



**TWEED**  
SHIRE COUNCIL

**Councillors:** M Armstrong  
G Bagnall  
C Byrne  
B Longland  
K Milne  
W Polglase  
P Youngblutt

# Agenda

## Planning and Regulation Reports

### **Ordinary Council Meeting**

### **Thursday 19 September 2013**

held at Murwillumbah Cultural and Civic Centre  
commencing at 4.45pm

## COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

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**Items for Consideration of Council:**

<b>ITEM</b>	<b>PRECIS</b>	<b>PAGE</b>
	<b>REPORTS THROUGH THE ACTING GENERAL MANAGER</b>	<b>5</b>
	<b>REPORTS FROM THE DIRECTOR PLANNING AND REGULATION</b>	<b>5</b>
24	[PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	7
25	[PR-CM] Development Application DA13/0132 - Change of Use (First Approved Use) to Surfboard Manufacturing, Extension of Mezzanine Level and Associated Signage at Lot 19 SP 80033, No. 19/23-25 Ourimbah Road, Tweed Heads	11
26	[PR-CM] Development Application DA13/0247 for a Dual Use of Existing Dwelling (Tourist Accommodation) at Lot 21 DP 1030322 No. 39 Collins Lane, Casuarina	39
27	[PR-CM] Development Application DA13/0212 for a Change of Use of Existing Building to Car Repair Station at Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South	61
28	[PR-CM] Development Application DA13/0233 for a 20 Lot Subdivision (19 Residential Lots and 1 Rural Lot) at Lot 2 DP 231691 No. 44 Station Street, Burringbar	85
29	[PR-CM] Development Application DA13/0119 for a Partial Demolition, Alterations and Additions of Salt Surf Lifesaving Club at Lot 173 DP 1075495 and Lot 901 DP 1066477 Bells Boulevard, Kingscliff	111
30	[PR-CM] Development Application DA12/0620 for Construction of an Awning over an Existing Outdoor Dining Area at Lot 2 DP 521302 No. 13 Wharf Street, Murwillumbah and Road 5900 Wharf Street, Murwillumbah	143
31	[PR-CM] Development Application DA13/0111 for a Detached Dual Occupancy at Lot 1 DP 790119 No. 75 Laura Street, Banora Point	165
32	[PR-CM] Development Application DA13/0239 for the Construction of a Carport (Unit 1) at Lot 1 SP 50344 No. 1/10 Chardonnay Crescent, Tweed Heads South	223
33	[PR-CM] Development Application DA13/0130 for a Rural Industry and Roadside Stall (Staged Development) at Part Lot 5 DP 599760 and Part Lot 5 DP 599760 No. 720 Clothiers Creek Road, Clothiers Creek	247
34	[PR-CM] Development Application DA13/0121 for a Minor Boundary Adjustment (Stage 1) and Two Lot Subdivision (Stage 2) at Lot 9 DP 616569 No. 1285 Numinbah Road, Chillingham; Lot 8 DP 579554 No. 23 Satinwood Place, Chillingham	295

35	[PR-CM] Development Application DA03/0476.04 for an Amendment to Development Consent DA03/0476 for the Establishment of an Art Gallery/Coffee Shop to include a Refreshment Room and Extend Trading Hours on Saturdays including the Option of Live Music at Lo	323
36	[PR-CM] Update on Planning Proposal PP12/0001 - No. 420-434 Terranora Road, Terranora	345
37	[PR-CM] Planning Proposal PP10/0007 - Mooball Planning Proposal - Lot 2 DP 534493 No. 5867 Tweed Valley Way, Lot B DP 419641 No. 5859 Tweed Valley Way and Lot 7 DP 593200 No. 5861 Tweed Valley Way, Mooball	351
38	[PR-CM] Draft Tweed Development Control Plan - Section B15 Seabreeze Estate	361
39	[PR-CM] Draft Design Excellence Policy	371
40	[PR-CM] Liquor Licence Application for the Hideaway Motel at Lots 1 and 2 Section 4 DP 29748, Lots 9-12 Section 4 DP 31209 Nos. 26 and 28 Tweed Coast Road and Nos. 19-25 Cypress Crescent, Cabarita Beach	381
41	[PR-CM] Development Application DA09/0611.11 Amendment to Development Consent DA09/0661 for a 181 Lot Subdivision Including 177 Residential Lots and Associated Subdivision Works Including Roads, Infrastructure, Western Cycleway and Landscaping Works (JRPP	387
	<b>CONFIDENTIAL ITEMS FOR CONSIDERATION</b>	<b>405</b>
	<b>REPORTS THROUGH THE ACTING GENERAL MANAGER IN COMMITTEE</b>	<b>405</b>
	<b>REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE</b>	<b>405</b>
C1	[PR-CM] Class 4 Appeal Tricare 87-89 Tweed Coast Road, Hastings Point - DA06/0413 Senior Living Development	405

## REPORTS THROUGH THE ACTING GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

(a) the provisions of:

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

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

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

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

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

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995 ), or

- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .
- (2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:
- (a) is not entitled to take those standards into further consideration in determining the development application, and
  - (b) must not refuse the application on the ground that the development does not comply with those standards, and
  - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,
- and the discretion of the consent authority under this section and section 80 is limited accordingly.
- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.
- Note:** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).
- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
  - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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

**SUBMITTED BY: Director**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

<b>DA No.</b>	DA13/0098
<b>Description of Development:</b>	Legalisation of existing farm structure as a rural workers dwelling
<b>Property Address:</b>	Lot 5 DP 630597 No. 197 Kielys Road, Mooball
<b>Date Granted:</b>	19/8/2013
<b>Development Standard to be Varied:</b>	Clause 18(3) Rural workers dwellings
<b>Zoning:</b>	1(a) Rural
<b>Justification:</b>	Nature of work to be carried out on site necessitates the provision of a rural workers dwelling.
<b>Extent:</b>	Subject site has a total area of 5.06ha
<b>Authority:</b>	Director General of the Department of Planning and Infrastructure

<b>DA No.</b>	DA13/0181
<b>Description of Development:</b>	Three lot community title to two lot torrens title subdivision (stage 1) and alterations to multi-dwelling housing (stages 2 and 3)
<b>Property Address:</b>	Lot 1 NPP 270157 & Lot 2 NPP 270157 No. 20 Tweed Coast Road, Hastings Road
<b>Date Granted:</b>	19/8/2013
<b>Development Standard to be Varied:</b>	Clause 32B(4)(b) - overshadowing
<b>Zoning:</b>	2(b) Medium Density Residential
<b>Justification:</b>	Proposed development results in additional area of approximately 25m <sup>2</sup> being overshadowed. This is considered to have minimal impact on public amenity of area as the land overshadowed is vegetated coastal reserve.
<b>Extent:</b>	An additional area of approximately 25m <sup>2</sup> is to be overshadowed as a result of this application.
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

## COUNCIL IMPLICATIONS:

### a. Policy:

Corporate Policy Not Applicable.

### b. Budget/Long Term Financial Plan:



Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA13/0132 Pt1**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

### **SUMMARY OF REPORT:**

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

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

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

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

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

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

operations of this particular industry, it cannot be assumed that by resolving any NSW WorkCover issues, the subject industry has complied or indeed negated Council's requirement for the provision of an Air Quality Impact Assessment Report.

To date the applicant has not provided the requested Air Quality Impact Assessment Report. As recently as 20 August 2013 the applicant made representations to the elected Councillors questioning the need for the requested Air Quality Impact Assessment.

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

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

Therefore the application is recommended for refusal and for the Council to resolve to instigate compliance action to have the business cease operating from the subject site and rectify illegal works undertaken to the mezzanine level.

Alternatively the Council could allow the applicant an additional 30 days to produce an Air Quality Impact Assessment Report and reconsider the application after receipt of that Report. If the report is not received within 30 days refuse the Development Application (under staff delegation) based on the reasons as outlined in this report.

Or Council could request that conditions of consent are brought forward to the next Council meeting to enable the application to be considered for approval.

#### **RECOMMENDATION:**

**That:**

- 1. Development Application DA13/0132 for a change of use (first approved use) to surfboard manufacturing, extension of mezzanine level and associated signage at Lot 19 SP 80033 No. 19/23-25 Ourimbah Road, Tweed Heads be refused for the following reasons:**
  - A. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (b) – “the likely impacts of that development including environmental impacts environmental impacts on both the natural and built environments, and social and economic impacts in the locality” as the development has not provided sufficient information in regards to the air quality as a result of the proposed development.**
  - B. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (c) – “the suitability of the site for the development” as the development has not demonstrated the sites suitability given the developments potential impact on adjoining tenancies.**
  - C. The development is not considered to be in the public interest as the application has failed to adequately address the issues raised in submissions received during the assessment of the application.**
  - D. The application has not been supported by sufficient owners consent acknowledging that DA13/0132 also seeks approval for the use of premises and signage not just the mezzanine construction.**

**and:**

- 2. Council instigate compliance action to have the business cease operating from the subject site and rectify illegal works undertaken to the mezzanine level.**

## REPORT:

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

### Background:

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

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

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

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

The subject application now seeks consent for:

- Change of Use (first use) of the premises for a surfboard manufacturing business (SuperBrand). The business has been operating at the subject unit without consent since November 2012.
- Extension of existing mezzanine by 112m<sup>2</sup> for the purposes of manufacturing, storage and office space (this work has been done without approval and would require the lodgement of a Building Certificate to validate the construction standard).
- Use of equipment such as air compressor (stored in room under stairs), a hand-operated sander, a cordless power drill and dust extraction unit.
- Hours of operation – 8am to 5pm Mondays to Fridays excluding Public Holidays.
- Up to ten employees.
- Minimal signage consisting of one flush wall sign measuring 6m x 1m.

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

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

The proposal is for the first approved use of Strata Unit 19 and has a total current Gross Floor Area of 213m<sup>2</sup> (165 ground/48 mezzanine). The factory unit is of concrete tilt up construction with an insulated metal roof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On 30 May 2013 Council receives a complaint that states:

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

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

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



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

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

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

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

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

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

On 12 July 2013 the applicant advised Council as follows:

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

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

On 8 August 2013 Council responded as follows:

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

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

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

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

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

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

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

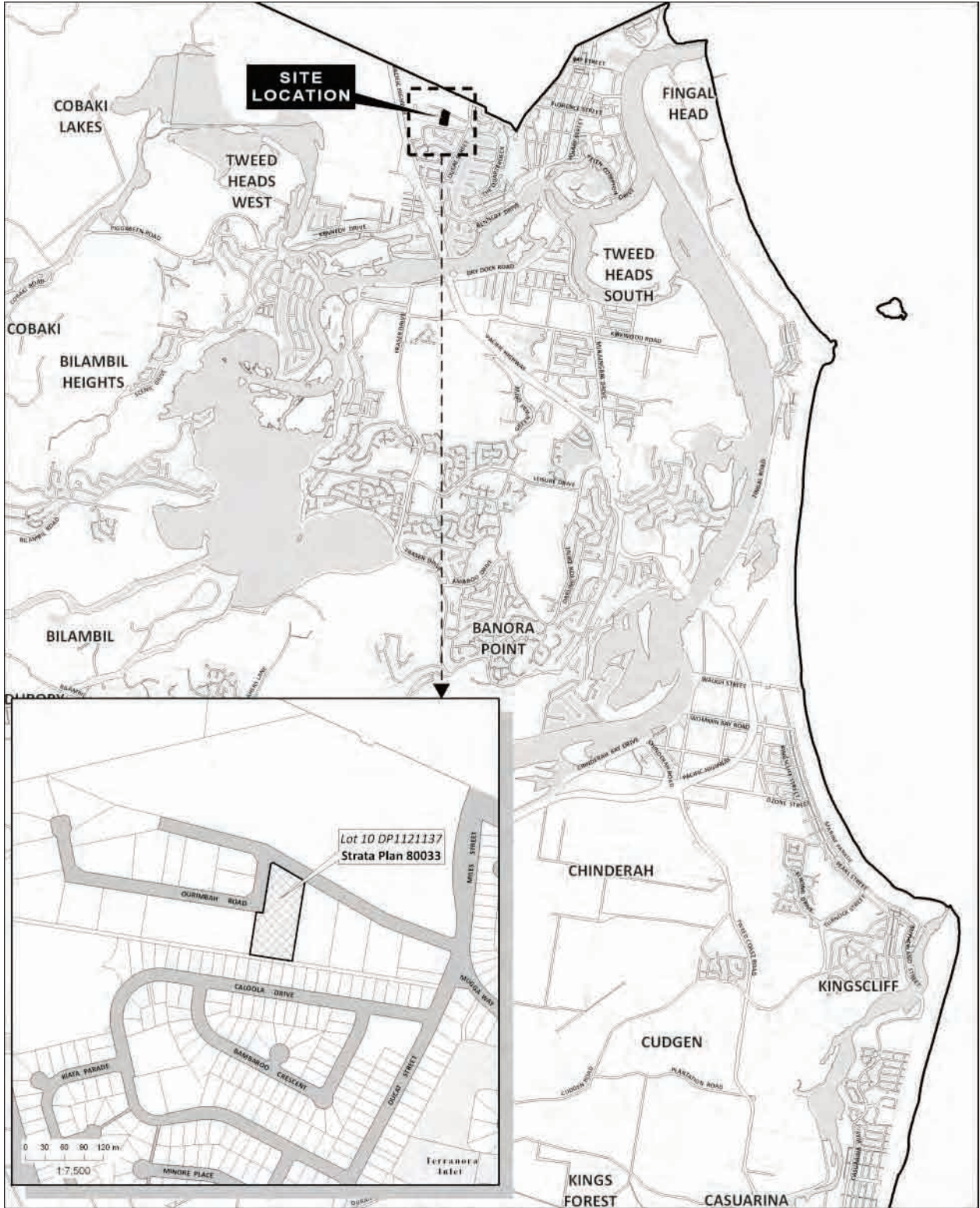
On 20 August 2013 the applicant responded to the above with disappointment and an indication that further quotes are being sought for the work.

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

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

Based on the information currently submitted by the applicant Council Officers are unable to recommend approval of the application as the applicant has not demonstrated that the business will not have an impact on adjoining businesses. Therefore the application is recommended for refusal and for the Council to resolve to instigate compliance action to have the business cease operating from the subject site and rectify illegal works undertaken to the mezzanine level.

**SITE DIAGRAM:**



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

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Cadastral 02/09/2013  
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Civic and Cultural Centre  
 3 Timbulgum Road  
 Murrumbidgee NSW 2484  
 PO Box 916  
 Murrumbidgee NSW 2484  
 T (02) 6670 2400 | 1300 230 872  
 F (02) 6670 2429  
 W www.tweed.nsw.gov.au  
 E planning@tweed.nsw.gov.au



**DEVELOPMENT/ELEVATION PLANS:**

Unit 19 and its associated car parking spaces:

Sheet No. 3 of 6 Sheets

SP80033

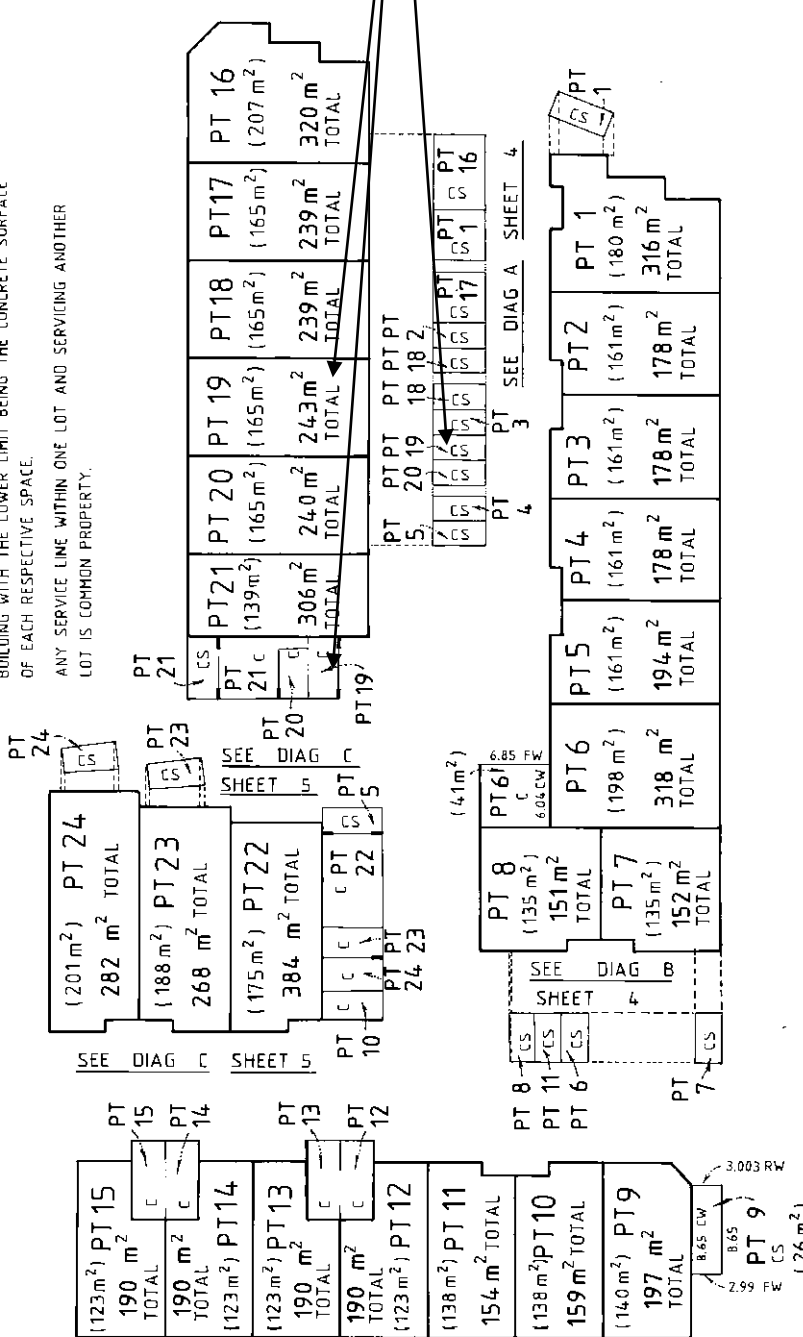
**WARNING: CREATING OR FOLDING WILL LEAD TO REJECTION**

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

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

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

MDA



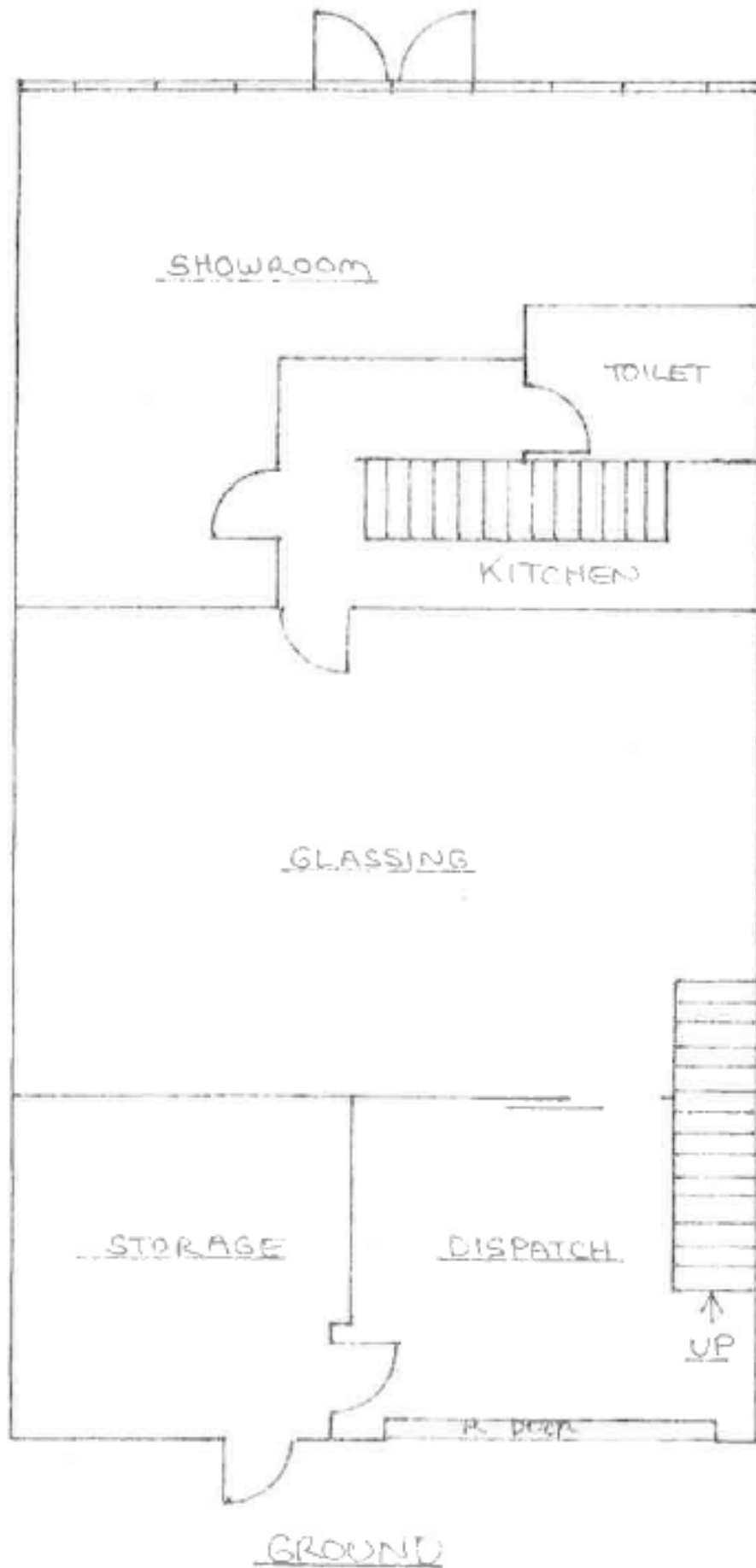
**GROUND FLOOR**

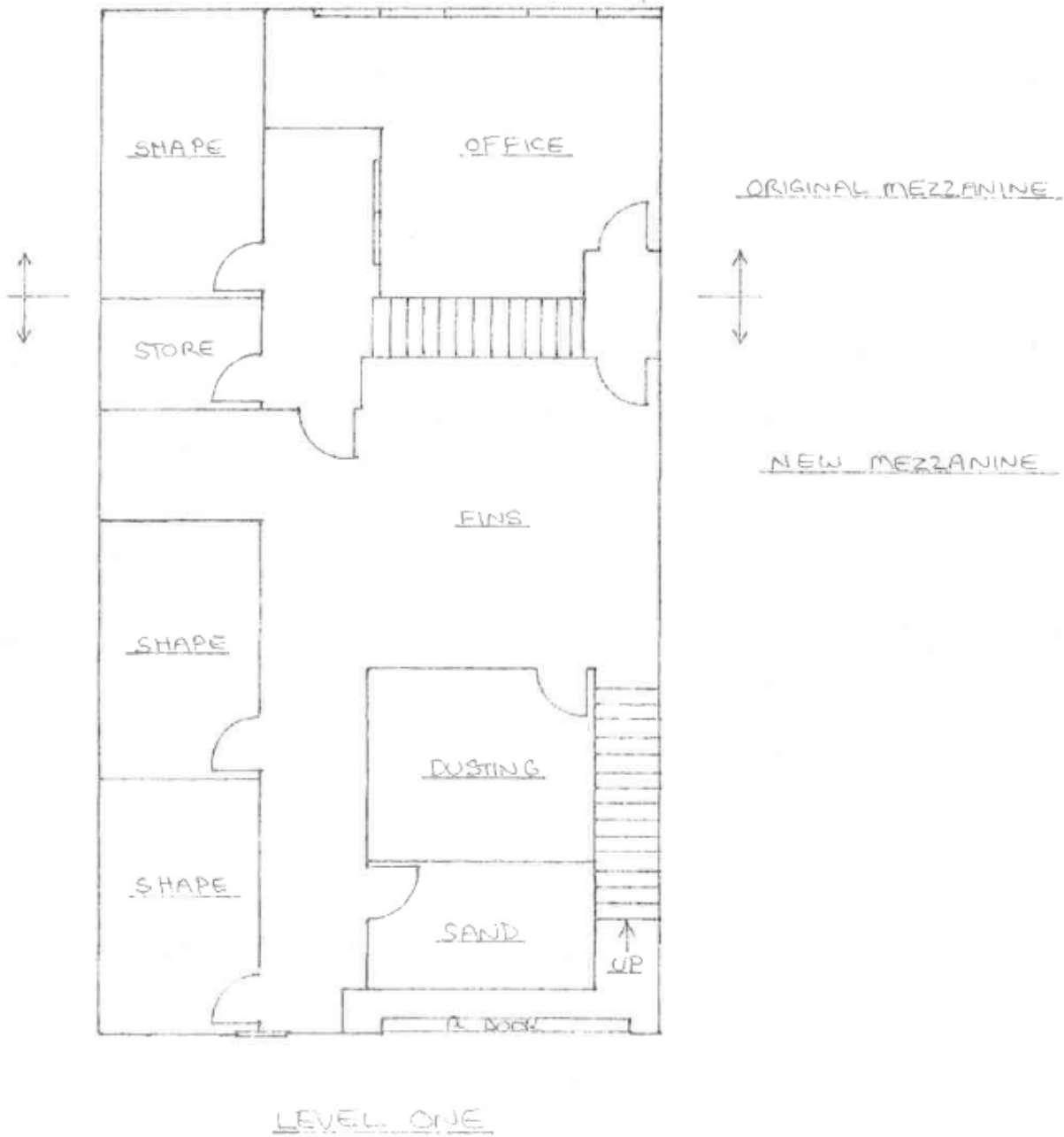
Reduction Ratio 1: 400

Lengths are in metres

Registered Surveyor  
 SURVEYOR'S REFERENCE: 05593 TH

Box:e-IDS /Doc:SP 0080033 P /Rev:18-Jan-2008 /Sta:OK-OK /Prt:19-Jan-2008 02:10 /Pgs:ALL /Seq:3 of 6  
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**Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:**

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

**Tweed Local Environmental Plan 2000 (TLEP 2000)**

Clause 4 - Aims of the Plan

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

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

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

Clause 5 - Ecologically Sustainable Development

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

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

Clause 8 - Consent Considerations

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

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

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

It is anticipated that developments such as this are located within Industrial Zones. However, the applicant needs to demonstrate that his business practices can occur without negatively affecting others particularly by way of smell. An Air Quality Impact Assessment Report would ensure the business operated in

accordance with best practice guidelines and that all possible building modifications were undertaken to ensure no adjoining premises are negatively affected by the proposed business operations.

Without the benefit of an Air Quality Impact Assessment Report Council staff are unable to ensure the development won't impact negatively on other businesses within the vicinity of the site.

#### Clause 11 - Zone Objectives

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

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

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

The proposed development is considered capable of compliance with these objectives subject to the lodgement of an Air Quality Impact Assessment Report which can recommend the necessary building modifications and work practices to mitigate the impacts associated with the proposed surfboard manufacturing business.

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

#### Clause 15 - Essential Services

All essential services are made available to the subject site.

#### Clause 16 - Height of Building

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

#### Clause 17 - Social Impact Assessment

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

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

#### Clause 35 - Acid Sulfate Soils

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

#### Clause 47 – Advertising Signage

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

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



Total signage area equates to 6m<sup>2</sup> which is acceptable.

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

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

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### **Clause 32B - Coastal Lands**

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

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

##### **Clause 47 – Principles for Commercial and Industrial Development**

The location of an industrial factory unit in an existing industrial zone in Tweed Heads is in accordance with the objectives of this clause in that it maintains the integrity of the main business area in this location, and provides for creation of an additional business on land which is zoned for such a purpose. It also strengthens the multi-functionality of the industrial area by its proximity to other industrial operations. All relevant services are available to the site and the site is located in proximity to existing local and regional road networks. However, the application has not adequately demonstrated that the business can function without having a negative impact on surrounding properties by way of smell.

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

##### **SEPP 64 – Advertising and Signage**

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

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

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

**State Environmental Planning Policy No. 71 – Coastal Protection**

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

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

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

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

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

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

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

There is a 10m height limit and the minimum allotment size for this draft zone is 2000m<sup>2</sup>.

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

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

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

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

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

Tenancy 19 has a proposed GFA of 325m<sup>2</sup> (165m<sup>2</sup> at ground level + 160m<sup>2</sup> at the increased mezzanine which is used for manufacturing, storage and office space).

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

The tenancy increases the GFA from 213m<sup>2</sup> (excluding car spaces) to 325m<sup>2</sup> (excluding car spaces) and would require one additional car space for the increased GFA on the mezzanine level.

DA05/1335 used the “industry” rate under DCP A2 (1 space/100m<sup>2</sup> GFA). The application approved 106 spaces based on a GFA of 7788m<sup>2</sup> (28 surplus spaces). The Section 96 for this consent approved 91 spaces (based on a GFA of 8141sqm, resulting in a surplus of 10 spaces for the entire site).

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

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

If Stage 1 of DA05/1332 becomes a standalone development the total approved GFA would be 5019m<sup>2</sup> requiring 40 spaces on site (1 per 100m<sup>2</sup> less 20% for ESD). There are 41 spaces shown on the Strata Plan for this section of the site (SP80033). Therefore **1 space credit**.

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

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

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

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

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

- *The site contains two road frontages and ample on street parking in close proximity to the premises.*

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

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

In regards to this application the applicant has indicated that the business employees up to 10 employees (as detailed verbally at Council's site visit in May 2013). The industry car parking rate of 1 space for every 100m<sup>2</sup> is a combined staff and customer average.

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

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

#### DCP A4 – Advertising Signs Code

The applicant has noted that signage will comprise of a single 6m<sup>2</sup> signage panel above the factory unit tenancy. This is consistent with all of the other factory units within the complex.

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

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

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

##### Clause 92(a) Government Coastal Policy

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

##### Clause 92(b) Applications for demolition

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

##### Clause 93 Fire Safety Considerations

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

Clause 94 Buildings to be upgraded

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

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

**Tweed Shire Coastline Management Plan 2005**

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

**Tweed Coast Estuaries Management Plan 2004**

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

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

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

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

Context and Setting

The proposed development will be situated within an established industrial area in Ourimbah Road, Tweed Heads. The proposed development comprises of the use of an existing industrial unit for surfboard manufacturing and storage. The application is considered capable of support provided that a suitable Air Quality Impact Assessment report could be produced detailing valid recommendations and conditions.

Odour

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

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

*Below is a summary of that Policy Information*

*Section 79C (1) of the Environmental Planning and Assessment Act 1979 states that in determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

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

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

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

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

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

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

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

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

*Particulate and dust emissions are also a concern particularly during the moulding and finishing processes. Activities such as grinding, polishing and*

sanding and the cutting of matting for use in the laminating process can create excessive particulate and dust emissions.

The main sources of pollution in FRP manufacture include:

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

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

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

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

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

As per Section 2.3 of the Local Government Air Quality Toolkit (Module 3: Guidance note—Composite structural products), a sense of smell cannot be used to judge whether the exposure is of concern with respect to toxicity. People complaining about chemical odours may well be seeking assurances

*that the level of exposure is not hazardous to their health. In situations where there is any doubt about possible health implications, an assessment of potential impacts should be carried out using the techniques described in the NSW Office of Environment & Heritage's Approved methods for the modelling and assessment of air pollutants in NSW (2005). The technical assessment described in this document will generally require specialist input.*

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

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

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

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

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

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

To date this report has still not been provided despite Council requesting this since 19 April 2013. Accordingly the application is recommended for refusal.

#### Waste

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

#### Noise and Vibration



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

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

Surrounding Land Uses/Development

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

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

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

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

Council has received written objections from the two adjoining businesses.

**The first objection** states as follows:

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

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

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

*appropriate extraction fans to be installed. We believe these fans have been installed, however the fumes are still prevalent.*

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

Council Assessment:

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

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

If Council wants to approve this application the owner's consent would need to be expanded authorising the lodgement of DA13/0132 detailing that the application seeks consent for the ongoing use of the premises, the mezzanine construction, and signage.

In regards to the odour complaints this complaint reinforces Council's assessment that an Air Quality Impact Assessment report is required.

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

Comments dated 12 Feb 2012:

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

Comments dated 12 Feb 2013:

- *Question..what filters are used and where? (when used)..how are these filters cleaned?..how are these filters disposed of when passed their use by?...what controls are in place with the disposal of toxic byproducts e.g. the sand from the floor (used in the glassing room) and other associated materials*

- *The emissions from the manufacturing process ie. blank shaping/sanding, fibreglass, resin and catalyst are all contributing to the carbon footprint and greenhouse gases.*
- *As a point of reference...James Hardy and the asbestos cover up was a sleeping giant!!...whilst a different business, the materials used in the manufacture and glassing of surfboards are toxic and a threat to human health.. this may well be another sleeping giant!?*

Comments dated 16 April 2013:

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

Comments dated 14 May 2013:

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

Comments dated 14 May 2013:

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

Council Assessment:

The odour complaints reinforces Council's assessment that an Air Quality Impact Assessment report is required.

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

**(e) Public interest**

The application as lodged (without an Air Quality Impact Assessment Report) is not considered in the public interest.

**OPTIONS:**

1. Refuse the Development Application in accordance with the reasons submitted in this report and instigate compliance action to have the business cease operating from the subject site; or
2. Allow the applicant an additional 30 days to produce an Air Quality Impact Assessment Report and reconsider the application after receipt of that Report. If the report is not received within 30 days refuse the Development Application (under staff delegation) based on the reasons as outlined in this report; or
3. Request conditions of consent be brought forward to the next Council meeting to enable the application to be considered for approval.

**CONCLUSION:**

Whilst the subject application could be considered a suitable development for the site the applicant has failed to provide sufficient documentation to demonstrate that the business practices of the proposed surfboard manufacturing can operate without adversely affecting the adjoining properties.

An Air Quality Impact Assessment Report is considered crucial to ensure that the building is modified to avoid vapours exiting the site and affecting adjoining properties. The Air Quality Impact Assessment Report would also need to make recommendations on the practices of the business to ensure best practice guidelines are being satisfied.

Without this report Council Officers are not convinced that the proposed development is suitable for the subject site given the proximity to other premises.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

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

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Applicant Letter to Council 8 May 2013 (ECM 3161959)  
Attachment 2. Applicant Letter to Council 10 July 2013 (ECM 3161960)  
Attachment 3. Applicant Letter to Council 20 August 2013 (ECM 3161961))

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**26 [PR-CM] Development Application DA13/0247 for a Dual Use of Existing Dwelling (Tourist Accommodation) at Lot 21 DP 1030322 No. 39 Collins Lane, Casuarina**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA13/0247 Pt1**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

### **SUMMARY OF REPORT:**

The proposed development is for dual use of an existing dwelling for tourist accommodation purposes. The dwelling would be leased to a maximum of 10 visitors at any one time as holiday accommodation. Intended clientele are predominantly family groups.

The existing dwelling was approved on 23 May 2005 for single dwelling purposes only. Since that time, the dwelling has been utilised for tourist accommodation on a commercial basis. As a result, Conditions 44 and 45 of the development consent have been breached.

The site is currently zoned 2(e) Residential Tourist and 7(f) Environmental Protection and the development is defined as 'tourist accommodation' under the current Tweed Local Environmental Plan 2000. Whilst the proposed tourist accommodation could be considered as permissible under the 2(e) Residential Tourist zone, it is prohibited under the proposed R2 Low Density Residential zone of the Draft Tweed Local Environmental Plan 2012. In addition, the proposal is not considered to be consistent with the objectives of the R2 Low Density Residential zone under the draft plan.

There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publically exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

Following an earlier public exhibition, Council at its meeting of 31 May 2013 resolved to adopt the exhibited Draft Tweed LEP 2012, subject to certain changes. The modified draft LEP has been referred to the Department of Planning and Infrastructure, and gazettal of the plan is expected within a number of months.

On that basis, it is the officer's view that the Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and as a prohibited use, should therefore be refused.

It is noted that lawful use of the dwelling for tourist accommodation purposes under the current LEP does not afford the applicant greater privilege than other land owners within the

2(e) zone at this point in time. However, once the draft LEP is in force and such use becomes prohibited within the R2 zone, other land owners will not have the same legal and financial right to operate their dwellings for the purposes of tourist and visitor accommodation, thus giving rise to equity issues. Although consistent with current objectives of the 2(e) zone, tourist and visitor accommodation is not consistent with the future desired character of the locality, reinforced by low density residential draft zoning and prohibition.

The development application has been referred to Council to determine given the current legal status which does not preclude Council from granting consent to the Development Application.

It should be noted that approval of the application would result in Existing Use Rights being relied upon once the Draft LEP 2012 is gazetted, which is not considered to be good planning practice and results in inconsistent use within the residential zone.

**RECOMMENDATION:**

**That Development Application DA13/0247 for a dual use of existing dwelling (tourist accommodation) at Lot 21 DP 1030322 No. 39 Collins Lane, Casuarina be refused for the following reasons:**

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – *the provisions of any Draft Environmental Planning Instruments* in that the development is prohibited within the R2 Low Density Residential zone.**
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – *the provisions of any Draft Environmental Planning Instruments* in that the development is inconsistent with the objectives of the R2 Low Density Residential zone.**
- 3. The development is not considered to be in the public interest.**



**REPORT:**

**Applicant:** Mr JJ Dixon  
**Owner:** Mr John J Dixon  
**Location:** Lot 21 DP 1030322 No. 39 Collins Lane, Casuarina  
**Zoning:** 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)  
**Cost:** Not Applicable

**Background:**

Council is in receipt of a development application that seeks consent for dual use of an existing dwelling (tourist accommodation) on a parcel of land zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands).

History

The single dwelling was constructed in 2005 following development consent in association with DA05/0311. Final occupation and compliance certificate was issued 24 February 2006 in the name of the current applicant.

The existing dwelling has had little alteration externally or internally since its original construction. The owners have used the dwelling for residential purposes and leased the property for the purposes of tourist accommodation (without the benefit of development consent). As such, Conditions 44 and 45 of the development consent for DA05/0311 have been breached:

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

[USE0110]

45. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE0290]

The Subject Site

The site is regular and rectangular shaped with a 12m frontage to Collins Lane and rear access to community land at the rear that provides a buffer to the coastal reserve. The site has a total land area of 746m<sup>2</sup>. The site is generally flat and landscaped to the rear of the dwelling. On-site parking is located at the Collins Lane frontage by way of a double carport and driveway space.



**Figure 1: Context of Site (No. 39)**

The existing two-storey dwelling has four bedrooms with large living areas (internal and external) on both levels that are oriented to the east. Dwellings on either side of the subject site extend further to the east and exhaust the developable area available within the 2(e) zone. Vegetated areas are located within the 7(f) zone.

#### The Proposed Development

The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing four-bedroom single dwelling for the purposes of short-term tourist accommodation. No physical works are required in order to facilitate the proposal.

On-site parking for up to four vehicles is proposed within the double carport and driveway area.

The property is currently advertised as "White Haven Beach House" via an online accommodation profile which currently states it can comfortably sleep up to eight persons. However, it is intended that the dwelling be leased via single booking to one tourist group comprising a maximum of 10 persons at any one time.

A typical group may be a small extended family consisting of parents, children, grandparents or the like or two small families (eg. two adults plus three children x 2). Groups of that size would only be approved upon application and a cap on the number of adults able to be accommodated would be applied. The proposal does not include use of the dwelling for events such as parties, weddings or end of school celebrations.

The owner has taken responsibility for bookings and management of the site for the last three years and undertakes on-line research of prospective tenants. However, prior management of the property did allow event bookings to occur which were not monitored. Cleaning and maintenance contractors attend to the residence and grounds following tenants vacating the premises.

The property has been advertised as 'dog-friendly' upon approval by the owner and a restriction to one (<10kg) dog only. This is problematic as a restriction on the use of the land pursuant to the Section 88B Conveyancing Act 1919 (registered 27 June 2001) applies to the property (eleventhly referred to) restricting the keeping of dogs (below) and specifically requires dog registration with Tweed Shire Council.

*7.2 No person occupying a lot burdened shall have more than one dog upon any lot burdened and shall not have any such dog unless the boundaries of the subject lot are securely fenced.*

7.3 *No person occupying any lot burdened may have a dog unless it is registered with the Tweed Shire Council and the relevant fee paid by the applicant and a secure dog-proof compound has been constructed upon the lot and such compound has been approved by the Tweed Shire Council.*

7.4 *No person occupying any lot may retrieve a dog that has been impounded by the Tweed Shire Council unless that person can satisfy Tweed Shire Council that a secure dog-proof compound has been constructed on the subject lot.*

The abovementioned restrictions have been put in place to enable careful management of environmentally sensitive land (zoned 7(f) Environmental Protection) located on and to the east of the Collins Lane properties and to mitigate the impacts of domestic animals such as dogs and cats upon native wildlife/habitat. Tweed Shire Council is empowered to release, vary or modify the restriction eleventhly referred to associated with Deposited Plan 1030322.

Several minor constructed changes to approved dwelling plans are also proposed that rectify practical changes involve the following:

*Ground level*

- Internal shutters on all north and south elevation windows (as opposed to external timber screens); and
- Patio screening to both sides.

*Upper level*

- Deletion of two windows on north elevation of family room;
- Internal shutters on all north and south elevation windows (as opposed to external timber screens); and
- Top deck privacy screening to both sides.

The applicant has proposed that a plan of management be submitted to Council for approval (upon condition) which will regulate use of the property, consistent with development consent conditions and existing S88B restrictions on the use of the land.

Additional wheelie bins are to be provided to ensure adequate waste management.

Summary


An assessment in accordance with current Tweed LEP 2000 controls indicates that the proposal may have merit in planning terms.

However, the development is prohibited by and inconsistent with the Draft LEP 2012, specifically the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

**SITE DIAGRAM:**

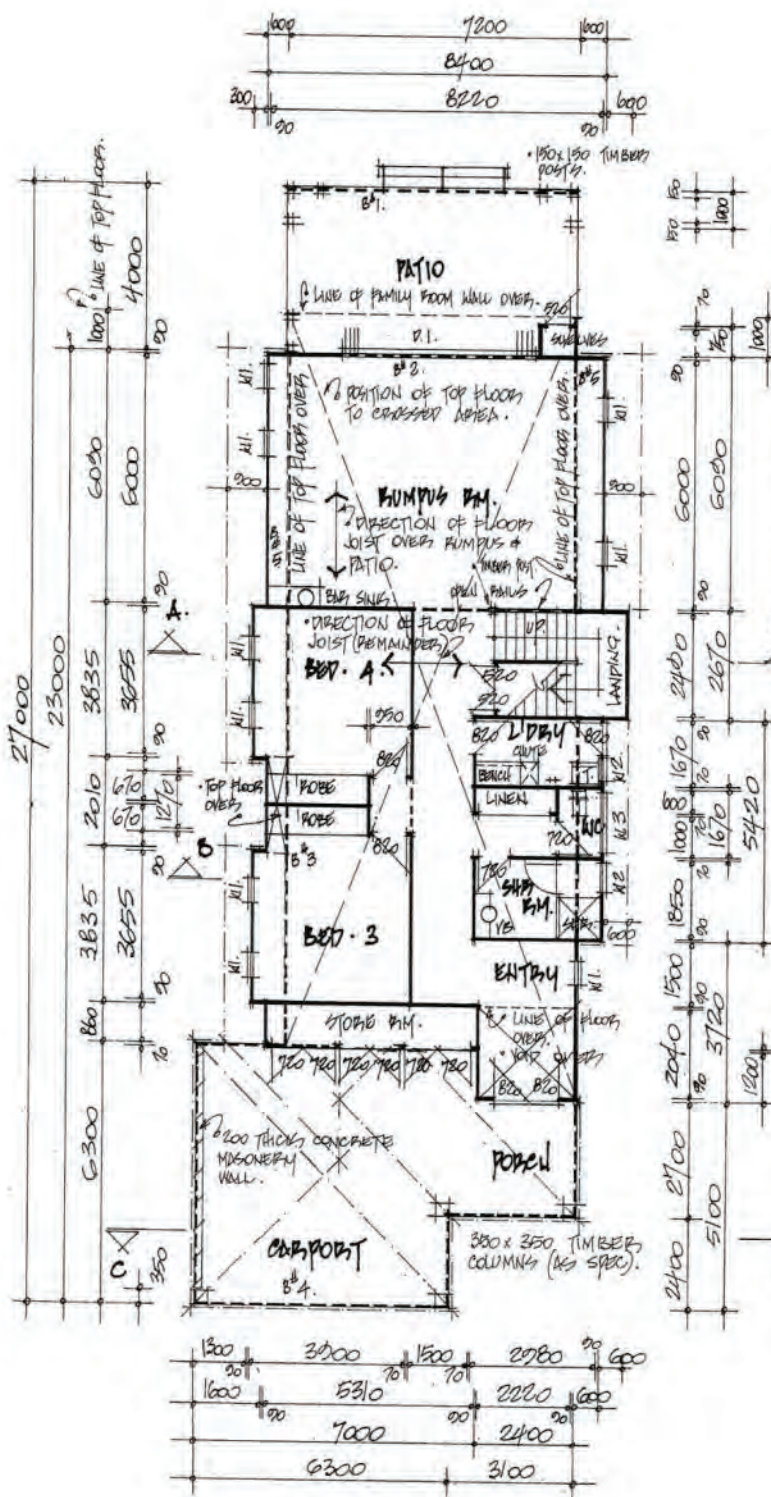


**Locality Plan**  
 Lot 21 DP 1030322  
 No. 39 Collins Lane, Casuarina

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties, expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability as recognised for all purposes, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 65 days only from the date of supply.</p>	<p>Cadastré 27/08/2013                  © Land and Property Information (LPI) &amp; Tweed Shire Council                  Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km                  1:15,000 @ A4 Portrait                  NOT FOR SALE                  COPY ONLY - NOT CERTIFIED                  Map Projection: Map of Australia                  Geodesic System of Australia 1984                  Map Unit of Australia, Zone 56</p>	<p>Civic and Cultural Centre                  3 Tumbulgom Road                  Murwillumbah NSW 2484                  PO Box 816                  Murwillumbah NSW 2484                  T   (02) 6670 2400   1300 292 872                  F   (02) 6670 2423                  W   www.tweed.nsw.gov.au                  E   planning@tweed.nsw.gov.au</p> 
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DEVELOPMENT/ELEVATION PLANS:

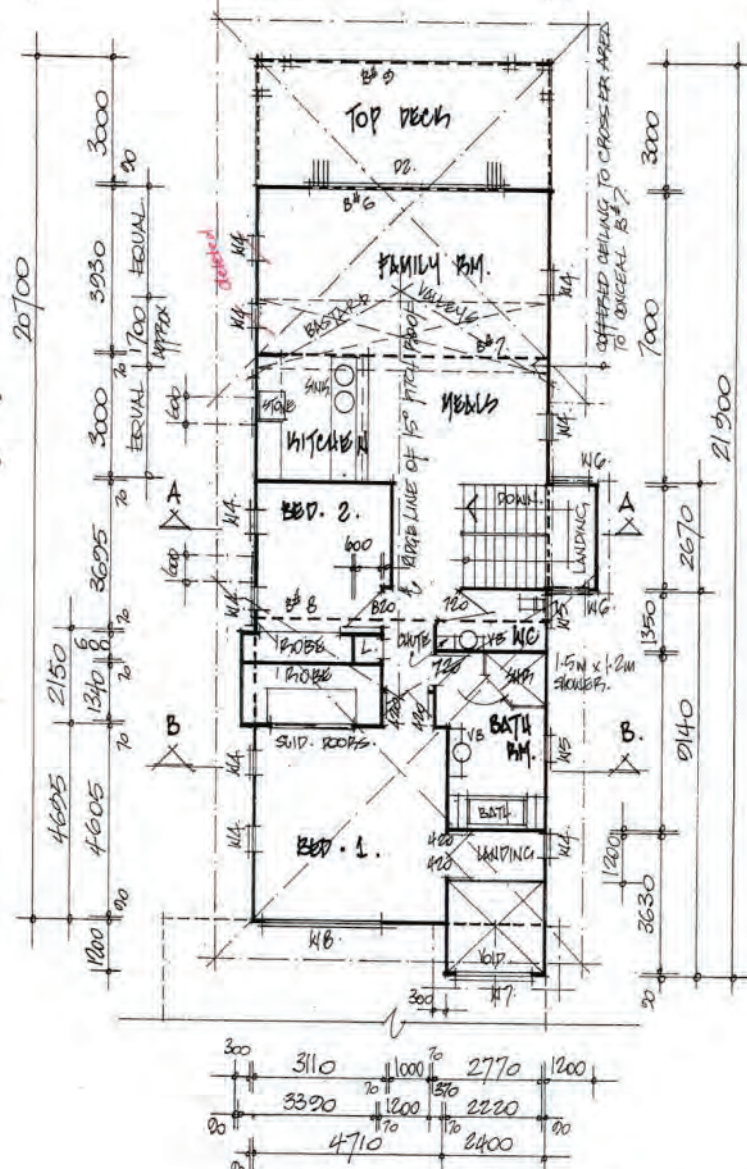
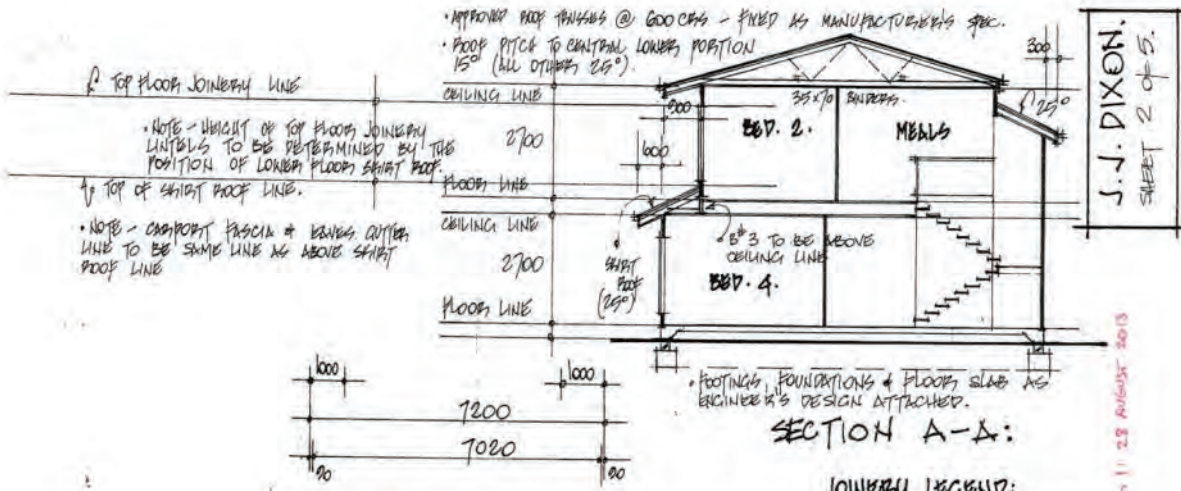
J.J. DIXON  
SHEET 1 OF 5.



- JOINERY LEGEND:**  
 GRAND FLOOR ONLY - REFER TO SHEET #2 FOR TOP FLOORS.
- N1. 1800 x 600 ALUM. DOUBLE HUNG.
  - N2. 900 x 600 " HOPPER WINDOW WITH OBS. GLASS.
  - N3. 900 x 1500 ALUM. SLIP WINDOW WITH OBS. GLASS.
  - D1. 2100 x 4800 SET OF B-ALUM. STACKED DOORS.

- BEAMS:**
- BEAMS #1 TO #8 - "TASBEAMS" AS ENGINEER'S DESIGN ATTACHED.
  - BEAM #3 & #5 TO BE POSITIONED IN FRAME WALL & BE ABOVE G/FLOOR CEILING LINE. FL JOIST TRIMMED TO SIDE OF BEAM.
  - B#4 & OTHER UNITS TO CARPORT TO BE SAME DEPTH FOR FULL PERIMETER.
  - UNITS OVER ENTRY, NC, SUB. RM TO BE KEPT ABOVE CEILING LINE
  - B#7 & #8 - DETAIL 'A' (SHEET 2), 20 AS TO REDUCE DEPTH OF COFFERED CEILING SURROUNDING B#7, BEAM DESIGN TO BE CALCULATED USING A 85MM WIDE "TASBEAM" I.B.C.

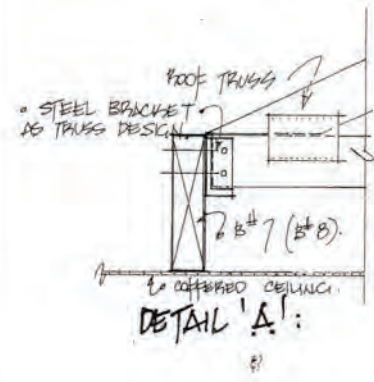
GROUND FLOOR PLAN: SCALE 1:100.



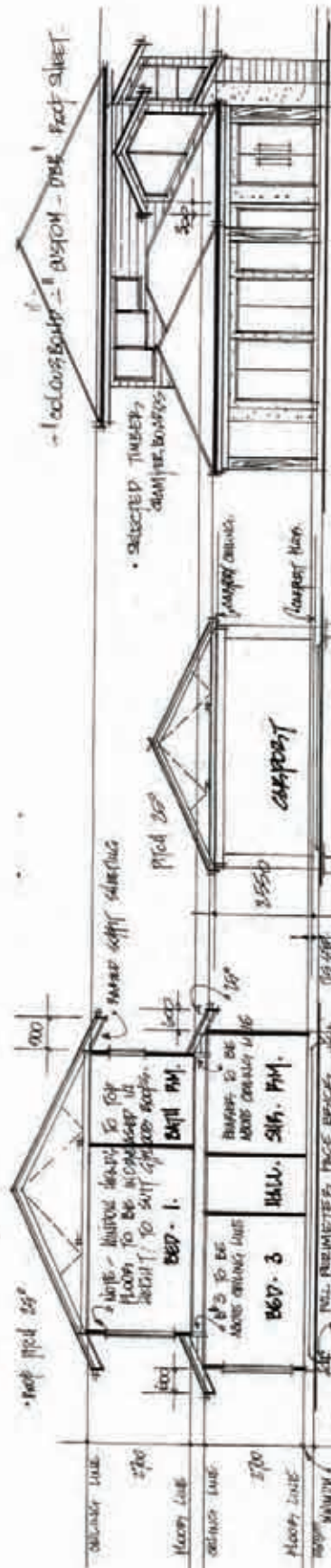
**JOINERY LEGEND:**  
 TOP FLOOR ONLY - REFER TO SHEET #1 FOR GROUND FLOOR.

- W4. 1800 x 600 ALUM. DOUBLE HUNG WINDOW.
- W5. 900 x 600 " HOPPER WINDOW.
- W6. FIXED GLASS (REFLECTIVE) AS SHOWN ON ELEVATION - ALUM. FRAME.
- W7. F.C. - SAME NOTE AS W6.
- W8. SET OF 3 ALUM. HOPPER WINDOWS 1000 x 900, 800 x 900, 600 x 900 WITH SELECTED REFLECTIVE GLASS.
- D2. 2100 x 4800 ALUM. SET OF 8 ROOFS.

- TOP DECK TO BE SHEETED WITH 'JAMES HARRIES' COMPRESSED SHEET & WATER PROOFED TO 'JAMES HARRIES' SPECIFICATION & SHEET WITH SELECTED FLOOR TILES.
- CEILING OF PATIO TO BE SHEETED WITH 'VILLA BOARD' & SET AS 'JAMES HARRIES' SPECIFICATION.
- CEILING TO STAIRWELL (LANDING PORTION) TO BE FIXED ON BACK OF PATTERNS.



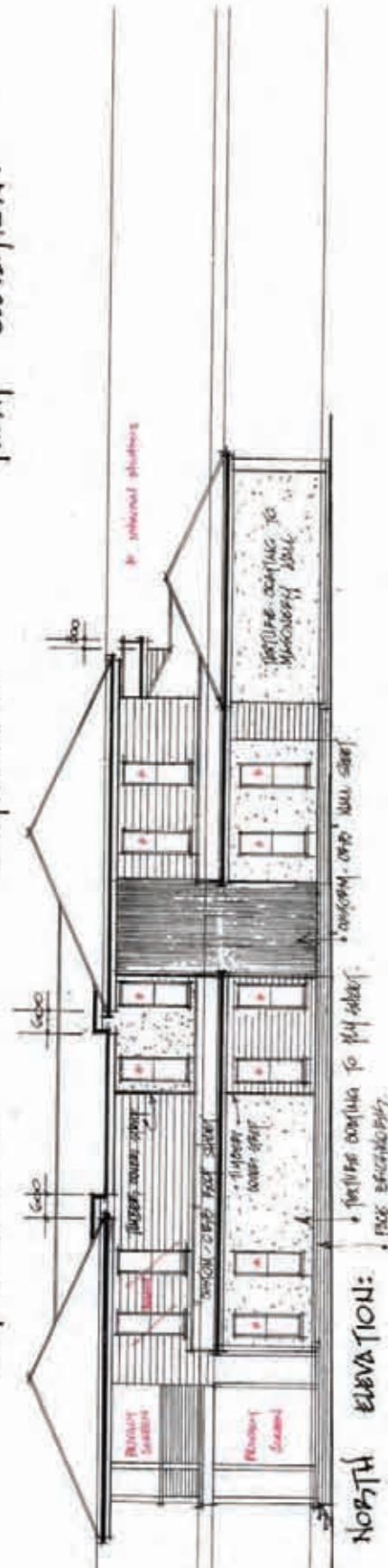
TOP FLOOR PLAN: SCALE 1:100.



SECTION B-B:

SECTION C-C:

FRONT ELEVATION:



NORTH ELEVATION:

Revision 11 21 October 2013  
**J.J. DIXON**  
 SHEET 3 of 5







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

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

**Tweed Local Environmental Plan 2000 (TLEP 2000)**

Clause 4 - Aims of the Plan

The proposed change of use is considered consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The development raises no specific concerns or implications in respect of ecologically sustainable development.

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 2(e) Residential Tourist, the primary objective of which is 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.*

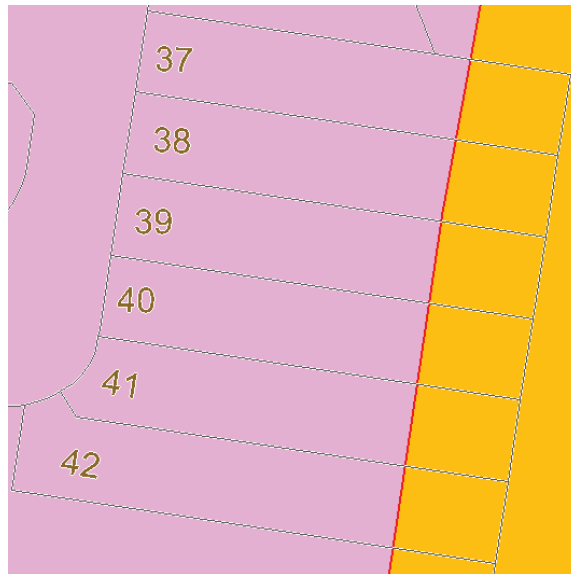
The proposed dual use of the existing dwelling (tourist accommodation) is considered consistent with the primary objective of the zone in that the proposal provides a form of family-oriented short-term accommodation.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed dual use of the existing dwelling (tourist accommodation) generally complies with the aims and objectives of each.

Subject to the imposition of development consent conditions to regulate activity at the site and under current controls, the proposal is not considered to contribute to an unacceptable cumulative impact in the community.

Clause 11 - Zone Objectives

The subject site is located within the 2(e) Residential Tourist zone (pink) with the rear of the site being zoned 7(f) Environmental Protection (orange). All structures on site are located entirely within the 2(e) Residential Tourist zone.



**Figure 2: Split Zoning of the Site**

The primary objective of that zone and consistency of the proposal with that objective has been outlined above. The secondary objective permits 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.

It is submitted that the proposal, being a form of residential/tourist development within an established residential area is suitable in scale and form as the appearance of a single dwelling is maintained. Although there are few such developments that Council are aware of, it is not considered currently to have significant effects on the character of the area. Impacts upon amenity have been raised by objectors in submissions received during the exhibition period and are discussed elsewhere in this report.

#### Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services available.

#### Clause 16 - Height of Building

The proposal does not contravene the imposed three storey height restriction on the subject site as there is no change to the two storey height of the existing dwelling.

#### Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

#### Clause 35 - Acid Sulfate Soils

Class 4 Acid Sulfate Soils are present on the site. There are no works proposed. As such, no further consideration is required and this clause is satisfied.

#### Other Specific Clauses

##### Clause 39A – Bushfire Protection

The site is bushfire prone. The application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose. A bush fire safety authority under section 100B

of the Rural Fires Act 1997 was received from the service on 3 July 2013 inclusive of conditions regarding Asset Protection Zones, Evacuation and Emergency Management, Design and Construction and Landscaping.

Clause 54 – Tree Preservation Order

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The proposal does not require any removal of vegetation. As such, this clause is satisfied.

**State Environmental Planning Policies**

**SEPP (North Coast Regional Environmental Plan) 1988**

Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

Clause 33: Coastal hazard areas

The rear of the site is subject to the 2100 coastal hazard projection line. The site is not impacted by either the immediate or the 2050 coastal hazard projection line.

Clause 43: Residential development

The application does not contradict the objectives of Clause 43. On-site density has been maximised without adversely affecting the environmental features of the land.

Clause 75: Tourism development

The plan generally refers to the location of large scale resort developments within prime tourism development area such as Kingscliff and Tweed Heads. The proposal does not meet the definition for small scale or low key tourism development as defined by the regional plan.

SEPP No 71 – Coastal Protection

The subject land has frontage to community land that provides a buffer to the coastal foreshore reserve. The proposal will therefore not restrict public access to the foreshore. The development is generally consistent with the zone objectives of TLEP 2000, the requirements of relevant Council DCPs and consistent with ESD principles and objectives. It is therefore considered that the proposal satisfies the matters for consideration under SEPP 71.

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

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

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

A recent article published in a Planning Institute of Australia (PIA) NSW Newsletter (June 2013) from Gadens Lawyers noted the following with respect to the determining weight of a draft LEP:

***"Question: I would like to understand why a Draft LEP is highly relevant to the assessment of a DA when the draft LEP is 'certain and imminent', and what exactly that means?"***

*The starting point is that s.79C of the Act expressly requires a consent authority, when assessing any development application, to take into consideration the provisions of any draft planning instrument (for example, an LEP or SEPP) that "is or has been the subject of public consultation" and that has been notified. However taking something into account is one thing - the remaining question is how much weight or emphasis to place on that EPI's provisions when it is only a draft document, and may well be quite inconsistent with a current and in-force LEP.*

*In that regard, the Courts have developed a body of caselaw to the effect that a Draft LEP will be given greater weight when it is "certain and imminent". Funnily enough, this phrase does not appear anywhere in the Act or Regulations, nor in any savings or transitional provisions that we are aware of, and although it is bandied about by judges, commissioners, lawyers, and government authorities, you'd have to search hard to find its source of origin. It actually dates back to a 1980 Judgment (*Balgownie Pty Ltd v Shoalhaven City Council* (1980), which well and truly predates s.79C of the Act. In that matter, the Court had some limited regard to a draft proposal to rezone the site, but only because it was said to be "the latest and best informed expert opinion" relating to the site.*

*It is therefore surprising that this has morphed into a general principle that any draft LEP that is 'certain or imminent' should be given considerable weight in the s.79C balancing act (in fact, the courts have used confusing terminology here too, referring variously to "significant weight", or "some weight", or "considerable weight" or "due force" or "determining weight" - see the discussion of this in *Blackmore Design Group v North Sydney* (2000)).*

*Nevertheless, what is clear is that the weight to be attributed to a draft environmental planning instrument will be greater if there is a greater certainty that it will be adopted (*Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* (2003)). Where the LEP has been exhibited and sent by the council to the Minister for approval and gazettal, it will often be given great weight, even more than the existing and in force LEP.*

*But is that approach fair and correct? The answer is probably not. It can be very hard to predict when an LEP is 'certain' and 'imminent', because this depends on the future decision of the Minister and his staff at the Department. For example, our team at Gadens was involved in an appeal in the Warringah local government area in 2011 where the Court ruled that a change to the zoning of the site was certain and imminent and should be given 'determinative weight', and refused the DA. About a month later, the Minister made the LEP but carved out the site as a 'deferred' matter (its zoning did not change). The Court and Council's assessment that the proposed rezoning was 'certain' and 'imminent' had been dead wrong. But*

*such a task is inherently uncertain because it relies on predictions as to a decision of the Minister that has not yet been made.*

*Notwithstanding 'certainty and imminence', a consent authority may of course grant consent to a development application which does not comply with the draft instrument. As the Court said in the Blackmore Design Group v North Sydney Council matter:*

*"In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith [or "antipathetic" thereto]."*

In light of the above advice, it is considered that refusal of the proposed development is the appropriate course of action. The draft LEP has been exhibited and sent by Council to the Minister for approval and gazettal. Approval of the development would result in creating Existing Use Rights for the development, which is not considered to be good planning practice.

The draft zone for the subject site is R2: Low Density Residential. The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation*:

**tourist and visitor accommodation** means 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:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

which is a prohibited use in the draft zone by its inclusion in Item 4:

#### 4 Prohibited

Agriculture; Airstrip; Air transport facilities; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Camping grounds; Caravan parks; Cemetery; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematorium; Depots; Eco-tourist facilities; Entertainment facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home occupation (sex services); Hostels; Industries; Industrial retail outlets; Industrial training facilities; Information and education facilities; Marinas; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Public administration building; Recreation facilities(major); Registered clubs; Research stations; Residential flat buildings; Restricted premises; Rural industries; Rural worker's dwellings; Service stations; Sex services premises; Shop top housing; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Wharf or boating facilities; Wholesale supplies

Objectives of the R2 zone include the following:

- To provide for the housing needs of the community within a low density residential environment; and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal to utilise the dwelling for the purposes of tourist and visitor accommodation is not consistent with the objectives of the R2 Low Density Residential zone. The proposed use does not satisfy housing needs of the community, nor does it provide facilities or services to meet the day to day needs of residents.

Draft zoning for the locality has been informed by the LEP Practice note PN 09-006 *Providing for tourism in Standard Instrument local environmental plans*, circulated by the Department of Planning on 2 December 2009. These practice guidelines stipulate that tourist and visitor accommodation is not recommended in the R2 Low Density Residential zone.

As such, the draft LEP has zoned the balance of the land (exclusive of parks/reserves and medium density residue allotments) as low density residential which is consistent with the as-built environment.

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

##### Tweed Development Control Plan

##### A1-Residential and Tourist Development Code

The dwelling was approved on 23 May 2005 by way of development application DA05/0311 prior to DCP A1 coming into force in April 2008.

The current DCP A1 came into force on 21 May 2013. A minor variation to Control C13 (Side Setbacks) of the current DCP A1 has been identified. The 1.2m side setback of the 2.67m long stair well wall is 300mm short of the required

1.5m side setback for two storey dwellings. Otherwise, the dwelling generally complies with current controls adequately.

A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces. A variation has been requested to delete the requirement for staff and delivery vehicle parking as the nature of the proposal does not require it. It is considered that the existing on-site parking arrangements are sufficient for an extended family group.

A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section. The proposal was notified to adjoining owners for 14 days from 19 June to 3 July 2013. Two submissions were received as a result of this process which are discussed elsewhere in this report.

B5-Casuarina Beach

This policy relates to the subdivision and release of land within Casuarina, most of which has already occurred. It does not offer guidance for change of use applications such as is being assessed. Development of the single dwelling accords with policy contained within DCP B5.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

B25-Coastal Hazards

The rear of the site is subject to the 2100 coastal hazard projection line. The site is not impacted by either the immediate or the 2050 coastal hazard projection line.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is not considered that the proposed dual use of the existing dwelling for tourist accommodation contradicts the objectives of the Government Coastal Policy.

This proposal does not require demolition or a change of BCA classification and no works are proposed. As such, Clause 92(b) (Applications for demolition), Clause 93 (Fire Safety Considerations) and Clause 94 (Buildings to be upgraded) of the Regulations do not apply.

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

The proposal does not impact upon coastal zone management plans.

**Tweed Shire Coastline Management Plan 2005**

The proposal does not impact upon coastline management strategies.

**Tweed Coast Estuaries Management Plan 2004**

The proposal does not impact upon estuaries management strategies.



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

The proposal does not impact upon coastal zone management strategies for Cobaki and Terranora Broadwater.

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

Amenity

Adjacent properties may be impacted by the constant nature of short-term visitors. The applicant has proposed the use of a plan of management to monitor and regulate amenity impacts that may arise from the development inclusive of those raised in submissions below.

Context and Setting

The proposed development is located within an area dominated by large dwellings lawfully utilised for long-term residential purposes and large scale resort developments within the prime tourism development area of Kingscliff. It is intended that the large scale resorts provide tourist accommodation and flexible use options into the future, not single dwellings.

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

The site is not considered to be suitable for the proposed development as the future (imminent and certain) zoning under Draft LEP 2012 will prohibit the proposed use.

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

The proposal was notified to adjoining properties in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 19 June to Wednesday 3 July 2013. During this time, two submissions were received.

Issues raised include the following:

- Impact upon tranquil family residential lifestyle in quiet family cul-de-sac;
- Tourist accommodation is provided elsewhere in Casuarina: Beach Shacks, Pandanus Pocket etc;
- Residents purchased here specifically for the quiet beachside family lifestyle;
- People come to party in large groups: excessive noise during day and late at night;
- Parking congestion (off site and on road reserve areas) and blocking of driveways;
- Barking dogs, especially when dogs are in a new house in unfamiliar territory;
- TSC unregistered dogs – more than one at a time;
- Rubbish, littering and vandalism;
- Trespassing / opening gates of neighbouring property;

- Discharge of fireworks; and
- Request for neighbours to approach tenants directly to remedy matters.

The applicant responded to the issues raised within the submissions as follows:

- Capacity will be capped at 10 persons. No party groups or groups exceeding this amount are permitted;
- It is not envisaged that more than two cars will be on-site at any time;
- Controls will apply to the inclusion of a family dog during tenancy inclusive of a non-refundable immediate ejection from the premises should the controls be breached;
- Additional waste and recycling wheelie bins are part of the proposal;
- Other issues to be addressed in the proposed plan of management;
- Tenants do not abide by agreements even though they are made aware of the policy;
- The property has been rented for 50 nights over the last 12 months by 8 families with an average stay of 6 nights per family; and
- Tenants have been harassed during their stay.

#### Assessment

It is clear that the way the tourist accommodation has been managed in the past is not consistent with how the applicant intends to manage it in the future.

Many of the issues raised may be resolved by the implementation of a firm management plan and an available 24 hour contact should issues arise as a result of tenancy.

The ability for tenants to lease the premises inclusive of the family dog as part of the tourist accommodation proposal is contrary to aforementioned restrictions on use of the land. There is no secure dog-proof compound on the site and fencing between properties is not intended to restrain dogs. Given the environmentally sensitive nature of the site and immediate locality, it is important that restrictions regarding keeping of domestic animals be retained.

It is noted that the external (upper and lower) living area of the southern adjoining property extends further to the rear of the site, possibly for solar access purposes. There is no privacy screening in place and minimal building separation. There is an interface between the two dwellings (despite measures taken to screen the sides of the upper verandah on the subject site) which may or may not be able to be resolved.

It is Council's intention to maintain availability of flexible tourist and visitor accommodation within larger scale developments at Casuarina. This is reflected in the objectives of draft zoning and supported by State government policy.

#### Referral to NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose. A bush fire safety authority under section 100B of the Rural Fires Act 1997 was received from the service on 3 July 2013 inclusive of

conditions regarding Asset Protection Zones, Evacuation and Emergency Management, Design and Construction and Landscaping.

**(e) Public interest**

Whilst the proposed development at present complies with the zoning controls under Tweed Local Environmental Plan 2000, it is certain and imminent that the Draft LEP 2012 will prohibit the development. As such, the development is not considered to be in the public interest.

**OPTIONS:**

1. Refuse the application for the reasons supplied; or
2. Grant in-principle support for the application and a report to be brought back to a further Council meeting with recommended conditions of consent for Council to determine.

The Council officers recommend Option 1.

**CONCLUSION:**

The development is prohibited by and inconsistent with the Draft LEP 2012, specifically the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant may seek to lodge an appeal against a Council determination in the NSW Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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27 [PR-CM] Development Application DA13/0212 for a Change of Use of Existing Building to Car Repair Station at Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0212 Pt1



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

#### Updated Information

At its meeting of 15 August 2013, Council resolved the following in respect of this matter:

***“RESOLVED*** that Council grants in-principle support for Development Application DA13/0212 for a change of use of existing building to car repair station at Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South and a report to be brought back to a further Council meeting with recommended conditions of consent for Council to determine.”

If Council wishes to approve the development the following conditions of consent are recommended:

#### GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos G2810 sheet 1, 2, 3 prepared by Gavin Duffie and dated 4:4:13, as amended in Red on the approved plans 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. The washing of vehicles is not permitted.

[GENNS01]

6. The site is to be serviced by vehicles not greater than 5 metres in length.

[GENNS02]

7. This consent permits four employees to be on the site at any one time.

[GENNS03]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

[PCC0285]

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

[PCC0585]

10. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

- (a) Design flood level of RL 2.6m AHD.
- (b) All building materials used below Council's design flood level must not be susceptible to water damage.
- (c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (d) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

#### **PRIOR TO COMMENCEMENT OF WORK**

11. 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]

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

[PCW0225]

13. 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**

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

[DUR0005]

15. The provision of 21 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DUR0085]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

17. 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]

18. 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]

19. 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]

20. 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]

21. Landscaping of the site shall be carried out in accordance with the approved landscaping plans.

[DUR1045]

22. Exit signs which comply with Part E4.5 of the Building Code of Australia and are designed in accordance with Part E4.8 of the Building Code of Australia shall be installed.

[DUR1295]

23. Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided.

[DUR1305]

24. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be:

- (a) Roofed;
- (b) Provided with a sealed floor; and

Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-labile and shall be provided with pump out facilities.

[DUR1635]

25. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]



26. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.

[DUR1705]

27. 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]

28. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by NSW Office of Environment & Heritage.

[DUR2215]

29. 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]

30. Plumbing

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

[DUR2495]

31. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

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

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

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

[DUR2555]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

33. 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]

34. 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]

35. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

2.9298 Trips @ \$1365 per Trips \$3999

(\$1318 base rate + \$47 indexation)

S94 Plan No. 4

Sector2\_4

[POC0395/PSC0175]

36. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate.

[POC0475]

37. Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia.

[POC0515]

38. 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]

## USE

39. 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]
40. All 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]
41. Hours of operation of the business are restricted to the following hours:
- \* 8.00 am to 5.30 pm Monday to Friday
  - \* 8.00 am to 12.30 pm Saturday
  - \* No operations are to be carried out on Sundays or Public Holidays
  - \* All deliveries and pickups relating to the business are to occur within the approved hours
- [USE0185]  
[USE0185]
42. 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]
43. 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]
44. All plant and equipment installed or used in or on the premises:
- (a) Must be maintained in a proper and efficient condition, and
  - (b) Must be operated in a proper and efficient manner.
- In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.  
[USE0315]
45. The use being restricted to the floor area designated on the approved plan.  
[USE0415]
46. No items or goods are to be stored or displayed outside the confines of the premises.  
[USE0445]
47. All loading/unloading to take place within the boundary of the subject property.  
[USE0525]
-

48. All wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.

[USE0875]

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

[USE1035]

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

[USE1045]

51. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate.

[USE1055]

52. No spray painting is to be undertaken at the site without prior written approval of Council's General Manager or his delegate.

[USE1065]

### Previous Report

This application proposes a change of use of an existing industrial building (previously used for the warehousing/wholesaling of auto spare parts) to a car repair station. Proposed works would create an office and reception area and disabled toilet.

Three work bays are proposed within the building itself. The development would include four staff, with the development operating from 8.00am to 5.30pm Monday to Friday and 8.00am to 12.30pm Saturday.

The site is currently zoned 3(c) General Business and the development would be defined as a 'car repair station' under the current Tweed Local Environmental Plan 2000. Whilst the proposed car repair station could be considered as permissible under the 3(c) zone, it is prohibited under the proposed B4 Mixed Use zone of the Draft Tweed Local Environmental Plan 2012. In addition, the proposal is not considered to be consistent with the objectives of the B4 Mixed Use zone under the draft plan.

There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

Following an earlier public exhibition, Council at its meeting of 31 May 2013 resolved to adopt the exhibited Draft Tweed LEP 2012, subject to certain changes. The modified draft LEP has been referred to the Department of Planning and Infrastructure, and gazettal of the plan is expected within a number of months.

On that basis, it is the officer's view that Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and as a prohibited use, should therefore be refused.

The development application has been referred to Council to determine given the current legal status which does not preclude Council from granting consent to the Development Application.

It should be noted that approval of the application would result in Existing Use Rights being relied upon once the Draft LEP 2012 is gazetted, which is not considered to be good planning practice.

**RECOMMENDATION:**

**That Development Application DA13/0212 for a change of use of existing building to car repair station at Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South be refused for the following reasons:**

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – *the provisions of any Draft Environmental Planning Instruments* in that the development is prohibited within the B4 Mixed Use zone.**
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – *the provisions of any Draft Environmental Planning Instruments* in that the development is inconsistent with the objectives of the B4 Mixed Use zone.**
- 3. The development does satisfy the provisions of the Tweed City Centre DCP (DCP B2), in that the development is not consistent with the future character of the Southern River Precinct.**
- 4. The development is not considered to be in the public interest.**

**REPORT:**

**Applicant:** Vosolo Pty Ltd and Colussa Superannuation Pty Ltd  
**Owner:** Vosolo Pty Ltd and Colussa Superannuation Fund Pty Ltd  
**Location:** Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South  
**Zoning:** 3(c) Commerce and Trade  
**Cost:** \$30,000

**Background:**

The site is located at Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South. The site contains an existing industrial building and associated on site car parking with access to Minjungbal Drive. The existing building has a floor area of 488.3m<sup>2</sup> and a site area of 1012m<sup>2</sup>.

Previous approvals relevant for the site and proposal are the construction of an industrial building for the use of warehousing/wholesaling auto spare parts D89/0041 approved 19 April 1989 and the erection of an advertising structure (pylon sign) D89/0592.

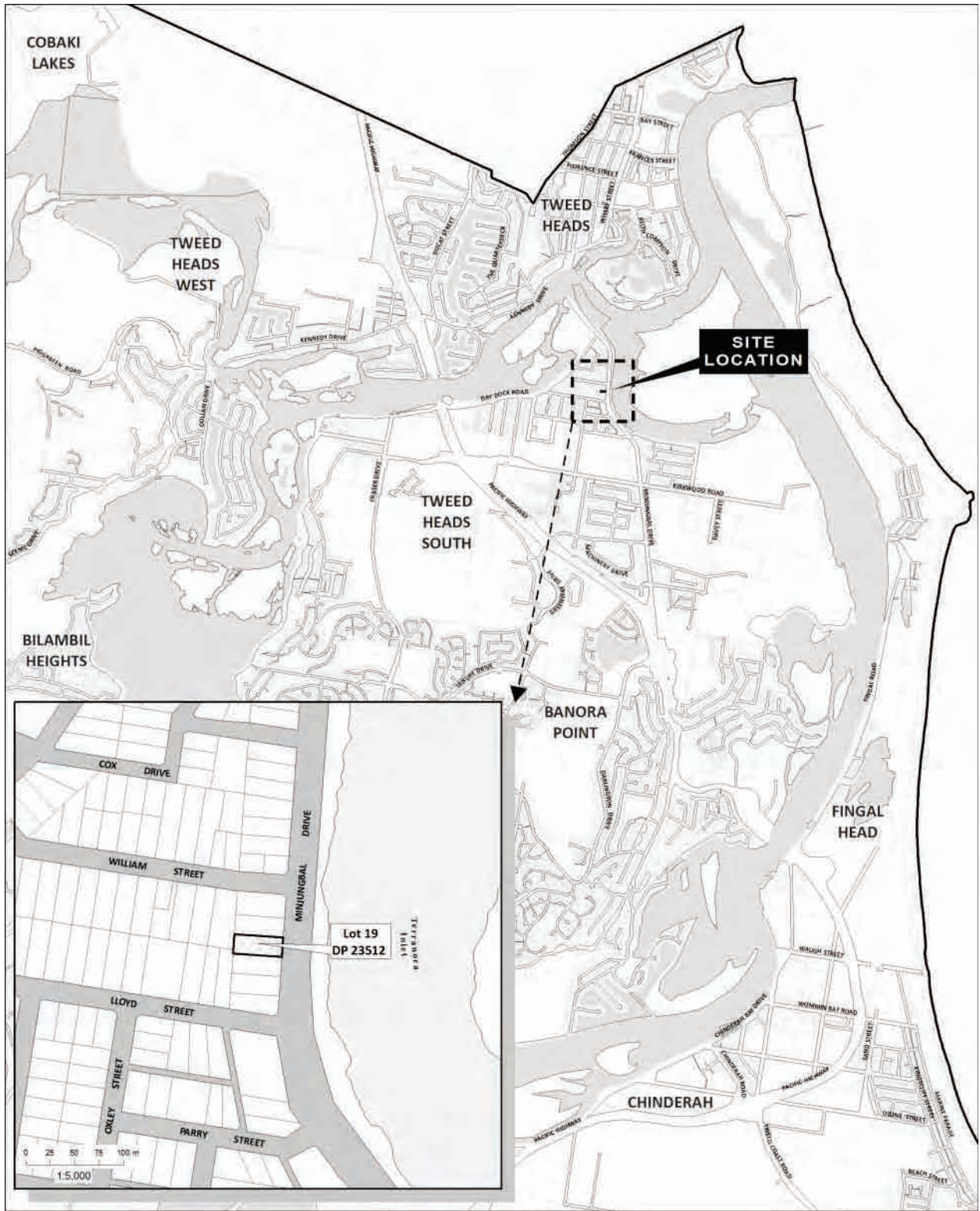
The application proposes a change of use of the existing building to a car repair station. The application proposes the construction of three garage doors and some minor internal works to create an office, reception and a disabled toilet.

