost of environmental repair, enhancement and maintenance works to be undertaken in accordance with the approved HRP. In this regard, two (2) written quotes from suitably experienced and qualified bush regenerators (to the satisfaction of Council's General Manager or his delegate) must be submitted to Council which detail the cost of all works associated with the HRP. The amount of the bond will be equivalent to 130% of the estimated cost of works

The bond or bank guarantee will be released five (5) years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that the HRP has been satisfactorily completed, unless otherwise approved by Council's General Manager or delegate.

90. All approved landscaping requirements must be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a final occupation certificate. Landscaping must be maintained at all times to the satisfaction of Council's General Manager or delegate.

[POCNS04]

USE

91. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

92. All externally mounted air conditioning units, heat pump water systems and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units, heat pump water systems and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

93. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE1510]

REPORT:

Applicant: Caller Enterprises
Owner: Caller Enterprises Pty Ltd
Location: Lot 4 DP 801038 No. 18-20 Cupania Court, Tweed Heads West
Zoning: 2(b) Medium Density Residential
Cost: \$1,900,000

Background:

Proposed development

As outlined above the subject application as originally submitted proposed the development of eight townhouses on the subject site, accessed via an internal roadway to the south of the site.

Following discussions with Council staff, the applicant has agreed to amend the proposal to a seven townhouse development, in order to provide an adequately sized vegetation retention and rehabilitation area to the east of the site. Proposed residence 8 would be deleted from the proposal, with the proposed vehicle turning area moved west to the location previously identified for residence 8.

The proposed townhouses consist of four bedroom developments with floor areas ranging from 144m² to 148m². As outlined above, these are accessed from an internal site roadway with garages orientated to the south. The primary living areas to each units are orientated to the north due to the shape and topography of the site.

Site

The subject site covers a total area of 4479m² and is an irregularly shaped allotment. The site provides road frontage to Culpania Court, a cul-de-sac to the western boundary. To the south, the site is bordered by a three storey residential flat building, with low density residential development forming the eastern boundary. The land to the north of the subject site is at a substantially lower level, consisting of the Terranora Valley Retirement Village. These lower level properties provide vehicular access via Carramar Drive to the north.

The subject site is currently undeveloped, with mature vegetation evidenced in particular to the north and eastern boundary. An assessment of this vegetation has been undertaken by Council's Natural Resource Management (NRM) Unit, with it being determined that the vegetation on site includes some areas of ecological value. The site slopes steeply down from south to north, with a fall of approximately 12m between the southern and northern boundary, over a distance of approximately 30m. The extent of this slope varies within the site.

The subject property is zoned 2(b) Medium Density Residential under the provisions of Tweed Local Environmental Plan 2000 (TLEP 2000). Surrounding zones are a combination of 2(b) Medium Density Residential to the south and west and 2(a) Low Density Residential to the north and east.

History

This site has been the subject of the following development history relevant to this application:

D88/0094- Development Application - erection of 13 x 3 storey buildings and 6 x 2 storey buildings comprising a total of 116 residential units. Surrendered 25 September 1989.

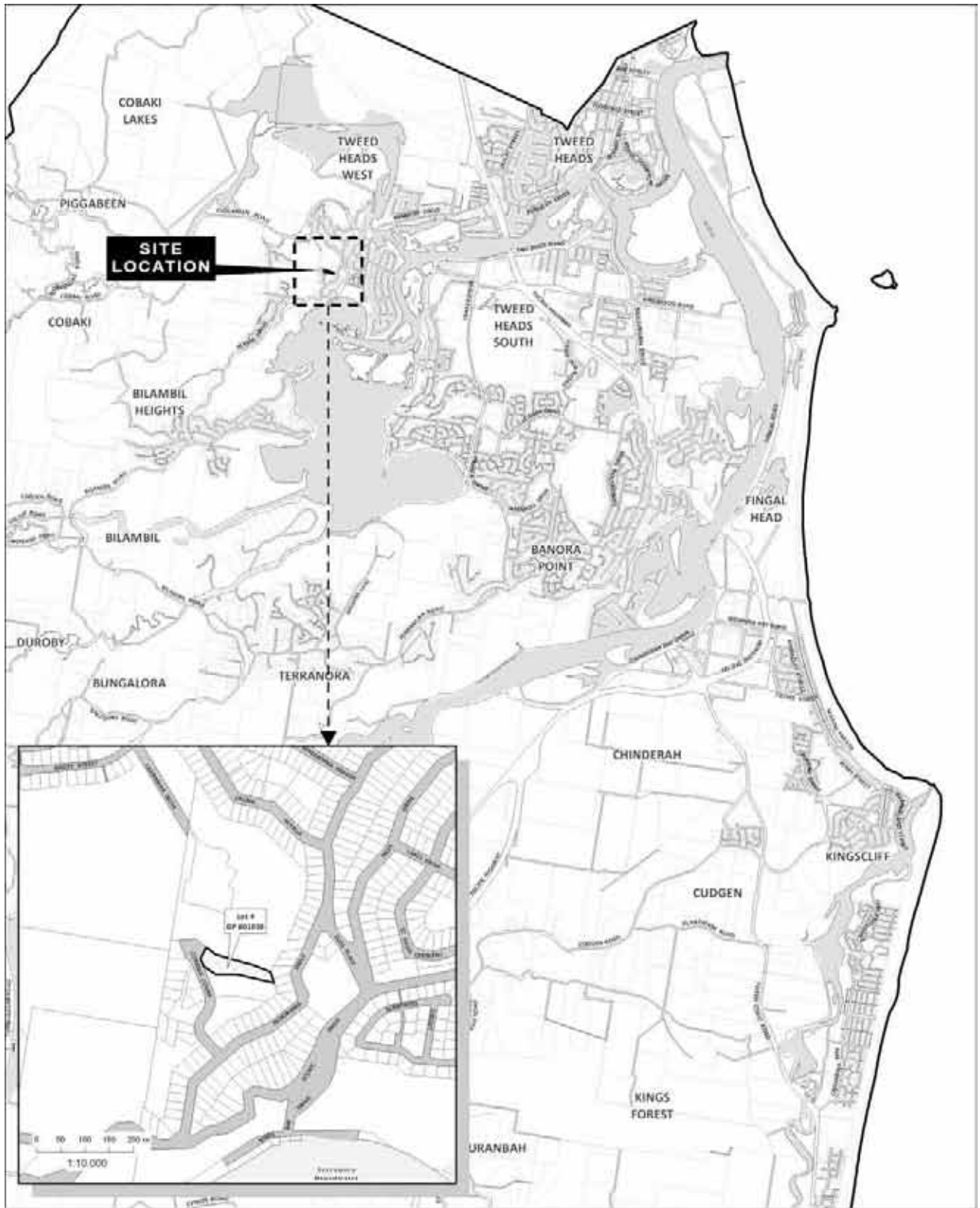
DA05/1147- Development Application - construction of a three (3) storey terrace development comprising 21 units and car parking for 32 vehicles. Refused 4 June 2008.

The reasons of refusal for this application included the following:

1. Geotechnical investigations submitted do not give Council the confidence that the proposed development will not adversely affect the existing landslip areas, surrounding land stability and the associated adjoining property located to the north and directly below the proposed development;
2. Stormwater is to be designed to a 1 in 500 year storm event, which is considered unachievable and would increase the likelihood of instability and landslip affecting down slope properties;
3. It is not considered that the circumstances of the proposed development warrant support of the State Environmental Planning Policy No. 1 objection to the three storey height limit;
4. Proposed development is considered to have an unacceptable cumulative impact upon adjoining property located to the north and directly below the proposed development;
5. The development application is contrary to the Development Control Plan Part A1 particularly relating to building envelope, private open space, waste and car wash bays.
6. The development application is contrary to the Development Control Plan Part A2 – Site Access and Parking Code, including the provision of car parking requirements generated by the proposal.
7. The development application is not considered to be in the public interest.

DA11/0172- Development Application - townhouse development - five detached and four attached. Withdrawn 5 March 2012.

SITE DIAGRAM:



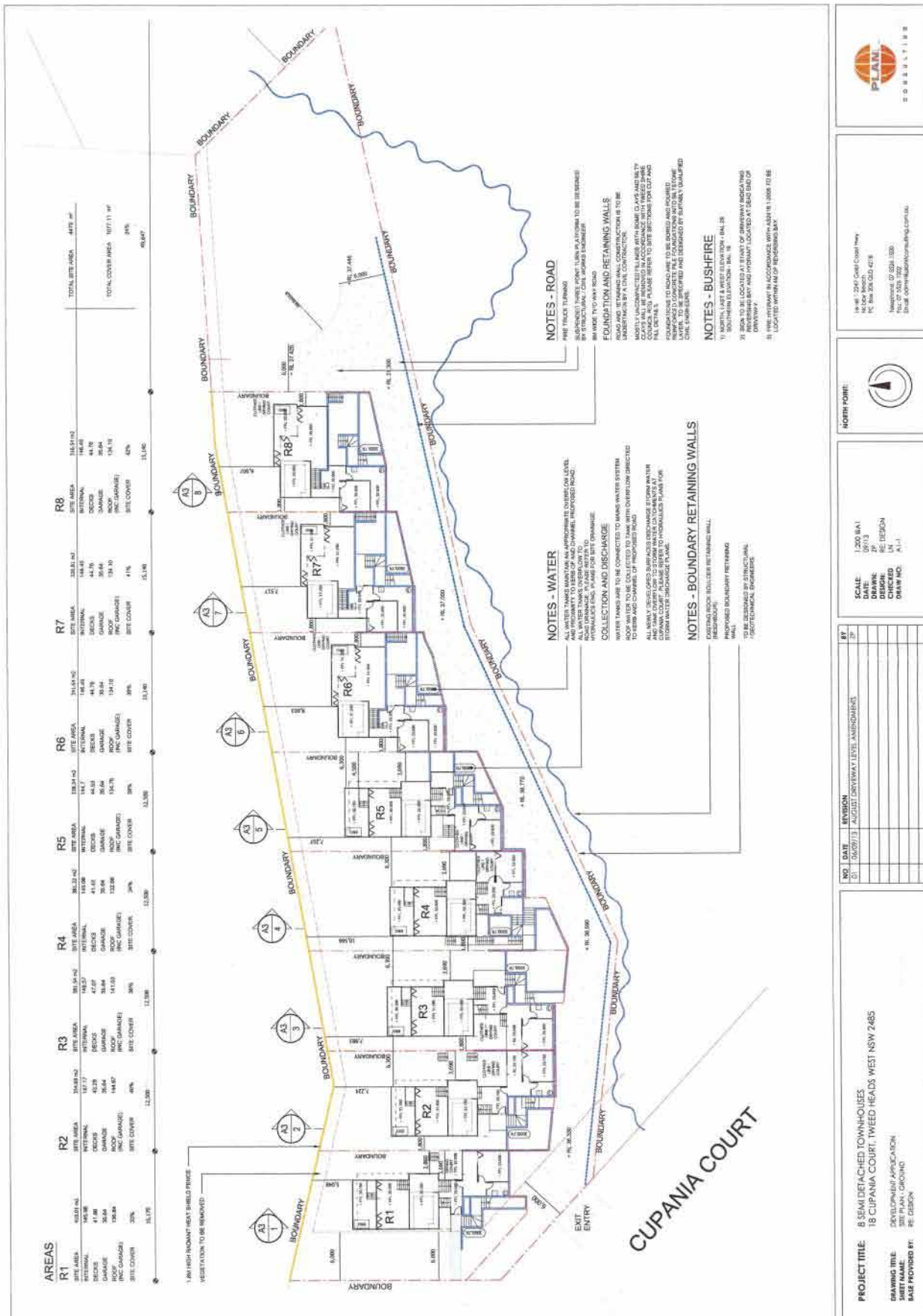
Locality Plan

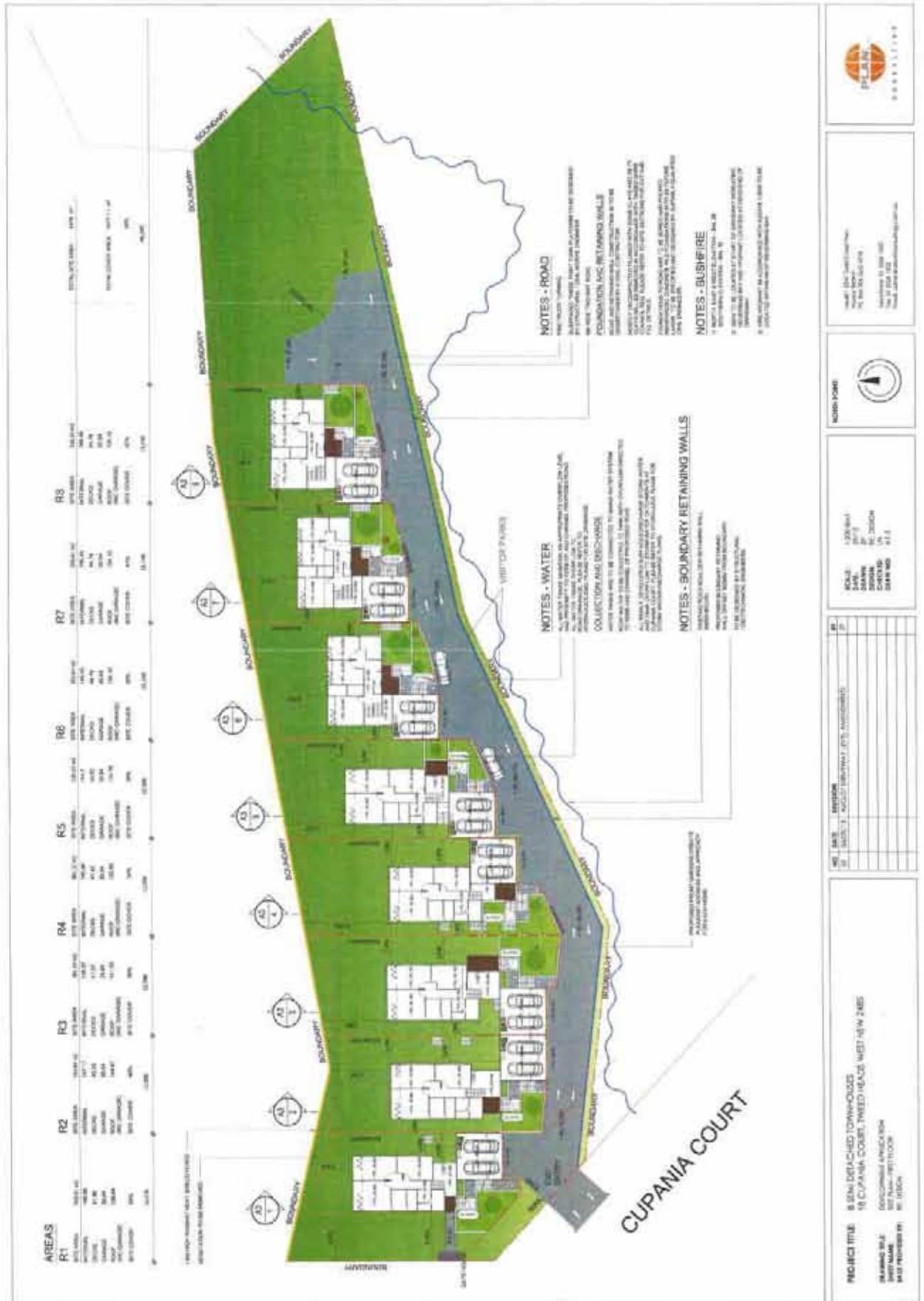
Lot 4 DP 801038

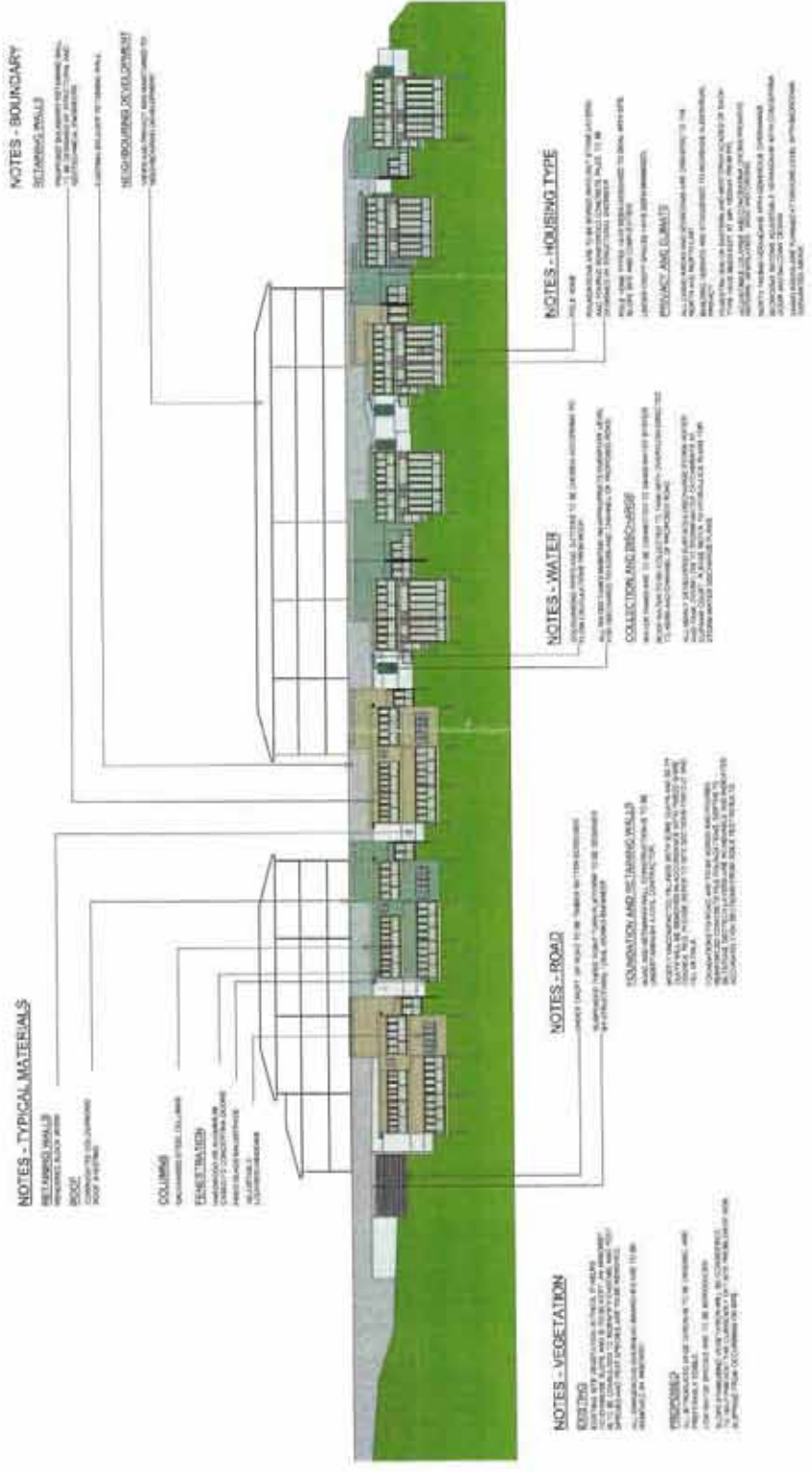
No. 18-20 Cupania Court, Tweed Heads West

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council does not represent or warrant expressed or implied, whether in relation to accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability including without limitation, liability in negligence for all expenses (costs, damages (including interest or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way, and for any losses, whether or not caused by the general public and it is to be regarded as not an advertisement. A "Bad Data Fee" may apply and be made by call 07 9372 1000. This information is provided on the disclaimer contained on the back of this map.</small></p>	<p><small>Call 07 9372 1000 Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 50 100 150 200 m 1:10,000</small></p>	<p><small>Civil and Cultural Centre 3 Havelock Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 9470 2400 / 1300 292 872 F (02) 9470 2428 W www.tweedshire.gov.au E planning@tweedshire.gov.au</small></p> 
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DEVELOPMENT/ELEVATION PLANS:







NORTHERN ELEVATION 1:200

PROJECT BILL: 5/04 BRACHES JOHN-COLES
 18 CUPARA COURT (WEST) RDW 2485
DRAWN BY: BRACHES & COLES
CHECKED BY: BRACHES & COLES
DATE FINISHED BY: BRACHES & COLES

SCALE: 1:200
DATE: 12/11/13
PROJECT: 18 CUPARA COURT (WEST) RDW 2485
DRAWING NO.: 10/13

NOTES:

BY:

DATE:

REVISION:

PROJECT BILL: 5/04 BRACHES JOHN-COLES
 18 CUPARA COURT (WEST) RDW 2485
DRAWN BY: BRACHES & COLES
CHECKED BY: BRACHES & COLES
DATE FINISHED BY: BRACHES & COLES



WEST ELEVATION (R1) - 1:100



EAST ELEVATION (R1) - 1:100



NORTHERN ELEVATION (R1) - 1:100



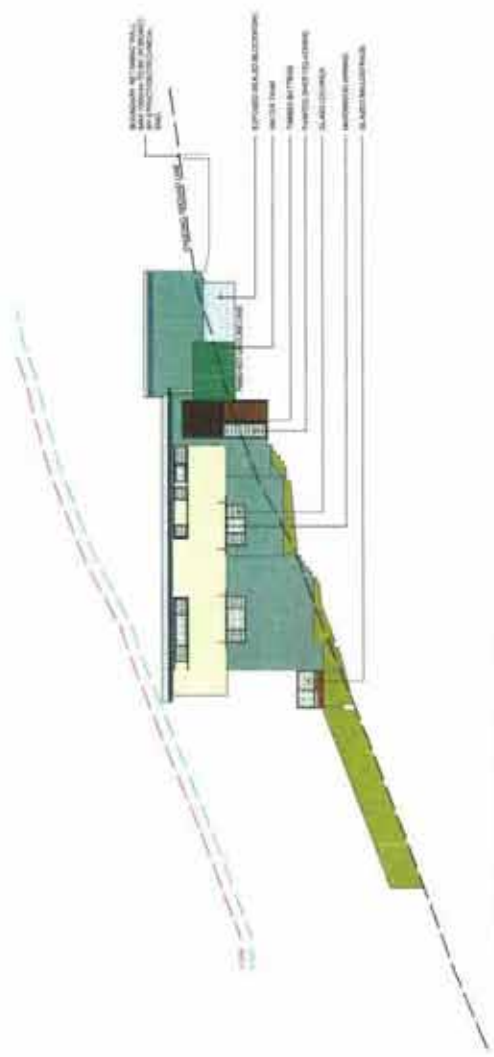
SOUTHERN ELEVATION (R1) - 1:100

NOTES:
 NORTH, EAST & WEST ELEVATION BAL 29
 SOUTHERN ELEVATION BAL 19

<p>PROJECT INFO: 8-8461 DETACHED TOWNHOUSES 18 CUPPHA COURT, WHEELERS WEEPSHAW DEVELOPER APPLICATION REDUCED PLAN - 18/08/13 18/08/13</p>		<p>SCALE: NORTH: 1:100 EAST: 1:100 WEST: 1:100 SOUTH: 1:100</p>		<p>DATE: 18/08/13</p>		<p>BY: [Signature]</p>		<p>FOR: [Signature]</p>	
<p>CLIENT: [Name]</p>		<p>ARCHITECT: [Name]</p>		<p>DATE: [Date]</p>		<p>BY: [Signature]</p>		<p>FOR: [Signature]</p>	
<p>PROJECT NO.: [Number]</p>		<p>DATE: [Date]</p>		<p>BY: [Signature]</p>		<p>FOR: [Signature]</p>		<p>SCALE: [Scale]</p>	
<p>PROJECT NAME: [Name]</p>		<p>DATE: [Date]</p>		<p>BY: [Signature]</p>		<p>FOR: [Signature]</p>		<p>SCALE: [Scale]</p>	



NORTHERN ELEVATION (R2) - 1:100



WEST ELEVATION (R2) - 1:100



SOUTHERN ELEVATION (R2) - 1:100



EAST ELEVATION (R2) - 1:100

NOTES:
 NORTH, EAST & WEST ELEVATION BAL 20
 SOUTHERN ELEVATION BAL 19

PROJECT TITLE: 4264 DETACHED TOWNHOUSE
 18 COPPIN COURT WOODHOLDS WEST NSW 2485
DRAWING DATE: 08/03/2013
DRAWING NAME: ARCHITECTURAL ELEVATIONS
DRAWING NUMBER: 08/03/2013

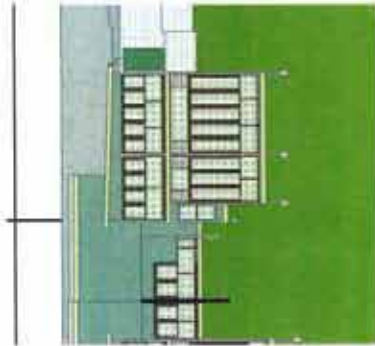
NO.	DATE	REVISION
1	08/03/2013	ISSUE FOR PERMIT APPLICATION
2		
3		
4		
5		
6		
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8		
9		
10		

SCALE:
 ARCHITECTURAL ELEVATIONS: 1:100 (R2)
 SITE PLAN: 1:500 (R2)
DRAWN BY: J. WILSON
CHECKED BY: M. WILSON
DATE: 08/03/2013

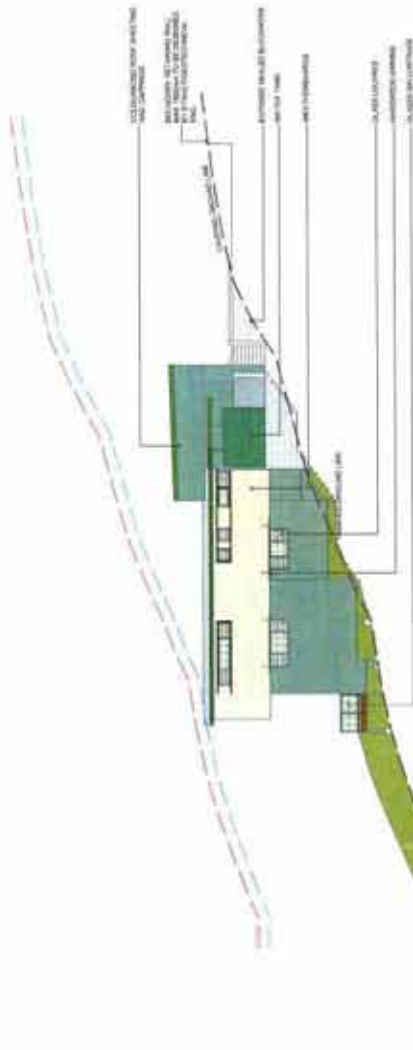


PROJECT NUMBER: 13/00000000000000000000
PROJECT NAME: 4264 DETACHED TOWNHOUSE
PROJECT ADDRESS: 18 COPPIN COURT WOODHOLDS WEST NSW 2485
PROJECT CLIENT: M. WILSON





NORTHERN ELEVATION (R4) - 1:100



WEST ELEVATION (R4) - 1:100



EAST ELEVATION (R4) - 1:100



SOUTHERN ELEVATION (R4) - 1:100

NOTES:
 NORTH, EAST & WEST ELEVATION BAL 29
 SOUTHERN ELEVATION BAL 19

PROJECT TITLE: 885/15 DETACHED 2 CHIMNEY HOUSE
 18 COOLWA COBBLE TYPED HEADS WEST HIGHWAYS
DRAWING NO.: DEVELOPMENT APPLICATION
SHEET NAME: RESIDENTIAL PLAN - INSULANCE &
DATE REVISED: 04/11/2013

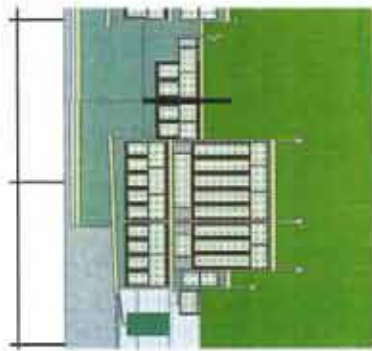
NO.	DATE	BY	REVISION

SCALE: 1:100 (R4)
DATE: 04/11/2013
DRAWN BY: M. J. DODD
CHECKED BY: M. J. DODD
DATE: 04/11/2013

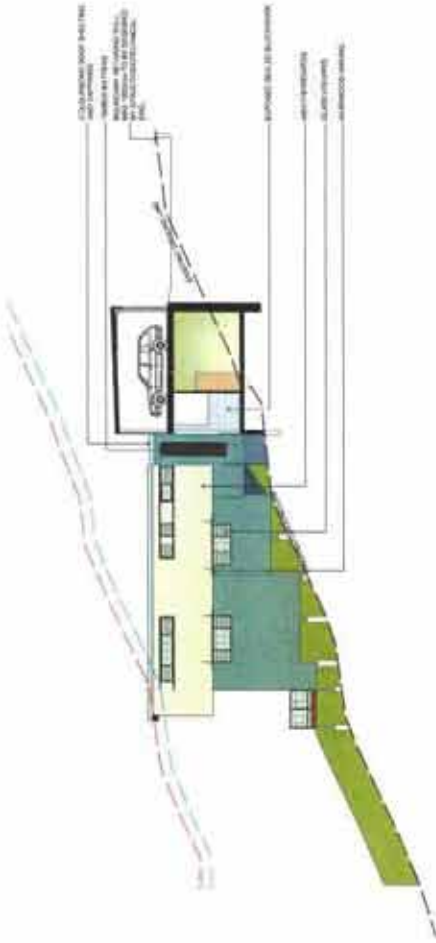


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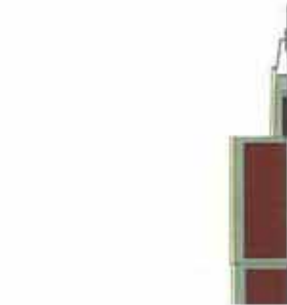




NORTHERN ELEVATION (R5) - 1:100



WEST ELEVATION (R5) - 1:100



SOUTHERN ELEVATION (R5) - 1:100



EAST ELEVATION (R5) - 1:100

NOTES:

NORTH, EAST & WEST ELEVATION BAL 29
SOUTHERN ELEVATION BAL 19

PROJECT FILE: 13141 DETACHED TOWNHOMES
18 CUPRANA COURT, TWEED HEADS WEST NSW 2485
DRAWING FILE: DEVELOPMENT APPLICATION - RESIDENTIAL - TOWNHOMES
SHEET NAME: RESIDENTIAL - TOWNHOMES
FILE FOLDER BY: 13141

REV	DATE	DESCRIPTION

SCALE: 1:100 (R5)
DATE: 20/11/13
DRAWN: RICHARD
CHECKED: AUSTIN
JOB NO: 13141



Issue: 2012 Development
No: 13141/13/016
Project: 13141/13/016
Date of Issue: 13/11/13
Project: 13141/13/016





WEST ELEVATION (R6) - 1:100



EAST ELEVATION (R6) - 1:100



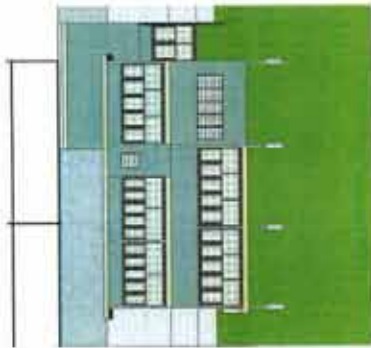
NORTHERN ELEVATION (R6) - 1:100



SOUTHERN ELEVATION (R6) - 1:100

NOTES:
 NORTH, EAST & WEST ELEVATION BAL 29
 SOUTHERN ELEVATION BAL 19

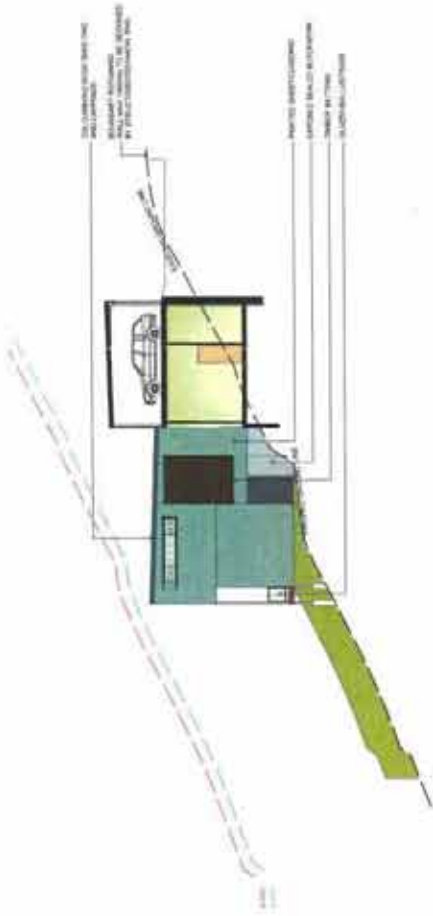
<p>PROJECT TITLE: 8 2/4 UNBUNDLED DOWNHOLDS 18 COPPER COURT, TWEED HEADS FREE-HOLD TARS</p>		
<p>DRAWING TITLE: 2D ARCHITECTURAL ELEVATION SHEET NAME: 2D ARCHITECTURAL ELEVATION DATE PROVIDED BY: 12/12/13</p>		
<p>SCALE: 1:100 (BAL) DATE: 12/13 DRAWN BY: J. JONES CHECKED BY: A. JONES DATE: 12/13</p>	<p>PROJECT NO: 12/13/13</p>	
<p>NO. DATE BY</p>	<p>NO. DATE BY</p>	<p>NO. DATE BY</p>
<p>1 12/13/13 J. JONES</p>	<p>1 12/13/13 J. JONES</p>	<p>1 12/13/13 J. JONES</p>
<p>2 12/13/13 J. JONES</p>	<p>2 12/13/13 J. JONES</p>	<p>2 12/13/13 J. JONES</p>
<p>3 12/13/13 J. JONES</p>	<p>3 12/13/13 J. JONES</p>	<p>3 12/13/13 J. JONES</p>
<p>4 12/13/13 J. JONES</p>	<p>4 12/13/13 J. JONES</p>	<p>4 12/13/13 J. JONES</p>
<p>5 12/13/13 J. JONES</p>	<p>5 12/13/13 J. JONES</p>	<p>5 12/13/13 J. JONES</p>
<p>6 12/13/13 J. JONES</p>	<p>6 12/13/13 J. JONES</p>	<p>6 12/13/13 J. JONES</p>
<p>7 12/13/13 J. JONES</p>	<p>7 12/13/13 J. JONES</p>	<p>7 12/13/13 J. JONES</p>
<p>8 12/13/13 J. JONES</p>	<p>8 12/13/13 J. JONES</p>	<p>8 12/13/13 J. JONES</p>
<p>9 12/13/13 J. JONES</p>	<p>9 12/13/13 J. JONES</p>	<p>9 12/13/13 J. JONES</p>
<p>10 12/13/13 J. JONES</p>	<p>10 12/13/13 J. JONES</p>	<p>10 12/13/13 J. JONES</p>



NORTHERN ELEVATION (R7) - 1:100



SOUTHERN ELEVATION (R7) - 1:100



WEST ELEVATION (R7) - 1:100



EAST ELEVATION (R7) - 1:100

NOTES:
 NORTH, EAST & WEST ELEVATION BAL 29
 SOUTHERN ELEVATION BAL 19

PROJECT TITLE 8 SEMI DETACHED TOWNHOUSES
 15 CUPUNA COURT, THREE HEADS WEST NSW 2468
 DRAWING TYPE DEVELOPMENT APPLICATION
 USER NAME ARCHITECT PLAN - REFERENCE 7
 DATE REQUESTED BY 16/08/2013

NO.	DATE	REVISION	BY
1	16/08/2013	ISSUED (PRELIMINARY) CHANGES	SP

SCALE:
 NORTH 1:100 BAL
 EAST 1:100
 WEST 1:100
 SOUTH 1:100
 CROSS SECTION 1:1
 EXISTING 1:1
 DEMO 1:1
 PLANS 1:100



ARCHITECT
 JOHN F. COOPER ARCHITECTURE
 15 CUPUNA COURT
 THREE HEADS WEST NSW 2468
 PHONE (02) 9283 4888
 WWW.JFCOA.COM.AU



Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*. Clause 4 further aims to provide a legal basis for the making of a Development Control Plan (DCP) to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities. The proposed development would generally accord with the aims of the plan, providing for a medium density residential use within an area zoned for this purpose.

Clause 5 - Ecologically Sustainable Development

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

Broadly, the subject proposal is considered consistent with the above criteria, and the proposed development is not likely to have significant ramifications for ecologically sustainable development.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 2 (b) Medium Density Residential, the primary objective of which is *‘to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes’*.

The proposed development is considered in keeping with such an objective as it will provide medium density housing on this site.

The proposal is not considered to contribute to any unacceptable cumulative impacts in the community. The proposal is appropriate in terms of scale and

design and is generally in keeping with development in the locality. The development is not considered to have an unacceptable cumulative impact on the Tweed Heads locality or the community as a whole.

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

Clause 11 - Zone Objectives

The zone objectives of the 2 (b) Medium Density Residential zone are:

Primary objective

- to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.

Secondary objectives

- to allow for non-residential development which supports the residential use of the locality.
- to allow for tourist accommodation that is compatible with the character of the surrounding locality.
- to discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.

The proposed development is considered to be consistent with the above objectives, being a medium density residential development on an appropriately zoned site. It is considered that the proposed development achieves an acceptable outcome in terms of avoiding under-utilisation of zoned residential land.

Clause 15 - Essential Services

The subject site maintains required connections to essential services including stormwater, sewerage and water reticulation. The application has been reviewed by Councils Development Engineering Section in this regard and appropriate conditions have been recommended to be attached to any consent with respect to the provision of these services. The proposal is considered to be in accordance with this clause.

Clause 16 - Height of Building

Clause 16 of the TLEP 2000 ensures development is undertaken in accordance with the building height plan. The subject land is identified as being in an area where development of up to three storeys is allowed.

The proposed development will result in a building with a maximum height of approximately 9.3m (Proposed Unit 5). This is classified as a three storey building in accordance with the provisions of this plan and therefore the proposed development is in accordance with Clause 16.

Clause 17 - Social Impact Assessment

This clause relates to social impact assessment, with the objective “*to ensure proper consideration of development that may have a significant social or economic impact*”. Tweed Shire Council Development Control Plan (DCP) A13 requires a social impact assessment for the development of multi dwelling housing

when more than 50 units are proposed. The requirements of DCP A13 therefore do not trigger the need for a social impact assessment and Clause 17 does not apply to the proposed development.

Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP 2000 requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject land is identified as containing Class 5 acid sulfate soil (ASS) area.

Council's Environmental Health Unit has reviewed the proposal and advised the following:

'The site is listed as Class 5 on the ASS planning maps. Given the elevated nature of the site, interception of ASS material or reduction of the water table is unlikely. ASS is not considered a constraint for the proposed works.'

As such, the proposal is considered to be generally acceptable having regard to this Clause.

Other Specific Clauses

Clause 39 – Remediation of contaminated lands

The objective of this clause is:

- *to ensure that contaminated land is adequately remediated prior to development occurring.*

In this regard the subject application was referred to Council's Environmental Health Unit for comment. Comments have been received outlining the following:

'The subject site was historically subjected to small cropping activities. As per EHO comments for development applications DA05/1147 (refused) and DA11/0172 (current owner - withdrawn), various contaminated land investigations including sampling were undertaken. The latest soil sampling undertaken in July 2011 determined that contamination is not considered a constraint.

It is noted that this report is almost two years old however the owner/applicant remains the same.

The applicant has submitted a Statutory Declaration dated 10/9/13 confirming that no fill material or persistent or potentially contaminating chemicals have been stored, mixed, decanted or applied to the site since the latest contamination assessment had been carried out. This is considered satisfactory.'

The proposal is considered to be acceptable having regard to this clause.

Clause 39A – Bushfire prone land

The objective of this clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

In this regard it is noted that the subject development site is entirely mapped as being bushfire prone by virtue of being located within both Vegetation Category 1 and the 30m and 100m vegetation buffer areas.

A Bushfire Threat Assessment Report has been prepared as part of this application by a BPAD-A Certified Practitioner which recommends a number of

conditions of consent to be applied in the event of approval of the application, including with respect to Bushfire Attack Level (BAL) construction, a 1.8m high radiant heat shield constructed to the northern boundary and inner protection areas to be maintained adjacent to the proposed buildings.

An updated bushfire management plan would be required by deferred commencement condition in order to take into account the long term restoration of the area described as 'Environmental Covenant Area - A' and to ensure that required landscape planting will not be impacted by measures necessary to manage bushfire during the long-term operational phase of the development.

The proposal is considered to be acceptable with respect to the objective of this clause, subject to appropriate deferred commencement conditions.

Clause 54 – Tree Preservation Order

Clause 54 of the TLEP relates to tree preservation order and aims to protect vegetation for reasons of amenity or ecology. The subject site is identified as being covered by the 2011 Tree Preservation Order within the koala habitat study area.

As outlined elsewhere in this report, the site will require the removal of vegetation in order to facilitate the proposed development. The subject application has been reviewed by Councils Natural Resource Management (NRM) Unit who have provided adequate measures in terms of deferred commencement requirements, including the provision of rehabilitation and revegetation areas within the site in order to minimise impacts of the proposal in this regard. Having regard to this, the proposal is considered to be in accordance with this Clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause states:

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*

- (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The subject land is designated coastal land and therefore this clause applies. The clause requires the consideration of the NSW Coastal Policy 1997 which seeks to protect, rehabilitate and improve the natural environment; protect and enhance aesthetic qualities and cultural heritage; and to provide for ecologically sustainable human development in the coastal zone.

It is further noted that the proposal will not result in overshadowing of coastal land or impede access to the foreshore.

Given the nature of the proposed development, located away from the coastal foreshore on residential zoned land, it is considered unlikely that the proposal will impact on the coastal values or cultural heritage as discussed elsewhere in this report.

Clause 43: Residential development

The provisions of Clause 43 of the REP relate to residential development on urban zoned land. The provisions state:

- (1) *The council shall not grant consent to development for residential purposes unless:*
- (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposed development is not considered to adversely affect environmental features of the site or generate any unreasonable burden onto the local road network. The residential development proposed is considered to be a reasonable response to the land use character of the area and the 2(b) Medium Density Residential zoning of the site. Recommended conditions of consent have been provided which require adequate erosion and sediment control measures to be implemented. The proposed development is considered to be acceptable having regard to the provisions of this clause.

SEPP No. 55 - Remediation of Land

The subject application has been reviewed by Council's Environmental Health Unit with respect to contamination.

The submitted application notes that as part of a previous application (DA11/0172) over the site, a Contaminated Lands Assessment was submitted to Council where elevated levels of Chromium were identified. Further analysis has followed confirming Chromium levels below the required level. The following has been provided by Council's Environmental Health Unit in this regard:

'The latest soil sampling undertaken in July 2011 determined that contamination is not considered a constraint. It is noted that this report is almost two years old however the owner/applicant remains the same.

As such, it was determined that a Statutory Declaration was required to be submitted by all owners of the subject site confirming that no fill material has been placed on the site and no persistent or potentially contaminating chemicals have been stored, mixed, decanted or applied to the site since site sampling was carried out on 21 June 2011.

The applicant has submitted a Statutory Declaration dated 10 September 2013 confirming that no fill material or persistent or potentially contaminating chemicals have been stored, mixed, decanted or applied to the site since the latest contamination assessment had been carried out. This is considered satisfactory.'

The proposal is considered to be acceptable having regard to this SEPP.

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71. Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

(a) the aims of this Policy set out in clause 2,

The proposal is generally in accordance with the aims of this policy.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

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

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

It is not considered that this application offers any opportunities to provide new public access to the foreshore.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

The proposal is considered suitable, having regard to its nature, scale and permissibility in this area.

- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,**

The proposal will not result in any detrimental impact on the coastal foreshore, given its distance (approximately 370m) from land identified under this SEPP.

- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,**

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,**

The proposal has been reviewed by Council's NRM Unit who have provided recommendations with respect to the provision of a Vegetation Retention Zone to be rehabilitated and revegetated which is to be provided as part of this development. This is considered to adequately provide measures to conserve animals and plants as outlined above.

- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats**

The proposal will not have an adverse impact upon marine environments or habitats.

- (i) existing wildlife corridors and the impact of development on these corridors,**

As advised above, the subject application has been reviewed by Council's NRM Unit who have advised that subject to the provision of an adequate Vegetation Retention Zone to be rehabilitated and revegetated, the proposed development would be considered acceptable. In this regard it is considered that the proposal would be acceptable.

- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,**

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards given its distance from any such land.

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,**

The proposal is not considered to cause any conflict between land-based and water-based activities.

- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,**

The subject development is not considered to impact on any traditional Aboriginal cultural values.

(m) likely impacts of development on the water quality of coastal water bodies,

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

Not applicable to the subject application.

(p) only in cases in which a development application in relation to proposed development is determined:

(i) the cumulative impacts of the proposed development on the environment, and

This development is not considered to have a negative cumulative impact on the environment.

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

Appropriate measures have been adopted in terms of design to minimise energy usage including the orientation of the building to maximise solar access and allow natural light to filter into all dwellings. Building Energy Efficiency Certificates have been prepared for the individual townhouses proposed as part of this application.

It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

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

The Draft Tweed Local Environmental Plan 2012 is applicable to the subject site.

Part 1 Preliminary

1.2 Aims of Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,

- (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
- (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
- (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
- (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible in the subject zone.

1.4 Definitions

Under this Plan, the proposed development would be defined as '*multi dwelling housing*' which means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Note. Multi dwelling housing is a type of *residential accommodation*.

This is permitted with consent in the R3 zone.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned as R3 Medium Density Residential zone under the provisions of this plan.

2.3 Zone objectives and Land Use Table

The Draft TLEP 2012 zones the development area as R3 – Medium Density Residential. The objectives of the R3 – Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

In this zone, the proposed development is permissible with consent. The proposed development is considered to be consistent with the objectives of the zone.

Part 4 Principal development standards

4.3 Height of buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the site has a maximum building height of 13.6m (Control 'N2') as identified on the building height map.

The proposed townhouse development has a maximum height of approximately 9.3m, which complies with the height of buildings allowable in this area. As such, this is considered acceptable and the proposal is not considered to contravene the provisions of this Clause.

4.4 Floor space ratio

This clause relates to the maximum floor space ratio permissible on any given site in order to define the allowable development density, to enable an alignment of building scale with the size of a site and to limit the impact of new development on the existing and planned natural and built environment.

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. For the subject site, a floor space ratio of T- 2:1 is stipulated. The submitted application advises that an eight townhouse development has a floor space ratio of approximately 0.23:1, which would be reduced further through the reduction from eight to seven townhouses. The proposed development is therefore well within the minimum required standards. However, it is considered that site constraints result in the proposed floor space ratio being at a maximum for the subject site.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

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

As outlined elsewhere in this report, the subject site is located away from the public foreshore and is not considered to impact on public access to the coastal foreshore as outlined above. The proposal is considered acceptable in this regard.

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
- (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
 - (ii) *the location, and*
 - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

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

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
- (i) *any significant overshadowing of the coastal foreshore, and*
 - (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development is not considered to impact on the amenity of the public foreshore given its spatial separation from any such land.

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

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

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

The proposed development has been reviewed by Councils NRM Unit who have recommended the provision of a Vegetation Retention Zone to be rehabilitated and revegetated. This is considered to conserve flora, fauna and their habitats as well as native coastal vegetation and wildlife corridors as outlined above.

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

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

This clause goes on to further state:

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

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

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

The subject development is to connect to Council's reticulation sewer system and is considered acceptable in this regard.

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

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

- (d) *the proposed development will not:*
- (i) *be significantly affected by coastal hazards, or*
- (ii) *have a significant impact on coastal hazards, or*
- (iii) *increase the risk of coastal hazards in relation to any other land.*

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

Part 7 Additional local provisions

7.1 Acid sulfate soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. As outlined elsewhere in this report the subject site is located on class 5 acid sulfate soil land. The application has been reviewed by Councils Environmental Health Unit who have advised that '*ASS is not considered a constraint for the proposed works.*'

As such, the proposal is considered to be generally acceptable having regard to this Clause.

7.8 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by protecting native fauna and flora, protecting the ecological processes necessary for their continued existence, and encouraging the conservation and recovery of native fauna and flora and their habitats.

A tract of vegetation to the northern boundary on the subject site is mapped on the Terrestrial Biodiversity Map and as such this clause applies to the proposed development.

Before determining a development application for development on land to which this clause applies, the consent authority must consider:

- (a) whether the development is likely to have:
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

The subject application has been reviewed by Council's NRM Unit who have provided advice with respect to ecological issues on the site and the terrestrial biodiversity mapping which applies to the site. From this it is noted that a Vegetation Retention Zone to be rehabilitated and revegetated is to be provided to the eastern section of the site which would minimise and mitigate any impact arising from the proposed development.

Whilst the proposal would result in the loss of vegetation to the northern boundary, it is considered that this is adequately mitigated by the provision of a Vegetation Retention Zone as outlined above.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

As outlined above, the proposal, subject to amendments required by recommended deferred commencement conditions is considered to avoid and minimise significant environmental impacts, through the provisions recommended by Council's NRM Unit. The proposal is considered to be acceptable in this regard.

7.9 Steep land

This clause applies to the proposed development as the majority of the site is identified as being steep land, under the provisions of this clause. The objectives of this clause are:

- (a) to protect scenic landscape values.
- (b) to protect soils on steep land susceptible to soil erosion.
- (c) to protect rural character and amenity
- (d) to minimise sedimentation and contamination of waterways and water storage facilities.

The subject area is not considered to represent a scenic landscape value of particular significance; furthermore any development on the site would be subject to standard erosion and sediment controls. The proposal is not considered to conflict with rural character or amenity provisions given its location in an urban area. The proposal is considered to generally meet the above objectives.

This clause further states that consent must not be granted to development on land to which this clause applies unless adequate consideration has been given to the following matters:

- (a) *the potential for the development to cause or to increase:*
 - (i) *soil erosion, including erosion caused by vegetation clearing, earthworks, or road construction;*
 - (ii) *contamination of surface and groundwater resources, including contamination caused by use of pesticides, herbicides, fuels and toxic chemicals, intensive horticulture, aquaculture, or intensive livestock agriculture;*
 - (iii) *alteration to surface water flow or groundwater recharge rates;*
or
 - (iv) *adverse impacts on scenic landscape values.*

As outlined above, the proposed development would be subject to standard erosion and sediment controls with respect to the proposal. Council's Environmental Health Unit have reviewed the proposal with respect to contamination, with no issues identified. Adequate provisions have been provided with respect to stormwater and no adverse impacts on scenic landscape values are envisaged, given the sites location in an urban area on land zoned for medium density development.

- (b) *measures to ameliorate or to avoid any adverse impact, including consideration of alternative locations for the development,*

The proposed development has been located on the subject site in close proximity to the area which is accessible by public road in order to mitigate potential impacts with the steep land on the site. In this regard, the proposal is considered to comply with the above.

- (c) *whether the land, or parts of the land, require rehabilitation or reforestation for the purpose of creating a wildlife corridor or to prevent or repair land degradation.*

The proposed development has been reviewed by Councils NRM Unit who have provided requirements for a section of the site to the east to be rehabilitated and revegetated as outlined above.

Having regard to the above, the proposed development is considered to comply with the provisions of this clause.

The subject application is considered to be generally in accordance with the provisions of the Draft LEP and would remain permissible were the draft to be adopted in its current form.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed development relates to a 'townhouse' development under the provisions of this DCP. A detailed assessment of Section A1 Part B is appended to the file. A variation to a number of these controls are outlined below. These variations are generally required due to the steep topography on the site which limits the ability of a compliant medium density development to be established at this location. These variations are addressed below:

Deep soil zone

A variation is sought with respect to controls e. and g. under this section with respect to a front deep soil zone. These controls state:

- e. *Front Deep Soil Zones are to be the width of the site boundary minus the driveway width and the pathway width by the front setback depth.*
- g. *Deep Soil Zones cannot be covered by impervious surfaces such as concrete, terraces, outbuildings or other structures.*

In this instance the applicant has stated that a minor retaining wall is proposed in the front deep soil zone adjoining the driveway. In support of the variation it is noted that a front deep soil zone of approximately 200m² would be provided at this location. The projection of the retaining wall into this setback area is considered to be minor and does not contravene the provisions of this policy.

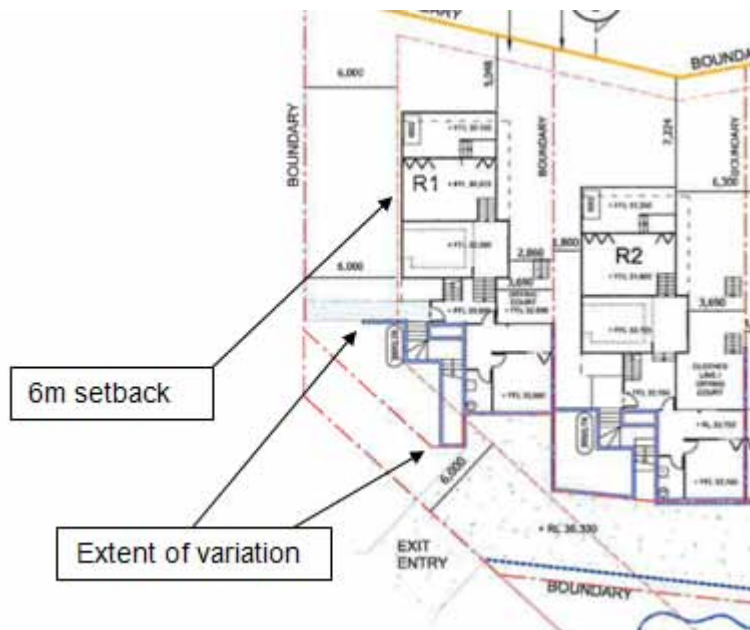


Figure 1: Extent of Front Deep Soil Zone variation

It is considered that the variation meets the objectives of these controls and is considered acceptable in this instance.

Topography, Cut and Fill

The subject site is heavily constrained due to topography, falling steeply from south to north. In this regard the proposed townhouses have been designed to step down the site accordingly, with a single storey element to the elevated southern section and the two storey element to the northern portion of the site.

The submitted application indicates that variations are sought with respect to controls f, g, h and m under this heading. These controls state:

- f. The maximum level of cut is 1m and fill is 1m except for areas under control j (refer to DCP).*
- g. Retaining walls maximum 1.2m.*
- h. Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.*
- m. The top of any battered cut (or retaining wall) and the toe of any battered fill (or retaining wall) is not to be closer than 900mm for cut and 1.5m for fill to any property boundary, where the overall height at any point exceeds 500mm.*

The applicant has requested that Council assess this against the objectives. The following comments are provided in this regard:

'Objectives

- To retain the existing landform.*

The proposed cut and fill effectively retains the existing landform as much as is seen to be practical to provide a site responsive design. The subject site has somewhat steep topographic constraints with large areas of uncontrolled fill being present on site and requires some cut, fill and soil stripping to be proposed in order to form a level internal driveway surface to the south boundary and to prepare a stable site for the proposed development. The proposed cut and fill is considered to be minimal in comparison to the site area. The proposal is compliant with this objective. Council is referred to the Geotechnical report under Appendix E of the SEE for further information regarding the uncontrolled loose fill and site stability.

- To limit the extent of excavation.*

The proposed cut and fill effectively limits the extent of excavation as much as is seen to be practical to provide a stable site for the proposed site responsive development. The subject site is relatively steep with large areas of uncontrolled fill (with depth varying between 0.3m and 2.2m) and requires some cut and fill to be proposed in order to form a level internal driveway surface to the south boundary and to construct a site responsive development on site. The proposed cut and fill is considered to be minimal in comparison to the site area. The proposal is compliant with this objective.

- To moderate the effects of building height and bulk on sloping land.*

The proposed townhouse development is considered to be a site responsive design utilising the sites topography to provide a stepped dwelling construction. The proposed appears as a single storey development from the southern neighbours and an elevated two storey development to the northern neighbours. Technically the proposed is defined as apart two (2) part, three (3) storey developments compliant with the three (3) storey height restrictions of the area. The proposal is considered compliant with this objective.

- To minimise the extent of earth works on residential land and earthworks associated with residential development.*

The proposed earthworks are considered consistent with the topographic constraints of the site to construct the proposed access way and provide a site responsive development. The proposed maintains existing landform within the majority of the site and the proposed cut and fill is considered minimal in the context of the total site area and the uncontrolled loose fill that is required to be removed due to site stability. The proposal is compliant with this objective.

- To ensure that the building design is appropriate for site topographical conditions.*

The proposed building design is considered to be site responsive through the use of elevated townhouses that are of stepped construction coinciding with the form of the land. Some cut and fill is required to provide a level internal driveway to the south boundary and to construct the dwellings. Cut and fill is not proposed to create large flat areas within the site but to provide a level surface for the functionality of the internal driveway, entrance areas into the dwellings and to reduce the height of building elevation in some areas. The proposal is compliant with this objective.'

The information provided with respect to these variations is considered to sufficiently justify the requirement for a variation to the applicable controls in this instance. In order to facilitate a medium density development on a site zoned for such a purpose, and minimise impacts on other A1 considerations, including building height, the variation to the cut and fill controls are considered acceptable. It is noted that the maximum cut demonstrated by the applicant occurs to proposed residence 6 where a maximum level of cut of approximately 1.9m is required.

Height

The proposed development results in proposed variations to the 9m maximum overall building height to units 5, 6 and 8 and the 8.5m wall plate height to units 1, 5, 6, 7 and 8.

It is noted that proposed unit 8 would be deleted from any development on the site through amended plans of development, required to satisfy deferred commencement conditions. As such it is considered that the proposal relates to a variation to the building height of units 5 and 6 and the wall plate heights to units, 1, 5, 6 and 7.

The proposed variation has been addressed in the applicant's DCP A1 variation report with the applicant advising that the proposed variations are due to the sites steep topography and the variation is limited in nature, covering a corner of the

buildings only. Please see Figure 2 below which shows the maximum variation in this regard, evidenced at residence 5.



Figure 2: General extent of height variation

This variation is considered acceptable having regard to both the extent of the variation and the topography of the subject site which limits the site being developed in a medium density manner, for which the site is zoned, without such a variation. The proposal is considered to meet the objectives of this control.

Fences and Walls; Front, Side and Rear

The submitted application requests a variation with respect to control d. This control states:

- d. Front and return fences can be up to maximum height of 1.5m high with a maximum solid fence height of 600mm, above the solid wall the fence is to have a min. openness ratio of 60%.*

Plans have been submitted which demonstrate that to this Cupania Court elevation a fence is provided with a height of approximately 2.5m to the courtyard of residence 1.

It is noted however that the internal access driveway proposed as part of this application is at a higher level than the adjacent townhouses and to this elevation this fence would have a height of approximately 1.4m. It is considered due to the topography of the site, that whilst this fence is not compliant to the west site boundary, this would provide an acceptable fence to other elevations. It should also be noted that the block wall below the fence is to be treated which will mitigate any potential visual impact arising from the non-compliant fence. The proposal is not considered to cause a significant impact and the variation is considered justified in this instance.

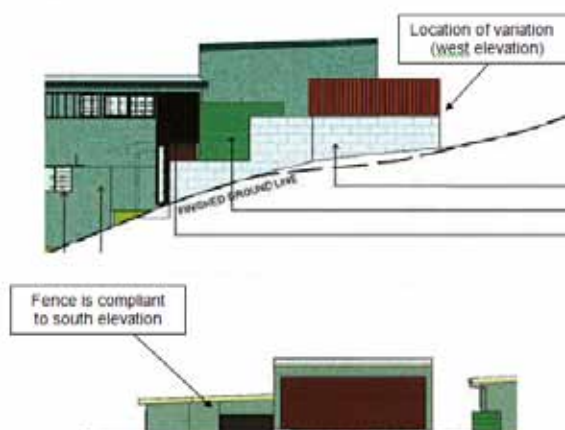


Figure 3: Variation to Front fence controls

Having regard to the information outlined above and the detailed DCP A1 assessment appended to this application, the proposed development is considered to be acceptable having regard to the controls contained in this policy.

DCP Section A2 – Site Access and Parking Code

The proposed development is subject to the provisions of DCP A2 with respect to site access and parking. The application proposes vehicular access to be provided from Cupania Court, with an internal driveway with an average width of approximately 6m providing access to individual townhouses. Access to the site is considered acceptable.

Under DCP A2 the following parking requirements apply:

Proposal	Parking rate	Required Spaces
7 x 4 bedroom	2 spaces per 3 or more bed unit	14
	Total for residence	14
	Total Proposed	14
Visitors	1 per 4 units	1.75 spaces
	Total Proposed	2 (adjacent to units 5 & 6, on driveway)
Bicycle	2 per unit	14
	Total Proposed	Adequate bicycle parking available on-site

Based on the above, it is noted that the proposed development is in accordance with the required vehicular parking standards outlined under DCP A2.

The proposed development is considered to comply with DCP A2 subject to the imposition of appropriate conditions of consent with respect to parking and access.

DCP Section A9 – Energy Smart Homes Policy

DCP A9 aims to ensure residential development utilises energy efficient design principles. The applicant has provided *Building Energy Efficiency Certificates for the individual townhouses proposed as part of this application*. The development will also be conditioned to meeting the BASIX requirements during construction

and prior to the occupancy certificate being issued for the property. The proposed development is consistent with the provisions of the DCP.

DCP Section A15 – Waste Minimisation and Management

This DCP aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

A Waste Management Plan has been provided as part of this application which has been reviewed by Council's Waste Management Unit who have raised no concerns with respect to the waste management provisions outlined in this document.

Subject to this, the proposed development is therefore considered to be generally acceptable having regard to the provisions of this DCP.

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

The proposed development does not include any demolition.

Clause 93 Fire Safety Considerations

The subject application was referred to Council's Building Unit who have raised no objections with respect to the proposed development. The following comment is provided in this regard '*No objections subject to the inclusion of the attached BSU conditions.*' The proposed development is considered to be acceptable in this regard.

Clause 94 Buildings to be upgraded

Not applicable to the subject application.

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

Tweed Shire Coastline Management Plan 2005

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

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

The subject site is located approximately 5.5km from the coastal foreshore and is

not identified as having any key management actions under this plan. As such is considered that the proposal would not impact on the provisions of this plan.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located within this area and as such the provisions of this plan are not considered to be impacted by the subject development.

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

The subject site is located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater catchments. The proposed development area is identified as a Urban Functional zone under the provisions of this plan. The proposed development is considered to be acceptable having regard to stormwater discharge from the site and does not contravene the principles of this plan.

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

Context and Setting

The proposal is for a seven townhouse residential development on a site zoned for medium density development. The adjoining property to the south consists of a similar medium density townhouse development with other properties in the surrounding area generally consisting of single dwelling or dual occupancy development. As outlined previously in this report, the site to the north has been developed as a retirement village. The proposed development is considered to be appropriate with the context and setting of the site as well as the general appearance of the area. The proposal is considered to be in keeping with the character of surrounding development.

Construction

The construction of the proposed development will be subject to standard conditions being included on any consent issued. It is noted that Council's Building Unit have reviewed the application and had no objection to its development subject to conditions. The development phase of the proposal will present some interruption to the ambience of the surrounding area but this is temporary in nature and amenity can be adequately protected via conditions.

Geotechnical Stability

The proposed development site has a history of stability issues including uncontrolled filling, landslips on neighbouring properties and landslips throughout the subject site.

It is noted that there is an existing boulder retaining wall to the southern property boundary (uphill). On the southern property boundary is uncontrolled fill, which has potential to undermine the structural integrity of this existing boulder retaining wall.

Four previous geotechnical investigation and slope stability assessments have been submitted to Council, however these did not give Council the confidence that the proposed developments would not affect the existing landslip areas, surrounding land stability and adjoining property located to the south on the

upslope and directly below the proposed development to the north (aged care units).

Information provided through this application has advised that the landslip areas are not located on the subject development site, but rather on the adjoining allotment to the north. In this regard, information has been provided outlining that attempts to gain landowners consent to undertake works with respect to landslip on the adjoining allotment have not been successful. As such it is proposed to install a protective wall along the northern property boundary to provide geotechnical stability to the proposed development and to prevent any upslope advancement of any down slope (off-site) slip failures. As such, the proposal does not rely upon the down slope property to maintain its stability.

A "Report on Slope Stability Analysis & Retention Wall Modelling" prepared by Douglas Partners (DP) dated September 2013 was submitted. This report presents the results of global slope stability analysis and soil-structure interaction analysis undertaken for a proposed soldier pile wall to be constructed near the northern property boundary to ensure stability of the subject site. The proposed soldier pile wall comprises of 0.45m diameter concrete piles at 1.2m horizontal centres, 6m long.

Council's Development Engineering Section have noted that the Report demonstrates that the site will remain stable in the long term and that stability is not contingent upon works carried out (or any future slope failures) on the neighbouring property to the north (i.e. down slope), which cannot be controlled by the applicant. The proposed development is considered to be acceptable in this regard as the applicant cannot prevent the land below the northern property boundary from potentially failing, but the submission received indicates that the proposed development will not contribute to a failure of the downstream property and it will prevent circumstantial failure of the development if such downslope failure were to occur.

Recommended conditions would be applied to any consent requiring that a detailed report from a suitably qualified Geotechnical/Structural Engineer be submitted confirming that the proposed development will provide adequate geotechnical stability to the proposed development. The proposal is considered to be acceptable with respect to the geotechnical issues on the subject site.

Stormwater Drainage

A Stormwater Management Plan (SWMP) has been submitted as part of this application. Council's Development Engineering Section has noted that it is proposed for stormwater runoff (including roof-water overflow from tanks associated with each residence) up to the Q100 storm event to be captured by the driveway and directed into a detention tank located underneath the driveway (with capacity of approx 225m³), before being discharged at a designated, controlled flow-rate into the pipe drainage network in Cupania Court. In the event the site is subjected to a much larger storm event such as the Probable Maximum Flood (PMF), the internal driveway has been designed to direct the PMF runoff to the Cupania Court carriageway.

Runoff generated from areas north and east of the proposed dwellings and access driveway, respectively, (as well as some elevated/retained areas between the proposed dwellings) shall be conveyed and discharged offsite as overland flow as per existing conditions.

It is noted that the SWMP is subject to further geotechnical investigation and design to confirm stability of the existing site, retaining and proposed works. As such, a detailed SWMP will be required to be submitted at Construction Certificate application stage by an appropriate condition of consent.

The subject development will result in a decrease in the stormwater currently sheeting across the site to the adjoining property to the north by virtue of the provision of a detention tank to divert stormwater from the majority of the hard surfaces on the site. In this regard, the proposal is considered to be acceptable.

(c) Suitability of the site for the development

Flora and Fauna

The subject application was referred to Councils NRM Unit for comments with respect to any impact from the proposal on existing flora/fauna in the area.

The vegetation to the north of the site has been recognised as supporting elements representative of an Endangered Ecological Community namely *Lowland rainforest in the NSW North Coast and Sydney Basin and bioregions*.

In consideration of NRM's EEC determination the extent of vegetation removal proposed as part of this application to accommodate the development, manage bushfire and slope stability hazard would likely result in an unacceptable adverse impact on the EEC.

A meeting was held with the applicant's planning consultant at which ecological concerns and potential alternative layout designs were discussed. From this meeting, in principle support was provided for the proposed development subject to the removal of one semi-detached townhouses (No. 8) to the east of the site, and relocation of a suspended three point turn platform to take the position of this townhouse.

The area previously occupied by the suspended three point turn platform is to form part of 'Environmental Covenant A - Vegetation Retention Zone to be Rehabilitated & Revegetated,' an area of approximately 1,125m² extending to the east side boundary. It is proposed to implement these provisions through deferred commencement approval to allow the applicant time to prepare amended plans to Council officer requirements with respect to this amendment.

Given the support of Councils NRM Unit for the proposal, this application is considered to be acceptable subject to the provision of deferred commencement conditions as outlined above with respect to its impact on flora and fauna in the area.

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

The subject application was advertised for a period of 14 days from 10 April 2013 to 24 April 2013. During this time approximately 66 submissions were received. Many of these submissions were in the form of a duplicated letter. The details of these submissions are outlined below.

Issue Raised	Council Officer Assessment
Council have previously advised the residents of Terranora Valley Village that this application had been denied, in April 2011. The applicant wished to go onto Terranora Valley Village to	Previous applications on the site have not been supported by Council, however this application is a new Development Application and as such

Issue Raised	Council Officer Assessment
<p>undertake work but this wasn't allowed.</p>	<p>is required to be assessed as such.</p> <p>The submitted information has made no reference to undertaking works from an adjoining property and would need the appropriate landowner consent to do this.</p> <p>The issues raised under this submission are not considered to warrant the refusal of the application.</p>
<p>A duplicated objection letter has been submitted by residents of Terranora Valley Village concerned with the 'geotechnical instability of the ground'.</p> <p>The letter advises that these concerns are based on previous engineering reports prepared by the applicant and Council assessment with extracts taken from these reports as follows:</p> <p><u>Council Officer Development Engineering Report (7 Feb 2012)</u></p> <p>Three geotechnical reports were carried out by two different companies on this lot. All three have been rejected as they didn't give Council confidence that the proposed development would not affect existing landslip areas to the north and land stability to properties to the south.</p> <p><u>Douglas Partners Pty Ltd 12 April 2001)</u></p> <p>Existing site (Lot 4 DP 801038) and neighbouring properties to the north and south are most at risk and the adjoining property to the north is very high risk due to slope stability.</p> <p><u>Douglas Partners Pty Ltd (26 October 2011)</u></p> <p>As previously concluded, the development is at 'low' risk of incurring slippage, such as might overflow onto the downslope neighbouring ground beneath the northern boundary of the subject site.</p> <p>No such acceptable risk level, however, is offered for the slopes below the subject development which are presently considered to require</p>	<p>The latest engineering report submitted by the applicant details that a protective barrier system (Soldier Wall) along the northern property boundary (within the subject site) is proposed which will isolate the development from any impact if any down-slope slope stability failures occurs.</p> <p>It is noted that the submitted information indicates that landslip/ slip areas are located outside the subject site, on the allotment to the north and as such cannot be addressed by the applicant without landowners consent from the retirement village, which has not been forthcoming.</p> <p>This has been reviewed by Councils Development Engineering Section who have advised the following:</p> <p><i>This solution does not fix the down-slope stability issue, but it does not exacerbate the problem and isolates the development from such failure if it occurred. This proposal addresses the concern.</i></p> <p>The proposal is not considered to warrant refusal based on the issue raised in these submissions.</p>

Issue Raised	Council Officer Assessment
<p>remediation and are presently considered to be at a relatively high risk of failure, without any impact from the proposed development works on the subject site.</p> <p>Should these lower off site slopes be allowed to further slip and creep, then such movement has some potential to affect the proposed development.</p>	
<p>The last landslip was over 10 years ago and the Village “resolved this problem” by having trees densely planted” above their retaining wall. Concerns are raised that damage may occur to the roots of these trees in order to provide a retaining wall for the subject development allotment.</p>	<p>A recommended condition of consent has been provided which requires all development works to be undertaken so as not to impact on any vegetation on the adjoining property. A report to this effect is to be provided to Council prior to the issue of a construction certificate for the subject development.</p>
<p>Drainage – Concerned with the impact on downstream village.</p>	<p>The application has been reviewed by Councils Development Engineering Section with respect to drainage, with the proposal considered acceptable in this regard. Specifically, the following comment has been provided:</p> <p><i>The application has undertaken an analysis of the existing drainage network in Cupania Court to determine that it has spare capacity in the order the order of 0.270m³/s. As such it is proposed to provide on-site stormwater detention (in the order of 225m³) to capture as much of the site as possible, including upstream catchments that currently grade through the site (up to the Q100 storm event) to detain runoff from the site and to control discharge into the existing pipe drainage networks in Cupania Court. This reduces considerably the catchment that currently drains to the north as sheet flow to the retirement village.</i></p> <p><i>Due to topographical constraints only the portion of the site below the proposed dwellings and a catchment to east of the</i></p>

Issue Raised	Council Officer Assessment
	<p><i>development, will continue to drain to the north. This will produce a "no worse or better" stormwater scenario for the downstream property.</i></p> <p>This considered is acceptable and refusal of the application is not warranted in this regard.</p>
<p>Drainage and soil slippage is an ongoing concern from the proposed development site on downslope retirement village, causing ongoing problems at expense of the village.</p>	<p>The subject application proposed drainage and geotechnical solutions which are not considered to exacerbate impacts with respect to the issues raised in this submission. The proposal does not warrant refusal in this regard.</p>
<p>Concerns that the developer would be utilising the retirement villages internal private roads for heavy machinery traffic.</p>	<p>The Developer cannot utilise the retirement villages property without their approval and the retirement villages is under no obligation to provide the Developer with that approval.</p> <p>This is not considered to provide a reason to refuse the proposed development.</p>
<p>Impact on units for sale in the Retirement Village if the development was to proceed.</p>	<p>This is not considered to be a valid planning consideration which warrants refusal of the application.</p>
<p>The proposed development will result in the destruction of a natural corridor which currently provides for the movement of animals.</p>	<p>The application has been reviewed by Council's Natural Resource Management Unit who have advised that the proposal would be acceptable subject to the provision of a vegetation rehabilitation and retention zone to the east of the site. The proposal is not considered to warrant refusal in this regard.</p>
<p>Should the application be endorsed, "who will monitor and correct the impact in relation to possible suggested erosion, water impact, fire reduction or hazard growth etc on the slip zone".</p>	<p>The subject application has been reviewed by Councils Engineering Section with respect to impacts arising from the proposal in term of geotechnical stability. In this regard it is noted that the landslip areas are located off the development site. Measures have been provided by the applicant which are considered not to exacerbate landslip from the development site. In this regard the</p>

Issue Raised	Council Officer Assessment
	proposal is considered to be acceptable.
Concern is raised in regards to responsibility where under the heading Borehole and Test Pit Logs, of the Douglas Partner Pty. Ltd., report (dated March 2013) states that "Ideally, continuous undisturbed sampling or core drilling will provide the most reliable assessment".	Recommended conditions of consent would require the subject development to be endorsed by a qualified geotechnical engineer. In this regard the proposal is considered to be acceptable.
The question is raised. "Who decides if further reporting is required?", as the Geotech Report states that "This report is subject to further geotechnical investigation and design to conform stability of the existing site, retaining and proposed work"	This quote has been extracted from the Stormwater Management Plan submitted with the DA, not the Geotech Report. Council officers have reviewed the application with respect to geotechnical concerns and it is considered that subject to appropriate conditions of consent, the proposal is acceptable with respect to this.
The question is raised as to who is liable for comments/statements made in each submitted report.	Reports have been prepared by qualified and accredited engineers and companies. In this regard, if the information provided in these reports is incorrect, this becomes a legal question as to disputing the information contained within the reports. As advised elsewhere in this report, it is noted that the submitted reports have been reviewed by Councils Engineering section who have advised that subject to appropriate conditions of consent, the proposal would be acceptable.
Do Council insist on receiving a copy of insurance undertaking by Caller Enterprises, to cover damage to all concerned adjacent properties, should the worst case scenario happen?	As advised elsewhere in this report, Council officers have reviewed the proposal and advised that subject to appropriate conditions of consent, the development is considered acceptable. In this instance. A bond/insurance would not be required specifically through this consent, however it is considered that appropriate indemnity insurance is required by the relevant companies which undertaken work on the site.
Who will take responsibility for any damage caused to adjacent properties, including the northern side or the	This submission does not outline the kind of damage envisaged, however it is considered that if there is any

Issue Raised	Council Officer Assessment
landslip strip, should the development be approved, during and after the sale of the properties at 18 - 20 Cupania Court?	breach of consent conditions or civil liberties, that the person or company making the breach would be responsible.
An objection is raised to the "lack of evidence, in the volume of reports, that there will be an undertaking of sensitivity and protection for the water dragons, frogs, lizards, bush turkeys, snakes, the occasional kangaroo and the abundant bird life that inhabit the property and the land slip strip between properties.	As advised elsewhere in this report, the application has been reviewed to the satisfaction to Council's NRM Unit from an environmental perspective, with this unit also undertaking an assessment of the site. Recommended conditions of consent have been provided with respect to habitat management. This is not considered to warrant refusal of the application.
An objection is raised to the "lack of evidence in relation to the northern side or landslip strip, for the care of the existing land and the flora, which will be affected as retaining walls and barriers are erected."	Recommended conditions of consent are to be applied to any consent with respect to geotech stability and environmental habitat which have been provided by Council's Engineering Section and NRM unit. These are considered to adequately address the concerns and refusal is not warranted in this regard.
Will the building of retaining walls and drainage be maintained wholly within the development site and a safe distance away from the edge of the land slip strip?"	The latest Geotechnical Report concludes that the landslip areas occur outside of the subject site and all proposed works are confined to be within the subject property.
Will there be machinery and digging on the land slip strip causing damage to the trees, land and possibly animals?"	The identified landslip areas occur outside of the subject site and all works are confined to be within the subject property. The proposal will result in the removal of vegetation, however this has been reviewed by Council's NRM unit who have provided in-principle support subject to the implementation of a revegetation and rehabilitation area.
Will there be an environmentally sensitive site supervisor / building manager on site to ensure that a duty of care is undertaken	A recommended condition of consent provided from Council's NRM Unit requires the provision of a Habitat Restoration Plan for the subject site prior to any works being undertaken to the satisfaction of Council officers. It is considered that this would outline the required monitoring to be undertaken

Issue Raised	Council Officer Assessment
	in associated with this proposal.
The objection is raised that the heavy machinery associated with the development will damage the surrounding road network.	A recommended condition of consent has been provided in this regard, requiring any damage to public infrastructure to be rectified.
Additional units would increase echo of noise of the units already in existence. Also issues raised with respect to building noise.	The development site is located in an urban area which is zoned for residential development. The application has been reviewed in terms of noise by Council's Environmental Health Unit who have raised no issue in this regard. Appropriate conditions of consent have been provided with respect to building noise. It is not considered appropriate to refuse the subject application based on this comment.
How is the applicant to access the site?	The application proposed access via Cupania Court, which is a public road.
If the development application has been rejected in the past, why would it be O.K. now?	As advised elsewhere in this report, this is a new application and as such is required to be assessed on its merits. The application will only be considered for approval if it has satisfactorily addressed all of the applicable issues.
The concern is raised in regards to the development's potential to impact on privacy to the lower residents.	The proposed development has been reviewed with respect to DCP A1 and it is considered that the proposal meets the required standards with respect to visual privacy, given the spatial separation between units in a medium density environment. Furthermore, a landscaping plan would be required in order to further mitigate any potential privacy concerns. Therefore, this issue is not considered to warrant refusal.
Concern has been raised about the intended 1.5m retaining wall planned for the southern boundary of the development site, including its potential impact on the existing Boulder Retaining Wall in the neighbouring property to the south, located at a higher level.	<p>The application has been reviewed by Councils Engineering section, with the following advice provided;</p> <p><i>This wall has now been located a minimum of 900mm as per Council policy from the property boundary and appropriate drainage is to be provided. The consent will be condition</i></p>

Issue Raised	Council Officer Assessment
	<p><i>accordingly to ensure the structural integrity of the exiting Boulder Retaining Wall and the proposed wall is not jeopardised.</i></p> <p><i>If the application is approved, it will be conditioned such that a detailed Geotechnical Report is submitted and endorsed by Council (prior to lodgement of a Construction Certificate application) to confirm the designs complies against Council's Design Specification D6 – Site Regrading. In addition to providing height and offset provisions, Section D6.06A ensures the design takes into consideration any existing retaining walls (i.e the existing, Boulder Retaining Wall to the south and (if applicable) the existing sleeper retaining wall to the north and that appropriate, supporting documentation is submitted with the Construction Certificate application.</i></p> <p>The proposal is considered to be acceptable having regard to this issue.</p>
<p>A resident of the residential property to the south has requested accurate offset distances between their existing Boulder Retaining Wall and the wall planned for the development and is concerned that this area will not be able to be maintained if the lower wall is constructed as proposed.</p>	<p>The proposed wall will be located a minimum of 900mm from the property boundary as per Council development standards. This is considered to be acceptable with respect to Council policy.</p>

It is considered that the proposal does not warrant a recommendation for refusal having regard to the issues raised through the public exhibition period, as assessed above.

(e) Public interest

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

OPTIONS:

That Council:

1. Approves the development application subject to recommended conditions of consent;
or
2. Refuses the development application for specified reasons.

Council officers recommend Option 1.

CONCLUSION:

The assessment has had regard for the issues raised by the public submissions, Council's Natural Resource Management Unit, Development Engineering Section, Environmental Health Unit and Building Unit. As a result, the proposed development is considered to be acceptable, subject to the changes recommended by Council staff through deferred commencement conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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31 [PR-CM] Development Application DA13/0174 for a Re-Subdivision of 34 Existing Lots into 62 Proposed Lots at Lots 341-349 DP 1162588 & Lots 368-375 DP 1162588 Seaside Drive; Lots 376-383 DP 1162588 & Lots 395-403 DP 1162588 Nautilus Way, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0174 Pt1



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
-

SUMMARY OF REPORT:

Council has received a development application for a 62 lot re-subdivision to be carried out over four stages at Seaside City. The applicant advises that the proposal is in response to current market conditions and continues the process of re-subdividing the Seaside City allotments to achieve viable densities within the area.

The subject site is formed by a total of 34 allotments, all of which are cleared and vacant lots. The proposed lots will have areas ranging from 453m² to 648.1m². The subdivision was originally created in the 1920s and has constructed in a similar format to that of the adjoining Casuarina and Salt developments. The realisation of these parcels of land (known as Seaside City) is attributed to development application DA05/1464 for the carrying out of works for land clearing, bulk earthworks, construction of roads and other services that was approved by the NSW Land & Environment Court on 16 March 2007. The applicant advises that these works have been fully completed (relative to staging), with the predominance of the approved lots having been created and fully serviced.

A Section 96 modification application has been received in conjunction to this development application for DA05/1464 that seeks amendments to Condition 1.8A - Stage 1, Part B of the development consent that refers to the staging of civil works, construction of roads, water and drainage infrastructure and has been assessed in conjunction with this development application.

The proposed subdivision relates to lots that are nominated as 'Coastal Housing' under Section B11 - Seaside City of Council's Development Control Plan (DCP).

The application was notified to surrounding properties for a period of 14 days from Monday 13 May 2013 to Monday 27 May 2013. Four submissions (two of which were identical from two separate parties) were received and forwarded to the applicant for consideration. The matters raised within these submissions are detailed further within this report.

Council Officers have reviewed the submitted information and a formal request for further information was sent to the applicant on 14 June 2013 in relation to traffic and stormwater management, sewer reticulation, parks and ecological matters. A response to the Council's information request was received on 23 October 2013. Council Officers have reviewed the submitted information and it is considered that the applicants have generally addressed the outstanding issues. Matters relating to the staging and construction of open space and completion of the approved viewing platform are addressed within this report and shall be dealt with via appropriate conditions of the consent.

On the basis of the relevant heads of consideration it is considered that the application may be approved with a number of recommended conditions of consent.

This application has been reported to Council for determination in accordance with the delegations as it seeks approval for more than 50 residential allotments.

RECOMMENDATION:

That Development Application DA13/0174 for a re-subdivision of 34 existing lots into 62 proposed lots at Lots 341-349 DP 1162588 & Lots 368-375 DP 1162588 Seaside Drive; Lots 376-383 DP 1162588 & Lots 395-403 DP 1162588 Nautilus Way, Kingscliff be approved subject to the following conditions:

GENERAL

1. This consent authorises a staged subdivision comprising four stages as follows:

- * Stage 1 - 8 existing lots into 14 new allotments;**
- * Stage 2 - 8 existing lots into 14 new allotments;**
- * Stage 3 - 9 existing lots into 16 new allotments;**
- * Stage 4 - 9 additional lots into 18 new allotments.**

The staged development as outlined above shall be completed in accordance with the Statement of Environmental Effects except where amended by the applicants additional information dated 18 October 2013 and Plan Nos:

- Seaside City Subdivision Plan - Part 01 (Stage 1 and Stage 2); and**
- Seaside City Subdivision Plan - Part 02 (Stage 3 and Stage 4)**

Prepared by Planit Consulting and dated November 2012.

[GEN0005]

2. Subject to Condition No. 7, the subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

4. Sewer manholes are present on this site. The manholes are not to be covered with soil or other material.

Should adjustments be required to the sewer manhole/s, then an application shall be made to Council's Community and Natural Resources Division for approval of such works.

[GEN0155]

5. All streets must comply with Council's Subdivision Design Specification D1 as Access Streets.

[GENNS01]

6. The installation of all embellishments (public amenities, seating, playground equipment and the like) are to be completed in Park 2 (Northern Park) to the satisfaction of Council once an Occupation Certificate is issued for 13 dwellings.
7. The proponent must provide an appropriate level area for the play equipment within Park 2 (Northern Park) with a minimum fall of 1:100.
8. The developer must provide an appropriate bank guarantee or cash contribution equivalent to the value of items (playground equipment and the like) that are not being initially installed in Park 2 (Northern Park), once an Occupation Certificate is issued for 13 dwellings, as detailed within Condition No. 70.
9. The proponent is advised that the use of *Melaleuca quinquernervia* as a street tree is not acceptable and shall be substituted with an appropriate species to the satisfaction of the General Manager or delegate officer. It is acceptable as an open space tree.

10. [GENNS02]

10. The works required in DA05/1464.15, condition 1.8(A)j and condition 3.22A are to be completed to the satisfaction of the General Manager and his delegate prior to the issue of a subdivision certificate.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.

[PCC0055]

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

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

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

[PCC0275]

13. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the

first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

14. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

15. Prior to the issue of a Construction Certificate for civil works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations*

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

16. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.

- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

17. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be designed to withstand loading from vehicles during construction and operation of the development.
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

18. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) **The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.**
- (b) **Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".**
- (c) **All exposed areas are to be sprayed with a dust suppression material such as "Hydromulch" "Dustex" or equivalent immediately once work activities have been completed. All haul roads shall be regularly watered.**
- (d) **All dust generating activities are to cease when the average wind speed exceeds (35 km/h). The applicant shall be responsible for providing calibrated wind meter on site monitoring speeds. This data must be produced to Council on request.**
- (e) **Sediment fence wind barriers shall be provided every 30m intervals for the entire work site.**
- (f) **Provide a 1.8m high Hessian fence or similar around the perimeter of the site.**

[PCC1155]

19. **A dilapidation report detailing the current condition of the adjacent buildings and infrastructure is to be prepared and endorsed by a qualified structural engineer. The report is to be submitted to the Principle Certifying Authority prior to the issue of the Construction Certificate.**

A second dilapidation report is to be prepared by a suitably qualified person at the completion of the works to ascertain if any structural damage has occurred to the adjoining and adjacent buildings, infrastructure and roads. The report is to be compared with the first report and recommend a course of action to carry out repairs if required. The report is to be submitted to Council.

[PCCNS01]

20. **A detailed plan of landscaping for all proposed street tree planting is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan of landscaping shall be in accordance with Tweed Shire Council Standard Drawing S.D.701 (Sep 13 Rev D) 'Tree & Shrub Planting' and contain no noxious or environmental weed species. The plan of landscaping will include a minimum of 80% of total plant numbers comprised of local native species. Further, due to the coastal location trees that have a maximum final height of 10m only are to be selected. The landscaping is to be carried out in accordance with the approved details.**

21. **A detailed plan of landscaping for all other soft landscape works within parks and other landscaped areas, separate to the proposed street tree planting, is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan of landscaping shall contain no noxious or environmental weed species and with a minimum of 80% of total plant numbers comprised of local native species. The landscaping is to be carried out in accordance with the approved details.**

[PCCNS01]

2. Prior to the issue of the Construction Certificate for DA13/0174, the applicant is required to submit a landscape plan to Council detailing the proposed embellishments to be constructed/installed within Park 2 (Northern Park) for approval. Any items not being installed from the previously approved Edaw Landscape Plans must be itemised with a value added to determine an appropriate bond value. The landscape plan will include (but not be limited to) details of public amenities to be constructed (toilet facilities, bbq structures, seating, lighting) to ensure appropriate planning of electrical conduits, power supply and other infrastructure. The embellishments within Park 2 will be carried out in accordance with the approved details to the satisfaction of the General Manager or delegate officer.

