



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland

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

Agenda

Planning Committee Meeting Thursday 1 May 2014

held at Murwillumbah Cultural and Civic Centre
commencing at 5.00pm

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.

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Items for Consideration of Council:

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CONFIRMATION OF MINUTES

- 1 [CONMIN-PC] Confirmation of Minutes of the Ordinary Planning Committee Meeting held on Thursday 3 April 2014

SUBMITTED BY: Planning and Regulation



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
-

SUMMARY OF REPORT:

The Minutes of the Ordinary Planning Committee Meeting held Thursday 3 April 2014 are attached for information and adoption by Council.

RECOMMENDATION:

That the Minutes of the Ordinary Planning Committee Meeting held Thursday 3 April 2014 be adopted as a true and accurate record of proceedings of that meeting.

REPORT:

As per Summary.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice Version 2.4.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Attachment 1

Minutes of the Ordinary Planning Committee Meeting held
Thursday 3 April 2014 (ECM 3332791).

SCHEDULE OF OUTSTANDING RESOLUTIONS

2 Schedule of Outstanding Resolutions



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making processes
-

CODE OF MEETING PRACTICE:

Section 2.8 Outstanding Resolutions

No debate is to be allowed on Outstanding Resolutions. Any changes to or debate on Outstanding Resolutions should only be by way of a Notice of Motion or a report to Council.

COUNCIL MEETING - 23 JANUARY 2014

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 17 [PR-CM] Development Application DA13/0175 for an 83 Lot Residential Subdivision in Four Stages Comprising 79 Residential Lots with Dedication of Two Lots as Drainage Reserves, One Lot as Public Reserve and One Lot as Sewer Pump Station Site at Lot 332 DP1158142 Silkpod Avenue, Murwillumbah

Cr G Bagnall
Cr M Armstrong

RESOLVED that the Development Application DA13/0175 for an 83 lot residential subdivision in four stages with dedication of two lots as drainage reserves, one lot as public reserve and one lot as sewer pump station site at Lot 332 DP 1158142 Silkpod Avenue, Murwillumbah be deferred for a Workshop.

Current Status: A Councillors Workshop was held with the applicant on 27 February 2014. The applicant has since submitted further information for review by Council officers. Amended plans have been sought, and the matter will be referred back to the Planning Committee following further assessment by the officers.

19 [PR-CM] Development Application DA13/0385 for a Three Lot Subdivision and Single Dwelling with Attached Secondary Dwelling at Lot 63 DP 804148 No. 3-6 Trutes Terrace, Terranora

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Cr K Milne
Cr M Armstrong

RESOLVED that Development Application DA13/0385 for a three lot subdivision and single dwelling with attached secondary dwelling at Lot 63 DP 804148 No. 3-6 Trutes Terrace, Terranora, due to the constraints of the site the matter be deferred to 6 March 2014 Planning Committee Meeting. The Director Planning and Regulation to include in the report consideration of the following matters:

1. Allow the proponents the opportunity to consider consolidating proposed Lots 1 and 2 into one single lot.
2. Allow the proponents and Council to agree to the terms of a voluntary planning agreement that ensures that each allotment created is ultimately serviced by connection to the Council sewerage network, if on site effluent management results are deemed to be unsatisfactory in the long term, and that all other relevant infrastructure costs and environmental provisions (associated with Area E development) are paid.
3. Allow the proponents to submit an updated On Site Effluent Management Report that seeks to commit to high level treatment of effluent management (including nutrient reduction and potential composting toilets), and that all land application areas are minimised to result in minimal to no removal of existing native vegetation and to maximise the revegetation of native vegetation where possible.
4. The proponent to be responsible for the costs of preparing this Voluntary Planning Agreement (VPA), including the costs to Council.

Current Status: Following this meeting, the applicant submitted further information and plans for review by Council officers. Amended plans were also forwarded to the NSW Fire Service for comment. Once this further assessment is completed, the matter will be reported back to the Planning Committee.

PLANNING COMMITTEE - 6 FEBRUARY 2014

- 2 [PR-PC] Development Application DA13/0267 for the Demolition of Existing Building and Construction of 3 Storey Multi-Dwelling Housing Development Incorporating 7 Units Plus Basement Parking at Lot 27 DP 21680 No. 42 Sutherland Street, Kingscliff

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Cr M Armstrong
Cr K Milne

RECOMMENDED that Development Application DA13/0267 for the demolition of existing building and construction of 3 storey multi dwelling housing development incorporating 7 units plus basement parking at Lot 27 DP 21680 No. 42 Sutherland Street, Kingscliff be deferred to the Planning Committee meeting of 6 March 2014.

Current Status: Following this meeting, the applicant submitted further information and plans for review by Council officers. Once a further assessment of this information is completed, the matter will be reported back to the Planning Committee.

PLANNING COMMITTEE - 6 MARCH 2014

- 9 [PR-PC] Development Application DA13/0383 for a Redevelopment of 'Jenners Corner' Site Incorporating a Boat Showroom, Boating Facility, Two Cafes and Caretakers Residence at Lot 1 DP 119054, Lot 1 DP 341470, Lot A DP 373769 No. 120 Chinderah Bay Drive, Chinderah; Lot 1 DP 382677, Lot C DP 373769 No. 122 Chinderah Bay Drive, Chinderah; Lot 1 DP 415533 No. 126 Chinderah Bay Drive, Chinderah; Lot 2 DP 415533 No. 128 Chinderah Bay Drive, Chinderah; Lot 3 DP 415533 No. 130 Chinderah Bay Drive, Chinderah

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Cr K Milne
Cr M Armstrong

RECOMMENDED that Development Application DA13/0383 for a Redevelopment of 'Jenners Corner' Site Incorporating a Boat Showroom, Boating Facility, Two Cafes and Caretakers Residence at Lot 1 DP 119054, Lot 1 DP 341470, Lot A DP 373769 No. 120 Chinderah Bay Drive, Chinderah; Lot 1 DP 382677, Lot C DP 373769 No. 122 Chinderah Bay Drive, Chinderah; Lot 1 DP 415533 No. 126 Chinderah Bay Drive, Chinderah; Lot 2 DP 415533 No. 128 Chinderah Bay Drive, Chinderah; Lot 3 DP 415533 No. 130 Chinderah Bay Drive, Chinderah be deferred for a workshop, and to allow the following information to be provided in the Council report in relation to:

1. The increase in numbers of boats expected on the river in peak demand times.
 2. Where these boats are expected to frequent, details on the safe carrying capacity in these areas, and how it could be ensured that boats do not congregate in the areas where safe carrying capacity is exceeded.
-

3. Potential legal liability for Council if boating collisions occur, if safe carrying capacity has been exceeded.
4. Potential environmental impacts from increased boating activity, including but not limited to riverbank erosion, seagrass, marine life and birdlife.
5. Impacts on Council's infrastructure, including but not limited to boat ramps and parking, and any costs associated to Council.
6. Noise impacts on the amenity of the area.
7. Ecological significance of adjacent wildlife corridor along creek to the south, and potential impacts to the resident Koala population in this corridor particularly from noise and lighting.
8. Treatment of stormwater and waste water, including but not limited to, engine flushing, boat cleaning, maintenance, refuelling etc.
9. Potential implications from the Chinderah Marina Land and Environment Court case.

Current Status: A Councillors Workshop was held on 15 April 2014. A further report will be submitted to 5 June 2014 Planning Committee meeting.

10 [PR-PC] Development Application DA13/0502 for a Staged Development - Boundary Adjustment, Boat Storage Facility and One Dwelling as a Caretakers Residence and One Dwelling with a Commercial Premise Component at Lot 23 DP 1130032 No. 7 Chinderah Bay Drive, Chinderah; Lot 22 DP 1130032 No. 9 Chinderah Bay Drive, Chinderah

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Cr K Milne
Cr M Armstrong

RECOMMENDED that Development Application DA13/0502 for a staged development - boundary adjustment, boat storage facility and one dwelling as a caretakers residence and one dwelling with a commercial premise component at Lot 23 DP 1130032 No. 7 Chinderah Bay Drive, Chinderah; Lot 22 DP 1130032 No. 9 Chinderah Bay Drive, Chinderah be deferred for a workshop, and to allow the following information to be provided in the Council report in relation to:

1. The increase in numbers of boats expected on the river in peak demand times.
 2. Where these boats are expected to frequent, details on the safe carrying capacity in these areas, and how it could be ensured that boats do not congregate in the areas where safe carrying capacity is exceeded.
 3. Potential legal liability for Council if boating collisions occur, if safe carrying capacity has been exceeded.
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4. Potential environmental impacts from increased boating activity, including but not limited to riverbank erosion, seagrass, marine life and birdlife.
5. Impacts on Council's infrastructure, including but not limited to boat ramps and parking, and any costs associated to Council.
6. Noise impacts on the amenity of the area.
7. Treatment of stormwater and waste water, including but not limited to, engine flushing, boat cleaning, maintenance, refuelling etc.
8. Potential implications from the Chinderah Marina Land and Environment Court case.

Current Status: A Councillors Workshop was held on 15 April 2014. A further report will be submitted to 5 June 2014 Planning Committee meeting.

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REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

3 [PR-PC] Development Application DA13/0678 for the Erection of a Garage with Shower and Toilet and Colourbond Fence with Privacy Screen to a Height of 2.1m at Lot 2 SP 38780 No. 2/1 Beatrice Court, Pottsville

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0678 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 proposal seeks approval for the erection of an outbuilding (41.7m²) that contains a shower, toilet and sink. The site was currently zoned 2(a) Low Density Residential and contains an existing attached dual occupancy development that has vehicle access from Andrew Avenue. The proposal complies with all relevant policies in particular DCP A1 Residential and Tourist Development Code. The application was notified for a period of 14 days, during the notification period Council received two submissions objecting to the proposal.

The original plans sought approval for a second driveway, garage 45.5m² in size, with a zero setback to the adjoining property boundary with a wall height of 3.58m. The applicant was advised that the second driveway and zero setback to the property boundary would not be supported. The applicant amended the plans removing the proposed second driveway, proposed a one metre setback from the dwellings façade, however the structure was still proposed on the property boundary and retained off-street car parking spaces in front of the garage. The applicant was advised that the proposal would not be supported. The applicant amended the proposal increasing the side setback to the property boundary to 450mm, removed reference to off-street car parking, and reversed the roof pitch so the low side faces the neighbouring property with a height of 3m. The applicant made a final amended design which related to the roof pitch only, the roof pitch is now located in the middle of the roof with the height of the gutters being 2.9m. The proposed roof design is consistent with the surrounding roof designs. This final design is considered the most appropriate, in terms of streetscape and amenity.

The final plans are considered compliant with Council's DCP Section A1 by being setback 450mm from the rear boundary where no greater than 4.5m in height (3.53m proposed), the proposed outbuilding is less than 60m² (41.7m² proposed), contains a shower, toilet and wash basin, the design and materials are compatible with the dwelling house. The proposed use of the outbuilding is for storage and is not to be used as a separate dwelling, a condition relating to this is recommended if the application were to be approved.

The application is being reported to Council at the request of Councillor Milne and Councillor Bagnall.

RECOMMENDATION:

That Development Application DA13/0678 for the erection of an outbuilding with shower and toilet at Lot 2 SP 38780 No. 2/1 Beatrice Court, Pottsville 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 JP - 300 sheet 1-4 Revision C prepared by D-Zyn Drafting Services and dated March 2014, 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. **A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.**

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

[GEN0155]

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. **The construction of the outbuilding subject to this approval must at no time result in additional ponding occurring within neighbouring properties.**

[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]

PRIOR TO COMMENCEMENT OF WORK

7. 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]
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]
10. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

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

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

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

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

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

[PCW0235]

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

[PCW1005]

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]

14. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

DURING CONSTRUCTION

15. 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]

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. 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]

18. 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]

19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

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

[DUR1945]

25. 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]

26. 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]

27. 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]

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

[DUR2545]

29. **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]

30. **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]

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

[DUR2645]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

32. **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]

33. **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]

34. **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

35. 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]
36. The outbuilding subject to this approval is not to be used for any habitable, commercial or industrial purpose without prior approval of Council. [USE0455]
37. The outbuilding subject to this approval is not to be used or adapted for separate residential habitation or occupation. [USE0465]

REPORT:

Applicant: Mrs J Sladen
Owner: Mrs Janice Sladen & Mr Peter R Sladen
Location: Lot 2 SP 38780 No. 2/1 Beatrice Court, Pottsville
Zoning: 2(a) Low Density Residential
Cost: \$24,000

Background:

The proposal seeks approval for the erection of an outbuilding that contains a shower, toilet and sink. The site contains an existing attached dual occupancy development that has vehicle access from Andrew Avenue. The site has a land area of 808.2m² with frontage to Andrew Avenue and Beatrice Court.

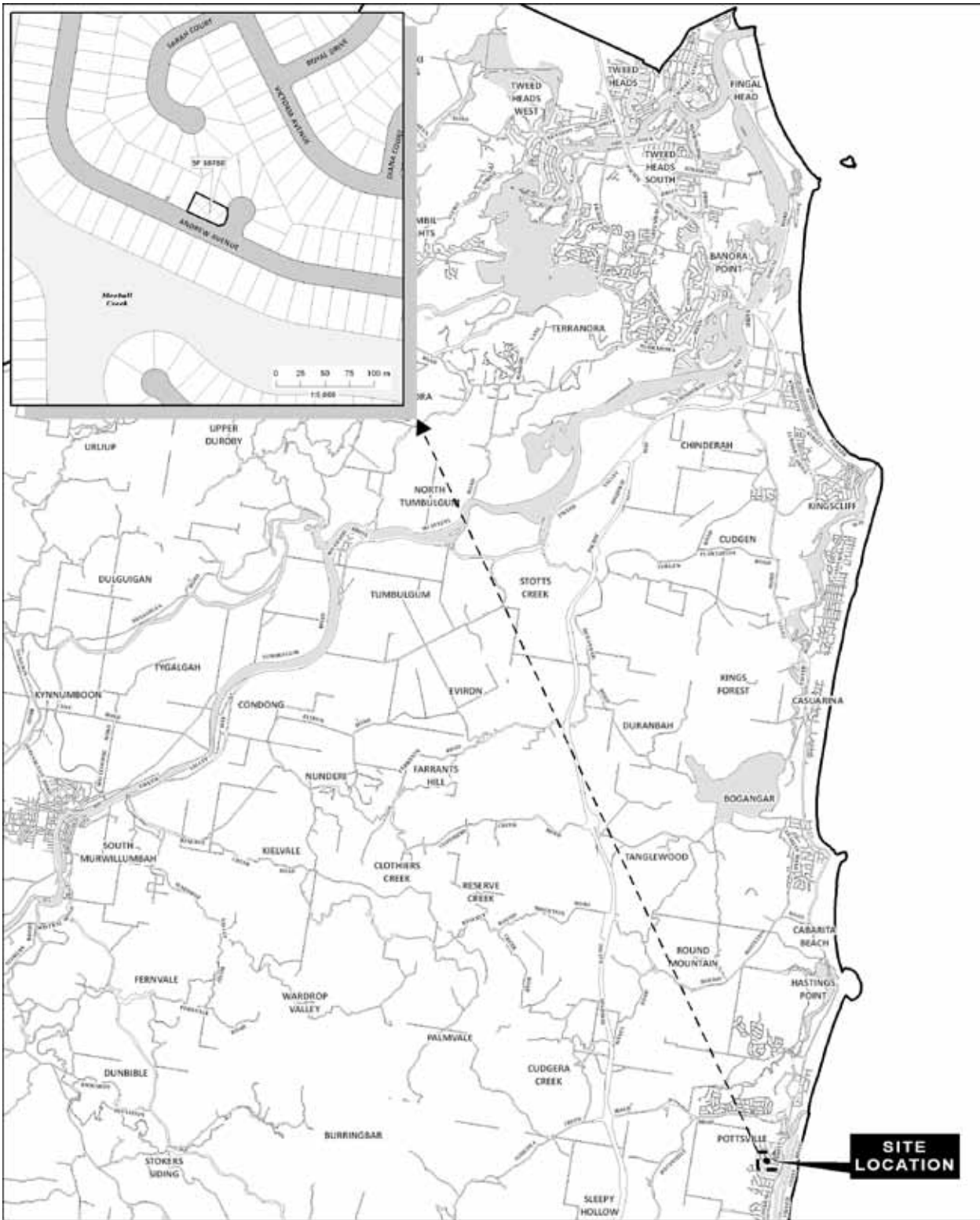
The owners of the subject unit have recently constructed a 1.80m high colour bond fence on the property boundary separating No. 1 and No. 2 Beatrice Court and also along the front property boundary of Beatrice Court. At the time the fence was constructed, the fence was exempt under the SEPP (Exempt and Complying Development Codes) 2008 (version 5 July 2013 21 February 2014).

The original plans sought approval for a second driveway, garage 45.5m² in size, with a zero setback to the adjoining property boundary with a wall height of 3.58m. The applicant was advised that the second driveway and zero setback to the property boundary would not be supported. The applicant amended the plans removing the proposed second driveway, proposed a one metre setback from the dwellings façade, however the structure is still proposed on the property boundary and retained off-street car parking spaces in front of the garage. The applicant was advised that the proposal would not be supported. The applicant amended the proposal increasing the side setback to the property boundary to 450mm, removed reference to off-street carparking, and reversed the roof pitch so the low side faces the neighbouring property with a height of 3m. The applicant made a final amended design which related to the roof pitch only, the roof pitch is now located in the middle of the roof with the height of the gutters being 2.9m. The proposed roof design is consistent with the surrounding roof designs. This final design is considered the most appropriate, in terms of streetscape and amenity.

The final plans are considered compliant with Council's DCP Section A1 by being setback 450mm from the rear boundary where no greater than 4.5m in height (3.53m proposed), the proposed outbuilding is less than 60m² (41.7m² proposed), contains a shower, toilet and wash basin, the design and materials are compatible with the dwelling house. The proposed use of the outbuilding is for storage and is not to be used as a separate dwelling, a condition relating to this is recommended if the application were to be approved.

The application was lodged prior to gazettal of the Tweed Local Environmental Plan 2014 and therefore is subject to the savings provisions which requires assessment of the application as if the Tweed Local Environmental Plan 2014 had not commenced.

SITE DIAGRAM:



Locality Plan

Lot 2 SP 38780
No. 2/1 Beatrice Court, Pottsville

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages, including indirect or consequential damages and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and it is the user's responsibility and responsibility only. It should not be used for any other purpose and prior to any excavation a 'dig before you dig' enquiry must be made by calling 8111. This information contained in this document remains the property of Tweed Shire Council. This information is provided for general information only.

