



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

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

Agenda

Planning and Regulation Reports **Ordinary Council Meeting** **Thursday 14 February 2013**

held at Murwillumbah Cultural and Civic Centre
commencing at 6.00pm

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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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE 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.

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

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

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

RECOMMENDATION:

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

REPORT:

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

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

DA No.	DA12/0501
Description of Development:	Alterations and additions to existing two (2) storey dwelling and conversion of ground floor to granny flat
Property Address:	Lot 2 DP 411004 No. 7 McPhail Avenue, Kingscliff
Date Granted:	10/1/2013
Development Standard to be Varied:	Clause 51A - Multi Dwelling Housing Densities in Zone 2a
Zoning:	2(a) Low Density Residential
Justification:	This proposal involves a 39% variation to the development standard in Clause 51A of the TLEP 2000 as the site area is 550.1m ² which is less than the required 900m ² for two multi-dwelling units in the 2(a) zone.
Extent:	39% variation: 550.1m ² site area when 900m ² required.
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA12/0555
Description of Development:	Two storey dwelling and inground swimming pool
Property Address:	Lot 22 DP 1066506 No. 10 North Point Avenue, Kingscliff
Date Granted:	17/1/2013
Development Standard to be Varied:	Clause 16 and Clause 32B of the North Coast Regional Environmental Plan
Zoning:	2(e) Residential Tourist
Justification:	Council has received an application to construct a single residence on the subject property. The property is beach front land in an approved residential subdivision. A SEPP No 1 variation is sought to Clause 32B of the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space. The proposed two storey dwelling will cast a shadow on the adjacent waterfront open space during the nominated times in the development standard. The shadow encroachment cast by the development into the foreshore is considered only minor and will have minimal impact on the public's enjoyment of the foreshore land. The shadows cast only impact on the coastal dune vegetation and do not reach the beach.
Extent:	The shadow encroachment cast by the development into the foreshore is considered only minor and will have minimal impact on the public's enjoyment of the foreshore land. The shadows cast only impact approximately 15 metres into the coastal dune vegetation and do not reach the beach, which is approximately 100m from the rear property boundary.
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

No-Legal advice has not been received.

Attachment of Legal Advice-Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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6 [PR-CM] Earthworks at Lot 1 DP 387105 Clothiers Creek Road, Nunderi

SUBMITTED BY: Development Assessment



Caring for the Environment

SUMMARY OF REPORT:

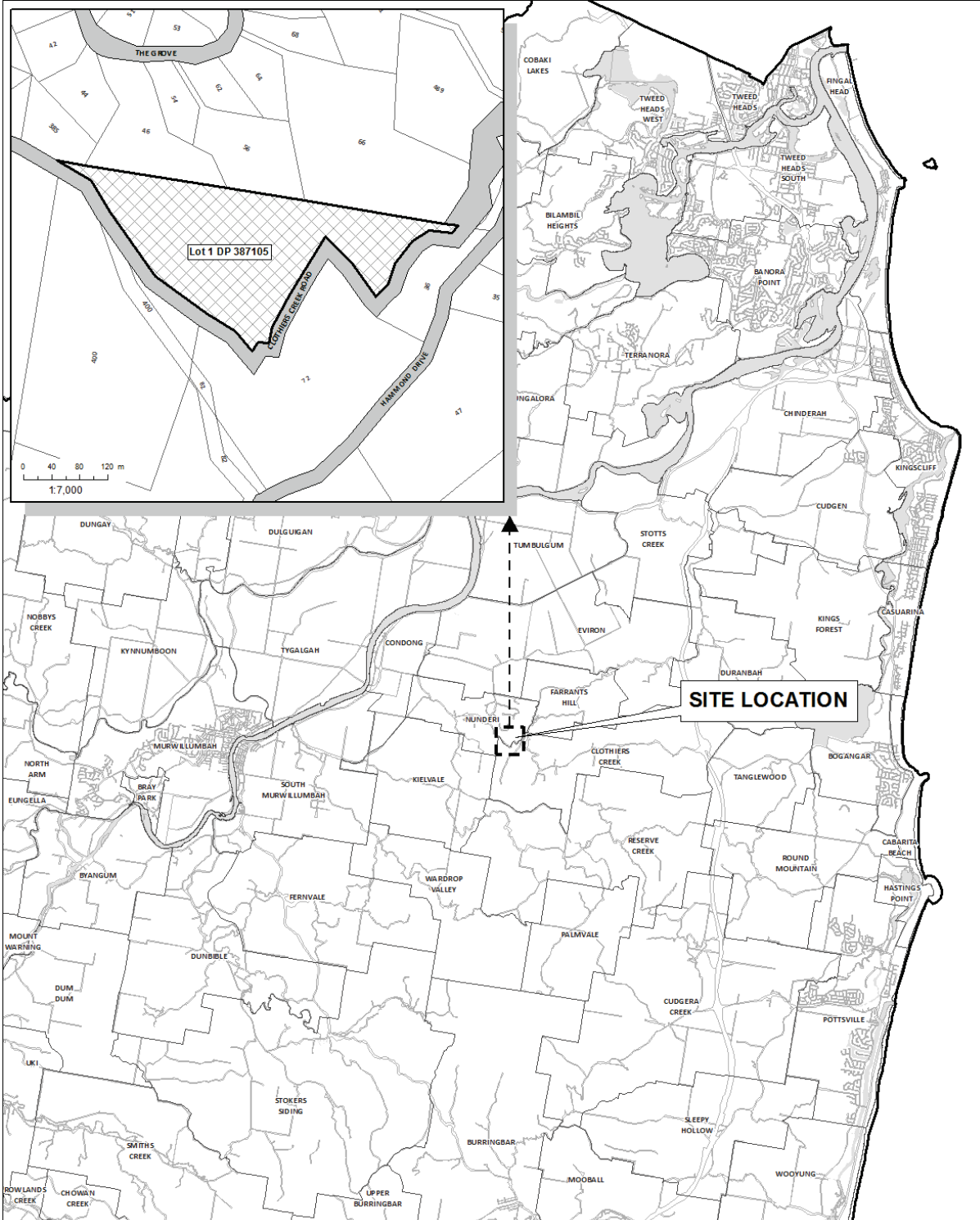
Council received advice that significant tree removal and earthworks had recently occurred on the above property. Following correspondence and a site inspection, it was concluded that being zoned Rural 1(a) with no Tree Preservation Order (TPO) over the land, the works to reactivate horticulture on the farm may well be a legitimate land use. The concern is more for any unreasonable environmental impacts which may occur from erosion, as a large area of steep land has been exposed in a season when heavy rains might occur. Advice has been offered to the land owner and the incident registered with the Department of Environment and Heritage, as well as the local Catchment Management Authority.

RECOMMENDATION:

That Council advises the landowner of Lot 1 DP387105 Clothiers Creek Road, Nunderi to consult with the relevant Government Agencies regarding 'best practice' for cultivation on steep slopes.

REPORT:

SITE DIAGRAM:



Locality Plan
 Lot 1 DP387105
 Clothiers Creek Road, Nunderi

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1. Background:

Council received advice that significant tree removal and earthworks had recently occurred on the above property. A letter was immediately sent to invite a formal response from the landowner. That correspondence advised that the farm had been in the family for 37 years and had historically grown bananas, mangoes, avocados and bush nuts on the slopes, and small cropping on the lower flats. Further, that regular dumping of 'filter press' from the sugar mill had created an uneven gradient with 'wash out' holes emerging when lower substrates were eroded. The hillside had apparently become quite uneven with ruts and channels and needed preparation prior to planting.

The current purpose is to reinstate agriculture by first clearing the undergrowth/weeds (Lantana and 'Devils Fig'), then regrading the slope so as to create an even surface for planting. The landowner states that planting will commence immediately as they are anxious not to miss the current growing season. The slopes were sown with 50 kilos of seed on 5-6 January 2013 to help bind the surface, but various plant stock (Mango, Avocado and Macadamia) are currently being planted on the steep slope.

The existing track was upgraded and widened to allow access by heavy water tanker trucks. The existing pad and borrow pit was regraded in readiness for a new farm machinery shed/store.

The trees removed were mostly Camphor Laurel and old Mango trees. Four Box trees were removed as the farmer intends re-fencing that northern side boundary. The timber is being used for fence posts.

2. Assessment:

The farm is zoned Rural 1(a), with no TPO over the land. The current works to reactivate horticulture on the farm are considered to be a legitimate land use within the Rural zone. The immediate concern is not land use, so much as whether any unreasonable environmental impacts might emerge from erosion should heavy rains occur prior to soil stabilisation by horticulture. A large area of steep land (over 18 degrees in places) has been exposed in a season when heavy rains might occur.

The contractor has used the weed/undergrowth vegetative matter to create a large bund along the base of the slope – in effect a large 'sed fence' to filter any top soil if it was dislodged in a storm event. The owner states that after the heavy storm event just prior to Christmas (21 December 2012) when local rain gauges measured a fall of 30mm, he inspected/photographed the drainage line at the base of the slope and there was no silt evident.

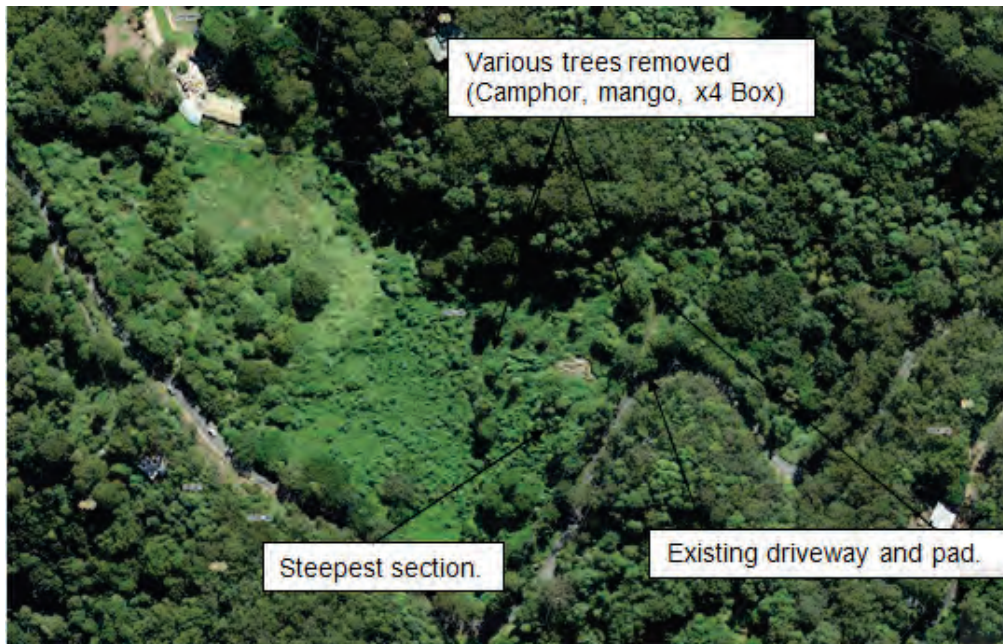
In respect to earthworks, there appears to be significant disturbance in connection with the pad and entry road. However both the landowner and contractor insist the pad is "essentially the same size" but now evenly graded and level in readiness for a shed. It is difficult to contend this assertion as Council officers did not observe the site prior to works. Exemption for earthworks under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 is confined to Residential zones which means any earthworks in the rural zone would technically require consent. In respect to farming works, there may be a range of earthworks occurring at any one time within the rural zone. The key issue moving forward is whether there are negative impacts in the future if the site is not stabilised.

At this point in time, there is no evidence of any environmental degradation caused by erosion or silt. No particular breach is currently evident. Council's role at this time is more to advise and caution. If unreasonable environmental impacts emerge in the future, then penalty may be assessed if appropriate.

In the interim, advice has been offered to the land owner and the incident registered with the Department of Environment and Heritage. Contact was also made with the local Catchment Management Authority whose officer is going to contact the landowner to provide 'best practice' advice and support.

The matter has also been referred to the Natural Resource Management unit for advice. Based on the information presented, they consider Council's response to date is reasonable and appropriate.

SITE PHOTOS:



OPTIONS:

1. Continue to provide, and direct the landowner to seek, advice on 'best practice' land management for horticulture on steep slopes; or
2. Defer consideration of whether to issue a Penalty Infringement Notice until issues of site management are resolved/clarified; or
3. Issue a Penalty Infringement Notice.

Council officers recommend Option 1 as mediation with the landowner has been constructive and works done in good faith.

CONCLUSION:

The landowner is reinvigorating a rundown farm within the Rural 1(a) zone. There is no TPO covering the site. The key concerns are whether the earthworks were excessive and what environmental damage might occur if heavy storm events erode the slope prior to consolidation by plant growth. Large 'sed fence' bunding is in place and there is currently no evidence of any sedimentation despite a storm event on the 21 December after the works were complete. Planting of various fruit trees has already commenced. The relevant government agencies have been consulted and Council has written to the landowner directing him to continue dialogue to ensure optimum land management.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4 Caring for the Environment

4.2.1.1 Provide effective response to compliance issues

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

7 [PR-CM] Illegal Dwelling House on a Parcel of Land with no Dwelling Entitlement

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: PF5065/10



Caring for the Environment

SUMMARY OF REPORT:

An application for a building certificate has been submitted to Council in respect of a dwelling Building Code Classification (Class 1a) and Shed (Class 10b) buildings on Lot 2 DP 614306 Slash Pine Road, Glengarrie which does not have dwelling entitlement.

This includes an illegal dwelling house which was erected in 1988 and has recently undergone unauthorised major alterations and additions.

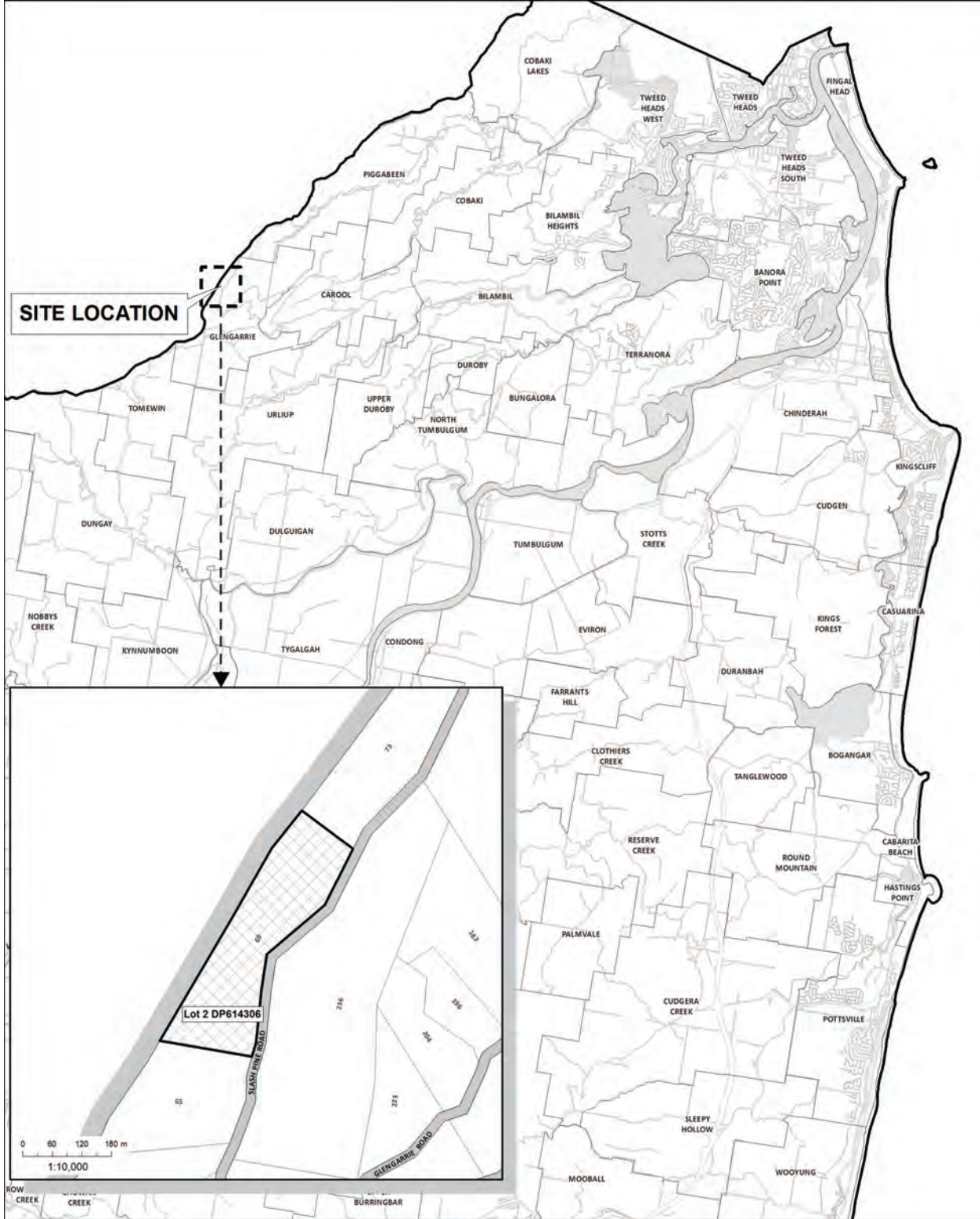
It is recommended that Council support a range of actions to respond to these unauthorised works.

RECOMMENDATION:

That in respect of premises Lot 2 DP 614306 Slash Pine Road, Glengarrie:

- 1. Building Certificate BC12/0108 for the dwelling Class 1a be refused as the subject land does not have dwelling entitlement;**
- 2. Notice be served upon the owners requiring that they submit within 30 days for approval to Council, a statement of works proposed to render the dwelling house uninhabitable and that such works are carried out within 60 days from the date of this Notice;**
- 3. Should arrangements satisfactory to Council not eventuate during this period, the matter be referred to Council's Solicitors to initiate appropriate action in the Land and Environment Court to ensure compliance.**

SITE DIAGRAM:



Locality Plan

Lot 2 DP 614306
Slash Pine Road, Glengarrie

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Cadastral: 01 February, 2013
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56



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Author: G. Saha - Information Technology Unit

Date Printed: 01 February, 2013

REPORT

Background

On 5 October 1995 a Development Application DA95/324 was lodged with Council for the erection of a new single dwelling house on Lot 2 DP 614306 Slash Pine Road, Glengarrie.

The application was accompanied by a State Environmental Planning Policy No. 1 (SEPP No. 1) Objection which was an objection to development standard Clause 25(3) of Tweed Local Environmental Plan 1987 and related to the minimum lot size for the erection of both a new dwelling house and demolish the existing illegal dwelling house.

Council records at that time revealed that the subject parcel of land did not have a dwelling entitlement as it did not meet the minimum 40 hectares and was not created as part of an approved Council subdivision, but has an existing dwelling upon it which was erected without the appropriate approval of Council. It is to be noted that a recent search has confirmed that the subject property still does not have legal dwelling entitlement.

This application was referred to Councils Development Assessment Panel on 24 November 1995 who resolved to approve the application subject to the concurrence of the Director of the Department of Urban Affairs and Planning. The Director of the Department of Urban Affairs and Planning did not grant concurrence and subsequently the application was refused and resulted in the development application being refused on the 20 March 1996.

Around the time the applicant received notice that the development application had been refused, the property changed ownership without the new owners being aware that the land did not possess a dwelling entitlement.

The matter of the illegal dwelling house was referred to Council on 4 September 1996 where it was resolved to give the current new owners 30 days to render the illegal dwelling house uninhabitable.

Council's records identify that on 14 November 1996 an inspection was undertaken by Council's Planning Officer. A note on the file states: *"I conducted an inspection of site on Thursday 14/11/96 and met Mr Savage. Discussions between myself and Mr Savage indicate that he was in the process of moving out, which appeared to be the case. He also indicated that he would use the building as a shed associated with the agriculture he intends to establish on the property. I advised Mr Savage I would conduct a further inspection soon to ensure compliance"*.

A search of Councils available records have not indicated any subsequent reinspections to ensure ongoing compliance with Councils Notice requiring that the illegal dwelling house rendered uninhabitable.

On 19 November 2012 an application for a Building Certificate in respect to the subject buildings was lodged with Council. A consequent inspection has identified that this building was still being used as a dwelling house and that the owners of the premises are the same owners that were directed to render the building uninhabitable.

This illegal dwelling house was originally erected in 1988 and has recently undergone unauthorised major alterations and additions which include bedrooms, lounge room, kitchen,

bathroom, laundry and perimeter verandas all of which were undertaken by its current owner.

Council bushfire maps also identify the site as being in bushfire prone area and when assessed in accordance with Planning for Bushfire Protection document 2006 and Australian Standard AS 3959-2009 the site falls within the Flame Zone. Furthermore it would appear that no consideration has been given to or built into the dwelling house to safe guard the occupants in the event of a bushfire which would have been required if formal approval had been sought.

OPTIONS:

Given that the applicant for the Building Certificate had been previously made aware of the non existence of a dwelling entitlement and previous Council direction it would appear that the only option available is as follows:

1. The Building Certificate be refused and the owners be directed to render the dwelling uninhabitable with advice that if the dwelling is not made uninhabitable within 60 days, that Council will refer the matter to its Solicitors with the instructions to initiate appropriate action in the Land and Environment Court to ensure compliance.

CONCLUSION:

Given the circumstances, it is considered that Council pursue the matter as the current owners are the same owners who were originally directed to render the building uninhabitable.

COUNCIL IMPLICATIONS:

Should Council issue a Building certificate it may compromise Councils power to control dwellings on properties that do not have a Council dwelling entitlement.

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The matter be referred to Councils Solicitor in the event that the current owners fail to comply with any direction given by Council.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.4 Assessment of new developments and building works (Building & Environmental Health unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil

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8 [PR-CM] Tweed Development Control Plan Section B15 - Seabreeze Estate, Pottsville

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/B15



Civic Leadership

SUMMARY OF REPORT:

At its meeting of 25 October 2012, Council considered a report regarding a proposed amendment to the Tweed Development Control Plan 2008, Section B15 Seabreeze Estate - Pottsville (draft Seabreeze DCP). The primary purpose of the draft Seabreeze DCP was to remove the designation of land for a 'Potential Future School Site' to enable the development of the land for urban purposes. Council resolved to reject the draft Seabreeze DCP and request the Department of Education and Communities (DEC) undertake an updated needs analysis for the high school using the latest census figures.

Council's Planning Reform Unit (PRU) formally requested the updated analysis and advice from DEC and a response has now been received. The purpose of this report is to provide the Council with the DEC's advice and options for providing an appropriate planning framework for the remaining undeveloped land within Seabreeze Estate.

RECOMMENDATION:

That Council:

- 1. Rescinds Point 1 of Minute 604 of Council's 25 October 2012 meeting; and**
- 2. Receives and notes the further advice received from NSW Department of Education and Communities that the site is not required for Departmental educational purposes.**
- 3. Adopts the draft Tweed Development Control Plan 2008, Section B15 Seabreeze Estate - Pottsville as detailed within Attachment 3 to this report, which includes the removal of the designated 'Potential Future School Site'; and**
- 4. Reviews the education infrastructure strategies and controls contained within Tweed Development Control Plan, Section B21 Pottsville Locality Based Development Code be undertaken as part of the Planning Reform Unit's general policy maintenance program endorsed in its Work Program 2012-2015.**

REPORT:

This report provides updated information following Council's resolution on 25 October 2012, regarding draft Development Control Plan, Section B15 Seabreeze Estate - Pottsville (draft Seabreeze DCP), being that Council:

- "1. Rejects the proponent's request to amend the Tweed Development Control Plan Section B15 - Seabreeze Estate, Pottsville, thereby retaining the existing Section B15 of the Tweed Development Control Plan.*
- 2. Requests the Department of Education and Communities to undertake an updated needs analysis for the high school using the latest census figures."*

For reference, a copy of the Council report from 25 October 2012 is provided in Attachment 1 of this report.

In accordance with the Council's resolution the Planning Reform Unit (PRU) subsequently notified the Department of Education and Communities (DEC) of Council's resolution and request. A complete copy of DEC's correspondence is provided in Attachment 2 of this report, and may be summarised as follows:

- The updated analysis of secondary school enrolment demand for students living in the Pottsville area indicates that the number of secondary school students living in Pottsville has been relatively stable in recent years and shows there is not enough demographic demand to require another government secondary school in the Tweed Coast LGA.
- The updated analysis indicates that the number of primary school students living in Pottsville is not sufficient to require a third primary school at this point in time (considering the existing Pottsville Beach Primary School and recently approved non-government school in Charles Street, Pottsville).
- DEC will continue to monitor education needs in the Pottsville area and continue to explore as a priority the identification of a future primary school site in the Dunloe Park Release Area.

Secondary School

The advice from DEC appears to conclude, based on their statistical analysis of historical demographic trends and most recent 2011 Census data, that there is presently an insufficient demand nexus to support additional capital investment in secondary school infrastructure in the Pottsville locality.

It is likely that the projection of demand is limited by the extent of urban land use zoning presently available under the Tweed LEP 2000 within Pottsville, on which a reasonable prediction of population yield can be made, as well as preliminary predictions concerning undeveloped lands that have been identified as potentially suitable for urban development but not yet zoned or developed (i.e. Dunloe Park, Kings Land, Pottsville Employment Land).

This latter criterion (future development sites) would likely have the greatest influence on whether secondary school infrastructure is likely to be justified in the longer-term. It is also likely that future development will have a bearing on where any schools would be built. The DEC advice is indicative of this rationale as it refers to the potential development area of 'Dunloe Park' as the likely location of a future primary school. It might follow that an economic approach concerning the provision of a secondary school, in the event that development yields are higher than currently projected and satisfy the DEC thresholds, may result in the collocation of a primary and secondary school in that locality.

The question then arises from a consideration of the DEC advice as to whether it is reasonably open to the Council to maintain the school site designation within the DCP, specifically for a secondary school, upon land that is presently in private ownership when the target developer (DEC) has essentially communicated contrary intentions regarding a location for a future school and no intention regarding a purchase or acquisition of the identified land.

If this is the correct question to answer Council's decision about whether the 'Potential Future School Site' should be maintained in the DCP, then it is likely that the answer would lead to a conclusion that it is both unwarranted and unnecessary.

Primary School

Similarly to the discussion above regarding the secondary school, the DEC advice indicates that there is not presently a demand for an additional primary school in the Pottsville area. However, unlike that of the secondary school, there is a greater likelihood of that demand reaching the DEC thresholds if development of the Dunloe Park release area proceeds as anticipated. In that event it is probable that the release area will be the preferred location, as has been communicated within the advice.

There is, likewise with that of the secondary school, no commitment to purchase or acquire the land identified in the DCP. Therefore the question posed above is equally relevant to a consideration regarding a future primary school.

It might also be relevant to ask a further question; for what public purpose or benefit is to be gained by restricting the development of private land so that it can be used for a public purpose, by a specific public authority, when that Authority (DEC) has advised that it does not intend to use or acquire the land for that purpose.

In answering the first question it is more probable than not that it was reasonably open to Council to incorporate a provision within the DCP that had the effect of sterilising the identified land for all but the nominated land-use (future school site) upon a consideration of the commitments made by the Proponent in securing Councils and the community's support for the rezoning and development of the land. This was essentially based on a detailed structure plan that was prepared by the proponent and inclusive of the schools site commitment.

In answering the second question it is pertinent to consider the site's history, and consequently the commitment. The Seabreeze Estate development has largely been constructed and progressively developing in excess of 10 years. During this time the DCP has been operative and advanced the location of a future school site. The site's owners, Metricon (QLD) had been in communication with the DEC on many occasions during the last ten years and at one stage came close to negotiating a sale to the State of NSW before it resiled to its current view, as discussed above.

Consequently, without confirmation from the DEC regarding their intention and commitment to the site it could be readily argued that it remains open to the Council to hold the Proponent landowner to their commitment of providing a future school site through the DCP provisions but, this position has changed.

Now that the DEC has made clear their views on the demand projections and preferred site location, which do not rely or marry with those of the DCP, it is likely that in answering the further question above that the only conclusion to be drawn about the public purpose or benefit to be gained by restricting the development of private land is that there is none. There is no utility in designating private land for public purposes in the face of the advice provided by the DEC.

The Proponent has been held to their commitment for as long as was reasonably thought necessary to either have the site secured for a school development, through purchase or acquisition, or in the alternative to have the target authority (DEC) confirm their intentions.

In light of the DEC correspondence it is more probable than not that the only conclusion to be reached about whether it remains reasonably open for the Council to continue with the DCP schools site controls is that it is no longer reasonable to do so.

OPTIONS:

That Council:

1. Rescinds Part 1 of Minute 604 of Council's 25 October 2012 meeting and adopt the draft Seabreeze DCP as detailed within Attachment 3, which includes the removal of the designated Potential Future School Site; or
2. Rescinds Part 1 of Minute 604 of Council's 25 October 2012 meeting and approve the draft Seabreeze DCP as detailed within Attachment 3 subject to the inclusion of a suitable site not smaller than 3ha (allowing sufficient area for a potential primary school) for the purposes of a 'Potential Future School Site'. The earmarking for a 'Potential Future School Site' be reviewed, if requested, no earlier than 2018 or;
3. Rescinds Part 1 of Minute 604 of Council's 25 October 2012 meeting and approve the draft Seabreeze DCP as detailed within Attachment 3 subject to the inclusion of a suitable site not smaller than 6ha (allowing sufficient area for a potential secondary school) for the purposes of a 'Potential Future School Site'. The earmarking for a 'Potential Future School Site' be reviewed, if requested, no earlier than 2018 or;
4. Rejects the proponent's request to amend the DCP thereby retaining the existing Section B15 of the Tweed Development Control Plan.

Option 1 is considered the preferred option as it is clear the DEC has no intention of acquiring the site for school purposes either in the short or long-term and continuing to restrict the use of the land indefinitely is unreasonable and unnecessarily restrictive on the land owner.

Option 2 allows the landowner to develop the majority of the remaining land whilst securing sufficient land to enable a Potential Future School (Primary School). Whilst this is not the preferred option, it is considered to be the most effective should Council wish to maintain a potential school designation as DEC have indicated that primary school infrastructure will likely be required in advance to secondary school infrastructure. Similarly, the review timeline of 2018 correlates with advice provided by DEC regarding their estimated earliest timeframe for further school infrastructure.

Option 3 allows the landowner to develop the majority of the remaining land whilst securing sufficient land to enable a Potential Future School (Secondary School). Whilst this is not the preferred option, it is an option should Council consider it reasonable to maintain a land reservation for a potential secondary school. As discussed above, the review timeline of 2018 correlates with advice provided by DEC regarding their estimated earliest timeframe for further school infrastructure.

Option 4 is not considered to be a desirable option as it effectively sterilises all land within Stage 2 of Seabreeze Estate from development and does not provide the necessary planning framework to monitor and distribute available sewer capacity, as updated within the Draft Seabreeze DCP.

CONCLUSION:

A key component of the draft Seabreeze DCP is the requested removal of the designated 'Potential School Site' to enable the development of that land for residential purposes.

The provision of an additional school for the Pottsville locality has long been discussed amongst the community, developers, Council and education providers. Since 2000, the subject land within Seabreeze Estate has been identified for a 'potential school site'.

Despite the longstanding designation for a potential school site, more recent population and demographic trends, as well as other factors in the way educational needs can be accommodated, have led the Department of Education and Communities (DEC) to conclude that a high school is not required for the foreseeable future and that a primary school is not considered warranted until the development of the Dunloe Park release area. Subsequent to Council's 25 October 2012 resolution, DEC has provided an updated demographic analysis further supporting this advice.

Whilst Council could seek to retain the current potential school site designation within Seabreeze until such time that the Dunloe Park release area becomes a reality, the requested amendment to the Seabreeze DCP does not preclude the construction of school facilities within the Pottsville locality. DEC have indicated a preference to pursue a site within the future Dunloe Park development, dependent on population growth and demographics. In addition, schools are a permitted land use throughout the majority of zones within the Tweed Local Environmental Plan 2000, including the current residential zoning of the site.

In light of the above, maintaining the specific designation of land for a 'potential school site' within the Seabreeze Estate DCP is considered unreasonable and without a proper justification for doing so.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1 Council report of 25 October 2012 (ECM 62798823)
 - Attachment 2 Advice received from NSW Department of Education and Communities dated December 2012 (ECM 62798827)
 - Attachment 3 Draft Tweed Development Control Plan Section B15 – Seabreeze Estate, Pottsville (ECM 62798828)
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9 [PR-CM] Development Application DA12/0243 for a Three Lot Subdivision - 2 Residential Lots and 1 Residue Lot at Lot 58 DP 1083567 Collins Lane, Casuarina

SUBMITTED BY: Development Assessment

FILE NUMBER: DA12/0243 Pt1



Civic Leadership

SUMMARY OF REPORT:

The proposal seeks approval for a three lot subdivision at Lot 58 DP 1083567; Collins Lane Casuarina.

Two of the proposed lots (Lot 1 and Lot 2) would be immediately suitable for residential use based on their size (627m² and 472m²) while the remaining allotment would be a residue lot capable of future subdivision (Lot 3 with an area of approximately 5251m²). Council is in receipt of another Development Application (DA12/0565) to undertake a subsequent subdivision of the residue allotment (Lot 3) however this is subject to a separate application which will be determined at a future time.

In regards to this three lot subdivision a State Environmental Planning Policy No. 1 – Development Standard (SEPP 1) objection accompanies the application. The objection is in respect of the development standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) Environmental Protection (Coastal Lands) zone.

The SEPP 1 objection relates to a small portion of the site adjacent to the eastern boundary which is zoned 7(f) Environmental Protection (Coastal Lands). The 7(f) zoned land represents approximately 13.50% of the site and the remainder of the site is zoned 2(e) Residential Tourist 86.50% which has a minimum lot size requirement of 450m².

The application was referred to the NSW Department of Planning and Infrastructure requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard subject to a condition being placed on the development consent to the effect that no residential, associated buildings or structures permitted on land zoned 7(f).

The application has been referred to Council for determination as the officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent 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 DA12/0243 for a three lot subdivision - 2 residential lots and 1 residue lot at Lot 58 DP 1083567 Collins Lane, Casuarina be approved subject to the following conditions:

GENERAL

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

- Staging Plan - Stage 1 Rev.2 by Planit dated 06/12.

[GEN0005]

2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

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

[GEN0135]

4. 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. No residential, associated buildings or structures are permitted on land zoned 7(f) Environmental Protection (Coastal Lands).

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction 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 a construction certificate. The contribution shall be based on the following formula:-

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

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

\\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

7. 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]

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. 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]

10. 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.

[PCC0485]

11. 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]

12. 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.

OTHER

- (a) Provision of water connections for Lots 1 and 2, generally as per "Proposed Water Reticulation Layout" plan by Opus No. TW_N-T2013.00 sheet 4 Rev. 3 dated 16.9.12 - as pertaining to Lots 1 and 2 only.
- (b) Construction of sewer infrastructure to service Lots 1 and 2 generally as per "Proposed Sewer Reticulation Layout" plan by Opus No. TW_N-T2013.00 sheet 3 Rev.3 dated 16.9.12 - subject to relocation of the sewer main to avoid future Lot 3.

Note: sewer main construction will need to be of sufficient depth to enable internal house service lines to fall to the connection point, being against the fall of the land: site filling is necessary as per the following requirement.

- (c) Site filling to facilitate fall to the Collins Lane road frontage for Lots 1 and 2 - as well as future Lot 3. This is to enable stormwater infiltration surcharges to gravitate to the street.
- (d) Turfing of the footpath area of Collins Lane.

[PCC0875]

13. 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]

14. 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]

15. 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]

PRIOR TO COMMENCEMENT OF WORK

16. 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]

17. 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]

18. 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]

19. 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]

20. 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]

21. 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 any erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

24. All 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]

25. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.

[DUR0745]

26. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**
- All fill and cut batters shall be contained wholly within the subject land.**
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.**

and upon completion,

- All topsoil to be respread and the site to be grassed and landscaped including battered areas.**

[DUR0755]

27. 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]

28. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

29. 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]

30. 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]

31. 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]

32. 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]

33. 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]

34. 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:

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 inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all civil works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

35. 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]

36. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

37. 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]

38. No acid sulfate soils to be disturbed without the prior written approval of Council.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

39. 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]

40. 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 DSP6: 2 ET @ \$12150 per ET \$24,300

South Kingscliff Water Levy: 2 ET @ 282 per ET \$564

Sewer Kingscliff: 2 ET @ \$5838 per ET \$11,676

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.

[PCC0265/PSC0165]

41. 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.

(a) Tweed Road Contribution Plan:

13 Trips @ \$1155 per Trips \$15,015

(\$1145 base rate + \$10 indexation)

S94 Plan No. 4

Sector7_4

LCA4 - Casuarina: \$2,197

13 trips at \$169 per trip

(\$168 base rate + \$1 indexation)

(b) Shirewide Library Facilities:

2 ET @ \$816 per ET \$1,632

(\$792 base rate + \$24 indexation)

S94 Plan No. 11

- (c) **Bus Shelters:**
2 ET @ \$62 per ET \$124
(\$60 base rate + \$2 indexation)
S94 Plan No. 12
- (d) **Eviron Cemetery:**
2 ET @ \$121 per ET \$242
(\$101 base rate + \$20 indexation)
S94 Plan No. 13
- (e) **Extensions to Council Administration Offices
& Technical Support Facilities**
2 ET @ \$1812.62 per ET \$3,625.24
(\$1759.9 base rate + \$52.72 indexation)
S94 Plan No. 18
- (f) **Casuarina Beach/Kings Forest Community Facilities:**
2 ET @ \$2203 per ET \$4,406
(\$2153 base rate + \$50 indexation)
S94 Plan No. 19
- (g) **Casuarina Beach/Kings Forest Open Space:**
2 ET @ \$1245 per ET \$2,490
(\$717 base rate + \$528 indexation)
S94 Plan No. 19
- (h) **Cycleways:**
2 ET @ \$460 per ET \$920
(\$447 base rate + \$13 indexation)
S94 Plan No. 22
- (i) **Regional Open Space (Casual)**
2 ET @ \$1064 per ET \$2,128
(\$1031 base rate + \$33 indexation)
S94 Plan No. 26
- (j) **Regional Open Space (Structured):**
2 ET @ \$3730 per ET \$7,460
(\$3619 base rate + \$111 indexation)
S94 Plan No. 26

[PCC0215/PSC0175]

42. 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:

$\text{\$Con}_{\text{TRCP - Heavy}}$ 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

[PSC0185]

43. Prior to the issue of an Occupation 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 approved under Section 138 of the Roads Act and Section 68 of the Local Government Act (as set out in Councils 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 Occupation Certificate 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]

44. 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]

45. 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]

46. 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]

47. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.

[PSC0830]

48. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.

[PSC0830]

49. 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) The existing Restrictions on Title over this site, relating to stormwater infiltration requirements, disallowed plant species, and pet ownership (dogs and cats) restrictions, are to be reiterated on the 88B instrument for this subdivision.

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

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

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

[PSC0835]

- 50. 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. Furthermore, prior to the issue of a Subdivision Certificate, each lot shall have its' address number displayed in accordance with Council's procedure on street numbering.**

[PSC0845]

- 51. 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]

- 52. Pursuant to Section 80A(1)(b) of the Environmental Planning and Assessment Act, 1979 (As amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000 Development Consent No. DA06/1289 dated 24 January 2008 shall be surrendered by lodgement of the prescribed information, suitably executed, PRIOR to the issue of a Subdivision Certificate.**

[PSC0875]

- 53. 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]

- 54. 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 - Water Reticulation**
- (b) Compliance Certificate - Sewerage Reticulation**

(c) 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]

55. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

56. 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 sewerage system 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]

57. 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]

58. 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]

59. 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 - if necessary. 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]

60. The existing Restriction on Title (No. 15 per 88B instrument annexed to DP 1083567) relating to compulsory use of the site for multi-unit tourist accommodation, is to be extinguished.

[PSCNS01]

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. The development proposal is to comply with the subdivision layout identified on the plan prepared by Planit Consulting, reference Plan No. 1C (revision 02), dated 01/13.
2. At the issue of subdivision certificate and in perpetuity, the land inward from the eastern boundary of the residue lot to a distance of 15 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
3. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: Heaven Forbid Pty Ltd
Owner: Quantum Funds Management Limited
Location: Lot 58 DP 1083567 Collins Lane, Casuarina
Zoning: 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)
Cost: Not Applicable

Background:

Historically the subject site obtained development approval for the construction of 92 tourist accommodation units within a three storey configuration (DA06/1289). The proposal included a swimming pool on the ground level with basement car parking for 99 vehicles with vehicular access provided from the proposed extension of Casuarina Way. The proposal involved a mixture in bedroom numbers, 81 x 1 one bedroom units, 8 x 2 bedroom units and 3 x 3 bedroom units. The applicant has advised that due to current market conditions this consent is not viable and that a traditional subdivision would better suit the current market conditions. Therefore if the subject application were to be approved it is recommended that a condition of consent would require the voluntary surrender of DA06/1289 prior to issue of a Subdivision Certificate for the subject subdivision (see Condition 52).

The subject application to create a three lot subdivision is considered Stage 1 of the ultimate development of Lot 58 Collins Lane as the subject application only seeks to create two residential lots capable of residential use and one residue parcel capable of further subdivision.

Council is already in receipt of the proposed Stage 2 development (DA12/0565) which seeks to further subdivide proposed Lot 3 into a further 8 allotments all capable of residential use. This Stage 2 application consists of a battle axe lot with access from Collins lane; an internal access road (right of way) from Dryandras Court to service four lots; with the remaining three lots gaining direct access from Dryandras Court. The proposal also requires new water, sewer and stormwater infrastructure to service the entire 10 residential lots (DA12/0243 and DA12/0565).

The reason the applicant has chosen to submit the two applications to Council (as opposed to one staged application) is that the second application (DA12/0565) requires access from Dryandras Court and Dryandras Court has not yet been dedicated to Council ownership and the current land owner has not and will not grant owners consent. As such that development application cannot be determined until the road has been dedicated. That development application will be reported to Council once Dryandras Court has been dedicated to Council. A subdivision certificate has been lodged with Council regarding the dedication of the road however, Council has requested further information to satisfy Council's requirements prior to determination of the subdivision certificate. DA12/0565 will also need to be reported to Council as that application also requires a SEPP 1 Objection relating to the small portion of the site adjacent to the eastern boundary which is zoned 7(f) Environmental Protection (Coastal Lands) being less than the required land area in accordance with clause 21A (2)(a) of the Tweed Local Environmental Plan 2000.

Accordingly the application currently before Council is merely for a three lot subdivision creating two lots capable of residential use and one residue parcel that will be capable of subdivision at a later date.