[PCCNS01]

23. Prior to the issue of a Construction Certificate, a Construction Management Plan shall be submitted and approved by Council. The Plan shall address, but not be limited to, the following matters:

- a) Hours of work.
- b) Contact details of site manager.
- c) Noise and vibration management plan - The vibration management plan is to identify what monitoring measures will be implemented to record vibration impacts to neighbouring properties. A plan shall be provided indicating the location of the vibration devices. The results of the monitoring are to be made to Council upon request.
- d) Traffic and pedestrian management.
- e) Erosion and sediment control.
- f) Construction waste management.

Where the construction work is to be undertaken in stages, the Proponent may, subject to the agreement of the Certifying Authority, stage the submission of the Construction Management Plan consistent with the staging of activities relating to that work.

[PCCNS02]

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

[PCW0005]

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

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

[PCW0025]

26. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate.

[PCW0375]

27. Civil work in accordance with a development consent must not be commenced until:

- (a) a Construction Certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

- (b) the person having the benefit of the development consent:

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

C4: Accredited Certifier - Stormwater management facilities construction compliance

C6: Accredited Certifier - Subdivision road and drainage construction compliance

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

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

Note: For subdivisions creating 5 new allotments or less, OR the value of new public infrastructure is less than \$30,000, then the SWAC may be substituted for

an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.

[PCW0815]

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

[PCW0835]

29. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

[PCW0985]

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

[DUR0005]

31. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

32. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

- A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

- B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

33. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply

with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

34. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

35. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

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

[DUR0995]

37. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

38. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

39. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:

- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

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

[DUR1835]

41. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

42. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, cycleways - formwork/reinforcement
- (h) Final Practical Inspection - on maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final Practical Inspection - on maintenance
- (i) Off maintenance

Sewer Pump Station and Lift Stations Upgrade

- (a) Hydraulics
- (b) Mechanical/electrical

- (c) Commissioning - on maintenance
- (d) Off maintenance

Stormwater Quality Control Devices (other than proprietary devices)

For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media
- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all civil works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

43. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

44. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

45. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

46. All disturbed areas are to be sprayed with a dust suppression material such as "Hydromulch" "Dustex" or equivalent immediately once work activities have been completed. A minimum of 80% grass strike is required for all disturbed areas.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

47. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

48. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

As this lot has not previously been connected to Council's Water Supply and Sewerage Schemes, the following capital contributions in addition to any physical works required to connect the development are required under Section 306 of the Water Management Act and must be paid prior to the release of the subdivision certificate.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Stage 1

South Kingscliff Water Levy:	14 ET @ 292 per ET	\$4,088
Water Capital Contribution:	14 ET @ \$12575 per ET	\$176,050
Sewer Capital Contribution:	14 ET @ \$6042 per ET:	\$84,588

Stage 2

South Kingscliff Water Levy:	14 ET @ 292 per ET	\$4,088
Water Capital Contribution:	14 ET @ \$12575 per ET	\$176,050
Sewer Capital Contribution:	14 ET @ \$6042 per ET:	\$84,588

Stage 3

South Kingscliff Water Levy:	16 ET @ 292 per ET	\$4,672
Water Capital Contribution:	16 ET @ \$12575 per ET	\$201,200
Sewer Capital Contribution:	16 ET @ \$6042 per ET:	\$96,672

Stage 4

South Kingscliff Water Levy:	18 ET @ 292 per ET	\$5,256
Water Capital Contribution:	18 ET @ \$12575 per ET	\$226,350
Sewer Capital Contribution:	18 ET @ \$6042 per ET:	\$108,756

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

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

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

[PSC0165]

49. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's 'Contribution Sheet' signed by an authorised officer of Council.

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

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

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

Stage 1

(a) Tweed Road Contribution Plan:

39 Trips @ \$1186 per Trips **\$46,254**
(\$1145 base rate + \$41 indexation)
S94 Plan No. 4
Sector7_4

(b) Shirewide Library Facilities:

6 ET @ \$838 per ET **\$5,028**
(\$792 base rate + \$46 indexation)
S94 Plan No. 11

(c) Bus Shelters:

6 ET @ \$64 per ET **\$384**
(\$60 base rate + \$4 indexation)
S94 Plan No. 12

(d) Eviron Cemetery:

6 ET @ \$123 per ET **\$738**
(\$101 base rate + \$22 indexation)
S94 Plan No. 13

(e) Community Facilities (Tweed Coast - North)

6 ET @ \$1389 per ET **\$8,334**
(\$1305.6 base rate + \$83.4 indexation)

S94 Plan No. 15

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

6 ET @ \$1860.31 per ET \$11,161.86

(\$1759.9 base rate + \$100.41 indexation)

S94 Plan No. 18

- (g) **Cycleways:**

Plan No. 22 states \$47 per m² for 715m² of cycleway.

This equates to \$84, 012 credit

Minus \$2,682 (DA08/0755) = \$81, 330 credit for works in kind.

Minus \$447 (DA09/0816) = \$80, 883 credit for works in kind.

Minus \$447 (DA09/0822) = \$80,386

Minus \$3,129 (DA10/0283) = \$77,257

Minus \$8,940 (DA12/0393) = \$68,317

Minus \$12,516 (DA13/0174 all stages) = \$55,801

Leaves a credit of \$55,801

Therefore NIL charge

(\$447 base rate + \$0 indexation)

S94 Plan No. 22

- (h) **Seaside City Structured Open Space:**

6 ET @ \$3585 per ET \$21,510

(\$3585 base rate + \$0 indexation)

S94 Plan No. 28

Stage 2

- (a) **Tweed Road Contribution Plan:**

39 Trips @ \$1186 per Trips \$46,254

(\$1145 base rate + \$41 indexation)

S94 Plan No. 4

Sector7_4

- (b) **Shirewide Library Facilities:**

6 ET @ \$838 per ET \$5,028

(\$792 base rate + \$46 indexation)

S94 Plan No. 11

- (c) **Bus Shelters:**
6 ET @ \$64 per ET \$384
(\$60 base rate + \$4 indexation)
S94 Plan No. 12
- (d) **Eviron Cemetery:**
6 ET @ \$123 per ET \$738
(\$101 base rate + \$22 indexation)
S94 Plan No. 13
- (e) **Community Facilities (Tweed Coast - North)**
6 ET @ \$1389 per ET \$8,334
(\$1305.6 base rate + \$83.4 indexation)
S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
& Technical Support Facilities**
6 ET @ \$1860.31 per ET \$11,161.86
(\$1759.9 base rate + \$100.41 indexation)
S94 Plan No. 18
- (g) **Cycleways:**
Plan No. 22 states \$47 per m² for 715m² of cycleway.
This equates to \$84, 012 credit
Minus \$2,682 (DA08/0755) = \$81, 330 credit for works in kind.
Minus \$447 (DA09/0816) = \$80, 883 credit for works in kind.
Minus \$447 (DA09/0822) = \$80,386
Minus \$3,129 (DA10/0283) = \$77,257
Minus \$8,940 (DA12/0393) = \$68,317
Minus \$12,516 (DA13/0174 all stages) = \$55,801
Leaves a credit of \$55,801
Therefore NIL charge
(\$447 base rate + \$0 indexation)
S94 Plan No. 22
- (h) **Seaside City Structured Open Space:**
6 ET @ \$3585 per ET \$21,510
(\$3585 base rate + \$0 indexation)
S94 Plan No. 28

Stage 3

- (a) **Tweed Road Contribution Plan:**
 45.5 Trips @ \$1186 per Trips **\$53,963**
 (\$1145 base rate + \$41 indexation)
 S94 Plan No. 4
 Sector7_4
- (b) **Shirewide Library Facilities:**
 7 ET @ \$838 per ET **\$5,866**
 (\$792 base rate + \$46 indexation)
 S94 Plan No. 11
- (c) **Bus Shelters:**
 7 ET @ \$64 per ET **\$448**
 (\$60 base rate + \$4 indexation)
 S94 Plan No. 12
- (d) **Eviron Cemetery:**
 7 ET @ \$123 per ET **\$861**
 (\$101 base rate + \$22 indexation)
 S94 Plan No. 13
- (e) **Community Facilities (Tweed Coast - North)**
 7 ET @ \$1389 per ET **\$9,723**
 (\$1305.6 base rate + \$83.4 indexation)
 S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
 & Technical Support Facilities**
 7 ET @ \$1860.31 per ET **\$13,022.17**
 (\$1759.9 base rate + \$100.41 indexation)
 S94 Plan No. 18
- (g) **Cycleways:**
 Plan No. 22 states \$47 per m² for 715m² of cycleway.
 This equates to \$84, 012 credit
 Minus \$2,682 (DA08/0755) = \$81, 330 credit for works in kind.
 Minus \$447 (DA09/0816) = \$80, 883 credit for works in kind.
 Minus \$447 (DA09/0822) = \$80,386
 Minus \$3,129 (DA10/0283) = \$77,257
 Minus \$8,940 (DA12/0393) = \$68,317
 Minus \$12,516 (DA13/0174 all stages) = \$55,801

Leaves a credit of \$55,801

Therefore NIL charge

(\$447 base rate + \$0 indexation)

S94 Plan No. 22

(h) Seaside City Structured Open Space:

7 ET @ \$3585 per ET \$25,095

(\$3585 base rate + \$0 indexation)

S94 Plan No. 28

Stage 4

(a) Tweed Road Contribution Plan:

58.5 Trips @ \$1186 per Trips \$69,381

(\$1145 base rate + \$41 indexation)

S94 Plan No. 4

Sector7_4

(b) Shirewide Library Facilities:

9 ET @ \$838 per ET \$7,542

(\$792 base rate + \$46 indexation)

S94 Plan No. 11

(c) Bus Shelters:

9 ET @ \$64 per ET \$576

(\$60 base rate + \$4 indexation)

S94 Plan No. 12

(d) Eviron Cemetery:

9 ET @ \$123 per ET \$1,107

(\$101 base rate + \$22 indexation)

S94 Plan No. 13

(e) Community Facilities (Tweed Coast - North)

9 ET @ \$1389 per ET \$12,501

(\$1305.6 base rate + \$83.4 indexation)

S94 Plan No. 15

(f) Extensions to Council Administration Offices
& Technical Support Facilities

9 ET @ \$1860.31 per ET \$16,742.79

(\$1759.9 base rate + \$100.41 indexation)

S94 Plan No. 18

(g) Cycleways:

Plan No. 22 states \$47 per m² for 715m² of cycleway.

This equates to \$84, 012 credit

Minus \$2,682 (DA08/0755) = \$81, 330 credit for works in kind.

Minus \$447 (DA09/0816) = \$80, 883 credit for works in kind.

Minus \$447 (DA09/0822) = \$80,386

Minus \$3,129 (DA10/0283) = \$77,257

Minus \$8,940 (DA12/0393) = \$68,317

Minus \$12,516 (DA13/0174 all stages) = \$55,801

Leaves a credit of \$55,801

Therefore NIL charge

(\$447 base rate + \$0 indexation)

S94 Plan No. 22

(h) Seaside City Structured Open Space:

9 ET @ \$3585 per ET \$32,265

(\$3585 base rate + \$0 indexation)

S94 Plan No. 28

[PSC0175]

50. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Environmental Planning and Assessment Act and the relevant Section 94 Plan.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of the subdivision certificate. The contribution shall be based on the following formula:-

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

where:

\$Con TRCP - Heavy heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PSC0185]

51. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the plan of subdivision is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

52. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

53. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

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

[PSC0825]

55. Prior to the issue of the Subdivision Certificate, if there are any Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent, certification from a Fire Protection Association

Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997.

[PSC0830]

56. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
 - (b) Identify all allotments to be created as dual occupancies.
 - (c) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006" Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.
 - (d) Extinguishment of superfluous Right Of Carriageways that were previously created to provide temporary turning areas for refuse vehicles and the general public, but are now no longer required.
 - (e) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.

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

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

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

[PSC0835]

57. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

58. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and

application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

59. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Sewerage Pump Station
- (e) Compliance Certificate - Drainage

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

60. The six months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

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

[PSC0945]

62. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and gravity sewerage systems installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

63. Prior to the release of the subdivision certificate the proponent shall:
- (a) Dedication of any proposed drainage reserve at no cost to Council.
 - (b) Submit an accurate plan of any proposed drainage reserve to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.

[PSC1075]

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

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

[PSC1115]

65. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of all allotments has been completed.

[PSC1165]

66. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

67. A Subdivision Certificate shall not be issued until all works pursuant to DA05/1464.15 have been completed to the satisfaction of the General Manager or delegate officer.

[PSCNS01]

68. Prior to the issue of the Subdivision Certificate for Stages 1 - 4, Park 2 (Northern Park) is to be completed to the satisfaction of the General Manager or delegate officer.

[PSCNS01]

69. Prior to the issue of the Subdivision Certificate for Stages 1 - 4, the viewing platform located on Lot 1971 DP 133919 (as approved under DA11/0026) shall be constructed in accordance with the approved details to the satisfaction of the General Manager or delegate officer.

[PSCNS01]

70. Prior to the issue of the Subdivision Certificate for Stages 1 - 4, details of the value of all items not to be initially installed in Park 2 (the Northern Park) shall be provided to Council. Further, a bond at a rate of 135% of the value of such items will be provided to Council.

[PSCNS02]

REPORT:

Applicant: Richtech Pty Ltd
Owner: Richtech Pty Ltd
Location: Lots 341-349 DP 1162588 & Lots 368-375 DP 1162588 Seaside Drive; Lots 376-383 DP 1162588 & Lots 395-403 DP 1162588 Nautilus Way, Kingscliff
Zoning: 2(e) Residential Tourist
Cost: Not Applicable.

Background:

Seaside City History

Seaside City comprises a 32 hectare parcel of land. Seaside City was approved for subdivision in the 1920s and originally comprised 205 titled lots. In more recent times Richtech Ltd owned approximately 85% of the lots with the remainder individually owned. Cudgen Creek forms the western edge to the Seaside City area and the Pacific Ocean to the east.

The site was never serviced and accordingly development of the site was problematic, specifically given the multiple landowners. The revitalisation of the site occurred when Richtech (the primary land owner) instigated a series of development applications to enable the servicing of the site.

Accordingly, in 2005 Council received and considered three Development Applications (DA05/0775, DA05/0793 and DA05/1464) which all sought approval for the carrying out of works for the purposes of land clearing, earthworks, construction of roads and other services in preparation of the further development of the existing lots. Also, DA11/0026 has approved the construction of a viewing platform adjacent to Cudgen Creek. Works for the viewing platform have not yet been commenced.

DA05/1464 was considered and ultimately determined by the NSW Land & Environment Court on 16 March 2007, while DA05/0775 and DA05/0793 were consequently approved by Council. Since approval of DA05/1464 the applicant has received the relevant Construction Certificates to act on the development consents issued to date. These Construction Certificates service the site with all the essential services (water, sewer, roads, telecommunications, power etc) thus enabling applications like this to be considered on its merits. The applicant advises that these works have been fully completed (relative to staging), with the predominance of the approved lots having been created and fully serviced.

As part of the approvals a site specific Development Control Plan (Tweed DCP Section B11) and site specific S94 Plan (Tweed S94 Plan No. 28) was created in relation to the Seaside City Development. Additionally a specific Planning Agreement was created between Tweed Shire Council and Richtech Pty Ltd to allow Tweed Shire Council to collect funds on behalf of Richtech from non Richtech owned land to contribute to the cost of the bulk earthworks and servicing across the site.

DA08/0755 was the first major re-subdivision (on the western side of Casuarina Way) and sought approval to re-subdivide 18 of the south west allotments into 24 smaller allotments. This application proceeded to the NSW Land & Environment Court where the applicant challenged many of Council's draft conditions of consent. Throughout the proceedings the interpretation of the following documents were challenged:

- Tweed DCP Section B11 Seaside City;
- Tweed Section 94 Plan No. 28 Seaside City;

- Seaside City Planning Agreement (Section 94) between Tweed Shire Council and Richtech Pty Ltd.

All subsequent subdivision applications need to be assessed against the principals established by this Court Case.

DA10/0283 was the second major re-subdivision (again on the western side of Casuarina Way) which sought approval to subdivide the existing 16 allotments into 23 allotments varying in size between 450m² and 744m². This application was approved by Council in September 2010. Also, DA12/0393 comprised the re-subdivision of 33 allotments into 53 proposed allotments (on land immediately to the east of Casuarina Way, for the full length of Seaside City). This application approved the subdivision of the existing 33 allotments which were all approximately 1010m², into 53 allotments varying in size between 502m² and 1304.9m². Of relevance, DA11/0026 approved the construction of a viewing platform over the Cudgen Creek.

Proposal

Council has received a development application for a re-subdivision of 34 existing allotments to 62 allotments, to be carried out over four stages at Seaside City. The applicant advises that the proposal is in response to current market conditions and continues the process of re-subdividing the Seaside City allotments to achieve viable densities within the area. The proposed subdivision relates to lots that are nominated as 'Coastal Housing' under Section B11 - Seaside City of Council's Development Control Plan (DCP).

The application is proposed over four stages (Stages 1 to 4) as shown in the following plan:



Amended staging plan for proposed subdivision (including Park 2 - Northern Park as part of Stages 1 - 4 works) as per the amended information dated 18 October 2013.

Please note the following table outlining the nature of the proposed subdivision:

	Approved lots (credit)	Proposed lots (new)	Additional lots
Stage 1	8	14	6
Stage 2	8	14	6
Stage 3	9	16	7
Stage 4	9	18	9

The subject site is formed by a total of 34 existing allotments, all of which are cleared and vacant lots. The proposed lots will have areas ranging from 453m² to 648.1m². Each lot will be capable of accommodating a single dwelling house only as Section B11 of the DCP requires a minimum lot size of 700m² with dual access to accommodate a dual occupancy form of development. All proposed allotments will have road access via Sailfish Way, Seaside Drive or Nautilus Way.

The application does not involve any significant works as DA05/1464 authorised the majority of earthworks, roads and services. DA05/1464 created earthwork peaks within each of the existing allotments to enable these lots to drain from this central spot to both Casuarina Way and Sailfish Way. A Section 96 Modification application has been received in conjunction to this development application for DA05/1464 that seeks amendments to Condition 1.8A - Stage 1, Part B of the development consent that refers to the staging of civil works, construction of roads, water and drainage infrastructure and has been assessed in conjunction with this development application.

The application was notified to surrounding properties for a period of 14 days from Monday 13 May 2013 to Monday 27 May 2013. Four submissions were received and forwarded to the applicant for consideration. The issues raised within these submissions are detailed further within this report.

Council Officers have reviewed the submitted information and a formal request for further information was sent on 14 June 2013. Further information was required in relation to traffic and stormwater management, sewer reticulation, parks and ecological matters. A response to the Council's information request was received on 23 October 2013. Council Officers have reviewed the submitted information and it is considered that the applicants have addressed the outstanding issues.

The site is zoned 2(e) Residential Tourist and is not bushfire prone. The site is also located within the SEPP 71 Coastal Protection Area and accordingly the application has been supported by a SEPP 71 Master Plan Waiver. Accordingly Tweed Shire Council is the lawful consent authority in this instance.

Council's Traffic Advisory Group Advice has also reviewed the proposed development and has advised that despite the submitted Statement of Environmental Effects providing limited information in relation to road access, that the proposed subdivision is considered appropriate subject to all streets complying with Council's Subdivision Design Specification D1 as Access Streets.

Of relevance to this application, whilst outside of the subject allotments, Council officers sought clarification in respect of the embellishment (such as footpaths and seating) of the Cudgen Creek Recreation Area (Park 4) in accordance with the provisions of DCP B11 - Seaside City. Council officers have previously indicated that certain embellishments within Park 4 were no longer appropriate due to the 'remote' location of the park and potential for noise generating uses and vandalism. It was also previously advised that the area has been set aside for ecological restoration and such uses would not be compatible with restoration efforts.

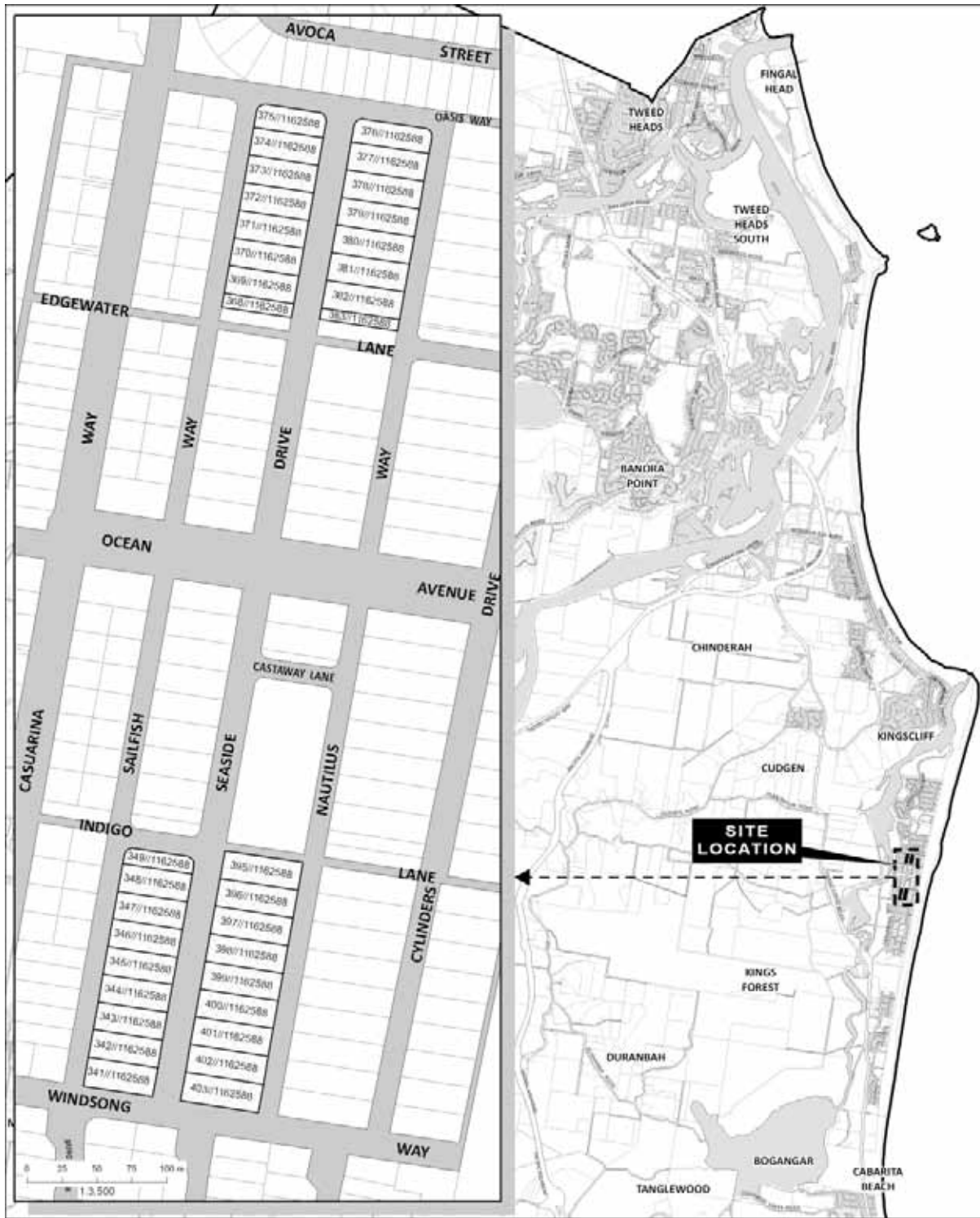
As the area is becoming established with residential development it was considered that there may be some benefit in considering some embellishment (pathways, seating and

formalisation of creek access) within Park 4. However, as the ownership of Park 4 has now been transferred to Council should additional embellishment of this area be deemed necessary in the future, such works would need to be carried out by Council. It is noted however that the developer will remain responsible for vegetation maintenance for a period of five years, ending in November 2015.

A condition will be applied to the consent in respect of the completion of the viewing platform (as approved under a separate development application DA11/0026) adjacent to Cudgen Creek. Conditions will also be applied in respect of suitable embellishment of Park 2 (Northern Park), as detailed further within this report.

On the basis of the relevant heads of consideration it is considered that the application may be approved with a number of recommended conditions of consent.

SITE DIAGRAM:



Locality Plan

Lots 341-349 and 368-375 DP 1162588; Seaside Drive and
 Lots 376-383 and 395-403 D 1162588; Nautilus Way, Kingscliff

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy of this data. Council does not accept any liability for any loss or damage arising from the use of this data. Council is not responsible for any loss or damage arising from the use of this data. Council is not responsible for any loss or damage arising from the use of this data. Council is not responsible for any loss or damage arising from the use of this data.

Created 20/11/2013
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 Boundaries shown should be considered approximate only.

Scale: 1:10,000
 0 1 2 Km
 875,000 @ A4 Portrait
 50 x 71 mm
 LAYER: 0001 - APT (shaded)

Map provided by Geographical Names Service
 Boundaries shown should be considered approximate only
 Map last updated: 2008/01

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DEVELOPMENT/ELEVATION PLANS:





NOTE: STAGING NUMBERS SHOWN ARE RELATIVE TO DA APPLICATION ONLY.
OVERALL STAGING FOR DEVELOPMENT SHOWN IN BRACKETS

SEASIDE CITY, CASUARINA
SUBDIVISION PLAN PART B & C

SCALE: 1:500
DATE: 27/01/13
DRAWN: [Name]
CHECKED: [Name]

PLANNING
CITY OF SEASIDE

NORTH



NOTE: STAGING NUMBERS SHOWN ARE RELATIVE TO DA APPLICATION ONLY;
OVERALL STAGING FOR DEVELOPMENT SHOWN IN BRICKETS

SEASIDE CITY, CASUARINA
STAGING LOCALITY PLAN

SCALE	1:500 (B.A.)	DRAWN BY	SAJ
DRAWN	20	CHECKED	AL
DATE	1/10		
PER	01		

PLANITY CONSULTANTS
10/11 BURNING TREE DRIVE, WILLOWBUSH NSW 1570
TEL: 02 9370 9000
WWW.PLANITYCONSULTANTS.COM.AU

NORTH

Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The aim of the Tweed Local Environmental Plan (TLEP) is to “manage growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”.

The proposed subdivision forms part of a larger master plan (now reflected in the Seaside City DCP) which has undergone extensive assessment and provided a framework for future development of the area.

The proposal is consistent with the land uses approved in the DCP as well as the intent of the subject zoning. Given the extensive planning that has previously occurred for the site, potential impacts on the environment and residential amenity have been adequately considered and the proposal is not considered to compromise the aims of the TLEP.

Clause 5 - Ecologically Sustainable Development

The proposal is not considered to contravene the principles of ecological sustainable development, which were considered as part of the DCP. Previous approvals have required the necessary land dedications along the creek and foreshore to ensure protection of the environment.

The constraints of the site have been considered in greater detail below, and conditions of approval recommend limiting potential impacts on the environment.

Clause 8 - Consent Considerations

Clause 8 1(a) and 8 1(b) are addressed under their specific Clause headings and are deemed to be satisfied.

Clause 8 1(c) requires that the Consent authority considers any cumulative impacts the development may have on the community, locality or catchment. It is not considered that the proposal will result in significant negative cumulative impacts given the various management plans and conditions imposed which are designed to mitigate potential impacts.

The proposed development is considered to be consistent with the DCP B11 and therefore satisfies the character and development intent of the Seaside City area.

Clause 11 - Zone Objectives

The subject site is zoned 2 (e) Residential Tourist and the proposed subdivision is permissible with consent in the subject zone.

The primary objective of the 2(e) Residential Tourist zone is to provide and encourage *'family-orientated tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities.*

The secondary objective is to permit other development associated with a residential/tourist environment and is unlikely to affect the residential amenity or place demands on services beyond the level reasonably required for residential use.

The proposed subdivision is consistent with these objectives as it provides for low to medium residential development (all allotments greater than 450m²) and does not demand any greater level of services beyond that reasonably expected for residential use.

Clause 15 - Essential Services

Clause 15 requires that development does not occur without a water supply, facilities for treatment of sewer and adequate drainage.

The development proposal includes provision for sewer, water and drainage. Council's Engineers have assessed the proposed infrastructure and it is deemed adequate subject to conditions.

Council officers consider that adequate water supply is available and infrastructure has been developed in the previous stages has adequate connections to facilitate the proposed development. A condition will be applied to the consent to ensure that all lots are to include standard house water connections.

As part of the investigation into the requirements for sewerage asset capacity within the Seaside development under DA05/1464, the developer commissioned an investigation by Aurecon to review the sewer loadings and flows in light of the reduction in density in the recently amended DCP B11 - Seaside City. In respect of the proposed subdivision, the applicant was requested to provide an assessment of: the installed Seaside Pump Station capacity; existing external Salt sewer pump stations; the remaining sewerage reticulation; and the second 225mm diameter rising main under Cudgen Creek.

Council Officers have reviewed the submitted information and consider that the reduced flows means that the extension of the sewer rising main (rising north of Longboard Crescent to Point Break Crescent) at Stage 1B is no longer required. It is also considered that modifications are required to pump stations SPS4031 (Bells Boulevard), SPS4032 (Longboard Circuit) and SPS4036 (Seaside) to accommodate the reduced flows and that a third pump station does not need to be installed at SPS4030 (Point Break Circuit).

However, Council Offices consider that there is a requirement to duplicate the rising main under Cudgen Creek to provide backup flow delivery options. In an environmentally sensitive area like Cudgen Creek, it is Council's responsibility to ensure that high risk assets have an acceptable level of redundancy planned for their assets and therefore the duplicate rising main, planned initially to be installed in 2004, must be completed within this development. Further, it is considered necessary that this work is undertaken as part of the first Construction Certificate approval for the development (Stages 1 - 4). Suitable conditions will be applied to the consent in relation to the provision of adequate sewer reticulation to service the proposed development.

Electricity services are currently provided to the area via Country Energy infrastructure, with telecommunications being provided by Telstra services. Suitable conditions will be applied to the consent to ensure that the applicant provides services in accordance with the standards of the supply authority.

Clause 17 - Social Impact Assessment

Clause 17 requires that Council considers a socio economic impact statement (in certain circumstances). The socio-economic impact must identify the likely future impacts of the development on the affected community and analysis the impacts in

terms of magnitude, significance, duration, effect on current and future conditions and community services. The socio economic impact assessment must also determine if impacts will cause a loss of amenity within the locality due to reduction in community services and facilities, as well as assess possible measure for the management or mitigation of likely impacts.

A socio-economic impact assessment is not required (by Council's DCP A13 - Socio-economic Assessment) as not more than 50 residential lots are proposed (28 additional allotments being created). In any case, it is considered that the proposed subdivision would be consistent with the desired future density and character of the area, with all allotments satisfying the minimum lot size criteria of 450m². It is considered that the proposal would be unlikely to impact on matters relating to ecology or amenity. Suitable conditions will be applied to the consent to ensure that the proposed subdivision is carried out in accordance with the relevant provisions.

Clause 35 - Acid Sulfate Soils

The subject site is indicated as Class 4 acid sulfate potential on Council's mapping. This clause requires that an acid sulfate soil (ASS) management plan is provided for works below 2 metres below the natural ground level.

An acid sulfate soil management plan was submitted and considered satisfactory for the parent consent DA05/1464. Council Officers consider that further assessment in respect of ASS is not required.

Other Specific Clauses

Clause 39 – Remediation of Contaminated Land

This clause seeks to ensure that contaminated land is adequately remediated prior to development occurring.

As part of DA05/1464 radiation monitoring and validation requirements were addressed. Council officers consider that all required remediation works have been completed in accordance with the requirements of DA05/1464 and that no further consideration of land contamination is required.

Clause 53C

Clause 53 aims

- (a) to ensure that development of the land to which this clause applies is undertaken within an appropriate planning framework, and
- (b) to ensure that relevant environmental issues are considered before consent is granted to development of the land, and
- (c) to facilitate the development of the land having regard to the subdivision and ownership patterns of the land.

The Clause states that development must not be carried out on land to which this clause applies unless a development control plan has been prepared for the land.

A DCP has been created (Tweed DCP Section B11 - Seaside City) and the proposed development generally conforms to the provisions contained therein.

Matters relating to the subdivision have been considered in relation to the relevant environmental issues, erosion and sediment control, service augmentation and stormwater management. The applicant has advised that the developer has considered the configuration of the lots with recognition of the

historical layout which has achieved a design that would benefit the future residents and the viability of the village centre by achieving realistic densities and varying development forms sought by the market. It is considered that the application satisfies the provisions of Clause 53C.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
 - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

It is considered that the proposed subdivision does not raise any implications in relation to Clause 32B. Public access to the coastal foreshore and matters relating to ecological values has been considered within previous development applications.

The current proposal relates to the re-subdivision of existing and previously cleared land and is therefore unlikely to impact on ecological matters or impact on the visual amenity of the locality. The proposed re-subdivision will not result in any overshadowing of foreshore areas. It is considered that the proposal would be consistent with Clause 32B.

As detailed further within this report, as residential development is now becoming established in the area, it is considered that Park 2 (Northern Park) should be constructed as part of Stages 7-10, as opposed to Stage 14 as originally proposed. The applicant has provided amended details in relation to the provision of parks within the area stating that the Northern Park (Park 2) is to be constructed as part of the Stages 7-10 works by way of footpaths, public facilities and soft landscaping. Suitable conditions will be applied to the consent to ensure that Park 2 is suitably constructed with Stages 1-10 works. Further, an appropriate condition will be applied to the consent to ensure that the viewing platform and track, as approved under DA11/0026, is constructed in accordance with the approved details for residents of the future subdivision.

Clause 43: Residential development

- (1) *The council shall not grant consent to development for residential purposes unless:*
- (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposal is considered to be an acceptable outcome with regard to this clause and is consistent with the previously adopted DCP for the site without adversely affecting the environmental features of the land.

The proposal complies with Council's road standards as previously approved within DA05/1464. Council's Development Traffic Advisory Group (DTAG) have advised that the proposal is considered to be appropriate subject to all streets complying with Council's Subdivision Design Specification D1 as Access Streets.

It is considered that the proposal is consistent with Clause 43.

Clause 81: Development adjacent to the ocean or a waterway

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
- (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
 - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
 - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*
- (2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

The proposed subdivision relates to previously approved allotments intended for residential purposes. It is considered that the proposed subdivision will not impact on previously established foreshore open space nor will it impact on the amenity of the waterway. Matters relating to public access to the foreshore reserve have been considered within previous applications and do not directly relate to the subject application.

It is considered that the proposal is consistent with Clause 81.

SEPP No. 44 - Koala Habitat Protection

The subject site does not comprise any vegetation on the site and therefore does not comprise potential Koala habitat.

SEPP No. 55 - Remediation of Land

As identified above previous approvals have addressed site contamination and Council officers consider that all remediation works have been completed.

SEPP No 71 – Coastal Protection

Clause 18 requires a master plan if the subdivision of land results in more than 25 lots. It is noted that the site is not identified as sensitive coastal land as it is not located within 100m of the mean high water mark of an estuary (Cudgen Creek).

The applicant has provided information addressing the matters in clause 18 of SEPP 71 and considers the proposal to be consistent with the aims of this policy. The applicant has provided correspondence from the Department of Planning (dated 10 April 2013) identifying that the master plan requirement can be waived.

The proposed subdivision will not have any impact on the coastal foreshore or scenic qualities of the NSW coast. It is consistent with the form of residential subdivision and housing development that exists in this area.

Land dedication along the Creek and foreshore have previously been provided in relation to maintaining riparian and foreshore buffers. As detailed within this report, matters relating to the staging and embellishment of these areas have been considered by Council officers. Cultural matters have been assessed and cumulative impacts were taken into consideration in the original Court approval for Seaside City.

The application is considered suitable having regard to SEPP 71.

SEPP Infrastructure 2007

The proposed development was considered a form of traffic generating development (more than 50 lots) and accordingly the application has been forwarded to DTAG. DTAG have considered the application and have advised that the proposed subdivision to increase the number of previously approved allotments (34) to 62 allotments over four stages is considered appropriate, providing all streets comply with Council's Subdivision Design Specification D1 as Access Streets.

It is considered that the proposed subdivision does not raise any implications in respect to the SEPP.

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

The Draft LEP 2013 has been on public exhibition and is yet to be gazetted. The Draft LEP 2013 shows the sites to be located within the R2 Low Density Residential (light pink) zone as shown below:



The objectives of the R2 Low Density Residential Zone are to provide for the housing needs of the community within a low density residential environment and to enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed subdivision would be a permissible form of development and would be consistent with the minimum lot size provisions of 450m² in size, as shown (light green) below:



The proposed subdivision would therefore be consistent with the Draft LEP 2013.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Road design and street networks are discussed in subsection A5 – Subdivision Manual below.

The proposal being for subdivision does not generate any car parking requirements at this stage.

A3-Development of Flood Liable Land

As identified above, the subject land is not flood prone.

A5-Subdivision Manual

The proposed subdivision has been assessed against section A5 and is generally considered to be compliant. Relevant sections of A5 are addressed in more detail below:

A5.4.3 Physical Constraints

The Subdivision Manual (A5) requires that master planning of the site is undertaken to identify physical constraints, including environmental constraints on the development site or adjacent land. The intent is that urban form responds to

the natural landform and drainage system, topographical features and environmental constraints. The proposal is considered to be consistent with the approved DCP for the site, as detailed within this report.

A5.4. Environmental Constraints

A5 also requires that site constraints are identified including contaminated land, landslip, bushfire threatened species, ecological communities, coastal lands, significant vegetation, landscape character, acid sulfate soils, heritage or cultural items.

As detailed within this report, this application relates to the subdivision of existing allotments that have been cleared of vegetation and have been previously outlined for residential development. These matters have been addressed within previous applications over the subject land and it is considered unlikely that the proposal will raise any significant considerations with this regard.

A5.4.7 Storm Water Runoff, Drainage, Waterways and Flooding

As previously detailed the site is not flood prone and is not located in close proximity to waterways. The proposed development does not reduce or impact on the existing and previously approved buffers however it will result in an increased intensity of the development by increasing the number of allotments.

Council officers requested further clarification in relation to stormwater management to illustrate that the proposed re-subdivision of 34 lots into 62 lots will have an impact on the approved drainage system. The applicant has advised that the proposed re-subdivision would largely be identical to the previously approved Stormwater Management Plan and the proposal would have minimal impact on the flow and drainage of stormwater on the site.

Council officers consider that the proposed development satisfies the drainage requirements providing that an updated Stormwater Management Plan is submitted and approved prior to the issue of a Construction Certificate and that suitable conditions may be applied to any consent with this regard.

A5.4.8 Urban Structure

The Subdivision Manual seeks to ensure neighbourhood design is walkable, connected and includes an interconnected street network. It also considers that a network of well distributed parks should be provided that offer a variety of safe, appropriate and attractive public open spaces and to ensure a site responsive approach to urban development that avoids unjustifiable changes to the natural landform.

The urban structure has been dictated by the approved Tweed DCP B11. The urban structure is considered suitable to be consistent with the provisions of the DCP.

A5.4.10 Movement Network

This section of the Subdivision Manual seeks to ensure adequate street network and intersection design. The applicant advises that the site is located within a new fully serviced residential area and the traffic, cycling and pedestrian movement elements now exist and have been constructed in accordance with DA05/1464. The applicant considers that these existing facilities and networks are sufficient to accommodate the proposed subdivision.

In relation to traffic management, a traffic management report has not been provided for the proposed subdivision.

The following roads are to be constructed as part of this re-subdivision to service the proposed lots:

- Seaside Drive Ch 0 – 210 and Ch 520 – 733.767 (End);
- Nautilus Way Ch 0 – 210 and Ch 520 - 730;
- Indigo Lane Ch 0 – 60 (End);
- Edgewater Lane Ch 0 – 96.067;
- Oasis Way Ch 730 – 870;
- Windsong Way Ch 755 – 950.

The above roads have been conditioned to be constructed as part of DA05/1464.15 (Stage 2 and 2A works). Temporary cul-de-sac turning areas and associated signage shall be provided to suit a minimum design for refuse vehicles at the end of the roads that will be extended in subsequent stages. Council officers have advised that there will be temporary turning areas constructed with a minimum 150mm pavement with a right of carriageway over the turning area until such a time as the road is extended.

In respect of parking, 33 car parking spaces to be provided within Windsong Way as previously approved. These parking spaces are to be constructed as part of Stage 2 works within DA05/1464.15 (the concurrent Section 96 Modification application). Further, a condition will be applied to this consent (DA13/0174) to ensure that DA05/1464 is to be satisfied prior to the issue of the subdivision certificate for DA13/0174.

A5.4.11 Open Space Network

All park requirements for Seaside City have been approved as part of DA05/1464 and subsequent modifications. The proposed additional allotments do not generate the need for additional parks as the approved parks were based on an ultimate population which this development contributes to. In relation to the staging of public open space provision it was considered that the provision of Park 2 (Northern Park) should be included within Stages 1 - 4 to ensure that adequate provision of open space is available to residents of the area in a timely manner.

The applicant has provided amended details in relation to the provision of parks within the area stating that the Northern Park (Park 2) is to be constructed as part of the Stages 1 - 4 works by way of footpaths, public facilities and soft landscaping. Appropriate conditions will be applied to the consent to ensure that this park is suitably constructed and embellished.

As detailed further within this report (within the assessment of DCP B11 - Open Space), Council Officers consider that embellishments may be required within Park 4 (Cudgen Creek Recreation Area) to avoid regeneration efforts in the area being jeopardised. However, as detailed further within this report, as land ownership of Park 4 has now been transferred to Council, it is considered that should any future embellishments (such as formalised footpaths or seating) be required, that such works would need to be carried out by Council.

A condition will be applied to the consent to ensure that the Cudgen Creek viewing platform is constructed prior to the issue of the subdivision certificate for Stage 1.

It is generally considered that the provision of open space is adequate and in accordance with the DCP.

Table A5-9.4 – Land in Zone 2 (e) Residential Tourist

The proposal complies with the minimum lot size for dwelling houses of 450m². Lot sizes are in the order of 453m² to 648.1m². The proposed allotments are of a regular shape capable of accommodating a building platform with a minimum dimension of 10m x 15m. Further it is considered that the proposed allotments would be capable of accommodating a single dwelling house in accordance with Tweed DCP B11, and where DCP B11 is silent, DCP A1 (Part A) prevails.

A11-Public Notification of Development Proposals

The subject application was notified to surrounding properties for a period of 14 days from Monday 13 May 2013 to Monday 27 May 2013. A total of four submissions were received (two of which are identical from residents of the same property and two were late submissions).

The main concerns raised within the submissions relates to the impact of: increasing the density on the character and amenity of the area; the suggested opening of Riberry Drive, Petral Place and She-Oak Lane onto the Seaside subdivision (and associated traffic problems); and implications of the splitting of the 'river-side blocks' of eroding the character of the area for financial gain at the expense of creating a spacious housing development; parking provision and lack of room for on-street parking to accommodate housing; lack of public parking; lack of provision for additional public services (hospitals, police, schools and the like) to cater for increased densities; and ongoing nuisance of building works in the locality.

The issues raised within these submissions are considered further within this report however it is considered that the proposed development is compliant with the relevant lot size provisions and would be unlikely to have an unacceptable impact on the character or amenity of the Seaside City locality. Further, the proposed subdivision will go some way to increasing the density, viability and affordability of allotments with this area.

A13-Socio-Economic Impact Assessment

It is considered that the proposal does not require a socio economic assessment as the proposal will not result in any unreasonable social or economic impact.

B9 - Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast generally.