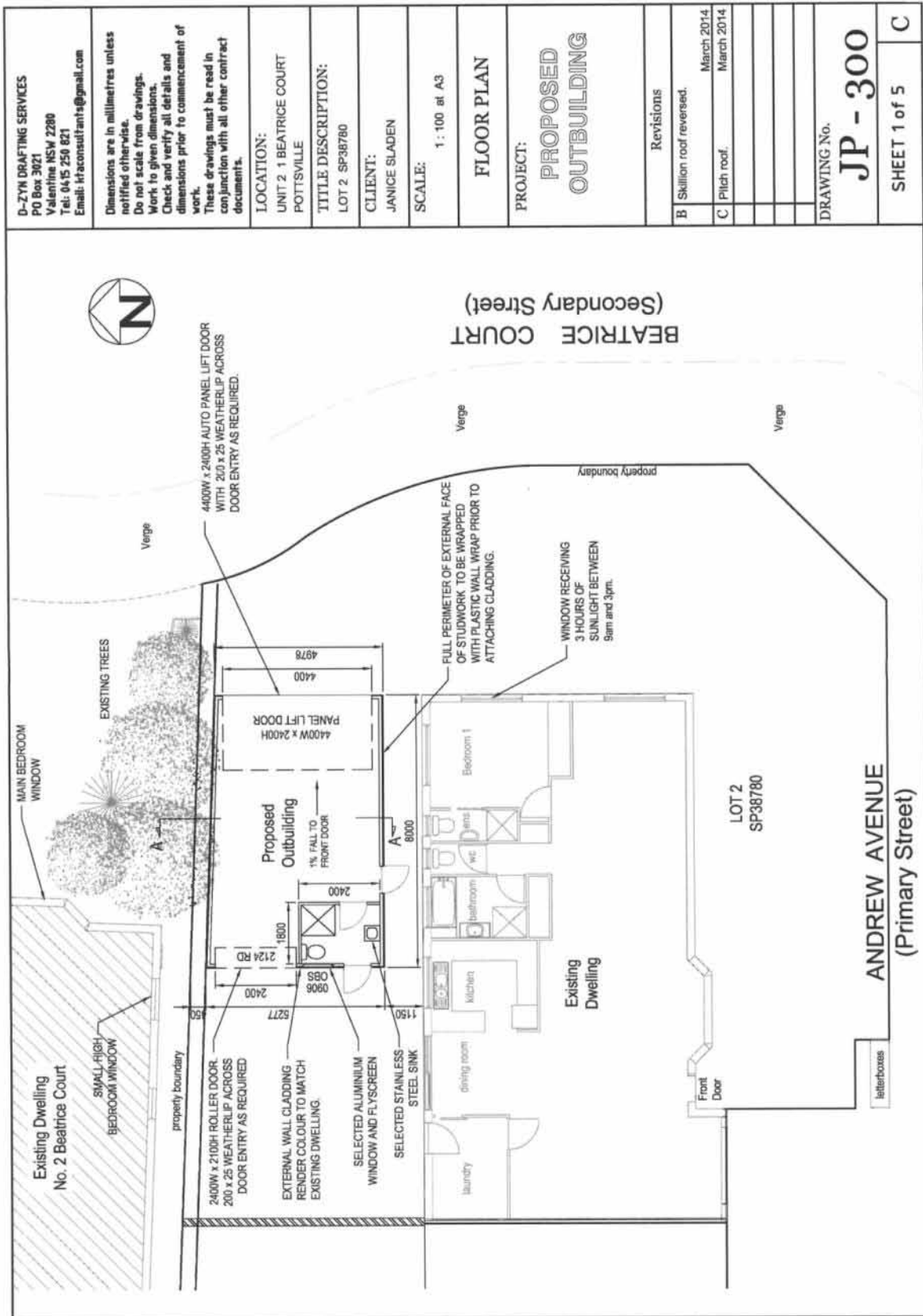
Cadastral: 14 April, 2014
 © Land and Property Management Authority (LPMA) & Tweed Shire Council
 Boundaries shown should be considered approximate only

Scale: 1:110,000 @ A4 Portrait
 GDA 94
 GDA

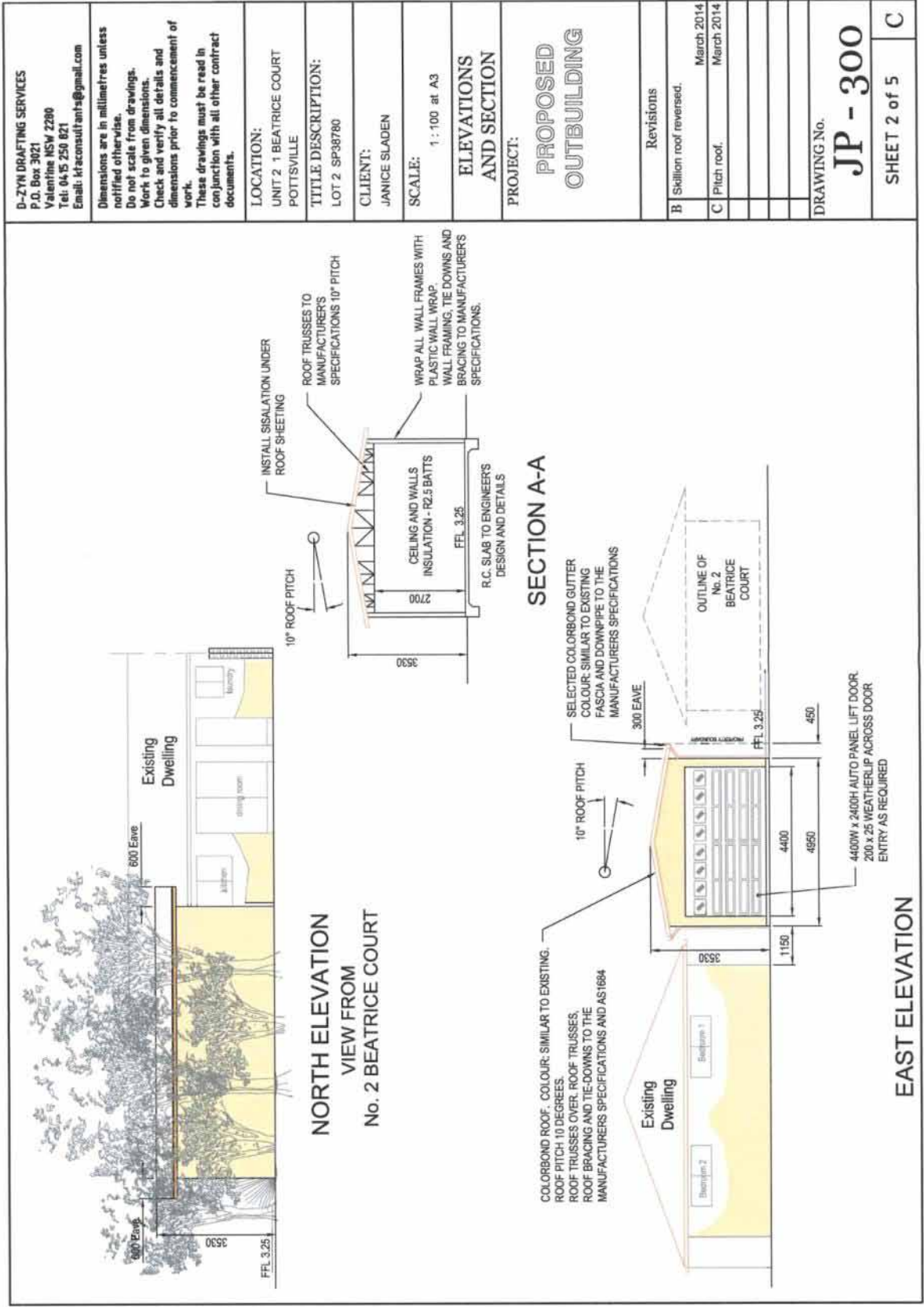
Civil and Cultural Centre
 2 Park Ridge Road
 Murumbidgee NSW 2454
 PO Box 875
 Murumbidgee NSW 2488
 T | (02) 6870 2400 | 1300 290 872
 F | (02) 6870 2429
 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:



D-ZYN DRAFTING SERVICES PO Box 3021 Valentine NSW 2280 Tel: 0415 250 821 Email: hzconsultants@gmail.com	
Dimensions are in millimetres unless notified otherwise. Do not scale from drawings. Work to given dimensions. Check and verify all details and dimensions prior to commencement of work. These drawings must be read in conjunction with all other contract documents.	
LOCATION:	UNIT 2 1 BEATRICE COURT POTTSVILLE
TITLE DESCRIPTION:	LOT 2 SP38780
CLIENT:	JANICE SLADEN
SCALE:	1: 100 at A3
FLOOR PLAN	
PROJECT:	PROPOSED OUTBUILDING
Revisions	
B	Skillion roof reversed. March 2014
C	Pitch roof. March 2014
DRAWING No. JP - 300	
SHEET 1 of 5	
C	



D-ZYN DRAFTING SERVICES
P.O. Box 3021
Valentine NSW 2280
Tel: 04 5 250 821
Email: ktconsultants@gmail.com

Dimensions are in millimetres unless notified otherwise.
Do not scale from drawings.
Work to given dimensions.
Check and verify all details and dimensions prior to commencement of work.
These drawings must be read in conjunction with all other contract documents.

LOCATION:
UNIT 2 1 BEATRICE COURT
POTTSVILLE

TITLE DESCRIPTION:
LOT 2 SP-8780

CLIENT:
JANICE SLADEN

SCALE:
1:100 at A3

ELEVATIONS AND SECTION

PROJECT:
**PROPOSED
OUTBUILDING**

Revisions

B Skillion roof reversed.
March 2014

C Pitch roof.
March 2014

DRAWING No.

JP - 300

SHEET 2 of 5

C

<p>D-ZYM DRAFTING SERVICES P.O. Box 3021 Valentine NSW 2206 Tel: 645 750 821 Email: ktraconstru@pau.com</p>	<p>Dimensions are in millimetres unless notified otherwise. Do not scale from drawings. Work to given dimensions. Check and verify all details and dimensions prior to commencement of work. These drawings must be read in conjunction with all other contract documents.</p>	<p>LOCATION: UNIT 2 1 BEATRICE COURT POTTSVILLE</p>	<p>TITLE DESCRIPTION: LOT 2 SP 38760</p>	<p>CLIENT: JANICE SLADEN</p>	<p>SCALE: 1 : 100 at A3</p>	<p>ELEVATIONS</p>	<p>PROJECT: PROPOSED OUTBUILDING</p>	<p>Revisions</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">B</td> <td style="width: 70%;">Shutter roof reversed.</td> <td style="width: 25%;">March 2014</td> </tr> <tr> <td>C</td> <td>Pitch roof.</td> <td>March 2014</td> </tr> </table>	B	Shutter roof reversed.	March 2014	C	Pitch roof.	March 2014	<p>DRAWING No. JP - 300</p>	<p>SHEET 3 of 5</p>	<p>C</p>
B	Shutter roof reversed.	March 2014															
C	Pitch roof.	March 2014															

SOUTH ELEVATION

WEST ELEVATION

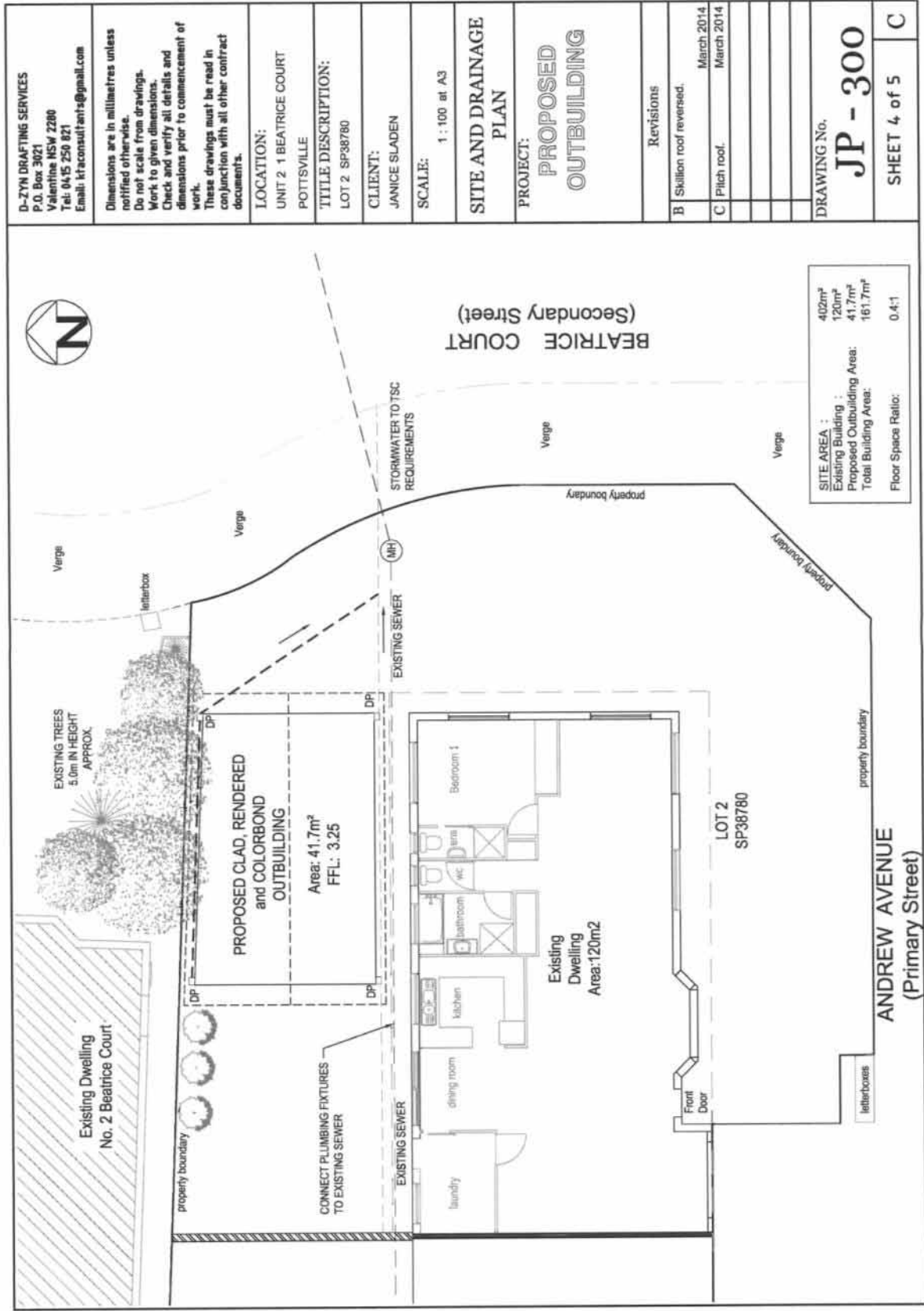
COLORBOND ROOF. COLOUR, SIMILAR TO EXISTING
 ROOF PITCH 10 DEGREES
 ROOF TRUSSES OVER ROOF TRUSSES
 ROOF BRACING AND TIEDOWNS TO THE
 MANUFACTURERS SPECIFICATIONS AND AS1684

10° ROOF PITCH

2400W x 2100H ROLLER DOOR
 200 x 25 WEATHERLIP ACROSS
 WORKSHOP DOOR ENTRY AS REQUIRED

OUTLINE OF
 No. 2
 BEATRICE
 COURT

Existing
 Dwelling



SITE AREA :	402m ²
Existing Building :	120m ²
Proposed Outbuilding Area:	41.7m ²
Total Building Area:	161.7m ²
Floor Space Ratio:	0.4:1

D-ZYN DRAFTING SERVICES
 P.O. Box 3021
 Valentine NSW 2280
 Tel: 0415 250 821
 Email: info@dzyn.com.au

Dimensions are in millimetres unless notified otherwise.
 Do not scale from drawings.
 Work to given dimensions.
 Check and verify all details and dimensions prior to commencement of work.
 These drawings must be read in conjunction with all other contract documents.

LOCATION:
 UNIT 2 1 BEATRICE COURT
 POTTSVILLE

TITLE DESCRIPTION:
 LOT 2 SP38780

CLIENT:
 JANICE SLADEN

SCALE:
 1 : 100 at A3

SITE AND DRAINAGE
 PLAN

PROJECT:
**PROPOSED
 OUTBUILDING**

Revisions	
B	Skillion roof reversed. March, 2014
C	Pitch roof. March 2014

DRAWING NO.
JP - 300

SHEET 4 of 5 C

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 proposed development is considered consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The minor scale of the proposed development does not contravene the four principles of ecological sustainable development. The development results in:

- a) No irreversible environmental damage.
- b) The environment is maintained for the benefit of future generations.
- c) The biological diversity and ecological integrity is retained and a fundamental consideration.
- d) The environmental qualities of the locality are retained.

Clause 8 - Consent Considerations

The proposed development is consistent with the primary objectives of the zone, with all other aims and objectives of the plan relevant to the development have been considered and addressed within the body of this report. The proposed development is considered not to have an unacceptable cumulative impact on the local community.

Clause 11 - Zone Objectives

The site was zoned 2(a) Low Density Residential, the objectives of the zone are:

Primary objectives

In the case of land within Zone 2 (a) between the Tweed Heads Bypass and Cobaki Bridge:

- *to minimise the number of dwellings subject to unacceptable aircraft noise and to limit development within the Kennedy Drive traffic catchment so that development is compatible with Kennedy Drive traffic capacity.*

In the case of all other land within Zone 2 (a):

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

Secondary objectives

- *to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*
- *to allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.*

The proposed outbuilding retains the existing population density of the site, housing character and amenity. The proposal is considered consistent with the objectives of the site. The proposed outbuilding is ancillary to the existing residential use of the site.

Clause 15 - Essential Services

All necessary urban services are available to the site, with the outbuilding proposing to connect to the internal, water, sewer and stormwater. Accordingly it is considered that the proposal complies with this Clause.

Clause 16 - Height of Building

The proposed height of the outbuilding is single storey within a two storey height restricted area. The height of the surrounding dwellings are single to two storey in height. The proposal is considered to comply.

Clause 17 - Social Impact Assessment

The proposed development is minor and is not likely to have a significant social or economic impact in the locality, therefore a Social Impact Assessment is not required.

Clause 35 - Acid Sulfate Soils

The site is identified as having class 3 ASS, works are not likely 1m below the natural ground level or likely to disturb the watertable or ASS.

Clause 34 - Flooding

The site is affected by the PMF, however the site is not affected by the Q100. The proposed Outbuilding is not for habitable use, with the proposal unlikely to be affected by flooding or create flooding impacts on adjoining properties. The proposal is considered to comply with the clause.

Clause 54 - Tree preservation order

The site is covered by TPO 'Bushland affected by Tree Preservation Order (2011)', however the removal of vegetation is not proposed or required. It is noted that vegetation is located adjacent to the proposed Outbuilding, these trees are within 8m of the existing dwellings and proposed outbuilding.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B Development control - coastal lands

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

- (a) the NSW Coastal Policy 1997,
- (b) the Coastline Management Manual, and

(c) the North Coast: Design Guidelines.

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

Clause 43 – Residential development

The proposal occurs within an existing 2(a) low density residential zone, and is not considered to adversely affect the environmental features of the land, there is suitable access to services and physical suitability of the site is satisfied with erosion management controls proposed. The proposal is therefore considered to comply with the objectives of clause 43 of the NCREP.

81 Development control - development adjacent to the ocean or a waterway

The subject site is within 100m of a waterway, accordingly the clause applies. The proposal will not permanently reduce or affect access to or along the foreshore open space. The proposed outbuilding will not detract from the amenity of the waterway, with the proposal consistent with the principles of any foreshore management plan applying to the area. The proposal is considered to comply with the clause.

SEPP 71 – Matters for Consideration

The site is located within the area to which the policy applies. The proposed development is not within 100m below the mean high water mark of the sea, a bay or an estuary being significant coastal development but the development is within 100 metres above the mean high water mark of the sea, a bay or an estuary being sensitive coastal location. The proposal is considered not to adversely affect the access to and along the coastal foreshore, limit overshadowing of foreshore areas and that the type, bulk, scale and size of the development is appropriate within the SEPP 71 zone.

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

Draft LEP 2012

The site is covered by the Draft LEP 2012, it is pertinent to note that the Draft LEP 2014 was adopted on 4 April 2014. The proposed outbuilding is permissible with consent and complies with the permitted building height of 9m and floor space ratio of 0.8:1. The proposal is considered consistent with the Draft LEP 2012.

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

Tweed Development Control Plan

A1 Residential and Tourist Development Code

The proposed outbuilding is considered to comply with the code, refer to A1 assessment on file for further detail.

A2 Site Access and Parking

The proposal does not require or propose additional site access or parking. The proposal is considered to comply with the code.

A3 Development of Flood Liable Land

The site is affected by the PMF, however the site is not affected by the Q100. The level of next highest flood level is 2.6m AHD, with the existing ground level at approximately 3m. The proposed outbuilding is not for habitable use, with the proposal unlikely to be affected by flooding or create flooding impacts on adjoining properties. The proposal is considered to comply with the policy.

A11 Public Notification

The application was notified for a period of 14 days from Wednesday 8 January 2014 to Wednesday 22 January 2014. During the notification period two submissions were received, the contents of the submissions addressed later within this report.

B21 Pottsville Based Locality Code

The development comprises the construction of a single storey detached outbuilding within a previously approved Council subdivision. It is considered that the development would be consistent with the surrounding residential area and the design and density are in keeping with the general character and surrounding development.

The development is considered to be in accordance with section B21.

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

Clause 92(a) Government Coastal Policy

No implications.

Clause 92(b) Applications for demolition

No implications.

Clause 93 Fire Safety Considerations

Not Applicable.

Clause 94 Buildings to be upgraded

Not Applicable.

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

Tweed Shire Coastline Management Plan 2005

Not Applicable.

Tweed Coast Estuaries Management Plan 2004

Not Applicable.

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

Context and Setting

The development is considered to create acceptable environmental impacts on the natural and built environments and acceptable social and economic impacts in the locality. The proposal is for an outbuilding/shed to be used for the storage of residential goods ancillary to the existing dwelling. The proposal is considered not to create an unacceptable impact on the locality.

(c) Suitability of the site for the development

Surrounding Landuses/Development

A number of the matters identified above have previously been discussed throughout the report, it is determined that the site is suitable for the proposed development when considering those matters. The proposal is for an outbuilding/shed to be used for the storage of residential goods ancillary to the existing dwelling, the site is considered suitable for the proposed development.

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

The application was notified for a period of 14 days from Wednesday 8 January 2014 to Wednesday 22 January 2014. During the notification period two submissions were received, the contents of the submissions are addressed in the table below.