SITE DIAGRAM:



Locality Plan

Lot 58 DP1083567
Collins Lane, Casuarina

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 damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 24 January, 2013
© Land and Property Management Authority (LPMA) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

0 1 2 Km
1:125,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodesic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

T | (02) 6670 2400 | 1300 282 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au



Filepath: Z:\GIS Jobs\10062001 to 00083000\0006289\5161Map - LocalityPlan.mxd

Author: C. Lees - Information Technology Unit

Date: 24 January, 2013

SUBDIVISION PLAN:



- (B) FIRE HYDRANT
- (O) STORMWATER MANHOLE
- (□) INLET PIT
- (B) EASEMENT FOR DRAINAGE OF SEWAGE 3 WIDE, 3.5 WIDE, 4 WIDE, 5 WIDE & 6 WIDE.
- (C) RIGHT OF FOOTWAY 2 WIDE.
- (K) EASEMENT FOR DRAINAGE OF SEWAGE 3 WIDE, 4 WIDE, 5 WIDE, 6 WIDE, 8 WIDE, 10 WIDE & VARIABLE WIDTH (DP1030322).
- (L) EASEMENT FOR DRAINAGE OF WATER 5 WIDE, 6 WIDE, 8 WIDE & VARIABLE WIDTH (DP1030322).
- (M) EASEMENT FOR DRAINAGE OF SEWAGE 3 WIDE, 6 WIDE, 10 WIDE & VARIABLE WIDTH (DP1027251).
- (N) EASEMENT FOR DRAINAGE OF WATER 10 WIDE, 20 WIDE & VARIABLE WIDTH (DP1027251).
- (K) RESTRICTION ON THE USE OF LAND & POSITIVE COVENANT. (DP1030322).

COLLINS LANE, CASUARINA BEACH
STAGING PLAN - STAGE 1

SCALE: 1:50 @ A3
DRAWN: [Name]
DATE: 02/12
REV: 02

Level 12/41 South Street
Tel: 08 9399 1000
PO Box 520, Hillarys Beach, WA 6147
www.plantconsulting.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 subject development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP 2000 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 site is an existing infill site and therefore the proposed development is considered to be in keeping with the ESD principles.

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 mostly zoned 2(e) Residential Tourism and partly zoned 7(f) Environmental Protection (Coastal Lands), the primary objectives of which are outlined below.

The proposed subdivision is considered consistent with the primary objective of the zone as it will be for residential use.

Other relevant clauses of the TLEP 2000 have been considered elsewhere in this report and it is considered that the proposed subdivision generally complies with the aims and objectives of each.

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the established residential nature of the local area.

Clause 11 - Zone objectives

The site is part zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands).

2(e) Residential Tourist Zone

Primary objective

- *To encourage the provision of family-oriented 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 such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.*

Secondary objective

- *To permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.*

The proposed development for a three lot residential subdivision within the Casuarina Beach Estate is considered to be consistent with the objectives of the 2(e) zone.

7(f) Environmental Protection

Primary objectives

- *To identify land susceptible to coastal erosion and protect it from inappropriate development.*
- *To protect and enhance the scenic and environmental values of the land.*

Secondary objective

- *To allow for other development that is compatible with the primary function of the zone.*

The proposed subdivision is considered to be appropriate in the 7(f) zone as the two proposed residential lots are wholly within the land zoned 2(e) Residential Tourist. Only the residue lot incorporates a portion of 7(f) Environmental Protection zoned land (in the eastern most portion of the lot).

Any future residential dwelling/structure will be required to be situated entirely within the 2(e) zone and no buildings or associated structures will be permitted in the 7(f) zone. The approved use of all allotments will be residential, which is consistent with the surrounding land uses.

Clause 15 - Essential Services

The proposal can be adequately serviced by way of existing water and sewer mains within the locality, subject to compliance with the provisions of Tweed DCP Section A5 and conditions of consent.

The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

Clause 16 - Height of Building

A three 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

Having regard to the provisions of DCP Section A13, a detailed social impact assessment is not required.

Clause 21A

Clause 21A requires a minimum 40 hectares for land zoned 7(f) Environmental Protection. The proposed development site incorporates an approximate 15m wide strip of land zoned 7(f) along the eastern boundary of the site, approximately 13.5% of the site or 857.79m². The area in question does not meet the 40 hectare requirement and as such, the applicant has lodged a SEPP 1 Objection with the application, specifically seeking variance to the minimum lot size development standard for the 7(f) zone. Further assessment in terms of the SEPP 1 Objection is detailed later in this report.

Clause 27 - Development in Zone 7(f) Environmental Protection (Coastal Lands)

The objective of Clause 27 is to protect land that may be susceptible to coastal erosion processes from inappropriate development.

It is considered that the proposed three lot Torrens title subdivision will not impact on the behaviour of the sea, beach or dune, landscape or scenic quality of the locality, and any native vegetation.

Although the 2100 Coastal Hazard line is located within the development site (approx 8m from the eastern property boundary), the 2100 Coastal Hazard line is within the 20m wide 7(f) zone. As such, no development is allowed within the 7(f) zone, including earthworks or vegetation removal is not permitted to take place that could influence coastal erosion processes. Therefore, the proposed development is considered to satisfy the provisions of Clause 27.

Clause 35 - Acid Sulfate Soils

The subject site is identified as possessing Class 4 Acid Sulfate Soils. Council's Environmental Health Unit has advised that the Statement of Environmental Effects (SEE) that accompanied DA06/1289 included an Acid Sulfate Soils Management Plan (ASSMP) (Cardno, 12 October 2006). The Environment and Health Services Report prepared for DA06/1289 outlined that the ASSMP was reviewed and considered to be adequate. A condition was recommended requiring compliance with the ASSMP.

The proposal requires infrastructure connections throughout the site, which is claimed by the applicant not to exceed 1.5 metres in depth.

Due to no works being proposed beyond 2 metres and that the site is highly disturbed, it is considered that no further assessment is required in this regard subject to conditions. It is considered that the proposal complies with the requirements of Clause 35 of the TLEP 2000.

Clause 39 - Contaminated Lands

The site is existing residential land and is part of the greater Casuarina Beach Estate. Council Environmental Health Unit has advised that in accordance with a Council Resolution of 21 November 2001, no further testing for contamination was necessary. It is considered the proposal complies with the requirements of Clause 39 of the TLEP 2000.

Clause 39A - Bushfire Protection

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act a permit is required for subdivisions on land subject to bushfire hazard.

The NSW Rural Fire Services has given their general terms of approval for the development and appropriate conditions of consent have been imposed.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 29A: Natural areas and water catchment

Clause 29A relates to the clearing of natural vegetation in environmental protection areas. The proposed development does not propose any vegetation removal within the 7(f) zone.

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.

Clause 33: Coastal hazard areas

The proposal is for subdivision of existing residential allotments within the Casuarina Beach Estate. All foreshore rehabilitation and beach access points have been undertaken/established as part of the parent subdivision. The proposal has no direct implications or relevance in this regard.

As noted above, the 2100 Coastal Hazard line is located within the residue lot (approx 8m from the eastern property boundary). No development is allowed within the 7(f) zone, therefore no earthworks or vegetation removal will take place that could influence coastal erosion processes. The applicant states:

"the proposal is for subdivision of an existing residential allotment within the Casuarina Estate. All foreshore rehabilitation and beach access points have been undertaken/established as part of the parent subdivision. The proposal has no direct implications or relevance in this regard."

It is considered the proposed subdivision is in accord with the Coastline Management Manual and the existing subdivision patterns within the area. Therefore, the proposal is compliant with Clause 33.

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

Site erosion will be minimised throughout the construction phase and enforced via conditions of consent. The density of the proposed development has been maximised (in terms of low density residential development) without adversely affecting the environmental features of the land.

Clause 32B: Coastal Lands

The proposal is considered not to negate the objectives of the following policies:

- (a) The NSW Coastal Policy 1997;
- (b) The Coastline Management Manual; and
- (c) The North Coast: Design Guidelines.

The proposed development is considered not to contravene the objectives of Clause 32B by: not creating any significant adverse effects to the public access to the foreshore, create overshadowing to beaches, waterfront open space before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

Clause 33: Coastal hazard areas

Before granting consent to development on land affected or likely to be affected by coastal processes, the council shall:

- (a) Take into account the Coastline Management Manual;*
- (b) Require as a condition of development consent that disturbed foreshore areas be rehabilitated; and*
- (c) Require as a condition of development consent that access across foredune areas be confined to specified points.*

The proposal is consistent with the objectives of the Coastline Management Manual, if necessary a condition will be imposed requiring disturbed foreshore areas be rehabilitated and access across foredune areas be confined to specified points.

Clause 43: Residential development

The provisions of Clause 43 of the NCREP 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 consistent with the desired future character and densities of the area. The proposal is considered suitable for the site in relation to the NCREP.

Clause 81: Development adjacent to the ocean or a waterway

(1) *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,*

The proposal will not permanently reduce or affect access to or along the foreshore open space.

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

No buildings are proposed as part of this development however, the future dwellings would be assessed to ensure that they do not detract from the amenity of the waterway.

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

The proposal is consistent with the objectives of the Coastline Management Manual, if necessary a condition will be imposed requiring disturbed foreshore areas be rehabilitated and access across foredune areas be confined to specified points.

(2) *Nothing in sub-clause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

The site is not for the purpose of agriculture.

SEPP No. 1 - Development Standards

A SEPP 1 objection accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone.

The 7(f) zoned land represents approximately 13.50% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size requirement of 450m². It is proposed as part of this subdivision to include the 7(f) zoned land within residue lot (lot 3).

A SEPP 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.

In support of the proposed variation, the applicant has provided the following:

"Specifically the objective of Clause 21A seeks to protect the ecological or scenic values of coastal lands and protect land that maybe susceptible to coastal erosion processes from inappropriate development.

With reference to the above objective, it is noted that the site is located within the Central Precinct of the Casuarina Beach Estate. The proposed subdivision has been designed to replicate the existing layout with regard to the 'beach front' allotments and is clearly representative of the established subdivision pattern.

In this regard the established subdivision pattern provides 'beach front' residential allotments (inclusive of the subject site) which incorporate a part 2(e)/7(f) zoning. This configuration sees all 7(f) zoned land within the existing residential allotments provide areas less than 40 hectares. An effective visual representation of this situation can be found within Councils zoning maps, an extract is provided right:

Despite the lot size variation all existing 'beach front' allotments within Casuarina Beach achieve land uses generally in accord with the objectives for the 7(f) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas.

By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'beach front' allotments and that of the subject property. No adverse impacts will result to the established environmental character nor will development be permit on land subject to coastal erosion hazard.

The proposal meets the objectives of the development standard notwithstanding the non compliance with minimum lot size."

Assessment of the applicant's submission:

The following assessment of the SEPP 1 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.

The applicant has adopted the first option being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted which states:

21A Subdivision in Zone 7 (f)

(1) Objectives

- *To protect the ecological or scenic values of coastal lands,*

- *To protect land that may be susceptible to coastal erosion processes from inappropriate development.*

In this regard, the applicant notes the following:

"As discussed above and confirmed by judgments supported by the Land & Environment Court, the ability of a proposal to attain the objective of the standard and its intent are fundamental to the appropriateness of applying the standard in the first instance. Specifically the objective of Clause 21A seeks to protect the ecological or scenic values of coastal lands and protect land that maybe susceptible to coastal erosion processes from inappropriate development.

With reference to the above objective, it is noted that the site is located within the Central Precinct of the Casuarina Beach Estate. The proposed subdivision has been designed to replicate the existing layout with regard to the 'beach front' allotments and is clearly representative of the established subdivision pattern.

In this regard the established subdivision pattern provides 'beach front' residential allotments (inclusive of the subject site) which incorporate a part 2(e)/7(f) zoning. This configuration sees all 7(f) zoned land within the existing residential allotments provide areas less than 40 hectares. An effective visual representation of this situation can be found within Councils zoning maps, an extract is provided right:

Despite the lot size variation all existing 'beach front' allotments within Casuarina Beach achieve land uses generally in accord with the objectives for the 7(f) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'beach front' allotments and that of the subject property. No adverse impacts will result to the established environmental character nor will development be permit on land subject to coastal erosion hazard.

The proposal meets the objectives of the development standard notwithstanding the non compliance with minimum lot size."

Comment:

Council agrees with the applicant in that compliance with the development standard not possible, and that the zone objectives are complied with. It is considered that the objectives of Clause 21A will be maintained by the proposed development, despite the minimum 40ha requirement not being met. As noted elsewhere in this report, there is no development proposed within the 7(f) zone and conditions of consent will prohibit any structures within the zone.

Therefore, it is Council's opinion that the objectives of the standard (particularly relating to the protection of the ecological values of the land) are achieved, notwithstanding non-compliance with the standard. Land susceptible to coastal erosion processes will be protected from inappropriate development, by way of restrictions of use applied to each new allotment.

It is considered that strict compliance with the minimum lot size of 40ha for the 7(f) zone is unreasonable and unnecessary in this instance.

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 and Assessment Act 1979*; and**

The objectives 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 applicant has noted the following:

"It is noted that the variation requested is done so with particular reference to the content and wording of the objective to the standard. Accordingly, we have broken down the request for variation in to three (3) specific headings, each of which is identified within the objective proper.

An analysis in this context has been carried out as follows:-

Is the development appropriate to its location and surrounding development??

It is contended that the development responds in the positive in relation to this question. In this regard, the key elements to consider are defined as follows:-

1. *What is the character of the locality;*
2. *What elements form or shape development in the locality;*
3. *Will the development appear out of character with surrounding development; and*
4. *Will the development translate into excessive or avoidable impacts?*

With reference to the above objective, it is noted that the subdivision partner of part 2(e) / 7(f) zoned allotments is well established within the Casuarina Estate. The intent objectives of the 7(f) zone as it relates to the Casuarina Estate has been achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas. The proposal will not alter this approach and will emulate the existing character of the locality.

Is the development appropriate to the environmental characteristics of the land??

Despite the lot size variation all existing 'beach front' allotments within Casuarina Beach achieve land uses generally in accord with the objectives for the 7(f) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas.

By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'beach front' allotments and that of the subject property. No adverse impacts will result to the established environmental character.

The SEPP No.1 Objection is considered to warrant support in that flexibility in planning controls is achieved and imposing compliance with the development standard is clearly a hindrance to the objects as listed in s 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979."

Comment:

The proposal provides for two residential lots and one residue lot Torrens title subdivision in an existing subdivision that incorporates a development with access to utility services and is within close proximity to community facilities. The subject allotment has been identified for development since the creation of the Casuarina Beach Estate.

The SEPP1 Objection is considered to warrant support in that flexibility in planning controls is achieved and approval of the development would not hinder the attainment of the above 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 Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f). As such, the proposed non-compliance with clause 21A of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this particular case, as only a minor portion of the site (13.50%) is zoned 7(f) Environmental Protection (Coastal Lands) and the proposed subdivision will have no impact upon that particular zone. That is, the area of land zoned 7(f) will remain unchanged, with all new development required to be located entirely within the 2(e) zoned land.

The streetscape and amenity of the locality will remain relatively the same, noting that the subject site is infill development within a well established residential precinct of Casuarina Beach estate.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with clause 21A of 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. As such, the granting of this application is unlikely to impact upon public benefit.

Conclusion

Given that the three principles set by Chief Justice Preston have been met, strict compliance with the development standard under clause 21A is considered unreasonable and unnecessary in this instance. As such, the SEPP1 Objection warrants support.

In addition, the Director-General's Concurrence has been granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The Department of Planning advised that concurrence was granted in this instance for the following reasons:

- *"The variation to the development standard will enable the orderly development of the remainder of the land which is zoned 2(e) Residential Tourist.*
- *Proposed lot 3 contains an area of 2(e) zoned land which is large enough to accommodate development without an adverse impact on the 7(f) zone.*

In granting concurrence the Department requests that, should Council approve the development application, a condition be placed on the development consent to the effect that no residential buildings or structures be permitted on land zoned 7(f) Environmental Protection."

SEPP No. 55 - Remediation of Land

The land has been sand mined in the past and areas of radiation have been discovered in the Casuarina Beach area. In relation to this development, Council's Environmental Health Unit are satisfied that on the basis of the information submitted to Council, that further investigation is not required for radioactive material.

SEPP No 71 – Coastal Protection

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development will be considered compatible with existing and approved development for the locality upon completion of the proposed subdivision works.

Clause 18(2) requires a master plan if subdivision of land is proposed within the sensitive coastal zone or the subdivision of residential land into more than 25 lots, unless the Minister has waived the need for a master plan. As the proposal is for less than 25 lots (being 3 lots, with the residue lot proposed to be subdivided into 8 lots) correspondence from the Department of Planning regarding a master plan requirement is not required.

SEPP (State and Regional Development) 2011

The proposed development is not required to be determined by the Joint Regional Planning Panel (JRPP) therefore the application can be determined by Council.

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

Draft Tweed LEP 2010

Under the Draft LEP 2010, the subject site is zoned R1 – General Residential and E2 Environmental Conservation. The proposed development is considered to be consistent with the objectives of both zones.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. That is, the R1 land currently zoned 2(e) is identified as Lot Size code G, which requires 450m²; the E2 land currently zoned 7(f) is identified as Lot Size code AB2, which requires 40ha.

Clause 4.6 of the Draft LEP 2010 relates to exceptions to development standards, to allow a degree of flexibility. The proposed subdivision is consistent with clause 4.6 in that: the applicant has lodged a written request that seeks to justify the contravention of the development standard (SEPP1 Objection); Council is satisfied that the written request adequately addresses all matters; the proposal will be in the public interest; and concurrence has been granted.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposal complies with Council's policy.

Access to proposed Lots 1, 2 and 3 is via the cul-de-sac in Collins Lane. The lot frontages for proposed Lots 1, 2, 3 are 10.7m, 10.7m and 4m respectively.

Future development (subdivision) of residual Lot 3 is dependent on gaining access from Dryandras Court. As previously mentioned Dryandras Court has been constructed but not dedicated to Council and currently remains in private ownership. Access to the subject land cannot be gained from Dryandras Court until the road is dedicated to Council. Council's subdivision manual requires that every lot shall have feasible access from a street.

Council's design specifications also require that a minimum 9m kerb frontage is provided for each lot within a cul-de-sac arrangement, unless alternative provision for parking is made.

Proposed Lots 1 and 2 both have frontages of 10.7m which is considered satisfactory. Proposed Lot 3 is a large residual battleaxe allotment and meets the minimum requirements in regards to access handle width (4m). Ideally this allotment would have a 9m frontage to Collins Lane however this will ultimately not be necessary as access to this lot will in the future be off Dryandra Court. Therefore the lack of the 9m frontage in regards to Lot 3 is not considered necessary as alternative provision for parking and access will be established through a future subdivision application.

A5-Subdivision Manual

Lot size and solar orientation

Regarding the relevant provisions governing lot size and geometric requirements, all allotments are compliant meeting both the 450m² minimum size and providing sufficient width and length to accommodate the required 10m by 15m building envelope and winter solar access and summer sun deflection.

Geotechnical/Earthworks/Landforming

The site is currently cleared and grassed. An existing 8m wide concrete cross over is on the Dryandras Court frontage, and fences are present on all boundaries. The land is generally flat with a gentle slope towards the south and east. Existing ground levels range from RL 8.4m to RL 7.8m along the western boundary, with a gentle slope towards the eastern and southern boundaries where ground levels range from RL 6.5m to 5.5m. Average gradients for the site range from 2.6% in the west-to-east direction and 1.3% in the north-to-south direction. No major bulk earthworks are proposed. The land has been previously filled in conjunction with prior development of the entire Casuarina estate. All access is currently via Collins Lane, and no road construction is required for this subdivision. The existing land grading is appropriate for a single larger scale development over the site – but not for a subdivision. A consequence of the site being subdivided is stormwater management is now more difficult to satisfactorily achieve for individual lots, in accordance with the regime adopted consistently over the Casuarina estate. Most sites have been filled/graded to fall to the street, where roofwater infiltration pits – which are usually located in the front yards – can surcharge in large storm events and overflows can gravitate to the street. Some filling of the site will be necessary to facilitate fall to the street for Lots 1 and 2 – as well as future Lot 3. Appropriate consent conditions will be imposed accordingly.

Road Network/Horizontal/Vertical Alignment, Cross Section

Collins Lane is classed as an Access Street and has a pavement width of 7m with roll over kerb and guttering. Collins Lane terminates in a cul-de-sac head at the northern boundary of the subject lot. Dryandras Court will be classed as an Access Street also, and has a pavement width of 7.8m and roll over kerb and guttering. Dryandras Court is located along the southern boundary of the subject lot, and as previously stated, has not yet been dedicated as a public road. Both roads have flat vertical and horizontal alignment. The roads are relatively new and the pavement is in good condition. No roadworks are required as a consequence of this subdivision proposal.

Bus routes/Shelters

The nearest bus route is located on Casuarina Way. All proposed lots within the subdivision are located within 400m of the existing bus shelters situated on Casuarina Way.

Access

Access to proposed Lots 1 and 2 is via the cul-de-sac in Collins Lane. The lot frontages for proposed Lots 1 and 2 are 10.7m and 10.7m respectively.

Battleaxe allotments/Cul-de-sac parking

Proposed Lot 3 is a large residual battleaxe allotment and meets the minimum requirements in regards to access handle width (4m). Council's design specifications also require that a minimum 9m kerb frontage is provided for each lot within a cul-de-sac arrangement, unless alternative provision for parking is made. Proposed Lots 1 & 2 both have frontages of 10.7m which is considered satisfactory. Future subdivision of residual Lot 3 will create a small battleaxe lot accessing Collins Lane, within which the applicant will provide a designated off-street parking area. This is considered to be an acceptable alternative solution and will be enforced via an 88B restriction on that future subdivision. A concrete

area for this off-street car park is to be constructed within the allotment. This issue will be addressed in any future subdivision proposal over residual Lot 3, and is only mentioned now to ensure parking provisions and requirements are not overlooked for Collins Lane, due to the 'staging' of the subdivision of this site.

Pedestrians/Footpaths/Cycleway

The Collins Lane frontage has an existing 1.2m wide concrete footpath.

The Dryandras Court frontage has an existing 2m wide concrete footpath.

With regard to the treatment of the footpath areas, advice from Recreation Services is that the Collins Lane frontage will be required to be turfed, and that no street trees are necessary.

No action is required for the Dryandras Court frontage as a consequence of this proposal, but any future subdivision of residual Lot 3 will require submission of a landscaping plan.

Traffic Generation/Assessment

Traffic generation has not been addressed in the development application, but it is considered that the proposed subdivision will not have any detrimental effect on the surrounding road network.

Parking/Manoeuvring

No engineering concerns regarding Lots 1 and 2. Any future subdivision of residual Lot 3 will require on-street parking to be satisfactorily addressed.

Lawful point of discharge

The subdivision is an infill subdivision with all major surrounding stormwater infrastructure installed. Stormwater is managed mainly by infiltration into the existing sandy soils, with most overland flows gravitating to the south-east and collected in existing gully pits located in Dryandras Court. The stormwater is then directed towards existing infiltration basins located to the east of the subject land. Minor filling will be required to ensure proposed Lots 1 and 2 – as well as future Lot 3 - drain towards Collins Lane. Most of the properties within the Casuarina estate have been graded to fall to the street, where roofwater infiltration pits – which are usually located in the front yards – can surcharge in large storm events and overflows can gravitate to the street.

The alternative of providing an inter-allotment stormwater drainage line, and associated swale drain, would have a detrimental impact on the developable areas of the lots, particularly future Lot 3, which is already an undersized lot with limited development potential and concerns with regard to amenity. Therefore site filling to facilitate this stormwater management regime will be a condition of consent. All new allotments will be required to infiltrate roof water, as per the rest of the Casuarina estate. An existing 88B restriction currently imposes this requirement, which will be required to be reiterated (for clarity) on the 88B instrument for this subdivision.

Water Supply

Council's reticulated potable water supply is available to the area. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

Sewer

Council's piped sewer infrastructure is available within the area. There is an existing sewer manhole in the north-eastern corner of the site, and a 225mm gravity main is located along the eastern boundary of the subject lot in the 7(f) environmental zone. Due to the excessive depth of the sewer main it is classified as a trunk main, and individual property connections directly from this main are not permissible.

Electricity

Electricity services are currently provided to the area via Country Energy underground infrastructure. Recommended conditions of consent shall require the applicant to provide services in accordance with the standards of the supply authority.

Telecommunication

Telecommunication services are currently provided to the area via Telstra underground infrastructure. Recommended conditions of consent shall require the applicant to provide services in accordance with the standards of the supply authority.

A11-Public Notification of Development Proposals

The proposed development was notified for a period of 14 days from 4 July 2012 to 18 July 2012. Council did not receive any submissions in relation to this application.

B5-Casuarina Beach

The proposed subdivision is not inconsistent with the plan, with the proposed subdivision layout consistent with established subdivision pattern within the Casuarina locality.

The applicant proposed the following comment in relation to Section B5:

"The site has been approved for the development of ninety two (92) one (1) bed tourist accommodation units under development consent DA06/1289. As demonstrated through other developments within Casuarina and surrounding areas demand no longer exists for such proposals and development of such a product on the site is commercially unviable.

Subdivision of the site is consistent with a number of existing approvals issued within Casuarina for allotments that were identified for medium density purposes within the Casuarina master plan. Councils support for lower density development within Casuarina has again been demonstrated within the recently determine consent DA11/0444. This proposal has seen the redevelopment of lots previously approved for medium density uses within the master plan subdivided into low density residential allotments in response to market conditions.

The proposal is consistent with the established approach and will enable the timely, orderly and economic development of the land."

B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast generally.

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.

B25 – Coastal Hazards

The Aim of this Section are:

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

The subject site is partially located within the 2100 hazard line shown on the mapping to Section B25. This subdivision will see the proposed residue lot 3 located partially within the 2100 hazard line. As the proposal will be replicating all existing covenant restrictions and will be subject to the provisions of Section B5 of the TDCP 2008. No structures other than coastal themed fencing will be permitted within the parts of the allotments which fall within 2100 hazard line.

The proposal does not compromise the provisions of Section B25 of the TDCP 2008.

(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 considered to be consistent with the relevant provisions of the NSW Government Coastal Policy 1997.

Clause 92(b) Applications for demolition

Not Applicable.

Clause 93 Fire Safety Considerations

Not Applicable.

Clause 94 Buildings to be upgraded

Not Applicable.

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

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. This management plan is applicable to the proposed development. Appropriate conditions of consent have been applied to ensure that the proposal will comply with the provisions of the management plan.

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's 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**

The proposal is considered not to create significant impacts on the natural and built environments or social or economic impacts in the locality.

Context and Setting

The proposal is considered compatible with the existing density and character of surrounding Casuarina Beach development and locality.

(c) **Suitability of the site for the development**

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 site and surrounding properties are zoned for residential development. It is therefore considered that the site is suitable for the proposed development.

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

Public Notification

The application was notified from Wednesday 4 July 2012 to Wednesday 18 July 2012. Council did not receive any submissions relating to this application.

Department of Planning

As noted previously within this report, the Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f).

NSW Rural Fire Services

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act, the proposed subdivision was referred to the NSW RFS as Integrated development. The NSW RFS has granted a bushfire safety authority, subject to conditions of consent which have been applied.

(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.

OPTIONS:

1. Approve the development application with conditions; or
2. Refuse the development application and provide reasons.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning policies. The proposal is considered not to result in adverse cumulative impacts on the natural or built environments, with the site 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.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

10 [PR-CM] Development Application DA12/0170 for Alterations and Additions to Motel (Staged) at Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach

SUBMITTED BY: Development Assessment

FILE NUMBER: DA12/0170 Pt2



Civic Leadership

SUMMARY OF REPORT:

This Development Application was previously considered at the Council Meeting of 13 December 2012. It was resolved by Council at this meeting that the determination of the Development Application be deferred to allow for further discussions at a Councillors Workshop. This Workshop was held on 17 January 2012. During this Workshop the provisions of the relevant legislation in relation to the enlargement, expansion and intensification of the Motel were discussed. The officers' also responded to an additional request submitted by the applicant to vary the recommended conditions of consent that were included in the report to the December Council Meeting. There were no formal outcomes arising from the Workshop. It is therefore recommended that no amendments are made to the officers' report or recommended conditions of development consent that were submitted to the 13 December 2012 Council Meeting.

Council has received a development application for alterations and additions to an existing motel at Cypress Crescent, Cabarita Beach in three stages, as detailed further below. The existing motel currently comprises: a one bed care takers residence; 14 motel rooms; a small reception, bathroom and kitchen area and one three bed self contained holiday apartment.

The proposal seeks an additional five motel rooms (19 in total), one additional three bedroom self contained holiday apartment (two in total), the construction of a separate one bedroom caretakers residence and the construction of amenities (restaurant area, lounge area, laundry, toilets, multipurpose space and the like).

Stage 1 principally involves the renovation of existing rooms; construction of reception, restaurant, dining space and new kitchen; new communal lounge with amenities and kitchenette; renovation of serviced apartment; creation of second serviced apartment; construction of outdoor food and beverage service area; new at grade car parking; retention of existing swimming pool and partial site landscaping. Stage 2 involves the construction of third level including new motel rooms and new caretakers dwelling; construction of new swimming pool, tennis courts and tennis cabana (which are to be deleted from the consent as detailed further within this report) and landscaping. Stage 3 involves the construction of new caretakers dwelling, storeroom, common amenities and multipurpose space.

The development, by reason of the third storey element, would result in the overshadowing of waterfront open space (Crown Reserve) before 3pm midwinter and before 7pm midsummer (daylight saving time). On this basis the proponent lodged a State Environmental Planning Policy No. 1 (SEPP No. 1) objection seeking a variation to the provisions of Clause 32B of the North Coast Regional Environmental Plan (NCREP) 1988.

On this basis this development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all SEPP No. 1 variations greater than 10% to be determined by full Council. Given the Department of Planning and Infrastructure have advised Council Officers to be conservative with the application of the 10% rule, and it is virtually impossible to calculate 10% of the shadow development standard as it is time based, officers have resolved to report this application to full Council.

Please note that Council officers had sought a relaxation of the requirement for all development applications involving SEPP No. 1 variations of more than 10% to be determined by full Council. In a letter dated 16 July 2012 confirmation was received from the Department of Planning and Infrastructure that an interim variation to the reporting requirement for Clause 32B(4) of the SEPP (North Coast Regional Environmental Plan), in relation to overshadowing of waterfront open space. However, it advised that a development application is to be referred to full Council where the development concerned exceeds two storeys in height.

Six submissions and one late submission containing a number of objections to the development have been received as well as a list of signatures (approximately 260) in support of the proposed development.

The subject application has been referred to the relevant departments in Council for consideration and a formal request for further information was sent to the applicant in relation to: asset protection zones for bush fire safety purposes; additional information in relation to coastal hazards; stormwater and drainage and further clarification in relation to parking and access; signage; vegetation removal; residential amenity (overlooking, noise and disturbance to adjoining occupants); design and appearance of the building and existing use rights.

A response to the request for information was received by Council on 24 September 2012 and has since been referred to the relevant departments within Council.

It is considered that the proponent has adequately addressed all of the issues raised within the request for further information and, following an assessment of the additional information against the relevant heads of consideration, the application is recommended for approval.

RECOMMENDATION:

That Development Application DA12/0170 for Alterations and Additions to Motel (Staged) at Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:**
 - **Site Plan Proposed, DA106 Revision A, dated 29 March 2012;**
 - **Ground Floor Plan, DA107 Revision B, dated 13 September 2012;**

- **First Floor Plan Proposed, DA108, Revision A, dated 29 March 2012;**
- **Second Floor Plan Proposed, DA109, Revision A, dated 29 March 2012;**
- **Roof Plan Proposed, DA110, Revision A, dated 29 March 2012;**
- **Elevations North / South, DA201, Revision A, dated 29 March 2012;**
- **Elevations East / West, DA202, Revision A, dated 29 March 2012;**
- **Sections, DA300, Revision A, dated 29 March 2012;**

All prepared by Virginia Kerridge Architect, 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. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.**

[GEN0190]

- 5. Structures proposed/identified within/over the proposed Drainage Easement on the land are not approved and are to be deleted or located external to the easement. This refers to the "Covered Service Entry" portion of the proposed development.**

Council may reconsider this requirement and allow a modified version of an open roofed structure over Council's stormwater pipe infrastructure if appropriate justification is provided that addresses:

- **Retention of the existing ground level, without full floor slab construction over the stormwater pipe. "Lightweight" concrete flooring or paving would be acceptable.**
- **A clear vertical clearance of 2.4m (minimum) from the finished ground/floor level to the underside of any roof structure is provided.**
- **Verification that the proposed easement is not the relief stormwater overland flowpath route through the site.**
- **No permanent walls to be erected across the easement.**
- **Adjacent floor slabs to incorporate appropriate pier and beam design to avoid placing any load on the existing pipe.**
- **Unimpeded access is to be available to the pipe by Council Officers at all times.**

Details are to be provided with the construction certificate application for the relevant Stage of the proposed development.

[GEN0255]

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

[GEN0300]

7. The signage hereby approved shall not include any form of internal or external illumination, unless otherwise approved by the General Manager or delegate officer in order to safeguard the residential and visual amenity of the locality.

[GENNS01]

8. Waste management on the site shall be carried out in accordance with the approved Waste Management Plan prepared by Planit Consulting, dated April 2012.

[GENNS02]

9. The facilities hereby approved within the motel building (such as restaurant/dining area, lounge room and outdoor food and beverage service area) are to be used by guests of the motel only.

10. The swimming pool hereby approved shall be used by guests of the motel only and are not to be utilised by members of the general public, unless otherwise approved in writing by the General Manager or delegate officer.

11. This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only (i.e. persons using the premises for overnight accommodation within the motel). This application does not approve the use of the facilities hereby approved for functions, parties or the like or for catering to the general public.

12. The use of the motel for members of the general public or for functions, parties or the like will require an additional development approval.

13. This approval relates to Lots 9, 10, 11 and 12 in Section 4 DP 31209 and does not authorise any works over Lots 1 or 2 in Section 4 DP 29748 (eg. the proposed tennis court and signage).

14. This approval does not include any signage. Where statutorily required any signage should be subject to a future application.

15. The 'multipurpose space' as shown on Ground Floor Plan, DA107 Revision B shall be used as a storage area and games room for the guests of the motel only.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. The developer shall provide 25 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas 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.

[PCC0065]

17. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction 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.

(a) Tweed Road Contribution Plan:

14.88 Trips @ \$1155 per Trips \$17186

(\$1145 base rate + \$10 indexation)

S94 Plan No. 4

Sector7_4

(b) Open Space (Casual):

10.4 ET @ \$526 per ET \$5470

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

(c) Open Space (Structured):

10.4 ET @ \$602 per ET \$6261

(\$575 base rate + \$27 indexation)

S94 Plan No. 5

(d) Shirewide Library Facilities:

10.4 ET @ \$816 per ET \$8486

(\$792 base rate + \$24 indexation)

S94 Plan No. 11

(e) Community Facilities (Tweed Coast - North)

10.4 ET @ \$1352 per ET \$14061

(\$1305.6 base rate + \$46.4 indexation)

S94 Plan No. 15

**(f) Extensions to Council Administration Offices
& Technical Support Facilities**

10.4 ET @ \$1812.62 per ET \$18851.25

(\$1759.9 base rate + \$52.72 indexation)

S94 Plan No. 18

[PCC0215]

18. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction 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 a construction certificate. The contribution shall be based on the following formula:-

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

where:

\\$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

[PCC0225/PSC0185]

19. 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 Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction 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 DSP6: 2.727 ET @ \$12150 per ET \$33133.10

Sewer Hastings Point: 4.1314 ET @ \$5838 per ET \$24119.10

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.

[PCC0265]

20. 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]

21. 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]

22. 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.

[PCC0485]

23. 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: construction of two (2) vehicular footpath crossings.
- (b) Construction of concrete path paving for the Cypress Crescent frontage.

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]

24. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main, public stormwater infrastructure, or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

25. 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]

26. 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.

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]

27. 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]

28. The applicant is to provide a report from a suitably qualified person verifying that an environmental risk assessment has been carried out, and that radiation levels throughout the proposed development site do not pose a public health risk. In the event that radiation is detected at levels likely to result in a risk to occupants and/ or users of the site, then a site remediation plan is to be prepared and submitted to Tweed Shire Council for approval to the satisfaction of the General Manager or delegate.
29. A noise management plan shall be prepared and submitted to the satisfaction of the General Manager or his delegate which details the type of plant and equipment proposed, proposed location of all plant and equipment, and proposed noise mitigation measures to ensure that the emission of intrusive noise is prevented. Such management plan shall be submitted and approved prior to the issue of the construction certificate.
30. Prior to the construction certificate being issued plans drawn to a scale of 1:50 detailing the following with regards to all food related areas (handling, storage, preparation and service) shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fit-out, and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:
- a. Floor plan;
 - b. Layout of kitchens and bar showing all equipment;
 - c. All internal finish details including floors, wall, ceiling and lighting;
 - d. Hydraulic design in particular method of disposal of trade waste;

- e. **Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required.**
31. **Prior to the issue of a Construction Certificate, the applicant is to provide details of the location, height and materials of all boundary treatment (fences and walls) to be approved in writing by the General Manager or delegate officer. Boundary treatment shall be constructed in accordance with the approved details and thereafter be retained as such.**
32. **Prior to the construction certificate being issued plans drawn to a scale of 1:50 detailing the following with regards to all food related areas (handling, storage, preparation and service) shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fit-out, and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:**
- a. **Floor plan;**
- b. **Layout of kitchens and bar showing all equipment;**
- c. **All internal finish details including floors, wall, ceiling and lighting;**
- d. **Hydraulic design in particular method of disposal of trade waste;**
- e. **Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required.**
33. **Prior to the issue of a construction certificate for any of the proposed Stages of the development, a Traffic Management Plan shall be submitted to the Principal Certifying Authority to address the access requirements for Heavy Ridge Vehicle/Small Rigid Vehicle movements within the site, to avoid conflict with existing parking arrangements and facilities.**
- [PCCNS03]
34. **Prior to the issue of a construction certificate for Stage 1, a Stormwater Management Plan and detailed stormwater design information is to be provided that must address;**
- **The requirement for a relief overland stormwater flowpath through the site, from the existing low point at the Cypress Crescent frontage, through the proposed car park, and merging with the existing ground level at the southern boundary, aligning with the existing Drainage Easement.**
 - **Investigates and assesses the upstream stormwater catchment, for a Q100 year storm event, to determine the required volume, depth, velocity, and top water level of overland flows that must be catered for.**
 - **The floor levels of any habitable buildings are to be a minimum of 300mm above the top water level as determined by the previous dot point.**
 - **Revert any concentrated flow (within the relief overland flowpath) back to a broad flow pattern along the southern boundary of the site, to mimic the existing situation as near as possible.**
 - **Any boundary or internal fencing that crosses the overland flowpath shall be of an open nature to allow for flow-through capability.**

- An appropriate easement is to be created over the overland stormwater flowpath.

[PCCNS04]

35. The applicant is to submit to Council details of proposed signage (including a scaled plan, details of materials, colours and wording) to be approved by the General Manager or delegate office prior to the issue of a Construction Certificate. The signage shall be carried out in accordance with the approved details and shall thereafter be retained as such.
36. Prior to the issue of the Construction Certificate, a detailed plan of landscaping with a minimum 80% of total plant numbers comprised of local native species and no noxious or environmental weed species or threatened species is to be submitted and approved by Council's General Manager or his delegate.
37. The proponent is to prepare a report, to the satisfaction of the Principal Certifying Authority, prior to the issue of the Construction Certificate, detailing how the outdoor food and beverage area is to be dismantled and removed from the site if the erosion escarpment comes within 20 metres of the building.

[PCCNS05]

38. Prior to issue of a construction certificate the applicant is to provide to Council for approval a revised site plan showing all works within Lots 9, 10, 11 and 12 in Section 4 DP 31209 including car parking and access provisions. This plan should retain the same number of car parking spaces as proposed within DA12/0170.

PRIOR TO COMMENCEMENT OF WORK

39. 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]

40. 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]

41. 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]

42. 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]

43. 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 and Premises Standard 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]

44. 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 any 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]

45. 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

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

[DUR0005]

47. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.

[DUR0025]

48. 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]

49. 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]

50. The existing building is to be upgraded to comply with the Building Code of Australia and 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]

51. 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]

52. 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]

53. 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, Occupational Health and Safety Regulation 2001.

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]

54. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- All fill and cut batters shall be contained wholly within the subject land.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

55. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

56. 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]

57. 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]

58. 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]

59. 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]

60. 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]

61. 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]

62. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicant's responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

63. A survey certificate signed by a registered surveyor is to be submitted to the Principal Certifying Authority at floor stage to certify that all habitable floor levels are at a level of not less than 300mm above the designed top water level within the overland stormwater flowpath traversing the site.

[DUR1445]

64. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material eg. Villaboard or

Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 meters.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

- 65. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.**

[DUR1505]

- 66. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.**

[DUR1515]

- 67. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.**

[DUR1545]

- 68. During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation.**

[DUR1575]

- 69. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Cypress Crescent in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.**

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

- 70. 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]

71. 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]
72. Where the 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]
73. 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]
74. 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]
75. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".
[DUR2195]
76. 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]
77. 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]
78. 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]
79. 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]

80. 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 NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

81. 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:-

- * 43.5°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]

82. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required

[DUR2565]

83. All structures are to be sited at least one metre horizontally clear of Council's stormwater infrastructure and sewer main on site. All footings and slabs within the area of influence of the stormwater pipe and sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the stormwater pipe or sewer main.

[DUR2645]

84. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) except where modified by this consent.

85. All plant and equipment including swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located and installed 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.

86. All plant and equipment including swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located and installed 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.
87. Vegetation clearing is limited to three (3) trees and several ornamental palms as identified on the On-site Vegetation Management Plan prepared by Planit Consulting and dated July 2012.
88. Wherever possible an adequate Tree Protection Zone shall be provided around vegetation that is to be retained to limit the extent of works. Tree Protection Zones:
 - a. Shall be adequately fenced, marked and sign posted before, during and after construction.
 - b. All trenches, footings and major earth movement shall avoid Tree Protection Zones.
 - c. Materials and soils shall not be stockpiled within Tree Protection Zones.
 - d. Machinery shall avoid Tree Protection Zones during all operations.
89. The outdoor food and beverage service area is to be constructed as a separate structure and be demountable or relocatable. The structure does not require screw piles as it will be sacrificial.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

90. 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]
91. 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]
92. 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]
93. 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]
94. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

95. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

96. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

97. 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]

98. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

99. 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 the structure.

[POC0805]

100. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate for Stage 1 works.