The application proposes four staff and will operate 8.00am to 5.30pm Monday to Friday and 8.00am to 12.30pm Saturday and will be closed on Sunday. A total of 21 on site car parking spaces are proposed, of which five spaces are located within the building. One of the internal spaces is for a delivery vehicle, the delivery vehicle is to have a maximum length of 5m, which is to be conditioned should the application be approved.

A separate development application has been lodged with Council for advertising signage (DA13/0242) for the proposed development.

Given the prohibition of the proposed development under the draft LEP, the applicant was requested to withdraw the application. This option was not undertaken, with the applicant requesting that the development proposal be referred to Council for determination, in the knowledge that Council staff would not be supporting the application.

**SITE DIAGRAM:**



**Locality Plan**

DA13/0212 - Lot 19 DP 23512  
No. 45 Minjungbal Drive, TWEED HEADS SOUTH

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Cadastre 25/07/2013  
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Boundaries shown should be considered approximate only.



Civic and Cultural Centre  
3 Tunbulgum Road  
Murrumbidgee NSW 2484  
PO Box 316  
Murrumbidgee NSW 2484  
T (02) 6870 2400 | 1300 292 872  
F (02) 6870 2429  
W www.tweed.nsw.gov.au  
E planning@tweed.nsw.gov.au









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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed change of use is considered consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The development raises no specific concerns or implications in respect of ecologically sustainable development.

Clause 8 - Consent Considerations

The proposal is consistent with the clause as the development is consistent with the primary objectives of the zone, by providing a trade activity which would not jeopardise the viability or function of the sub-regional or business centres. The development is consistent the other aims and objectives of this plan relevant to the development which are addressed within this report. Council Officers are satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

Clause 11 - Zone Objectives

The zone objectives of the 3(c) zone are:

***Primary objective***

- *to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres.*

***Secondary objectives***

- *to provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.*
- *to allow for other development that is compatible with the primary function of the zone.*

The proposed change of use to a car repair station is consistent with the clause, by providing a light industrial activity which would not jeopardise the viability or function of the sub-regional or business centres.

Clause 15 - Essential Services

The proposal complies with the clause as water supply and facilities for the removal or disposal of sewage and drainage are available for that land.

Clause 16 - Height of Building

A three storey height limit applies to the site. The proposal does not propose an increase to the existing building height, which is single storey.

Clause 17 - Social Impact Assessment

A social impact assessment is not required.

Clause 22 – Development Near Designated Roads

The subject site is located upon Minjungbal Drive, which is a designated road. Given the previous approval of the building as an industrial building/warehouse, the proposed development is considered to satisfy the provisions of Clause 22 in that the proposed use is not considered to constitute a traffic hazard.

Clause 35 - Acid Sulfate Soils (ASS)

Class 2 ASS affects the site. Council's Environmental Health Unit advised that Acid Sulfate Soils is not considered to be a constraint for the proposed development.

Clause 34 - Flooding

The site is identified as being flood prone with a Q100 of 2.6m AHD. The proposal is for a car repair station within an existing industrial building and therefore considered appropriate development in terms of flooding. A flooding condition for a flood free storage area would be applied, were the application to be approved.

Clause 39 - Remediation of contaminated land

Council's Environmental Health Unit advised that contamination is considered not to be a constraint for the proposed development.

Clause 39A - Bushfire protection

The site is identified as being prone to bushfire. The proposed change of use is considered to comply with the clause as the proposal will not increase the risk of bushfire to built assets or people.

Clause 47 – Advertising Signs

Advertising is proposed under a separate development application (reference DA13/0242).

Clause 54 - Tree preservation order

Not Applicable. The removal of vegetation is not required or proposed.

**State Environmental Planning Policies**

**SEPP (North Coast Regional Environmental Plan) 1988**

Clause 32B: Coastal Lands

- 1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- 2) *In determining an application for consent to carry out development on such land, the council must take into account:*
  - (a) *the NSW Coastal Policy 1997,*
  - (b) *the Coastline Management Manual, and*
  - (c) *the North Coast: Design Guidelines.*
- 3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- 4) *The council must not consent to the carrying out of development:*

- (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
- (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposal is considered consistent with the policies listed above, as the proposal will not impede public access to the foreshore and will not overshadow adjacent open space.

#### Clause 47 Principles for Commercial and Industrial Development

The proposal is considered to comply with this clause as the development is located where it can be adequately serviced by the transport system and is accessible from urban areas.

#### Clause 81: Development adjacent to the ocean or a waterway

- 1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
  - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
  - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
  - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*
- (2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

The proposal is considered consistent with the clause as the proposal will not impede public access to the foreshore, will not detract from the amenity of the waterway.

#### State Environmental Planning Policy No 14—Coastal Wetlands

The proposal is considered consistent with the clause as the proposal does not involve clearing or earthworks. The coastal wetland will not be impacted by the proposal.

#### SEPP No. 64 – Advertising and Signage

Advertising is proposed under a separate development application (reference DA13/0242).

#### SEPP No 71 – Coastal Protection

##### *SEPP 71 – Matters for Consideration*

- (a) *The aims of this Policy set out in Clause 2.*
- (b) *Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public*

*access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.*

Existing public access is retained.

- (c) *Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.*

Opportunities to provide new public access are not available.

- (d) *The suitability of the development given its type, location and design and its relationship with the surrounding area.*

The proposed change of use is suitable in relation to the surrounding area.

- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.*

The proposal will not impact on the coastal foreshore.

- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities.*

The proposal will not impact on the scenic qualities of the coastal foreshore.

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats.*

The proposal will not impact on animals or their habitats.

- (h) *measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats.*

The proposal will not impact on fish or their habitats.

- (i) *existing wildlife corridors and the impact of development on these corridors.*

The proposal will not impact on wildlife corridors.

- (j) *the likely impact of coastal process and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.*

The proposal will not impact and will not be impacted upon by coastal processes and coastal hazards.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

The proposal will be serviced by Councils stormwater and sewer systems.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.*

The proposal will not impact cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.

- (m) *likely impacts of development on the water quality of coastal waterbodies.*

The proposal will not impact on the water quality of coastal waterbodies.

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- (n) *the conservation and preservation of items of heritage, archaeological or historic significance.*

The proposal will not impact items of heritage, archaeological or historic significance.

- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities.*

Not Applicable to the proposal.

- (p) *only in cases in which a development application in relation to proposed development is determined:*

- (i) *the cumulative impacts of the proposed development on the environment; and*  
(ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

*No additional impacts on the environment or increase use in water and energy are expected.*

The proposal is considered to comply with the policy.

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

**Draft LEP 2012**

The site is zoned B4 – Mixed Use. The proposal is defined as a *Vehicle Repair Station*, which is prohibited within the zone. The draft plan is considered to be “certain and imminent” in terms of previous legal precedent and as such has determining weight.

The Draft LEP 2012 defines the proposal as:

***Vehicle repair stations*** means a building or place used for the purpose of carrying out repairs to, or the selling and fitting of accessories to, vehicles or agricultural machinery, but does not include a vehicle body repair workshop or vehicle sales or hire premises.

The applicant provided the following comments in regards to the Draft LEP 2012 in the statement of environmental effects, which is provided below.

*“The draft Tweed LEP 2012 has come off exhibition and proposes to change the zoning of the land to B4 Mixed use within which the proposal is prohibited.*

*The proposal will make use of an existing factory building and is also generally consistent with other similar established uses in this street. Immediately north of the subject site is another car repair station and to the south are commercial building and a tyre business. To the rear or west of the site is also a commercial building. It would therefore appear that the change to mixed use development along Minjungbal Drive in this immediate vicinity will not occur overnight. It is therefore envisaged that the proposed use should not significantly hamper the aims and objectives of the mixed use zone and they should still be achievable for any future redevelopment of this site.”*

The applicant provided further justification in regards to the Draft LEP 2012 on 3 July 2013, which is provided below.

*“The draft Tweed LEP 2012 proposes to rezone the subject site to B4 Mixed Use within which the proposal is prohibited. It is considered that the draft LEP should not be given determining weight because it is neither certain nor imminent. There are a number of court precedents to this effect. In addition Clause 1.8A of the Draft Lep provides that a DA lodged before the Draft LEP is gazetted must be determined as if the draft LEP had been exhibited only.*

*The current zoning permits the proposed development and the subject site and the vacant building is suitable for a car repair station and has satisfies all statutory requirements. There are also other similar established uses in this street in the immediate locality including another car repair station, vehicle detailing premises and a tyre outlet as demonstrated in the previously submitted statement of environmental effects.*

*In addition the use will provide employment opportunities for up to four persons directly and will also provide opportunities for other services and persons indirectly.”*

A recent article published in a Planning Institute of Australia (PIA) NSW Newsletter (June 2013) from Gadens Lawyers noted the following with respect to the determining weight of a draft LEP:

*“Question: I would like to understand why a Draft LEP is highly relevant to the assessment of a DA when the draft LEP is ‘certain and imminent’, and what exactly that means?*

*The starting point is that s.79C of the Act expressly requires a consent authority, when assessing any development application, to take into consideration the provisions of any draft planning instrument (for example, an LEP or SEPP) that “is or has been the subject of public consultation” and that has been notified. However taking something into account is one thing – the remaining question is how much weight or emphasis to place on that EPI’s provisions when it is only a draft document, and may well be quite inconsistent with a current and in-force LEP.*

*In that regard, the Courts have developed a body of caselaw to the effect that a Draft LEP will be given greater weight when it is “certain and imminent”. Funnily enough, this phrase does not appear anywhere in the Act or Regulations, nor in any savings or transitional provisions that we are aware of, and although it is bandied about by judges, commissioners, lawyers, and government authorities, you’d have to search hard to find its source of origin. It actually dates back to a 1980 Judgment (Balgownie Pty Ltd v Shoalhaven City Council (1980), which well and truly predates s.79C of the Act. In that matter, the Court had some limited regard to a draft proposal to rezone the site, but only because it was said to be “the latest and best informed expert opinion” relating to the site.*

*It is therefore surprising that this has morphed into a general principle that any draft LEP that is ‘certain or imminent’ should be given considerable weight in the s.79C balancing act (in fact, the courts have used confusing terminology here too, referring variously to “significant weight”, or “some weight”, or “considerable weight” or “due force” or “determining weight” – see the discussion of this in Blackmore Design Group v North Sydney (2000)).*

*Nevertheless, what is clear is that the weight to be attributed to a draft environmental planning instrument will be greater if there is a greater certainty that it will be adopted (Terrace Tower Holdings Pty Ltd v Sutherland Shire Council (2003).) Where the LEP has been exhibited and sent by the council to the Minister for approval and gazettal, it will often be given great weight, even more than the existing and in force LEP.*

*But is that approach fair and correct? The answer is probably not. It can be very hard to predict when an LEP is 'certain' and 'imminent', because this depends on the future decision of the Minister and his staff at the Department. For example, our team at Gadens was involved in an appeal in the Warringah local government area in 2011 where the Court ruled that a change to the zoning of the site was certain and imminent and should be given 'determinative weight', and refused the DA. About a month later, the Minister made the LEP but carved out the site as a 'deferred' matter (its zoning did not change). The Court and Council's assessment that the proposed rezoning was 'certain and imminent' had been dead wrong. But such a task is inherently uncertain because it relies on predictions as to a decision of the Minister that has not yet been made.*

*Notwithstanding 'certainty and imminence', a consent authority may of course grant consent to a development application which does not comply with the draft instrument. As the Court said in the Blackmore Design Group v North Sydney Council matter:*

*"In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith [or "antipathetic" thereto]."*

In light of the above advice, it is considered that the refusal of the proposed development is the appropriate course of action. The draft LEP has been exhibited and sent by Council to the Minister for approval and gazettal. Approval of the development would result in creating Existing Use Rights for the development, which is not considered to be good planning practice.

Additionally, the development does not accord with the objectives of the B4 zone which are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

These objectives clearly relate to residential, retail and commercial activities that are small scale and compatible with one another. The proposed development is more 'light industrial' in nature and is not considered to be compatible with residential, retail or commercial use.

As noted by the applicant, Clause 1.8A of the Draft LEP is a savings provision for development applications that have not yet been determined before commencement of the new Plan, whereby the application is determined as if the Plan had been exhibited but not commenced. Even with the savings provision within the draft LEP, the above advice from Gadens still stands in that the determining weight of the draft LEP must be taken into consideration.



Refusal is recommended based on the above prohibition, as well as the lack of consistency between the proposed development and the objectives of the zone.

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

Tweed Development Control Plan

**A2 Site Access and Parking Code**

The proposal complies with this policy subject to recommended conditions (were the application to be approved).

The application proposes four staff and three work bays and has a floor area of 488.3m<sup>2</sup>. The proposal generates the requirement of 16 spaces with 21 spaces provided on site (five of these spaces are located within the building). One of these spaces is designated for disabled parking, with the delivery space located inside the building adjacent to the storage and reception area.

The applicant states that the delivery vehicle will have a length not exceeding 5 metres, which would be able to enter and exit the site in a forward direction (this would need to be conditioned). Figure 1 below is an extract from DCP A2 Site Access and Parking Code illustrating the plans requirements.

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking	Delivery, Service Vehicle parking Refer to Table 3.0	Resident Parking	Staff parking	Customer car parking
14	Car repair station	Customer parking requirement is inclusive of the work bay		1/2 car park	1/200m <sup>2</sup> HRV		1/staff	4/work bay

**Figure 1 - extract from DCP A2 Site Access and Parking Code.**

**A3 Development of flood liable land**

The site is identified as being prone to flooding with a Q100 of 2.6m AHD. The policy requires commercial development to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage. This would be recommended as a condition of consent, were the application to be approved.

**A4 Advertising Code**

This application does not propose advertising signage. A separate development application for advertising has been lodged with Council (reference DA13/0242).

**A11 Public notification of development proposals**

The proposal was advertised in the Tweed Link for a period of 14 days from Wednesday 17 July 2013 to Wednesday 31 July 2013 (public holidays excepted). During the submission period Council received two submissions objecting to the proposal. The details of the submissions are provided in this report below.

**B2 Tweed Heads**

Being a change of use application, many of the controls under DCP B2 (such as Building Form) are not applicable. However, the proposal is not considered to be consistent with the future character of the area.

B2 identifies the site as being located within the 'Southern River Precinct', which notes the following:

*It is intended that the residential character of the Tweed Southern River Precinct will be retained. Existing development controls permit three storey residential buildings on consolidated allotments in this area.*

*The attractiveness of these areas for tourist accommodation will be improved through the upgrading of this section of Minjungbal Drive as a boulevard and enhancements to the riverfront park on the eastern side of the Minjungbal Drive. Existing businesses in this precinct are more suited to higher exposure areas and will be encouraged to relocate southwards to the enterprise corridor on Minjungbal Drive.*

As such, the proposed 'light industrial' development within a future residential/Mixed Use area is not considered to be consistent with the aims and objectives of DCP B2.

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

Clause 92(a) Government Coastal Policy

No implications.

Clause 92(b) Applications for demolition

Not Applicable.

Clause 93 Fire Safety Considerations

Council's Building Services Unit has reviewed the application and do not raise an objection to the proposal, subject to recommended conditions.

Clause 94 Buildings to be upgraded

Not Applicable.

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

**Tweed Shire Coastline Management Plan 2005**

Not Applicable.

**Tweed Coast Estuaries Management Plan 2004**

Not Applicable.

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

Not Applicable.

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

The proposal is considered not likely to impact on the local natural or built environments, or economically or socially.

Noise

The proposal being for the servicing and repair of vehicles and will involve the use of air compressors, ratchet guns, electronic equipment and power and hand tools. The proposed hours of operation are 8am to 5.30pm Monday to Friday and 8am to 12.30pm Saturday, work is not proposed on Sundays. The delivery vehicle space will be located within the building.

Council's Environmental Health Officer advised that the existing building faces towards the south and east towards Minjungbal Drive so that any noise generated by the development will be directed away from the residential developments, which are located towards the west. The use is consistent with the surrounding sites therefore based on the surrounding land uses, the proximity of the site to Minjungbal Drive and the proposed hours of operation, the development is not likely to generate excessive noise. Conditions relating to noise would be recommended, if the application were to be approved.

Waste

Trade wastes and vehicle parts are to be collected and disposed of offsite. General waste is to be removed via Council's waste services. Conditions relating to waste are recommended, if the application were to be approved.

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

The site is not considered suitable for the proposed use, as the proposal is prohibited within the B4 Mixed Use zone under the draft LEP 2012 and does not comply with the B4 Mixed Use zone objectives within the draft LEP 2012.

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

The application was advertised for a period of 14 days. During the submission period Council received three submissions, the submissions objected to the proposal.

The objections raise issues such as; noise, parking, air pollution, economic impact and the proposal not being suitable for the location. Council's Environmental Health unit assessed the application and raised no objection in regards to noise and air pollution subject to recommended conditions. The proposal complies with Council's car parking requirements. A socio-economic assessment is not required for the proposed change of use. The proposed use is prohibited within the draft LEP 2012 and is not consistent with the zone objectives.

**(e) Public interest**

The proposed development is considered not to be in the public interest.

**OPTIONS:**

1. Refuse the application; or
2. Approve subject to the recommended conditions.

The Council officers recommend Option 1.

**CONCLUSION:**

The proposal is prohibited within the B4 Mixed Use zone under the draft LEP 2012 and does not comply with the B4 Mixed Use zone objectives within the draft LEP 2012. As such the proposal is recommended for refusal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

The applicant may seek to lodge an appeal against a Council determination in the NSW Land and Environmental Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**28 [PR-CM] Development Application DA13/0233 for a 20 Lot Subdivision (19 Residential Lots and 1 Rural Lot) at Lot 2 DP 231691 No. 44 Station Street, Burringbar**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA13/0233 Pt1**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

### **SUMMARY OF REPORT:**

The proposed development involves a 20 lot subdivision comprising 19 residential lots and 1 rural residue allotment at No. 44 Station Street, Burringbar.

Council officers have previously undertaken an initial assessment of the proposed development whereby a range of significant issues have been raised. The site is highly constrained which results in difficulty in the proposal being able to be compliant with all relevant Council controls.

The applicant has been provided with an extensive list of outstanding matters, which relate to ecology, water/sewer reticulation, stormwater, NSW Rural Fire Service, contamination, land use conflicts and other major engineering issues.

The issues raised to date are considered to be of such significance that a redesign of the proposed development is likely to be required. The extensive list of outstanding matters and the likelihood of a redesign would result in an extended period of time for the applicant to address all outstanding matters.

The number of significant issues with the development also raises the question of viability of the proposal.

As such, the applicant was advised that the proposal in its current form is not supported and should be withdrawn. Upon satisfaction of the issues raised, the applicant would then be able to lodge a new development application.

Given that the applicant did not formally withdraw the application the proposed development was referred to the Council meeting held on 15 August 2013, with the following options available for consideration:

1. Allow the application process to continue, whereby the applicant will be required to address all outstanding matters, resulting in an extensive delay in the overall development assessment processing time; or

2. Resolve to report the matter to the September Council meeting with a detailed assessment and recommended reasons for refusal.

The officers recommended that Council endorse Option 2.

Council resolved at the Council meeting held on 15 August 2013, that a further, more detailed report be submitted to the September Council meeting in respect of Development Application DA13/0233 for a 20 lot subdivision (19 residential lots and 1 rural lot) at Lot 2 DP 231691 No. 44 Station Street, Burringbar including recommended reasons for refusal.

**RECOMMENDATION:**

**That Development Application DA13/0233 for a 20 Lot Subdivision (19 Residential Lots and 1 Rural Lot) at Lot 2 DP 231691 No. 44 Station Street, Burringbar be refused for the following reasons:**

1. The proposed development is not considered to be consistent with Clause 4, 5, 8, 11, 15, 39 and 39A of Tweed Local Environmental Plan 2000, due to insufficient information being provided in support of the proposal.
2. The proposed development is not considered to be consistent with Clauses 12, 15, 43 and 81 of the North Coast Regional Environmental Plan, due to insufficient information being provided.
3. The proposed development is not considered to be consistent with State Environmental Planning Policy No. 44 (Koala Habitat Protection), State Environmental Planning Policy No. 55 (Remediation of Land) and State Environmental Planning Policy (Rural Lands) 2008.
4. The proposed development is not considered to be consistent with the provisions of Tweed Development Control Plan 2008 - Section A5 (Subdivision Manual), with particular regard to water and sewer supply, stormwater, road gradients, retaining wall requirements and geotechnical issues.
5. The proposed development is considered to result in an impact on the natural environment and built environment.
6. The subject site is not considered suitable for the proposed development.
7. The proposed development is not considered to be in the public interest.
8. The proposed development has not been granted a Fire Safety Authority from the NSW Rural Fire Service.

**REPORT:**

**Applicant:** S Parnell  
**Owner:** Mr Stephen A Parnell  
**Location:** Lot 2 DP 231691; No. 44 Station Street, Burringbar  
**Zoning:** 1(a) Rural and 2(d) Village  
**Cost:** Nil

**Background:**

A two lot subdivision for the subject site was granted development consent on the site on 21 June 2011 (DA10/0626). The approval created a Torrens Title subdivision of the single allotment into two allotments. That part of the site that is within the 2(d) Village Zone was included within Lot 1 and that part of the site that is within the 1(a) Rural Zone (and the existing dwelling house) was included within Lot 2. The purpose of the subdivision was to separate the two zones into separate allotments. The approved subdivision has not commenced.

A Development Assessment Panel (DAP) meeting was held with Council officers on 9 December 2011 relating to the subject 20 lot subdivision. The DAP meeting raised the following issues:

- Bushfire prone land - integrated development;
- SEPP No. 1 Objection due to Rural 1(a) zoned lot being less than 40ha - concurrence;
- The site is identified as having high ecological status;
- Geotechnical stability of the land;
- Details on vegetation proposed to be cleared and impacts on flora and fauna;
- Proposed works including cut and fill and location/depth of retaining walls;
- Driveway access that meets Council's specifications;
- Paved footpath;
- Onsite treatment of stormwater runoff;
- The stormwater management plan shall address minor and major storm events including consideration of external catchments, inter-allotment drainage services and potential impacts on downstream property;
- Sewer, there should be no problem with connecting the proposed lots to sewer;
- Water supply is a problem for this location due to the elevation of the proposed road;
- The typical cross section indicates a batter of 1 in 2 (50%). Access into proposed lots cannot be achieved for driveway property access. Maximum permissible driveway grades are 1 in 4 (25%);
- The typical cross section indicates a footpath directly behind the kerb with a verge area of 1.2m. Tweed Shire Councils standard cross section for an access street indicates that both verge areas are to be 3.5m in width. Proposed road reserve for Road 1 does not meet the minimum required for an access road;

- The absolute maximum grade for an access street is 16%, with a desirable maximum grade of 10%. The proposed grades exceed the absolute maximum of 16%. Grades are greater than 12% for pedestrians, cyclists and waste collection vehicles. The maximum 16% is indented for short lengths not entire road lengths;
- Concerns are raised that proposed crests and sags do not provide safe site distances. The application is to comply with vertical curves and horizontal curve radii;
- Maximum length of a cul-de-sac is 120m and cul-de-sac minimum grades for safe turn around. Variation to maximum length requirements will need to be addressed as part of the application;
- Intersection grades are to be addressed;
- There is an existing rock retaining wall near Third Avenue that is proposed to be incorporated into the new allotments. This wall will need engineering certification as to its design and construction otherwise it should be demolished and reconstructed as part of the subdivision works;
- The application should outline any intended works within the unnamed lane including proposed dual accesses to lots which will require construction of the laneway to Council's minimum standards. Future maintenance of the laneway, if it is to remain unformed, will also need to be discussed with Council officers;
- Provision would need to be made on site for storage and collection of waste. Details for collection would need to be determined in conjunction with Solo Waste; and
- Contamination report addressing previous site uses is to accompany the Development Application in accordance with Council's Contaminated Land Policy.

The application was reported to Council on 15 August 2013, with the following options available for consideration:

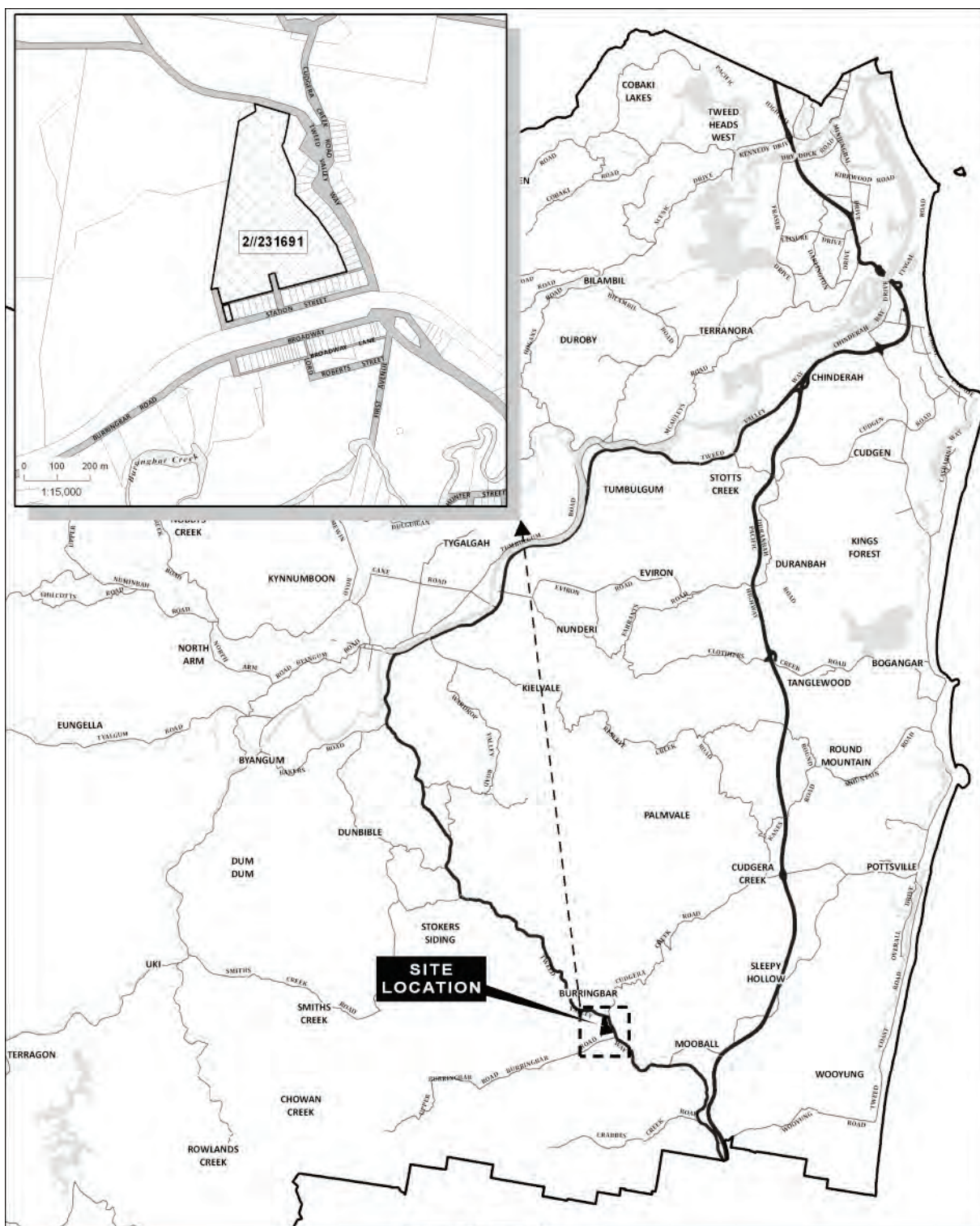
1. Allow the application process to continue, whereby the applicant will be required to address all outstanding matters, resulting in an extensive delay in the overall development assessment processing time; or
2. Resolve to report the matter to the September Council meeting with a detailed assessment and recommended reasons for refusal.

The officers recommended that Council endorse Option 2.

Council resolved that a further, more detailed report be submitted to the September Council meeting in respect of Development Application DA13/0233 for a 20 lot subdivision (19 residential lots and 1 rural lot) at Lot 2 DP 231691 No. 44 Station Street, Burringbar including recommended reasons for refusal.



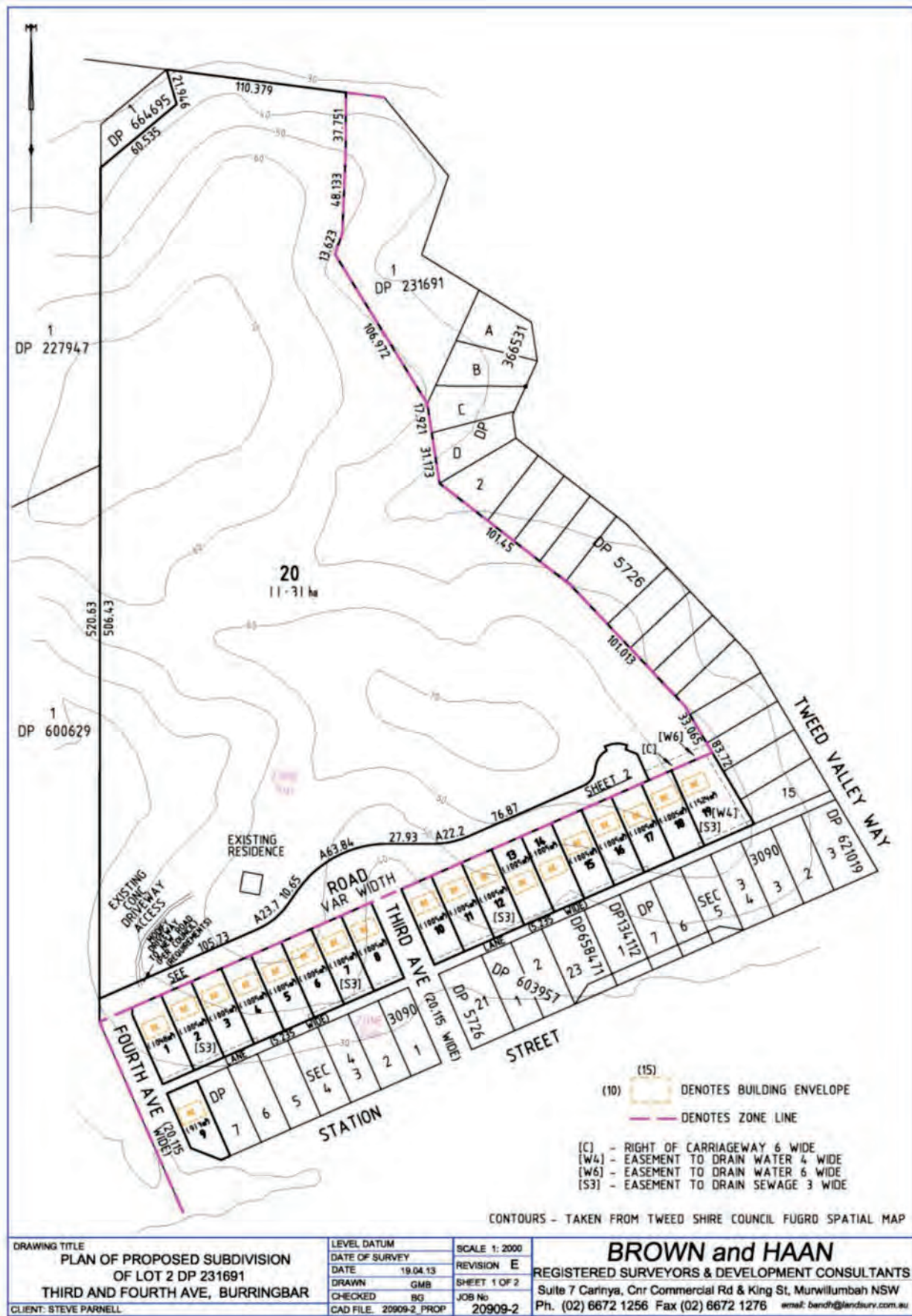
**SITE DIAGRAM:**



**Locality Plan**  
 Lot 2 DP 231691  
 No. 44 Station Street, Burringbar

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DEVELOPMENT/ELEVATION PLANS:





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ALL UNDERGROUND SERVICES SHOULD BE LOCATED ON SITE BY RELEVANT AUTHORITIES BEFORE ANY WORK IS COMMENCED

**AERIAL PHOTOGRAPH**



Lot 2  
DP 231691

SOURCE: Aerial imagery taken May 2012 by AAM

**Aerial Photo - taken May 2012**  
Lot 2 DP 231691

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Civic and Cultural Centre  
3 Turbulum Road  
Murrumbidgee NSW 2484  
PO Box 916  
Murrumbidgee NSW 2484  
T | (02) 6670 2400 | 1300 292 872  
F | (02) 6670 2429  
W | www.tweed.nsw.gov.au  
E | planning@tweed.nsw.gov.au



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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

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

Insufficient information has been provided to enable determination that the development complies with the aims of the plan.

**Clause 5 - Ecologically Sustainable Development**

Clause 5 aims to promote development that is consistent with the four principles of ecologically sustainable development, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

Insufficient information has been provided to enable determination that the development complies with the clause.

**Clause 8 - Consent Considerations**

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

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

Insufficient information has been provided to enable determination that the development complies with the clause.

**Clause 11 - Zone Objectives**

The subject site is located within the 1(a) Rural zone and 2(d) Village Zone. The objectives of the 1(a) Rural zone are as follows:

***Primary objectives***

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

- *to protect rural character and amenity.*

**Secondary objectives**

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

The objectives of the 2(d) Village zone are as follows:

**Primary objective**

- *to provide for residential development and a full range of services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village.*

Insufficient information has been provided to enable determination that the development complies with the clause.

**Clause 15 - Essential Services**

The clause states that:

*Consent must not be granted to the carrying out of development on any land unless:*

- (a) *a water supply and facilities for the removal or disposal of sewage and drainage are available for that land, or*
- (b) *arrangements satisfactory to the consent authority have been made for the provision of that supply and those facilities.*

Insufficient information has been provided to enable determination that the development complies with the clause.

**Clause 17 - Social Impact Assessment**

An assessment under DCP A13 – Socio-Economic Impact Assessment has revealed that a Social Impact Assessment is not necessary for this type of development and accordingly Clause 17 is deemed satisfied.

**Clause 20 - Subdivision**

This clause requires a minimum allotment size of 40 hectares in the 1(a) zone. The proposed lot 20 does not comply with this development standard. An objection under State Environmental Planning Policy No.1 has been prepared by the applicant in this regard and is addressed later in this report.

**Clause 22 - Development near designated roads**

The north eastern portion of the site has frontage to a designated road (Tweed Valley Way), however, direct access to Tweed Valley Way from the site is not proposed. Access to and from the site is proposed from is via Third and Fourth Avenue and Station Street. The proposal is considered to be consistent with the objectives of the clause.

### Clause 35 - Acid Sulfate Soils

The site is identified as having class 5 acid sulfate soils. Council's Environmental Health officers reviewed the application and did not raise this as an issue.

### 39 - Remediation of contaminated land

A Preliminary Site Contamination Investigation Report prepared by HMC Environmental Consulting dated January 2011 has been submitted. The Report was prepared to support DA10/0626 being a prior application of the same parcel of land for a 2 lot rural subdivision, one with an existing dwelling and the other for the creation of a new dwelling site.

Council's Environmental Health officers reviewed the application and advised that the scope of the Report was to carry out an investigation for a 2 lot subdivision with the creation of a single dwelling site and does not reflect the current proposal. It is considered therefore that the Report does not provide sufficient information to address the requirements of SEPP 55.

Insufficient information has been provided to enable determination that the development complies with the clause.

### 39A - Bushfire protection

The site is identified as being prone to bush fire, accordingly the application was referred to the NSW Rural Fire Service for comment and General Terms of Approval as integrated development. The Department advised Council on 18 June 2013

*"that the proposed alternative solution where a perimeter road will not achieve the 8m in width is not supported and that further justification of the alternative solution is required, specifically how compliance with the Performance Criteria is achieved."*

This was sent to the applicant on 19 June 2013, a response to this issue has not been received. The proposal does not comply with this clause.

## **State Environmental Planning Policies**

### **SEPP (North Coast Regional Environmental Plan) 1988**

#### Clause 12: Impact on agricultural activities

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

Council recommends a minimum buffer of 30m is required for grazing activities which would appear to be the current and likely ongoing use. However, the *Living and Working in Rural Areas Handbook* also provides guidelines for buffer distances, a 50m buffer is recommended for grazing stock.

A land use compatibility assessment is required in accordance with Council's Development Control Plan A5.4.4, 2008 and The *Living and Working in Rural Areas Handbook* produced in partnership between DPI, Northern Rivers CMA and SCU 2007.

Insufficient information has been provided to enable determination that the development complies with the clause.

Clause 15: Wetlands or Fishery Habitats

This Clause requires the consent authority to take into account the likely impact of the proposed development on rivers, streams and wetlands.

The application proposes fill and modification to the Burringbar Creek, a third order tributary which comprises species representative of a candidate Endangered Ecological Community.

Insufficient information has been provided to enable determination that the development complies with the clause.

Clause 43: Residential development

This Clause requires the consent authority to take into account the likely impact of the proposed development on dwelling density without adversely affecting the environmental features of the land, proposed road widths, public transport and minimal site erosion.

Insufficient information has been provided to enable determination that the development complies with the clause.

Clause 81: Development adjacent to the ocean or a waterway

This Clause requires the consent authority to take into account sufficient foreshore open space which is accessible and open to the public, buildings to be erected as part of the development will not detract from the amenity of the waterway, the development is consistent with the principles of any foreshore management plan applying to the area (Coastal Zone Management Plan for the Tweed Coast Estuaries).

Insufficient information has been provided to enable determination that the development complies with the clause.

SEPP No. 1 - Development Standards

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

As established, the proposed subdivision requires a variation to the 40 hectare minimum allotment size stipulated under Clause 20(2)(a) of the LEP.

Clause 20(2)(a) states:

- (2) *Consent may only be granted to the subdivision of land:*
  - (a) *within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of each allotment created is at least 40 hectares*



The variation is required in relation to proposed Lot 20 being under the 40 hectare development standard.

The underlying objectives of the development standard are to prevent the fragmentation of rural land, ensure the scenic and natural environments are protected and maintain agricultural viability.

The Court has consistently emphasised that there is no single determinative test for assessing a SEPP 1 Objection. However, it has become usual practice in recent years to apply the “underlying object test” and to use the formulation suggested by Lloyd J in *Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79*.

In *Wehbe v Pittwater Council [2007] NSW LEC 827*, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 part test for consideration of a SEPP 1 Objection set out in *Winten Property Group Ltd v North Sydney Council (2001)*.

The applicant has provided the following assessment against the five part test:

***Is the planning control a development standard?***

*The subject planning control is contained within the Tweed LEP 2000. Clause 20 of the LEP provides inter alia, as follows:*

*“Consent may only be granted to the subdivision of land:*

*(a) within Zone 1 (a), 1 (b2), 7 (a), 7 (d) or 7 (l) if the area of each allotment created is at least 40 hectares, or.....”*

*As the planning control is a provision of an LEP it is regarded as a development standard and it could only be varied through the provisions of SEPP No. 1.*

***Is the objection is well founded?***

*The existing parcel has an area of 13.94ha and under the Tweed LEP 2000 11.97ha of it is within the Rural zone. Past decisions of Council to approve the current lot configuration and establish the zoning boundaries has lead to a situation where it is not possible to comply with the minimum lot size.*

*On 23 June 2011 Council approved a two (2) lot subdivision DA10/0626 that involved creating lots that positioned the lot boundaries over the zoning boundaries.*

*Although title was not created for the subdivision the Council and Department of Planning as a Concurrence agency allowed the development to proceed and the grounds of that SEPP No. 1 objection were accepted.*

*The current proposal would lead to a 0.66ha decrease in the size of the rural allotment. The decrease is caused by the need to construct a road to service the proposed residential lots. The constrained topography of the site and the shape of the 2(d) zoned land means that the location of an access road is limited to the position proposed.*

*In gazetting Tweed LEP 2000 and approving the current subdivision pattern Council has virtually abandoned any prospect of complying with the required 40ha minimum lot size. In the circumstances compliance with the standard is not possible.*

*Compliance with the development standard is unnecessary in the circumstances of the case because:*

- *The development would not be in conflict with the stated purpose of requiring a minimum site area of 40ha as it would not lead to potential fragmentation of ownership of rural land – the rural part of the site would remain in a single ownership. The existing and proposed lots do not currently achieve the minimum standard.*
- *Council’s website indicates that the village part of the site is committed to urban usage and that the rural part of the site:*
  - *is not significant non-contiguous farmland;*
  - *is not State or Regionally significant farmland; and*
  - *is predominantly land that is unsuitable for agriculture with small pockets that may be suitable for grazing but not cultivation.*

*Part of the site is used for low intensity grazing. The reduction in the size of the rural parcel by 0.66ha is negligible and would not affect the viability of the existing rural activity.*

- *The proposal would not cause a change that would lead to pressure to further subdivide the property. The proposal would not lead to additional dwelling entitlements on the rural part of the site.*

### **Consistency with Clause 3 of SEPP 1**

*Clause 3 of SEPP 1 states:*

*“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

*The objects specified in section 5 (a) (i) and (ii) are stated as:*

- “(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,”*

*In the circumstances the proposed subdivision:*

- *Would not be in conflict with the proper management of the agricultural resource as neither the existing or proposed lot configuration will achieve lot sizes considered sufficient by the applicant for sustainable agriculture.*
- *Promotes achievement of the objectives of the 2(d) zone by allowing for the logical expansion of Burringbar village thereby promoting the efficient and economic use of the land.*

- *The proposal would not lead to further development of the property that might give rise to adverse environmental impacts. No additional dwelling entitlements or further subdivision would be possible on the rural part of the site.*

### **Consistency with State and Regional Planning Instruments**

*The proposal does not raise any matters of significance for State or regional planning. The proposal is not in conflict with any objectives or provisions of the SEPP's or REP's.*

*In terms of the aims of the SEPP (Rural Lands) 2008, the proposal would:*

- *It would have no impact (positive or negative) on the lands ability to sustain viable commercial agriculture as the land is not of sufficient size currently or as proposed.*
- *Not cause a loss in available land for agricultural purposes*
- *Not involve subdivision of rural lands for the purposes of creating additional lots or give rise to pressure for future subdivision*
- *Not give rise to any land use conflict*

*The proposal is not in conflict with the Rural Planning Principles included in Clause 7 of the SEPP (Rural Lands) 2008 because:*

- *It would not adversely impact current production or affect opportunities for the sustained economic use of the land. The applicant contends that the lot as currently configured is not sufficient for sustainable agricultural production and that the proposed subdivision would not affect this situation*
- *It seeks to maintain the social and economic benefits arising from current low intensity grazing activity occurring on the site*
- *It would not lead to an imbalance of the social, economic and environmental interests of the community. On the contrary, it could potentially provide social and economic benefits through promoting the development of the 2(d) part of the site in accordance with the objectives of the LEP.*
- *Impacts on biodiversity, native vegetation or natural waterways would be limited to those that are a normal consequence of development of this nature. Management of impacts are proposed in accordance with the reports included in the application and relevant conditions of Council.*
- *The 2(d) part of the site would be connected to existing services and infrastructure as illustrated in the Engineering report prepared by Knobel Consulting.*

*Clause 8 of the North Coast Regional Environmental Plan includes provisions applicable to the preparation of Local Environmental Plan provisions for lot sizes on rural land. Specifically it states:*

*“In relation to rural land which is not prime crop or pasture land, a draft local environmental plan should set a sufficient minimum allotment size for the conduct of commercial farming.”*

*We are advised by the applicant that the current and proposed lot sizes are not sufficient to carry out commercial farming (cattle grazing). The proposed boundary adjustment would not therefore be in conflict with the intent of this clause and would have no detrimental impact on the long term viability of the property for commercial farming.*

***The objectives are achieved notwithstanding noncompliance***

*The minimum lot size for a subdivision in the Rural 1(a) Zone is 40ha and that minimum area is underpinned by the objective stated in clause 20 of the TLEP as:*

- “* to prevent the potential for fragmentation of ownership of rural land that would:
  - (i) adversely affect the continuance or aggregation of sustainable agricultural units, or*
  - (ii) generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- to protect the ecological or scenic values of the land.*
- to protect the area of Tweed’s water supply quality.”*

*The proposed boundary adjustment would not be in conflict with these objectives for the following reasons:*

- The proposal would not cause fragmentation of an agricultural allotment. In its current configuration the land is not of a suitable size to sustain commercial agriculture. The TLEP suggests that 40ha is generally the minimum area requirement to sustain agricultural activities and therefore rural pursuits on lots less than 40ha would generally not be able commercially viable. In this case, the allotment as it exists and as proposed, would be less than 40ha in area. In the circumstances there the minor further fragmentation would have no significant “adverse” affect on the continuation or potential future aggregation of sustainable agricultural units.*
- The subdivision would occur in accordance with the objectives of the Village 2(d) zone and would be a logical expansion of the existing urban area. The balance parcel would be entirely located in the Rural 1(a) zone and as such should not generate any pressure for further subdivision or residential development.*
- The majority of the rural parcel would be retained in its existing condition and would not affect the ecological or scenic values of the rural part of the land. The construction of the road will involve earthworks that will require stabilisation and revegetation.*
- The proposal would not impact on the Tweeds water supply catchment.*

***The underlying objective is not relevant and compliance is unnecessary***

*As discussed above, the underlying purpose of the standard is based on an assumption that 40ha is the minimum allotment size required for sustainable and economic agricultural production. This assumption supports the applicant's contention that the subdivision would not be in conflict with the purpose of the standard as both the existing and proposed lot configurations are not sufficient for sustainable agricultural production. We conclude therefore that the standard is not reasonable in the existing context and therefore compliance is not necessary.*

*With respect to the public benefit of maintaining the planning controls in the LEP it is considered that in the particular circumstances of this case there would be no public benefit in maintaining the controls and consequently not permitting the proposal.*

*The primary public benefit in this situation would be derived from the additional lots (population) and subdivision / housing construction which will provide economic benefits to the region.*

### **CONCLUSION**

- *It is concluded that the proposed variation to Clause 20 of the TLEP is acceptable in the circumstances of this case. There would be negligible impact on the potential for use of the land for sustainable agricultural production caused by the subdivision.*
- *Compliance with the development standard in this case is unnecessary and unreasonable. It would not be possible to comply as the lots are currently below the minimum set by clause 20 of the TLEP.*
- *The subdivision would not be in conflict with the objectives of the development standard in clause 20 of the TLEP and the proposal satisfies the 5 part test outlined by Chief Justice Preston in *Wehbe v Pittwater Council (2007) NSW LEC 827.*"*

### **Assessment of the applicant's submission**

The applicants Objection to the State Environmental Planning Policy was referred to the Department of Planning and Infrastructure for concurrence.

Concurrence was granted by the Director General in this instance to permit the creation of proposed Lot 20 with an area of 11.31 Hectares for the following reasons:

- Limited fragmentation of rural land will occur and the rural character and amenity will remain similar to the existing;
- The proposal subdivision is unlikely to undermine the objectives of the 1(a) as the proposal involves only a minor change to the size of the lot; and
- There is no public benefit in maintaining the standard in this case.

The applicants SEPP 1 objection is supported in this instance as compliance with this development standard is considered unreasonable and unnecessary in the circumstances of this application.

### **SEPP No. 44 - Koala Habitat Protection**

The proposal would require removal and disturbance of a significant area of remnant vegetation, vegetation of high ecological value and koala habitat vegetation.

Insufficient information has been provided to enable determination that the development complies with the clause.

SEPP No. 55 - Remediation of Land

A Preliminary Site Contamination Investigation Report prepared by HMC Environmental Consulting dated January 2011 has been submitted. The Report was prepared to support DA10/0626 being a prior application of the same parcel of land for a 2 lot rural subdivision, one with an existing dwelling and the other for the creation of a new dwelling site. The stated purpose of the report "is to assess the likelihood of contamination of the land, in the vicinity of the dwelling sites, in relation to the current and former land use including the cultivation of bananas".

The report findings, following research into historical land uses, included the use of the subject parcel for cropping and banana cultivation. Site investigations, interviews conducted and soil sampling design methodology concentrated on those areas where the two dwelling sites were to be located for that proposal.

The scope of the Report was to carry out an investigation for a 2 lot subdivision with the creation of a single dwelling site and does not reflect the current proposal. Council's Environmental Health Officers consider that the Report does not provide sufficient information to address the requirements of SEPP 55.

Insufficient information has been provided to enable determination that the development complies with the clause.

SEPP (Rural Lands) 2008

The land is zoned Rural 1(a) and therefore this Policy applies. The applicant has assessed the matter listed within clause 10(3) of the Policy, which are provided as follows:

- "(a) The existing uses and approved uses of land in the vicinity of the development.*

*The existing dwelling house on the rural part of the land is to be retained and the rural part of the lot will continue to be used for grazing purposes. The subdivision is located predominantly within the part of the site zoned 2(d) Village.*

- (b) Whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development.*

*The zones reflect Council's preferred land use for the site. The proposed development is consistent with the preferred and predominant land uses in the vicinity of the development. The subdivision will facilitate land uses within the village zoned part of the land that are of a village nature and consistent with the established village character of the adjacent development. The rural part of the site adjoins rural land uses to the west and north and the retention of the existing dwelling house on the site maintains the rural character of that part of the land.*

- (c) *Whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b).*

*The proposal is compatible with the nearby land uses.*

- (d) *If the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone*

*The site does not adjoin land within a rural residential zone.*

- (e) *Any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

*There are no incompatibility issues associated with the proposal.”*

### **Assessment of the applicant’s submission**

Insufficient information has been provided to enable determination that the development complies with the policy.

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

Pursuant to the draft LEP 2012, the site is zoned part RU5 Village and part RU2 Rural Landscape. The proposal complies with the minimum lots size standard of 450m<sup>2</sup> within the RU5 Village zone, however, the proposal would not comply with the minimum lot size of RU2 Rural Landscape zone standard of 40ha.

The objectives of the RU2 Rural Landscape zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The objectives of the RU5 Village zone are:

- *To provide for a range of land uses, services and facilities that are associated with a rural village.*
- *To ensure that new development responds to and respects the character of a rural village.*

Insufficient information has been provided to enable determination that the development complies with the objectives of each zone.

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

Tweed Development Control Plan

A5-Subdivision Manual

#### **Water and Sewer Supply**

Council’s Water Unit does not support the proposal based on the insufficient information submitted.

Adequate information to demonstrate to Council that the proposed water supply solution will meet pressure and fire flow demands has not been provided. The proposal would require a booster system for any lot above 25m AHD and a backup generator for the booster pump to ensure all lots can receive flow so a fire fighting appliance can extract water during power failure. The system would need to ensure the booster pump can deliver the flow at peak hour rate. The applicant's Engineering Report states that Council should complete capital works plans to upgrade the full 2.3km length of the pipeline to the reservoir. This statement is not accepted by Council. Any required upgrade to water and sewer should be completed by the applicant.

The applicants Engineering Report failed to address anomaly's such as two sewer reticulation lines and manholes that extend into existing Lot 2 and the proposed provision of gravity sewer shown on sewer reticulation plan S101 for proposed Lots 18 and 19 connecting into the pressure sewer system on Tweed Valley Way is not feasible. Council Engineers advise that pressure sewer to service Lots 18 and 19 should be considered. The applicant has not addressed design standards for pressure sewer prior to determination.

### **Stormwater**

Council's Planning and Infrastructure Unit does not support the proposal based on the insufficient information submitted.

The site has significant external catchments which drain through the proposed subdivision and existing houses. Minimal detail of how run on stormwater is to be catered for has been provided. The application has not provided detail of major event (Q100) flow paths (including external catchments) and their impact on existing and proposed residences.

The performance noted in the Preliminary Stormwater Management Plan (PSWMP) does not meet the required targets and seems to disregard catchments A and D. There is a small wetland at the southern end of Fourth Avenue that the applicant proposes to discharge untreated road runoff to, this may have detrimental effect on the wetland. The PSWMP also claims that a downstream swale will provide additional treatment, this is not acceptable. The proposal fails to meet the required stormwater quality treatment targets and does not meet the deemed to comply requirements of Development Design Specification D7 - Stormwater Quality.

The applicant proposes to attenuate peak stormwater flows to pre-development levels through one of two options. Option one is an underground detention tank, option two is an open detention basin. Council considers option two is the preferred solution.

The proposed detention basin and underground detention tank are located on land that is part of the Casino-Murwillumbah rail corridor. This is unacceptable unless the applicant can secure a formal agreement with the State Rail Authority.

### **Road gradients exceeding standards, proposed and existing retaining walls exceeding standards, uncontrolled fill and failure of slopes**

Council's Development Engineer does not support the proposal based on the insufficient information submitted.

The site contains an existing retaining wall, however, the history of the existing boulder wall is unknown. The wall is seemingly unauthorised and built over an



existing Council road reserve. The geotechnical report indicates options to reduce risk to acceptable levels, however, no option is chosen. The engineering plans also propose sewerage and stormwater drainage through or immediately behind the existing boulder wall, however, no design consideration has been provided for proposed sewerage and stormwater drainage services within the zone of influence on the existing retaining wall.

There are two subsurface conditions that are of concern within this subdivision which is the fill and slopewash. The fill was encountered at BH6 of up to 0.7m in depth and at TP 7 of up to 0.4m. As there is no history of the fill being placed on site, it would be deemed as uncontrolled fill. Further investigation is required to identify the extent of uncontrolled fill. The applicant is to identify the extent of slopewash to be removed and illustrate how site regrading is addressed; particularly Council's cut and fill mass landform change criteria.

The description and engineering plans provided for the geotechnical report is not consistent with the plans submitted by Knobel Consulting. The drawings provided in Appendix E of the geotechnical report do not depict the drawings provided by Knobel Consulting engineering report. The engineering plans as detailed in the geotechnical report only detail batters, however, the civil engineering report provides details of a 1.8m high boulder retaining wall. The geotechnical report specifically mentions "*this report does not provide any recommendations for the construction of boulder or crib walls*". The geotechnical report is to address current engineering plans and retaining walls as proposed. In addition the geotechnical report describes that "no earthworks plans have been provided for the allotments", hence earthworks with the allotments have not been considered in the geotechnical report. The engineering plans indicate that there are significant cut and fill batters proposed within the allotments. The geotechnical report is to address the significant cut and fill batters within the proposed allotments.

As the site has slopes of up to 35 degrees, the submitted geotechnical report by Geotech Investigations Pty Ltd states there are measures required for soil failure slopes for different gradients. In particular soil failure of slopes 25 to 30 degrees and above where it is recommended that houses and associated infrastructure should not be built in areas or within 10m down slope of such areas. Therefore a plan is to be submitted that demonstrates building pad locations on each lot taking into consideration soil failure slopes as described in Table 4: Risk Mitigation Measures. In addition the plan is to clearly demonstrate the slope and direction of fall on each lot.

The maximum road grade is 16%, with a desirable maximum road grade of 10%. The proposed road long-section has gradients between +15.9% and -15.95%. For grades greater than 12% the requirements for pedestrians, cyclists and waste collection vehicles and transverse access are to be addressed explicitly in the design. It is uncertain if garbage collection and fire trucks can service and protect these allotments due to the steep roads. This information has not been provided in the application. The maximum horizontal grade for a cul-de-sac head is 5%, with the proposed cul-de-sac is between -5.250% and +1.021%. The maximum permitted cul-de-sac length is 120m with the proposed cul-de-sac length being 175.24m.

The engineering report does not adequately address sight distance. Sight lines are to demonstrate compliance in particular with intersections of Third Avenue

and Road 1 and Station Street and Tweed Valley Way intersection. Particular consideration is to be provided for the curve radii of the intersection of Third Avenue and Road 1. This is to be demonstrated on both the plan of subdivision and long sections.

Retaining walls are proposed throughout the development of unknown height which are not depicted on the site plans or on section drawings. There is limited information on the extent of the retaining walls, batter and fill. Additional information is to be provided for the location of the proposed retaining walls and batters.

Given the extensive amount of insufficient information, the proposal is not considered to be consistent with DCPA5.

#### A11-Public Notification of Development Proposals

The proposed development was required to be notified for a period of 14 days from Wednesday 29 May 2013 to Thursday 13 June 2013. During the submission period Council received one submission, the issues raised in the submission are addressed within this report.

#### A13-Socio-Economic Impact Assessment

An assessment under DCP A13 – Socio-Economic Impact Assessment has revealed that a Social Impact Assessment is not necessary for this type of development and accordingly Clause 17 is deemed satisfied.

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

#### Clause 92(a) Government Coastal Policy

Not Applicable to this application, as the site is not covered by this policy.

#### Clause 92(b) Applications for demolition

Not Applicable to this application, as the application is for subdivision only.

#### Clause 93 Fire Safety Considerations

Not Applicable to this application, as the application is for subdivision only.

#### Clause 94 Buildings to be upgraded

Not Applicable to this application, as the application is for subdivision only.

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

Not Applicable to this application, as the site is not covered by this plan.

#### **Tweed Shire Coastline Management Plan 2005**

Not Applicable to this application, as the site is not covered by this plan.

#### **Tweed Coast Estuaries Management Plan 2004**

The application proposes fill and modification to the Burringbar Creek, a third order tributary. Insufficient information has been provided to enable determination that the development complies with the plan.

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

Not Applicable to this application, as the site is not covered by this plan.

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

The development is considered to create significant environmental impacts on the natural and built environments.

**Ecology**

Council's Natural Resource Management Unit does not support the proposal based on the insufficient information submitted and the large amount of significant vegetation removal, including the construction of a new road through that portion of the site zoned 1(a) Rural.

The proposal would require removal and disturbance of a significant area of remnant vegetation, vegetation of high ecological value and koala habitat vegetation. Compensatory planting has not been offered. Site inspections and review of aerial photographs identified ongoing clearing within both the 1(a) Rural and 2(d) Village zoned land. The applicant has been requested to provide a copy of correspondence/approval from the relevant administering agency (Catchment Management Authority) authorising the removal of the vegetation. An accurate survey of the extent of earthworks and vegetation removal has not been undertaken and as such is required for further assessment.

A seven part test of significance in accordance with Part 5A of the EP&A Act for the additional listed flora and fauna species not evaluated in the submitted ecological assessment is required for further assessment.

The application proposes fill and modification to the Burringbar Creek, a third order tributary which comprises species representative of a candidate Endangered Ecological Community. The applicant has been requested to undertake further investigations and assessment of the vegetation community having regard to the relevant EEC NSW Scientific Committee - Final Determination and if necessary undertake a seven part test of significance to satisfy Part 5A of the EP&A Act.

The extent of vegetation removal/modification required to manage bushfire risk has not be clearly prescribed in the submitted bushfire management plan. Further detail is required in respect to asset protection zones for the site and shown on a plan of survey. Vegetation within the prescribed asset protection zones requiring removal/modification shall be identified as part of the detailed vegetation survey.

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

The site is not considered suitable for the proposed development. The site is considered to be highly constrained which results in difficulty in the proposal being able to comply with Council's standards. The site is surrounded by rural land to the north and east with residential zoned land located to the west and south.

**Surrounding land uses/Buffers**

The application has not addressed potential conflicts arising from incompatible land uses between the rural and urban zones. A minimum buffer of 30m is required for grazing activities which would appear to be the current and likely ongoing use. A land use compatibility assessment is required in accordance with Council's Development Control Plan A5.4.4, 2008 and The *Living and Working in*

*Rural Areas Handbook* produced in partnership between DPI, Northern Rivers CMA and SCU 2007.

### **Contamination**

The site has previously been used for cropping and banana cultivation which is a potential contaminating activity. A contaminated lands assessment is required in accordance with Council's Contaminated Land Policy incorporating the relevant documents endorsed under Section 105 of the Contaminated Land Management Act 1997.

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

The proposed development was referred to the Department of Planning and Infrastructure for concurrence and to the NSW Rural Fire Service.

##### Department of Planning and Infrastructure

Concurrence was granted by the Director General in this instance to permit the creation of proposed Lot 20 with an area of 11.31 Hectares for the following reasons:

- *limited fragmentation of rural land will occur and the rural character and amenity will remain similar to the existing;*
- *the proposal subdivision is unlikely to undermine the objectives of the 1(a) as the proposal involves only a minor change to the size of the lot; and*
- *there is no public benefit in maintaining the standard in this case.*

##### NSW Rural Fire Service

The site is in a bushfire hazard area as such the application required referral to the NSW Rural Fire Service for comment as integrated development. The Department advised Council on 18 June 2013 that the proposed alternative solution where a perimeter road will not achieve the 8m in width is not supported and that further justification of the alternative solution is required, specifically how compliance with the Performance Criteria is achieved. This was sent to the applicant on 19 June 2013, a response to this issue has not been received.

##### Public Submissions Comment

The proposed development was required to be notified for a period of 14 days Wednesday 29 May 2013 to Thursday 13 June 2013. During the submission period Council received one submission, the issues raised in the submission were, potential loss of winter sun from tree planting proposed along Third Avenue and further tree planting by homeowners, noise from traffic generated from the development, concerns over the existing exit inadequate sight distance, drainage concerns due to large amounts of water runoff from the hill.

A copy of the submission was sent to the applicant for comment on 19 June 2013, a response to this submission has not been received.

#### **(e) Public interest**

The proposed development is not in the public interest.

**OPTIONS:**

1. Refuse this application in accordance with the recommendation for refusal.

**CONCLUSION:**

Council officers have conducted an assessment of the subject application and consider that it is generally deficient in supporting information, and raises a range of significant engineering, infrastructure, environmental, contamination and NSW Rural Fire concerns, which warrant the refusal of the application.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant may seek to lodge an appeal against a Council determination in the NSW Land and Environmental Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**29 [PR-CM] Development Application DA13/0119 for a Partial Demolition, Alterations and Additions of Salt Surf Lifesaving Club at Lot 173 DP 1075495 and Lot 901 DP 1066477 Bells Boulevard, Kingscliff**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA13/0119 Pt1**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

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### **SUMMARY OF REPORT:**

Consent is sought for partial demolition of the existing Salt Surf Lifesaving Facility building on the foreshore at Salt beach.

Construction of a new lifesaving facility is then proposed, including facilities over two floors as follows:

#### Ground Floor

- Equipment storage
- Gym
- Amenities
- First aid
- Kiosk

#### First Floor

- Clubhouse
- Kitchen
- Training room office
- Amenities
- Deck

Existing concrete paths and landscaping will be removed and reinstated to suit the new building.

The existing surf lifesaving facility has a gross floor area of 159.7m<sup>2</sup>. The proposed building has a total floor area of 1441m<sup>2</sup>.

Concern was originally raised with the size and layout of the building as it appears more indicative of a club which would be open to the public. However, the applicant has since

clarified that the facility will be for members only and not open to the public at all (except the ground floor kiosk which will be open weekends only while the club is manned by members). The definition of the development under the Tweed Local Environmental Plan 2000 (LEP 2000) was also queried (*emergency service facility/club*) with the applicant confirming that as club operations are not proposed (i.e.: the premises will not be licensed nor open to the public), the emergency services definition remains appropriate. Further detail in this regard is provided later in this report.

A State Environmental Planning Policy No. 1 (SEPP No. 1) is sought for a variation to the provisions of Clause 32B of the North Coast Regional Environmental Plan (NCREP) 1988, relating to overshadowing of foreshore 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. Further assessment is provided later in this report and it is concluded that compliance with the standard is unreasonable and unnecessary in this instance.

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, with a recommendation of approval subject to conditions of consent.

## RECOMMENDATION:

That:

- A. **State Environmental Planning Policy No. 1 objection to Clause 32B(4)(a) of the North Coast Regional Environmental Plan regarding overshadowing of beaches or adjacent open space before 3pm midwinter or 6.30pm midsummer be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- B. **Development Application DA13/0119 for a partial demolition, alterations and additions of Salt surf lifesaving club at Lot 173 DP 1075495 and Lot 901 DP 1066477 Bells Boulevard, Kingscliff be approved subject to the following conditions:**

### GENERAL

- 1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plans as listed in the table below, except where varied by the conditions of this consent.**

TITLE	PREPARED BY	DATED
Title Page/Site Plan (DWG DA-01, Issue A)	Scott Carpenter	Undated (submitted to Council 20 March 2013)
Existing Site Aerial Photos (DWG DA-06, Issue A)	Scott Carpenter	Undated (submitted to Council 20 March 2013)
Proposed Site Plan (DWG DA-09, Issue A)	Scott Carpenter	Undated (submitted to Council 20 March 2013)



TITLE	PREPARED BY	DATED
Proposed Floor Plans, Levels 0 & 1 (DWG DA-10, Issue A)	Scott Carpenter	Undated (submitted to Council 20 March 2013)
Elevations (DWG DA-11, Issue A)	Scott Carpenter	Undated (submitted to Council 20 March 2013)

[GEN0005]

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

[GEN0115]

3. 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]

4. 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]

5. Public access to the development (except the ground floor kiosk and public amenities) is not permitted. The north deck and public surf surveillance deck as shown on the plans are not to provide public access into any of the first floor facilities. The deck in both these areas is to be constructed so as to physically prevent public access (except for members) into this part of the facility (by permanent screen or similar).

[GENNS01]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. 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]

7. 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]

8. 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]

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

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

[PCC1325]

10. 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 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:

1. Floor plan
2. Layout of kitchens and bar showing all equipment
3. All internal finish details including floors, wall, ceiling and lighting
4. Hydraulic design in particular method of disposal of trade waste
5. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required.

11. Prior to issue of construction certificate, the applicant shall submit a Coastal Risk Management Report in accordance with the provisions of Development Control Plan B25 - Coastal Hazards to Council's General Manager or delegate for assessment and approval.

[PCCNS01]

#### **PRIOR TO COMMENCEMENT OF WORK**

12. 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]

13. 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]

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

[PCW0225]

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

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

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

[PCW0985]

16. 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**

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

[DUR0005]

18. 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]

19. 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]

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

[DUR0245]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

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

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

[DUR0645]

26. 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]

27. 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]

28. 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]

29. 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]

30. 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]

- 31. 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]

- 32. 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]

- 33. 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]

- 34. 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]

- 35. 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]

- 36. 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]

- 37. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".**

[DUR2195]

38. 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]

39. 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]

40. 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]

41. Plumbing

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

[DUR2495]

42. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

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

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

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

[DUR2555]

- 44. 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]

- 45. Acid Sulfate Soil is not to be disturbed during construction.**
- 46. No excavation, disturbance or removal of soil is to occur at depths greater than 1m below the existing finished surface level.**
- 47. Demolition and construction waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with the Waste Management Plan of HMC Pty Ltd (HMC Pty Ltd Waste Management Plan Report No. 2012.077 WMP February 2013), except where modified by this consent.**
- 48. The east/west shared user path at the southern end of the Development is to be maintained free of vehicles and equipment to enable safe public access through the site.**
- 49. Public amenities shall be provided for public use in the vicinity of the development for the period of demolition and construction.**

[DURNS01]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

- 50. 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]

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

[POC0355]

- 52. 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]

- 53. 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](http://www.foodnotify.nsw.gov.au) or alternatively by contacting the NSW Food Authority on 1300650124.**

[POC0625]

- 54. 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]

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

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

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

Water DSP6:	1.9 ET @ \$12575 per ET	\$23892.50
South Kingscliff Water Levy:	1.9 ET @ 292 per ET	\$555
Sewer Kingscliff:	2.85 ET @ \$6042 per ET	\$17219.70

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

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

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

[POC0675]

56. 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]

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

[POC1055]

## **USE**

58. 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]

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

[USE0145]

60. 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]

61. 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]

62. 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]

63. 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]

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

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

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

[USE0315]

65. 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]

66. All activities associated with the use of the facilities, external to the clubhouse, shall not be conducted prior to 7am nor after 8:30pm on any day.
67. All deliveries and servicing relating to the facility shall occur between 8am and 5pm Monday to Saturday.
68. All activities associated with the use of the facilities, internal to the clubhouse, shall not be conducted prior to 6am nor after 10pm on any day.

Variation after 10pm until 12pm is permissible on Friday and Saturday evenings for up to 6 occasions in any 12 month period.

69. Use of the development (excluding kiosk and public amenities) is restricted to members only.
70. Waste generated by the operation of the facility shall be managed in accordance with the Waste Management Plan of HMC Pty Ltd (HMC Pty Ltd Waste Management Plan Report No. 2012.077 WMP February 2013), except where modified by this consent.

[USENS01]

**REPORT:**

**Applicant:** Salt Surf Life Saving Club Inc  
**Owner:** Tweed Shire Council  
**Location:** Lot 173 DP 1075495 and Lot 901 DP 1066477 Bells Boulevard, Kingscliff  
**Zoning:** 2(f) Tourism and 7(f) Environmental Protection (Coastal Lands)  
**Cost:** \$2,400,000

**Background:**

The site comprises two allotments and contains the existing Salt Surf Lifesaving Club (SLSC) facility within Lot 173. Both lots are Council owned land and Lot 173 is leased to the club. Lot 901 is not currently subject to any lease. The proposed development will extend over both allotments.

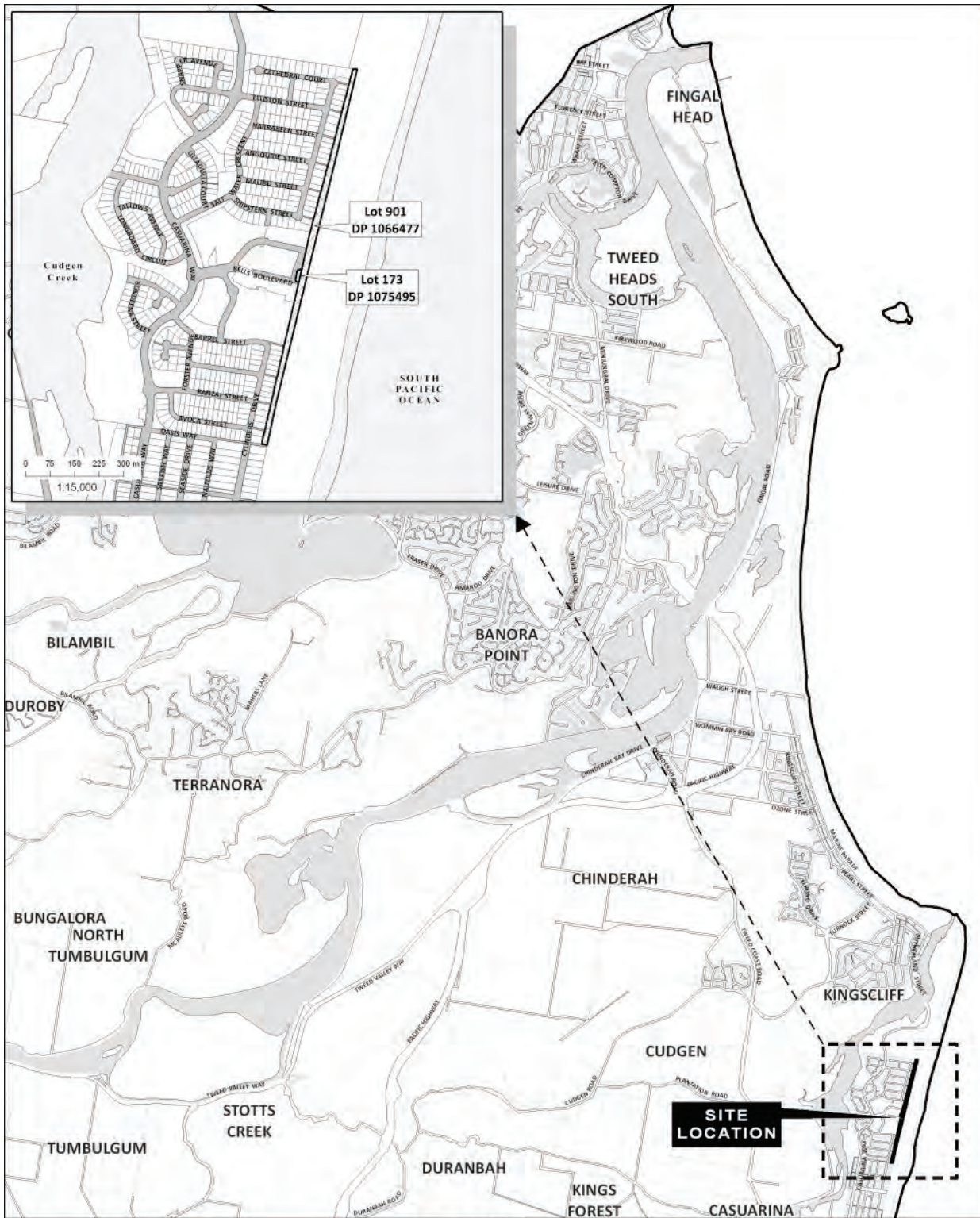
The Salt SLSC facility has a detailed history which began with a requirement for a SLSC facility to be provided under an early subdivision consent for the Salt locality. The existing small (159.7m<sup>2</sup>) SLSC facility was approved by Council in its current location under DA04/0168, then a subsequent application (DA05/0228) approved the use of the undercroft of the 'Salt Bar' deck for the club, in addition to the existing club space within Lot 173. Access paths and landscaping were approved by a later consent.

At Council's meeting of 16 March 2010, a report was considered which outlined the future plans for the club which included the proposed expansion of the club east into Lot 901. The report also indicated that the area underneath the Salt Bar was proposed to be reclaimed by the owners to augment their existing commercial operation. The imminent loss of this area plus the population growth factors on that part of the coast informed the proposal to expand east upon the existing SLSC facility, such that it would occupy Lot 173 and part of Lot 901. It was subsequently resolved that Council indicates its support for the leasing of a portion of Lot 901 for the construction of surf life saving facilities subject to the development of a Plan of Management.

Adoption of the Plan of Management was resolved by Council at the meeting of 17 August 2010. The plan of management specifies that the provision of surf life saving facilities is appropriate on the site.

Prior to lodgement of the application, the applicant submitted the plans for review by Council's Executive Management Team and attended a Development Assessment Panel Meeting for feedback on the proposed design. No major design issues were raised at either meeting though it is noted that the design plans have been modified since both meetings. The current application has been reviewed by various Council staff and is considered to be suitable for approval, subject to conditions.

**SITE DIAGRAM:**



**Locality Plan**

Lot 901 DP 1066477 & Lot 173 DP 1075495  
Bells Boulevard, Kingscliff

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 general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Dig before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre 27/08/2013  
 © Land and Property Information (LPI) & Tweed Shire Council.  
 Boundaries shown should be considered approximate only.