Summary of Submissions	Response
Impact on Streetscape.	<p>The proposed outbuilding is single storey in height with a pitched roof matching the roof of the existing dwelling on the subject site and neighbouring dwelling roof style. The outbuilding has a maximum pitch height of 3.530m with the gutters having a height of 2.8m. The proposed height complies with Council's building height requirements of 4.8m.</p> <p>The outbuilding is setback 5.7m and 3.3m from the secondary property boundary due to the irregular shape of the site due to the irregular shape of the cul de sac of Beatrice Court, this is compliant with Council's requirements of a 3m minimum setback to secondary street frontage on corner allotments. The front and side/rear property boundary, where the outbuilding is proposed, contains a solid 1.8m high colour bond fence which assists in screening the majority of the outbuilding from the street or neighbouring property.</p>

Summary of Submissions	Response
Impact on amenity of front elevation of the neighbouring front yard.	The outbuilding is setback 450mm from the side/rear boundary to the neighbouring property, which complies with Council's requirements, also the side/rear boundary contains a solid 1.8m high colour bond fence and vegetation which assists in screening the proposal from the neighbouring property.
Ponding/Drainage.	The subject site and neighbouring property are level, however, a condition prohibiting additional ponding occurring within neighbouring properties is recommended. The condition reads as follows: <i>"The construction of the outbuilding subject to this approval must at no time result in additional ponding occurring within neighbouring properties."</i>

Public Authority Submissions Comment

No public authority comments were required or received regarding the application.

(e) Public interest

The proposal is consistent with Council's DCP requirements and therefore is within the public interest.

OPTIONS:

That Council:

1. Approves the application subject to recommended conditions.
2. Refuses the application and provides reasons for refusal.

Council officers recommend Option 1.

CONCLUSION:

The proposed is permissible with consent, consistent with relevant environmental planning instruments, and Council policy requirements. The proposal is considered suitable and appropriate for the subject site, and considered not to create a significant adverse impact on the natural or built environments or have detrimental social or economical impact on the locality.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may lodge an appeal against Council's determination in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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4 [PR-PC] Development Application DA06/1412.04 for an Amendment to Development Consent DA06/1412 for Demolition of Existing Shed and Replace with New Storage Shed at Lot 22 DP 815069 No. 20 Gurrinyah Drive, Stokers Siding

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: DA06/1412 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 an application seeking an amendment to DA06/1412.03 for an existing 10 bay storage shed, 7 metres wide and 30 metres long on the subject site. The amendment seeks to modify the conditions of consent to clarify the use of the shed and add certainty to the types of activities allowed to be carried on within the shed. The existing consent includes a condition restricting the use of the shed, prohibiting any habitable commercial or industrial purposes.

The subject site is a 2 hectare rural allotment which forms part of a rural subdivision, adjoining properties of a similar size with existing dwelling houses, and surrounding land comprising a larger sized rural parcels catering to a combination of dwelling houses and land used for rural and agricultural purposes. The proposal presents potential amenity issues typical of conflicting residential/rural land uses.

The application was notified to immediately adjacent and surrounding property owners and exhibited for a period of 14 days from Friday 15 November to Friday 29 November 2013. Council received two submissions of objection on behalf of two adjoining land owners. The main reasons for objection are the legality of Council assessing a change of use under Section 96 of the Environmental Planning and Assessment Act, the permissibility of the proposed use of the shed for commercial/industrial purposes within the 1(a) Rural zone, visual amenity impacts, and the historical unauthorised works within the shed being non compliant with the existing development consent.

The applicant submitted a statement addressing the objector concerns and forming the basis for the current proposal before Council, being an application to change the existing conditions of consent to allow the shed to be used for rural activities in keeping with the agricultural pursuits of the property.

On the balance of assessment of the planning merit issues under Section 96 of the Act, it is considered that the applicant's proposed modification is a reasonable way forward in both addressing the concerns of objecting neighbours, as well as rectifying the lack of clarity in the approved Condition 16, relating to the use of the existing shed.

RECOMMENDATION:

That:

- A. Development Application DA06/1412.04 for an amendment to Development Consent DA06/1412 for demolition of existing shed and replace with new storage shed at Lot 22 DP 815069 No. 20 Gurrinyah Drive, Stokers Siding be approved and the consent be amended as follows:**
- 1. Delete Condition No. 16 and replace it with Condition No. 16A which reads as follows:**
- 16(A)The building is not to be used for any habitable commercial or industrial purpose. This condition does not restrict or prohibit the use of the shed for the purpose of agriculture conducted on the property which is the subject of this consent.**
- B. Council Compliance Officers follow up to require the removal of the kitchen sink and oven from the storage shed.**
- C. ATTACHMENTS 1-12 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.**

REPORT:

Applicant: Mr K Singh-Goesel
Owner: Mr Kelvinder Singh-Goesel
Location: Lot 22 DP 815069 No. 20 Gurrinyah Drive, Stokers Siding
Zoning: 1(a) Rural
Cost: Not Applicable

Background:

On 8 February 2007 Council approved Development Application DA06/1412 for the demolition of an existing shed and construction of a new 11 bay storage shed 6 metres wide, 33 metres long and 3.4 metres high on the subject property.

The application was notified to adjoining property owners during the assessment of the application. Several objections were received, mainly in regard to the anticipated use of the shed for commercial purposes as well as potential visual amenity impacts due to the 1m setback to the common boundary. The applicant had recently planted a large crop of blueberries and adjoining property owners had concerns that the shed would be used on a commercial basis for the refrigeration and packing of blueberries.

The applicant was made aware of these concerns and subsequently provided confirmation to Council that the shed was to be used for storage purposes only, and clearly outlined the proposed use of each bay in the shed in relation to what was to be stored. The planting of screening trees was also proposed.

The application was subsequently approved, with Condition No. 16 stating:

“The building is not to be used for any habitable commercial or industrial purpose”.

On 11 May 2007 the applicant lodged a Section 96 application DA06/1412.03 with amended plans to reduce the size of the shed to a 10 bay shed, 7 metres wide and 30 metres long, effectively increasing the setback to the common boundary to 4 metres. The application was subsequently approved on 22 May 2007.

The shed was constructed and completed with an occupation certificate being issued on 19 July 2007.

Council received complaints from neighbouring property owners on 7 January 2013 that the shed was being used for habitable and commercial purposes. Council’s compliance officers investigated the complaint with substantial correspondence occurring between Council and both the complainants and the owners of the subject property regarding the current use of and unauthorised works taking place within the shed. Copies of Council’s correspondence have been attached to this report as Confidential Attachments 1-3.

Through on site investigations, correspondence with the owner of the subject property and searches of Council records, Councils Compliance officers concluded that:

- The shed was not being used solely for storage purposes in accordance with the original consent but was being used as a lunch room for farm workers and for the packing of blueberries and storage of chemicals.
- Unauthorised works including the installation of a toilet, basin, shower and kitchen facilities have taken place in the shed, therefore rendering it capable of being used as a separate domicile for habitable purposes.

Upon request from Council, the owner of the property advised via a statutory declaration (Confidential Attachment 4) that the facilities were provided for family members who worked on the farm, a place where they could have lunch, wash, use the bathroom and that no one was living in the shed. He also advised that part of the shed was being used for packing blueberries grown on the subject property.

The Proposal

The owner was advised that the current use and layout of the shed were in breach of the conditions of DA06/1412.03 and an application under Section 96 of the Environmental Planning and Assessment Act 1979 (the Act) to modify the existing consent was required (Confidential Attachment 5). The owner has engaged planning consultants Jim Glazebrook & Associates to act on their behalf, who assert that the primary use of the property is the growing of blueberries and the use of the shed for farm workers and packing of blueberries is ancillary to that use, which is permitted without consent on land zoned Rural 1(a). Therefore the continued use of the shed for that purpose requires neither application under Section 79(C) nor Section 96 of the Act. Notwithstanding, a Section 96 application has been lodged with Council seeking to clarify which activities are actually prohibited in relation to Condition 16 so that the applicant can continue the permissible use of the shed for activities associated with the agricultural use of the property. Copies of Jim Glazebrook and Associates correspondence have been attached to this report as Confidential Attachments 6 and 7.

An application to install and operate a new onsite sewage management system capable of processing waste from the primary dwelling and the shed facilities has also been lodged and approved by Council. The improvements to the shed (toilet, shower, and basin) are to be dealt with by way of application for a Building Certificate for unauthorised works.

The subject of this report is the Section 96 application to clarify which uses are prohibited by way of the following proposed addition to Condition 16:

"This condition does not restrict or prohibit the use of the shed for the purpose of agriculture conducted on the property which is the subject of this consent."

Public Submissions

The modification application was notified to adjoining property owners and two submissions were received. A copy of these submissions has been attached to the report as Confidential Attachments 8-10 and consideration of the points raised is given later in this report.

Statutory consideration

The proposal requires consideration by Council under Section 96 of the Act, including public submissions.

After consideration of the existing consent in place being the construction and use of a shed for storage purposes on rural zoned land, and the proposal of the current application, being the modification of the existing consent to clarify what uses are actually prohibited in the shed, it has been satisfactorily concluded that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, being a shed on rural land. Given the use of the shed for agricultural purposes is permissible without consent, this cannot be considered an intensification of the permitted use under Development Consent DA06/1412.03.

No public authority conditions were imposed on the original consent, the application was notified in accordance with the regulations and relevant development control plans, and any submissions received have been considered. It is therefore concluded that the modification proposal is reasonable having regard to the matters listed under Section 96 of the Act.

Whilst the application attracted a number of robust objections, it is recommended for approval.

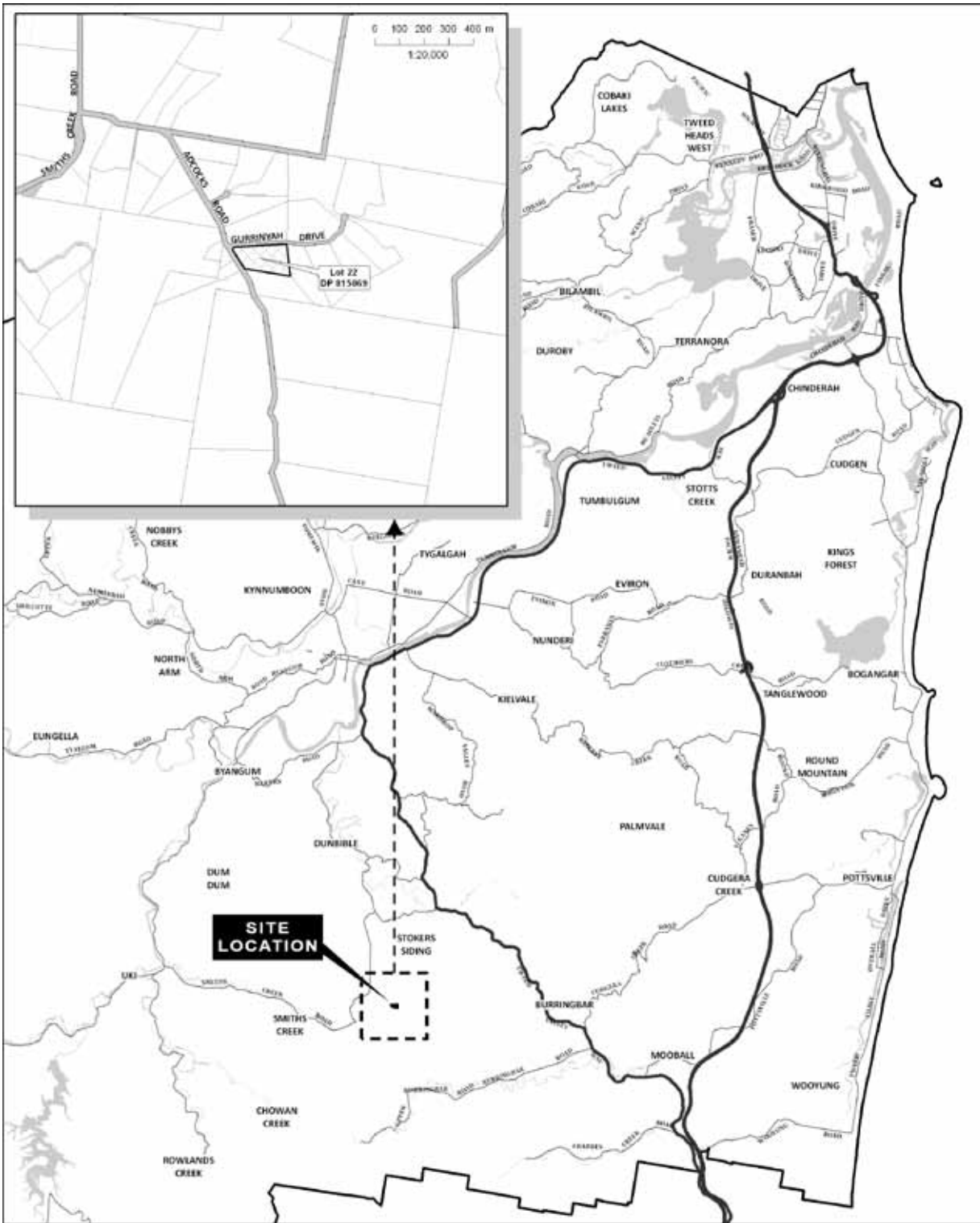
Not only is the use of the shed for agricultural activities permissible without consent in the Rural 1(a) zone, but it appears is more than consistent with a multitude of similar buildings/sheds on rural properties throughout the shire that are engaged in agricultural land use activities use in their sheds for purposes ancillary to the primary agricultural activities.

It is therefore recommended that Condition No. 16 of the development consent DA14/1412.03 be deleted and replaced with the following:

"16(A) The building is not to be used for any habitable commercial or industrial purpose. This condition does not restrict or prohibit the use of the shed for the purpose of agriculture conducted on the property which is the subject of this consent."

No objection is raised to the retention of the bathroom facilities in the shed, as many sheds in the Shire have such facilities installed. The retention of the kitchen facilities, however, makes the building capable of being used as a separate occupancy and cannot be supported. These facilities should therefore be removed from the building and will be followed up by compliance action by Council.

SITE DIAGRAM:



Locality Plan

Lot 22 DP 815069
No. 20 Gurrinyah Drive, Stokers Siding

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council does not represent or warrant expressed or implied, liability or otherwise, directly or indirectly, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability to employees) for all operations, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general purpose and is to be considered indicative and approximate only. It should not be used for surveys or construction purposes and prior to any excavation a 'dig before you dig' enquiry must be made by calling 8100. The information contained in this document remains valid for 12 days only from the date of issue.</p>	<p>Collected 14 April, 2014 © Land and Property Management Authority (LPM) & Tweed Shire Council Boundaries shown should be considered approximate only.</p>		<p>Civic and Cultural Centre 3 Tanglewood Road Murrumbidgee NSW 2684 PO Box 816 Murrumbidgee NSW 2684 T (02) 8670 2400 1300 202 072 F (02) 8670 2420 E enquiries@tweed.nsw.gov.au E planning@tweed.nsw.gov.au</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

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

Clause 5 - Ecologically Sustainable Development

Clause 5 outlines an objective of the TLEP 2000 to promote development that is consistent with four principles of ecologically sustainable development, namely the precautionary principle, inter-generational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

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

Clause 8 - Consent Considerations

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

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

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

In addressing the provisions of Clause 8(1), the proposed development requires definition before it can be determined whether the use is consistent with the objectives of the zone. The primary use of the land is for the growing of blueberries. Under the Tweed LEP, the growing of fruit falls under the definition of agriculture, which is defined as:

"horticulture and the use of the land for any purposes of husbandry, including the keeping or breeding of livestock, poultry or bees, and the growing of fruit, vegetables and the like. It does not include forestry, or the use of an animal establishment or a retail plant nursery."

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

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

The application before Council involves the proponent seeking a modification to Condition 16 of their development consent to clarify which uses are prohibited and to give certainty that the use of the shed for purposes ancillary to the agricultural

use of the land is permitted. The current use of the shed is for the purposes of providing amenities (shower, toilet, lunch room) for workers on the farm, and for the packing of blueberries grown on the subject site into punnets for delivery to markets and shops. The packing of blueberries does not involve any processing other than tipping them from large buckets into small punnets, and is considered an activity both necessary and subsidiary to the primary use of the land for the cultivation of said produce, which is both permissible without consent in the Rural 1(a) Zone, and consistent with the primary objectives of the zone. The provision of amenities for workers on the farm is also considered ancillary to the primary use of the land for agricultural purposes, and therefore fully consistent with the primary objectives of the zone.

The secondary objectives of the 1(a) zone are:

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

The proposed use of the shed for purposes ancillary to the primary use of the land for agriculture is deemed consistent with the secondary objectives of the Rural 1(a) zone.

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

To address Clause 8(1)(c) this report in its entirety considers the cumulative impact of the proposal including its interaction with the built and natural environment, inclusive of the proximity to neighbouring properties. In response to the aims, objectives and controls of planning instruments and documents applicable to the site and these issues the proposal is acceptable development.

Based on the proposal's permissibility under the TLEP 2000 and other planning provisions applicable to the site and proposal, if the proposal was accumulated successively in the community, locality or catchment or on the area of Tweed as a whole, the outcome would be acceptable and any precedent would also be acceptable. The Tweed historically through the implementation of its planning instrument and controls has provided for and encouraged the use of land zoned Rural 1(a) for primary agricultural production in all areas of the Shire, including smaller parcels of land that remain suitable for such purposes.

Clause 11 - Zone Objectives

The subject property is Zoned 1(a) rural and the primary objective of the land is:

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

As discussed above in relation to Clause 8(1)(a) of the Tweed LEP 2000, the use of the shed for agricultural purposes is considered consistent with the Primary objective of the 1(a) Rural zone.

Clause 17 - Social Impact Assessment

Under Clause 17, Council is obliged to consider whether the proposed development is likely to have a significant social or economic impact in the locality

or the local government Area of Tweed, with consideration of the significance of social or economic impacts in terms of magnitude, duration, effect on current and future conditions and community services and the like, and whether the development will cause a loss of amenity within the rural locality due to a net reduction in community services and facilities.

It is reasonable to assume that with the ongoing dispute between the proponent and adjoining property owners and the intensity of the submissions received by Council, any change to the existing consent will be and is objectionable to the adjoining property owners. Notwithstanding, the proposal before Council requires assessment based first and foremost on the permissibility of the use of the shed for agricultural purposes on Rural 1(a) land, then subsequently whether the social or economic impacts of such a permissible development are of an acceptable degree in relation to the desired current and future use of the land within the locality.

Given the value placed on maintaining the viability and productivity of rural land within the Tweed Shire, and the relative minor scale of the blueberry farm as a horticultural enterprise, it is considered that the social and economic impacts on adjoining properties resulting from the use of the shed for workers amenities and small scale packing of fruit are of a minor nature, and are not only tolerable but somewhat expected in a rural locality. The use would not result in a loss of amenity within the rural locality due to a net reduction in community services and facilities, and is therefore acceptable with respect to Clause 17 considerations.

State Environmental Planning Policies

There are no State Environmental Planning Policies which are relevant to the assessment of the proposed modification.

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

The application was submitted to Council prior to the Tweed Local Environmental Plan 2014 being gazetted therefore is subject to the saving provisions under Clause 1.8A, which states that a Development Application lodged but not yet determined before the commencement of the Plan will be determined by the LEP it was lodged under.

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

A11-Public Notification of Development Proposals

The development application was notified and exhibited for a period of 14 days from Friday 15 November to Friday 29 November 2013. Council received two submissions of objection from two adjoining land owners, one being prepared by a professional town planning consultant.

The objections focused on the lawfulness of Council considering an application made under Section 96(1A) of the Environmental Planning and Assessment Act 1979 as the proposed modification would allow a use which is not substantially the same development; the proposed use being prohibited under the Tweed LEP; the illegal works undertaken in the shed (bathroom and kitchen facilities etc) and Council's lack of enforcement of said works in the past; and the ongoing issues of reduced amenity due to visual impact of the shed.

Copies of the objection letters were provided to the applicant who responded with a submission from a professional town planning consultant, which has been considered during assessment of the application.

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

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

The proposed development is consistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

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

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

Context and Setting

The subject site is zoned Rural 1(a) therefore sits within a strategically defined rural context and setting where agricultural pursuits are anticipated and encouraged.