[POC0855]

101. 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]

102. 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]

103. Prior to the issue of an Occupation Certificate for Stage 1, the following Easements are to be created over the site (and are recommended to be created in conjunction with the consolidation of the site into a single allotment:

- i. Drainage Easement 3m wide over the existing Council stormwater pipe that traverses the site.
- ii. Easement for Overland Stormwater Flowpath over the route of the constructed flowpath through the site. Note that this easement may overlap existing or proposed Drainage Easements.

[POCNS01]

104. Prior to the issue of an Occupation Certificate for Stage 1, existing Development Consent DA07/0966 shall be surrendered.

[POCNS02]

105. As the development subject of this consent has been identified as being within one or more of the Coastal Hazard Zones as described in Tweed Development Control Plan B25 this consent is subject to the owner of the subject land PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE creating a positive covenant under section 88E of the (*Conveyancing Act, 1919*) on the following terms:

“(i) *The registered proprietor of the subject land acknowledges that the subject land is within a Coastal Hazard Zone as described in Tweed Development Control Plan B25 or any other subsequent iteration of that planning instrument.*

(ii) *The registered proprietor also acknowledges that any development within the subject land must comply with the terms set out herein as follows:*

a. *In the event that the erosion escarpment comes within 20 metres of any building/s on the subject land then the use of any building/s shall cease and the registered proprietor of the subject land shall remove any or all buildings to a location on the subject land that is further than 20 metres from the erosion escarpment where possible, or off site where not possible. In the event that relocation is not possible, then any affected building shall be demolished.*

b. *The registered proprietor of the subject land shall bear all costs in relation to the relocation or demolition of any or all buildings located on the subject land.*

c. *The terms "Coastal Hazard Zones", "erosion escarpment" and any other references of this covenant are to be read as having the meaning in accordance with their definitions in the Tweed Development Control Plan B25”.*

[POCNS03]

106. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

107. All proposed works within the 2100 Hazard Zone need to demonstrate they are in accordance with Section 3.3.2 of the Coast Hazard - Tweed DCP B25.

[POCNS04]

USE

108. 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]

109. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{Aeq}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0165]

110. 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]

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

- * Dining areas, not including BBQ or Outdoor Bar and Dining Areas, 7am - 9pm Sunday to Thursday and Public Holidays, 7am - 12am Friday and Saturday;**
- * Outdoor facilities, including Pool, BBQ and Bar and Outdoor Dining Areas, 7am to 9pm Monday to Sunday.**

[USE0185]

112. 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]

113. 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]

114. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

115. All trade materials, product and plant to be kept within confines of the building at all times.

[USE0515]

116. All loading/unloading to take place within the boundary of the subject property.

[USE0525]

117. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

118. Amplified music or sound is only to be used in indoor areas which have doors, windows or other openings that can be closed to reduce or prevent noise emissions from the buildings.

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. The motel re-development proposal is to comply with the plans attached to the Bush Fire Safety Authority (BFSA) application, referred by Tweed Shire Council under S 100B of the Rural Fires Act and received by the NSW RFS 16 May 2012, along with amendments made by the attached conditions.

The plans referred to (and used for this assessment) are noted as being prepared by Virginia Kerridge Architect, and are identified as:

- Site Plan DA106, Revision A, Dated 29/3/12;
 - Ground Floor Plan, DA107, Revision B, Dated 13/09/12;
 - First Floor Plan Proposed, DA108, Revision A, Dated 29/3/12;
 - Second Floor Plan Proposed, DA109, Revision A, Dated 29/3/12;
 - Roof Plan Proposed, DA110, Revision A, Dated 29/3/12;
 - Elevations North South, DA201, Revision A, Dated 29/3/12;
 - Elevations East West, DA202, Revision A, Dated 29/3/12;
 - Sections DA300, Revision A, Dated 29/3/12.
2. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
 3. Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.
 4. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
 5. Exits are to be located away from the hazard side of the building.
 6. Roller doors, tilt-a-doors and other such doors shall be sealed to prevent the entry of embers into the building.
 7. No brushwood fencing shall be used.
 8. Structure and shade materials in the inner protection area shall be non-combustible or have a Flammability Index of no greater than 5 when tested in accordance with Australian Standard AS1530.2-1993 'Methods for Fire Tests on Building Materials, Components and Structures - Test for Flammability of Materials'.
 9. New construction on the Northern, Eastern and Southern elevations of the existing motel building, with a setback distance greater than 16.8m from the Eastern boundary (generally balcony additions), shall comply with Sections 3 and 7 (BAL - 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

10. **New construction on the Western elevation of the existing motel building and all other additions located to the West of the existing motel, shall comply with Sections 3 and 6 (Bal - 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.**
11. **The 'Outdoor food and beverage service area' and the 'Equipment store' shall either be constructed from non-combustible materials or comply with Sections 3 and 9 (BAL-FZ) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.**

However, any material, element of construction or system when tested to the method described in Australian Standard AS1530.8.2 'Methods for fire tests on building materials, components and structures Part 8.2: Tests on elements of construction for buildings exposed to simulated bushfire attack - Large flaming sources' shall comply with Clause 13.8 of that Standard except that flaming of the specimen is not permitted and there shall be no exposed timber.

Window assemblies shall comply with one of the following:

- a) **Clause 9.5.2 of AS 3959-2009 as modified above; or**
- b) **They shall comply with the following:**
 - i. **Completely protected by a non-combustible and non perforated bushfire shutter that complies with Section 3.7 of AS3959-2009 excluding parts (e) & (f).**
 - ii. **Window frames and hardware shall be metal.**
 - iii. **Glazing shall be toughened glass minimum 6mm.**
 - iv. **Seals to stiles, heads and sills or thresholds shall be manufactured from materials having a flammability index no greater than 5 or from silicone.**
 - v. **The openable portion of the window shall be screened internally or externally with screens that comply with Clause 9.5.1A.**

External doors and door frames (not including garage doors) shall comply with one of the following:

- a) **Clause 9.5.3 or 9.5.4 of AS 3959-2009 as modified above; or**
- b) **They shall comply with the following:**
 - i. **Completely protected by a non-combustible and non perforated bushfire shutter that complies with Section 3.7 of AS 3959-2009 excluding parts (e) & (f).**
 - ii. **Doors shall be non-combustible.**
 - iii. **Externally fitted hardware that supports the panel in its function of opening and closing shall be metal.**
 - iv. **Where doors incorporate glazing, the glazing shall be toughened glass minimum 6mm.**
 - v. **Seals to stiles, head and sills or thresholds shall be manufactured from materials having a flammability index no greater than 5 or from silicone.**

- vi. Doorframes shall be metal.
 - vii. Doors shall be tight fitting to the doorframe and to an abutting door if applicable.
 - viii. Weather strips, draught excluders or draught seals shall be installed at the base of side-hung external doors.
12. Roofing of the single storey buildings shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.
13. New construction, located generally on the Eastern side of the motel building, and having a setback of between 16.8m and 21.3m from the Eastern boundary (i.e. additions to: serviced apartments and restaurant), shall comply with Sections 3 and 8 (BAL -40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
14. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Note

The following bushfire-resisting timbers have been determined as being acceptable to withstand exposure up to BAL -29 conditions as per Australian Standard AS 3959-2009 'Construction of buildings in bush fire-prone areas' and are identified within Appendix F of the standard. These species include: Silvertop Ash, Blackbutt, River Red Gum, Spotted Gum, Red Ironbark, Kwila (Merbau) and Turpentine.

REPORT:

Applicant: Western Trust Partnership
Owner: Flaskas Bickle Pty Ltd and Wadley Bickle Pty Ltd
Location: Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach
Zoning: 2(a) Low Density Residential
Cost: \$1,100,000

Background:

Council has received a development application for alterations and additions to an existing motel at the above mentioned site which faces Cabarita Beach and the foreshore reserve to the south of Cabarita village.

The existing motel has established existing use rights as the motel has been used for a continuous period which is understood as being circa 1960. A search of Council's records has revealed an approval for the erection and completion of luxury holiday apartments (12 units) (Reference No. 218/60). Since then a number of applications have been approved by Council in relation to the renovation and addition to motel units. In 2007 a development application was approved for the demolition of the motel and a four lot re-subdivision and the construction of three detached dwellings (DA07/0966).

The current proposal before Council seeks the refurbishment and expansion of the existing motel in three stages. Upon completion of the three stages the motel will provide a total gross floor area (GFA) of 1450m² with a maximum height of three storeys (11.55m).

The proposed stages are summarised as follows:

Stage 1

- Construction of new covered service entry including common amenities, common laundry and bin store;
- Conversion of existing caretakers dwelling, laundry, reception and restaurant service kitchen area to new circulation space, reception, reception office, restaurant dining space, new kitchen and cold room;
- Renovation of rooms 1 through 5 including room enlargement and new individual ground level balcony areas;
- Conversion of room 6 and adjoining storage space into new store and communal lounge room with amenities and serving kitchenette;
- Renovation of existing serviced apartment and existing rooms 7 through 12 (identified as rooms 6 through 11 on proposed plans);
- Conversion of rooms 14 and 15 into a second serviced apartment;
- Renovation of existing external staircase access upgraded to comply with the Building Code of Australia (BCA);
- Construction of outdoor food and beverage service area;
- Construction of external equipment store;
- Construction of external bin storage area and new at grade car parking;
- Partial site landscaping;

- Renovation of existing stair access to foreshore reserve; and
- Retention of existing swimming pool.

Stage 2

- Construction of third level including new motel rooms 12 through 19;
- Extension of existing external stairs to provide access to third level;
- Construction of new pool;
- Construction of tennis court and tennis court cabana; and
- Partial site landscaping.

Stage 3

- Construction of new caretakers dwelling, storeroom, common amenities and multipurpose space.

The development proposes the construction of new at grade car parking facilities for 25 vehicles including one disabled space utilising the existing cross over and driveway. A second access point is proposed to Cypress Crescent. The new car park would operate in a 'one way' arrangement.

The proposal would be operated by approximately 10-12 staff upon completion of Stage 3 of the proposal. The facilities onsite will be open to guests as follows:

- The restaurant, multipurpose space and ground level patron lounge – 7am to midnight, 7 days per week;
- Outdoor recreation areas (i.e. bbq, pool, tennis court) – open 7am to 10pm, 7 days per week.

The proposal includes a number of ancillary facilities for guests of the motel such as restaurant; communal open space; pools and tennis court. The application originally detailed that the facilities within the motel would not be available to the general public. However, in response to a request for information the applicant proposed that the restaurant and outdoor food and beverage service area only would be available for the use of the general public in accordance with established existing use rights. This is detailed further within this report.

The redevelopment proposes extensive landscaping onsite incorporating in excess of 80% native coastal species however will require the removal of three trees (Coastal Banksia, Golden Penda and Muttonwood) and several ornamental palms.

The site currently comprises an existing pylon sign which is to be retained. A new wall sign is proposed as part of Stage 1 located on the northern access stairs with a maximum signage envelope of 3.8m x 0.6m.

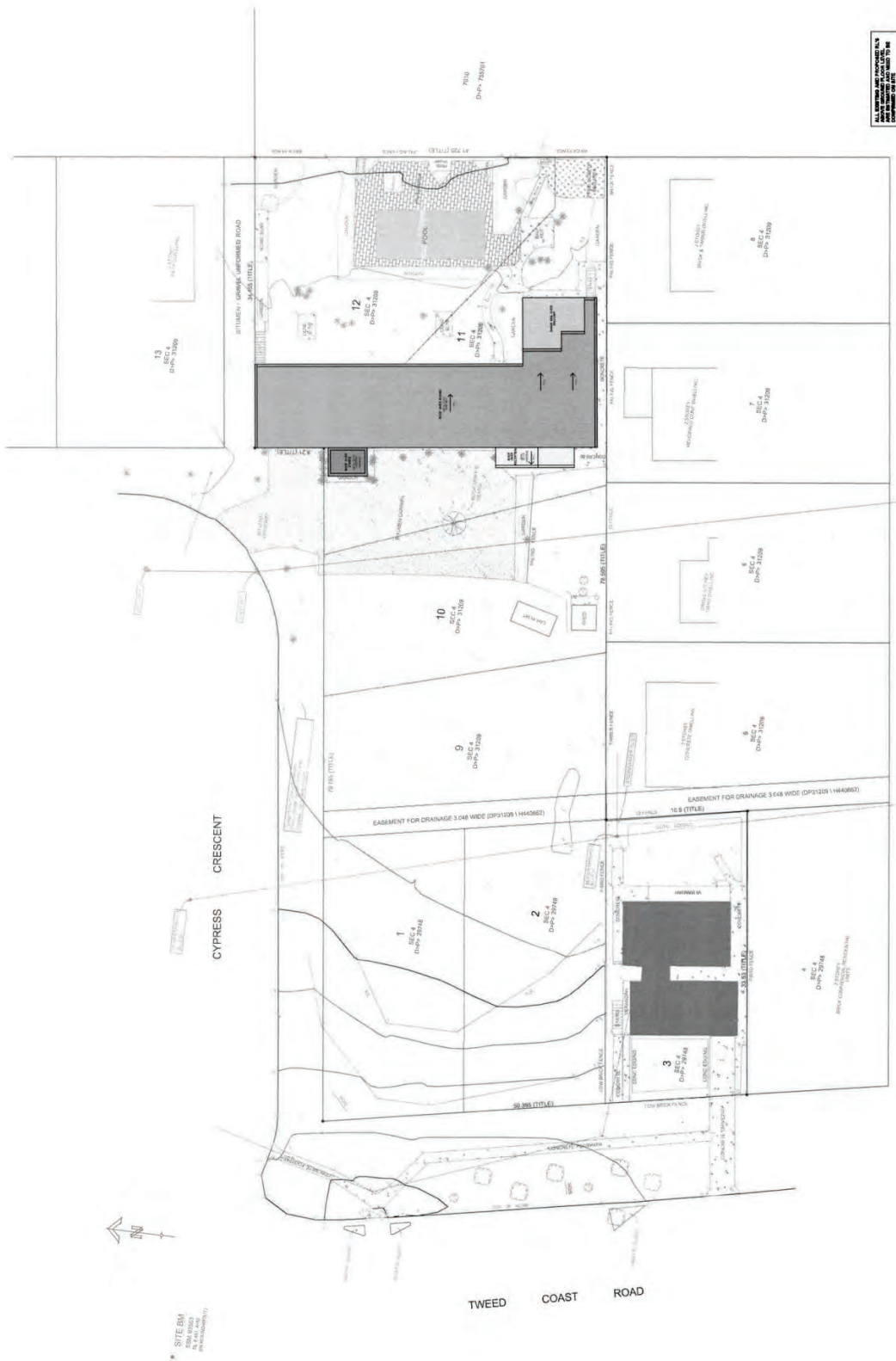
A SEPP No. 1 is sought for a variation to the NCREP 1988 relating to overshadowing of waterfront open space before 3pm midwinter and 7pm midsummer. The proponent has advised that the overshadowing is minor and does not fall upon the beach and will not impact on the recreational integrity of foreshore open space. It is considered that, for reasons detailed further within this report, that the extent of overshadowing is minimal and will not impact on the recreational capacity of the foreshore and compliance with the standard is unreasonable and unnecessary in this instance.

Six submissions and one late submission has been received with concerns in relation to the proposed development. The issues raised within these submissions are detailed further within this report. A list of signatures supporting the proposal has also been received, including approximately 250 signatures.

The subject application has been referred to the relevant departments in Council for consideration and a formal request for further information was sent to the applicant in relation to: asset protection zones for bush fire safety purposes; additional information in relation to coastal hazards; stormwater and drainage and further clarification in relation to parking and access; signage; vegetation removal; residential amenity (overlooking, noise and disturbance to adjoining occupants); design and appearance of the building and existing use rights.

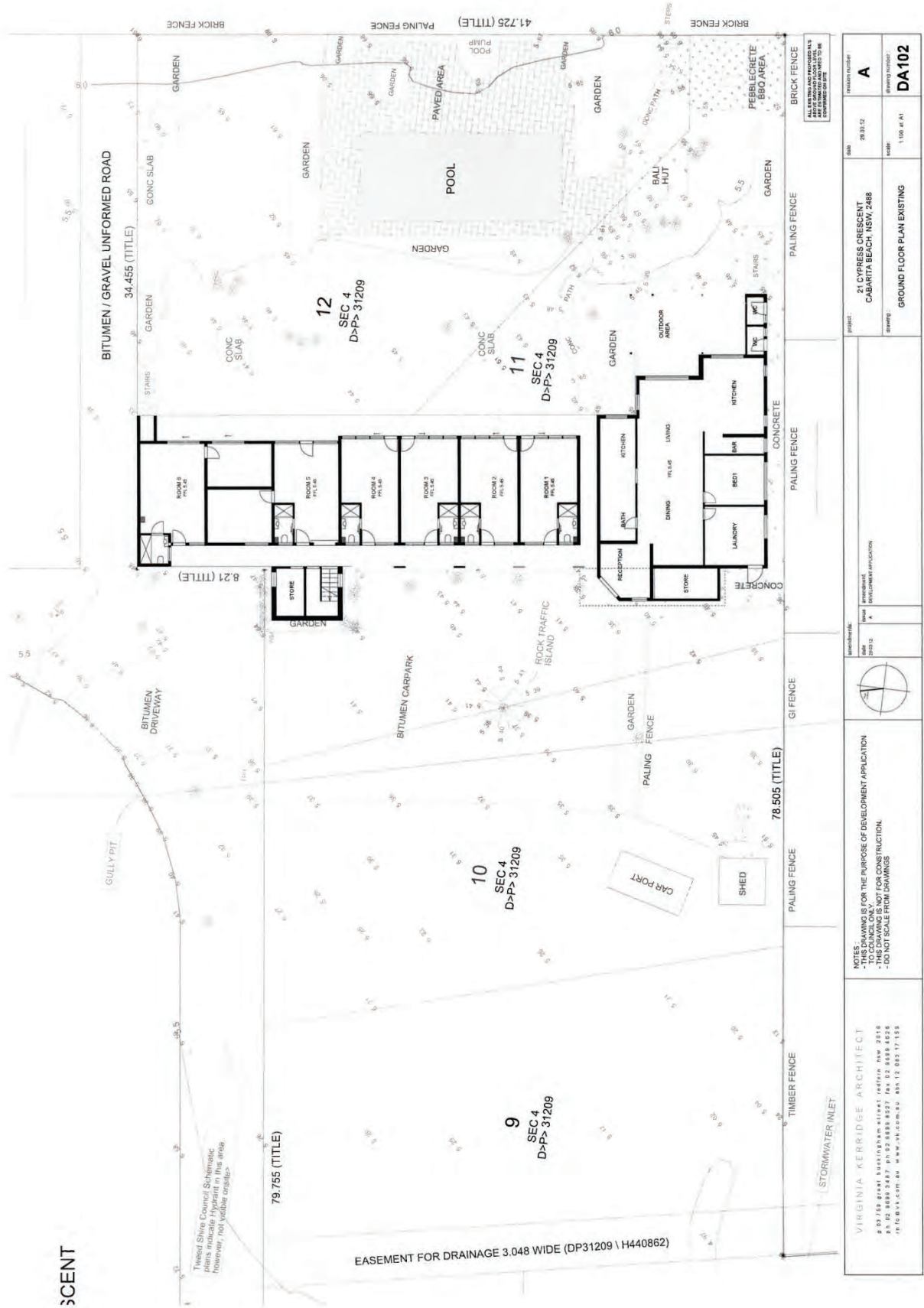
A response to the request for information was received by Council on 24 September 2012 and has since been referred to the relevant departments within Council. It is considered that the proponent has adequately addressed all of the issues raised within the request for further information and, following an assessment of the additional information against the relevant heads of consideration, and provided a number of conditions are applied to any development consent (particularly in relation to hours of operation, restriction of use by motel guests only and the like), the application is recommended for approval.

DEVELOPMENT/ELEVATION PLANS (EXISTING PLANS):



ALL DIMENSIONS ARE PROVIDED IN METERS UNLESS OTHERWISE STATED

<p>VIRGINIA KERRIDGE ARCHITECT</p> <p>8/51/150, 8/52/150, 8/53/150, 8/54/150, 8/55/150, 8/56/150, 8/57/150, 8/58/150, 8/59/150, 8/60/150, 8/61/150, 8/62/150, 8/63/150, 8/64/150, 8/65/150, 8/66/150, 8/67/150, 8/68/150, 8/69/150, 8/70/150, 8/71/150, 8/72/150, 8/73/150, 8/74/150, 8/75/150, 8/76/150, 8/77/150, 8/78/150, 8/79/150, 8/80/150, 8/81/150, 8/82/150, 8/83/150, 8/84/150, 8/85/150, 8/86/150, 8/87/150, 8/88/150, 8/89/150, 8/90/150, 8/91/150, 8/92/150, 8/93/150, 8/94/150, 8/95/150, 8/96/150, 8/97/150, 8/98/150, 8/99/150, 900/150</p> <p>INFO@VKA.COM.AU WWW.VKA.COM.AU 0812 853 17 158</p>	<p>NOTES:</p> <ul style="list-style-type: none"> - DRAWINGS ARE FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY. - THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION. - DO NOT SCALE FROM DRAWINGS. 	<p>DATE: 28/1/12</p> <p>SCALE: 1:200 at A1</p>	<p>PROJECT: 21 CYPRESS CRESCENT CABARITA BEACH, NSW, 2486</p> <p>DRAWN: SITE PLAN EXISTING</p>	<p>REVISION NUMBER: A</p> <p>DRAWING NUMBER: DA101</p>
	<p>APPROVALS:</p> <p>DATE: 28/1/12</p> <p>SCALE: A</p> <p>REVISION: DEVELOPMENT APPLICATION</p>		<p>DATE: 28/1/12</p> <p>SCALE: A</p> <p>REVISION: DEVELOPMENT APPLICATION</p>	<p>PROJECT: 21 CYPRESS CRESCENT CABARITA BEACH, NSW, 2486</p> <p>DRAWN: SITE PLAN EXISTING</p>



<p>NOTES:</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION - THIS DRAWING IS NOT FOR CONSTRUCTION. - DO NOT SCALE FROM DRAWINGS 		<p>DATE: 29/01/12</p> <p>SCALE: 1:100 @ A1</p>	
<p>PROJECT:</p> <p>21 CYPRESS CRESCENT CARRUTH BEACH, NSW, 2488</p>		<p>REVISION NUMBER:</p> <p>A</p>	
<p>DATE: 29/01/12</p> <p>SCALE: 1:100 @ A1</p>		<p>DRAWING NUMBER:</p> <p>DA102</p>	
<p>DESCRIPTION:</p> <p>GROUND FLOOR PLAN EXISTING</p>		<p>PROJECT:</p> <p>21 CYPRESS CRESCENT CARRUTH BEACH, NSW, 2488</p>	
<p>DATE: 29/01/12</p> <p>SCALE: 1:100 @ A1</p>		<p>DRAWING NUMBER:</p> <p>DA102</p>	
<p>DESCRIPTION:</p> <p>GROUND FLOOR PLAN EXISTING</p>		<p>PROJECT:</p> <p>21 CYPRESS CRESCENT CARRUTH BEACH, NSW, 2488</p>	

VIRGINIA KERRIDGE ARCHITECT
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NOTES:

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DATE: 29/01/12
 SCALE: 1:100 @ A1

PROJECT:

21 CYPRESS CRESCENT
CARRUTH BEACH, NSW, 2488

REVISION NUMBER:

A

DRAWING NUMBER:

DA102

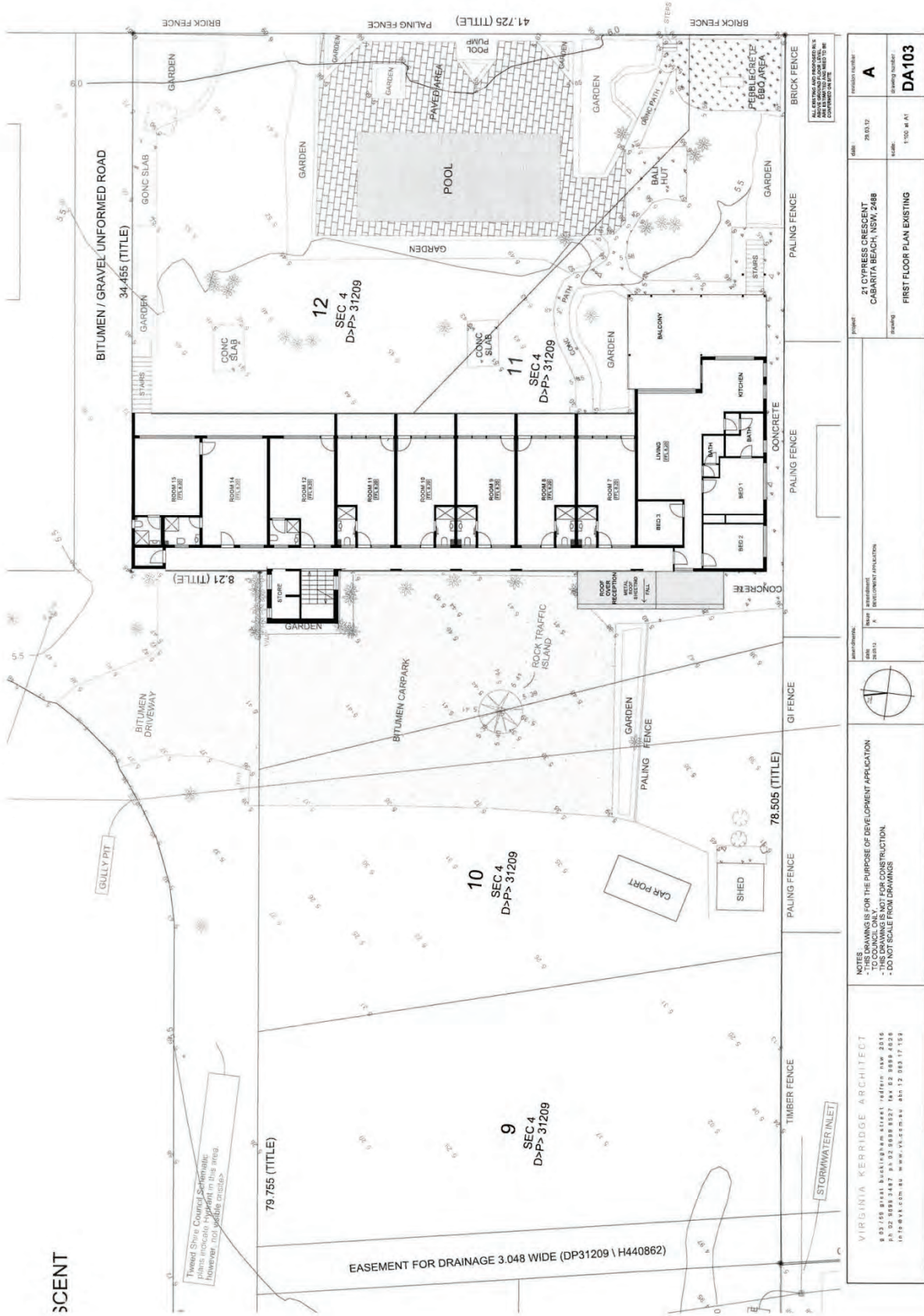
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DESCRIPTION:

GROUND FLOOR PLAN EXISTING

PROJECT:

21 CYPRESS CRESCENT
CARRUTH BEACH, NSW, 2488



SCENT

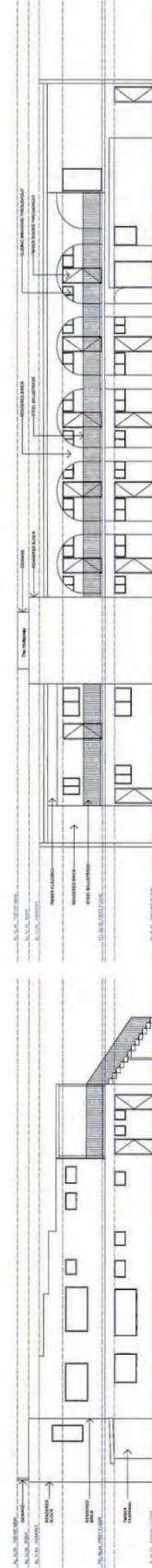
Toward City Council Schematic plans include a stormwater pond in this area however no mobile toilets

<p>NOTES</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION - THIS DRAWING IS NOT FOR CONSTRUCTION. - DO NOT SCALE FROM DRAWINGS 		<p>DATE: 29.03.12</p> <p>PROJECT: 51 AVENUE CRESCENT CASBATH REGION, NSW, 2448</p> <p>DRAWING: FIRST FLOOR PLAN EXISTING</p> <p>SCALE: 1:100, W. AT</p> <p>PROVISION NUMBER: A</p> <p>DRAWING NUMBER: DA 103</p>
<p>APPROVED:</p> <p>DATE: 29.03.12</p> <p>REVISION: A</p> <p>REVISION DESCRIPTION: REVISIONS</p>		<p>VIRGINIA KERRIDGE ARCHITECT</p> <p>8 03 156 BIVAL Bushylogham Street, Telfer NSW 2516</p> <p>PH 02 6088 2447 FAX 02 6088 8027</p> <p>WWW.VKAS.COM.AU</p>



NORTH ELEVATION

EAST ELEVATION

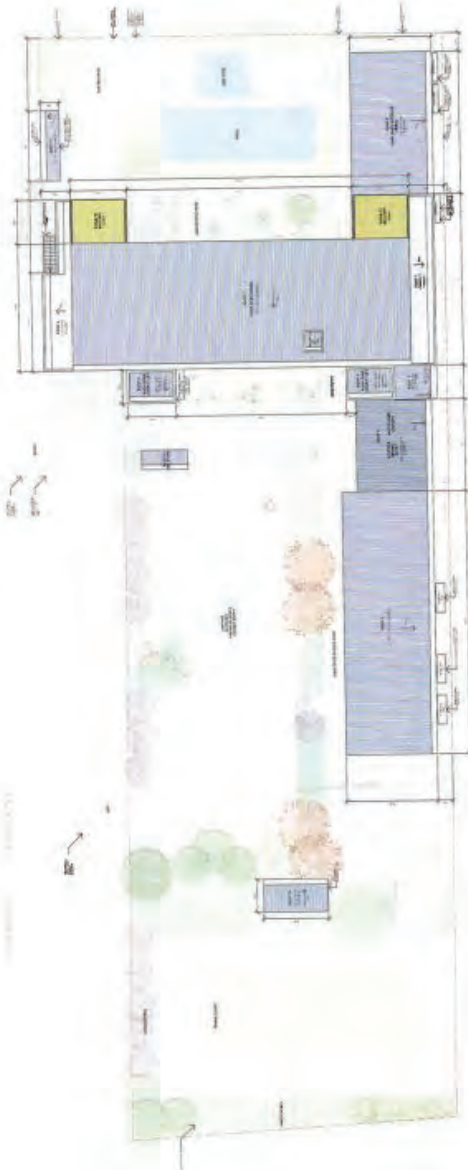


SOUTH ELEVATION

WEST ELEVATION

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<p>NOTES</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY FOR CONSTRUCTION - DO NOT SCALE FROM DRAWINGS 		<p>DATE: 29/03/12</p> <p>DATE: 29/03/12</p>		<p>PROJECT: 21 CYPRESS CRESCENT CABARITA BEACH, NSW, 2488</p> <p>DRAWING: ELEVATIONS EXISTING</p>		<p>REVISION NUMBER: A</p> <p>DRAWING NUMBER: DA200</p>	
<p>VIRGINIA KERRIDGE ARCHITECT</p> <p>5/51/56/114/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000</p>		<p>DATE: 29/03/12</p> <p>DATE: 29/03/12</p>		<p>PROJECT: 21 CYPRESS CRESCENT CABARITA BEACH, NSW, 2488</p> <p>DRAWING: ELEVATIONS EXISTING</p>		<p>REVISION NUMBER: A</p> <p>DRAWING NUMBER: DA200</p>	



PLAN REQUIREMENTS TO BE MET BY THE DEVELOPER TO OBTAIN APPROVAL OF THIS DEVELOPMENT

1. TO OBTAIN APPROVAL OF THIS DEVELOPMENT, THE DEVELOPER MUST SUBMIT TO THE COUNCIL A DEVELOPMENT PLAN THAT SHOWS THE PROPOSED DEVELOPMENT AND THE PROPOSED LANDSCAPING AND TREES TO BE PLANTED.
2. TO OBTAIN APPROVAL OF THIS DEVELOPMENT, THE DEVELOPER MUST SUBMIT TO THE COUNCIL A DEVELOPMENT PLAN THAT SHOWS THE PROPOSED DEVELOPMENT AND THE PROPOSED LANDSCAPING AND TREES TO BE PLANTED.
3. TO OBTAIN APPROVAL OF THIS DEVELOPMENT, THE DEVELOPER MUST SUBMIT TO THE COUNCIL A DEVELOPMENT PLAN THAT SHOWS THE PROPOSED DEVELOPMENT AND THE PROPOSED LANDSCAPING AND TREES TO BE PLANTED.

AREA	AREA TYPE	AREA SIZE	AREA VALUE
DRIVEWAY	150 SQ M	150	150
LANDSCAPING	100 SQ M	100	100
WALKWAY	100 SQ M	100	100
TOTAL		350	350

AREA	AREA TYPE	AREA SIZE	AREA VALUE
DRIVEWAY	150 SQ M	150	150
LANDSCAPING	100 SQ M	100	100
WALKWAY	100 SQ M	100	100
TOTAL		350	350

NOTE: DRAWINGS IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY. NOT FOR CONSTRUCTION. DO NOT SCALE FROM DRAWING.

VIRGINIA KERRIDGE ARCHITECT
 98 THE GREAT EASTERN AVENUE SUITE 2018
 ST. LOUIS, MISSOURI 63114
 TEL: 314.433.1111 FAX: 314.433.1112

Project: **31 CYPRESS CRESCENT CABARITA BEACH, NSW, 2486**

Site Plan Proposed

Scale: 1:100 @ A4

DA 106

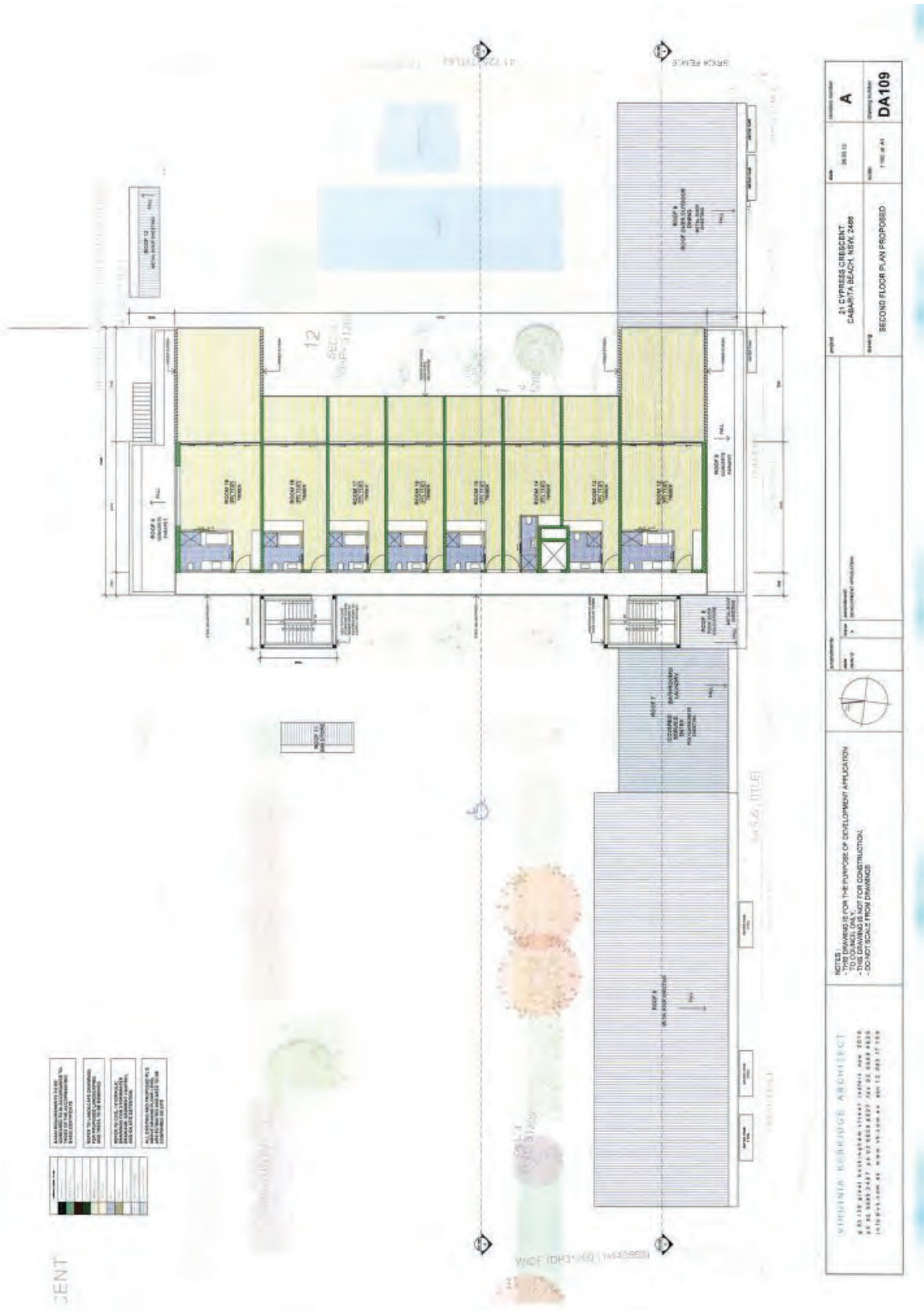


<p>1. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE</p> <p>2. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE</p> <p>3. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE</p> <p>4. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE</p> <p>5. ALL DIMENSIONS TO FACE UNLESS SPECIFIED OTHERWISE</p>

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<p>NOTES</p> <p>1. THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY.</p> <p>2. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION.</p> <p>3. DO NOT SCALE FROM DRAWING.</p>	<p>DATE: 11/01/12</p> <p>SCALE: 1:100 @ A4</p>	<p>PROJECT: 21 CYPRESS CRESCENT, CABARITA BEACH, NSW 2468</p> <p>GROUND FLOOR PLAN</p>	<p>DATE: 11/01/12</p> <p>SCALE: 1:100 @ A4</p>
			<p>DATE: 11/01/12</p> <p>SCALE: 1:100 @ A4</p>





MENT

1	ROOF 1	ROOF OVER PORCH
2	ROOF 2	ROOF OVER PORCH
3	ROOF 3	ROOF OVER PORCH
4	ROOF 4	ROOF OVER PORCH
5	ROOF 5	ROOF OVER PORCH
6	ROOF 6	ROOF OVER PORCH
7	ROOF 7	ROOF OVER PORCH
8	ROOF 8	ROOF OVER PORCH
9	ROOF 9	ROOF OVER PORCH
10	ROOF 10	ROOF OVER PORCH
11	ROOF 11	ROOF OVER PORCH
12	ROOF 12	ROOF OVER PORCH

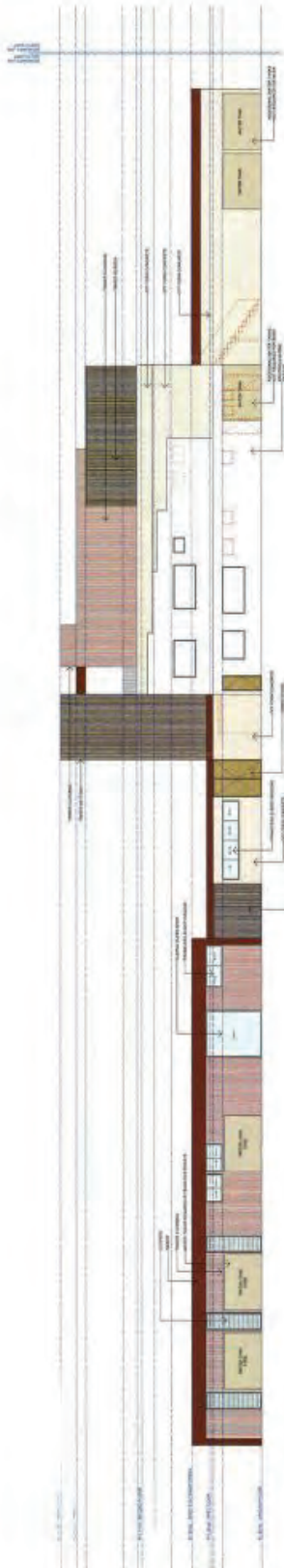
ALL DIMENSIONS AND CONSTRUCTION TO BE CONFIRMED ON SITE.