0 0.5 1 1.5 Km  
 1:85,000 @ A4 Portrait  
 DO NOT SCALE  
 COPY ONLY - NOT CERTIFIED

**GDA** Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geocentric Datum of Australia 2014  
 Sited: Map of NSW, Case 50

**Civic and Cultural Centre**  
 5 Tumbulgum Road  
 Murwillumbah NSW 2484

**TWEED SHIRE COUNCIL**

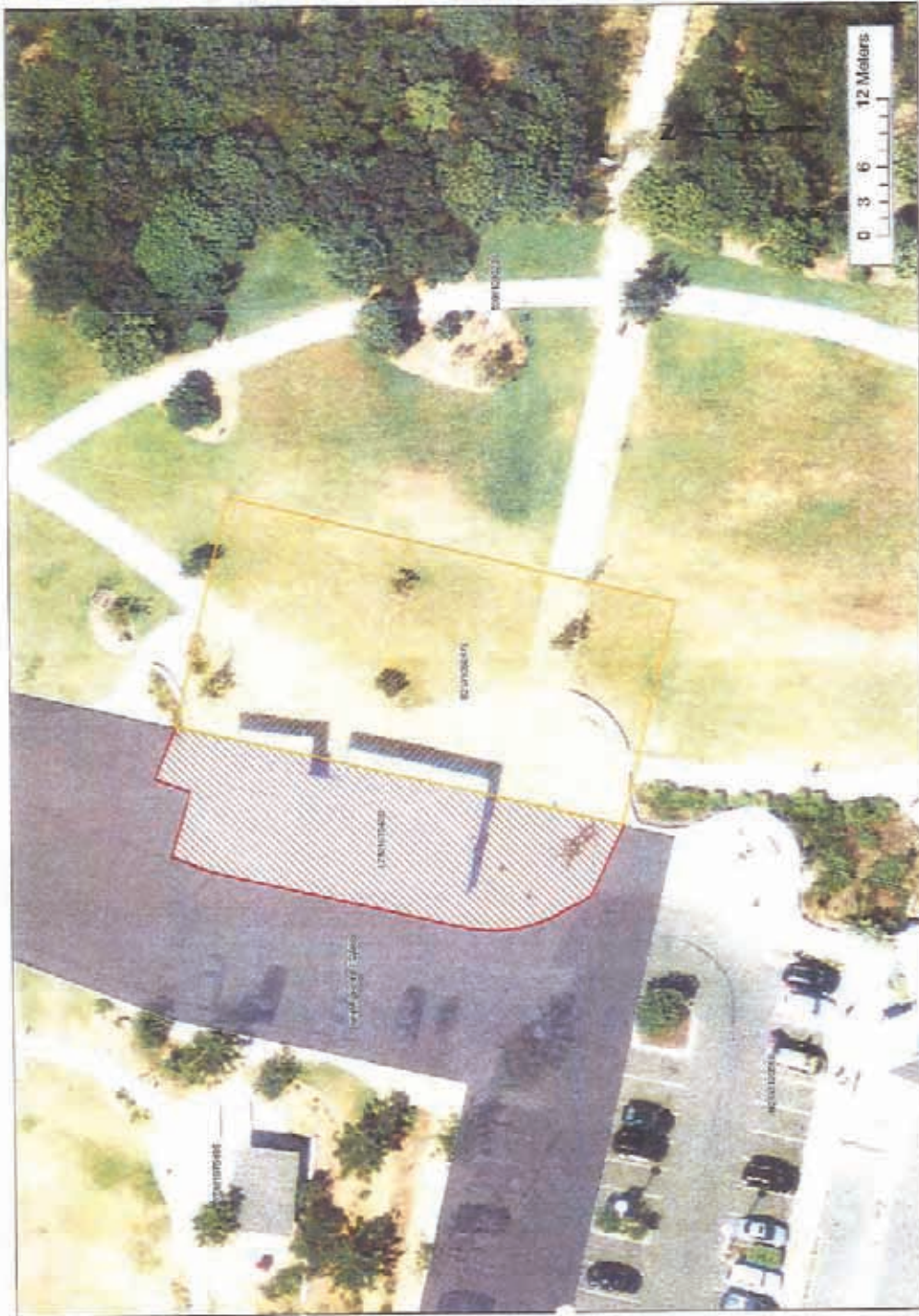
PO Box 816  
 Murwillumbah NSW 2484  
 T | (02) 6670 2400 | 1300 292 872  
 F | (02) 6670 2429  
 W | www.tweed.nsw.gov.au  
 E | planningreforms@tweed.nsw.gov.au

DEVELOPMENT/ELEVATION PLANS:

SALT  
SURF LIFE SAVING CLUB  
DEVELOPMENT APPLICATION



 <b>LIGHTWAVE ARCHITECTURAL</b>	 <b>scott carpenter</b>	 CLIENT <b>Salt</b> SURF LIFE SAVING CLUB	PROJECT PROPOSED SURF LIFE SAVING CLUB	DRAWING TITLE SHEET	SCALE DATE DESIGNER: SCOTT CARPENTER DRAWN: SC	JOB NO. DWG NO.: (SAL) 1002 ISSUE NO.: (A)
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JOB NO: 1002  
ENG NO: 10-10  
ISSUE NO: A

SCALE: 1:500  
DATE: 10/10/12  
DESIGN: SCOTT CARPENTER  
DRAWN: SC

DRAWING:  
EXISTING SITE AERIAL PHOTO

PROJECT:  
PROPOSED MULTYRIP  
LIFEWAVE CLUB

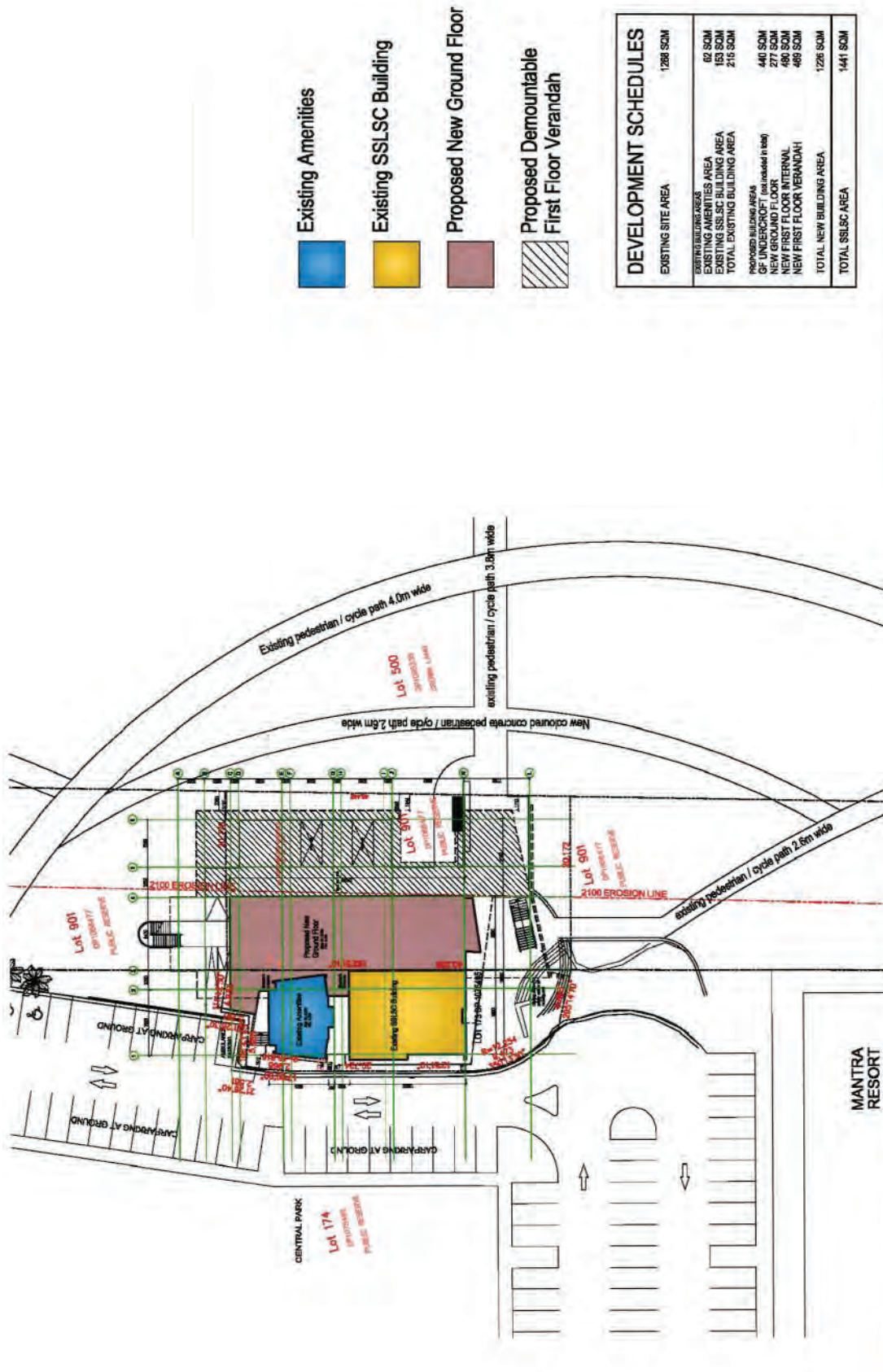
CLIENT:  
sa |  
GOLF LIFE SKATING CLUB

scott carpenter  
ARCHITECTURE



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LIGHTWAVE  
ARCHITECTURAL

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LIGHTWAVE  
ARCHITECTURAL



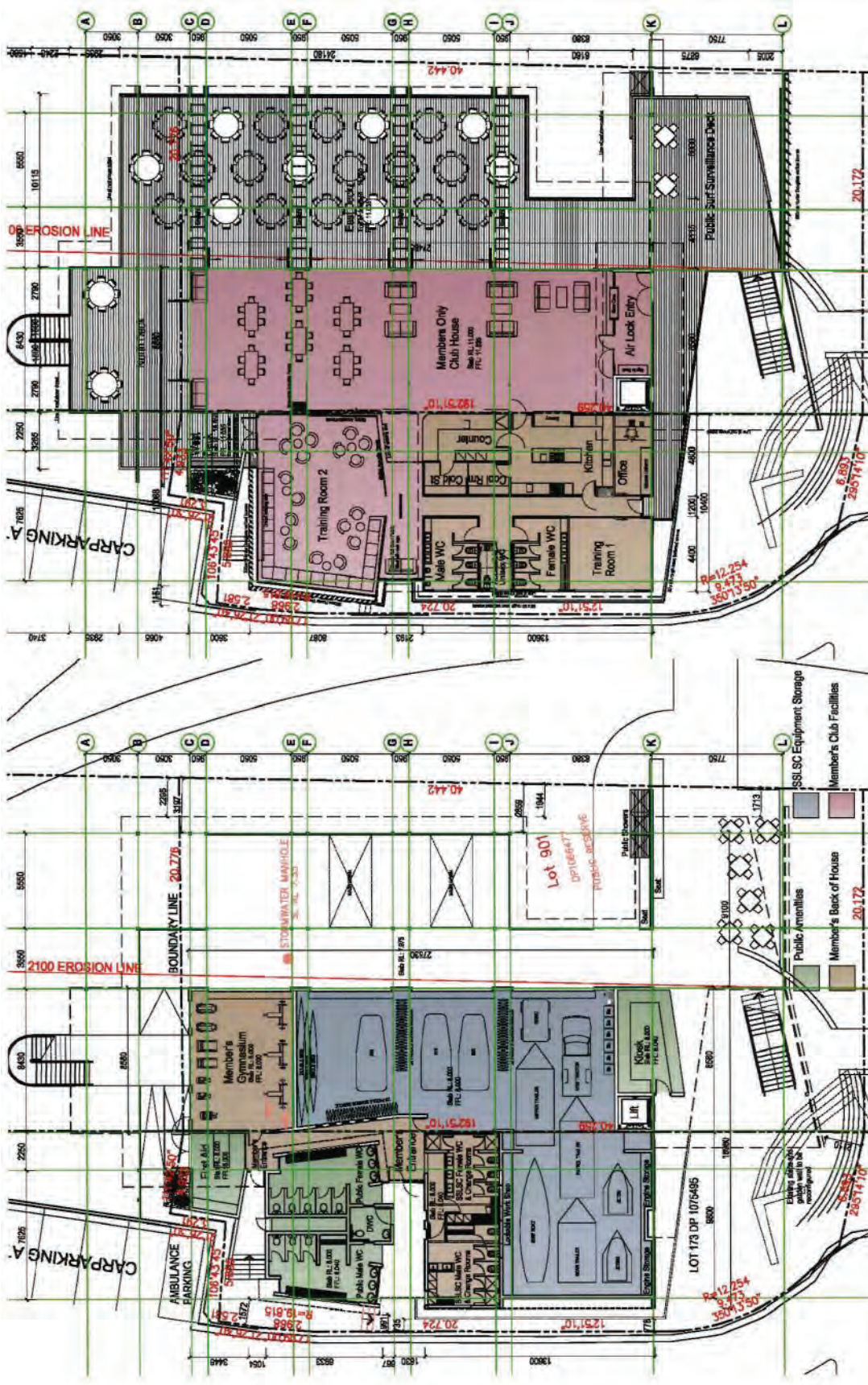
**CLIENT:** **SAUR LIFE SAVING CLUB**  
**PROJECT:** PROPOSED SAUR LIFE SAVING CLUB  
**DRAWING:** PROPOSED SITE PLAN  
**SCALE:** 1:400 @ A5 1200x841  
**DATE:** 04/09  
**DESIGN:** SCOTT CARPENTER  
**DRAWN:** SC  
**JOB NO.:** 10022  
**DWG NO.:** 04/09  
**ISSUE NO.:** A

**LIGHTWAVE ARCHITECTURAL**  
 10/1000 MOUNTAIN VIEW DRIVE, WILLOWBROOK NSW 2159  
 TEL: (02) 9439 2000  
 WWW.LIGHTWAVEARCHITECTURAL.COM.AU

**scott carpenter**  
 ARCHITECT

**MANTRA RESORT**





PROJECT: PROPOSED SALT SURF LIFESAVING CLUB  
 DRAWING: PROPOSED FLOOR PLANS LEVELS 0 & 1  
 SCALE: 1:400 @ A3 1/200 @ A1  
 DATE: 14/09/13  
 DESIGN: SCOTT CARPENTER  
 DRAWN: SC

JOB NO: 1002  
 DWG NO: DW 10  
 ISSUE NO: A

CLIENT: **salt** CLUB LIFE SAVING CLUB

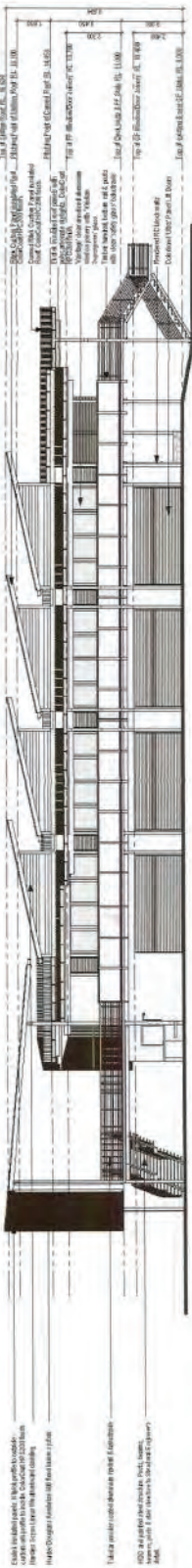
**scott carpenter** ARCHITECT



Scott Carpenter Architect  
 111 The Esplanade, Perth WA 6000  
 Tel: 08 9437 1234  
 Fax: 08 9437 1235  
 Email: info@scottcarpenter.com.au

**LIGHTWAVE** ARCHITECTURAL





**Lightwave Architectural**  
 10000 Highway 100, Suite 100, Jacksonville, FL 32256  
 Phone: 904.251.1111  
 www.lightwavearchitectural.com

**scott carpenter ARCHITECTURE**  
 10000 Highway 100, Suite 100, Jacksonville, FL 32256  
 Phone: 904.251.1111  
 www.scottcarpenter.com

**CLIENT:** salt SURF LIFE SAVING CLUB

**PROJECT:** PROPOSED SALT SHIRE LIFESAVING CLUB

**DRAWING:** ELEVATIONS

**SCALE:** 1/200 @ A3

**DATE:** SCOTT CARPENTER

**DESIGN:** SCOTT CARPENTER

**DRAWING:** SC

**JOB NO.:** 10027

**DWG NO.:** DA-11

**ISSUE NO.:** A

**South Elevation**  
 10000 Highway 100, Suite 100, Jacksonville, FL 32256

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

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

**Tweed Local Environmental Plan 2000 (TLEP 2000)**

Clause 4 - Aims of the Plan

The Tweed Local Environmental Plan 2000 aims to manage the growth of the shire whilst retaining the area's natural and environmental features. The proposed development is consistent with this aim.

Clause 5 - Ecologically Sustainable Development

The development remains consistent with the provisions of ecologically sustainable development.

Clause 8 - Consent Considerations

The application was lodged as 'emergency services facility' under the TLEP 2000, which is:

*Facilities for air-sea rescue, surf life saving, bushfire control, ambulances or the like.*

The applicant was queried on the applicable definition for the proposal is the floor plan appears more indicative of a 'club'. However, the applicant has confirmed that the development remains consistent with the 'emergency services facility' definition as no public access will be available to the building. It was also under this definition that Council approved the existing SLSC facility (albeit a much smaller development) under DA04/0168. As an emergency services facility, the development is permissible in both the 2(f) and 7(f) zones and is consistent with the primary objective of each (SLSC facilities support the use of the area by tourists and are compatible with the coastal protection objectives of the 7(f) zone).

The development is really an expansion and upgrade of an existing facility and is not considered to have any unacceptable cumulative impacts being located in an appropriate area and subject to the recommended conditions.

Clause 11 - Zone Objectives

The development is located within both the 2(f) Tourism and 7(f) Environmental Protection (Coastal Lands) zones.

The objectives of 2(f) zone aim to encourage integrated tourist development and uses associated with or ancillary to or supportive of tourist development, ensure that prime sites are developed to their potential and to permit high quality residential development as being integral to and supportive of tourist oriented development.

The proposed development is clearly ancillary to tourist development as well as providing an important service for the permanent Kingscliff/Salt population and visitors. It makes use of the beachfront site for an important community purpose and is considered to be consistent with the objectives of the 2(f) zone.

The objectives of 7(f) zone relate to the protection of land from coastal erosion, the enhancement of scenic and environmental values and the provision of development which is compatible with the primary zone function.

The proposed development aims to upgrade and extend an existing facility which is sited in an appropriate location and is not impacting on coastal erosion.

The development is considered to be consistent with the 7(f) zone objectives.

Clause 15 - Essential Services

Essential services are currently supplied to the facility, and will continue to be so.

Clause 16 - Height of Building

The site has a height limit of 3 storeys under the current LEP. The proposed development has a maximum height of 8.78m (2 storeys) which remains consistent with the control.

Clause 17 - Social Impact Assessment

Emergency service facilities do not necessitate social impact assessment.

Were the proposal defined as a club, social impact assessment would be required as the premises exceeds 1000m<sup>2</sup> (GFA of 1226m<sup>2</sup>).

Clause 35 - Acid Sulfate Soils

The site exhibits Class 4 Acid Sulfate Soils (ASS) and a Preliminary ASS Assessment (prepared by HMC Consulting) was submitted with the application. This assessment concludes that it is unlikely that ASS would be intercepted during works. Council's Environmental Health Officer has reviewed the report with no objections and has applied a condition prohibiting the disturbance of ASS during construction.

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

Clause 27 previously required concurrence of the Director (Planning and Infrastructure) prior to undertaking works on 7(f) land subject to any other item other than Item 1 in the zoning table. This provision has now been repealed.

With regard to the remaining Clause 27 matters, it is evident that the proposal would not adversely impact upon coastal erosion or impact on the beach or ocean in any way. In terms of the scenic quality of the location, certainly the natural features of the site are noteworthy however the building (although large) is designed in a contemporary coastal style and would fit within the existing residential/tourist context of the site. No vegetation is required to be removed to facilitate the development and with regard to Clause 27, the development is considered to be satisfactory, noting it will also provide an important community service/facility in the area.

**State Environmental Planning Policies**

**SEPP (North Coast Regional Environmental Plan) 1988**

Clause 32B – Coastal Lands

The applicant has submitted that the proposal is consistent with Clause 32B excepting that the foreshore will be overshadowed by 626m<sup>2</sup> at 3pm in mid winter (an increase of 401m<sup>2</sup>) and 2313m<sup>2</sup> at 6.30pm in summer. Note that this shadow is in addition to existing shadow cast by the Mantra/Salt Bar development.

A SEPP No. 1 objection was prepared and submitted with the application which is addressed further in this report. Council has assumed concurrence for Clause 32B(4)(a) of the North Coast REP. The justification presented in the SEPP No. 1 Objection is relevant and is summarised below:

- "- it is submitted that the standard has been destroyed by the approval of previous developments which have overshadowed the foreshore.*
- the proposed development does comply with the building height and setback requirements.*
- compliance with the foreshore shadow development standard would preclude the construction of a functional and efficient surf lifesaving facility in close proximity to the beach which is a necessary requirement to ensure that proper surveillance of the beach is provided and suitable facilities are available for the current (and expanding) members and volunteer life guards.*
- the proposed building complies with the prevailing three storey height limit, but will result in some afternoon shadowing of the adjacent foreshore reserve however due to the nature of the foreshore area (i.e.: narrow grass strip abutting buildings and then coastal health vegetation) and the temporal and casual uses of the space, the resultant impact on the amenity of the open space is considered minor, particularly in the context of the extent of foreshore open space available adjacent to the Salt development generally.*
- strict compliance with the standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.*
- at 6.30pm midsummer, shadows cast by the proposed building will only affect a small portion of the reserve and do not extend to the beach area.*
- at 3.00pm midwinter, the additional shadow cast by the proposed building that will encroach onto the foreshore reserve are relatively narrow and affect only a small portion of the reserve (626m<sup>2</sup>).*
- at the stated times, the shadows cast by the proposed building would not extend to any beach areas and therefore will not impact on sunbathers and surfers.*
- the shadow does not impact on any areas used by the public for formal recreational activities.*
- the shadow cast by the proposed building is similar to that cast by the buildings located on the adjacent properties."*

The applicant has also noted that the Government Coastal Policy contains a strategic action in relation to beaches and waterfront open space which is referred to in CI32B of the REP. The principle is:

*Beaches and waterfront open space will be protected from overshadowing. The standard to be applied will vary according to local circumstances, however generally the standard to be applied is:*

- in cities or large towns, no overshadowing before 3pm mid winter and 6.30pm summer daylight saving time;*
- elsewhere, no overshadowing before 4pm mid winter and 7pm midsummer daylight saving time.*

There is also a related note which states 'the suggested standard in this principle may be difficult to apply in highly urbanised environments. An LEP or DCP which is tailored to local conditions and which has the overriding objective of minimising overshadowing may be required in these situations'.

The applicant contends that the above note acknowledges that it can be difficult to achieve nil overshadowing of waterfront open space or beach areas in urban environments. They maintain that the extent of overshadowing is minor and the proposal is consistent with the intended development of the site and the immediate area.

Generally, planning assessment concurs with the above. Whilst the development will increase overshadowing prior to the specified times in winter and summer, the shadow at no time extends to the beach itself and is not considered to be excessive on this basis. It is recognised that the location of the facility in this area is logical and necessary and that the development does comply with the building height controls, compliance with which would suggest that a degree of overshadowing in this location is likely to occur. It is also acknowledged that the times of overshadowing would generally be considered to be times of lesser usage of the foreshore area and that usage during these times would be more casual and fleeting, i.e.: casual walkers or bikers, not necessarily large groups of people utilising the area for any great period of time.

On this basis, the increase in overshadowing is considered to be acceptable. It is further considered that the public benefit of a functioning lifesaving facility in this location would appear to outweigh any possible negative effects of increased overshadowing at a time when the area is likely underutilised. This Clause of the REP as well as the NSW Coastal Policy (which is called up by Clause 32B) are considered to be satisfied.

#### Clause 33 – Coastal Hazard Areas

The development is consistent with the provisions of Clause 33 and will not impact adversely on foreshore access or foredune areas. The DCP B25 assessment further in this report provides further detail.

#### Clause 81 – Development Adjacent to the Ocean or a Waterway

The development doesn't reduce foreshore open space considerably and is not considered to detract from the amenity of the beach or foreshore area. In fact, the building design (though large) is considered to be complementary to the coastal location with an open, coastal architectural style which is typical of the Salt area and the Tweed Coast in general. A Plan of Management for the subject area exists, with which the application is consistent. The plan in fact notes that allowance should be made for future extensions to the existing SLS facility from Lot 173 onto Lot 901 which is the development proposed by this application.

#### SEPP No. 1 - Development Standards

The proposed development does not comply with the development standard contained in Clause 32B (4) of State Environmental Planning Policy (North Coast Regional Environmental Plan) 1988 as it relates to overshadowing of foreshore open space.

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.

The extent of overshadowing is as follows:

Extent of shadow			
Date	Time	Existing shadow	Proposed shadow
21 June	3.00pm	225m <sup>2</sup>	626m <sup>2</sup>
21 December	6.30pm	Shadow from existing building contained within existing Mantra building shadows	2313m <sup>2</sup> <b>Note – this is in addition to the existing Mantra building shadow</b>

As detailed earlier in this report, it is considered that the extent of overshadowing created is relatively minor and importantly, it does not 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's justification for the objection centres around their assertion that the standard has been virtually abandoned or destroyed in the location by various development consents which include variations to the foreshore shadow development standard. It is submitted that existing buildings in the immediate locality (including the Peppers and Mantra resort buildings) whilst complying with the height standard have had the effect of nullifying the standard.

In their justification, the applicant has appropriately considered the SEPP No. 1 aims and objectives, as well as the SEPP No. 1 tests supplied by Lloyd J in *Wintern Property Group Limited v North Sydney Council* (2001) 130 LGERA 79 and *Webhe v Pittwater Council* (2007) NSW LEC 827.

The applicant further asserts that compliance with the foreshore shadow development standard would preclude the construction of a functional and efficient surf lifesaving facility in close proximity to the beach which is a necessary requirement to ensure that proper surveillance of the beach is provided and suitable facilities are available for the current (and expanding) members and volunteer life guards.

The proposed building complies with the prevailing three storey height limit, but will result in some afternoon shadowing of the adjacent foreshore reserve however due to the nature of the foreshore area (i.e.: narrow grass strip abutting buildings and then coastal heath vegetation) and the temporal and casual uses of the space, the resultant impact on the amenity of the open space is considered minor, particularly in the context of foreshore open space available adjacent to the Salt development generally.

The applicant concludes that in the context of the surrounding development and the planning controls applying to the site, the design of the proposal is not considered to be inconsistent with the anticipated development of this site or the immediate area. More importantly, the proposed encroachment of shadow at the statutory time of 6.30pm midsummer daylight saving time and 3.00pm midwinter,

into part of the foreshore open space is not considered to be significant, nor is it considered to be inconsistent with the objectives of Clause 32B(4)(a) of State Environmental Planning Policy (North Coast Regional Environmental Plan) 1988. Upholding the objection would be consistent with the aims of SEPP No. 1 in that strict compliance with the foreshore shadow development standard would unreasonably preclude the appropriate development of the site in accordance with the relevant planning controls.

Planning assessment concurs with the above and it is considered that the principles for assessing a SEPP No. 1 Objection presented in *Lloyd J in Wintern Property Group Limited v North Sydney Council* (2001) 130 LGERA 79 and *Webhe v Pittwater Council* (2007) NSW LEC 827 have been satisfied. That is, the objection is well founded, upholding the standard is both unreasonable and unnecessary in this instance and the objection is consistent with the SEPP No. 1 aims. Additionally, the non compliance is not considered to raise any matters of State or Regional planning significance and there is not considered to be great public benefit in maintaining the control, in fact the proposed variation is considered to allow greater public benefit by enabling the construction of a well sited and functional surf life saving facility.

Council has assumed concurrence with regard to the foreshore overshadowing standard and accordingly, it is recommended that the SEPP No. 1 Objection supported.

#### SEPP (Infrastructure)

Division 6 of the policy provides for certain development relating to emergency service facilities to be exempt or complying development. Surf lifesaving clubs are not covered by the definition of 'emergency services organisations' as defined in the policy and accordingly, the policy does not apply.

#### SEPP 55 – Remediation of Land

Council's Environmental Health Officer has reviewed the application with regard to land contamination and raised no objections to the development subject to a condition prohibiting excavation, disturbance or removal of soil at depths greater than 1m below the existing finished surface level. There are no further ramifications for SEPP 55.

#### SEPP 71 – Coastal Protection

The site is within the coastal zone and by nature requires a location close to the foreshore and beach. The development is considered to be appropriate with regard to the SEPP 71 matters for consideration and will not reduce public foreshore access or amenity whilst providing an essential service. In terms of overshadowing, though an extension of the existing shadow will occur, this is not considered sufficient to warrant refusal of the application. The applicant is considered to have submitted a reasonable justification for the overshadowing (which doesn't extend to the beach itself) within the application which has been assessed in detail under the relevant provisions of the NCREP above. Accordingly, the development is considered to be satisfactory with regard to SEPP 71.

#### SEPP (State and Regional Development) 2011

The project does not fall within the criteria for either state significant or regionally significant development, and does not exceed any threshold requirements



requiring assessment by the Joint Regional Planning Panel (JRPP). As such, Council is the consent authority.

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

Draft Local Environmental Plan 2012

Under the Draft Tweed LEP 2012 (which is now imminent and certain, though it wasn't at the time the application was lodged in March 2013), the proposal does not meet the 'emergency services facility' definition as this specifically prescribes a list of services which qualify which does not include surf lifesaving facilities (as the current LEP 2000 does). The applicant suggests that the proposed development would be covered by the 'community facilities' definition which is:

*A building or place:*

- (a) owned for controlled by a public authority or non profit community organisation, and*
- (b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.*

Community facilities are permissible with consent in both draft zones (SP3 Tourist and E2 Environmental Conservation). The proposed development would maintain consistency with the 13.6m (SP3) and 9m (E2) height limits under the draft, with a maximum height of 8.78m and two storeys.

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

Tweed Development Control Plan

DCP A2 – Site Access and Parking Code

Council's Traffic Engineer has reviewed the application as follows:

*"This proposal is considered to be justified since the surf lifesaving facility does not comprise any commercial components and is not intended to provide full scale activities associated with a traditional surf lifesaving club operation.*

*And therefore there is no need for additional parking provision for the development. However, given that the proposed plans identify a kiosk at ground level, a kitchen on the upper level and significant areas for dining it is unrealistic to expect that the facility will not be used other than for active members of the Club. There are significant public parking spaces in close proximity to the Club which is underutilised at most times and therefore additional parking is not required. It is accepted that members would be local residents and would therefore most likely walk to the Club."*

Appropriate conditions limiting public access to the building have been applied. The development is considered to comply with DCP A2 and sufficient parking is considered to be provided. Note that this may require revision in the future should the applicant apply to intensify the operations of the facility.

DCP B9 – Tweed Coast Strategy

The development is located in an appropriate area as per the provisions of DCP B9 and does not contravene any objectives or controls of the plan.

DCP B25 – Coastal Hazards

The main part of the development is located landward of the 2100 coastal erosion line however the deck extends into the 2100 hazard zone. The applicant has not completed a Coastal Risk Management Plan at this point as required by the DCP though they do state that the deck will be constructed to allow its removal in the event of a threatening erosion scenario. Council's Waterways and Coasts Coordinator has confirmed that as the proposal is relatively minor in that the extent of encroachment into the hazard area is minimal and deck only, and the fact that the hazard lines are currently under review and most likely being moved further seaward in a few months such that the development may be entirely clear, it is appropriate to condition that the applicant submit the plan prior to issue of construction certificate. An appropriate condition has been applied.

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

Clause 92(a) Government Coastal Policy

The development does not contravene the NSW Coastal Policy.

Clause 92(b) Applications for demolition

The application involves minor demolition and a demolition work plan was submitted and reviewed by Council's Building Surveyor. Appropriate conditions have been applied.

Clause 93 Fire Safety Considerations

Council's Building Surveyor has reviewed such matters and applied appropriate conditions.

Clause 94 Buildings to be upgraded

Council's Building Surveyor has reviewed such matters and applied appropriate conditions.

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

The development does not contravene a coastal zone management plan.

**Tweed Shire Coastline Management Plan 2005**

*The proposed development does not contravene the Coastline Management Plan.*

**Tweed Coast Estuaries Management Plan 2004**

The site is not affected by this plan.

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

The site is not affected by this plan.

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

Amenity/Restriction on Public Use

The site is surrounded by mixed commercial and tourist (accommodation) facilities which have been built around a large central park - the SLSC lies on the eastern side of the park. The expanded SLSC would continue to be operated by volunteer club members and the first floor clubhouse is not proposed to be available to the public. Businesses in the immediate area are a mix of

restaurants and cafes, as well as the Salt Bar which is a pub and live music venue. Hours of operation for businesses in the precinct range between early morning (7am) to late evening. The central park is used for events including food and live music events.

The application states that the club is currently unlicensed and will continue to be so. Neither is it open for public use nor is it intended. That is to say, the Club will only be open to members for purposes ordinarily incidental and subsidiary to surf lifesaving activities undertaken on Salt Beach.

With regard to opening hours it is submitted the Club conducts training on an average of 2 nights weekly after normal work hours until approximately 8:30pm. Various night committee meetings occur also with peak club activities occurring on weekends and public holidays during the life saving season between September and April each year. Limited special occasion events will occur for Club awards and branch functions.

It would appear the operations of the existing gym, though now housed with the new structure, will continue as previously.

Conditions have been applied by Council's Environmental Health Officer to preserve surrounding amenity. These conditions include restrictions on operating hours.

#### Food Premises

The proposal includes a first floor kitchen with servery through to the 'members only club house'. Design plans have been provided with the application however they do not provide adequate detail, and further information will be required prior to construction. Standard conditions have been applied relating to the operation of a commercial food premises.

#### Demolition and Construction Waste

The proposal includes partial demolition of the existing building (internal walls, internal lining, roof sheeting, fixtures and fittings would be removed, and concrete cutting in to the existing slab to install additional footings, drainage, water and other services would generate waste). The applicant has included a waste management plan which addresses the demolition stage which is comprehensive and satisfactorily addresses any health and environmental concerns in relation to managing waste material during the demolition/construction phases.

#### Traffic

Council's Traffic Engineer has reviewed the application as follows:

*"This proposal is considered to be justified since the surf lifesaving facility does not comprise any commercial components and is not intended to provide full scale activities associated with a traditional surf lifesaving club operation.*

*And therefore there is no need for additional parking provision for the development. However, given that the proposed plans identify a kiosk at ground level, a kitchen on the upper level and significant areas for dining it is unrealistic to expect that the facility will not be used other than for active members of the Club. There are significant public parking spaces in close proximity to the Club which is underutilised at most times and therefore*

*additional parking is not required. It is accepted that members would be local residents and would therefore most likely walk to the Club.*

*For the purposes of TRCP s94 contributions the applicant should be requested to justify why additional trips will not be generated if the upstairs kitchen and balcony area is open to casual club members."*

In response to the above request, the applicant has clarified that the facility will not be open to the public and that there will be no intensification of traffic.

**"ITEM 3 - TWEED ROAD CONTRIBUTION PLAN**

*The facility will not be open to members of the public and there will therefore be no intensification of traffic as Club members will be attending the beach in their capacity as members of the public and therefore regardless of whether or not the facility is available the volume of traffic will remain the same."*

Council's Traffic Engineer has confirmed the above and as such, there are no Tweed Road Contribution Plan contributions or additional parking requirements applicable.

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

Surrounding Land Uses

The proposed development is compatible with the recreational landuse of the subject area and provides a necessary service.

Contamination

Council's Environmental Health Officer has reviewed the application with regard to contamination and applied standard conditions, noting that the proposed works are minor.

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

The application was advertised for 14 days from 10 to 24 April 2013. During this period, one submission was received as detailed below:

Summary of Submissions	Response
It is necessary for public toilets to be provided during construction.	Council's Manager Recreation Services has confirmed that public toilets during the construction period are definitely required. An appropriate condition has been applied.
Is a restaurant part of the DA?	A restaurant is not proposed as part of the application. No part of the SLSC facility (excluding the ground floor kiosk and public toilets) will be open to the public.
The drawings describe the deck as a demountable verandah. The materials (timber posts and rails with glass balustrade and colourbond roof) do not appear to be demountable.	The proposed materials are able to be readily removed in the event that this is required. The applicant will be required to submit a Coastal Risk Management Report prior to issue of Construction Certificate which will address this issue.
A landscaping plan is required to show what is proposed around the	A detailed landscaping plan has been conditioned to be supplied prior to issue of

Summary of Submissions	Response
building.	Construction Certificate.
Drawing DA-13 is confusing and the site has not been identified on the shadow plans.	This issue was picked up and raised with the applicant who supplied a revised plan.

**(e) Public interest**

Subject to the recommended conditions to safeguard amenity and limit operations of the club to members only, the proposed development is considered to be in the public interest.

**OPTIONS:**

1. Approve the development in accordance with the recommended conditions; or
2. Refuse the development for specified reasons.

Council officers recommend Option 1.

**CONCLUSION:**

The application proposes the development of a new, larger surf life saving club that can more appropriately provide for the needs of the Salt community and tourist visitors to the area. Subject to the recommended conditions, the impacts of the development are considered to be minor and approval of the application, inclusive of the SEPP No. 1 variation is warranted.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

If dissatisfied with the decision, the applicant may appeal the determination in the Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.



30 [PR-CM] Development Application DA12/0620 for Construction of an Awning over an Existing Outdoor Dining Area at Lot 2 DP 521302 No. 13 Wharf Street, Murwillumbah and Road 5900 Wharf Street, Murwillumbah

SUBMITTED BY: Development Assessment Unit

FILE REFERENCE: DA12/0620 Pt1



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

#### Updated Information

The applicant attended a Councillors Workshop for this matter on 5 September 2013. At the Workshop, the Councillors requested that the officers include an additional option of approval of the application, subject to a time limitation consent condition up to five years, in the further report to the September Council meeting. The additional option is included within the Options section of this Report.

#### Previous Reports to Council

A planned Councillors Workshop on 8 August 2013 did not proceed.

At its meeting of 15 August 2013, Council resolved the following in respect of this matter:

**"RESOLVED** that Development Application DA12/0620 for the construction of an awning over an existing outdoor dining area at Lot 2 DP 521302 No. 13 Wharf Street, Muwillumbah; Road 5900 Wharf Street, Murwillumbah be deferred to the next Council meeting'.

A further Councillors Workshop for this application was held on 5 September 2013.

This report is now submitted to Council for its further determination.

#### Previous Reports to Council

At its meeting of 18 July 2013, Council resolved the following in respect of this matter:

**"RESOLVED** that this item be deferred to the August meeting of Council to allow Council staff to continue to negotiate with the owner for an alternative structure."

The applicant has been requested to attend a Councillors Workshop on 8 August 2013.

The report is now submitted for Council determination.

At its meeting of 20 June 2013, Council resolved the following in respect of this matter:

**"RESOLVED** that this item be deferred for a Workshop."

A Councillors Workshop on this matter was held on 11 July 2013. There was no formal decision made on this Development Application at the Workshop.

The previous report has been re-submitted to Council for their determination.

### Original Report

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

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

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

When considered in isolation, the proposed structure is considered to be relatively light weight and unobtrusive and, in the absence of Council adopted design guidelines for such structures, as well as the presence of similar structures within the vicinity of the subject site, it would be difficult to refuse the proposal on the basis of design. However should the application be approved there are concerns about the cumulative impact of similar development within the locality, particularly given the Murwillumbah Main Street Conservation Area (MMSCA) status as defined within the Draft Local Environmental Plan (LEP) 2012.

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

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



**RECOMMENDATION:**

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

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

**REPORT:**

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

**Background:**

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

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



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

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

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

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

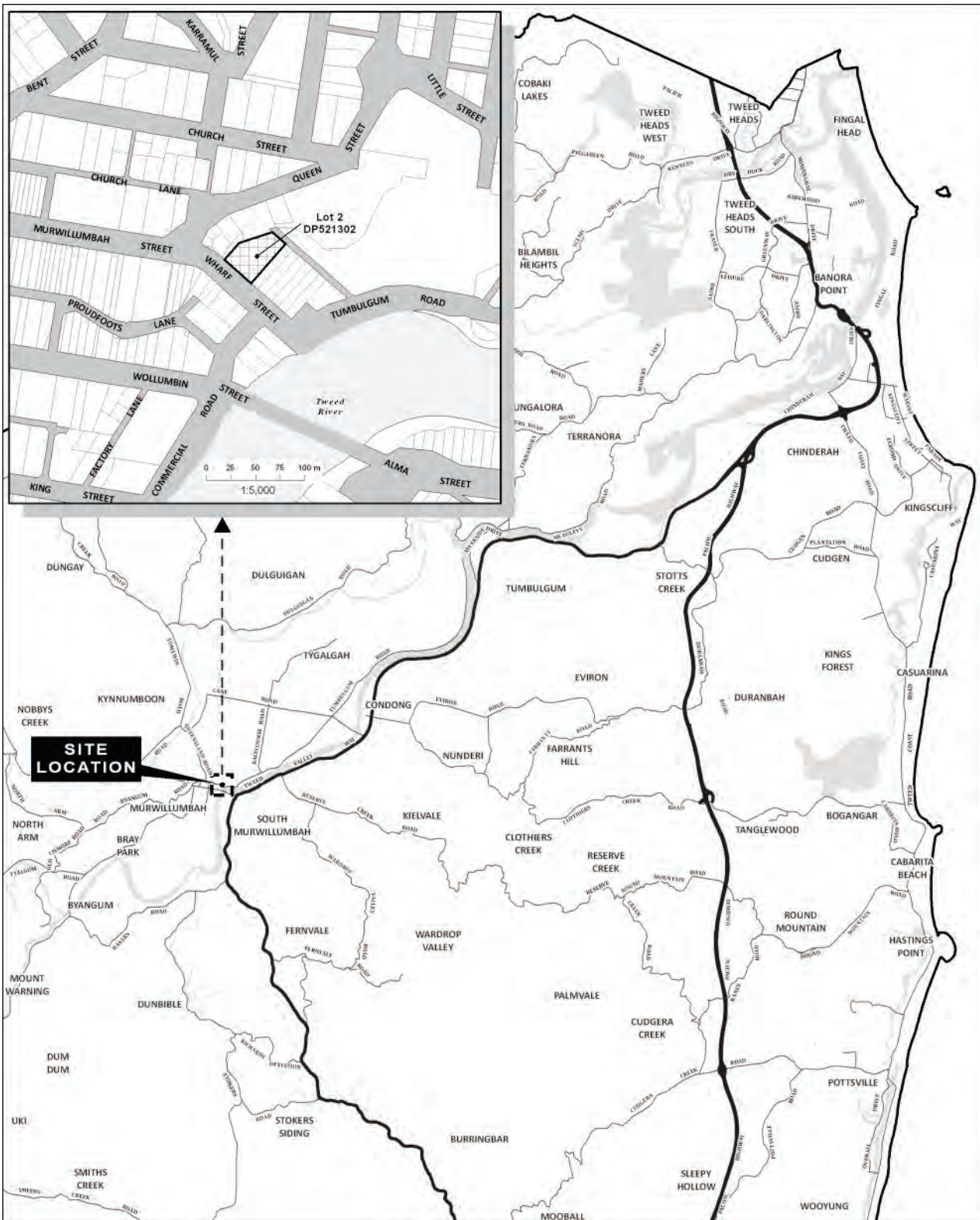
From a design perspective, shade structures attached to existing awnings have the capability to intrude on the fabric of the host building as well as impact on the amenity and appearance of streetscapes and the pedestrian environment. The proposed structure is considered to be relatively light weight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

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

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

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

**SITE DIAGRAM:**



**Locality Plan**

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

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



Civic and Cultural Centre  
 3 Tumbulgum Road  
 Murwillumbah NSW 2484  
 PO Box 818  
 Murwillumbah NSW 2484  
 T | (02) 6670 2400 | 1300 292 872  
 F | (02) 6670 2429  
 W | www.tweed.nsw.gov.au  
 E | planningreform@tweed.nsw.gov.au





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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

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

When considered in isolation, the proposed development is of a relatively minor nature and scale and is not likely to impact on the character of the Tweed as a whole. The requirement for weather protection within outdoor dining spaces is acknowledged and Council wishes to encourage the use of these spaces to create a vibrant streetscape and assist local businesses. However, it is considered that such structures should be of a high architectural quality, sensitive to both the building to which they are attached and that compliments the surrounding streetscape. Such structures should also provide adequate levels of lighting to footpaths and to ground floor spaces within buildings as well as maintain existing public safety and security levels, particularly outside of licensed premises.

Should the application be approved, it would set a precedent for such structures within the road reserve that collectively, may have a detrimental impact on the character and amenity of the Tweed as a whole.

Clause 5 - Ecologically Sustainable Development

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

It is considered that the scale and nature of the proposed development would not conflict with principles of ESD.

Clause 8 - Consent Considerations

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

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

The subject site is located within the 3(b) General Business Zone and the proposal relates to the construction of an awning, in association with a previously

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approved outdoor dining area. For reasons detailed within this report, it is considered that the proposal would not be consistent with the primary objective of the zone, primarily on account of the restriction to CCTV surveillance and impact on light levels along the pedestrian footpath.

However, it is also considered that the awning may also impact on the architectural quality of the host building, which is a prominent heritage building within the Murwillumbah town centre. The approval of the awning structure may set a precedent for similar proposals within the Shire that collectively may impact substantially on streetscape character.

It is therefore considered that the proposal would not be consistent with this clause.

#### Clause 11 - Zone Objectives

The subject site is located within the 3(b) General Business Zone. The objectives of the zone are as follows:

##### **Primary objectives:**

- *To provide business centres in which the community's shopping, business, welfare and social needs can be met.*
- *To provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding areas.*

##### **Secondary objectives:**

- *To provide for tourist oriented development.*
- *To encourage upper floor residential or tourist accommodation.*

The proposed awning structure would be ancillary to the Murwillumbah Hotel and located over a previously approved outdoor dining area. The applicant considers that the structure is necessary to provide an area for outdoor dining in all weather conditions, thereby providing an attractive seating area for customers and creating a vibrant streetscape. Should this justification be accepted, it may be considered that any impact the structure may have from a visual or public safety point of view would be counteracted by the facilitation of a useable outdoor dining area.

The proposed awning structure would be attached to the existing awning located over the public footpath and would be constructed of steel supports and rafters with a shade fabric material. There is a concern that the design and use of materials would not be compatible with the scale and architecture of the host building and may impact on the heritage significance of both the Murwillumbah Hotel and the surrounding area.

It is important to note that there are a number of awnings located within the road reserve that have been approved by Council, such as at the Court House Hotel, at the Sugarbeat cafe and at the Noodle Bar located opposite to the subject site. It is noted that these structures do not enhance streetscape appeal and have the capacity to create a tunnelling effect along the section of the footpath in front of these buildings, particularly in the case of the Courthouse Hotel. There is a concern that the approval of this awning structure may lead to visual clutter and further erode streetscape character. There is also particular concern in the case of this application that the structure may restrict CCTV coverage and reduce light

levels along the pedestrian footpath and is therefore considered to be a security and public safety risk.

It is considered that the proposed structure would not be compatible with the host building and would impact detrimentally on the character and amenity of the area. On this basis the proposed awning would not be consistent with the objectives of the zone.

#### Clause 15 - Essential Services

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

The subject site has existing access to essential services and the proposed development does not raise any concerns with this regard.

#### Clause 16 - Height of Building

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

The proposed structure would be attached to an existing awning and would have a maximum height of 3.25m. The proposal would be consistent with this clause.

#### Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality.

Given the minor nature and scale of the proposal a Social Impact Assessment is not required. However, in the absence of a policy framework for such structures in the road reserve, the determination of this application will set the precedent for similar development proposals which may have broader implications for the community.

There is a good deal of community interest in local business activities and the requirement to make such spaces more attractive to customers, by creating 'all weather' seating areas, is acknowledged. It is recognised that outdoor dining has the potential to add vitality to the town centre and Council wishes to support local business and encourage the utilisation of these spaces. However, this should not be at the expense of public safety and security or to the architectural qualities of the host building or to streetscape amenity.

#### **State Environmental Planning Policies**

There are no State Environmental Planning Policies of specific relevance to the proposed development.

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 36C: Conservation Areas of State and Regional Significance

The MMSCA is not included within the list of State or Regionally significant conservation areas.

##### Clause 47: Principles for Commercial and Industrial Development

Clause 47 provides a number of objectives to consider in the determination of development applications of a commercial or industrial nature. The development application relates to the construction of an awning in association with a previously



approved outdoor dining area for a public house and refreshment room. In general it is considered that the proposal would be consistent with this clause.

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

Draft Tweed Local Environmental Plan 2012

B3 - Commercial Core

The Draft LEP has been on public exhibition and is yet to be gazetted. In this Draft the site is located within the B3 - Commercial Core. One of the objectives of the zone is to provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

In general, the proposal would be consistent with the objective of the zone. However, as detailed within this report, it is considered that the proposal may set a harmful precedent for such structures within the road reserve that may impact on the character and amenity, as well as public safety of the area.

Clause 5.10 - Heritage conservation [compulsory]

The subject site is located in the MMSCA within Draft LEP 2012. Clause 5.10 of this document seeks to conserve the heritage significance of conservation areas, including associated fabric, settings and views. It requests that the consent authority considers the effect of a proposed development on the heritage significance of a heritage conservation area. 5.10(5) states that the consent authority may request that a heritage management document is prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage conservation area concerned.

Whilst it is noted that there are similar structures attached to existing awnings within the locality, the impending future designation of the MMSCA is of key importance in the determination of this application. As detailed further within this report, these structures can detract from the heritage significance and architectural qualities of the buildings to which they are attached and impact on the amenity of the area. The Murwillumbah Hotel is listed amongst several buildings of individual and historic significance within the precinct. The Murwillumbah Hotel and other buildings such as the Police Station and Courthouse Group, the Westpac and National Banks, Regent Cinema and Imperial Hotel *'punctuate the architectural character of the MMSCA'*.

Council's Urban Designer has advised that the proposed form of the awning (being attached to the existing awning) and materials (modern, galvanised steel finish and fabric roofing) would not be complimentary to the host building or the surrounding MMSCA. As detailed further within this report however, improvements to the form of the proposal, from an urban and conservation design point of view, may have repercussions on issues relating to public safety and security.

In the absence of a heritage DCP or comprehensive design guidelines it was considered unreasonable in this instance to request that the applicant lodge a costly heritage management document for the proposed structure, particularly given the existence of similar awnings within the MMSCA. The determination of the proposal therefore requires consideration of the requirement for 'all weather' protection within these spaces, the existing built environment and the desired future character and amenity of the locality.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The existing outdoor dining area has already been approved and the loss of on street car parking has already been considered and accepted. Council's Traffic Engineer has advised that the proposed awning would not impact on site access or traffic.

A3-Development of Flood Liable Land

The subject site is located on flood prone land with a design flood level of 7.5m AHD. Having regard to the proposed development, for an open awning over an existing outdoor dining area, it is not considered that these works will adversely affect the flow of floodwater on the site and as such the proposal is in accord with this DCP.

A11-Public Notification of Development Proposals

The development application was notified for a period of 14 days in accordance with Council Policy. No submissions have been received.

DCP B22 – Murwillumbah Town Centre

The subject site is located within the parameters of the Murwillumbah Town Centre DCP. The purpose of the DCP is to contribute to the growth and character of the Murwillumbah Town Centre and protect and enhance the public domain. Specifically, this site is located within the Town Centre Core Precinct. It is intended that retail and commercial development be maintained and consolidated within this precinct in order to support a strong urban structure. The Murwillumbah Town Centre Vision is as follows:

*'Build on Murwillumbah's lively hinterland village qualities to create a walkable, vibrant, mixed use centre with a successful main street and a balance between building scale and landscape character'.*

In relation to awnings, Section 4.10 of the DCP states that *'awnings assist in providing a pleasant and comfortable pedestrian environment, weather protection and contribute to the creation of a pedestrian scaled environment'*. The objectives of Section 4.10 are to provide weather protection in areas of high pedestrian traffic and to encourage the use of consistent and continuous awnings within the Town Centre Core. One of the controls requires that where deep awnings occur, that natural light should be brought to the shop front.

The proposed awning would be located over an outdoor dining area, not an area of high pedestrian traffic. Further, it is considered that the awning would reduce light levels to the pedestrian footpath as well as to the ground floor of the Hotel. The impact on light levels would be particularly prevalent in this case given the awning would be located on the southern side of a two storey building.

It is acknowledged that outdoor dining can bring financial benefits and increased enjoyment for the community, as well as contribute toward a vibrant streetscape. However, as detailed within this report, it is considered that the proposed awning will reduce public safety and security and also has the capacity to impact detrimentally on the appearance of the host building as well as to streetscape character. It is therefore considered that the proposal would not be consistent with the DCP that seeks to protect and enhance the public domain.

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

There are no matters prescribed by the Regulations of relevance to this proposal.

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

Not applicable to the proposed development as the subject site is not located within the coastal zone.

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

Context and Setting

It is considered that awning structures should achieve a high degree of compatibility with the host building and should be uncomplicated to reduce visual clutter in the streetscape. Awnings over the pedestrian footpath are a prominent feature within the Murwillumbah Town Centre and help to define pedestrian space and provide pedestrian amenity by providing weather protection.

In relation to awning structures over outdoor dining areas within the road reserve, there are a number of similar structures to that proposed within the Murwillumbah Town Centre, as shown in the following photographs:



Outdoor dining area and awning outside the Noodle Bar, Wharf Street



Outdoor dining area and awning structure within road reserve at the Sugarbeat Cafe, Commercial Road



Outdoor dining area and awning outside of the Court House Hotel, Murwillumbah Street

Whilst the presence of these awnings located over outdoor dining areas is a material consideration, it is considered that these structures have had a significant impact on the architectural qualities of both the buildings to which they are attached

and to streetscape amenity. This is particularly the case when, at a later date, side wind breaks and screens are added which can create a dark, tunnelling effect, restrict driver visibility and cause public safety and security concerns through restricted CCTV camera surveillance. Whilst it may be possible to apply a condition to any development consent to ensure that no additional structures, such as wind breaks or other enclosures, are constructed without Council approval, such structures are often installed without prior consent which can lead to compliance investigation and enforcement action.

To improve streetscape amenity it is considered that outdoor dining areas should have the appearance and feel of an outdoor dining area and not become extensions of the internal environment. From an urban design perspective, it is considered that awning structures over outdoor dining areas should be independent from the main building and existing awning and thereby be read as a separate entity. This would also assist in maintaining the dominant line of the awning (and building) to the street edge. In this case, the proposed awning would be attached to the existing awning structure and would therefore contravene this objective.

The difficulty is that, from a design perspective, it would be more appropriate to lower the structure below the existing awning line. This would allow natural light to penetrate through and make the space feel less enclosed. However, lowering the proposed awning would further reduce CCTV camera surveillance to the outdoor dining area and along the footpath, which in turn would not be acceptable from a public safety perspective. It is therefore considered that, in this instance, temporary structures such as umbrellas would be more appropriate. The visual appearance of the outdoor area could also be significantly improved with the installation of planter boxes.

In relation to materials, it is considered that awning materials should be of a high quality that are consistent with the host building as well as surrounding development. Council's Urban Designer has advised that exposed galvanised steel is not a preferred building material within the context of the MMSCA and that exposed hardwood or painted timber would be preferable and more in keeping with the recent renovation of the Hotel (with hardwood door frame and windows) and the town centre more broadly.

A fabric canopy may appear lightweight and an impermanent addition to the building however it would function as a sunshade but not for rain protection. Further, being located on the southern side of a two storey building, the area is in shade for much of the day, which brings into question of the extent to which sun protection is required. Council's Urban Designer has recommended that, if the intent of the structure is to provide all weather protection, it would be preferable to have a roof material that would be more in keeping with traditional building materials, such as metal sheet roofing and that to allow some natural light / sunlight permeation, polycarbonate panels could also be utilised. It would however be difficult to condition the use of more appropriate materials such as timber and metal sheeting, as these sorts of materials may further reduce CCTV camera surveillance and light levels to the pedestrian footpath.

#### Access, Transport and Traffic

Council's Traffic Engineer has not raised any concerns with the proposal, which would be set back from the white line road marking by a minimum of 450mm.

Provided that windbreaks or other permanent structures (screens or shutters), as defined under Council's 'Footpath Trading Policy', are not installed it is considered that the proposal would not pose any traffic safety issues. However, structures, such as screens or windbreaks, can restrict CCTV coverage and restrict driver and pedestrian sight lines and are therefore considered to be a public safety risk. There is a concern that should the proposed awning be approved, there may be a desire to install additional screens and wind breaks to the structure which may then cause additional burden on Council in relation to compliance investigation and enforcement action.

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

Surrounding Landuses/Development

The presence of awning structures over outdoor dining areas within the Murwillumbah Town Centre has been discussed within the report and is a material consideration, particularly in the absence of a more comprehensive policy framework for such structures. However, the impact that these structures have in relation to reduced light levels, reduced public safety and security concerns (through CCTV camera restriction) are also important factors in the consideration of this application.

The heritage value of the building and the surrounding area is also now afforded greater weight with the impending adoption of the MMSCA. The general streetscape of the MMSCA is dominated by buildings with masonry facades featuring distinctive parapets with mouldings and projections, such as at the Murwillumbah Hotel, with cantilever style awnings and verandahs. The *Community Based Heritage Study and Management Plan (2012)* states '*in sheer numbers, the integrity of this period of development is impressive and has great potential to be consolidated and enriched*'.

Future development should protect and improve the heritage conservation value of the area, not detract from the overall character of the precinct.

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

No submissions have been received as a result of the notification process.

**(e) Public interest**

It is acknowledged that the use of outdoor dining areas can bring financial benefit to business owners as well as increased community enjoyment, particularly where they provide protection from sun and rain. This report has also considered that awning structures, in association with outdoor dining areas, can significantly impact on matters relating to public safety and security and reduced light levels. In addition, these structures can impact on the architectural qualities of the host buildings as well as the heritage value of the surrounding heritage conservation area.

In the absence of a broader policy framework for such structures it is considered necessary to report the application to Council to assess the broader implications to the public interest.

**OPTIONS:**

1. Refuse the development application on the grounds of impact to CCTV coverage and light levels; or

2. Refuse the development application on the grounds of impact to CCTV coverage, light levels and the impact of the proposed structure on the heritage value of the host building and the surrounding conservation area; or
3. Approve the development application subject to the following conditions:

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 816/12 Sheet 1 of 1 prepared by Trevor White - Building Design and dated 29 November 2012, except where varied by the conditions of this consent.

[GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]
3. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on the road reserve or footpath in association with the awning structure. Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0245]
4. The roof awning cladding shall be of light colour and of a material that is transparent or translucent permitting no less than 85% visible light transmission.
5. Side screens or shade screens or blinds of any type (e.g. vertical screens - including partial drop down screens, full length screens and screens that connect with a free standing barrier) are not to be added to the approved structure without prior written approval from the General Manager or delegate.

[GENNS01]
6. The awning structure hereby approved is not to comprise advertising material or signage.
7. The awning hereby approved is to be maintained in a clean and tidy manner.

[GENNS02]
8. The development subject to this approval is limited to a period of three years from the date of this Development Consent. The awning and associated structures are to be removed from the site within three years of the date of this Consent.

[GENNS03]
9. The erection of a building in accordance with a development consent must not be commenced until:
  - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

- (c) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

11. 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]

12. Prior to the commencement of building work a certificate signed by a registered professional engineer is to be submitted to the Principal Certifying Authority and Council to certify that the existing awning over the footpath is structurally adequate taking into account the likely wind loadings and affects of the proposed awning attachment.

[PCWNS01]

## **DURING CONSTRUCTION**

13. 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]

14. 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]

15. 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]

16. 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]

17. 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]

18. 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]

19. 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]

20. 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]

21. 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]

22. 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]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

23. 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]

24. 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.

Council officers recommend Option 1.

#### **CONCLUSION:**

The proposal seeks the construction of an awning structure to be located over a previously approved outdoor dining area. When considered in isolation, the proposed structure is considered to be relatively light weight and unobtrusive however there are concerns about the broader cumulative impact of similar development within the locality, should the application be approved, particularly given the MMSCA status as defined within the Draft Local Environmental Plan (LEP) 2012.

The impact of the proposed structure on matters relating to public safety (reduced light levels) and security (reduced CCTV camera surveillance) is not supported by Council Officers. The impact of the proposal with this regard is particularly prevalent given the subject site is a licensed premises. The applicant has provided further information in relation to CCTV camera restriction and light levels however Council Officers consider that this additional information does not alleviate their concerns with this regard. The proposed awning structure is therefore recommended for refusal on this basis.

In the absence of a more comprehensive policy framework and design guidelines for such development, it is considered necessary to report the application to Council for consideration

of the broader community benefit of such structures against any potential detrimental impacts to the heritage value of the host building and streetscape character, as well as to public amenity and safety.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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31 [PR-CM] Development Application DA13/0111 for a Detached Dual Occupancy at Lot 1 DP 790119 No. 75 Laura Street, Banora Point

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0111 Pt1



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

#### Updated Information

At its meeting of 15 August 2013, Council resolved the following in respect of this matter:

"**RESOLVED** that Development Application DA13/0111 for a detached dual occupancy at Lot 1 DP 790119 No. 75 Laura Street, Banora Point be deferred for a workshop".

A Councillors Workshop was held on 5 September 2013 to further discuss this application.

The report is now submitted to Council for its further determination.

#### Previous Report

A development application has been received for the construction of a secondary dwelling to create a detached dual occupancy on Lot 1 DP 790119, otherwise known as No. 75 Laura Street. In summary, whilst the proposal complies with the minimum lot size requirements it comprises a number of variations to Section A1 of the Tweed Development Control Plan (DCP) 2008 and concerns have been received from neighbouring properties.

This application follows a previous development application for a dual occupancy development which was withdrawn by the applicant after Council Officers raised concerns with the design. Council Officers have again relayed very similar concerns to the applicant in relation to the suitability of the site to accommodate an additional dwelling of the scale proposed and that a smaller building may be more appropriate on the site. The applicant considers that the proposed development provides adequate consideration of surrounding development and should be supported. In light of the degree of non-compliance to DCP A1, and objections received, it is considered appropriate that the application be reported to Council for determination of the application.

The site is located within an established low density residential area of Banora Point. The existing site is irregular in shape due to its location at the end of a cul de sac, comprises a two storey brick residence at the northern section of the lot, and has a 3.05m wide easement running along the southern boundary of the site.

The proposed secondary dwelling would be located toward the western boundary of the site aligned in a north south configuration. The proposed secondary dwelling would comprise an

open plan living and kitchen area with external living area, guest room with ensuite, study, double garage and laundry on the ground floor. The first floor would comprise three bedrooms, storeroom, bathroom and lounge area leading to a balcony. The total Gross Floor Area (GFA) of the proposed structure is approximately 225m<sup>2</sup> (not including decks) compared to the GFA of the existing structure which is approximately 200m<sup>2</sup>. The primary outdoor living space would be a 6.3m x 4m 'alfresco' area adjacent to the living room on the ground floor. Open space would be located to the south of the proposed dwelling, accessed via the laundry from an internal corridor.

The proposed secondary dwelling would be two storeys with a maximum building height of approximately 8.5m above ground level. The proposed secondary dwelling would be of a contemporary design with a skillion roof and covered entry area, with a variation in window size, design and placement and utilises contemporary materials. The proposed dwelling incorporates an attached single storey garage, located at the southern portion of the site. The location of the proposed dwelling would necessitate the removal of the existing access point to the existing dwelling. A single carport and adjacent car parking space is therefore proposed at the front of the existing dwelling to provide off street car parking. The topography of the site is relatively steep, sloping from Laura Street to the north-west. The applicant advises that the building has been designed with a step in the house, ensuring that significant retaining walls, external to the building, are not required.

The application has been referred to the relevant internal departments for consideration with Council's Building Services Unit and Development Engineering Unit being satisfied with the proposed development, subject to a number of conditions being applied to any development consent. Council's Urban Designer has also provided comments in relation to the proposal in relation to Section A1 of the Tweed Development Control Plan (DCP) 2008, further detailed within this report.

The application was notified to surrounding properties for a period of 14 days with a total of four submissions being received. The matters raised within these submissions are considered further within this report.

In response to a detailed further information request in relation to a number of concerns with the proposal, sent to the applicant on 23 April 2013, amended plans and supporting information, including an assessment of Section A1 of the current Tweed Development Control Plan (DCP) 2008, have been received. Those that had originally sent a submission to Council in relation to the original plans were notified of the proposed amendments and given an additional opportunity to provide any further comments. Three additional submissions have since been received and the applicant has been given an opportunity to comment on the issues raised. A letter of support has also recently been received from the owner of Unit 1, No. 50 Elsie Street, as detailed further within this report.

An assessment of the proposal has revealed a number of variations are proposed to Section A1 of the Tweed DCP 2008, particularly in relation to: the siting of the proposed building, overall building form, materials and compatibility with surrounding built development in Laura Street as well as in relation to the location of the principle outdoor amenity space and lack of integration with the internal living spaces. Further, it is considered that the proposal would have an unacceptable impact on the residential amenity of surrounding properties, namely in regard to inappropriate overlooking and invasion of privacy issues.

For the reasons outlined within this report it is considered that the proposed dwelling is too large for the irregular shaped site, which has resulted in a number of non-compliances with Section A1 of the Tweed DCP 2008 and an unacceptable impact on the residential amenity of surrounding properties. On this basis it is recommended that the proposed development be refused.

**RECOMMENDATION:**

That Development Application DA13/0111 for a detached dual occupancy at Lot 1 DP 790119 No. 75 Laura Street, Banora Point be refused for the following reasons:

1. The application is not considered to be consistent with Section 79C 1(a) of the Environmental Planning & Assessment Act 1979 as it does not satisfy the following applicable planning instruments:
  - The Tweed Local Environmental Plan 2000 including: Clause 4 Aims of the Plan; Clause 8 Consent Considerations; Clause 11 The Zones; and Clause 56 Suspension of covenants, agreements and similar instruments;
  - The Draft Tweed Local Environmental Plan 2012 including the Objectives of the RU2 Low Density Residential Zone as detailed within the Land Use Table and Clause 1.9A Suspension of covenants, agreements and instruments [local];
  - The North Coast Regional Environmental Plan including Clause 32B Development Control - Coastal Lands and Clause 43 - Residential Development;
  - Tweed Development Control Plan Section A1 Residential & Tourist Development Code as the bulk and scale of the development results in non compliances with various controls as follows:
    - A predominantly two storey building that would be out of character in terms of building siting, height, overall building forms and materials, with the existing built form character in Laura Street;
    - Non-compliance with the setback provisions on the rear (western) boundary would result in reduced provision for landscaping, useable outdoor space and would result in inappropriate overlooking and invasion of privacy issues, primarily from the elevated decks;
    - The principle outdoor amenity space, being located along the side (southern) boundary, would not be integrated with internal living spaces and would not provide a useable, private and sunny space for future residents.
2. The application is not considered to be consistent with Section 79C 1(b) of the Environmental Planning & Assessment Act 1979 as it would have a negative impact on the surrounding low density residential environment by unreasonably overlooking adjoining properties and invading privacy, primarily from the large elevated decks.
3. The application is not considered to be consistent with Section 79C 1(c) of the Environmental Planning & Assessment Act 1979 as the proposed development has not responded to the site constraints or surrounding development, as the elevated structure impacts on privacy and would present larger than surrounding built development.
4. The application is not considered to be consistent with Section 79C 1(e) of the Environmental Planning & Assessment Act 1979 as the proposed development is not considered in the public interest, as the original covenant specified only one dwelling per property and the extent of variations proposed under the

**Tweed Development Control Plan 2008 Section A1 are considered to be excessive.**



**REPORT:**

**Applicant:** Ms Design Pty Ltd  
**Owner:** Mr Murray A Martin & Mrs Angela M Valentine  
**Location:** Lot 1 DP 790119 No. 75 Laura Street, Banora Point  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$320,000

**Background:**

A development application has been received for the construction of a secondary dwelling to create a detached dual occupancy on Lot 1 DP 790119, otherwise known as No. 75 Laura Street. The site is located within an established low density residential area of Banora Point. The existing site is irregular in shape due to its location at the end of a cul-de-sac, comprises a two storey brick residence at the northern section of the lot, and has a 3.05m wide easement running along the southern boundary of the site.

It is of importance to note that a previous development application for a secondary dwelling to create a detached dual occupancy was received by Council in 2011 (DA11/0008). A number of concerns were raised with the proposed development in relation to: discrepancies with the submitted plans; the design, height and appearance of the proposal and resultant impact on streetscape character; resultant impact on the residential amenity of surrounding properties (overlooking, loss of view and privacy issues); as well as a number of variations with Section A1 of the Tweed DCP 2008. The proposed dwelling was located within the same location as that currently proposed and comprised two storeys across the length of the building with an external deck located at the northern elevation of the building. This application was subsequently withdrawn by the applicant.

Following the withdrawal of DA11/0008, Council Officers have provided feedback to the applicant in relation to the requirements of Section A1 of the Tweed DCP 2008 and the potential difficulties in achieving a compliant building on the subject site, given the constrained nature of the site, in relation to topography, site configuration and surrounding development.

The subject application currently before Council was received on 18 March 2013.

The proposed dwelling would be located toward the western boundary of the site aligned in a north south configuration. The proposed dwelling would comprise an open plan living and kitchen area with external living area, guest room with ensuite, study, double garage and laundry on the ground floor. The first floor would comprise three bedrooms, storeroom, bathroom and lounge area leading to a balcony. The primary outdoor living space would be a 6.3m x 4m 'alfresco' area adjacent to the living room on the ground floor. Open space would be located to the south of the proposed dwelling, accessed via the laundry from an internal corridor.

The proposed dwelling would be two storeys with a maximum building height of approximately 8.5m above ground level. The proposed dwelling would be of a contemporary design with a skillion roof and covered entry area, with a variation in window size, design and placement and utilises contemporary materials. The dwelling incorporates an attached single storey garage, located at the southern portion of the site.

An assessment of the submitted details revealed a shortage of information to enable Council Officers to properly assess the proposed development as well as a number of discrepancies with Council policies, as detailed further within this report. A formal request for further information was sent to the applicant on 23 April 2013 requesting that, given the application

would be unlikely to be supported in its current form and would require substantial redesign in order to achieve a compliant proposal, that the application be withdrawn.

The applicant subsequently engaged a Town Planning firm to address the issues raised within Council's request for information. On 7 June 2013 a revised Statement of Environmental Effects (SEE), an assessment of the newly adopted Section A1 of the Tweed DCP 2008 were received and a number of modifications to the development were proposed as follows:

1. The proposed carport on the existing dwelling has been changed to a single car carport and its design modified to match the existing roof shape and materials for the existing house (brick and tile construction);
2. The proposed dwelling has been reduced in size (to provide an additional 1m setback at the southern boundary (total 5.5m to the building line); to provide an additional 300mm setback to the western boundary (total 1.8m); by removing the workshop from the garage to decrease the degree of impact to the dwelling to the south).
3. Foam mouldings have been provided to the window surrounds on the street elevation to improve the presentation to the street;
4. The raised platform at the northern side of the dwelling has been removed to increase the size of the deep soil zone and the stairs from the alfresco to the ground level being moved to the southern side of the alfresco area.

The applicants amended Statement of Environmental Effects (SEE) considers that whilst the proposal seeks a number of variations to Section A1 of the Tweed DCP 2008, the above changes significantly improve the level of compliance with Section A1 and address some of the concerns of surrounding residents. The SEE also advises that the *'modified proposal demonstrates an acceptable degree of compliance with Council's LEP and DCP and demonstrates sufficient planning merit to justify approval'*.

The application has been referred to the relevant internal departments for consideration with Council's Building Services Unit and Development Engineering Unit being satisfied with the proposed development, subject to a number of conditions being applied to any development consent. Council's Urban Designer has also provided comments in relation to the proposal in relation to Section A1 of the Tweed DCP 2008, as detailed within this report.

The application was notified to surrounding properties for a period of 14 days with a total of four submissions being received. The matters raised within these submissions are considered further within this report. Those that had originally sent a submission to Council in relation to the original plans were notified of the proposed amendments and given an additional opportunity to provide any further comments. Three additional submissions have since been received and the applicant has been given an opportunity to comment on the issues raised. Of note, a letter of support has recently been submitted by the applicant from the owner of Unit 1, No. 50 Elsie Street, to the west of the subject site in relation to overlooking.

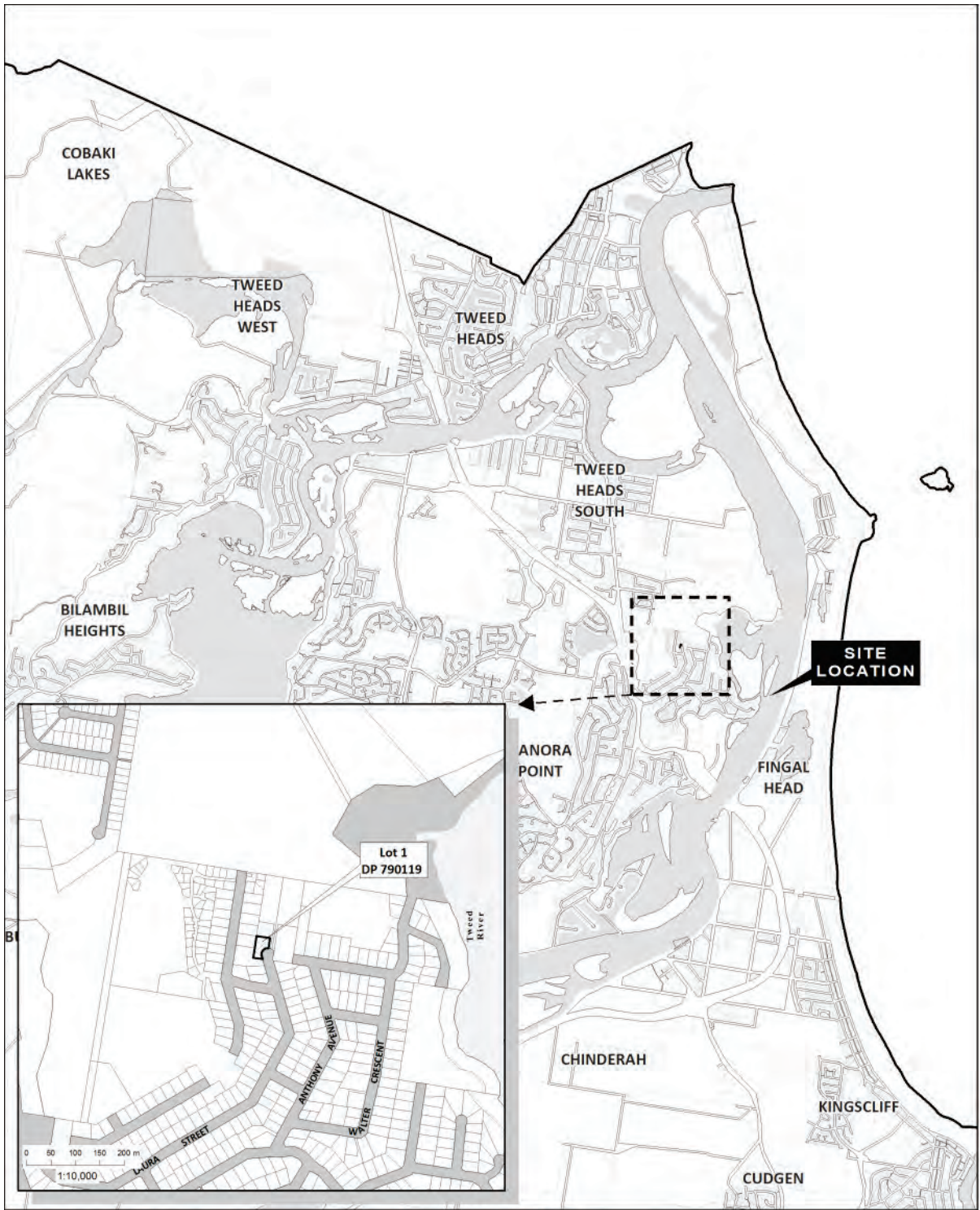
An assessment of the proposal has revealed that a number of variations are proposed to Section A1 of the Tweed DCP 2008. Council Officers consider that the proposed variations, particularly in relation to: the siting of the proposed building, overall building form, materials and compatibility with surrounding built development in Laura Street as well as in relation to the location of the principle outdoor amenity space and lack of integration with the internal living spaces, would not result in a favourable outcome and would be contrary to the intent of Section A1 of the Tweed DCP 2008. Further, it is considered that the proposal would have an unacceptable impact on the residential amenity of surrounding properties, namely

in regard to inappropriate overlooking and invasion of privacy issues primarily from the elevated decks.

For the reasons outlined within this report it is considered that the proposed dwelling is too large for the irregular shaped residual site which leads a number of non-compliances with Section A1 of the Tweed DCP 2008 and an unacceptable impact on the residential amenity of surrounding properties.

It is therefore recommended that the application be refused.