While the use of the subject site for the growing of blueberries as well as providing a lawful dwelling house for the property owner and his family differs from the immediately adjoining properties which are used solely for residential purposes, the fact remains that the land is zoned Rural 1(a) and the primary intent of the zone is to provide land for rural purposes, of which agriculture is identified. The primarily residential nature of the adjoining parcels of land is acknowledged, as is their higher sensitivity to potentially disturbing impacts from activities traditionally permissible on rural land. However, when placed in that context, the growing and packing of blueberries over a 2 hectare parcel of land is not deemed an intensive agricultural activity which is likely to cause unacceptable noise, lighting, odours, dust or intensive use of machinery when considered in relation to other potential agricultural activities which are also permissible without consent. The current proposal to clarify which uses are prohibited and which uses are permissible on the subject site, in the interests of allowing the continued use of the shed for uses ancillary to the small scale agricultural use of the land, would not intensify the received impacts on neighbouring properties any further than that already permissible under the Tweed LEP 2000 which could in principle occur without development consent.

In consideration of the proposal's compliance with the planning controls in force over the land, the scale of the agricultural activity taking place, and the rural context of the locality, the difference in land uses between the subject site and surrounding properties is not considered to hinder the application proceeding.

Access, Transport and Traffic

Existing vehicle access is provided to the property and appears adequate. The clarification of which uses of the shed are prohibited would not generate traffic any greater than that resulting from the current use of the land for purposes permissible without consent under the planning controls.

Amenity Impacts

The proposal has been assessed as being largely compliant with the relevant development controls aimed at mitigating privacy impacts. The closest residential dwelling on adjoining property is over 60m from the subject shed providing ample separation. Some screening vegetation exists however it is considered there are additional opportunities to provide visual screening between allotments to further protect privacy. The proposal is therefore supported with respect to amenity

impacts, with the recommendation that further landscaping including fast growing screening vegetation be conditioned.

(c) Suitability of the site for the development

Surrounding Land uses

The land immediately surrounding the subject site comprises 2 road frontages and 2 small lot (2-3 hectare) rural parcels of land with a dwelling house on each.

Although it is a reasonable assumption that potential buyers of rural land take into consideration the activities that are allowed to take place on adjoining land.

The site is considered more than suitable for the use of a shed for agricultural purposes.

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

The objections focused on the lawfulness of Council considering an application made under Section 96(1A) of the Environmental Planning and Assessment Act 1979 as the proposed modification would allow a use which is not substantially the same development; the proposed use being prohibited under the Tweed LEP; and the storage of dangerous chemicals.

Copies of the main points raised in the objection letters were provided to the applicant (Confidential Attachment 11) who responded with a submission from a town planning consultant (Confidential Attachment 12). The applicant's responses are summarised along with Council's response in the below table.

Summary of submission	Response from <i>Applicant/Council</i>
<p><i>Council cannot lawfully consider such an application under S96(a) of the Environmental Planning and Assessment Act 1979 as the use of the shed sought is not materially and substantially the same as that approved under the original Development Application. Storage vs. shed used for commercial/industrial/storage of dangerous goods/habitable is clearly an intensification of the use of land and prohibited in the 1 (a) Zone.</i></p>	<p><i>The Section 96 does not involve any change of use. It certainly does not involve any change of use for commercial, industrial, dangerous goods storage or habitable purposes. The continued use of the property for agriculture is permitted without consent pursuant to the Tweed LEP 2000 (and Draft LEP 2012). The application is considered to be properly made under Section 96(1A) of the EP&A Act.</i></p> <p>Agreed.</p>
<p><i>The proposed use for commercial/industrial/storage of dangerous goods is not permissible in Zone 1(a) of the Tweed Local Environmental Plan 2000.</i></p>	<p><i>The application does not propose that the shed be used for commercial, industrial or storage of dangerous goods purposes. The question of permissibility does not arise.</i></p> <p>Agreed. The application proposes a modification to Condition 16 to refine which uses are prohibited in the shed. No change of use requiring a permissibility assessment is proposed.</p>

Summary of submission	Response from <i>Applicant</i> /Council
<p><i>The S96 (1A) Application is poorly made as it fails to provide necessary State Environmental Planning Policy No 33 - Hazardous and Offensive development assessment as the materials and quantities of chemicals that are being stored are unknown. As a minimum, the applicant should be required to prepare a SEPP 33 Assessment (prepared by a suitably qualified Dangerous Goods Expert) and disclose this information such that a formal SEPP 33 Assessment can be undertaken.</i></p>	<p><i>The application does not trigger the provisions of SEPP 33.</i></p> <p>Agreed. Furthermore, the storage of some chemicals for herbicide and pesticide application purposes is a standard feature of most small scale farms and horticulture enterprises, and is the same as numerous other small crop growers in the Tweed Shire. This does not necessitate the preparation of a SEPP 33 assessment.</p>
<p><i>The shed has been illegally adapted for habitable use with the construction of a bathroom, laundry and kitchen facilities, in direct violation of the conditions of the original consent.</i></p>	<p><i>The question of the shed being used for habitable purposes does not arise through this application. That is a matter that is being separately addressed by my client in consultation with Council officers (refer application covering letter 6.11.13).</i></p> <p>Agreed. The proposal before Council is for the modification of Condition 16 of DA06/1412.03 to clarify that the shed may be used for purposes ancillary to the primary agricultural use of the subject site. Council may decide to add further conditions regarding the unlawful modifications to the shed at their discretion; however that issue does not form part of the proposal presented for consideration.</p>
<p><i>The application clearly fails the test of upholding the objectives of the Rural 1 (a) Zone and cannot be supported. The application should be withdrawn or refused.</i></p>	<p><i>No details are given to support the assertion that the application "fails the test of upholding the objectives of the Rural 1(a) Zone". The application is considered to be completely consistent with the relevant zone objectives.</i></p> <p>Agreed. As demonstrated earlier in this report, the modification of Condition 16 to provide clarification that the shed may be used for purposes ancillary to the primary agricultural use of the subject site has no effect on the consistency of the use of the land with the primary or secondary objectives of the Rural 1(a) zone. The zone objectives clearly encourage the development of land for agricultural purposes.</p>

Summary of submission	Response from <i>Applicant/Council</i>
<p><i>It is clear from the facts of the application that Council cannot legally favourably consider a S96(1A) of this nature as the uses sought are not materially or substantially the same as that approved under DA06/1412 nor are they permissible on the zone.</i></p>	<p><i>No substantive reasons are put forward to justify the assertion that the application fails the test of "substantially the same development" (refer EP&A Act SS96.(1A)(b). The application involves only a minor amendment to one (1) condition of the consent for the purposes of clarity, it does not involve any new building work or change of use. The application is considered to be completely consistent with the requirements of Section 96(1a) of the EP&A Act.</i></p> <p>Agreed.</p>

(e) Public interest

The development will not prejudice the public interest.

OPTIONS:

That Council:

1. Approves the application with modified conditions of consent consistent with the recommendation of this report that include following up with compliance action to require the removal of the kitchen sink and oven from the storage shed; or
2. Refuses the application, providing reasons.

Council officers recommend Option 1.

CONCLUSION:

The use of the shed is obviously of great concern to both adjoining property owners; however the property is zoned Rural 1a and the "primary objective of the land is to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development". It would be difficult for council to restrict the use of the shed for storage purposes only when the primary zone objective is to encourage agricultural use and associated development.

The subject of this Section 96 modification proposal is not to permit a change of land use within the shed, nor to allow an intensification of the use of the land to which the proposal applies. It is to amend Condition 16 of the existing consent to clarify which uses are considered prohibited, being commercial, industrial and habitable uses, and to clarify that the use of the land for agricultural purposes is permissible without consent under the provisions of the Tweed LEP 2000, therefore any uses which fall under the definition of "agriculture" may be carried out without application to or assessment by Council. There is no resistance to the growing of blueberries on the subject site as there are no grounds for opposition, as should be the case with the use of the shed for purposes ancillary to agriculture. Regardless of the proposed or intended use of the shed at the time of approval, if the continued use is not in conflict with any environmental planning instruments or Council policies, it may go on without consent.

Therefore it is recommended that Council amend Condition No 16 of the development consent to allow the shed to be used for agricultural activities in keeping with the agricultural use of the property.

This will provide clarity and certainty for the applicant to allow the shed to be used for agricultural activities in keeping with the agricultural pursuits of the property.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

If Council's decision is challenged in the Land and Environment Court this will have financial implications for Council.

Wilson Haynes Solicitors were engaged by one land owner to provide a submission, and advised Council that his clients reserve their rights in all respects against Tweed Shire Council for its conduct to date and in respect to any further entertaining of the application. This includes damages and legal costs to date and prospectively.

Further points in the submissions advised Council is on Notice that further third party action may be considered should the matter be determined favourably for the applicant and owner of the property.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Letter to objectors dated 21 May 2013 (ECM 3342838)

(Confidential) Attachment 2. Letter to owners of the property dated 11 July 2013 (ECM 3342839)

(Confidential) Attachment 3. Letter to owners of the property dated 15 May 2013 (ECM 3342840)

(Confidential) Attachment 4. Statutory Declaration from the owners of the property (ECM 3342841)

(Confidential) Attachment 5. Letter to applicants Planning Consultant dated 8 October 2013 (ECM 3342842)

(Confidential) Attachment 6. Letter from applicants Planning Consultant dated 1 October 2013 (ECM 3342843)

(Confidential) Attachment 7. Letter from applicants Planning Consultant dated 6 November 2013 (ECM 3342844)

(Confidential) Attachment 8. Letter from objector dated 20 November 2013 (ECM 3342845)

(Confidential) Attachment 9. Email from objectors Solicitor dated 26 November 2013 (ECM 3342846)

(Confidential) Attachment 10. Letter from objectors Solicitor dated 26 November 2013 (ECM 3342847)

(Confidential) Attachment 11. Letter to owners of the property dated 10 January 2014 (ECM 3342848)

(Confidential) Attachment 12. Letter from applicants Planning Consultant dated 19 March 2014 (ECM 3342849)

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- 5 [PR-PC] Development Application DA13/0745 for Alterations to the Existing Kingscliff North Holiday Park including Reconfiguration of Sites, Demolition Work and Associated Earthworks as well as Consent for the Overall Use of the Site as a Caravan Park at Part Lot 2 DP 1122062 No. 131 Marine Parade, Kingscliff**

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0745 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council is in receipt of an application for consent for the overall use of and alterations to the Kingscliff North Holiday Park, including to reduce the total number of operational sites from 57 to 49 (all short term) and to provide additional site facilities.

The subject application also includes the demolition of existing structures on the site including office/managers residence, amenities buildings, BBQ shelter and laundry. A central sand mound is to be removed and an internal road to be extended to form a loop around the site.

The application includes a nominated integrated referral to the NSW Rural Fire Service (RFS) under Section 100B of the Rural Fires Act as the application relates to tourist accommodation. A response has been received from the RFS providing General Terms of Approval (GTA) for the proposal.

The application has been reported for determination at a full Council Meeting as the application relates to a caravan park, located on land for which Council is the Trust Manager and seven public submissions have been received with respect to the proposal through the public exhibition period which have been detailed elsewhere in this report. The proposed development is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA13/0745 for Alterations to the Existing Kingscliff North Holiday Park including Reconfiguration of Sites, Demolition Work and Associated Earthworks as well as Consent for the Overall Use of the Site as a Caravan Park at Part Lot 2 DP 1122062 No. 131 Marine Parade, Kingscliff 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:

- Existing Site Plan (Drawing No. SK-02, Issue A), dated 25 October 2013;
- Site Demolition and Earthworks Plan (Drawing No. SK-03, Issue A), dated 25 October 2013;
- Proposed Site Plan (Drawing No. SK-04, Issue B), dated 21 November 2013, and;
- Site Details (Drawing No. SK-05, Issue B), dated 25 October 2013,

all prepared by Tweed Shire Council Design Unit, 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. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

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

[GEN0155]

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

[GEN0290]

5. Any foreshore area disturbed by works carried as part of this consent are to be rehabilitated to the satisfaction of Councils General Manager or delegate.

6. Access across foredune areas is to be confined to the existing specified points. This application is not to generate any further accessways across foredune areas.

[GENNS01]

7. This consent does not provide for a lesser distance of 10m of a moveable dwelling site or camp site boundary to a community building or facility under the provisions of Clause 88 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. Such approval shall be the subject of assessment under the provisions of Section 68 of the Local Government Act 1993.

8. This consent does not amend or modify the current Sec 68 Approval issued under the provisions of the Local Government Act 1993. A further approval of the General Manager or delegate shall be required to be obtained and shall include but not be limited to the provisions of Part 3 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, noting the site is within a coastal erosion zone.
9. The caravan park and camping ground shall generally be designed, constructed maintained and operated in general accordance with the provisions of Part 3, Division 3 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 except where varied by these conditions of consent. [GENNS02]
10. The number of approved sites in the park is limited to 34 short term and 15 camp sites. [GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. [PCC0585]
12. 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 subdivision works, 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]
13. 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]

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

[PCC1195]

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

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

[PCC1325]

PRIOR TO COMMENCEMENT OF WORK

16. The proposed earthworks and internal road upgrade in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

- (a) 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

- (b) 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

- (c) 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]

17. 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]

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

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

[PCW0245]

19. 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]

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

[PCW0665]

21. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with 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]

22. 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]

23. Plan Drawing No. SK-50 and Landscaping Concept Plan prepared by Plummer & Smith dated 28 November 2013 is not approved for the purposes of the provisions of Clause 88 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. An amended Community Map shall be submitted to the satisfaction of the General Manager or delegate.

[PCWNS01]

DURING CONSTRUCTION

24. 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]

25. 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]

26. 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]

27. 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 development application)

[DUR0375]

28. Building materials used in development works on site are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

29. 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]

30. 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]

31. 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]

32. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

33. 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]

34. 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]

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. 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]

38. 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]

- 39. 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]

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

[DUR2545]

- 41. 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]

- 42. During excavation and removal of the sand mounds the sand material shall be monitored for naturally occurring radioactive material. Should levels exceed the Investigation Trigger Level Criteria of $0.35\mu\text{Sv hr}^{-1}$ excavations shall cease immediately. Works are not permitted to recommence until adequate subsurface site investigations are completed and a Remediation Action Plan, to the satisfaction of the General Manager or delegate, has been submitted where required.**

- 43. Following the completion of any excavation works greater than 300mm in depth below the existing surface levels including the removal of the sand mounds, and once all services have been installed, a final site validation survey shall be completed and reported to the satisfaction of the General Manager or delegate to demonstrate compliance with an Action Level criteria of $0.7\mu\text{Sv hr}^{-1}$ or less at 1m above finished ground level.**

44. No excavated soil obtained at greater than 300mm in depth, shall be disposed of off the site or relocated within the site where the radiation level of that material is above $0.7\mu\text{Sv hr}^{-1}$. Radiation levels of any materials proposed to be removed from the site shall be monitored and recorded by an appropriately qualified person. Record of the monitoring shall be maintained on site and made available to authorised officers of Tweed Shire Council on request.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

45. A satisfactory final inspection, where applicable, is to be carried out by Council prior to occupation or use commencing.

[POC0255]

46. Prior to the occupation or use of any structure, where applicable, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

USE

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

[USE0125]

48. All externally mounted 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]

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

1. The development proposal is to comply with the layout identified on the drawings prepared by I-Site Sustainable Solutions, referenced Job No. 29.07 (Drawing No. KN-03 and KN-04), dated 7 November 2013, except as modified by the following conditions.
2. The use of sites ST30 and ST31 for safari tents is not approved. Any future use of these sites shall be subject to a separate assessment under section 100B of the Rural Fires Act 1997.

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. To achieve this, the following conditions shall apply:

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

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. Water, electricity and gas are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.**

Access

The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:

- 5. Internal roads shall comply with section 4.2.7 of 'Planning for Bushfire Protection 2006' except that the perimeter road width may be less than 8 metres and a passing bay shall be provided along the eastern perimeter road, being 20 metres long by 2 metres wide, making a minimum trafficable width of 6 metres at the passing bay.**

Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

- 6. An emergency and evacuation plan addressing 4.2.7 of 'Planning for Bush Fire Protection 2006' shall be prepared for the subject site. A copy of the plan shall be provided to the consent authority prior to the issuing of an occupation certificate.**

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:

- 7. The existing cabins on proposed site ST22 and ST23 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.**
- 8. New construction of cabins on proposed sites ST20 and ST21 shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.**

9. **New construction of the Manager's Residence and cabins on proposed sites ST16 to ST19 (inclusive) shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.**
10. **Roofing of new structures shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.**

Landscaping

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

REPORT:

Applicant: Tweed Coast Holiday Parks Res Trust
Owner: Tweed Coast Holiday Parks Res Trust
Location: Part Lot 2 DP 1122062 No. 131 Marine Parade, Kingscliff
Zoning: 6(a) Open Space, 7(f) Environmental Protection (Coastal Lands)
Cost: \$2,748,500

Background:

The subject application relates to alterations to the existing Kingscliff North Caravan Park. These works result in a reduction of the total number of operational sites from 57 to 49 and to provide additional site facilities. Key elements of the proposal are summarised below:

The Park currently supports 57 sites as follows:

- . 45 Short Term (ST) sites which rely on the communal amenities;
- . 8 safari tents and cabins which are on ST sites but which are fully self contained, and,
- . 4 camp sites which rely on communal amenities.

Once complete the Park will have a total of 49 sites in the following configuration:

- . 14 short term sites which rely on the communal amenities;
- . 8 cabins which are on ST sites but which are fully self contained;
- . 8 safari tents which are on ST sites but which are fully self contained;
- . 3 ensuite sites which are ST sites but which are fully self contained;
- . 1 fully serviced short term site to be used for the Office/Manager's Residence, and,
- . 15 camp sites which rely on communal amenities.

The internal road layout is to be amended to provide a formed looped configuration around the caravan park. Presently the internal network is partially formed and extends in a 'U' shape to the southern end of the park. Existing access arrangements are to be maintained.

The existing office/managers residence, amenities buildings, BBQ shelter and laundry are to be demolished as part of this application. These are to be replaced with moveable dwelling structures.

An existing sand mound running from north to south through the centre of the caravan park site is to be removed. This sand mound is considered to be residual from historical sand mining operations in the area.

The removal of this sand mound also results in the loss of some existing landscaping vegetation at this location, in particular in proximity to the existing amenities structures.

All development is to occur within the existing caravan park site.

It is noted that consent is not required for the placement of moveable dwellings on a caravan park site under the provisions of SEPP 21, detailed elsewhere in this report. The proposed cabins, safari tents, community buildings (amenities block, BBQ shelters, ensuite facilities) and office/manager's residence are to be in the form of moveable dwellings and as such do not require development consent.

This application also seeks consent for the overall use of the caravan park. It is considered that the caravan park was established prior to planning controls on this site and is currently operational under the provisions of Section 109 Continuance of and limitations on other lawful uses (Continuing Use Rights) of the Environmental Planning and Assessment Act. The applicant wishes to obtain an approval for the caravan park in order to allow any future modifications by way of a S96 modification application rather than requiring a new Development Application.

Site

The Kingscliff North Holiday Park is located on a strip of public reserve land which borders the coastal foreshore and the urban zoned area in Kingscliff. The land parcel has an approximate area of 8 hectares and consists of a number of uses, including caravan park at two locations, public park and environmentally protected land.

Kingscliff North Holiday Park covers an area of approximately 1.9 hectares within this land parcel and is located on land zoned 6 (a) Open Space. The caravan park is accessed from Marine Parade with a partially formed 'U' shaped road providing internal access to the various sites. As outlined above, it is proposed to extend this road to form a loop around the caravan park site through this application.

Existing structures on site include an office and managers' residence building, various amenities buildings, laundry and a barbecue shelter. These are to be demolished as part of this application. It is noted that there are currently eight cabin/safari tents located on the site.

The site is relatively flat, although it is noted that there is an existing mounding to the centre of the site, running from north to south. This is identified as being remnant from historical sandmining operations in the area and is to be removed as part of this application.

The caravan park site is not heavily vegetated with the majority of trees located to the centre of the caravan park in close proximity to the existing amenities and office/managers residence buildings. Much of the vegetation at this location is to be removed through the works to remove the central mounded area, however it is noted that replacement landscaping is to be provided throughout the site as part of this application also.