VIRGINIA KERRIDGE ARCHITECTS 100/105/110/115/120/125/130/135/140/145/150/155/160/165/170/175/180/185/190/195/200/205/210/215/220/225/230/235/240/245/250/255/260/265/270/275/280/285/290/295/300/305/310/315/320/325/330/335/340/345/350/355/360/365/370/375/380/385/390/395/400/405/410/415/420/425/430/435/440/445/450/455/460/465/470/475/480/485/490/495/500/505/510/515/520/525/530/535/540/545/550/555/560/565/570/575/580/585/590/595/600/605/610/615/620/625/630/635/640/645/650/655/660/665/670/675/680/685/690/695/700/705/710/715/720/725/730/735/740/745/750/755/760/765/770/775/780/785/790/795/800/805/810/815/820/825/830/835/840/845/850/855/860/865/870/875/880/885/890/895/900/905/910/915/920/925/930/935/940/945/950/955/960/965/970/975/980/985/990/995/1000/1005/1010/1015/1020/1025/1030/1035/1040/1045/1050/1055/1060/1065/1070/1075/1080/1085/1090/1095/1100/1105/1110/1115/1120/1125/1130/1135/1140/1145/1150/1155/1160/1165/1170/1175/1180/1185/1190/1195/1200/1205/1210/1215/1220/1225/1230/1235/1240/1245/1250/1255/1260/1265/1270/1275/1280/1285/1290/1295/1300/1305/1310/1315/1320/1325/1330/1335/1340/1345/1350/1355/1360/1365/1370/1375/1380/1385/1390/1395/1400/1405/1410/1415/1420/1425/1430/1435/1440/1445/1450/1455/1460/1465/1470/1475/1480/1485/1490/1495/1500/1505/1510/1515/1520/1525/1530/1535/1540/1545/1550/1555/1560/1565/1570/1575/1580/1585/1590/1595/1600/1605/1610/1615/1620/1625/1630/1635/1640/1645/1650/1655/1660/1665/1670/1675/1680/1685/1690/1695/1700/1705/1710/1715/1720/1725/1730/1735/1740/1745/1750/1755/1760/1765/1770/1775/1780/1785/1790/1795/1800/1805/1810/1815/1820/1825/1830/1835/1840/1845/1850/1855/1860/1865/1870/1875/1880/1885/1890/1895/1900/1905/1910/1915/1920/1925/1930/1935/1940/1945/1950/1955/1960/1965/1970/1975/1980/1985/1990/1995/2000/2005/2010/2015/2020/2025/2030/2035/2040/2045/2050/2055/2060/2065/2070/2075/2080/2085/2090/2095/2100/2105/2110/2115/2120/2125/2130/2135/2140/2145/2150/2155/2160/2165/2170/2175/2180/2185/2190/2195/2200/2205/2210/2215/2220/2225/2230/2235/2240/2245/2250/2255/2260/2265/2270/2275/2280/2285/2290/2295/2300/2305/2310/2315/2320/2325/2330/2335/2340/2345/2350/2355/2360/2365/2370/2375/2380/2385/2390/2395/2400/2405/2410/2415/2420/2425/2430/2435/2440/2445/2450/2455/2460/2465/2470/2475/2480/2485/2490/2495/2500/2505/2510/2515/2520/2525/2530/2535/2540/2545/2550/2555/2560/2565/2570/2575/2580/2585/2590/2595/2600/2605/2610/2615/2620/2625/2630/2635/2640/2645/2650/2655/2660/2665/2670/2675/2680/2685/2690/2695/2700/2705/2710/2715/2720/2725/2730/2735/2740/2745/2750/2755/2760/2765/2770/2775/2780/2785/2790/2795/2800/2805/2810/2815/2820/2825/2830/2835/2840/2845/2850/2855/2860/2865/2870/2875/2880/2885/2890/2895/2900/2905/2910/2915/2920/2925/2930/2935/2940/2945/2950/2955/2960/2965/2970/2975/2980/2985/2990/2995/3000/3005/3010/3015/3020/3025/3030/3035/3040/3045/3050/3055/3060/3065/3070/3075/3080/3085/3090/3095/3100/3105/3110/3115/3120/3125/3130/3135/3140/3145/3150/3155/3160/3165/3170/3175/3180/3185/3190/3195/3200/3205/3210/3215/3220/3225/3230/3235/3240/3245/3250/3255/3260/3265/3270/3275/3280/3285/3290/3295/3300/3305/3310/3315/3320/3325/3330/3335/3340/3345/3350/3355/3360/3365/3370/3375/3380/3385/3390/3395/3400/3405/3410/3415/3420/3425/3430/3435/3440/3445/3450/3455/3460/3465/3470/3475/3480/3485/3490/3495/3500/3505/3510/3515/3520/3525/3530/3535/3540/3545/3550/3555/3560/3565/3570/3575/3580/3585/3590/3595/3600/3605/3610/3615/3620/3625/3630/3635/3640/3645/3650/3655/3660/3665/3670/3675/3680/3685/3690/3695/3700/3705/3710/3715/3720/3725/3730/3735/3740/3745/3750/3755/3760/3765/3770/3775/3780/3785/3790/3795/3800/3805/3810/3815/3820/3825/3830/3835/3840/3845/3850/3855/3860/3865/3870/3875/3880/3885/3890/3895/3900/3905/3910/3915/3920/3925/3930/3935/3940/3945/3950/3955/3960/3965/3970/3975/3980/3985/3990/3995/4000/4005/4010/4015/4020/4025/4030/4035/4040/4045/4050/4055/4060/4065/4070/4075/4080/4085/4090/4095/4100/4105/4110/4115/4120/4125/4130/4135/4140/4145/4150/4155/4160/4165/4170/4175/4180/4185/4190/4195/4200/4205/4210/4215/4220/4225/4230/4235/4240/4245/4250/4255/4260/4265/4270/4275/4280/4285/4290/4295/4300/4305/4310/4315/4320/4325/4330/4335/4340/4345/4350/4355/4360/4365/4370/4375/4380/4385/4390/4395/4400/4405/4410/4415/4420/4425/4430/4435/4440/4445/4450/4455/4460/4465/4470/4475/4480/4485/4490/4495/4500/4505/4510/4515/4520/4525/4530/4535/4540/4545/4550/4555/4560/4565/4570/4575/4580/4585/4590/4595/4600/4605/4610/4615/4620/4625/4630/4635/4640/4645/4650/4655/4660/4665/4670/4675/4680/4685/4690/4695/4700/4705/4710/4715/4720/4725/4730/4735/4740/4745/4750/4755/4760/4765/4770/4775/4780/4785/4790/4795/4800/4805/4810/4815/4820/4825/4830/4835/4840/4845/4850/4855/4860/4865/4870/4875/4880/4885/4890/4895/4900/4905/4910/4915/4920/4925/4930/4935/4940/4945/4950/4955/4960/4965/4970/4975/4980/4985/4990/4995/5000/5005/5010/5015/5020/5025/5030/5035/5040/5045/5050/5055/5060/5065/5070/5075/5080/5085/5090/5095/5100/5105/5110/5115/5120/5125/5130/5135/5140/5145/5150/5155/5160/5165/5170/5175/5180/5185/5190/5195/5200/5205/5210/5215/5220/5225/5230/5235/5240/5245/5250/5255/5260/5265/5270/5275/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NORTH ELEVATION



SOUTH ELEVATION

ALL DIMENSIONS UNLESS NOTED OTHERWISE ARE IN METERS

1:1	1:2	1:4	1:8	1:16	1:32
1:64	1:128	1:256	1:512	1:1024	1:2048

<p>NOTES:</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION ONLY - THIS DRAWING IS NOT FOR CONSTRUCTION - CONSULT ARCHITECT FOR DETAILS 		<p>DATE: 11/01/2012</p> <p>BY: [Signature]</p>	<p>PROJECT:</p> <p>31 CYPRESS CRESCENT</p> <p>CAROLINA BEACH, NEW ZEALAND</p>	<p>DATE:</p> <p>11/01/2012</p>	<p>SCALE:</p> <p>1:100 (A1)</p>
			<p>CLIENT:</p> <p>RESIDENTIAL DEVELOPER</p>	<p>NO.:</p> <p>A</p>	<p>PROJECT NUMBER:</p> <p>DA201</p>

EAST ELEVATION

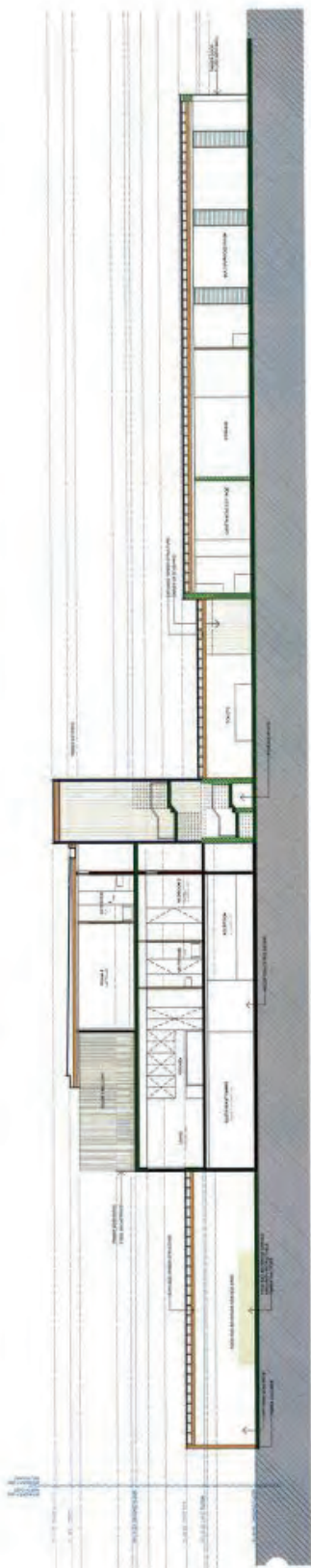
WEST ELEVATION

THE HIDEAWAY

NOTES:
 - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION
 - THIS DRAWING IS NOT FOR CONSTRUCTION
 - DO NOT SCALE THIS DRAWING

LEGEND:
 - BRICK
 - CONCRETE
 - GLASS
 - METAL
 - WOOD

PROJECT INFORMATION:
 PROJECT NAME: 21 CYPRESS CRESCENT
 ADDRESS: CASARITA BEACH, NSW 2488
 DRAWN BY: ELEVATIONS EAST / WEST
 SHEET NO: 1 OF 4
 PROJECT NUMBER: DA202



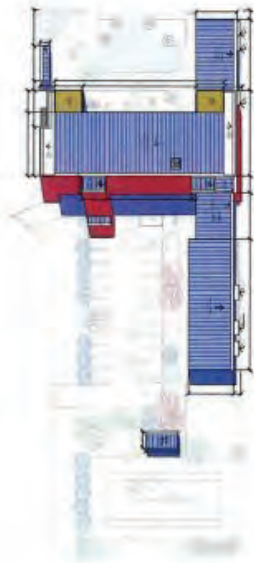
SECTION B



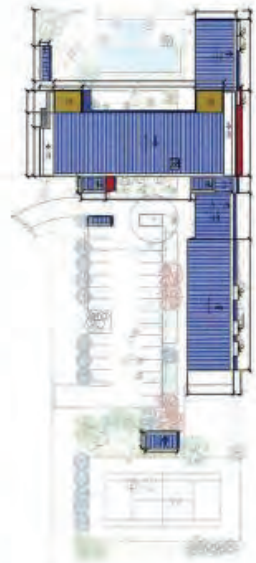
SECTION A



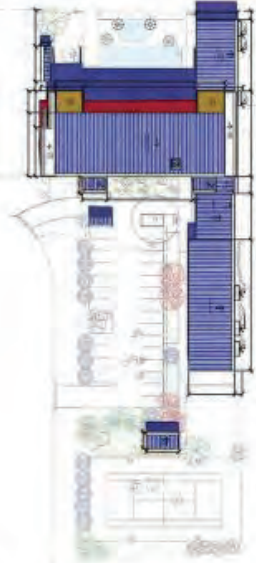
VIRGINIA VERHILDE ARCHITECT 3/32/28 GREAT WALSH AVENUE, APT 4/21, WINDERMERE QLD 4074 PH: 08 3858 2627 FAX: 08 3858 2628 WWW.VIRGINIAVERHILDE.COM.AU		NOTES: - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION - THIS DRAWING IS NOT FOR CONSTRUCTION - DO NOT SCALE FROM DRAWINGS	DATE: 28/01/13 SCALE: 1:100 @ A4	PROJECT NUMBER: DA300	PROJECT NAME: 21 CYPRESS CRESCENT CARARITA BEACH, NSW, 2488	SECTION NUMBER: SECTIONS
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SHADOWS AT 9AM



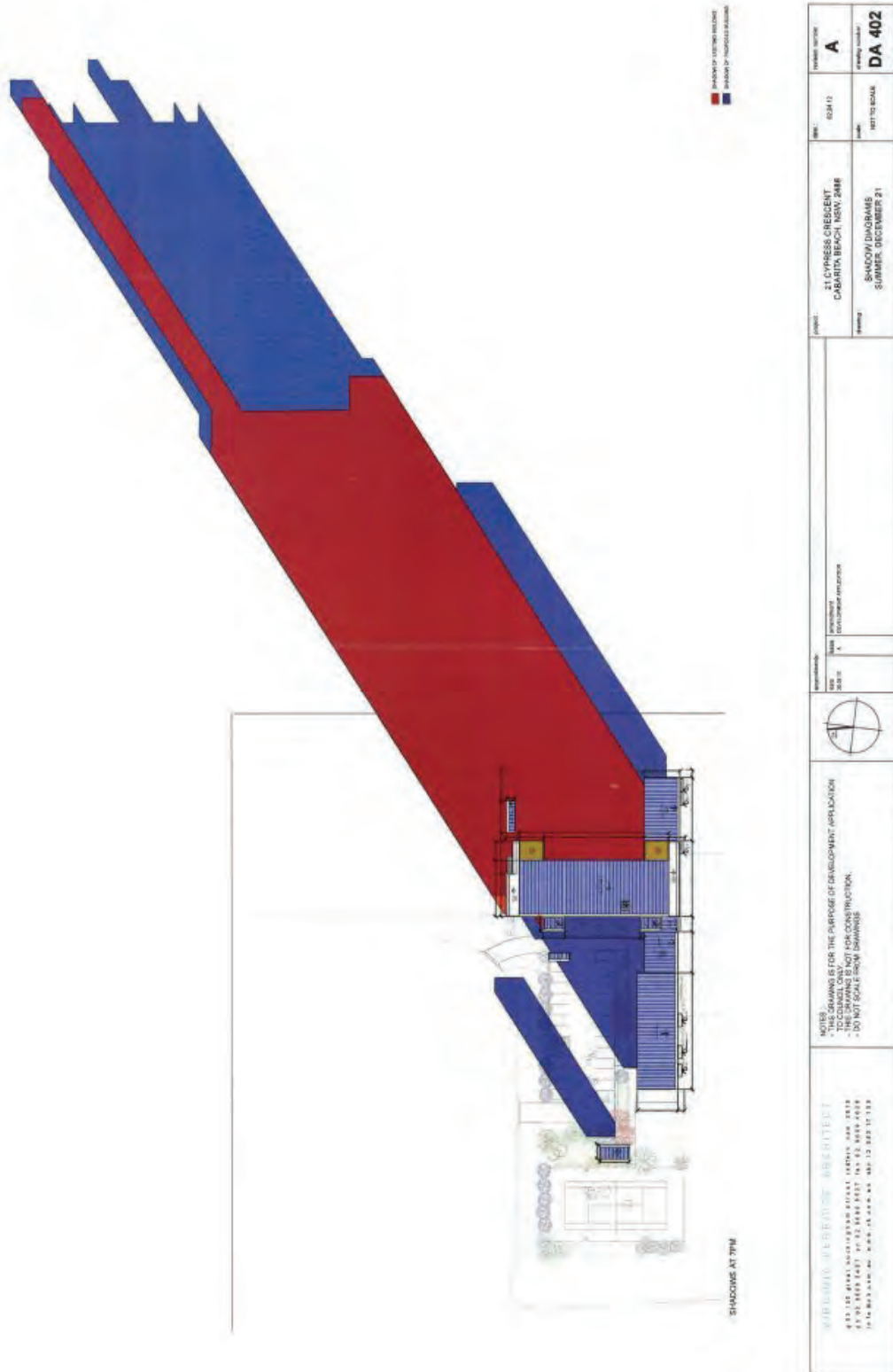
SHADOWS AT 12PM



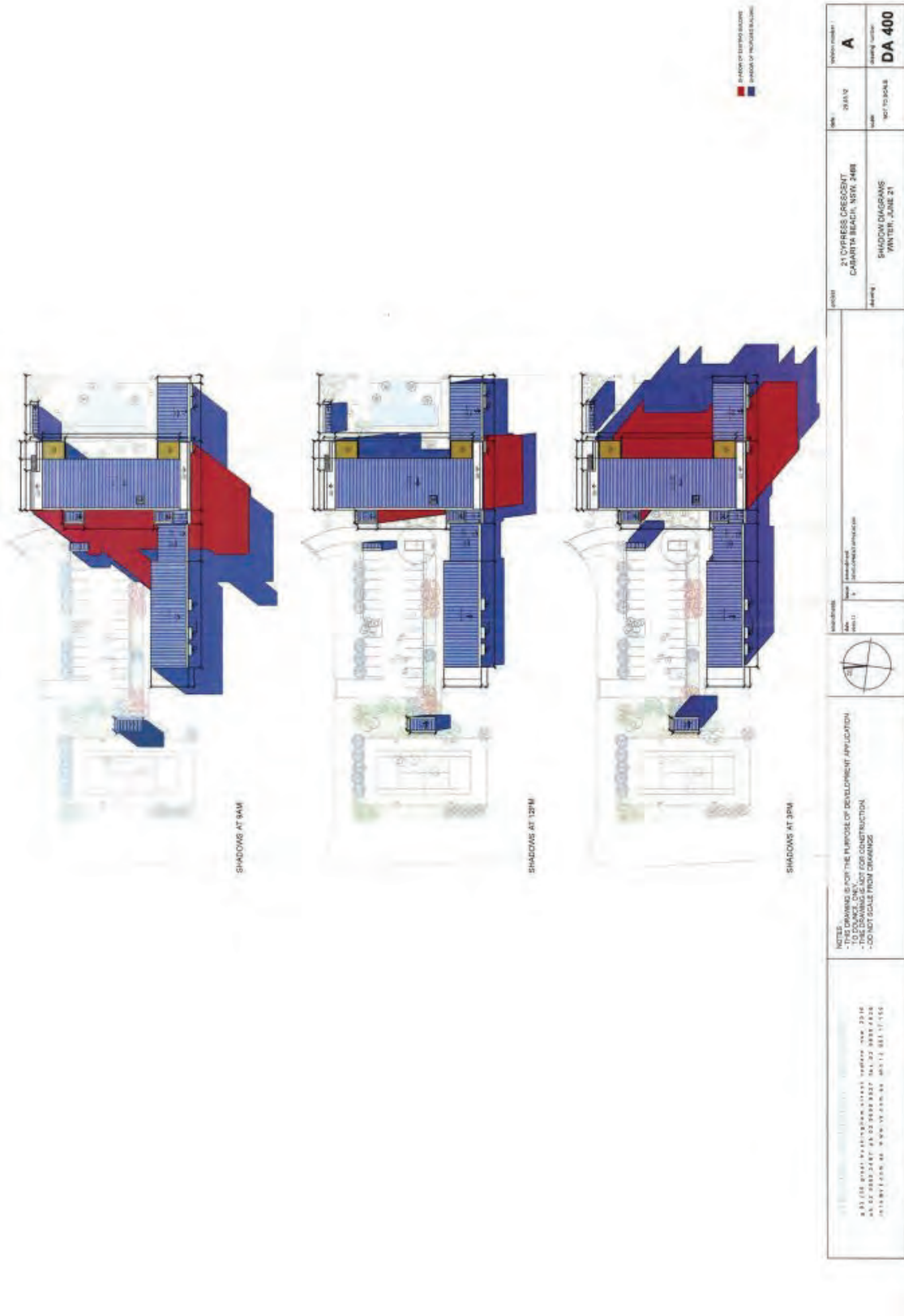
SHADOWS AT 3PM

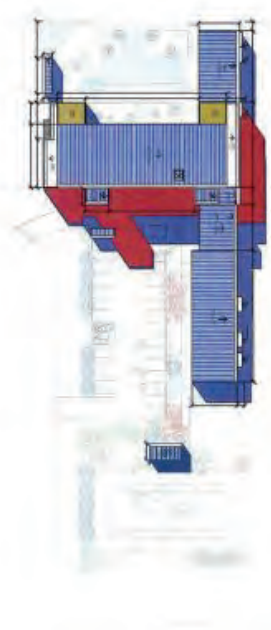


<p>NOTES: - SHADOWS ARE FOR THE PURPOSE OF DEVELOPMENT APPLICATION - TO CLARIFY ONLY - NOT TO BE USED FOR CONSTRUCTION - DO NOT SCALE FROM DRAWINGS</p>		Date: 21/01/13 Scale: 1:1000 Project: 21 CYPRESS CRESCENT DAMARLA BEACH, NSW 2488	Version number: A
		Drawing number: DA 401	Title: SHADOW STUDY DATE: DECEMBER 21

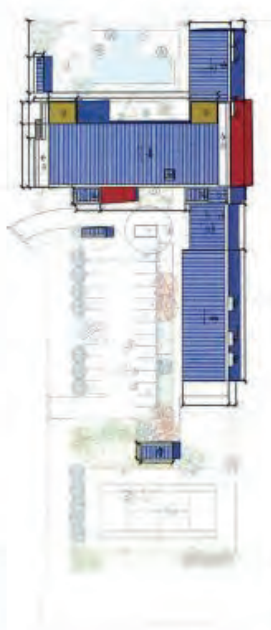


<p>NOTES:</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT / APPLICATION - THE DRAWING IS NOT FOR CONSTRUCTION. - DO NOT SCALE ANY DIMENSIONS 		<p>PROJECT:</p> <p>ST CYRILS CRESCENT CABARITA BEACH, NOV, 2011</p>		<p>DATE:</p> <p>02/11/13</p>		<p>PROJECT NUMBER:</p> <p>A</p>	
<p>DESIGNER:</p> <p>SHADOW DIAGRAMS SUMMER, DECEMBER 21</p>		<p>SCALE:</p> <p>1:100</p>		<p>DATE:</p> <p>18/11/13</p>		<p>PROJECT NUMBER:</p> <p>DA_402</p>	





SHADOWS AT 9AM



SHADOWS AT 12PM



SHADOWS AT 3PM



<p>NOTES: - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION - THIS DRAWING IS NOT FOR CONSTRUCTION - DO NOT SCALE FROM DRAWING</p>				<p>PROPOSED DEVELOPMENT 21 CYPRESS CRESCENT CABARITA BEACH, NSW 2488</p>		<p>PROJECT NUMBER A</p>	
<p>PROPOSED DEVELOPMENT SHADOW DIAGRAMS EQUINOX, MARCH 20</p>		<p>PROPOSED DEVELOPMENT SHADOW DIAGRAMS EQUINOX, MARCH 20</p>		<p>DATE 18/01/12</p>		<p>SCALE 1:1000</p>	
<p>DA 402</p>							

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced [and] to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

The proposed development is of a relatively minor nature and scale and is not likely to impact on the character of the Tweed as a whole. The proposal seeks to renovate and refurbish the existing motel and is considered unlikely to impact on the residential amenity of surrounding properties, nor the area's environmental qualities, as detailed further within this report.

It is therefore considered that the proposal would be consistent with this clause. This clause also requires that development complies with the zone objectives. This is addressed below.

Clause 5 - Ecologically Sustainable Development

The intent of this clause is to provide for development which is compatible with principles of ecological sustainable development (ESD) including the precautionary principle, inter-generational equity, ecological and environmental factors.

It is considered that the scale and nature of the proposed additions and alterations to the existing hotel is minor and, as the site has already been substantially cleared of vegetation, would not conflict with principles of ESD.

Clause 8 - Zone objectives

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

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

The subject site is located within the 2(a) Low Density Residential Zone. The provisions of the Tweed Local Environmental Plan (TLEP) 2000 prohibit the use of a 'Motel' on 2(a) zoned land. However, the proponent advises that the subject site has been utilised for the purpose of a motel for 46 years and the proposal will maintain a motel on the site and is therefore permissible.

Clause 106 of the Environmental Planning and Assessment (EPA) Act 1979 defines existing uses as:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4 of this Part, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land:*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced [...]*

A review of Council's records has revealed that the motel was established on the site circa 1960, before the coming into force of the current TLEP 2000. A motel would have been permissible within the 'Village or Township' zone under the previous Interim Development Order. The Tweed LEP 1987 changed the zoning to 2(a) Low Density Residential which prohibits motels. On this basis it is considered that the existing motel has established existing use rights.

Clause 41 of the Environmental Planning and Assessment (EPA) Regulation 2000 states that:

(1) An existing use may, subject to this Division:

- (a) be enlarged, expanded or intensified, or*
- (b) be altered or extended, or*
- (c) _____ be rebuilt, or*
- (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
- (e) if it is a commercial use – be changed to another commercial use, or*
- (f) if it is a light industrial use – be changed to another light industrial or a commercial use.*

Therefore under the provisions of Clause 41, (1)(a) of the EPA Regulation 2000, the existing use may be enlarged, expanded or intensified. It is considered that sufficient evidence has been brought to Council's attention to demonstrate that existing use rights for the motel over Lots 11 and 12 in Section 4 DP 31209 have been established. As the subject development is not defined as a commercial or light industrial use, subsections (1)(e) and (f) do not apply.

However, Clause 42 of the EPA Regulation 2000 states that:

- (1) Development consent is required for any enlargement, expansion or intensification of an existing use.*
- (2) The enlargement, expansion or intensification:*
 - (a) Must be for the existing use and for no other use, and*
 - (b) Must be carried out only on the land on which the existing use was carried out immediately before the relevant date.*

Clause 42 allows for the enlargement, expansion or intensification of an existing use, providing the use is for not other use, and that it is carried out on the land on which the existing use was carried out immediately before the relevant date, which in this case is the gazettal of the Tweed LEP in 1987.

Whilst expansion of existing use rights over Lots 11 and 12 in Section 4 DP 31209 have been established, the expansion of the motel (for car parking) over Lots 9 and 10 has been questioned. The applicant has advised that the expansion of the motel in this location relies on Development Consent 54/82 which approved alterations and additions to the motel, as well as the construction of a car park over Lots 9 and 10 in Section 4 DP 31209. Whilst the car parking area has not formally been constructed, the applicant has provided sufficient evidence to demonstrate that the 54/82 consent has been lawfully commenced and therefore remains a valid consent. Therefore Lots 9 and 10 are also considered to benefit from existing use rights for the purpose of a motel.

However, Council officers have been unable to find any evidence of existing use rights over Lots 1 and 2 in Section 4 DP 29748. Lots 1 and 2 propose to contain a tennis court, an advertising sign and part of a vehicular access in association with the motel. The applicant has been unable to provide Council with evidence to show that existing use rights exist for the motel over Lots 1 and 2 and therefore it is Council's view that any works proposed on Lots 1 or 2 should be withdrawn from the application.

On this basis all components located on Lots 1 and 2 will be deleted from the consent via appropriate conditions.

Please note that the Tweed LEP 2000 provides the following definition for a motel:

"A building or buildings (other than a hotel, boarding house or dwelling used to provide bed and breakfast) substantially used for the overnight accommodation of travellers and the vehicles used by them, whether or not the building or buildings are also used in the provision of meals to those travellers or the general public."

The subject application originally proposed the amenities of the motel to be utilised by guests of the motel only. In a response to Council's request for information the applicant requested that the restaurant and outside serving area be open to members of the general public also (with swimming pool and tennis courts being made available to guests of the motel only, although as detailed above the tennis court component of the DA has been deleted).

The applicant has provided legal advice in relation to the use of the restaurant for members of the public. The advice states that *the definition of 'motel' provides that three activities could occur within a motel premises:*

- 1. Overnight accommodation provided to travellers and their vehicles;*
- 2. The provision of meals to travellers using the accommodation facilities;*
- 3. The provision of meals to the general public.*

The advice further states that Justice Cripps of the Land and Environment Court in Scott & Ors v Wollongong Council & Anor [1989] NSWLEC 85 when considering the definition of a 'Motel' within the Model Provisions, confirmed that the operation of a 'restaurant' is also permitted. His Honour commented that '*Most motels in New South Wales have restaurants which serve members of the public not staying at the motel*'.

The advice therefore recommends that the *approval of a 'motel' therefore also permitted the service of food to patrons and to the general public*'.

The legal advice states that the premises has been used as a motel prior to the commencement of the Tweed LEP 1987 and that food has been provided to motel guests for consumption in their rooms and to the general public, with food being prepared in the commercial kitchen (granted consent under Permit Number T4/1551).

The legal advice states that the *premises has continued to operate as a motel with food service to patrons and the general public, particularly to guests associated with weddings and to informal dining in public areas within the curtilage of the site*. The advice concludes that the legal representative is of the *opinion on the information provided, that the motel may prepare and provide meals to the motel patrons and the general public pursuant to the Act's existing use rights provisions*.

Council officers do not concur with this position as there is currently no restaurant area and a search of Council's records has not revealed the presence of a formal restaurant/dining area for guests and members of the general public (separate to living accommodation) on the approved plans. Further, Council's Environmental Health records indicate that food preparation was limited to the preparation of small meals (breakfasts) only in the kitchen, to be delivered to guests in their rooms. Further, there has never been an approval issued for the use of the building for functions and the like.

Whilst it is acknowledged that the motel itself has the benefit of existing use rights, Council officers consider that existing use rights cannot be acknowledged for a restaurant and/or dining area on the subject site, as approval has never been granted for this use and is not demonstrated on the existing or previous plans.

The application currently before Council proposes alterations and additions to an existing motel only. Should the applicant wish to open the facilities to the general public and, in addition, formalise the use of the site for functions and the like, a future development application would be required for such uses (including any additional details of existing use rights not currently before Council; amended noise impact report and details of potential residential amenity issues).

Clause 11 – Zone Objectives

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

Primary 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.

A motel use is prohibited in the 2(a) Low Density Residential Zone however, the existing motel has been present on the site for approximately 50 years. It has been established the existing motel has the benefit of lawful existing use rights, in accordance with Clause 106 of the EPA Act 1979 and that the expansion and enlargement of the motel is permissible under Clause 41 of the EPA Regulation 2000.

It is considered however that the proposed alterations and additions to the existing motel would be in keeping with the residential character of the surrounding area and would not detract from the primary objective of the zone.

Clause 15 - Essential Services

The primary objective is to ensure that development does not occur without adequate measures to protect the environment and the community's health.

The subject site has existing access to essential services. Accordingly, the proposal is consistent with the provisions of this clause.

Clause 16 - Height of Building

Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. Clause 16 of the TLEP provides a three-storey height restriction over the subject site.

The development proposes the addition of a third storey and therefore the proposal would be consistent with the clause.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The development proposes alterations and additions to an existing and well established motel that has been in situ for approximately 50 years. Whilst submissions have been received with concerns in relation to noise and disturbance from the proposed outdoor eating and entertainment areas, it is noted that a pool and outdoor seating area already exists on the subject site. A condition would be applied to any development consent to ensure that the facilities are for the use of guests of the motel who are staying at the motel only and under no circumstances are they to be used by members of the public (please also note that the tennis court component has been removed from the application). Conditions relating to the hours of operation of these areas would also be applied to any development consent.

It is considered unlikely that the proposal would have a significant impact on the residential amenity of surrounding properties provided the proposal is carried out in accordance with the conditions of the consent.

The development would improve and modernise a tourist facility and boost the economic viability of the existing business.

Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP provides for the management of acid sulfate soils. The land has been identified as having Class 4 acid sulfate soils. Council's Environmental Health Services has reviewed the proposal and has advised that the proposed development does not comprise an excavation below 2m or works likely to lower the water table 2m beyond the natural ground surface.

No additional information is required in relation to ASS.

Other Specific Clauses

Clause 22 – Development near designated roads

The land has frontage to the Tweed Coast Road which is a Council designated road and therefore this clause applies. The objectives of this clause are:

- To protect and improve the capacity, efficiency and safety of designated roads.
- To prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.
- To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

The majority of the development is setback from the designated road with ancillary facilities and landscaping fronting the Tweed Coast Road. It is considered that the proposal will not impact on the safety or efficiency of the designated road nor detract from the scenic attractiveness of the area of the Tweed.

Clause 23 – Control of access

The objective of the clause is to control development along designated roads.

The proposal does not gain access from Tweed Coast Road with all site access being from Cypress Crescent. The development is therefore consistent with this clause.

Clause 24 – Set backs to designated roads

This clause does not apply to land within the 2(a) Zone.

Clause 36 – Coastal erosion outside Zone 7(f)

The subject land is located on land that is subject to coastal erosion outside of Zone 7(f) and therefore this clause applies. The objective of the clause is *To protect land that may be subject to coastal erosion (but not within Zone 7(f)) from inappropriate development.*

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

- (a) *consider*
- (i) *the likelihood of the proposed development adversely affecting the behavior or being adversely affected by the behavior of the sea, or of water in an arm of the sea or any other body of water, and*
 - (ii) *the likelihood of the proposed development adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea, any arm of the sea or any other body of water, and*
 - (iii) *the likelihood of the proposed development adversely affecting the landscape or scenic quality of the locality, and*
 - (iv) *the potential impacts of climate change including sea level rise.*

The development proposes alterations and additions to an existing motel located in close proximity to the coastal foreshore. The development application has been referred to Council's Natural Resource Management (NRM) Unit for the assessment of the proposal in relation to coastal hazards.

It is considered unlikely that the proposed extensions and alterations would adversely affect the behavior of the sea, beach or dune or foreshore. The motel is not located immediately adjacent to the sea and the majority of additions are located to the west (rear) of the existing building. The development proposes the construction of a third storey and minor additions to the existing building. It is considered that the proposed alterations will be in keeping with the host building and seek to modernise and improve the visual appearance of the motel. It is therefore considered that the proposal would not adversely affect the landscape or scenic quality of the locality.

Council's NRM Unit have recommended that appropriate conditions are applied to any consent as follows: any consent granted shall be on the proviso that if the erosion escarpment comes within 20m of the building, the use of the building will cease. A Section 88E (*Conveyancing Act 1919*) instrument is to be used to achieve this outcome in accordance with the Tweed DCP B25, as detailed further within this report.. Further, the proponent is to prepare a report detailing how the outdoor food and beverage area is to be dismantled and removed from the site if the erosion escarpment comes within 20m of the building and that the outdoor food and beverage area is to be constructed as a separate structure and be demountable or relocatable; and that all works within the 2100 Coastal Hazard Zone need are to be in accordance with Section 3.3.2 of the Coastal Hazards – Tweed DCP B25.

On this basis it is considered that the proposal is in accordance with the clause.

Clause 39 – Contaminated Land

The applicant has not addressed the issue of contaminated land other than to say that there does not appear to be any historical land use which was potentially contaminated. The application has been referred to Council's Environmental Health Department who have advised that a review of Council's historical aerial photography (1962, 1970 and 1987) show that the land surrounding the motel was vacant, as it is today, and that the motel is clearly visible in its current position.

It is advised that sand mining operations may have occurred in close proximity to the motel site and a condition should be applied to any development consent to ensure that radiation levels throughout the proposed development site are not to pose a public health risk.

Clause 39A – Bushfire Protection

The subject site is partially bushfire prone and therefore this clause applies. The development application was referred to the NSW Rural Fire Service (RFS) as Integrated Development in accordance with Section 91 of the EPA Act 1979. The RFS initially advised that they were not in a position to properly assess the application due to the lack of information regarding asset protection zones within the managed Crown land nature strip and management in perpetuity.

Further information with this regard was received, including the *Tweed Coast Regional Crown Reserve Plan of Management* courtesy of the Land and Property Management Authority, and submitted to the RFS for comment.

On 19 September 2012 general terms of approval were received from the RFS including requirements relating to: asset protection zones; water and utilities; evacuation and emergency management; design and construction and landscaping. A note to the Consent Authority was applied to advise that the *proposed development falls within the Flame Zone. Flame Zone development is high risk development; consequently, in situations such as this, the Service seeks to improve the overall fire safety of the existing development. This requires greater emphasis on construction standards, landscaping, siting and vegetation management practices to ensure improved levels of protection are afforded to the development, its occupants and its fire fighters. The Service has undertaken a merit based assessment of the proposal and provides the above advice in accordance with 'Planning for Bush Fire Protection 2006'.*

Clause 47 – Advertising signs

The objective of the advertising provisions is to ensure that outdoor advertising does not adversely affect the locality in terms of appearance, size, illumination or the like; does not lead to visual clutter through the proliferation of signs; does not detract from the scenic quality of the area and the like.

The applicant has failed to provide Council with sufficient evidence to demonstrate that the existing pylon sign (located on Lot 1) has the benefit of existing use rights. As signage, other than business identification signage, is prohibited in the residential zone, Council is unable to acknowledge existing use rights for the pylon sign. Therefore this element of the proposal has been deleted from the consent until such a time that existing use rights may be demonstrated.

It is considered that the proposed wall sign would be in keeping with the building and would not detract from the scenic quality of the area. A condition will be applied to any development consent to ensure that details of the proposed wall sign are to be received prior to the issue of a Construction Certificate.

Clause 54 – Tree preservation order

The subject site is covered by the Tree Protection Order (TPO) 2011 (Koala Habitat) and therefore this clause applies. The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

The application has been referred to Council's Ecologist who has advised that the site is of low ecological value with no Koala food trees and the proposed works are considered minor in nature with regards to vegetation removal. Council's Natural Resource Management Unit has advised that little ecological impact is anticipated. It is therefore considered that the proposal is consistent with the clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The subject land is designated coastal land and therefore this clause applies. The clause requires the consideration of the NSW Coastal Policy 1997 seeks to: protect, rehabilitate and improve the natural environment; protect and enhance aesthetic qualities and cultural heritage; and to provide for ecologically sustainable human development in the coastal zone.

It is acknowledged that the proposal will not restrict public access to the coastal foreshore, nor impact on the ecological values, scenic quality or cultural heritage of the locality.

However, the proposal comprises the construction of a third storey which will result in overshadowing of the waterfront open space (Crown Reserve) before 3pm midwinter and before 7pm midsummer (daylight saving time). On this basis the proponent lodged a SEPP 1 Objection seeking a variation to the provisions of Clause 32B (4) of the North Coast Regional Environmental Plan (NCREP) 1988, as detailed further within this report.

The applicant has submitted shadow diagrams illustrating 8284.5m² of overshadowing at 7.00pm midsummer and 33.5m² at 3.00pm midwinter. The applicants have put forward that the extent of overshadowing on the Crown reserve is minor on the following basis:

- *The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the coastal foreshore;*
- *That the area subject to overshadowing in no way precludes the future use or reclassification of the adjacent reserve;*
- *The overshadowing is minor at 7pm midsummer and is nonexistent at 3pm midwinter.*

It is not precisely understood what is meant by the term 'reclassification of the adjacent reserve', however this has no bearing on the assessment of overshadowing of the proposal as it is considered that the extent of overshadowing is relatively minor in scale in mid Summer and virtually nonexistent in the mid Winter. The shadow diagrams provided indicate that overshadowing only occurs between 3pm and 7pm and will not fall on the beach/sun bathing area. Further, the shadow occupies only a very marginal area of a large foreshore, a significant proportion of which is undeveloped.

With this regard the subject environment is urbanised, although characterised by low density and low rise development. However, the proposal is consistent with the height provisions as set out in the Tweed LEP 2000 and is considered to be compliant with the density nature of surrounding development.

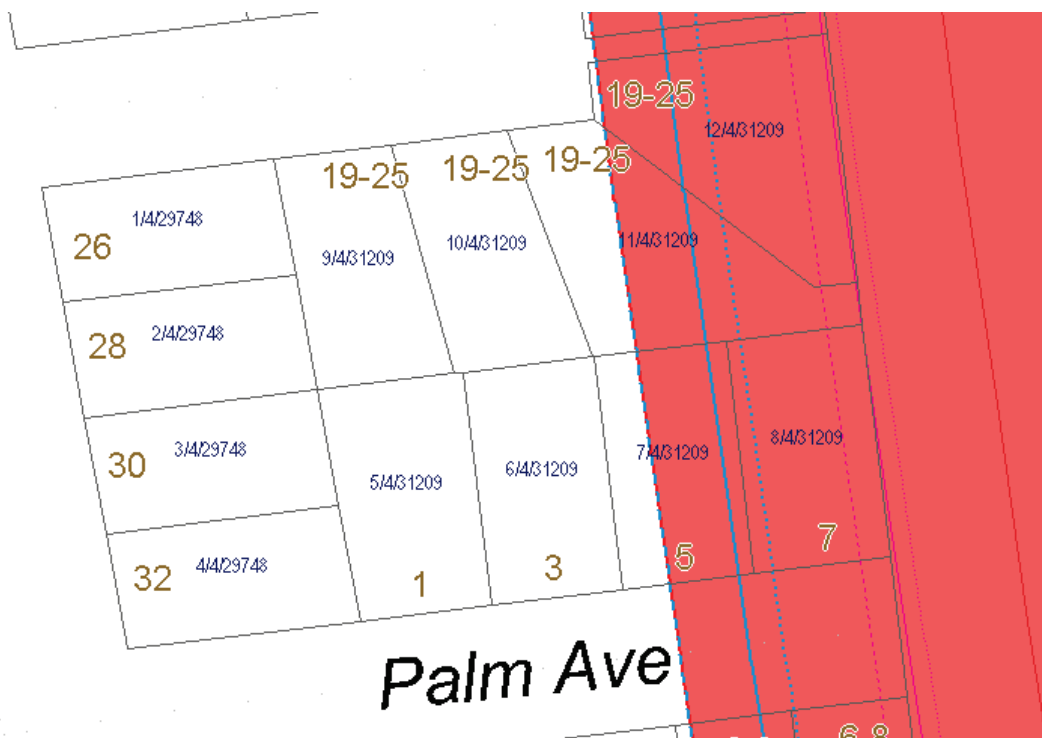
On this basis it is considered that the level of overshadowing does not warrant refusal of the application.

Clause 33: Coastal hazard areas

Clause 33 of the NCREP 1988 requires council to take into account the Coastline Management Manual; require as a condition of development consent that disturbed foreshore areas are rehabilitated; and require as a condition that access across foreshore areas be confined to specified points.

The primary objectives of the Tweed Shire Coastal Management Manual are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The subject site is identified as being subject to the effects of coastal erosion as shown in the following diagram:



Extract of Council's Geographical Information System (GIS) indicating portion of site subject to Coastal Erosion Hazard 2007.

The proponent has provided a Coastal Hazards Report (Cozens, Regan, Williams, Prove dated September 2012). The report advises that the dunes to the east of the site currently provide protection to the site from the affects of coastal erosion and it is expected that no works will be carried out beyond the boundary of the site. The report further advises that the portion of the proposed development beyond the Coastal Hazard 2050 line is in the order of 90m² (being the area for outdoor dining). The report states that this area can be considered as temporary structures and therefore considered sacrificial.

The report concludes that, following assessment of the available information and on the basis of a worst case scenario, the subject site would be subject to the impact of storm surges and coastal erosion which should be considered during the structural design of the building works.

The development application has been referred to Council's Natural Resource Management (NRM) Unit with this regard who have advised that the subject proposal is acceptable providing a number of conditions are applied to the consent.

Clause 75: Tourism development

This Clause stipulates that Council must not grant consent for tourism development unless it is satisfied that suitable access is in place; all social and community services are in close proximity to the development (for permanent residential accommodation); that the development will not be detrimental to the scenery or other significant features of the natural environment; and that satisfactory water and sewerage is available.

As previously detailed the proposal relates to additions and alterations to an existing motel which has been in situ for a considerable length of time. However, the subject site may be accessed by road and is located in close proximity to community services located in the town of Cabarita (shopping facilities, doctors surgery, chemist and the like).

The development proposes the addition of a third storey and additional structures that will improve the visual appearance of the motel and improve facilities for motel patrons. It is considered that these additions will not be detrimental to the scenery of the Tweed Coast, nor impact on the features of the natural environment.

It is considered that the proposal would be consistent with this clause.

SEPP No. 1 - Development Standards

A SEPP No. 1 Objection in relation to the provisions of Clause 32B of the NCREP 1988 has been lodged as the proposed development will result in overshadowing of the adjacent foreshore reserve prior to 3.00pm mid winter and 7pm mid summer.

As previously detailed within this report, it is considered that the extent of overshadowing created is relatively minor and does not impact on any recreation areas within the reserve, nor does it fall upon the beach.