**SITE DIAGRAM:**



**Locality Plan**

DA13/0111 - Lot 1 DP 790119  
No. 75 Laura Street, BANORA POINT

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1:50,000 @ A4 Portrait  
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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



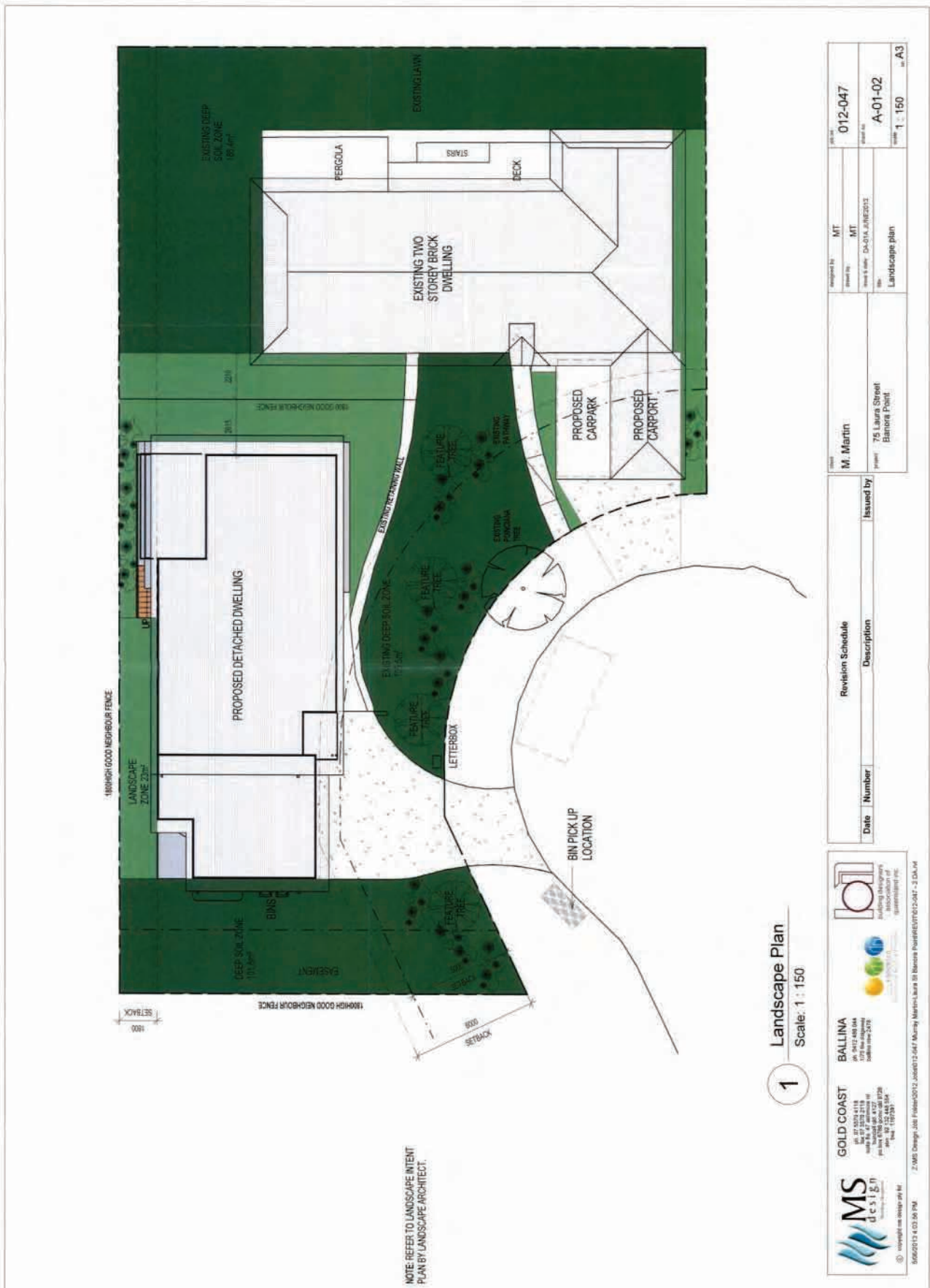
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F | (02) 6670 2429  
W | www.tweed.nsw.gov.au  
E | planningreforms@tweed.nsw.gov.au

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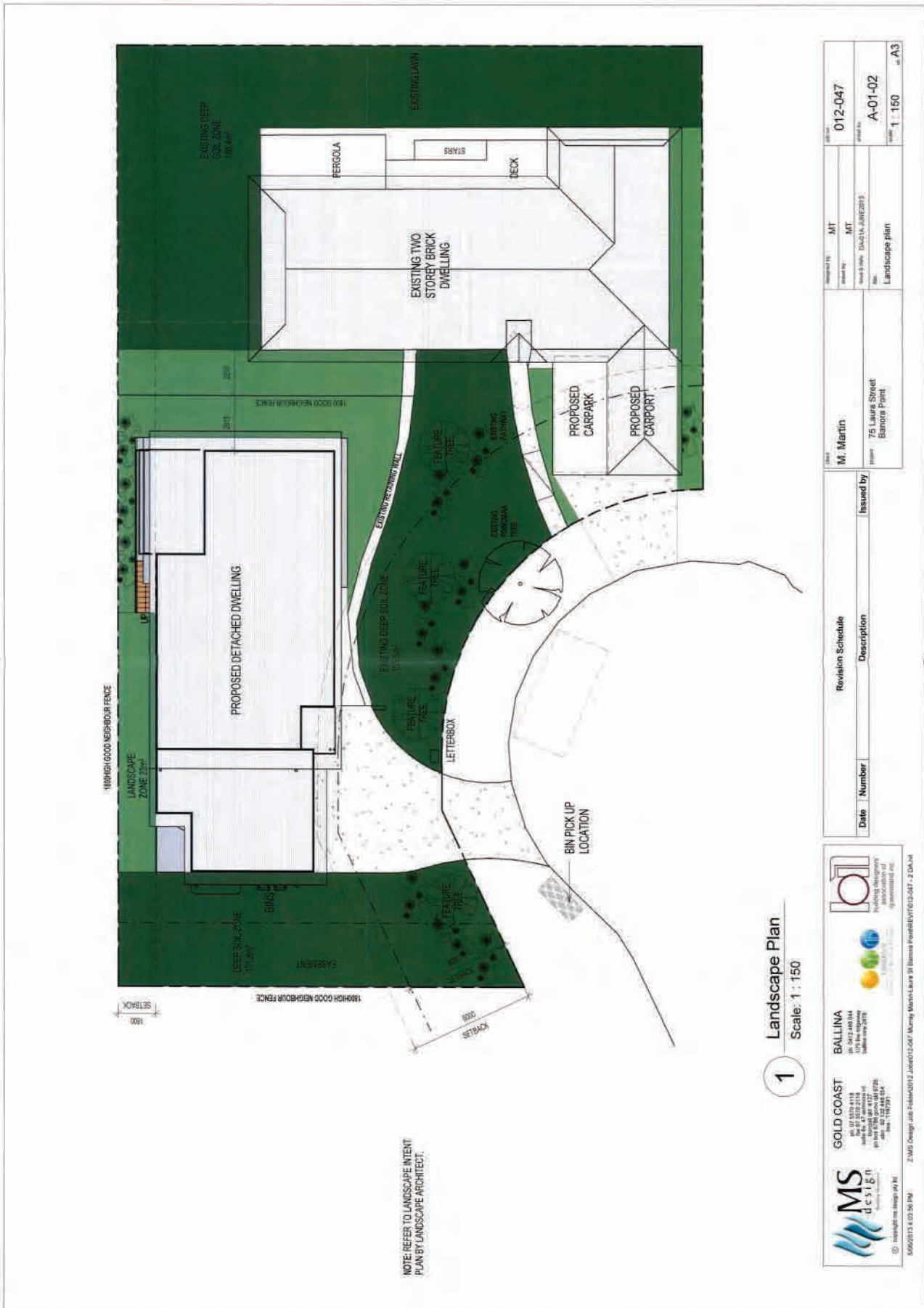
DEVELOPMENT/ELEVATION PLANS:



1 Landscape Plan  
Scale: 1 : 150

 <p><b>MS</b> Murray Martin 75 Laura Street Barnore Pk Ballina NSW 2470 Ph: 02 662 488 644 Fax: 02 662 488 644 Mobile: 0428 247 070</p>	<p><b>GOLD COAST</b> 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18</p>	<p><b>BALLINA</b> 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18 10/17/2013 4:18</p>	<p><b>012-047</b> 012-047 012-047 012-047 012-047 012-047 012-047 012-047</p>

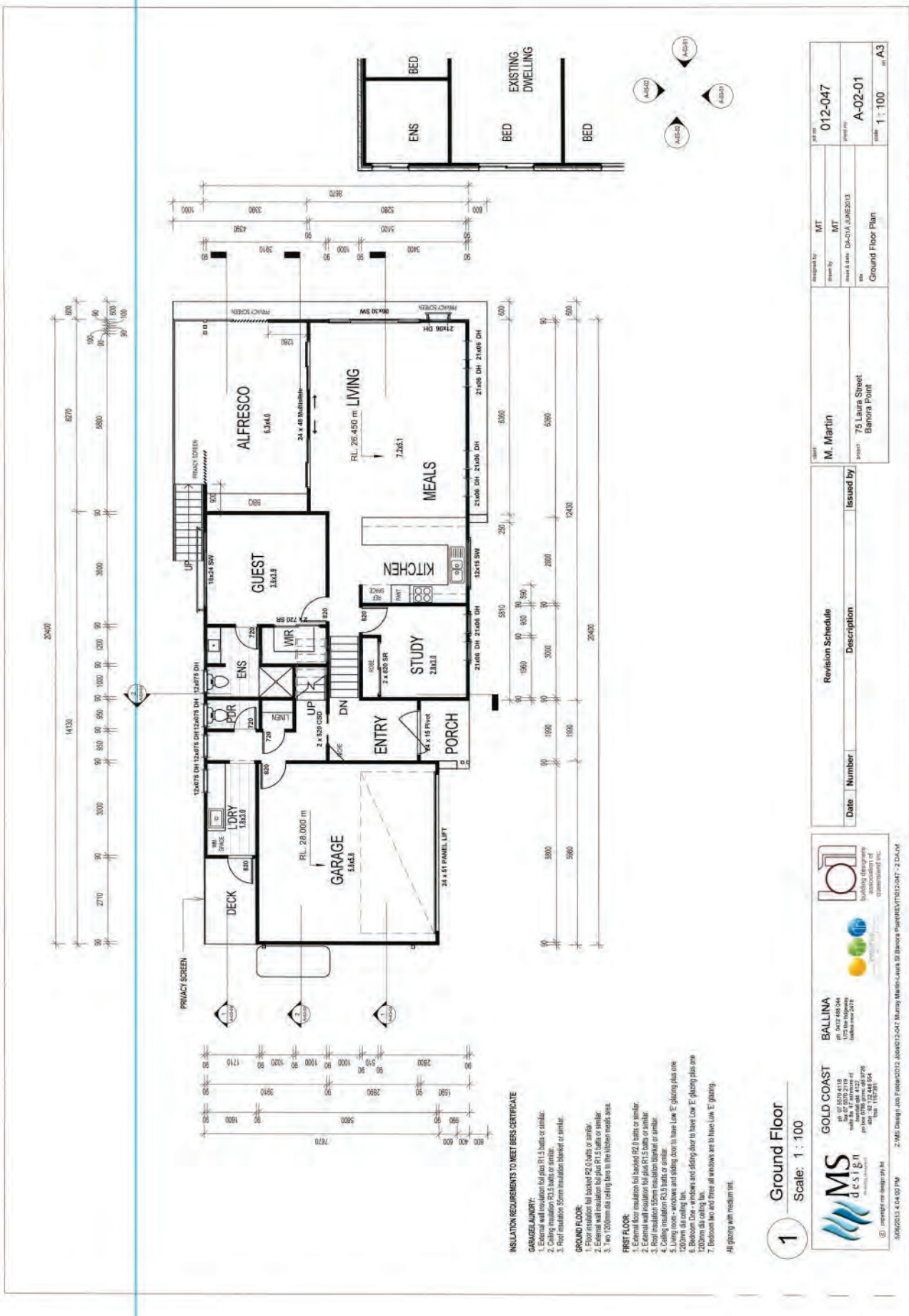
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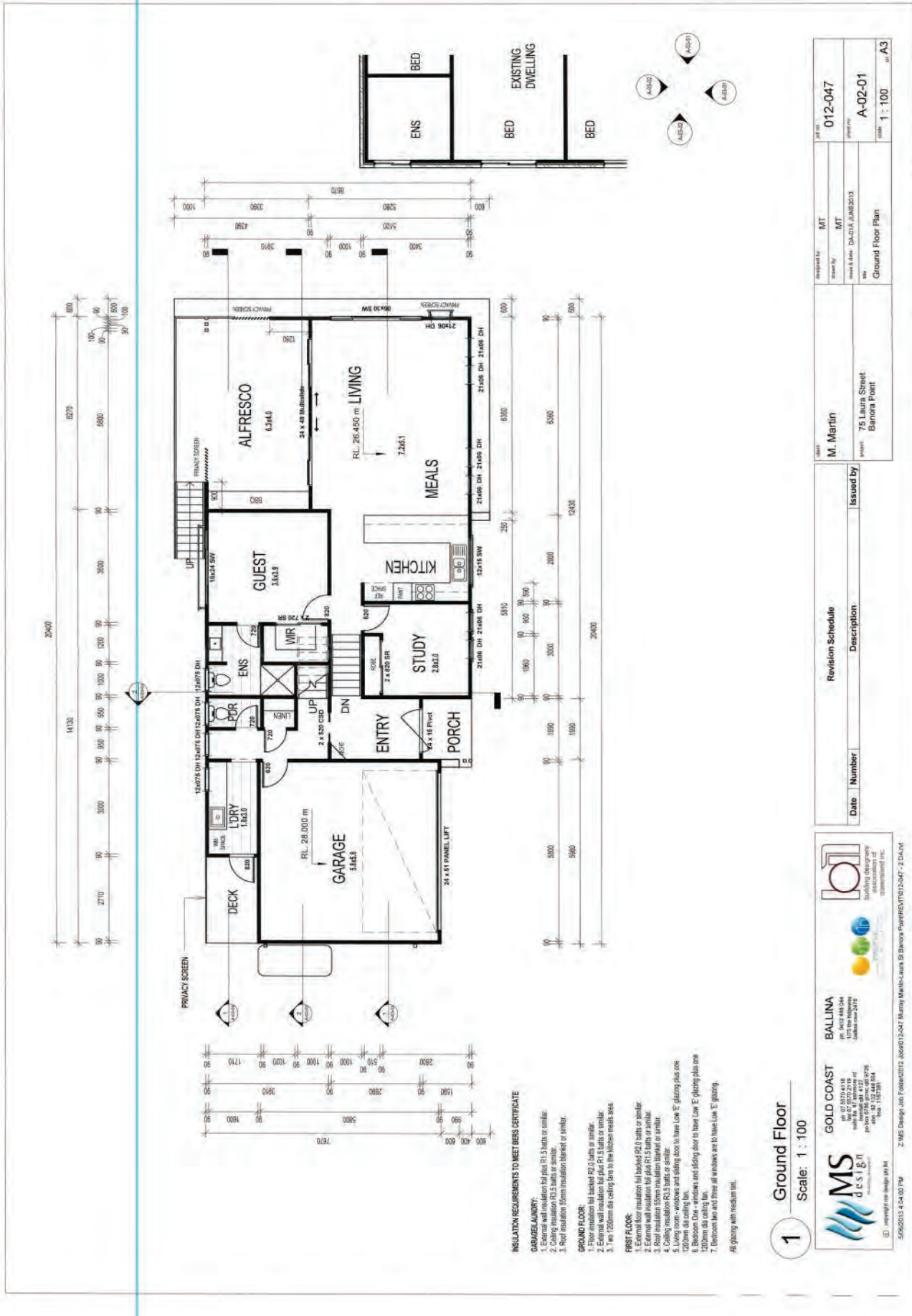


NOTE: REFER TO LANDSCAPE INTENT PLAN BY LANDSCAPE ARCHITECT.

**1** Landscape Plan  
Scale: 1 : 150

<p><b>GOLD COAST</b> MS 100/102/104 Lions Road MURRAYVILLE QLD 4272 Phone: 07 5531 1111 Fax: 07 5531 1112 www.msdesign.com.au MS Design Pty Ltd ABN 61 119 729 111</p>	<p><b>BALLINA</b> 100/102/104 Lions Road MURRAYVILLE QLD 4272 Phone: 07 5531 1111 Fax: 07 5531 1112 www.msdesign.com.au MS Design Pty Ltd ABN 61 119 729 111</p>	<p>Designed by: <b>MT</b></p>	<p>Project No: <b>012-047</b></p>
		<p>Issued by: <b>MT</b></p>	<p>Project No: <b>A-01-02</b></p>
<p>Project: <b>M. Martin</b></p>		<p>Project Title: <b>LANDSCAPE PLAN</b></p>	
<p>Address: <b>75 Laura Street (Eaton's Farm)</b></p>		<p>Scale: <b>1 : 150</b></p>	
<p>Date: <b>Number</b></p>		<p>Revision Schedule</p>	
<p>Issued by</p>		<p>Description</p>	





**INSULATION REQUIREMENTS TO MEET BESS CERTIFICATE**

- GARAGE/LAUNDRY:**
1. External wall insulation for plus R1.3 batts or similar.
  2. Roof insulation for plus R1.3 batts or similar.
  3. Floor insulation: Some insulation blanket or similar.
- GROUND FLOOR:**
1. Floor insulation for backed R2.0 batts or similar.
  2. External wall insulation for plus R1.3 batts or similar.
  3. Roof insulation: Some insulation blanket or similar.
  4. Two 100mm air celling gaps to free bedroom walls.
- FIRST FLOOR:**
1. External floor insulation for backed R2.0 batts or similar.
  2. External wall insulation for plus R1.5 batts or similar.
  3. Roof insulation: Some insulation blanket or similar.
  4. Two 100mm air celling gaps to free bedroom walls.
  5. Living room - windows and sliding door to have Low E glazing plus one 120mm air celling gap.
  6. Bedroom - windows and sliding door to have Low E glazing plus one 120mm air celling gap.
  7. Bedroom two and three all windows are to have Low E glazing.
- All glazing with mediansist.

1 Ground Floor  
Scale: 1 : 100

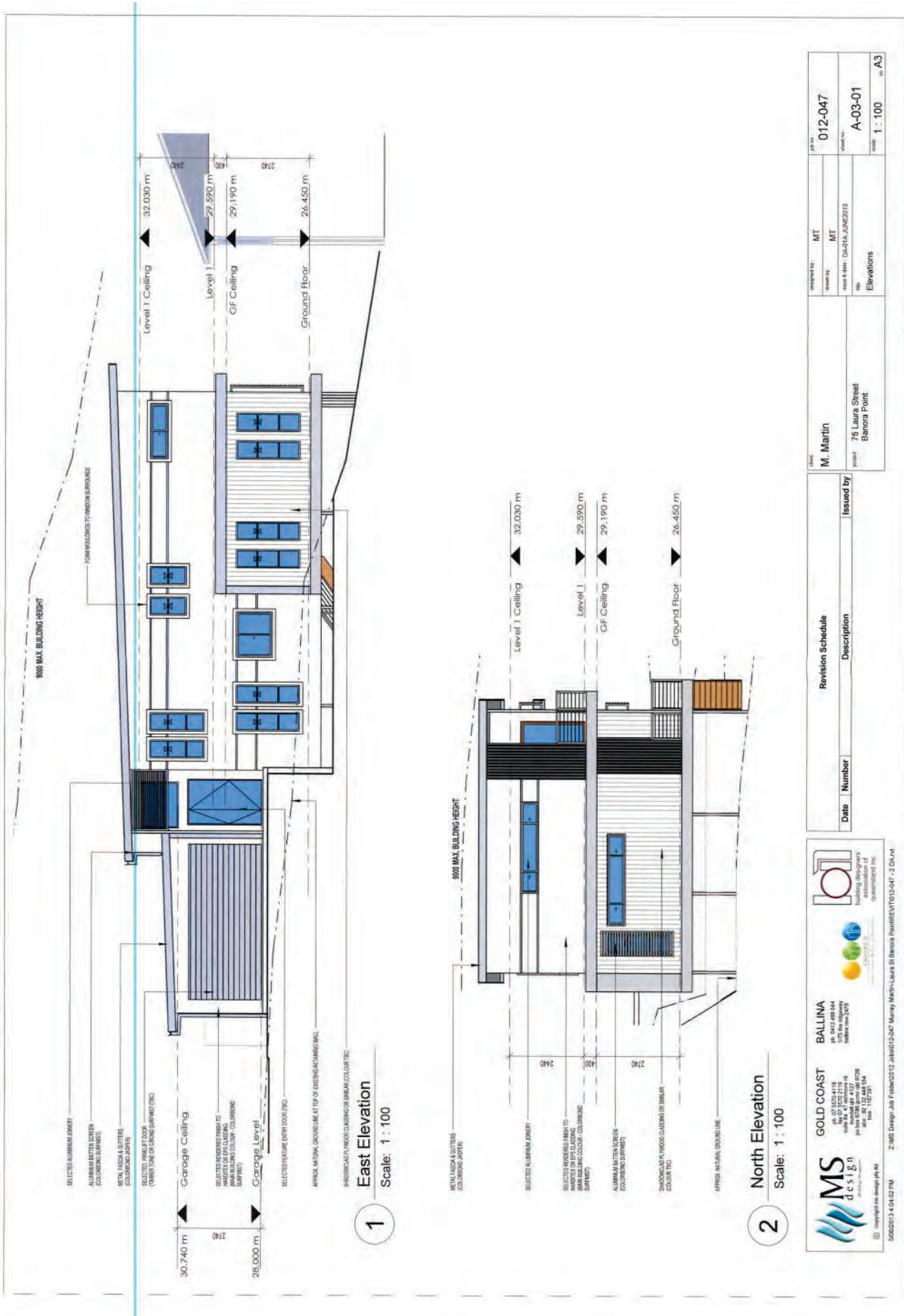
**MS GOLD COAST**  
PO BOX 6518  
MURRAY MARRIL-LAURENCE DRIVE  
BALLINA NSW 2487  
Tel: 07 5522 4118  
Fax: 07 5522 4119  
www.ms-goldcoast.com.au

**BALLINA**  
PO BOX 488-044  
MURRAY MARRIL-LAURENCE DRIVE  
BALLINA NSW 2487  
Tel: 07 5522 4118  
Fax: 07 5522 4119  
www.ballina.nsw.gov.au

designed by	MT	job no	012-047
drawn by	MT	issue date	DA-21/A, JUNE 2013
project	75 Laura Street Ballina Point	sheet no	A-02-01
	Ground Floor Plan	scale	1 : 100

Date	Number	Description	Issued by





Project No.	012-047
Client	M. Martin
Location	75 Laura Street Banora Point
Design No.	A-03-01
Scale	1 : 100
Sheet No.	of A3

Date	Number	Description	Issued by

**MS**  
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Architects

**GOLD COAST**  
ph 07 5522 4118  
fax 07 5522 4114  
1/110 SOUTH BRISBANE RD  
GOLD COAST QLD 4217

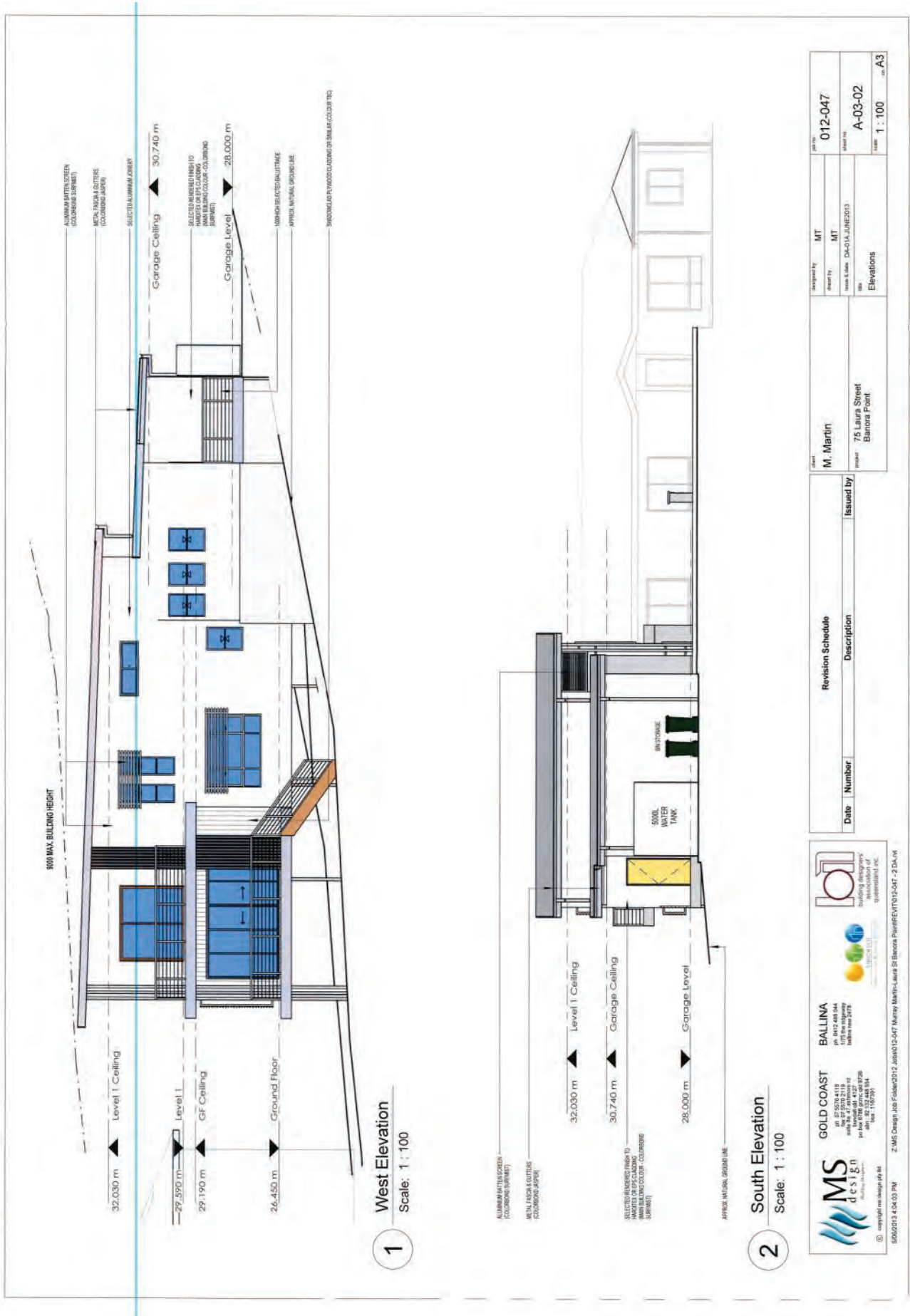
**BALLINA**  
ph 0412 488 544  
fax 0412 488 547  
1/110 SOUTH BRISBANE RD  
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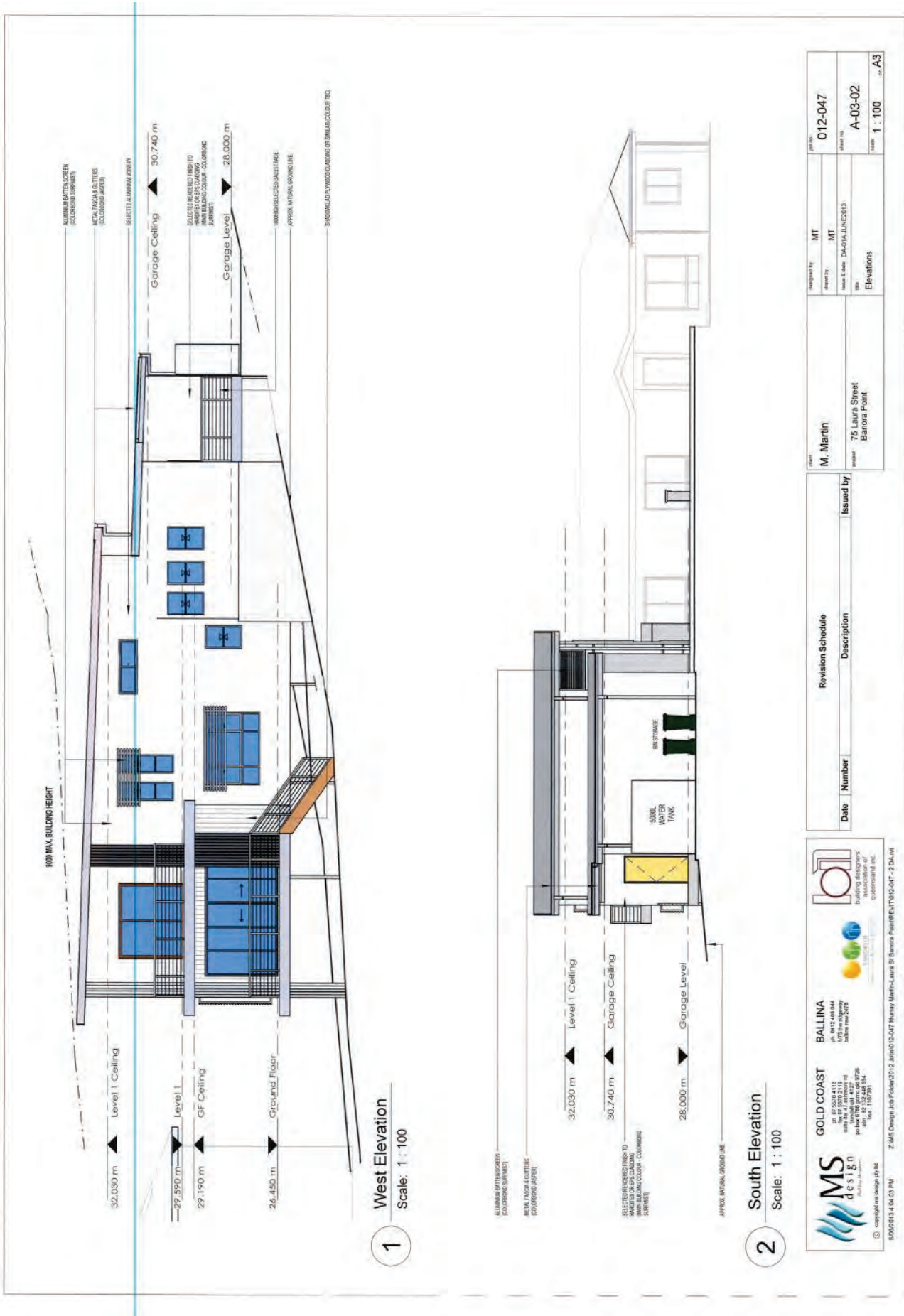
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location	75 Laura Street Banora Point	drawn by	MT	sheet no	A-03-02
		issue & date	24-01-JUNE-2013	scale	1 : 100
		title	Elevations	on	A3

Date	Number	Description
		Issued by

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 111-113 SOUTH BRISBANE STREET  
 BALLINA NSW 2478  
 PH 012 436 1444  
 FAX 012 436 1445  
 WWW.GOLD-COAST-DESIGN.COM.AU

**MS DESIGN**  
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Project	M. Martin	Designed by	MT	Job No.	012-047
Address	75 Laura Street Banora Point	Drawn by	MT	Sheet No.	A-03-02
Issue & Date	DA-01-JUNE-2013	Scale	1 : 100	Sheet Size	A3
Topic	Elevations				

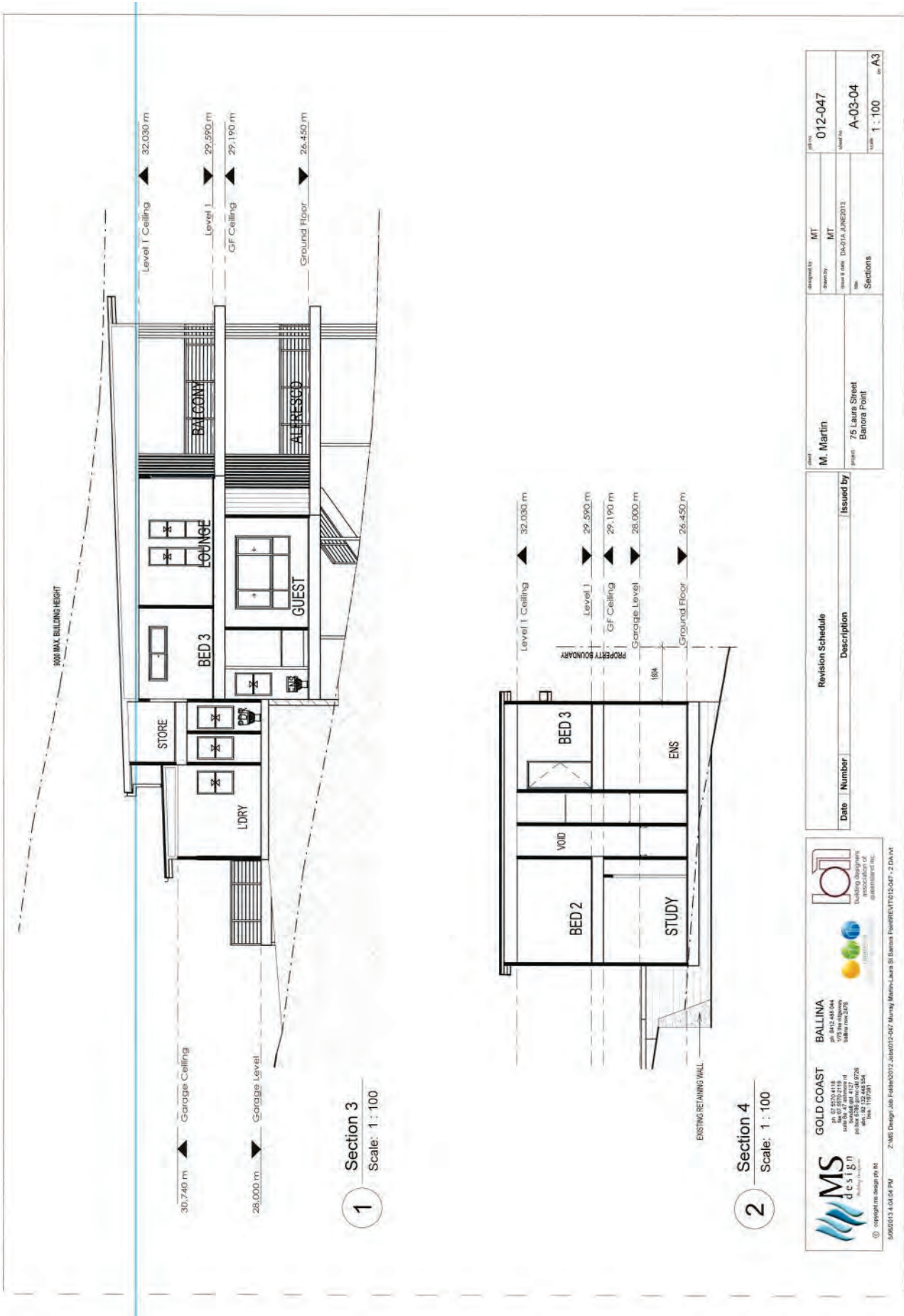
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 PO BOX 488 044  
 SOUTH BEACH QLD 4217  
 AUSTRALIA  
 07 5598 4678  
 07 5598 4678  
 07 5598 4678

**BALLINA**  
 67 5078 4118  
 PO BOX 488 044  
 SOUTH BEACH QLD 4217  
 AUSTRALIA  
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client	M. Martin	designed by	MT	job no	012-047
project	76 Laura Street Barrow Point	drawn by	MT	issued by	A-03-04
		date of issue	24/01/2011	scale	1 : 100
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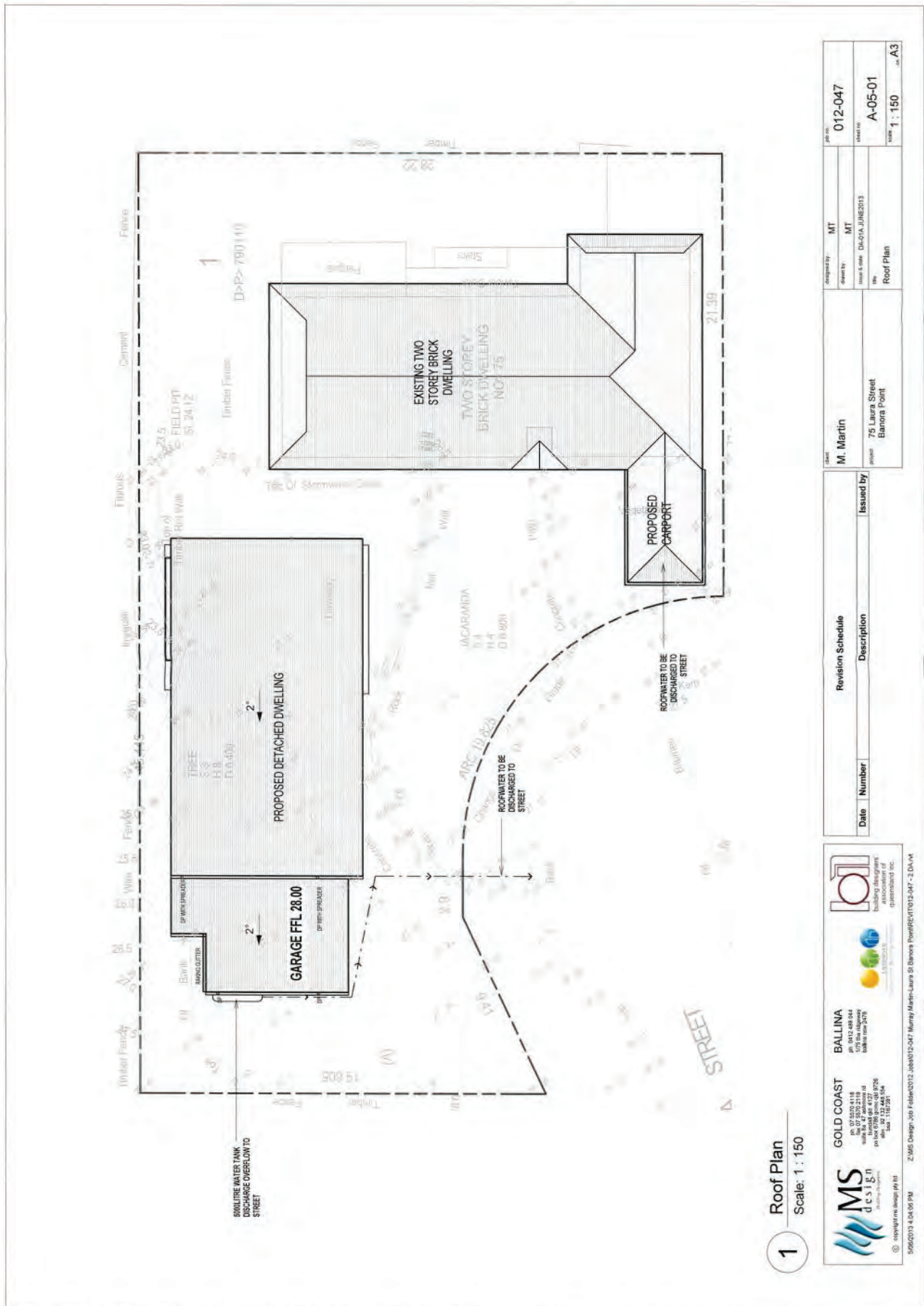
Date	Number	Description	Issued by

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**BALLINA**  
 Suite 20/21-21/22  
 179 The Esplanade  
 Ballina NSW 2478  
 Phone: 02 6620 1118  
 Fax: 02 6620 1119  
 Email: info@msgoldcoast.com.au  
 Website: www.msgoldcoast.com.au

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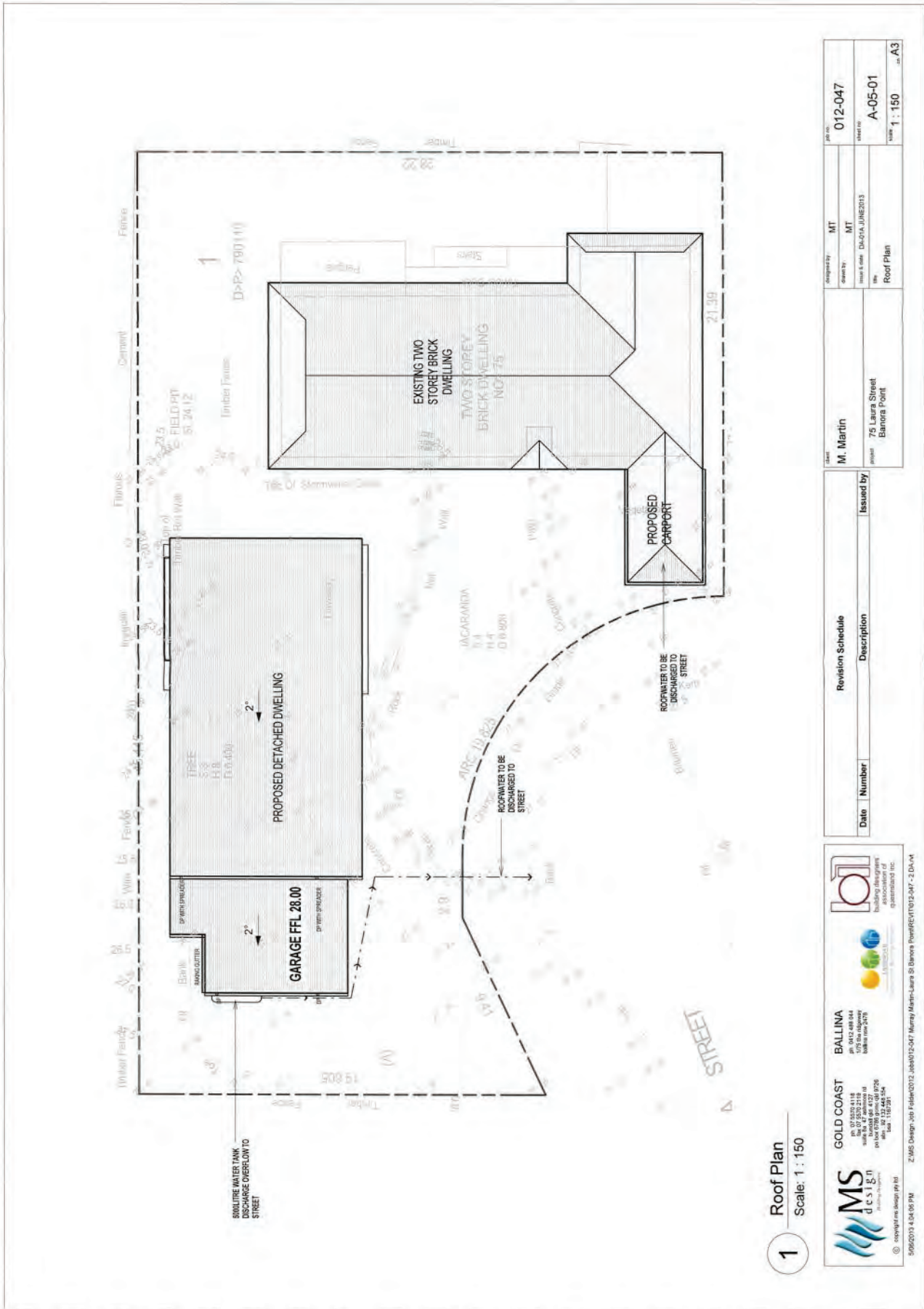
Project No.	012-047
Client No.	A-05-01
Scale	1 : 150
Sheet	A3
Drawn by	M. Martin
Checked by	M. Martin
Issue Date	04/04/JUNE2013
Title	Roof Plan
Address	75 Laura Street Banora Point

Revision Schedule	
Date	Description
1	Issued by

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1 Roof Plan  
Scale: 1 : 150

client	M. Martin	discipline	MT	plan no.	012-047	
address	75 Laura Street Banora Point	client no.	MT	sheet no.	A-05-01	
issue date	24/09/2013	title	Roof Plan	scale	1 : 150	
					sheet	A3

Date	Number	Description	Issued by

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Issue No	012-047	Project	75 Laura Street Banora Point	Sheet No	A-07-01a
Issue Date	DA-07A, JUNE 2013	Site	Shadows March 22	Scale	1 : 300
Sheet	M. Martin	Scale		Sheet No	A3

Revision Schedule	
Date	Description
	Issued by

**GOLD COAST**  
 PO BOX 6118  
 1/20 The Esplanade  
 Mooloolah QLD 4572  
 PH 07 5523 2118  
 FAX 07 5523 2119  
 Email: info@goldcoast.qld.gov.au

**BALLINA**  
 PH 042 488 144  
 1/20 The Esplanade  
 Mooloolah QLD 4572  
 PH 07 5523 2118  
 FAX 07 5523 2119  
 Email: info@goldcoast.qld.gov.au

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EXISTING DWELLING

EXISTING TWO STOREY BRICK DWELLING

PROPOSED DETACHED DWELLING

EXISTING DWELLING

**1** June 21 9am  
Scale: 1 : 300

EXISTING DWELLING

EXISTING TWO STOREY BRICK DWELLING

PROPOSED DETACHED DWELLING

EXISTING DWELLING

**2** June 21 12pm  
Scale: 1 : 300

Date	Number	Description	Issued by

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<p style="font-size: 8px;">M. Martin</p>	<p style="font-size: 8px;">75 Laura Street Ballina NSW 2375</p>	<p style="font-size: 8px;">Shadows June 22</p>	<p style="font-size: 8px;">012-047</p>
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June 21 9am  
Scale: 1 : 300

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June 21 12pm  
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**MS**  
MURRAY MARTIN ARCHITECTS  
2006/0013 & 04/11/PA

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Revision Schedule	
Date	Description
	Issued by

**M. Martin**

75 Laura Street  
Ballina Point

012-047

A-07-02

Scale: 1 : 300 on A3

**1** Sept 21 9am  
Scale: 1 : 300

**2** Sept 21 12pm  
Scale: 1 : 300

Revision Schedule	
Date	Description
Issued by	

<p><b>MS</b> Murray Martin Architects</p>	<p><b>GOLD COAST</b>                  ph 07 5533 4118                  fax 07 5533 4119                  mobile 04 3830 2013                  po box 6728 gold coast qld 4225                  email info@goldcoast.qld.gov.au</p>	<p><b>BALLINA</b>                  ph 0412 485 044                  fax 0412 485 045                  mobile 04 3830 2013</p>	<p><b>NSW</b>                  Building Professionals                  Association of Queensland                  Queensland Branch</p>	<p>2: NSD Design, Joe Fiddler 0012, John 0012, Murray Martin, Laura St, Ballina, P.O. Box 12, 0012, 2 DA, NT</p>
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<p>designed by: <b>MT</b></p>	<p>drawn by: <b>MT</b></p>	<p>plan no: <b>012-047</b></p>	<p>sheet no: <b>A-07-03</b></p>	<p>scale: <b>1 : 300</b></p>
<p>client: <b>M. Martin</b></p>		<p>address: <b>75 Laura Street, Ballina Point</b></p>		
<p>issue date: <b>24.09.2013</b></p>		<p>issue: <b>Shadows September 21</b></p>		



1 Sept 21 3pm  
Scale: 1 : 300

2 Sept 21 6pm  
Scale: 1 : 300

client	M. Martin	designed by	MT	plan no.	012-047
project	75 Laura Street Banora Point	drawn by	MT	sheet no.	A-07-03a
		issue & date	04/07/A JUNE 2013	scale	1 : 300
		date	Shadowe September 21	size	A3

Revision Schedule	
Date	Description
	Issued by

**GOLD COAST**  
 ph 07 5570 8118  
 fax 0432 488 044  
 178 Riverside  
 Gold Coast QLD 4216

**BALLINA**  
 ph 0432 488 044  
 fax 0432 488 044  
 178 Riverside  
 Gold Coast QLD 4216

**MS d c s i s t**  
 Architecture & Interiors  
 ph 02 132 488 944  
 fax 132 488 944

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2 Sept 21 6pm  
Scale: 1 : 300

1 Sept 21 3pm  
Scale: 1 : 300

designed by	MT	plan no	012-047
drawn by	MT	sheet no	A-07-03a
date & site	04/07/14, JUNE 2013	scale	1 : 300
site	75 Laura Street Balnora Point	date	Shadowe September 21
			of A3

client		M. Martin	
project		75 Laura Street Balnora Point	
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m/s 22 484 044

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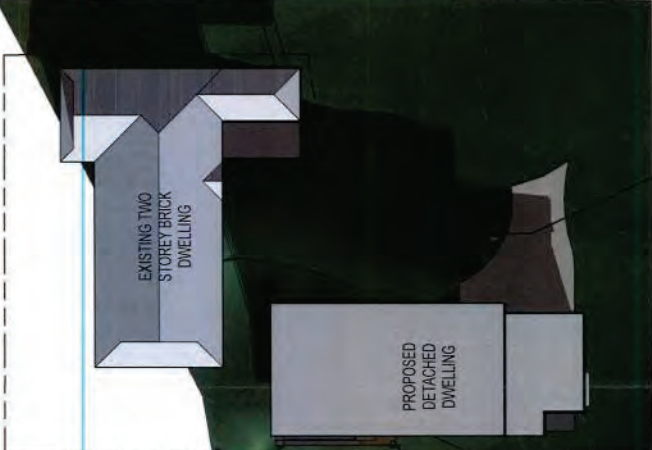
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EXISTING TWO STOREY BRICK DWELLING

PROPOSED DETACHED DWELLING

EXISTING DWELLING



EXISTING TWO STOREY BRICK DWELLING

PROPOSED DETACHED DWELLING

EXISTING DWELLING

**1**

Dec 22 3pm

Scale: 1 : 300

**2**

Dec 22 6pm

Scale: 1 : 300

Revision Schedule	
Date	Description
Issued by	

**GOLD COAST**  
MS dcs llp  
 ph: 07 5575 4118  
 fax: 07 5575 4119  
 mobile: 04 7702 2222  
 email: info@msdcs.com.au  
 www: www.msdesign.com.au

**BALLINA**  
 ph: 0412 480 044  
 fax: 0412 480 045  
 mobile: 0412 480 047

**MS dcs llp**  
MS dcs llp  
 ph: 07 5575 4118  
 fax: 07 5575 4119  
 mobile: 04 7702 2222  
 email: info@msdcs.com.au  
 www: www.msdesign.com.au

designed by: MT drawn by: MT issue & date: DA-014 JUNE 2013 title: Shadows December 22	client: M. Martin project: 75 Laura Street Ballina Point	job no: 012-047 sheet no: A-07-04a scale: 1 : 300 of: A3
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**GOLD COAST**  
 MS d c s i b i  
 175 The Esplanade  
 Gold Coast QLD 4217  
 Ph: 07 5536 1119  
 Fax: 07 5536 1118  
 Email: info@goldcoastdcsi.com.au

**BALLINA**  
 175 The Esplanade  
 Ballina NSW 2478  
 Ph: 02 6621 1119  
 Fax: 02 6621 1118  
 Email: info@ballinadcsi.com.au





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Date	Number	Description	Issued by

Project	M. Martin	Drawing No.	012-047	Scale	A3
Client	75 Laura Street Ballina NSW	Issue Date	24/07/12	Issue No.	A-08-01
Author	Persepectives	Scale		Issue	

<b>PROJECT NO</b>	012-047	<b>STATE</b>	MT
<b>ISSUED BY</b>	M. Martin	<b>DATE</b>	01/08/2013
<b>PROJECT</b>	75 Laura Street Banyo Point	<b>PERIOD</b>	A-08-01
<b>DESCRIPTION</b>	Perspectives		
<b>SCALE</b>	A3		

Date	Number	Description	Issued by

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

*The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.*

The development proposes the construction of a large, predominantly two storey building on a constrained allotment surrounded by residential development. It is considered that the proposal would impact negatively on the character of the surrounding low density residential environment.

On this basis it is considered that the proposal would not be consistent with Clause 4.

Clause 5 - Ecologically Sustainable Development

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

The proposal seeks the construction of an additional dwelling within a residual portion of an existing allotment, located within an established residential area. It is therefore considered unlikely that the proposal would impact on matters relating to the principles of ecological sustainable development, such as ecological or environmental factors.

Clause 8 - Consent Considerations

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

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

The subject site is located within the 2(a) Low Density Residential Zone within the current Local Environmental Plan (LEP) 2000.

The proposed dwelling house, by reason of its siting, bulk, height would not be consistent with the primary objective of the 2(a) Low Density Zone, as detailed below. Further, it is considered that the proposal would not be consistent with other aims and objectives of the LEP 2000 and, if approved, would have an unacceptable cumulative impact on the community and locality.



### Clause 11 - Zone Objectives

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

Primary objectives:

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

Secondary objectives:

- To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.
- To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.

Multi-dwelling houses are an Item 2 form of development within the 2(a) Low Density Residential zone, provided that each dwelling house is on an allotment of at least 450m<sup>2</sup>, as specified with Clause 51A of the Tweed LEP 2000, as detailed below. The subject site has a site area of 1031m<sup>2</sup> and therefore, in principle, satisfies this requirement.

The proposal seeks the construction of a second dwelling to form a detached dual occupancy development within a residual portion of an existing allotment. It is noted that one of the secondary objectives seeks to allow for some diversity of housing types, provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

For reasons outlined within this report, it is considered that the proposed dwelling is too large (consisting of four bedrooms, study and two separate lounge areas) to be accommodated within the site. The proposal does not achieve adequate setback distances, useable and private open space that is sufficiently integrated with the dwelling and on the basis of its bulky two storey presentation with the long elevation to the street, would not be compatible with the existing built form character of the surrounding area. Further, it is considered that the proposal would result in an inappropriate level of overlooking and invasion of privacy issues, primarily as a result of the elevated deck areas.

On this basis it is considered that the proposal would not be consistent with Clause 11.

### Clause 15 - Essential Services

The site is connected to essential services with Council's reticulated water and sewer services available to the locality. Should the application be approved, conditions will be applied to any consent to ensure the provision of new and adequate services for the new dwelling.

### Clause 16 - Height of Building

The subject site is located within an area that has a maximum building height of three storeys. The proposal seeks a two storey building which is below the maximum allowable height limit.

### Clause 17 - Social Impact Assessment

This clause requires Council to consider whether a proposed development is likely to have a significant social or economic impact. The nature and scale of the proposed development did not require the applicant to prepare a Social Impact Assessment (SIA). When considered in isolation the proposed development would be unlikely to have a significant social or economic impact. However, if approved, the proposal may set a precedent for similar 'infill' development within the Shire that may collectively impact on the residential amenity and character of the area.

### Clause 35 - Acid Sulfate Soils

The subject site is mapped as comprising Class 5 Acid Sulfate Soils. Limited earthworks are proposed and it is considered unlikely that the proposal would have any significant impact on relation to Acid Sulfate Soils.

### Other Specific Clauses

#### Clause 51A - Multi-dwelling housing densities in Zone 2(a)

The objective of the clause is to control the density of multi-dwelling housing in Zone 2(a) (the Low Density Residential zone) by the use of a development standard, as follows:

- 2) *Multi-dwelling housing proposed to be erected on land within Zone 2(a) is to be at a density not greater than:*
  - (a) *One dwelling per 450 square metres of site area, or*
  - (b) *If the site is within 300 metres of a business centre as indicated on the Business Centres Map - one dwelling per 250 square metres of site area.*

The subject site is 1031m<sup>2</sup> and therefore the density of the proposed development is satisfied.

#### Clause 54 - Tree Preservation Order

The subject site is covered by the Tweed Shire Council 2011 (Koala Habitat) Tree Preservation Order (TPO). The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

The site is located within an established residential area and the proposed development would not necessitate the removal of any significant vegetation such as primary Koala feed trees.

#### Clause 56 - Suspension of covenants, agreements and similar instruments

Council records indicate that there is a Section 88B Instrument over the subject allotment that stipulates the following:

*'Terms of Restrictions as to User fifthly referred to in the above Plan:*

- a) *That not more than one main building shall be erected or permitted to remain on any lot and such main building shall not be used for any purpose other than a single private dwelling house and shall have an overall floor area excluding any attached garage or carport of not less than 125 square metres'.*

Clause 56 allows some discretion to override Section 88B Instruments and reads as follows:

- (1) Objective
  - to enable development to be carried out in accordance with this plan or a consent.
- (2) For the purpose of enabling development to be carried out in accordance with this plan or a consent under the Act, any covenant, agreement or similar instrument that restricts or prohibits development allowed by this plan shall not apply to the development to the extent necessary to serve that purpose.
- (3) Nothing in subclause (2) affects the rights or interests of any public authority under any registered instrument.
- (4) Pursuant to section 28 of the Act, before the making of this clause the Governor approved subclause (2).

The applicant has been requested to address this restriction within the Section 88B Instrument and demonstrate why the site is suitable and capable of accommodating a compliant dual occupancy development, with reference to Clause 56. The applicant was advised that Council would only allow some discretion in this regard where the applicant has sufficiently demonstrated that the site is capable of accommodating a compliant dual occupancy development.

In response the applicant has advised the following:

*"The Section 88B instrument took effect in 1989 at the time of the original land subdivision. It was one of a number of restrictions that appear to have been imposed by the developer. The nature of the restrictions placed at the subdivision stage, eg. Minimum dwelling size of 125m<sup>2</sup>, do not appear to relate to any policy position of Council but were probably more sales tools intended to convince purchasers that housing in the estate will achieve a certain standard.*

*It is our view that the relevance of a restriction that dates back 24 years should be considered against current town planning and government policy. Clearly in the 24 year period the policies of the Council have evolved in response to broad policies like urban consolidation and efforts to efficiently use urban land and infrastructure. Further changing demographics and affordability issues have meant that smaller houses and reduced maintenance is preferred by a number of household types. Council, in its planning controls have supported these policies by allowing for lot sizes to 450m<sup>2</sup> and for a range of housing types to establish in residential zones.*

*In this case, the subject land achieves the minimum land area to support a dual occupancy development. The ability to achieve a development that is compliant with DCP A1 or meets the objectives of its provisions will be assessed in the attached SEE.*

*As the development is lawfully able to be carried out under the Tweed Local Environmental Plan 2000 (LEP) it is considered appropriate that Council use Clause 56 of the LEP to suspend the Section 88B Instrument."*

The applicants SEE considers that the likely reasoning behind the imposition of the Section 88B Restriction was that it was likely to be more of a 'sales tool' and that the restriction should be considered against current town planning and government policy.

With this regard, it is acknowledged that the site area is 1031m<sup>2</sup>, and therefore, in principle, the 450m<sup>2</sup> minimum allotment size requirement of the 2(a) Low Density Zone is satisfied. However, it is evident that the subject site is significantly constrained in both topography and configuration, being influenced in shape by the cul-de-sac formation at the end of Laura Street, the location of the existing dwelling and a 3.05m easement. The existing landscaped and open space area at the southern portion of the site contributes to the low density character of the area and provides extensive views out to the rural hinterland. It is also considered likely that the existing dwelling was located at the northern section of the lot, in a west to east configuration, to allow for such views from surrounding properties and to mitigate overlooking impacts to properties to the west (below the subject site).

For the reasons outlined within this report, it is considered that the proposed development is too large to be accommodated on this constrained site and would be contrary to current planning policy. On this basis it is considered that the proposed relaxation of the Section 88B Restriction is not justified and the proposal would be contrary to Clause 56.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### **Clause 32B: Coastal Lands**

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

It is considered that the proposed development would be unlikely to raise any implications in relation to the NSW Coastline Management Manual. Given the location of the subject site, matters relating to beach erosion and other related hazards are not applicable.

The North Coast Urban Design Guidelines provide a guide in relation to advancing quality urban design and aims to manage development to reflect and enhance the unique visual and built character values of North Coast towns and villages. These guidelines are based on a broad analysis of the existing urban design character of various settlements throughout the region, and are therefore not specifically relevant to a single development application for a dual occupancy development. However, these guidelines do seek to ensure that the unique natural and urban character of the settlements in the region are enhanced and maintained.

The development proposes the construction of a large predominantly two storey dwelling with minimal setbacks and useable open space, located on a constrained lot surrounded by low density residential development. The subject development is not considered to maintain or enhance the visual amenity or character of the area and would therefore be contrary to the intentions of these guidelines.

##### **Clause 43: Residential development**

Clause 43 states that Council shall not grant consent to development for residential purposes unless, amongst other things, it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land.

As detailed within this report, it is considered that the character and amenity of the low density residential zone would be comprised should the development be approved.

#### SEPP No 71 – Coastal Protection

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

The development seeks the construction of a predominantly two storey building that would comprise a double garage, four bedrooms, study and two separate living areas. Whilst the proposal will clearly not impact on matters relating to beach access, overshadowing of the foreshore and so on, it is considered that, by reason of the siting, bulk, scale and size of the proposed development, that it would not be appropriate on the subject site.

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

The Draft Tweed Local Environmental Plan is yet to be gazetted but has been endorsed by Council. In this Draft the site is nominated within the R2 – Low Density Residential Zone. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment, and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

A detached dual occupancy development would be permissible with consent in the R2 Zone. The minimum lot size for subdivision purposes would remain consistent with the current LEP 2000 requirement of 450m<sup>2</sup>. The maximum building height under the Draft is 9m to which the proposed building would also comply. The required Floor Space Ratio (FSR) for the subject site is 0.8:1. The estimated GFA of the buildings on the subject site is 425m<sup>2</sup>. As the site area is 1031m<sup>2</sup>, the FSR is estimated to be 0.4:1, which complies with the FSR requirements.

However, by reason of the siting, bulk and scale of the proposed dwelling that would be constructed in close proximity to the boundaries of the site, it is considered that the proposal would not be compatible with the surrounding low density residential development and would therefore not meet the objectives of the R2 Zone.

Further, Clause 1.9A of the Draft LEP 2012 relates to the Suspension of covenants, agreements and instruments [local]. The clause reads as follows:

- (1) *For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a development consent granted under the Act, any agreement, covenant or other similar*

*instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*

The intention of this clause is akin to Clause 56 of the current LEP 2000 in that it allows a relaxation of any covenant or restriction pertaining to the land where it would be carried out, should the development be carried out in accordance with the Draft LEP 2012.

As detailed within this report, it is considered that the proposed dwelling would not be in accordance with the objectives of the low density residential zone. Council Officers are of the opinion that sufficient justification has not been received to allow a relaxation of the Section 88B Restriction (that permits only one habitable dwelling on the site) should not be permitted in this instance.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant was required to address the provisions of Section A1 of the current Tweed DCP 2008 and where variations to the controls were proposed, provide a sufficient justification with this regard. A summary of the principle A1 controls relevant to the proposed development is provided below:

3. Context and Site Analysis (Preliminaries Section)

C1. *A site analysis, including details as relevant but not limited to the criteria in the Site Analysis Checklist (Appendix 7.3) is required for all dwelling development applications involving external building work, and is to demonstrate how the proposed development responds to the site analysis.*

A written site analysis has been provided that discusses the urban form and character of the locality. Further, photo montages of the site and proposed building have been provided in relation to view analysis and shadow diagrams. However, the applicant was required to provide details of how the proposed building is responsive to the lot configuration and existing built development as well as demonstrate any privacy implications to neighbouring properties.

It is considered that the supplied information (photo montages and building elevations) suggest that the building will present as a large, predominantly two storey building to the street that would be out of character with surrounding built development. The proximity of the two storey building to the rear setback will result in an inappropriate level of overlooking and loss of privacy to neighbouring dwellings.

Further, whilst not a reason for refusal in itself, the proposed two storey building would impact on views from the street and surrounding dwellings.

In conclusion, it is considered that the submitted information has insufficiently demonstrated to Council Officers that the proposed development responds to the site configuration and topography, or the location of surrounding development.

3.1 Streetscape

- C1. *All dwellings should address the street by ensuring important elements such as front doors and building entry areas are prominent from the building facade.*

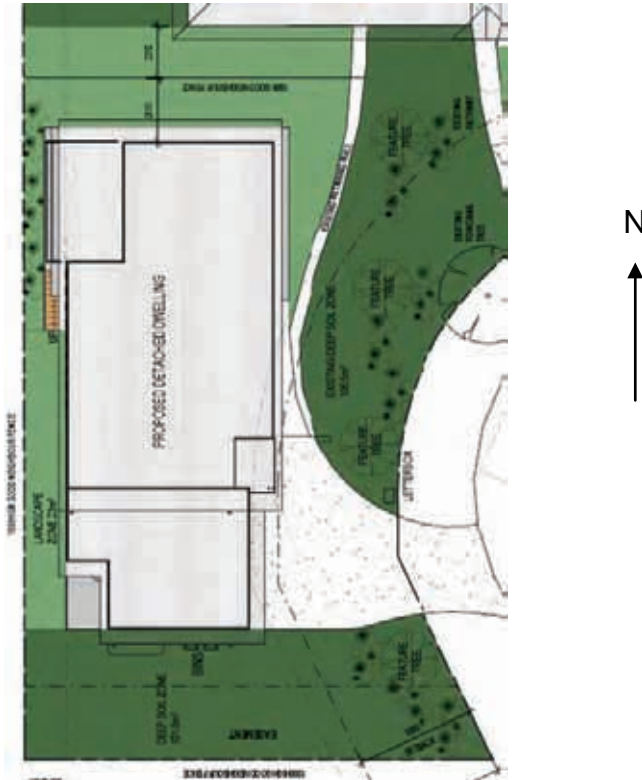
In general, the proposed dwelling would address the street with front door and garage being clearly visible from Laura Street.

- C2. *Site design, building setbacks and the location and height of level changes are to consider and be compatible with other buildings and sites along the street, particularly those that are older and more established.*

The subject site adjoins the north western edge of the cul-de-sac and therefore, the allotment comprises an irregular shape with its south eastern street boundary reflecting the arc of the cul-de-sac geometry. A further constraint is the 3.05m easement that runs along the southern boundary of the site. Taking into consideration the existing two storey residence located at the northern most part of the site, the residual vacant part of the block occupies a reasonably constrained section of the site, as shown in the following aerial imagery:



Further, once a side, front and rear setback is applied across the site, the remaining 'developable' footprint is a narrow north south envelope. In this instance, the applicant has redefined what would constitute the front, side and rear boundaries in order to maximize a developable footprint envelope over the residual portion of the site, as shown in the following image:



The submitted plans illustrate that the rear setback (and location of deep soil zone) is to the south, the side is to the west and the front boundary faces east. Matters relating to building setback are considered in greater detail within this assessment however, it is considered that the proposed building configuration and setback arrangement would disrupt the building envelope to allotment configuration that is found throughout Laura Street.

Further, it is considered that the proposed dwelling would not be compatible with surrounding built form.



The above image details the existing predominantly single storey brick and tile residence located on the subject site. The following provides a



perspective of the proposed new dwelling and carport addition on the existing dwelling:



As detailed within this report, it is considered that the proposed (predominantly) two storey building, with a limited rear setback, located within a constrained site, would not be consistent with surrounding built, low density residential development, particularly in relation to the height and built form of the existing dwelling on the subject site.

It should be noted that the proposed secondary dwelling would be approximately 1.5m higher than the existing dwelling and has a larger GFA by approximately 25m<sup>2</sup> (not including the external decks).

### 3.2 Views and Vistas

- C1. *Building siting and height is, as far as it is practical, to be designed to minimise the impact on views from surrounding properties, and follow the Planning Principles (refer note) of view sharing between properties.*
- C2. *The location and height of new development is not to significantly diminish the public views to heritage items, dominant landmarks, public buildings from public places or unreasonably obscure public district views of major natural features such as the water, ridgelines or bushland.*

The site slopes away to the north-west with long distance views of what are considered to be significant natural features of the rural hinterland and border ranges, as depicted in the following image:



The configuration of the dwelling, with its long, predominantly two storey elevation to the street, will block hinterland views from the street as well as from those dwellings on the upslope of Laura Street, as shown in the following photomontage, as provided by the applicant:



The loss of view from Laura Street and from properties to the east is acknowledged. The question is how reasonable would it be to expect the view from the public realm and from surrounding properties located across the road from the subject site to be retained. Whilst the impact to views of the rural hinterland is acknowledged, this is not considered to warrant refusal of the proposal alone, given the site is located within a residential zone and the sloping nature of the area. However, the height of the building and the resultant impact on views adds to the opinion that a smaller building with a more considered approach of distribution of massing (such as reconfiguring the main 'mass' of the building up slope rather than down

slope of the single storey garage component) would reduce this overall impact.

Concerns have been raised from the residents of the property immediately to the south of the subject site (No. 73 Laura Street) in relation to the impact on views from the living areas of their property.



The above image provides an indication of the approximate impact on views to the north from the property to the south of the site. Whilst the restricted views to the north is acknowledged, the dwelling to the south will retain its predominant views over to the west. Reducing the height of the proposed building to single storey and increasing the side setback to 5.5m has also assisted in increasing view sharing between these two properties.

#### 1. General

- C1. *Dwellings and development must be consistent with the scale and character of surrounding dwellings or as envisaged through an adopted concept plan, locality plan, design statement/covenant or the like.*

A Section 88B Restriction that permits only one habitable dwelling on the allotment is relevant to the subject site. As detailed within this report, it is considered that the proposed development (building height and length across the site, limited setback, lack of useable open space) would not be consistent with the scale and character of surrounding dwellings. Further, it is considered that the proposed dwelling would result in unacceptable implications to the residential amenity of surrounding properties in relation to overlooking and loss of privacy.

Council Officers remain of the opinion that the proposed dwelling is too large to be accommodated on the site without impacting on the low density character of the locality, as well as on the residential amenity of surrounding properties.

#### Dual Occupancy

- C2. *Dual occupancies are considered as two separate dwellings, each of which are required to meet the requirements setout in Part A.*

As detailed within this assessment, a number of variations to the A1 controls are proposed in relation to the development.

- C3. This control requires dual occupancy developments within a low density zone to be a minimum of 900m<sup>2</sup>. The site is 1031m<sup>2</sup> and therefore satisfies this requirement in principle, however a detailed breakdown of each site area has not been provided.
- C5. *In all dual occupancy developments, applicants are to nominate front, rear and side boundaries and apply setback and landscape area requirements accordingly. The nomination of these boundaries, setbacks and configuration of the development is to be justified through a site analysis.*

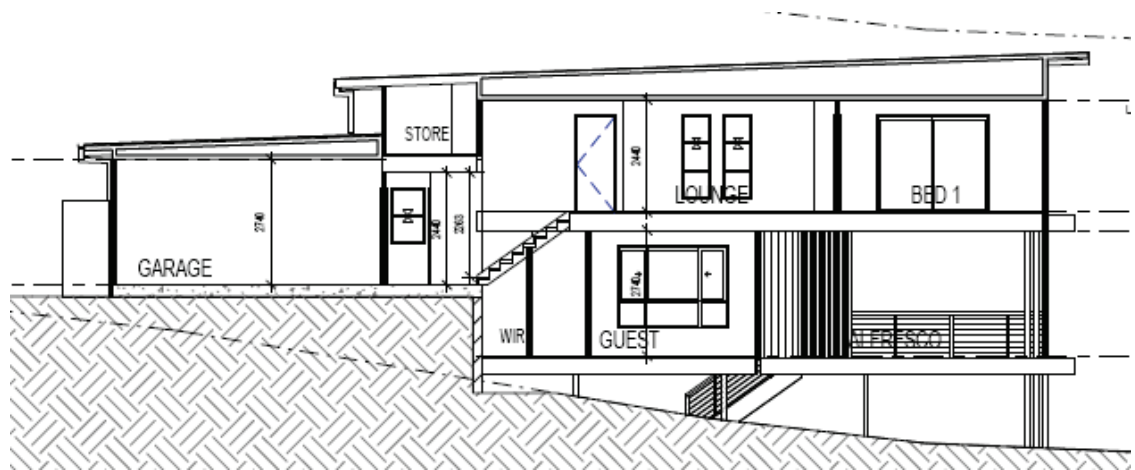
Due to the configuration of the subject site and location of existing dwelling the applicants have redefined what constitutes the front, side and rear boundaries of the proposed new dwelling house. The SEE advises that consideration of the site and surrounding development '*drove the nomination of these boundaries*' as the provision of the rear boundary to the south, for example, would provide a greater separation distance to the existing dwelling on the adjacent lot and also opportunities to provide landscaping and screening.

In some respect the proposed variation to the setback configuration are justified in this instance. Locating the rear setback to the south does increase the distance of the proposed new dwelling to the dwelling to the south (No. 73 Laura Street). The land immediately to the west of the subject site is steeply sloping and comprises a natural rock formation which would pose limitations on the viability of future development on this site. However, there are concerns about the lack of integration of the 'rear' setback with the dwelling house (as the deep soil zone and open space area is not located off an internal living area) as well as the impact of the development on the overall character of the surrounding area.

### 2.1 Topography, cut and fill

The development proposes a split slab, post and beam form of construction that will limit the extent of cut and fill. The SEE advises that the areas outside of the building footprint are predominantly at natural ground level which is in the 10-14% slope range.

The SEE advises that '*all new proposed retaining is within the building footprint area*' and '*the retaining consists of engineer designed block retaining walls up to 2m in height and contained predominantly in the garage subfloor area*', as shown in the following image:



The SEE advises that excavations of greater than 1m, as detailed within C3, are not proposed. C10 requires that no building works or earthworks are proposed within the easement. It is noted that no works are proposed within the easement to the south of the site.

In general, it is considered that the proposal raises no significant concerns in relation to cut and fill.

## 2.2 Landscaping, deep soil zones and external living areas

C1. C1 requires that a lot must include a total landscaped area consistent with Table 2. Table 2 requires that sites with a lot size of 900m<sup>2</sup> but less than 1500m<sup>2</sup> require a landscaped area and deep soil zone of at least 40% of the site, including at least 2 deep soil zones measuring a minimum of 5m in any direction.

A detailed breakdown of landscaped areas has not been received although a Landscape Plan has been provided. Based on the submitted Landscape Plan (Sheet A-01-02), proposed landscape areas would comprise an approximate area of 420m<sup>2</sup>. Based on a site area of 1031m<sup>2</sup>, the total landscape area would comprise approximately 40% of the site area, and would therefore be consistent with this control.

- C3. *C3 requires that the submitted landscape plan include the following details:*
- i. Calculations of the landscaped area, deep soil zones and site coverage;*
  - ii. Demonstrate how the landscaping complements and integrates with the amenity of the dwelling, the streetscape and any topographical features;*
  - iii. Demonstrate how each dwelling achieves integration of the dwelling, landscaped areas, private open space and external living areas;*
  - iv. Demonstrate suitable privacy and solar access for each dwelling and its outdoor and landscaped spaces; and*
  - v. Detail of plant species to be used and their locations. Species are to comprise no less than 80% native species.*

The SEE advises that the proposal provides a total landscaped area through a combination of deep soil zones and soft landscaping and that, due to the irregular shape of the lot, the deep soil zone has been provided to the southern boundary (nominated as the rear boundary). A detailed

planting schedule has not been provided however if the application were to be approved, such details may be requested via a condition of consent.

The only area available for landscaped area and open space is at the southern portion of the lot, which the applicant nominates as the 'rear' setback. Stepped access to this area would be via a laundry to a small external deck. The location of the only area available for outdoor amenity space to the south of the site, with no access from internal living spaces, is considered to be inappropriate. It is considered that the eastern portion of the yard space, within the front setback, would provide a better opportunity for integration between internal and external spaces.

External living areas would be located on two levels of elevated decks, the lower deck comprising steps to the 'side' or western setback. In relation to C3 ii, iii and iv, there are concerns that the proposed development fails to sufficiently integrate the only area available for useable outdoor space with the dwelling, as shown in the following image:



Further, there are concerns about the level of useability and privacy of this area, with potential for overlooking from the upper floors of the dwelling to the south of the site (No. 73 Laura Street) and from the street. Future boundary treatment such as fences, that may increase the useability, privacy and security in this space, may further reduce streetscape amenity as well as limit the potential for view sharing.

Of note, there are concerns that the new driveway and carport located within the front setback of the existing dwelling may necessitate the removal of a significant Jacaranda tree that, whilst not a native species, greatly enhances the visual amenity of the area and its loss would be unfortunate.

- C6. *Locate and design landscaping to increase privacy between neighbouring dwellings without excessive shadowing or blocking primary views or existing solar panels.*

The SEE advises that locating the landscaped area to the southern boundary increase the level of privacy to the property to the south (No. 73 Laura Street). However, as the primary area of open space for the

proposed new dwelling is located at the southern boundary, this may further result in privacy issues to the residents of the property to the south in relation to noise and disturbance.

C8 and C9 relate to the treatment of runoff where possible as well as details relating to stormwater system and geotechnical stability of the site. Further details have been received with this regard to which Council's Development Engineer consider acceptable. Roofwater is to be collected in an on-site rainwater tank for re-use on the site, with overflow tank water to be discharged to the street.

### 3. Setbacks (front and rear)

- C1. *The minimum setback from the street and rear boundary for a dwelling is to comply with Table 3 - Front and Rear Setbacks in DCP A1 - Part A.*

For an allotment measuring between 900m<sup>2</sup> and 1500m<sup>2</sup>, the required front setback is 6m and rear setback is 12m (for a building of 4.5m in height or greater). The front setback is generally consistent with this requirement, taking into consideration that the proposed dwelling would be located within an established area and would be an infill site.

However, the applicant nominates the southern boundary would be the 'rear' setback in this instance. The proposed 'rear' setback is 5.5m, which is clearly a significant variation to the requirement of 12m. Further, should the 'rear' setback be considered to be the western boundary (at the rear of the dwelling), a setback of only 1.8m at most is proposed (reduced to 1m from the outer edge of the proposed deck).

Should the 'rear' setback be defined as the western boundary, the significantly reduced rear setback and proposed location of living spaces (particularly given two levels of elevated decks are proposed) directly adjoining this boundary, would have significant invasion of privacy impacts to dwellings located to the west of the site. Council Officers are of the opinion that the proposed variation to the rear setback requirement, combined with the lack of integration of landscaped areas with the proposed dwelling, cannot be supported.

- C5. *Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front façade, unless it can be demonstrated how the design mitigates the dominance of the garage door to the street elevation.*
- C7. C7 sets out various criteria where a carport may be permitted to encroach within the front setback.

In relation to C5 and C7, the proposed carport for the existing dwelling would be located forward of the building line. The SEE advises that there is no alternative location for the proposed carport and has provided a number of examples of carports located within the front setback of the site in the vicinity of the site. The proposed carport would be setback a minimum of 900mm which complies; would not exceed 33% of the width of the allotment frontage and would be of an open design (with a minimum of two sides being open).

The proposed design of the carport has been amended to incorporate a pitched roof integrated with the existing dwelling as well as brick and tile

materials. The proposed design and use of materials would be compatible with the existing dwelling and would be in keeping with surrounding streetscape character.

### Side Setbacks

C13. This control requires a two storey dwelling to be setback a minimum of 1.5m from the side boundary.

The SEE advises that, given the irregular shape of the allotment the *'proposed dwelling has been located to provide the greatest possible setback to the southern boundary and adjoining residence. We contend that the 2m setback to the western boundary satisfies the side boundary setback requirements'*.

It is noted that the maximum 'side' setback distance at the western boundary would be 1.8m with external decks located only 1m from the boundary, which does not comply with this control.

In some respects, given the lot configuration and the location of surrounding dwellings, the applicant's nomination of the side and rear setbacks may be considered to be acceptable; increasing the southern, or 'rear' setback (maximum of 5.5m) will reduce the impact of the proposed dwelling on the property to the south (No. 73 Laura Street).

However, by redefining what constitutes the rear and side setbacks, the applicant has been opportunistic to maximise a developable building envelope over the residual part of the site. Should the applicant's nomination of what constitutes a side and rear boundary be accepted, the construction of the proposed two storey dwelling, only 1m from the western boundary, would have significant overlooking impacts, particularly given the proposed location of living spaces and two levels of elevated decks.

Further, by locating the 'rear' setback to the southern elevation has reduced the capacity for adequate integration of the dwelling and its external living areas with landscaped areas and useable, private open space.

C19. *External living areas adjoining side boundaries are to be setback a minimum of 900mm from the side boundary. This external living area may be required to be appropriately screened and/or the setback increased where there may be overlooking and/or privacy impacts.*

The SEE advises that the proposal complies with this control. It is noted that the proposed decks would be located a maximum of 1m from the western boundary.

However, the proximity of the proposed two storey building and location of elevated decks, only 1m from the boundary, would have significant overlooking and invasion of privacy impacts, particularly within the garden area and directly into the properties located at No. 50 Elsie Street, as shown in the following image, taken at ground level noting the proposed structure would be a maximum of 8m in height with a 1m setback, overlooking adjoining properties.





The applicant has been advised of Council Officer's concerns with this regard and a letter of support has since been received from the owner of Unit 1 No. 50 Elsie Street, located immediately to the west of the site. The submission states that no concerns are raised with regard to overlooking into the rear garden, which they consider is already overlooked from No. 73 Laura Street. It is acknowledged that, given the sloping nature of the locality, a degree of overlooking from dwellings located on higher ground is to be expected.



However, please note the above image outlining the location of the proposed new dwelling up to the western boundary, location of external

decks on lower and upper floor (outlined in red) and the location of surrounding dwellings and their garden areas. It is considered that the proposed secondary dwelling, by reason of its height, proximity to the western (rear) setback and location of external living areas, will have the capacity to impact on surrounding properties to the west, including Unit 1 and 2 of No. 50 Elsie Street and No. 52 Elsie Street.

The following image provides a perspective view of the proposed dwelling and elevated decks. Please note the height difference with the existing dwelling house, located in the foreground of the image.



The applicant was requested to address the perceived impact on privacy to neighbouring properties and has advised that the planting proposed along the western boundary (adjacent to the external deck) will achieve sufficient screening within 12 months (*Syzygium* that would grow up to 3m in height) to mitigate overlooking impacts.

It is noted that the lower level deck (25m<sup>2</sup>), located adjacent to the primary living and kitchen area, will be the principle external living space. Whilst landscaping may mitigate the level of overlooking from this area, it is the feeling of being overlooked, noise and disturbance from this deck that will also negatively impact on the residential amenity of surrounding properties. Further, planting of a maximum of 3m in height will not mitigate overlooking impacts from the upper floor deck.

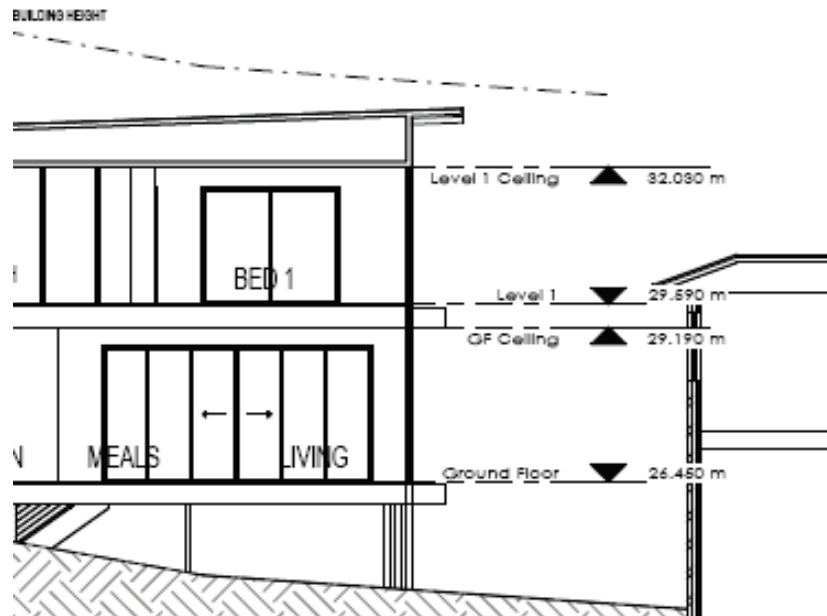
It is also noted that overlooking will also occur from the decks to the north and over the side setback of the existing dwelling. The applicant has advised that the principle outdoor area and external living space is located to the rear (north) of the existing dwelling and therefore the proposal would have minimal impact on the residential amenity of the occupants of this dwelling.

Council Officers are of the opinion that the proximity of the proposed two storey building to the boundary, combined with elevated decks and

proposed location of living spaces, will significantly impact on the residential amenity of the dwellings to the west.

### 3.2 Building Height

C1 states that the overall maximum building height is 9m. The proposed dwelling would be consistent with this control.



The image above provides an indication of the height of the proposed dwelling (maximum RL 8m AHD above ground level) in relation to the height of the existing dwelling on the site. The overall building height (although below the 9m height limit with split floor plate and attempt to design to the slope) and the distribution of the two storey element in a north south configuration, will result in a development that presents itself as a significant building within the street.

On this basis it is considered that the proposed dwelling would be out of character with other dwellings in the street, including the existing dwelling on the subject site.

### 3.3 Site Coverage

The objectives of 3.3 are to ensure a balance of built form and landscaped area and to ensure that residential development is sympathetic with the existing topography, water cycle and amenity of the site and neighbourhood.

C1 requires that the maximum site coverage of a dwelling must be consistent with Table 4. Table 4 requires that sites with an area of at least 900m<sup>2</sup> but less than 1500m<sup>2</sup> has a maximum site coverage (not including driveways) of 40%. The SEE advises that the proposed site coverage is 36% and therefore complies.

There are however concerns about the layout of the site and whether the development achieves a sufficient balance between the built form and landscaped area, particularly in comparison to the character and amenity of the locality.

### 4.2 Passive Design

C1 requires that new dwellings are sited to encourage a balance of solar access and shade to windows and doors of primary living spaces and external living

areas. In general the proposal would achieve these requirements however it is considered that there would be limited opportunity for solar gain to the external living areas.

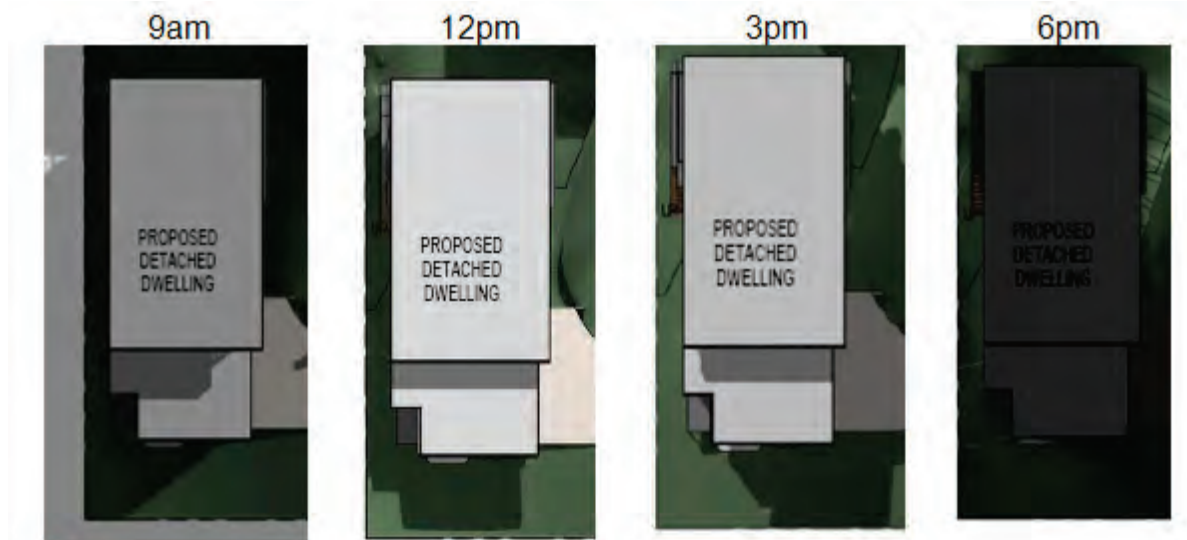
There would also be limited opportunity for solar gain from the northern aspect of the proposed building, as window placement and size has been restricted to mitigate overlooking to the north.

#### 4.3 Solar Access and Natural Ventilation

C1 requires that two storey development must prepare shadow diagrams over the subject and adjoining sites for both the summer (December 21) and winter (June 21) solstice. The submitted shadow diagrams generally indicate that there would be minimal overshadowing to neighbouring properties, with the most significant overshadowing occurring in June at 9am.