B9 sets out the required parking provision of 300 car spaces per kilometre of ocean foreshore for public use. As previously detailed, a total of 33 public car parking spaces are required for beach access. Such spaces will be required to be relocated. Council Officers consider that the proposed locations of public parking spaces are satisfactory.

The proposal is generally consistent with B9 and does not contravene the intended urban structure, centres hierarchy or design principles relating to the

Tweed Coast. The subject allotments are not in close proximity to the riparian buffer zones and will not have any implications in respect of ecological matters.

B11-Seaside City

Section B11 contains the broad strategic framework for Seaside City as a whole in addition to specific precinct controls. The document seeks to create a vibrant and individual community that reflects its subtropical climate and cultural context, to provide residential accommodation at a density that will make a local centre viable at a walkable distance and provide high quality and accessible open space that contributes to the quality of built and natural environments. It also seeks to ensure traffic is managed to ensure safety and quality of life is not impaired.



Extract of DCP B11 - Seaside City - Structure Plan with subject allotments outlined in red

It is considered that the proposed subdivision closely aligns with the provisions of B11 and would be consistent with the desired future character of Seaside City. Given the location of the subject sites within the central portion of Seaside City, the proposal will not impact on the Cudgen Creek riparian buffer zone and the site is not bushfire prone and therefore does not require the preparation of a bushfire management plan. It is noted that no further bulk earthworks are required for the proposed subdivision, other than those works required to augment services.

Council Officers consider that matters relating to stormwater management and infiltration design are acceptable. In respect of proposed roads, it is considered that the proposal would be able to accord with the provisions of Section A5 and Design Specification D1 as Access Streets with all lots having road access. There is no additional requirement for public beach access parking, which is based on a per kilometre of site frontage to the ocean foreshore, as detailed above.

Open Space

Matters relating to open space have been previously considered within previous development applications and the subdivision does not comprise any alterations to the previously approved open space provisions.



Extract of DCP B11 - Seaside City - Open Space, location of parks 2 - 5

The applicant advises that open space provisions for Seaside City have been met under previous approvals and recognises that appropriate Section 94 Contributions may be required and would be placed as a condition of any planning approval.

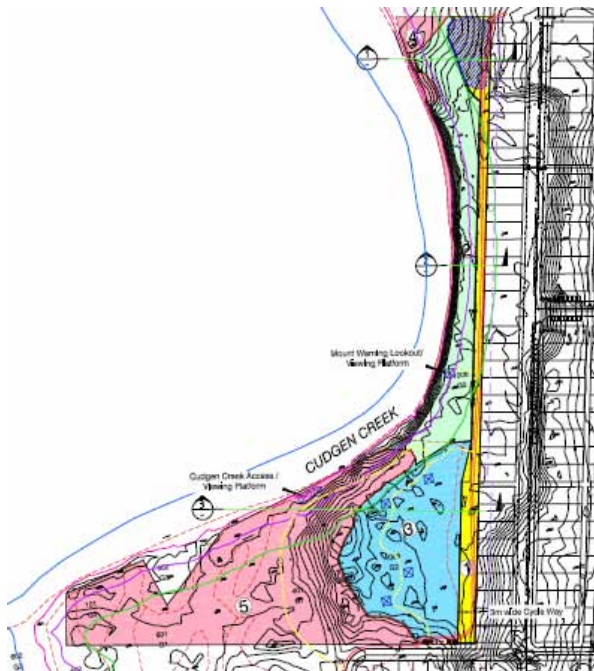
During the assessment of the proposed subdivision and concurrent Section 96 Modification in respect of DA05/1464, matters relating to park provision and embellishments within the Seaside City locality were considered. The applicant was advised that there were requirements to include parks within appropriate stages. Amendments to the Staging Plan have been provided that now incorporates the Northern Park (Park 2 as shown in the above image) to be constructed as part of the Stages 7 to 10 works by way of footpaths, public facilities and soft landscaping. Playground equipment and other hardscape structures are to be deferred until such time as Stages 7-10 have been completed to avoid unnecessary cost on the development by way of vandalism.

Details relating to the specific embellishment of Park 2 (the Northern Park) will be requested from the applicant prior to the issue of a Construction Certificate for DA13/0174 as well as the imposition of an adequate bond for any items not to be installed within the Park. Council Officers consider that the trigger for installing the remaining items to be installed by the developer once the development stages reach a 20 per cent occupation rate (or 13 built dwellings). Appropriate conditions will be applied to the consent with this regard.

Within the assessment of this application Council Officers requested clarification in respect of the Cudgen Creek Recreation Area (Park 4), the location of which is shown in the following imagery:



It is understood that within previous assessments of the suitability of embellishments within Park 4, Council officers considered that the area should be set aside for ecological restoration. It was also considered that due to the 'remote' location of the park, that there was a potential for noise generating uses and vandalism. On this basis, previous embellishments such as park seating were deleted from the most recently approved Vegetation Management Plan in association with DA05/0793 as shown below:



Extract of approved Vegetation Management Plan, please note Park 4 area coloured blue and showing seating (four crossed boxes)



Extract of latest approved Vegetation Management Plan as approved under DA05/0793.01 showing seating has been removed

As residential development is becoming established it is evident that Park 4 is being used informally with trampled access tracks within the park and to the Sandy Beach, as shown in the following images:



Partial concrete track to previously approved viewing platform (under DA11/0026)



Informal access track toward 'Sandy Beach' located within Park 4



'Sandy Beach' area at Cudgen Creek: soil type and vegetation highly vulnerable to erosion



Small car parking area to South of Park 4 (adjoining Miramar development) to provide access to creek access on Cudgen Creek and creek side parkland (Park 4)

It is therefore considered that there may be a requirement for some embellishment of this park to avoid regeneration efforts being jeopardised in the future.

This requirement is consistent with B11 that sets out the following objectives for Park 4:

Park 4:	An area adjacent to Cudgen Creek at the southern end of the development has been identified as a possible casual recreation area and creek access point. The setting is to remain informal with a strong emphasis on protecting the conservation values of the creek and native vegetation. Any development of recreation facilities in this area must be sympathetic to these conservation values. Infrastructure will include a small car park and access path, fencing, seating and park shelters, and creek access. Interpretive information on the flora and fauna of the area should be provided.
Cudgen Creek Recreation Area	The main recreation value of this site is its strong link with Cudgen Creek. In view of this, the site could provide a destination and access point for small non-powered water-craft such as canoes. Design of any furniture or facilities to support this use must ensure any impacts on the creek bank are minimized.

It is considered that some park embellishments may be warranted to mitigate further degradation of the area and to provide formal access paths and access to the creek as well as a link between the previously approved viewing platform and the Sandy Beach area. It is considered that any embellishments within Park 4 need to be sensitively designed with minimal impact to the environment and established vegetation.

However, the applicant has advised that they consider as land ownership of Park 4 has now been transferred to Council, any future works within the park should be carried out at the expense of Council. Council Officers have considered this response and consider that this situation is acceptable, given Park 4 was originally set aside purely for ecological restoration purposes. If Council requires any embellishment of Park 4 this will need to be reported to Council. It is noted that the developer will remain responsible for vegetation maintenance for a period of five years, ending in November 2015.

Coastal Housing

The proposed allotments are nominated for Coastal Housing (as shown in dark green on the above extract of DCP B11 - Land Use Plan).

All lots will be conditioned to require a minimum of 30 per cent landscaped area in accordance with B11 Coastal Housing.

The applicant advises that the proposed subdivision will promote a variation in housing type in accordance with B11 and will allow for sufficient area to allow for the construction of appropriate dwelling types.

It is generally considered that the proposed subdivision is consistent with the desired character of Seaside City and the provisions of B11.

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

Clause 92(a) Government Coastal Policy

As identified above, the proposal is not considered to be inconsistent with the Coastal Policy. It will not result in overshadowing or impacts on the coastal foreshore.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

No buildings are proposed.

Clause 94 Buildings to be upgraded

No buildings are proposed.

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

The proposed subdivision does not raise any matters of significance in relation to any coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The proposed subdivision relates to previously approved allotments that have been cleared of vegetation and raise no implications in respect of the Tweed Shire Coastline Management Plan. The subject allotments are located a minimum of 115m from the 2100 Coastal Hazard Buffer.

Tweed Coast Estuaries Management Plan 2004

The subject allotments are not located in close proximity to Tweed Coast Estuaries and therefore this is not applicable to the proposed development.

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

The subject allotments are not located in close proximity to the Cobaki or Terranora Broadwater Management Plan and therefore this is not applicable to the proposed development.

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

Context and Setting

The proposal is considered compatible with the existing density and character of surrounding development and coastal communities.

Flora and Fauna

Council Officers have reviewed the proposed development and are satisfied that the proposed subdivision would be unlikely to impact on ecological site values. Further, it is considered that the establishment and maintenance of park/reserve areas and any embellishments (such as the Cudgen Creek viewing platform) have been adequately addressed in previous development approvals (being DA05/1464 and DA11/0026 respectively).

However, further clarification was required from the applicant in respect of the creation of additional lots and the retention of existing streetscape trees that may be affected through the construction of driveway crossovers to allow lot access. The applicants have provided a Landscaping Plan that details the location of the proposed street trees and responds to the allotment layout. The applicant advises that the street trees have been positioned on the northern portion of each allotments street frontage and have been chosen to encourage the location of the driveways toward the southern portion of each allotment, giving the opportunity for future dwellings to encourage passive design and maximise available solar access and prevailing sea breezes.

Council officers consider that the proposal would therefore be unlikely to impact on matters relating to street trees or ecological matters, providing suitable tree species and shrubs are utilised. Suitable conditions have been applied to the consent with regard to the submission of a detailed landscape plan for proposed street trees (in accordance with the Tweed Shire Council Standard Drawing S.D.701 'Tree & Shrub Planting') and for parks and other landscaped areas, prior to the issue of a Construction Certificate.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is compatible with surrounding residential development within the Seaside City area.

Topography

All required bulk earthworks will occur as part of DA05/1464. The previously approved earthworks are compliant with Council's policies.

Site Orientation

The configuration of the site allows for the long axis of the proposed lots to be provided on an east/west orientation to allow for increased solar access.

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

The application was notified and advertised from Monday 13 May 2013 to Monday 27 May 2013. Two submissions were received within this period (both identical and from residents of the same property) and two later submissions.

The main concerns raised within the submissions relates to the impact of: increasing the density on the character and amenity of the area (increased number of unit and multi-dwelling development); the suggested opening of Riberry Drive, Petrel Place and She-Oak Lane onto the Seaside subdivision (and

associated traffic problems such as increased traffic and speeding); and implications of the splitting of the 'river-side blocks' and erosion of the character of the area for financial gain at the expense of creating a spacious housing development; parking provision and lack of room for on-street parking to accommodate housing; lack of public parking; lack of provision for additional public services (hospitals, police, schools and the like) to cater for increased densities; and ongoing nuisance of building works in the locality.

The proposed subdivision would satisfy the minimum lot size of 450m² per dwelling and it is considered that the proposed development is compliant with the relevant lot size provisions and would be unlikely to have an unacceptable impact on the character or amenity of the Seaside City locality. Further, the proposed subdivision will go some way to increasing the density, viability and affordability of allotments with this area.

In respect of the 'suggested' opening of Riberry Drive, Petrel Place and She-Oak Lane to integrate with the Seaside subdivision, the applicant has advised that the opening of these roads is not proposed as part of this development application.

In respect of matters relating to the potential impacts of the proposed subdivision upon car parking in the area, the applicant advises that each of the proposed allotments will be equal to or greater than the minimum lot size requirement of 450m² and as such will be able to satisfy the relevant parking criteria for a single dwelling house through the provision of a dwelling house with a double garage and two driveway spaces.

In relation to public car parking for beach access, it has been noted that all of the approved car parks from the previous development consent have been retained. The applicants advise that the occupants of the created allotments would be within walking distance from the beach and therefore this proposal does not require the provision of any additional public car parking.

In respect of the service provision and public facilities, the applicant advises that the Seaside City area has long been earmarked for significant residential development and that the proposal moves away from multi-dwelling and unit development to make provision for lower density residential development in the form of single dwellings. The applicant considers that this will in fact have a lesser demand on Council service infrastructure than the previous development ethos for the area which sought a medium density form of development.

In respect of the inclusion of Park 2 (the Northern Park) as part of the Stage 8 works, the applicant states that this would ensure that the needs of the Seaside residents are tended to until such a time as the development as a whole has been realised and that this would add to the already existing public footpath and bicycle trail that runs the length of the Seaside development area.

In general Council Officers consider that the proposed subdivision would be in keeping with the provisions of the DCP for Seaside City and accord with the minimum lot size provisions within the locality. It is considered that the proposal would be unlikely to result in a detrimental impact to the character of the area or an unnecessary burden on essential services.

(e) Public interest

The application is not considered to be contrary to the general public interest.

Developer Contributions

Contributions have been applied to the proposed subdivision on the basis of the additional allotments created as detailed in the following table:

	Approved lots (credit)	Proposed lots (new)	Additional lots
Stage 1	8	14	6
Stage 2	8	14	6
Stage 3	9	16	7
Stage 4	9	18	9
Total	34	62	28

Section 94 Contributions have been applied to the proposed subdivision for the additional lots created as follows:

Section 94 Plan	Applicable Section 94 Plan (for additional lots in all Stages)
Plan No 4 - TRCP	Applied to 28 additional lots
Plan No 5 - Local Open Space	Not applied as parks are levied within Plan No 28 (Seaside City)
Plan No 11 - Libraries	Applied to 28 additional lots
Plan No 12 - Bus Shelters	Applied to 28 additional lots
Plan No 13 - Cemeteries	Applied to 28 additional lots
Plan No 15 - Community Facilities	Applied to 28 additional lots
Plan No 18 - Council Administration	Applied to 28 additional lots
Plan No 22 - Cycleways	Not applied as sufficient credit is available to the proposed subdivision
Plan No 26 - Shirewide / Regional Open Space	Not applied as per the outcome of DA08/0755 that was debated within the Land and Environment Court
Plan No 28 - Seaside City	Applied to 28 additional lots

Section 64 Contributions have been applied to **all** proposed allotments (62) as there are no existing water or sewer connections in place and therefore no applicable credit available to these allotments.

OPTIONS:

That Council:

1. Approves the application as recommended; or
2. Refuses the application with reasons for refusal.

Council officers recommend Option 1.

CONCLUSION:

Council has received a development application for a 62 lot re-subdivision to be carried out over four stages at Seaside City. The applicant advises that the proposal is in response to current market conditions and continues the process of re-subdividing the Seaside City allotments to achieve viable densities within the area.

The subject site is formed by a total of 34 allotments, all of which are cleared and vacant lots. The proposed lots will have areas ranging from 453m² to 648.1m². The realisation of these parcels of land (known as Seaside City) is attributed to development application DA05/1464 for the carrying out of works for land clearing, bulk earthworks, construction of roads and other services that was approved by the NSW Land & Environment Court on 16 March 2007. The applicant advises that these works have been fully completed (relative to staging), with the predominance of the approved lots having been created and fully serviced.

The proposed subdivision relates to lots that are nominated as 'Coastal Housing' under Section B11 - Seaside City of Council's Development Control Plan (DCP). The proposed lots accord with the minimum lot size provisions of 450m², in accordance with the provisions of the LEP 2000 and the Draft LEP 2013. It is considered that the proposed subdivision would be in keeping with the desired character of the area and would not demand any greater level of services beyond that reasonably expected for residential use.

The proposal is therefore recommended for approval, subject to appropriate conditions to limit and manage the potential impacts arising from the development and to ensure the provision of adequate services and open space embellishments and provision.

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.

32 [PR-CM] Development Application DA13/0385 for a Three Lot Subdivision and Single Dwelling with Attached Secondary Dwelling at Lot 63 DP 804148 No. 3-6 Trutes Terrace, Terranora

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0385 Pt1



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

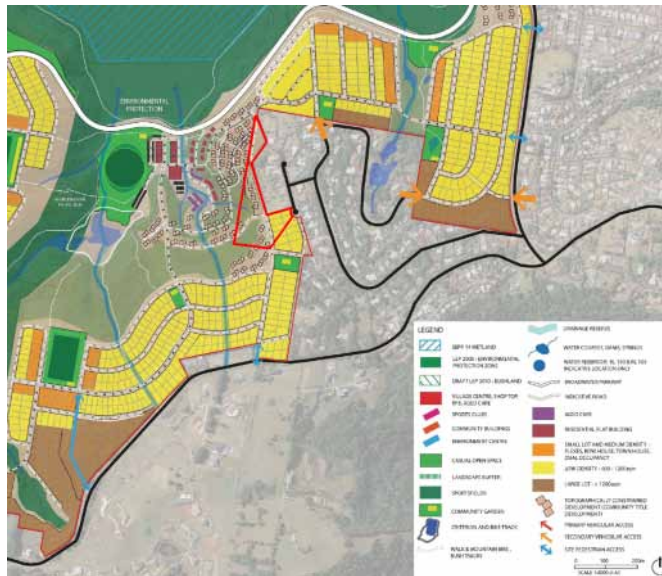
- 1 Civic Leadership
 - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
-

SUMMARY OF REPORT:

On 18 July 2013 Council received a Development Application seeking approval to create a three lot subdivision from one existing allotment currently with an allotment size of 2.769ha. The proposed subdivision seeks approval for proposed Lot 1 with a land size of 1900m² (which will remain vacant with a future house option), proposed Lot 2 with a land size of 3030m² (which will maintain an existing dwelling) and proposed Lot 3 with a land size of 2.2ha. It is also proposed as part of this Development Application to construct a dwelling with attached secondary dwelling over proposed Lot 3.

The existing parcel of land and all the proposed allotments are located within the mapped urban land release area at Terranora known as "Area E" which is one of Council's major urban land release areas.

On 13 December 2011 Council resolved to endorse the Draft Development Control Plan B24 Area E Urban Release Development Code and this DCP shows that the subject site could theoretically accommodate 6 low density residential homes and approximately 13 additional homes under a community title development as shown on the below figure.



Area E Indicative Structure Plan (Figure 2.2 Draft DCP B24 page 22 from the Subdivision Section)

The proposed three lot subdivision is considered an underdevelopment of prime residential land having regard to the endorsed DCP for the site.

Furthermore, the proposed three lot subdivision cannot physically connect to any existing or currently proposed sewer reticulation systems and accordingly the applicants have requested consideration for onsite effluent disposal.

Council's Water Unit staff have reviewed this proposal and have indicated that prior to the Parkes Lane sewerage system being implemented (at a point when it will be economic to do so) development should be refused.

Council's Environmental Health Officer's have reviewed the proposed onsite effluent disposal scheme and are of the opinion that the two smaller allotments would need to be almost entirely cleared of vegetation to ensure viable onsite effluent disposal areas. Council's minimum size criteria for onsite effluent is normally 4000m² allotments and the proposed allotments are only 1900m² and 3030m². Therefore on site effluent is not considered to be a viable option as it results in large urban lots completely cleared of vegetation (contrary to the existing larger allotments in a leafy environment) in an area nominated for higher density residential purposes.

It should also be noted that whilst Council adopted the Draft Development Control Plan B24 Area E Urban Release Development Code Council also specifically required an appropriate framework of Developer Contributions to be in place before final adoption of the DCP.

All lots within "Area E" need to contribute to the costs of sports fields, the proposed road being Broadwater Parkway, environmental restoration and local drainage issues. The costs of such facilities equates to approximately \$40,000 per allotment within Area E based on the densities as set by the DCP. If the densities as per the DCP are not utilised each lot will have to pay even more for these required facilities. In addition each proposed allotment of land would need to pay the normal Developer Contributions for Water and Sewer (\$18,500 per allotment), Roads (\$13,400), and all the normal S94 Contributions applicable to all lots within the Shire (approximately \$10,000). When all of these figures are combined it equates to each lot having to pay \$81,900 in developer contributions per allotment of land. Such contributions are not viable for minor subdivisions and can only be justified when land within Area E is developed to its intended population in a coordinated manner. For example Altitude Aspire which is currently being developed in the eastern portion of Area E proposed 255 allotments of land based on the above developer contributions and they have agreed to

enter into a Voluntary Planning Agreement to cover the site specific contributions listed above. However the proposed under utilisation of land within a planned urban land release area cannot be considered desirable or viable in this location given the constraints of the site. In this instance the applicant has not proposed a mechanism for paying the site specific contributions (\$40,000 per allotment) and accordingly the proposed subdivision is considered premature in light of the rest of the release area.

It is considered that the overarching purpose of the Environmental Planning and Assessment Act 1979 and its associated documents is to secure the orderly development of land. This includes having the necessary infrastructure available in order to service the development. Furthermore, the proposed three lot subdivision is considered to severely undermine the broader strategic plans for the subject site and represents a massive under development of prime residential land. For these reasons the application is recommended for refusal.

RECOMMENDATION:

That Development Application DA13/0385 for a three lot subdivision and single dwelling with attached secondary dwelling at Lot 63 DP 804148 No. 3-6 Trutes Terrace, Terranora be refused for the following reasons:

- 1. The proposed subdivision is not considered to comply with the Environmental Planning and Assessment Act 1979 as it fails to secure the orderly development of land. Furthermore, the proposal is not consistent with the provisions of the Tweed Local Environmental Plan 2000 and in particular Clause 4(a), Clause 8(1)(a), (b) and (c)] and Clause 11, as the subdivision is premature having regard to the broader release area in which it is located and represents an under utilisation of urban land within an approved urban land release area.**
- 2. The proposed subdivision is not consistent with the provisions of Tweed Development Control Plan Part A5 and in particular Section A5.4.13 Infrastructure, as the sites cannot be adequately serviced with reticulated sewer.**
- 3. The proposed subdivision does not satisfy the objectives or density yield provisions in accordance with Tweed Development Control Plan Section B 24 Draft Area E Urban Release Development Code.**
- 4. The application has not been supported with an appropriate funding mechanism to establish an infrastructure regime to cater for the required on site services within the 'Area E' urban land release area. The "Area E Urban Land Release Area" does not have an applicable S94 Contribution Plan and the applicant has not established a suitable funding mechanism to reflect the urban land release area requirements as other development in the release area have had to do.**
- 5. The proposal is premature and would undermine the whole release area. If approved the application would have a negative cumulative impact on the remainder of the release area and potentially set an undesirable precedent.**
- 6. The proposal is not in the public interest as the development would have negative flow on affects for the remainder of the release area.**

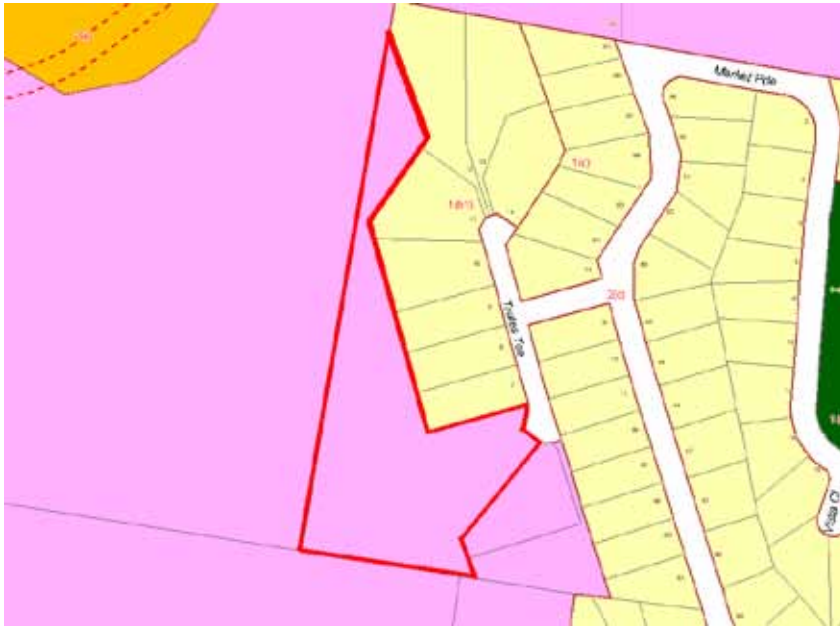
REPORT:

Applicant: Mr T Edser and Mrs C Edser
Owner: Mr Trevor E Edser & Mrs Christine I Edser
Location: Lot 63 DP 804148 No. 3-6 Trutes Terrace, Terranora
Zoning: 2(c) Urban Expansion
Cost: \$829,800

Background:

The Subject Site

The subject site is located on the western side of Trutes Terrace and currently comprises a total area of 2.769 hectares. It comprises one parcel of 2(c) Urban Expansion zoned land.



Lot 63 DP 804148



Subject site within Area E Urban Release Area

The Proposed Development

The application seeks consent to subdivide the 2(c) zoned land (which comprises one allotment) to create three allotments.

The existing allotment comprises:

- Lot 63 DP 804148 with a total site area of approximately 2.769ha.

The proposed layout is as follows:

- Proposed Lot 1 with a total area of 1,900m²;
- Proposed Lot 2 with a total area of 3,030m²
- Proposed Lot 3 with a total area of 22,223m² (2.2223ha)

Lot 1 will remain vacant as part of this proposal. It has been sized to support a single dwelling as part of a future development application. The lot will have direct street frontage to Trutes Terrace.

Lot 2 is a battle-axe shaped lot that will bound the existing dwelling on-site. The access handle arrangement maintains frontage to Trutes Terrace.

Lot 3 forms the residual land and will support the single dwelling with attached secondary dwelling that is proposed as part of this application. An access handle is retained to allow for frontage to Trutes Terrace.

The proposed dwelling with attached secondary dwelling has a maximum total height of 7.5m. It has been designed to incorporate two storeys.

The single dwelling incorporates four bedrooms and three bathrooms with an open plan living, dining and outdoor entertaining area.

The attached secondary dwelling is located on the ground floor and is fitout with a single bedroom and one bathroom as well as its own kitchen and laundry. The attached secondary dwelling has a floor area of 55.7m² and is compliant with the maximum floor area requirements of the Draft LEP 2012 (60m²).

The existing shed on-site is to be relocated onto the created Lot 3. This shed will be ancillary to the proposed dwelling and will be accessible from the driveway.

History

Upon review of the submitted detail Council responded to the applicant with the following information request:

"Area E Urban Land Release Area

The proposed development falls within the mapped urban land release area of 'Area E'. The Tweed LEP (Clause 53 D - Specific provisions for Terranora Urban Release Area E) requires this urban land release area to have a site specific DCP that considered certain aspects of developing the site.

Council has drafted a site specific DCP (Draft Tweed DCP Section B24 – Area E Urban Release Development Code). This DCP has been endorsed by Council but not yet adopted as the infrastructure framework for the release area has not yet been established.

You may be aware that Metricon are progressing with a project in Area E called 'Altitude Aspire'. This project is being assessed by the NSW Department of Planning and the only reason that this proposal is being considered is that the proponents have agreed to enter into a Voluntary Planning Agreement (VPA) with Tweed Shire Council to cover costs associated with Area E in regards to drainage, sports fields, the Broadwater Parkway construction and environmental restoration. The approximate cost for these matters is \$40,000 per lot within Altitude Aspire in addition to the normal infrastructure charges. It is anticipated that all lots within Area E will need to enter into a similar VPA to ensure that adequate infrastructure is provided within the release area.

Therefore, given the subject land is within the Area E Urban Land Release Area and the development cannot proceed without an infrastructure framework and Council is proposing a VPA similar to that drafted for 'Altitude Aspire'. However for an additional 2 lots as proposed by this application seems unviable. Should you wish to proceed with the subject application please advise whether you will be entering into a Voluntary Planning Agreement (the drafting of which would also need to be funded by you). If you are not prepared to enter into this voluntary planning agreement or provide another mechanism for infrastructure contributions within Area E then Council would recommend the withdrawal of the subject application. Alternatively Council will determine the application based on the information provided to date.

Should you decide to proceed with the application despite the comments above you should also be aware of the following issues that are yet resolved within the application:

Sewer Infrastructure

Council's System Engineer has provided the following information in relation to Development Control Plan Section A5:

"The site as it exists is not serviced by Council sewer. On-site treatment exists for the existing dwelling and the Statement of Environmental Effects Report proposes the new lots shall also be serviced by onsite treatment. The Tweed Shire Council Development Control Plan: Section A5- Subdivision Manual requires that land in Zone 2(c) Urban Expansion must provide sewerage services to the lot as specified in Development Design Specification D12. Pressure sewer currently exists up to 30 Parkes Lane (approximately 640 meters via road easement from the proposed development), however the downstream system has capacity limitations and no further extension can be permitted at this stage. The Parkes Lane limited sewer scheme was developed on a strictly limited basis of only permitting an additional 10 ET connection of which 5 are already connected or allocated. This scheme involves an additional charge of \$4320 per ET.

It is intended to provide a sewerage system to the Parkes Lane area when other development within Area E progresses to a point at which it will be economic. Prior to that, the development should be refused unless the developer can demonstrate how the requirement to connect to sewer in the short term can be met."

It is therefore considered that the proposed development does not comply with Council's Development Control Plan Section A5 - Subdivision Manual and as such the applicant is either requested to enter into a VPA as outlined in point 1 or withdraw the proposed development.

Engineering Issues

Council's Development Engineer has provided the following information that is required to be addressed if the applicant continues with the proposed development.

It is noted that the proposal includes a series of retaining walls along and near to the southern boundary of proposed Lot 3. It is requested that the applicant demonstrate how these comply with the requirements of TSC DCP A1 and TSC Development Design Specification D6.

Minor Engineering matters:

The applicant is to be advised of the following minor issues relating to the proposed driveway access, which can either be addressed as part of this submission or alternatively can be covered by consent conditions:

The driveway design nominates an inverted crown whereas the preferred cross-section is a one-way crossfall.

The vehicular footpath crossing from Trutes Terrace is to be evenly splayed.

As a result of the information request further research was done in regards to servicing the site as the applicant requested that onsite effluent service the proposed development until adequate servicing is available. The onsite sewerage design as submitted was considered

to be unsatisfactory for proposed Lot 1 as Council prefers lot sizes of 4000m² to ensure sufficient room for recreational activities.

The applicant outlined that through use of a Voluntary Planning Agreement, the proposed subdivision and lots created would comply with Section A5 of the Tweed DCP 2008 once sewer infrastructure becomes available at reasonable cost.

It was determined that the onsite effluent disposal as designed would require 100% vegetation clearance which lots less than 4000m² would require. Notwithstanding, on site effluent disposal at this location is not be supported by Council Officers given Tweed DCP Section A5. The application was requested to be withdrawn as a result of this.

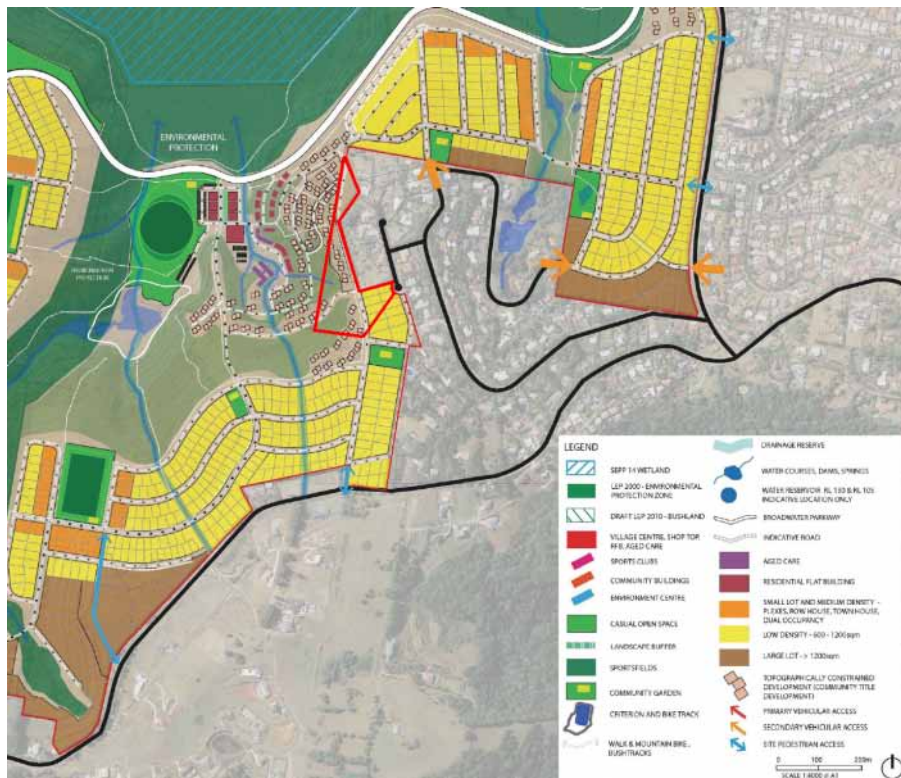
Summary

Having regard to relevant statutory controls in particular Section 79C Clause 1(a)(iii):

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(iii) any development control plan

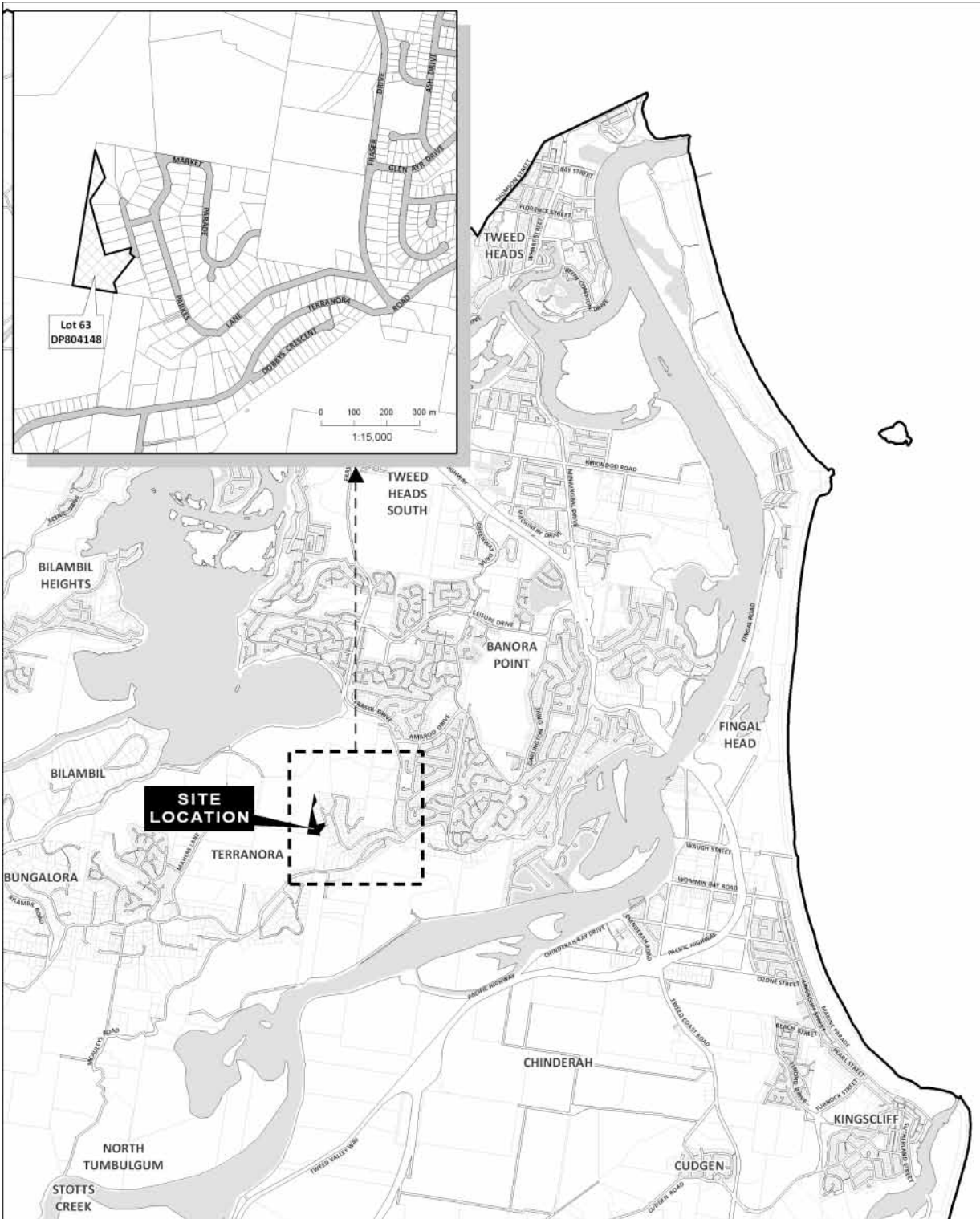
The proposed development is located in the 2(c) Urban Expansion zone which is intended for future urban development. The DCP Structure plan shows the subject site should accommodate approximately six low density residential homes and approximately 13 houses over a community title developments as shown on the figure below. The proposed subdivision is a massive under development and should be refused.



Area E Indicative Structure Plan (Figure 2.2 Draft DCP B24 page 22 from the Subdivision Section)

An assessment against the provisions of the urban subdivision objectives of Council's Development Control Plan Section A5 and Section B24 was deemed appropriate. The proposed development was assessed against the Tweed LEP 2000 and other relevant statutory controls and it was determined that the proposed two lot subdivision is not considered suitable. The proposed development is recommended for refusal.

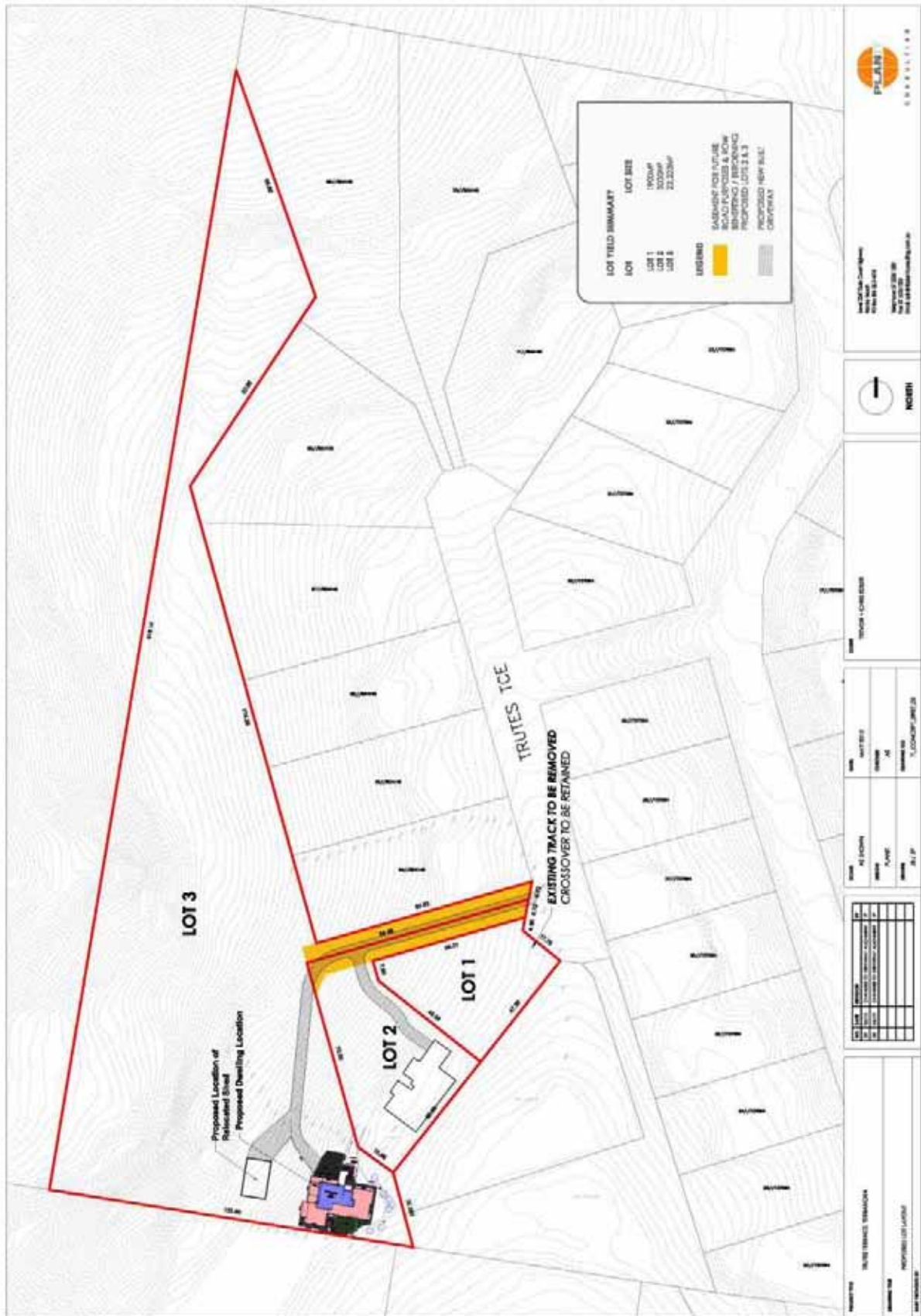
SITE DIAGRAM:

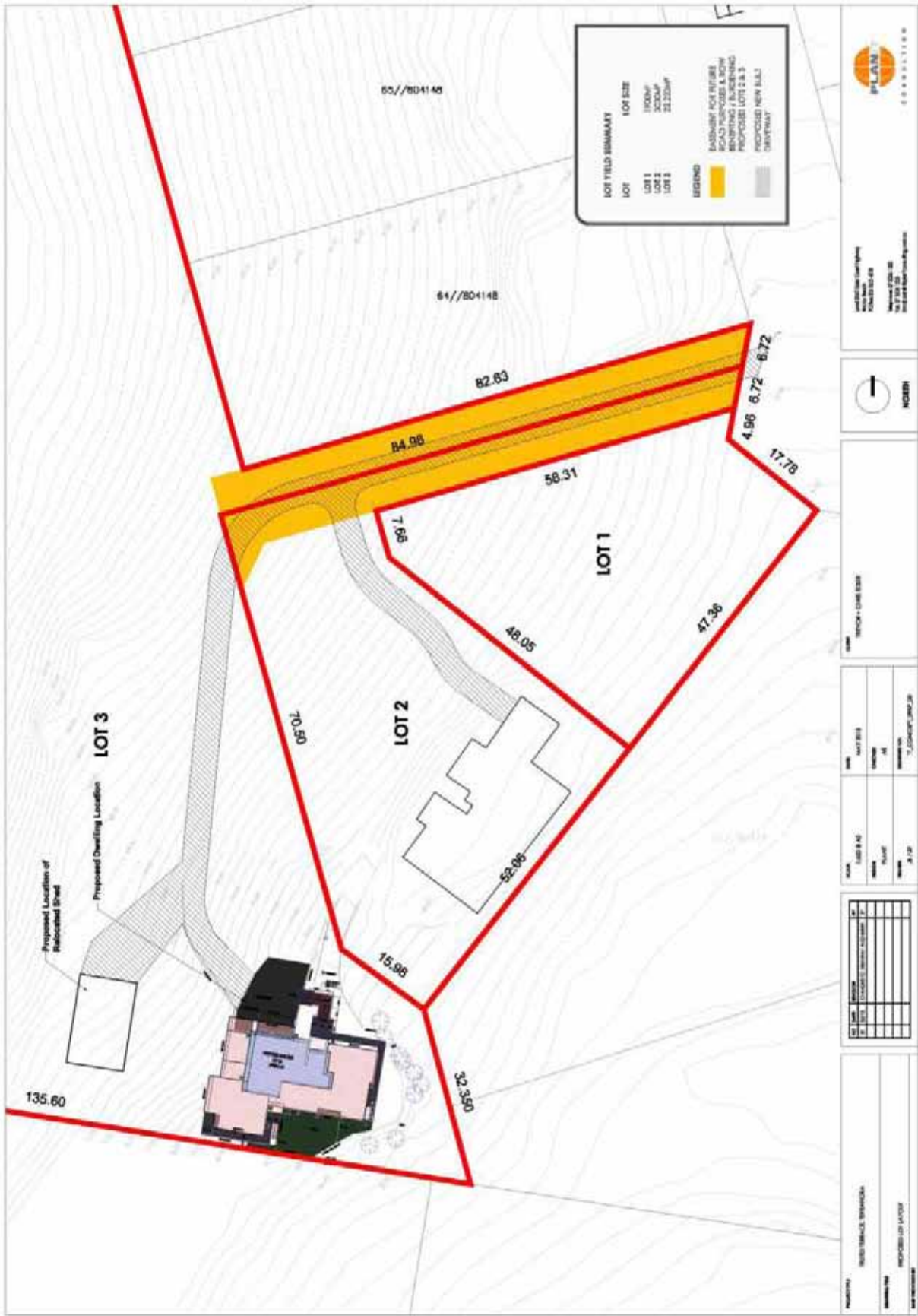


Locality Plan
 Lot 63 DP 804148
 No. 3-6 Trutes Terrace, Terranora

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before you Dig' enquiry must be made by calling 1100. The information contained in this document remains valid for 30 days only from the date of supply.</small></p>	<p><small>Cadastral 26/11/2013 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 0.5 1 Km 1:50,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</small></p> <p><small>Map Projection: Universal Transverse Mercator Geoid: East of Australia 1994 Map Grid of Australia, Zone 56</small></p>	<p><small>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484</small></p> <p><small>T (02) 6670 2400 1300 292 872 F (02) 6670 2428 W www.tweed.nsw.gov.au E planningreform@tweed.nsw.gov.au</small></p>	 <p>TWEED SHIRE COUNCIL</p>
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DEVELOPMENT/ELEVATION PLANS:





PLAN

Project Name: [REDACTED]
 Project No: [REDACTED]
 Date: [REDACTED]

REVISION

NO.	DATE	DESCRIPTION

SCALE: 1:1000

PROJECT: [REDACTED]

PREPARED BY: [REDACTED]

CHECKED BY: [REDACTED]

DATE: [REDACTED]

Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

The aims of this plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:*

“The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and

- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Shire 2000+ Strategy*
 - *Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

Strategic Plans

Clause 4 of the Tweed Local Environmental Plan 2000 states the following:

- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Shire 2000+ Strategy*

An assessment has been undertaken in regards to Council’s Strategic plans. There are three strategic plans which will be addressed with the Tweed Shire 2000+ Strategy and the Tweed 4/24 Strategic Plan being superseded plans and the most recent plan in force being the Community Strategic Plan 2011/2021. Although the earlier plans have been superseded they are still important in outlining the overall strategic plan for the Terranora area and the direction

Council has been working towards strategically for the area. Each of the plans have been assessed below.