History

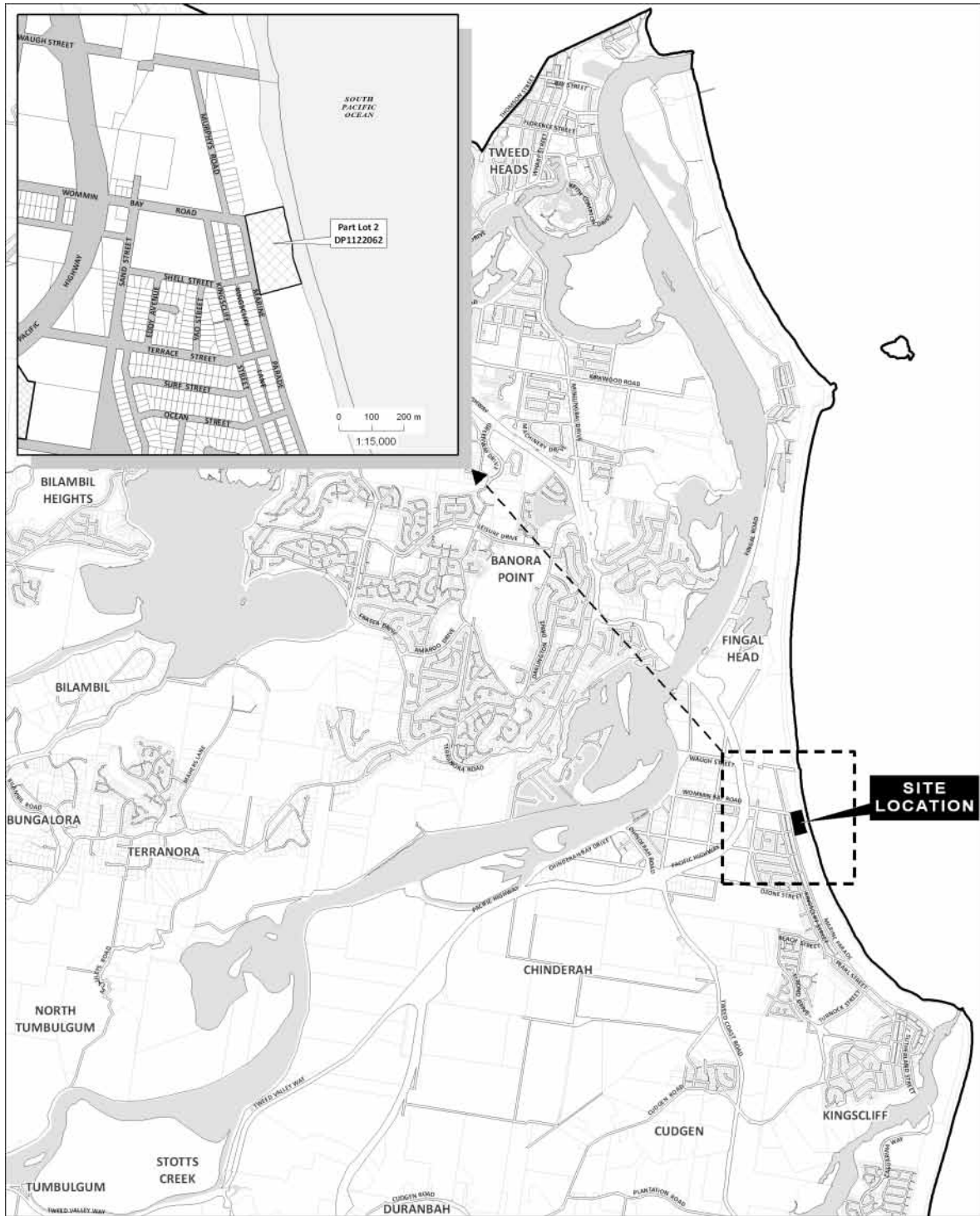
The subject land parcel demonstrates an extensive development history due to its size, consisting of the public reserve bordering the beach for the extent of urban zoned land in Kingscliff. The majority of these applications relate to parkland upgrades and more recently, foreshore protection works to the south of the subject development site.

At this location, under DA05/1167 Council approved an application for the creation of new sites in a caravan park (being Kingscliff North Holiday Park), in addition to some minor alterations to the caravan park. A consent search was undertaken in 2011 which indicated that this was the only development application approved in relation to this use at this location.

As such, whilst there is no consent for the establishment of the caravan park given that it appears to have predated planning controls, the holiday park is subject to the provisions of Clause 109 of the Environmental Planning and Assessment Act in relation to the continuance of existing use rights.

Of further relevance to this application, Council has issued a Section 68 Local Government Act Approval to Operate (Ref CP00015, dated 14 June 2013) and endorsed the Community Map for a total of 57 sites, the most recent approval being dated 14 June 2013. A copy of this has been submitted with this application.

SITE DIAGRAM:



Locality Plan

Part Lot 2 DP 1122062
Marine Parade, Kingscliff

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you dig" enquiry must be made by calling 8100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral 11/04/2014
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Boundaries shown should be considered approximate only.

0 0.5 1km
1:50,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED

Map Symbols: (Geospatial Transformation Metadata)
Horizontal Datum: Geoidetic Datum of Australia 1984
Vertical Datum: Mean Sea Level of Australia, Zone 55
GDA

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



FilePath: C:\EPP\PROJ\2014\04\2014\TEMPLATES\BAY\DP1122062-LocalityPlan01_04.pdf

Author: B. Whiteley Planning Information Unit

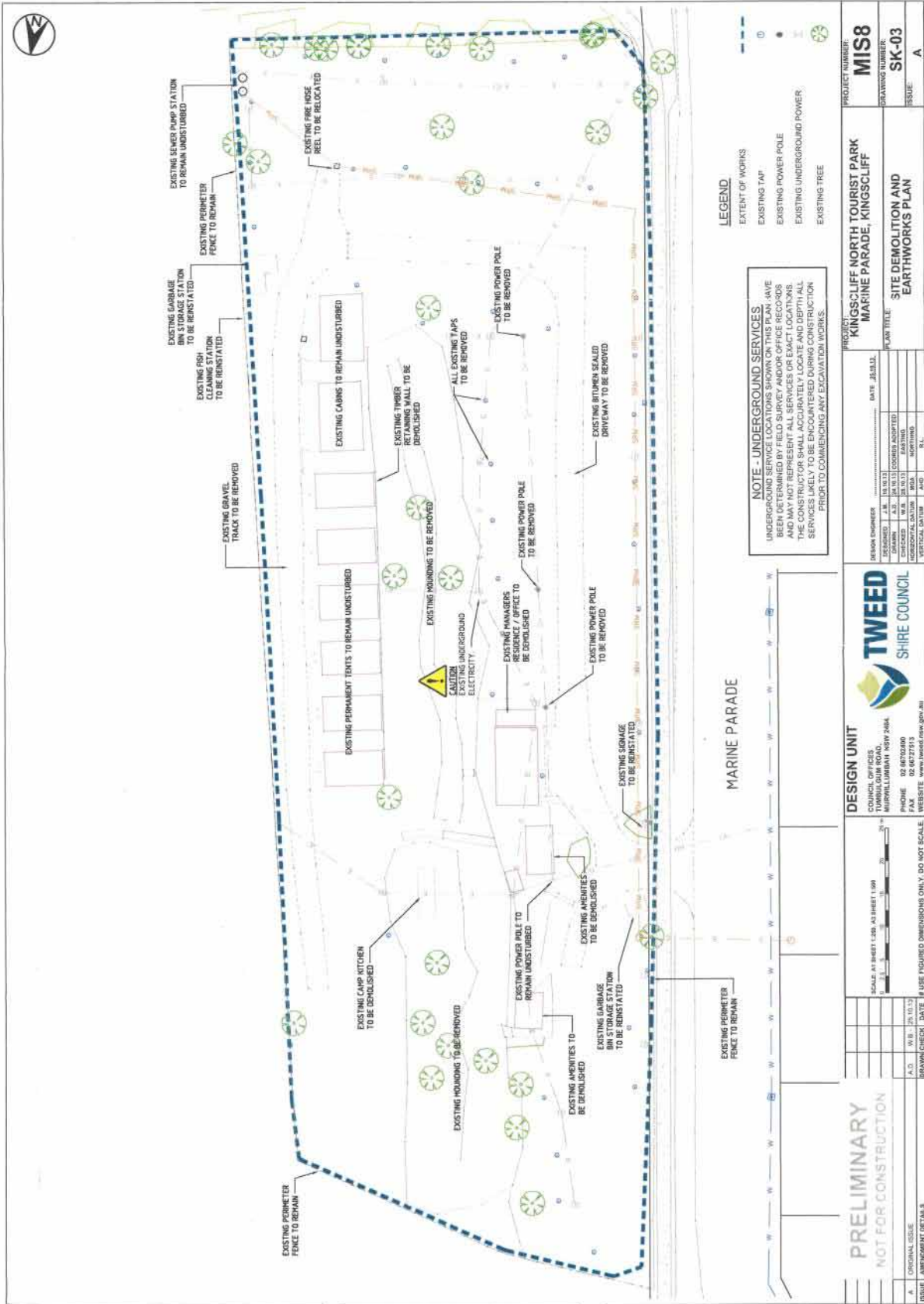
Date Printed: 14 April, 2014

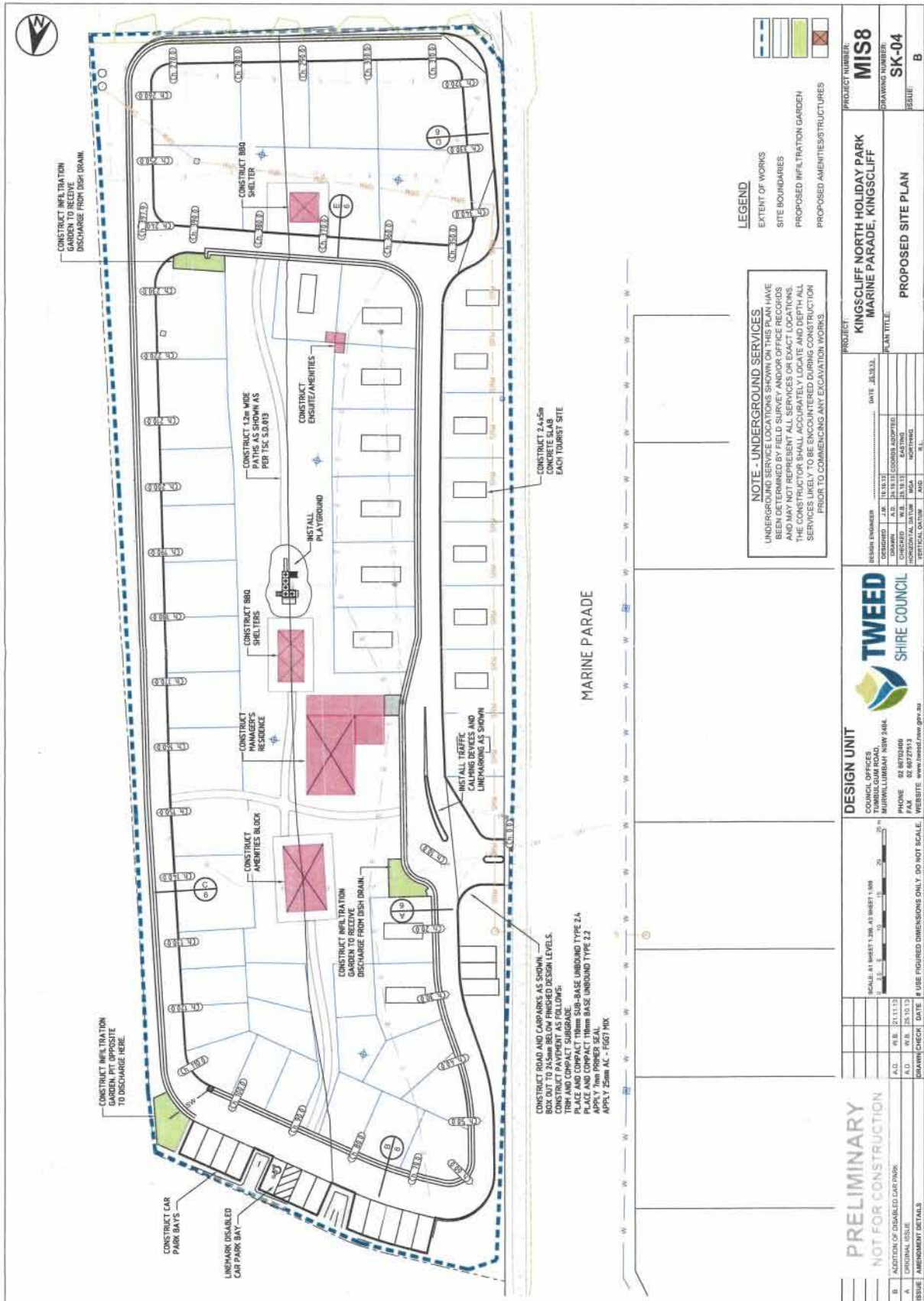
DEVELOPMENT/ELEVATION PLANS:

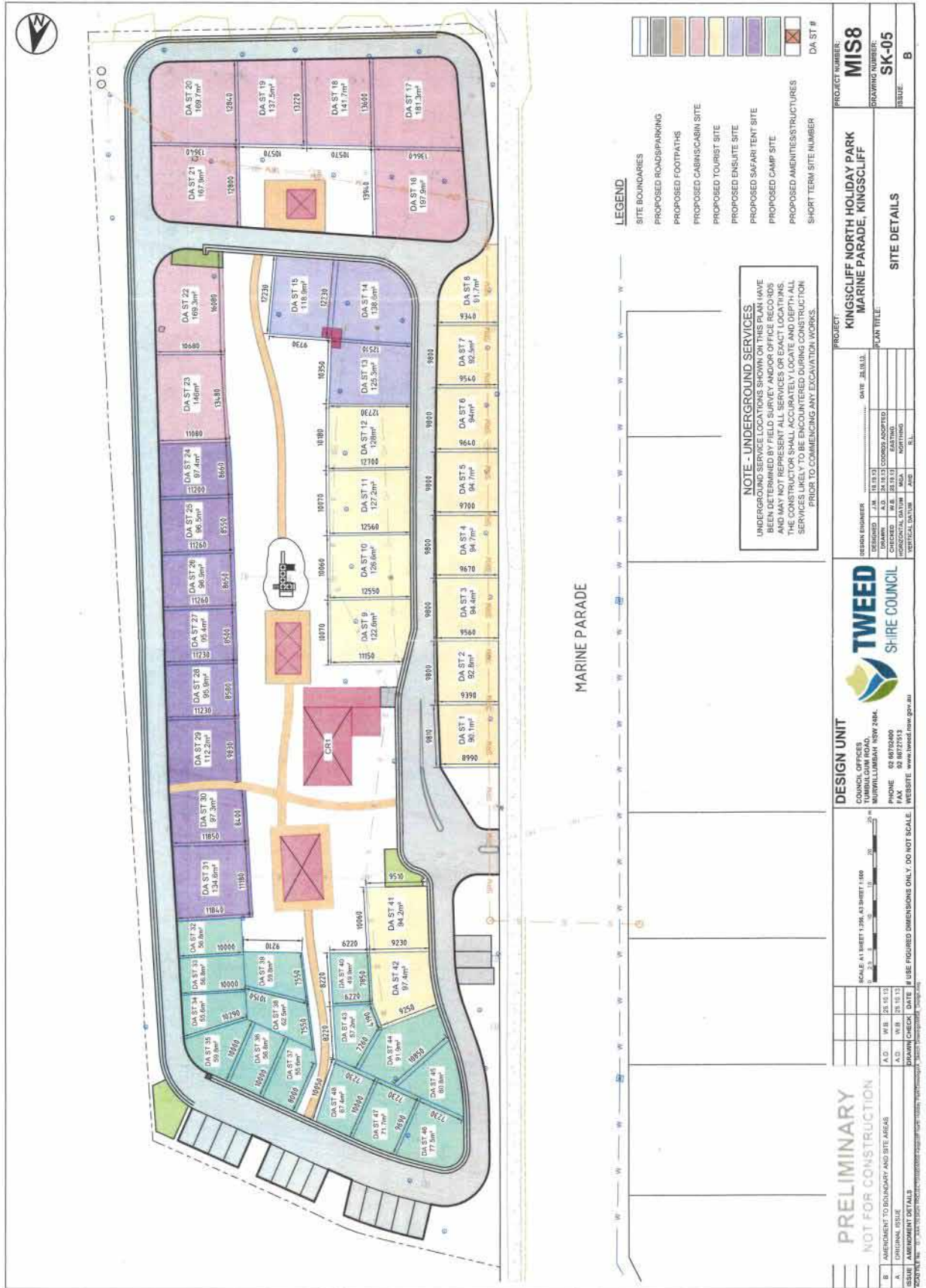


- GENERAL NOTES**
1. THESE DRAWINGS SHALL BE READ IN CONJUNCTION WITH THE RELEVANT TWEED SHIRE COUNCIL (TSC) DEVELOPMENT DESIGN SPECIFICATIONS AND STANDARD DRAWINGS.
 2. DIMENSIONS ARE IN MILLIMETRES UNLESS SHOWN OTHERWISE.
 3. DIMENSIONS SHALL NOT BE SCALED FROM THE DRAWINGS.
 4. MATERIALS AND WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE SPECIFICATIONS, TOGETHER WITH THE REQUIREMENTS OF ALL APPLICABLE CODES OF PRACTICE, AUSTRALIAN STANDARDS AND STATUTORY AUTHORITIES.
 5. SURVEY DATA HAS BEEN COMPILED FROM FIELD PICK-UPS AND OFFICE RECORDS. THE PROJECT MANAGER SHOULD ENSURE THAT SUFFICIENT DATA IS SHOWN TO ENABLE CONSTRUCTION WITHOUT DISTURBANCE TO FEATURES THAT ARE NOT SHOWN ON THE DRAWINGS.
 6. SERVICES SHOWN HEREON HAVE BEEN LOCATED WHERE POSSIBLE ON THE SITE. PROPERTIES AND RECORDS HELD BY TWEED SHIRE COUNCIL PRIOR TO ANY DEMOLITION, EXCAVATION OR CONSTRUCTION ON SITE. THE RELEVANT AUTHORITIES SHOULD BE CONTACTED FOR POSSIBLE LOCATION OF FURTHER UNDERGROUND SERVICES AND DETAILED LOCATION OF ALL SERVICES (DIAL BEFORE YOU DIG) FIELD INVESTIGATED OR MARKED AT THE TIME OF SURVEY AND HAVE BEEN DETERMINED BY PLAN DIMENSIONS ONLY.
 7. THE ORIGIN OF CO-ORDINATES IS MGA.
 8. THE DATUM FOR LEVELS IS AHD.
 9. THE TWEED SHIRE COUNCIL ACCEPTS NO RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS CONTAINED HEREIN.

PRELIMINARY		DESIGN UNIT		TWEED SHIRE COUNCIL		PROJECT		PROJECT NUMBER:																							
NOT FOR CONSTRUCTION		COUNCIL OFFICES TUMBULEIGH ROAD MURRUMBidgee NSW 2464				KINGSCLIFF NORTH TOURIST PARK MARINE PARADE, KINGSCLIFF		MIS8																							
SCALE: 1:250 (A3 SHEET 1:500)		PHONE 02 66702400		<table border="1"> <tr> <td>DESIGNED</td> <td>BY</td> <td>18.10.13</td> <td>DATE</td> <td>26.04.13</td> </tr> <tr> <td>DRAWN</td> <td>AD</td> <td>24.10.13</td> <td>COORDINATOR</td> <td>ADPPT</td> </tr> <tr> <td>CHECKED</td> <td>WB</td> <td>25.10.13</td> <td>DATE</td> <td></td> </tr> <tr> <td>APPROVED</td> <td>WB</td> <td>25.10.13</td> <td>DATE</td> <td></td> </tr> </table>		DESIGNED	BY	18.10.13	DATE	26.04.13	DRAWN	AD	24.10.13	COORDINATOR	ADPPT	CHECKED	WB	25.10.13	DATE		APPROVED	WB	25.10.13	DATE		PLAN TITLE:		EXISTING SITE PLAN		DRAWING NUMBER:	
DESIGNED	BY	18.10.13	DATE	26.04.13																											
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CHECKED	WB	25.10.13	DATE																												
APPROVED	WB	25.10.13	DATE																												
ISSUE / AMENDMENT DETAILS		WEBSITE www.tweedshire.gov.au		MARINE PARADE		EXISTING SITE PLAN		SK-02																							
A. ORIGINAL ISSUE		DATE 26.10.13		EXISTING CONCRETE FOOTPATH		EXISTING PERIMETER FENCE		ISSUE:																							
B. AMENDMENT		DATE		EXISTING BITUMEN SEALED DRIVEWAY		EXISTING CONCRETE FOOTPATH		A																							







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

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*. Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

The subject development application is considered generally in keeping with the above, and it is not considered to result in a reduction of amenity for nearby residential properties or the shire as a whole given the permissibility of this type of development at this location.

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. The proposed development is considered to be consistent with the provisions of this clause.

Clause 8 - Consent Considerations

The proposed development is defined as a ‘caravan park’ under the provisions of Tweed Local Environmental Plan 2000. This definition is as follows;

‘land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.’