C2 requires private open space to receive at least two hours of sunlight between 9am and 3pm during the winter solstice. The SEE considers that the proposal complies with this control however, the following snapshots of the submitted shadow diagrams indicate that minimal sunlight would be available to the southern setback, the only area available as open space, which further highlights Council Officer's concerns about the usefulness and liveability of this area.



C4 requires that sunlight is received in at least 50% of the principle area of private open space to neighbouring properties. It is considered that this requirement would be achieved and that the proposed building would not result in such significant overshadowing to neighbouring properties to warrant refusal of the proposal.

#### 4.4 Building Form

C1. *Building siting, height, scale, and roof form must to relate to the surrounding development, topography and the existing site conditions.*

As detailed, the site is of an irregular shape located at the edge of a cul-de-sac and is further constrained by the location of the easement on the southern boundary; topography, existing dwelling house and location of surrounding development.

Issues relating to the building form have been discussed in detail within this report. In summary, the proposed detached dwelling would be predominantly two storeys (with single storey to garage) and considerable in size, comprising four bedrooms, a study and two separate lounge areas. Significant variations to the setback requirements have been proposed, with the applicant redefining what constitutes front, side and rear boundaries to achieve a developable building envelope.

Typically within the surrounding subdivision pattern, Council's Urban Designer has advised that a deeper rear setback increases building separation and allows landscaping to grow up between the building and boundary to reduce overlooking and privacy impacts. It is considered that the proposal would disrupt this building envelope to allotment configuration found throughout Laura Street. It is considered that the awkward allotment shape is not justified reason enough to vary the rear setback requirement and impose a significant overlooking and invasion of privacy amenity impacts on the down slope allotments. The unusual shape allotment shape indicates that two large dwellings are not suitable for the constrained site.

Concerns relating to the height of the proposed dwelling and its compatibility with surrounding development have been considered within this report.

The area is characterised by single and two storey unfinished brick dwellings with tiled roofs. Council's Urban Designer has advised that whilst

it could be argued that the proposed dwelling's materials (rendered cladding with metal fascia and roof) are more considered in terms of passive design, its overall appearance (materials and colour) would be out of character with other dwellings in the street, including the existing dwelling on the subject site.

Council Officers are of the opinion that the proposed dwelling remains too large to be adequately accommodated on the subject site and that the dwelling would comprise a bulky, two storey presentation with a long elevation to the street. On this basis it is considered that proposed development would not be in keeping with the surrounding area in terms of building siting, overall building forms and materials with the existing built form character in Laura Street.

#### 4.5 Visual and Acoustic Privacy

- C1. *Terraces, balconies, living room and kitchen windows are to avoid a direct view into neighbouring dwellings or neighbouring private open space.*

The concerns in relation to the location of the proposed elevated decks and the resultant impact on the residential amenity of adjoining properties has been considered in detail within the Side Setback controls. The following image indicates the elevated level of the proposed dwelling and location of proposed windows and decks on the western elevation, where the greatest potential for overlooking will occur:



In summary, the proposed elevated decks and windows would allow future occupants to look directly into the neighbouring private open space and into the dwellings to the west, as well as into the private open space for the existing dwelling to the north.

- C2. *Decks, verandahs, terraces, balconies and other external living areas within 4 metres from a side or rear boundary may require a privacy screen unless it can be demonstrated that there will be negligible overlooking and/or privacy impacts, as demonstrated on a site analysis.*

The proposed decks would be located a maximum of 1m from the western boundary and therefore is a considerable variation to the 4m requirement.

As detailed within the Side Setback control, planting has been proposed along the western boundary to mitigate the potential for overlooking from the

lower floor deck. Council Officers concerns in relation to overlooking and other privacy implications in relation to noise and disturbance are not alleviated with this regard.

In relation to C2, the SEE advises that *'the proposed upper floor balcony has the potential to create an overlooking situation however given the sloping topography of the site it wouldn't matter if the building was setback 20m from the rear boundary. This balcony will predominantly be used by the occupants of the main bedroom and is unlikely to be used for entertainment purposes thereby limiting the overlooking potential'*.

The two storey dwelling, with a non-compliance with the rear setback, would lead to significant inappropriate overlooking and invasion of privacy issues. Whilst the applicant's justification for the upper floor deck is noted, future occupants of the dwelling house would be entirely within their right to establish this area as a useable living area and enjoy the extensive views that the upper floor would offer. The argument that setting the building back by 20m would not reduce the potential for overlooking is not accepted.

It is considered that the level of overlooking lends support to the argument that a two storey dwelling is not suitable on the subject site and that a smaller building with a more considered approach to building massing, height and setback requirements would help to reduce impacts to surrounding residential amenity.

#### 4.6 Garages, Driveways and Car Parking

- C1. *Car parking and driveways are to be in accordance with Section A2 of the Tweed Shire Development Control Plan and Council's Driveway Design Specification.*

A2 requires two spaces per two bedroom unit or more, plus provision for driveway parking of another vehicle. The development comprises a double garage for the proposed new dwelling, with sufficient space for driveway parking for an additional vehicle.

The existing dwelling would comprise a single carport and additional space for one other vehicle.

Two new driveway accesses are to be constructed to the existing dwelling and new dwelling. Should the application be approved the proposed accesses would be subject to a Section 138 application and approval and would need to comply with the requirements of Council's Driveway Design Specification.

It is noted that details of the treatment and conversion of the existing double garage that serves the existing dwelling have not been received.

- C2. This control requests that carports and garages visible from the street should be compatible with building design and be treated with materials and colours that ensure reduced visual intrusion to the streetscape. It is generally considered that the proposed modification (design and materials) would be in keeping with the existing dwelling and would not impact on streetscape character.
- C4. This control requests that vehicular movement, driveways and parking areas are to be minimised to reduce hard surfaces on the lot and increase the area available for landscaping. The topography and configuration of the lot

does not lend itself to a shared communal driveway. As the proposed driveway and parking area for the existing dwelling has been minimised it is considered that the proposal generally complies with this requirement and enables sufficient landscaped areas within the front setback.

#### A2-Site Access and Parking Code

As detailed above, site access and parking availability is considered to be in accordance with Section A2 of the Tweed DCP 2008. Should the development application be approved, conditions would be applied to any consent to ensure that a Section 138 approval is obtained to the satisfaction of Council's Development Engineers.

#### A11-Public Notification of Development Proposals

The original application was notified for a period of 14 days from Wednesday 10 April 2013 to Wednesday 24 April 2013. Four submissions were subsequently received. These four parties were subsequently notified of the amended details and were provided an opportunity to provide any additional comments. Three additional submissions have subsequently been received.

The issues raised within these submissions are detailed further within this report.

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

#### Clause 92(a) Government Coastal Policy

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy it would not pose any implications in relation to the restriction of access to any foreshore areas nor result in any overshadowing of beaches or foreshores.

#### Clause 92(b) Applications for demolition

The development application does not comprise any demolition works.

#### Clause 93 Fire Safety Considerations

The development application does not involve the change of use of a building. Council's Building Services Unit have not raised any concerns subject to a number of recommended conditions of any consent.

#### Clause 94 Buildings to be upgraded

The application does not propose any building work that would represent more than half the total volume of the existing building. Council's Building Services Unit considered that the proposal would comply with the requirements of the Building Code of Australia.

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

#### **Tweed Shire Coastline Management Plan 2005**

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the subject site, within an established residential area and a significant distance from the coastal foreshore, it is considered that the proposed development would be consistent with the objectives of the clause.



**Tweed Coast Estuaries Management Plan 2004**

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

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

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

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

**Context and Setting**

The subject site comprises a single dwelling house with a vacant part of the block occupying the residual, southern portion of the site. Whilst the applicant's desire to utilise this vacant portion of land is acknowledged, it is considered that development should be sensitive to the local context and surroundings.

With this in mind the proposed building is considered to be inconsistent with the context and setting of the locality for reasons detailed within this report. In summary, the siting of the proposed building (being of a north south configuration), height (predominantly two storeys and elevated above natural ground level), limited setbacks and the overall building form and materials would not be compatible with the surrounding low density character of Laura Street, particularly in relation to the existing dwelling.

**Access, Transport and Traffic**

Proposed access arrangements are considered to be satisfactory and as detailed, should the application be approved a Section 138 application for the proposed new driveways would be required.

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

**Surrounding Landuses/Development**

As detailed within this report, the site is constrained in both configuration and topography. In considering the irregular shape of the allotment, the existing dwelling, location of the easement and surrounding development, the potential for an additional dwelling, particularly one of the size and scale proposed, is limited.

Residential development within the locality comprises a low density subdivision pattern with deep rear setbacks, private garden areas and open landscaped front setbacks. The proposed configuration of the development would not be compatible with surrounding built development and would disrupt the building envelope to allotment configuration found throughout Laura Street.

Whilst there are examples of two storey dwellings within the locality, the proposed dwelling (on a north to south configuration) would present itself as a bulky predominantly two storey building to the street that would be out of character with the locality. A smaller building, of reduced building height and mass, would reduce the impact of the development on streetscape character, as well as ensure principle district views from the street and surrounding dwellings are retained.

The size of the proposed dwelling combined with limited rear setback would also lead to inappropriate overlooking and invasion of privacy issues, primarily from the elevated decks.

For these reasons it is considered that the proposal would not be compatible with surrounding land uses/development.

#### Flora and Fauna

The site comprises a residential dwelling with limited landscaping or mature vegetation within the southern portion of the site. A significant Jacaranda tree is located within the front setback in close proximity to the existing driveway. It is understood that this tree will not be affected by the proposal however concerns are raised with this regard and its loss would be unfortunate.

#### Topography

The site is relatively steeply sloping and the applicants advise that the proposal has been designed in response to the site. The main living spaces drop down half a storey from the entry foyer with the main kitchen, dining and living spaces opening onto a generous north-facing deck. It is the elevated nature of the dwelling, particularly when viewed from the western elevation that will cause significant impacts to surrounding residential amenity and will result in a building of considerable bulk and scale.

#### Site Orientation

The orientation of the proposed dwelling is as a result of the constrained residual developable footprint on the subject allotment. The orientation of the predominantly two storey dwelling (in a north south configuration) and the location of the principle outdoor amenity space to the south, will result in a shaded and redundant space that lacks integration with the dwelling. This report has considered at length that the reduced setbacks and lack of sensitive design response to the existing dwelling and surrounding development is not supported in this instance.

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

Four submissions were received in response to the original notification process. Submitters were then provided an additional opportunity to provide any further comments in relation to the amended details. The main issues raised within these submissions are summarised as follows:

#### **Site configuration**

- Will result in a loss of amenity (in relation to boundary setbacks, loss of privacy, views and management of water runoff) for the residents of No. 73 Laura Street (immediately to the south);
- Site is extremely constrained (orientation, depth and topography);
- Insufficient lot size to accommodate two dwellings, associated living space and parking;
- Proposed dwelling would not be in keeping in character, size or construction materials with streetscape or the existing dwelling;
- Proposed dwelling would not complement the existing dwelling (would be dominated by proposed dwelling as a result of height and design);

- Dwellings in the vicinity have not significantly altered the standard boundary setbacks to support their design;
- Insufficient deep soil zones and landscaping;
- Significant variations to the 5m setback requirement and building should be reduced to comply with current requirements or should be disallowed based upon the future impact of the proposed design;
- Applicant using easement area to support their application even though no building works would be permitted in this location;

#### **Privacy and amenity issues**

- Impacts in relation to privacy and future use of site immediately adjacent to western boundary of the site (particularly in relation to proximity of decks);
- Impact of the proposal on the amenity of the residents of No. 73 Laura Street;
- Significantly reduced views from the living and front garden area of No. 84 Laura Street (located to the east of the site);
- If proposed dwelling was reduced by approximately 1m it would allow the retention of some of the views that No. 84 Laura Street currently enjoys;

#### **Impact to views**

- Significant impact to views and vistas, particularly from main living areas at front of dwelling of No. 73 Laura Street;
- Impact to views from the dwelling at No 84 Laura Street (immediately opposite the site). No. 84 Laura Street (single storey dwelling) was constructed to capture views of the hinterland and the proposed dwelling will obliterate this view;
- Lowering the ground floor to ceiling height to that of the first floor and excavating below ground level would retain a proportion of the views that this dwelling currently enjoys;

#### **Drainage and runoff**

- An elevated dwelling located above the existing ground level should not be supported as it would be likely to impact on runoff issues to the southern and western boundaries;
- Easement located along the southern boundary has already been altered by build up of materials/landscaping so that water runoff is exacerbated at No. 73 Laura Street;
- Reduced landscaping would increase surface runoff and drainage issues;
- Uncertainties in relation to method of construction and potential for surface runoff to property to the south (including lack of retaining walls and fencing along western boundary);

#### **Other concerns**

- Height of proposed building not being in keeping with surrounding area;
- Concerns over loss of vegetation on the site and alleged removal of a Moreton Bay fig tree within the proposed building footprint;

- Concerns about level of cut and whether in accordance with Council policies;
- Concerns in relation to the design of the proposed double carport.

### **Assessment of submissions**

The matters raised within the submissions have been considered throughout this report. It is considered that concerns in relation to the impact of the proposed dwelling on the character of the area and on the residential amenity of surrounding properties are well founded, particularly in respect of building height, reduced setbacks and insufficient outdoor space. The height of the predominantly two storey building and the resultant loss of outlook and view, particularly from the street and the properties to the east of the site, is also considered to be a material consideration.

Matters relating to surface runoff and drainage issues have been considered by Council's Development Engineering Unit. Provided roof water is directed to the rain water tank to be reused on site and overflow directed to the street, it is considered that the proposed development would be acceptable in relation to stormwater management. Should runoff be entering the property to the south from the existing drainage easement, a form of bunding could be constructed on either the subject site or adjacent property to redirect surface water to the street.

Please note that one letter of support has been recently been provided from the owner of Unit 1 No. 50 Elsie Street, located to the west and down slope of the site. The letter implies that the resident has no issues with the proposed new development in relation to overlooking given the topography of the area. Whilst the support from the owner of Unit 1 is acknowledged, the scale of the proposed building combined with its proximity to the western boundary, and location of elevated external living areas would result in an unacceptable level of impact to surrounding residential amenity in relation to overlooking and loss of privacy to which current and future residents could reasonably expect to enjoy.

### **(e) Public interest**

It is acknowledged that the subject site meets the minimum lot size criteria and provides for a mixture of housing types to meet market demand. However, the proposed dwelling would constitute a large, four bedroom dwelling with two separate living areas, study and large elevated decks. The lack of useable private, sunny outdoor space, reduced setbacks and resultant impact on surrounding residential amenity calls into question whether a secondary dwelling is suitable on the site.

If approved, a precedent would be set for similar 'infill' development that cumulatively, may significantly impact on the character, visual and residential amenity of the Shire. For this reason it is considered that the proposal would not be in the public interest.

### **OPTIONS:**

1. That Council refuses the application in accordance with the recommended reasons for refusal; or
2. Gives in-principle support for the application and that the application be reconsidered at a later Council meeting with recommended conditions of consent.

Council officers recommend Option 1.

**CONCLUSION:**

The development application before Council seeks approval for the construction of an additional dwelling house to create a detached dual occupancy development on an infill site that is significantly constrained in configuration and topography.

An assessment of the proposal has revealed a number of substantial variations are proposed to Section A1 of the Tweed DCP 2008, particularly in relation to: the siting of the proposed building, overall building form, materials and compatibility with surrounding built development in Laura Street as well as in relation to the location of the principal outdoor amenity space and lack of integration with the internal living spaces. Whilst the applicant's justification for each of the variations to A1 are acknowledged and why the Section 88B Restriction (only one habitable structure on the site) should be relaxed, Council Officers are of the opinion that the site is too constrained to accommodate a building of this scale.

Further, it is considered that the proposal would have an unacceptable impact on the residential amenity of surrounding properties, namely in regard to inappropriate overlooking and invasion of privacy issues primarily from the elevated decks.

On this basis it is recommended that the proposed development be refused.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant may seek to lodge an appeal in the Land and Environment Court in respect of Council's determination.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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32 [PR-CM] Development Application DA13/0239 for the Construction of a Carport (Unit 1) at Lot 1 SP 50344 No. 1/10 Chardonnay Crescent, Tweed Heads South

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0239 Pt1



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

#### Updated Information

At its meeting of 15 August 2013, Council resolved the following in respect of this matter:

**"RESOLVED** that Council, with respect to Development Application DA13/0239 for a carport (unit 1) at Lot 1 SP 50344 No 1/10 Chardonnay Crescent, Tweed Heads South:

1. Give in-principle approval to the application for the proposed carport and bring back a further report to Council with recommended conditions of consent; and
2. Require the unauthorised constructed driveway along the site's eastern driveway being removed proper to the commencement of works to construct the proposed carport".

On this basis this Development Application is being reported back to this Council meeting with a recommendation of approval with the following conditions of consent:

#### GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 1 Site Plan and Plan 2 (Floor Plan & Elevations) prepared by Brians Patios and dated May 2013, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

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

[GEN0135]

4. The unauthorised driveway is to be removed prior to the construction of the carport structure.
5. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from fence lines.

[GEN0300]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. The footings and structural frame are to be designed by a practising Structural Engineer and details shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

7. 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]

#### **PRIOR TO COMMENCEMENT OF WORK**

8. 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]

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

[PCW0225]

### **DURING CONSTRUCTION**

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

11. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

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

[DUR0375]

13. 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]

14. 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]

15. 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]

16. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.

[DUR2255]

## **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

17. 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).

### Previous Report

A development application has been received for the construction of a carport at Unit 1 No. 10 Chardonnay Crescent, Tweed Heads South, otherwise known as Lot 1 SP 50344. The carport would be constructed of a flat roofed metal attached to the eastern wall of Unit 1 and would be 4.2m wide and 8.15m long, extending from the existing eaves line to within 100mm of the property boundary.

The site comprises a single storey brick and tile dual occupancy located within a residential cul-de-sac of similar style properties. Originally, both dwellings would have been accessed from a driveway located to the west of the site however a secondary driveway has been constructed without Council approval to the eastern side of Unit 1. This application seeks the construction of a carport over the unlawful secondary driveway.

Surrounding properties have been notified of the proposal however no submissions have been received. Council's Building Unit have provided conditions of any consent and the development application did not require referral to any external parties.

The secondary driveway however has been constructed without Council approval and Council's Traffic Engineer has advised that secondary access points for dual occupancy dwellings are generally not supported. Further, a Section 138 approval notice cannot be issued for the secondary driveway as the steel placements were not sited prior to the concrete pour and the gradient for the driveway has not been checked.

The application also comprises a number of variations to Section A1 of Council's Development Control Plan (DCP) as detailed within this report. Of note, variations to the: maximum site coverage for impermeable surfaces; provision of useable and private outdoor space; provision of landscaped areas and deep soil zones are proposed as part of this application. Of note, Section A1 of the DCP states that carports must not necessitate an extra driveway additional to the driveway for a garage or other parking structure. The proposed carport does not comply with this requirement.

On this basis refusal of the proposed carport and Council is requested to seek legal advice to request that the applicant remove the unauthorised driveway and reinstate the land to its former state.

## **RECOMMENDATION:**

**That Development Application DA13/0239 for a carport (unit 1) at Lot 1 SP 50344 No. 1/10 Chardonnay Crescent, Tweed Heads South be refused for the following reasons:**

- 1. The proposed carport structure would necessitate the approval of an unauthorised secondary driveway located in the only area available to Unit 1 for useable private open space. The development would therefore be contrary to Section A1 of the Tweed Development Control Plan 2008.**
- 2. The proposed carport structure and secondary driveway reduces the level of landscaping and deep soil zones available to the subject lot, contrary to Section A1 of the Tweed Development Control Plan 2008.**
- 3. The development, if approved, would set a precedent for similar development that would impact on the character and visual amenity of the Shire. The development would therefore be contrary to Clauses 4, 5, 8 and 11 of the Tweed Local Environmental Plan 2000.**

**REPORT:**

**Applicant:** Brians Patios  
**Owner:** Mrs Marjorie MA Tagliapietra  
**Location:** Lot 1 SP 50344 No. 1/10 Chardonnay Crescent, Tweed Heads South  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$5,000

**Background:**

A development application has been received for the construction of a carport at Unit 1 No. 10 Chardonnay Crescent, Tweed Heads South, otherwise known as Lot 1 SP 50344. The carport would be constructed of a flat roofed metal attached to the eastern wall of Unit 1 and would be 4.2m wide and 8.15m long, extending from the existing eaves line to within 100mm of the property boundary.

The site comprises a single storey brick and tile dual occupancy located within a residential cul-de-sac of similar style properties, originally approved under application reference D94/0495. Originally, the garages for both dwellings would have been accessed from a driveway located to the west of the site, as shown in the following image:



However a secondary driveway has been constructed without Council approval to the eastern side of Unit 1, as shown in the following image:



This application seeks the construction of a carport over the unlawful secondary driveway. The following snapshot of Council's GIS Imagery (2012) indicates that the driveway has been constructed at some point within the last year:



The secondary driveway has since been constructed within the only rear garden area available for the subject Unit. The applicant has advised that the driveway was installed without the appropriate approvals as there has been a 'miscommunication' between the applicant and their contractor. The applicant advises that the second driveway was required as the ground in that location was susceptible to water logging in the location where cars were parked on the road reserve, as the road is considered too narrow for vehicles to be parked on the road. Further, the applicant is unable to park their second vehicle in front of the garage as it blocks access for the resident of Unit 2.

No submissions have been received as a result of the notification process and owners consent from Unit 2 has been received. The subject application has been referred to the relevant departments in Council for consideration. Council's Building Unit has advised that the proposed structure is considered to be adequate from a Building Code of Australia (BCA) perspective, provided a number of conditions are applied to any consent.

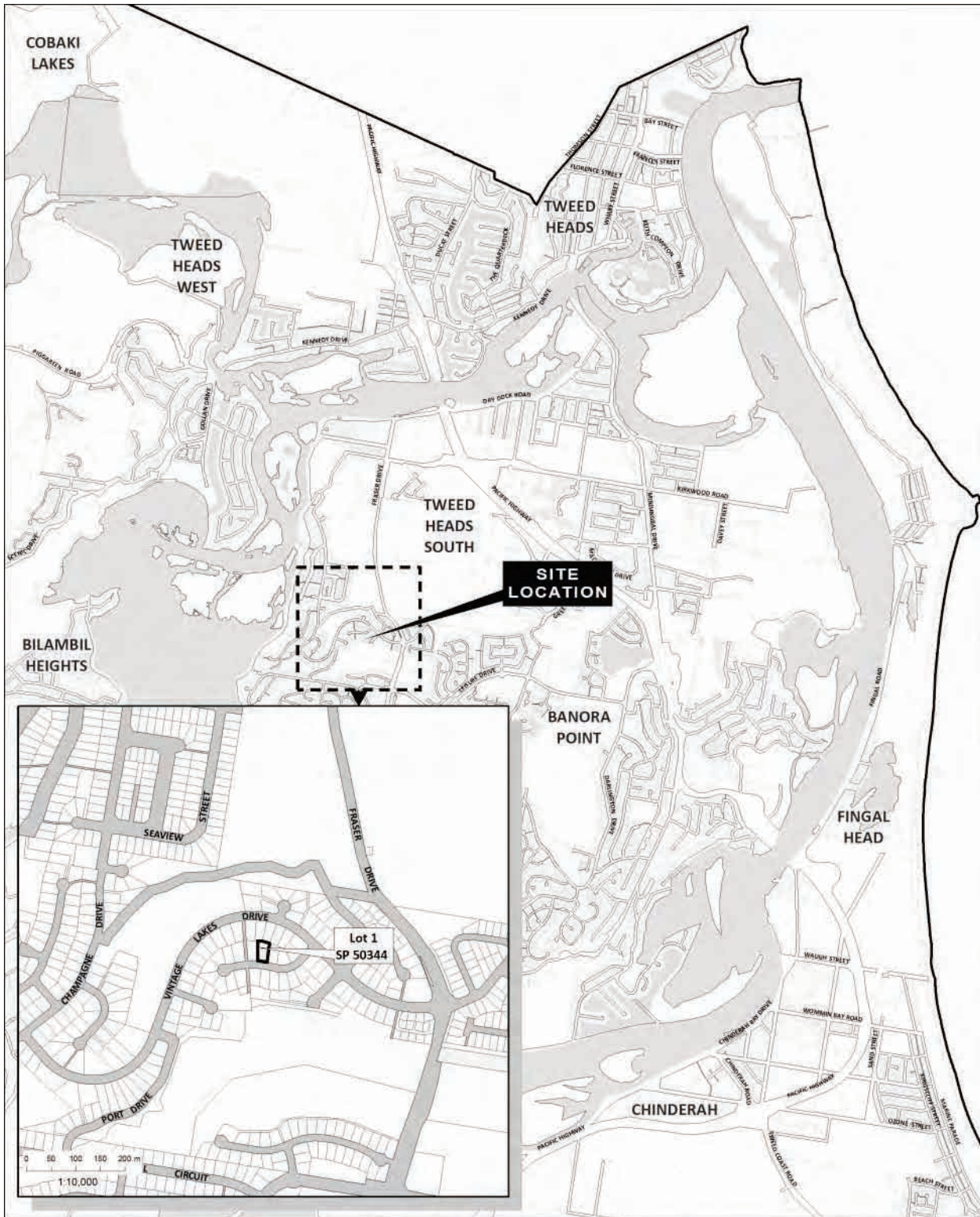
However, in relation to the secondary driveway, Council's Traffic Engineer has advised that a Section 138 approval cannot be approved retrospectively and that secondary driveways for dual occupancies are not normally supported.

In respect of Section A1 of the DCP, there are a number of variations to the Controls in relation to: maximum site coverage for impermeable surfaces; provision of useable and private outdoor space; provision of landscaped areas and deep soil. Of note, Section A1 of the DCP states that carports must not necessitate an extra driveway additional to the driveway for a garage or other parking structure. The proposed carport does not comply with this requirement.

It is considered that the approval of this application would set a precedent for the approval of similar development, which would in turn have a harmful cumulative impact on the character of low density residential environments within the Shire.

On this basis refusal of the proposed carport and Council is requested to seek legal advice to request that the applicant remove the unauthorised driveway and reinstate the land to its former state.

**SITE DIAGRAM:**



**Locality Plan**

DA13/0239 - Lot 1 SP 50344  
 No. 1/10 Chardonnay Crescent, TWEED HEADS SOUTH

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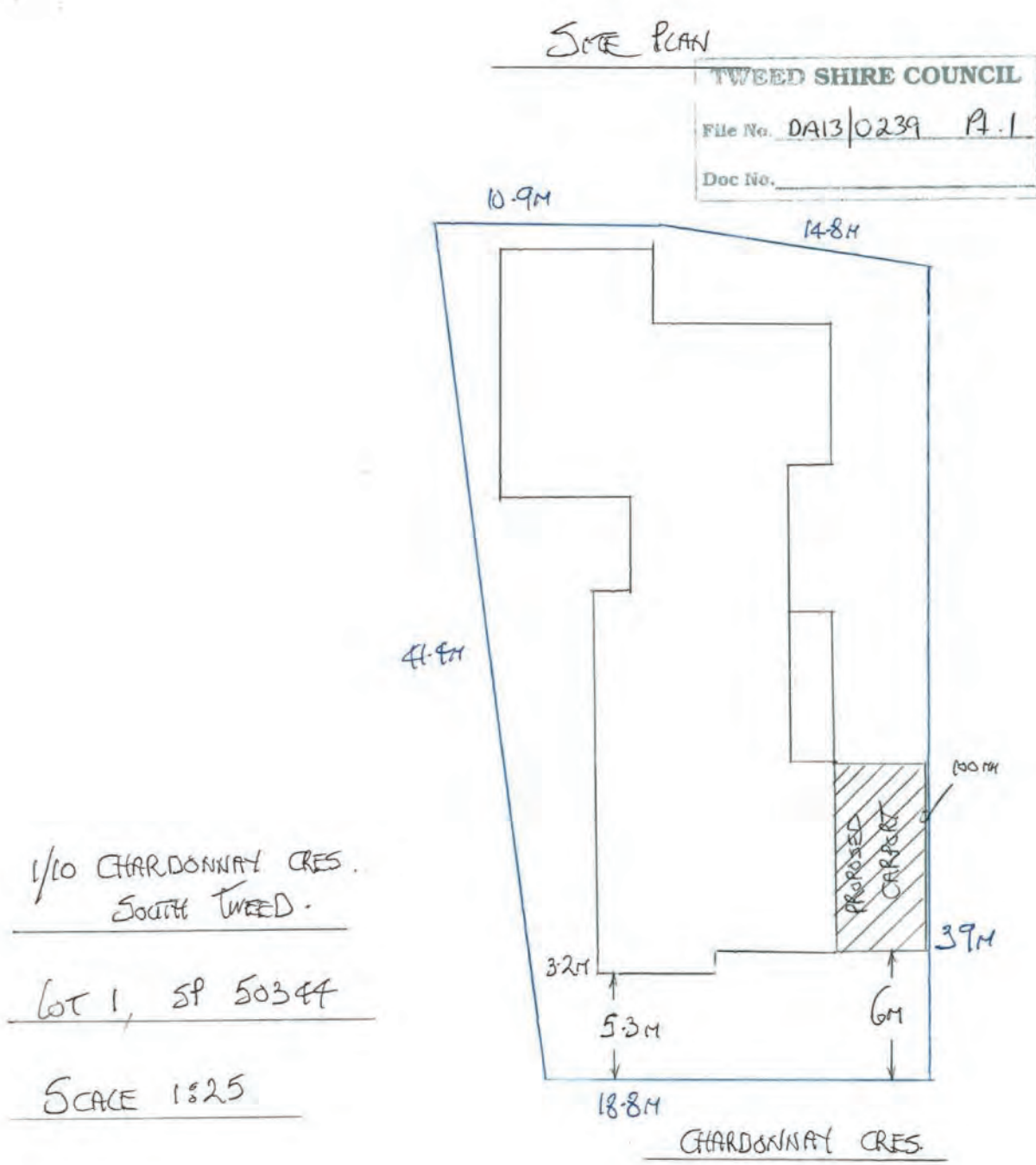


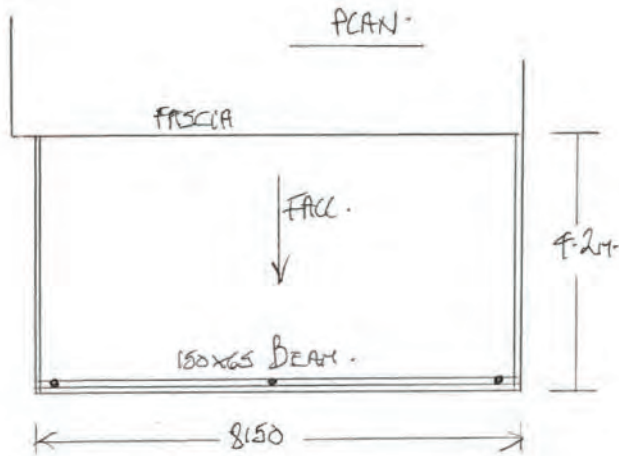
Civic and Cultural Centre  
 3 Tambouran Road  
 Murrumbidgee NSW 2484  
 PO Box 816  
 Murrumbidgee NSW 2484  
 T | (02) 6670 2400 | 1300 262 872  
 F | (02) 6670 2429  
 W | www.tweed.nsw.gov.au  
 E | planning@tweed.nsw.gov.au





DEVELOPMENT/ELEVATION PLANS:

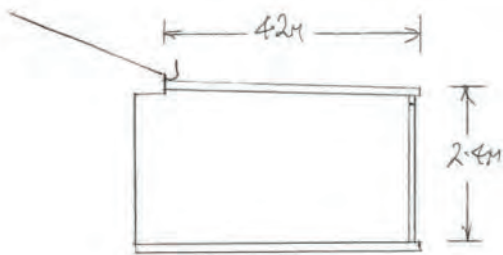




FRONT ELEV



SIDE ELEV



\* SPECS

\* ALL DECK CORRUGATED ROOFING.

\* 150x65 CORRUGATED BEAM.

\* 65x65 ALUM. POSTS TO SCAB

\* CORRUGATED GUTTER.

\* OP TO S/WATER.

\* COLORS TO MATCH

\* EXISTING.

1/10 CHARBONNAY CRES,  
SOUTH TWEED.

LOT 1, SP 50344

SCALE 1:100

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

*The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.*

The proposed carport is of a relatively minor nature and scale however given the proposal would be located on an unauthorised secondary driveway the approval of such a development would set a harmful precedent for similar development to occur within the Shire.

It is considered that the proposal would not be consistent with Clause 4.

Clause 5 - Ecologically Sustainable Development

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

In general it is considered that the scale and nature of the proposal is minor and, when considered in isolation, would not conflict with principles of ESD. However, if approved, the proposal would set a harmful precedent for the construction of secondary driveways, which may reduce the availability of landscape areas and sufficient deep soil zones within the subject allotment and reduce the provision of/or necessitate the removal of vegetation within the road reserve.

It is considered that the proposal would not be consistent with Clause 5.

Clause 8 - Consent Considerations

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

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

The subject site is located within the 2(c) Urban Expansion Zone within the current Tweed Local Environmental Plan (LEP) 2000. It is considered, for reasons outlined within this report, that the proposal would not be consistent with the objective of the zone in which it is located nor other aims and objectives of this Plan. Of note, if approved, the development may set a harmful precedent for similar development to be carried out within the Shire.

Clause 11 - Zone Objectives

The subject site is located in the 2(c) Urban Expansion Zone. The objectives of the zone are as follows:

Primary Objective

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

Secondary objectives:

- To allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.
- To ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.
- To enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.

The proposal seeks the construction of a carport structure in association with a previously approved dual occupancy development located in an established residential area. Therefore the proposal would have limited repercussions on the long-term development potential of the 2(c) Zone.

However, the proposed carport would be located over an unauthorised secondary driveway located in the only area available to the Unit for private open space. Further, the approval of a secondary driveway in this location would set a harmful precedent for similar development within the Zone.

On this basis it is considered that the proposal would not be consistent with the Primary Objective of the Zone, that seeks to ensure the optimal utilisation of such land consistent with environmental constraints.

Clause 15 - Essential Services

The site is connected to essential services. The proposed carport would not raise any concerns in relation to such services.

Clause 16 - Height of Building

The proposed carport would be single storey and therefore raises no implications in respect to Clause 16.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as comprising Class 2 Acid Sulfate Soils. Council's Environmental Health Unit have informally advised that for development that results in excavations of less than 10 tonnes of material, within the Class 2 Acid Sulfate Soils, that an ASS Management Plan for Minor Works would have been carried out prior to works. Such a plan would have detailed the method of treatment of soils if transported from the site.

Given the subject site is located within an established residential area, where much of the soil has already been disturbed, it was considered unlikely that matters relating to ASS would be considered a significant issue in this instance.

### Clause 34 - Flooding

The site is flood prone being affected by the Probable Maximum Flood (PMF) inundation area. The proposed carport raises no significant implications in respect of flood evacuation. The proposed structure would not be enclosed and would be constructed of flood compatible materials.

### Other Specific Clauses

#### Clause 39A – Bushfire Protection

The subject site is partially bushfire prone and therefore this clause applies. Given the proposal relates to the construction of a carport only, to be constructed of non-combustible materials such as metal sheeting and aluminium supports, the proposal would be considered unlikely to result in any additional risk to built assets or people nor increase the threat of bushfire to ecological or environmental assets.

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

#### Clause 54 - Tree Preservation Order

The subject site is covered by the Tweed Shire Council 2011 (Koala Habitat) Tree Preservation Order (TPO). The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

Details of tree removal to necessitate the construction of the secondary driveway access have not been received. Council's aerial imagery (2012) appears to indicate that no trees were removed to necessitate the driveway, either within the side setback of Unit 1 or within the road reserve. Given the site is located within an established residential area it is considered unlikely that the proposal would impact on matters relating to Koala feed trees.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 32B: Coastal Lands

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

The proposed carport does not raise any issues of significance in relation to Clause 32B given the scale and nature of the proposed development, ancillary to an existing dual occupancy development within an established residential area. However, if approved, the proposal would set a harmful precedent for the construction of secondary driveways on dual occupancy lots. This may impact significantly on the visual amenity and character of residential land within the Shire as well as necessitate the removal of street trees and vegetation within road reserves.

Therefore the proposal is considered to be contrary to the objectives of this clause.

##### SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The Policy aims to, amongst other things, protect and manage the natural, cultural,

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

The nature of this application is relatively minor in scale and when considered in isolation has no serious implications in respect of this Policy. However, approval of the proposal would result in the loss of the only available private open space for the Unit and would result in the approval of a secondary driveway. As detailed within this report, the approval of this application would set a harmful precedent for similar development within the Shire.

Therefore the proposal is considered to be contrary to the objectives of this Policy.

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

The Draft Tweed Local Environmental Plan is yet to be gazetted. In this Draft the site is nominated within the R2 – Low Density Residential Zone. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment, and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

In general the proposal would be consistent with the objectives of the zone, being ancillary to the existing and previously approved dual occupancy development. However, the loss of the only area of private open space and deep soil zones available to the Unit would erode the low density character of the locality.

If approved the proposed development would set a harmful precedent for similar development within the R2 - Low Density Residential Zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A detailed assessment of Section A1 of the DCP has been carried out. The proposed carport and secondary driveway comprises a number of variations to Section A1 as summarised below:

3.1 Streetscape (Preliminaries Section)

C1. *All dwellings should address the street by ensuring important elements such as front doors and building entry areas are prominent from the building facade.*

As Unit 1 incorporates two driveways that are clearly identifiable from the street it is unclear as to which entry is the primary dwelling, exacerbating the reduced level of privacy available to the Unit.

1. General

- C1. *Dwellings and development must be consistent with the scale and character of surrounding dwellings or as envisaged through an adopted concept plan, locality plan, design statement / covenant or the like.*

Secondary driveways are generally not encouraged and the construction of a hard surface over the only area available for private open space is not supported, as detailed further within this report, and will erode the low density character of the area.

2.2 Landscaping, deep soil zones and external living areas

- C1. *A lot must include a total landscaped area consistent with Table 2 DCP A1 Part A.*

A breakdown of landscaped areas on the site has not been received however the site has an approximate area of 888m<sup>2</sup>. Table 2 states that for land at least 600m<sup>2</sup> in site area, but less than 900m<sup>2</sup>, 35% of the site should include two deep soil zones measuring a minimum of 4m in any direction.

The site coverage of built structures is approximately 87%, (not including driveways). Therefore the only area available for landscaping and deep soil zones is approximately 13% of the site area. Whilst it is noted that the development was approved before the commencement of recent requirements for adequate landscaping areas, this represents a significant variation to this control. Further, there is limited opportunity for deep soil zones within the site which is further exacerbated by the construction of the unauthorised secondary driveway.

- C3. *Sections iii and iv require each dwelling to achieve integration with landscaped areas, private open space and external living areas, and to demonstrate suitable privacy and solar access for each dwelling.*

The only area available for landscaping and deep soil zones is within the front and side (eastern) setback of Unit 1, with the side setback being the only area available for private open space. Therefore the construction of the secondary driveway has removed any opportunity for useable private open space or external living areas. The proposal is not consistent with this control.

- C7. *Deep soil zones are to have soft landscaping and cannot be covered by impervious surfaces such as concrete, terraces, outbuildings, swimming pools, tennis courts or other structures or located on structures such as basement car parks or in planter boxes.*

A breakdown of deep soil zones on the subject site has not been provided however it is evident that the most significant area available for such has been covered by a hard surface and is therefore not consistent with this control.

Controls C8 and C9 relate to details of stormwater management and request that runoff from the site is to be minimised and accommodated within the landscaped area. Whilst the secondary driveway is not considered to have serious implications from a stormwater management perspective, it is likely that increased runoff would be directed to the street as opposed to being contained on the site. The proposal would therefore be contrary to these controls.

### 3.1 Setbacks

- C5. *Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front façade, unless it can be demonstrated how the design mitigates the dominance of the garage door to the street elevation.*

The proposed carport would not be setback from the primary elevation of the building. A justification as to why this variation should be allowed has not been received and it is considered that the combined impact of both the garage and the proposed carport would dominate the front facade of the Unit.

- C7. Control C7 sets out the various criteria for a carport that encroaches within the front setback of the building line. With this regard, the proposed carport would not encroach forward of the front facade of the Unit, however, of note is C7.iii that requests that in this circumstance, a carport should not exceed *33% of the width of the allotment frontage, or 6m measured between supporting posts, whichever is the lesser.*

The proposed carport would measure approximately 4.2m in width; the existing garage measures approximately 5m in width, with the remaining frontage of the dwelling being 6.5m in width. Therefore the combined frontage of the carport and garage would equate to approximately 56% of the Unit, which is a significant proportion of the building's frontage.

### 3.3 Site Coverage

- C1. *The maximum site coverage and all ancillary development on a lot must be consistent with Table 4 Site Coverage within DCP A1 - Part A.*

Table 4 states that the maximum site coverage for a lot at least 450m<sup>2</sup> but less than 900m<sup>2</sup> is 50%. Please note that driveway structures are not included within the calculation of site coverage. A detailed breakdown of site coverage has not been provided however the site area is approximately 888m<sup>2</sup>. Unit 1 has an approximate area of 378m<sup>2</sup> and Unit 2 is 400m<sup>2</sup>, as approved under D94/0495. Existing site coverage is therefore approximately 88%. It is acknowledged that the dual occupancy development was approved some time ago and prior to the current controls in relation to site coverage. However, this represents a significant variation from this requirement.

### 4.6 Garages, Driveways and Car Parking

- C1. *Car parking and driveways are to be in accordance with Section A2 of the Tweed Shire Development Control Plan and Council's Driveway Design Specification.*

Section A2 of the DCP requires one space per one bed and two spaces per two bed plus provision for driveway parking for another vehicle. Both units comprise three bedrooms. Unit 1 comprises a garage for one vehicle and one parking space on the driveway and therefore does not meet the current requirements as set out in Section A2. However, the dual occupancy development was approved prior to the current car parking standards.

Section 3.2 of Council's Driveway Access to Property Design Specification states that only one driveway is generally permitted for each property adjoining a public road. Section 4.2 states that approved driveways must be



at least 6.5m apart, or multiples thereof, so as to preserve on street car parking.

Secondary driveway access is assessed on an individual basis and in most cases, Council's Traffic Engineer has advised, that secondary access for dual occupancy development is unlikely to be supported. The unauthorised secondary driveway for Unit 1 is located approximately 9m from the existing driveway on the subject site and therefore technically complies with Section 4.2 of Council's Driveway Access to Property Design Specification.

However, should a Section 138 application was to be lodged with Council for the construction of the driveway, it would need to be in accordance with Council's Design Specifications. Council's Traffic Engineer has advised that at least part of the unauthorised driveway would need to be removed and reconstructed to these standards. Further, no inspection was undertaken by Council Officers prior to concrete placement to verify reinforcing compliance or the depth of the concrete pour.

C2. *Carports and garages visible from the public street are to:*

- i. *Be compatible with the building design, including roofs; and*
- ii. *Be treated with materials and colours and windows which ensure the garage or carport is less visibly intrusive to the streetscape.*

The proposed carport would be of a simple, utilitarian flat roofed design constructed of metal sheeting with aluminium supports. Given the cross hipped roof formation of Unit 1 it is considered that the proposed carport, when considered in isolation, would be relatively compatible with the existing dwelling.

C4. *Vehicular movement, driveways and parking areas are to be designed to minimise dimensions, to reduce hard surfaces on the lot, and increase the area available for landscaping. Permeable driveway surface treatments are encouraged.*

An unauthorised secondary driveway has been constructed that has significantly reduced the area available for landscaping and deep soil zones within the front and side setback of Unit 1 and therefore does not comply with this control.

C12. *Carports cannot be wider than two car spaces width or 6 metres.*

The proposed carport would not be wider than two car spaces or 6m and therefore complies.

C14. *Carports must not necessitate an extra driveway additional to the driveway for a garage or other parking structure.*

The proposed carport would not comply with this control as it would be located on an additional secondary driveway.

#### A2-Site Access and Parking Code

As detailed above, Section A2 of the DCP requires one space per one bed and two spaces per two bed plus provision for driveway parking for another vehicle. Both units comprise three bedrooms. Unit 1 comprises a garage for one vehicle and one parking space on the driveway immediately in front of the garage and therefore complies with the current parking

standards. However, given the narrow nature of the driveway, there is no provision for visitor parking spaces for Unit 1 on the driveway.

The applicant has advised that there is insufficient space in the driveway in front of the garage to accommodate an additional car parking space and to allow the occupants of Unit 2 access to their property. It is considered that there is sufficient room to accommodate an additional standard vehicle, parked in a stacked formation in front of the garage. However, the applicant also advises that, given the narrow nature of Chardonay Crescent, there is limited opportunity for on street visitor parking.

The following snapshot of Council's GIS imagery indicates that a number of vehicles park on the road reserve as opposed to on the street itself which supports the applicants claim with this regard:



However, the dual occupancy development was approved prior to the current car parking standards and the difficulty in granting a retrospective approval for the secondary driveway is that Council is uncertain as to whether it accords with Council's Driveway Access to Property Design Specification and, as detailed within this report, it would set a harmful precedent for similar development within the locality.

#### A3-Development of Flood Liable Land

The subject site is flood prone however it is considered unlikely that the proposed carport structure would exacerbate the risk of flooding. The structure would be open on three sides and would be constructed of flood compatible materials. It is considered that the proposal would be consistent with Section A3.

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

##### Clause 92(a) Government Coastal Policy

The subject site is coastal land and therefore this Policy applies. However, the proposed carport structure would have limited impact on matters relating to Clause 92(a).

##### Clause 92(b) Applications for demolition

The application does not comprise any demolition works.

##### Clause 93 Fire Safety Considerations

The development application has been referred to 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

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.

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

**Tweed Shire Coastline Management Plan 2005**

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the subject site, within an established residential area and a significant distance from the coastal foreshore, it is considered that the proposal is consistent with the objectives of the clause.

**Tweed Coast Estuaries Management Plan 2004**

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

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

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

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

Context and Setting

The approval of the proposed carport would necessitate the retention of the unauthorised secondary driveway and therefore, the removal of the only area available for the Unit for private outdoor space, landscaping and deep soil zones. The approval of this application would set a precedent for similar development within the Shire which, cumulatively, would conflict with the intentions of Section A1 of the DCP, which seeks to create liveable dwellings, integrated with external living areas, private outdoor space and reducing the dominance of driveways and hardstand areas.

Access, Transport and Traffic

As detailed within this report, the application seeks the construction of a carport over an unauthorised secondary driveway to create an additional access and parking area for Unit 1. It is considered that the approval of the secondary driveway would set a precedent for the similar development within the locality.

Flora and Fauna

It is uncertain whether the installation of the secondary driveway required the removal of significant vegetation. Council's aerial imagery of the site (2012) does not indicate any significant trees or vegetation within the front or side setback of Unit 1.

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

Surrounding Landuses/Development

Surrounding development comprises low density detached and attached dual occupancies and single dwellings, the majority of which are single storey. The area is characterised by open and landscaped front setbacks with single driveways serving each property. Most properties in the area comprise garages with a small number of properties containing covered carports.

The proposed carport would be unlikely to impact on the residential amenity of the neighbouring property. From a design point of view, the proposed carport would be relatively light weight and unobtrusive. However, as detailed within this report, the approval of the subject carport, and therefore the retention of the secondary driveway, may create a precedent for similar development within the area. It is considered that such development would erode the low density feel of the locality, clutter front setbacks and road reserves with additional and unwarranted hard surfaces and reduce the opportunity for landscaping and deep soil zones as well as reduce the opportunity for private and useable open space for Unit 1.

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

No submissions have been received for the proposed development.

**(e) Public interest**

The proposed carport, when considered in isolation, raises no significant issues in relation to the public interest. However, if approved, the proposed carport (and retention of the secondary driveway) may set a precedent for similar development which may impact significantly on the character and appearance of such low density residential areas within the Shire.

**OPTIONS:**

1. Refuse the application for the proposed carport and seek legal advice to request the applicant to remove the secondary driveway and reinstate the land to its former condition; or
2. Refuse the application for the proposed carport and commence proceedings to issue a Infringement Notice; or
3. Give in-principle approval to the application for the proposed carport and bring back a further report to Council with recommended conditions of consent. The applicant should be requested to also regularise the secondary driveway by obtaining a Section 138 approval, and make the necessary changes to the design to ensure compliance.

Council officers recommend Option 1.

**CONCLUSION:**

This application proposes a carport to be constructed over an unauthorised secondary driveway within an established low density residential area. The applicant has advised that the relevant approvals for the secondary driveway was not obtained as a result of

miscommunication with their builder and that the reason the driveway is required is to facilitate adequate onsite parking.

Whilst the applicants justification for the additional driveway is acknowledged, for reasons outlined within this report, it is considered that the approval of the carport (and therefore secondary driveway), would be contrary to the controls as set out within Section A1 of the DCP. Further, the approval of this application may also set a precedent for similar development within the Shire. On this basis the proposed carport is recommended for refusal and it is requested that Councillors obtain legal advice in respect of reinstating the land to its former condition.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Councillors may resolve to refuse the development application and seek legal advice to remove the secondary driveway and reinstate the land to its former condition.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**33 [PR-CM] Development Application DA13/0130 for a Rural Industry and Roadside Stall (Staged Development) at Part Lot 5 DP 599760 and Part Lot 5 DP 599760 No. 720 Clothiers Creek Road, Clothiers Creek**

**SUBMITTED BY:** Development Assessment

**FILE REFERENCE:** DA13/0130 Pt1



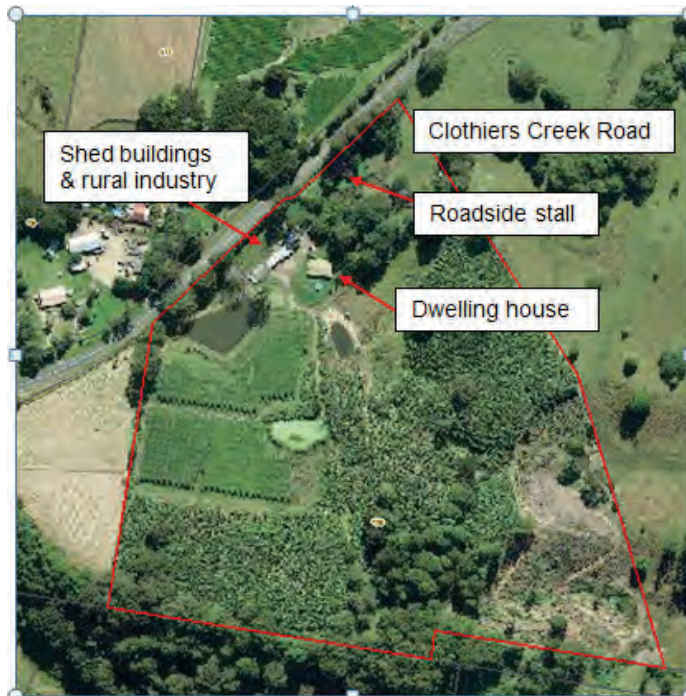
## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

Consent is sought for a rural industry and roadside stall on an existing rural property. The site is currently used for agricultural purposes and comprises a dwelling house, shed buildings, an existing roadside cart stall and agricultural activities, as shown in the following image.



**Figure 1 - Site Plan and location of key features**

The existing roadside stall is located to the east of Clothiers Creek Road and is accessed via an unsealed turnaround area that circles the cart and allows vehicles to exit the site in a forward direction. The dwelling house and rural industry are accessed via a separate unsealed driveway with parking available for a number of vehicles.

The application proposes the following staging of the development:

- Stage 1 would incorporate a rural industry in part of an existing steel shed. The nature of the rural industry would be the processing of the banana and passionfruit that are grown on the subject site and in the locality. The existing roadside stall was established without consent a number of years ago and this Development Application is to regularise the current roadside stall. Goods would continue to be sold from the existing roadside stall (cart). Please note that the fitting out of the existing shed has already been completed and the rural industry is fully operational.
- Stage 2 would comprise the construction of a permanent structure for the operation of a roadside stall. The proposed permanent roadside stall would have a gross floor area (GFA) of 20m<sup>2</sup>. No alterations are proposed to the existing car parking and manoeuvring area as part of the Stage 2 works. The applicant advises that the amended location of the proposed structure will enable the existing vehicular circulation area to be retained with the proposed structure to be setback 7.79m from the rainforest tree and 8.45m to the creek.

Please note that originally, the existing informal parking and turning area was proposed to be increased within Stage 2. Following concerns from Council's Natural Resource Management (NRM) Unit in relation to the proximity of the proposed Stage 2 structure and associated car parking area to the creek and protected rainforest tree, the applicant proposed to delete Stage 2 from the development application. However, as detailed above, the applicant wishes to continue with the Stage 2 works and has amended the location of the stall in order to retain the existing car park and turning area.

The proposed development would provide the following setbacks to Clothiers Creek Road:

- Stage 1 - roadside stall (within existing structure) - 3.2m;
- Stage 1 - rural industry (within existing shed building) - 15.6m;
- Stage 2 - permanent roadside stall building - 5.02m.

On this basis the proposed rural industry and roadside stall (as proposed within Stage 1 and Stage 2 of the development) would be located within the 30m setback distance to a designated road, as prescribed within Clause 24 of the Tweed Local Environmental Plan (LEP) 2000. Tweed Shire Council has assumed concurrence under SEPP No. 1 for this development standard, however the proposal requires referral to a full Council meeting for determination.

The application has been reviewed internally by the relevant departments within Council and appropriate conditions of approval have been recommended that will be applied to any development consent.

Council Officers relayed concerns with Stage 2 (permanent roadside stall structure) of the proposed development and the increase in car parking and gravel manoeuvring area and the impact this may have on the mapped waterway (creek). The applicant resolved to delete Stage 2 however has recently provided amended plans that have reintroduced this component of the development. A number of conditions will be applied to any consent to ensure that the development does not involve any alterations to the existing car parking and manoeuvring arrangements and that adequate setbacks from the waterway can be achieved and vegetation on the site can be protected.

Following assessment of the proposed development Council's records revealed that Clothiers Creek Dip is located within the general vicinity of, or beneath the existing shed



structure (and location of proposed rural industry). The applicant was requested to provide further details with this regard and provide an assessment of the proposal against the relevant contaminated lands provisions. Council's Environmental Health Unit has advised that sufficient information in relation to land contamination has been received to enable the approval of the proposed development, subject to a number of conditions being applied to any development consent.

Further, during a site inspection it was evident that the Land Application Area (LAA) servicing the existing dwelling was failing and discharging into a gully. It is noted that an approval to operate an On Site Sewage Management System (OSSM) servicing the existing dwelling has not been issued. The applicant was therefore requested to provide further details to demonstrate that an adequate system(s) of wastewater management is capable of being installed and operated on the subject site. Council's Environmental Health Unit have considered that the applicant has demonstrated that sufficient information has been presented to ensure that an adequate OSSM may be accommodated on the site and appropriate conditions will be applied to any consent with this regard.

The application was notified to surrounding properties for 14 days from Wednesday 10 April 2013 to Wednesday 24 April 2013. No submissions have been received.

Conditional approval of the application (inclusive of the SEPP No. 1 objection) is recommended.

## **RECOMMENDATION:**

**That:**

- A. That Council assumes the Director's Concurrence under the State Environmental Planning Policy No. 1 in respect of Clause 24 of the Tweed Local Environmental Plan 2000 in regards to setbacks to a Council designated road.**
- B. That Development Application DA13/0130 for a rural industry and roadside stall (staged development) at Lot 5 DP 599760 No. 720 Clothiers Creek Road, Clothiers Creek 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:**
  - 1478E Amendment 3 Sheet 1 (Location Plan and Stage 1 Site Plan);**
  - 1478E Amendment 3 Sheet 2 (Location Plan and Stage 2 Site Plan);**
  - 1478E Amendment 3 Sheet 3 (Stage 1 Rural Industry Floor Plan);**
  - 1478E Amendment 3 Sheet 4 (Stage 1 Rural Industry Floor Plan);**
  - 1478E Amendment 3 Sheet 5 (Stage 1 Rural Industry Elevations);**
  - 1478E Amendment 3 Sheet 6 (Stage 2 - Roadside Stall Floor Plan and Elevations)**

**Prepared by Parameter Designs and dated 29 July 2013, except where varied by the conditions of this consent.**

[GEN0005]

- 2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).**

[GEN0065]

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

[GEN0115]

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

[GEN0265]

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. **Bushfire Asset Protection Zones**

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

- (a) At the commencement of building works and in perpetuity the property around the building shall be managed as follows 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':

- (i) North for a distance of 10 metres as an asset protection zone;
- (ii) South for a distance of 10 metres as an asset protection zone;
- (iii) East for a distance of 10 metres as an asset protection zone;
- (iv) West for a distance of 10 metres as an asset protection zone.

(Note: in forested areas a portion of the APZ may be maintained as an outer protection zone as specified in Table A2.7 of 'Planning for Bush Fire Protection 2006'.)

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

[GEN0320]

8. **Bushfire Water and Utilities**

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

- (a) Water, electricity and gas are to comply with the following requirements of section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

- (b) A10,000 litre water supply shall be provided for fire fighting purposes. A 65mm storz fitting and ball valve or gate valve shall be installed on any tank designated for fire fighting purposes.
- (c) Polycarbonate/plastic tanks shall be shielded from the impact of radiant heat and direct flame contact.
- (d) A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
- (e) A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.
- (f) 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. Polymer sheathed flexible gas supply lines to gas meters adjacent to building are not to be used.

[GEN0325]

#### **9. Bushfire Access**

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation.

- (a) Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

[GEN0330]

- 10. Appropriate erosion and sediment control shall be provided 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".

[GENNS01]

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

[GENNS02]

- 12. Only primary products produced or processed on the property on which the stall is situated are permitted to be sold from the roadside stall as indicated within Stage 1 and Stage 2 of the development hereby approved.

- 13. The signage hereby approved shall not include any internal illumination, unless otherwise approved in writing by the General Manager or delegate officer.

- 14. The stall shall not be adapted or used for any purpose other than a roadside stall without prior consent from Council's General Manager or delegate.

[GENNS03]

- 15. Within three months of the date of this Development Consent the applicant is required to lodge an application to install/operate an on-site sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval. Any approval to install shall be in accordance with the On-site Sewage Management Assessment Report - Rural Industry, HMC2013.065OSSM, prepared by HMC

**Environmental Consulting PL dated 2 July 2013 and correspondence dated 6 August 2013 or where varied by these conditions.**

**Any application to install/operate an on-site sewage management system shall include the following:**

- (i) A high level waste water alarm,**
  - (ii) A flow rate meter to monitor wastewater discharges from the fruit processing preparation area,**
  - (iii) Site specific management plan addressing installation and operation of the system in areas where contaminated soil has been identified,**
  - (iv) Measures to adequately protect the land application area infrastructure from damage by other farming operations.**
- 16. An Environmental Management Plan shall be compiled to the satisfaction of the General Manager or delegate within three months of the date of this Development Consent. The Plan shall be in accordance with the Preliminary Site Contamination Investigation - Site History, Report No. 2013.065 CL, prepared by HMC Environmental Consulting PL dated June 2013 and correspondence dated 6 August 2013 except where varied by conditions of this consent. The Plan shall detail remedial actions and management of infrastructure to ensure the ongoing suitability of the site for the development in accordance with relevant guidelines as approved under the provisions of the NSW Contaminated Land Management Act 1997.**
- [GENNS04]**
- 17. Habitat restoration works are to undertaken within the area described as 'Habitat Restoration Area' ('HRA') that is to be an area of minimum six metres wide measured landward and to the north-west from the top bank (the top bank taken as being situated 19 metres from the north-western Lot boundary as shown on Plan No. 1478E Rev. 3 Sheet 2 of 6 (Proposed Development Plan) dated 29 July 2013 prepared by Parameter Designs of Clothiers Creek for a length of approximately 40 metres between and parallel to the 'Existing Gravel Car-parking & Manoeuvring Around Stall' feature (as shown on the aforementioned plan) covering an area of approximately 260m<sup>2</sup>. The following habitat restoration works shall be completed within the nominated HRA within three months of the date of this Development Consent to the satisfaction of the General Manager or his delegate:**
- a. Installation of native tube-stock sourced locally and to be planted at a density of one plant per square metre across the entire HRA using a selection of species listed in 'Attachment 1' provided with this approval. Species selected from the attached list and subsequently installed shall comprise of 60% Large Trees/Trees/Small Trees, 20% Shrubs and 20% Grasses to generally reflect the structure and floristic assemblage of a riparian Sub-tropical/Warm Temperate Rainforest vegetation community (TVMS Code 102).**
- 18. The *Syzygium francisii* (giant Water Gum) as shown on Plan No. 1478E Rev. 3 Sheet 2 of 6 (Proposed Development Plan) dated 29 July 2013 prepared by Parameter Designs shall be retained and protected. The specified tree shall be provided a structural barrier (i.e. bollards) to be installed a minimum**

two metres from the base of the tree. The barrier/s shall be installed within three months of the date of this Development Consent.

19. Within three months of the date of this Development Consent, application on shall be made to and approved by Tweed Shire Council under Section 138 of the Roads Act 1993 for the provision of sealed driveway accesses for the Rural Industry development and the Roadside Stall, in accordance with Council's Development Control Plan Section A2 - *Site Access and Parking Code* and Council's "*Driveway Access to Property - Part 1* " Design Specification June 2004.

The application must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Driveway works;
- Stormwater drainage;
- Sediment and erosion control plans;
- Location of all services/conduits.

[GENNS05]

20. A maximum of one delivery vehicle for produce not grown on the site is permitted per week in association with the rural industry. Any additional deliveries in association with the rural industry will require further development consent from Council.

21. Section 94 Contributions

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

All Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council within six (6) months of the date of this development consent.

**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:

0.17 Trips @ \$1871 per Trips \$318

(\$1807 base rate + \$64 indexation)

S94 Plan No. 4

**Sector10\_4**

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

22. 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]

**PRIOR TO COMMENCEMENT OF WORK**

23. The erection of the Stage 2 Roadside Stall 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]

24. 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]

- 25. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

[PCW0985]

#### **DURING CONSTRUCTION**

- 26. All proposed works are to be carried out in accordance with the conditions of development consent, approved Section 138 Application, drawings and specifications.

[DUR0005]

- 27. Construction 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]

- 28. 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]

29. 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]

30. 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]

31. 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]

32. 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]

33. 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]

34. 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]

35. 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]

36. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the rural industry development or the roadside stall shall be repaired in accordance with Councils Development Design and Construction Specifications.

[DUR1875]

37. 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]



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

[DUR2205]

39. Plumbing

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

[DUR2495]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POC0205]

41. 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](http://www.foodnotify.nsw.gov.au) or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

42. 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]

43. The food business shall be registered with Tweed Shire Council's Public Health Register for Private Water Suppliers and the appropriate fees paid in accordance with Council's adopted Fees and Charges Policy.

44. Within one month of the date of this Development Consent being issued copies of 3 plans drawn to a scale of 1:50 detailing the following with regards to all food related areas, in accordance with the Food Act 2003 and AS4674:2004 Design, Construction and Fit-out of Food Premises shall be provided to Council's Environmental Health Officers for assessment and approval:

- 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;
- f. Servery areas including counters etc.

Following approval of the internal fitout of the Rural industry and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval within seven days.

[POCNS01]

## USE

45. 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]

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

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

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

[USE0315]

47. 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]

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

[USE0875]

49. Habitat restoration works within the nominated 'Habitat Restoration Area' ('HRA') shall be maintained for a period of six months to be taken immediately following successful installation of all plants. The HRA shall be maintained free of environmental weeds and achieve a 90% survival rate for all planted stock at the completion of the maintenance period. Following this period the 'HRA' shall be retained and maintained at all times to the satisfaction of the General Manager or his delegate.

50. The *Syzygium francisii* (Water Gum) as shown on Plan No. 1478E Amendment 3 Sheet 2 of 6 dated 29 July 2013 prepared by Parameter Designs (reference to this plan does not assume approval for any works, facilities or structures it is to be used only for the purposes of tree identification) shall be retained and protected during construction and operation of the use for the life of the development the subject of this approval.

[USENS01]

51. A safe and secure potable water is to be available, at all times, to the food business for washing food ingredients, cooking, adding to food and drinks, making ice, cleaning, sanitising and personal hygiene.

52. The provision of potable water shall be in accordance with the Water Supply Management Plan prepared in accordance with the NSW Health *Private Water Supply Guidelines 2008* and *Australian Drinking Water*

***Guidelines 2011*** and any subsequent amendments to the Guidelines. The Plan shall be made available on-site at all times to any authorised officer of Council upon reasonable request.

53. The food stall shall be utilised for the sale of whole fruit and vegetables only. No food preparation is permitted.

[USENS01]

**REPORT:**

**Applicant:** Mr TJ Johnson  
**Owner:** Mr Timothy J Johnson and Mrs Louise C Johnson  
**Location:** Lot 5 DP 599760 No. 720 Clothiers Creek Road, Clothiers Creek  
**Zoning:** 1(a) Rural  
**Cost:** \$50,000

**Background:**

Tweed Shire Council has received a development application for a rural industry, temporary roadside stall and construction of a permanent roadside stall to be carried out at Lot 5 DP 599760, otherwise known as No. 720 Clothiers Creek Road.

The subject property provides an area of 9.54 hectares with a frontage of Clothiers Creek Road of approximately 237m. The site is currently used to produce banana, passionfruit and other seasonal fruit and vegetable crops. The site also contains a dwelling house and a number of steel shed structures to the northwest of the existing dwelling. There is also a mapped waterway that forms part of the upper reach of Clothiers Creek which traverses the site conveying water to the east. Part of this waterway is located approximately 14m to the rear (south) of the existing roadside stall and turning/parking area.

The proposed development would be carried out in two stages as follows:

Stage 1 would incorporate the use of part of an existing steel shed located near the Clothiers Creek Road frontage as a rural industry. The rural industry comprises the processing of the banana and passionfruit that are grown on the subject site and in the locality. The fruit is manufactured into a pure fruit pulp or a dried fruit product. The applicant owns the rights to the locally developed banana variety that is cultivated on the site and under licence on other properties, known as LG1, with a trademark of 'Little Gem'. The applicant advises that the development of this particular product is significant due to its qualities, such as resistance to common fruit disease and oxidation, which makes it suitable for processing.

The rural industry occupies a floor area of 39.24m<sup>2</sup> and is setback from Clothiers Creek Road by 15.6m. The rural industry would be operated by residents of the existing dwelling house on the subject site. Proposed hours of operation would be 7.00am to 7.00pm Monday to Saturday. Operating hours may be extended during peak seasonal periods in order to meet demand.

It is understood that the fitout of the existing shed building has already been carried out and the rural industry is already in operation. This application seeks to regularise the activity.

There is an existing roadside (small covered cart, approximately 3m<sup>2</sup> in floor area) stall located adjacent to Clothiers Creek Road frontage. The stall is located 3.2m from the road reserve. This application seeks to regularise the existing roadside stall. The applicant has advised that they have operated a roadside stall on the subject property and at other properties in the locality for the past 25 years. The stall would continue to be operated by residents of the property by an 'honesty system' and therefore would not be permanently staffed. The applicant advises that the stall would therefore be available over extended hours due to the nature of its operation. The applicants advise that a maximum of three customers visit the stall at any one time, with an estimation of approximately 20 vehicles per day in peak periods.

Signage has been proposed as part of this application with one 'A frame' sign with a display area of less than 1m<sup>2</sup> per side with the words 'Stall Here'. The sign would be located on the existing property.

Stage 2 seeks the construction of a permanent structure for the operation of a roadside stall. The proposed building would be located in the area of the temporary roadside stall as detailed in Stage 1. The proposed building would have a floor area of 20m<sup>2</sup> (4m<sup>2</sup> x 5m<sup>2</sup>) and would be setback approximately 5.02m from the road frontage.

The Stage 2 component will retain the existing gravel parking and turning area around the stall.

The Tweed Local Environmental Plan (LEP) 2000 a roadside stall is defined as follows:

*'a building or place not exceeding 20m<sup>2</sup> in floor space or area, respectively, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail'.*

The LEP 2000 defines a rural industry as:

*'Handling, treating, processing or packing of primary products in the locality and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality'.*

The roadside stall proposes to sell fruit that has been grown on the subject site and in the locality which would have been processed (pulped or dried) on the subject site. The applicant has advised that only produce grown or produced on the property will be sold and the proposal therefore complies with this requirement. Providing a condition is applied to any development consent ensuring that both the proposed roadside stall and rural industry are operated in accordance with the LEP 2000 definition of a 'Rural Industry' and 'Roadside Stall'.

The applicant has clarified that the majority of produce that is to be processed will be grown on the site and that a maximum of one delivery or dispatch of produce in association with the rural industry will occur per week. Section 94 (Plan No. 4) Tweed Road Contribution Plan contributions have been levied on this basis and a condition will be applied to any consent to permit a maximum of one delivery or dispatch within a seven day period.

A SEPP No. 1 Objection has been provided by the applicant in relation to Clause 24 - Setbacks to Designated Roads of the TLEP 2000. Clause 24 requires development for the purposes of a roadside stall within the 1(a) Rural zone to be setback a minimum of 30m from the designated road. The proposed development would provide the following setbacks to Clothiers Creek Road:

- Stage 1 - roadside stall (within existing structure) - 3.2m;
- Stage 1 - rural industry (within existing shed building) - 15.6m;
- Stage 2 - permanent roadside stall building - 5.02m.

The Director General of the NSW Department of Planning and Infrastructure has granted an interim variation for the reporting requirement for matters relating to Clause 24 of the LEP until 16 July 2013, where the variation to the development standard does not exceed 60%. This interim variation to the reporting requirement has now expired and therefore the SEPP No. 1 is reported to Council.

The application has been reviewed internally by the relevant departments within Council and appropriate conditions of approval have been recommended that will be applied to any development consent.

As detailed, concerns were originally raised from an ecological perspective in relation to the encroachment of the car parking and turning area to the waterway and the impact of the proposal on protected vegetation. The applicant has since amended the proposed development so that no alterations to the existing car parking and turning area are required and appropriate setbacks may be achieved between the development and the waterway. Appropriate conditions will be applied to the consent with this regard.

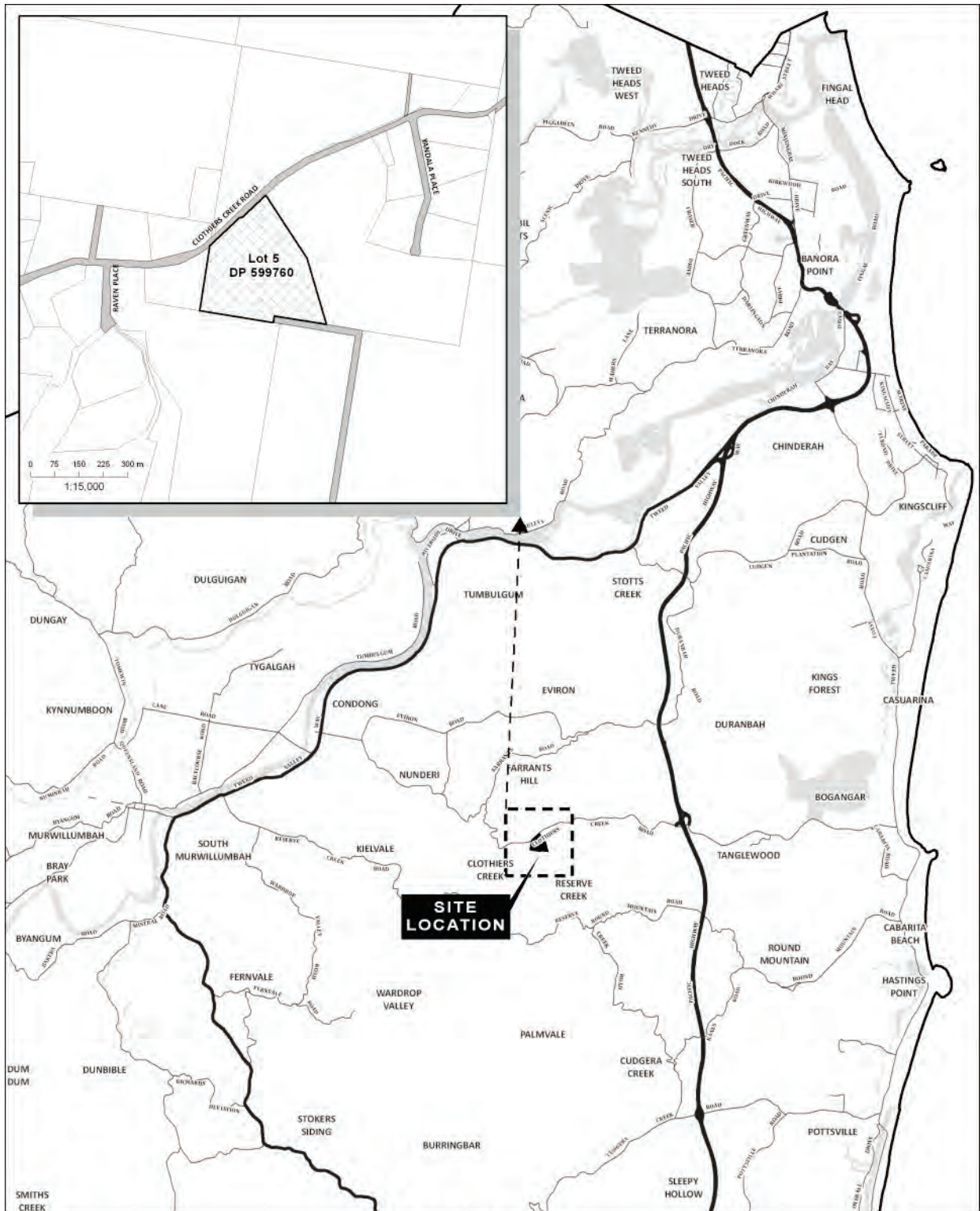
Following assessment of the proposed development Council's records revealed that Clothiers Creek Dip is located within the general vicinity of, or beneath the existing shed structure (and location of proposed rural industry). The applicant was requested to provide further details with this regard and provide an assessment of the proposal against the relevant contaminated lands provisions. Council's Environmental Health Unit has advised that sufficient information in relation to land contamination has been received to enable the approval of the proposed development, subject to a number of conditions being applied to any development consent.

Further, during a site inspection it was evident that the Land Application Area (LAA) servicing the existing dwelling was failing and discharging into a gully. It is noted that an approval to operate an On Site Sewage Management System (OSSM) servicing the existing dwelling has not been issued. The applicant was therefore requested to provide further details to demonstrate that an adequate system(s) of wastewater management is capable of being installed and operated on the subject site. Council's Environmental Health Unit have considered that the applicant has demonstrated that sufficient information has been presented to ensure that an adequate OSSM may be accommodated on the site and appropriate conditions will be applied to any consent with this regard.

The development application was notified for a period of 14 days during which time no public submissions were received.

Conditional approval of the application (inclusive of the SEPP No. 1 objection) is recommended.

**SITE DIAGRAM:**

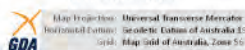


**Locality Plan**

Lot 5 DP 599760  
No. 720 Clothiers Creek Road, Clothiers Creek

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Cadastral: 20 August 2013  
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Boundaries shown should be considered approximate only.