Tweed Shire 2000+ Strategy

The Strategic Plan for Tweed 2000+ which has now been superseded was adopted on 17 December 1996. The Plan provides the broad directions for future planning in the Tweed. Within the policies and actions section, references specifically to Terranora 'Area E' are made as follows:

117. Green Belts *Open space green belts will be addressed by:*

- (e) *limiting development of Area 'E; at Terranora to the north-facing slope of the Terranora Ridge, so that the southern face remains as a forested backdrop to the Tweed River and agricultural land.*

122. Terranora (Area E) - *Subject to meeting other strategic requirements for integrated planning, the detailed local area planning for Terranora should include the following principles:*

- *A relatively high portion of large residential lots (i.e. minimum size of 800m²) because of existing development and scenic values*
- *Defined areas of potential dual occupancy and medium density development*
- *Controls over clearing of vegetation on land containing vegetation with habitat significance*
- *Housing not located directly adjoining wetlands or other significant vegetation, buffer areas provided with these based on local characteristics of vegetation, drainage and topography*
- *Houses not permitted on prominent ridgelines*

From the information above it can be seen that there are a number of strategic directions for the Terranora area. It identifies a number of issues which need to be addressed prior to the release of the urban land including *an infrastructure plan and development control plan*. If this subdivision was to be approved it would create a situation where there are increased numbers of owners and therefore this would make it increasingly difficult to strategically plan the area. The cumulative impact of approving this application could be that a number of other land owners in the locality undertake similar subdivisions thereby increasing the number of owners and allotments not suitably serviced for urban subdivision. The approval of this subdivision would create an undesirable precedent for the area. It is therefore considered that the proposed development should be refused.

Tweed 4/24 Strategic Plan

The Tweed 4/24 Strategic Plan which has now been superseded was adopted in September 2004. A key element of the strategy is as follows:

Urban Development. *Implement current plans for urban expansion including Cobaki and Bilambil Heights. Complete assessments of Terranora 'Area E' and Kings Forest. Retain green belts or buffers between settlements.*

Furthermore, Part 7 - Managing Urban Development outlines the following:

Continued urban expansion over the next two decades is inevitable. Substantial areas of land at Cobaki Lakes, Bilambil Heights, Kings Forest and elsewhere have been zoned for development for many years. Population growth has slowed somewhat in recent years, but remains strong.

Further urban development depends on improved infrastructure, including roads, water and sewerage, drainage and flood control, parks and a wide range of community facilities (education, health, police etc). Whilst some of this infrastructure is Council's responsibility, State and Federal governments, the private sector and community organisations all have important roles to play. Adequate funding and effective coordination are essential.

Challenges and Opportunities - *At current growth rates there is sufficient zoned land in the Tweed for 20-25 years residential development. In the short term there appears to be no need for Council to consider additional major release areas beyond those in the current Residential Development Strategy (Kings Forest, Terranora 'Area E' and Kielvale. However, the capacity of existing zoned residential land needs to be confirmed it is possible that some areas zoned for development may prove unsuitable or may not be released for many years. The likely extent of redevelopment for higher density housing in existing urban areas also needs to be assessed.*

Strategic Directions - *Council will liaise with developers to seek the timely release of zoned urban land to meet market needs. Master Plans for Kings Forest, Bilambil Heights (subject to adequate road access) and 'Area E' at Terranora (subject to rezoning) will be completed as quickly as possible.*

Four-Year Priorities

Urban Planning - *Review the likely capacity and timing of proposed urban release areas (Cobaki Lakes, Kings Forest, Terranora 'Area E' and Bilambil Heights) taking into account:*

- *Housing demand and affordability*
- *Infrastructure, road access and environmental issues*
- *Redevelopment potential in existing areas*
- *Needs for land for non-residential uses*
- *Possible alternative locations for development.*

It can be seen from the information above that Terranora 'Area E' is still regarded as an area for future urban development. A number of infrastructure improvements need to be completed before this can happen. It puts the onus on not only Council but landowners in the area. If the urban release is to go forward then Council needs to take a coordinated approach to the development. If this subdivision was to go forward then there would be an increase in land owners which could make it increasingly difficult to plan the area.

Community Strategic Plan 2011/2021

The Strategic Plan 2011/2021 is the current plan and was adopted by Council on 14 December 2010. *The Tweed Community Strategic Plan 2011/2021 is the community's 10-year vision for the Tweed, to protect the qualities that make the Tweed a great place to live and to create communities which are strong and well*

connected. This plan creates a framework to implement Council's four-year Delivery Program and annual Operational Plan, which will align the community's aspirations with the necessary strategy development, planning and resourcing required to achieve the long-term vision and deliver the outcomes.

The Community Strategic Plan outlines a number of other plans and policies which are to be used in conjunction with the Plan. These include the Tweed Urban and Employment Land Release Strategy 2009 which was implemented on 17 March 2009. This document is intended to examine growth options that would guide Tweed Shire towards 2031. Section 11 and 13 of this Plan relates to the directions for urban land development and implementation. Council could take a range of planning approaches or a combination of planning approaches to deal with growth and change over the next 25 years. A number of these are outlined as follows:

11.1 Rely on Existing Zoned Areas - *This option would see Council not rezone any more land for residential development over the life of the Strategy (till 2031) relying on existing zoned land to meet the demands of the market. Given the amount of land that Council has already zoned and the predicted growth rates, it is an option that would have some advantages. These would include allowing Council to concentrate on servicing the existing established areas and current zoned lands with infrastructure and social services; allow Council to focus on urban design issues; and allow Council to review existing planning controls (particularly DCP's) to better address local issues.*

13.1.3 Land Release - *The potential urban release lands nominated in this Strategy are considered in a short, medium and long term land release program based on a 0-10 year, 10-20 year and 20+ year time frame. This Strategy recognises the large existing supply of zoned land located predominantly at Kings Forest, Cobaki Lakes, Bilambil Heights, Area E and West Kingscliff and the role that these lands will play in supplying the residential needs of the Tweed over the next 10 years in particular.*

Terranora 'Area E' is still considered to be a major land release area identified within the strategic plan for Tweed Shire. For effective urban planning to be undertaken it is considered that the fragmentation of urban expansion zoned land should be limited. If this subdivision is approved it will set a precedent for other land owners to undertake similar types of developments reducing Council's ability to move forward with its urban release of the area.

Based on the above strategic plans outlined for the Terranora 'Area E' urban land release area it is considered that the proposed development would have a negative cumulative impact on the surrounding locality. It is therefore recommended that the proposed subdivision be refused.

The proposed development is not considered to be consistent with the aims of the TLEP 2000. The proposed development is not considered to be consistent with the vision of the shire "to manage growth so that the unique natural and developed character of the Tweed Shire is retained." The proposed development is for a three lot subdivision which does not comply with the primary objective of the zone as seen below, and the consent considerations contained within the TLEP 2000.

Tweed Shire 2000+ Strategy has been superseded through by both Tweed 4/24 and the adoption of the Community Strategic Plan 2011/2021. All three documents include references to Terranora 'Area E'; urban release area and have been assessed above.

The proposed development is non-compliant with the TLEP 2000 in terms of creating negative cumulative impacts being that it creates a precedent for other similar types of development to go ahead in the area. It is considered not to be in keeping with the aim of the plan in particular, that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

Clause 5 - Ecologically Sustainable Development

Clause 5 aims to promote development that is consistent with the four principles of ecologically sustainable development, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

To accommodate the onsite effluent as proposed for Lot 1, 100% vegetation clearance would be required and maintained to ensure onsite effluent is accommodated. It is considered that conservation of biological diversity and ecological integrity may be impacted, were this application to be approved.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *It is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *It has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *It is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The land is within the 2(c) zone and the proposed subdivision is not consistent with the primary objective of the zone which is as follows:

"to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake."

It is considered that the proposed subdivision does not ensure optimum utilisation of the land. A secondary objective of the zone is to:

"enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan."

As the proposed development does not comply with Council's Development Control Plan Section A5 - Subdivision Manual as detailed later in this report it is considered that it also does not meet the secondary objective of the zone.

The proposed development if approved may result in unacceptable cumulative impacts. The creation of two additional freehold lots is an under utilisation of land and may encourage, or allow for further subdivision development in the

surrounding locality due to precedence. The subject site is within the 2(c) Urban Expansion zoned land and has been identified for future urban development. Allowing this subdivision could create a negative cumulative effect being the first subdivisions in the urban expansion area of 'Area E' which is underutilised and not serviced by the essential services outlined in Council's Development Control Plans (DCPs). It could lead to a number of other residents within the locality applying for similar subdivisions and hence reducing the likeliness of the area to be strategically planned for its future urban purposes. It is therefore recommended that the application be refused.

Clause 11 - Zone Objectives

The subject land is zoned 2(c) Urban Expansion. The objectives of the 2(c) zone include:

Primary objective

- *Identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.*

Secondary objectives

- *To allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- *To ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*
- *Enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.*

The proposed subdivision is to create an allotment for the purpose of creating two additional lots for residential purposes. The proposal has not ensured its optimum utilisation as the zone is for future urban development. It is considered that the intent of the proposed subdivision does not satisfy the objectives of the Tweed LEP as both proposed lots will not be serviced in accordance with Council's Development Control Plan. Additionally, the subdivision may lead to establishing land use which conflicts with the future urban expansion and strategic planning for the Terranora area.

The proposal is therefore not consistent with the relevant zone objectives and recommended for refusal.

Clause 15 - Essential Services

Council's Strategic and Asset Engineer has provided the following:

Water

The site is currently serviced by an existing Council water main in Trutes Terrace. The developer proposes to leave this existing connection in place to the existing dwelling and to provide additional connection points for the proposed lots within the access handles of each allotment. This will require the construction of two new service connections from the existing line to the proposed Lots 2 and 3.

Water pressures at this location are around 80m and therefore sufficient protection such as a pressure limiting valve should be installed.

Sewer

The site as it exists is not serviced by Council sewer. On-site treatment exists for the existing dwelling and the Statement of Environmental Effects Report proposes the new lots shall also be serviced by onsite treatment. The Tweed Shire Council Development Control Plan: Section A5-Subdivision Manual requires that land in Zone 2(c) Urban Expansion must provide sewerage services to the lot as specified in Development Design Specification D12.

Pressure sewer currently exists up to 30 Parkes Lane (approximately 640 meters via road easement from the proposed development), however the downstream system has capacity limitations and no further extension can be permitted at this stage. The Parkes Lane limited sewer scheme was developed on a strictly limited basis of only permitting an additional 10 ET connection of which 5 are already connected or allocated. This scheme involves an additional charge of \$4320 per ET.

It is intended to provide a sewerage system to the Parkes Lane area when other development within Area E progresses to a point at which it will be economic. Prior to that, the development should be refused unless the developer can demonstrate how the requirement to connect to sewer in the short term can be met.

The alternative is for Council to find a way to circumvent the requirement of DCP Section A5.

Recommendation

The development should be refused on the basis that it cannot meet DCP Section A5.

Electricity services are currently provided to the area via Essential Energy infrastructure.

Telecommunication services are currently provided to the area via Telstra infrastructure.

As the proposed development cannot provide the essential services as required by Council it is considered appropriate to refuse the application.

Clause 16 - Height of Building

The site has a maximum building height of 9m from the finished ground level and a storey limit of three. The proposed dwelling with attached secondary dwelling has a maximum total height of 7.5m. It has been designed to incorporate two storeys. The proposal complies with the clause.

Clause 17 - Social Impact Assessment

An assessment under DCP A13 – Socio-Economic Impact Assessment has revealed that a Social Impact Assessment is not necessary for this type of development and accordingly Clause 17 is deemed satisfied.

Clause 19 - Subdivision

The objective of this clause is to provide a comprehensive system of planning controls for the subdivision of land in the Tweed local government area. The proposed development does not satisfy the provisions outlined for Area E and is accordingly recommended for refusal.

Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP 2000 requires Acid Sulfate Soils (ASS) management in relation to development where such is likely to be impacted upon. The subject site exhibits Class 5 ASS however, given the elevated nature of this site, acid sulfate soil is not considered a constraint. The applicant has provided an Acid Sulfate Soil Minor Works Plan and it is considered that ASS will not be impacted.

Clause 38 - Future Road Corridor

The objective of Clause 38 is to cater for the alignment of, and development in proximity to, future roads. Due to the location of the development within the 'Area E' Urban Release Area a 13.45m wide easement for future road purposes which will both benefit and burden Lots 2 and 3 is required. This has been included in the subdivision and can be conditioned if approved.

Clause 39 - Remediation of Contaminated Land

A Preliminary Site Contamination Assessment has been carried out which was reviewed by Council's Environmental Health Unit who responded with the following:

'dwelling sites on proposed lot 1 and 3 within the proposed subdivision of Lot 63 DP 804148 are unlikely to be significantly impacted by potential contaminants of concern and therefore suitable for the proposed residential use and in relation to potential site contamination associated with current or former agricultural activities, no remediation is required.'

It is therefore considered that the proposed complies with this clause.

Clause 39A - Bushfire Protection

The subject site has a portion which is identified as being bushfire prone land. The proposed development was referred to the NSW Rural Fire Service who responded on 5 September 2013 with one condition of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

Clause 53D - Specific provisions for Terranora Urban Release Area E

The site forms part of the Terranora 'Area E' Urban Release Area and is subject to an assessment against Clause 53D of the TLEP 2000. Clause 53D(3)(a) specifies that the consent authority must not consent to development on land to which this clause applies unless it is satisfied that a development control plan has been prepared for the land.

Development Control Plan Section B24 has been adopted but not made by Council on 13 December 2011 and applies to the whole of the Urban Release Area.

At the Council meeting of 26 June 2012, Council resolved (Item 352) that:

"Clause 53D(3)(a) of the Tweed Local Environmental Plan 2000 is considered satisfied for minor works which do not affect the overall strategic objectives for Area E Terranora".

Minor development is considered not to intensify existing uses over the Urban Release Area. It is considered that a subdivision of land creating additional

residential allotments is not minor in nature and may affect the overall strategic objectives of Terranora 'Area E'.

The proposal does not raise any issues with regard to contamination, proximity to wetlands or non-compliance with Council's Tweed Urban Stormwater Quality Management Plan.

In addition, 'Area E' does not yet have an adopted S94 Contributions regime. Any increase in density could not be considered until an appropriate S94 regime is endorsed. This application does not propose to increase density on site and is therefore able to be considered as minor.

As such, this clause is considered to be unsatisfactory and refusal of the application is recommended.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B of the NCREP is applicable to this proposal as the subject land falls under the jurisdiction of the NSW Coastal Policy.

- (a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies. [In this case, the proposed granny flat does not contradict the strategic aims and objectives of the policy, owing to its residential nature and lack of impact on any adjoining water body.]
- (b) Council is also required to consider the Coastline Management Manual.
- (c) A consideration of the North Coast: Design Guidelines is required.
- (d) Public access to the foreshore must not be impeded. This proposal does not restrict access to any public foreshore area.
- (e&f) Council is required to consider whether the development would result in overshadowing of beaches or adjacent open space. This application does not result in overshadowing of any beaches or adjacent open space.

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

Clause 43: Residential development

- (1) The council shall not grant consent to development for residential purposes unless:
 - (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,
 - (b) it is satisfied that the proposed road widths are not excessive for the function of the road,
 - (c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,
 - (d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and

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

As a single dwelling development with attached secondary dwelling, the proposed density reflects the surrounding density. However, the proposed development is recommended for refusal as the proposed is unable to be serviced by Council sewer and is underutilised as 2(c) Urban Expansion zoned land.

The proposal is therefore considered to be inconsistent with the relevant provision (a) of Clause 43 of NCREP 1988.

SEPP No. 55 - Remediation of Land

A Preliminary Site Contamination Investigation for Lot 63 DP 804148 prepared by HMC Environmental Consulting Pty Ltd dated April 2013 (Report: HMC 2013.027 CL) has been submitted. Council's Environmental Health Unit have assessed the report and have provided the following:

'HMC have advised that in relation to current or past landuse associated with agricultural activities, the two new nominated dwelling sites on proposed lot 1 and 3 within the proposed subdivision of Lot 63 DP 804148 are unlikely to be significantly impacted by potential contaminants of concern and therefore suitable for the proposed residential use and in relation to potential site contamination associated with current or former agricultural activities, no remediation is required.'

It is therefore considered that the proposed development is in accordance with the requirements of the SEPP.

SEPP No 71 – Coastal Protection

The subject land does not have frontage to the coastal foreshore reserve and therefore will not restrict public access to the foreshore. The development is not consistent with the zone objectives of TLEP 2000 as outlined in the report above. The proposed development additionally does not meet the minimum requirements of the relevant Council DCPs and is inconsistent with ESD principles and objectives. It is therefore considered that the proposal does not satisfy the matters for consideration under SEPP 71 and is recommended for refusal.

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

The Draft Tweed Local Environmental Plan 2012 relates to the subject site and zones the land R1 - General Residential. Within the R1 - General Residential zone the minimum subdivision size is 450m². The proposal complies with this minimum allotment size.

Clause 1.2 - Aims of Plan provides the following:

(2) *The particular aims of this Plan are as follows:*

(a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents.*

The greater strategic plan for the area is for future urban development as per Council's Strategic policies outlined above. It is considered that the proposed development is not consistent with the aims of the Draft LEP 2012 and is recommended for refusal.

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

Tweed Development Control Plan

A1 – Residential and Tourist Development Code

Given there is a site specific Development Control Plan for the subject site this Section of the DCP only applies to the extent of any inconsistency. The provisions in the site specific DCP are sufficient in this instance to assess the application.

A5-Subdivision Manual

The proposed subdivision has been assessed against section A5. The subject application was referred to Councils Development Engineering Section who provided comment on the application against the provisions of DCP A5. Further information was requested in relation to a number of DCP A5 issues relating to retaining walls and the proposed driveways. This information was not received as the applicant was advised that the proposal would be refused.

Relevant sections of A5 are addressed in more detail below:

A5.4.3 Physical Constraints

The Subdivision Manual (A5) requires that master planning of the site is undertaken to identify physical constraints, including environmental constraints on the development site or adjacent land. The intent is that urban form responds to the natural landform and drainage system, topographical features and environmental constraints. The proposal is not considered to be consistent with the approved DCP for the site, as detailed within this report.

A5.4. Environmental Constraints

A5 also requires that site constraints are identified including contaminated land, landslip, bushfire threatened species, ecological communities, coastal lands, significant vegetation, landscape character, acid sulfate soils, heritage or cultural items.

As detailed within this report, this application relates to the subdivision of a single allotment into three allotments for residential development. The proposal is to utilise onsite effluent disposal instead of servicing the site with sewer until it is available. As a result of this the proposed Lot 1 would require to be cleared of all vegetation to ensure the onsite effluent can be accommodated. It is considered that this may raise issues with the ecological communities and landscape character.

The proposed development is also located in an area as identified on the bushfire prone land maps. The proposed development was referred to the NSW Rural Fire Service who responded on 5 September 2013 with one condition of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

A5.4.7 Storm Water Runoff, Drainage, Waterways and Flooding

The site is not flood prone and is not located in close proximity to waterways. The proposed development is not considered to increase the severity of stormwater runoff, impact drainage or increase the risk of flooding in the locality.

A5.4.8 Urban Structure

The Subdivision Manual seeks to ensure neighbourhood design is walkable, connected and includes an interconnected street network. It also considers that a network of well distributed parks should be provided that offer a variety of safe, appropriate and attractive public open spaces and to ensure a site responsive approach to urban development that avoids unjustifiable changes to the natural landform.

The urban structure has been dictated by the Draft Tweed DCP B24. The urban structure is considered to be inconsistent with the provisions of the DCP as the site is located within an urban release area which is not adequately serviced and is an underutilisation of the site in terms of dwelling density.

A5.4.10 Movement Network

This section of the Subdivision Manual seeks to ensure adequate street network and intersection design. The proposed development has included a future road reserve to adequately cater for the release of the urban area being Area E. It is considered that the proposal is inadequate in terms of the movement network given the inconsistency with the site specific DCP.

A5.4.11 Open Space Network

The proposed additional allotments do not generate the need for additional parks, however each lot would be required to contribute to the cost of local parks under a funding mechanism which has not been established.

A5.4.12 Lot Layout

Whilst the proposal complies with the minimum lot size for dwelling houses of 450m² and are of a regular shape capable of accommodating a building platform with a minimum dimension of 10m x 15m, the proposed development is located within the urban release area being Area E the three lot residential subdivision is considered to be an underutilisation of the site in terms of density. The development is therefore recommended for refusal.

A5.4.13 Infrastructure

The proposed development was referred to Council's Strategic and Asset Engineer who provided the following:

"The site as it exists is not serviced by Council sewer. On-site treatment exists for the existing dwelling and the Statement of Environmental Effects Report proposes the new lots shall also be serviced by onsite treatment. The Tweed Shire Council Development Control Plan: Section A5- Subdivision Manual requires that land in Zone 2(c) Urban Expansion must provide sewerage services to the lot as specified in Development Design Specification D12.

Pressure sewer currently exists up to 30 Parkes Lane (approximately 640 meters via road easement from the proposed development), however the downstream system has capacity limitations and no further extension can be permitted at this stage. The Parkes Lane limited sewer scheme was developed on a strictly limited basis of only permitting an additional 10 ET connection of which 5 are already connected or allocated. This scheme involves an additional charge of \$4320 per ET.

It is intended to provide a sewerage system to the Parkes Lane area when other development within Area E progresses to a point at which it will be economic.

Prior to that, the development should be refused unless the developer can demonstrate how the requirement to connect to sewer in the short term can be met.

The site is currently serviced by an existing Council water main in Trutes Terrace. The developer proposes to leave this existing connection in place to the existing dwelling and to provide additional connection points for the proposed lots within the access handles of each allotment. This will require the construction of two new service connections from the existing line to the proposed Lots 2 and 3.

Water pressures at this location are around 80m and therefore sufficient protection such as a pressure limiting valve should be installed.

The current site is not provided with sewerage reticulation and previous approval had allowed for an on-site sewage management system to service the site. Under Section A5 of this DCP the subdivision would require connection to sewerage.

Following further correspondence with the applicant and a meeting with members of Councils Development Engineering Section, it was considered that it is unlikely that the applicant would be willing to provide information in relation to the number of issues raised in the Request for Further Information letter in relation to the provision of sewer facilities for each site. It is therefore considered appropriate to assess the application based on the information on the file.

The proposed development is considered to be in contravention of DCP A5, in particular Section A5.4.13 Infrastructure, and as such should be refused.

It is noted that Council's Environmental Health Officer made the following comment:

"On-site Sewage Management - Proposed Lot 1 is considered restrictive in size for a dwelling and associated structures and may not provide adequate area for social and recreational uses and landscaping/deep soil zones.

Consideration should also be given to whether it is desirable to remove the majority of existing vegetation on the proposed lots 1 and 2 for land application areas."

It was considered that the removal of 100% of the vegetation on site to cater for the proposed on-site effluent is not a desirable situation. As such it is considered appropriate to refuse the application based on the constraints.

Based on the information provided and the Council's strategic planning direction it is considered that the application is required to comply with the urban standards of this section of the Development Control Plan. The application is therefore recommended for refusal.

A11-Public Notification of Development Proposals

The proposed development was notified to surrounding neighbours for a period of 14 days finishing on Monday 19 August 2013 in accordance with the Development Control Plan. From this notification period there were no submissions received in relation to the proposal. The proposed development therefore complies with this section of the DCP.

B24-Draft Area E Urban Release Development Code

It should be noted that Development Control Plan B24 Area E Urban Release Development Code has been adopted but not yet in effect.

The aims of this section of the Development Control Plan are to ensure:

1. *Quality residential development that responds to aspect, slope and climate;*
2. *Protection and enhancement of natural bushland areas, waterways and land of high ecological value;*
3. *Provision of quality open space and public domain areas that meet the needs of the local and regional community;*
4. *Provision of integrated into pedestrian and cycleway networks;*
5. *Co-ordinated infrastructure provision to ensure efficient use of the land and efficient infrastructure supply and provision.*

It is considered that the development does not provide adequate infrastructure for the proposal and as such should be refused.

Proposed dwelling with attached secondary dwelling

Tweed DCP Section B24 has items relating to Development Applications in regards to design specifications as follows:

2.3 Design Principle 1 - Environment

Objectives

- *The environmental lands, natural watercourses and other natural systems are protected and retained.*
- *To preserve and protect land of high ecological significance from urban development.*
- *To encourage the enhancement of land with high environmental qualities.*
- *To provide for the rehabilitation and enhancement of degraded habitat and ensure that comprehensive rehabilitation plans form part of any future development applications or masterplans.*
- *To provide for the protection and improvement of existing hydrological conditions in Terranora Broadwater.*
- *To provide a natural growth boundary to residential development and visual relief for the proposed urban environment.*
- *To integrate localised 'green belts' into the urban footprint.*
- *To create additional wildlife corridors.*
- *To embody urban development within a park-like setting.*

If the development were to be approved with the on-site effluent disposal as requested there would be a requirement for all vegetation for Proposed Lot 1 to be removed. The proposed would therefore not enhance the environment. As such, the proposed development is recommended for refusal.

2.4 Design Principle 2 - Landscape Character and Views

Objectives

- *Maintain the integrity of ridge lines, valleys and natural topographic features as an important part of the localities character.*
- *Promote subdivision design which reduces the need for benching and significant cut and fill.*
- *To ensure site modifications, retaining walls and engineered elements do not adversely impact on the streetscape, or precincts character.*
- *The watercourses and vegetated drainage lines running through the site provide excellent visual, recreational, educational and environmental preservation opportunities and are to be integrated with opportunity for pedestrian links between.*
- *Realise and retain key visual character components of the site through a contemporary urban structure and built form.*
- *Provide view sharing and maintenance of view fields.*
- *Maintain important regional and local views.*
- *Preserve the visual amenity of and within the site.*
- *The identification and retention of green breaks, important feature trees/stands of trees and important view fields.*

The proposed development generally complies with this design principle. It is considered that the dwelling and attached secondary dwelling would not decrease the visual amenity of the area.

2.5 Design Principle 3 - Landforming

Objectives

- *Maintaining and respecting the landform – buildings and civil works are to be designed to landform rather than landform designed to buildings and civil works;*
- *Maintain the integrity of ridge lines, valleys and natural topographic features as an important part of the locality's character;*
- *Promote subdivision, building design and structural systems which reduce the need for benching and significant cut and fill;*
- *Understand the design relationship of slope to appropriate construction types to minimise cut and fill and respond to upslope, down slope, side slope and combination slope with appropriate design consideration;*
- *Adopt an overall bulk earthworks strategy that includes:*
 - *subdivision design which reduces the need for benching and significant cut and fill;*
 - *to limit modification of site levels at boundaries to maintain amenity to adjoining properties;*
 - *to ensure site modifications, retaining walls and engineered elements do not adversely impact on the streetscape character;*
 - *ensure that fencing on top of retaining walls does not adversely impact amenity of neighbouring properties or de-stabilise retaining walls;*

- *where possible, the use of the stone found on the site should be incorporated into the retaining walls, although it is understood that this stone would not be suitable for structural elements of retaining walls.*

The proposed development only proposes minor earthworks. It is considered that the proposed development is consistent with this design principle.

2.6 Design Principle 4 - Road Layout Traffic and Transport

Objectives

- *As well as providing access for vehicles, streets and roads are to be pedestrian safe and friendly environments.*
- *Integrate the principles of WSUD into street and open space design.*
- *Progressively implement the construction of Broadwater Parkway, the primary road for the Area E Urban Release Area.*
- *The design of Broadwater Parkway is to create a sense of place through a range of public domain treatments and address pedestrian movement and comfort, efficient vehicle movement, and establish a key entry statement and journey to the overall character and appearance Area E.*
- *A road layout and design that provides integration between the existing urban fabric, particularly to the East and West, for an efficient bus transport option. Suitable locations and attractive bus shelter designs should be determined to further encourage this sustainable mode of transport.*
- *A road network and layout that establishes a clear and legible configuration contributing to way finding and establishing a strong streetscape character in terms of carriage widths, verge, street trees and implementation of water sensitive urban design principles.*
- *Adequate integrated bicycle facilities (parking and on/off street routes). Particular consideration should be given to providing East-West links throughout Area E that traverse the same contour, or provide minimal transition in elevation to further encourage this healthy and sustainable form of transport.*

The proposed development has incorporated a future road reserve through all three allotments as it is a requirement for access for the future development when Area E is released. It is considered that the road reserve is adequate to cater for any future development. It is however noted that development of the area should not be undertaken until adequate services can be provided for the urban release area. As such the proposal is recommended for refusal.

2.7 Design Principle 5 - Open Space

Objectives

- *Ensure a mix of active and passive open space to service the community;*
- *To integrate road layout with open space and pedestrian/cycle paths to achieve good access, connectivity and site permeability;*
- *The primary role of the open space is to ensure that the passive and active recreation needs of the proposed community are met. However, the open space is also expected to provide visual relief to the urban environment and to be designed to contribute towards an overall identity and a new 'sense of*

place' for the community (responsive to the unimproved nature and vistas characteristic of the undeveloped site);

- The design of the individual open spaces and overall network is to facilitate use by the community. Open space should incorporate design aspects of safety, accessibility, activity (through embellishments) and utility (e.g. slope, dimensions). The network in the area should acknowledge its role in the 'bigger system' by building upon and connecting to open spaces in surrounding areas;*
- Ensure a diverse range of quality open spaces is anticipated to allow for diversity of recreation use and flexibility to meet the changing recreation needs of future generations;*
- Ensure the provision of a structured open space facility within the Area E Urban Release Area;*
- Encourage the delivery of alternate forms, uses and facilities for public open space;*
- Provide a series of well designed public open spaces that contributes to the identity, amenity and wellbeing of the community;*
- Provide open space that is conveniently and safely accessible to users, particularly pedestrians and cyclists;*
- Ensure green linkages are provided through the residential precincts to connect the open space system into the greater (external) network;*
- The open space areas are designed to ensure that land is not fragmented by physical barriers preventing use by those that it intends to service, including inhibited groups such as the frail;*
- To ensure that open space areas comprise suitable dimensions, quality of land and are unencumbered by hazards;*
- Provide opportunity for community gardens.*

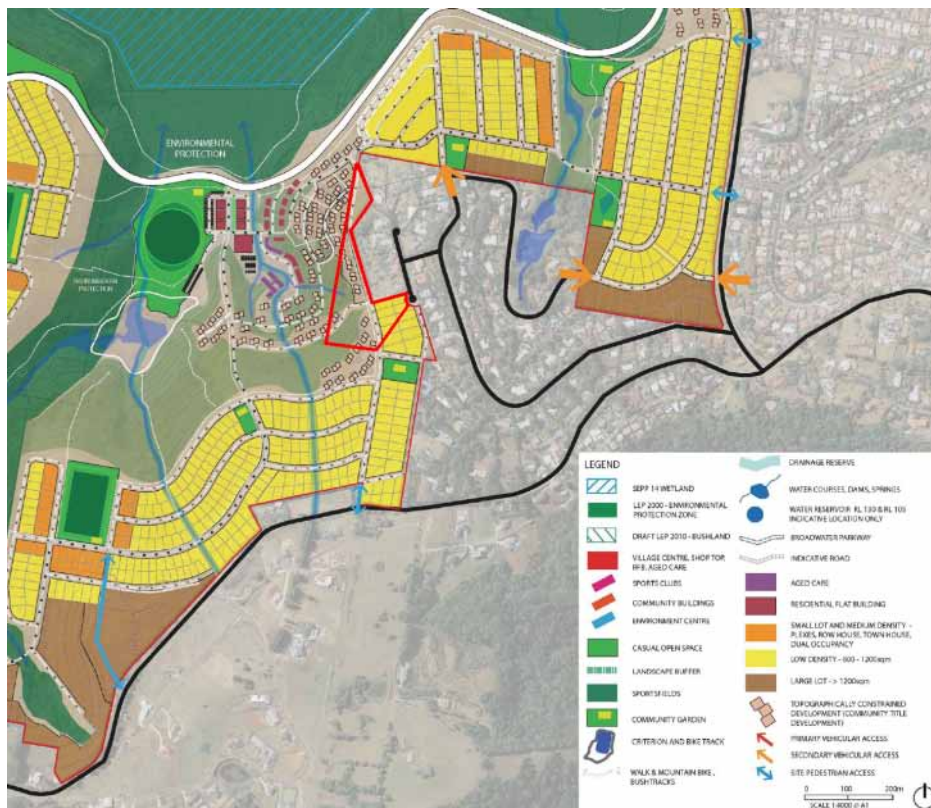
The proposed development is for a three lot subdivision. It is considered that open space is not required as a part of this application and contributions could be levied for this component.

2.8 Design Principle 6 - Dwelling and Allotment Mix

Objectives

- To provide for a range of lot sizes and medium density integrated sites which will provide a broader range of housing types, sizes and housing choice for future occupants.*

The proposed development represents an under-utilisation of the site. As seen in the figure below, there site is envisaged for a broad range of housing types and sizes. The proposed development is for a three lot subdivision with a detached dwelling and attached secondary dwelling. The proposal has not ensured its optimum utilisation as the zone is for future urban development. It is therefore recommended that the proposed development should be refused.



Area E Indicative Structure Plan (Figure 2.2 Draft DCP B24 page 22 from the Subdivision Section)

2.9 Design Principle 7 - Urban Design, Streetscape and Public Domain

Objectives

- Public domain areas both within the village centre and residential areas are embellished to a high standard and reinforce the landscape character of the locality.
- Public domain areas are safe and accessible to all users.

Not applicable. It is considered that a three lot subdivision does not require public domain enhancements.

2.10 Design Principle 8 - Solar orientation

Objectives

- Encourage subdivision design which maximises opportunity for good solar orientation and access to prevailing breezes in terms of street layout and lot configuration;
- Encourage buildings which respond to the natural environment and climatic condition of the location;

The proposed development has been oriented for good solar orientation and has access to prevailing breezes. The applicant has provided shadow diagrams which comply with the provisions.

2.11 Design Principle 9 - Hazards and Resilience

Objectives

- Ensure that development is appropriately designed to accommodate for potential climate change impacts.

- *Ensure that any soil contamination is identified and suitably mitigated prior to the development of Area E.*
- *Provide only suitable development and landuses within land identified as affected by a Probable Maximum Flood.*
- *Minimise the disturbance of acid sulfate soils.*
- *Provide a subdivision layout that responds to and manages bushfire hazards.*
- *Incorporate design elements and urban buffers, such as lot size and orientation, perimeter roads or overland drainage reserves, to enable the maintenance of existing vegetation and provide adequate separation of residential landuses from any hazard.*
- *Ensure areas identified as 'currently unsuitable' are excluded from development for urban purposes or other purposes that are sensitive to soil stability.*

The proposed development is located within a mapped bushfire prone area. The proposed development was referred to the NSW Rural Fire Service who responded on 5 September 2013 with one condition of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

2.12 Design Principle 10 - Infrastructure

Objectives

- *Progressively implement the design and construction of essential services for Area E and ensure coordinated and efficient delivery;*
- *Convey external catchment flows safely through the site;*
- *Preserve existing catchment boundaries and utilise existing water courses and gully lines for conveyance where practical and environmentally sustainable;*
- *Provision of minor and major stormwater collection and conveyance systems for the development land;*
- *Provision of stormwater quality control devices to meet Council's stormwater quality objectives in accordance with Development Design Specification D7 – Stormwater Quality;*
- *Provision of stormwater detention / retention devices and level spreaders to ensure that stormwater discharge from the development does not create significant adverse impacts on receiving water bodies, wetlands and environmental land.*

Section 2.12 - Design Principle 10: Infrastructure has the following:

A sewerage strategy for Area E was developed in the Banora Point Sewerage Strategy Study (September 1999). This strategy provides for a new regional sewer pump station to be constructed within Area E. Flow from the Terranora Village sub-regional pump station (SPS3033) will be intercepted and re-pumped through a new 375 diameter sewer rising main (SRM) direct to the Banora Point

Wastewater Treatment Plant, unloading the existing SPS3018 Fraser Drive. Recent analysis has shown that:

- *The estimated inflow to SPS3018 has increased over that anticipated when the 1999 Strategy was prepared.*
- *The disused 150 diameter SRM was placed in service some years ago to reduce the effect of the additional load.*
- *The existing SPS3018 is performing below the estimated peak wet weather flow.*
- *SPS3018 cannot be satisfactorily upgraded to adequately cope with the estimated interim inflow on the existing site.*
- *The corridor expected to contain the new 375 diameter SRM already has two active mains and it is considered that no additional mains should be constructed in that corridor other than the proposed 375 diameter main.*

Accordingly, further investigation of staging options is required to determine a suitable interim strategy to enable development to proceed.

The proposed development does not comply with the Development Control Plan in relation to servicing the site.

The development does not ensure co-ordinated infrastructure provision to ensure efficient use of the land. The proposed development is also an underutilisation of the land. The application should therefore be refused.

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

Clause 92(a) Government Coastal Policy

The proposed development is consistent with the objectives and strategic actions of the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

No demolition is proposed with the application.

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

The site is not located within a coastal zone management area.

Tweed Shire Coastline Management Plan 2005

The site is not affected by the Tweed Shire Coastline Management Plan 2005. No further assessment is required.

Tweed Coast Estuaries Management Plan 2004

The site is not affected by the Tweed Coast Estuaries Management Plan 2004. No further assessment is required.

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

The site is not affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater. No further assessment is required.

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

Context and Setting

The proposed subdivision whilst considered minor in nature by itself, could set an undesirable precedent and create a negative cumulative impact upon the locality. As outlined previously, the subdivision is located within the Terranora 'Area E' Urban Release Area. If this application was to be approved it would create a precedent for a number of other similar applications to come in creating a large number of smaller allotments with numerous landowners making it difficult to strategically plan the area as envisaged by the adopted DCP. A number of infrastructure issues need to be rectified before this happens.

Flora and Fauna

The proposed development would require Lot 1 to be cleared of all vegetation to ensure the On-site Effluent is sufficient. It is considered that the clearing of 100% of the vegetation on the proposed lot is undesirable and should not be supported in this instance.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development is located within the Terranora 'Area E' Urban Release Area. The surrounding sites are currently of a similar size as the subject site and utilised for residential purposes. The sites are located within the 2(c) Urban Expansion zone and are earmarked for future urban development. The fragmentation of land zoned urban expansion in the area should be limited until such time that the urban release is going to be undertaken. The cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, would be significant.

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

Public Submissions

The proposed development was notified for a period of 14 days finishing on Monday 19 August 2013 in accordance with the Act and Regulations. There were no submissions received in relation to the proposed development.

Rural Fire Service

The proposed development was referred to the NSW Rural Fire Service who responded on 5 September 2013 with one condition of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

(e) Public interest

The proposed three lot subdivision and dwelling with attached secondary dwelling is of a relatively minor scale and nature however should the application be approved, it would set a harmful precedent for the continued urban release of the area. As such it is considered that the proposal is not in the public interest.

OPTIONS:

That Council:

1. Refuses this application in accordance with the recommendation for refusal; or

2. Requests the applicant to withdraw their Development Application and re-lodge an amended application which better align with the site specific Development Control Plan and which considers and establishes a Developer Contributions funding mechanism for services within Area E including (but not limited to) sports fields, the Broadwater Parkway, environmental restoration, and drainage issues.

CONCLUSION:

It is considered that the overarching purpose of the Environmental Planning and Assessment Act 1979 and its associated documents is to secure the orderly development of land. This includes having the necessary infrastructure available in order to service the development. The proposed three lot subdivision cannot be adequately serviced with reticulated sewer and is considered to severely undermine the broader strategic plans for the subject site as it represents a massive under development of prime residential land. For these reasons the application is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

33 [PR-CM] Development Application DA13/0024 for a 44 Lot Subdivision, Construction of Internal Road and Associated Infrastructure at Lot 1 DP 407094 Cudgen Road, Cudgen and Lot 1 DP 598073 No. 17 Collier Street, Cudgen

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0024 Pt3



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

Council at its meeting of 21 November 2013 resolved as follows:

"RESOLVED that this item be deferred for a Workshop."

A workshop was held on 28 November 2013. The report is now presented to Council for determination.

Original Report

The proposal seeks approval for a forty lot residential subdivision of two parcels of land with multiple zonings.

The subject application proposes a subdivision comprising 40 lots ranging from a proposed road and associated infrastructure.

- Lots 1 – 37 - Residential allotments varying in size from 450m² to 1039m² averaging 598.5m².
- Lot 38 – 39 - Residual lots to remain for agricultural purposes.
- Lot 40 - Drainage reserve to be transferred to Council.

The original application was for 44 lots however this was amended to be able to cater for a number of items requested throughout the assessment process.

The existing area and each of the zones are configured as follows:

- 2(a) Low Density Residential zone of 2.8ha
 - 5(a) Special Uses (School) zone of 1,353m²
 - 1(b1) Agricultural Protection zone of 10.06ha
 - 1(b2) Agricultural Protection zone of 5.7ha
-

A State Environmental Planning Policy No. 1 – *Development Standard* (SEPP No. 1) objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(b2) Agricultural Protection zone. Council can assume concurrence to vary the standard applying to the 1(b1) Agricultural Protection zone of 10 hectares, as the variation is less than 10%.

Proposed lots 38 and 39 will be conditioned to be consolidated into 1 allotment having a total area of 15.1454ha and will be split zoned 1(b1) and 1(b2) and will continue to be utilised for agricultural purposes such as the existing cropping/orchid pursuits.

The SEPP No. 1 objection relates to the portion of the combined lots 38 and 39 which is located within the 1(b2) zone. This equates to a total area of approximately 5.2382ha within the proposed lot which is under the 40ha minimum.

Lot 40 will not require a SEPP No. 1 objection as the lot will not be used for agricultural or residential purposes under Clause 20(3) of the Tweed Local Environmental Plan as outlined in this report.