SEPP No. 1 provides a mechanism by which Council can consent to a variation to a development standard where it is considered unreasonable or unjustified to request strict adherence to the standard, or where the granting of such a variance will not result in the compromising of the objects of the Act.

The objective of Clause 32B of the NCREP 1988 is related to the protection of the recreational integrity of the foreshore open space areas and the need to restrict adverse impacts upon the same by the erection of buildings in close proximity.

The applicant has provided a reasonable justification for the variation to the development standard as follows:

- The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the foreshore reserve;
- That the area subject to overshadowing is not an active recreation area;
- The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve;

- The overshadowing is minor at 7pm midsummer and is non-existent at 3pm midwinter.

Council officers concur with this justification and acknowledge that the extent of overshadowing of the coastal foreshore is minor. On this basis it is considered that compliance with the development standard is both unreasonable and unnecessary and therefore Council support in assuming concurrence of the Director-General, in this instance, is recommended.

SEPP No. 64 – Advertising and Signage

This Policy provides a State wide approach to managing advertising signage and aims:

- (a) to ensure that signage (including advertising):
 - (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, and
- (b) to regulate signage (but not content) under Part 4 of the Act, and
- (c) to provide time-limited consents for the display of certain advertisements, and
- (d) to regulate the display of advertisements in transport corridors, and
- (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.

The development proposes to retain the existing pylon sign located on the corner of Tweed Coast Road and Cypress Crescent and a new wall sign is proposed as part of Stage 1 of the redevelopment.

As previously detailed within this report, Council is unable to acknowledge that the existing pylon sign has the benefit of existing use rights and therefore this component of the application has been deleted from the submitted plans.

It is considered that the proposed wall sign would be compatible with the visual character of the area and would be integrated with the built form of the development. The sign would not result in a proliferation of signs on the building, or visual clutter. It is therefore considered that the proposal is consistent with the aims of the SEPP.

A condition will be applied to any development consent to ensure that details of the proposed wall sign are received prior to the issue of a Construction Certificate.

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The Policy aims to, amongst other things, protect and manage the natural, cultural, recreational and economic attributes of the NSW coast; protect and improve existing public access to and along the coast; to protect and preserve Aboriginal cultural heritage; to ensure visual amenity of the coast is protected; to protect beach environments and beach amenity as well as coastal vegetation and the marine environment; to manage the coastal zone in accordance with the principles of ecologically sustainable development; to ensure the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area; and encourages a strategic approach to coastal management.

The proposed development will not restrict public access to the foreshore area and will not impact on the beach environment or coastal/marine ecosystems or vegetation (significant vegetation removal is not proposed on the subject site and the development does not require any vegetation removal or works within the coastal foreshore). It is also considered unlikely, given the established nature of the motel and likely historic land uses (sand mining) that Aboriginal cultural heritage will be impacted upon however a condition will be applied to any consent with this regard.

As previously detailed within this report the proposal will result in the overshadowing of the coastal foreshore. It is however acknowledged that no overshadowing will extend onto the beach area nor impact on recreational areas, with the majority of shadow falling on vegetation within the hind dune area.

With regard to visual impact, it is considered that the proposed third storey and alterations to the facade of the building would provide a contemporary and innovative design. It is important to note however that the building would not be particularly prominent from the beach itself, being screened by the dune vegetation within the foreshore reserve. Further, the existing motel is located within an established residential area and will therefore not result in the significant loss of views from a public place to the coastal foreshore.

The applicant advises that all services are provided including reticulated water, sewer, stormwater and drainage.

It is considered that the proposed development is consistent with the aims of the Policy.

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

The Draft Tweed LEP 2012 is currently on public exhibition. Under the provisions of the Draft LEP the site is located within the R2 Low Density Residential Zone. The objective of this zone is:

- 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.

Within the Draft LEP, tourist and visitor accommodation is defined as:

A building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) *Backpackers accommodation,*
- (b) *Bed and breakfast accommodation,*
- (c) *Farm stay accommodation,*
- (d) *Hotel or motel accommodation,*
- (e) *Serviced apartments,*

But does not include:

- (a) *Camping grounds, or*
- (b) *Caravan parks, or*
- (c) *Eco-tourist facilities.*

Within the Draft Tweed LEP 2012, a motel is defined as a:

hotel or motel accommodation means tourist and visitor accommodation (whether or not licensed premises under the Liquor Act 2007): (a) comprising rooms or self-contained rooms; (b) that may provide meals to guests or the general public and facilities for the parking of guests' vehicles, but does not include backpacker's accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

As the Tweed Draft LEP 2012 is currently on public exhibition, more weight is now afforded to this document. However, akin to the provisions of the current Tweed LEP 2000, tourist and visitor accommodation would be prohibited under the provisions of the Tweed Draft LEP 2012.

Whilst the motel would be prohibited within the Draft Tweed LEP 2012, as previously detailed within this report, the motel relies on established existing use rights. Of importance with this regard is the definition relates to the provision of licensed premises as well as the permissibility for the motel to be used by members of the general public. However Council officers are of the opinion that whilst existing use rights for the motel have been established, they do not exist for a restaurant or dining area open to the general public.

Council officers consider it necessary and reasonable in this instance to apply conditions to any consent in relation to the use of the premises being restricted to patrons of the motel only in order to safeguard the residential amenity of surrounding properties.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant has provided a detailed assessment of the compliance of the proposal against Section A1 of the DCP under the provisions of a residential flat building. It is of importance to note that the existing motel was constructed long before these controls were adopted by Council and it would therefore be unreasonable for Council to request strict adherence with this regard.

The majority of the development is consistent with the controls set out within A1 with minimal cut and fill proposed, adequate landscaping and the proposed alterations are unlikely to impact on view sharing from public places or surrounding properties and orientation and the like is already dictated by the location of the existing building on site. A variation is sought in relation to a rear setback provisions, the proposed outdoor area being setback by approximately 2m from the rear setback. The site backs onto foreshore reserve with no dwelling houses adjoining the rear and it is therefore considered that there will be no amenity or privacy impacts on this basis. It is considered that the proposal provides sufficient outdoor amenity area for guests of the motel and sufficient landscaping.

It is considered that the proposal is generally consistent with the provisions of Section A1.

A2-Site Access and Parking Code

A search of previous approvals on the subject site indicates that 20 car parking spaces were originally approved for the motel under building application 54/82 (that approved alterations and additions to the motel). Further, permit number T4/1551 imposed a requirement for 20 off street car parking spaces to be provided. The 20 required car parking spaces have not been formally provided for the existing motel (for 15 motel rooms and self contained apartment) with an informal parking area provided at the front of the motel.

The application proposes an additional five motel rooms and a self contained three bed unit. The application details acknowledges that the previous requirement for car parking has not been formally provided and is to be constructed as part of stage 1 of the development.

Section A2 of the DCP requires a motel to provide 0.5 spaces per staff member; one (1) space per unit plus one (1) space per 15m² gross floor area (GFA) restaurant open to the public. Section A2 also allows for an ecologically sustainable development (ESD) reduction of 20%, providing sufficient justification is demonstrated.

The applicant originally provided a parking assessment based on 12 staff members, 21 units and 1 dwelling house (caretakers residence). Including the ESD discount of 20%, a total of 24 spaces are required. However, an amended parking assessment has now been provided including the restaurant area, which the applicant wishes to open to the public. The restaurant component would generate a requirement of approximately five spaces (including the ESD discount) and therefore, a total of 29 spaces.

The development proposes 25 car parking spaces (including one disabled parking space) and therefore a shortfall of four spaces. Council's Development Engineer has advised that the applicant has submitted sufficient justification for the application of the ESD reduction and that there would be sufficient room to accommodate the extra four parking spaces required to the west of the proposed parking area. As detailed above, it is Council officers opinion that Lots 1 and 2 do not have the benefit of existing use rights and therefore, could not be used for additional carparking, ancillary to the motel.

However, for reasons outlined within this report, Council officers do not consider that existing use rights for the restaurant to be open to members of the general public is sustained in this instance. Therefore it is considered that proposed parking spaces (25) is adequate (a condition will be applied to the consent restricting use by the general public).

HRV accessibility, also required under Section A2, has been addressed by the applicant and a condition of the consent has been applied with this regard (in relation to the submission of a Traffic Management Plan). Council's Development Engineer has advised that no extra on-site parking provision is required, but accessibility is to be demonstrated (which may be required during the construction of Stages 2 and 3). A condition shall be applied to the consent with this regard.

Please note that it is a requirement that car park construction is carried out as part of Stage 1 works to which the applicant has agreed to.

A4-Advertising Signs Code

As previously detailed within this report the application proposed the retention of the existing pylon sign and the installation of a new wall sign, located on the northern access stairs. Section A4 seeks to preserve the residential amenity and minimise the visual impact of signs in residential areas.

As detailed within this report Council is unable to acknowledge existing use rights for the existing pylon sign. On this basis this element of the proposal has been deleted from the submitted plans.

It is considered that the proposed wall sign would be in keeping with the provisions of Section A4 of the DCP, which allows a maximum of five signs per business.

Further, it is considered that the proposed sign would not cause visual clutter and would preserve the overall residential character of the locality.

It is considered that the proposed sign would be consistent with Section A4.

B19 – Bogangar/Cabarita

Section B19 of the DCP specifically relates to the Bogangar and Cabarita Beach Locality and advises that Cabarita Beach has only limited development due to the proximity of protected wetlands. The DCP acknowledges the importance of the State Government's Coastal Policy 1997 in the protection of the environmental and scenic qualities of the coast as well as encouraging higher density residential development in close proximity to town centres, to create easy access to services and stimulating the town centre environment.

The DCP acknowledges that a Vision Statement for the Bogangar / Cabarita Beach study area has been formulated which expressed the area to be a unique coastal village characterised by: significant natural assets; peaceful, quiet beach lifestyle; a community living in harmony with the natural environment and embracing a beach village atmosphere; an attractive holiday destination for a variety of tourists and a safe environment.

The Steering Committee established for the study reinforced the unique coastal village character with a vision as follows:

'To retain and enhance the unique natural environmental character and coastal lifestyle offered by Bogangar / Cabarita Beach, whilst embracing high quality development promoting the area as a popular location for residential living, tourism and business'.

The DCP provides a number of objectives for the area such as: facilitating economic development through a viable and attractive 'niche market' for tourists, retail and commercial investors; ensuring the compact village form is retained and enhanced through appropriate forms of infill development and ensuring that new development is adequately protected from environmental hazards, such as coastal processes.

As detailed within this report, the application relates to alterations and additions to improve services and amenities to an established motel.

In terms of the visual appearance of the development, the development, which has been referred to Council's Urban Designer, is considered to provide a contemporary uplifting of the existing building and would contribute to the visual amenity of the area. Further, it is considered unlikely that the proposal would impact on matters relating to ecology or environmental conservation.

As discussed in greater detail below, the proposed outdoor eating area located at the front (seaward side) is located in front of the 2050 Hazard Line, the remainder of the motel being located in front of the 2100 Hazard Line. The application has been referred to Council's NRM Unit who have recommended appropriate conditions are applied to any consent.

Council however acknowledges that the proposed alterations to the existing motel will result in a significant expansion of rooms and services (restaurant area, lounge, outdoor eating area, pool, and tennis court). Such additions will undoubtedly impact on the residential amenity of surrounding dwellings in terms of noise and disturbance. It is for this reason that suitable conditions would be applied to any consent to ensure that the amenities within the motel are used by guests who are staying overnight in the motel only, within approved hours of operation.

Should the applicant wish to open the restaurant area and the like to members of the public in the future, a development application would be required including a revised Noise Impact Report and the like. Whilst Council officers consider that the improvement and modernisation of an existing business within the Cabarita Beach locality, it is also recognised that this should not be to the detriment of surrounding residential amenity.

B25 – Coastal Hazards

Section B25 of the DCP provides guidelines for the development of the land in close proximity to the Tweed Coast, having regard to minimising coastal hazard risks as well as to establish whether the proposed development is appropriate to be carried out, and the conditions of the development consent that should be applied if it is to be carried out, having regard to the coastal hazard lines established in the Tweed Coastline Hazard Definition Study 2001 (as amended).

Coastal hazards are defined as detrimental impacts of coastal processes on the use, capability and amenity of the coastline such as: beach erosion; shoreline recession; coastal inundation; coastal cliff or slope instability; tidal inundation and erosion caused by tidal waters. Erosion escarpment relates to the vertical or near vertical drop in the profile of a beach caused by tidal or storm erosion.

The DCP acknowledges that urban development is expected to continue in proximity to the coast and should therefore be carefully planned and managed to minimise impacts on coastal resources and limit development in areas that may be at risk from coastal hazards.

The existing motel is currently located forward of the 2100 Hazard Line, with proposed extensions to the motel being located forward of the 2050 Hazard Line, as shown in the following diagram:



Extract from Council's GIS showing location of Hazard Lines in relation to existing motel

Part 3.2.2 of Section B25 states that development in the 2050 Hazard Zone is encouraged to be built as modular, detachable and relocatable which will benefit future relocation or removal of development in the future if under threat from coastal hazards. It also advises that no building is to be located within 20m of the current erosion escarpment and should development within the 2050 Hazard Zone be granted consent (subject to a Coastal Risk Management Report) then any consent granted will be subject to the proviso that if the erosion escarpment comes within 20m of any building, then the use of the building will cease, and a Section 88E (*Conveyancing Act, 1919*) instrument will be used to achieve this outcome.

It also advises that should the use or occupation of the building cease, then the owner of the land will be responsible for the removal of any or all buildings from the site further than 20m from the erosion escarpment. Further, Section B5 advises that all structures constructed within the 2050 Hazard Zone shall:

- a) Be compatible with the coastal hazards identified;
- b) Be set back as far landward as practically possible;

- c) Not give rise to any increased hazard or other public or private property;
- d) Be designed to structurally withstand the designated hazard at the risk level required
- e) Be designed with consideration given to the effects of larger events than the designated hazard;
- f) Be constructed in a manner or to a level which caters for the coastal hazards of wave runup and overtopping and inundation from increased water levels.

Section 3.2.3 – Additions, Renovations, Alterations and Maintenance advises that additions and alterations to existing buildings will be considered on their merits with consideration being given to the location of the erosion escarpment, the type of building involved and access to the site. Additions or alterations will be considered where there will be no adverse effect on the ability of the building or buildings to be removed in an emergency.

Council's Natural Resource Management (NRM) Unit have assessed the submitted Coastal Report and have recommended that appropriate conditions are applied to any consent in relation to the removal of the outdoor food and beverage service area and that the building should cease to operate should the erosion escarpment reach 20m of the building. It is considered that the proposal accords with Section B25 of the DCP.

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

Clause 92(a) Government Coastal Policy

Clause 92 of the Regulations requires the consent authority to consider the Government Coastal Policy, or the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*.

The proposal is not inconsistent with the *NSW Coastal Policy*, as previously detailed within this report, as it will not impact or restrict access to any foreshore areas. Further, the level of overshadowing is not considered to result in such a detrimental impact on the recreational area of the coastal foreshore to warrant refusal of the proposal.

It is considered that the proposed development would be consistent with the intentions of the Policy.

Clause 92(b) Applications for demolition

The application has been referred to Council's Building Services Unit with this regard who have recommended suitable conditions are applied to any consent.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been referred to Council's Building Unit in this regard who has advised no objections to the proposed development subject to conditions.

Clause 94 Buildings to be upgraded

Section 94 of the Regulations is applicable where the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls or the measures contained in the building are inadequate: (i) to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or (ii) to restrict the spread of fire from the building to other buildings nearby.

Council's Building Services Unit considers the proposal is adequate in this regard and will generally comply with the requirements of the BCA.

- (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. This document highlights that the '*current State Government policy strongly advocates the protection and maintenance of beach amenity and access when dealing with coastline hazards*'. The document also provides management objectives to: protect, rehabilitate and improve the natural environment; to recognise and accommodate natural processes and climate change and to protect and enhance the aesthetic qualities of the coastal zone.

The applicant has provided information in relation to the suitability of the proposed development in this coastal location and considered the impact of the proposal on both the aesthetic and recreational value of the coastline, impact on views and in relation to the height and scale of the proposal. As previously detailed within this report the proposed development is considered to generally accord with the provisions of the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast* as well as Section B25 of the Tweed DCP.

It is considered that the proposed alterations and additions will be unlikely to impact on the natural environment or coastal processes, nor on the visual amenity or scenic quality of the area. As detailed within this report, appropriate conditions have been applied in relation to the use of the building ceasing should the erosion escarpment reach 20m of the building as well as the proposed outdoor eating area to be relocatable. It is considered that the proposal is generally consistent with the objectives of the Tweed Shire Coastline Management Plan 2005

Tweed Coast Estuaries Management Plan 2004

Not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

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

Not applicable to the proposed development as the subject site is not located in the vicinity of the Cobaki or Terranora Broadwater.

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

Context and Setting

The proposed development comprises alterations and additions to an existing and well established motel. The application has been referred to Council's Urban Designer who has advised that the proposed alterations are of a high architectural quality and are generally supported: *'the additional level of hotel rooms, addition of balconies to the existing hotel rooms, addition of new kitchen and outdoor dining areas combined with amenities, caretaker facilities, multi-purpose room and tennis courts will provide a much needed 'facelift' to the classic beachfront coastal hotel. Improving and contemporising the facilities will ensure the continued use of the hotel within this location which contributes to the overall landuse character of this part of Cabarita'*.

It is considered that the use of materials is acceptable with the proposed increase in height of the building being of an appropriate scale and proportion, with the predominantly timber clad materials and replication of strong horizontal banding to the upper level, which reduces bulk and mass. Council's Urban Designer has advised that, despite the additional level, the hotel would retain its generally low scale and understated coastal holiday motel character.

It is considered that the proposed additions to the motel would be in keeping with the context and setting of the locality.

Access, Transport and Traffic

The site currently has a single access driveway constructed with a bitumen surface. This same location will be utilised for the new site ingress, but be reconstructed in concrete and a new egress driveway be constructed to the west.

Council's Development Engineer has advised that the proposed access arrangements are satisfactory, providing further information is submitted in relation to HRV accessibility (as this may be required during the construction phases of Stage 2 and 3). It is considered unlikely that the proposed additions and alterations would generate significant levels of additional traffic and Council's Development Engineer considers that the existing street hierarchy is considered to be capable of easily coping with this extra traffic.

Flora and Fauna

Residential and urban development surrounds the site to the north, south and west and coastal foreshore reserve is located to the east. A large portion of the site is vacant land with a few scattered trees and landscaped gardens within the grounds of the existing motel.

The majority of the site is substantially cleared of native vegetation with several isolated trees located around the motel. Council's Ecologist has advised that these trees would provide minimal habitat and shelter to highly mobile species traversing the site from time to time and that, for this reason, the ecological value of this site is very low.

The proposal requires the removal of three trees (Coastal Banksia; Golden Penda and Muttonwood). A large Norfolk Pine and a Cabbage-tree Palm are to be retained and incorporated into the proposed landscaping of the site.

Council's Ecologist has advised that the proposed works are considered minor in nature and that, although a minor reduction in foraging resources may occur, these will be sufficiently compensated in landscaping. Appropriate conditions shall be applied to any consent to ensure that vegetation is limited to three trees as identified on the On-site Vegetation Management Plan, prepared by Planit Consulting and dated July 2012, and that landscaping should incorporate a minimum of 80% native species.

Road traffic impacts

Council's Environmental Health Services have advise that the submitted Noise Impact Assessment has considered onsite external noise criterion from increased traffic noise by using the *NSW Industrial Noise Policy* as a guide to acceptable noise levels ay [potentially affected residences (for day and night). The Report used methodology from the *RTA Guide to Traffic Generating Developments* to calculate noise levels from increased traffic activity on Cypress Crescent.

Both day and night time calculated values were lower than the *NSW Industrial Noise Policy* values with a total of 24 trips calculated at peak hour, which is an increase of the current calculation of 16 trips. Council's Environmental Health Services have advised that *'given the relatively low frequency of vehicle movements likely to result from the proposed development and the small (3dB(A)) noise increase, noise impacts from vehicle noise may be considered relatively minor. However, there will be a reduction in amenity for existing residents'*.

Whilst a reduction in amenity for existing residents is acknowledged, it is considered that the proposal would be unlikely to generate such a detrimental impact to such amenity so as to warrant refusal of the proposal.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Residential development is located to the north and south of the subject site, as shown in the image below:



A number of submissions have been received from neighbouring properties, as detailed further within this report. Council officers consider that the nature of the surrounding land uses (residential dwellings located in close proximity to the motel, particularly to the southern boundary) are such that the proposal may have the potential to impact on surrounding land uses, as detailed further within this report.

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

A total of seven submissions have been received detailing a number of concerns with the proposed development, as summarised below:

Overlooking

The balcony areas proposed on the southern elevation are to be fully screened. Further, a setback of approximately 3.6m would reduce the ability for guests to be able to walk to the edge of the balcony and look down into the neighbouring properties.

Overshadowing of foreshore

Submissions received by Council have raised concerns in relation to the level of overshadowing of the proposed development. The submissions advise that the area that is to be overshadowed is an active recreation area and any level of overshadowing is considered unjustified and unreasonable.

As previously detailed the proposed alterations and additions to the motel will result in a level of overshadowing to the coastal foreshore reserve and on this basis a SEPP No. 1 Objection has been lodged with Council. For the reasons already outlined within this report, Council Officers are of the opinion that the level of proposed overshadowing is relatively minor and does not warrant refusal of the application.

Overshadowing of Properties

The shadow diagrams submitted with the application details that there will be some level of overshadowing to the properties located to the south of the motel. It is considered that the level of overshadowing to dwellings would not be for lengthy time periods through the day with the shade moving so that each dwelling would have the same level of amenity.

It is considered that the level of overshadowing to the properties to the south is to so unreasonable so as to warrant refusal of the proposal.

Noise and disturbance

A number of the issues raised by submitters relate to noise and disturbance associated with the proposed restaurant and outdoor dining area and construction of new swimming pool. The application also proposes the construction of a tennis court however as detailed this component of the application has been deleted. Submitters have advised that perhaps the most suitable location for the proposed eating area and the like would be to the rear of the motel, in the approximate area of the proposed tennis courts.

The restaurant/outdoor dining area and the swimming pool are located adjacent to the southern boundary to the adjoining domestic dwellings along Palm Avenue (numbers 1, 2, 5 and 7). Council's Environmental Health Unit have advised that residents of these properties would potentially be affected by noise, odour, lighting and hours of operation. The southern wall of motel is proposed to be extended which will provide some noise attenuation.

The applicant has submitted a Noise Impact Report that proposes acoustic treatment and / or management including as follows: restricting operating hours for the indoor areas (restaurant, multi-purpose space and ground level lounge) to 7am to midnight; outdoor areas (pool and BBQ) to 7am to 10pm. It is also acknowledged that amplified music is to be restricted to 'inside areas only' and at a level that does not interfere with normal conversation.

The Noise Impact Report makes further recommendations in relation to the management of potentially noisy areas (closing doors and windows) along with recommendations for construction standards such as: laminate window glass; awning style windows along the southern side of the multi-purpose room; heavy vinyl curtains and the like.

Council's Environmental Health Unit have advised that, in order to protect surrounding residential amenity, hours of operation for dining areas (not including BBQ area) to be changed from the proposed 7am – midnight seven days a week, to 7am to 9pm Sunday to Thursday and 7am – midnight Fridays and Saturdays. Outdoor facilities and activities (swimming pool and BBQ) to be restricted to 7am – 9pm seven days a week with amplified music or sound to be conditioned for internal use only.

Please note that the existing motel already comprises an outdoor swimming pool and outdoor seating areas. Whilst it is acknowledged that the expansion and modernisation of the motel is likely to have the capacity to increase the number of patrons and use of the facilities, it is considered that, providing the use of the motel is carried out in accordance with the Noise Impact Report, that the proposal would be unlikely to impact on surrounding residential amenity to such an extent to warrant refusal of the proposal. It would be unreasonable for Council to request that the proposed extensions are located to the rear of the existing motel, given the proximity of the coastal foreshore and location of existing swimming pool and facilities.

Further, Council's Environmental Health Services have recommended that a condition is applied to any consent requesting the submission of a noise management plan that details the type and location of proposed plant and equipment (such as commercial air conditioners, cool-rooms, kitchen and laundry exhausts and the like). The plan shall also include noise mitigation measures to ensure the emission of intrusive noise is prevented.

Use of the restaurant for the general public

The application originally proposed that the premises would not be open to the general public however in the response to the request for further information the applicant proposed that the restaurant and outdoor serving area is to be opened to members of the general public (please note that pool and tennis court is to be used by guests of the motel only).

The applicant has provided legal advice in relation to the use of the restaurant for members of the public. The advice states that the definition of 'motel' provides that three activities could occur within a motel premises:

1. Overnight accommodation provided to travellers and their vehicles;
2. The provision of meals to travellers using the accommodation facilities; and
3. The provision of meals to the general public.

The advice further states that Justice Cripps of the Land and Environment Court in Scott & Ors v Wollongong Council & Anor [1989] NSWLEC 85 when considering the definition of a 'Motel' within the Model Provisions, confirmed that the operation of a 'restaurant' is also permitted. His Honour commented that '*Most motels in New South Wales have restaurants which serve members of the public not staying at the motel*'.

The advice therefore recommends that the *approval of a 'motel' therefore also permitted the service of food to patrons and to the general public*.

The legal advice states that the premises has been used as a motel prior to the commencement of the Tweed LEP 1987 and that food has been provided to motel guests for consumption in their rooms and to the general public, with food being prepared in the commercial kitchen (granted consent under Permit Number T4/1551).

The legal advice advises that the *premises has continued to operate as a motel with food service to patrons and the general public, particularly to guests associated with weddings and to informal dining in public areas within the curtilage of the site.* The advice concludes that the legal representative is of the *opinion on the information provided, that the motel may prepare and provide meals to the motel patrons and the general public pursuant to the Act's existing use rights provisions.*

Council officers do not concur with this position as a search of Council's records has not revealed the presence of a restaurant / dining area for guests and members of the general public (separate to living accommodation) on the approved plans. Further, Council's Environmental Health records indicate that food preparation was limited to the preparation of small meals (breakfasts) only in the kitchen, to be delivered to guests in their rooms.

Whilst it is acknowledged that the motel has the benefit of existing use rights, Council officers considered that existing use rights cannot be acknowledged for a restaurant and / or dining area on the subject site, as approval has never been granted for this use and is not demonstrated on the existing or previous plans.

The application currently before Council proposes alterations and additions to an existing motel only. Should the applicant wish to open the facilities to the general public, and formalise the use of the site for functions and the like, a future development application would be required (including any additional details of existing use rights not currently before Council; amended noise impact report and details of potential residential amenity issues).

Liquor licence

The proposal seeks the alteration and addition to a motel which includes a licensed restaurant. It has been brought to Council's attention that the applicant has lodged an application for a liquor licence from Monday to Saturday between the hours of 10am – 12.00am (Monday to Saturday) and 10.00am to 10.00pm (Sunday) (with a 6 hour proposed closure time between 4.00am to 10am). The licence application proposes a total of 100 patrons on the proposed licensed premises.

Submissions have expressed that the likely uses associated with the liquor licence application are inconsistent with the historical use of the site which has been used as a motel since its establishment. Submitters have expressed concerns that, given the proposed hours of operation within the liquor licence application, there is a likelihood that the proposal would be used as a late night bar/nightclub and that the submitted noise report has not taken this into consideration. There are concerns that the Cabarita locality is unable to accommodate such a late night proposal (lack of infrastructure such as policing and transport).

In response to the concerns raised within the submissions, the applicant has advised that having a liquor licence does not allow the premises to be operated as a bar, but allows for the provision of mini bar facilities in rooms, provide alcohol with means and during the occasional function (wedding and the like). The applicant advises that a number of motels/hotels and caravan parks within the area have liquor licences and that the service of alcohol will be primarily to the rooms.

The applicants' justification with this regard is considered to be acceptable in this regard and it is considered reasonable that alcoholic beverages are permitted to be served to guests of the motel. Council however is of the opinion that development consent has never been granted for the use of the building as a restaurant for the use of members of the public, nor for the use of the premises for functions or the like.

The application currently before Council seeks for the alterations and additions only to an existing motel only. It is therefore considered necessary and reasonable in this instance to apply a condition to any consent to ensure that the facilities are to be used by guests of the motel only as well as to apply hours of operation conditions in accordance with the recommendations from Council's Environmental Health Officer. Should the applicant wish to open up the facilities to members of the general public and to formalise the use of the premises for functions and the like. An amended development consent would be required. A suitable condition in this regard is proposed.

Late night venue

A number of submissions have reported to Council that the applicant is associated with a number of late night venues in the Brisbane area and on this basis, are concerned that the Hideaway Motel is looking to attract similar clientele (young backpacker crowd that are seeking a party atmosphere close to the beach).

Whilst such concerns are appreciated by Council officers, the application seeks for the alterations and additions to a motel only. Provided the use of the motel is carried out in accordance with the submitted Noise Impact Assessment Report it is considered that such concerns would not warrant the refusal of the application. As detailed above, Council's Environmental Health Unit have assessed the proposal and consider that the proposed alterations and additions would be unlikely to impact on surrounding residential amenity.

Amended hours of operation conditions will be applied to any consent as well as a condition to ensure that the premises is to be used solely by guests of the motel.

Should Council receive reasonable complaints about the use of the facilities (such as in relation to noise and disturbance), these would be referred to the most appropriate service in Council for further action.

Please note that a submission has been received that states there is no requirement for an additional entertainment venue in the small community of Cabarita, which is already serviced by several liquor venues (bowls club, hotel, restaurant, bottle shops and the like) with all of these venues being located in the main commercial precinct of the town. Council is unable to take issues relating to current facilities or market demand for such a facility into consideration however it is of note to reiterate that the application currently before Council does not comprise a late night bar / drinking establishment but to supplement the services and facilities of the existing motel.

Council officers acknowledge that the concerns of local residents in relation to noise and disturbance from a late night venue are valid and reasonable in this quiet and low density residential area. However, the application currently before Council seeks for the alteration and addition to the existing motel only. Suitable conditions will be applied to the consent to ensure reasonable hours of operation, as recommended by Council's Environmental Health Unit.

Camping site

A submission has also been received that details the expansion of the motel is not required and provision of lower cost camping grounds should be encouraged on such a site.

A camping facility would also be prohibited on the subject site and such a proposal in this location would be likely to generate far significant amenity (noise, parking) issues for proposed residents than that currently before Council. Market demand and perceived suitable land uses is not a material planning consideration.

Traffic generation

Submitters have advised that the planned entry to the motel will generate more traffic usage as the number of rooms has significantly increased. An adjoining property has specific concerns with this regard as they advise that the motel uses a partly shared driveway.

The development application has been referred to Council's Development Engineer who has advised that the proposed access and parking (including disabled parking space) arrangements appear to be satisfactory. Further, the development proposes a relatively minor expansion of the motel accommodation. As previously detailed a condition will be applied to any development consent to ensure that the facilities of the motel are to be utilised by guests of the motel only. Any future development application to open the facilities to the general public (including functions and the like) would need to consider the impact of traffic generation to surrounding properties.

Inadequate setback distances

Concerns have been raised in relation to inadequate setback distances from the proposed extensions to the building to the boundaries of the site. The location of the proposed extension to the building is in some ways restricted by the location of the existing motel building. However, as detailed previously within this report, Section A1 of the DCP (Part C – Residential Flat Buildings) sets a minimum of 1.5m side setback distances.

The proposal comprises a side setback of 1.5m which accords with the controls. Further, primary windows and doors face the foreshore reserve with secondary windows / doors facing side boundaries. It is considered that the proposal would not have such an impact on the residential amenity of neighbouring properties so as to warrant refusal of the proposal.

Coastal Hazards

Submissions have also addressed the fact that the subject site is located within the 2050 Hazard Line and therefore the suitability of the site for development. This issue has been addressed within the body of this report in great detail and, as discussed, Council's NRM Unit have advised that the proposed development is acceptable with this regard, provided appropriate conditions are applied to the consent (in relation to the use of the building ceasing and the outdoor eating area being a removable structure).

Signage

Concerns have been expressed that signage should be in keeping with the residential amenity of the locality and reflect the quiet and secluded nature of the retreat (as the 'Hideaway Motel' suggests).

As detailed, the existing pylon sign located on Lot 1 has not been included as part of this development application. However, condition will be applied to any consent to ensure that details of signage (wording, materials) for the proposed wall sign are submitted prior to the issue of a Construction Certificate. It is also considered reasonable to ensure that the proposed signage is not to be internally illuminated, to safeguard the character of the area and residential amenity.

Notification of development proposal

One submission has expressed that Council has insufficiently notified adjoining properties as properties within 50m of the subject site have not received notification. The application was advertised for a period of 14 days from Wednesday 16 May to Wednesday 30 May 2012 to a number of properties on land immediately adjoining the subject site. Further, a site notice was displayed adjacent to the site and the proposed development was advertised in the Tweed Link.

It is considered that the proposal was notified in accordance with the requirements of Section A11 (Public Notification of Development Proposals) of the DCP, which seeks that Council notify all persons who own land immediately adjoining the application site. It was considered unnecessary by Council officers to notify additional properties in this instance.

Signatures of support

Approximately 260 signatures in support of the proposed development have been submitted by the applicant in a petition format. The petition reads as follows:

'I fully support the recent development application at the Hideaway Motel at 19-25 Cypress Crs and 30 Tweed Coast Rd, Cabarita Beach. I fully support the restaurant being open to the public. I believe the Cabarita Beach community will benefit enormously from the proposed refurbishment and upgrade put forward by the new owners of the Hideaway. By signing this letter of support I believe that the proposed development will:

- 1. Bring economic benefits to the local business community;*
- 2. Increase local employment;*
- 3. Reinvigorate local tourism.*

The refurbishment plans provide a low impact solution for an essential upgrade of the property that is in tune with the existing peaceful and tranquil atmosphere that is Cabarita Beach'.

The collection of a significant number of signatures is of material consideration to the proposed development however, the concerns from residents of dwelling houses located immediately adjacent to the subject site (in relation to noise and the like) are well founded.

Whilst Council officers acknowledge and welcome the expansion and modernisation of the existing motel, this should not be at the expense of surrounding residential amenity. However, as detailed within this report, the application seeks for the alterations and additions to the motel only and does not seek to provide a noisy, late night establishment.

Council considers that the design and appearance of the proposed modifications are in keeping with the character of the locality. To ensure that the residential amenity of surrounding residents is preserved, suitable conditions will be applied to any development consent to ensure (in relation to hours of operation and the like).

(e) Public interest

The application proposes minor alterations and additions to an existing and well established motel. It is considered that the proposed additions and alterations would improve the visual appearance of the existing motel and improve the facilities for motel guests. It is acknowledged that the proposed development, if approved, would have the capacity to impact on the residential amenity of surrounding properties however, provided the motel is operated in accordance with the submitted Noise Impact Assessment report and is used by guests of the motel only, that refusal of the application on this basis would be unreasonable.

Further, the application proposes a level of overshadowing of the coastal foreshore however, for reasons outlined within this report, it is considered that the level of overshadowing is not so great as to set a harmful precedent for similar development or warrant refusal of the proposal.

It is considered that the proposal is generally in accordance with matters relating to the public interest.

OPTIONS:

1. Approve the development application in accordance with the recommendations within this report; or
2. Refuse the development application.

The Officers recommend Option 1.

CONCLUSION:

The application proposes alterations and additions to an existing motel that, whilst prohibited in the 2(a) Low Density Zone, has established existing use rights. Whilst concerns relating to the use of the motel as a lively bar/entertainment facility are acknowledged, such facilities are intended to be ancillary to the use of the building as a motel.

It is considered that the proposed development is acceptable, providing that the restaurant and outdoor beverage and eating area is to be utilised by guests of the motel only as Council officers do not consider that the subject motel has established existing use rights for the serving of food or beverages to the general public; a condition will be applied to any consent with this regard. Should the applicants wish to expand the use of the motel to accommodate use by the general public, a future development application (including updated Noise and Impact Assessment) is to be submitted to Council for further consideration. Further, conditions shall be applied to any consent to ensure adequate hours of operation, in line with Council's Environmental Health recommendations.

Following an assessment of the submitted information and the response to Council's request for further information against the relevant heads of consideration, and provided a number of conditions are applied to any development consent, the application is recommended for approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

11 [PR-CM] Development Application DA12/0320 for a Two Lot into Six Lot Subdivision at Lot 12 DP 825726 No. 26 Waterlily Close; Lot 25 DP 870463 No. 37 Hindmarsh Road, Nunderi

SUBMITTED BY: Development Assessment Unit

FILE NUMBER: DA12/0320 Pt2



Civic Leadership

SUMMARY OF REPORT:

Council has received a development application for a rural residential subdivision comprising six lots at Waterlily Close, Gum Tree Court and Hindmarsh Road, Nunderi. The site has a total area of approximately 6.157 hectares and currently comprises two dwelling houses located on Lot 12 DP 825726 and Lot 25 DP 870463.

The subject application proposes a subdivision comprising six lots. Proposed Lots 1 and 2 will have frontage to and access from Hindmarsh Road. Lots 4, 5 and 6 will have vehicular access direct to Waterlily Close. Lot 3 will have access to Gum Tree Court. All lots would comprise approximately 1 hectare.

The applicant has provided a conceptual layout of proposed house pads, access arrangements, servicing and effluent disposal.

On 22 October 2009 a development application for a six lot subdivision (DA08/0293) was refused by Council for the following reasons:

1. The proposal does not comply with Clause 15 of the Tweed Local Environmental Plan as satisfactory arrangements have not been made for the removal of disposal of sewerage.
2. The proposal does not comply with clause 21 of the Tweed Local Environmental Plan as each proposed allotment is not capable of accommodating adequate facilities for treatment and disposal of sewerage.
3. The information provided with the application is insufficient and the proposal may result in impacts on the amenity of the area and quality of the environment, including aquatic habitats.
4. The proposal does not comply with Council's Development Control Plan Section A5 – Subdivision Manual, particularly in relation to landforming.
5. The proposal does not adequately address issues raised by public submissions and is not in the public interest.

Please note that the Development Application currently before Council is substantially the same development as that previously refused, however additional supporting material has now been provided.

The revised details include: an On Site Sewerage Management Design Report (for sewerage treatment and disposal, particularly in relation to the disposal of sewage above

the flood level); a revised Ecological Assessment (that provides details in relation to the impact to aquatic vegetation and potential impacts to the dam and drainage channels); and a Civil Engineering Report (detailing the level of proposed fill).

Further, the applicant advises that the issues raised in the public submissions received in respect of DA08/0293 (such as insufficient information in relation to landfilling and effluent treatment and level of proposed fill) have now been adequately addressed.

The current Development Application is Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act (EPA Act) 1979' and has been referred to the NSW Rural Fire Service (RFS) who provided a bush fire safety authority for the proposed subdivision. Should the application be approved, conditions would be applied to the consent in relation to the provision of asset protection zones (APZ) and water and electricity supply in accordance with the provisions of 'Planning for Bush Fire Protection 2006'; and the provision of adequate water supply for each dwelling.

The Development Application is also Integrated Development in regard to works requiring a Controlled Activity Approval under the Water Management Act 2000. The application has been referred to the NSW Department of Primary Industries Office of Water, who have provided General Terms of Approval. Should the application be approved, conditions would be applied to the consent in relation to the submission of suitable Sediment and Erosion Plans, rehabilitation and maintenance plans, and the submission of a Vegetation Management Plan.

Six submissions have been received which have raised concerns in relation to: potential flood impacts on adjacent residential properties (as a result of proposed fill); impacts of flooding on proposed sewage treatment devices; development impacts on flora and fauna and the general site suitability for the proposed subdivision. The issues raised in these submissions have been considered further within this report. The applicant has also provided a response to the issues raised in the submissions; this response is summarised at the end of this report.

The current application before Council has been referred to the relevant Council officers for their consideration. In relation to flooding, Council officers consider that the applicant has addressed local catchment flooding and that the proposal would be unlikely to significantly impact surrounding properties in relation to the dispersal of flood waters. Council officers consider that the proposal is now satisfactory in relation to sewerage management as the applicant has proposed improved treatment, coupled with subsurface drip irrigation that now provides a solution to the many site constraints. In relation to ecological matters, Council officers are of the opinion that the proposal would not result in such a significant impact to the environment so as to warrant refusal of the proposal.

It is considered that the applicant has adequately addressed all of the previous reasons for refusal and concerns raised within the submissions and following an assessment of the additional information against the relevant heads of consideration, and provided conditions are applied to any consent, the application is recommended for approval.

RECOMMENDATION:

That Development Application DA12/0320 for a two lot into six lot subdivision at Lot 12 DP 825726; No. 26 Waterlily Close; Lot 25 DP 870463; No. 37 Hindmarsh Road Nunderi be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos BH110134-DA1A Issue A (Proposed Layout Plan) dated 11 June 2012, BH110134-CV14 Issue C (Concept Layout Plan) dated 26 June 2012, BH110134-CV15 Issue B (Sediment and Erosion Control Plan) dated 19 June 2012, BH110134-CV-16 Issue A (Stormwater Catchment Plan) dated 01 February 2012, BH110134-CV17 Issue B dated 19 June 2012 prepared by Hammond & Associates, 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. The approved subdivision/development shall not result in any clearing of native vegetation without prior approval from the relevant authority.

[GEN0290]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision/Occupation Certificate is issued.

[PCC0275]

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

[PCC0285]

8. 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]

9. 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]

10. 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.

[PCC0485]

11. 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]

12. 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 filing on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.

[PCC0675]

13. Design detail shall be provided with the Construction Certificate to address the flood compatibility of the proposed structures including the following specific matters:

- (a) Design flood level of RL4.2m AHD.
- (b) Provision of a high level evacuation route, as defined by DCP-A3, to all dwelling sites, considering both regional and local catchment flood events.

[PCC0705]

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 filled building pads, access driveway construction and/or modifications for all Lots, and various stormwater drainage works including dam spillway modification, re-routing a drain through Lot 1, and several driveway culverts and swale drains, as nominated in various reports in the Statement of Environmental Effects.
 - (b) The access driveway for Lot 5 shall be provided with a gravelled surface and not a grassed surface as depicted on Hammond & Associates plan BH110134-CV14.
 - (c) The existing water supply pipe from Gumtree Court that services the existing dwelling on Lot 25 (No. 37 Hindmarsh Road) is to be disconnected and fully removed (at least) wherever it crosses internal lot boundaries.
 - (d) The construction of vehicular footpath crossings for Lots 1, 2 and 4 can be included in the construction certificate application - or alternatively the applicant may submit separate applications pursuant to Section 138 of the Roads Act for these works.