**Civic and Cultural Centre**  
3 Tumbulgum Road  
Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484  
T | (02) 6670 2400 | 1300 292 872  
F | (02) 6670 2425  
W | www.tweed.nsw.gov.au  
E | planning@tweed.nsw.gov.au



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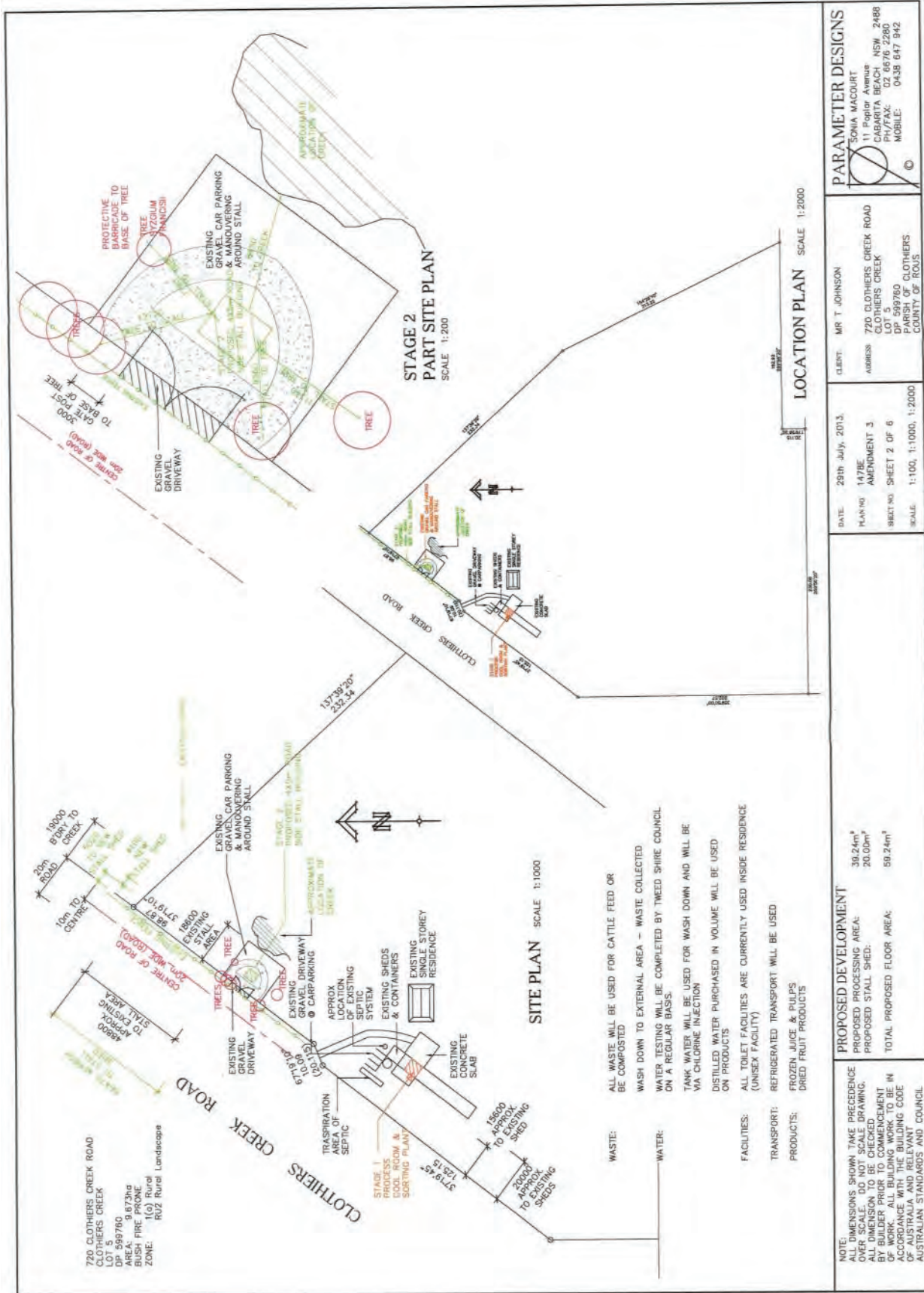
Author: [Redacted] - Planning Information

Date Printed: 18 August 2013

DEVELOPMENT/ELEVATION PLANS:



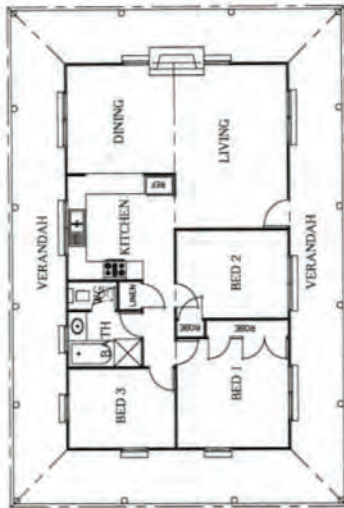




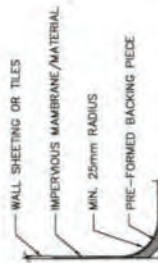
<p><b>NOTE:</b> ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSIONS TO BE VERIFIED BY BUILDERS PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL</p>	<p><b>PROPOSED DEVELOPMENT</b> PROPOSED PROCESSING AREA: 39.24m<sup>2</sup> PROPOSED STALL SHED: 20.00m<sup>2</sup> TOTAL PROPOSED FLOOR AREA: 59.24m<sup>2</sup></p>	<p>DATE: 28th July, 2013. PLAN NO: 1478E AMENDMENT 3 SHEET NO: SHEET 2 OF 6 SCALE: 1:100, 1:1000, 1:2000</p>	<p>CLIENT: MR T JOHNSON ADDRESS: 720 CLOTHIERS CREEK ROAD, CLOTHIERS CREEK, LOT 5, DP 599760, CLOTHIERS CREEK, COUNTY OF ROUS.</p>	<p>PARAMETER DESIGNS SONIA MACCOURT 11 Foglar Avenue CABARRITA BEACH NSW 2488 PH/FAX: 02 6676 2260 MOBILE: 0438 647 942</p>
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- WASTE:** ALL WASTE WILL BE USED FOR CATTLE FEED OR BE COMPOSTED  
WASH DOWN TO EXTERNAL AREA - WASTE COLLECTED  
WATER TESTING WILL BE COMPLETED BY TWEED SHIRE COUNCIL ON A REGULAR BASIS.  
TANK WATER WILL BE USED FOR WASH DOWN AND WILL BE VIA CHLORINE INJECTION  
DISTILLED WATER PURCHASED IN VOLUME WILL BE USED ON PRODUCTS
- FACILITIES:** ALL TOILET FACILITIES ARE CURRENTLY USED INSIDE RESIDENCE (UNISEX FACILITY)
- TRANSPORT:** REFRIGERATED TRANSPORT WILL BE USED
- PRODUCTS:** FROZEN JUICE & PULPS  
DRIED FRUIT PRODUCTS

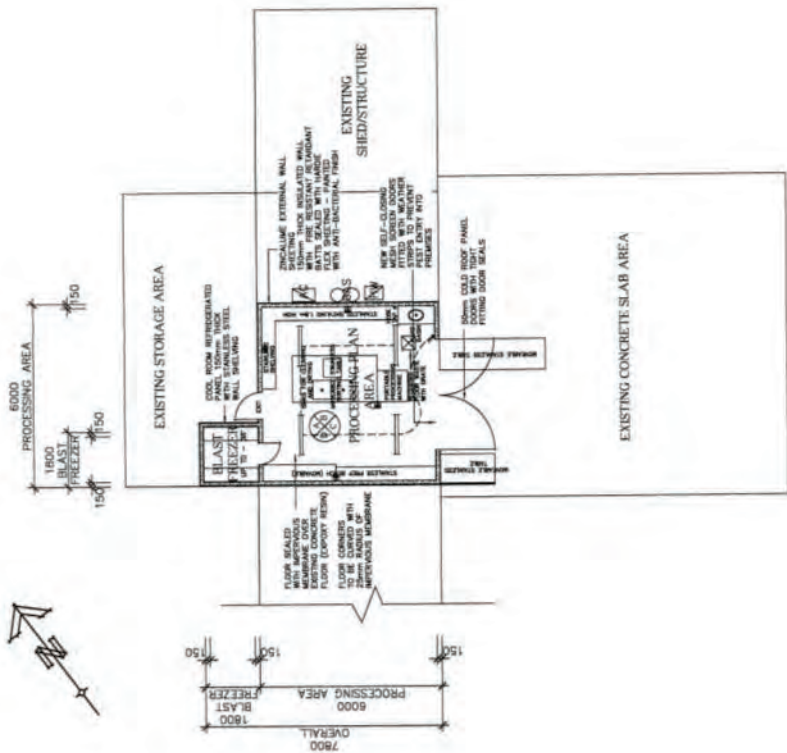
720 CLOTHIERS CREEK ROAD  
CLOTHIERS CREEK  
LOT 5  
DP 599760  
AREA: 9.872ha  
BUSH FIRE PRONE  
ZONE: 1(c) Rural  
Landscape: R02 Rural Landscape



EXISTING RESIDENCE FLOOR PLAN SCALE 1:100

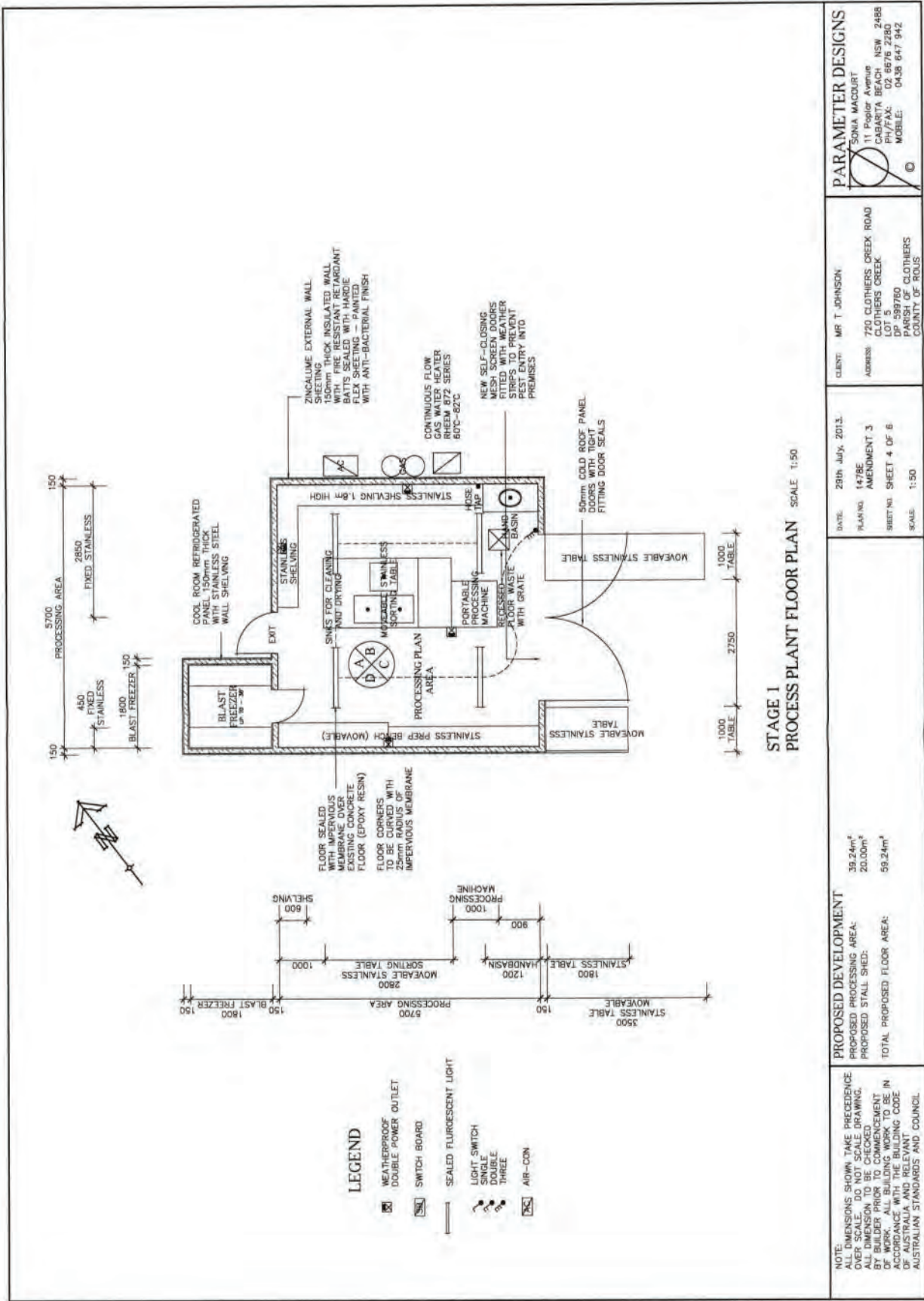


FLOOR/WALL COVER METHODS SCALE 1:20



STAGE 1 PROCESSING AREA FLOOR PLAN SCALE 1:100

<p><b>PARAMETER DESIGNS</b> SONIA MACCORT 11 Poplar Avenue CADAMPTA BEACH NSW 2486 PHONE: 0438 647 2282 MOBILE: 0438 647 942</p>	<p>CLIENT: MR T. JOHNSON ADDRESS: 720 CLOTHERS CREEK ROAD CLOTHERS CREEK NSW 2486 DIP 599780 PARISH OF CLOTHERS COUNTY OF ROUS</p>	<p>DATE: 29th July, 2013. PLAN NO: 1478E AMENDMENT 3 SHEET NO. SHEET 3 OF 6 SCALE 1:100</p>	<p>PROPOSED DEVELOPMENT PROPOSED PROCESSING AREA: 58.24m<sup>2</sup> PROPOSED STALL SHED: 20.00m<sup>2</sup> TOTAL PROPOSED FLOOR AREA: 58.24m<sup>2</sup></p>	<p>NOTE: ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSIONS TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT WORK. ALL BUILDING WORKING TO BE ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL.</p>
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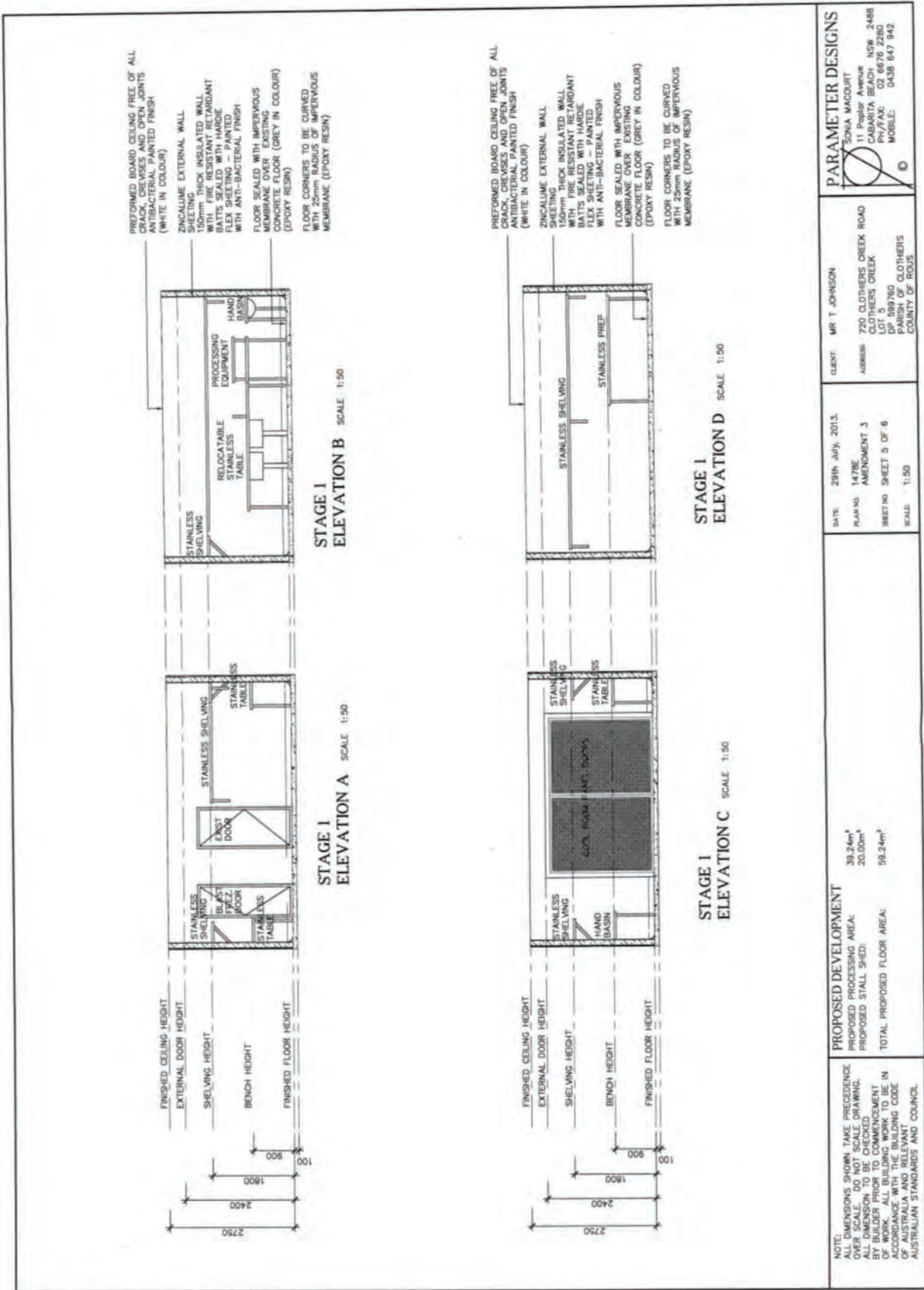


**PARAMETER DESIGNS**  
 SONIA MACDOURT  
 11 Parker Avenue  
 CABARITA BEACH NSW 2488  
 PH/FAX: 02 8676 2280  
 MOBILE: 0438 647 942

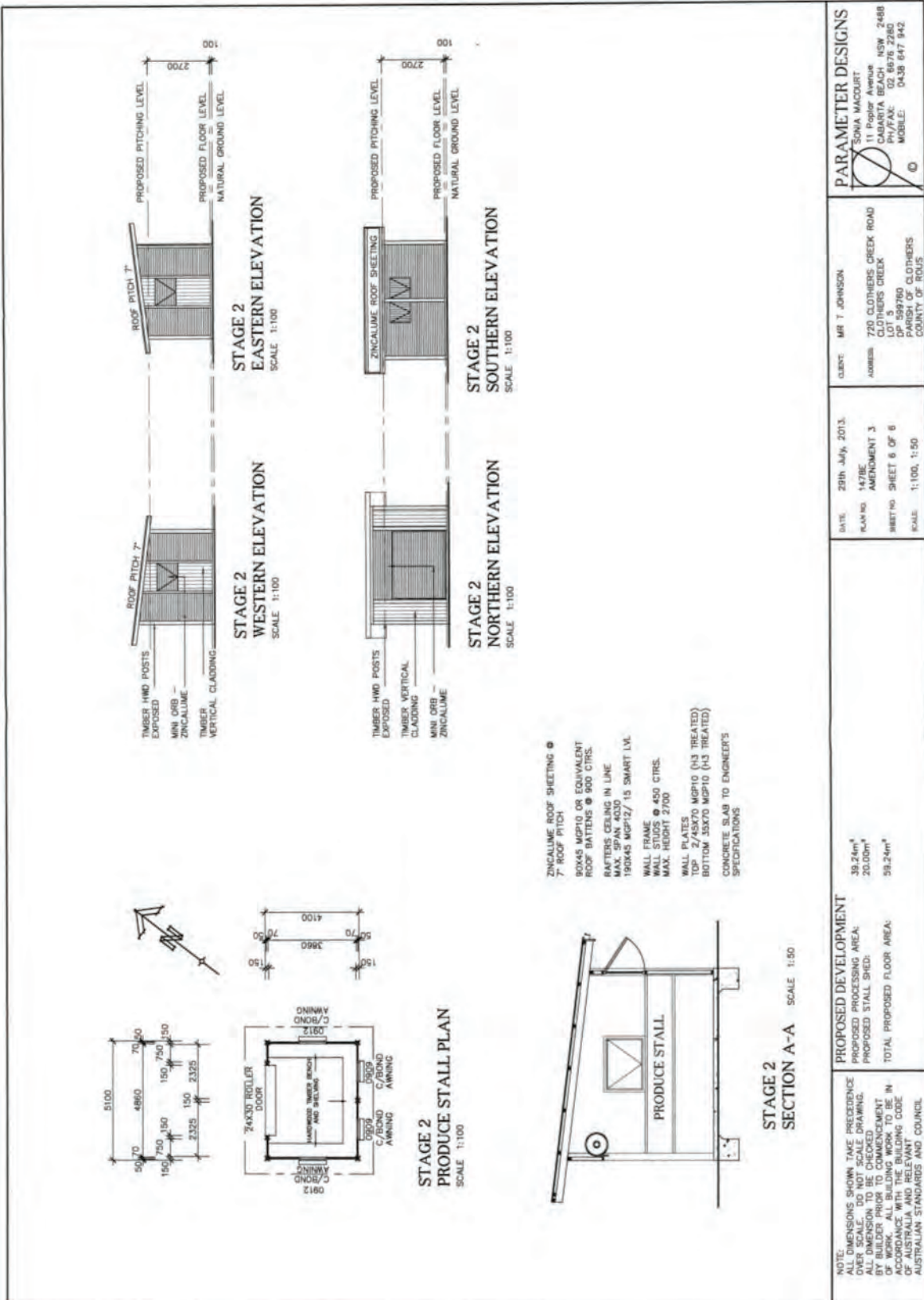
CLIENT: MR T JOHNSON  
 ADDRESS: 720 CLOTHIERS CREEK ROAD  
 CLOTHIERS CREEK  
 LOT 5  
 DP 589760  
 PARISH OF CLOTHIERS  
 COUNTY OF ROUS

DATE: 29th JULY, 2013.  
 PLAN NO. 147BE  
 AMENDMENT 3  
 SHEET NO. SHEET 4 OF 6  
 SCALE: 1:50

DATE: 29th JULY, 2013.  
 PLAN NO. 147BE  
 AMENDMENT 3  
 SHEET NO. SHEET 4 OF 6  
 SCALE: 1:50



<p><b>PARAMETER DESIGNS</b></p> <p>11 Poplar Avenue MADANTA BEACH NSW 2448 PHONE: 02 6678 2280 FAX: 02 6678 2280 MOBILE: 0438 647 942</p>	<p>CLIENT: MR T JOHNSON</p> <p>ADDRESS: 720 CLOTHIERS CREEK ROAD CLOTHIERS CREEK DP 589760 PARISH OF CLOTHIERS COUNTY OF ROUS</p>	<p>DATE: 29th July, 2013</p> <p>PLAN NO: 1478E</p> <p>AMENDMENT: 3</p> <p>SHEET NO: SHEET 5 OF 6</p> <p>SCALE: 1:50</p>
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**Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:**

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.

The subject development application proposes the retention of an existing roadside stall structure, the continued operation of a rural industry and the construction of a replacement permanent roadside stall structure. It is considered that the proposed development would be in keeping with the aims of the plan, being of a relatively minor nature and scale. Further, the proposed development encourages sustainable economic development whilst maintaining the environmental qualities of the area.

Clause 5 - Ecologically Sustainable Development

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

The development application seeks to regularise the existing roadside stall that has been in situ on the site for a number of years. The proposal also seeks the approval of a rural industry within an existing shed structure, and the construction of a replacement roadside stall structure. Provided the development is carried out in accordance with the recommended conditions of consent (in relation to the protection of native vegetation and the provision of adequate setbacks from the waterway, it is considered that it would not contravene the principles of ecologically sustainable development.

Clause 8 - Consent Considerations

The subject site is located in the 1(a) Rural Zone, the objectives of which are detailed in Clause 11 below. Clause 8 states that the consent authority may grant consent to development only if:

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

The proposed roadside stall and rural industry would be consistent with the primary objective of the zone, being a permissible use within the 1(a) Rural zone. The proposed roadside stall and rural industry would be considered to be consistent with the aims and objectives of the zone as it facilitates the sale of the primary products grown and processed on the site and allows for the sustainable economic use of the site and the continued growth of produce.

The subject proposal is not considered to result in any unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole due to its minor scale and nature.

Approval of this application is not considered to set a harmful precedent as each development proposal would be assessed on its merits and likely require its own SEPP No. 1 objection. The proposal is considered to be consistent with this Clause.

#### Clause 11 - Zone Objectives

Under the TLEP 2000, the subject land is zoned 1(a) Rural, within which a rural industry and a roadside stall are both permissible with development consent (Item 2).

The objectives of the 1(a) Rural zone are as follows:

##### Primary Objective

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

##### Secondary Objective

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

The TLEP 2000 provides the following definition of a rural industry: '*handling, treating, processing or packing of primary products in the locality and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality*'. The proposed rural industry is located in an existing shed building and involves the handling, processing and packaging of primary products grown on the subject site and from the surrounding area. The roadside stall would not jeopardise the use of the land for agricultural purposes and would provide an economic benefit to the land owner. It is considered that the proposed rural industry would be consistent with the provisions of the 1(a) Rural zone.

With respect to the proposed roadside stalls, the TLEP 2000 requires a roadside stall to have a maximum gross floor area (GFA) of 20m<sup>2</sup> and that only primary products produced on the property are exposed or offered for sale.

The Stage 1 and Stage 2 roadside stall conforms with this requirement having a gross floor area (GFA) of 3m<sup>2</sup>. The Stage 2 roadside stall would have a GFA of 20m<sup>2</sup>. Both stalls would only offer produce for sale that has been produced on the property and a condition of consent would be applied with this regard.

The proposed development is considered to be consistent with the Zone Objectives in that it would facilitate sustainable economic utilisation of natural resources and would contribute to the rural nature and amenity of the local area.

The proposal is also considered to accord with the secondary objectives in that it would enable sustainable economic development which relies on the rural values of the land.

The proposal is considered to be consistent with Clause 11.

#### 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. Reticulated water supply or sewerage is not available to the subject site. The applicant has advised that the operators of the roadside stall and the rural industry are residents of the dwelling house located on the subject site and would therefore utilise the facilities in the dwelling.

The applicant proposes to collect roof waters as the source of water supply for the rural industry (for hand washing and cleaning of equipment). The Food Standards Code requires potable water for washing food ingredients, cooking, adding to food and drinks, cleaning, sanitising and personal hygiene. On this basis a condition will be applied to any consent to ensure that a safe and secure potable water supply is available for the proposed development.

In relation to on-site sewage management, the applicant proposes to irrigate waste waters from the processing facility on surrounding grassed areas. Within the original application details, limited information was received in relation to the amount or quality of waste water and it was considered unacceptable to discharge wastewater by the proposed method, due to the potential impact on soil chemistry and groundwater quality over an extended period of time, particularly given the location of the Clothiers Creek waterway.

The site inspection revealed that the LAA connected to the existing septic tank servicing the existing dwelling was failing and discharging into a gully carrying flowing surface waters within it. As detailed, the applicant intends to utilise the existing toilet facilities within the existing dwelling, as no additional staff, beyond the occupants of the dwelling, are to be engaged in the processing facilities. However, it is noted that some off-site workers are engaged in other farm activities.

As the current arrangements for the treatment and disposal of wastewaters, both domestic and business derived, are inadequate, the applicant was required to provide further information to demonstrate that an adequate system is capable of being installed and operated on the site. A report has been prepared by HMC Environmental Consulting (dated 6 August 2013). The report advises that the existing septic tank is to be decommissioned and capped. A new OSSM is to be installed with the dwelling and rural industry being connected to the proposed system. It is considered that the information provided within this report has adequately addressed Council's concerns in relation to wastewater management. Suitable conditions will be applied to any consent in relation to the provision of adequate wastewater treatment and disposal.

It is therefore considered that the proposal is consistent with Clause 15.

#### Clause 16 - Height of Building

The rural industry would be located within an existing single storey structure. The roadside stall as proposed within Stage 2 would be single storey (with a maximum height of 2.75m) and would therefore be consistent with Clause 16.



Clause 17 - Social Impact Assessment

The proposal does not require the provision of a social impact assessment and is not considered to result in any significant social impacts, aside from potential economic returns for the operators of the rural industry and roadside stall.

Clause 35 - Acid Sulfate Soils

The subject site displays Class 5 Acid Sulfate Soils. As this application relates to the use of an existing building as a rural industry and a small scale roadside stall it is considered unlikely that the proposal would impact on matters relating to Acid Sulfate Soils. No further consideration with regard to Acid Sulfate Soils is required.

Other Specific Clauses

Clause 22 – Development near designated roads

Clause 22 of the TLEP 2000 requires Council: 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 and to prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

The proposal relies upon Clothiers Creek Road for access, a Council designated road, and therefore this clause applies.

The applicant has provided a detailed response to Clause 22, summarised as follows:

- The development is of a modest scale and nature and its siting and access from Clothiers Creek Road is considered not to compromise the objectives of the Clause;
- Access is proposed off Clothiers Creek Road (which is a two lane sealed road) via an existing driveway. The sight distance is approximately 115m to the east and 215m to the west. The onsite configuration of the stall provides for circulation around the stall and sufficient parking and maneuvering so that through traffic movement on Clothiers Creek Road is not impeded;
- No new access is proposed and the proposal would not prejudice any future road realignment;
- The land is zoned 1(a) Rural and the roadside stall needs to be located in close proximity to Clothiers Creek Road because of the nature of the use and to provide convenient access. The rural industry would utilise an existing shed;
- The proposed development would not be sensitive to traffic noise;
- The existing cart stall is of a very modest scale and is suitably screened from Clothiers Creek Road by existing landscaping. The proposed development is therefore not considered to detract from the landscape or scenic quality of the locality. The Stage 2 stall structure remains of a modest scale and would be constructed of low reflective materials.

Council Traffic Engineers have reviewed the application in this regard and have no objections to the location of the proposed roadside stall or rural industry. It is considered that the proposal, by reason of its modest scale would not be out of

character with surrounding rural land uses. A condition will be applied to any consent to ensure that a sealed driveway access for the rural industry and roadside stall are constructed. It is considered that the proposal would be consistent with Clause 22.

#### Clause 24 – Set backs to designated roads

Clause 24 of the TLEP requires Council to control development along designated roads. Clause 24 requires the proposed development (rural industry and roadside stall included within both Stage 1 and Stage 2) to be setback a minimum of 30m from the designated road (Clothiers Creek Road).

The Stage 1 rural industry use is to be undertaken within an existing shed building and the Stage 1 roadside stall already exists. The applicants therefore consider that Clause 24 does not technically apply to these two elements of the proposal however an assessment has been provided.

The proposed development would provide the following setbacks to Clothiers Creek Road:

- Stage 1 roadside stall - 3.2m;
- Stage 1 rural industry - 15.6m;
- Stage 2 roadside stall building - 5.02m.

Therefore the development does not comply with the development standard contained in the Table to Clause 24(3) and an Objection to the 30m development standard has been submitted with the application.

The details of the SEPP No. 1 objection have been discussed in detail further in this report, concluding that, in this instance, the 30m setback development standard is considered unreasonable and unnecessary.

#### Clause 31 - Development adjoining waterbodies

The clause requires consideration of the impacts of development on adjoining waterbodies, with particular emphasis on scenic quality, water quality, aquatic ecosystems, flora/fauna and public accessibility and applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody.

The site occurs within the Clothiers Creek sub-catchment with an approximate 85m section of upper Clothiers Creek traversing through the property. The main channel discharges beneath Clothiers Creek Road through a series of box culverts before entering the property and draining to the east. In addition, a single order drainage line conveys surface/subsurface water to the main Clothiers Creek channel from the more elevated area of the site. It is noted that this drainage line has been highly modified through agricultural activity where the hill-slope from where the waterway originates is dominated by banana and passionfruit crops.

It is understood that the roadside stall building and carparking and turning area have been in situ for a considerable number of years. The original application proposed an extension of the existing carparking and turning area however Council Officers considered that this arrangement would not have been satisfactory as it would have resulted in a reduced setback between the hardstanding and the waterway. As detailed above, amended plans have been received whereby no alterations are proposed to the existing hardstanding area.

It is noted that the northern bank of Clothiers Creek immediately adjacent to the existing display cart has been highly disturbed with only a small copse of riparian vegetation remaining along the bank. The top of the bank in this location consists of turf grass whilst the exposed bank slope exhibits evidence of erosion and recent slumping, particularly on meander bends. It is noted that the southern bank retains some floristic and structural integrity and supports a narrow riparian community described as Subtropical Warm Temperate Rainforest, recognised as a candidate Endangered Ecological Community (EEC), as detailed further within this report.

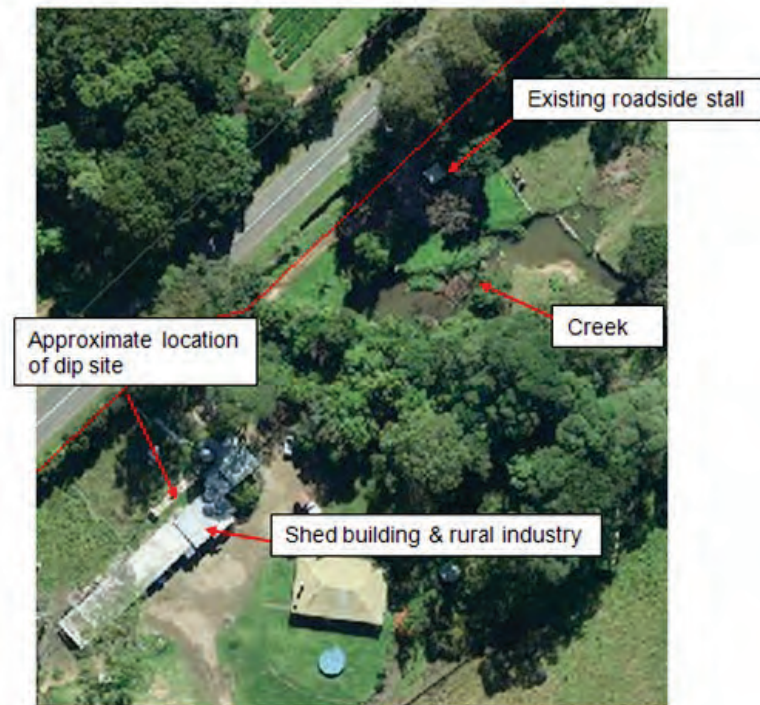
Waterway conditions both up and downstream from the site is described as modified where limited retention of riparian vegetation has occurred, regular slashing/mowing extends to the banks of the main channel and unrestricted stock access to the creek has led to erosion and compaction resulting in low resilience and limited opportunity for native seedling recruitment/establishment.

In relation to the subject site, as a result of continued frequent use of the car parking and turning area around the existing roadside stall, the subsurface would be expected to be further compacted over time leading to limited permeability, resulting in high rates of surface runoff into the adjacent waterway. Due to the close proximity of the waterway and lack of an established buffer vegetation, runoff may lead to accelerated erosion of the exposed banks and may likely result in pollutants from vehicles entering the waterway. As a result, the integrity of the stream bank and water-quality may be negatively impacted.

In order to mitigate any further impacts, it is recommended that a densely vegetated buffer of approximately 260m<sup>2</sup> in area and a minimum of 6m width be established between the top of the bank of Clothiers Creek and the existing turning area. A number of conditions shall be applied to any consent to ensure that satisfactory habitat restoration is in place and maintained for a period of six months to ensure successful habitat establishment. Provided the development is carried out in accordance with the recommended conditions of consent it is considered that the proposal would be consistent with Clause 31.

#### Clause 39 - Remediation of Contaminated Land

The site is currently used for agricultural activities and a dwelling house is also located on the subject property. The land has been used for agricultural purposes, specifically banana cultivation, small crops, stock grazing and dipping for cattle tick control.



**Figure 2 - Aerial imagery of site and location of rural industry, roadside stall, dwelling, dip site and Clothiers Creek.**

Council's GIS imagery indicates Clothiers Creek Dip is located within the general vicinity of the existing shed structure (and location of rural industry) and a site inspection has revealed that the site lies along the north-west wall of the existing shed, as shown in Figure 2.

The original details for the proposed development did not provide any assessment of the dip site and further information was requested with this regard. A Report has been prepared by HMC Environmental Consulting (dated 6 August 2013) advises the following in relation to land contamination:

*'The shed containing the proposed fruit processing room, the driveway, and the vehicle yard between the house and the shed were in existence at the time the cattle dip was in operation. The cattle dip site original fencing restricted the movement of cattle to the dip bath side of the existing driveway, and the existing car park is located in this area. The cattle movement dictates the spread of the dip chemical through chemical drip and soil relocation'.*

It has been confirmed that the shed building was built in approximately 1978 and so was built around the dip bath fencing, while it was still in place and operational. The applicant has also advised that the stock access to the yards was directly off Clothiers Creek Road which minimises the risk that trafficable areas between the shed and the house were within the fenced cattle dip yard. Further sampling is proposed to assist in final carpark and driveway layout to ensure vehicular access is restricted to sealed areas only. An Environmental Management Plan is also proposed to define remediation and management actions, prior to the commencement of operations.

On this basis Council Officers consider that the applicant has adequately addressed contaminated land issues on the site and that, provided the

development is carried out in accordance with the recommended conditions of consent, that the proposal would be consistent with Clause 39.

#### Clause 39A – Bushfire protection

The subject site is mapped as bushfire prone land (Bushfire Prone Land Map 2012) and therefore this clause is applicable. The objective of this clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The applicant has provided a bushfire assessment relevant to the provisions of *Planning for Bushfire Protection, 2006* and Clause 44 of the Rural Fires Regulation 2008. The bushfire assessment details that the mapped vegetation hazard is located approximately 180m to the south of the existing shed building. Suitable evacuation routes are provided to the east and west and given the size of the building and nature of the proposed use (non-residential), it is submitted that the proposal is not inconsistent with this objective.

Appropriate conditions will be applied to any development consent in relation to the maintenance of an inner protection area around the roadside stall and existing shed building and the provision of a suitable water supply, in accordance with the provisions of *Planning for Bushfire Protection, 2006*. As detailed further within this report, a landscaping buffer is recommended to be planted in between the existing car parking area and the creek. It is considered that suitable planting within this landscape buffer can be achieved in this location without compromising bushfire requirements.

#### Clause 47 – Advertising signs

One 'A' frame sign has been proposed at the site boundary adjacent to Clothiers Creek Road. The sign would have an area of less than 1m<sup>2</sup> per side and would include the words 'Stall Here'.

The sign would be permissible in a rural zone under Clause 47 as it is directing the travelling public to what will be a lawful business; is considered to be of a reasonable size for such a purpose; and relates to a lawful use of the land on which it is to be displayed.

The proposed sign is considered to be in keeping with the character of the locality and is not considered to adversely affect the locality in terms of appearance or size, nor will it detract from the rural character of the area or contribute to visual clutter through the proliferation of signs. A condition would be applied to any consent to ensure that the sign does not have an area greater than 1m<sup>2</sup> per side and is not to be internally or externally illuminated and to ensure that no other signs are installed on the site without prior approval.

The proposal is considered to be consistent with Clause 47.

The proposed roadside stall is considered to be generally consistent with the Tweed Local Environmental Plan, notwithstanding the SEPP No. 1 variation to Clause 24 (Setbacks to designated roads) which is discussed under SEPP No. 1 below.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 12: Impact on agricultural activities

Clause 12 advises 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 proposed rural industry, roadside stall and associated car parking area are considered to be minor in scale and located adjacent to the roadside boundary, minimising any impact on agricultural activities on the site. The northern portion of the subject site is nominated as Regionally Significant Farmland however as the proposed development would be ancillary to the existing agricultural use, it is considered that the proposal would not jeopardise the agricultural capacity of the site.

The proposed development would be ancillary and complimentary to the agricultural use of the site and would allow for the processing of locally produced produce. It is considered that the proposal is generally consistent with Clause 12.

#### Clause 15: Rivers, streams and wetlands

Clause 15 requires that Council shall not consent to an application to carry out development for any purpose adjoining or upstream of a river system unless it has considered a number of matters, such as: the need to maintain or improve the quality or quantity of flow waters to the wetland; any loss of habitat which will be caused by the carrying out of the development; whether the development would result in pollution of the wetland and the need to ensure that native vegetation surrounding the wetland is conserved.

As detailed within this report, a low order waterway transects the site as is located in close proximity to the existing roadside stall and parking/turning area. The development would not result in any increase in the area of hardstanding and, providing an adequate vegetation buffer is provided between this area and the waterway, it is considered that the proposal would be unlikely to compromise the existing waterway and may result in an improved situation than currently exists.

Further, conditions of the consent will be applied to ensure that an adequate system of treating wastewater is put in place to ensure that wastewater is dealt with appropriately and that suitably treated water no longer enters the waterway.

The proposed development is considered to be consistent with Clause 15.

#### Clause 47: Principles for Commercial and Industrial Development

Clause 47(2) requires consideration that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas.

The subject site is within close proximity to a designated road and is approximately 4km from an access point to the Pacific Highway and 8km from the urban outskirts of Bogangar to the east and 10km from the outskirts of Murwillumbah to the west. In any event, it is envisaged that most of the custom to the roadside stall will arise from traffic passing the site and not through specific trips. As such, accessibility to the site is considered to be acceptable and the proposal satisfies this clause.

#### SEPP No. 1 - Development Standards

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this, it may, with the assumed concurrence of the Director-General, grant consent to the development application.

The subject application contains a SEPP No. 1 objection with respect to the 30m setback required by Clause 24 (Setbacks to designated roads) of the TLEP 2000 for development of this nature within the 1(a) Rural zone. The application proposes the following setbacks from Clothiers Creek Road:

- Stage 1 roadside stall (within existing structure) - 3.2m;
- Stage 1 rural industry (within existing shed building) - 15.6m;
- Stage 2 roadside stall building - 5.02m.

In this instance, the proposed rural industry (although located within an existing building) and roadside stalls proposed within both Stage 1 and Stage 2 would be located less than 30m from the designated road. As such, the application has been reported to Council for determination in accordance with the SEPP No. 1 Guidelines.

The applicant has advised that the *'Courts have consistently emphasised that there is no single determinative test for assessing a SEPP 1 Objection. However, it has become usual practice in recent years to apply the 'underlying object test' and to use the formulation suggested by Lloyd J in Winten Property Group v North Sydney Council (2001).'*

*In Wehbe v Pittwater Council (2007) New South Wales Land Environment Court 827, Chief Justice Preston of the Land and Environment Court recasts the long standing part 5 test for consideration of a SEPP No. 1 Objection set out in Winten Property Group v North Sydney Council (2001).*

The Chief Judge suggests that a consent authority must be satisfied of three matters before a SEPP No. 1 objection can be upheld:

- (1) That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- (2) The granting of consent is consistent with the aims of SEPP 1.
- (3) That clause 8 matters (in SEPP 1) are satisfied i.e.

- Whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning.
- The public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Each of the three key matters have been addressed by the applicant as follows:

**(1) That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.**

*We submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard on the following basis:*

*Clause 24(1) of the Local Environmental Plan provides the following objective in relation to setbacks to designated roads.*

*'(1) Objective*

- *To control development along designated roads'.*

*The terms of Clause 24(1) of TLEP 2000 are not to preclude any building within 30m, but rather to 'control development'.*

*The implied objective of the 30m development standard is to facilitate possible future road widening, maintain the rural character of the locality and maintain a rural streetscape.*

*The relevant questions to properly assess whether the objectives of the standard are achieved notwithstanding non-compliance with the standard are as follows:*

**a) Will the proposed use of the existing and proposed buildings adversely impact on the ability for future widening of Clothiers Creek Road?**

*The existing and proposed roadside stall structures are setback 3.2m and 5.02m from the alignment of Clothiers Creek Road. The proposed rural industry will be conducted in an existing shed which is located 15.6m from Clothiers Creek Road.*

*Clothiers Creek Road is within a road reserve which, in the vicinity of the site is between 15 - 20m wide. The southern edge of the road formation is located between 4 and 8m from the southern alignment of the road reserve.*

*Having regard to existing zonings and land uses in the locality and the existing road geometry, it is highly unlikely that road widening will be required in the future and therefore a setback of 3.2m to the existing 'cart stall'; 5.02m to the new stall building; and 15.6m to the Rural Industry in the existing building is considered to be adequate.*

**b) Will the use of the existing building as a Roadside Stall and Rural Industry adversely impact on the rural character and amenity of the locality?**

*The scale and appearance of the existing and proposed structures are consistent with the existing rural landscape. Existing vegetation provides screening from Clothiers Creek Road. It is therefore considered that the reduced setback will not be inconsistent with the objective of maintaining rural character and amenity.*

**c) Will the use of the existing roadside shed as a roadside stall impact on the rural streetscape?**



*The design, scale and siting of the proposed and existing buildings are such that it is not prominent and does not impact on the rural streetscape.*

*It is therefore submitted that the proposed development is consistent with the objectives for building setbacks in the Rural 1(a) zone as set out in Clause 24(3) of the Tweed LEP 2000.*

*For the above stated reasons we submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard. Following from the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827, we conclude that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

**(2) That the granting of consent is consistent with the aims of SEPP 1**

*The aims and objectives of SEPP 1 are as follows:*

*"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."*

*Compliance with the 30m setback development standard would preclude a logical use of an existing shed in an appropriate location which is setback an adequate distance from the alignment of Clothiers Creek Road.*

*In this case, where the proposed development would not alter the status-quo and would be consistent with similar development in the locality, compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.*

**(3) That clause 8 matters (in SEPP 1) are satisfied i.e.**

- ***Whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning.***
- ***The public benefit of maintaining the planning controls adopted by the environmental planning instrument.***

*In considering whether the proposal creates any matters of Regional or State planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.*

- *A reasonable setback of 3.2m is provided to the road side 'cart stall';*
- *A substantial setback of 5.02m to the proposed Stage 2 roadside stall building is achieved;*
- *The building to be used as a rural industry is existing;*
- *The buildings are of a very modest scale, discreetly located and do not detract from the landscape and scenic quality of the locality generally and Clothiers Creek Road in particular;*
- *Widening of Clothiers Creek Road is unlikely to be required because the existing road reserve is between 15m and 20m wide and the*

*existing southern carriageway edge is between 4m and 8m from the southern alignment of Clothiers Creek Road.*

*We conclude that the proposed development does not raise any matters of Regional planning significance and there is considered to be no public benefit in maintaining the standard.*

*It is submitted that upholding of the Objection would be consistent with the aims of the State Environmental Planning Policy No. 1 in that strict compliance with the 30m setback development standard would unreasonably preclude the appropriate use of the existing shed.*

*Accordingly, in the circumstances of this case non-compliance with the development standard is well founded and is consistent with the aims of the State Environmental Planning Policy No. 1. We conclude that upholding the Objection is considered to be in the public interest and consistent with the objects of the Act.*

#### Development Assessment Unit Comments

In addition to being satisfied that the SEPP No. 1 objection is well founded, the consent authority must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3” and consider the matters in clause 8(a): “whether non-compliance with the development standard raises any matters of significance for State or regional environmental planning; and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

The aims of the SEPP are as follows:

*“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act”.*

Section 5(a)(i) and (ii) of the EP&A Act 1979 seek to encourage:

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) The promotion and co-ordination of the orderly and economic use and development of land.*

With respect to 5(a)(i) and (ii) it is considered that the proposed rural industry and the proposed roadside stall (within Stage 1 and Stage 2 of the proposed application) would not hinder the proper management, development and conservation of any resources, particularly in relation to agricultural land that surrounds the subject site. The proposed development is considered to have a minimal environmental impact (the rural industry being located in an existing shed building and the site of the roadside stall, driveway and associated parking area already being in situ). It is considered that the proposal would contribute to the economic welfare of the community and facilitate orderly and economic use of the subject site.

It is considered that the non-compliance with the development standard, in this instance, would not raise any matters of significance for State or Regional environmental planning.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with Clause 24 of the TLEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent. As such, the approval of this development application is unlikely to impact upon public benefit and the SEPP No. 1 Objection is considered to be well founded.

Based on the above, support of the subject SEPP No. 1 objection is considered appropriate in this instance.

#### SEPP No. 55 - Remediation of Contaminated Land

The aim of SEPP No. 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.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose.

Matters relating to contaminated land have been addressed in detail within the assessment of Clause 39 of the TLEP 2000. The applicant has provided further information in relation to the cattle dip site and wastewater management and Council Officers have advised that the applicant has now adequately demonstrated compliance with SEPP No. 55 requirements. On this basis appropriate conditions will be applied to any consent in relation to contaminated land and adequate wastewater treatment.

#### SEPP No. 64 - Advertising Signage

The SEPP outlines the following in regards provisions for signs within rural areas:

*The advertisement relates to the land on which the advertisement is to be displayed, or to premises situated on that land or adjacent land, and*

(ii) *specifies one or more of the following particulars:*

- (A) *the purpose for which the land or premises is or are used,*
- (B) *the identification of a person residing or carrying on an occupation or business on the land or premises,*
- (C) *a description of an occupation or business referred to in sub-subparagraph (B),*
- (D) *particulars of the goods or services dealt with or provided on the land or premises.*

The subject sign is considered to be consistent with the requirements of the SEPP in that the sign would be displayed on the premises to which the signage relates, and will serve to identify the goods or services dealt with or provided on the land or premises.

Clause 8 of this SEPP requires Council to assess whether proposed signage is consistent with the objectives of the policy, and compliant with Schedule 1 of the policy. Schedule 1 provides assessment criteria, as set out below:

1. Character of the area: The proposed sign is considered to be compatible with the existing character of this area and in this regard is an extension of the proposed use of the site. The proposal is not considered to negatively impact on the character of the area.
2. Special Areas: The subject site is not located in close proximity to any significant special environmental areas.
3. Views and vistas: The proposed sign would be located to the site boundary and is not considered to obscure, compromise or dominate any important views or reduce the quality of vistas. The proposal is furthermore considered to respect the viewing rights of other advertisers.
4. Streetscape, setting or landscape: The subject A frame sign would have a maximum area of 1m<sup>2</sup> per side and is considered to be appropriate in terms of scale, proportion and form having regard to the existing streetscape and setting. The sign is not considered to contribute to visual clutter or proliferation of signs in the area or set a harmful precedent for similar development in the locality. Furthermore, the proposal is not considered to screen unsightliness, protrude above buildings or require ongoing vegetation management.
5. Site and building: The sign appears compatible with the size, scale and proportion of the subject roadside stall and site to which it is associated. Thus the proposal is not considered to impinge on any existing characteristics of the site or buildings. Further, the nature of the proposal does not lend itself to particular innovation; however, it is considered that the proposed sign is consistent with the requirements under Schedule 1 of the clause.
6. Associated devices and logos with advertisements and advertising structures: The content of the sign would display the words 'Stall Here' and is not considered to be excessive or inappropriate. The proposed sign does not contain any safety devices, platforms or lighting devices due to its uncomplicated nature.
7. Illumination: Not applicable. The subject signage is not to be illuminated.
8. Safety: The proposed sign is not considered to reduce the safety of any public road, pedestrians or cyclists as it does not protrude into the sight lines of the subject site or that of any adjoining lots. The sign is located at the site boundary and is not considered to obscure any sightlines or encroach onto the road reserve.

The proposed signage is considered to be consistent with the provisions of SEPP 64.

#### 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;*

#### **Planning Comment:**

Provided the produce to be sold within the roadside stall is grown and / or processed on the subject site itself, it is considered that the proposed rural industry and roadside stall would promote sustainable economic activities on the subject site. It is considered that the proposed use would be appropriate for the subject site, which is located in the 1(a) Rural Zone and would not jeopardise the agricultural viability of the subject site or the surrounding area.

- (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;*

**Planning Comment:**

The subject proposal facilitates the continuation of agricultural activities on the subject allotment and is supportive of the increasing demand for consumers wishing to purchase primary produce. The proposed rural industry would also provide a unique processed local product and provides for the direct retail sale of the goods produced on the subject site.

- (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;*

**Planning Comment:**

The subject proposal maintains the rural use of the subject site and may facilitate further growth of the existing farm which has the potential to provide social and economic benefits through the employment and generation of profit for the landholders and cost effective local produce for consumers.

- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community;*

**Planning Comment:**

The proposed development is minor and is not considered to impact on the social, economic and environmental interests of the broader 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;*

**Planning Comment:**

The subject proposal, if approved, is not considered to result in a detrimental impact on any natural resource in the vicinity.

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities;*

**Planning Comment:**

The proposed development is minor in scale and is not considered to have any significant impacts on the local community in terms of social and economic welfare, notwithstanding the potential positive impacts outlined under principle (c) above.

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing.*

**Planning Comment:**

The proposal is minor and does not have any ramifications for rural housing.

Based on the above, the proposal is considered to be in accordance with SEPP (Rural Lands) 2008.

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

The Draft Tweed Local Environmental Plan (LEP) 2012 zones the subject site RU2 – Rural Landscape. The objectives of the RU2 Zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible uses, including extensive agriculture.*
- *To provide for a range of tourist accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

A rural industry and roadside stall are permitted with consent in the RU2 Zone.

The Draft LEP 2012 defines a rural industry as follows:

**Rural industry** means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

- (a) *agricultural produce industries,*
- (b) *livestock processing industries,*
- (c) *composting facilities and works (including the production of mushroom substrate),*
- (d) *sawmill or log processing works,*
- (e) *stock and sale yards,*
- (f) *the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

It is considered that the proposed rural industry would satisfy the abovementioned definition within the Draft LEP 2012.

The Draft LEP 2012 defines a roadside stall as follows:

**Roadside stall** means a place or temporary structure used for retail selling of agricultural produce or handcrafted goods (or both) produced from the property in which the stall is situated, or from an adjacent property.

Clause 5.4 of the Draft LEP 2012 requires that the gross floor area of a roadside stall must not exceed 30m<sup>2</sup>.

The subject proposal would have a gross floor area of 20m<sup>2</sup> and is consistent with the 30m<sup>2</sup> maximum control for the floor area of the stall as specified with Clause 5.4 of the Draft LEP 2012.

Of relevance to the proposed development, the Draft LEP 2012 no longer specifies minimum setback requirements for certain types of development along designated roads. Therefore, should the application have been received after the Draft LEP 2012 had been gazetted, it would not require a SEPP No. 1 Objection to a development standard.

The proposed development is considered to be consistent with the Draft LEP 2012.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Under Development Control Plan (DCP) A2, there is no specific requirement for car parking associated with a roadside stall has been specified, with a note applied to 'assess parking on its merits, with all parking to be within property boundaries'.

The submitted information indicates that approximately three car parking spaces are provided in relation to the roadside stall. It is also noted that staff of the rural industry and roadside stall would be residents of the existing dwelling house on the site and therefore no additional staff parking is required. The application proposes to retain the existing gravel surface for the following reasons: there is very low patronage and turnover; a hardstand area will generate additional runoff and would be incompatible with the established rural character of the area; the scale and nature of the development does not warrant a sealed surface.

The development application has been reviewed by Council's Traffic Engineer and Development Engineering Section and it is considered that the parking and access arrangements proposed are generally acceptable, with vehicles being able to enter and exit the site in a forward direction.

Conditions of consent with respect to appropriate sediment and erosion control and the requirement for a Section 138 approval to ensure the provision of sealed driveway accesses for the rural industry development and the roadside stall will be applied to any consent.

It is considered that the roadside stall has adequate parking and access arrangements and as such the proposal is consistent with DCP A2.

A4-Advertising Signs Code

The development proposes the installation of one 'A frame' sign to be located adjacent to Clothiers Creek Road. The sign would have a maximum area of 1m<sup>2</sup> on either side and would comprise the wording 'Stall Here'.

The DCP permits a maximum of five business identification signs per business premises (which will not be exceeded by the subject proposal) and specifies types of signs which are permissible and prohibited. It is considered that the proposed sign would be classified as a 'chalkboard' or a moveable board. The DCP specifies that such signage is to have an area of no greater than 1.5m<sup>2</sup>.

The following objectives are also provided for signage in rural areas:

- *To preserve the rural amenity of the locality within which the sign is to be displayed;*
- *To eliminate the proliferation of signs;*
- *To ensure that those signs which are displayed are in character with the existing and likely future amenity of the rural locality;*
- *To minimise the visual impact of signs;*
- *To prevent distraction to motorists and a reduction in traffic safety on roads;*  
*and*

- *To coordinate tourism signs.*

The subject sign (chalkboard) is a permissible type of signage and the applicant advises that the sign would have an area of no greater than 1m<sup>2</sup> on either side. This is considered to be a minor increase which will not have an adverse impact on the locality in terms of size or visual appearance. Appropriate conditions will be applied to any development consent to ensure that no additional signage is placed on the site without the relevant approvals and that the sign is to be removed at the close of business each day in order to protect the rural character of the area.

The proposed signage is considered to be generally consistent with the objectives for signage in rural areas, and is to be located within the property. The proposed signage is considered to be consistent with DCP A4.

#### A11-Public Notification of Development Proposals

The proposal was notified to nearby landholders for a period of 14 days from Wednesday 10 April 2013 to Wednesday 24 April 2013. No submissions were received as a result of the notification process.

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

##### Clause 92(a) Government Coastal Policy

The subject site is not located on land to which the Government Coastal Policy applies.

##### Clause 92(b) Applications for demolition

No demolition is proposed in the application.

##### Clause 93 Fire Safety Considerations

The Development Application was reviewed by Councils Building Services Unit who has recommended a number of conditions to any development consent. As such, the proposal is considered to be acceptable having regard to the above Clause.

##### Clause 94 Buildings to be upgraded

The Development Application was reviewed by Councils Building Services Unit who has recommended a number of conditions to any development consent. As such, the proposal is considered to be acceptable having regard to the above Clause.

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

##### **Tweed Shire Coastline Management Plan 2005**

The subject site is not located within an area that is affected by the Tweed Shire Coastline Management Plan 2005.

##### **Tweed Coast Estuaries Management Plan 2004**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not applicable to the application.

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



As the subject site is not located within the Cobaki or Terranorra Broadwater (within the Tweed Estuary), this Plan is not considered relevant to the proposed development.

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

Context and Setting

The proposed roadside stall and rural industry is considered to be minor in scale and in keeping with the rural character of the locality. The proposal will offer primary produce and produce processed on the subject site. It is considered that no adverse impacts will arise on the natural or built environment. The proposal has the potential to facilitate economic returns for the landholder and provide for future growth and stability by the processing of locally grown produce. The proposal is considered to be consistent with the context and setting of the locality.

Access, Transport and Traffic

The proposed access and parking arrangements have been reviewed by Councils Development Engineering Section and Traffic Engineer. No objections have been raised with respect to the development in this regard.

Recommended conditions have been provided requiring the applicant to upgrade the existing gravel driveways (for both the rural industry and the roadside stall) to sealed surfaces. These are to be attached to any consent for the development application. The proposal is considered to be unlikely to generate significant levels of traffic so as to impact on the road safety of amenity of the locality. It is considered that the proposal would be appropriate from an access and traffic point of view.

Flora and Fauna

The subject site is classified as 'highly disturbed / modified' with a small fragment of 'rainforest and riparian community' (of a high ecological status) in the approximate location of the existing roadside stall and a fragment of 'sclerophyll open forest' to the southern portion of the site. It is noted that the majority of native vegetation has been cleared from the site however several copses remain to the rear of the property (within the south eastern corner), as a narrow fragmented band along Clothiers Creek and as a row of planed trees occurring along the northern boundary fronting Clothiers Creek Road.

Whilst the site is unmapped under the suite of TSC Tree Protection order mapping, the *Tweed Vegetation Management Strategy* (TVMS) 2004 (refined 2009) mapping identifies two vegetation communities occurring across the subject site:

1. TVMS Code 201 - Blackbutt Open Forest Complex, situated at the rear of the site forming the northern most section of part of a broader remnant tract (Koala Habitat Category 2010 - Secondary (B)). Council Officers consider that this area of vegetation is unlikely to be affected given the distance of the proposed development and this tract of vegetation.
2. TVMS Code 102 - Subtropical Warm Temperate Rainforest, situated along the southern bank of Clothiers Creek and adjacent to the existing dwellings and shed structures. Council Officers observed a number of species typical

of this vegetation category within this area although the understorey has been simplified through regular and intensive domestic/farm animal grazing. The small unit of Subtropical Warm Temperate Rainforest does not qualify as Koala habitat due to its absence of sclerophyll elements, however this stand of vegetation could offer refuge/cover to the Koala during periods of dispersal/movement to resource areas, particularly given the high number of Koala records in the local Clothiers Creek area and availability of habitat to the rear of the property.



**Figure 3 - Vegetation Communities and Waterways**

It is recognised that the Subtropical Warm Temperate Rainforest unit is recognised as a candidate Endangered Ecological Community (EEC) being *Lowland rainforest in the NSW North Coast and Sydney Basin* bioregions and the onsite mapped community generally meets a number of the criteria to qualify as an EEC. On this basis, Council Officers consider that a precautionary approach should be adopted by accepting that the community meets the EE classification and status.

The vegetated area further downstream has been more heavily disturbed with the northern bank of Clothiers Creek immediately adjacent to the existing roadside stall being highly disturbed, with only a small copse of riparian vegetation remaining along the bank. As detailed previously, the majority of the bank in this area has been heavily mowed allowing for limited recruitment of woody trees or shrubs. Along the boundary line near the entrance of the roadside stall hardstand area remain a number of semi-mature *Eucalyptus pilualris* (Blackbutt) and *Grevillea robusta* (Australian Silver Oak) whilst a single *Syzygium francisii* (Giant Water Gum) is located to the rear of the existing roadside stall; the latter two species being recognised within the lowland rainforest on floodplain in the NSW North Coast Bioregion (EEC listing).

In relation to fauna, as detailed above, the Blackbutt Open Forest Complex to the rear of the site is classified as Secondary Habitat Class A and B, as shown in Figure 4 below:



**Figure 4 - Dark green Secondary Habitat Class A and light green Secondary Habitat Class B - Koala Habitat Atlas**

The small area of Subtropical Warm Temperate Rainforest does not qualify as Koala habitat however this stand of vegetation could offer refuge/cover to the Koala during periods of dispersal/movement to resource areas, particularly given the high number of Koala records in the local Clothiers Creek area and availability of habitat to the rear of the property.

In the absence of a detailed fauna survey, other notable fauna species likely to utilise the site (as recorded within a 2km buffer survey of the *NSW Bionet Wildlife Atlas* include: White-headed Pigeon, Wonga Pigeon, Topknot Pigeon, Black-shouldered Kite, Southern Boobook as well as the Forest Kingfisher, Rainbow Bee-eater, amphibian Brown-striped Frog and microbat species, that are all likely to utilise the riverine corridor for foraging and refuge.

The submitted Statement of Environmental Effects states that '*vegetation removal is not proposed or required*' and it is considered unlikely that the development would necessitate the removal of vegetation. Council Officers consider that, due to the relatively low intensity of the proposed development, further survey effort in relation to native vegetation is not warranted.

However, it is considered that frequent vehicle movement beneath the drip zone of the remaining *Syzygium francisii* may negatively affect the long term health and viability of the tree through excessive compaction and increased possibility of vehicle strike and damage to both the roots and trunk of the tree. As such it is recommended that a vehicle exclusion zone (minimum 2m in width from the trunk of the tree) is established above a section of the structural root zone of the tree that extends into the vehicle turning area, through the use of timber bollards or horizontal timber barricade.

Further, as a result of continued frequent vehicle use of the turning area around the roadside stall, the subsurface would be expected to be further compacted over time leading to reduced permeability and resulting in high rates of surface runoff

into the adjacent waterway. As detailed within this report, as a result of the proximity of the waterway and lack of established buffer vegetation, runoff may become concentrated leading to accelerated erosion of the exposed banks. In order to mitigate any impacts it is recommended that a densely vegetated vegetation buffer of approximately 260m<sup>2</sup> in area and a minimum of 6m in width be established between the top bank of Clothiers Creek and the existing turning area. Habitat restoration is to be undertaken in accordance with the recommended conditions of consent and maintained for a period of six months to ensure successful establishment.

Provided the proposed development is carried out in accordance with the recommended conditions of consent it is considered that the proposal would be unlikely to impact on matters relating to flora and fauna and, with the inclusion of an effective vegetation buffer, may result in an improved scenario with this regard.

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

Surrounding Landuses/Development

The proposed development is minor in scale and is considered to be generally consistent with surrounding land uses, much of which is pasture land or small crops and rural-residential properties.

Food Premises

Appropriate conditions have been recommended in relation to the rural industry to ensure that: a safe and secure potable water supply is to be available for washing food ingredients, cooking, adding to food and drinks, making ice, cleaning, sanitising and personal hygiene; the food premises is registered with Tweed Shire Council's Public Health Register for Private Water Suppliers; for all commercial waste to be collected and disposed of in accordance with any approved Waste Management Plan; adequate flooring materials, windows and doors and hand washing facilities. A condition will also be applied to any consent to ensure that '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 Council's Environmental Health Unit.

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

No public submissions were received with respect to this application.

**(e) Public interest**

The proposed rural industry and roadside stall is considered to be consistent with all applicable planning controls and the SEPP No. 1 objection is considered to be well founded and warranted based on the circumstances of this particular case. The proposal is considered to be generally in the public interest as it will facilitate economic activity in the subject locality whilst remaining consistent with the rural land use of the area and compatible with the natural environment.

**OPTIONS:**

1. Approve the application in accordance with the recommended conditions; or
2. Refuse the development application for specified reasons.

Council Officers recommend Option 1.

**CONCLUSION:**

The subject application is considered to generally comply with statutory and policy requirements. Strict application of Clause 24 – Setbacks to designated roads of the Tweed Local Environmental Plan 2000 was considered unreasonable and unnecessary in this instance and the State Environmental Planning Policy No. 1 Objection is considered to warrant support.

The proposed development has been assessed against the relevant legislative provisions and standards and is not considered to have a significant impact on agricultural activities in the locality nor impact upon the social, cultural and environmental characteristics of the local environment.

Therefore the proposed development is recommended for conditional approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Recommended species list for habitat restoration area (ECM 3158871)

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**34 [PR-CM] Development Application DA13/0121 for a Minor Boundary Adjustment (Stage 1) and Two Lot Subdivision (Stage 2) at Lot 9 DP 616569 No. 1285 Numinbah Road, Chillingham; Lot 8 DP 579554 No. 23 Satinwood Place, Chillingham**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA13/0121 Pt1**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

### **SUMMARY OF REPORT:**

Council has received a development application for a staged boundary adjustment and two lot subdivision at No. 23 Satinwood Place, Chillingham. The development proposes in Stage 1 to adjust the boundaries between existing Lot 8 DP 599554 and Lot 9 DP 616569 to create proposed Lot 1 and Proposed Lot 2. Stage 2 of the development seeks to further subdivide newly created Lot 2 into 2 lots being Proposed Lot 1 and Proposed Lot 2.

Part (2)(a) of Clause 20 of the Tweed Local Environmental Plan (LEP) 2000 requires consent to be granted to the subdivision of land within the 1(a) and 7(l) zone if the area of each allotment created is at least 40 hectares (unless it does not comprise agricultural or residential components). All lots would not comply with this clause as they will be only 4.4273ha, 0.6808ha and 6.9543ha in size.

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 State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning and Infrastructure, officers have resolved to report this application to full Council. The standard is varied by approximately 95%.

Concurrence was granted in this instance as the areas zoned 7(1) and 1 (a) are already well below the development standard and, therefore, there is no public benefit in maintaining these standards.

It is therefore considered that the proposal would be unlikely to set a harmful precedent for similar development as the proposed subdivision would not affect the existing status quo of the land.

Having regard to the relevant statutory controls and an assessment of the submitted SEPP No. 1 Objection in relation to Clause 20(2)(a) of the Tweed LEP 2000, in particular, it is considered that the proposed staged boundary adjustment and two lot subdivision is justified in this instance. On this basis approval of the proposed development is recommended.

**RECOMMENDATION:**

That Development Application DA13/0121 for a minor boundary adjustment (Stage 1) and two lot subdivision (Stage 2) at Lot 9 DP 616569 No. 1285 Numinbah Road, Chillingham; Lot 8 DP 579554 No. 23 Satinwood Place, Chillingham 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 NUMINBAHRD\_SUBPLN\_ST1 revision 01 and NUMINBAHRD\_SUBPLN\_ST2 revision 01 prepared by Planit Consulting and dated 07/13 and Plan 01 Issue A sheet 1 and 2 prepared by Cozens Regan Williams Prove Pty Ltd as stamped, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0125]

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

[GEN0135]

4. Any approval to install an on site sewage treatment and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the On-site Sewage Management Design Report (reference: HMC2013.017) prepared by HMC Pty Ltd and dated February 2013 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

[GENNS01]

5. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works:-

(a) Provision of a standard residential access in accordance with Section A2 - "Site Access and Parking Code" of Council's consolidated Tweed Development Control Plan and Council's Driveway Access to Property - Part 1 " Design Specification June 2004 for proposed Lot 1 in Stage 2.

(b) Bitumen or concrete sealing of the access from the existing road carriageway to the property boundary

[GENNS02]

6. No physical access shall be permitted from within adjacent allotment - Lot 6 in DP41458.

[GENNS03]

7. The applicant shall obtain written permission from the owners of Lot 6 in DP 41458 if the construction of the driveway access to Lot 1 in Stage 2 encroaches within the boundaries of this adjacent allotment.



[GENNS04]

8. The proposed subdivision does not approve any new dwellings. All future dwellings are to be applied for under a separate application.
9. The approved subdivision/development shall not result in any clearing of native vegetation without prior approval from the relevant authority. All trees identified as 'Possible Durobby Trees' (*Syzygium moorei*) depicted on the plan being Level Detail and Contour Plan of Part Lot 8 DP579554 & Part Lot 9 DP616569 Numinbah Road Chillingham Sheet 1 of 1 dated 3rd May 2013 prepared by Robert. A. Harries Surveyor shall be protected and retained. The reference to the aforementioned plan relates only to the location of vegetation and does not approve the location of any subdivision boundaries shown on the plan.
10. The boundary adjustment and subdivision does not approve water pumping from Rous River. Separate approval and licensing is required under the Water Management Act 2000.

[GENNS05]

#### DURING CONSTRUCTION

11. During construction for the relevant stage, 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]

#### PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

##### 12. 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 for Stage 2 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 will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$2318 per Trips \$11601.59\*

(\$2239 base rate + \$79 indexation)

S94 Plan No. 4

Sector12b\_4

<b>(b) Open Space (Casual):</b>	
1 ET @ \$543 per ET	<b>\$418.11*</b>
(\$502 base rate + \$41 indexation)	
S94 Plan No. 5	
<b>(c) Open Space (Structured):</b>	
1 ET @ \$622 per ET	<b>\$478.94*</b>
(\$575 base rate + \$47 indexation)	
S94 Plan No. 5	
<b>(d) Shirewide Library Facilities:</b>	
1 ET @ \$838 per ET	<b>\$645.26*</b>
(\$792 base rate + \$46 indexation)	
S94 Plan No. 11	
<b>(e) Bus Shelters:</b>	
1 ET @ \$64 per ET	<b>\$49.28*</b>
(\$60 base rate + \$4 indexation)	
S94 Plan No. 12	
<b>(f) Eviron Cemetery:</b>	
1 ET @ \$123 per ET	<b>\$94.71*</b>
(\$101 base rate + \$22 indexation)	
S94 Plan No. 13	
<b>(g) Community Facilities (Tweed Coast - North)</b>	
1 ET @ \$1389 per ET	<b>\$1069.53*</b>
(\$1305.6 base rate + \$83.4 indexation)	
S94 Plan No. 15	
<b>(h) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	
1 ET @ \$1860.31 per ET	<b>\$1435.26*</b>
(\$1759.9 base rate + \$100.41 indexation)	
S94 Plan No. 18	
<b>(i) Cycleways:</b>	
1 ET @ \$473 per ET	<b>\$368.94*</b>
(\$447 base rate + \$26 indexation)	
S94 Plan No. 22	

- (j) **Regional Open Space (Casual)**  
1 ET @ \$1091 per ET **\$850.98\***  
(\$1031 base rate + \$60 indexation)  
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**  
1 ET @ \$3830 per ET **\$2987.40\***  
(\$3619 base rate + \$211 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.

[POC0395/PSC0175]

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

[PSC0825]

14. **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, future water supply (subject to relevant licensing and approvals) and drainage over ALL public services/infrastructure on private property.**

**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]

15. **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 for each relevant stage, each lot shall have its' address number displayed in accordance with Council's procedure on street numbering.

[PSC0845]

16. Prior to registration of the plan of subdivision for each relevant stage, a Subdivision Certificate for each relevant stage 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]

17. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence deemed by Council to be a safety risk is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0945]

18. 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]

19. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) 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]

20. Prior to the issue of a Subdivision Certificate for each relevant stage, 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.

[PSCNS01]

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

1. The development proposal is to comply with the following subdivision layout plans as submitted in Appendix A of Planit Consulting 'Bushfire Safety Authority' report dated March, 2013:
  - Drawing prepared by Planit Consulting referenced NUMINBAHRD\_SUBPLN\_ST1, titled 'Numinbah Road, Chillingham Subdivision Plan Stage 1' dated 07/2013;
  - Drawing prepared by Planit Consulting referenced NUMINBAHRD\_SUBPLN\_ST2, titled 'Numinbah Road, Chillingham Subdivision Plan Stage 2' dated 07/2013
2. At the issue of subdivision certificate for Stage 1 and in perpetuity, the land surrounding the existing dwelling on proposed Lot 1 to a distance of 21 metres to the west and 10 metres to the south and east 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. At the issue of subdivision certificate for Stage 1 and in perpetuity, the land surrounding the existing dwelling on proposed Lot 2 to a distance of 21 metres to the north and west or to the property boundary, 27 metres to the east and 10 metres to the south 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'.
4. Any new water, electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
5. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.
6. The existing dwelling(s) on proposed Lots 1 and 2 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 M Chittick  
**Owner:** Mr Kenneth G Chittick  
**Location:** Lot 9 DP 616569 No. 1285 Numinbah Road, Chillingham and Lot 8 DP 579554 No. 23 Satinwood Place, Chillingham  
**Zoning:** 7(l) Environmental Protection (Habitat), 1(a) Rural, 2(d) Village  
**Cost:** Not applicable

**Background:**

Council is in receipt of a proposed a staged boundary adjustment and a two lot subdivision at Lot 9 DP 616569 No. 1285 Numinbah Road Chillingham and Lot 8 DP 579554 No. 23 Satinwood Place, Chillingham. The subject property has a total area of 12.065ha and features three zones - 1(a) Rural, 2(d) Village and 7(l) Environmental Protection. Development on the sites currently consists of a single storey dwelling house on each allotment and landscape improvements. Lot 8 has access from Satinwood Place and Lot 9 has access off Numinbah Road.

The property slopes generally from the Numinbah Road in the north to Rous River in the south of the site. The property has a high point of approximately 30 metres AHD adjacent to the northern boundary of each site.

Most of the sites have previously been cleared for grazing purposes. A dense area of vegetation is located on the southern boundary of the site along Rous River.

The site in its current configuration contains portions of 1(a) Rural and 7(l) Environmental Protection (habitat) land that do not achieve the minimum land size requirement of 40ha.

The subdivision is proposed in two stages. Stage one would adjust the boundary between the existing Lot 8 and Lot 9 to create proposed Lot 1 and 2. Stage two would subdivide the newly created proposed lot 2 into a further two allotments. The configuration of the development is as follows:

Existing:

- Lot 8 DP 579554 - 4.1157ha (7(l) - Environmental Protection)
- Lot 9 DP 616569 7.9493ha (Part 1(a) - Rural, Part 2(d) - Village and Part 7(l) - Environmental Protection)

Stage One (boundary adjustment:

- Proposed Lot 1 - 4.4273ha (Part 2(d) - Village and Part 7(l) - Environmental Protection)
- Proposed Lot 2 - 7.6350ha (Part 1(a) - Rural, Part 2(d) - Village and Part 7(l) - Environmental Protection)

Stage two would involve the further subdivision of Proposed Lot 2 into:

- Proposed Lot 1 - 0.6808ha (2(d) - Village)
- Proposed Lot 2- 6.9543ha (Part 1(a) - Rural, and Part 7(l) - Environmental Protection)

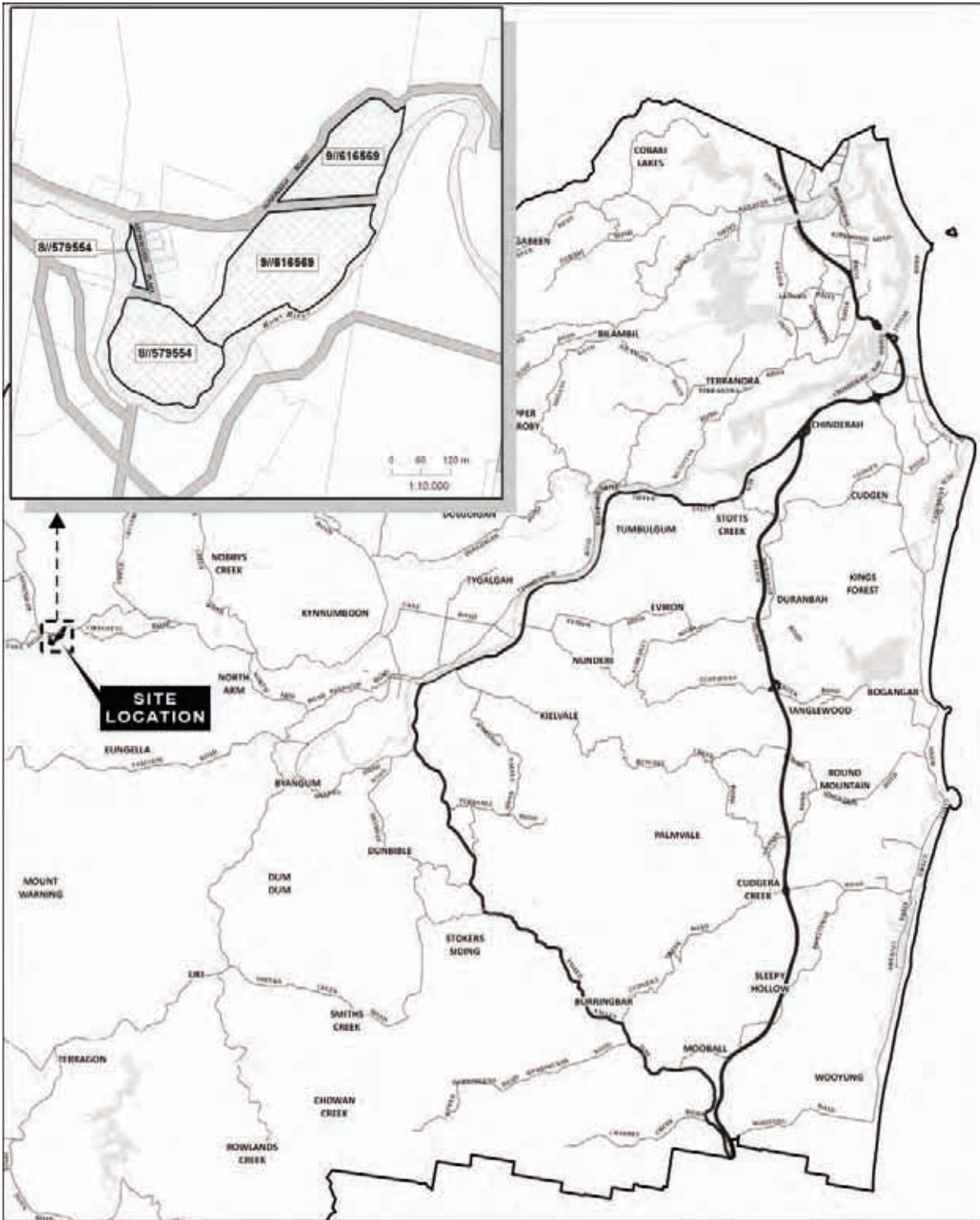
Currently Lot 8 DP579554 contains a dwelling approved via 0195/84B on 28/03/1984. Lot 9 DP 616569 is improved by a dwelling approved via DA07/0998 on 12/12/2007 and a rural shed approved via D86/0446 on 19/09/1986. These dwellings will be maintained on two (2)

separate allotments with the newly created Proposed Lot 1 via stage 2 having the possibility for a future residential development via separate application.

The subject application was referred to the NSW Rural Fire Service who responded on 24 April 2013 with conditions to be placed within the recommendations.

The subject application was referred to the Department of Planning and Infrastructure to seek concurrence for the proposed boundary adjustment and subdivision. The Department of Planning and Infrastructure granted concurrence on 21 May 2013.

**SITE DIAGRAM:**



**Locality Plan**

Lot 8 DP 579554 & Lot 9 DP 616569  
No. 23 Satinwood Place, Chillingham

Disclaimer: This report can be taken to mean the accuracy of the data. Council does not warrant the accuracy of the information provided in this report. Council does not accept any liability for any loss or damage, whether direct or indirect, arising from the use of this report. Council does not accept any liability for any loss or damage, whether direct or indirect, arising from the use of this report.

Prepared: 20 August 2013  
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 Boundaries shown should be considered approximate only.

0 1 2 3 4 5  
 1:10,000  
 0 100 200 300 400 500  
 1:10,000  
 0 100 200 300 400 500  
 1:10,000

Civic and Cultural Centre  
 2 Lambton Road  
 Murumbidgee NSW 2454  
 PO Box 919  
 Murumbidgee NSW 2454  
 T: (02) 4476 2400 | (02) 232 671  
 F: (02) 4476 2429  
 W: www.tweed.nsw.gov.au  
 E: planning@tweed.nsw.gov.au

**TWEED**  
SHIRE COUNCIL



DEVELOPMENT/ELEVATION PLANS:



NUMINBAH ROAD, CHILLINGHAM  
SUBDIVISION PLAN - STAGE 1

SCALE: 1:2000 @ A3  
DRAWN: RM  
DATE: 07/13  
REV: 01

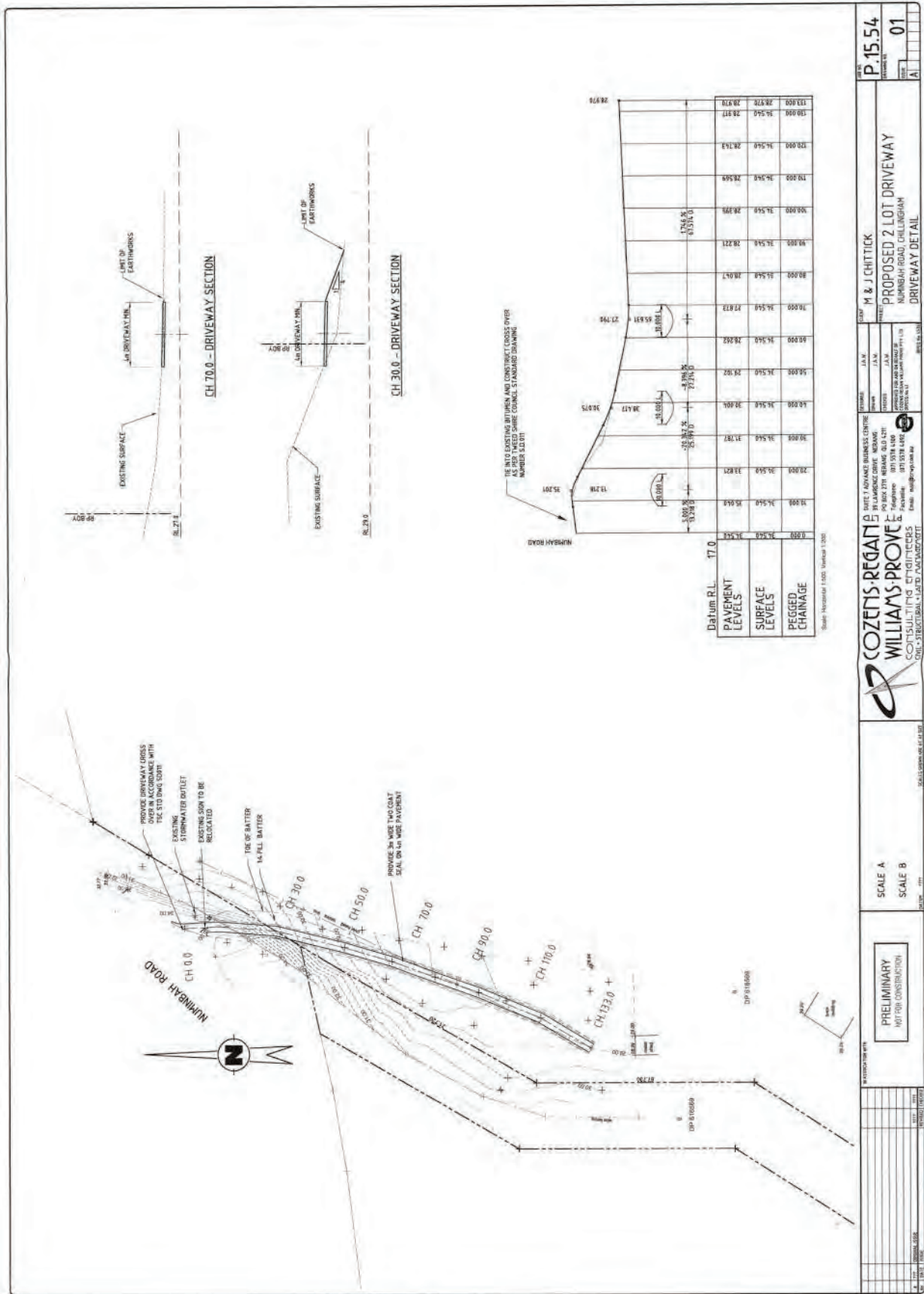
DRAW NO. A3  
CHECKED: BI

NUMINBAHRD\_SUBDIVL\_ST1  
BI

NORTH

PLANT CONSULTING  
10/100 South Coast Hwy  
Mooloolah  
7540  
07 5522 1122  
www.plantconsulting.com.au





**COZENS REIDAN**  
 WILLIAMS PROVE &  
 CONSULTING ENGINEERS  
 100-102 BENTLEY ROAD, CHILLINGHAM, HANTS RG26 7JH  
 TEL: 01256 495200 FAX: 01256 495201  
 www.cozensreidan.co.uk

**M & J CHITICK**  
 PROPOSED 2 LOT DRIVEWAY  
 NIMNBAH ROAD, CHILLINGHAM  
 DRIVEWAY DETAIL

DATE: 15/09/13  
 DRAWING NO: P.15.54  
 SHEET NO: 01  
 OF: 01

SCALE A  
 SCALE B

PRELIMINARY  
 NOT FOR CONSTRUCTION

DATE: 15/09/13  
 DRAWING NO: P.15.54  
 SHEET NO: 01  
 OF: 01



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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The vision of the clause is outlined as:

*“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”*

The proposed subdivision will not be detrimental to the natural or developed character of the Tweed Shire. The proposal will not have an unacceptable impact upon the economic vitality, ecological integrity or cultural fabric of the Tweed Shire.