The application was referred to the NSW Department of Planning and Infrastructure requesting the Director-General's Concurrence. Concurrence was granted to vary the 40ha minimum lot size development standard.

The purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP No. 1 objection greater than 10% variation of the applicable development standard in accordance with the Department of Planning directive (circular PS 08-014).

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

RECOMMENDATION:

That Development Application DA13/0024 for a 40 lot subdivision, construction of internal road and associated infrastructure at Lot 1 DP 407094 Cudgen Road, Cudgen and Lot 1 DP 598073 No. 17 Collier Street, Cudgen be approved subject to the following conditions:

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within twelve (12) months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.

- 1. The applicant is to provide an acoustic report prepared by a suitably qualified acoustic consultant to the satisfaction of the General Manager or delegate. The acoustic report shall include but not be limited to:**

- (i) A review of the Statement of Environmental Effects for NSW Planning Major Project MP05_0103, conditions of the approval and the requirements of the NSW Industrial Noise Policy.
 - (ii) Informed comment, based on sound modelling, as to the noise impact of the defined PSNL nominated, on the basis of the methodology carried out, at each proposed residential lots, internal and external to any standard constructed dwelling.
 - (iii) Identification of each of the instances where the modelling predicts exceedance of determined background levels across each of the day, evening and night periods .
 - (iv) Identification of where exceedance are greater than 5 dB(a) above background and recommend reasonable measures that may be carried out to reduce noise impact. If the acoustic report demonstrates reasonable mitigation measures, where required, cannot be implemented and exceedance are not acceptable the application in its current form is unable to proceed.
2. A Contaminated Land Investigation Report shall be prepared, by a suitably qualified and experienced person, and submitted to the General Manager or delegate for approval. The report shall assess previous banana growing and potential termite treatment, and be prepared in accordance with relevant documents made or approved by the NSW Environment Protection Authority in accordance with the Contaminated Land Management Act 1997. Where required, a Remediation Action Plan (RAP) shall be prepared and submitted. The report shall demonstrate that the site is suitable, or is able to be made suitable following remedial works, for the proposed land use.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 1 revision O prepared by Bennett + Bennett Surveyors and Planners and dated 13/09/2013 and Project Number WLN01 prepared by Place Planning Design Group Pty Ltd dated 16/08/2013 and the Farm Management Practices prepared by Kevin Wilson's Real Estate dated 7 August 2013 except where varied by the conditions of this consent.
[GEN0005]
2. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.
[GEN0045]
3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.
[GEN0125]
4. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

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

Should adjustments be required to the sewer manhole, then these changes are to be shown on the application for a Construction Certificate.

[GEN0155]

6. The area described as 'Proposed Environment Covenant B - 424m²' shown on Plan No 1 Rev. O Proposed Subdivision dated 13 September 2013 prepared by Bennett & Bennett must be the subject to an ecological restoration program (undertaken in accordance with an approved habitat restoration plan) and managed as a natural area for conservation purposes in perpetuity.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. Prior to the issue of a Civil Construction Certificate for each stage of the project, a Construction Management Plan shall be submitted to and approved by the Principle Certifying Authority. A copy of the approved plan shall be submitted to Council. The Plan shall address, but not be limited to, the following matters where relevant:

- a) Hours of work;
- b) Contact details of site manager;
- c) Traffic and pedestrian management;
- d) Noise and vibration management;
- e) Construction waste management;
- f) Erosion and sediment control; and,
- g) Flora and fauna management.

Where construction work is to be undertaken in stages, the Proponent may, subject to agreement with the Principle Certifying Authority, stage the submission of the Construction Management Plan consistent with the staging of activities relating to that work. The Proponent shall submit a copy of the approved plan to Council.

[PCC0125]

8. The Construction Certificate Application shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the proposed development, prepared in accordance with Section D7.07 of Council's Development Design Specification D7 - Stormwater Quality. The plans are to include measures, monitoring and adaptive management actions to ensure appropriate stormwater quality outcomes are achieved.

Permanent stormwater quality treatment shall comply with the Tweed Urban Stormwater Quality Management Plan and Council's Development Design Specification D7 - Stormwater Quality. Variations to these standards shall only be accepted where they are supported by best practice water sensitive urban design principles entailed in the "Water By Design" guidelines (being a program of the South East Queensland Healthy Waterways Partnership).

Treatment basins must be provided with a facility to bypass major stormwater flow events (greater than the Q3 month storm event), or otherwise cater for

major storm flows without disturbing captured pollutants or damaging the structure.

Proposed treatment measures other than "deemed to comply" measures as specified in Council's Development Design Specification D7, must be supported by engineering calculations, including MUSIC modelling, to confirm that acceptable capacity and efficiency is achieved.

An Operational Manual for all stormwater quality control devices must be provided as part of the SWMP. This manual must be updated as required during the Defects Liability ("On-Maintenance") Period for the device and the final version of the manual must be handed over to Council at the formal commissioning of the device, at the completion of the Defects Liability Period ("Off Maintenance").

[PCC0165]

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

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

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

[PCC0275]

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

[PCC0285]

11. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

12. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

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

[PCC0485]

13. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimising the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.

[PCC0675]

14. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

15. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications;

- (a) Construction of an urban bitumen sealed road formation 7.5m between kerbs.
- (b) Collier Street is to be reconstructed from the property boundary of Lot 71 DP 755701 into the subdivision as per drawing no. K2027 issue A titled 'Preliminary Roadworks Plan' prepared by Knobel Consulting dated 3 June 2013. The developer is to liaise with Council when the subdivision road works are expected to commence to allow for Council to program the Collier Street upgrade in conjunction with the developer.
- (c) A reinforced concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire road frontage of the site and Collier Street up to the property boundary of Lot 71 DP 755701 in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.
- (d) Traffic control devices are to be shown on the application for a Construction Certificate. A stop sign and associated line marking is to be placed at the intersection of Road 1 & 2 (northern intersection). A give way sign and associated line marking is required at the intersection of Road 2 and Crescent Street.
- (e) The application for a Construction Certificate is to demonstrate that a gravity sewer connection for proposed consolidated Lots 38 and 39 is able to adequately service a future dwelling.
- (f) The proposed piped drainage system is to be redesigned to mainly be located within the road reserve and not under the road pavement.

- (g) The detailed design of the 2 inlet pits located prior to the Gross Pollutant Trap must demonstrate that they are capable of capturing Q_{100} flows from the major street system and directing it to the proposed detention basin.

[PCC0875]

16. Prior to the issue of a Construction Certificate for civil works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - retaining walls
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations*

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

17. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:

- (e) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

18. A construction certificate application for works that involve any of the following:

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

19. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

20. Prior to issue of the construction certificate the applicant is to submit a landscape plan for the vegetated buffer on Lot 38, prepared by a suitably qualified landscape architect. The vegetated buffer is to contain random plantings of a variety of tree and shrub species of differing growth habits, at spacings of four to five metres. The vegetated buffer is to include species that have long, thin and rough foliage that facilitate the more efficient capture of spray droplets. The vegetated buffer is to include at least 80% local native species. The landscape plan is to be to the satisfaction of the General Manager or his delegate.

21. Prior to the issuing of a Construction Certificate, a construction noise assessment is to be prepared in accordance with the Interim Construction Noise Guideline (DECC, 2009), to the satisfaction of the General Manager or his delegate. The construction noise assessment is to be prepared by a suitably qualified person.

22. Prior to the issuing of a Construction Certificate, a dust management plan is to be prepared to the satisfaction of the General Manager or his delegate. The dust management plan is to be prepared by a suitably qualified person.

23. Prior to the issuing of a Construction Certificate, a demolition plan is to be prepared to the satisfaction of the General Manager or his delegate. The demolition plan shall reference Australian Standard AS 2601 *The Demolition of Structures*, and the requirements of NSW WorkCover and the *Work Health and Safety Regulation 2011*. The demolition plan is to be prepared by a suitably qualified person.

[PCCNS02]

24. A landscape plan must be submitted that addresses the nature strip of all roads to be dedicated to Council. Such a plan should show only suitable street trees and turf, and must be approved by the Manager, Recreation Services, Tweed Shire Council. The landscape and civil drawings must be consistent in the space allowed for planting trees between the kerb and footpath, and must be consistent with TSC standard drawing SD-701. The street tree locations are also to be consistent with the Development Design Specification D14 and be planted no less than 7.5m from streetlights. The street tree species to be used is to be negotiated with Council, and it is preferable they be native to the local area.

[PCCNS03]

25. A Habitat Restoration Plan ('HRP') must be submitted for the following 'ecological restoration areas' as shown on Plan No 1 Rev. O Proposed Subdivision dated 13 September 2013 prepared by Bennett & Bennett:

- a. Proposed Environment Covenant B - 424m²;
- b. Remaining contiguous tract of significant vegetation occurring within the Crescent Street road reserve (western side) for a length of approximately 73 metres immediately to the rear of Lots 33 and 34; and
- c. An approximate five (5) metre wide buffer around the entire perimeter of the 'Water Catchment Lake' unless where restricted by the proposed northern access road.

The HRP shall be prepared by a suitably qualified professional in accordance with Council's Draft Habitat Restoration Plan Preparation Guideline dated February 2012 (attached) for the identified 'ecological restoration areas' to include the following information (but may not limited to):

- a. An appraisal of the present condition of remnant vegetation;
- b. A plan overlaying an aerial photograph of the site which divides the area into management zones where appropriate;
- c. A management strategy for each of the zones, including the adoption of an 'Assisted Natural Regeneration' approach;
- d. A schedule of local native plant species to be used for planting (if required under offsetting arrangements pursuant to Condition 28);
- e. A program of works to be undertaken to remove invasive weed species (noxious and environmental weeds);
- f. A schedule of timing of proposed works that reflects both the short term (developer's responsibility) and long term (future landholder's responsibility) establishment and management of the identified ecological restoration areas;
- g. A schedule of activities not permitted within the Proposed Environment Covenant B pursuant to Condition 77;

- h. Requirement for 132C Licence under the National Parks and Wildlife Act**
- i. Coordination of services such as irrigation repair or civil infrastructure maintenance (such as stormwater) that may impact on the landscape establishment and maintenance periods;**
- j. Management of domestic farm/feral animals (if appropriate) and any fencing/signage requirements to restrict access and increase landholder/public awareness;**
- k. Nomination of key performance indicators/criteria for monitoring purposes;**
- l. A maintenance, monitoring and reporting schedule with developer commitment for a period not less than two (2) years; and**
- m. An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of the General Manager or delegate for such changes.**

To be clear the developer is responsible for a two (2) year establishment phase for all identified 'ecological restoration areas'. Following successful completion of works within this period the existing/future landowner/s of Lot 33 shall be responsible for the long term management of the 'Environment Covenant' in perpetuity. This management arrangement shall be reflected in the HRP.

The HRP must be approved by the General Manager or delegate prior to issue of the first of any construction certificate.

In this regard the establishment phase works proposed in the HRP must be completed prior to issue of the first subdivision certificate with a progress report prepared by a suitably qualified and experienced Bush Regenerator, submitted one year after commencement of the establishment phase works with a final report demonstrating compliance with the HRP prior to issue of the subdivision certificate.

[PCCNS04]

- 26. To evaluate and quantify the extent of vegetation removal necessary to facilitate installation of any external stormwater infrastructure within the Crescent Street road reserve the applicant shall provide a detailed survey plan with particulars of all native woody vegetation greater than 30cm circumference at 45cm above ground, or greater than three (3) metres or more in height occurring within and immediately adjacent to the construction footprint. The tree survey shall be overlaid on Dwg. No. P019 Issue A Outlet Arrangement Plan dated 13 September 2013 prepared by Knobel Consulting P/L or similar plans as amended in accordance with conditions of this consent. The survey information and any associated best practice vegetation management measures as required by Council shall be submitted as an addendum to the Flora and Fauna Management Plan Lot 1 DP407094 & Part Lot 1 DP598073 Version 2 dated June 2013 prepared by Habitat Environment Management Trading P/L.**

The loss of any surveyed native vegetation shall be offset at a ratio of 2:1 (Replace : Loss) using suitable tube-stock species to be installed with an area additional to and adjoining the 'Water Catchment Lake' ecological restoration area. Offsetting arrangements shall be agreed upon prior to issue of the first of any construction certificate and details subsequently reflected in the 'Habitat Restoration Plan' prior to approval.

27. **Conditions and recommendations imposed by the Remedial Action Plan (RAP) required by Schedule "A" of this consent shall be implemented prior to the issue of a construction certificate.**
28. **Proposed Lots 38 and 39 are to be consolidated into a single allotment to ensure the fragmentation of agricultural land does not occur. All other conditions relating to Lots 38 and 39 are to be implemented on a single allotment.**

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

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

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

[PCW0025]

31. **All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.**

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate.

[PCW0375]

32. **Civil work in accordance with a development consent must not be commenced until:**
 - (a) **a Construction Certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:**
 - (i) **the consent authority, or**
 - (ii) **an accredited certifier, and**
 - (b) **the person having the benefit of the development consent:**
 - (i) **has appointed a principal certifying authority,**
 - (ii) **has appointed a Subdivision Works Accredited Certifier (SWAC) to certify the compliance of the completed works. The SWAC must be accredited in accordance with Tweed Shire Council DCP Part A5 - Subdivision Manual, Appendix C with accreditation in accordance with**

the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

C4: Accredited Certifier - Stormwater management facilities construction compliance

C6: Accredited Certifier - Subdivision road and drainage construction compliance

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

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

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

[PCW0815]

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

[PCW0835]

34. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area to the satisfaction of the Principal Certifying Authority. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

36. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

37. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

38. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

In addition geotechnical certification is to be provided certifying that unsuitable material has been removed from the southern area of the existing dam and replaced with material adequate for the support and stability of the proposed road and embankment.

[DUR0795]

39. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

40. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

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

[DUR0995]

42. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic

Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

- 43. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.**
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.**
 - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.**
 - (c) That site fill areas have been compacted to the specified standard.**
 - (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.**

[DUR1805]

- 44. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:**
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.**
 - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.**

[DUR1825]

- 45. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate.**

[DUR1875]

- 46. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:**

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures**
- (b) Completion of earthworks**
- (c) Excavation of subgrade**
- (d) Pavement - sub-base**
- (e) Pavement - pre kerb**

- (f) Pavement - pre seal
- (g) Pathways, footways, cycleways - formwork/reinforcement
- (h) Final Practical Inspection - on maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final Practical Inspection - on maintenance
- (i) Off maintenance

Stormwater Quality Control Devices (other than proprietary devices)

For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media
- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all civil works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

47. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Subdivision Certificate.

[DUR1955]

48. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

49. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

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

[DUR2285]

51. Drainage Reserve

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

[DUR2295]

52. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

53. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

54. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

55. Dust and Erosion Management

- (a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed area's are to be topsoiled and seeded immediately to protect them from water and wind erosion.

- (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.**
- (c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.**

[DUR2825]

- 56. The disturbance of rock boulders rolling down the steep sloping terrain during construction is to be mitigated by the inclusion of temporary fencing or earth bunds for ensure site safety and to ensure neighbouring properties are not affected.**

[DURNS01]

- 57. Any disturbance of soil below 5 m AHD is to be carried out in accordance with the Acid Sulfate Soils Management Plan prepared by Geotech Investigations Pty Ltd and dated 21 March 2013, except where as varied by this consent.**
- 58. The implementation of the Acid Sulfate Soils Management Plan is to be the responsibility of the Site Manager.**
- 59. Where a RAP is required in accordance with Schedule A of this consent, all works are to be carried out in accordance with the RAP, to the satisfaction of the General Manager or his delegate.**
- 60. During construction, all works are to be carried out in accordance the Council approved construction noise assessment, including recommendations of the construction noise assessment.**
- 61. During construction, all works are to be carried out in accordance the Council approved dust management plan.**
- 62. All demolition works are to be carried out in accordance with the Council approved demolition plan.**

[DURNS02]

- 63. 60 days prior to lodgment of Application for Subdivision Certificate, an accurate plan of the subdivision is to be submitted to Council indicating all public land to be dedicated to Council (including Drainage Reserves, Sewer Pump Stations, Parks, Sports Fields, Conservation Areas and other lands as defined and excluding Roads, etc). The function of all such public land is to be indicated to allow classification of the land parcel by Council as either Operational or Community Land, as detailed in the Local Government Act 1993.**

[DURNS03]

- 64. All operations must comply with the fauna and flora management measures as outlined in the Flora and Fauna Management Plan Lot 1 DP407094 & Part Lot 1 DP598073 Version 2 dated June 2013 prepared by Habitat Environment Management Trading P/L unless otherwise amended and approved by Council's General Manager or modified as a result of conditions of this approval. In the event that any threatened species, populations, ecological communities or their habitats not addressed in the report are discovered during operations, appropriate Plans of Management for those species must be formulated to the**

satisfaction of the General Manager or delegate. No further operational works will take place until the Plan(s) of Management is/are approved.

[DURNS04]

USE

65. The development shall be carried out in accordance with the provisions of the acoustic report as per Schedule A of this consent, to the satisfaction of the General Manager or his delegate.

[USENS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

66. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

67. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP5:	35 ET @ \$12575 per ET	\$440125
Sewer Kingscliff:	35 ET @ \$6042 per ET	\$211470

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

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

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

[POC0675/PSC0165]

68. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

- | | |
|---|-----------------|
| (a) Tweed Road Contribution Plan: | |
| 227.5 Trips @ \$1176 per Trips | \$267540 |
| (\$1137 base rate + \$39 indexation) | |
| S94 Plan No. 4 | |
| Sector6_4 | |
| (b) Open Space (Casual): | |
| 35 ET @ \$543 per ET | \$19005 |
| (\$502 base rate + \$41 indexation) | |
| S94 Plan No. 5 | |
| (c) Open Space (Structured): | |
| 35 ET @ \$622 per ET | \$21770 |
| (\$575 base rate + \$47 indexation) | |
| S94 Plan No. 5 | |
| (d) Shirewide Library Facilities: | |
| 35 ET @ \$838 per ET | \$29330 |
| (\$792 base rate + \$46 indexation) | |
| S94 Plan No. 11 | |
| (e) Bus Shelters: | |
| 35 ET @ \$64 per ET | \$2240 |
| (\$60 base rate + \$4 indexation) | |
| S94 Plan No. 12 | |
| (f) Eviron Cemetery: | |
| 35 ET @ \$123 per ET | \$4305 |
| (\$101 base rate + \$22 indexation) | |
| S94 Plan No. 13 | |
| (g) Community Facilities (Tweed Coast - North) | |
| 35 ET @ \$1389 per ET | \$48615 |
| (\$1305.6 base rate + \$83.4 indexation) | |
| S94 Plan No. 15 | |

- (h) **Extensions to Council Administration Offices
& Technical Support Facilities**
35 ET @ \$1860.31 per ET **\$65110.85**
(\$1759.9 base rate + \$100.41 indexation)
S94 Plan No. 18
- (i) **Cycleways:**
35 ET @ \$473 per ET **\$16555**
(\$447 base rate + \$26 indexation)
S94 Plan No. 22
- (j) **Regional Open Space (Casual)**
35 ET @ \$1091 per ET **\$38185**
(\$1031 base rate + \$60 indexation)
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
35 ET @ \$3830 per ET **\$134050**
(\$3619 base rate + \$211 indexation)
S94 Plan No. 26

[POC0395/PSC0175]

69. **Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the (public infrastructure) works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the plan of subdivision is registered.

It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

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

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

[PSC0225]

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

balance remaining at the end of the 12 months establishment period will be refunded.

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

[PSC0235]

72. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

73. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

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

[PSC0825]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) A restriction to user for a 30m wide separation buffer is required on proposed Lot 38 as per the Land Use Conflict Management Strategy prepared by Place Design Group Pty Ltd and dated 16 August 2013. The restriction to user is to state that no agricultural activities are to occur within the 30m wide buffer and is to be maintained in perpetuity, burdening proposed Lot 38 and benefiting proposed Lots 6 through to Lot 14.
- (c) A positive covenant for a 10m wide vegetated buffer is required on proposed Lot 38 as per the Land Use Conflict Management Strategy prepared by Place Design Group Pty Ltd and dated 16 August 2013. The vegetated buffer is to be maintained in perpetuity, burdening proposed Lot 38 and benefiting proposed Lot 6 through to Lot 14 inclusive.
- (d) A positive covenant is required to maintain a 1.8m acoustic fence constructed with lapped-style timber or equivalent in perpetuity on

proposed Lot 38 as per the Land Use Conflict Management Strategy prepared by Place Design Group Pty Ltd and dated 16 August 2013. The covenant is to burden proposed Lot 38 and benefit proposed Lot 6 through to Lot 14 inclusive.

- (e) A positive covenant is required for future dwellings on proposed Lot 6 through to Lot 14 inclusive requiring the design of future dwellings on these allotments to be air conditioned and capable of having all doors and windows fully closed.
- (f) A positive covenant is required for agricultural activities conducted on proposed consolidated Lots 38 & 39. The positive covenant is to state that agricultural activities are to be carried out in accordance with the Farm Management Practices prepared by Wilson's Commercial Real Estate and dated 7 August 2013. These agricultural activities may include pesticide spraying, which is regulated under the Pesticides Act 1999. Agricultural activities may only be carried out during daylight hours. The positive covenant is to burden proposed consolidated Lots 38 and 39.
- (g) A restriction to user is required for a future dwelling on proposed Lot 33 stating that a residential dwelling may only be constructed on the southern half of proposed Lot 33.
- (h) Restriction as to user regarding the 'Proposed Environment Covenant B - 424m²' shown on Plan No 1 Rev. O Proposed Subdivision dated 13 September 2013 prepared by Bennett & Bennett - this area must be subject to an approved ecological restoration program (undertaken in accordance with an approved habitat restoration plan) and managed as a natural area for conservation purposes in perpetuity.
- (i) Restriction as to user regarding the 'Proposed Environment Covenant B - 424m²' shown on Plan No 1 Rev. O Proposed Subdivision dated 13 September 2013 prepared by Bennett & Bennett - The following activities are not permitted within this area:
 - i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this approval unless otherwise approved by Council's General Manager or delegate;
 - ii. Erection of any fixtures or improvements, including buildings or structures;
 - iii. Construction of any trails or paths;
 - iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area;
 - v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the Covenant Area; and
 - vi. Performance of any other acts which may have detrimental impact on the values of the Covenant Area. The area must be managed in accordance with the approved habitat restoration plan for the life of the development and the use of the premises.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision

for maintenance of the right of carriageway / easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

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

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

[PSC0835]

76. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each new lot in the deposited plan.

[PSC0845]

77. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

78. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

79. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Drainage

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]
80. The six months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]
81. A formal asset handover of all water quality control devices is to be implemented at the completion of the maintenance period ("Off Maintenance"), whereby all relevant stakeholders will inspect the device and be issued with a current operational manual for the device.

[PSC1025]
82. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and gravity sewerage systems installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]
83. Prior to the release of the subdivision certificate the proponent shall:

 - (a) Dedicate the proposed drainage reserve at no cost to Council.
 - (b) Submit an accurate plan of the proposed drainage reserve to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.

[PSC1075]
84. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]
85. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

86. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and**
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.**

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

- 87. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.**

[PSCNS01]

- 88. Documentary evidence is to be provided that the right of carriageway and footway plus any existing unnecessary easements no longer required are extinguished prior to the issue of a Subdivision Certificate.**

[PSCNS02]

- 89. Prior to the issue of the subdivision certificate the vegetated buffer is to be established on Lot 38 in accordance with the approved landscape plan.**

- 90. Prior to the issue of the subdivision certificate the acoustic fence is to be constructed on Lot 38 in accordance with the Land Use Conflict Management Strategy prepared by Place Design Group Pty Ltd and dated 16 August 2013. The acoustic fence is to be at least 1.8 m high, constructed with lapped-style timber or equivalent.**

[PSCNS03]

- 91. The developer is to undertake care and maintenance operations on all streetscapes and public open space for a minimum of 12 months after the Subdivision is registered with the Land Titles Office. This is the establishment period for new plantings. Such maintenance will include all soft landscaping, particularly mowing and weed control. Any power and water consumption costs during this period must also be met by the developer.**

[PSCNS04]

- 92. A bond to ensure acceptable plant establishment and landscaping performance at time of handover to Council shall be lodged by the Developer prior to the issue of any Subdivision Certificate. The bond shall be held by Council for a minimum period of 12 months from the date of issue of the Subdivision Certificate (or longer if required by the approved Landscaping Plan) and may be**

utilised by Council during this period to undertake essential plant establishment or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

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

93. Prior to issue of a Subdivision Certificate, Work as Executed Plans (WAX) must be submitted for the streetscape. These must show all plantings, footpaths and underground services. The plans are to be certified by a registered surveyor or consulting engineer.

Two categories of WAX plans are to be provided:

- a) The original approved plan with any variation to this indicated.
- b) Plan showing only the actual as constructed information.

The plans are to be submitted in the following formats:

- a) 2 paper copies of the same scale and format as the approved plan.
 - b) A PDF version on CD or an approved medium.
 - c) An electronic copy in DWG or DXF format on CD or an approved medium.
94. Environmental restoration works shall be completed to a level specified in the approved Habitat Restoration Plan prior to the release of the subdivision certificate and shall be maintained at all times in accordance with the approved Plan.
95. The final Habitat Restoration Plan report is to be approved by the General Manager or delegate prior to release of the first subdivision certificate.

REPORT:

Applicant: Wilson's Commercial Real Estate
Owner: Mr Ross A Julius
Location: Lot 1 DP 407094 Cudgen Road, Cudgen and Lot 1 DP 598073 No. 17 Collier Street, Cudgen
Zoning: 5(a) School, 1(b1) Agricultural Protection, 1(b2) Agricultural Protection, 2(a) Low Density Residential
Cost: \$2,000,000

Background:

Council has received a development application for a residential subdivision comprising 40 lots at Cudgen Road and Collier Street, Cudgen. The site has an area of 18.69ha comprising of two allotments designated as:

- Lot 1 on DP407094: Zone 5(a) Special Uses (School) of approximately 1,353m².
- Lot 1 on DP598073: Zone 2(a) Low Density Residential, Zone 1(b1), Zone 1(b2) Agricultural Protection and Clause 38 TLEP 2000 of approximately 18.56ha.

The subject application proposes a subdivision comprising 40 lots ranging from a proposed road and associated infrastructure.

- Lots 1 – 37 - Residential allotments varying in size from 450m² to 1039m² averaging 598.5m².
- Lot 38 – 39 - Residual lots to remain for agricultural purposes.
- Lot 40 - Drainage reserve to be transferred to Council.

The original application was for 44 lots however this was amended to be able to cater for a number of items requested throughout the assessment process. These will be detailed later in the report.

Stormwater

The proposal results in an increase in impervious area and therefore an increase in the quantity of stormwater runoff. The major stormwater issue was the lawful point of discharge. Throughout the assessment Council has maintained that the development's only lawful point of discharge is the 'East-West drain' at Altona Drive. It was deemed unacceptable to discharge stormwater to the private agricultural drains to the North of the property as proposed.

Some difficulty was encountered trying to discharge runoff from the development to this lawful point of discharge without mixing with stormwater from the existing private agricultural drains. After multiple iterations, the current concept of piping stormwater from the bio-retention/detention basin out to Crescent Street and to the northern side of the existing culvert located north of the proposed intersection and directed towards Altona Road via an open channel was agreed upon. Conditions of consent have been included within the recommendations relating to stormwater.

Surrounding Development/Buffer issues

The site is currently operating for agricultural purposes and contains an existing single unit dwelling and farming sheds which complement the agricultural/farming use. The site is positioned adjacent to a primary school (south) and residential dwelling (to the east).

Agricultural uses continue to the east and north of the site. The site acts as the western edge of Cudgen Village urban area as shown in the following figure:



Figure 3 – Aerial photograph of subject site

There is an existing approved Sand Quarry located to the north of the subject site. NSW Industry and Investment was notified and responded with the following:

"Industry and Investment - Mineral Resource Branch is seriously concerned about the close proximity of the subject area to the Crescent Street sand resource (operated on a continuous basis by Hanson), the Cudgen Lakes sand resource (site of the proposed Gales-Kingscliff's Cudgen Lakes Project) and the extensive, potential sand resource mapped to the west of these sites. The resources are all large and have, or will potentially have long operational lives, and council should consider possible environmental impacts from current and future operations on the subject area.

Council should ensure that measures are put in place to mitigate potential impacts on the proposed development by the use of buffers between any operations and the proposed development. Proponents seeking to develop the site should also demonstrate that the presence of such development would not restrict sand operations.

The resources adjoining the subject area were included in the Mineral Resource Audit which was recently completed for Tweed Shire Council (a data package was sent to council in May 2011). The audit was conducted in accordance to Section 117(2) Direction 1.3 – Mining, Petroleum Production and Extractive Industries under the Environmental Planning and Assessment Act 1979. In reference to the Mineral Resource Audit, the proposed development is located within a transition zone (formerly referred to as buffer zones) of the Crescent Street and Cudgen Lakes resources."

This information was forwarded onto the applicant requesting further information in relation to the proposed development, particularly in regards to acoustic issues. The applicant responded with the following:

"Approved by the Minister for Planning in 2009, the Cudgen Lakes Sand Extraction Project adjoins the project site to the north. The Environmental Assessment failed to take into account the subject land which has been zoned residential since 1987. Of concern are the amenity impacts to the proposal site, most notably operational noise.

The Environmental Assessment undertook predicted operational noise modelling that in the absence of mitigating measures, noise emissions would comply with criteria under most operating conditions. To avoid exceedence of levels above that allowed the following mitigation measures have been included in the quarry project:

- *Acoustically treating the dredge to reduce the sound power level emitted to 97 dB(A) or lower;*
- *Increasing the height of the noise barrier on the southern side of the processing area by installing an acoustic fence on the bund; and*
- *Enclosing noisier components of the processing plant, designed in conjunction with the noise barrier, to achieve a noise reduction of 5 dB(A) at relevant receptors."*

To the north east of the site there is a residential subdivision (S93/0076 - Development Application - 96 lot residential subdivision) which was approved 25/01/1994.

Council's Environmental Health Unit raised concerns in relation to the acoustic issues and has determined to put a number of items in place to ensure acoustic impacts are kept to a minimum. It is acknowledged that the sand extraction was approved after part of Lot 1 DP 598073 was zoned for residential purposes. However, the information provided by the applicant does not sufficiently demonstrate that there is a suitable separation between the sand extraction and residential land uses. The most appropriate option to progress the current application would be to recommend a deferred commencement condition requiring, that the applicant provide an acoustic report prepared by a suitably qualified acoustic consultant. The acoustic report should predict noise impacts at residential lots as a result of sand extraction activities, and if required, recommend measures to reduce impacts. An appropriate deferred commencement condition is recommended.

It is therefore considered appropriate to implement these items within the recommended conditions.

Contaminated Land

Information relating to land contamination was provided by Gilbert and Sutherland. The Statement of Environmental Effects (to be referred to as 'SEE') included a Preliminary Contamination Assessment (to be referred to as 'PCA'). The PCA stated that a land use history assessment, and soil sampling and analysis were carried out. The PCA concluded that minor contamination could be easily remediated to ensure that the residential component of the subdivision is suitable for residential use.

However, Council's Environmental Health Unit has advised that additional soil sampling and analysis is required. Information provided by Gilbert and Sutherland indicates that the subject site is capable of being remediated to ensure that the residential component of the subdivision is suitable for residential use. It is likely that only minor remediation would be required. An appropriate deferred commencement condition is recommended.

Orientation and Lot Sizes

The majority of the allotments are orientated in an east to west configuration. Wherever possible, north-facing slopes have been utilised in the design to improve the solar access.

Lot sizes are generally rectangular in shape with over the minimum of 9m kerb frontage. The residential allotments range in size from 450m² to 1039m² with an average of 598.5m². A review of the subdivision pattern of Cudgen has revealed that there are a number of allotments within Cudgen that are below the 450m² with the majority of allotments being between 450m² - 900m² as shown on Figure 1 below. It can also be seen that the majority of the allotments for the proposed subdivision pattern are between 450m² - 900m² as shown on Figure 2.



Figure 1 - Existing subdivision pattern (Cudgen)



Figure 2 - Proposed subdivision pattern

Flora and Fauna

A Flora and Fauna Report was submitted with the application and amended as a result of the information request. This report identified five significant trees of greater than 500mm diameter at base height (dbh). All trees identified on the plan are situated either within the road reserve or proposed covenant area encumbered to Lot 33 and therefore will not be removed.

The remaining trees across the balance of the development site either comprise of orchard species or the declared weed *Cinnamomum camphora* (Camphour Laurel). Regardless of the limited extent of habitat available to native fauna, management measures shall be implemented during clearing operations to ensure that any native fauna utilising any of the remaining vegetation are not injured or harmed during construction and if necessary translocated to more suitable habitat in close proximity by a licensed spotter catcher.

Road Network

A traffic report prepared by CRG dated 27 May 2013 has been submitted with the application.

The traffic report concludes that the subdivision will generate 37 peak hour vehicle trips and 396 daily trips and that the proposed 40 lot subdivision will not significantly affect the surrounding road network.

The proposed road network details an internal loop road with two intersections into Cudgen Village, these being Collier Street and Crescent Street respectively. The layout plan shows the proposed road as having a 7.5m wide pavement within a 15m wide road reserve.

Following advice from Council's Design and Works units, it is noted that Collier Street is to be upgraded with the works programmed to be scheduled in this financial year's budget. Community consultation and design plans have been completed by Council. The applicant was advised in a meeting held 31 July 2013 that Council will upgrade Collier Street although the developer will be required to reconstruct Collier Street from the property boundary of Lot 71 DP 755701 into the subdivision as per Drawing No. K2027 issue A titled 'Preliminary Roadworks Plan' prepared by Knobel Consulting dated 3 June 2013.

No objections or issues to the traffic report and proposed subdivision have been raised by Council's Traffic Engineer.

Earthworks

Existing levels and proposed levels as detailed on Knobel Consulting plans shows a maximum of 2.7m of cut in the north west of the site and maximum fill level of 2.6m in the north east of the site. The majority of cut and fill on the site ranges from 0.5m to 1m. This is considered to be minor in relation to the existing form of the site which generally preserves the natural landform.

The earthworks sections show the boundary levels around the external perimeter have been preserved with the exception of fill up to 2.2m on the Crescent Street Road reserve (near proposed Lot 33). Three retaining walls are proposed, which generally average 1m in height.

Slope

The land slopes to the north east with gradients ranging from moderate (7% to 9%) to steep slopes (18% to 20% - middle of site) and again to moderate slopes (7% to 9%) near the existing dam to the north.

Council's enlighten system details approximately half to two thirds of the 2(a) Low Density Residential zoned area where the development is proposed as being affected by slopes between 8 to 18 degrees. Earthworks have been kept to a minimum and the design of the subdivision has taken the slope of the land into consideration.

Agricultural Land

Residual Lot 38 is to remain for agricultural purposes. In order to limit the impact of these agricultural practices a number of mitigation measures are proposed as follows:

- A 30m buffer along the western part of the residential component of the subdivision and along a short section of the northern part.
- A 1.8 m high acoustic fence along the western part and along a short section of the northern part.
- Within the buffer, a vegetation buffer at least 10 m wide.
- Design restrictions applicable to Lot 6 through to Lot 14 inclusive.
- Restrictions on horticultural/agricultural activities on adjacent lots (Lots 38 and 39).

The proposed development was referred to Industry and Investment NSW (Division of Primary Industries) on 14 February 2013. Industry and Investment raised no concerns in regards to the Agricultural Land impact however raised issues in regards to the approved sand quarry located to the north of the subject site. This will be detailed later in this report.

Department of Planning and Infrastructure

The Development Application required concurrence from the Department of Planning and Infrastructure due to the minimum allotment size. Concurrence was granted on 13 February 2013 for the following reasons:

1. *No issues of state or regional significance are raised;*
2. *Creation of the residue lot is an administrative matter; and*
3. *Creation of the small lot for bio-retention basin (Lot 39) is of minor significance.*

The proposed development was amended during the assessment to reduce the number of allotments.

Proposed lots 38 and 39 will be conditioned to be consolidated into 1 allotment having a total area of 15.1454ha and will be split zoned 1(b1) and 1(b2) and will continue to be utilised for agricultural purposes such as the existing cropping/orchid pursuits.

The SEPP No. 1 objection relates to the portion of the combined lots 38 and 39 which is located within the 1(b2) zone. This equates to a total area of 5.2382ha within the proposed lot which is under the 40ha minimum.

Lot 40 will not require a SEPP No. 1 objection as the lot will not be used for agricultural or residential purposes under Clause 20(3) of the Tweed Local Environmental Plan as outlined in this report.

Objections

16 submissions have been received which have raised concerns in relation to: The main points of the objections are as follows:

- a. Lot sizes too small;
- b. Earthworks required for steep land;

- c. Increased traffic congestion/safety issues;
- d. Acoustic issues between school and Lots 1-6;
- e. No recreation area;
- f. Inconsistent density with the rest of Cudgen Village;
- g. Collier Street already damaged;
- h. Increased crime and safety concerns;
- i. 7.5m too small for internal road;
- j. Infrastructure capacity already at maximum;
- k. No parking along Collier Street;
- l. No drainage along Collier Street;
- m. School enrolment currently at maximum;
- n. No provision or room for footpaths along Collier Street;
- o. Safety of students who attend Cudgen Primary as there are no pedestrian areas along Collier Street;
- p. Reduced Amenity;
- q. Loss of valuable farmland;
- r. Impact upon Pine Trees (Heritage Listed) along Collier Street;
- s. Access to school becomes unsafe;
- t. Infrastructure being located outside of the land zoned for residential (i.e. road infrastructure proposed in 1(b2) zone);
- u. Are retaining walls being used;
- v. Crime Prevention.

Each of these submissions will be addressed further in this report.

Infrastructure Charges

The proposed development is for 40 allotments however only 37 of these allotments are for residential purposes. Council's Strategic and Assets Engineer has advised the following:

"Section 64 Development contributions should be calculated at the rate of 1 ET per lot for both Water Supply and Sewer with a credit of 2 ET each for existing allotments."

As there were two lots originally and there will be 37 allotments which will be subject to infrastructure charges being proposed Lots 1-37 it is expected that 35 new ET's are chargeable to the proposal. Lots 38, 39 and 40 will not have any credit for ET's as a result of this as they will not have dwelling entitlements.

Council Referrals

The current application before Council has been referred to the relevant Council officers for their consideration.

Council's Environmental Health Unit (EHU) has advised that the amended details in relation to amenity; land-use conflict (new residences with surrounding agricultural land uses) are acceptable provided the appropriate conditions of consent are included within the recommendations.

Council's Development Engineering Unit and Planning and Infrastructure Engineer have advised that the proposed development is supported subject to the recommended conditions of consent.

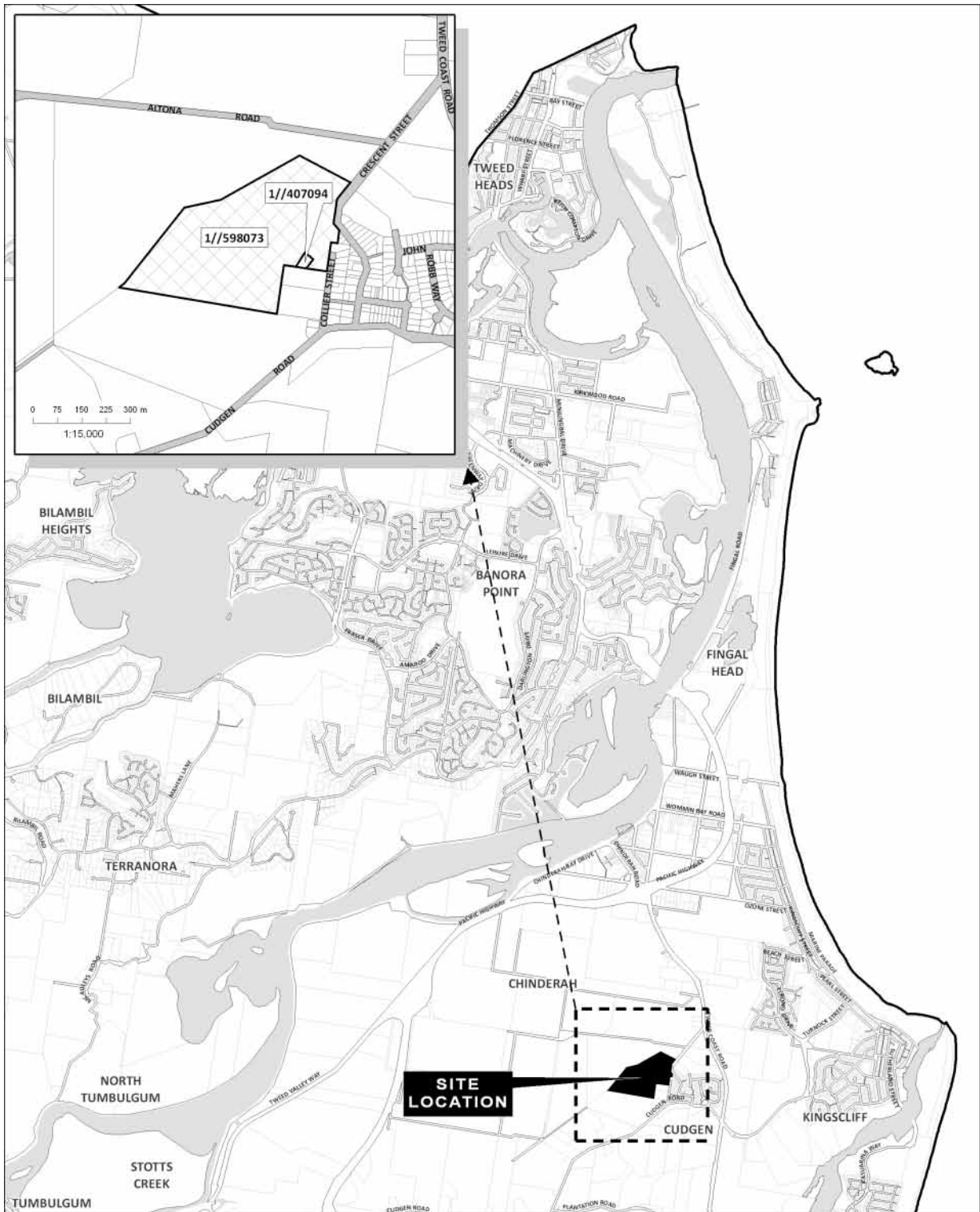
Council's Natural Resource Management (NRM) Unit has advised that they have no objections to the proposal provided the conditions provided are implemented into any recommendations.

Council's Open Space Officer has advised they have no objections subject to the proposed conditions of approval.

Council's Traffic Engineer has advised they have no objections subject to the proposed conditions of approval.