[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
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, 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 Habitat Restoration Plan in accordance with Council's draft guidelines as attached and the Terms of Approval from the Office of Water and dated 12 November 2012 detailing:

- (a) The establishment and maintenance of the rehabilitated riparian corridor in accordance with the Office of Water guidelines and to the satisfaction of Council's Director of Planning and Regulation or delegate.
- (b) The retention of all preferred Koala feed trees (*Eucalyptus robusta*, *Eucalyptus tereticornis*, *Eucalyptus microcorys*, and *Eucalyptus propinqua*)
- (c) Identification of the location and demonstration of the retention of the individual *Rhodamnia maideniana*.

The Habitat Restoration Plan must be approved to the satisfaction of Council's Director of Planning and Regulation or delegate prior to commencement of works.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

21. 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]

22. 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]

23. 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]

24. 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 complianceThe 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]

25. 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]

26. 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 any 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

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

[DUR0005]

28. 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]

29. 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]

30. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

31. During filling operations:

- **No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**
- **All fill and cut batters shall be contained wholly within the subject land.**
- **All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.**

and upon completion,

- **all topsoil to be respread and the site to be grassed and landscaped including battered areas.**

[DUR0755]

32. No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.

No filling of any description is to be deposited, or remain deposited, within adjacent properties.

[DUR0765]

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. 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]
38. 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]
39. 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]
40. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.
- [DUR1075]
41. 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]
42. 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]
43. 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]

44. 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]

45. If Tweed Shire Council issues the Construction Certificate, 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/Driveway Works

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre seal
- (f) Final inspections - on maintenance
- (g) Off Maintenance inspection

Water 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 inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all civil works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

46. 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]

47. 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]

48. 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]

49. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

50. All operations must comply with the fauna and flora amelioration measures as outlined in the Ecological Assessment prepared by James Warren & Associates and dated July 2012. 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.

51. No preferred Koala feed trees (*Eucalyptus robusta*, *Eucalyptus tereticornis*, *Eucalyptus microcorys*, and *Eucalyptus propinqua*), Pink Bloodwood (*Corymbia intermedia*) within proposed Lot 6, Blackbutt (*Eucalyptus pilularis*) within proposed Lot 5 and large Fig (*Ficus* sp.) in proposed Lot 3 may be cleared without specific approval of the General Manager or delegate. Should any of these trees require removal or become damaged or die during subdivision works, a suitable replacement tree will be planted on the site to the satisfaction of the General Manager or delegate.

52. The only drainage lines approved for filling are those specified on the Conceptual Layout Plan (Drawing number: BH110134-CV14) as designed by Hammond & Associates and dated May 2012.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

53. 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]

54. 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 DSP6: 2.4 ET @ \$12150 per ET \$29,160

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.

[PCC0265/PSC0165]

55. 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.

- (a) **Tweed Road Contribution Plan:**
26 Trips @ \$1822 per Trips \$46,908*
(\$1807 base rate + \$15 indexation)
S94 Plan No. 4
Sector10_4
- (b) **Open Space (Casual):**
4 ET @ \$526 per ET \$2,104
(\$502 base rate + \$24 indexation)
S94 Plan No. 5
- (c) **Open Space (Structured):**
4 ET @ \$602 per ET \$2,408
(\$575 base rate + \$27 indexation)
S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
4 ET @ \$816 per ET \$3,264
(\$792 base rate + \$24 indexation)
S94 Plan No. 11
- (e) **Bus Shelters:**
4 ET @ \$62 per ET \$248
(\$60 base rate + \$2 indexation)
S94 Plan No. 12
- (f) **Eviron Cemetery:**
4 ET @ \$121 per ET \$484
(\$101 base rate + \$20 indexation)
S94 Plan No. 13
- (g) **Community Facilities (Tweed Coast - North)**
4 ET @ \$1352 per ET \$5,408
(\$1305.6 base rate + \$46.4 indexation)
S94 Plan No. 15
- (h) **Regional Open Space (Casual)**
4 ET @ \$1064 per ET \$4,256
(\$1031 base rate + \$33 indexation)
S94 Plan No. 26

(i) **Regional Open Space (Structured):**

4 ET @ \$3730 per ET \$14,920

(\$3619 base rate + \$111 indexation)

S94 Plan No. 26

- * Includes adjustments which effect compliance with the Directions from the Minister for Planning in relation to the maximum contribution payable per dwelling dated 13 January 2009 and 19 July 2009.

[PCC0215/PSC0175]

56. 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:

$\text{\$Con}_{\text{TRCP - Heavy}}$ 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

[PSC0185]

57. Prior to the issue of an Occupation 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 approved under Section 138 of the Roads Act and Section 68 of the Local Government Act (as set out in Councils 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 Occupation Certificate 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]

58. 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 6 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 6 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]

59. Prior to the issue of a subdivision certificate, a certificate of compliance shall be submitted to Council by the Developers Subdivision Works Accredited Certifier (SWAC) or equivalent, verifying that the placed fill has been compacted in accordance with the requirements of AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments" and is suitable for residential purposes.

The submission shall include copies of all undertaken test results.

[PSC0395]

60. All approved landscaping requirements must be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate.

[PSC0485]

61. 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]

62. 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]

63. 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]

64. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.

[PSC0830]

65. 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) Easements for batters and support for any earthworks batters that cross newly created property boundaries.
- (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.

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]

66. **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. Furthermore, prior to the issue of a Subdivision Certificate, each lot shall have its' address number displayed in accordance with Council's procedure on street numbering.**

[PSC0845]

67. **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]

68. **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]

69. **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/Driveways**
- (b) **Compliance Certificate - Water Reticulation**
- (c) **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]

70. **The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.**

[PSC0925]

71. 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 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]

72. 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 sewerage system 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]

73. Prior to issuing a Subdivision Certificate, reticulated water supply (or acceptable alternative) 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]

74. 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]

75. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead or underground electricity and energising has been provided to each allotment.

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.

[PSC1175]

76. 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.

77. Proposed onsite sewage management facilities are to be installed in accordance with the HMC report (ref: HMC Pty Ltd 2010.075 dated August 2010) except where modified by this approval.
78. Land application areas, for treated wastewater disposal, are to be located at least 20m from the central drainage channel, which runs from the dam in the east, to the western side of the property.
79. Adequate provision to be made, within filled areas, so that wastewater treatment devices and wastewater Land Application Areas (LAA) can be installed above the following flood levels i.e. Treatment devices (vents and electrical control units) will only be approved for installation above the 100 year ARI flood height, and LAA's will only be approved on the batter slopes of house pads or other areas where the installation height is above the Q20 flood level.
80. Prior to the issue of a subdivision certificate approval to operate the existing on-site sewage management facilities, under Section 68 of the Local Government Act 1993, shall be obtained from Council.
81. Environmental restoration works shall be completed to a level specified in the approved Habitat Restoration Plan and the guidelines as established by the Office of Water prior to the release of the subdivision certificate and shall be maintained in accordance with the approved Plan.
82. The planted area and/or regenerated area shall be fenced to prevent stock access.
83. Fencing shall not restrict the free movement of koalas that may traverse the site from time to time and shall allow a clearance of at least 40cm at the bottom to enable koalas to move under it. If post and wire fencing is used, the bottom strand must not be barbed. Subdivision boundary fences to be erected on the property, shall comply with the following conditions:
 - (a) Fences shall be constructed of wire, with the top wire and the bottom two wires consisting of non-electrified plain wire.
 - (b) The bottom fence wire shall be no closer than 40 cm to the ground at any point.
 - (c) The removal of vegetation for fence construction shall be undertaken with hand tools only (e.g. brush cutters, lawn mowers), and shall be limited to a maximum width of 1m.
84. As a minimum the following restrictions as to user under Section 88B of the Conveyancing Act are to be created to Council's satisfaction:
 - (a) Restriction as to user regarding the environmental covenant area to be described within the approved Habitat Restoration Plan and the Office of Waters guidelines for the site - this area must be subject to an ecological restoration program where native vegetation is protected. Burden: Each lot. Benefit: Tweed Shire Council.
 - (b) Restriction as to user regarding protection of all Koala feed tree species on the site of 3m or greater in height. Burden: Each lot. Benefit: Tweed Shire Council.

GENERAL TERMS OF APPROVAL UNDER SECTION 91 OF THE WATER MANAGEMENT ACT 2000 (Work requiring a controlled activity approval)

Plans, standards and guidelines	
1	These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA12/0320 and provided by Council. Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Officer of Water must be notified to determine if any variations to these GTA will be required.
2	Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront and for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.
3	The consent holder must prepare or commission the preparation of: (i) Vegetation Management Plan (ii) Erosion and Sediment Control Plan
4	All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The plans must be prepared in accordance with the NSW Office of Water's guidelines located at www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx < http://www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx > (i) Vegetation Management Plans (ii) Riparian Corridors (iii) In-stream works
5	The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.
Rehabilitation and maintenance	
6	The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.
7	The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.
Reporting requirements	
8	The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.

Security deposits	
9	N/A
Access-ways	
10	N/A
11	N/A
Bridge, causeway, culverts and crossing	
12	N/A
13	N/A
Disposal	
14	The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
Drainage and Stormwater	
15	The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.
16	The consent holder must stabilise drainage discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.
Erosion control	
17	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.
Excavation	
18	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
19	N/A
Maintaining river	
20	The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any controlled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the NSW Office of Water.

21	The consent holder must ensure that the surfaces of river banks are graded to enable the unobstructed flow of water and bank retaining structures result in a stable river bank in accordance with a plan approved by the NSW Office of Water.
River bed and bank protection	
22	N/A
23	The consent holder must establish riparian corridors along the unnamed watercourse in accordance with a plan approved by the NSW Office of Water.
Plans, standards and guidelines	
24	N/A
25	N/A
26	N/A
27	N/A
END OF CONDITIONS	

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. The development proposal is to comply with the subdivision layout identified on the drawing prepared by Hammond and Associates numbered BH110134-DA1A Sheet 1 of 1, Issue A, dated 11 June 2012.
2. At the issue of subdivision certificate and in perpetuity the land surrounding each of the existing dwellings, on proposed Lots 1 and 6 to a distance of 20m or to the boundary (whichever is the least), shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
3. Water and electricity are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
4. A 10,000l fire fighting water supply must be available for each dwelling where the reticulated supply is not adequate/available or greater than 70m from the most external part of the dwelling. This includes the existing dwelling on proposed Lot 6. Existing tank(s) may be able to be used for this purpose. The fire fighting water supply shall meet the following requirements:
 - (a) A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply.
 - (b) A 65mm metal Storz outlet with a gate or ball valve, shall be fitted to any fire fighting water supply tank(s) and be accessible for a fire fighting truck. The Storz outlet fitting shall not be located facing the hazard or the approved structure.
 - (c) The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.

- (d) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.
- (e) All water supplies for fire fighting purposes shall be clearly signposted as a fire fighting water supply.
- (f) Fire fighting water supply tank(s) and associated fittings, located within 60 metres of a bushfire hazard and on the hazard side of an approved building, shall be provided with radiant heat shielding to protect the tank from bush fire impacts and maintain safe access to the water supply for fire fighters.

Should new tank(s) be installed for to provide an adequate fire fighting water supply, they shall meet the following additional requirements:

- (a) Any fire fighting water supply tank(s) located below ground shall be clearly delineated to prevent vehicles being driven over the tank.
- (b) Below ground fire fighting water supply tank(s) shall have an access hole measuring a minimum 200mm x 200mm to allow fire fighting trucks to access water direct from the tank.
- (c) Fire fighting water supply tank(s) shall be located not less than 5 metres and not more than 20 metres from the approved structure.
- (d) Above ground fire fighting water supply tank(s) are to be manufactured using non combustible material (concrete, metal, etc).
- (e) Non combustible materials (concrete, metal, etc) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.
- (f) Any below ground fire fighting water supply tank(s) constructed of combustible polycarbonate, plastic, fiberglass, etc) materials shall be shielded from the impact of radiant heat and direct flame contact.

Note: Below ground dedicated fire fighting water supply tank(s) is defined as: that no part of the tank(s) is to be located above natural ground level.

A Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:

- i) Markers must be fixed in a suitable location so as to be highly visible; and
- ii) Markers should be positioned adjacent to the most appropriate access for the water supply.

5. In recognition that the existing dwellings may be connected to a gas supply, the following requirements are to be complied with:

- (a) Reticulated or bottled gas is to be installed and maintained in accordance with Australian Standard AS/NZ 1596:2008: 'The storage and handling of LP gas' and the requirements of relevant authorities. Metal piping is to be used.
- (b) All fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and be shielded on the hazard side of the installation.
- (c) Gas cylinders kept close to the building shall have release valves directed away from the building. Connections to and from gas cylinders are to be metal.

- (d) Polymer sheathed flexible gas supply lines to gas meters adjacent to building are not to be used.
- 6. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.
- 7. The existing dwellings, located on proposed Lots 1 and 6, are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

REPORT:

Applicant: Mr CE Reeve and Mrs PM Reeve

Owner: Mr Colin E Reeve & Mrs Patricia M Reeve

Location: Lot 12 DP 825726; No. 26 Waterlily Close; Lot 25 DP 870463; No. 37 Hindmarsh Road, Nunderi

Zoning: 1(c) Rural Living

Cost: Not Applicable

Background:

Council has received a development application for a rural residential subdivision comprising six lots at Waterlily Close, Gum Tree Court and Hindmarsh Road, Nunderi. The site has a total area of approximately 6.157 hectares and currently comprises two dwelling houses located on Lot 12 DP 825726 and Lot 25 DP 870463.

The subject site is generally cleared of vegetation and predominantly consists of grass land. The land has frontage to Hindmarsh Road, Gum Tree Court and Waterlily Close and also comprises an existing farm dam and agricultural components, as shown in the following figure:



Figure 1 – Aerial photograph of subject site

The subject application proposes a subdivision comprising six lots as detailed in Table 1 below. Proposed Lots 1 and 2 will have frontage to and access from Hindmarsh Road. Lots 4, 5 and 6 will have vehicular access direct to Waterlily Close. Lot 3 will have access to Gum Tree Court.

Lot Number	Area (ha)	Access Arrangements
Lot 1 – contains an existing dwelling house	1.006	23m frontage to Hindmarsh Road and access driveway proposed to that road
Lot 2 - Vacant	1.005	15m frontage to Hindmarsh Rd and access driveway proposed to that road
Lot 3 - Vacant	1.01	3.685m battleaxe frontage to Gum Tree Court and proposed access driveway
Lot 4 - Vacant	1.012	12.2m frontage to Waterlily Close and proposed driveway
Lot 5 - Vacant	1.169	6.23m battleaxe frontage and access driveway to Waterlily Close
Lot 6 – Contains an existing dwelling house	1.006	4.564m battleaxe frontage and access driveway to Waterlily Close

The applicant has provided a conceptual layout of proposed house pads, access arrangements, servicing and effluent disposal.

On 22 October 2009 a development application for a six lot subdivision (DA08/0293) was refused by Council for the following reasons:

1. The proposal does not comply with Clause 15 of the Tweed Local Environmental Plan as satisfactory arrangements have not been made for the removal of disposal of sewerage.
2. The proposal does not comply with clause 21 of the Tweed Local Environmental Plan as each proposed allotment is not capable of accommodating adequate facilities for treatment and disposal of sewerage.
3. The information provided with the application is insufficient and the proposal may result in impacts on the amenity of the area and quality of the environment, including aquatic habitats.
4. The proposal does not comply with Council's Development Control Plan Section A5 – Subdivision Manual, particularly in relation to landforming.
5. The proposal does not adequately address issues raised by public submissions and is not in the public interest.

In response to the reasons for refusal, the applicant has submitted a revised On Site Sewerage Management Design Report (prepared by HMC Pty Ltd and dated 3 July 2012 indicating land application areas (for sewerage treatment and disposal) located above the Q20 flood level and demonstrating that all proposed dwelling disposal areas are suitable and adequate. The applicant also advises that the On Site Sewerage Management Report demonstrates that proposed land application areas are suitably located in relation to adjoining properties such that potential amenity impacts are mitigated.

The applicant has submitted a revised Ecological Assessment that concludes that the aquatic habitat on the subject site is not an endangered ecological community but a constructed waterbody. The Assessment states that:

"There will be no loss to aquatic vegetation on the site. There are potential indirect impacts to the dam and drainage channels on the site such as: increased sedimentation/nutrient load and weed invasions. However, with the amelioration measures outlined in this report and best practice strategies adopted in the Stormwater, and Erosions and Sediment Control Management Plans, the probability of these negative impacts will be greatly reduced."

Council assessment of the application generally concurs with this finding subject to the project complying with the recommended conditions of consent.

In relation to Council's Subdivision Manual, a Civil Engineering Report has been submitted that advises no retaining walls are proposed and the development proposal now complies with the requirements of Council's Design Specification D6, as detailed further within this report.

Further, the applicant advises that the issues raised in the public submissions (such as insufficient information in relation to landfilling and effluent treatment and level of proposed fill) in relation to the previous Development Application (DA08/0293) have now been adequately addressed.

The Development Application is Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act (EPA Act) 1979' and has been referred to the NSW Rural Fire Service (RFS) who provided a bush fire safety authority for the proposed subdivision. Should the application be approved, conditions would be applied to the consent in relation to the provision of asset protection zones (APZ) and water and electricity supply in accordance with the provisions of 'Planning for Bush Fire Protection 2006'; and the provision of adequate water supply for each dwelling.

The Development Application is also Integrated Development in regard to works requiring a Controlled Activity Approval under the Water Management Act 2000. The application has been referred to the NSW Department of Primary Industries Office of Water, who have provided General Terms of Approval. Should the application be approved, conditions would be applied to the consent in relation to the submission of suitable Sediment and Erosion Plans, rehabilitation and maintenance plans, and the submission of a Vegetation Management Plan.

Six submissions have been received which have raised concerns in relation to: potential flood impacts on adjacent residential properties (as a result of proposed fill); impacts of flooding on proposed sewage treatment devices; development impacts on flora and fauna and the sites general suitability for the project. The issues raised in these submissions have been considered further within this report.

The current application before Council has been referred to the relevant Council officers for their consideration.

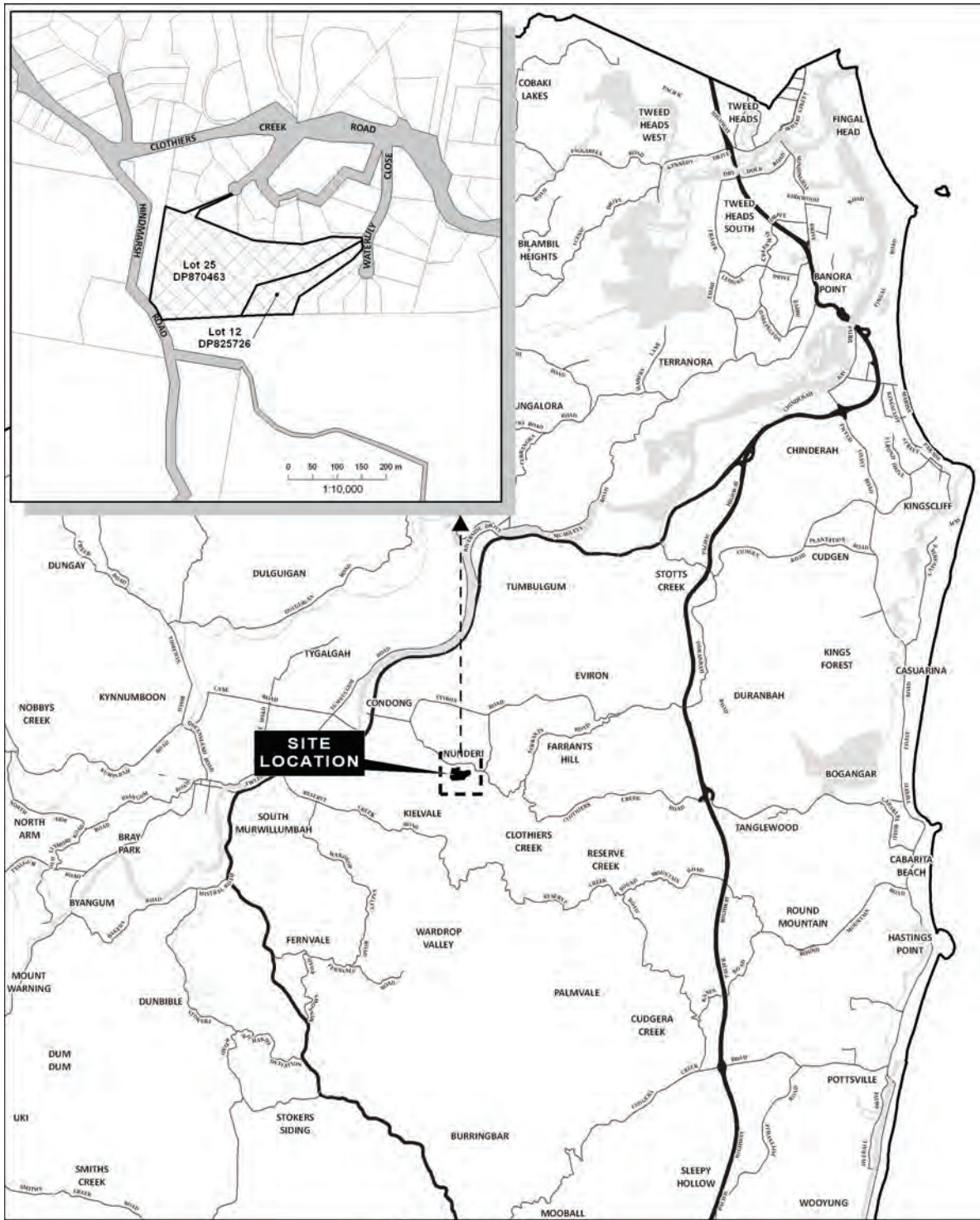
Council's Environmental Health Unit (EHU) has advised that the amended details in relation to amenity; land-use conflict (new rural residences with surrounding agricultural and horticultural land uses); fill; sewage treatment systems and water supply are considered adequate. Any outstanding information may be dealt with via appropriate conditions of consent.

Council's Development Engineering Unit and Planning and Infrastructure Engineer have advised that issues relating to flooding, landforming, infrastructure provision, stormwater drainage and roads are satisfactory.

Council's Natural Resource Management (NRM) Unit has advised that whilst the proposed subdivision will ultimately impact on the matters relating to ecology on the site (potential hydrological changes, increased sediment, and loss of habitat), it is evident that the proposed subdivision requires very little tree removal. Further, the NRM Unit have advised that the site is unlikely to contain any endangered or threatened species due to the highly modified state of the site. The NRM Unit consider that it is highly likely that Koalas traverse the subject site from time to time and it is noted that there are Koala feed trees on the subject site. The NRM Unit have recommended a number of conditions be applied to any development consent in relation to the submission of a Habitat Restoration Plan and for environmental restoration to be completed to a level as specified in that Plan; the retention of Koala feed trees on site as well as the provision of adequate Koala fencing.

It is considered that the applicant has adequately addressed all of the previous reasons for refusal 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 approval.

SITE DIAGRAM:



Locality Plan

Lot 12 DP 825726; No. 26 Waterlily Close;
 Lot 25 DP 870463; No. 37 Hindmarsh Road, Nunderi

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Cadastral: 02 January 2013
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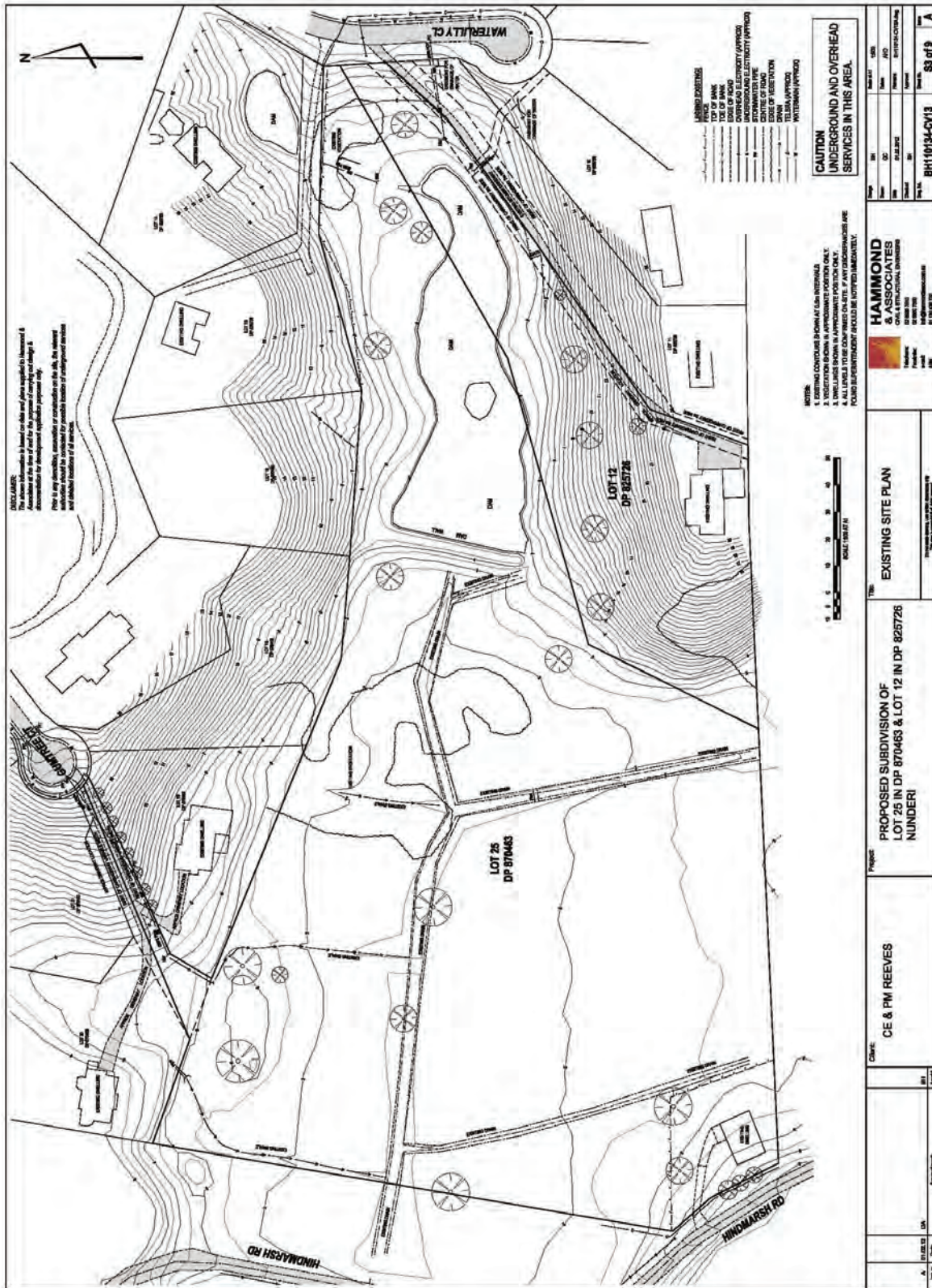
0 1 2 3 Km
 1:120,000 @ A4 Portrait
 DO NOT SCALE
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Map Projections: Universal Transverse Mercator
 Horizontal datum: GDA94
 Vertical datum: Australian Height Datum 1984
 Leaf: Main sheet of cadastral zone 56

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TWEED
 SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced [and] to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

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 and 11 - Consent Considerations and Zone Objectives

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

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

The subject site is located in the 1(c) Rural Living zone. The objectives of the zone are as follows:

Primary Objectives:

- *To enable rural residential development in selected areas possessing particular environmental and servicing attributes which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment and do not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.*
- *To provide rural residential development of a design integration, quality and scale compatible with, and making a positive contribution to, the character of the rural area in the vicinity.*

Secondary objective

- *To enable other development that is compatible with rural residential development.*

Further, as detailed further within this report, the clause requires a minimum allotment size of one hectare (not connected to reticulated sewer) in the 1(c) Rural Living zone. It is considered that the proposal would be consistent with the objectives of the zone in the facilitation of a rural residential subdivision.

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 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 subject site is not connected to Council's reticulated sewer. However some water services are available. The application has been referred to the relevant officers for comment with this regard.

As detailed previously, the previous development application (DA08/0293) was refused on the basis of inadequate provision for onsite sewage management.

Water

The application has been referred to Council's Strategic Assets Engineer who has advised that of the six proposed lots, four would be provided for connection to the existing water supply (proposed Lots 3-6). The remaining two lots (proposed Lots 1 and 2) would provide 20,000 litre water tanks as the sites are not suitable for water connection under the new lot configuration.

Council has advised that 100mm diameter water mains in both Waterlily Close and Gumtree Court which are part of the water supply zone based on the Duranbah Reservoirs, with a top water level of approximately 83m AHD. This should ensure adequate pressure for supply to rural residential properties.

Council's Strategic Asset Engineer has advised that the dwelling on existing Lot 25 (37 Hindmarsh Road) is currently connected to the water supply at Gumnut Court. The submitted Engineers Plans indicate that this is to be disconnected and will become part of the two properties to rely on potable water tank supply. On this basis it is important that the disconnection of this property is appropriately conditioned. Such a condition should also ensure that the existing internal supply pipe is removed where it crosses the proposed new property boundary between Lots 2 and 3, to ensure that Lots 1 and 2 are not set up as a 'party line' supply from Lot 3.

Council's Strategic Asset Engineer has advised that it is acknowledged that sewerage is not available to Nunderi and that on-site sewerage management is required. Further, it is advised that the development will generate the requirement for additional Section 64 developer contributions for Water Supply, based on the Residential Lot >2000m² rate for four lots, with a credit of two lots for the existing connections.

Sewer

During the assessment of the previous development application (DA08/0293), further information was requested from the applicant in relation to the proposed on-site sewer management and flooding. The design of proposed Lot 4 particularly was not supported due to flooding issues. Two options for sewer treatment were put forward: the first being the installation of a 3000L septic tank with the effluent passing through a secondary treatment (reed bed); option two being an ablution treatment in a composting toilet and greywater treatment in a reed bed into a pump-well.

Option one was considered to be unsuitable due to:

- Poor drainage and low permeability of soils, waterlogged ground surface, dampness and surface ponding for the proposed reed beds;
- Low specific absorption rates for soil materials and southerly aspect of disposal area;
- Proximity to standing water (dam), drainage channel and ephemeral water way;
- High watertable;
- Presence of groundwater springs and surface seepage of groundwater known to occur on similar sites throughout the Nunderi area; and
- Historic and regular occurrence of failed effluent disposal areas and poorly performed on-site sewage management systems located on similar sites in the Nunderi area.

Option two was considered to be unsuitable for the following reasons:

- The exact location of the effluent land application areas (LAAs) and reserve area in relation to ancillary infrastructure (driveways and stormwater drains) and other site specific factors such as proximity and distance to property boundaries, drainage lines, ephemeral waterways and permanent water bodies could not be identified on a scaled plan;
- Limited information was provided in relation to the future expansion of the LAA if required (as identified in the disclaimer within the submitted on-site sewage treatment and disposal report);
- The location of soil sample bore hole horizons was not identified and the soil analysis was poorly documented;
- The site evaluation appeared to be conflicting with and contradictory to the soil assessment (indicated good drainage with no limitations and 1.5m to the water table, when a site inspection by Council officers showed water ponding on the ground surface and waterlogged areas);
- Lack of adequate detail with relation to the hydraulic design loading rates; and
- Proposed method of effluent treatment and disposal did not demonstrate adequacy with site limitations when assessed in accordance with the *Environment & Health Protection Guidelines – onsite sewage management for single households 1998*, *Australian Standard AS1547/2000* and *Soil Landscapes of the Murwillumbah – Tweed Heads* (D.T. Morland, 1996).

These two options were considered to be inconsistent with clause 15 of the TLEP 2000 and refusal of the application was recommended on this basis.

In relation to the current development application before Council, the applicants have submitted a revised On Site Sewage Management (OSSM) Report. Of the proposed six allotments, two already have dwellings and onsite sewage management systems. The remaining four (proposed) allotments (proposed Lots 2 to 5) will require onsite sewage management systems. The property is not connected to reticulated sewer and Council's Environmental Health Unit has advised that there is no opportunity for the proposed Lots to connect in the future.

Council's Environmental Health Unit acknowledges that the site is not well suited to onsite sewage management, and that poor aspect (Lot 4), poor soil and part shading by mature trees are issues that, along with potential for flooding, will be required to be addressed prior to issuing approval for onsite sewage management at the site. Further, Council's Environmental Health Unit has advised that the site is flood prone; has poor soil (clay), proposed Lots are in close proximity to drainage lines; generally has poor drainage; and the 100m buffers between land application areas (LAAs) and permanent water or 40m buffers to other waters cannot be achieved by all proposed Lots.

In response to this, the revised OSSM Report considers that improved treatment, coupled with sub-surface drip irrigation, is able to provide an adequate solution to the many site constraints. The OSSM Report proposes secondary treatment, nutrient removal, disinfection (of treated effluent) and disposal by sub-surface low pressure drip irrigation to LAAs. The proposed LAAs are to be constructed of raised beds of amended soil (sandy loam) to a finished level that will be above the Q20 (one in 20 year flood level) level of RL 2.95m AHD.

Council's Environmental Health Unit has advised that the OSSM Report site assessment and design proposal has been carried out generally in accordance with *Environment & Health Protection Guidelines – onsite sewage management for single households* 1998 and *Australian Standard (AS) 1547 Onsite domestic wastewater management*.

Council's Environmental Health Unit has advised that, in consideration of the site restraints and the proposed secondary treatment methods, a conditional approval may be supported for the proposed development.

Conditions shall be applied to any development approval to ensure that future OSSM installations are in accordance with the OSSM Report and adequate provision is made, in filled areas, for wastewater treatment devices and wastewater LAAs to be installed above flood levels, such as: treatment devices (vents and electrical control Services) will only be approved for installation above the 100 year ARI flood height and; LAAs will only be approved on the batter slopes of house pads or other areas where the installation height is above the Q20 flood level (in accordance with *Environment & Health Protection Guidelines – onsite sewage management for single households* 1998). Please note that LAAs will not to be approved on the batter slopes of house pads or other areas where the installation height is below the Q20 flood level.

Further, the OSSM Report advises that minor improvements are recommended (installation of outlet filters) for the existing wastewater treatment and disposal devices. Council's Environmental Health Unit has recommended that suitable conditions with this regard are applied to any development consent (for proposed lot 1 and 6).

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 (minimum of one hectare allotment size).

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 21 – Subdivision in Zone 1(c)

The objective of the clause is:

- (1) *To ensure that the semi-rural character and environmental values of the locality are protected.*
- (2) *Consent may be granted to the subdivision of land in Zone 1(c) for residential purposes only if:*

- a. *Each allotment will be connected to a reticulated water supply system, or a tank water supply will be provided to the satisfaction of the consent authority, and*
- b. *The consent authority is satisfied that each allotment created is capable of accommodating adequate facilities for the treatment and disposal of sewage or will be connected to the Council's reticulated sewerage system, and*
- c. *In the case of land to be connected to the Council's reticulated sewerage system – the area of each lot created is not less than 0.4 hectare, and*
- d. *In the case of land not to be connected to the Council's reticulated sewerage system – the area of each is created is not less than 1 hectare.*

In summary, this clause requires that consent must not be granted to the subdivision of land for residential purposes, unless each allotment will be connected to a reticulated water supply system or a tank water supply, and in the case of land not to be connected to Council's reticulated sewer system, the area of each lot is not less than one hectare.

Within the assessment of the previous development application it was considered that the provision of an adequate water supply could be dealt with via appropriate conditions. However, one of the reasons for refusal for the previous development application (DA08/0293) related to inadequate facilities for the treatment and disposal of sewage and therefore, being contrary to the provisions of clause 21(2b).

In relation to the current development application before Council and as detailed above, all lots comply with the one hectare minimum allotment size. In relation to water provision, Lots 3, 4, 5 and 6 will be provided with a reticulated water supply. Lots 1 and 2 are not in close proximity to the existing mains and therefore will be provided with a tank water supply. All proposed lots will have an onsite effluent disposal system.

On this basis it is considered that the proposed subdivision would be consistent with the semi-rural character of the surrounding area and that, in general, environmental characteristics will be protected. It is considered that the proposal would be consistent with the clause.

Clause 31 - Development adjoining waterbodies

Clause 31 applies to development adjoining waterbodies. In summary, the objectives of the clause are: to protect and enhance scenic and water quality, aquatic ecosystems, bio-diversity and wildlife habitat corridors; to provide adequate public access to waterways and to minimise the impact of development from known biting midge and mosquito breeding areas.

The site comprises a farm dam and several drainage lines located toward the central/eastern portion of the site, as shown in the following aerial imagery of the site.



One of the reasons for refusal for the previous development application (DA08/0293) related to the insufficient information provided by the applicant in relation to the impacts on the amenity of the area and quality of the environment, including aquatic habitats.

The applicants have submitted a revised Ecological Assessment that advises that no vegetation in or around the dam is proposed for removal, however two small drainage lines will be affected by the proposal; one is to be filled and realigned, the other to be filled. The Ecological Assessment suggests that these drainage lines are generally of a degraded state.

The application has been referred to the NSW Office of Water who have provided General Terms of Approval (GTAs) for works requiring a controlled activity approval. The Office of Water have advised that there are no particular concerns in relation to the redirection of the drainage channel, given it is already in a highly modified state. However, they have advised that any redirected channel must be suitably constructed to reduce the risk of erosion.

The Office of Water have recommended a number of conditions are to be applied to any development approval in relation to the submission of a vegetation management plan (in particular, the revegetation of the riparian zone); sediment and erosion plan and details in relation to riparian corridors and in-stream works as well as conditions in relation to rehabilitation and maintenance (the consent holder must carry out a maintenance period of two years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Office of Water).

With regard to the location of LAAs for septic overflow, the Office of Water have advised that providing Council officers are satisfied that pollution to the stream is low risk, and LAAs do not impede appropriate revegetation areas, the Office of Water will defer to Council's expertise in this area.

With this regard Council's Environmental Health Unit has advised that they: *are satisfied that the proposed advanced secondary treatment of wastewater, combined with sub-surface, low pressure drip irrigation (treated wastewater disposal), represents a low risk to the environment. A width of 20m for riparian re-vegetation buffers to the central channel can be achieved for all but one of the proposed Lots. A buffer of 10m appears to be the maximum buffer that would be achievable for proposed Lot 5, if the LAA is located as proposed. However, it appears that a modification could be made to reorientate the LAA to the west of the proposed location for Lot 5. That would require further fill in addition to that already proposed.*

Council's Natural Resource Management (NRM) Unit and Development Engineer have not raised any concern in relation to the imposition of such a condition to any development consent, although to achieve this may result in additional fill being placed on the site. Condition 77 has been recommended to ensure a 20m setback.

Clause 34 - Flooding

Clause 34 requires that the consent authority considers the impact of flooding. The objectives of the clause are: to minimise the future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land and to minimise the adverse effect of flooding on a community.

Within the assessment of the previous development application (DA08/0293), it was advised that: *whilst there are outstanding issues with landforming, Council's Planning and Infrastructure Engineer is satisfied that this clause has been addressed adequately.*

The site is flood prone with Council's mapping identifying that the design flood level (i.e. the 1:100 year flood event) is predicted to reach RL 4.2m AHD with a probable maximum flood (PMF) level (the largest flood that could conceivably occur at a particular location) being RL 9m AHD to RL 9.5m AHD.

The development application has been referred to Council's Planning and Infrastructure Engineer who has advised the following:

"The design flood level (DFL) for the site is RL 4.2m AHD, based on a regional Tweed Valley flood. Note that this is less than was considered with the previous application, due to a revision of the Tweed Valley Flood Study and DCP - A3. All proposed house sites are located or will be filled to above the DFL. Evacuation routes are available to all sites, allowing vehicle and / or pedestrian egress to flood free land in events exceeding the 100 year ARI event. This demonstrates compliance with DCP-A3 Development of Flood Liable Land.

Further, the applicant has had to address local catchment flooding from the gully line to the north east. The provided hydraulic calculations demonstrate that flows from the external catchment can pass through the site with no significant adverse impact on adjoining upstream properties or risk adjacent house pad locations. In particular the design of the Lot 4 driveway has been lowered to be below the existing driveway formation for neighbouring properties to the north, with additional piped infrastructure below the new driveway to ensure this does not present an additional barrier flow, while maintaining flood immunity. Culvert capacity under the driveway exceeds the 100 year ARI design storm event for the local catchment.

As such, no objections are raised in relation to flooding and drainage for the subdivision proposal."

A number of submissions have been received from surrounding residents in relation to flooding, with particular regard for the impact of fill and raised house pads and dislodgement of flood water to surrounding low lying properties. The issues raised within these submissions have been considered in greater detail further within this report. However, Council officers consider that the applicant has provided sufficient information to ensure that the associated flood risks can be appropriately managed and that it would be highly unlikely that there will be any significant impact on the adjoining properties.

On this basis it is considered that the proposal would be consistent with Clause 34.

Clause 35 - Acid Sulfate Soils

Council's records lists the property as being Class 3 and 5 acid sulphate soils (ASS). As such 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 proposal includes modifications to existing drains, filling to provide house pads, some site regrading and excavation works to provide services (water, electricity, phone). It is considered likely that the proposed works can be carried out in accordance with Council's *Acid Sulfate Management Plan for Minor Works*. A condition will be applied to any consent with this regard.

Clause 39 - Remediation of contaminated land

This clause aims to ensure that contaminated land is adequately remediated prior to the development occurring. The applicant has provided an unwitnessed and undated statutory declaration. Council's Environmental Health Services has advised that the site is approximately 700m from the 'demolished' Boyd's cattle dip; that the Murwillumbah topographic map does not indicate any small cropping or bananas on the site as of 1972; and previous history searches have indicated that the land had been used for grazing.

Council's Environmental Health Services have advised that this information is consistent with the statutory declaration provided by the applicant, who states that they are familiar with the land use on the subject site going back to 1950 and that they were not aware of any potentially contaminating activities occurring.

It is considered that the proposal is consistent with clause 39.

Clause 39A - Bushfire Protection

The majority of the subject site is bushfire prone. The objective of the clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological and environmental assets.

The applicant has submitted a Bushfire Threat Assessment Report, dated March 2008. The submitted details have been submitted to the NSW Rural Fire Service for their consideration as the proposed subdivision is Integrated Development in accordance with Clause 55(a) of the *Environmental Planning and Assessment Regulation 2000*. Please note that whilst this document is the same as that submitted for the previous development application, the vegetation classification, slope assessment and asset protection zone requirements are considered to be satisfactory for the current proposal.

The NSW RFS have provided a bush fire safety authority as required under section 100B of the *Rural Fires Act 1997*, subject to a number of conditions in relation to: asset protection zone provision (to a distance of 20m or to the boundary on proposed Lots 1 and 6 to be maintained as an inner protection area (IPA)); water and electricity provision; provision of fire fighting water supply for each dwelling (10,000l); adequate access to and from the public road system for fire fighters; and design and construction (upgrade of existing dwellings on the site to improve ember protection).