Clause 5 - Ecologically Sustainable Development (ESD)

The subject proposal is consistent with the four principles of ESD and is unlikely to result in any undesirable impacts on any natural, built, social or economic environments.

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.*

As noted below, the proposed development is considered to meet the primary objective of the zones. The proposal generally complies with Clause 8(a).

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

The proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole due to the current sizes of the allotments and the surrounding subdivision pattern.

Clause 11 - Zone Objectives

1(a) Rural

*Primary Objective*

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

*Secondary Objective*

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

2(d) Village

*Primary Objective*

- *To provide for residential development and a full range of services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village.*

7(l) Environmental Protection-Habitat

*Primary Objective*

- *To protect areas or features which have been identified as being of particular habitat significance.*
- *To preserve the diversity of habitats for flora and fauna.*
- *To protect and enhance land that acts as a wildlife corridor.*

*Secondary Objectives*

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

The subdivision layout out leaves the portion of the site that is zoned 1(a) and 7(l) predominantly intact. With the portions of the site comprising the 2(d) zoning being subdivided into off the existing allotment in stage 2. Proposed Lot 1 from the boundary adjustment will comprise mainly 7(l) zoned land with a small portion of 2(d) zoned land. Proposed Lot 1 from the subdivision stage will be entirely 2(d) zoned land with proposed Lot 2 having 1(a) and 7(l) zoned land. The primary objective of the 2(d) zone to facilitate residential development is achieved in this instance with the allotments that are created providing a useable size, the smallest proposed allotment size is 6,808m<sup>2</sup> which is consistent with existing rural village allotments in the Chillingham village locality.

Clause 14- Development near zone boundaries

*Objective*

- *To provide flexibility where detailed investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable more logical and appropriated development of a site.*

This clause applies to land which is:

- Within 20 metres of a boundary between any two of Zones 1(c), 2(a), 2(b), 2(c), 2(d), 2(e), 2(f), 3(a), 3(b), 3(c),3(d),3(e), 4(a), 5(a),6(a) and 6 (b), or
- Within 50 metres of a boundary between Zones 1(a) and 1(b), or
- Within 50 metres of a boundary between any zone referred to in paragraph (a) and any zoned referred to in paragraph (b).

The applicants have utilised Clause 14 to enable provision of building envelopes on the proposed allotments that contain a mixture of zonings. In terms of the subject proposal it is considered that utilising the zoning flexibility clause is warranted in this instance and will enable efficient usage of the site.

#### Clause 15 - Essential Services

The subject proposal creates one additional allotment which has adequate land size to allow for service provision. The State of Environmental Effects (SEE) states that power and telecommunications are provided to the property. Water will be provided on site via rain water tanks and rain water collection. Effluent will be disposed of onsite via On Site Sewage Management (OSSM). The report has been assessed by Council's Environmental Health Unit and deemed to be acceptable with the imposition of conditions.

#### Clause 16 - Height of Building

No structures are proposed within the subject application therefore Clause 16 is not applicable in this instance.

#### Clause 17 - Social Impact Assessment

The subject application does not require a social impact assessment.

#### Clause 20-Subdivision in Zones 1(a), 1(b), 7(a), 7(d) and 7(l)

##### 1) Objectives

- To prevent the potential for fragmentation of ownership of rural land that would:
  - i) adversely affect the continuance or aggregation of sustainable agricultural units,
  - ii) generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and sustainable manner.
- To protect the ecological or scenic values of the land.
- To protect the area of Tweed's water supply and quality.

The design of the proposal has ensured that the continuance or aggregation of sustainable agricultural units is not prevented.

##### 2) Consent may only be granted to the subdivision of land:

- a) within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of each allotment created is at least 40 hectares.

In terms of the subject application, the parent parcel contains zoned areas of 1(a) and 7(l) that are substantially under the required size of 40ha. The subject proposal does not result in a further fragmentation of the areas zoned 1(a) and

7(l) as these areas are proposed to be contained predominantly within the one allotment.

Clause 22- Development near Designated Roads

Objective

- 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 of traffic noise on development adjacent to designated roads.

The subject property has frontage to Numinbah Road, Numinbah Road is a sealed road with no kerbing or formalised drainage.

The proposed development would not detract from the scenic attractiveness of the area of Tweed. Traffic noise would not be an issue in this instance as the topography of the site, setback distances and existing vegetation would limit the impact of traffic noise.

Clause 28- Development in Zone 7(l) Environmental Protection (Habitat) and on adjacent land

Objective

- To protect wildlife habitat from the adverse impacts of development.

The subject proposal will have minimal impact on wildlife habitat as no clearing is proposed under this application. No buildings have been proposed in this application.

Clause 34 Flooding

Objective

- To minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.

The subject application was referred to Council's engineers for comment. Comment was received as follows:

*"According to Council's Development Control Plan (DCP) - A3 Development of Flood Liable Land the design level for the Chillingham area is 29.95 metres AHD and Adopted Minimum Floor Level for Residential Development is 30.45 metres AHD.*

*The potential site for a future dwelling for Lot 1 in Stage 1 will be required to adhere to these requirements."*

It is therefore considered that any future applications for dwellings will be required to address flooding in the locality.

Clause 35 - Acid Sulfate Soils (ASS)

The subject site is mapped as containing Class 5 ASS. Class 5 ASS is outlined as:

*'Works within 500 metres of Class 1,2,3 or 4 land which is likely to lower the watertable below 1 metre AHD in adjacent Class 1,2,3 or 4 land.'*



In this instance no works are proposed within 500 metres of Class 1, 2, 3 or 4 land. Therefore no conflict with the level of ASS will result.

#### Clause 39A Bush Fire Protection

##### Objective

- To minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The subject proposal is considered to be integrated development and as such the proposal was referred to NSW Rural Fire Service for comment. Support for the proposal was granted subject to the conditions being placed within the recommendations.

#### Other Specific Clauses

There are no other clauses considered applicable to the subject proposal.

#### State Environmental Planning Policies

#### SEPP (North Coast Regional Environmental Plan) 1988

##### Clause 12: Impact on agricultural activities

The subject proposal ensures minimal fragmentation of the portions of the parent parcel zoned 1(a) and 7(l). Due to the current lot sizes well below the 40ha minimum it is considered that the sites are unlikely to result in any detrimental impact upon agricultural activities in the area.

##### SEPP No. 1 - Development Standards

Concurrence was sought from the Department of Planning and Infrastructure, concurrence was granted (see comment in Public Authority Submission section).

In terms of SEPP No. 1, this Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of the development, supported by written objection that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of the objection.

The subject application contained a SEPP No. 1 objection in regards to the minimum land size requirements as outlined within Clause 20 of the LEP Subdivision.

In accordance with the new 5 part test outlined by Chief Justice Preston in recent decision *Wehbe v Pittwater Council* (2007) NSW LEC 827. The applicants' assessment has been provided below:

1. ***The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case***

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The Clause 20(2a) objective providing foundation for the minimum lot size requirements states, *inter alia*:-

- (2) Consent may only be granted to the subdivision of land:
  - a) within zone 1(a), 1(b2), 7(a), 7(d) or 7(1) if the area of each allotment created is at least 40 hectares.

This development standard outlines the desire of Tweed Shire Council to ensure that these particular zone types are maintained in large areas to prevent the isolation and division of lands. The objection is deemed to be well founded on the grounds that the allotments are in keeping with the appropriate zoning objectives and the site as a whole will remain predominantly unchanged due to this subdivision.

It is noted that Stage 1 of the proposal does not require assessment and a variation to be granted under SEPP 1 due to the following clause of the TLEP2000:

Clause 19(3)

A person may, with consent, carry out a minor boundary adjustment, notwithstanding new lots may not comply with any relevant development standards applicable to the zone in which the land is situated.

Therefore, this SEPP 1 Objection is sought regarding only Stage 2 of the proposal.

## **Stage 2**

Proposed Lot 1 contains portions of 2(d) (6808m<sup>2</sup>) and 7(1) (995m<sup>2</sup>) zoned lands. Proposed Lot 2 contains portions of 1(a) (4.3263ha) and 7(1) (2.5285ha) zoned lands.

Lot 1 will be created so as to house a dwelling on the residentially zoned 2(d) land. Access is to be maintained to allow for frontage and potential pumping of water from the nearby Rous River. It is due to this access that a small portion of 7(1) zoned land will be excised from portions that form part of Lot 2. Due to the development sites rural location, no connection to Council reticulated water supply is available. As such, potential access to pump water from the nearby Rous River as a secondary water supply is considered valuable. The Stage 2 subdivision has been designed so as to retain this access for both Lots 1 and 2.

Lot 2 forms the residue from the creation of Lot 1 and will contain portions of 1(a) (4.3263ha) and 7(1) (2.5285ha) zoned lands.

The argument for a SEPP 1 Objection is considered to be well founded and therefore justified in the situation.

- 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.*

*Imposing strict compliance with Clause 20(2a) on the development would effectively limit the development potential of lands zoned for residential use by Council. The frontage to the Rous River is considered a valuable resource to rural lands. This loss of development potential would not represent the orderly and economic use and development of land.*

*As the majority of the site will not be altered from the existing arrangement this SEPP NO.1 Objection is considered to warrant Councils support. The development would see flexibility in planning controls achieved and the imposition of 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.*

**3. *It is also important to consider:***

- a. *Whether non-compliance with the development standard raises any matter of significance for State or regional planning; and***
- b. *The public benefit of maintaining the planning controls adopted by the environmental planning instrument.***

*The proposed non compliance raises no matters of significance for State or Regional Planning and no public benefit results from maintaining the development standard in this particular case. Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However in this instance, enforcing compliance with Clause 20(2a) would effectively prevent the land from being used in an orderly and economic use and would represent an onerous and unnecessary prevention of access to the Rous River.*

*In this regard, the proposals extent of compliance with all other requirements of the TLEP2000 is noted. The proposed non-compliance with Clause 20(2a) is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it relates to a specific development situation presented by the local context.*

Concurrence was granted in this instance as the areas zoned 7(1) and 1(a) are already well below the development standard and, therefore, there is no public benefit in maintaining these standards.

The Department of Planning and Infrastructure also provided the following:

*"While concurrence is granted, there are other issues with this proposal which Council might consider:*

- *it would be preferable for the proposed dwelling to be located wholly within the 2(d) zone;*
- *buffer areas against identified Regionally Significant Farmland should be located within the development site and be sufficient to avoid land use conflict;*
- *on-site effluent disposal may need additional consideration in view of flood liability of some of the site; and*
- *vegetation within that part of Lot 9 which is within the NPWS Sub-Regional Wildlife Corridor should preferably not be fragmented."*

Council concurs with the Department of Planning and Infrastructures concurrence. Conditions and further assessment was undertaken in regards to the other issues raised.

#### SEPP No. 44 - Koala Habitat Protection

SEPP 44 is applicable to the subject site due to the combined area of the site being greater than 1ha. Council's GIS identifies the vegetation on site as being predominantly highly modified/disturbed with some patches of rainforest present along the banks of the River. This will not be impacted upon as a result of the subdivision. The subject site is not identified as containing core koala habitat. No vegetation removal is proposed within the subject application. The subject proposal is considered to be consistent with the requirements of SEPP 44.

#### SEPP No. 55 - Remediation of Land

The proposed development was referred to Council's Environmental Health Unit who provided the following:

*"Given that there were no obvious indications of potentially contaminating activities and that a suitable Statutory Declaration is available for the proposed development area, no further information in regards to contaminated land is required."*

It is therefore considered that the proposed development will not impact upon contaminated land in the area. As such this SEPP is considered to be complied with. No further assessment is required.

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

Draft Tweed Local Environmental Plan (TLEP) 2012 applies to the subject site. Within the Draft TLEP the sites have split zonings being RU2 - Rural Landscape, RU5 - Village and E3 - Environmental Management. The minimum lot sizes within each of the zones are as follows:

- RU2 - 40ha
- RU5 - 450m<sup>2</sup>
- E3 - 40ha

The sites are currently well below these minimum lot sizes for RU2 and E3. The applicant has provided a SEPP No. 1 objection in relation to the size of these lots. The Department of Planning and Infrastructure has granted concurrence for this. It is considered that the proposed boundary adjustment and subdivision are consistent with the aims of the Draft Tweed LEP 2012.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

The subject application was referred to Council's flooding engineers for comment. Comment was received as follows:

*“According to Council’s Development Control Plan (DCP) - A3 Development of Flood Liable Land the design level for the Chillingham area is 29.95 metres AHD and Adopted Minimum Floor Level for Residential Development is 30.45 metres AHD.*

*The potential site for a future dwelling for Lot 1 in Stage 1 will be required to adhere to these requirements.”*

It is therefore considered that any future applications for dwellings will be required to address flooding in the locality.

A5-Subdivision Manual

Physical constraints:

The subject site is constrained by Bush Fire and flooding (refer to above for comment on flooding). The subject application was referred to the Rural Fire Service for comment. The Rural Fire Service determined that the proposal does not increase the risk of bushfire for people living on the property or in adjacent areas.

Landscape visual character:

The subdivision proposed relatively sizeable lot areas, in the context of the village, and retains natural vegetation so as to blend with the existing rural residential character of the village of Chillingham. The proposed dwelling envelopes are located below the ridgeline to the east and have utilised existing cleared areas. The proposal will therefore maintain the current landscape visual character.

Suitability of the site for effluent disposal:

The subject site has been determined as being adequately able to provide on-site effluent disposal as outlined further below.

Lawful point of discharge:

Most of the drainage of the site will follow existing drainage patterns of the lands natural form. The subject land slopes down from Lot 9 down to Lot 8 and the formed Satinwood Place road reserve. Being a rural environment the existing drainage arrangement will be maintained and is considered satisfactory.

Future dwellings will be assessed under new applications.

A11-Public Notification of Development Proposals

The subject application was notified from Wednesday 10 April 2013 to Wednesday 24 April 2013. During the notification timeframe no submissions were received. This DCP is considered to be complied with.

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

Clause 92(a) Government Coastal Policy

The proposed development is not affected by the Government Coastal Policy.

Clause 92(b) Applications for demolition

Not applicable. No demolition work is proposed.

Clause 93 Fire Safety Considerations

Not applicable. No buildings are proposed.

Clause 94 Buildings to be upgraded

Not applicable. No buildings are proposed.

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

The proposed development is not located within an area that is impacted by this management plan. No further assessment is required.

**Tweed Shire Coastline Management Plan 2005**

The proposed development is not located within an area that is impacted by this management plan. No further assessment is required.

**Tweed Coast Estuaries Management Plan 2004**

The proposed development is not located within an area that is impacted by this management plan. No further assessment is required.

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

The proposed development is not located within an area that is impacted by this management plan. No further assessment is required.

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

Context and Setting

The subject proposal results in the boundary adjustment and subdivision of a 2(d) portion of a parent parcel of land. The majority of the 1(a) and 7(l) sections will remain within two allotments with a minor section of 2(d) zoned land included in the 7(l) zoned land of Stage 1 Lot 1.

The proposed stage 2 subdivision will divide the 2(d) off the 1(a) and 7(l) zoned land to create proposed Lot 1 of 2(d) zoned land and proposed Lot 2 of 1(a) and 7(l) zoned land. This is consistent with surrounding parcels of land in the village area of Chillingham.

Access, Transport and Traffic

The following access arrangements were assessed by Council's Development Engineer.

- Lot 8 currently gains access by way of Satinwood Place and is a 5-metre wide bitumen sealed driveway in fair condition.
- Lot 9 is accessed from Numinbah Road and is a 5-metre wide gravel driveway in fair condition.

- As part of Stage 1, both lots 8 and 9 will retain their existing crossovers with Satinwood Place and Numinbah Road respectively. Stage 2 will retain these existing crossovers but will create a new property access to Lot 1 from the street frontage at Numinbah Road.
- Proposed Lot 1 in Stage 2 shall be subject to a Section 138 application and approval, and comply with Councils Access to Property Guidelines.
- It will be conditioned that no physical access shall be permitted from Lot 6 in DP41458.

It is considered that the access arrangements are sufficient to cater for the proposed development.

#### Flora and Fauna

The proposed development included a battle-axe type allotment which allowed access to the Rous River for Lot 1 in proposed Stage 2. This access handle created a situation where the boundary went through a portion of heavily vegetated land. Council's Natural Resource Management Unit assessed the proposal and provided the following:

*"Following discussions with the landholder it was agreed that access to the river from proposed Lot 1 Stage 2 be restricted to a 4 metre easement across Lot 2 Stage 2 rather than offering direct freehold frontage. The purpose of the easement is to allow for future water extraction for domestic or other purposes, subject to approval by the relevant state agency (NSW Office of Water). As such the layout has been appropriately amended to reflect the easement arrangement and to ensure that the easement is aligned clear of the canopy of existing trees to avoid future tree removal to accommodate services."*

It is considered that this can be achieved with the imposition of conditions within the recommendations.

#### Utilities

##### *Provision of Water*

Reticulated water is not available to the subject allotment. The applicant has stated that rainwater will be collected on site and future water extraction can be utilised for any future dwellings subject to approval from relevant state agencies.

##### *Effluent Disposal*

It is considered that the recommended on-site sewerage treatment and disposal methods for any future dwellings be constructed on the proposed lots created from the proposed subdivision, as detailed in the HMC On-Site Sewerage Management Design Report HMC2013.017 and dated February 2013 is sufficient to attain an acceptable level of environmental impact within the proposed allotment boundaries. Conditions will be included within the recommendations.

#### Hazards

##### *Bushfire*

As identified above, the site is bushfire prone and flood affected. The application was referred to the Rural Fire Service in terms of the bush fire and Council

Flooding Engineers assessed the flooding impact. In terms of both hazards it was determined that consent could be granted with appropriate conditioning.

#### *Contamination*

Reporting submitted with the application has indicated that there is no risk of contamination.

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

#### Surrounding Landuses/Development

The proposed subdivision will result in lot sizes which are consistent with adjoining development.

#### Flora and Fauna

The property features mostly modified grazing land with some areas of natural vegetation. If approved conditions of consent will be incorporated to ensure no removal of native vegetation occurs.

#### Natural Hazards

Whilst the site is constrained by flooding and bushfire, these hazards can be adequately managed through conditions.

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

#### Public Notification

The subject application was notified for a 14 day timeframe from 10 April 2013 to 24 April 2013. No submissions were received in regards to the proposal.

#### Department of Planning and Infrastructure

The subject application was referred to the Department of Planning and Infrastructure in regards to concurrence for the proposed subdivision. Concurrence was granted in this instance as the areas zoned 7(1) and 1(a) are already well below the development standard and, therefore, there is no public benefit in maintaining these standards.

#### NSW Rural Fire Service

The subject proposal is considered to be integrated development and as such the proposal was referred to the NSW Rural Fire Service for comment. Support for the proposal was granted subject to the following conditions:

1. The development proposal is to comply with the following subdivision layout plans as submitted in Appendix A of Planit Consulting 'Bushfire Safety Authority' report dated March, 2013:
  - Drawing prepared by Planit Consulting referenced NUMINBAHRD\_SUBPLN\_ST1, titled 'Numinbah Road, Chillingham Subdivision Plan Stage 1' dated March, 2013;
  - Drawing prepared by Planit Consulting referenced NUMINBAHRD\_SUBPLN\_ST2, titled 'Numinbah Road, Chillingham Subdivision Plan Stage 2' dated March, 2013;

#### Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and



to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

2. At the issue of subdivision certificate for Stage 1 and in perpetuity, the land surrounding the existing dwelling on proposed Lot 1 to a distance of 21 metres to the west and 10 metres to the south and east 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. At the issue of subdivision certificate for Stage 1 and in perpetuity, the land surrounding the existing dwelling on proposed Lot 2 to a distance of 21 metres to the north and west or to the property boundary, 27 metres to the east and 10 metres to the south 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'.

#### Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

4. Any new water, electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

#### Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

5. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

#### Design and Construction

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

6. The existing dwelling(s) on proposed Lots 1 and 2 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.

#### **(e) Public interest**

The proposed development, generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan, is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general. The proposal will not result in adverse cumulative impacts. It is considered that the site is suitable for the development.

**OPTIONS:**

1. Adopt the recommendations made and approve the development application.
2. Refuse the development application for specified reasons.

The Council officers recommend Option 1.

**CONCLUSION:**

The subject application is considered to generally comply with statutory and policy requirements. The development standard Clause 20 - Subdivision was considered unreasonable and unnecessary in this instance and therefore the SEPP No. 1 objection is concurred with. The proposed development is considered to not have a significant impact on flora and fauna, agricultural activities or the social, cultural and economic environment. The proposed lot sizes are considered to be consistent with existing allotments in the area and the proposal is therefore considered acceptable in this instance. The impact of the proposal in terms of traffic, flooding and bush fire have been assessed and determined to be acceptable.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**35 [PR-CM] Development Application DA03/0476.04 for an Amendment to Development Consent DA03/0476 for the Establishment of an Art Gallery/Coffee Shop to include a Refreshment Room and Extend Trading Hours on Saturdays including the Option of Live Music at Lo**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA03/0476 Pt5**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

### **SUMMARY OF REPORT:**

Approval was granted in October 2003 for an art gallery/coffee shop to include a refreshment room and extend trading hours to 11.30pm on Saturdays including the option of live music.

Along with an outdoor dining area within the road reserve, the approval required three car spaces to be provided on site.

Following a complaint in June 2011, the applicant was asked to re-instate the three spaces for the purposes of parking, as required under the conditions of development consent.

The applicant subsequently lodged a S96 application (DA03/0476.02) in March 2012, proposing to delete all parking requirements from the subject site, as well as extending trading hours on Friday nights to 9.00pm and Sunday nights to 8.00pm.

Assessment of the proposal identified concerns in relation to the car parking issues relating to the use of the site, structures within the road reserve, trading hours, live music and signage.

Following several Council meetings and workshops to try and resolve the parking issue, on 25 October 2012 Council resolved as follows:

*"A. Council, in respect of Development Application DA03/0476.02 for an amendment to Development Consent DA03/0476 for the establishment of an art gallery/coffee shop to include a refreshment room and extend trading hours on Saturdays including the option of live music at Lot 2 DP 575934 No. 17 Bambery Street, Fingal Head, endorse the following:*

1. *The applicant be requested to withdraw DA03/0476.02 within fourteen days of the date of this meeting, and that any further Section 96 application to modify the terms of the current DA consent for this site in terms of the current shortfall of required on site car parking not be determined until the*

*proposed Section 94 Plan identified in Point 2 is adopted by Council and made effective under the relevant provisions of the Act;*

2. *Upon withdrawal of DA03/0476.02 a draft Section 94 Plan be prepared applying to those parts of Fingal Head that are currently not included in Tweed Contribution Plan No. 23, and that it be presented at a Councillors Workshop, and reported to a subsequent Council Meeting for determination to proceed to public exhibition; and*
3. *If DA03/0476.02 is not withdrawn in accordance with Point 1 above, Development Application DA03/0476.02 for an amendment to Development Consent DA03/0476 for the establishment of an art gallery/coffee shop to include a refreshment room and extend trading hours on Saturdays including the option of live music at Lot 2 DP 575934; No. 17 Bambery Street, Fingal Head be refused for the following reasons:*
  1. *The proposed modification is not considered to be consistent with the provisions of Clause 8(1)(c) of Tweed Local Environmental Plan 2000, in that the deletion of onsite parking provisions would 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;*
  2. *The proposed modification is not considered to be in accordance with the provisions of Council's Development Control Plan Section A2 – Site Access and Parking Code, in that onsite parking provisions are not being maintained;*
  3. *The proposed modifications are considered not to be in the public interest, with regard to the precedent the proposal would set if parking requirements were removed;*
  4. *The proposed modification to extend trading hours is not supported, given the non-compliance with existing approved trading hours; and*
  5. *The proposed modification to use the approved parking area for alternate uses is not supported, in that the area is required for on-site car parking purposes.*

*B. Upon withdrawal or refusal of the Section 96 amended application the applicant be formally advised in writing that:*

- *The development must comply with existing approved conditions of consent;*
- *A Section 138 application must be submitted to Council for approval within 14 days of the date of the written notification in relation to all structures within the road reserve; and*
- *A development application must be submitted within 28 days of the date of the written notification in relation to all signage associated with the development where statutorily required.”*

Following the abovementioned Council resolution the application was formally withdrawn, a Section 138 application lodged for structures within the road reserve and unauthorised signage removed.

Subsequently Council officers undertook the process of amending the S94 Plan No. 23 so as to include those parts of Fingal that were not included in Tweed Contribution Plan No. 23 – Offsite Parking. Version 2.3 of S94 Plan No 23 was adopted on 18 April 2013, resulting in

the requirement for the payment of \$2,898 per car space in lieu of providing on-site car parking. This rate has since increased to \$2,983 per car space following indexation on 1 July 2013.

The applicant has since lodged a new Section 96 application for the use of the existing on-site parking for outdoor dining; payment of a financial contribution in lieu of on-site parking; and a change to the hours of operation.

The proposal was advertised for a period of 14 days. Only one late submission was received, in support of the proposed development.

Following assessment of the proposed modifications the application is recommended for approval, subject to conditions of consent. Given the extensive history of this development and previous reporting to Council, it was considered appropriate to report this matter to full Council for determination.

### **RECOMMENDATION:**

**That Development Application DA03/0476.04 for an amendment to Development Consent DA03/0476 for the establishment of an art gallery/coffee shop to include a refreshment room and extend trading hours on Saturdays including the option of live music at Lot 2 DP 575934 No. 17 Bambery Street, Fingal Head be approved and the consent be amended as follows:**

- 1. Delete Condition No. 1 and replace it with Condition No. 1A which reads as follows:**
  - 1A. The development shall be completed in accordance with the Statement of Environmental Effects and the Site Plan as submitted on 11 July 2013 with the development application, except where varied by these conditions.**
- 2. Delete Condition No. 5.**
- 3. Delete Condition No. 10.**
- 4. Delete Condition No. 22 and replace it with Condition No. 22A which reads as follows:**
  - 22A. Hours of operation are of the business are restricted to the following hours:**
    - 8.30am - 5.00pm Mondays to Thursdays**
    - 8.30am - 9.00pm Fridays**
    - 8.30am – 10.30pm Saturdays**
    - 8.30am - 8.00pm Sundays****In addition the art gallery is permitted to be open until 9.30pm on ten nights of every calendar year.**
- 5. Insert new Condition No. 25 which reads as follows:**
  - 25. Section 94 Contributions**

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

**Prior to the occupation/use of the on-site outdoor dining area, all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised**

officer of Council.

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

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

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

**(a) Tweed Road Contribution Plan:**

12.6 Trips @ \$1176 per Trips \$14,818

(\$1137 base rate + \$39 indexation)

S94 Plan No. 4

Sector 6\_4

**(b) Shirewide Car Parking**

6 space/s @ \$2983 per space/s \$17,898

(\$0 base rate + \$2983 indexation)

S94 Plan No. 23

**6. Insert new Condition No. 26 which reads as follows:**

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

**Prior to the occupation/use of the on-site outdoor dining area, all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.**

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

**Water DSP4: 0.28 ET @ \$12575 per ET \$3,521**

**Sewer Kingscliff: 0.455 ET @ \$6042 per ET \$2749.10**

**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.**

**7. Insert new Condition No. 27 which reads as follows:**

- 27 A Section 138 application must be submitted to Council for approval within 28 days of the date of the amended consent (September 2013) in relation to all structures within the road reserve, with the exception of the roof structure approved under the S138 approval DWY13/0225.**

## REPORT:

**Applicant:** Ms A McKay  
**Owner:** Mr Richard B Steenson  
**Location:** Lot 2 DP 575934 No. 17 Bambery Street, Fingal Head  
**Zoning:** 2(a) Low density Residential

### Background:

The subject site is located on Fingal Road, adjacent to the intersection with Bambery Street, overlooking the Tweed River to the west and adjacent reserve. The following is a summary of the history of the development of the site.

#### Existing Use

- 8 September 1993 - Council acknowledged that the marine showroom (Fingal Head Marine) had existing use rights.

#### D93/487

- Approved 25 March 1994 for the “*conversion of an existing commercial vacant building to two (2) separate occupancies being **retail plant nursery, arts and craft shop and an office** for business development advice*”.
- The application noted that there was provision for three car spaces on site.
- Council's Development Assessment Panel (DAP) minutes acknowledge that the provision of on-site parking is limited and not in accordance with Development Control Plan (DCP) 2, however it also notes the existing use situation.
- A condition of consent (Condition 14) required “*the provision of **three (3) on site car spaces** to be suitably located and marked out to the satisfaction of Council's Director of Development Services*”.

#### D93/487.01

- Proposed amendments to engineering conditions and proposed change of use to ‘Shop 1’ from Business Consultancy to a Real Estate office.
- The assessment noted no objection to the change of use - no change to parking requirements.
- Approved 8 July 1994 for the “*conversion of an existing commercial vacant building to two (2) separate occupancies being **retail plant nursery, arts and craft shop and a Real Estate office** for business development advice*”.
- A condition of consent (Condition 14) remained the same, requiring “*the provision of three (3) on site car spaces to be suitably located and marked out to the satisfaction of Council's Director of Development Services*”.

#### K99/96

- This application proposed to locate the three car spaces at the rear of the existing dwelling, accessed off Bambery Street. This design was not supported and the applicant was requested to provide the three spaces on the existing concrete slab accessed off Fingal Road. The applicant was also requested to provide turning areas to allow vehicles to turn and leave in a forward direction.
- Approved 11 May 1999 for the “***addition of a staircase to an existing dwelling and amenities to a commercial building***”.



K00/0303

- The applicant proposed a change of use to 'Shop 1' for a tea and coffee shop to allow for serving beverages and cakes. The proposal also requests an extension of art gallery opening hours. Also included provision of an outdoor eating area containing five tables and 20 seats within the road reserve - consent not required for this component.
- The DAP report notes the conversion of 21m<sup>2</sup> of office area to a kitchen for the provision of tea and coffee. No indoor seating proposed - only outdoor seating in road reserve, which did not trigger parking requirements.
- The DAP report acknowledged that three car spaces exist on site for the commercial building, which has existing use rights. The report concludes that no additional parking is required.
- The report also notes the following:

*"On street parking in front of the site will not be able to be provided due to the width of the road and the location of the site. However, the site is in close proximity to the Fingal boat ramp which has ample car parking. It is noted that Council's Engineering Services Division has raised no objections to the application in this regard."*
- A Deferred Commencement approval was issued on 28 April 2000 for the purposes of a **"coffee shop and extension of art gallery opening hours"**.
- The approved plan indicates the three car spaces (as approved under K99/96). **No specific conditions were applied with regard to car parking.**
- Condition 5 states that *'no customer seating for the coffee shop is to be provided within the boundaries of the subject land'*.
- The deferred commencement condition stated that *'the toilet facilities approved by way of development consent K99/96 are to be installed and operational to the satisfaction of the Director Environment and Community Services'*. Council records do **not** show that the deferred commencement conditions were met.

K00/0303.01

- The applicant proposed an amendment to the operating hours of the gallery in July 2002. The applicant was trying to change the nature of the coffee shop to a refreshment room, which was a change of use. The applicant was request to withdraw the application and submit a new Development Application. The Section 96 was withdrawn in August 2002.

DA03/0476

- Fresh application for use of a refreshment room (as opposed to the approved coffee shop) and art gallery. The application also requested an extension to trading hours to 11.30pm on Saturdays with live music on Saturdays to 10.30pm.
- The DAP report notes the following:
  - *DCP 2 does not generate the need for on-site parking to be provided for alfresco dining. The existing development operates under a footpath dining agreement with Council. All of the existing seating is located on the road reserve and is therefore regulated by the footpath dining agreement.*

- *The existing development and the proposed refreshment room with extended hours will utilise the same area of land regulated by the footpath dining agreement, and therefore the proposed development does not generate any on-site car parking requirements.*
- *The existing consent for the site requires the provision of three (3) on-site car parking spaces accessed by a driveway from Fingal Road. These exist on the site however casual seating has been placed over these spaces. Conditions of consent would be imposed ensuring that these three car parking spaces are provided.*
- A Deferred Commencement approval was issued on 27 October 2003 for the establishment of an “**art gallery/coffee shop to include a refreshment room & extend trading hours to 11.30pm on Saturdays including the option of live music**”. The consent was limited to a 12 month period from when it becomes operational.
- Condition 10 required ‘*the provision of **three off street car parking spaces as identified on the approved plan for Development Consent K2000/303. The layout and construction standards** to be in accordance with DCP2’.*
- Condition 5 states that ‘*no customer seating for the coffee shop shall be provided within the boundaries of the subject land*’.
- The deferred commencement condition stated that ‘*the applicant shall demonstrate compliance with all of the conditions of consent contained in K2000/303. This shall include providing proof of payment for monetary contributions and a written submission demonstrating compliance with other conditions. **The site shall be provided with the on-site car parking as identified on the approved plan***’. Council records do show that the deferred commencement conditions were met and the **consent was operation from 1 November 2004.**

DA03/0476.01

- Proposed amendment to remove Condition 2, which limited the consent to a period of 12 months only.
- Prior to the assessment being determined, Council staff met with the applicant to resolve outstanding matters such as:
  - The post and rail fence running parallel with Fingal Road is to be removed and reinstated on the agreed outdoor dining lease alignment;
  - Vegetation outside the correctly aligned fence alignment had to be removed to improve sight lines for motorists exiting Bambery Street; and
  - Car parking requirements were not being kept clear for use as customer car parking.
- All of the above issues were resolved prior to approval being issued.
- It was also noted that the description of the development consent had erroneously noted the proposed trading hours as opposed to the approved hours. The amended consent revised the description appropriately.
- Approved 9 May 2006 for the “**establishment of an “art gallery/coffee shop to include a refreshment room & extend trading hours on Saturdays including the option of live music**”.

- No changes to parking requirement – 3 on site spaces.

DA12/0072

- Approval was granted for an additional on-site toilet facility to cater for additional future patronage within the footpath dining area.

DA03/0476.02

- Following a complaint being lodged in June 2011 against the Sheoak Shack business for not operating in accordance with its development consent (in terms of car parking provisions), Council initiated an investigation into the non-compliance.
- A site inspection on 17 August 2011 concluded that the required three car spaces were not being utilised in accordance with the approved plans for the business. The business owner was requested on 21 September 2011 to reinstate the three approved car spaces, as there were no other options considered to be available for onsite parking.
- Following several meetings with various Council staff and requests for extension of time, the business owner lodged a Section 96 application on 9 March 2012 to modify the approved development. The application sought the following:
  - The deletion of the requirement for the provision of three on-site parking spaces (Condition 10);
  - To use the parking area as an informal area for such uses as reception area, separated seating area for dog owners and smokers, dancing area, staff amenities, and community events such as exhibition openings also during inclement weather conditions; and
  - Amend the trading hours of the business to 9.00pm on Friday and 8.00pm on Sunday (Condition 22).
- Included with the application was 1000 letters of support from...‘concerned customers, staff and artists’.
- Following a detailed assessment of the proposed modifications, the application was reported to the 17 July 2012 Council meeting with a recommendation for refusal.
- In accordance with the Council's resolution of the July meeting, a workshop was held on Tuesday 31 July 2012 to discuss this matter further, between the Councillors, Council's staff and the applicant. Issues raised at the workshop related to: staff parking; customer parking; structures within the road reserve; trading hours; and live music.
- Further to the Councillors workshop, Council's Engineering and Operations Division considered a series of options for providing car spaces for the current restaurant use on adjoining and adjacent public areas. Council's preferred option was that the spaces be provided in the road reserve adjoining the frontage of the subject site along Fingal Road, as shown in Figure 1 below.



2. *Upon withdrawal of DA03/0476.02 a draft Section 94 Plan be prepared applying to those parts of Fingal Head that are currently not included in Tweed Contribution Plan No. 23, and that it be presented at a Councillors Workshop, and reported to a subsequent Council Meeting for determination to proceed to public exhibition; and*
  3. *If DA03/0476.02 is not withdrawn in accordance with Point 1 above, Development Application DA03/0476.02 for an amendment to Development Consent DA03/0476 for the establishment of an art gallery/coffee shop to include a refreshment room and extend trading hours on Saturdays including the option of live music at Lot 2 DP 575934; No. 17 Bambery Street, Fingal Head be refused for the following reasons:*
    1. *The proposed modification is not considered to be consistent with the provisions of Clause 8(1)(c) of Tweed Local Environmental Plan 2000, in that the deletion of onsite parking provisions would 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;*
    2. *The proposed modification is not considered to be in accordance with the provisions of Council's Development Control Plan Section A2 – Site Access and Parking Code, in that onsite parking provisions are not being maintained;*
    3. *The proposed modifications are considered not to be in the public interest, with regard to the precedent the proposal would set if parking requirements were removed;*
    4. *The proposed modification to extend trading hours is not supported, given the non-compliance with existing approved trading hours; and*
    5. *The proposed modification to use the approved parking area for alternate uses is not supported, in that the area is required for on-site car parking purposes.*
- B. *Upon withdrawal or refusal of the Section 96 amended application the applicant be formally advised in writing that:*
- *The development must comply with existing approved conditions of consent;*
  - *A Section 138 application must be submitted to Council for approval within 14 days of the date of the written notification in relation to all structures within the road reserve; and*
  - *A development application must be submitted within 28 days of the date of the written notification in relation to all signage associated with the development where statutorily required”.*
- Subsequently, the S96 application (DA03/0476.02) was formally withdrawn and the draft S94 Plan was prepared. In addition, the applicant submitted a S138 application for the majority of the structures within the road reserve and all unlawful signage was removed.

**PROPOSAL:**

The subject S96 application (DA03/0476.04) proposes to modify the approval in the following manner:

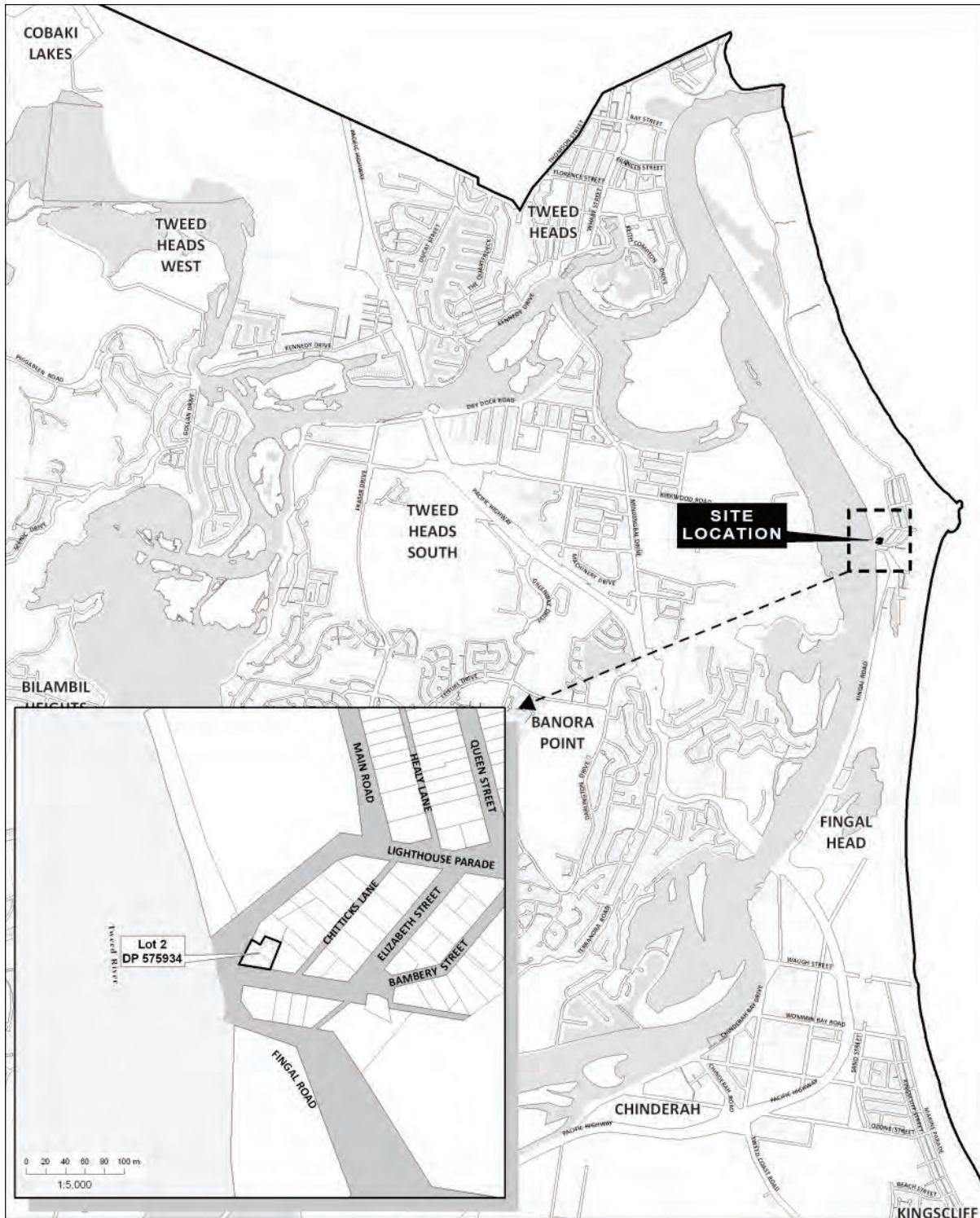
- Deletion of any on-site car parking requirements;
- Use of the existing on-site car parking area for outdoor dining;
- Payment of a financial contribution in lieu of on-site parking; and
- Extended hours of operation.

The proposed modifications result in the following amendments to existing conditions of consent as follows:

- Condition 1 – approved plans;
- Condition 10 – onsite car parking requirements; and
- Condition 22 – hours of operation.

In addition to the modifications proposed by the applicant, several new conditions of consent are recommended following assessment of the application. These include: a condition with regard to the payment of contributions in lieu of supplying on-site car parking; the deletion of Condition 5 with regard to on-site customer seating; and a requirement for an additional S138 application with regard to structures within the road reserve.

**SITE DIAGRAM:**



**Locality Plan**

Lot 2 DP 575934  
No. 17 Bambery Street, Fingal Head

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Cadastral: 04 July, 2012  
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Boundaries shown should be considered approximate only.

0 0.5 1 Km  
1:40,000 @ A4 Portrait  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED  
Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geoidetic Datum of Australia 1984  
9401: Map of Australia, Zone 50  
GDA

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



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Author: 24/07/2013 10:00:00 AM

Date Printed: 04/09/2013

DEVELOPMENT/ELEVATION PLANS:





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

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

**Tweed Local Environmental Plan 2000 (TLEP 2000)**

**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.*

As noted below, the proposed modifications are considered to be consistent with the primary objective of the 2(a) zone.

Other relevant clauses of the TLEP 2000 have been taken into consideration.

The proposed modification is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

**Clause 11 – Zone Objectives**

The subject land is zoned 2(a) Low Density Residential under the Tweed Local Environmental Plan 2000.

The objectives of the zone are:

- *To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.*
- *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 objectives of the zone.*

The existing use of the site and proposed continuing use of the site are non residential uses. In assessing the original application, Council was satisfied that the proposed development would not detract from the primary objective of the zone being a predominantly low density residential environment, subject to conditions of consent.

The change in hours of operation relates to Friday night trading to 9.00pm and Sunday night trading to 8.00pm. The proposed modification to trading hours is not considered to be a significant impact to the residential environment and is not considered to undermine the objective of the zone.

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

**Tweed Development Control Plan**

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A2-Site Access and Parking Code

The subject site has three uses on it, these being: residence, gallery and refreshment room. In addition to standard residential requirements, the subject site must incorporate the following parking provisions:

	<b>Bicycle</b>	<b>Staff</b>	<b>Customers</b>
Gallery	2	*	1
Cafe		4*	5
<b>Total</b>	<b>2</b>	<b>4</b>	<b>6</b>

\* As the owner resides on site, one (1) additional staff spaces is not required

\*\*\* Customer parking is not required for footpath dining

Although it is acknowledged that the footpath dining component of the business associated with the refreshment room does not trigger any parking requirements, the kitchen associated with the refreshment room generates the need for one car space per staff at peak operating time.

The applicant has not provided sufficient information to date with regard to staff numbers. However, Council staff has estimated that the café would utilise five staff at peak operating times. This generates a need for four staff spaces for the refreshment room (allowing for the owner of the business being a staff member and not requiring a car space as they reside on the subject site).

The accommodation of staff parking has been addressed at a Councillor workshop for the previous (withdrawn) S96 application, whereby staff will park their vehicles in tandem within the driveway located behind the existing residence, with available room for four vehicles. Whilst staff parking is normally limited to only two spaces to allow easy manoeuvring of vehicles, it was agreed at the workshop that management of the staff parking would be left to the applicant to maintain. Therefore, no further requirement for on-site staff parking is required.

Customer parking is generated by the existing gallery (one space) and the proposed use of the existing on-site parking area as an outdoor dining area, which has been calculated as 35m<sup>2</sup> by the applicant. Using the standard rate of 1 space per 7m<sup>2</sup> of dining area, the on-site outdoor dining generates a requirement of five spaces. In total, the development requires six customer spaces.

As noted previously, the S94 Plan No. 23 has been amended to include areas of Fingal not previously covered. The requirement of six customer spaces results in the payment of \$17,898 in lieu of the six car spaces being provided on-site.

Given that the payment of contributions in lieu of on-site parking is available, the applicant has requested the deletion of Condition 10, which currently states:

- 10. The provision of three off street car parking spaces as identified on the approved plan for Development Consent K2000/303. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.*

The proposed deletion of Condition 10 is supported, subject to the inclusion of a new condition of consent for the payment of contributions, pursuant to the provisions of S94 Plan No. 23 – Offsite Parking. In addition to the off site parking contribution the development generates Section 94 Plan No. 4 - Tweed Road Contribution Plan in relation to the additional 35m<sup>2</sup> of on-site outdoor dining. The following new Condition 25 is proposed:

25. **Section 94 Contributions**

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

*Prior to the occupation/use of the on-site outdoor dining area, all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.*

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

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

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

(a) *Tweed Road Contribution Plan:*

12.6 Trips @ \$1176 per Trips \$14,818

*(\$1137 base rate + \$39 indexation)*

*S94 Plan No. 4*

*Sector 6\_4*

(b) *Shirewide Car Parking*

6 space/s @ \$2983 per space/s \$17,898

*(\$0 base rate + \$2983 indexation)*

*S94 Plan No. 23*

[POC0395/PSC0175]

Similarly the proposed use of the existing on-site car parking as outdoor dining generates development contributions for Water and Sewer under Section 64 of the Water Management Act 2000. The following new Condition No. 26 is proposed:

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

*Prior to the occupation/use of the on-site outdoor dining area, all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.*

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

Water DSP4: 0.28 ET @ \$12575 per ET \$3,521

Sewer Kingscliff: 0.455 ET @ \$6042 per ET \$2749.10

*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.*

Subject to the abovementioned deletion of Condition 10 and the inclusion of new Condition Nos. 25 and 26, the proposed modifications are considered to be consistent with the provisions of DCP A2.

#### A4 - Advertising Signs Code

The original assessment of this application did not incorporate any proposed signage. The following standard signage condition was applied as Condition 3:

3. *Advertising structures/signs to be the subject of a separate development application, where statutorily required.*

Following the Council resolution on 25 October 2012 that a development application be lodged within 28 days of notification for all signage on the site, the applicant removed all unlawful signage. This S96 application does not incorporate any signage provisions. Condition 3 remains applicable in that separate approval is required for future signage, where statutorily required.

#### A11 - Public Notification of Development Proposals

It is acknowledged that the previous (withdrawn) S96 application was supported by over 1000 letters of support.

The proposed modifications were advertised for a period of 14 days, with only one late submission being received. This submission was in support of the proposal.

### **(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**

#### Access, Transport and Traffic

As noted previously, Council have recently amended Contribution Plan No. 23 so as to incorporate areas of Fingal that were not previously covered. This amendment provides an opportunity for the applicant to lawfully utilise the existing on-site car spaces as additional on-site outdoor dining, subject to the payment of contributions. As such, the proposal is now considered to be compliant with applicable car parking requirements.

#### Trading Hours

As noted above, the applicant has again requested an extension of trading hours on Fridays and Sundays. Condition 22 of the development consent notes the following:

22. *Hours of operation are limited to the hours 8.30am - 5.00pm Monday to Sunday inclusive, except Saturdays where trading hours are 8.30am - 10.30pm. In addition the art gallery is permitted to be open until 9.30pm on ten nights of every calendar year.*

The applicant has provided the following justification for the proposed extension of trading hours:

*"The community expectations for refreshment rooms are extended trading hours at weekends. The consent only allows this on Saturday evening. Therefore a modification to condition no. 22 is requested to provide for trading until 9.00pm on Friday and 8.00pm on Sunday. This would allow the Shack to extend to the local community similar hours to those enjoyed by other village and town centres in the Shire, without community members having to leave Fingal Head. The extended trading hours would not require any additional facilities at the Shack.*

*There have been no adverse impacts of the extended trading on Saturday and therefore the proposed modification is considered to be reasonable."*

Council's Environmental Health Unit has assessed the proposed modification of Condition 22 and has provided the following comments:

*"The application requests that the permissible trading hours be modified to 9.00pm on Friday nights and 8.00pm on Sunday nights.*

*During assessment of DA03/0476.02 (withdrawn) in March 2012, it was noted that "the matter was discussed with Grant Seddon, Licensing Sergeant, Tweed Heads Police who advised that the current Liquor License permits trading up until midnight 7 days, except Sunday which is restricted to 10.00pm. Therefore the trading hour restrictions are created under Condition 22 of the development consent. Sergeant Seddon also advised that he is familiar with the premise and has not received any notifications regarding the premise in his capacity as Licensing Sergeant. He did not raise any objection to the proposed amendment to permissible hours".*

*This matter was discussed with Mark Gorton, Licensing Sergeant, Tweed Heads Police on 9 August 2013 who reviewed Police records and agreed with previous comments from Grant Seddon above (Grant Seddon is on leave).*

*No recent complaints regarding noise have been received. It was noted that an email to Council regarding planning use rights dated 24/10/12 referred to it as a "noisy business" however no formal complaint was made.*

*The premise has a liquor license and the Office of Liquor, Gaming and Racing (OLGR) is responsible for any noise or amenity notifications. Based on the information above and the fact that the Licensing Sergeants have not raised any concerns about the modified hours, no objection is raised to the amendment of this condition."*

The proposed extension of trading hours on a Friday and Sunday evening is supported. As such, the following amendment to Condition 22 is recommended:

*22A. Hours of operation are of the business are restricted to the following hours:*

*8.30am - 5.00pm Mondays to Thursdays*

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8.30am - 9.00pm Fridays

8.30am – 10.30pm Saturdays

8.30am - 8.00pm Sundays

*In addition the art gallery is permitted to be open until 9.30pm on ten nights of every calendar year.*

### Noise

The previous S96 application (withdrawn) proposed to modify Condition 23 to allow live music on a Sunday. Live music on a Sunday has been consistently opposed by Council staff without the submission of a full acoustic report supporting the application.

Condition 23 notes the following:

23. *Outdoor amplified music may only be played on Saturday night. This may only occur up until 9.30pm and speakers shall be directed away from residential premises. The playing of amplified or live music must cease upon request by any Council or Police officer.*

It should be noted that this current S96 application does not propose any modification of Condition 23. As such, live music continues to be permissible on Saturdays only.

### Use

The proposed use of the existing car parking area has not previously been supported, as a result of non-compliance with on-site parking requirements. As a result of the original application only proposing dining within the road reserve, the following condition was applied:

5. *No customer seating for the refreshment room shall be provided within the boundaries of the subject land.*

Following the amendment of the S94 Plan No. 23, the applicant now proposes to lawfully use the existing on-site car spaces for the purposes of on-site outdoor dining. Subject to the inclusion of new Condition 25 in relation to the payment of contributions, the deletion of Condition 5 is recommended.

In terms of the new use of the on-site car spaces, the applicant has submitted a revised site plan. An amendment to Condition 1 of the consent is required with regard to the new plan, as follows:

- 1A. *The development shall be completed in accordance with the Statement of Environmental Effects and **the Site Plan as submitted on 11 July 2013** with the development application, except where varied by these conditions.*

The use of the existing on-site parking area as outdoor dining was also assessed in terms of adequate toilet facilities. Council's Building Unit has noted that the approval of DA12/0072 (additional toilet) adequately caters for 100 persons, in accordance with the provisions of Part F2.3 of the Building Code of Australia (BCA).

The current footpath dining area allows for 44 patrons. Using Table D1.13 of the BCA, the use of the existing on-site parking area for outdoor dining would allow an additional 35 patrons. Based on the existing and proposed seating, a total of 79 patrons can be adequately catered for by the existing toilet facilities.

It should be noted that any future increase to the footpath dining licence area will need to take into consideration the current limit of 100 patrons, otherwise additional toilet facilities will be required.

#### Structures within the Road Reserve

The existing footpath dining area is surrounded by various structures providing shade and weather protection. As per the requirements of the Council resolution of 25 October 2012, the applicant submitted a S138 application for the roof structures within the road reserve. The S138 application was supported by engineer's certification in terms of the structural adequacy of the structures. The S138 application was approved by Council's Engineers in May 2013.

However, during the assessment of the current S96 application it has become apparent that not all structures were included in the S138 application. Items not covered by the recent S138 application include (but is not limited to) the raised stage area adjacent to the existing driveway and the fencing structure along the front of the outdoor dining area within the road reserve.

It is considered acceptable to apply new Condition 27 requiring a further Section 138 application to be submitted within a certain timeframe for approval as follows:

*27 A Section 138 application must be submitted to Council for approval within 28 days of the date of the amended consent (September 2013) in relation to all structures within the road reserve, with the exception of the roof structure approved under the S138 approval DWY13/0225.*

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

The subject site is considered to be suitable for the proposed modifications, subject to the applicant complying with the conditions of consent in terms of payment of contributions, hours of operation, signage and approval of all structures within the road reserve.

#### **(e) Public interest**

The proposed modifications are considered to be in the public interest, particularly given that they will result in an acceptable resolution to long standing compliance matters for the subject site.

### **CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- "(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

### **Likely Environmental Impact**

As noted above under Section 79c considerations, the previous compliance matters relating to the subject site are resolved by the proposed modifications. As such, it is considered that the proposal is unlikely to result in any likely environmental impact.

### **Substantially the Same Development**

The proposed modifications are considered to result in substantially the same development as that originally approved, in terms of the use of the site as: art gallery, refreshment room and residence.

### **Notification/Submissions**

The proposed development was advertised for a period of 14 days, during which there were no submissions. One late submission was received, in support of the proposed modifications.

### **OPTIONS:**

1. Approve the proposed modifications, or
2. Refuse the proposed modifications, with reasons for refusal.

Council officers recommend Option 1.

### **CONCLUSION:**

The proposed modifications are considered to be acceptable in that they will result in previous compliance matters being resolved, subject to the payment of contributions in lieu of providing on-site car parking provisions.

### **COUNCIL IMPLICATIONS:**

#### **a. Policy:**

Corporate Policy Not Applicable.

#### **b. Budget/Long Term Financial Plan:**

Not Applicable.

#### **c. Legal:**

Not Applicable.

#### **d. Communication/Engagement:**

Not Applicable.

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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

**SUBMITTED BY: Planning Reforms**

**FILE REFERENCE: PP12/0001 Pt2**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

### **SUMMARY OF REPORT:**

This report provides an update on Planning Proposal PP12/0001 for 420-434 Terranora Road, Terranora. It also seeks Council's endorsement to proceed with making a planning proposal for submission to the Department of Planning and Infrastructure's (DP&I) legislative 'Gateway' portal for a Ministerial 'Determination'.

At its meeting of 21 March 2013, Council considered a report from the officers recommending support to advance this Proposal to Gateway determination. Due to the particular sequence of Councillor motions and voting on this item, there was no determined action. On the basis of this action, the applicant for the Proposal has since sought a review of the pre-Gateway process through the DP&I.

The review was undertaken by the Joint Regional Panel (JRPP) and their recommendation to the Department was to progress the proposal to the Gateway portal, and for certain requirements to be included, which is discussed in the report. The Department has since sought Council's advice in response to JRPP recommendation on whether it will finalise and submit a planning proposal.

Further to the Gateway planning proposal request the Department also seeks advice about whether the Council wants to retain its role as the 'Relevant Planning Authority' (RPA) for this proposal. The alternative being the Department's appointment of a different RPA.

This report concludes that Council would be best served by accepting the role of Relevant Planning Authority and submitting a completed planning proposal to the Gateway for determination.

The report makes recommendation based on assessment of the JRPP, Council officers and the Department.

**RECOMMENDATION:**

- 1. That Council prepares a planning proposal for Lots 2-8 DP 28597 being No. 420-434 Terranora Road, Terranora, and submit the planning proposal for a Gateway determination.**
- 2. That the Minister for Planning and Infrastructure be advised that a delegation of the Plan Making functions is not being sought in this instance and accept the role as Relevant Planning Authority for this proposal.**
- 3. That Council officers enter into negotiations with the owner of Lots 2-8 DP 28597 No. 420-434 Terranora Road, Terranora, for the preparation of a Planning Agreement pursuant to s93F of the *Environmental Planning and Assessment Act 1979*, which ensures that development of vacant allotments does not occur until such time as critical constraints affecting the site are addressed to the satisfaction of Council, and that ongoing maintenance and management requirements for shared and other infrastructure and services are secured within the planning agreement.**
- 4. That should any one of the critical constraints affecting the site not be resolved to the satisfaction of Council, that the planning proposal not be placed on public exhibition and a further report be prepared for Council's consideration detailing any prevailing issues.**
- 5. That consultation with the landowners of the four adjoining developed properties, Lot 1 DP 28597, Lots 9, 10 and 11 DP 28597 commence regarding their inclusion within a revised planning proposal post receipt of the initial Gateway Determination for Lots 2-8 DP 28597, and a further report be prepared for Council's consideration detailing the specifics of the consultation and recommendations for proceeding with the rezoning of those properties.**

## REPORT:

At the Council meeting of 21 March 2013 a report was presented to Council providing a suite of recommendations including:

- Conditional support for Planning Proposal PP12/0001 to rezone Lots 2–8 DP 28597 from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed Local Environmental Plan 2000;
- Council officers entering into negotiations with the owner for the preparation of a Planning Agreement to ensure that critical constraints affecting the site are addressed to the satisfaction of Council;
- Should any critical constraint(s) affecting the site not be resolved to the satisfaction of Council, that the planning proposal not be placed on public exhibition; and
- Consultation with the landowners of the four adjoining developed properties for inclusion in a revised planning proposal post exhibition.

A motion to endorse the recommendations was moved and subsequently lost.

On 18 July 2013 a further report was received and noted by Council which advised that the proponent had sought to pursue their Pre-Gateway appeal rights through the Department of Planning and Infrastructure (DP&I), and that the DP&I had advised Council on 25 June 2013 that their review had determined that there may be merit in the planning proposal proceeding to a Gateway determination. A copy of their letter is attached to this report.

### **Appeal procedures and rights of proponent**

As outlined in the DP&I publication “*A guide to preparing planning proposals*”, should the Director General determine that the proposed instrument should proceed, then, with the payment of a fee by the proponent, the proposal would be forwarded to the Northern Joint Regional Planning Panel (JRPP) for a detailed review. This review was conducted in part on 18 July 2013, when Council officers were interviewed by the JRPP.

Regional panel advice to the Department is typically framed around the merits of the proposal and whether the panel would recommend to the Minister that the proposed instrument should be submitted for a determination under section 56 of the Environmental Planning and Assessment Act 1979 (Gateway Determination).

As a result of the JRPP’s advice to the Minister, Council, on 1 August 2013 received advice from the DP&I asking Council to prepare a planning proposal and submit it for a Gateway determination. The Department further advised that should Council not wish to be the Relevant Planning Authority (RPA) for this proposal, an alternate RPA may be appointed to prepare one, and that the matter should be discussed with the Regional Director of the DP&I.

In instances where the Director-General is appointed the RPA, the Department will process the planning proposal and the proponent will need to pay a fee and charges to recover the Department’s costs on a proposal-specific basis.

Should Council elect, as requested in the Department’s letter of 31 July 2013, to prepare the planning proposal and submit it for a Gateway determination, Council takes on the role of RPA.

While the proponent will no longer need to pay the relevant fees and charges to the Department, continuation of this project by Council will incur fees and charges in accordance with the Cost and Expenses Agreement previously signed by the landowner.

Once forwarded for a Gateway determination, it is expected that the determination will be broadly in line with the recommendations of the JRPP, but not necessarily confined to those matters. The determination will specify matters to be addressed before the proposed instrument can be placed on public exhibition, but this does not preclude Council from requesting that further studies and investigations be undertaken; such studies would be consistent with the matters raised in the initial report to Council of 21 March 2013.

### **JRPP advice and justification**

The letter received from the Department included the advice and justification for the JRPP's recommendation. While the JRPP agreed with the earlier DP&I assessment that the proposal has strategic merit, it went on to make several clarifying comments:

1. The regional panel considers that in its current form, the planning proposal does not adequately address site specific issues such as access, drainage, water, sewerage and site design.
2. The panel also has concerns over the implementation and ongoing maintenance of shared infrastructure and services.
3. Therefore, as part of the Gateway determination, the regional panel recommends that the proponent be required to undertake further studies to address the site specific issues identified above.
4. Additionally, the proponent should be requested to provide a strategy outlining details of a legally enforceable mechanism to implement those solutions.
5. The panel also recommends that Council consider progressing a separate planning proposal for the rezoning of the four adjoining developed lots.

### **Implications of JRPP advice and justification**

While the advice of the JRPP has not at this time been reflected in a Gateway determination, it is clear that the Panel believes that further studies and reports, consistent with the requirements of the report to Council of 21 March 2013, will be required.

Notwithstanding any requirements of the Gateway determination which is expected to be consistent with the JRPP advice, it is within Council's ability to request further studies as deemed necessary.

In response to the advice of the JRPP, the following comments apply:

1. Further studies will be required to address access, drainage, water, sewerage and site design issues. Agreed and previously recommended to Council.
2. The proponent will need to demonstrate how shared infrastructure and services will be implemented and maintenance. This will form part of investigations and reports on relevant infrastructure and services.
3. The JRPP suggests the need for a strategy outlining details of a legally enforceable mechanism to implement those solutions. The use of a voluntary planning agreement as previously reported to Council will be pursued to secure this outcome.
4. Regarding advice that a separate planning proposal for the rezoning of the four adjoining developed lots be prepared; discussion with adjoin landowners will occur once a Gateway determination is received, and during public consultation, with an amendment to the planning proposal to be made prior to requesting that the plan be made by the Department.

Advice and justification from the JRPP and request from the DP&I support progressing with the submission of the proposed instrument for a Gateway determination and progress consistent with the recommendations presented to Council at its 21 March 2013 meeting.

**OPTIONS:**

1. Accept the role of RPA and proceed with submitting the draft planning proposal to the Gateway for a determination and other recommendations of this report; or
2. Decline the request of the Department of Planning and Infrastructure to submit the draft planning proposal to the Gateway for a determination and advise the Department likewise.

Council officers recommend Option 1.

**CONCLUSION:**

The opportunity now exists for Council to review its decision of 21 March 2013, and submit Planning Proposal PP12/0001 to the Gateway for a determination.

Assessment of the proposed instrument by the Department of Planning and Infrastructure and the Northern Regional Planning Panel have both concluded that the proposal has strategic merit and should be submitted to the Gateway for a determination.

Receipt of a Gateway determination does not mean that the planning proposal will result in an amendment to the Tweed LEP being made; the site is heavily constrained and will require investigation of significant issues such as traffic, water supply, sewer disposal, stormwater management and lot configuration. Until such time as these matters have been concluded to the satisfaction of Council the proposal will not be returned to the Department for making of the plan.

It is therefore recommended, along with other recommendations of this report, that Council accept the role of RPA and submit PP12/0001 for a Gateway determination.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Existing Cost and Expenses Agreement to apply to any further action on this project.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

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

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Department of Planning and Infrastructure - request for pre-Gateway review (ECM 3160668)

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**37 [PR-CM] Planning Proposal PP10/0007 - Mooball Planning Proposal - Lot 2 DP 534493 No. 5867 Tweed Valley Way, Lot B DP 419641 No. 5859 Tweed Valley Way and Lot 7 DP 593200 No. 5861 Tweed Valley Way, Mooball**

**SUBMITTED BY: Planning Reforms**

**FILE REFERENCE: PP10/0007 Pt2**



## Civic Leadership

- 1 Civic Leadership
  - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
  - 1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community
- 

### SUMMARY OF REPORT:

This report has two objectives. Firstly, it provides an update on the status of the 'Mooball Planning Proposal', which implements the *Tweed Urban and Employment Lands Release Strategy 2009* relating to the conversion of Release Area 9 into a new Greenfield development site, and secondly it recommends an approach for moving forward with the rezoning in a way that will hopefully assist in resolving some existing conflict with an adjoining property owner.

There is a discussion within the report about the substantive issue of buffering the new development area from existing neighbouring land. It refers to the independent Land Use Conflict Risk Assessment Report (LUCRA) that was prepared on behalf of the proponent to assess the necessities for a buffer, including its size, relating to the immediately adjoining private, rural residential land on the eastern edge of the Planning Proposal area, known as Lot B DP 419641 (referred throughout the report as "Lot B"), where domestic animal breeding has been occurring for many years. The ability to keep and breed animals may be significantly restricted by new and encroaching housing development, and this is a particular point of concern for the owners of Lot B.

The LUCRA recommends a 50 metre buffer between Lot B and the eastern edge of the proposed Planning Proposal redevelopment. As discussed in this report, the Council officers are of the view that the recommended buffer, although arguably suitable from a quantitative view point regarding animal keeping and breeding, may not be adequate from a qualitative stand point. The owners of Lot B have also raised concern with the loss of rural amenity, and do not accept the adequacy of the recommended 50 metre buffer.

Whilst some progress has been made in addressing some of the concerns of the owners of Lot B, there are still some unresolved concerns.

It is therefore recommended that Council further defer consideration of this Planning Proposal, to enable the proponent to meet further with the owners of Lot B, and seek to resolve their outstanding concerns.

**RECOMMENDATION:**

**That Council in respect of the Planning Proposal PP10/0007, over Lot 2 DP 534493 No. 5867 Tweed Valley Way and Lot 7 DP 593200 No. 5861 Tweed Valley Way, Mooball:**

- 1. Further defers sending the Planning Proposal for a Gateway Determination; and**
- 2. Writes to the applicant, Jefferson Lane Pty Ltd, requesting that they meet further with owners of Lot B DP 419641 to seek a mutually acceptable buffer treatment between the Lot B DP 419641 site, and the eastern edge of the proposed residential redevelopment area of the latest PP10/0007 Land Use Conflict Risk Assessment Report (LUCRA) report; and**
- 3. A further report be submitted to the November Council meeting providing an update on the outcome of the meeting identified in Point 2 and addressing the strategic compliance with the aims of the *Tweed Urban and Employment Land Strategy 2009*.**



## REPORT:

The Mooball Planning Proposal (the Proposal) has a long history and has been progressing since 2010.

More recently the relationship between the proposed urban release area site and the neighbouring Lot B in DP 419641 (Lot B) has come under closer examination.

Following a report to Councils meeting of December 2012 resolved that the Proposal be submitted through the Department of Planning and Infrastructure's (DP&I) Gateway Determination system, seeking their approval to proceed with an amendment to the Tweed Local Environmental Plan 2000.

The owners of the adjoining property Lot B, raised concerns and made representations to the Council following the December meeting. The ultimate issue at that time revolved around their concern about not being notified of the Proposal and being unaware of the full extent of the proposal. On further examination it was revealed that the description of the land in the Planning Proposal was incorrect. Lot B had mistakenly been included in the Proposal.

The issues with the Proposal and an explanation of the statutory procedures for preparing, notifying and publicly exhibiting a planning proposal have since been addressed and reported to Council.

The owners of Lot B still raise the following concerns in respect of the Planning Proposal:

- The loss of rural amenity, and
- The impact of new housing development on their ability to keep and breed animals, in particular Roosters, which often generate noise complaints in more urbanised areas.

In response to those concerns the applicant commissioned an independent consultant to undertake a Land Use Conflict Risk Assessment (LUCRA) to determine the level of potential conflict between the proposed residential land uses, and the existing land use of Lot B.

It should be noted that the owner's of Lot B objected to the findings of the LUCRA upon the basis of anomalies within that report, in particular the failure of the Report to appropriately refer to "roosters" as opposed to "poultry". In response to those concerns Council's planning consultant reviewed the LUCRA and further enquiries have been made of the applicant.

Those questions took the following form:

- i. Whether keeping of roosters on Lot B has the ability to change the LUCRA's recommendations.
- ii. Whether the removal of a sensitive receptor (on Lot 1 in DP231846, changes the LUCRA's recommendations.

Although this has led to a revised LUCRA being submitted in an attempt to address those issues, Council officers are seeking a more direct response to the questions raised. The process detailed in the recommendations to this report will enable additional time for this to occur prior to a further report in November.

The LUCRA utilised the Land Use Conflict Risk Assessment Guide (Guide) from the Department of Primary Industries, amongst other referenced materials. This Guide outlines the four following steps for conducting a LUCRA:

1. Gather information;
2. Evaluate the risk level of each activity;
3. Risk reduction management strategies; and
4. Record LUCRA results.

Applying the risk matrices within the Guide the assessment determined the ranking of the conflict to be category 2, an 'unlikely, low impact' occurrence. The recommended buffer was 50m.

The revised LUCRA likewise identifies that a 50m buffer area is adequate to mitigate any interference between Lot B and the future housing as it relates to the keeping and breeding of animals, in particular the roosters.

The revised LUCRA is attached to this Report.

### **Council Officer's Assessment of the LUCRA Buffer**

Within the context of this assessment, Council officers are satisfied that the 50m buffer proposed and the findings of the LUCRA are satisfactory for the purposes of establishing a setback that encompasses the quantitative aspects of continuing the rural activities currently being pursued on Lot B.

The limitation in the LUCRA however is the lack of assessment into the qualitative components of the rural amenity afforded to Lot B. In this regard, its assessment does not take into account the visual landscape, access to prevailing breezes, relationship with the natural environment and the like that are usually incidental to rural living.

While Council staff are not advocating for an increased buffer per se, the owners of Lot B have raised concern about the adequacy of the proposed 50m buffer. In light of this, it is considered appropriate that further investigation and discussion between the two parties occur in an attempt to maintain the rural amenity of Lot B to the reasonable satisfaction of the owners.

These discussions could consider a variety of means to soften the interface between Lot B and the future urban footprint to retain the rural amenity of Lot B as far as is practical. To assist in this relationship, the inclusion of design features could be investigated, such as:

- Provision of selective landscaping,
- Building footprint or height considerations to limit visual obtrusion of the future built form,
- Sympathetic road and open space layouts and the like,
- Increasing the buffer size established.

It should also be noted in the context of any discussion concerning buffering that any increase in the buffer area will lead to a corresponding decrease in the developable footprint. Depending on how this impacts on the economic certainty or viability of the project it may need to be compensated by higher densities on those areas within the developable area.

### **Amended Planning Proposal**

Based on the identification of a recommended buffer zone of 50m and other issues arising during the course of the Proposal's assessment the Applicant has submitted an amended zoning plan. This may need to be further revised pending any adjustment to the buffer zone arising from further discussion between the parties.

In the meantime the current amendments include:

- Remove the reference to any rezoning of Lot B, retaining its 1(a) Rural zoning;
- Include 1(a) Rural and 1(c) Rural Living zones to the proponent's land;
- Pursue a smaller footprint of 2(d) Village zoning;
- Provide a 50m (radius) buffer from the existing dwelling on Lot B and retain the current rural zoning;
- Increase the minimum lot size within the central precinct of the site from 250m<sup>2</sup> to 450m<sup>2</sup>.
- Reduce the 2ha minimum lot size previously pursued on land with greater than 18 degrees slope to a 1ha minimum lot size.

These amendments are illustrated in the maps below. Figure 1 Showing the proposed zoning plan and Figure 2 illustrates a proposed concept plan.

FIGURE 1 - PROPOSED ZONING MAP

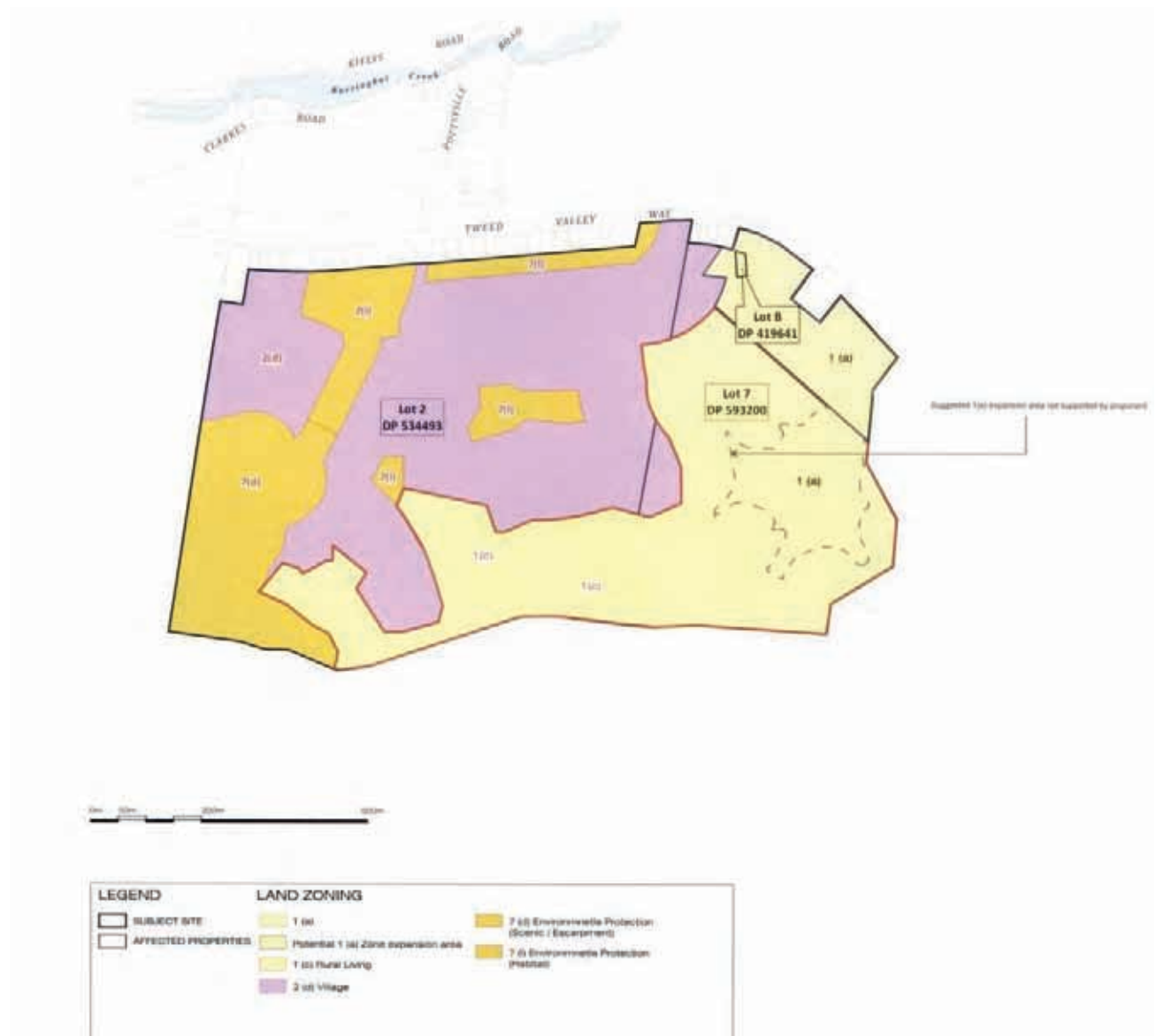


FIGURE 2 - PROPOSED CONCEPT MASTERPLAN



## OPTIONS:

That Council:

### Option 1

- Further defers sending the Planning Proposal for a Gateway Determination;
- Writes to the applicant, Jefferson Lane Pty Ltd, requesting that they meet further with owners of Lot B DP 419641 to seek a mutually acceptable buffer treatment between the Lot B DP 419641 site, and the eastern edge of the proposed residential redevelopment area of the latest PP10/0007 Land Use Conflict Risk Assessment Report (LUCRA) report; and
- A further report be submitted to the November Meeting providing an update on the outcome of the meeting identified in Point 2 and addressing the strategic compliance with the aims of the *Tweed Urban and Employment Land Strategy 2009*; or

### Option 2

Accepts the proponents' current LUCRA recommendation of a 50 metre buffer zone between the development site and Lot B DP 419641 and refer the latest Planning Proposal PP10/0007 to the NSW Department of Planning and Infrastructure for a Gateway Determination; or

### Option 3

Not proceed with Planning Proposal PP10/0007.

The Council officers recommend Option 1.

## CONCLUSION:

Subsequent to previous Council reporting, the landowner of Lot B DP419641 (Lot B) and the applicant of the planning proposal have sought to resolve their concerns and some progress has been made.

The applicant has undertaken further assessment and provided an amended proposal. This seemingly goes some way to resolving a number of issues, but it does not adequately address the issue regarding the rural amenity of Lot B.

It is concluded that the proposed 50m development buffer around Lot B represents the minimum quantitative buffer acceptable to safeguard the continued rural uses currently pursued by the owners of Lot B. The Land Use Conflict Risk Assessment finds this buffer suitable, however, it does not investigate the qualitative features of Lot B and how that rural amenity maybe be affected by the Proposal.

Council officers recommend further discussions between the applicant and the owners of Lot B occurs in an attempt to reconcile the issue of rural amenity. This should occur prior to advancing the Proposal to the NSW Department of Planning and Infrastructure for a Gateway Determination, as any change in buffer distance will impact on the zoning pattern and concept plan.

## COUNCIL IMPLICATIONS:

### a. Policy:

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1: Land Use Conflict Risk Assessment - *As updated* (ECM 3160317)

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**38 [PR-CM] Draft Tweed Development Control Plan - Section B15 Seabreeze Estate**

**SUBMITTED BY: Planning Reforms**

**FILE REFERENCE: GT1/DCP/B15 Pt2**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

### **SUMMARY OF REPORT:**

This report seeks Council's endorsement to proceed with making of amendments to the Tweed Development Control Plan - Section B15 Seabreeze Estate (draft Seabreeze DCP), which became effective in January 2000.

The resolution of the Council meeting of 20 June 2013 was to publicly exhibit the draft Seabreeze DCP. The substance of the draft Seabreeze DCP, the exhibition process, and summary of public submissions received, is discussed within the report. This also takes into account the additional advice provided by the NSW Department of Education and Communities.

The report highlights the long history and community expectation for maintaining the allocation of land for a future school site, concluding that it is a key component of the current Plan and equally important for the draft Plan. The land identified in the exhibited draft Plan is sufficient for a school and could be used by either a private or public school service provider.

The small number of public submissions received during the public exhibition has been taken into account within the report, resulting in minor amendments to the draft Seabreeze DCP. Finally, the draft Seabreeze DCP will enable the development of the final stages of the Seabreeze Estate, which is consistent with the Council's strategic vision for the area, and for these reasons the report recommends that the draft Seabreeze DCP be adopted and implemented.