The subject development area is located within the 6(a) Open Space zone, within which a caravan park development is identified under clause 11 as a development type being *‘Item 3 allowed only with consent and must satisfy the provisions of clause 8 (2).*

The submitted application is for development consent and the assessment below details compliance with the provisions of clause 8(2). Clause 8(2) specifies that:

(8)(2) The consent authority may grant consent to development specified in Item 3 of the Table to Clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:

- (a) the development is necessary for any one of the following reasons:*
 - (i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
 - (ii) it meets an identified urgent community need,*
 - (iii) it comprises a major employment generator, and*
-

The submitted application has identified that the proposal complies with the above clause under (a)(i) above for the following reason:

'This development proposal involves alterations to and the overall use of an existing caravan park. The park has operated successfully for approximately 50 years and is located in an ideal waterfront location. Therefore, having regard to the nature of the development, it needs to be in this locality and indeed on the subject land.'

The justification provided by the applicant is considered to be acceptable in this instance, given that the submitted application could not be practicably carried out at a different location due to the established nature of the caravan park at this location.

(b) there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and

Given that the subject site has been previously developed as a caravan park and is currently operating under existing use rights it is considered reasonable to assess that there is no other appropriate site on which the subject development is permitted with consent in reasonable proximity. The subject application is acceptable with respect to this clause.

(c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and

With respect to future development of the site, it is noted that under the Tweed LEP 2014, under which the future development of the caravan park would be assessed, the caravan park site is zoned RE1 Public Recreation, within which 'caravan park' development is permissible and considered to be consistent with the zone objectives, as outlined elsewhere in this report. In this regard the proposed development is considered to be consistent with the future lawful development in the immediate area. In relation to existing lawful development, it is noted that the site has been previously lawfully developed as a caravan park site.

(d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

The proposed development has been assessed against the aims of this plan elsewhere in this report, with the subject application considered to be generally acceptable. With respect to the objective of the zone, an assessment is provided under clause 11 below which concludes that the subject development is generally consistent with the primary objective of the zone by virtue of satisfying the open space and recreational needs of local residents and visitors to the area of Tweed and to enable its development to encourage or assist their recreational use and enjoyment of the land.

Having regard to the above, the proposal is considered to be consistent with the provisions of clause 8(2) and is acceptable in this instance.

Clause 11 - Zone Objectives

The subject development area is located within the 6(a) Open Space zone. The objectives of the zone are as follows:

The primary objective of the zone is:

- *To identify existing public land, and land that is proposed to be acquired for public ownership, to satisfy the open space and recreational needs of local residents and visitors to the area of Tweed and to enable its development to encourage or assist their recreational use and enjoyment of the land.*

The secondary objective of the zone is:

- *To allow for other development that is compatible with the recreational use of the land.*

As previously detailed, the subject caravan park has been in existence for a number of years and has a long and established history at this location. The subject development is considered to be generally consistent with the primary objective of the zone by virtue of satisfying the open space and recreational needs of local residents and visitors to the area of Tweed and to enable its development to encourage or assist their recreational use and enjoyment of the land.

It is therefore considered that the proposed development would be in keeping with the existing use of the site, as a holiday park and is consistent with the objective of the zone.

Clause 15 - Essential Services

The primary objectives of this Clause are:

- *to ensure that development does not occur without adequate measures to protect the environment and the community's health.*
- *to ensure that development occurs in a coordinated and efficient manner.*

The subject site is serviced with water, sewer and stormwater infrastructure. Council's Water Unit has reviewed the application and has raised no concerns with relation to the provision of essential services for the subject development. Accordingly, the proposal is considered to comply with the provisions of this clause.

Clause 16 - Height of Building

Clause 16 of the TLEP 2000 ensures development is undertaken in accordance with the building height plan. The subject land is identified as being in an area where development of up to three storeys is allowed.

Any future buildings imported to the site would be limited to single storey development under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. As such, the proposed development is not considered to contravene the provisions of this clause.

Clause 17 - Social Impact Assessment

The objective of this clause is to ensure proper consideration of development that may have a significant social or economic impact.

In this regard Council has prepared DCP A13- Socio-Economic Impact Assessment which outlines development thresholds which would necessitate a Social Impact Assessment to be prepared and submitted with a development application. Under these criteria, any caravan park/manufactured home estate necessitates the preparation of a Social Impact Assessment.

In line with this a socio-economic impact statement has been prepared which concludes that the proposed development will result in positive social and economic outcomes by providing contemporary onsite amenities, a greater choice and range of accommodation types, a direct investment of approximately \$2.75 million and the direct and indirect creation of jobs during construction and ongoing employment during the operational phase.

The submitted socio-economic impact assessment is considered to adequately address such issues with respect to this application and the proposed development is considered to be in accordance with the objectives of this clause.

Clause 22 – Designated Roads

The subject site (Lot 2 DP 1122062) has partial frontage to Wommin Bay Road and Kingscliff Street which are both identified as being Council designated roads. In this regard it is noted that the caravan park site access is located approximately 90m from the nearest portion of road identified as designated road (Wommin Bay Road). The proposal does not propose to modify access arrangements to the subject site which is from Marine Parade.

With respect to the provisions of this clause the proposal is not considered to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road having regard to the nature and scale of the proposal on land zoned for this purpose.

It is not considered that the proposed development would impede through traffic movement on the designated road to any significant adverse measure. The development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and the proposal is not considered to detract from the scenic values of the locality.

Furthermore, access to the land is provided by a road other than the designated road (Marine Parade) in accordance with part (4)(g) of this clause. Having regard to the above, the proposal is not considered to contravene the provisions or objectives of clause 22.

Clause 34 - Flooding

The subject site is flood prone with a minor proportion of the proposed development area being within Council's probable maximum flood (PMF) level area. As such this clause applies to the subject application. The objectives of the clause are as follows:

- *To minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.*
- *To minimise the adverse effect of flooding on the community.*

This application was referred to Council's Flooding Infrastructure Engineer who has raised no concerns regarding flooding impacts on the subject site. Given the nature of the proposed development it is considered unlikely that the proposal would exacerbate flooding within the locality. It is considered that the proposal is consistent with the objectives and provisions of Clause 34.

Clause 35 - Acid Sulfate Soils

The Acid Sulfate Soil (ASS) Planning Map on Council's GIS mapping system indicates that the proposed development area is located on Class 5 Land.

The specified works for Class 5 land under this Clause are: *Works within 500 metres of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD in adjacent Class 1, 2, 3 or 4 land.*

The proposed works are not considered likely to go beyond the specified works criteria (i.e. likely to lower the watertable below 1m AHD in adjacent class 1-4 land) given the extent and nature of the work proposed.

This clause is considered to be satisfied.

Clause 36 - Coastal erosion outside zone 7 (f)

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

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

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

With respect to the provisions of this clause, Council's electronic mapping system demonstrates the holiday park site is within the 2100 or 2050 hazard area. The submitted information has advised that the proposal would result in two additional sites being located seaward of the 2050 hazard line, however the application would result in less sites overall within the 2100 hazard zone. The application was referred to Council's Natural Resource Management Unit for comment with respect to this who have advised of the following:

"I have reviewed the proposal and concur that the overall impact on the site is minimal (with respect to coastal erosion) and is in accordance with the intent of DCP B25 - Coastal Hazards."

(Note: Council's Coastal Hazards DCP B25 is discussed in more detail elsewhere in this report.)

With respect to this clause the proposed development is considered unlikely to adversely affect the behaviour or be adversely affected by the behaviour of the sea. Furthermore, the proposed works are considered to have a minimal impact with respect to the foreshore area outlined above. The proposed development is also considered unlikely to adversely affect the landscape or scenic quality of the locality or result in notable potential impacts with respect to climate change and sea level rise. The subject application is considered to be consistent with the above provisions and the proposed development is supported with respect to clause 36.

Clause 39 – Remediation of contaminated land

The objective of the clause is to ensure that contaminated land is adequately remediated prior to the development occurring.

The development application has been referred to Council's Environmental Health Unit for consideration who advised the following:

"The further information submitted does not adequately demonstrate that potentially radioactive material is not located at depth at the subject site and would not be disturbed with any excavations greater than 300mm in depth.

Under the provisions of Clause 7 of SEPP 55 it is considered that the site is potentially contaminated with naturally occurring radioactive material. Excavation works and removal of the central sand mounds form however only a minor part of the development and therefore remediation of the site if required, is possible and the site could be made suitable following remediation considering the limited extent of potential contamination and source of contamination.

Due to the existing use of the site a conservative approach to trigger levels for further site investigation is considered warranted and is in line with other developments subject to historical sand mining activities.

Condition accordingly."

As outlined above, Council's Environmental Health Unit have considered the submitted information and consider that the proposal is satisfactory in relation to contaminated lands, subject to the provision of an appropriate conditions of consent. It is therefore considered that the proposal is consistent with the clause.

Clause 39A – Bushfire protection

The entire caravan park site is mapped as bushfire prone land (Bushfire Prone Land Map 2012) by virtue of being located within the 'vegetation category 1' and '30m and 100m vegetation buffer' area. Therefore this clause is applicable to the proposed development. The objective of this clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

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

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

Clause 54 – Tree Preservation Order

Clause 54 of the TLEP 2000 relates to tree preservation order and aims to protect vegetation for reasons of amenity or ecology. The subject site is identified as being covered by the 2011 Tree preservation order within the koala habitat study area. This TPO relates to the following species only:

- *Swamp Mahogany Eucalyptus Robusta,*
- *Forest Red Gum E. Tereticornis,*
- *Tallowwood E. Microcorys,*
- *Grey Gum E. Propinqua.*

The submitted application identifies a number of trees to be removed as part of this application, mainly relating to landscaping vegetation to the caravan park land. Only two of these are identified as being 'Eucalyptus species' and the submitted application states that these are in 'very poor condition' and are to be removed. The trees in question are identified in the figure below. It is considered these trees do not relate to any species covered by this TPO and it is not certain that they actually relate to Eucalyptus species as identified.



Figure 1: Species to be removed

In any event, the vegetation identified above is located to the roadside boundary and does not form part of a larger stand of vegetation which would be considered to provide significant ecological value, but rather relates to landscaping planting as part of the caravan park site.

Furthermore, it is noted that landscaping, including native species, would be required as part of any approval on the site. Having regard to this it is considered that the removal of the above identified vegetation would not contradict the objectives of this clause, being to protect vegetation for reasons of amenity or ecology. As such the provisions of this clause are not considered to be contravened by this application.

The proposed development is considered to be generally acceptable having regard to the provisions of the Tweed LEP 2000 and is acceptable in this regard.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B of the NCREP is applicable to this proposal as the subject land falls under the jurisdiction of the NSW Coastal Policy.

- (a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies.
- (b) Council is also required to consider the Coastline Management Manual.
- (c) A consideration of the North Coast: Design Guidelines is required.
- (d) Public access to the foreshore must not be impeded. This proposal does not restrict access to any public foreshore area.
- (e&f) Council is required to consider whether the development would result in overshadowing of beaches or adjacent open space.

The proposal is consistent with Clause 32B as it is not considered to impede public foreshore access to the beach or result in significant overshadowing of adjacent open space, given it does not provide for any alterations to existing foreshore access and does not include the development of any buildings. 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

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

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

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

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

The proposed development includes provisions to remove a central sand bank to the existing caravan park and in this regard is considered to disturb foreshore area. It is noted from the submitted application that this area is to be rehabilitated through proposed landscaping which is considered to satisfy the requirements of this clause. In any event, in order to achieve strict compliance with this clause it is considered that a condition would be applied to any consent as outlined above.

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

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

Clause 75: Tourism development

The clause seeks to ensure that development consent for tourist related development should have adequate access by various transport links, should not be detrimental to the scenery or other significant features of the natural environment, that sewerage and reticulated water is available, that Council has regard for the principles contained in *Tourism Development Along the NSW Coast: Guidelines*.

The proposed development is considered to be in accordance with the above provisions as detailed elsewhere in this report. The proposal relates to the overall use of and alterations and additions to an existing caravan park. It is therefore considered that the proposal would be consistent with the intentions of the clause.

Clause 81: Development adjacent to the ocean or a waterway

This clause states that Council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied of the following:

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

The subject application does not reduce or impact upon the foreshore open space accessible and open to the public in proximity of the development area.

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

The subject application does not include the development of any buildings as outlined elsewhere in this report.

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

The subject application has been reviewed with respect to the Tweed Shire Coastline Management Plan 2005 elsewhere in this report, being the applicable foreshore management plan for this area. The proposal is not considered to contravene the provisions of this plan.

As outlined above, the proposed development is considered to be acceptable having regard to the provisions of this clause.

SEPP No. 21 - Caravan Parks

The subject development relates to the development of a caravan park and as such the provisions of this SEPP are applicable to the assessment of this application. *The aim of this Policy is to encourage:*

- (a) *the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and*
- (b) *the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and*
- (c) *the provision of community facilities for land so used, and*
- (d) *the protection of the environment of, and in the vicinity of, land so used.*

The subject application is not considered to contravene the above objectives of this SEPP.

Under this SEPP a *'caravan park'* means *land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.*

Part 8, subclause 4A of this SEPP outlines that *'nothing in this Policy or any other environmental planning instrument requires separate development consent to be obtained for the installation or placement of a moveable dwelling on land on which development for the purposes of a caravan park is being lawfully carried out.'*

With respect to this it is noted that the subject application relates to the reconfiguration of (and a reduction in overall number) the existing sites within the caravan park. The future placement of moveable dwellings on the site does not require development consent.

Part 10 of the SEPP outlines six matters to be considered by Councils as follows:

10 Matters to be considered by Councils

A Council may grant a development consent required by this Policy only after it has considered the following:

(a) whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,

It is considered that the land is suitable for use as a caravan park given the caravan park has been long established and operational at this location.

(b) whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,

It is noted that this application reduces the number of sites within Kingscliff North Holiday Park from that currently lawfully operating. In this regard, the subject application is not considered to have a significant impact on tourist accommodation in the locality. Furthermore, no sites are to be utilised for long term residence.

(c) whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,

The proposed development does not include provision of long-term sites and in this regard is not considered to impact on the provision of low-cost housing in Kingscliff, as the caravan park does not provide an alternative to low-cost housing in the absence of long-term sites.

(d) whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,

The park is considered to provide adequate community facilities and services. Amenities, BBQ shelters and a playground are to be located centrally to the site. Local facilities in Kingscliff are readily accessible from the site through pedestrian linkage and vehicular access (car and public transport).

(e) *any relevant guidelines issued by the Director, and*

There are no specific guidelines by the Director General of Planning.

(f) *the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.*

The proposal complies with the requirements of the current Caravan Parks Regulations, as assessed by Councils Environmental Health Unit.

The proposed application is considered to be consistent with the aims of SEPP 21 subject to the application of appropriate conditions of consent.

SEPP No. 55 - Remediation of 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. The subject application has been reviewed by Council's Environmental Health Unit with respect to land contamination, with the following comments provided in this regard (Note these comments have been partially reproduced under Tweed LEP 2000, clause 39 assessment elsewhere in this report).

"The applicant has further submitted a copy of a signed memo dated 26 February 2014 from Bartolo Safety Management Service to Mark Tunks (HMC Environment Consulting) advising that there is no justifiable reason for doing any further monitoring. The memo states that it was not the site of a processing plant location having settling ponds and stockpiles. However whilst it further reasons why the site does not require further monitoring, especially sub surface and or during any planned excavations, this is based on supposition.

The Mine Inspectors report submitted as part of the Preliminary Site Investigation Report provides comment on the use of "dredge and spiral plant" on Mine Lease 16 (which includes the subject area), "Dredge on ML 16 moving in a southerly direction and dredging to a depth of 30ft. All tailings are being returned to the pool, levelled off..." 5/6/57.

It would appear sand mining productions of the north coast were centred on zircon and rutile concentrates while monazite and ilmenite were potentially stockpiled and remained on site. Monazite is the only mineral with a significant concentration of radionuclides, though is normally present at low concentrations in deposits of heavy mineral sands. (unpublished background paper Cavanba 2013).

The further information submitted does not adequately demonstrate that potentially radioactive material is not located at depth at the subject site and would not be disturbed with any excavations greater than 300mm in depth.

Under the provisions of Clause 7 of SEPP 55 it is considered that the site is potentially contaminated with naturally occurring radioactive material. Excavation works and removal of the central sand mounds form however only a minor part of the development and therefore remediation of the site if

required, is possible and the site could be made suitable following remediation considering the limited extent of potential contamination and source of contamination.

Due to the existing use of the site a conservative approach to trigger levels for further site investigation is considered warranted and is in line with other developments subject to historical sand mining activities.

Condition accordingly."

Having regard to the advice provided, the subject application is considered to be acceptable with respect to contaminated land and would not contravene the provisions of this SEPP.

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71. Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

(a) the aims of this Policy set out in clause 2,

The proposal is generally in accordance with the aims of this policy.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

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

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

It is not considered that this application offers any opportunities to provide new public access to the foreshore.

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

The proposal is considered suitable, having regard to its nature, scale and permissibility in this area.

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

The proposal is not considered to result in any detrimental impact on the coastal foreshore as outlined above. In this regard the application results in a reconfiguration of sites within this caravan park, the demolition of a number of existing structures and the removal of the central mound which currently runs along the centre of the site. The development does not in itself provide for the location of any cabin structures on the site which would result in the overshadowing of coastal foreshore or a loss of views from a public place as identified above. As detailed elsewhere in this report, this is permissible without

consent under the provisions of SEPP 21- Caravan Parks. In relation to a loss of views, it is considered that views from adjacent public land to the south would not be compromised as a result of this application.

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

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

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

The proposal is not considered to impact negatively animals or their habitats. The subject development site is currently developed as a caravan park and whilst some vegetation on the site is to be removed, it is considered that the scale of this will not impact on measures as identified above.

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

The proposal will not have an adverse impact upon marine environments or habitats.

(i) existing wildlife corridors and the impact of development on these corridors,

It is considered that there are no wildlife corridors impacted by the proposed development.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards.

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

The proposal is not considered to cause any conflict between land-based and water-based activities.

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

The subject development is not considered to impact on any traditional Aboriginal cultural values.

(m) likely impacts of development on the water quality of coastal water bodies,

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

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

Not applicable to the subject application.

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

(i) the cumulative impacts of the proposed development on the environment, and

This development is not considered to have a negative cumulative impact on the environment.

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

Not applicable to the subject application. The subject application does not provide for the development of any buildings on the site which would be subject to the above controls.

It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection and is therefore considered acceptable.

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

It is noted that the draft Tweed Local Environmental Plan 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. The subject application is assessed against the provisions of the Tweed Local Environmental Plan 2014 below:

Part 1 Preliminary

1.2 Aims of Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
 - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,

- (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
- (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
- (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible at this location.

1.4 Definitions

Under this Plan, the proposed development would be a 'caravan park' defined as follows:

'means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.'

This is permitted with consent in the RE1 zone.

1.8A Savings provision relating to development applications

This clause states that if a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

With respect to this it is noted that the subject application was lodged with Council on 18 December 2013, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014 and as such this clause is applicable to this development application. Notwithstanding this, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned as RE1 Public Recreation under the provisions of this plan.

2.3 Zone objectives and Land Use Table

This document zones the development area as RE1 Public Recreation. The objectives of this zone are:

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

The proposed development is considered to be consistent with the objectives of the zone through the provision of a caravan park which enables the land to be used for recreational purposes.

2.7 Demolition requires development consent

This clause states that the demolition of a building or work may be carried out only with development consent, unless another EPI allows it without consent. The applicant has confirmed (correspondence dated 3 March 2014) that the proposal includes demolition of the existing office, managers residence, laundry building, amenities buildings and camp kitchen. As this application has been submitted in order to obtain development consent, the proposal is considered to be in accordance with this clause.

The application has been reviewed by Councils Building Unit who have provided recommended conditions of consent with respect to the demolition to be undertaken on the site. The proposal is considered to be acceptable in this regard.

Part 5 Miscellaneous provisions

5.5 *Development within the coastal zone*

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

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

The subject application does not propose any amendments to existing public access to or along the coastal foreshore.

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
 - (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
 - (ii) *the location, and*
 - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed development is permissible on the subject site and meets the prescribed development requirements as outlined throughout this report. As such the proposal is considered to be acceptable at this location.

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
- (i) *any significant overshadowing of the coastal foreshore, and*
 - (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development results in a reconfiguration of sites within this caravan park, the demolition of a number of existing structures and the removal of the central mound which currently runs along the centre of the site.

The proposed development does not in itself provide for the location of any cabin structures on the site which would result in the overshadowing of coastal foreshore or a loss of views from a public place as identified above. As detailed elsewhere in this report, this is permissible without consent under the provisions of SEPP 21- Caravan Parks. In relation to a loss of views, it is considered that views from adjacent public land to the south would not be compromised as a result of this application.