Council's NRM Unit has advised that they consider that, due to the sparse vegetation, it is likely that an appropriate IPA will be achievable.

It is considered that the proposal is consistent with this clause.

Clause 54 - Tree Preservation Order

The subject site is not covered by any of Council's Tree Preservation Orders and therefore this clause does not apply.

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 and the applicant has advised that it has only been used for grazing. The subject site is located within the 1(c) Rural Living zone, with similar land uses located to the north, east and west and 1(a) Rural land located immediately to the south (although this is presently not utilised for intensive agricultural pursuits and is heavily vegetated). The subject site currently comprises two dwelling houses.

Whilst the proposed residential subdivision would preclude the use of the land for agricultural purposes, as 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 that 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 15: Wetlands or Fishery Habitats

Clause 15 states the consent authority: *shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:*

- (a) *the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,*
- (b) *the need to conserve the existing amateur and commercial fisheries,*

- (c) *any loss of habitat which will or is likely to be caused by the carrying out of the development,*
- (d) *whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*
- (e) *whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*
- (f) *the proximity of aquatic reserves dedicated under the [Fisheries Management Act 1994](#) and the effect the development will have on these reserves,*
- (g) *whether the watercourse is an area of protected land as defined in section 21AB of the [Soil Conservation Act 1938](#) and any measures to prevent soil erosion, and*
- (h) *the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and*
- (i) *the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.*

As detailed above, the application has been referred to the NSW Office of Water in relation to the impact of the proposed subdivision on existing waterways. The NSW Office of Water has provided General Terms of Approval (GTAs) for works requiring a controlled activity approval. The Office of Water have advised that there are no particular concerns in relation to the redirection of the drainage channel, given it is already in a highly modified state. However, they have advised that any redirected channel must be suitably constructed to reduce the risk of erosion.

The submitted Ecological Assessment provides a breakdown of the various vegetation communities on the subject site advising that there are four communities present on the site (cleared land with scattered trees; closed/open forest; closed forest (island) and dam/aquatic vegetation. The latter is considered to comprise a mixture of native sedges and rushes and exotic weeds and grasses. The report advises that although the dam is *'apparently a relatively healthy system with some aquatic plants it is a constructed water body [...], with fill from offsite used to construct the island and the dam wall. On this basis, it is considered that the dam and surrounds are not representative of the EEC Freshwater Wetlands on Coastal Floodplain'*.

During the ecological assessment of the previous development application (DA08/0293), it was suggested that the dam could be an Endangered Ecological Community (EEC), however the provided Ecological Assessment determined that the site was not representative of the EEC as the original drainage line that traverses the property has been significantly altered from its original and unnatural state (i.e. dammed and channelled as part of the Condong Drainage Union).

The Office of Environment and Heritage's (OEH) Freshwater Wetland Identification guidelines state that: *'artificial wetlands created on previously dry land for purposes such as sewerage treatment, stormwater management and farm production, are not regarded as part of this community'*. Council's NRM Unit has advised that, whilst not considered to conform to the Freshwater Wetland EEC, it remains that the wetland area provides potentially important habitat for local fauna.

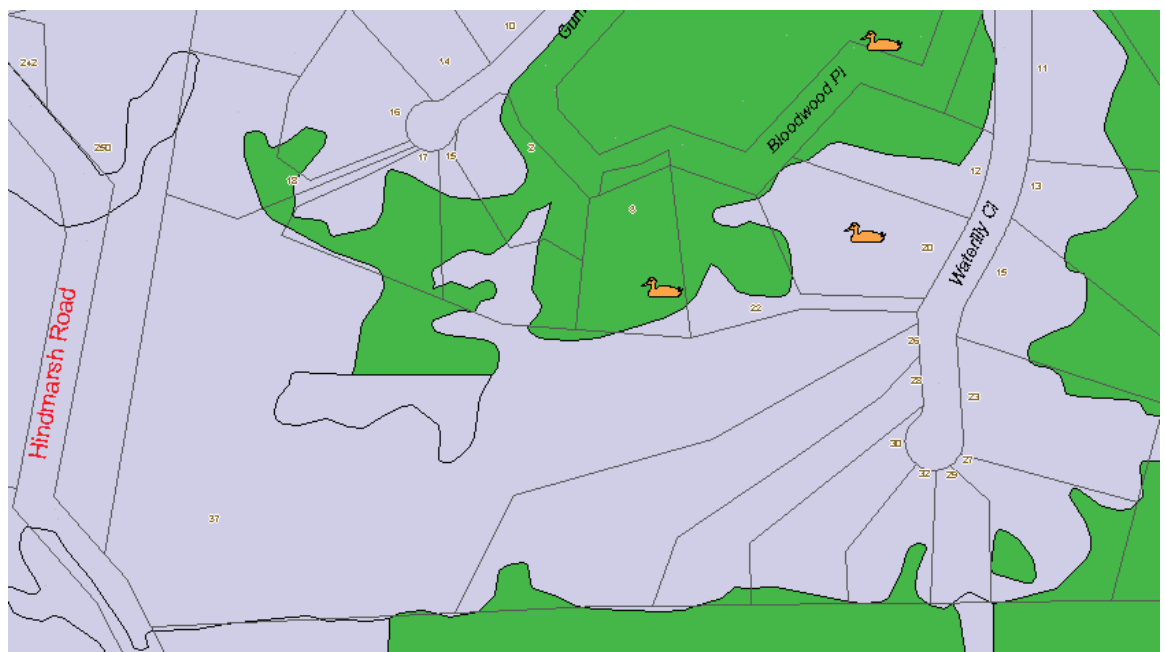
As detailed above, the Office of Water have provided consent conditions to the rehabilitation and restoration of riparian areas of the drainage lines and dam as well as conditions in relation to sediment and erosion control. Council's NRM Unit advise that these conditions are deemed to be satisfactory and a positive outcome with regard to improving available habitat.

Whilst the existing drainage channels and wetland habitat will be impacted as a result of the proposal, there is the potential for revegetating of riparian buffers to provide the opportunity to improve available habitat on the site. It is considered that the proposal is consistent with this clause, provided it is carried out in accordance with the conditions of the consent.

SEPP No. 44 - Koala Habitat Protection

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas and ensure a permanent free-living population over their present range and reverse the current trend of population decline.

Council's NRM Unit has advised that relatively recent records exist for the Koala, the most recent recording being in 2006, within the vicinity of the subject site. A number of Swamp Mahogany (*Eucalyptus robusta*), a preferred Koala food tree, are present on the site and the vegetation communities adjacent properties are mapped as being preferred Koala habitat, as shown in the following snapshot:



Extract of Council's GIS imagery - Areas of secondary koala habitat (green) and recorded sightings of threatened species (Koala) located in close proximity to the subject site

The application details state that '*the proposed development will result in a minor loss of vegetation for earthworks and the construction of house pads*' although the submitted Ecological Assessment provided uncertainties in relation to the extent of vegetation clearance on the subject site.

As detailed further within this report, a site inspection revealed that there are a number of Swamp Mahogany trees located within the central portion of the site, which will remain unaffected by the proposal, and one Swamp Mahogany located in close proximity to the proposed building pad on Proposed Lot 3.

Council's NRM Unit has advised that the proposal would be unlikely to result in the loss of Koala feed trees and appropriate conditions shall be applied to any development consent to ensure that such trees are retained on the site.

Further, conditions will be applied to any development consent in relation to appropriate fencing (so as not to restrict Koala movement on site).

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.

As detailed above, the applicant has provided an unwitnessed and undated statutory declaration. Council's Environmental Health Unit has advised that the site is approximately 700m from the 'demolished' Boyd's cattle dip; that the Murwillumbah topographic map does not indicate any small cropping or bananas on the site as of 1972; and previous history searches have indicated that the land had been used for grazing.

Council's Environmental Health Unit have advised that this information is consistent with the statutory declaration provided by the applicant, who states that they are familiar with the land use on the subject site going back to 1950 and that they were not aware of any potentially contaminating activities occurring.

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.

The subject site is not nominated as Regionally Significant Farmland and the lot is not used for intensive agricultural purposes, being used for grazing. The site is in close proximity to other residential dwellings which may render the subject site unsuitable for large scale agricultural pursuits (to protect surrounding residential amenity). It is considered that the proposed development would be unlikely to impact on the viability of adjoining agricultural land.

It is considered unlikely that the proposal would result in significant repercussions for environmental factors so as to warrant refusal of the proposal. Should the development application be approved, conditions of the consent will be recommended to ensure that a suitable revegetation management plan is approved and carried out in accordance with the approved details; that Koala food trees are not to be removed; and that appropriate erosion and sediment controls are applied to any consent.

It is considered that the proposal would generally be consistent with the Rural Lands SEPP.

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

The Draft Tweed LEP 2012 is currently on public exhibition. Under the provisions of the Draft LEP the site is located within the R5 Large Lot Residential Low Density Residential Zone. The objective of this zone is:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper orderly development of urban areas in the future.*
- *To ensure that development in that area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural and scenic character of the land.*

It is considered that the proposal would be consistent with the objectives of the R5 zone as the proposed allotments accord with the minimum allotment size (as detailed below); the proposal would not conflict with land uses within the zone (also residential) or adjoining zones (rural land) and would not impact to such an extent on the rural or scenic character of the land so as to warrant refusal of the proposal.

The subject site comprises a minimum lot size of 1 hectare on the Draft Tweed LEP 2012 Lot Size Map. Each proposed lot would be 1 hectare in size and therefore the proposal is consistent with this requirement and clause 4.2 and 4.2A of the Draft Tweed LEP 2012 (in relation to flexibility in standards for subdivision in rural zones and the R5 zone in particular) are not applicable.

Clause 4.2B – relates to the construction of a dwelling house on vacant land in the R5 zone. The application currently before Council relates to the subdivision of land only however proposes conceptual building footprints. The proposed subdivision however comprises six land parcels that would comply with the Lot Size Map provisions (a minimum of 1 hectare in size). Any future development application for dwellings on each lot would therefore comply with the provisions of this clause.

Clause 5.9AA allows for the cutting down, lopping or removal of tree species or kind not prescribed by a development control plan to be permitted without development consent.

Clause 7.6 relates to flood planning and seeks to minimise the flood risk to life and property associated with the use of land; to allow development that is compatible with the land's flood hazard and to avoid significant adverse impacts on flood behaviour and the environment. Point (3) of clause 7.6 states:

- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
- a. *Is compatible with the flood hazard of the land; and*
 - b. *Will not detrimentally adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - c. *Incorporates appropriate measures to manage risk to life from flood, and*
 - d. *Will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or reduction in the stability of river banks or watercourses, and*
 - e. *Is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

As detailed within this report, Council's Planning and Infrastructure Engineer has advised that the proposed subdivision is compatible with the flood hazard of the land; will not detrimentally adversely affect the flood behaviour resulting in potential flood affectation of other development properties and, provided the development is carried out in accordance with the conditions of the consent (in relation to Sediment and Erosion Management Plans, and Revegetation Plans) , will be unlikely to significantly adversely affect the environment.

Further, the Draft Tweed LEP 2012 contains a clause in relation to Terrestrial Biodiversity. The objective of the clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and
- (b) protecting the ecological processes necessary for their continued existence;
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.

The subject site contains portions of land affected by the Terrestrial Biodiversity Map as shown in the following extract:



Extract of Council's GIS imagery showing areas subject to the Terrestrial Biodiversity Map included in the Draft Tweed LEP 2012

This clause requires the consent authority to consider: any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna; any potential to fragment, disturb or diminish the biodiversity, structure, function and composition of the land; and any adverse impact on the habitat elements providing connectivity on the land; and, importantly, any appropriate measures proposed to avoid, minimise or mitigate impacts of the development.

The application proposes no significant alterations to the existing dam and relatively minimal clearance of native vegetation for development purposes. Council's NRM Unit has advised that the proposal would be unlikely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land. Conditions will be applied to any development consent to ensure that certain native tree species are retained. The proposed development will inevitably alter the built form of the subject site; however there are opportunities for revegetation of the site and appropriate management and weed control measures. As detailed within this report, suitable conditions will be applied to any development consent with this regard.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A detailed assessment of the proposed house sites under the specifications of Section A1 has not been carried out as the proposal comprises a six lot subdivision with indicative house sites only.

However, a preliminary review of the proposal revealed that each of the proposed allotments would be capable of compliance with A1 in relation to: the provision of deep soil zones and useable outdoor open space; access and vehicle parking; suitable setback distances and separation distances between dwellings.

A2-Site Access and Parking Code

Section A2 of the DCP requires dwelling houses to provide one space per dwelling plus provision for driveway parking of another vehicle. It is considered that the proposed subdivision would be able to accord with the requirements of Section A2 of the DCP.

A3-Development of Flood Liable Land

As previously detailed the site is considered flood liable, with the following levels applicable over the site: Design Flood Level (DFL) is RL 4.2m AHD (Q100 year); the Q20 year level is RL 2.95m AHD; and PMF level is RL 9.1m AHD. Please note that the DFL for the locality is determined by the 100 year ARI (Average Recurrence Interval being the long-term average number of years between the occurrence of a flood as big as (or larger than) the selected event) flood level contours and are based on the Tweed Valley Flood Study Update 2009. Council's DCP requires that a freeboard of 0.5m shall be added to the DFL to determine the minimum habitable floor level for development.

Section A3 sets detailed standards for land development in order to minimise the adverse effect of flooding on the community. The DCP recognises that many areas of the floodplain, adjacent to local creeks and streams, are liable to rapid flood inundation with little warning.

Section A3 also requires all new development to have permanent high level road/pedestrian evacuation route(s) to land above PMF level and/or adequate PMF refuge.

As previously detailed within this report, the application has been referred to Council's Planning and Infrastructure Engineer for assessment and it is considered that the applicant has provided sufficient information to ensure that the associated flood risks can be appropriately managed. Further, it is considered that it would be highly unlikely that there will be any significant impact on the adjoining properties in relation to flooding as a result of the proposal.

Should the development application be approved, any further application to Council for future dwelling houses would need to consider the requirements of Section A3 (such as the provision of MPF refuge where applicable).

A5-Subdivision Manual

One of the aims of Section A5 of the DCP are to achieve the highest quality and 'best practice' of subdivision development in the Shire and to provide guidelines and development standards for the development of subdivisions. The DCP advises that design principles for new subdivisions should acknowledge the ecological interaction to help people appreciate the natural attributes of their surroundings and understand how development and infrastructure can impact on fragile natural resources if not properly planned, designed and constructed.

A strategic principle of the document is to '*retain the Tweed's environmental and scenic values as a primary focus of all Council's decision making*'.

With this in mind, the existing site is predominantly rural in nature. Contours range from RL 2.0m AHD to RL 20m AHD over the two subject properties. A low level of approximately RL 2.0m AHD covers a large portion of existing Lot 25 DP 870463. All proposed allotments contain a proportion of the low lying land at RL 2.0m AHD or lower. As previously detailed within this report, a large existing dam is also located between proposed lots 4 and 5.

As detailed above, the application required referral to the NSW Office of Water in relation to the alteration of water courses under the *Water Management Act 2004*. General Terms of Approval for works requiring a Controlled Activity Approval have been provided. Should the application be approved various conditions of the development approval shall be applied in relation to the submission of Erosion and Sediment Management Plans, and Revegetation Management Plans.

A5.4.4 Physical constraints

Section A5.4.4 of the document requires that physical constraints of the site must be identified, mapped and constraint issues resolved. In summary, the document advises that new subdivisions should achieve urban forms that: respond to the natural landform and drainage system; take advantage of the topographical features of the site; integrate with natural water and catchment systems and preserve/enhance natural watercourses and riparian vegetation; avoid significant changes to the natural landform and large scale earthworks; as well as to encourage building construction techniques that are responsive to the natural landform.

A5.4.5 Environmental constraints

Contaminated Land

Issues relating to contaminated land have been addressed elsewhere in this report. It is considered that the proposal raises no concerns with this regard.

Bushfire risk

As previously detailed within this report the subject proposal is 'integrated development' and required authorisation under s100B of the *Rural Fires Act 1997* in respect of bush fire safety. A bushfire safety authority has been provided by the NSW RFS and appropriate conditions will be applied to any development approval in relation to the provision of adequate APZs contained wholly within the subject site; access requirements and provision of adequate water supply for emergency services. It is considered that the proposed subdivision would be able to accord with the principles set out in 'Planning for Bushfire Protection' 2006. Council's Development Engineer has raised no further concern with this regard.

Threatened species, population or ecological communities and their habitats

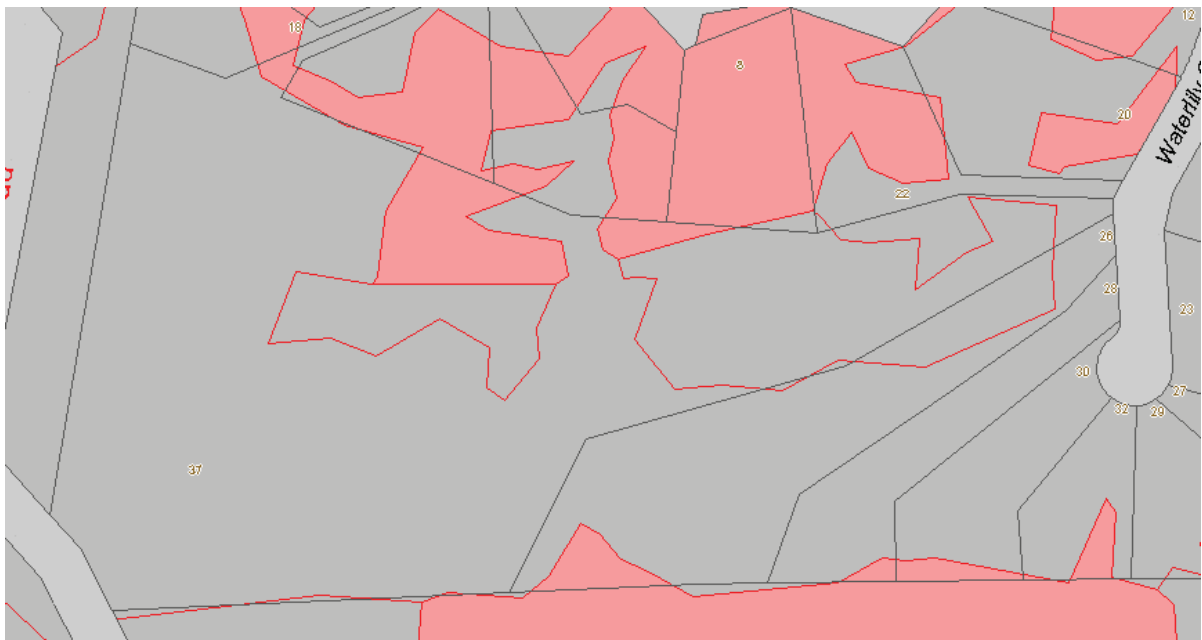
As previously detailed within this report it is considered unlikely that the proposed subdivision will cause a significant effect on threatened species or ecological communities or their habitats. Whilst it is considered unlikely that the subject site comprises threatened species or EEC (wetland), it is acknowledged that the site is likely to provide important habitat for flora and fauna.

Council's NRM Unit have advised that there have been recent recorded Koala sightings in close proximity to the subject site and the site is known to comprise Koala feed trees (Swamp Mahogany or *Eucalyptus robusta*).

A site inspection revealed no evidence of recent Koala activity (such as tree scratches or scats) on the site however it is considered to be highly probable that Koalas traverse the site from time to time. On this basis conditions shall be applied to any development consent to ensure that the Swamp Mahogany tree that is nominated for removal is to be retained. Further, a condition shall be applied to any consent to ensure that no other Koala feed trees are removed from the subject site without prior approval.

Significant vegetation

Council's Mapping system shows that portions of the site are of a 'Moderate' ecological status, the remaining being 'Not determined' or 'Not classified', as shown in the extract below:



Extract of Council's GIS mapping system showing areas of moderate and not determined / classified ecological status

The site does not comprise regionally significant natural areas and, as previously detailed within this report, comprises modified and disturbed vegetation that has been substantially cleared for agricultural purposes (grazing).

Whilst this may be the case, it is acknowledged that the site has the potential to provide important habitat for wildlife and fauna species. For this reason a number of conditions will be applied to any development approval to ensure that a positive outcome may be achieved in regard to improving habitat on the site.

Landscape character

A5.4.6 Landforming

The development application has been referred to Council's Development Engineering Unit who have advised that earthworks will be required to create dwelling pads and access driveways that will all be above the DFL. A Structural Engineering Report (Hammond & Associates, dated June 2012) has been submitted and addresses the requirements for the provision of filled building pads for Lots 2 to 5. Bulk earthworks and filling that is to be undertaken on site should be carried out in accordance with the submitted Structural Engineering Report and appropriate conditions of any development approval will be applied in this regard.

Council's Development Engineer has advised that any uncontrolled fill in the area of the building envelopes will be required to be removed and recompacted to a Level 1 geotechnical certification.

The applicant has also reused a geotechnical site investigation (prepared by Australian Soil and Concrete Testing and dated 30 March 2009). This Report has investigated all lots which do not have an existing dwelling (i.e. Lots 2, 3, 4 and 5) and provides the following comments:

- Lot 2 - building pad has already been filled 1m above the remainder of the proposed allotment; building rubble has been used as fill material and will require removal; the site has poor drainage;
- Lot 3 - the proposed building pad is slightly raised from the surrounding lot; the site has poor to fair drainage; old machinery and equipment to be removed;
- Lot 4 - Drainage is required to re-direct stormwater from other lots into the existing dam; the site has poor to fair drainage; building pad is cleared and grassed; and
- Lot 5 - Signs of surface creep are present on the hill slope to the west of the building envelope, requiring the use of terracing or retaining structures; drainage is to be redirected away from adjoining Lot 6; a large amount of cut material for the Lot 5 house pad is shown on adjoining Lot 6.

Proposed Lots 2, 3 and 5 will all be provided with building pads at RL 5.0m AHD. Lot 4 will have a building pad at RL 5.65 AHD. To attain these levels, fill depths of up to 2.5m will be required as follows:

- Lots 2 and 3 will need fill of up to 2.5m;
- Lot 4 will need fill of up to 1.1m;
- Lot 5 will need fill up to 2.1m.

Council's Development Engineer has advised that the volume of fill required (from prior assessment) is approximately 3200m², but this is likely to be a lesser volume under the current proposal.

The house pad for Lot 5 will necessitate a fill batter that will encroach onto Lot 6 and terracing is likely to be necessary. It was advised that this issue was the main engineering point of concern with the prior application and formed the basis of the fourth reason for refusal:

"The proposal does not comply with Council's Development Control Plan Section A5 – Subdivision Manual, particularly in relation to landforming."

Within the engineering assessment of the previous development application (DA08/0293) there were concerns in relation to the location of the cut and fill batters for the proposed Lot 5 house pad which is downstream and adjacent to the proposed dam spillway. This raised concerns as to the potential impacts of dam failure or high flow over the spillway. Further concerns were raised in relation to Council's Development Design Specification (D6- Site regrading table 6.1 - maximum permissible combined height of retaining walls or batters) that states that the maximum cut is 1.2m for a proposed allotment boundary. The proposed Lot 5 house pad would be 3m or greater in height (under the previous application). The proposed Lot 5 house pad did not comply with the minimum 0.9m boundary setback, being located partially within future Lot 6. Further, the cut batter for future Lot 5 extended several metres into future Lot 6. Council's Design Specification D6.06A(2) states that 'the whole of the retaining wall(s) or batter is to be located on land belonging to the lower lot'. Given that proposed Lot 6 was already at the minimum 1 hectare allotment size, the subdivision layout would have required amendment to comply with the requirement for retaining walls and batters to be located on land belonging to that lot. For this reason it was considered inappropriate to approve the Lot 5 house pad due to non-compliance with landforming standards and the risk of failure.

The applicant has now modified the proposed development to reduce the consequences of the above mentioned issues of concern as follows:

- Proximity to the dam spillway has been extended and better protection provided;
- Height of the fill batter at the boundary has been reduced to less than 2m;
- The batter still crosses a future boundary - however this is not deemed a significant issue and Council's Planning and Infrastructure Engineer has advised that this would be unlikely to cause issues between future landholders. A condition has been recommended requiring an easement for the batter encroachment.

Council's Planning and Infrastructure Engineer has raised no objections to the landforming proposal as provided in the revised submission stating that the revised landforming plans reduce the extent of works and adequately protect the house pad on Lot 5 from potential hazards due to land use and maintenance on the upslope adjoining property Lot 6, as well as the proximity to the dam spillway.

In relation to flooding, Council's Development Engineer has advised that the volume of filling that is proposed within the floodplain has not been subject to flood catchment remodelling, but, as agreed by Council's Planning and Infrastructure Engineer, *'the loss of flood storage would only have a minimal effect on the Q100 year flood level, and given the level of existing and proposed protection (all existing dwellings and proposed house pads are well above the Q100 freeboard requirement) it is not considered necessary to pursue further information in that regard, in this instance'*.

A5.4.7 Stormwater runoff, drainage, waterways and flooding

Drainage

The entire lower area of the parent properties could be considered as a legal point of discharge. Council's Development Engineer has no engineering concerns in relation to a lawful point of discharge on this basis.

However, the site is affected by external catchments coming from the north, east and south. However it is considered that appropriate measures have been taken to cater for such flows, where areas of conflict may arise (e.g. where driveways cross depressions, culverts are to be installed). The dam spillway will also be modified and improved.

Council's Development Engineer has advised that the Office of Water have nominated that the existing drains that crisscross the site as second and third order streams, but have also acknowledged that these streams have been highly modified in the past, but have raised no significant concerns to the proposed rerouting of the natural, but modified, gully coming from the south. It is considered that the downstream drainage network will be practically unaffected as the natural gully leaves the western boundary of the site.

Erosion and sediment control

The applicant has provided an Erosion and Sediment Control Plan. Council's Development Engineer has advised that this is adequate as a conceptual plan, but will need to be formally approved as part of the construction certificate submission for civil works.

As previously detailed within this report, further information in relation to erosion and sediment control is requested as part of the NSW Office of Water requirements for works requiring a controlled activity approval.

Watercourses traversing the subdivision

Section A5 states that where a subdivision development site contains watercourses and/or drains traversing the site that are sourced externally, provision must be made for conveyance of stormwater flows (including the ARI 100 year event) through the site in a manner that does not adversely impact on upstream or downstream watercourses or property.

As previously detailed within this report, Council's Planning and Infrastructure Engineer has advised that the application details includes an assessment of the proposal against the ARI 100 year event flood and it is acknowledged that portions of the site are inundated regularly. However, Council does not have a policy that prohibits the subdivision of 1(c) zoned land in this locality on the basis that it is flood prone. Further, it is advised that it would be highly unlikely that there will be any significant impact to adjoining properties; some loss of flood storage will result from the development of the Lot 2, 3 and 5 house pads however, due to their location outside of the main flood flowpaths, and the relatively small proportion of the floodplain area they will take up, any afflux would be considered insignificant.

Further, it advises that the natural alignment of watercourses should be retained, except where feasible adjustments can be made to urban structure, without compromising the natural environment. As detailed within this report, the existing drainage channels on the site have been highly modified and are not considered to be in a natural state. The NSW Office of Water have expressed no significant concerns in this regard.

Buffers

Section A5 states that there is a requirement to buffer areas between subdivisions and other specified landuses to minimise landuse conflicts. Council's Environmental Health Unit has assessed the proposed subdivision in this regard and have advised that the property is in close proximity to a productive / active sugar cane plantation. The NSW Department of Planning and Infrastructure (DPI) publication *Living and working in rural areas* proposed that adequate buffers be provided between new rural residences and existing agricultural or horticultural activity, so that conflict between land uses is avoided.

The suggested minimum 'separation buffer' between 'rural residential dwellings' and 'Sugarcane, cropping and horticulture', is 200m. Lots 1 (existing dwelling), 2 and 3 cannot achieve this buffer. Council's Environmental Health Unit has advised that the non-compliance with this guideline should be brought to the applicant's attention as a courtesy, however would be unlikely to result in the requirement to amend the proposal.

A5.5.5 Rural subdivision and lot layout

In summary, Section A5 states that a subdivision design should:

- Protect and encourage appropriate management of natural habitat and vegetation;
- Provide for reforestation and tree planting;
- Protect watercourses, water quality and riparian vegetation;
- Promote the continuation of agricultural uses in adjoining land;
- Promote the control of weeds;
- Provide buffer areas between potentially conflicting land uses;
- Provide for bushfire protection;
- Minimise soil erosion;
- Avoid development on land with environmental constraints;
- Retain significant vegetation and habitat areas;
- Provide for protection of koalas and koala habitat;
- Be integrated with surrounding rural environment and landscapes;
- Provide well distributed rural open spaces that contribute to the character of the development;
- Provide an access road network with a high level of accessibility;
- Reinforce local identity by retaining items, trees/vegetation.

Specifically, rural lots must have an identified building platform that has access to a public road, is free from environmental constrains, is safe from bushfire, is above the Q100 flood level and has access to high level road and/or pedestrian access to land above the probable maximum flood level; has adequate solar access; will not impact on rural activities on nearby land; has appropriate area and dimensions for the siting and construction of a dwelling and ancillary outbuildings.

This report has identified that the proposed subdivision is considered to accord with the above mentioned. The subject application has provided details in relation to conceptual building platforms (dimensions of 10m x 15m), road access, environmental constraints, and flood provision. The proposed development will not result in the clearance of significant vegetation or habitat areas and Council's NRM Unit consider that it is unlikely that the proposal would impact on Koala habitat. Appropriate conditions of the consent will be applied to any development consent to ensure that Koala feed trees are retained on the site and to ensure that there are improvements to habitat on the site (i.e. removal and control of weeds and replanting of the riparian buffer).

In general, it is considered that the proposed subdivision would be consistent with the character and appearance of the existing rural subdivisions, located to the north and east of the subject property, as shown in the snapshot of Council's aerial imagery below:



Extract of Council's GIS imagery showing nature of land uses in proximity to the subject site

Whilst the proposed subdivision will undoubtedly alter the environmental characteristics of the land, it is considered that the applicant has addressed all of Council's previous concerns in relation to the management of onsite sewer provision; landforming; and ecological matters.

Lot boundaries

Section A5 states that lot boundaries should be located, taking into account: the slope of the land; natural boundaries existing fencing and paddock structure; protection of natural features; site environmental constraints and retention of special features (trees).

In general, it is considered that the proposal is consistent with these requirements although it is acknowledged that proposed lot boundaries will result in the need for the removal of a number of trees on the site, particularly in the north eastern portion of Proposed Lot 4. Proposed Lot 4 is recognised as being highly constrained both in topography as well as with the presence of a number of mature trees. It is clear that the proposed driveway and building pad will transect a large patch of vegetation (although this predominantly consists of Camphor Laurel and Cocos Palms) with the wastewater LAA being located to the far northwest of the site and the dam covering a large proportion of the Lot. The recommended NRM Unit conditions seek to ensure that all preferred Koala feed trees are retained and vegetation in and around the dam is not impacted by the proposed works.

Further, a condition will be applied to any consent to ensure that no threatened species or preferred Koala feed trees are to be cleared or removed from the site without specific approval from the General Manager or delegate. A condition will also be applied to ensure that should the removal of any of these trees be necessary, or they become damaged or die during subdivision works, a suitable replacement tree is to be planted on the site to the satisfaction of the General Manager or delegate.

A5.5.6 Rural movement network

Access to dwellings

Section A5 requires that each lot is to have a sealed driveway, constructed from the road to 3m inside the property boundary. The proposed subdivision will utilise three existing rural residential roads in Nunderi. Future Lots 4, 5 and 6 will have access from Waterlily Close. Proposed Lots 1 and 2 will access directly from Hindmarsh Road and proposed Lot 3 has a battleaxe access from the cul-de-sac on Gumtree Close.

Council's Development Engineer has advised the following in relation to access provision for the proposed development:

- Lots 1 and 2 will have access below the DFL, as the existing Hindmarsh Road frontage is flood prone. Lots 3 and 6 will have their accesses above the DFL;
- Lot 1 (contains an existing dwelling) and is located approximately 5m from Hindmarsh Road; existing access is relatively flat and approximately 30m long; the location of the driveway will be moved to enable Lots 1 and 2 to have frontage to Hindmarsh Road. Sight distance will be adequate; a new bitumen footpath crossing (an appropriately sealed/concreted driveway from the existing edge of seal/kerb and gutter to the property boundary) will be constructed with the internal driveway to be gravelled;
- Lot 2 has a proposed filled house site adjacent to Hindmarsh Road with a similar driveway configuration to proposed Lot 1. Sight distance is adequate and a new bitumen vehicular footpath crossing will be constructed, with internal driveway to be gravelled;

- Lot 3 has access from Gumtree Court cul-de-sac via a battleaxe handle of varying width. A right of carriageway benefitting the subject lot and burdening adjoining Lot 20 DP 870463 is located over the battleaxe handle. No additional lots will service the right of carriageway, which currently serves two allotments. The existing bitumen sealed driveway will be extended for the length of the right of carriageway, with the remaining driveway to be gravelled which is acceptable'
- Lot 4 will have access to Waterlily Close via a narrow road frontage of 12.2m. A new bitumen vehicular footpath crossing will be constructed, with the internal driveway to be gravelled. The internal driveway will basically form a berm across a natural low spot downstream of a dam on adjoining Lot 14 DP 825726, but a multi-cell culvert will provide in excess of the Q100 year flow capacity, which is ample protection for the proposed dwelling site, as well as the existing adjoining driveway;
- Lot 5 will utilise the existing access to Waterlily Close via the shared battleaxe handle, used by the existing dwelling on parent Lot 12 and adjoining Lot 11. The driveway will have the existing bitumen surface widened to 4.5m, for the extent of the proposed shared use which is considered to be satisfactory. However, the intended grassed surface for the driveway that is outside the existing right of carriageway is not supported and will be conditioned to provide a gravel surface;
- Lot 6 contains an existing dwelling and the current shared driveway (with adjoining Lot 11 DP 825726) will remain unaltered, except for the widening of the lower portion where access will be further shared with proposed Lot 5. The existing right of carriageway has a bitumen seal and is in reasonable condition;
- There are no existing concrete footpaths in the vicinity and this subdivision does not generate the requirement for any.

Council's Development Engineer and Traffic Engineer has raised no concerns in relation to traffic generation or access requirements.

Rural Subdivision Infrastructure

Sewer

As previously detailed within this report, Council's piped effluent disposal infrastructure is not available within the area. Due to each lot being in the one hectare in area, the proposed lots will not need to be connected to a reticulated sewerage system. Each allotment created will have to be capable of accommodating adequate facilities for their own onsite treatment and disposal of effluent.

Council's Development Engineer has acknowledged that the Onsite Sewage Management Report states that the effluent irrigation system's LAAs are to be above the 1 in 20 tear design flood level of RL 2.95m AHD. Concerns are raised about the depicted LAAs for Lots 2, 3 and 5 as they utilise entire filled batter slopes that extend well below the RL 2.95m AHD. It is likely that the filled building pads will need to be extended to accommodate the required LAAs. Also, it is understood that the LAAs require a sandy loam yet the earth batters are likely to comprise a more solid clay based material to be compacted to withstand flood flows. Council's Development Engineer has acknowledged the conditions applied by the Environmental Health Unit that include referencing these LAAs. However, Council's Development Engineer considers that it is likely that significant earthworks will be necessary to implement them although it is anticipated that such matters may be appropriately dealt with prior to the issue of a construction certificate.

Water

Council's reticulated potable water supply is available to the area, excluding Hindmarsh Road. The existing dwelling fronting Hindmarsh Road is currently serviced via Gumtree Court, however this is to be disconnected to allot Lot 3 to utilise this service. The applicant proposes that potable reticulated water be provided to Lots 3 to 6, with Lots 1 and 2 to rely on a potable rainwater tank supply. This is considered to be a satisfactory arrangement by Council's Development Engineer and is also supported by Council's Strategic Assets Engineer, as detailed above.

Appropriate conditions of consent shall be applied in relation to water provision requirements.

Electricity

Electricity services are currently provided to the area via Country Energy infrastructure overhead in Hindmarsh Road and underground in Waterlily Close and Gumtree Court. Council's Development Engineer has recommended a number of conditions of consent that will require the applicant to provide services in accordance with the standards of the supply authority.

Telecommunication

Telecommunication services are currently provided to the area via Telstra infrastructure, overhead in Hindmarsh Road and underground in Waterlily Close and Gumtree Court. Council's Development Engineer has recommended a number of conditions of consent that will require the applicant to provide services in accordance with the standards of the supply authority.

Conclusion

In general it is considered that the proposed subdivision is in accordance with the provisions of Section A5 of the DCP, provided the proposal is carried out in accordance with the recommended conditions of the consent to the satisfaction of the consent authority.

A6-Biting Midge and Mosquito Control

Council records indicate that the subject site is not a designated Midge or Mosquito breeding area and the application details have not addressed issues in relation to biting midge and mosquito control, Council's Environmental Health Unit or NRM Unit have not raised this issue as a potential concern for proposed future residents.

A11-Public Notification of Development Proposals

The application was notified to surrounding properties from Wednesday 15 August 2012 to Wednesday 29 August 2012, in accordance with Section A11 of the DCP.

A total of six submissions were received as a result of the notification process, all of which raised concerns in relation to the proposed subdivision. The issues raised in these submissions are detailed further within this report.

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

Clause 92(a) Government Coastal Policy

Not applicable to the application as the subject site is not coastal land.

Clause 92(b) Applications for demolition

Not applicable to the application as the proposal does not comprise any demolition.

Clause 93 Fire Safety Considerations

As detailed above, the NSW RFS have required that the existing buildings on the subject site are upgraded to comply with current bush fire regulations. There is no requirement for the existing dwellings to be upgraded for fire safety purposes from a BCA perspective.

Clause 94 Buildings to be upgraded

Not applicable as the development does not propose any works to upgrade existing buildings or the like.

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

Not applicable to the application as the subject land is not coastal land.

Tweed Shire Coastline Management Plan 2005

Not applicable as the subject land is not subject to the provisions of the Tweed Shire Coastline Management Plan.

Tweed Coast Estuaries Management Plan 2004

Not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem.

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

Not applicable to the proposed development as the subject site is not located in the vicinity of the Cobaki or Terranora Broadwater.

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

Context and Setting

It is acknowledged that the proposed subdivision will alter the appearance of the subject site in the facilitation of raised house pads, lot boundaries, and driveways. It is also acknowledged that the proposal will ultimately necessitate the removal of a number of trees on the subject property.

It is considered however by Council officers that matters in relation to landforming, sewerage provision and flooding have been satisfactorily addressed. Whilst concerns may still prevail in relation to the suitability of the site for such development (in relation to the low lying and environmental constraints), Council officers are of the opinion that such concerns do not warrant the refusal of the proposal.

The proposed subdivision is considered to be in keeping with the surrounding land use character, being a rural residential subdivision providing a minimum of one hectare allotment sizes.

Access, Transport and Traffic

Council's Development Engineer and Traffic Engineer have raised no concerns in relation to proposed access and traffic arrangements. It is considered that the proposed subdivision is capable of complying with Council's standards in relation to parking and access. Suitable conditions are to be applied to any development approval with this regard.

Flora and Fauna

As previously detailed within this report, the subject site comprises two dwelling houses, a farm dam, several modified drainage lines and other agricultural improvements. The majority of the site has been cleared and contains introduced pasture grasses with occasional scattered native trees and clumps of exotic trees with the land currently being utilised for the purposes of cattle grazing.

Previous assessment of ecological impacts

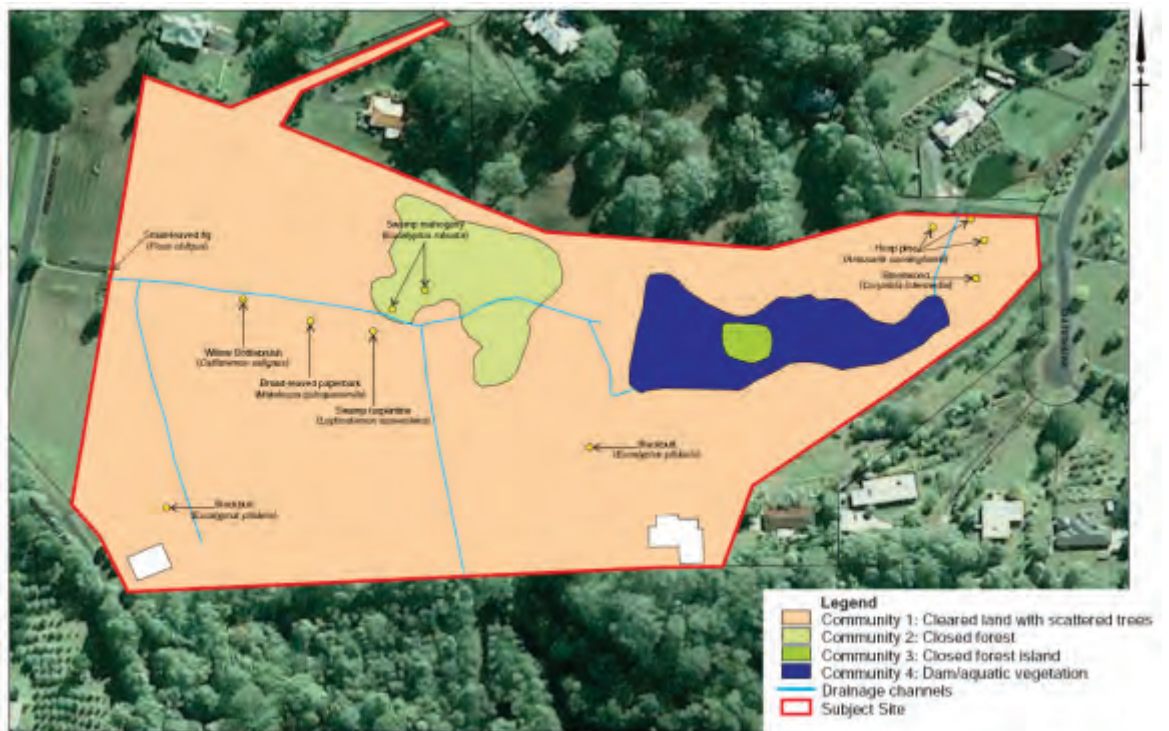
The previous development application (DA08/0293) considered that there was insufficient information for Council officers to be able to determine the impact of the proposal from an ecological perspective. Within the previous ecological assessment it was considered that the site performs an important stormwater detention function for the existing rural residential subdivision. It was advised that, at that time, the site was wet underfoot with evidence of aquatic plant species (water couch, smart weed and sedges) that were likely to provide habitats for many micro and macro invertebrates, that were then used as food by fish and other wildlife species (e.g. reptiles, amphibians and ducks).