It is considered that the applicant has adequately addressed all of the previous requests for further information and following an assessment of the additional information against the relevant heads of consideration, and provided a number of conditions are applied to any consent, the application is recommended for deferred commencement approval.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 407094, Cudgen Road, Cudgen &
Lot 1 DP 598073, No. 17 Collier Street, Cudgen

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1:50,000 @ A4 Portrait
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Map Projection: Universal Transverse Mercator
Geoid for datum of Australia 1984
GDA
Map 584 of Australia, Zone 55

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W | www.tweed.nsw.gov.au
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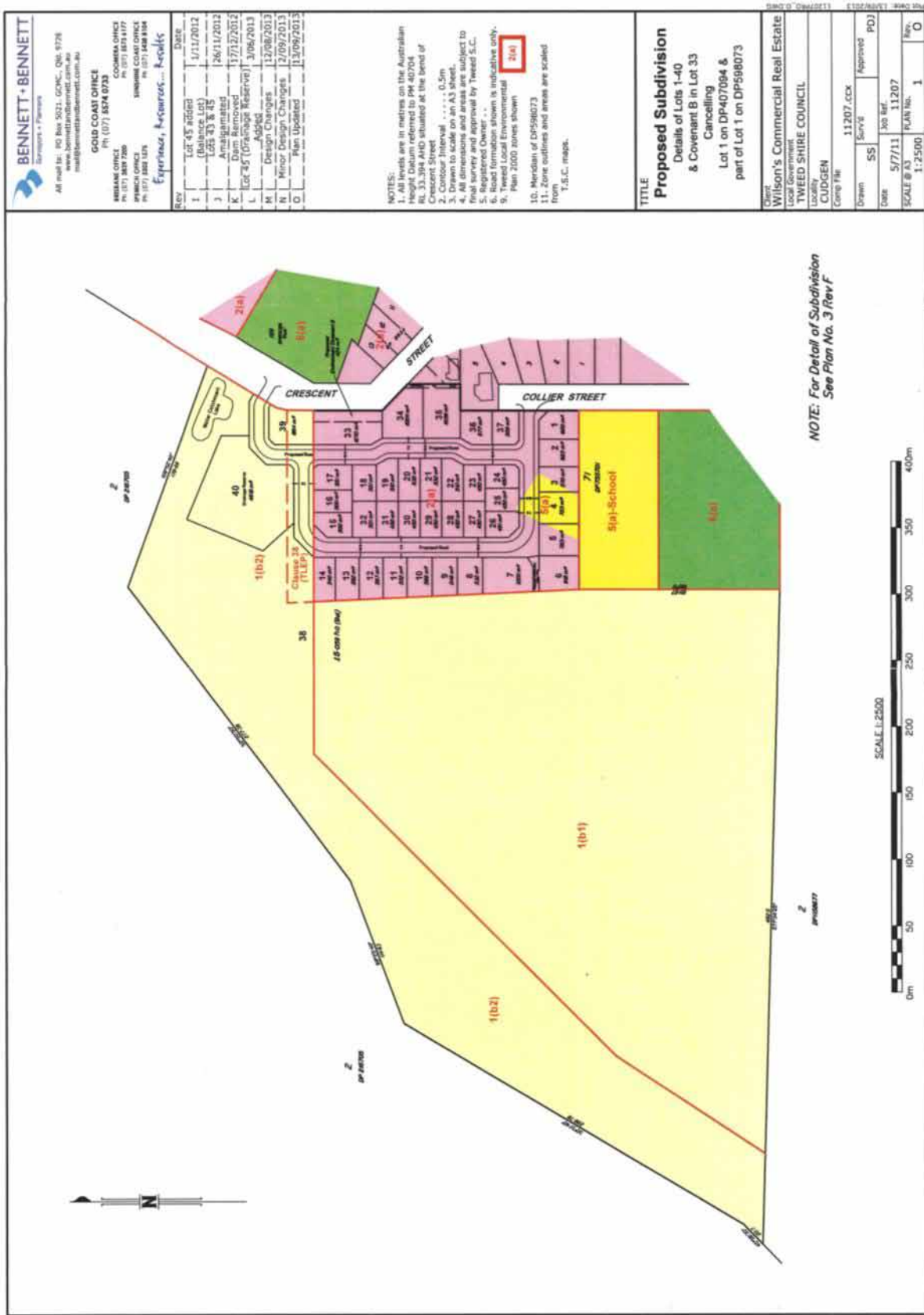


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Author: M.Boothby Planning Information

Date Printed: 28/10/2013 10:37

DEVELOPMENT/ELEVATION PLANS:





PLACE
PLANNING
DESIGN
ENVIRONMENT

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Wilson Collier St. Cudgen
Land Use Conflict Management Strategy

DATE: 16/08/2013
PROJECT NO. WLND01

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.

In general it is considered that the proposed subdivision would accord with the aims of the Tweed Local Environmental Plan (TLEP) 2000. The application has been referred to the relevant units in Council who have considered relevant details relating to flooding, land forming, and ecological impacts. It is considered that the proposal would be unlikely to impact on the area's environmental or residential amenity qualities to such an extent to warrant refusal of the proposal.

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 proposal would be consistent with the objectives of the zone, as detailed further within this report. It is also considered that, given the site does not comprise any protected or endangered vegetation communities, that the proposal would be unlikely to result in irreversible environmental damage and would accord with the principles of ecological sustainable development, provided the development is carried out in accordance with the recommended conditions of consent (in relation to vegetation clearance, as detailed further within this report).

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 sites have multiple zones which are the 2(a) Low Density Residential zone, 5(a) Special Uses (School) zone and the 1(b1) and 1(b2) Agricultural Protection zone. The objectives each zone will be detailed further below. It is considered that the proposed development is consistent with the primary objective of the zones.

As detailed further within this report, it is also considered that the proposal would be consistent with the other aims and objectives of the TLEP 2000 that are relevant to the development. Further, it is considered that the proposal, provided it is carried out in accordance with the conditions of the consent, would be unlikely to impact on the locality or catchment to such an extent to warrant refusal of the proposal. The development would not have an unacceptable cumulative impact if managed in accordance with the recommended conditions.

Clause 11 - Zone Objectives

Zone 1(b) Agricultural Protection

Primary objective

- *to protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.*

Secondary objective

- *to allow other development that is compatible with agricultural activities.*

The proposed subdivision is located within a portion of land which contains 1(b1) and 1(b2) Agricultural Protection. The site is located within a parcel of land which has multiple zones.

The intent of the proposal is to subdivide off the 2(a) Low Density Residential zone and maintain the agricultural protection zone in three residue allotments being proposed lots 38, 39 and 40. A small section of the proposed road is to be located within the 1(b2) portion of the lot however it is considered that this is minor in nature and will not impact upon the rest of the prime agricultural land. The location of the road is identified as a future road under Clause 38 of the LEP. The road will not fragment any agricultural land, as the road is directly adjacent to residential land under Zone 2(a) and will separate residential land from agricultural land.

A stormwater detention basin (defined as an 'urban stormwater water quality management facility' in the LEP) will be constructed in land under this Zone and be located within proposed lot 40.

This detention basin is compatible with surrounding agricultural activities. The detention basin will be located adjacent to a road and residential development and so will not fragment agricultural land.

The residue lots will continue to be utilised for agricultural purposes and is therefore considered to be consistent with the primary objective of the land.

Zone 2(a) Low Density Residential

Primary objective

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

Secondary objectives

- *to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*
- *to allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.*

The proposed development involves a 40 lot subdivision which is consistent with the primary objective of this zone. Primarily detached residential development is proposed, which will create a detached housing character and amenity on the land.

Zone 5(a) Special Uses (School) zone

Primary objective

- *to identify land which is developed or is proposed to be developed, generally by public bodies, for community facilities and services, roads, railways, utilities and similar things.*

Secondary objective

- *to provide flexibility in the development of the land, particularly if it is not yet or is no longer required for the relevant special use.*

The proposed subdivision is consistent with this zone, by virtue of the zones secondary objective.

The primary objective of the zone states that land is to be developed for public or community facilities.

However, the secondary objective provides “*flexibility in the development of the land, particularly if it is not yet or is no longer required for the relevant special use.*”

In this instance, the land under Zone 5(a) is adjacent to a school, but the land itself contains a detached dwelling (house). It is therefore considered the subject land is not required for school purposes, but is appropriate for residential purposes.

The proposed residential subdivision over this land would therefore be consistent with this objective and the zone generally.

Clause 14 - Development near zone boundaries

Objective

- To provide flexibility where detailed investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable more logical and appropriated development of a site.

This clause applies to land which is:

- Within 20 metres of a boundary between any two of Zones 1(c), 2(a), 2(b), 2(c), 2(d), 2(e), 2(f), 3(a), 3(b), 3(c),3(d),3(e), 4(a), 5(a),6(a) and 6 (b), or
- Within 50 metres of a boundary between Zones 1(a) and 1(b), or
- Within 50 metres of a boundary between any zone referred to in paragraph (a) and any zoned referred to in paragraph (b).

They proposed development involves the subdivision of 2(a) and 5(a) zoned land from the 1(b) and 1(b2) zoned land. The 5(a) land is no longer utilised for school purposes, but is appropriate for residential purposes. The 5(a) zoned land is within 20 metres of 2(a) zoned land.

Clause 15 - Essential Services

Clause 15 of the TLEP 2000 requires that available services are adequate and that development does not occur without adequate measures to protect the environment and community health prior to determining a development application.

The primary objective is to ensure that development does not occur without adequate measures to protect the environment and the community's health.

The subdivision development will provide reticulated water and sewerage services to all residential lots created, as well as stormwater drainage infrastructure.

Clause 16 - Height of Building

A 3 storey height limit applies to the site. No buildings are proposed as part of this application.

The proposal is considered to be consistent with the provisions of Clause 16 of TLEP 2000.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP 2000 requires Council to consider whether a proposed development is likely to have a significant social or economic impact. It is considered that the proposed subdivision is not of a significant scale to have a social or economic impact on the broader community; the proposed development is consistent with the zoning controls.

However, as detailed within this report, it is considered that the proposed subdivision would be unlikely to impact on the residential amenity or environmental qualities of the land to such an extent to warrant refusal of the proposal.

Clause 19 - Subdivision

This clause outlines that:

- A person must not subdivide land without consent
- Strata division is permissible in prescribed zones, and
- A person may, with consent, carry out a minor boundary adjustment, notwithstanding that the new lots may not comply with relevant development standards applicable to the subject site.

The subject proposal satisfies this clause as it does not result in lot sizes less than those allowable in the 2(a) zone (450m²).

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

The proposed development will be subdividing the allotment to sizes less than 40ha which triggers a SEPP 1 objection. This has been outlined below.

Proposed lots 38 and 39 will be conditioned to be consolidated into 1 allotment having a total area of 15.1454ha and will be split zoned 1(b1) and 1(b2) and will continue to be utilised for agricultural purposes such as the existing cropping/orchid pursuits.

The SEPP No. 1 objection relates to the portion of the combined lots 38 and 39 which is located within the 1(b2) zone. This equates to a total area of 5.2382ha within the proposed lot which is under the 40ha minimum.

Lot 40 will not require a SEPP No. 1 objection as the lot will not be used for agricultural or residential purposes under Clause 20(3) of the Tweed Local Environmental Plan as outlined in this report.

Proposed Lot 40 does not require a SEPP No. 1 Objection as Clause 20(3) states:

"Despite subclause (2), consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, or 10 hectares in the case of Zone 1(b1), if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purpose, for which consent could be granted."

The proposed development was amended within the assessment timeframe and an additional allotment was created which will be undersized. The allotment will not be utilised for an agricultural or residential purpose and as such does not require a SEPP No. 1 objection. The allotment will be utilised for drainage purposes.

Clause 34 - Flooding

The actual development footprint is not shown as being flood affected on Council's GIS enlighten system apart from a northern section of proposed Lot 39. The Q100 design flood level does affect the bio retention basin and the intersection of proposed Road 2 and Crescent Street. Evacuation for future residents in a flood event would be Collier Street, which is not affected by flood. It is considered that the proposal complies with this Clause.

Clause 35 - Acid Sulfate Soils

Council's records lists the property as being Class 3 and 5 acid sulphate soils (ASS). However, the portion of the site to be subdivided is entirely within Class 5 mapped area.

An acid sulfate soil management plan will be required for any works beyond 1m below the natural ground surface, or works likely to lower the water table by beyond 1m below the natural ground surface.

Council's Environmental Health Services has advised that the ASSMP provided was considered to have been prepared generally in accordance with the relevant NSW guideline, the Acid Sulfate Soils Manual. Provided that the ASSMP is complied with, adverse impacts associated with acid sulfate soils are not anticipated. Appropriate conditions are recommended.

Clause 38 - Future road corridors

The proposal objective of this Clause is *to cater for the alignment of, and development in proximity to, future roads.*

The subdivision will allow this road to be established, and is designed to connect to this surrounding roads.

Clause 39 - Contaminated Lands

The site is existing residential land and is part of the greater Cudgen Village. Council Environmental Health Unit has advised that additional soil sampling and analysis is required. However, information provided by Gilbert and Sutherland indicates that the subject site is capable of being remediated to ensure that the residential component of the subdivision is suitable for residential use. It is likely that only minor remediation would be required. An appropriate deferred commencement condition is recommended. It is considered the proposal can comply with the requirements of Clause 39 of the TLEP 2000.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

Clause 12 states that the consent authority:

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

The subject site is not identified as prime crop or pasture land. The portion of the subject site that involves the residential development is located within the 2(a) Low Density Residential zone, with similar land uses located to the east.

The proposed road is located on agricultural land (Zone 1(b2) under the Tweed LEP); however, this road is a designated road under Clause 38 of the LEP and therefore the road will not compromise the adjacent agricultural land.

The land is not significant farmland, and given the proximity of other residential dwellings, that such a land use would not be appropriate in this location.

It is considered unlikely that the proposed residential subdivision would impact on the use of adjacent agricultural land for such purposes. On this basis it is considered that the proposal would not contravene the intentions of Clause 12 of the NCREP 1988.

Clause 32B: Coastal Lands

Clause 32B applies as the NSW Coastal Policy applies to the subject land. The following has been noted:

- The proposal has addressed the relevant environmental planning instruments which implement the objectives of the Coastal Policy and related documents.
- The proposal does not impede public access to the foreshore in any way.
- The proposal is located on urban land in the Tweed Heads area; yet, the development will not give rise to any overshadowing of any foreshore land.

It is considered that the proposed development complies with this Clause.

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan (NCREP) states that Council shall not grant consent to the development for residential purposes unless:

- (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land;
- (b) it is satisfied that the proposed road widths are not excessive for the function of the road;
- (c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met;

- (d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles; and
- (e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

The proposed development is considered to be consistent with the above provisions of this clause in that: the proposed density is a reasonable response to the existing land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. Further, the road widths are satisfactory for the proposal and a detailed sedimentation and erosion control plan will be applied in relation to the construction.

SEPP No. 1 - Development Standards

As discussed, a SEPP No. 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40ha minimum lot size development standard for the 1(b2) zone.

Clause 20(2)(b) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 10ha minimum lot size development standard for the 1(b1) zone.

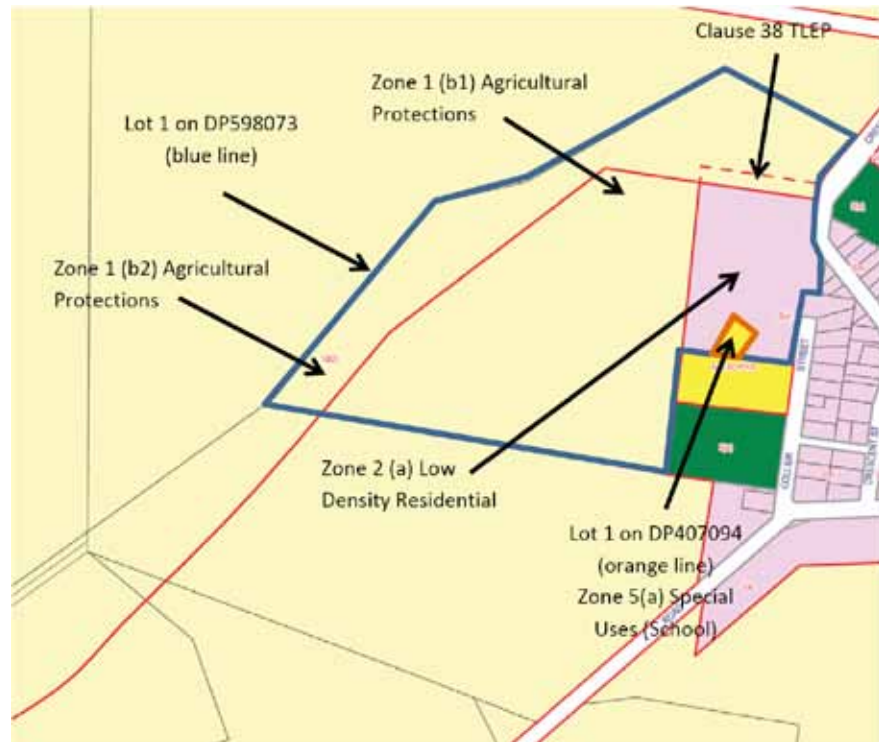
The remainder of the site is zoned 2(a) Low Density Residential which has a minimum lot size of 450m² and 5(a) Special Uses which does not have a specific minimum lot size.

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

During the assessment a number of amendments were made and the allotment numbers have changed slightly. The new allotment numbers will be included within the applicant's variation.

In support of the proposed variation, sections of the applicant's justification are as follows:

"The following application is provided in support of a variation to a development standard highlighted in the Tweed Local Environmental Plan 2000 (TLEP 2000). The variation is to facilitate the highest and best use of the site (proposed residential development). The proposed development involves the subdivision of the land located at 17 Collier Street, Cudgen, into residential allotments to meet the current and future demands for low residential allotments in the area. The proposed subdivision involves two (2) parcels of land (Lot 1 on DP407094 and part of Lot 1 on DP598073) which are designated as Zone 2(a) – Low Density Residential, Zone 5(a) Special Uses (School), Zone 1(b1) and Zone 1(b2) Agricultural Protection – please refer to the following zoning map.



The proposed subdivision creates 40 allotments of which include low density residential lots, a rural lot, road and an allotment for the stormwater drainage. The component of the proposed development that is the subject of this variation is the rural lot, road and stormwater drainage which all fall within the Zone 1 (b1) and (b2) Agricultural Protection. As such, the Applicant wishes to provide the following grounds for variation to development standards in line with the Varying Development Standards: A guide document.

1. What is the name of the environmental planning instrument that applies to the land?

Tweed Local Environmental Plan 2000 (TLEP 2000).

2. What is the zoning of the land?

Zone 1 (b1) and (b2) Agricultural Protection.

3. What are the objectives of the zone?

The primary objective of this zone is 'to protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.' The secondary objective is 'to allow other development that is compatible with agricultural activities.'

4. What is the development standard being varied? e.g. FSR, height, lot size

The development standard being varied is the Lot Size required for land identified within the Agricultural Protection zone.

5. Under what clause is the development standard listed in the environmental planning instrument?

The relevant section of the TLEP 2000 is Part 2, Clause 11 (Provisions applying to particular zones – The zones).

6. What are the objectives of the development standard?

We understand that the development standard objectives are as detailed in Part 4, Clause 20 [Subdivision – Subdivision in Zones 1 (a), 1 (b), 7 (a), 7 (b) and 7 (l)] of the TLEP 2000 and are as follows:

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

(1) Objectives

- *to prevent the potential for fragmentation of ownership of rural land that would:*
 - (i) adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- *to protect the ecological or scenic values of the land.*
- *to protect the area of Tweed's water supply quality.*

(2) Consent may only be granted to the subdivision of land:

- (a) within Zone 1 (a), 1 (b2), 7 (a), 7 (d) or 7 (l) if the area of each allotment created is at least 40 hectares, or*
- (b) within Zone 1 (b1) if the area of each allotment created is at least 10 hectares.*

(3) Despite subclause (2), consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, or 10 hectares in the case of Zone 1(b1), if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purpose, for which consent could be granted.

(4) For the purposes of subclauses (2) and (3):

- (a) land is taken to be within Zone 1 (b1) if it is shown on the zone map by the marking "1(b1)", and*
- (b) land is taken to be in Zone 1 (b2) if it is shown on the zone map by the marking "1(b2)".*

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The proposed subdivision involves the creation of 40 allotments; however only two (2) of the proposed allotments are the subjects of this objection, which have been detailed below:

Proposed Lot 38-39 (Combined via conditions) is to remain as a rural lot and is not intended to be further subdivided.

Proposed Lot 40 is a stormwater drainage reserve to service the proposed development. The stormwater runoff from the proposed development shall discharge into the stormwater drainage reserve as described in the amended stormwater report.

The development standard requires the following for land located in:

Zone 1 (b1) – minimum lot size of 10ha

Zone 1 (b2) – minimum lot size of 40ha

The original lot, Lot 1 on DP598073, prior to the proposed subdivision had a total site area of 18.56ha, which consists of approximately 9.89ha in Zone 1 (b1) and 5.9ha in Zone 1 (b2); therefore, already not complying with the above-mentioned minimum lot sizes.

As part of the proposed subdivision, the balance of this allotment (proposed Lot 38-39) will have a total area of 15.521ha, which includes 9.908ha located within Zone 1 (b1) and 5.613ha within Zone 1 (b2).

Based on the above, we believe that the proposed allotments located within Zone 1 (b1) and (b2) are acceptable in this instance as they do not detrimentally impact of the surrounding agricultural land uses nor the community.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

As mentioned above, the original title area of Lot 1 on DP598073, already did not comply with the subject development standards. In addition, the surrounding land uses are predominantly low-density residential (to the east), whilst, agricultural land is located to the west. It is believed that the proposed development would not detract from those existing agricultural and rural uses in the area, and would instead provide a transition / buffer between the two (2) lands uses (i.e. between the agricultural and low-density residential uses).

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

Compliance with the development standard cannot be achieved due to the original area of the site being less than what is required under the TLEP 2000. Therefore, the development of this site does not hinder the attainment of the object specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979, due to its non-compliance with the development standard.

The proposed development will encourage the proper management, development and conservation of natural and artificial resource. The agricultural land component of the subject site is mainly being maintained with the exception of those areas being proposed as road and stormwater drainage reserve. The site does not contain any natural areas, forests, minerals, water, cities, towns and villages; however, will promote and support the social and economic welfare of the community through providing a residential product that is in high demand in this location and will ensure to maintain, protect and remediate significant landscape (where possible) to promote a better environment.

Based on our Clients informal research we understand that there is demand in the current and future market for this type of residential product (low-density residential allotments). With respect to the rural lot (proposed combined Lot 38-39), this is to be retained by the current

land owner and will continue to be used for agricultural / rural purposes. The proposed development will promote the coordination and economic use of the subject site through providing a residential development that has been undertaken in an appropriate manner (i.e. compliant construction methods) and results in a product that is acceptable to Council and the community.

12. Is the development standard a performance based control?

Based on our interpretation of the objective for the Zone, we understand that the development standard is a performance based control.

13. Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

The compliance with the development standard, as mentioned above, cannot be achieved as the subject site does not achieve the minimum lot sizes prior to the proposed development.

The proposed subdivision of the subject site does not take away from the character of the area and will instead encourage the further growth of this area through providing a residential product that is in demand.

In addition, the proposed development complies with the objectives of Section 20 of the TLEP 2000, which have been detailed below:

1. Presently the subject site is owned by one (1) owner. The proposed low-density-residential allotments will be sold to individual owners, whilst the 'rural lot' (proposed Lot 38-39) will continue to be owned by the current owner. The fragmentation of the rural land will not occur, with the exception of the portion of the agricultural protection land that will be utilised for road and the stormwater drainage reserve.
2. The proposed development does not adversely impact of the continuance or aggregation of sustainable agricultural units in the area as the subject site (where adjoining existing agricultural / rural land uses) is proposed to be utilised for agricultural / rural purposes.
3. The residential development involves the necessary services, including access to surrounding public amenities and services (i.e. shopping facilities located at Kingscliff approx. 4km from the site).
4. The ecological and scenic values of the area are not negatively impacted upon by the proposed development and instead enhance them through the positioning of the proposed allotments to take advantage the surrounding views and vistas.
5. Through the inclusion of the bio-retention basin, the runoff from the proposed development will be captured and treated to ensure that Tweed's water supply quality is not impacted.

The proposed development does not comply with the development standard; however, the intent of the development still ensures that the objectives of the TLEP 2000 are meet and maintained.

14. Are there sufficient environmental planning grounds to justify contravening the development standard?

We believe that the proposed development will result in an appropriate form of development that is consistent with the area and the expectations of the community. The objectives of the TLEP 2000 are also met through the proposed development, even if the minimum lots size is not achieved by those located within Zone 1 (b1) and (b2). The above-mentioned has demonstrated that the proposed development and the proposed varying of the development standard is appropriate in this instance and ask that this be considered and approved accordingly.

The proposed development was amended during the assessment which reduced the number of allotments from 44 to 40. As a result of this amendment the lot numbers have changed slightly and an additional allotment is created within the 1(b2) zoned land. The allotments within the rural zones are as follows:

- Combined Lots 38 & 39. Residual lots to remain for agricultural purposes being cropping/orchids.
- Lot 40 Drainage reserve to be transferred to Council.

Lot 40 does not require a SEPP No. 1 objection as under Tweed Local Environmental Plan 2000 clause 20(3) subdivisions are able to occur which are under the minimum allotment size if they are not used for an agricultural or residential purpose. As the proposed is for a drainage reserve a SEPP No. 1 is not required.

The Development Application required concurrence from the Department of Planning and Infrastructure due to the minimum allotment size. Concurrence was granted on 13 February 2013 for the following reasons:

1. *No issues of state or regional significance are raised;*
2. *Creation of the residue lot is an administrative matter; and*
3. *Creation of the lot for stormwater drainage reserve is of minor significance.*

As a result of the concurrence from the Department of Planning and Infrastructure it is considered appropriate to accept the SEPP No. 1 Objection for the proposal including land under the minimum allotment size in this instance.

SEPP No. 44 - Koala Habitat Protection

SEPP 44 is applicable to the subject site due to the combined area of the site being greater than 1ha. Council's GIS identifies the vegetation on site as being predominantly highly modified/disturbed with some patches of vegetation present along the Crescent Street Road Reserve. The subject site is not identified as containing core koala habitat. The subject proposal is considered to be consistent with the requirements of SEPP 44.

SEPP No. 55 - Remediation of Land

The aim of SEPP 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

A Preliminary Contamination Assessment has been undertaken that includes the findings of a preliminary investigation and addresses land concerns.

Council Environmental Health Unit has advised that additional soil sampling and analysis is required. However, information provided by Gilbert and Sutherland indicates that the subject site is capable of being remediated to ensure that the residential component of the subdivision is suitable for residential use. It is likely that only minor remediation would be required. An appropriate deferred commencement condition is recommended.

SEPP (Rural Lands) 2008

The SEPP outlines the following 'Rural Planning Principles':

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas;
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State;
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development;
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community;
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land;
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities;
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing.

Despite the proposed subdivision incorporating rural land uses – no urban uses are being considered in the rural land area. Lot 38 and 39 is proposed for the purpose of rural production and will contain a buffer to ensure that any possible land use conflicts between rural and residential uses are minimised. In addition, Lot 38 will also contain the proposed new road (complying with Clause 38 TLEP). Proposed Lot 40 will contain a stormwater detention basin that is not an urban use.

The proposed development is considered to fulfil the aims of the Policy and Clause 7 and 8 that talk about Rural Planning and Subdivision Principles.

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

Draft Tweed Local Environmental Plan 2012 relates to the subject site. Within the Draft LEP the site is split zoned being RU1 - Primary Production and R2 - Low Density Residential. Within the LEP the minimum lot sizes applying to the site are 450m² for the R2 zone and both 10ha and 40ha for the RU1 zone. These minimum lot sizes are consistent with the current minimum lot sizes and it is considered that the proposed development is consistent with the Draft Local Environmental plan 2012.

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

Tweed Development Control Plan

A1 - Residential and Tourist Development Code

Although the subject application relates to a subdivision development only it is considered that the proposed allotments should be able to accommodate a dwelling in accordance with DCP A1 requirements without the necessity for variations to this DCP.

In this regard, the applicant has submitted information relating to some of the DCP A1 controls such as setbacks and deep soils zones which would apply to a subsequent development application for a dwelling on the proposed allotments.

It is considered that the applicant has adequately demonstrated that dwellings which would comply with the DCP could be placed on each allotment in terms of these controls.

It is also accepted that the assessment of future applications for development on these sites would be subject to separate assessment process and in this regard the assessment of the application under this DCP was in order to establish generally that acceptable outcomes could be provided on site rather than a detailed assessment of the specific future design for each allotment.

A2 - Site Access and Parking Code

The subject development is to be accessed from Crescent Street and Collier Street. A new internal road will connect the two streets. All individual allotments accessed from an internal loop road to be created as part of this application.

The application was referred to Councils Development Engineering Section and Traffic Engineer.

In terms of access to the proposed development, Councils Development Engineer has advised that:

"Council's Subdivision Manual specifies 'a minimum of 9.0 metres of kerb frontage is required for each lot unless alternative provisions are made for parking.' Council's request for further information required that proposed Lot 6 had adequate road frontage and access to Road 1. The lot frontage was amended to 9m. All other allotments have an average road frontage of 16m."

Actual onsite parking requirements under this DCP would be considered under the future applications for development of each individual allotment, however it is considered that given the area of each allotment, there would be adequate space for parking facilities compliant with this DCP to be provided on each site, subject to an appropriate build design.

A3 - Flood Liable Land

The actual development footprint is not shown as being flood affected on Council's GIS enlighten system apart from a northern section of proposed Lot 39. The Q100 design flood level does affect the bio retention basin and the intersection of proposed Road 2 and Crescent Street. Evacuation for future residents in a flood event would be Collier Street, which is not affected by flood. It is considered that the proposed development is consistent with this section of the DCP.

A5 - Subdivision Manual

Tweed Development Control Plan A5 -Subdivision Manual aims to:

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

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

Environmental Constraints – this section of the DCP relates to issues such as contamination, bushfire and access etc. These matters are discussed in detail elsewhere in this report with the conclusion being that the proposal is acceptable subject to appropriate conditions of consent.

Landforming – Levels within the development footprint range from RL35.5m AHD in the south western corner (Lot 6) to RL2.5m AHD in the north eastern corner (Lot 39). The proposed drainage reserve is located at the lowest part of the site with levels ranging from RL0.5m to 1.5m AHD.

Knobel Consulting have prepared a number of plans titled Preliminary Earthwork Plan and Preliminary Earthworks Sections dated 13 September 2013 to demonstrate proposed cut and fill on the site.

Comparison of the existing levels and proposed levels as detailed on Knobel Consulting plans shows a maximum of 2.7m of cut in the north west of the site and maximum fill level of 2.6m in the north east of the site. The majority of cut and fill on the site ranges from 0.5m to 1m. Only minor regrading of the site is proposed, therefore generally preserving the natural landform.

The earthworks sections show the boundary levels around the external perimeter have been preserved with the exception of fill up to 2.2m on the Crescent Street Road reserve (near proposed Lot 36). Three retaining walls are proposed, which generally average 1m in height.

Stormwater Runoff, Drainage, Waterways & Flooding – The proposed development was referred to Council's Infrastructure Engineer who responded with the following:

"The major stormwater issue was the lawful point of discharge. Throughout the assessment Council has maintained that the developments only lawful point of discharge is the 'East-West drain' at Altona Drive. It was deemed

unacceptable to discharge stormwater to the private agricultural drains to the North of the property. Some difficulty was encountered trying to discharge runoff from the development to this LPOD without mixing with stormwater from the existing private agricultural drains. After multiple iterations, the current concept of piping stormwater from the bio-retention/detention basin out to Crescent St and to the Northern side of the existing culvert was agreed upon. This appears to be the only solution available with no risk of nuisance to the adjoining properties.

The other stormwater issue was concern regarding the major stormwater system. Due to the slope of the land, the gradient and inefficient alignment of the flow paths, a higher level of immunity was requested. The applicant was asked to re-design (in accordance with D5.12.3a) the major stormwater system with a factor of safety of 1.5 on the design rainfall and a free board of 500m. The recently submitted SWMP-P has met this request."

Urban Structure – The proposed subdivision is considered to provide appropriate access, orientation and configuration of lots which meets the provisions of this section of the DCP.

Movement Network – The infill nature of the proposed development has resulted in an improved movement network through the design of an internal road connecting Crescent Street and Collier Street.

Open Space Network – The applicant has agreed to pay Section 94 contributions for Casual Local Open rather than a land contribution. The application was referred to Council's Open Space Officer who advised that this was an acceptable solution. The proposal is considered to be acceptable in this regard.

Lot Layout – The proposal is consistent with the minimum allotment area of 450m² as all allotments are greater than this. The allotments can provide an area for a building envelope of 10m x 15m. The applicant has provided information which demonstrates that future dwelling units could be provided to each allotment in accordance with DCP Section A1.

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

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

A11 - Public Notification of Development Proposals

Under the provisions of this DCP, the proposed development was required to be notified to surrounding properties as it comprises of a subdivision of 20 or more lots. As such, the subject application was notified for a period of 14 days from 7 February 2013 to 21 February 2013. During that period, a total of 16 submissions were received which have been addressed below.

B9 - Tweed Coast Strategy

DCP B9 relates to the northern end of the Tweed Coast, which includes Cudgen Village. The site has been identified as an existing urban area due to its residential zoning. The Plan sets objectives for future development concentrating

on public services and design principals. The Vision Statement for this district identified at Clause B9.3.2 is:

To manage growth so that the unique natural and developed character of the Tweed Coast is retained, and its economic vitality, tourism potential, ecological integrity and cultural fabric are enhanced.

As the site has been considered to be an existing urban area it is capable of integration with the rest of the Cudgen Village area.

The proposed development is considered to represent an appropriate development in terms of the above objective as it provides for a low density residential option in the area, with the housing density assessed as being an appropriate response to site and development constraints in this instance.

The proposal is not considered to have an unacceptable impact on the objectives or provisions of this DCP and the proposal is appropriate.

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

The proposal does not include any demolition as the application relates to subdivision of a cleared site only.

Clause 93 Fire Safety Considerations

Not applicable. No buildings are proposed.

Clause 94 Buildings to be upgraded

Not applicable. No buildings are proposed.

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

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is approximately 2.3km from the coastal foreshore and is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is located well away from all creeks and therefore this Plan does not apply.

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

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.

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

Context and Setting

The subject proposal results in the subdivision of 2(a) and 5(a) portion of land with the remainder of the land remaining 1(b1) and 1(b2) zoned land. It is considered the low density residential subdivision of the 2(a) and 5(a) zoned land is consistent with the rest of Cudgen Village. It is envisaged that there will be no significant adverse impacts upon the surrounding locality as a result of the proposed application.

Access, Transport and Traffic

The proposed road network details an internal loop road with two intersections into Cudgen Village, these being Collier Street and Crescent Street respectively. The layout plan shows the proposed road as having a 7.5m wide pavement within a 15m wide road reserve.

Council's Subdivision Manual specifies '*a minimum of 9.0 metres of kerb frontage is required for each lot unless alternative provisions are made for parking.*' Council's request for further information required that proposed Lot 6 had adequate road frontage and access to Road 1. The lot frontage was amended to 9m. All other allotments have an average road frontage of 16m.

It is considered that the access, transport and traffic have adequately been dealt with in the information provided.

Flora and Fauna

The applicant submitted a management plan titled *Flora and Fauna Management Plan Lot 1 DP407094 & Part Lot 1 DP598073 Version 2 dated June 2013 prepared by Habitat Environment Management Trading P/L ('F&FMP')*.

Council's Natural Resources Unit has assessed the provided information and recommended a number of conditions including an environmental covenant to be provided along the eastern boundary of Lot 33. This is as a result of a number of significant trees of greater than 500mm of diameter at base height which Council consider significant enough to protect with a covenant. This has been included in the recommendations.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development is considered to be appropriate with the context and setting of the Cudgen Village being a low density residential development within a low density residential area. The proposal will result in a permissible use of the site. The property is/can be fully serviced by all necessary infrastructure (water, sewer, stormwater, electricity and telecommunications), and has easy access to main roads. The proposal is considered to be in keeping with the character of surrounding development. Issues relating to density and allotment sizes have

been addressed elsewhere in this report. It is therefore considered that the site is suitable for the proposed development.

Access, Transport and Traffic

The subject development was assessed in terms of access, transport and traffic by Council's Traffic Engineer and Development Engineering Section. The proposed subdivision is to be accessed from Crescent Street and Collier Street.

Surfside Buslines currently operate within the vicinity of the subject site. The service runs between Pottsville and Tweed Heads. The service operates along Crescent Street adjacent to the subject site frontage. It is considered that the existing public transport within the locality is sufficient to cater for the proposed development.

Availability of Utilities and Services

The subject site is serviced by Council's water and sewer services which are available to the proposal on advice from Council's Strategic and Asset Engineer. As such the proposal is considered to be acceptable in this regard.

Flora and Fauna

The property features mostly modified grazing land with some areas of natural vegetation. A number of significant trees of greater than 500mm of diameter at base height are located along the eastern boundary of Lot 33 which Council consider significant enough to protect with a covenant. If approved, appropriate conditions of consent have been recommended to ensure minimal impact upon flora and fauna in the locality.

Natural Hazards

Whilst part of the site is constrained by flooding this can be adequately managed through conditions.

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

Public Submissions Comment

The application was on exhibition for a period of 14 days from Thursday 7 February 2013 to Thursday 21 February 2013. During that period, a total of 16 submissions were received that brought up issues in relation to the following:

Issue	Assessment
Lot sizes too small	The residential lot sizes vary from 450m ² - 1039m ² with an average of 598.5m ² . The minimum lot size allowable in the Tweed Local Environmental Plan 2000 for a dwelling to be located on the land is 450m ² as per Clause 11 of the instrument. It is therefore considered that the proposed development meets the requirement and should not be refused based on this submission.

Issue	Assessment
<p>Earthworks required for steep land</p>	<p>An engineering report prepared by Knobel Consulting dated 8 November 2012 (amended 31 May 2013 with Council's further information request) was been lodged with the application. Council's Development Assessment Engineer has provided the following:</p> <p><i>Comparison of the existing levels and proposed levels as detailed on Knobel Consulting plans shows a maximum of 2.7m of cut in the north west of the site and maximum fill level of 2.6m in the north east of the site. The majority of cut and fill on the site ranges from 0.5m to 1m. Only minor regrading of the site is proposed, therefore generally preserving the natural landform.</i></p> <p>Significant land reforming proposals where more than 10% gross site area or more than 1.0ha is to have surface levels changed by more than 5m or where earthworks exceed an average of 10,000m³ per ha must be justified in context of the Tweed Development Control Plan Section A5. As the proposed only has cut and fill to a maximum of 2.7m and 2.6m respectively the earthworks are considered minor in nature.</p> <p>Therefore the proposed should not be refused based on this submission in this instance.</p>
<p>Increased traffic congestion/safety issues</p>	<p>A traffic report prepared by CRG dated 27 May 2013 has been submitted with the application.</p> <p>The traffic report concludes that the subdivision will generate 37 peak hour vehicle trips with 396 daily trips and that the proposed 40 lot subdivision will not significantly affect the surrounding road network.</p> <p>No objections or issues to the traffic report and proposed subdivision have been raised by Council's Traffic Engineer.</p> <p>Therefore the proposed should not be refused based on this submission in this instance.</p>

Issue	Assessment
Acoustic issues between school and Lots 1-6	<p>It is considered that residential uses and schools uses are compatible land uses as a result of the zoning within the Tweed Local Environmental Plan. The applicant has advised that appropriate fencing will be constructed between the school and the proposed allotments.</p> <p>The average lot size of Lots 1-6 being 692m² is considered to provide adequate room for design of appropriate dwellings to consider the school.</p> <p>Therefore the proposed should not be refused based on this submission in this instance.</p>
No recreation area	<p>The applicant has agreed to pay Section 94 contributions for Casual Local Open rather than a land contribution. The application was referred to Council's Open Space Officer who advised that this was an acceptable solution. Therefore the proposed should not be refused based on this submission in this instance.</p>
Inconsistent density with the rest of Cudgen Village	<p>The residential allotments range in size from 450m² to 1039m² with an average of 598.5m². A review of the subdivision pattern of Cudgen has revealed that there are a number of allotments within Cudgen that are below the 450m² with the majority of allotments being between 450m² - 900m². It is considered that the proposed density is consistent with the village of Cudgen. Therefore the proposed should not be refused based on this submission in this instance.</p>
Collier Street already damaged	<p>Collier Street does not form part of this development. Additionally, following advice from Council's Design and Works units, it is noted that Collier Street is to be upgraded with the works programmed to be scheduled in this financial year's budget. Community consultation and design plans have been completed by Council. The applicant was advised in a meeting held 31 July 2013 that Council will upgrade Collier Street although the developer will be required to reconstruct Collier Street from the property boundary of Lot 71 DP 755701 into the subdivision as per Drawing No. K2027 issue A titled 'Preliminary Roadworks Plan' prepared by Knobel Consulting dated 3 June 2013.</p>

Issue	Assessment
Increased crime and safety concerns	It is considered that new housing developments take into account crime prevention through environmental design, this will in some way increase casual surveillance to the neighbourhood. It is considered that natural surveillance and access control strategies limit the opportunity for crime. Therefore the proposed should not be refused based on this submission in this instance.
7.5m too small for internal road	The proposed internal roads meet the requirements of Tweed Development Control Plan Section A5 - Development Design Specification D1. The road is considered to be an access street which is to accommodate shared pedestrian, bike and vehicular movements. Council's Traffic Engineer has raised no objections to the proposed development. Therefore the proposed should not be refused based on this submission in this instance.
Infrastructure capacity already at maximum	The applicant has provided an Engineering Report prepared by Knobel Consulting which refers to the existing and proposed infrastructure in the area in order to meet the demands of the proposed development. It is considered that there is adequate capacity within the network to cater for the proposed development. Therefore the proposed should not be refused based on this submission in this instance.
No parking along Collier Street	The proposed development will provide for adequate off street parking. Each new dwelling that will be proposed as a result of this application will be required to meet the current standards for off street car parking. Therefore the proposed should not be refused based on this submission in this instance.
No drainage along Collier Street	The proposed development was referred to Council Stormwater Engineer who concluded that the proposed development can adequately treat and disposed of stormwater directed into the proposed development. It is therefore considered that the proposed should not be refused based on this submission in this instance.

Issue	Assessment
School enrolment currently at maximum	Local Council's do not get involved within school enrolments as they are a matter for the State Government. The proposed subdivision is not of a size to warrant the creation of a new school.
No provision or room for footpaths along Collier Street	The proposed subdivision includes footpaths along one side of the new roads connecting to the existing road network. Collier Street is not within the proposed subdivision and therefore will not be expected to provide footpaths.
Safety of students who attend Cudgen Primary as there are no pedestrian areas along Collier Street	Collier Street is not within the proposed subdivision and therefore will not be expected to provide footpaths. Council's Design and Works units advised that Collier Street is to be upgraded within the works programmed to be scheduled in this financial year's budget. Community consultation and design plans have been completed by Council. It is also considered that traffic for the proposed development will not significantly alter safety of students. Therefore the proposed should not be refused based on this submission in this instance.
Reduced Amenity	The proposed development is consistent with the low density residential configuration of Cudgen Village. It is considered that the proposal will not cause any undue impacts such as noise, odour, dust or visual and should not be refused based on this submission.
Loss of valuable farmland	The proposed development involves the subdivision of residential zoned land for residential purposes. The portion of development within the agricultural zoned land will be utilised for a road to access the development. The majority of the road is within an area classified by Tweed Local Environmental Plan 2000 as a future road corridor. The small portion of road outside this road corridor has been placed in this area for safety reasons. Roads are permissible with consent within zone 1(b2) of the Tweed Local Environmental Plan 2000. It is therefore considered that the proposal should not be refused based on this objection in this instance.

Issue	Assessment
Impact upon Pine Trees (Heritage Listed) along Collier Street	The proposed development will not impact upon the Pine Trees along Collier Street. Therefore the proposed should not be refused based on this submission in this instance.
Access to school becomes unsafe	Collier Street is not within the proposed subdivision and therefore will not be expected to provide footpaths. Council's Design and Works units, it is noted that Collier Street is to be upgraded with the works programmed to be scheduled in this financial year's budget. Community consultation and design plans have been completed by Council. It is also considered that traffic for the proposed development will not significantly alter safety of students. Therefore the proposed should not be refused based on this submission in this instance.
Infrastructure being located outside of the land zoned for residential (i.e. road infrastructure proposed in 1(b2) zone	The portion of development within the agricultural zoned land will be utilised for a road to access the development. The majority of the road is within an area classified by Tweed Local Environmental Plan 2000 as a future road corridor. The small portion of road outside this road corridor has been placed in this area for safety reasons. It is therefore considered that the proposal should not be refused based on this objection in this instance.
Are retaining walls being used	<p>Council's Development Design Specification – D6 Site Regrading specifies that retaining walls are to be 1.2m high at the perimeter boundary of the subdivision and 1.2m at side and rear boundaries. Three retaining walls are proposed on the boundaries of Lots 14, 37 & 39, all retaining walls are between 1m to 1.2m in height.</p> <p>The proposed development complies with Council's D6 Site Regrading policy and should not be refused based on this submission.</p>
Crime Prevention	Crime prevention through good environmental design allows for residents to have a greater level of casual surveillance of public spaces. It is considered that the proposed has been designed in a way to improve casual surveillance for the area and should not be refused based on this submission.