The subject application is considered to be acceptable having regard to the above considerations.

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

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

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

The proposal is to be undertaken on a site which has been previously developed as a caravan park, and whilst a number of trees are to be removed as part of this application, it is considered that these mainly provide amenity landscaping to the existing caravan park rather than a significant ecological value as outlined above. In this regard it is noted that replacement landscaping is to be provided to the site. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard.

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

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

This clause goes on to further state:

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

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

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

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

The subject site would maintain connection to Councils reticulation sewer system.

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

The submitted application includes a Preliminary Stormwater Management Plan which outlines that roof water from future moveable dwellings will be conveyed to the internal drainage system and hardstand areas will discharge to lawns and landscaped areas where possible including appropriate infiltration devices where required.

This document further states that full details of Water Quality Management Measures will be provided with any future Construction Certificate Application in accordance with the provisions of "Tweed Urban Stormwater Quality Management Plan, April 2000".

Having regard to the above, it is considered that the subject application would be in accordance with the above controls, with no untreated stormwater being discharged to the sea, beach or the like.

(d) *the proposed development will not:*

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

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

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

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

The subject application is considered to be generally in accordance with the provisions of this document.

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

Tweed Development Control Plan

Section DCP A2– Site Access and Parking Code

The subject development is to maintain the existing access arrangements from Marine Parade. This is considered to be acceptable.

With respect to on-site parking, it is noted that under control 'B3 Caravan Park and Camping Ground' in the Accommodation Group parking is to be provided 'As per Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2000.' Clause 97 of this Regulation states the following:

- (1) *A caravan park or camping ground must contain no fewer visitor parking spaces than the following:*
 - (a) *one visitor parking space for each 10 (and any remaining fraction of 10) long-term sites in the caravan park or camping ground,*
 - (b) *one visitor parking space for each 20 (and any remaining fraction of 20) short-term sites in the caravan park or camping ground,*
 - (c) *one visitor parking space for each 40 (and any remaining fraction of 40) camp sites in the caravan park or camping ground.*
- (2) *The minimum number of visitor parking spaces to be provided is 4.*
- (3) *Each parking space is to have, at minimum, dimensions of:*
 - (a) *5.4 metres by 2.5 metres, in the case of angle parking, and*
 - (b) *6.1 metres by 2.5 metres, in any other case.*
- (4) *Visitor parking spaces must be clearly identified as such.*

The subject application requires the provision of three visitor parking spaces to service the 34 short term sites (*one visitor parking space for each 20/ 34 = 2*) and 15 camp sites (*one visitor parking space for each 40/15= 1*).

The subject development provides 12 visitor parking spaces on site which is in accordance with the above parking requirements.

The application has been reviewed by Council's Environmental Health Unit with respect to the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2000. In this regard a recommended condition of consent has been provided which requires the caravan park to be in accordance with the above referenced clause as follows:

The caravan park and camping ground shall generally be designed, constructed maintained and operated in general accordance with the provisions of Part 3, Division 3 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 except where varied by these conditions of consent.

Subject to approval of this application, this condition would be applied to the consent and would ensure that parking is provided in accordance with this clause. Having regard to this the submitted application is considered to be in accordance with the parking provisions for the caravan park generally as referred to in this section of the DCP.

Section DCP A3 – Development of Flood Liable Land

The subject site is identified as being affected by the probable maximum flood (PMF) level and as such the provisions of this DCP apply to the proposed development. It is noted that the entire site is covered by the Probable Maximum Flood (PMF) level. This DCP contains specific provisions with respect to the development of existing caravan parks as follows:

No expansion of existing facilities by the addition of moveable dwelling sites permitted, unless permanent high level road evacuation route to high land external to the site is available, or high land internal to the site can be accessed by the additional sites via road and/or pedestrian routes. Expansion of caravan park amenities and other non-habitable facilities permitted without consideration of PMF.

It is noted that Marine Parade at the site's entrance provides a high level evacuation route from the subject site. The proposed addition of an internal loop road is considered to improve the ability of the site to provide a high level evacuation route, as properties currently located to the south of the caravan park can navigate to Marine Parade without being obstructed by PMF mapped area. The development is considered acceptable having regard to the provisions of this section of the DCP.

Section DCP A11 – Public Notification of Development Proposals

Under the provisions of this DCP, the proposed development was required to be advertised with a notice in Tweed Link, a site sign and notification letters to adjoining properties. The subject application was placed on public exhibition for a period of 14 days from 15 January 2014 to 30 January 2014. During this time seven submissions were received, which are reviewed in detail elsewhere in this report.

Section A13-Socio-Economic Impact Assessment

The subject application necessitated the preparation of a Socio-Economic Impact assessment under section A13.5.1. A Socio- Economic Impact Assessment has been prepared in accordance with the provisions of this DCP. As outlined elsewhere in this report, a socio-economic impact statement has been prepared which concludes that the proposed development will result in positive social and economic outcomes by providing contemporary onsite amenities, a greater choice and range of accommodation types, a direct investment of approximately \$2.75 million and the direct and indirect creation of jobs during construction and ongoing employment during the operational phase. The submitted socio-economic impact assessment is considered to adequately address such issues with respect to this application. The subject application is considered to be acceptable having regard to this section of the DCP.

Section DCP B9 – Tweed Coast Strategy

DCP B9 relates to the northern end of the Tweed Coast. The Plan sets objectives for future development concentrating on public services and design principals. The Vision Statement for this district identified at Clause B9.3.2 is:

To manage growth so that the unique natural and developed character of the Tweed Coast is retained, and its economic vitality, tourism potential, ecological integrity and cultural fabric are enhanced.

The site is indicated as being in an area identified as Protected Lands for Environmental and Coastal Significance under the provisions of this DCP (Map 2-Structure Plan). Under this map, the subject area is also identified as being in close proximity to a neighbourhood centre.

Policy Principles are identified at Clause B9.3.3, with characteristics to be considered including the following which are of particular relevance to this application:

Public Open Space: Coastal open space is one of the prime attractions of the Tweed Coast. It provides important amenity and recreational value for both residents and tourists. All coastal foreshore land is to be available for public use wherever possible and the district's beaches are to remain highly accessible to the public. Dedicated public open space areas are to be provided adjacent to the coastal foreshore. New developments will facilitate public access to all foreshore areas where access is desirable and environmentally sustainable.

Business and Tourism: Major tourist developments will be encouraged to locate in the South Kingscliff locality. Other businesses will generally locate in designated town centres where mixed land use developments will be encouraged. The establishment of a regionally focussed business park adjacent to the Pacific Highway at the northern end of Kingscliff will be promoted.

The subject application is not considered to contravene the above principles as the subject application does not impact on existing public open space provision. Whilst the caravan park is not located within the South Kingscliff locality, it is noted that the caravan park has been previously established at this location. The proposed development is considered to be consistent with the policy principles of the DCP.

Section B25-Coastal Hazards

The aims of this DCP are:

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

This DCP applies to all land located seaward of the 2100 Hazard Line. Under Council's GIS mapping the subject holiday park site is within the 2100 and 2050 hazard area. The submitted information has advised that the proposal would result in two additional sites being located seaward of the 2050 hazard line, however the application would result in less sites overall within the 2100 hazard zone.

The application has been reviewed by Council's Natural Resource Management (NRM) Unit who have advised the following:

'..overall impact on the site is minimal and is in accordance with the intent of DCP B25 - Coastal Hazards.

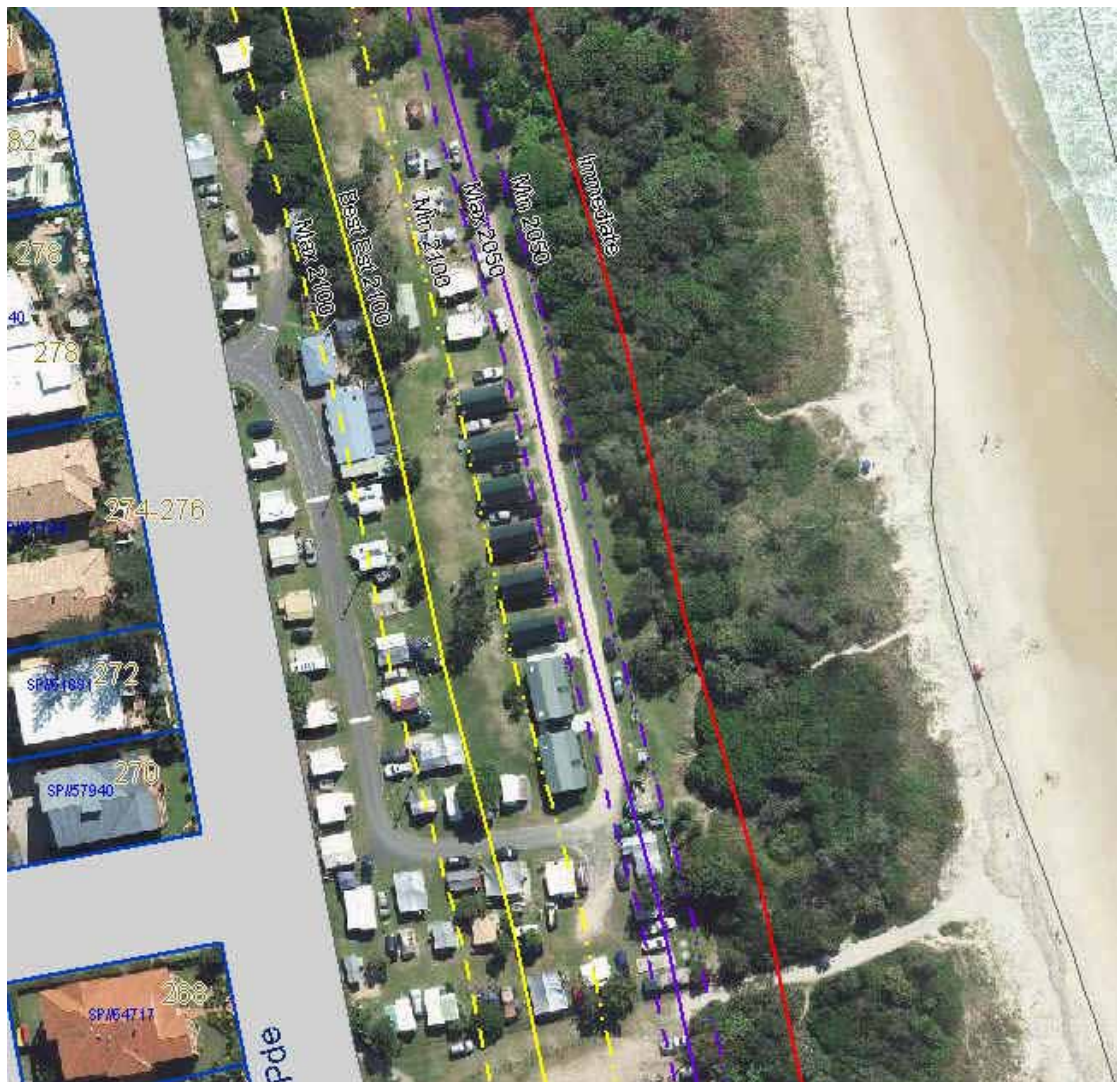
In addition, Council at the 20 February 2014 meeting adopted the Tweed Shire Coastal Hazards Assessment 2013 which provides for amended and updated coastal hazard zones. Although DCP B25 is yet to be amended

to incorporate these updated hazard lines, Council has adopted them for the purposes of planning and management of coastal hazards.

The updated lines in this location have shifted seaward from the 2010 Hazard lines in the current DCP B25, therefore, less of the Holiday Park is impacted by the current (2013) Hazard Zones.

It is also noted that the development is for removable dwellings capable of being relocated in a short amount of time which is also within the intent of DCP B25'.

Having regard to this advice it is considered that the proposed development is acceptable having regard to the Coastal Hazards Development Control Plan given that the application would result in moveable dwellings on the site.



DCPB25 Coastal Hazards 2014

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

Clause 92(a) Government Coastal Policy

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

development contradicts the objectives of the Government Coastal Policy, given its permissible nature on a site identified for development works.

Clause 92(b) Applications for demolition

The subject application has been reviewed by Councils Building Unit who have provided recommended conditions of consent with respect to demolition work to be undertaken on the site. No objections are raised with respect to this component of the proposed development.

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

Tweed Shire Coastline Management Plan 2005

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

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

The subject site is located within the Kingscliff- South Kingscliff Area identified under the Plan at Clause 3.1.4. The subject site is identified as being a Holiday Park within this plan, however it is not directly impacted upon by the issues identified for that area.

Under this plan, the subject site is not identified as having any key management actions or specific management strategies. It is considered that the proposal is consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by the Tweed Coast Estuaries Management Plan 2004.

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

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.

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

Context and Setting

The proposed development is considered to be appropriate with the context and setting of the site as well as the general appearance of the area. In this regard, it is noted that the site is currently lawfully operational as a caravan park.

Whilst a number of public submissions raise concerns regarding the future development of the caravan park (as outlined elsewhere in this report), it is considered that the subject application remains in accordance with the established

caravan park setting at this location. The proposal is assessed as being acceptable in this regard.

Access, Transport and Traffic

As outlined elsewhere in this report, the subject caravan park site is to maintain the existing access point to Marine Parade. As the subject application in actuality reduces the number of sites from 57 to 49 it is not considered that there would be an intensification of traffic to the site which would require the upgrade of this access. Furthermore, adequate visitor parking has been provided to service the subject development, with a requirement of three spaces identified under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, and 12 provided. The subject application is considered to be acceptable in this regard.

Flora and Fauna

The subject application includes provision to remove existing vegetation from the caravan park site to the extent of approximately 26 trees, mainly located in close proximity to the existing office/managers residence. The majority of these require removal as part of works to remove the central sand mound on the site whilst the remainder are generally identified as being of poor condition.

It is considered that this vegetation is not mapped as being of high ecological status and in the main forms landscaped vegetation for the caravan park operation on the site. The applicant has provided a tree schedule for the caravan park site, identifying approximately 42 trees, with an assessment of the condition/value of each. Many of these are to be retained where possible and complimented with further landscaping works.

The proposed development is considered acceptable in this regard subject to appropriate conditions of consent being provided which limit the removal of native vegetation and require detailed landscaping to be provided in place of removed vegetation.

Local Government (Manufactured Homes estates, Caravan Parks and Camping Grounds and Moveable Dwellings) Regulations 2005.

The subject application has been reviewed by Council's Environmental Health Unit with respect to the above Regulations, which relate to caravan park development. In this regard it is noted that no objections are raised with respect to the proposal and recommended conditions of consent have been provided.

(c) Suitability of the site for the development

As outlined elsewhere in this report, the subject application relates to the Kingscliff North Holiday Park which is considered to have been previously lawfully established at this location. The site is considered to be suitable for this purpose as outlined elsewhere in this assessment report, having consideration to both the existing and future planning framework for the site. As such, it is considered that the subject site is generally suitable for this development.

Surrounding Landuses/Development

The caravan park is located to the north of Kingscliff and both the immediate and wider surrounding area display a variety of landuses and development types. As outlined elsewhere in this report, the caravan park itself is located on coastal foreshore land which surrounds the site to the north, east and south. Some of this is utilised as open park area whilst the remainder is vegetated coastal land.

Immediately to the west of the site, there are a number of medium density residential flat buildings which front onto Marine Parade and overlook the caravan park. These form part of the mixed residential (low and medium density) development evidenced in the wider area. It is also noted that the surrounding area incorporates a number of sports fields to the west and north-west of the site.

Availability of Utilities and Services

The subject site is serviced by Council’s water and sewerage reticulation system, located within Tweed Coast Road. The application has been reviewed by Council’s Water Unit with no issues raised in relation to water supply or sewerage. As such the proposal is considered to be acceptable in this regard.

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

The subject application was exhibited for a period of 14 days between 15 January and 30 January 2014. During this time seven submissions were received, the content of which is outlined below. In summary, six of these submissions are from residents of residential flat buildings at No. 266 (x2), 268 (x3) and 270 Marine Parade which are generally located to the west of the southern component of the caravan park. These submissions raise issues such as impact of the development on views from units to beach, impacts of landscaping and future cabins on views, impact on beach access, unit valuation and one of the submissions requests that the holiday park be relocated in its entirety.

The remaining submission is not from a Kingscliff address and queries information provided in the Preliminary Site Contamination Investigation Report.

The content of these submissions were also forwarded to the applicant who has provided a response which is also outlined in the table below:

Issue Raised	Assessment
<p><u>Cabins should not be located to southern holiday park boundary</u></p> <p>A number of submissions request that the permanent cabins be moved to the northern and eastern end of the caravan park instead of the southern end as if the cabins are built at the southern end, the objectors views would be affected severely by permanent buildings, and this in turn will reduce the property values. Another submission requests that the cabins be spread throughout the park to minimise visual impact.</p>	<p><u>Applicant response</u></p> <p><i>Several submissions contend that the proposed construction of the 6 sites (several objections refer to 8 holiday cabins proposed in this area, however only 6 sites are in fact proposed) adjacent to the southern boundary will result in too much of an impact or massing in this area of the Park.</i></p> <p><i>This and other issues raised by the objectors should be considered in the context of the existing Park and its status. As indicated in the Statement of Environmental Effects, Kingscliff North Holiday Park has existed on the site since the late 1960s and the current Section 68 Approval to Operate authorises 17 sites in the southern part of the Park.</i></p> <p><i>In accordance with Clause 8(4A) of State Environmental Planning Policy No. 21 - Caravan Parks, development</i></p>

Issue Raised	Assessment
	<p><i>consent is not required for the placement of moveable dwellings (which includes cabins) on the approved sites. Therefore, up to 17 cabins could be installed on the current southerly sites without any further approvals.</i></p> <p><i>The current application only proposes 6 sites in the southern area of the Park which is a substantial reduction in density and massing. In addition, the proposal results in an overall reduction in the number of sites from 57 to 49 which represents a 14% decrease.</i></p> <p><i>Finally, the development will result in significant upgrading to the whole Park in terms of its visual appearance from the public domain and will include appropriate landscaping with native species to soften visual impacts and provide appropriate shade and boundary definition.</i></p> <p><u>Council officer assessment</u></p> <p>Any future moveable dwelling structures to be placed on the site would be limited to single storey in design and as such it is not considered that there would be an unacceptable impact arising from the proposal as raised in public submissions. It is not considered appropriate to refuse the application on this basis.</p>
<p><u>Loss of Beach Access</u></p> <p>The proposal denies the public the usual beach access which is used in this area. This has not been addressed in the submitted application.</p>	<p><u>Applicant response</u></p> <p><i>The proposed Kingscliff North Holiday Park alterations and additions, layout and overall use are fully contained within the fenced confines of the existing Park. That is to say, there is no expansion of the footprint. The existing pedestrian beach access on the southern side of the site will not be affected by the development proposal and the northern access on the prolongation of Wommin Bay Road is well clear of the northern Holiday Park boundary and similarly, will not be affected.</i></p> <p><i>In summary, the claim that the proposal will deny existing residents and</i></p>

Issue Raised	Assessment
	<p><i>ratepayers access to the beach is without foundation. The question of beach access and accessibility generally is addressed in the Statement of Environmental Effects at Section 5.7 and Annexure J of the submitted application.</i></p> <p><u>Council officer assessment</u></p> <p>The proposal is not considered to impact on public access to the beach. This issue is not considered to warrant the refusal of the application.</p>
<p><u>Alternative holiday park location</u></p> <p>It is suggested that money would be better spent on building an architect designed holiday park away from the residential area at the end of Murphy's Road. The small, overcrowded eyesore at the existing North Kingscliff location could then be returned back to an open park land - a more pleasing entry for visitors into the village of Kingscliff.</p>	<p><u>Applicant response</u></p> <p><i>One submission contends that the small overcrowded eyesore should be relocated to the end of Murphys Road and the site returned for open space. The land at the end of Murphys Road is mainly zoned 7(f) Environmental Protection [Coastal Lands) and further to the north is zoned 7(1) Environmental Protection [Habitat). Caravan Parks are permissible, with consent. as an Item 3 use in the 7(f) zone but prohibited in the 7(1) zone, given that the 7(f) zone is subject to coastal erosion and having regard to existing topography and vegetation on the site, it is highly unlikely that the proposed sites would be suitable and in any case the prerequisites in Clause 8(2) of Tweed Local Environmental Plan 2000 would be very difficult to satisfy. In addition, the land is not under the care, control and management of the Tweed Coast Holiday Parks Reserve Trust. The subjective contention of "overcrowded eyesore" will be ameliorated by the proposal via reduction in development density from 57 sites to 49, 014% decrease and the replacement of old improvements with new more attractive facilities and upgraded landscaping.</i></p> <p><u>Council officer assessment</u></p> <p>This is not considered to raise a substantive planning issue which warrants refusal of the application.</p>