Council's previous ecological assessment of the proposal advised that whilst the majority of the site was cleared and contained introduced pasture grasses, there were occasional scattered native and clumps of exotic trees. Further, the dam itself provided habitat for waterfowl (with submissions listing two threatened species that had been reported on the site - Black-necked Stork and Freckled Duck). It was advised that the former billabong area, although in a degraded and limited area, was regarded as part of the Endangered Ecological Community Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions and that, although house sites are not located in this area, impacts are likely to occur through altered drainage patterns from the required fill.

On this basis, Council's ecologist recommended that the proposal be refused, or the number of lots be reduced due to insufficient information to accurately address impacts on threatened species, population and ecological communities. Hence, the following reason for refusal was recommended: *'the information provided with the application is insufficient and the proposal may result in impacts on the amenity of the area and quality of the environment including aquatic habitats'*.

Vegetation community categories

A revised Ecological Assessment has been provided with the current development application details. The Assessment advises that there are four community groups present on the site, as shown in the following figure:



Extract of Ecological Assessment detailing vegetation communities on the subject site

Community 1 (cleared land with scattered trees) covers almost the entire site and is currently used for cattle grazing. The Assessment advises that there is 'little quality native vegetation occurring' which has a low conservation value.

Community 2 (closed/open forest) covers a small portion of the centre of the site. The Assessment advises that the community is heavily dominated by Camphor and other weed species, however, there are a 'few Swamp mahogany trees' with a few seedlings of Small leaved and Sandpaper figs recorded. It is reported that there is no 'middle layer and very little ground cover, as the area is used as a cattle camp'. The Assessment advises that this community is of a very low conservation value due to 'absence of quality native vegetation and degradation from invasive weeds'.

Community 3 (closed forest (island)) occupies a small portion of the site, occurring on a man-made island in the middle of the dam. The Assessment advises that 'although there are some natives present (i.e. Pink euodia, Brown kurrajong and Bangalow palm), the original vegetation was planted after the island was constructed.

The Assessment advises that Community 4 (dam/aquatic vegetation) occupies an area of approximately 4,400m² and comprises a mixture of native sedges and rushes as well as exotic weeds and grasses. The Assessment states that at the time of survey, the dam was dominated by lily (*Nymphaea violacea*) and water couch (*Paspalum distichum*) with water milfoil also being present (*Myriophyllum*). The Assessment states that 'although the dam is apparently a relatively healthy system with some native aquatic plants it is a constructed water body'.

Fauna assessment

Within the Ecological Assessment, an assessment of the site was conducted to determine its value for native fauna species and focussed on identifying habitat features associated with Threatened species as well as other native fauna groups. The results of the site survey are summarised below:

Amphibians

It is advised that the study area is *'likely to provide good quality habitat for a range of frogs, in and around the dam and drainage lines through the site. It is highly unlikely that the site provides habitat for any of the threatened amphibians known to occur in the locality'*.

Reptiles

The Assessment states that *'The subject site may provide some habitat for reptiles. Although there is an absence of logs and tree hollows with the grassed areas, there are piles of large rocks which may provide some shelter on the site. No threatened reptiles have been recorded in the near locality of the site'*.

Birds

The Assessment acknowledges the significance of near coastal environments of the NSW Far North Coast as over-wintering habitat for migratory birds. The Assessment advises that preferred habitat (i.e. nectar bearing plants) for such species as Fantail cuckoo, Sacred kingfisher, Rainbow bee-eater, and Golden whistler, are present on the subject site (i.e. dammed and grassed areas with scattered trees). The Assessment advises however that the site *'does not provide a diversity and abundance of flowering and fruiting species'*.

The Assessment states that *'the dam and drainage lines will provide good quality foraging habitat for aquatic birds [however ...] it is unlikely that any of the threatened diurnal, nocturnal or wetland birds known to occur in the locality will occur on this site'*.

Mammals

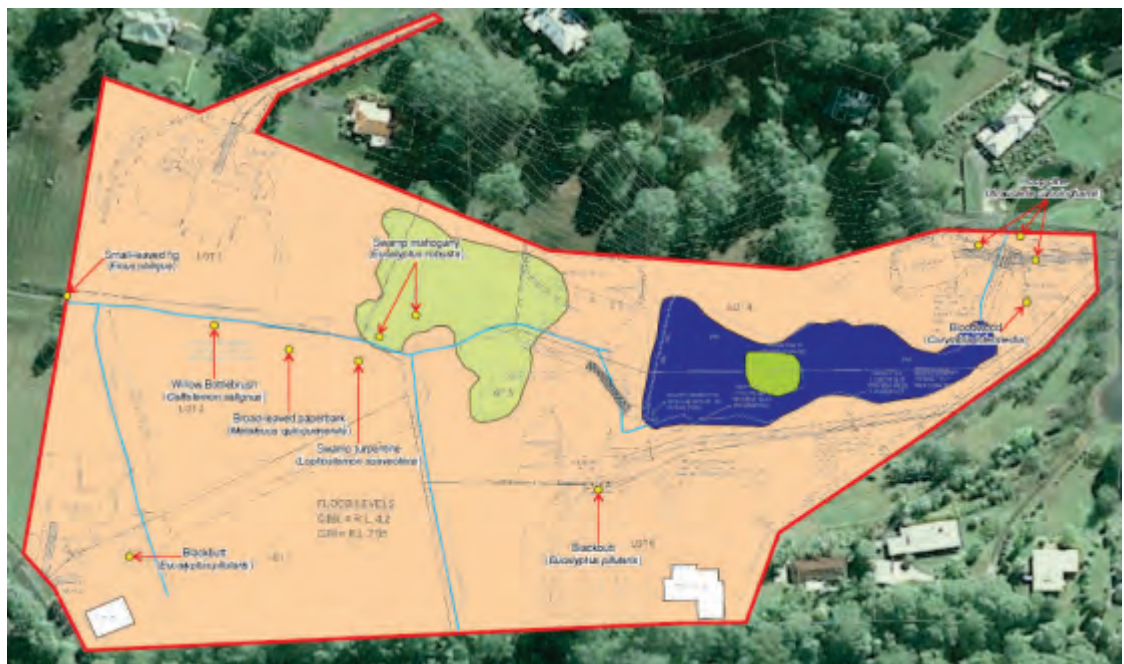
The Assessment states that *'the study site lacks vegetation with a structural complexity and is therefore unlikely to support a diversity and abundance of ground dwelling mammals, although common species such as the Ringtail and Brushtail possums may occur. The study site does not provide good forage habitat for insectivorous bats or frugivorous bats'*.

In relation to the Koala, the Assessment states *'Swamp mahogany (E. Robusta) occurs on the site, however, no signs of Koala activity were observed (Scats or scratches). No old growth trees with dens suitable for scansorial or arboreal mammals were noted on the site'*.

Impacts and amelioration

Section 4 of the Assessment details various impacts of the proposed development and the possible amelioration measures to minimise impacts on flora and fauna. The Assessment advises that the *'vegetation to be lost on the site is from highly disturbed land, currently used for cattle. Some vegetation will be lost from the Closed/open forest, however, this consists primarily of Camphor laurel and other weeds. Some larger native trees will be lost'*.

The Assessment provides the following overlay of vegetation to be removed:



Extract of Ecological Assessment - Impacts of proposed development

The Ecological Assessment does not provide a detailed breakdown of the number or type of trees to be removed or retained on the subject site, however, the following table provides details in relation to the loss of vegetation communities:

Vegetation Communities	TOTAL (ha)	LOSS (ha)		RETAINED (ha)
		Building envelope & Driveways	Earthworks & Drains	
Community 1: Cleared land with scattered trees	5.34	0.16	0.49	4.69
Community 2: Closed forest	0.38	0.00	0.02	0.36
Community 3: Closed forest island	0.03	0.00	0.00	0.03
Community 4: Dam - aquatic vegetation	0.40	0.00	0.00	0.40
Existing houses	0.06	0.00	0.00	0.06
TOTAL	6.22	0.16	0.52	5.54

Extract of Ecological Assessment - detailing vegetation to be removed from the site

The Assessment also provides a breakdown of the potential impacts to both flora (i.e. introduction of weed species) and fauna (disturbance impacts from construction phase; reduction in opportunities for movement through site; increased light, noise and activity to fauna in adjacent areas of native vegetation).

The Assessment advises that *'it is considered unlikely that any threatened fauna will be adversely affected by the proposed development'*. The Assessment concludes that:

'The vegetation to be lost, for earthworks and dwelling construction, is from land that is highly disturbed (i.e. cleared and grazed). There will be no loss to aquatic vegetation on the site. There are potential indirect impacts to the dam and drainage channels on site such as: increased sedimentation/nutrient load and weed invasion. However, with the amelioration measures outlined in this report and the 'best practice' strategies adopted in the Stormwater and Erosion and Sediment Control Management Plans, the probability of these negative impacts will be greatly reduced'.

Council's assessment

The development application has been referred to Council's Natural Resource Management (NRM) Unit for their assessment. The NRM comments are based on the findings of the submitted Ecological Assessment, Searches of the National Parks and Wildlife Service (NPWS) and Environment Protection and Biodiversity Conservation (EPBC) databases for records of State and Commonwealth threatened species and the review of Council's GIS mapping layers, as well as an inspection of the site.

Ecological values

In summary, a review of the NSW Wildlife Atlas found records of 11 threatened flora species known to occur within 5km of the site. Vegetation on the site is variable and is mapped by the Tweed Vegetation Management Strategy 2009 as:

- Blackbutt Open Forest: this patch of vegetation occurs predominantly over proposed Lot 5. On site assessment by James Warren & Associates (JWA) defines this vegetation as being dominated by Camphor Laurel and other weeds with some Swamp Mahogany species;
- Substantially cleared of native vegetation: the majority of the site is cleared of vegetation and currently functions as cattle grazing land;

- Open water: a large dam is present over proposed Lots 4 & 5. A mixture of native & exotic species, sedges, rushes, weeds and grasses were recorded by JWA. Native trees such as Pink Euodia, Brown Kurrajong and Bangalow Palm are present on the small island within the dam. Exotic species including Wild Tobacco and Camphor Laurel are also present;
- Unassessed: this patch of vegetation abuts the Blackbutt Open Forest. Council's NRM Unit has advised that the site inspection indicated that this vegetation is dominated by Camphor Laurel with several large Swamp Mahogany trees being located within this area, often growing in close proximity to Camphor Laurel.

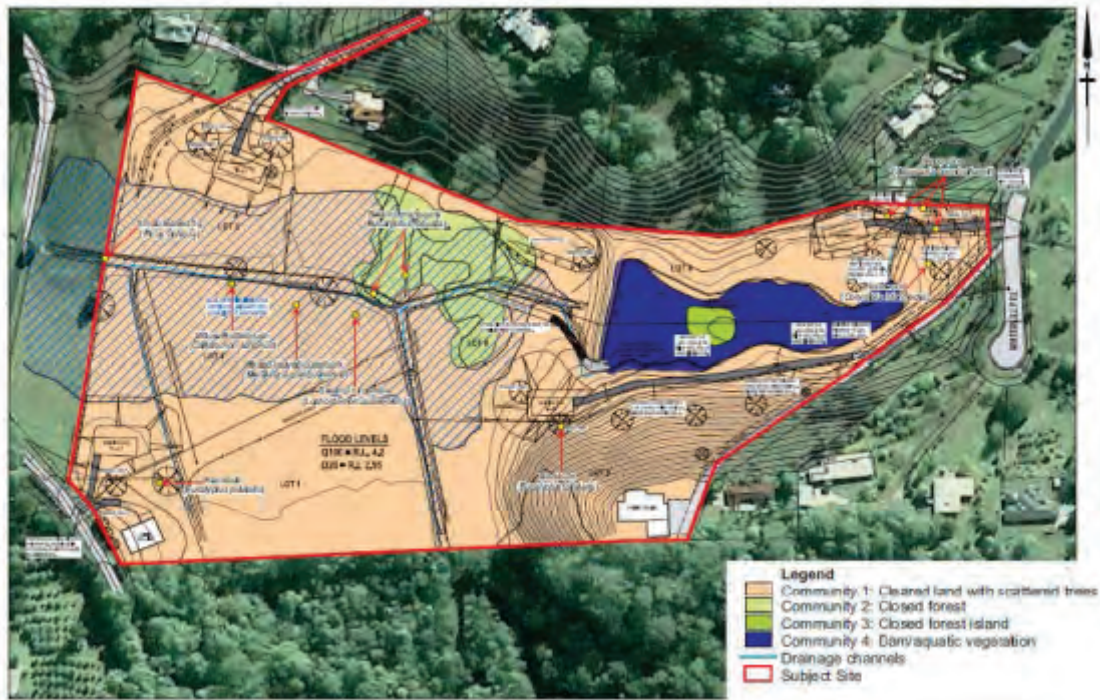
Council's NRM Unit advise that one Rare or Threatened Australian Plants (ROTAP) species was reported in the Ecological Assessment, being Scrub Turpentine (*Rhodamnia maideniana*), although it is unclear where this species is on the subject site.

As previously detailed within this report, the ecological assessment conducted as part of DA08/0293 suggested that the dam could be an EEC. However, the Assessment determined that the dam was not representative of an EEC, as the original drainage line that traverses the property has been significantly altered from its original and natural state (i.e. dammed and channelled). The Assessment advises that the dam is an artificial water body and fill from offsite was used to construct the vegetated island and dam wall.

Council's NRM Unit have advised that, the *Office of Environment and Heritage's Freshwater Wetland Identification guidelines state that* '... artificial wetlands created on previously dry land for purposes such as sewerage treatment, stormwater management and farm production, are not regarded as part of this community'. *Whilst not considered to confirm to the Freshwater Wetland EEC, it remains that the wetland area provides potentially important habitat for local fauna.*

Impact assessment

The Assessment has not provided a clear indication of the number or species of trees that require removal as a result of the proposed subdivision. Please note the following two figures below with this regard:



Extract of Ecological Assessment - Overlay of proposed development in relation to vegetation and ecological communities



Extract of Statement of Environmental Effects - Aerial imagery of subject site illustrating location of vegetation and drainage channels / dam on the site

A search of Council's GIS aerial mapping data has revealed that there appear to be discrepancies between the trees marked for removal, and the presence of vegetation on the subject site, particularly within the north-eastern portion of proposed Lot 4 adjacent to Waterlily Close.

A Rare or Threatened Australian Plant (ROTAP) species is present on the site (Scrub Turpentine or *Rhodamnia maideniana*) and there are numerous Koala feed trees present across the site, although the submitted Ecological Assessment provided uncertainties as to the precise location of these species. It is also acknowledged that Koala sightings exist both on site and on surrounding properties.

Council's NRM Unit has advised that it is evident that the proposed subdivision will require very little tree removal. Proposed Lot 4 will require the removal of one tree (unidentified) within the proposed LAA, and several Camphor Laurels and Cocos Palms to facilitate the driveway. The NRM Unit have not raised any concerns from an ecological perspective with this regard.

No vegetation in or around the dam is proposed for removal, however two (2) small drainage lines will be affected by the proposal, one will be filled and realigned and another filled. Assessment by JWA suggests that these drainage lines are generally of a degraded state. The Office of Water has requested the applicant prepare a Vegetation Management Plan to rehabilitate and restore riparian areas of the drainage lines and dam. These conditions are deemed satisfactory and a positive outcome with regard to improving available habitat is envisaged. Potential hydrological changes and increased sedimentation resulting from the physical process of Lot creation may cause disturbance to aquatic species both in the dam and along the drainage lines. Increased sediment can impact on aquatic species by filling in pools and reducing habitat. The requirement for an Erosion and Sediment Control Plan has been conditioned by others.

Two trees located in close proximity to the proposed building pad on Proposed Lot 5 (one Blackbutt and one Bloodwood) are proposed to be removed. During the inspection of the site it was agreed by the applicant that it would be possible to retain these trees. However, there is a concern in relation to the retention of the Blackbutt tree, located to the north of the proposed building pad, given the extent of fill proposed in that location. A condition of consent is recommended to ensure that these trees are retained, unless otherwise consented to by the General Manager or delegate. Should the removal of any tree be necessary, or any tree become damaged or dies during subdivision works, the applicant will be required to plant a suitable replacement species, to be approved by Council.

The implementation of a Habitat Restoration Plan with a requirement for weed management of Camphor Laurel species and other exotic species has been conditioned. Further, the recommended conditions will ensure the retention of all preferred Koala feed trees (Swamp Mahogany) and the ROTAP species.

Conclusion

Council's NRM Unit has advised that it is unlikely that the proposal will result in such significant impacts to existing onsite vegetation so as to warrant refusal of the proposal. A site inspection clarified that the site is in a highly modified state and that the sparse native vegetation that does remain can be retained. As detailed, appropriate conditions will be applied to any development consent to ensure that preferred Koala feed trees and other significant native vegetation is retained, unless otherwise approved by the General Manager.

(c) Suitability of the site for the development

Surrounding Landuses/Development

This report has provided details in relation to the nature of surrounding land uses and development and the impact of the proposed subdivision on such development. It is considered that the proposal would not preclude surrounding 1(a) Rural land from being utilised for agricultural purposes although it is noted that proposed Lots 2 and 3 and existing Lot 1 cannot achieve the required buffer distances from neighbouring Sugarcane cropping.

It is considered unlikely that the proposed levels of fill and location of house pads will result in such a significant impact in relation to the dispersal of flood waters to surrounding properties, for reasons detailed within this report.

It is considered that the proposed residential subdivision would be consistent with surrounding land use character.

Flora and Fauna

Issues relating to flora and fauna have been addressed within the body of this report.

Topography


Matters relating to the topography and suitability of the site for development have been addressed within the body of this report. It is acknowledged that there are portions of the site that are low lying and sensitive to regular inundation by flood waters. However, as detailed above, it is considered that the applicant has addressed issues in relation to landforming and flooding and that all outstanding issues may be addressed via conditions of consent.

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

Summary of submissions:

Issue	Council officer response
<p>Insufficient and outdated documents:</p> <ul style="list-style-type: none">• Little has changed since the original application was submitted (in terms of additional information submitted);• Submissions have alleged that some of the images are very old and that all of the information should be current	<ul style="list-style-type: none">• The applicant has submitted a revised Statement of Environmental Effects; an On Site Sewerage Management Design Report (HMC Pty, Ltd, dated August 2010 with amendments dated June 2012); a Civil Engineering Report dated June 2012;• The BushFire Threat Assessment Report is dated March 2008 is the same as that previously submitted. However, the RFS have considered the report and deem in adequate for the purposes of the current application.• It is considered by Council officers that the submitted information is relevant to the current application before Council.


Issue	Council officer response
<p>Suitability of site for development:</p> <ul style="list-style-type: none"> • Development not in keeping with existing residences; • Lot sizes (1 hectare) questioned, when taken into context of existing constraints (water bodies, shared driveways); • Existing dwellings unable to acquire insurance due to 'risk of inundation' 	<ul style="list-style-type: none"> • Lot sizes are in accordance with the 1 hectare minimum lot size, established for the 1(c) Rural Living zone; • The difficulty for properties to obtain building insurance is acknowledged but such impacts (as well as impacts to property value or the like) are not valid planning considerations.
<p>Flooding:</p> <ul style="list-style-type: none"> • Site is flood liable land and provides significant storm water drainage for the locality (from Waterlily Close, parts of Clothiers Creek Road and Gum Tree Place); • Site is a natural valley, with subject site located at bottom of natural water course and therefore provides pivotal stormwater drainage role; • Particular concern for properties at No. 20 and 22 Waterlily Close due to proposed pad on Lot 4; • Particular concern also for flooding on Lot 25 which, according to residents, floods frequently with water encroaching onto neighbouring properties; • Concern in relation to proposed access onto Hindmarsh Road to proposed Lot 2 which is inaccessible in times of flood; • Site is constantly wet and boggy and a breeding ground for mosquitoes; • Throughout year common to see standing water on much of land; • Proposed fill and raised house pads and driveways will enable water runoff to occur and be dislodged into nearby properties, that do not currently experience stormwater problems; • This issue should be addressed by an independent auditor; • Applicant has allegedly removed vegetation (trees and aquatic species), reduced water level behind dam, place pipes to mitigate standing water to ready site for development; • Development will result in 'islands in the water' – houses completely surrounded by flood water, coupled with inundated septic tanks with future and existing residents put at risk of health problems; • Site is affected by underwater springs; • Whether a high level evacuation road is 	<ul style="list-style-type: none"> • Flood liability of the proposed subdivision has been properly considered by Council's Planning & Infrastructure Engineer who has seen many examples of flooding evidence across the site provided by objectors and the applicant, and has attended site inspections with concerned residents as part of the previous DA; • It is difficult to access Nunderi during flood peaks, however the site has been observed during and after heavy rain events. • The DA provides an approximate inundation area of the January 2012 flood in the engineering plans. This was approximately a 1 in 5 year (20% AEP) flood, and the inundation area shown correlates with Council's flood study mapping for the 5 year ARI event. This flood is known to have affected the low areas of the site to a significant degree, but was not close to inundating any dwellings in the vicinity, and based on the submitted plan, would only slightly encroach on three of the nominated building pad locations; • The central portion of the site (Lot 25) is low lying with elevations less than RL 2.0m AHD and provides drainage to the upper catchment via agricultural drains and sheet flow across cleared paddocks, and storage areas for larger river floods, which back up into the valley. The 100 year ARI flood level is RL 4.2m AHD. As such, it is agreed that portions of the site are inundated regularly. Council does not have a policy that prohibits the subdivision of 1(c) zoned land in this locality on the basis that it is flood prone. Sterilisation of developable land is not supported by the State Government's Floodplain Development Manual, if the flood risks can be appropriately managed; • The application includes the provision of dwelling sites on each of the large allotments, and these dwellings are

Issue	Council officer response
<p>possible;</p> <p>A number of photographs of previous flooding events have been presented to Council, the most recent being January 2012.</p>  <p>Photographs sent in from submitters showing extent of flooding on subject site</p> <p>Submissions have pointed out that those that live in the area (and have done for some time) see what is occurring, especially in times of flood and request that an independent body assess the site in time of flood.</p>	<p>suitably located outside of or on the fringe of the inundated area, clear of any mapped high flow areas, and will be filled to exceed the design flood level;</p> <ul style="list-style-type: none"> • The application includes an assessment of potential impacts of the Lot 4 access on upstream properties (No's 20-22 Waterlily Cl). As the driveway formation is considerably lower than the existing access on the adjoining property, and there is adequate transverse drainage (capacity in excess of calculated Q100 flows), it is highly unlikely that there will be any significant impact on the adjoining properties. • Some loss of flood storage will result from the development of the Lot 2, 3 and 5 house pads. The application has not assessed these impacts in detail. However due to their location outside of the main flood flowpaths, and the relatively small proportion of floodplain area they will take up, any afflux would be considered insignificant. Based on recent floor level survey, the two closest existing dwellings in the vicinity have habitable floor levels of RL 5.37m AHD and RL 5.71m AHD, which provides over a metre of freeboard above the design flood. Therefore even if there were measurable impacts of the development, they would not significantly alter the flood risk to these properties. • Due to their location on the flood fringe, all house sites allow for suitable emergency access to higher ground, should floods larger than the 100 year ARI event occur. This avoids the "low island" design that requires rescue by emergency services, and as such these objections are not valid. Hindmarsh Road is known to have low flood immunity, however there is land adjacent to Lots 1 and 2 that is flood free and in a worst case scenario occupants can still evacuate to higher ground until Hindmarsh Road reopens. This is not unusual in a rural locality and is not considered an impediment to the development.; • Based on this assessment and the matters raised above, it is considered that the development complies with Section A3 of the DCP; • Council's assessment is based on the best available data, being the Tweed Valley Flood Study 2009, as well as the

Issue	Council officer response
	<p>observations of the applicant and the objectors. Any independent assessor would have to rely on the same information, so there would be little value in obtaining third party assessment, There is no requirement for independent assessment of these matters, as Council is the floodplain management authority.</p> <ul style="list-style-type: none"> • Springs are a geological feature that is relevant to geotechnical investigation and drainage, but are not significant to the flood risk of the development.
<p>Impact to river, streams, catchments:</p> <ul style="list-style-type: none"> • Clause 15 of the North Coast Regional Environmental Plan requires the consent authority to consider the impact of development on rivers, streams and catchments and the inclusion of four dwellings on flood liable land will significantly alter the current water bodies and drainage channels; • Silt and sediment along with inundated septic tanks have the potential to see a significant change in the current water quality which is released into the Tweed River 	<ul style="list-style-type: none"> • General Terms of Approval have been received from the Office of Water for works requiring a controlled activity approval. A controlled activity approval, under the <i>Water Management Act 2000</i>, is required for certain types of developments and activities that are carried out in or near a river, lake or estuary. Under the WM Act, a Controlled Activity means: a) the erection of a building or the carrying out of work; the removal or deposition of material; and the carrying out of any other activity that affects the quantity or flow of water in a water source; • Should the application be approved, the applicant must apply for a controlled activity approval after (such a time that) consent has been issued by Council and prior to the commencement of works (this will involve the submission of a Vegetation Management and Erosion and Sediment Control Plan, details of riparian corridors, and in-stream works); • Erosion and sediment controls are required during the construction stage of the development, and standard conditions apply.
<p>Sewage treatment:</p> <ul style="list-style-type: none"> • Inadequate sewage provision (no change between previous and current application); • Septic tanks providing refuge storage are located in areas where inundation an issue; • Will cause a serious health hazard and nothing has changed from the previous application to the current. 	<ul style="list-style-type: none"> • The application has been referred to Council's Environmental Health Unit who have advised that the submitted On Site Sewage Management (OSSM) Report has been carried out generally in accordance with <i>Environment & Health Protection Guidelines – onsite sewage management for single households 1998</i> and <i>Australian Standard 1547 Onsite domestic wastewater management</i>; • The submitted report relates to proposed Lots 2 to 5, as proposed Lots 1 and 6 already have existing dwellings serviced by septic tanks/trenches;

Issue	Council officer response
	<ul style="list-style-type: none"> • It is noted that the site is flood prone with poor soil (clay) and poor drainage. Council's Environmental Health Unit have advised that, whilst 100m buffers between land application areas and permanent water or 40m to other waters cannot be achieved for all lots, the report argues that improved treatment, coupled with sub-surface drip irrigation can provide an adequate solution to the many site constraints; • The report proposes secondary treatment, nutrient removal, disinfection (of treated effluent) and disposal by sub-surface low pressure drip irrigation; • Council's Environmental Health Unit have recommended that a number of conditions are applied to any consent to ensure that future OSSM installations are to be in accordance with the consultant's report, and adequate provision is made, in filled areas, for wastewater treatment devices and wastewater Land Application Areas (LAA) to be installed above flood levels i.e. Treatment devices (vents and electrical control units) will only be approved for installation above the 100 year ARI flood height, and LAA's will only be approved on the batter slopes of house pads or other areas where the installation height is above the Q20 flood level. (Note: this is in accordance with the <i>Environment & Health Protection Guidelines – onsite sewage management for single households</i> 1998); • Land application areas are not to be approved on the batter slopes of house pads or other areas where the installation height is below the Q20 flood level; • Improvements to the existing wastewater treatment and disposal devices have also been recommended at proposed Lot 1 and Lot 6; • 88B Restrictions have been recommended to ensure that a) the proposed wastewater disposal areas are restricted for that use only; b) wastewater is treated to advance secondary standard; c) wastewater is only applied to the proposed wastewater land application areas.

Issue	Council officer response
<p>Landforming:</p> <ul style="list-style-type: none"> • Large amount of fill required to raise house pads will result in significant change in land formation and impacts to storm water drainage; • House pads will encroach on existing boundaries unless retaining walls used to constrain fill sites; • Inclusion of significant house pad elevations not viewed as minor – fill sites would be destructive and extensive and would be out of character with existing formation of the valley and would create significant issues in relation to drainage; • Some earthworks have allegedly already been undertaken by the developer with the construction of a driveway off Gum Tree Court; 	<ul style="list-style-type: none"> • The development application has been referred to Council's Development Engineering Unit who have advised that earthworks will be required to create dwelling pads and access driveways that will all be above the DFL. A Structural Engineering Report (Hammond & Associates, dated June 2012) has been submitted and addresses the requirements for the provision of filled building pads for Lots 2 to 5. Bulk earthworks and filling that is to be undertaken on site should be carried out in accordance with the submitted Structural Engineering Report and appropriate conditions of any development approval will be applied in this regard; • Council's Development Engineer has advised that any uncontrolled fill in the area of the building envelopes will be required to be removed and recompacted to a Level 1 geotechnical certification; • Council's Planning and Infrastructure Engineer has raised no objections to the landforming proposal as provided in the revised submission. • Council officers are unable to comment in regard to alleged earthworks that have been undertaken in the past. It is understood that Council's compliance officer undertook an inspection of the subject site in April 2009 in response to alleged vegetation clearance and earthworks however it was considered that such works were minor and did not require a development application. It is noted that any existing fill on the site is to be rectified in accordance with the submitted Structural Engineering Report.
<p>Land contamination:</p> <ul style="list-style-type: none"> • No effort to undertake contamination studies 	<ul style="list-style-type: none"> • The applicant has provided an unwitnessed and undated statutory declaration in relation to land contamination; • The application has been referred to Council's Environmental Health Unit who has carried out a search of potentially contaminating occurrences on the site. This has revealed that the site is 700m from the demolished Boyds Cattle dip; the Murwillumbah topographic map does not indicate any small cropping or bananas on the site as of 1972; previous Council history indicates that the land has been used

Issue	Council officer response
	<p>for grazing;</p> <ul style="list-style-type: none"> The Environmental Health Unit have advised that the land uses are consistent with the statutory declaration and that it is unlikely that the site has been subject to potentially contaminating activities; Standard conditions to apply to any development approval in relation to the submission of an acid sulphate soil management plan.
<p>Fauna:</p> <ul style="list-style-type: none"> Report inadequately assesses wildlife in the waterbody (sea eagles and black cockatoos sighted); Report deficient of information as wetland provides habitat and food to a variety of wildlife species; Land is designated koala habitat and applicant has acknowledged that there is <i>Eucalyptus robusta</i> present on the site; Applicant has already carried out recent tree felling and there has been a significant decrease in wildlife utilising the land – land is in a declining state; Council should act to ensure that the remaining populations are not discouraged from utilising the area; Likely that tree felling will occur to make way for house pads and driveways. <p>Submitters have sent in a number of photographs of wildlife present on the site as follows:</p> 	<ul style="list-style-type: none"> The applicant has provided an Ecological Assessment which includes a site survey of vegetation on the site. The Assessment concludes that there is no endangered species or Ecological Communities identified; It has been alleged that the applicant has carried out vegetation clearance and earthworks. A previous complaint for such was investigated by Council's Compliance Officer in April 2010 to which it was advised that there had been minimal disturbance. No such reports or complaints of earthworks or tree clearance have been received; The application has been referred to Council's Natural Resource Management Unit who have advised that the site, given its highly disturbed state, does not comprise Endangered Ecological Communities and as it is not covered by a Council Tree Preservation Order. On this basis the applicant is able to carry out vegetation clearance without Council consent; Council is aware that the site comprises Koala habitat with sightings recorded in the immediate area. It is noted also however that the land is of a highly disturbed and modified state and that the land owner may carry out tree removal without Council consent (under the provisions of the Native Vegetation Act 2003). A site inspection revealed that there is no evidence of recent Koala activity on the site however it is likely that Koala feed trees may be retained. Appropriate conditions with this regard will be applied to any consent; A diurnal fauna assessment conducted by JWA on the 9th March 2009 found no amphibians, reptiles or mammals on the site. The survey recorded the presence of eighteen (18) bird species, none of which are threatened. The dam

Issue	Council officer response
 <p>The top photograph shows a large, leafy tree in a grassy field. The bottom photograph shows two ducks in a grassy area with some pink flowers in the foreground.</p>	<p>and drainage lines provide a permanent water source and is thus considered good quality habitat for amphibians and it is probable that numerous species are present. It is considered that a number of reptile and mammal species are potentially also resident on and/or traverse the site from time to time;</p> <ul style="list-style-type: none"> • Several relatively recent records exist for the Koala (<i>Phascolarctos cinereus</i>) where, the most recent recording being in 2006. As noted, an undefined number of Swamp Mahogany, a preferred koala feed tree, are present on site and the vegetation communities on adjacent properties are mapped as preferred koala habitat; • The application states that <i>"the proposed development will result in a minor loss of vegetation for earthworks and the construction of the house pads"</i>, however, the submitted Ecological Assessment provided uncertainties in relation to the extent of vegetation clearance as well as the species of trees to be removed. As reported, a ROTAP species is present on site, Scrub Turpentine (<i>Rhodamnia maideniana</i>). Furthermore, numerous Koala feed trees and Koala sightings exist both on site and on surrounding properties. If the application is approved, a condition will be applied to ensure the retention of all preferred Koala feed trees and the ROTAP species; • Review of the Conceptual Layout Plan (Drawing number: BH110134-CV14), indicates that Lot 4 is heavily constrained. The proposed driveway and building pad transect a large patch of vegetation; the waste water LAA is in the far northwest of the site and the dam covers a large proportion of the Lot. Council's NRM Unit have advised that the proposed subdivision requires very little tree removal; several Camphor Laurel trees are to be removed to facilitate the construction of a driveway to proposed Lot 4 and an unidentified tree within the proposed LAA. It is considered that all other vegetation can be retained during subdivision works. Appropriate conditions will be applied to any development consent to ensure significant species are retained.

Issue	Council officer response
<p>Flora:</p> <ul style="list-style-type: none"> • Disagree with statement that land comprises grasslands which are regularly slashed and grazed; • Land is swamp and waterlogged even in dry periods of the year 	<ul style="list-style-type: none"> • Assessment by Council of the DA lodged in 2008 suggested that the dam could be an Endangered Ecological Community (EEC), however assessment by JWA determined that the dam was not representative of an EEC as the original drainage line that traverses the property has been significantly altered from its original and natural state (i.e. dammed and channelled as part of the Condong Drainage Union). They concluded that the dam is an artificial water body and fill from offsite was used to construct the vegetated island and dam wall; • OEH's Freshwater Wetland Identification guidelines state that "<i>...artificial wetlands created on previously dry land for purposes such as sewerage treatment, stormwater management and farm production, are not regarded as part of this community...</i>" Whilst not considered to conform to the Freshwater Wetland EEC, it remains that the wetland area provides potentially important habitat for local fauna.
<p>Bushfire threat:</p> <ul style="list-style-type: none"> • Same report used as that included in original application 	<ul style="list-style-type: none"> • It is acknowledged that the same report has been submitted for the current development application. The application details have been referred to the NSW Rural Fires Service who have assessed the submitted details and provided general terms of approval; • Should the application be approved conditions would be applied to any consent in relation to asset protection zones, water and utilities, access provision and the design and construction of buildings.
<p>Public interest:</p> <ul style="list-style-type: none"> • A significant public interest in the development by existing residents 	<p>It is acknowledged that the development application, if approved, would alter the visual appearance of the land in question. For the reasons outlined above, specifically in relation to flooding, landforming, vegetation removal and the provision of onsite sewage management systems, it is considered that the proposal accords with Council's policies and provisions, provided adequate conditions are applied to any consent.</p> <p>It is considered that the proposal would not result in such harm to the character/visual amenity or residential amenity of the locality so as to warrant refusal of the proposal.</p>

The applicant has provided a response to the concerns raised in the submissions, as summarised below:

Previous Reasons for Refusal

- The applicant advises that the previous reasons for refusal (DA08/0293) have now been addressed and further information has been provided to support this.

Sewerage Provision

- Proposed Land Application Areas (LAA) are now located above the flood level and the applicant considers that these issues have now been addressed;
- The applicant advises that proposed secondary treatment systems with nutrient reduction will also be located above flood levels and therefore inundation is not an issue;
- In relation to the provision of septic tanks, the applicant advises that *'The advanced secondary treatment systems with nutrient reduction (not septics) [...] are located at Q100 flood levels, so inundation is not an issue'*. Further, the applicant advises that the LAAs comply with Council standards for clearances from houses and boundaries with treated effluent being discharged below ground at the LAA and the discharge being better quality than the flood water. The applicant clarifies that no septic tanks are proposed;
- In relation to the On-site Sewage Management Report, the applicant advises that *'the images of the site may be very old but very little has occurred... and the 'On-Site Sewage Management Report has been revised'*.

Flood Liable Land

- The submitted Civil Engineering Report advises that *'the development poses no hindrance to existing floodwaters and will have no adverse impacts on flooding either above or below the site'*;
- In regard to the proposed development impacting waterways the applicant advises that the Civil Engineering Report states that *'No fill will be placed that will cause an overland flow path from any catchment to be blocked or its capacity inhibited for any flows up to the Q100'*;
- In regard to allegations that the land is not grassland but swampland, the applicant advises that the site has been continuously grazed for more than 30 years with drainage channels being enlarged in the 1980s; the land is boggy as a result of cattle grazing and this will cease once the development is constructed;
- The applicant states that the previous development application acknowledged that there were no drainage problems caused by the proposed house pad sites. The allegation that the Gumtree Court catchment enters the dam is incorrect as is the speculation that the land contains underground springs, which is also not of relevance to the proposed house pad sites;

- The applicant advises that all house pads and access driveways will be constructed above the Q100 flood level and therefore residents can leave for higher ground above the Probable Maximum Flood (PMF) level in an emergency;
- The applicant advises that the sites will not become 'islands' *'as they will provide flood free exit to elevated land above PMF in compliance with Council standards'*;
- In relation to flood water from Lot 25 entering Lot 19, the applicant advises that Lot 19 has been filled and that the area around the house pad is flood liable. The applicant advises that the extreme flooding as shown in the photographs was temporarily retained behind Hindmarsh Road but was overtopped during a severe flood event as the culvert pipe cannot cope with the flows from the large southern catchment. The applicant advises that the Condong Drainage Union entered the lot below lot 25 and cleaned the channel.

Landforming

- The applicant advises that the proposed fill to form the house pads above the Q100 flood level accommodates a small percentage of each hectare and will not interfere with stormwater drainage, as outlined in the Civil Engineering Report: *'No fill will be placed that will cause an overland flow path from any catchment to be blocked or its capacity inhibited for any flows up to the Q100'* and *'The development poses no hindrance to existing flood waters and will have no adverse impacts on flooding either above or below the site'*;
- The applicant advises that the house pad batters satisfy Council's Design Specifications (D6 - Site Regrading);
- In relation to alleged unauthorised earthworks the applicant advises that this statement is not correct and that no levels were changed and no earthworks were undertaken to utilise a new gate position, which did not require consent from Council. Further, the applicant advises that the lowering of the dam has never occurred and that no heavy machinery has been used on the spillway or on the proposed subdivision construction.

Environmental issues

- The applicant advises that the waterway is a constructed waterbody and is not an Endangered Ecological Community (EEC) and there will be no loss of aquatic vegetation on the site. The applicant advises that they have committed both physically and financially to the development of the wildlife habitat by creating a dam and island habitat and have continued to plant the area and encourage wildlife into the valley;
- In response to tree clearing, the applicant advises that *'no mature trees exist in the proposed house sites, no changes have been made to the dam levels, and no trees will be poisoned and felled [...]. The dam has not been lowered as suggested however the dry weather conditions of late has impacted on the height of the water level'*;

- In relation to tree clearance the applicant advises that '*in the last few years two trees have been removed on the subject site*', one being a large Blackbutt located in close proximity to the existing house on Hindmarsh Road and the second being an alleged dangerous tree in the common driveway below Gumtree Court that was removed after a request from neighbours.
- In response to allegations of weed spraying, the applicant advises that '*the dam was sprayed to eradicate invasive weeds dangerous if digested by cattle [... and] it should be noted that downstream cane field drains are sprayed with the same chemicals for the similar reason to prevent the invasive weed species and keep drainage channels clean*';
- In relation to Koala habitat, the applicant advises that, as stated in the Statement of Environmental Effects, '*core Koala habitat is not considered to occur on the subject site*'.

Bush fire

- The applicant advises that the house site or vegetation has not altered since the previous development application and therefore the Rural Fire Service General Terms of Approval would still apply.

Public Interest

- House sites have been chosen to limit visual impact to neighbours and retain existing environmental features;
- Not all surrounding properties have raised concerns with the proposed development;
- In response to allegations that the proposed development is out of keeping with existing residences in the area, the applicant advises that '*several of the adjacent residences (Lot 19 and 20) are on sites that have been filled by imported materials to achieve flood free house sites [... and] Proposed lots will be one hectare and will be constructed in similar methods to the existing adjacent lots. [...] Civil Engineering drawings show no works proposed for the water bodies. The dam spillway will be enlarged and armoured*'. The applicant also advises that there would be limited modifications to driveways;
- The applicant advises that the '*proposed development including land formation, grassing and vegetation plantings, will mimic the visual amenity of the surrounds and existing nearby residences*'.

Contamination

- The applicant and their family have occupied the site since the late 1970s and the lack of remnant structures and the utilisation of a dip site one kilometre to the west indicates the absence of organo-chlorides and similar chemicals that are persistent in the soil after 30 years of ownership;
- A statutory declaration has been signed by the applicant in this regard.

It is considered that the whilst the proposal will alter the character and appearance of the subject site, that the issues raised in the submissions in relation to: flooding; landforming; on-site sewage management; impact to habitat; and loss of trees have been satisfactorily addressed. Further, it is considered unlikely that the proposal would impact on the residential amenity of the neighbouring properties to such an extent to warrant refusal of the proposal. It is considered that the amended application details have satisfactorily addressed all of the previous reasons for refusal and the issues raised within the submissions and on this basis the application is recommended for approval.

(e) Public interest

In general, it is considered that the proposal would not impact to such an extent on matters relating to the public interest so as to warrant refusal of the application.

OPTIONS:

1. Approve the development application and apply conditions of consent; or
2. Refuse the development application.

Council Officers recommend Option 1.

CONCLUSION:

As detailed within this report, the current application before Council has been referred to the relevant Council officers for their consideration. In relation to flooding, Council officers consider that the applicant has addressed local catchment flooding and that the proposal would be unlikely to significantly impact surrounding properties in relation to the dispersal of flood waters. Council officers consider that the proposal is now satisfactory in relation to sewerage management as the applicant has proposed improved treatment, coupled with subsurface drip irrigation that now provides a solution to the many site constraints. In relation to ecological matters, Council officers are of the opinion that the proposal would not result in such a significant impact to the environment so as to warrant refusal of the proposal.

It is considered that the applicant has adequately addressed all of the previous reasons for refusal and concerns raised within the submissions 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 approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment Services)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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