Public Authority Submissions Comment

Department of Planning and Infrastructure

The subject application was referred to the Department of Planning and Infrastructure in regards to concurrence for the proposed subdivision. Concurrence has been granted to vary the 40 hectare minimum lot size development standard, for the following reasons:

1. No issues of state or regional significance are raised;
2. Creation of the residue lot is an administrative matter; and
3. Creation of the small lot for bio-retention basin is of minor significance.

Department of Industry and Investment

The proposed development was referred to the Department of Industry and Investment for comment in regards to the agricultural impacts as a result of the application. On 5 March 2013 the Department of Industry and Investment - Mineral Resources Branch responded with concerns relating to the approved sand quarry to the north of the subject site. This information was forwarded onto the applicant in an information request sent out on 9 April 2013. The applicant provided additional information in regards to the buffers from the approved sand quarry. Council's Environmental Health Unit has requested a deferred commencement condition be placed within the recommendations to further assess the acoustic details of the sand quarry and any impacts upon the future residents.

(e) Public interest

The creation of a residential subdivision within the residential zoned portion of the allotment is considered to be consistent with the surrounding subdivision pattern. There will be two residue allotments being utilised for agriculture and drainage purposes. As detailed within this report, the proposed subdivision would be unlikely to impact on the character or amenity of the subject site or surrounding area.

A SEPP No. 1 Objection has been received that demonstrates that in this instance the proposal raises no matters of significance for State or Regional Planning and that no public benefit results from maintaining the development standard. Concurrence has been granted by the Director-General for the creation of the undersized allotment as it was considered that there is no public benefit in maintaining the development standard in this instance.

It is considered that the proposed subdivision would be unlikely to set a harmful precedent for the creation of undersized allotments, given the circumstances of this application.

OPTIONS:

1. Approve the application with conditions of approval in accordance with the recommendation of approval; or
2. Refuse the application for specified reasons.

The Council officers recommend Option 1.

CONCLUSION:

The development application proposes a subdivision that divides the subject allotments into lots as follows:

- Lots 1 – 37 - Residential allotments varying in size from 450m² to 1039m² averaging 598.5m².
- Lot 38 – 39 - Residual lots to remain for agricultural (cropping/orchid) purposes.
- Lot 40 - Drainage reserve to be transferred to Council.

Proposed Lots 38 and 39 would be below the minimum lot size and would be used for agricultural purposes (cropping and orchid). As such a State Environmental Planning Policy (SEPP) No. 1 - Planning Principles Objection has been received in relation to the variation of the development standard.

The application has been referred to the Department of Planning and Infrastructure for consideration who have granted concurrence in respect to the variation of the 40 hectare development standard contained in clause 20(2)(a) of the Tweed LEP 2000 to permit the creation of proposed Lot 38 & 39 and Lot 40 for the following reasons:

1. No issues of state or regional significance are raised;
2. Creation of the residue lot is an administrative matter; and
3. Creation of the lot for a stormwater drainage reserve is of minor significance.

The proposed development is considered to not have a significant impact on flora and fauna, agricultural activities or the social, cultural and economic environment. The proposed lot sizes are considered to be consistent with existing allotments in the area and the proposal is therefore considered acceptable in this instance. On this basis approval of the proposed development is recommended.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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a33 [PR-CM] Class 1 Appeal in Relation to Development Application DA12/0527 for Internal Alterations and Additions Comprising of a New General Store, Extension of Entrance and Car Park Reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads Wes

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0527 Pt3



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:

At its meeting on 16 May 2013, Council unanimously resolved to refuse Development Application DA12/0527 which sought approval for alterations and additions to the existing Seagulls Club to accommodate a full line supermarket. The supermarket was proposed to be operated by the Independent Grocers of Australia (IGA) franchise comprising a gross floor area of 1965m².

Council has been served notice of a Class 1 Merits Appeal against Council's refusal in the NSW Land and Environment Court. A telephone directions hearing has been set down for Monday 20 January 2014 and it is requested that Council's position on defending the Appeal be determined to enable engagement of solicitors and consultants.

RECOMMENDATION:

That Council in respect of its decision to refuse Development Application DA12/0527 for internal alterations and additions comprising of a new general store, extension of entrance and car park reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads West determines to defend the Class 1 Appeal and engage the necessary solicitors and consultants.

REPORT:

The Development Application now subject to the Class 1 Merits Appeal sought approval for alterations and additions to the existing Seagulls Club to accommodate a full line supermarket. The supermarket was proposed to be operated by the Independent Grocers of Australia (IGA) franchise comprising a gross floor area of 1965m².

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

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

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

The applicant lodged the application as a "general store" by definition (TLEP 2000) and sought Council's approval for this as a permissible land use. The applicant submitted legal advice to support this view and such advice was discussed in the original report.

Council assessed the original application for a supermarket on its merits having regard to the matters for consideration under the Environmental Planning and Assessment Act 1979.

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

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

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

Accordingly the application was recommended for refusal with the following reasons:

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

OPTIONS:

1. Defend the Appeal; or
2. Negotiate Consent Orders.

Council Officers recommend Option 1.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Council will be required to engage legal representation and specialist consultants regarding the Appeal. Legal costs will be incurred as a result of the Appeal.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Council Report 16 May 2013 (ECM 3237954)

b33 [PR-CM] Strategic Planning - Murwillumbah Bowls and Sports Club site - Lot 1 DP 524512, Lot 1 DP 523131, Lot A DP 390347, and Lot 1 DP 250164 Condong Street, Brisbane Street and Commercial Road, Murwillumbah

SUBMITTED BY: Planning Reforms

alid



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
- 1.5.3 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

SUMMARY OF REPORT:

Council at its meeting held 21 November 2013 resolved:

"that this item be deferred to a Workshop"

This Workshop was held on Thursday 5 December 2013 and the following report is now resubmitted for Council's consideration.

The Planning Reform Unit has been approached by representatives of the landowners of the former Murwillumbah Bowls Club. The Club became financially unviable and ceased trading in June 2012, with the Club's bowler's accommodated at Condong Bowls Club, as well as others in the district.

This report has been prepared in response to the Club's representations and seeks to provide guidance on how the Club and Council can capitalise on a suitable planning outcome for the site. It is arguably one of the Township's most significant remaining redevelopment opportunities with the land capacity to accommodate a new major supermarket retailer. Strategic investigations therefore present the opportunity to resolve outstanding disconnections between community demand for increased chore-based retail competition and services and the market's ability to meet those needs.

Strategic investigations through a planning proposal will provide the best means for assessing opportunity and suitability in consultation with the Tweed community. This is particularly important as any policy change will be required to both the Tweed Local Environmental Plan and the Tweed Development Control Plan (Section B22 -Murwillumbah Town Centre).

The redevelopment of this site could act as a local catalyst for further consolidation and continued economic and social sustainability of the Murwillumbah Town Centre. It is recommended that a planning proposal should be prepared as a priority and the

Murwillumbah Services Memorial Club Limited be advised to submit a formal planning proposal request.

RECOMMENDATION:

That Council, in respect of Murwillumbah Bowls and Sports Club site - Lot 1 DP 524512, Lot 1 DP 523131, Lot A DP 390347, and Lot 1 DP 250164 Condong Street, Brisbane Street and Commercial Road, Murwillumbah, endorse the following:

- 1. The preparation of a planning proposal:**
- 2. The landowner be advised of the need to prepare and submit a formal request for a planning proposal; and**
- 3. That any amendments needing to be made to the Tweed Development Control Plan, Section B22 - Murwillumbah Town Centre, are to be carried out concurrently with the planning proposal and community consultation undertaken.**
- 4. ATTACHMENT 1 is Confidential in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:**
 - (d) commercial information of a confidential nature that would, if disclosed:*
 - (i) prejudice the commercial position of the person who supplied it, or*
 - (ii) confer a commercial advantage on a competitor of the council, or*
 - (iii) reveal a trade secret*

REPORT:

Investigations have been undertaken in the pursuit of establishing additional retail services for Murwillumbah Town Centre and in particular a second 'full-line' supermarket, over many years. The major supermarket retailers have made regular contact with Council staff during this period, seeking advice on a wide range of sites and localities, but none that have materialised with a development.

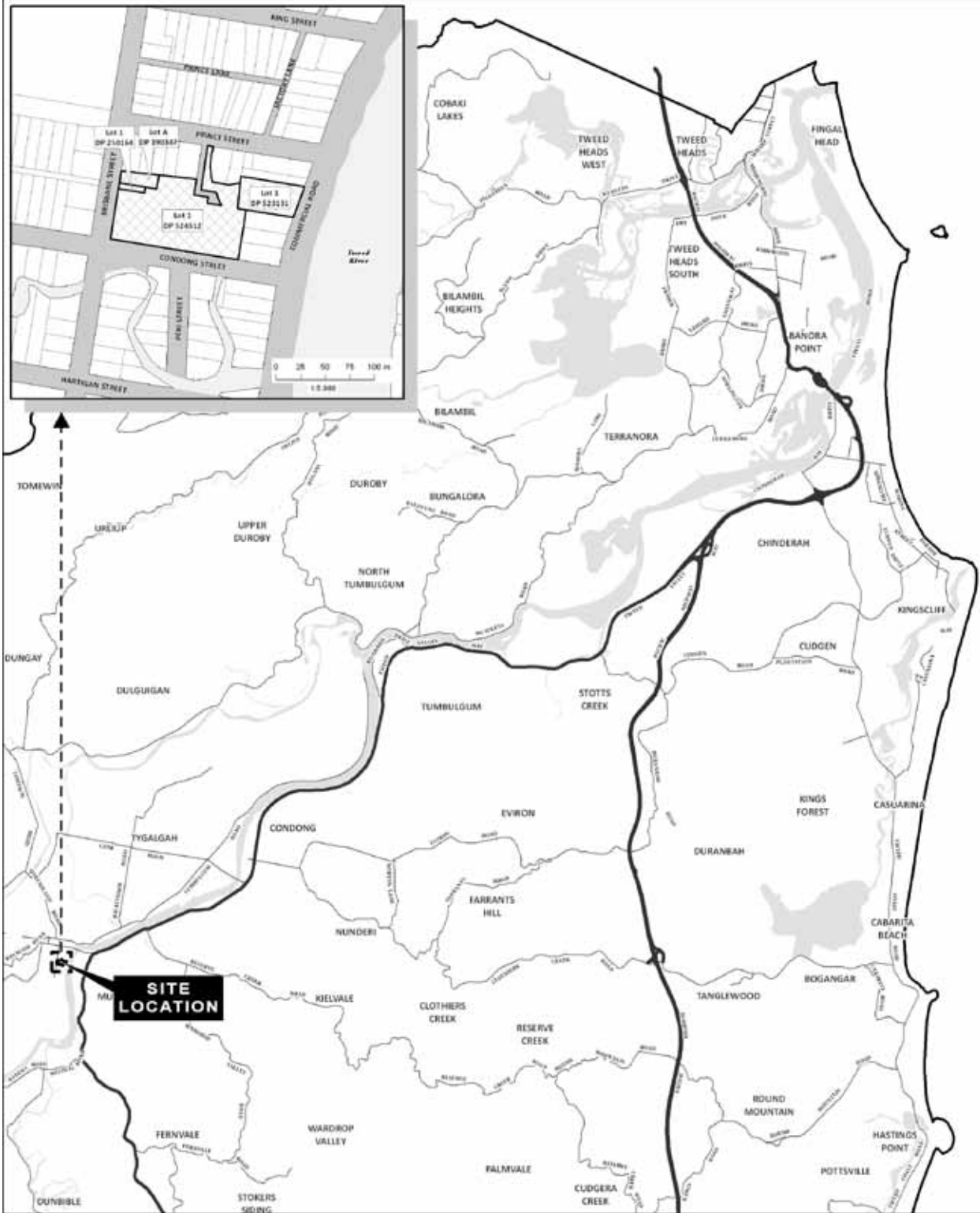
Following the adoption of the Tweed Development Control Plan 2008 - Section B22 - Murwillumbah Town Centre (the DCP) in 2008, the search for a suitable site intensified and many 'potential' opportunities were assessed. Importantly, the DCP was very clear about the need to consolidate retail activities within the Town Centre. Despite best endeavours for the DCP to identify potential sites none of those listed have yielded a realistic opportunity.

The predominate constraints which have to-date delayed the provision of a new major retailer include fragmented land tenure and the need for lot amalgamation, and those few sites that have been looked at in detail have presented other barriers such as inadequate site area, flooding and access issues.

When considering these primary factors, the number of opportunities within the Town Centre is limited to only a few select sites. The difficulty in locating within the Town Centre is evidenced by the recent approval for an IGA Supermarket on Tweed Valley Way.

One of the few sites that could potentially fulfil the site requirements for a 'full-line' supermarket is the Murwillumbah Bowls Club (the Site). The Site is located on the Southern fringe of the Murwillumbah CBD with frontage to the South-western corner of Knox Park, comprises 4 lots, combining to total 11,406m² of site area, which is zoned a mix of 6(b) Recreation and 2(a) Low Density Residential. The Site is displayed within Figure 1.

Figure 1 - Locality Plan



Locality Plan

Lot 1 DP 524512; Lot A DP 390347; Lot 1 DP 250164; Lot 1 DP 523131;
No.38 Brisbane Street, Murwillumbah

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Cadastral: 05 November, 2013
© Land and Property Management Authority (LPMMA) & Tweed Shire Council
Boundaries shown should be interpreted approximately only

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DIP NOT SUITABLE
COPY ONLY - NOT CERTIFIED

Scale 1:100,000 - Source: National Triangulation Network
National datum: Geoidless Datum of Australia 1984
U.S.G. Map Grid of Australia, Zone 56

Civic and Cultural Centre
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Murwillumbah NSW 2484
PO Box 816
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In August 2013, Council's Planning Reform Unit (PRU) was approached by representatives of the landowner to discuss strategic options for the site. As discussed above it ceased trading as a bowls club in June 2012 and has since been vacant, with only limited and sporadic leased occupation.

Any strategic investigations into the Site would be an addition to the tasks currently tabled within the PRUs adopted Work Program, which is currently at resource capacity. Despite the resource implications upon the PRU, these strategic investigations hold the potential to achieve a significant net community benefit: this Site and the potential opportunity to consolidate a further major supermarket retailer could be significant for the Town and the surrounding local communities, and as such the risk of delaying other current projects as resources are readjusted far outweighs the risk of the development opportunities being lost to a less beneficial albeit permitted form of development.

A formal strategic process presents a significant opportunity to provide for and guide the redevelopment of the Site, as well as harness the numerous positive spin-offs for the Town Centre and the wider public. Accordingly, it considered appropriate to enable the collaborative investigation of the Site.

It is important to acknowledge that any strategic investigations into the Site may result in a variety of potential outcomes, not confined just to the suitability of supermarkets or retail based outcomes. Likewise, the strategic processes could also require the reconsideration of the Murwillumbah DCP to provide a coordinated suite of visions and development controls.

OPTIONS:

That Council:

1. Proceed in accordance with the recommendations in this report; or
2. Inform the landowner that any Request for a Planning Proposal will need to be submitted and considered within future Council reporting of the Planning Reform Unit Work Program.

Council officers recommend option 1.

CONCLUSION:

Despite repeated investigations seeking to provide a second 'full-line' supermarket within Murwillumbah Town Centre, to-date a suitable site to facilitate the short-term provision of these services has not been identified.

Council's established planning framework identifies the significant benefits towards Murwillumbah's place-making and sustainability by continuing to consolidate the Town Centre as the core activity space. Potentially the most significant short-term development site to contribute to the established vision is the 'Murwillumbah Bowls Club' site, which is currently vacant.

An opportunity exists to collaborate with the landowner and undertake a strategic planning process to unlock development potential of the site, provide a catalyst for the consolidation

and continued economic sustainability of the Murwillumbah Town Centre as well as meet the needs of the wider community.

It is recommended that the landowner be advised to lodge a Request for a Planning Proposal to commence these investigations with Council.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Letter from the Murwillumbah Services Club (ECM 3212711)

c33 [PR-CM] Combined Planning Proposal (PP13/0003) and Development Application (DA13/0469) for a Highway Service Centre, Chinderah

SUBMITTED BY: Planning Reform

FILE REFERENCE: PP13/0003

Valid



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
- 1.5.3 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

SUMMARY OF REPORT:

Council at its meeting held 21 November 2013 resolved:

"that this item be deferred to a Workshop"

This Workshop was held on Thursday 5 December 2013 and the following report is now resubmitted for Council's consideration.

Council received a combined Planning Proposal and Development Application on 28 August 2013 for a Highway Service Centre. This report deals exclusively with the planning proposal.

This report has been prepared following a preliminary review of the planning proposal request and is responding to the 90 day administrative review process established and managed by the Department of Planning and Infrastructure and the Joint Regional Planning Panel. The review procedure is enlivened for an applicant when the consent authority either fails to make a determination within 90 days or resolves not to proceed with making a planning proposal.

The land on which the service centre and associated facilities is to be located is presently zoned 1(b2) Agricultural Protection, a zoning that prohibits the proposed use. The planning proposal request seeks an amendment to the Tweed Local Environmental Plan 2000 by way of inclusion within Schedule 3 "Additional Permitted Uses" the land-use definition for a *Highway Service Station* as prescribed by the *Standard-Instrument - Principle Local Environmental Plan* for the purposes of the *Standard Instrument (Local Environmental Plans) Order 2006*.

The **detailed** assessment of and any additional studies relating to the preparation of the planning proposal will commence should Council resolve to prepare one. This report **does**

not relate to the assessment or determination of the Development Application (DA) and cannot be construed in any way as approving or implying an approval, acceptance or support for any aspect of it; the DA will be assessed and reported under a separate process.

On the limited assessment of the planning proposal request to-date this report recommends that Council should proceed with preparing a planning proposal, conditional on additional studies and work being undertaken post Gateway and prior to public exhibition.

It is intended that an external consultant will be engaged to assist in the process and procurement has been commenced to establish a shortlist of available / suitable consultancies in anticipation of Council resolving to proceed. This will assist in minimising delay.

A Costs Agreement has been executed between Council and the Applicant. This ensures all costs arising in association with preparing the planning proposal and making of the amended LEP are those of the Applicant. Demonstrating their genuineness and commitment to the proposal the first funding instalment under the Agreement has been paid.

This report concludes that while there are several significant engineering and planning issues to be overcome there is presently no evidence suggesting that an appropriate solution cannot be found for each. On that basis, and given the need for a northbound service station on the Pacific Highway within the Tweed region, it is recommended that a planning proposal be prepared.

RECOMMENDATION:

That

- 1. A Planning Proposal to facilitate a "Highway Service Centre" on Lot 11 DP 1134229, Lot 1 DP 116567 and Lot 1 DP 210674 be prepared and submitted to the 'Gateway', as administered by the NSW Department of Planning and Infrastructure, for a determination.**
- 2. The Minister for Planning and Infrastructure or his Delegate be advised that Tweed Council is NOT seeking plan making delegations for this planning proposal.**
- 3. The Minister for Planning and Infrastructure or his Delegate be advised that the minimum exhibition period for joint exhibition of the Planning Proposal and Corresponding Development Application (DA13/0469) should be for a period not less than 28 days and should be concurrent.**
- 4. Upon receiving an affirmative Determination Notice from the NSW Department of Planning and Infrastructure any additional studies or work required in satisfaction of demonstrating the suitability of the proposed Highway Service Centre is to be completed.**
- 5. On satisfactory completion of the Planning Proposal it is to be publicly exhibited in accordance with the Determination Notice or where there is no such condition or the condition prescribes a period less than 28 days, for a period not less than 28 days.**

- 6. Following public exhibition of the Planning Proposal a report is to be submitted to Council at the earliest time detailing the content of submissions received and how those, if any, issues have been addressed.**

REPORT:

The Applicant's proposal is being managed and assessed by the Planning Reform Unit (Planning Proposal) and the Development Assessment Unit (Development Application) concurrently. Documentation for both aspects is to be publicly exhibited concurrently and is subject to both a resolution of the Council to proceed with preparing a Planning Proposal as well as receiving an affirmative Gateway Determination from the Department of Planning and Infrastructure (DP&I).

The proposal, as a whole, comprises:

A boundary adjustment is proposed between three existing allotments (Lot 11 DP1134229, Lot 1 DP 1165676 and Lot 1 DP 210674 Tweed Valley Way, Chinderah) into three new allotments and the dedication of two areas of land as road widening to enable the construction of a roundabout on Tweed Valley Way.

- LEP amendment to include the land-use definition of "Highway Service Station" within the "Additional Permitted Uses" Schedule of the Tweed LEP.

- Stage 1

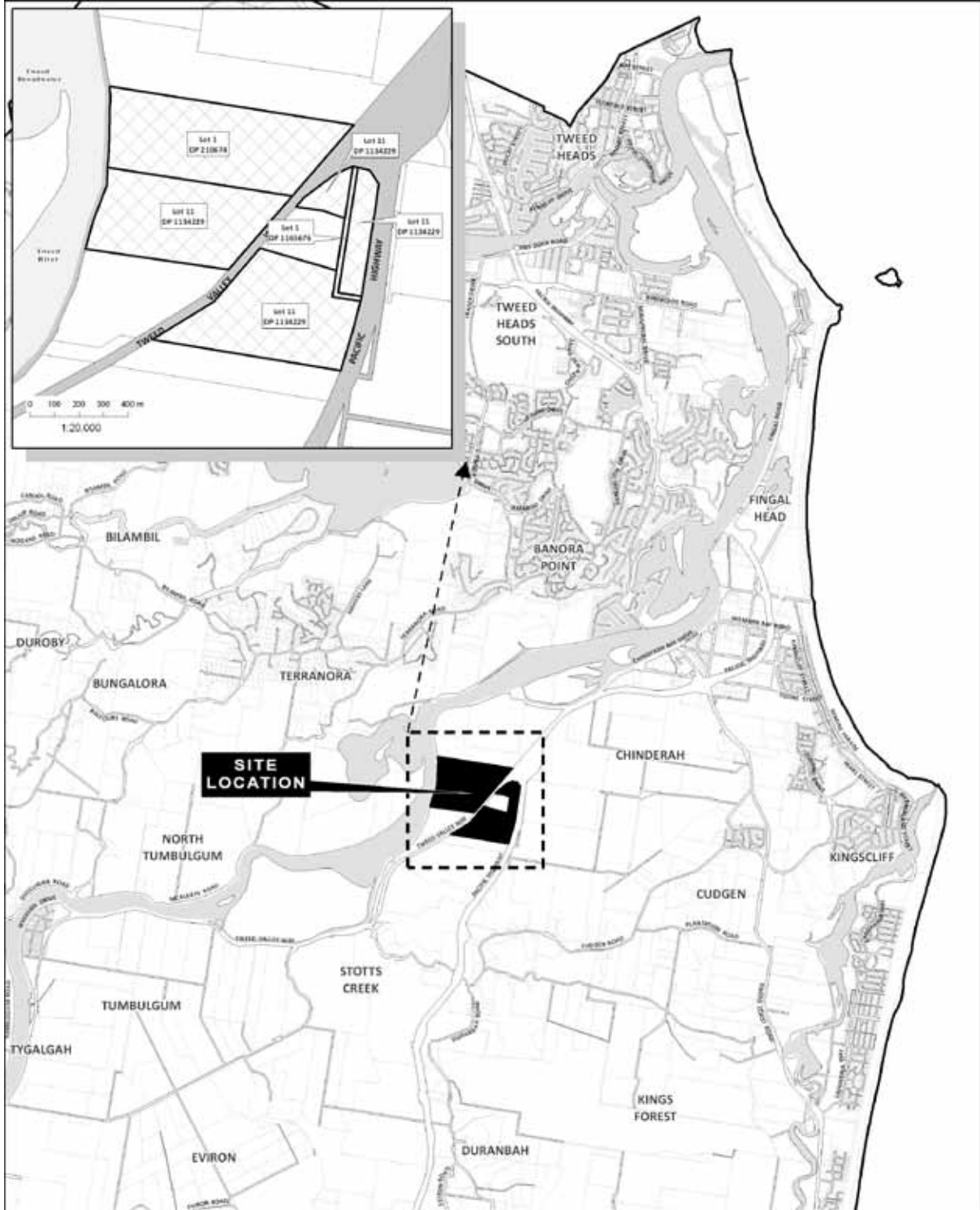
- Stage 2

A highway service centre (Shell is described as the main tenant). The centre comprises of the following;

- § Service centre single story building with a GFA (Gross Floor Area) of approximately 1270m². The building also contains the service centre control centre and five other tenancies to provide food outlets and a dining area. Two of the food outlets are proposed to have drive through facilities.
- § 97 public car spaces, 20 staff car spaces, 5 caravan / bus spaces and 25 truck parking spaces
- § Outdoor dining area and playground
- § Truckers lounge and public amenities
- § Landscaped area of 12,334m²
- § Two lane arterial roundabout at Tweed Valley Way to provide ingress and egress into and out of the service centre.
- § Construction of an off ramp from the Pacific Highway to provide ingress to the proposed service centre for northbound traffic
- § Filling of the site to RL3.5m AHD to enable the building and refuelling areas to be above Council's design flood level.

The proposed highway service centre *planning proposal request and statement of environmental effects* document, prepared by Jim Glazebrook & Associates Pty Ltd, is provided as Attachment 1 to this report.

Figure 1 - Locality Plan



Locality Plan

Lot 1 DP 210674; Lot 11 DP 1134229; Lot 1 DP 1165676;
Pacific Highway & Tweed Valley Way, Chinderah

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KEY MATTERS ASSESSED WITH PLANNING PROPOSAL REQUEST

Stormwater Drainage

The site is relatively flat and flood prone, with ground levels varying between -0.6m AHD to 1.1m AHD. The site drains via sheet flow and minor surface drains and then to an open drain to the west, which then discharges through a series of culverts and drainage channels and into the Tweed River via a flood-gated outlet.

Stormwater Quality

Standard erosion and sediment control measures are proposed for the construction phase, and this is considered acceptable given the existing flat grades.

Operational phase water quality requirements will need to be addressed through the provision of proprietary treatment devices (Humeceptors), and roof water may need to be separated from the treatable hardstand catchment. An oil separator facility located within the runoff area of the fuel pumps will need to be assessed for its adequacy, as it proposes to discharge to the site's effluent management system rather than the stormwater drainage system. This will occur as part of the DA assessment process.

Stormwater Quantity

Potential impacts on peak stormwater runoff have been taken into account owing to the increase in the site's impervious fraction from 1% to 45%, and associated reduction in time of concentration.

Council's Engineering Services have identified the potential underestimation of peak runoff based on the scale of development proposed and assumptions made, and have identified the potential need for additional drainage facilities in the vicinity of the proposed roundabout. This will be required to address road drainage and runoff from Melaleuca Station.

There is no apparent impediment to engineering an appropriate stormwater drainage regime for the site from a strategic planning perspective. Council's Engineering Services have identified that further assessment is required and that there will likely be a requirement for Proponent to acquire or create easements for drainage as part of their subdivision DA and works. This will be assessed as part of the DA requirement and requires no further consideration with the planning proposal.

Land Filling

Filling of the site is required and it is proposed to raise the service centre building and refuelling areas above Council's adopted the design flood level of RL 3.5m AHD. The remaining areas of the site incorporating the carparking and access areas will be graded accordingly to an internal drainage system. Current fill levels range from RL 1.8m AHD to RL 3.675m AHD and will require approximately 62,000m³ of fill to be imported.

Filling of the site is integral to the development and the proposed level of fill is considered within the context of other supporting engineering reports. There is no apparent impediment to engineering an appropriate fill regime for the site that works in with other engineered outcomes for the site.

Council's Engineering Services have identified that further work is required as part of the DA assessment, but from a strategic planning perspective no further assessment is required; in other words there is a high probability that the site can be suitably engineered and it remains only as to how that will be best achieved.

Flooding

Most of the site is mapped as "low flow", however some areas around the extremities are affected by "high flow" classification.

Modelling was performed by BMT WBM using Council's Tweed Valley Flood Model as the basis. As this base model has a coarse 40m grid resolution, the consultants refined the model to provide a 10m grid in the locality. The development was then tested against the 100 year ARI flood event. Results predict peak flood level increases of 0.01m, which is considered negligible.

These results are not unexpected, given the site is surrounded by filled development, particularly the Pacific Highway formation. While the area may provide some flood storage at present, this volume is not significant in the scheme of the wider floodplain. Council's Engineering Services have advised that for completeness the DA assessment should also confirm impacts for smaller floods (the 20% and 5% AEP events), and verify whether there are any significant impacts on the duration of inundation for the 20%, 5% and 1% AEP floods, as this is most critical to crop losses, particularly sugar cane.

There is no apparent impediment to flood engineering the site and managing other related engineering and on-site waste management regimes. Minimum floor levels for the building have been designed to ensure that the building is above the design flood level. No further assessment is required from a strategic planning perspective.

Water Supply

Section 5.7 of the Statement of Environmental Effects states that: *Reticulated water supply would be via an existing connection on Lot 11 DP 1134229* and Section 9 of Appendix H provides further details on how they shall meet peak demands. Lot 11 DP 1134229 is currently connected to water supply off an existing 500mm trunk main in Tweed Valley Way, which was installed in 2003.

Section 9.2.5 of Appendix H states *subject to approval by Tweed Shire Council, upgrading of the existing connection is proposed to provide a higher level of supply security*. Council policy, implemented since the connection in 2003, is that no new connections to Trunk water mains shall be allowed, which includes the upgrading of the existing service connections. Therefore, upgrading of the existing connection will not be approved.

Water supply to the development is only available via an existing 20mm water meter 350 metres south of the proposed service centre site and an upgrade of the existing service connection is supported. Approval from the relevant roads authority will be required (i.e: Roads and Maritime Services and/ or Council) to run the service along the road easement from the water meter to the development site.

The existing water meter cannot be moved from Lot 11 DP 1134229, however it must be transferred in ownership to the new subdivided lot. Connection of Lot 11 DP 1134229 this meter is not supported and is contrary to Council's policy, which permits only one meter per property.

Council's Engineering Services advises that a detailed hydraulic report and detail on an alternate power supply for booster pumps will be required, along with the relevant approvals.

From an engineering perspective the details of water supply remain to be fully addressed and assessed. From a strategic planning perspective the advice received is that there is no impediment to the planning proposal, and the detailed design is to be managed as part of the DA assessment and construction application stages.

Wastewater

Council's Engineering Services have advised that there is no nearby Council wastewater system for the development (subdivision) to connect to and an onsite sewerage system is required.

The proponents documentation includes an On-site Sewage Management Report (2013.034) prepared by HMC Environmental Consulting Pty Ltd, dated June 2013.

Council's Environmental Health Services has advised that the information provided is not sufficient and a further more detailed report is required. The terms of reference for a further study have been provided. At this stage there is no evidence to suggest that an on-site sewage management system cannot be designed for the proposed use of the site. From a strategic planning perspective this indicates that the planning proposal can proceed, but conditional on the further study and investigation occurring post Gateway Determination and prior to public exhibition. This report would be provided to the Department of Planning and Infrastructure (DP&I) as part of the request for the Gateway consideration.

The Proponent will be required to either provide or fund the additional studies and the terms of reference for it will be included within a memorandum of understanding. This will ensure that the information specifically required is provided.

Traffic Management

The proposal includes a comprehensive traffic study and engineered road design, which includes a proposal for a new roundabout installation on Tweed Valley Way.

Council's Engineering Services have identified with the proponent several issues of concern; these relate to the location and size of the roundabout and the impact on current traffic flows. Maintaining the efficiency of Tweed Valley Way is essential and requires that access to it from traffic exiting the highway service station can do so without the need to unreasonably reduce the current traffic speed. This is of particular concern given the close proximity to the Pacific Highway intersection and the need for vehicles, including heavy goods vehicles, to accelerate to safe speeds prior to entering the 110 Kph.

The ultimate design of the traffic management must be determined as part of the DA assessment, but from a strategic planning perspective there is no impediment to proceeding with the planning proposal. It is not a question of whether traffic management can be achieved but instead how it should best be achieved.

Contaminated Land

The proponent's documentation includes a Preliminary Site Contamination Investigation (HMC2011.066CL) prepared by HMC Environmental Consulting Pty Ltd dated July 2013, which concluded the site is suitable for the proposed land use.

Council's Environmental Health Services has advised that the planning proposal is suitable to proceed on the information provided with regards to its contaminated land assessment.

Flora and fauna

The subject site consists of a slashed paddock previously used for sugar cane and tea tree plantation. Vegetation consists of introduced grasses and scattered Camphor Laurel and Swamp Oak. A dam and a series of drainage lines occur on the site. No significant vegetation or wetlands are mapped on the site, and it does not form part of a regional or subregional corridor. Any local corridor value is precluded by the site's proximity to the highway and existing surrounding land-uses. Vegetation in the vicinity of the site is limited to very small remnant patches in surrounding agricultural lands.

Council's Natural Resource Management Unit has assessed Proponent's report. It is stated that the likelihood of impact on threatened flora, fauna and ecological communities has been assessed though limited on-ground survey and database searches in the Flora and Fauna Assessment (JWA 2013). The flora and fauna assessment considered that due to the highly disturbed nature of the site, the site was unlikely to provide habitat for any threatened fauna species. No threatened flora was recorded on the site.

Recommendations have been made in the Flora and Fauna Assessment, relating to the inclusion of native species in landscaping species selection, which are supported and can be conditioned at DA stage. Given the above, it appears that there are no significant ecological constraints to the proposed development.

Bushfire

The majority of the land subject to the proposal is not mapped as bushfire prone, with the exception of a small area on the eastern and northern boundary of the site that falls within the 100 metre buffer to vegetation patches located to the north (an isolated planting of eucalypts, presumably for screening purposes) and east (a linear patch of *Casuarina* forest) adjacent to the Pacific Highway.

A Bushfire Risk Management Plan (BushfireSafe 2013) has been submitted which demonstrates that all proposed buildings are located greater than 100m from the above vegetation, and thus the proposal complies with the requirements of Planning for Bushfire Protection (NSW Rural Fire Service 2006).

Agricultural Assessment Pertaining to the 1(b2) Agricultural Protection Zone

The site is zoned 1(b2) Agricultural Protection and is mapped as Regionally Significant Farmland.

An Agricultural Assessment prepared by Allen & Associates, dated June 2013, was submitted with the proponent's documentation and a planning assessment of the relevant Planning s 117 Directions was provided in the *planning proposal request and statement of environmental effects* document, prepared by Jim Glazebrook & Associates Pty Ltd, which is provided as Attachment 1 to this report.

In summary, the agricultural assessment concludes that the area of land required for the highway service station *has a low agricultural value or rating and that this is due to inherent physical site characteristics*. It is noted in particular that the site (the area designated for the service centre and associated parking) is *of an inconvenient shape, size and location to allow for purposeful and practical agricultural land use/s to occur*, and that the removal of this area of land from agricultural use *is not believed that this will have a significant effect on the long-term agricultural production potential of the wider region*.

The *proposal request and statement of environmental effects* document provides a compliance assessment for the planning proposal against relevant local and State Government Policies. In particular, the report (page 38) responds to the compliance matters with s 117 Direction 5.3 - Farmland of State and Regional Significance on the NSW Far North Coast, as follows:

The objectives of this Direction are:

- “(a) to ensure that the best agricultural land will be available for current and future generations to grow food and fibre;*
- (b) to provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning; and*
- (c) to reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas.”*

This Direction applies when a planning authority prepares a planning proposal for land mapped as ‘state significant farmland’, ‘regionally significant farmland’ or ‘significant non-contiguous farmland’ on the “Northern Rivers Farmland Protection Project, Final Map 2005”.

The proposed development site is part of a broader land area mapped as Regionally Significant Farmland. According to clause 4(b) of the Direction, a planning proposal must not “rezone land identified as ‘Regionally Significant Farmland’ for urban or rural residential purposes”. Further, clause 5 states that:

“A planning proposal may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning or (an officer of the Department nominated by the Director-General) that the planning proposal is consistent with:

- (a) the Far North Coast Regional Strategy; and*
- (b) Section 4 of the report titled Northern Rivers Farmland Protection Project- Final Recommendations, February 2005, held by the Department of Planning.”*

With respect to clause 4(b), the application does not seek to ‘rezone’ the land, rather it is proposed that a site specific clause be inserted into the shire-wide Tweed LEP to enable the development of a highway service centre on the land. Notwithstanding the fact that a rezoning is not proposed, the intent of the clause is to ensure that the objectives of the Direction are met and further discussion follows in that regard.

The agricultural assessment at Appendix F (Agricultural Assessment prepared by Allen & Associates, dated June 2013) specifically addresses:

- The agricultural land classification according to the guidelines contained in the Rural Land Evaluation Manual;*
- The Northern Rivers Farmland Protection Mapping and its methodology;*
- The value of the land for agricultural purposes; and*
- The objectives of the 1(b2) Agricultural Protection Zone pursuant to the Tweed LEP 2000.*

Relevant observations and conclusions from the assessment are:

- “• This report has shown that the 3.9 hectares of land is classified as Class 4 land; that is land that is a low agricultural value. Issues of practical and economic land use management were major considerations in this classification. The parcel of land is of an inconvenient shape, is in an inconvenient location and is of insufficient size to enable its purposeful and long term agricultural use. The Northern Rivers Farmland Protection Project has previously mapped the land as regionally significant farmland. However, this mapping project was done at a scale of 1:100,000 as opposed to an individual property scale, and also during the mapping process gave considerable weight to soil landscape data in contrast to the major agricultural limiting factors that are inherent to this instance;
- The existing and previous owners of the studied land have since 1992 utilised the majority of the land (with the exception of the 3.9 hectare study area and also land for housing, farm roads and infrastructure) for commercial tea tree and sugar cane production. More recently the 3.9 hectares of land (study area) has been removed from agricultural operation due to issues of low productivity and practical land use management and is currently maintained (slashing) purely for aesthetic purposes and weed control only;
- Development of 3.9 hectares of land to a non-agricultural use will not therefore detract in any significant way from the existing agricultural production potential of the remainder of the land involved with this subdivision and nor of the wider region. Furthermore approval of the development will take pressure off surrounding lands that are of a higher agricultural value for developments of a similar nature; and
- From an agricultural perspective therefore, it is considered that there should be no reason why Council and the State Government should not approve the application.”

The agricultural assessment demonstrates the limited agricultural value of the land. Consequently, objectives (a) and (b) of the Direction are met. With respect to objective (c), the service centre site is remote from the balance of farming land being surrounded on three (3) sides by the motorway interchange and on the fourth side by a crematorium, farm dam and tea tree distillery. Land use conflicts between agricultural and non agricultural land uses are therefore unlikely to arise and consequently, it is concluded that the proposal is consistent with objective (c) of the Direction.

Moreover, it is noted that planning principle 9 of section 4 of the Northern Rivers Farmland Project identifies that public infrastructure is permitted on land mapped as state or regionally significant where no feasible alternatives are available. While a highway service centre is not provided by a Council or state agency it is effectively “public infrastructure” as it provides infrastructure used by the travelling public in accordance with RMS planning for state highways. The planning process for establishing a highway service centre for northbound highway traffic at Chinderah undertaken by Tweed Shire Council did not result in any feasible alternative sites for such a facility. The site nominated in Section 117(2) Direction 5.4 – Commercial and Retail Development along the Pacific Highway, North Coast, within Chinderah owned by the RMS is not suitable for a highway service centre for traffic and amenity reasons. It has now been abandoned for that use (refer Section 4.5.2). Consequently, it is considered that the proposal is consistent with planning principle 9 of section 4 of the Northern Rivers Farmland Project.

As a result of the detailed agricultural suitability analysis it can be concluded that the proposal is consistent with the Far North Coast Regional Strategy and Section 4 of the Northern Rivers Farmland Protection Project – Final Recommendations, February 2005. Therefore, if the Department considers that the proposal is a ‘rezoning’ and consequently inconsistent with clause 4(b) of the Direction, the inconsistency is justified under the provisions of clause (5) and the Direction is not an impediment to the proposal proceeding. [Emphasis added].

From a strategic planning point of view the Proponent's Planning Consultant has provided a comprehensive response to the matters for which consideration is required under the s 117 Directions, and is underpinned by a suitably qualified agricultural report.

Whether the DP&I themselves agree with the assessment and consequently agree to any inconsistency remains to be tested at the Gateway Determination stage. There is nothing raised in either report or in the preliminary assessment undertaken that would otherwise indicate that the planning proposal should not proceed.

Cultural Heritage

A *Cultural Heritage Due Diligence Assessment* has been prepared by Everick Heritage Consultants Pty Ltd and submitted in support of the proposal.

The report details the methodology of site investigation and consultation undertaken. In summary it states that no further cultural assessment is recommended and provides four precautionary recommendations. These relate to actions that should be observed in the event that cultural heritage is found through site disturbance during construction activities. The recommendation can be incorporated into conditions of consent and will need to be assessed at the DA stage.

From a strategic planning perspective the report is satisfactory at this stage, except in so far as the responses (comments) from the Tweed Aboriginal Advisory Committee and the Tweed Byron Local Aboriginal Land Council are omitted from the report. This is noted within the report and will be required post Gateway Determination and prior to public exhibition.

OPTIONS:

That Council:

1. Proceed with preparation of a planning proposal in accordance with the recommendations of this report or
2. Reject the proposal (noting that this will prevent an affirmative determination of the DA) and provide reasons for doing so, as these will be required to inform the DP&I and JRPP should an administrative appeal be sought.

Council staff recommend Option 1.

CONCLUSION:

The Proponent has lodged a combined planning proposal request and development application for a highway service centre to service the Pacific Highway at Chinderah. The development is currently prohibited and requires a prior amendment to the Tweed LEP. The amendment is based on a change to the "Additional Permitted Uses" Schedule of the LEP to

include the land-use definition of a "Highway Service Station". That definition is the following terms:

"highway service centre" means a building or place used to provide refreshments and vehicle services to highway users. It may include any one or more of the following:

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) service stations and facilities for emergency vehicle towing and repairs,*
- (d) parking for vehicles,*
- (e) rest areas and public amenities.*

The Proponent's *planning proposal request and statement of environmental effects* document, prepared by Jim Glazebrook & Associates Pty Ltd, as provided as Attachment 1 to this report, details the background to this proposal at Section 1 (pages 1-2).

In summary, there is an argument advanced that there is limited opportunity for locating a northbound service centre within the Tweed region and which is presently only serviced by the current southbound service centre, also at Chinderah. The history of this site is said to include the Council's previous support for a service station on this site and that planning studies and an LEP amendment were previously commenced. This occurred prior to the opening of the Pacific Highway and/or when it was under construction and notably at a time when the Tweed Valley Way was servicing that function. Consequently, the Roads and Maritime Services were not supportive of the then proposal and it did not proceed further.

Circumstances have since changed and with the opening of the new highway the service function of Tweed Valley Way also changed. It remains a crucially important arterial road connecting the south/southwestern areas of the Tweed to the north /northeast, but is now more amenable to new access and greater variability in its design speed.

Preliminary assessment has indicated that whilst there are significant site engineering matters to be addressed and finalised the site appears capable of accommodating the service centre, without significant adverse impacts to the broader community. It is also noted that many Tweed residents and tourists alike rely on the Pacific Highway to travel routinely around the Tweed. The proposed service centre is likely to have a community net benefit in several ways and noticeably by providing convenience to Tweed commuters, the possibility of competitive fuel prices, and access to other related conveniences stores.

In concluding, the preliminary assessment has not identified any matters that might otherwise present as a prohibition to proceeding with a planning proposal and as such it is recommended that a planning proposal be prepared.

COUNCIL IMPLICATIONS:

a. Policy:

Community Engagement Strategy Version 1.1.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Planning Proposal Request and Statement of Environmental Effects, prepared by Jim Glazebrook & Associates Pty Ltd (ECM 3212655)

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