### **RECOMMENDATION:**

**That Council:**

- 1. Receives and notes the contents of public consultation submissions.**
- 2. Endorses the Tweed Development Control Plan - Section B15 Seabreeze Estate, as amended, and provided as an attachment to this report.**

3. **Endorses the public notice of the adoption of the Tweed Development Control Plan in accordance with Clause 21(2) of the Environmental Planning and Assessment Regulation 2000, satisfying the provision of Clauses 53E(5) and 53E(6) of the Tweed Local Environmental Plan 2000 – Specific Provisions for Seabreeze Estate – Stage 2.**
4. **Forwards a copy of the Development Control Plan Section B15 – Seabreeze Estate to the Director-General of the NSW Department of Planning and Infrastructure in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000.**

## REPORT:

On 20 June 2013, Council resolved to publicly exhibit draft Tweed Development Control Plan - Section B15 Seabreeze Estate (draft Seabreeze DCP). A copy of the Council report from 20 June 2013 is provided in Attachment 1 of this report.

The overarching intention of the draft Seabreeze DCP is to satisfy the provisions of Clause 53E(5) of the Tweed Local Environmental Plan 2000, enabling the urban use of land referred to as 'Seabreeze Estate Stage 2'. Specific to the site, the draft Seabreeze DCP seeks to:

- Manage the distribution and availability of reticulated wastewater in light of capacity constraints within the existing network;
- Refine the location of the currently identified potential school site;
- Reinforce the need for a 50m riparian buffer to Cudgera Creek, consistent with the Tweed Coast Estuaries Management Plan and previous Local Environmental Studies;
- Identify a potential alternative 'Town Centre' site;
- Provide guidelines for high quality urban design built form, open space and public domain areas within Seabreeze Estate; and
- Improve the DCP through general housekeeping.

The draft Seabreeze DCP was formally exhibited from 17 July 2013 – 16 August 2013, with copies available at the Murwillumbah Civic Centre, Tweed Heads Civic Centre, Kingscliff Library as well as on Council's website. During the exhibition period four (4) submissions were received. The following table provides a summary of the submissions received, along with relevant planning comments.

Issue	Planning Comment
<p><i>Traffic Management and Movement Plan (TM&amp;MP)</i></p> <p>Given that the road hierarchy has already been established by the approval and construction of Stage 1 to 14 and the Stages 15 to 18 Development Application will only propose 'local streets' to access the residential lots, there is no apparent need for a further TM&amp;MP.</p>	<p>The existing Seabreeze DCP requires a TM&amp;MP be submitted with any master plan development application (DA), further DAs for subdivision or integrated housing DA. Accordingly the requirement for a TM&amp;MP to be prepared for 'Stage 2' of the Seabreeze Estate does not provide a new provision within the DCP.</p> <p>In addition, Clause 53E of the Tweed Local Environmental Plan 2000 (Tweed LEP 2000), as it applies to this site, requires the preparation of a DCP that provides, in part, for:</p> <p><i>'(b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists.'</i></p> <p>In light of the above, the retention of controls relating to a TM&amp;MP are retained to satisfy the requirements of the Tweed LEP 2000. These matters were conveyed to the submitter, along with further guidance as to the scope of works/detail necessary within the TM&amp;MP. Upon further clarification, the submitter verbally indicated that the preparation of a TM&amp;MP within a future development application is not excessive or onerous.</p> <p><b>Outcome: No amendment to the DCP recommended.</b></p>
<p><i>Open Space Strategy (OSS)</i></p> <p>There is nothing beneficial to be achieved in preparing an OSS at this late stage of the development of the Seabreeze site. That is to say, approximately 500 residential lots have already been registered and only approximately 89 remain, requiring an additional casual open space park.</p>	<p>The existing Seabreeze DCP requires an OSS be submitted with any master plan DA and further DAs for subdivision. Accordingly, the requirement for an OSS to be prepared for 'Stage 2' of the Seabreeze Estate does not provide a new provision within the DCP.</p> <p>In addition, Clause 53E of the Tweed Local Environmental Plan 2000 (Tweed LEP 2000), as it applies to this site, requires the preparation of a DCP that provides, in part, for:</p> <p><i>'(c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain'</i></p> <p>In light of the above, the retention of controls relating to an OSS is considered to satisfy the requirements of the Tweed LEP 2000. These matters were conveyed to submitter, along with further guidance as to the scope of works/detail necessary within the OSS. Upon further clarification, the submitter verbally indicated that the preparation of an OSS within a future development application is not excessive or onerous.</p> <p><b>Outcome: No amendment to the DCP recommended.</b></p>

Issue	Planning Comment
<p><i>Town Centre Nomination - Land Use</i></p> <p>The proposed R2 (Low Density Residential) zoning will provide sufficient flexibility to enable a range of appropriate uses to be approved, which are likely to be commercially viable, without the need for a rezoning. Permitted uses include 'Neighbourhood Shop', 'Medical Centre', 'Health Services Facility' and 'Child Care Centre'.</p> <p>Accordingly, the requirements for Town Centre B to be rezoned before Town Centre A can be developed for general residential purposes should be deleted and a new paragraph inserted as follows:</p> <p><i>'Should a Development Application be approved for Town Centre B, Town Centre A can be developed for general residential purposes.'</i></p> <p>Further, the relevant Performance Measure and Acceptable Solution (B15.3.12 M2), which currently provides as follows:</p> <p><i>'The range of uses within the neighbourhood centre to be restricted to convenience shops and services servicing the day-to-day needs of the surrounding areas, such as fruit shop, milk bar, general store, hairdressing salon, café, video outlet, childcare centre and the</i></p>	<p>As detailed within the Council report of 20 June 2013 (provided as Attachment 1) the DCP amendment request proposed shifting the Town Centre location approximately 300m eastward. Whilst both the current and proposed locations are generally flat, not identified as being affected by significant hazards (flooding, bushfire etc) and are well located in relation to higher order roads within the Seabreeze Estate, the proposed 'new' Town Centre site (Town Centre B) is subject to more restrictive zoning, 2(a) Low Density Residential, under the Tweed LEP 2000.</p> <p>The existing Seabreeze DCP envisages the range of uses within the neighbourhood centre to be restricted to convenience shops and services servicing the day-to-day needs of the surrounding areas, such as fruit shop, milk bar, general store, hairdressing salon, café, video outlet, childcare centre and the like. As many of these land uses are prohibited within the 2(a) zone, the draft Seabreeze DCP included a clause which restricted the development of the existing Town Centre site for residential uses until the Town Centre B site was rezoned to an appropriate zone to facilitate long-term non-residential activities.</p> <p>This approach retains the primacy of the existing Town Centre site, which enables a wider range of permissible uses, better supporting the establishment and continued viability of a Town Centre. This approach also enables the flexibility necessary to give effect to any Planning Proposal for Town Centre B and not require further DCP amendments.</p> <p>Amending the DCP to only require DA approval prior to 'releasing' the existing Town Centre to residential use would not provide certainty that any non-residential uses would actually be constructed and operated. In addition, the limited scope of permitted land uses within the 2(a) zone could result in numerous issues as Town Centre B evolves to follow market trends and local conditions. Accordingly, this approach is considered to unnecessarily jeopardise a longstanding component of the Seabreeze DCP.</p> <p>In meeting with the submitter, a verbal request was made to include the rezoning of Town Centre B within the recently resolved, but not yet made, Draft Tweed Local Environmental Plan 2012 (Shirewide LEP) with the aim of permitting the desired wider range of permissible uses.</p> <p>Should Council consider this appropriate, a separate Planning Proposal to rezone the site would not be required (subject to Council and the NSW Department of Planning and Infrastructure (DP&amp;I) accepting the rezoning of the site within the Shirewide LEP). This would save the proponent approximately 9-12 months required for the Planning Proposal process (if the PRU work program was amended with this</p>

Issue	Planning Comment
<p><i>like, as well as community based uses.'</i></p> <p>Be amended as follows:</p> <p><i>'The range of uses within the neighbourhood centre are to cater for the day to day needs of the existing and future population having regard to the range of permissible uses within the proposed R2 Low Density Residential zone under the exhibited Draft Tweed Local Environmental Plan 2012.'</i></p>	<p>inclusion). Based on a desktop analysis, a rezoning could be adequately justified through the findings of the original Local Environmental Study (LES) prepared to rezone the 'Stage 2' land in 2010. This LES found the site suitable for urban purposes, subject to adequate provision of wastewater treatment.</p> <p>Nonetheless, Council officers have reviewed this request and do not recommend including the amendment within the Shirewide LEP given that the draft LEP 2012 has now been referred to the Department of Planning and is in its final stages of making. . Seeking to include this request now would require the support of the DP&amp;I, and potentially delay the progress of the Shirewide LEP. Further, a separate Planning Proposal process for an LEP amendment provides a transparent process allowing for public exhibition and review of submissions. Inclusion of an amendment at this late stage removes this transparency.</p> <p><b>Outcome: No amendment to the DCP recommended.</b></p>
<p><i>Town Centre Nomination - Suitability and impacts</i></p> <p><i>Concern was raised that the Town Centre B site, despite in Council reporting being identified as unconstrained, is also mapped within Map 2 as flood liable land.</i></p> <p><i>Concern was raised that the corresponding filling required to raise the site out of the flood level could impact neighbouring residents and surface water flows.</i></p> <p><i>Concern was also raised that the larger development site could impact upon the riparian zone and residential amenity.</i></p> <p><i>Finally, concern was raised that should sufficient on-site parking was not provided, traffic issues could arise in light of the adjoining school</i></p>	<p>Whilst Map 2 within both the existing and draft Seabreeze DCP identifies the Town Centre B site as flood liable land, this mapping was prepared when the Seabreeze Estate was still in 'greenfield' state (i.e. pre 2000). Within the subsequent development of the estate, various areas of Seabreeze have been filled to provide land above Council's design flood level, including the site of Town Centre B.</p> <p>As the site is already filled to Council's adopted design flood level the development of that site for residential or non-residential purposes is not considered to generate any significant adverse flood or surface water impacts on surrounding allotments.</p> <p>Despite the potential increase in site area of Town Centre B as opposed to Town Centre A, any specific impacts to residential amenity or the riparian zone approximately 170m to the north are not considered to be prohibitive. In this regard, the detailed design pursued within future development application/s will provide the appropriate opportunity to consider the likelihood and extent of external impacts. Whilst in theory it is acknowledged that a larger site will likely result in greater development and therefore potentially greater impacts, larger sites also provide greater opportunity to mitigate external impacts through building placement, car parking provision and landscaping treatment.</p> <p>Council's Access and Car Parking Code (Section A2) details the number of parking spaces required by development and details that these spaces will be required to be provided on-site.</p>

Issue	Planning Comment
<i>site.</i>	<b>Outcome: No amendment to the DCP recommended.</b>
<p><i>Landscape Treatments</i></p> <p>Objection was raised to 'providing for pedestrian movements alongside existing wetlands' as substantial areas of public and drainage reserve have already been created and dedicated to Council.</p> <p>A submission received supported the provision of pedestrian and bikeways along the wetland areas to encourage sustainable transport.</p> <p>Clarification was sought that the 'linear green space' along Tom Merchant Drive as part of a 'northern gateway' to Seabreeze could be provided within the road reserve.</p> <p>Clarification was sought that extension landscaping alongside the drainage reserve (proposed Lot 1748) was to be provided within the drainage reserve (top of the bank) as opposed to land suitable for residential development.</p>	<p>The Seabreeze DCP provision to provide for pedestrian movements alongside the existing wetlands sought to create a shorter walking distances and a more attractive walkway between key nodes. Accordingly, the intent of the notation was not to actively seek additional land to be provided for public reserve, as a sufficient corridor may exist within the existing reserves. Should investigations into this corridor conclude that reserve walkway cannot be constructed or that superior alternatives are present, then subdivision layouts that provide for the desired corridor may need to be pursued.</p> <p>Post discussions with the submitter, a brief inspection of the site has been undertaken by planning and Natural Resource Management staff to determine the viability of location the corridor within the existing public reserve. These investigations concluded that a pedestrian corridor in this location did not appear prohibitive, however, that the final proposed alignment, construction method and ongoing maintenance program would need to be sensitive to the intent of the reserve (being nature conservation). Further, whilst both the eastern and western ends have fewer constraints, the central section would need to be highly responsive to the location of existing vegetation which is still relatively in its infancy.</p> <p>Similarly the desired landscaping treatments along Tom Merchant Drive and proposed Lot 1748 (drainage reserve) are not seeking additional land, rather appropriate landscaping treatment, responding to the entry to the Seabreeze Estate. Depending on the design response, the landscaping elements may be contained within the road reserve and/ or contained within the adjoining private land.</p> <p>Council's subdivision manual (Section A5) details that subdivision works that require landscaping include:</p> <ul style="list-style-type: none"> <li>• Public open space (all categories);</li> <li>• Road reserves; <ul style="list-style-type: none"> <li>○ landscaping and tree planting on verges;</li> <li>○ roundabouts;</li> <li>○ entry and threshold treatments, temporary display areas;</li> <li>○ noise buffer mounds.</li> </ul> </li> </ul> <p>Accordingly, the notation within the draft Seabreeze DCP simply highlights that Tom Merchant Drive is an entry/gateway to Seabreeze Estate.</p> <p>In summary, achieving a suitable landscape design along both Tom Merchant Drive and the proposed Lot 1748 (drainage</p>

Issue	Planning Comment
	<p>reserve) is appropriate and desirable. Future design detail will highlight the location and footprint necessary to achieve the response and at that time the ownership and ongoing management of that footprint should be reconciled. Accordingly, it is not considered necessary to confine those works purely to the road and drainage reserve at this stage.</p> <p><b>Outcome: No amendment to the DCP recommended.</b></p>
<p><i>Interface between future residential lots and the existing Seabreeze sports fields</i></p> <p>The draft DCP contains the following notation:</p> <p><i>'Ensure development addresses adjoining open space'</i></p> <p>Council is requested to amend the notation as follows:</p> <p><i>'Provide for a continuous 2m high Colourbond fence and appropriate plantings within the existing sports fields immediately adjacent to the fence to address interface issues.'</i></p>	<p>As a best practice principle, the location, layout and design of subdivision and development surrounding public open spaces should minimise potential problems relating to personal security and surveillance, property security, vandalism and poor visual amenity. These outcomes are normally achieved by bounding public open spaces with streets and/or ensuring adjacent lots front and overlook open spaces.</p> <p>Council's Subdivision Manual (Section A5) already details as follows:</p> <p><i>'Lots adjacent to parks or natural areas should be orientated to front parkland and natural areas to enhance amenity while contributing to personal and property security and deterrence of crime and vandalism.'</i></p> <p>The Seabreeze DCP identifies this interface between public and private land to assist in ensuring an appropriate design response along this elevation.</p> <p>It is not considered appropriate to include further prescriptive controls within the DCP as this would potentially limit the myriad of suitable design solutions that could adequately address the public/private land interface. Further, it is not considered that a 2m high colourbond fence represents an appropriate design response towards deterring vandalism or promoting visual amenity or passive surveillance.</p> <p><b>Outcome: No amendment to the DCP recommended.</b></p>
<p><i>Pedestrian and cyclist safety</i></p> <p>A suggestion was received that the local speed limit apply from the junction of Pottsville Mooball Road with Cudgera Creek Road and that a pathway be installed from Pottsville Mooball Road to Newcastle Drive. Further, the road shoulder be made consistent and extend from Hazelwood Drive into the Pottsville</p>	<p>The requested actions are beyond the scope and actions of the draft Seabreeze DCP, which focuses on provisions to enable the development of the 'Stage 2' land. The request has been referred to Council's Planning &amp; Infrastructure unit for further consideration.</p> <p><b>Outcome: No amendment to the DCP recommended.</b></p>



Issue	Planning Comment
village.	
<p><i>School Site</i></p> <p>A submission of support was received in relation to the retention of the Potential School Site.</p>	<p><b>Outcome: Noted. No amendment to the DCP recommended.</b></p>

In addition to the submissions discussed above, correspondence was received from the NSW Department of Education and Communities (DEC) during the public exhibition period. The DEC submission detailed that subject to the relocation of the open storm water channel to the western boundary, the site broadly met their requirements. Accordingly, the site is broadly suitable for a potential school site.

Subsequent to the previous Council report of 20 June 2013 and DEC's stipulated site requirement, the proponent has submitted a conceptual design for relocating the open storm water channel if/when required towards the Western boundary. Whilst, acknowledging the theoretical likelihood of achieving a satisfactory outcome, on the basis of the sketches and information provided to-date, Council officers have concerns that the proposed overland flow path is inferior to the existing infrastructure and cannot be supported.

In order to progress the draft Seabreeze DCP and ensure adequate drainage infrastructure, the draft Seabreeze DCP has been amended to require engineering detail be submitted with the first Development Application for Seabreeze Estate 'Stage 2'. The engineering detail required is to ensure that at least the same level of function is achieved by the proposed relocated overland flow path as the existing and that sufficient, constraint-free land is allocated for future school purposes.

Whilst Council officers are satisfied with this amendment, the realignment of the drainage infrastructure results in a contiguous land area for the purpose of Potential school parcel being 5.3ha, 0.7ha short of DEC's advisory notes for developers and consent authorities for master planning new education facility sites and Council's previous resolutions to enable the reconsideration of the draft Seabreeze DCP.

This information has been conveyed to DEC officers, whom have raised no objection and advised that the land still appears adequate for a potential school site. DEC officers have noted that the location of the existing playing/sports field that are within walking distance of the potential school site, enabling DEC staff to support a reduction from the optimal 6.0 ha requirement.

**OPTIONS:**

1. Council approves the proponent's request and amends the draft Seabreeze DCP as exhibited and within Attachment 2 of this report, or
2. Council approves the proponent's request and amends the draft Seabreeze DCP as detailed within Attachment 2 and seeks to include amendments to the Draft Shirewide LEP to facilitate the shift in Town Centre location to Town Centre B, or
3. Council defers the matter for a workshop.

Council officers recommend Option 1.

**CONCLUSION:**

A key component of the Tweed Development Control Plan - Section B15 Seabreeze Estate (draft Seabreeze DCP) is the allocation of land for a potential school site. The provision of an additional school for the Pottsville locality has long been discussed amongst the community, developers, Council and education providers. The draft Seabreeze DCP supports this vision by identifying sufficient land for a school should either a public or private school provider wish to establish in the Pottsville locality. The requested amendment provides greater clarity as to the extent of the potential school site and is considered suitable by the NSW Department of Education and Communities.

Public exhibition of the draft Seabreeze DCP attracted a small number of submissions, however the issues as discussed above are not considered significant or prohibitive to the adoption of the DCP. The adoption of the draft Seabreeze DCP will enable the development of the final stages of the Seabreeze Estate, facilitating an outcome that is consistent with the current vision for the area and that is in keeping with the broader locality.

The revised draft Seabreeze DCP is provided as Attachment 2 to this report and is recommended for adoption.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1 Council Meeting Report of 20 June 2013 (ECM 3161546)

Attachment 2 Tweed Development Control Plan – Section B15 – Seabreeze Estate, Pottsville (ECM 3161548)

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**39 [PR-CM] Draft Design Excellence Policy**

**SUBMITTED BY: Planning Reforms**



**Civic Leadership**

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

**SUMMARY OF REPORT:**

This report provides a comprehensive outline of the draft Design Excellence Policy to supplement the provisions of the Tweed City Centre Local Environmental Plan 2012. This Local Environmental Plan (LEP), adopted in January 2012, incorporates a requirement that development of specific 'Key Sites' and development that is greater than 35m in height within the CBD is to achieve 'Design Excellence'. This is a prerequisite to the grant of development approval and requires that an architectural design competition be held.

Although the design competitions are not new and are widely used in major cities it is a new concept for the Tweed.

This report details the draft Policy and how its proposed framework works. The use of a panel of industry architect or design experts is also discussed. Finally, the report recommends that the draft Policy be publicly exhibited and that the landowners of key sites, as well as local industry groups, be directly consulted.

**RECOMMENDATION:**

**That :**

- 1. The Draft Design Excellence Policy be publicly exhibited for a minimum period of 28 days and invites submissions for a period of 42 days;**
- 2. During the course of public exhibition the landowners of key sites, as well as local industry groups, be directly consulted;**
- 3. Following public exhibition of the Draft Design Excellence Policy, a further report be submitted to Council detailing any submissions received and the process for adapting and implementing the Policy.**

## REPORT:

On 18 January 2013, the *Tweed City Centre Local Environmental Plan 2012* (TCC/LEP) was made under Section 70(1)(a) of the *Environmental Planning and Assessment Act 1979* and the savings provisions contained within Section 12 of the *Environmental Planning and Assessment Regulations 2000*. The TCC/LEP introduces various planning initiatives within the Standard Instrument Order 2006 (template LEP) format to facilitate the LEP's prescribed aims, namely:

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

In order to address aim (h), a Design Excellence clause (Clause 6.10) was included within the TCC/LEP. A full copy of the clause is provided as Attachment 1.

In effect the clause requires the development of 'Key Sites', or buildings taller than 35m in height, to be the subject of an architectural design competition (ADC). This is designed to occur prior to the grant of development approval. Key sites within the Tweed City Centre, along with sites that by virtue of the established maximum building heights may trigger the need for an ADC, are identified in Map 1 below.



The purpose of an ADC is to promote innovative design solutions that achieve high quality buildings and spaces. In recognition of the additional cost and effort required by a competitive process, a successful design competition that achieves design excellence can result in a development bonus in relation to building height and/or floor space. In this regard, the TCC/LEP allows up to 10% additional building height and/or floor space ratio to that prescribed.

To date, Council has not participated in an ADC, nor received an application that has been subject to an ADC. Whilst Tweed Council has limited ADC experience, design competitions are reasonably common throughout NSW and Australia; staff are with familiar with the procedural aspects of like projects.

ADCs should be distinguished from architectural/design review panels, such as those used by several NSW Council's under *State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development*. In this regard, ADCs occur prior to the lodgement of any development application, whereas design panels provide comment and guidance on development applications that have been lodged with a council. Accordingly, the consent authority (whether that be the Council or the Joint Regional Planning Panel) is not bound by the outcome of the architectural competition.

Notwithstanding, the establishment of a Design Review Panel is often viewed as an important component of running an ADC and complimentary process of encouraging and fostering higher quality built form beyond those competition sites. The formation of a Tweed Design Review Panel would also fulfil an important role in providing integrated design advice on larger and more sophisticated landmark developments, which is likely to become more prevalent in Tweed City CBD given the increased development opportunities brought about by the TCC/LEP.

### **Draft Design Excellence Policy**

The draft 'Design Excellence Policy' comprises of four parts; they include:

- (1) Introduction and Context – including purpose and objectives of the Policy;
- (2) Establishing a Competitive Design Process – including the types of competition and how the procedure for running the competitive tender brief works;
- (3) Judging the Competition Entries – including jury establishment and the assessment and decision of submissions; and
- (4) Design Appendices – including further design guidance for sites.

The latter section of the draft Policy is envisaged to occur at a later stage when resourcing permits. In the meantime, the draft Policy is provided as Attachment 2.

Formulating the scope of the policy firstly involved a literature review, web based research of relevant case studies, including the model used by the Royal Australian Institute of Architects (RAIA). Secondly, several interviews were conducted with industry professionals, including the RAIA and the Gold Coast City Council City Architects Office. Finally, this literature review was tempered with the consideration of local conditions, development climate and the aims of the TCC/LEP. In other words Council staff have attempted to ensure that the policy is practical and workable within our region, not founded on unattainable aspiration that seeks the extraordinarily high level of development investment witnessed in many larger Australian capital cities.

Underpinning the success of the architectural design competition process is the awareness of its existence and relevance to a modern cityscape by both the community and landowners. Achieving a level of recognition requires that the draft Policy be publicly

exhibited and whilst it does not have the statutory making of a DCP or LEP a consultation process of at least 30 days is warranted.

### **The Jury**

Within an ADC, the jury provides input to the design process prior to the lodgement of a development application, as opposed to towards the determination of an application. Accordingly, the decision of the jury does not fetter the discretion of the consent authority in determination of any development application.

The functions of the jury are to:

- Undertake a site inspection;
- Review each competition entry, which includes a Summary of Compliance, documenting each competition entries compliance with the TCC/LEP;
- Provide an ADC Report, detailing:
  - A summary the competition process incorporating a copy of the competition brief;
  - An outline the assessment of the design merits of each of the entries;
  - The jury's decision, including the rationale for the choice of a nominated design and how this exhibits design excellence; and
  - Any recommended design amendments or propose conditions of development consent that are relevant to the achievement of design excellence.

The NSW Department of Planning & Infrastructure (DP&I) Design Excellence Guidelines detail that the competition jury will comprise a minimum of three members. At least one member will be a nominee of each of the following:

- (1) The proponent; and
- (2) The consent authority; and
- (3) The Director General of the Department of Planning.

These directions have been embodied within the draft Policy.

The draft Policy establishes a maximum number of six jury members, containing an equal proportionate of representation from the proponent and consent authority (plus the DP&I representative). Where the DP&I is the consent authority, the Tweed Council will be invited to nominate a jury member/s.

Selected jury members must not:

- Have a pecuniary interest in the development proposal;
- Be an owner, shareholder or manager associated with the proponent or proponent's companies;
- Be a staff member or councillor with an approval role in council's development assessment process.

Finally, members of the jury must have relevant design expertise and experience, and collectively the jury will include the following skills base

- Architecture,
- Planning,

- Urban Design,
- Heritage,
- Landscape architecture,
- Local and regional issues appreciation

During the proposed public exhibition period, targeted consultation with industry groups (architectural, heritage and urban design based firms and associations, as well as universities offering courses in these fields) is proposed, firstly in order to obtain feedback from primary users of the policy and secondly to formally seek expressions of interest for panel positions of behalf of Council (when it is the consent authority). It is proposed that a pool of individuals that satisfy the criteria within the draft Policy be maintained. Their rotation as attending panel members is essential and may be controlled General Manager's appointment.

The DP&I *Design Excellence Guidelines* enable the collection of up to \$1,000 for the consent authority from the proponent for the provision of administrative and secretarial services (i.e. the recording of the jury proceedings and preparation of the Design Competition Report). Whilst administrative-based fees are accounted for, there appears to be scarce NSW based literature on what fees may be appropriate for sitting jury panel members and from who they are paid. It is considered essential for jury members representing Council to be adequately remunerated so as ensure the services of high calibre architects and designers. As this may require further consideration post public exhibition the amount of \$300 per hour (plus GST) has been included within the draft Policy as guide. It represents a fairly conservative commercial rate for a quality design expert.

To facilitate the proper and orderly payment of fees it is anticipated that the Council's Fees and Charges Schedule will need to be amended following adoption of the policy.

### **How does this process affect applicants?**

The requirement to undertake an ADC imposes additional cost; it will lengthen development timelines, and does not guarantee certainty about the outcome of achieving 'excellence'. It is the proponent who will bear these costs.

At least in theory, and there are seemingly case studies in practice, it is about unlocking additional design and development opportunities from a given site where those opportunities would not otherwise existed. Acknowledging the current economic climate and the need to 'compete' with re-development opportunities within South-East Queensland, as well as the need for developers to minimise additional upfront expenditure, is important. The draft Policy provides a mechanism to seek effective engagement and implementation allied with the TCC/LEP provisions. It cannot however deliver the take-up of those development opportunities if the landowner's think it is commercially undesirable, cost prohibitive or otherwise too uncertain.

### *Cost*

In the process of establishing and completing an ADC, the proponent is responsible for the cost of preparing the brief, advertising the competition, jury members and potentially awards for competition placegetters.

In this regard, the cost of preparing a brief is not considered to be significantly different to the process when commissioning development plans outside of an ADC framework, nor is it expected that advertising costs will be substantial; however jury costs and awards could be significant. The draft Policy does not mandate payment of awards to placegetters; however the draft Policy does replicate the DP&I Guidelines which simply require that the competition



brief details the number and amount of all prizes and recommends that fees paid to entrants should be appropriately scaled to recompense the extent of work undertaken.

Within the industry it is broadly accepted that for competitions in which contestants are required to produce a design, the total prize money will be equal to the schematic design fee that would be due to an architect working under a direct commission. The RAI A provides a Schedule of Recommended Prizes, contained within Table 1, for conventional projects as a reference for determining the appropriate total prize money. Whilst the draft Policy does not endorse or require the financial amounts detailed within the table, it is provided within this report to indicate the scale of fees generally involved.

Project Value	Total prize	Premiums		
		1st	2nd	3rd
Below \$1m	Negotiated with the RAI A			
\$1m	\$11,000	\$6,600	\$3,300	\$1,100
\$2m	\$20,000	\$12,000	\$6,000	\$2,000
\$3m	\$28,000	\$17,000	\$8,000	\$2,800
\$4m	\$36,000	\$21,000	\$11,000	\$3,600
\$6m	\$51,000	\$30,000	\$15,000	\$5,000
\$8m	\$66,000	\$40,000	\$19,000	\$6,600
\$10m	\$80,000	\$48,000	\$24,000	\$8,000
\$15m	\$117,000	\$70,000	\$35,000	\$12,000
\$20m	\$150,000	\$90,000	\$45,000	\$15,000
\$50m	\$337,000	\$200,000	\$100,000	\$37,000
\$100m	\$630,000	\$380,000	\$197,000	\$63,000

**Table 1 - RAI A Schedule of Recommended Prizes**

As identified within Table 1, the RAI A recommends three prizes are awarded, distributed 60% for 1<sup>st</sup> prize, 30% for 2<sup>nd</sup> prize and 10% for 3<sup>rd</sup> prize. In competitions where the project is constructed, the winner shall be commissioned as the project architect and the first prize money shall be credited against the fees due for the commission.

Whilst the monetary costs of awarding prizes can be substantial, providing a reasonable total prize budget is considered necessary in order to attract the services of high calibre design firms that are best placed to deliver schemes of design excellence. In addition, the cost of conducting an ADC is, in theory, also offset by the potential 10% development bonus in relation to building height and/or floor space.

When considering those costs it is also important to recall that the overarching purpose for the TCC/LEP provisions is to elevate the standard of design/urban design within the CBD and to reinforce its place as a major regional centre.

#### *Timeline*

The draft Policy indicates a minimum timeline of 10 weeks to undertake the competition ('closed' competition), comprising the following broad tasks:

- Three weeks preparing the brief,
- Four weeks for competition participants to respond,
- Three weeks for the jury to convene and award placegetters.

An additional three weeks is anticipated should the proponent wish to undertake an 'open' competition.

Whilst the addition of 10 - 13 weeks to the timeframe is acknowledged, it is also acknowledged that a significant portion of the work undertaken in preparing a competition

submission is comparable to the time allocated towards preparing and investigating a sketch design/initial concept as a prelude to lodging a development application.

The fact that competitors' work will be based upon a brief provided by Council minimises work which is not generally in keeping with Council's strategic planning and urban design vision and framework. This should in effect result in a more seamless transition from competition entry to DA submission in terms of planning and design intent, preparation and compliance.

#### **How does this process affect Council?**

As discussed in the report the ADC process occurs prior to lodgement of any DA and does not bind the consent authority to approving the winning design scheme. Additional resourcing cost is likely to be incurred by Council and will need to be underpinned by an amendment to the Council's Fees and Charges Schedule, so that it remains a cost of the proponent. This also raises the opportunity for Council to take a lead role in promoting the new growth of the CBD and may wish to fund all or part of the process itself, depending on the level of support for the Policy.

The main area of impact on Council is likely to be ensuring that suitable candidates are representing Council on the jury. This is a critical aspect and will be further reported on at the conclusion of the public exhibition period.

#### **How does this process affect the community?**

The ADC process does not normally involve a formal public community consultation process. Accordingly the views of the community will not have a direct bearing on the deliberations or conclusions of the jury panel. Whilst it is open to Council to require the ADC process to include a public exhibition process, this would add further costs and extend the timeline of undertaking an ADC. Post jury determination, any DA submitted would be subject to the established public notification and advertising procedures, allowing the community an appropriate opportunity to provide input.

#### **OPTIONS:**

1. Endorse the draft Policy for the purposes of public exhibition.
2. Defer for a workshop.

Council officers recommend Option 1 to progress the process framework to support the Design Competition requirements of the LEP. It is also recommended that should Council wish to have a workshop that it follow the consultation stage so that Council officers' are more informed about the community and landowner's reception to it.

#### **CONCLUSION:**

A primary aim of the Tweed City Centre Local Environmental Plan 2012 is to facilitate building design excellence appropriate to a regional city within the Tweed City Centre. In order to deliver this aim, architectural design competitions are required for specific sites and development.

Architectural design competitions can assist in creating a robust vision, deliver innovative thinking when experimentation of development concepts is most fruitful, promote

sustainable development, and assist in focussing on the big issues of a development or site, rather than barriers or premature detail.

In order to facilitate the effective implementation of the TCC/LEP and architectural design competitions, a draft Design Excellence Policy has been prepared. The draft Policy provides an introduction and context, the methods of establishing a competitive design process, judging of the competition entries and allows for future design appendices.

This report recommends that public exhibition of the draft Policy is warranted and should be along the lines of those required of other important policies, such as DCPs and LEPs, and for a period of not less than 30 days.

Within the public consultation period it is also recommended that expressions of interest from suitably qualified persons to participate on any design panel jury should be sought. His will assist with identifying any shortcomings with the draft Policy or that is likely to arise with is implementation.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Should the draft Design Excellence Policy be adopted in the future, amendments will need to be made to Council's adopted Fees and Charges.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1: Clause 16.10 of Tweed City Centre Local Environmental Plan 2012 (ECM 3160663)

Attachment 2: Draft Design Excellence Policy (ECM 3160665)

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**40 [PR-CM] Liquor Licence Application for the Hideaway Motel at Lots 1 and 2 Section 4 DP 29748, Lots 9-12 Section 4 DP 31209 Nos. 26 and 28 Tweed Coast Road and Nos. 19-25 Cypress Crescent, Cabarita Beach**

**SUBMITTED BY: Development Assessment**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan

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### **SUMMARY OF REPORT:**

On 27 February 2012 an application for an 'On-premises Liquor Licence' (Application Number 1-1410959372) was lodged with The Office of Liquor, Gaming and Racing (OLGR), NSW for the Hideaway Motel, Cabarita. The Liquor Licence is currently under consideration by OLGR, pending confirmation from Council that the motel has the necessary approvals.

In relation to the Liquor Licence application, Council acknowledged, in correspondence of 1 November 2012 to Planit Consulting, that the motel had the benefit of existing use rights under the provisions of Section 106 of the Environmental Planning and Assessment (EPA) Act 1979, as consent had been granted for a motel on the subject site. However, it was advised that existing use rights could not be acknowledged for a restaurant and/or dining area on the subject site, as approval had not been granted for this use. It was also advised that Council did not consider the use of the site for functions ancillary to the use of the existing motel. Council's previous correspondence of 14 May 2012 to Cow Nominees Pty Ltd, in relation to the Liquor Licence Application, was given in response to advice received from the applicant whereby the applicant advised Council that the service of alcohol would be primarily to the motel rooms.

Within the Council Report for DA12/0170 Council Officers advised that a search of Council's records revealed a number of approvals pertaining to the construction of the motel itself (circa 1960) and in relation to the renovation and addition of motel units on the subject site. It was advised that existing use rights were evident for the motel over Lots 9, 10, 11 and 12 in DP 31209. Whilst it was acknowledged that the motel itself had the benefit of existing use rights, Council Officers considered that the existing use rights could not be acknowledged for a restaurant and/or communal dining area, as approval has never been granted for this use and was not demonstrated on the existing or previously approved plans.

DA12/0170 originally proposed a number of ancillary facilities for guests of the motel such as a new at grade parking facilities; restaurant; lounge room; outdoor food and beverage service area and swimming pool. A number of submissions were received from neighbouring residents with concerns in relation to overlooking, overshadowing of foreshore and residents, noise and disturbance in relation to this application. The application was later amended to allow the facilities to be open to the general public and for the use of the premises for functions and events.

Council Officers recommended that DA12/0170 be approved, provided a number of recommended conditions were applied to any Development Consent, particularly in relation to hours of operation and restriction of use by motel guests only, to safeguard the residential amenity of surrounding properties and ensure that the development was in accordance with the relevant statutory legislation. Parking calculations and developer contributions were prepared and applied on the basis of a motel use and associated facilities to be utilised by guests of the motel only.

At the Council meeting of 14 February 2013, Councillors resolved to grant approval to Development Application DA12/0170 for 'Alterations and Additions to Motel'. Councillors resolved to amend Condition No. 9 of the Consent to allow the facilities (such as restaurant/dining area, lounge room and outdoor food and beverage service area) to be used by guests of the motel only, with the exception of ancillary functions and events consistent with the use of the premises as a motel and linked to guests residing on site. Further, Condition No. 11 and No. 12 were amended to permit the use of the motel for members of the general public or for functions, parties of the like, on an ancillary basis to the primary function of the premises as a motel. Also, Condition No. 15, that required the 'multipurpose space' to be used as storage area and games room for guests of the motel only, was deleted.

On 30 July 2013 a request was received from the Liquor & Gaming Specialists, on behalf of the applicant, in relation to the Liquor Licence Application submitted to OLGR at the Hideaway Motel, Cabarita. The applicant now seeks an 'On-Premises Liquor Licence' to permit liquor service in all areas of the motel and considers that the approval of DA12/0170 should now overcome any restrictions as previously detailed within Council's correspondence of 14 May 2012 and 1 November 2012.

OLGR have advised the applicant that in order for the premises, other than just motel rooms, to be licensed, they would require confirmation from Council that their previous submission is 'withdrawn' and that they no longer object to the whole premises being licensed. As Councillors resolved to permit the motel facilities (restaurant / dining area, lounge room and outdoor food and beverage service area as well as multipurpose space at the rear of the motel) to be opened to members of the general public for functions and events, this matter is now being reported to Councillors for consideration.

#### **RECOMMENDATION:**

**That Council in respect of a Liquor Licence Application for the Hideaway Motel at Lots 1 and 2 Section 4 DP 29748, Lots 9-12 Section 4 DP 31209 Nos. 26 and 28 Tweed Coast Road and Nos. 19-25 Cypress Crescent, Cabarita Beach, determines a preferred action from one of the following three options:**

- 1. Supports the application for an On-Premises Liquor Licence on the basis that DA12/0170 permits the use of the facilities (restaurant/food and beverage area) to members of the general public and the use of the premises for functions, parties and the like; or**
- 2. Requests the applicant lodge a Section 96 application to enable Council Officers to consider the use of the facilities for members of the general public and for functions/parties, and supports the application for an On-Premises Liquor Licence if the Section 96 application is approved; or**

3. **Not to support the On-Premises Liquor Licence as it would not be in keeping with surrounding development and may be detrimental to surrounding residential land uses.**

**The Council Officers recommend Option 2.**

## REPORT:

### Background:

On 14 February 2012 Councillors resolved to approve Development Application DA12/0170 for alterations and additions to an existing motel (refurbishment and expansion of the existing motel in three stages resulting in a three storey building with new amenities: construction of outdoor food and beverage area; new caretakers residence; new swimming pool; new restaurant dining space; kitchen and cool room; and addition of new motel rooms) subject to a number of recommended conditions. The development also comprised the construction of new at grade car parking facilities for 25 vehicles (based on additional motel rooms only and not based on restaurant/dining area being open to general public) with a second access point proposed to Cypress Crescent.

The application originally advised that the facilities within the motel would not be available to members of the general public and the development application was advertised as such. 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.

As detailed within the previous Council Report for DA12/0170, the Tweed Local Environmental Plan (TLEP) 2000, prohibits the use of a 'Motel' on 2(a) Low Density Residential Zoned land. Therefore, the motel would need to rely on existing use rights in order to remain permitted within the 2(a) Low Density Residential zone. An assessment of the development history on the site indicated that the motel had the benefit of existing use rights as it was established on the site circa 1960 (12 units Reference No. 218/60), prior to the coming into force of the current Tweed Local Environmental Plan (TLEP) 2000. Other applications approved a number of alterations and extensions to the building and car parking area. It was therefore acknowledged that, under the provisions of Clause 41 of the EPA Regulation 2000, that the existing use of the motel may be enlarged, expanded or intensified.

However, Council Officers considered that existing use rights could not be acknowledged for a restaurant and/or dining area (separate to living accommodation), as approval had never been granted for this use and it was not demonstrated on the existing or previous plans. Council records also revealed that food preparation was limited to the preparation of small meals (breakfasts) only in the kitchen, to be delivered to guests in their rooms. It was also noted that approval had never been issued for the use of the building for functions or the like.

It was advised that, should the applicant wish to open the facilities to the general public and formalise the use of the site for functions and events, a future development application would be required for such uses (including any additional details of existing use rights, amended noise impact report and details of potential residential amenity issues, such as a detailed parking assessment).

Six submissions were received as a result of the notification process for DA12/0170, a number of which stated concerns in relation to the submitted Liquor Licence that ran concurrently with DA12/0170. In particular, residents advised of their concerns in relation to the proximity of the building to neighbouring residential dwellings and that such a use, and resultant noise and disturbance, would be inconsistent with the current, 'low-key' motel use.

Council Officers considered that an extension and intensification of the motel was permissible under the provisions of Clause 41 of the EPA Regulation 2000. However, it was considered necessary and prudent to ensure that the facilities proposed were not to be made available to the general public as existing use rights had not been established for this



purpose, in order to safeguard surrounding residential amenity and to ensure that the development was consistent with the relevant legislation and planning provisions. Conditions prohibiting the use of the motel to members of the general public, restricting the use of the 'multipurpose space', limiting hours of use and restricting the use of the premises for functions and events were recommended.

Further, developer contributions (Section 94 and Section 64) were levied on the basis of a motel use for the increased residential components; a retail use for the multipurpose space; no charge for the lounge area (as it was considered that this would not be an intensive use); and the outdoor area not to be charged at the refreshment room rate provided it was to be for the use of motel guests only. Therefore Councillors are advised that developer contributions for the development were prepared on the basis of a low-key motel use, to be used by motel guests only.

Within the Council meeting of 14 February 2013, Councillors resolved to approve the application and amend a number of conditions of the consent to: allow the motel facilities to be used by the general public and to allow for functions, parties or the like on an ancillary basis to the primary function of the premises as a motel (Conditions No. 9, 11 and 12); to allow for an unspecified use within the 'multipurpose space' (Condition No. 15) and to extend the hours of operation of the building (Condition No. 111).

On this basis, the applicant is now seeking confirmation from Council that it no longer objects to the granting of a Liquor Licence for the service of alcohol within all areas of the building, and not just restricted to the motel rooms.

#### **Proposed Liquor Licence:**

An Officer of OLGR has advised that at the present moment OLGR would be prepared to grant a Liquor Licence for the service of alcohol within motel rooms only, in accordance with Council's previous correspondence. It is understood that the applicant has applied for an On-Premises Liquor Licence to permit liquor service in all areas of the motel. OLGR have advised that they are not prepared to grant an On-Premises Liquor Licence until Council provides confirmation that approval has been granted for the additional motel facilities, functions and events, to be available to members of the general public.

OLGR have also advised that further detail in relation to the intended maximum capacity of persons has not been received and this would depend on the details contained within any development application for such a use. It is noted that DA12/0170 did not provide details in relation to the frequency of functions/events/parties or proposed numbers of patrons. This application approved not only the alterations and additions to the motel, but also approved the use of motel facilities technically to an unlimited number of patrons for functions, parties and the like, on an ancillary basis to the primary function of the premises as a motel.

Council Officers are of the opinion that the amended conditions, as detailed above, permit the applicant to host an unlimited number of functions/events from anywhere within the building. However, it is considered that the granting of a Liquor Licence for the entire premises will alter the intensity and use of the building that has traditionally functioned as a low-key motel, to a fully functioning licensed premise, capable of holding an unlimited number of functions, events and parties. This will inevitably impact on the residential amenity of surrounding properties in terms of noise, disturbance, increased traffic and parking congestion.

#### **OPTIONS:**

That Council determine a preferred action from one of the following three options:

1. Supports the application for an On-Premises Liquor Licence on the basis that DA12/0170 permits the use of the facilities (restaurant/food and beverage area) to members of the general public and the use of the premises for functions, parties and the like; or
2. Requests that the applicant lodge a Section 96 application to enable Council Officers to consider the use of the facilities for members of the general public and for functions/parties, and support the application for an On-Premises Liquor Licence if the Section 96 application is approved; or
3. Not to support the On-Premises Liquor Licence as it would not be in keeping with surrounding development and may be detrimental to surrounding residential land uses.

The Council officers recommend Option 2.

**CONCLUSION:**

Council resolved to grant consent to DA12/0170 for alterations and additions to the motel as well as permit the use of the motel for functions, parties and the like and be open to the general public, on an ancillary basis to the primary function of the premises as a motel.

The applicant considers that this approval overcomes any concerns that Council previously had in relation to the service of alcohol from anywhere within the building. It is therefore considered necessary to report this matter to the Councillors for consideration as to whether support should be granted for an On-Premises Liquor Licence at the motel.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- |               |   |
|---------------|---|
| Attachment 1. | Council correspondence dated 14 May 2012 in relation to Liquor Licence Application (ECM 3151961)        |
| Attachment 2. | Council correspondence dated 1 November 2012 in relation to Liquor Licence Application (ECM 3151972)    |
| Attachment 3. | Report to Council meeting of 14 February 2013 regarding Development Application DA12/0170 (ECM 3151974) |
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**41 [PR-CM] Development Application DA09/0611.11 Amendment to Development Consent DA09/0661 for a 181 Lot Subdivision Including 177 Residential Lots and Associated Subdivision Works Including Roads, Infrastructure, Western Cycleway and Landscaping Works (JRPP)**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA09/0661 Pt12**

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**Civic Leadership**

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

**SUMMARY OF REPORT:**

Approval was originally granted in July 2010 by the Joint Regional Planning Panel for a 180 lot subdivision at Casuarina Way, Casuarina.

The original approval involved the construction of the subdivision in a single stage. A subsequent amendment was approved whereby the subdivision was broken into seven stages. Conditions of consent were appropriately modified to accommodate the proposed staging.

Council is now in receipt of a Section 96 application for a proposed modification to approved development more commonly known as 'Miramar'.

This current application does not propose any change to the approved footprint of the development or the number of allotments. The applicant is seeking to modify a particular condition with regard to dilapidation reports.

The original approval applied Condition 85, which required a second dilapidation report for adjoining/adjacent properties at the completion of works. The condition also required the written acceptance of the adjoining/adjacent property owners in relation to the dilapidation report.

The previous Section 96 application resulted in Condition 85A, which modified the original wording of the condition to account for the staging of the development. The requirement for the written acceptance of adjoining/adjacent property owners remained. Late in the assessment process of the previous Section 96 application, the applicant approached Council officers with regard to removing the reference to written acceptance of the adjoining/adjacent property owners. Given that re-advertisement would be required, the applicant chose not to proceed with any further modification of the condition.

The current Section 96 application does propose to modify Condition 85A, to remove the requirement for the written acceptance of adjoining/adjacent property owners. The applicant proposes to replace the written acceptance component with a requirement that a practicing

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structural engineer certify that no damage has occurred or that satisfactory repairs have been undertaken.

The application was advertised for a period of 14 days, during which time 16 submissions were received against the proposed modification.

It should also be noted that Council has been served with a Class 1 Appeal by the applicant (c/o Gadens Lawyers) for the 'deemed refusal' of the proposed modification. Council's legal representatives attended the applicant's Notice of Motion (seeking expedition of the matter) on 29 August 2013. The Registrar of the Court has agreed to expedite the hearing of the proceedings, but not before the Council meeting on 19 September 2013. The proceedings have been fixed for a hearing on 30 September 2013.

Having undertaken an assessment against all relevant statutory requirements and legal ramifications, the proposed modification is recommended for approval.

## **RECOMMENDATION:**

**That:**

**A. ATTACHMENTS 1-3 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**

**(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**

**B. Development Application DA09/0661.11 for an amendment to Development Consent DA09/0661 for a 181 lot subdivision including 177 residential lots and associated subdivision works including roads, infrastructure, western cycleway and landscaping works (JRPP) at Lot 2 DP 1042119 and Lot 224 DP 1075237 Casuarina Way, Casuarina; Lot 8 DP 1014470 Tweed Coast Road, Casuarina be approved and the conditions be amended as follows:**

**1. Delete Condition No. 85A and replace it with Condition No. 85B which reads as follows:**

**85B. Upon completion of all works on the site pertaining to each relevant 'Phase' of bulk earthworks and/or 'Stage' of the subdivision (as nominated hereunder), and prior to the issue of a corresponding Subdivision Certificate (where relevant), a further dilapidation report is to be prepared and certified by suitably qualified and experienced structural and civil engineers detailing the current general condition including the structural condition, of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and:**

- Ascertain if any structural *or incidental* damage has occurred to any adjoining and adjacent building/site, infrastructure or roads,**
- Recommend a course of action to rectify any such damage that has occurred,**
- Ensure any required rectification works have been undertaken and completed to a satisfactory standard,**
- Include certification from a practising Structural Engineer that no damage has occurred to adjacent or adjoining dwellings as a**

**result of the development or alternatively, where damage has occurred, satisfactory repairs have been undertaken,**

- **Be submitted to and approved by the General Manager or his delegate prior to the issue of the relevant Subdivision Certificate**

Submission of further dilapidation reports are required upon completion of:

- 'Phase 1' bulk earthworks and submission of corresponding Work-As-Executed Plans, unless this occurs in conjunction with completion of 'Stage 1' (or any other 'Stage') - in which case prior to issue of the corresponding Subdivision Certificate.
- 'Stage 2' and prior to issue of the corresponding Subdivision Certificate.
- 'Phase 2' bulk earthworks and submission of corresponding Work-As-Executed Plans, unless this occurs in conjunction with completion of 'Stage 6' (or any other 'Stage') - in which case prior to issue of the corresponding Subdivision Certificate.
- 'Stage 6' and prior to issue of the corresponding Subdivision Certificate.

## REPORT:

**Applicant:** Casuarina Beach Holdings Pty Ltd  
**Owner:** Casuarina Beach Holdings Pty Ltd  
**Location:** Lot 2 DP 1042119 and Lot 224 DP 1075237 Casuarina Way, Casuarina; Lot 8 DP 1014470 Tweed Coast Road, Casuarina  
**Zoning:** 2(e) Residential Tourist, 7(a) Environmental Protection (Wetlands & Littoral Rainforests); 7(l) Environmental Protection (Habitat) and Uncoloured Land

## Background:

### Subject Site

The subject site is part of the master planned development known as Casuarina Beach. The site is described as Lot 224 DP1075237, Lot 2 DP1042119 and Lot 8 DP1014470. The topography of the site is a result of previous sand mining. The topography on the site generally slopes towards the west.

Lot 8 is currently an environmental reserve and contains significant habitat areas. It is predominately zoned 7 (l) Environmental Protection. The remainder of the site is characterised by coastland scrubland dominated by Coastal Banksia, Coast Tea Tree and Coastal Oak. Other introduced species also occur on the site.

The subject site is surrounded by the following road network: Casuarina Way to the east; Dianella Drive to the south; Windsong Way to the north and Tweed Coast Road to the west of Lot 8.

### Land and Environment Consent for Kings Beach

In December 1998, the NSW Land and Environment Court granted consent to 'Stage 1 Kings Beach Approval'. This consent was for a development plan and a 14 lot master plan development for the purpose of residential, tourist and commercial development.

The Consent allowed for some stormwater and road works but generally did not permit any works to be undertaken on the site until further development consent were obtained for each precinct.

The subject subdivision application is the final precinct of Casuarina Beach known as the North West Precinct.

The Court consent required deferral of development of the North West Precinct and the Town Centre Precinct for a period of 4 years (until 31 May 2003). This was to enable the revegetation of habitat for the Blossom Bat, a threatened species found within the site.

### SEPP 71 Master Plan Approval

A development application for subdivision in the North West Precinct was lodged in December 2002 with a concurrent application for SEPP 71. This was subsequently withdrawn.

In April 2003, a SEPP 71 Master Plan application relating to the Casuarina North West Precinct was submitted to the Department of Planning. It was adopted by the Minister on 14 December 2004 (refer below). A revised master Plan was submitted to the Department and also adopted in February 2005.

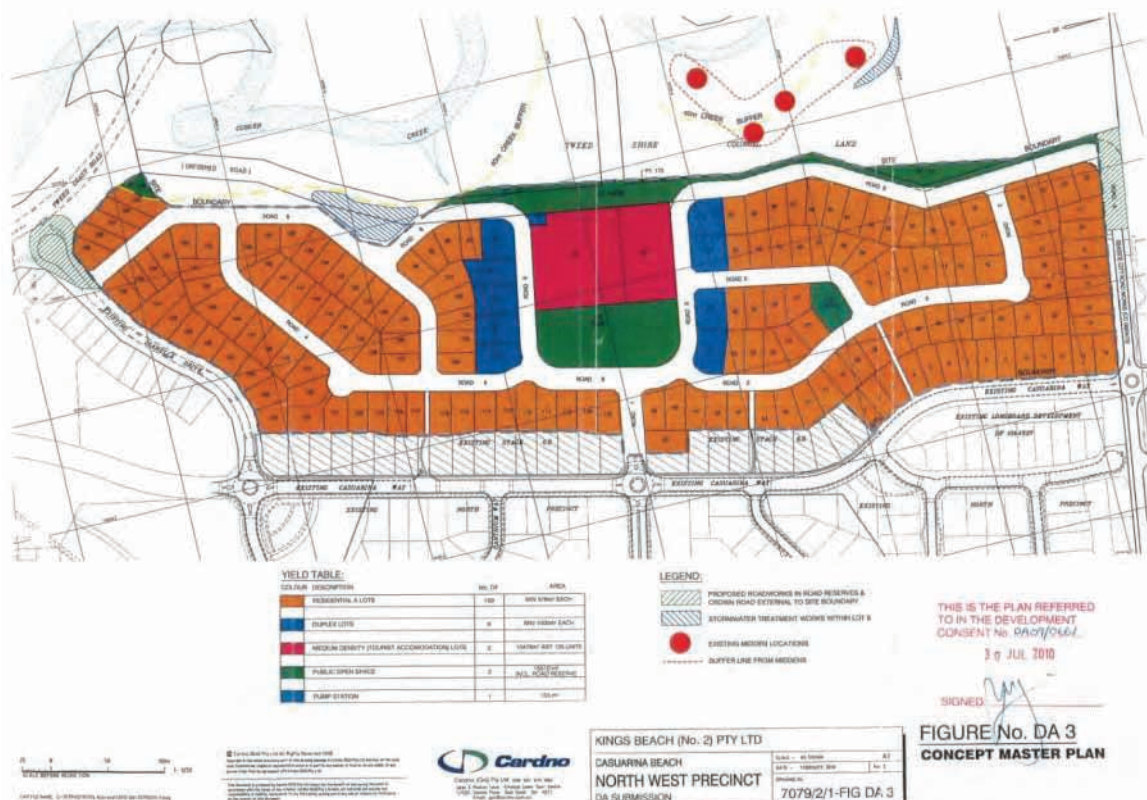
### Development Application DA06/1313 for Work in the Adjoining Lot

In addition to DA09/0661 for the proposed subdivision of the site, Council was also assessing a separate application (DA06/1313) for a stormwater drainage channel in the adjoining Lot 8 DP1014470. This application was to prevent ponding of stormwater within a Banksia compensatory replanting zone for the Blossum Bat. This application was not determined as it included additional cycleway and Asset Protection Zones (APZ) opposed by Council. Amendments also become necessary to relocate the drainage channel as the original excavation would have impacted on a midden site.

In response to the Council's concerns, the applicant included the proposed drainage works into DA09/0661 and Development Application DA06/1313 was withdrawn upon approval of the proposed subdivision.

Approved Subdivision DA09/0661

Development consent was granted by the Northern Joint Regional Planning Panel (JRPP) in July 2010 for the proposed subdivision of Lot 24 and Lot 8. The approved development included a total of 159 residential lots, 9 nominated duplex lots, 2 lots for medium tourist accommodation density (135 units), 3 lots for public open space and 1 lot for a pump station. The approval also included the following works: clearing of vegetation and stockpiling of mulch; carrying out of earthworks to reshape the site for drainage and urban development purposes; construction and installation of engineering infrastructure, including provision of roads, drainage, water quality controls, water supply, sewerage, power and telecommunications; and landscaping of the public domain. The originally approved plan is shown below in Figure 1:



**Figure 1: Approved original layout**

The approved development included a requirement for an initial dilapidation report prior to the commencement of works (Condition 13) as follows:

- 13 A Dilapidation Report detailing current structural condition of adjoining and adjacent buildings, infrastructure and roads is to be prepared and endorsed by a

*qualified structural engineer. The report is to be submitted to Council prior to commencement of works.*

*A second Dilapidation Report is to be prepared by a suitably qualified expert at completion of works as to ascertain if any structural damage has occurred to the adjoining and adjacent buildings, infrastructure and roads. The report is to be compared with the first report and recommend a course of action to carry out repairs if required. A copy of the report is to be submitted to Council.*

In addition, the original approval required the provision of a Dilapidation Report at the completion of works, prior to the issue of a Subdivision Certificate (Condition 85), as shown below:

85. *Upon completion of all works on the site and prior to the issue of a Subdivision Certificate, a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and provide to Council the **written acceptance of the adjoining/adjacent owners** confirming agreement that no damages have occurred/repairs carried out are acceptable.*

Condition 85 is Council's standard condition. Council's Development Engineer has noted that the adoption of this condition as a Council 'standard' stemmed from:

- A history of numerous instances of complaints from adjoining neighbours (regarding structural damage occurring to their property) during building construction works on adjacent sites, and
- Multiple similar complaints received at Council during a major stormwater works construction project in Fraser Drive, several years ago.

Council's involvement in such instances necessitated significant time and effort to be spent by Council staff to ensure appropriate rectification works were undertaken, and to try and implement preventative measures to avoid, or at least minimise, repeat occurrences – whether on the same work site or future work sites.

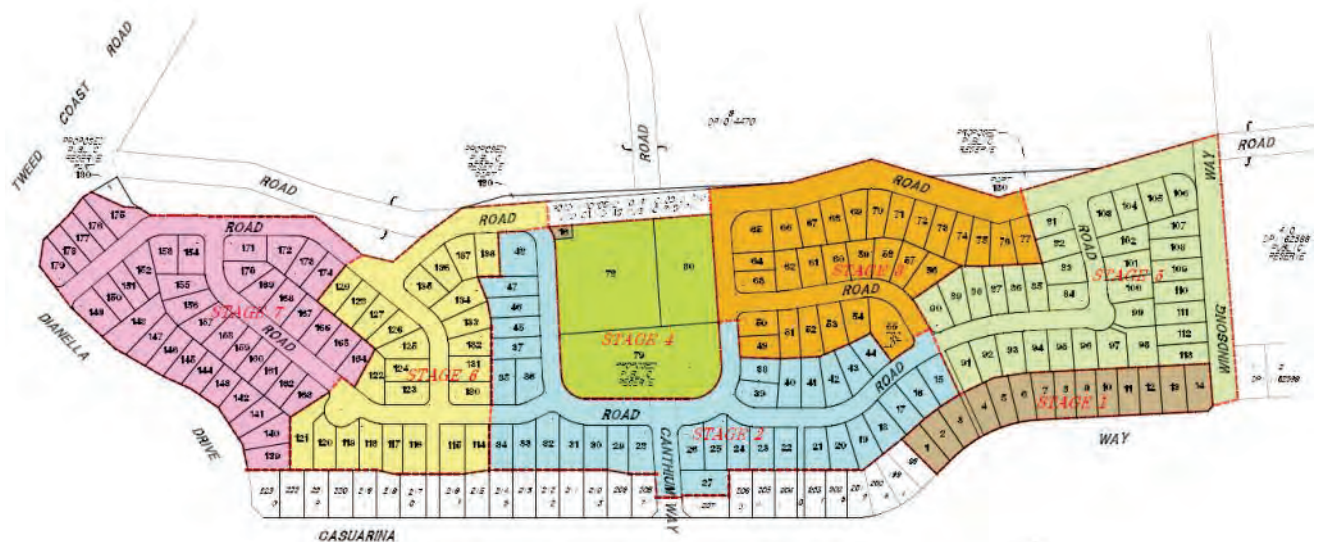
Council staff has generally had good success in negotiating a satisfactory outcome in such instances, but as stated, this required considerable time and effort. To counteract this, 'standard' conditions were created for inclusion in future development consents.

Given the characteristics of the sandy soils on the subject site, it would have been considered appropriate to apply the standard condition during the initial assessment of the development, in an effort to ensure that the existing/adjoining residences were protected from potential damage.

#### DA09/0661.01

The applicant lodged a Section 96 application in late June 2012, proposing modifications largely in relation to the staging of the approved development (as shown in Figure 2 below). Approval of the Section 96 application was granted on 20 December 2012.





**Figure 2: Approved staging of the development**

The approved modification to Condition 13 was as follows:

*13A A Dilapidation Report is to be submitted to Council prior to commencement of any civil works on the subdivision, including bulk earthworks, detailing current structural condition of adjoining and adjacent buildings, infrastructure and roads, prepared and endorsed by a suitably qualified structural and civil engineers.*

*A second Dilapidation Report is to be prepared by suitably qualified engineers at the completion of relevant Stages as required by Condition 85A.*

In addition, a modification to Condition 85 (as proposed by Council's Development Engineer) was approved, taking into account the proposed staging but keeping the requirement for the written acceptance from adjoining/adjacent property owners as follows:

*85A Upon completion of all works on the site pertaining to each relevant 'Phase' of bulk earthworks and/or 'Stage' of the subdivision (as nominated hereunder), and prior to the issue of a corresponding Subdivision Certificate (where relevant), a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural and civil engineers detailing the current general condition including the structural condition, of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and;*

- *Ascertain if any structural damage has occurred to any adjoining and adjacent building / site, infrastructure or roads,*
- *Recommend a course of action to rectify any such damage that has occurred,*
- *Ensure any required rectification works have been undertaken and completed to a satisfactory standard,*
- *Provide to Council the **written acceptance of the adjoining / adjacent owners** confirming agreement that no damages have occurred / repairs carried out are acceptable.*

*Submission of further dilapidation reports are required upon completion of;*

- *'Phase 1' bulk earthworks and submission of corresponding Work-As-Executed Plans, unless this occurs in conjunction with completion of*

*'Stage 1' (or any other 'Stage') - in which case prior to issue of the corresponding Subdivision Certificate.*

- *'Stage 2' and prior to issue of the corresponding Subdivision Certificate.*
- *'Phase 2' bulk earthworks and submission of corresponding Work-As-Executed Plans, unless this occurs in conjunction with completion of 'Stage 6' (or any other 'Stage') - in which case prior to issue of the corresponding Subdivision Certificate.*
- *'Stage 6' and prior to issue of the corresponding Subdivision Certificate.*

Prior to the determination of DA09/0661.01 the applicant approached Council with regard to the removal of the requirement for written owner's acceptance of the dilapidation reports. Whilst this was an available option for the applicant (subject to merit assessment), such a modification would require re-advertising, to allow nearby residents an opportunity to comment. As this process would further delay the determination of the application, the applicant chose not to proceed with this alternative and the wording of Condition 85A (as proposed by Council's Development Engineer) was approved.

PROPOSED DEVELOPMENT:

A further Section 96 application was lodged on 11 July 2013. The proposed modification relates directly to Condition 85A, with the applicant requesting the removal of the requirement for written acceptance of adjoining owners confirming agreement that no damages have occurred/repairs carried out are acceptable.

The applicant's documentation was supported with their own legal advice with respect to the requirement for written acceptance of adjoining owners (refer to Confidential Attachment 1).

The application was notified to surrounding residences, with 16 submissions being received against the proposed modifications.

Prior to determination of the current S96 application, Council was served with a Class 1 Appeal (Deemed Refusal) in relation to the proposed modification.



**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 8 – Consent Considerations**

Clause 8 matters were taken into consideration during the original assessment of the proposed development. The proposed modifications are not considered to trigger any reassessment of the Clause 8 consent considerations.

**(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**

**Condition 85A – Dilapidation Report**

As noted previously, the wording of Condition 85A was proposed by Council's Development Engineer in order to better accommodate the proposed staging of the development of the residential subdivision, whilst maintaining a level of assurance for adjoining/adjacent residents by way of the second dilapidation report and inclusion of the requirement for written acceptance of the report from the property owners.

The applicant has noted the following with regard to the proposed modification of Condition 85A:

*“The original condition and the modified condition insofar as they purport to require the “written acceptance of the adjoining/adjacent owners confirming agreement that no damages have occurred/repairs carried out are acceptable” is clearly unreasonable. The condition, in effect, provides adjacent and adjoining owners with powers which should be exercised by the PCA or Council, based on advice from an appropriate expert.*

*In summary, in our opinion, based upon the facts and circumstances of this case, we consider that:*

- *The proposed modification is an appropriate matter to be subject of a modification application.*
- *The consent condition represents the exercise of a power under Section 80A(2) of the Act. However, the way it has been exercised is very unusual.*
- *Public functions have been conferred on private individuals. These individuals are unlikely to carry out the functions in a suitable way.*
- *The decision to give this public power to adjoining landowners lacks merit. This is irrespective of whether the decision is lawful.*
- *A lack of merit is a sufficient reason for the Land and Environment Court to, on appeal, exercise its powers and remove the condition to require the proponent to obtain the written acceptance of the adjacent landowners.*
- *The development consent explicitly establishes an approval regime under section 85A that is, almost self-evidently, going to be unworkable and very costly and time consuming to resolve.*

- *The burden placed on the applicant by the requirement is disproportionate to the consequences attributable to the proposed development. It is manifestly unreasonable and therefore, unlawful.*
- *The view that the Land and Environment Court is likely to take on merits will be reinforced by the legal position.*

*Having regard to the above, Council is requested to delete Condition 85A and insert a new Condition 85B as follows:*

*Note: Only condition 85A, Dot Point 4 has been modified.*

**Condition 85B**

*Upon completion of all works on the site pertaining to each relevant ~~to each~~ 'Phase' of bulk earthworks and/or 'Stage' of the subdivision (as nominated hereunder), and prior to the issue of a corresponding Subdivision Certificate (where relevant), a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural and civil engineers detailing the current general condition including the, structural condition, of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and;*

- *Ascertain if any structural damage has occurred to any adjoining and adjacent building / site, infrastructure or roads,*
- *Recommend a course of action to rectify any such damage that has occurred,*
- *Ensure any required rectification works have been undertaken and completed to a satisfactory standard,*
- ***Submit to the PCA certification from a practising Structural Engineer that no damage has occurred to adjacent or adjoining dwellings as a result of the development or alternatively, where damage has occurred, satisfactory repairs have been undertaken.***

*Submission of further dilapidation reports are required upon completion of;*

- *'Phase 1' bulk earthworks and submission of corresponding Work-As-Executed Plans, unless this occurs in conjunction with completion of 'Stage 1' (or any other 'Stage') - in which case prior to issue of the corresponding Subdivision Certificate.*
- *'Stage 2' and prior to issue of the corresponding Subdivision Certificate.*
- *'Phase 2' bulk earthworks and submission of corresponding Work-As-Executed Plans, unless this occurs in conjunction with completion of 'Stage 6' (or any other 'Stage') - in which case prior to issue of the corresponding Subdivision Certificate.*
- *'Stage 6' and prior to issue of the corresponding Subdivision Certificate."*

Following assessment of the proposed modification and advice from Council's legal representative (refer to Confidential Attachments 2 and 3), Council officers consider that the applicant's wording of the proposed Condition 85B is acceptable subject to the following additional changes (underlined text):

85B. Upon completion of all works on the site pertaining to each relevant 'Phase' of bulk earthworks and/or 'Stage' of the subdivision (as nominated hereunder), and prior to the issue of a corresponding Subdivision Certificate (where relevant), a further dilapidation report is to be prepared and certified by suitably qualified and experienced structural and civil engineers detailing the current general condition including the structural condition, of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and:

- Ascertain if any structural *or incidental* damage has occurred to any adjoining and adjacent building/site, infrastructure or roads,
- Recommend a course of action to rectify any such damage that has occurred,
- Ensure any required rectification works have been undertaken and completed to a satisfactory standard,
- *Include certification from a practising Structural Engineer that no damage has occurred to adjacent or adjoining dwellings as a result of the development or alternatively, where damage has occurred, satisfactory repairs have been undertaken,*
- *Be submitted to and approved by the General Manager or his delegate prior to the issue of the relevant Subdivision Certificate*

Submission of further dilapidation reports are required upon completion of:

- 'Phase 1' bulk earthworks and submission of corresponding Work-As-Executed Plans, unless this occurs in conjunction with completion of 'Stage 1' (or any other 'Stage') - in which case prior to issue of the corresponding Subdivision Certificate.
- 'Stage 2' and prior to issue of the corresponding Subdivision Certificate.
- 'Phase 2' bulk earthworks and submission of corresponding Work-As-Executed Plans, unless this occurs in conjunction with completion of 'Stage 6' (or any other 'Stage') - in which case prior to issue of the corresponding Subdivision Certificate.
- 'Stage 6' and prior to issue of the corresponding Subdivision Certificate.

The requirement for certification from a practising structural engineer that no damage has occurred or where damage has occurred, that satisfactory repairs have been undertaken is generally considered to be a reasonable alternative to the existing Condition 85A, subject to the dilapidation report being submitted to Council for final approval.

Whilst there are many objections from adjoining/adjacent residents, the proposed modification is not considered likely to result in significant impact upon the locality. The proposed modification, with amendments by Council officers, is considered to suitably protect any residents from potential damage resulting from the construction of the subdivision.

Council officers proposed modification to the first dot point (to include incidental damage) is considered to be warranted, as many residents are currently experiencing 'general' (rather than just structural) damage to their existing dwellings.

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

The applicant has addressed Council's original concerns by way of providing an alternative proposal in terms of protecting the adjoining/adjacent properties in the event of damage resulting from the construction of the subdivision. As such, the proposed modification, with additional changes suggested by Council staff, is considered to result in a development that is suitable for the subject site, subject to conditions of consent.

**CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

Section 96(1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- “(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations.”*

**Likely Environmental Impact**

An assessment has been undertaken with regard to the proposed modification to the approved subdivision, as noted in the 79C assessment above.

In conclusion, approval of the modification application, with further amendments by Council staff, is not considered to result in any significant environmental impact, subject to appropriate conditions of consent.

**Substantially the Same Development**

The proposed modification results in essentially the same development as originally approved, with the proposed amendment considered unlikely to result in any significant change to the originally approved development. There are no changes to the development footprint, no changes to the number of allotments and importantly, certification from a structural engineer is required to determine if any damage has occurred as a result of the development. As such, the proposed modification is considered to be substantially the same development as that originally approved.

**Consideration of Submissions**

The application was placed on exhibition for 14 days. During this time, 16 written submissions were received.

The following table lists the issues raised by the submissions and provides comment to each issue.

ISSUE	RESPONSE
<p>Property is already suffering major vibrations from the vibrating roller being used on site. Concerned we will suffer damage to our property as the major works directly behind us has not even started yet, it will only get worse. Therefore the developer must be responsible for the damage they cause.</p>	<p><i>The developer is responsible for rectifying any damage to adjoining/adjacent residents, which has resulted from the construction works associated with the development. The second dilapidation report is to be certified by a structural engineer before a Subdivision Certificate can be issued for that particular stage.</i></p>
<p>We believe that 85A is fair to us, the property owners and developers. We have already sustained damage to our property during this development so far and certainly expect it to be rectified by the developers. We feel that the amendment could jeopardise this from happening to our satisfaction.</p>	<p><i>As noted above, the proposed modification to Condition 85A still requires any damage to adjoining/adjacent residences to be rectified by the developer. Any repairs works will be required to be certified by a structural engineer that they are satisfactory.</i></p> <p><i>Council's proposed modification would ensure that all damage be repaired to the satisfaction of Council.</i></p>
<p>The amendment seems to be biased towards the developer and seems to be giving them the opportunity not to honour the original condition. We do not want our rights as an owner diminished and because of this be financially disadvantaged by having to pay for damage done to our property by this development.</p>	<p><i>The proposed modification is not considered to be biased or result in a diminishment of the developer's responsibilities. As noted above, the developer is responsible for rectifying any damage to adjoining/adjacent residents, which has resulted from the construction works associated with the development. Such repair works will be required to be certified by a structural engineer that they are satisfactory prior to release of any Subdivision Certificate.</i></p> <p><i>Council's proposed modification would ensure that all damage be repaired to the satisfaction of Council.</i></p>
<p>We have been told that the developer is proposing to remove any involvement of the owners in determining what damages have occurred and what repairs will be needed. That as home owners we would have no say to this effect</p>	<p><i>If the home owners are dissatisfied with the outcome of the dilapidation report required by the proposed Condition 85B, they have the ability to independently pursue the matter in Court proceedings.</i></p>
<p>The original clause 85 of the Development Consent was the only clause in the document which did give the residents (adjoining and adjacent) some protection/recourse for damage caused by the works (all) being carried on at the development site. To afford us this protection it called for us to sign off that no damage (in any form) had occurred or had been satisfactorily repaired/restored. Also in the original condition the clause was very specific in that it covered damage to both the General Condition and the Structural Condition of the property. No doubt Council, had very good reason why this clause was placed in the development consent at the outset, and had it worded the way it was. I'm sure it was to give us (owners) some needed protection.</p>	<p><i>It is not considered that the proposed modification of the original condition 85 reduced the resident's protection/recourse for damages.</i></p> <p><i>Council's proposed modification would ensure that all damage be repaired to the satisfaction of Council.</i></p> <p><i>Condition 85A is considered to simply clarify what is required from the developer in terms of the proposed staging.</i></p>



ISSUE	RESPONSE
<p>We are unsure how it happened, but the original condition has already been amended, to our (residents) detriment to Condition 85A. At least this still provides for our sign off, but concludes reports etc at the end of Stage 6. This is a Seven stage development and all adjoining/adjacent residents are likely to be affected until all works (not just earthworks) are completed. The original condition was clear in that it provided for our sign off at the end of all works. What the developer is now looking to do is remove this protection from the owner and place it solely in the hands of a consulting structural engineer, engaged by themselves.</p>	<p><i>The modification of Condition 85 was proposed by Council's Development Engineer to provide clarity on what was required from the developer (in terms of the second dilapidation report) and when (with regard to staging).</i></p> <p><i>As noted above, the proposed Condition 85B is not considered to remove protection from damage for the adjoining / adjacent residences.</i></p> <p><i>The requirement for a practising structural engineer to certify the dilapidation report is considered to be standard practise for such matters.</i></p>
<p>The developer owes a duty of care to the owners and for that matter Council as well, for surrounding roads and other infrastructure. If the developers actions have incurred damage in whatever form they are responsible and fully accountable to the aggrieved party. It is only fair that we have some say (by way of sign off) in whether our properties have been damaged and properly repaired.</p>	<p><i>As noted above, the proposed Condition 85B does not remove the duty of care in relation to damage to adjoining/adjacent residences.</i></p> <p><i>The proposed use of an experienced structural engineer for certification purposes is considered to be acceptable. If landowners are dissatisfied with the outcome of the dilapidation report, they still have the ability to undertake their own civil action, in terms of damage resulting from the development.</i></p>
<p>The grounds to my objection are: the removal of my right as the owner of the property affected to have any assessed damage recorded or not recorded by the structural engineer agreed to with my signature of approval. The final dilapidation report and repair work should be left until all ground movement / settlement has ceased.</p>	<p><i>The applicant has verbally advised Council staff that all works covering all Stages would be flowing on from each other, and their intention is to continue construction works in an uninterrupted fashion until completion of all Stages.</i></p> <p><i>The applicant also verbally advised staff that the current dilapidation reports are just preliminary and are only being undertaken to satisfy the consent condition. It is intended to redo these reports at later stages, also in accordance with the current consent condition.</i></p>
<p>It is stated that we as landowners may have possible bias. We would question the possible bias of the proposed expert to be appointed by the Applicant. It has been stated that the land owners lack the necessary skills, resources and experience to deal with these matters. As landowners we would like to believe that you as Council will protect our interests. It is unethical to expect landowners to bear the brunt of damages to their property due to a development on adjoining land that is totally out of their control.</p>	<p><i>The use of a practising structural engineer for certification purposes is considered to be standard practise for such matters.</i></p> <p><i>The proposed modification of Condition 85A is considered to maintain the interests of adjoining/adjacent residences, with any damage required to be satisfactorily repaired. The proposed Condition 85B is not considered to be unethical, with certification considered to be standard practise.</i></p>

ISSUE	RESPONSE
<p>Condition 85 clearly stated that the adjoining/adjacent owners had a right of reply regarding whether they agreed that damages had or had not occurred and any repairs carried out were acceptable by way of a sign-off. It included both the general condition of the building and the structural condition. We were quite happy with the condition and felt that the Council worded it in such a way to protect and afford recourse for the adjacent property owners. Condition 85A appears to water this condition down by placing the emphasis on structural damage and away from non-structural damage (e.g. general condition of the building).</p>	<p><i>Council's proposed modification would ensure that all damage be repaired to the satisfaction of Council.</i></p> <p><i>As noted above, Council does not consider that the proposed modification of Condition 85A 'waters down' the responsibilities of the developer in terms of repair of any damage.</i></p>
<p>Objection relates to the proposed condition that relies solely on the report of a practising structural engineer, one engaged by the developer, regarding whether damage has occurred or repairs undertaken satisfactorily. It is only fair and reasonable that residents have some say in this.</p>	<p><i>As noted above, the use of a practising structural engineer for certification purposes is considered to be standard practise for such matters.</i></p> <p><i>Council's proposed modification would ensure that all damage be repaired to the satisfaction of Council.</i></p>
<p>We are pleased to see that the need for dilapidation reports are still required at the end of phase 1 bulk earthworks, stage 2, phase 2 bulk earthworks and after stage 6. However, we are quite concerned for the adjoining properties that will still be affected until after the completion of stage 7. Surely the properties at the southern end of Casuarina Way are still at risk of potential damage and should be offered protection requiring further dilapidation reports.</p>	<p><i>The applicant verbally advised Council staff that the current dilapidation reports are just preliminary and are only being undertaken to satisfy the consent condition. It is intended to redo these reports at later stages, also in accordance with the current consent condition.</i></p>
<p>I have had major issues with vibration, dust and sand. Our house shakes and vibrates every day very badly and has now for 6 months. We would like to reinstate clause 85. I would like our assets to be restored to their original state prior to Council allowing clearance of the subdivision certificate.</p>	<p><i>Reinstatement of the original Condition 85 has not been proposed, nor is it considered appropriate, given the approved staging of the development.</i></p> <p><i>The developer is required to satisfactorily repair any damage to houses prior to the dilapidation report being submitted to Council.</i></p>

### Public interest

Despite the number of submissions, the proposed modification to Development Consent DA09/0661 is considered to be acceptable, subject to the additional changes recommended by Council staff, in terms of overall public interest. The modification, as amended by Council staff, is not considered to result in a significant negative impact upon the surrounding area, with a second dilapidation report required to be submitted (to the satisfaction of the General Manager or his delegate), certifying that no structural or incidental damage has occurred or that satisfactory repairs have been undertaken.

### OPTIONS:

1. Approve the modification to Condition 85A as proposed by Council officers; or
2. Approve the modification to Condition 85A as proposed by the applicant; or

3. Refuse the proposed modification, with reasons for refusal and resolve to defend the Class 1 Appeal in the NSW Land and Environment Court.

Council officers recommend Option 1.

**CONCLUSION:**

This assessment has had regard for all of the issues raised by the submissions, as well as consideration of legal implications of not supporting the proposal. As a result, the proposed modification is considered to be acceptable, subject to the additional changes suggested by Council staff, and it is considered that the proposal warrants approval, subject to the recommended amendment to Development Consent DA09/0661.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

A Class 1 Appeal has been lodged by the applicant. Option 2 will result in legal expenses to defend the matter in court.

**c. Legal:**

Yes, legal advice has been attached.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- (Confidential)* Attachment 1. Gadens legal advice on behalf of the applicant (ECM 3162942)
  - (Confidential)* Attachment 2. Council's legal advice dated 30 August 2013 (ECM 3162947)
  - (Confidential)* Attachment 3. Council's further legal advice dated 30 August 2013 (ECM 3162949)
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## CONFIDENTIAL ITEMS FOR CONSIDERATION

### REPORTS THROUGH THE ACTING GENERAL MANAGER IN COMMITTEE

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C1 [PR-CM] Class 4 Appeal Tricare 87-89 Tweed Coast Road, Hastings Point - DA06/0413 Senior Living Development

#### REASON FOR CONFIDENTIALITY:

The appeal is a current legal matter that should not be discussed in the ordinary agenda.

#### Local Government Act

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

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.



**Civic Leadership**

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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