Issue Raised	Assessment
<p data-bbox="338 264 906 369"><u>Loss of Beach Views through the Pedestrian Beach Access on the Southern Side of the Site</u></p> <p data-bbox="338 387 906 712">* The list of trees to be planted will alter our seaward view which was the basis on which we purchased this unit for our personal use and became a Tweed Shire Council ratepayer. I accept the landscaping plan provided that no tree is of a type that exceeds 5m in height.</p> <p data-bbox="338 730 906 1131">* I purchased my unit approx 6 years ago and one of the deciding reasons was that I had a view down the pedestrian walkway through the trees to the beach. The planning shows trees to be located right up to the boundary. Depending on their type this will totally block my view of the beach through the pedestrian access and is unacceptable.</p>	<p data-bbox="928 264 1209 297"><u>Applicant response</u></p> <p data-bbox="928 315 1513 786"><i>Plantings are proposed adjacent to the southern boundary of the site as shown on the Landscaping Plans at Annexure H of the Statement of Environmental Effects. The proposed plantings will comprise species in keeping with other foreshore species already at maturity throughout the foreshore area including Banksia Integrifolia, Pandanus sp and Cupaniopsis anacardioidies. The trees are intended to define the Park/public reserve boundary and provide a screen to soften visual impacts.</i></p> <p data-bbox="928 804 1513 1171">The applicant has also provided a number of photographs with respect to this component of the submissions. It is generally advised that it is either unlikely that the proposed landscape plantings will result in a loss of beach views from a given location or that currently beach views are obscured by existing vegetation, moveable dwellings or dunal vegetation.</p> <p data-bbox="928 1189 1513 1444"><i>It is intended that with the revised Park layout general landscaping and contemporary buildings, the overall appearance will be substantially improved, particularly as a result of the significant reduction in the density of the development from 57 to 49.</i></p> <p data-bbox="928 1462 1513 1787"><i>In summary, as indicated in the above photographs, the redevelopment proposal will result in substantial improvements to the streetscape and the visual amenity from the existing residential buildings on the western side of Marine Parade, whilst not substantially reducing any existing beach views from street level.</i></p> <p data-bbox="928 1805 1321 1839"><u>Council officer assessment</u></p> <p data-bbox="928 1856 1513 2074">The subject development is not considered to result in an unacceptable amenity impact on these units by virtue of providing landscaping works to a caravan park. As outlined elsewhere in this report, the location of moveable</p>

Issue Raised	Assessment
	<p>dwelling on the lawful caravan park site does not require consent and as such does not form part of this application.</p> <p>This issue raised in these submissions are not considered to warrant refusal of the application.</p>
<p><u>Caravan park and internal road layout</u></p> <p>The placing of the road external of the cabins is totally different to the road location for the rest of the park. All roads to this park are located internally as is the norm in caravan park design. Relocation of the cabins will also provide further noise space between the barbecue area and the cabins. In addition the large reduction in the size of the bitumen road should save costs and heat reflection in summer.</p>	<p><u>Applicant response</u></p> <p><i>The proposed layout reflects contemporary design practice in relation to caravan parks. Locating the access road on the outer edge of the Park, where possible, assists with security and in defining the Park/public reserve interface and also provides a bushfire asset protection zone. In addition, the significant reduction in the number of sites, construction of modern buildings and appropriate landscaping will substantially improve the appearance and presentation of the Park, particularly when viewed from the public domain.</i></p> <p><u>Council officer assessment</u></p> <p>This issue is not considered to raise a substantive planning issue which warrants refusal of the application. The applicant has proposed a site and road layout which is considered to be acceptable and it does not warrant amendment based on this submission.</p>
<p><u>Unacceptable noise</u></p> <p>Proposed location of holiday cabins is likely foster an unacceptable noise problem.</p>	<p><u>Applicant response</u></p> <p><i>It is not clear how the redevelopment proposal will result in "an unacceptable noise problem", given that noise has not historically been an issue and the number of sites will be reduced. In addition, modern cabins provide improved acoustic qualities. Currently, there are 16 approved sites adjacent to the Marine Parade frontage and under the proposed redevelopment the number of sites will be reduced to 10 in this location.</i></p> <p><i>This reduction allows for increased landscaping, increased setbacks and improved streetscape by way of</i></p>

Issue Raised	Assessment
	<p><i>landscaping and modern buildings.</i></p> <p><u>Council officer assessment</u></p> <p>As outlined above, the location of cabins on the site is not undertaken through this application. In any event it is not considered that this issue is substantiated in the objection. Any noise problems would be dealt with as a holiday park management issue or, if required, by the Police. This is not considered to raise a substantive planning issue which warrants refusal of the application.</p>
<p><u>Future Development</u></p> <p>The Preliminary Site Contamination Investigation Report contains a diagram which indicates Stage 1 to the north of Shell Street and a Stage 2 generally to the south of Shell Street.</p> <p>Can you please advise why this appears on this map and if in fact there are plans for any future development on the Crown land to the south of Shell Street.</p>	<p><u>Applicant response</u></p> <p><i>The Preliminary Site Contamination Investigation Report at Annexure G of the Statement of Environmental Effects contains a diagram which shows Stage 1 generally to the north of Shell Street and Stage 2 generally to the south of Shell Street.</i></p> <p><i>The map referred to has been inadvertently included in the report and is in fact incorrect. An amended Report is attached showing the correct map. During early preliminary investigations a Concept Plan was prepared showing a possible future Stage 2, however it is not being pursued. This application [DA 13/0745) is to redevelop the existing Kingscliff North Holiday Park within the existing boundaries of the Park.</i></p> <p><u>Council officer assessment</u></p> <p>The information provided is considered to adequately address the query raised in this submission. This response has been forwarded to the submitter.</p>

Having regard to the issues raised above, the response provided by the applicant and the Council officer assessment of the submission it is considered that the subject application does not warrant refusal based on the submission received through the public exhibition process of this application.

Public Authority Submissions

NSW Rural Fire Service

The subject application was integrated under the Rural Fires Act 1997, being a tourist development application. As such the application was referred to New South Wales Rural Fire Service. General Terms of Approval for the proposal have been provided by the Rural Fire Service. These will be included as conditions of consent in the event of approval of the application.

(e) Public interest

Given the nature of the proposed development, relating to an established caravan park on an appropriately zoned site which is in accordance with the applicable planning framework as outlined in this report, it is considered that the proposal would be unlikely to impact on the public interest.

OPTIONS:

That Council:

1. Approves the development application subject to recommended conditions of consent;
or
2. Refuses the development application for specified reasons.

Council officers recommend Option 1.

CONCLUSION:

The subject application seeks consent for alterations to, and the overall use of, the Kingscliff North Holiday Park. The above assessment is considered to demonstrate that the proposal is generally acceptable with respect to the appropriate legislative considerations. As such, it is recommended that this development application be approved subject to appropriate conditions of consent.

COUNCIL IMPLICATIONS:

a. 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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6 [PR-PC] Development Application DA13/0679 to Demolish Existing Buildings and Construct Two Storey Commercial Building including Refreshment Room (Cafe) at Lots 9 and 10 Section 4 DP 2974 Nos. 9-11 River Street, South Murwillumbah

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0679 Pt1



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This development application is being reported to Council based on the request of Councillors Milne and Bagnall.

It is noted that the Draft Tweed Local Environmental Plan (LEP) 2012 was gazetted (as amended) and became effective on 4 April 2014 as the Tweed Local Environmental Plan 2014. Under the Draft Tweed LEP the subject site is within the B5 – Business Development Zone. Within the B5 zone a commercial premise (child definition - office) is a use which is permitted with consent. Within the B5 zone a food and drink premise (child definition - restaurant or café) is prohibited.

The application was lodged prior to gazettal of the Tweed Local Environmental Plan 2014 and as such it is subject to the savings provision in Tweed Local Environmental Plan 2014. The savings provision requires applications lodged prior to gazettal of the Tweed Local Environmental Plan 2014 to be assessed as if the Tweed Local Environmental Plan 2014 had not commenced.

The proposal is permissible with consent under the provisions of Tweed Local Environmental Plan 2000. The proposal is also considered to be consistent with the objectives of the current zone. The café component (67m²) is relatively minor (15%) compared to the overall floor area of the proposed development (440m²).

The proposal was advertised and notified,. One objection in the form of a petition with 22 signatures was received during the exhibition period. Matters raised within the submission have been considered in the assessment of the proposal.

The proposed development was Integrated Development and was referred to the Department of Primary Industries - Office of Water as a controlled activity approval under the Water Management Act 2000 is required. The Office of Water responded on 4 December 2013 with General Terms of Approval to be placed in the recommendations.

The application is recommended for approval subject to conditions.

RECOMMENDATION:

That Development Application DA13/0679 to demolish existing buildings and construct two storey commercial building including refreshment room (cafe) at Lots 9 and 10 Section 4 DP 2974 Nos. 9-11 River Street, South Murwillumbah 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:

- DA10 - Site and Location Plans**
- DA11 - Lower Floor Plan**
- DA12 - Upper Floor Plan**
- DA13 - Roof Plan**
- DA20 - Elevations**
- DA22 - Sections**

as amended in red and prepared by Aspect Architecture and dated 5/11/2013, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

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

[GEN0135]

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

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

[GEN0155]

5. 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]

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

[GEN0265]

7. 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]

8. All service deliveries including loading and unloading shall be conducted within the site. Vehicles waiting to be loaded and unloaded shall stand entirely within the site and all vehicles shall enter and exit the site in forward gear. All servicing requirements are to be undertaken by a vehicle no larger than a van.

[GENNS01]

9. This consent approves the use of the building the subject to this consent for a commercial premises and refreshment room as defined by the Tweed Local Environmental Plan 2000. In this regard a commercial premises is defined as follows:

"land used as an office or for other business or commercial purposes, but does not include a building or place elsewhere specifically defined in this Schedule or a building or place used for a land use elsewhere specifically defined in this Schedule."

and a refreshment room is defined as:

"a restaurant, cafe, tea room, eating house or the like."

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

11. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

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

- (a) Minimum non-habitable floor level for the building is RL 7.0m 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.

[PCC0705]

13. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

- (a) Vehicular access

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

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

[PCC0935]

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

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.

- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

16. 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.

[PCC1145]

17. 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]

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

[PCC1195]

19. In accordance with Section 68 of the Local Government Act, application shall be made to Council for any proposed sewerage drainage system. Detail shall include hydraulic drawings, pipe sizes, details of materials and discharge temperatures.

[PCC1225]

20. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

21. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by the General Manager or

his delegate PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[PCC1255]

22. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval.

[PCC1265]

23. Three copies of detailed hydraulic plans shall be submitted with all trade waste applications which indicate size, type and location of pre-treatment devices. All plumbing and drainage installations to these devices shall comply with AS3500.

[PCC1275]

24. A site specific acoustic assessment shall be carried out by a suitably qualified person identifying each potential noise source from all plant and equipment intended to be installed to the satisfaction of the General Manager or Delegate. The report shall make recommendations for mitigation where required to demonstrate that a noise level, $L_{Aeq,15min}$ exceedence of no greater than 5dB(A) is achievable, in any Octave band centre, at the boundary of the site between the hours of 7am and 10pm all days.

25. Prior to the construction certificate being issued copies of 3 plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be submitted to Council's Environmental Health Officers for assessment and approval, on the approved form and accompanied by the adopted fee:

- 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.

Any premises used for the storage, preparation or sale of food are to comply with the NSW Food Act 2003, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises.

26. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements. Systems are to adequately designed and located so as not to cause a noise nuisance to adjoining properties when in operation.

27. Excavations beyond 2m of natural ground level are not permitted unless an acid sulfate soils investigation and MP, where necessary, has been approved to the satisfaction of the General Manager or delegate.

[PCCNS01]

28. The development shall provide a transverse drainage system for the continuity of stormwater flows from the open drain on adjoining land to the north, through the development site, to the Stafford Street stormwater drainage system, for all events up to and including the 100 year ARI storm event. Any piped system serving this purpose must be supplemented by an overland flow path that will operate in a manner that will minimise potential damages and nuisance in the event of a pipe failure. The design of the pipe inlet must include a safety factor of 2 to account for blockage. The s68 Stormwater Application shall include a hydraulic assessment of the transverse drainage system, which demonstrates that the system will provide a "no worsening" post-development case for upstream land for events up to and including the 100 year ARI event. The hydraulic assessment shall include identification of the extent of all contributing catchments, as verified by on site survey. An easement benefitting Council shall be created over the transverse drainage system prior to occupation. [PCCNS02]
29. The development shall provide for the mitigation for stormwater runoff generated by the development with the existing downstream stormwater infrastructure in place, in accordance with Development Design Specification D5 - Stormwater Drainage Design Clause D5.16 Stormwater Detention. Engineering details of an adequate stormwater detention system shall be submitted with the s68 Stormwater Application to Council for approval prior to issue of a construction certificate. [PCCNS03]
30. The construction certificate application shall include certified engineering details of the proposed access platform adjacent to Council's levee. The platform shall be of light weight construction and must be readily removable from its structural supports and relocatable without the need for special equipment. No structural supports are permitted within three (3) metres horizontal distance of the surveyed top of the levee embankment. The platform must be designed to impose minimal bearing forces on the levee.
31. The developer must obtain all necessary separate State Government approvals for any works on Lot 8126 DP 755698 (State Crown Land). [PCCNS04]
32. Any future development of this site will require an updated civil work plan and Amended architectural Plans that shows the placement of piers and footings for the building to be at least 1.0 metres horizontally clear of sewer main on site.
33. Sewer depth and actual location must be confirmed on site and recorded on construction plans prior to construction.
34. A suitably qualified engineer shall design any retaining walls, pier or footing depths based on the geotechnical conditions on site and the plans must be submitted to Council to demonstrate the Council Sewers - Works in Proximity Policy has been adhered to.
35. Access to the manhole must be available at all times. Any fencing around the underground car park must include removable fencing over the sewer easement to enable access, as per the Council Sewers - Works in Proximity Policy.

36. Construction joints or removable paving must be shown on the final design plans for the car park concrete slab along the alignment of the 3.0 metre width over the existing sewer, to enable council to remove and reinstate flooring without destruction, and limit the scale of removal whilst undertaking construction works on the sewer.
37. Any alterations to approved plans shall be confirmed by Council Manager Water Engineer prior to construction.
38. Council requires a legal arrangement and easement which will burden current and future owners of the property to permit Council to maintain, and re-construct these works as and when required. That is, twenty-four hour access is required to repair, maintain and reconstruct the sewer.
39. The height between the carpark concrete slab and the building overhead must be a minimum clearance of 2.4 metres to enable clear access for future sewer excavations at the site may have adequate clearance to work in the space created by the structure.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

40. 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]
41. An application is to be made to Council to disconnect the existing building from Council's sewerage system, prior to any demolition work commencing.
[PCW0045]
42. 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]
- 43. 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]
- 44. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]
- 45. 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]
- 46. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

47. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development. [PCW0985]
48. 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]
49. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee. [PCW1170]
50. Any alterations to approved plans shall be confirmed by Council W&S Systems Engineer prior to construction.
51. Should any part of the sewerage reticulation infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.
52. Documentary evidence of creation of the required 3.0 metre easement over the existing sewer within Lot 10 Sec 4 DP2974 and Lot 9 Sec 4 DP2974 and the legal agreement required as per Condition 37 shall be submitted to Tweed Shire Council.
53. Excavation, shoring and dewatering of the approved works must be considered when undertaking works. Any permits required to undertake dewatering shall be obtained prior to commencing. The applicant shall conduct a thorough site assessment to determine trench safety for the approved works. [PCWNS01]

DURING CONSTRUCTION

54. 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]
55. 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]

56. 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]

57. 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]

58. 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]

59. 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]

60. 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]

61. 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]

62. 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]

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

[DUR0815]

64. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

65. 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]

66. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

67. 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]

68. Subject to the requirements of the local electricity authority, all electrical wiring, power 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 shall be provided with earth leakage devices.

[DUR1415]

69. 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]
70. 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]
71. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.
[DUR1955]
72. 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. Demolition waste receipts quoting DA13/0679, attained from an approved landfill business, shall be submitted to Council within 3 days of transport.
[DUR2185]
73. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.
[DUR2445]
74. 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]
75. 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]

76. 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]

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

[DUR2545]

78. 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]

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

[DUR2645]

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

[DUR2705]

81. Construction joints or removable paving must be installed in the car park concrete slab along the alignment of the newly created 3.0 metre easement over the existing sewer to enable council to remove and reinstate flooring without destruction, and limit the scale of removal whilst undertaking construction works on the sewer.

82. During Construction access to the sewer and sewer manhole must be available to maintain, and re-construct as and when required.

83. Continual sewerage services must be maintained for all properties upstream of or connected to the affected sewer, for the duration of the works.

84. Any damage to any property or services shall be the responsibility of the constructor. Reinstatement shall be to the relevant authorities or property owner's satisfaction and at the constructors cost.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

85. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans. [POC0005]
86. A noise management plan shall be prepared and submitted to the satisfaction of the General Manager or his delegate which details how noise from onsite activities will be managed and controlled, so as to prevent the generation or emission of intrusive noise. Such management plan shall be submitted and approved prior to the issue of the occupation certificate [POC0125]
87. 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]
88. 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]
89. 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]
90. **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:
50.1336 Trips @ \$1364 per Trips \$68,382
(\$1,317 base rate + \$47 indexation)
S94 Plan No. 4
Sector9_4

[POC0395/PSC0175]

91. 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: 0.1312 ET @ \$12575 \$1649.84
Sewer: 1.2884 ET @ \$6042 \$7784.51

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.

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.

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

[POC0755]

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

[POC0855]

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

[POC0985]

95. 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]

96. An easement in favour of Tweed Shire Council shall be created over the full length of the flood levee within the subject land. The easement width shall extend from the rear (north western) boundary to three (3) metres (measured horizontally) on the landward side of the surveyed top of the levee embankment prior to the issue of an Occupation Certificate.

[POCNS01]

USE

97. 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]

98. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (LA90) 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]

99. 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]

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

Office Tenancies

- * 7am to 10pm - Mondays to Saturdays
- * 7am to 8pm - Sundays and Public Holidays

Cafe Tenancy

- * 8am to 8pm All Days
- * All deliveries and pickups relating to the business are to occur between 7am and 6pm any day

[USE0185]

101. 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]

102. 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]

103. The development shall be carried out in accordance with the Recommendations of Section 6 the Environmental Noise Impact Report has been prepared by CRG Acoustical Consultants dated 7 November 2013 (crgref:10163a report Nov2103) except where varied by the conditions of this consent.

[USE0305]

104. 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]

GENERAL TERMS OF APPROVAL UNDER s91 OF THE WATER MANAGEMENT ACT 2000 (for work requiring a controlled activity approval)

- 1. These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA 13/0679 and provided by Council.**
- 2. Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.**
- 3. Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CM) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.**
- 4. The consent holder must prepare or commission the preparation of:**
 - (i) Erosion and Sediment Control Plan**

5. All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The plans must be prepared in accordance with the NSW Office of Waters guidelines located at www.water.nsw.gov.au/Water-licensing/Approvals/default.aspx
6. The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.
7. The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.
8. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.
9. The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
10. The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.
11. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
12. The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any controlled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the NSW Office of Water.

REPORT:

Applicant: C Dudgeon
Owner: Mr Craig I Dudgeon & Mrs Rebecca J Dudgeon
Location: Lots 9 and 10 Section 4 DP 2974 Nos. 9-11 River Street, South Murwillumbah
Zoning: 3(c) Commerce and Trade
Cost: \$700,000

Background:

Proposal

The proposed development involves the demolition of the existing buildings and construction of a two storey commercial building including refreshment room (cafe).

The proposal incorporates the following:

- Office Space (Office Work Area & Meeting/Gathering) = 349.6m²
- Refreshment Room (Café) = 67.7m²
- Amenities (Female WC, Male WC, Shower) = 23.9m²
- 21 car parking spaces including one disabled car parking spaces

The proposed hours of operation are as follows:

- Office: 7am to 10pm Monday to Saturday and 7am to 8pm Sunday and Public Holidays
- Cafe/Event: 8am to 8pm Monday to Sunday and Public Holidays

Subject Site

The subject site comprises two allotments with an area of 474.2m² and 651.3m². The subject site is bound to the north by Commercial and Trade Zoned land, to the east by River Street, to the South by the Stafford Street Road Reserve and to the west by unzoned land.

The site currently contains two dwellings, both two storeys in height.

History

Council at its meeting held on 19 April 2011 resolved to approve Development Application DA10/0480 for the demolition of existing dwellings and construction of a function centre.

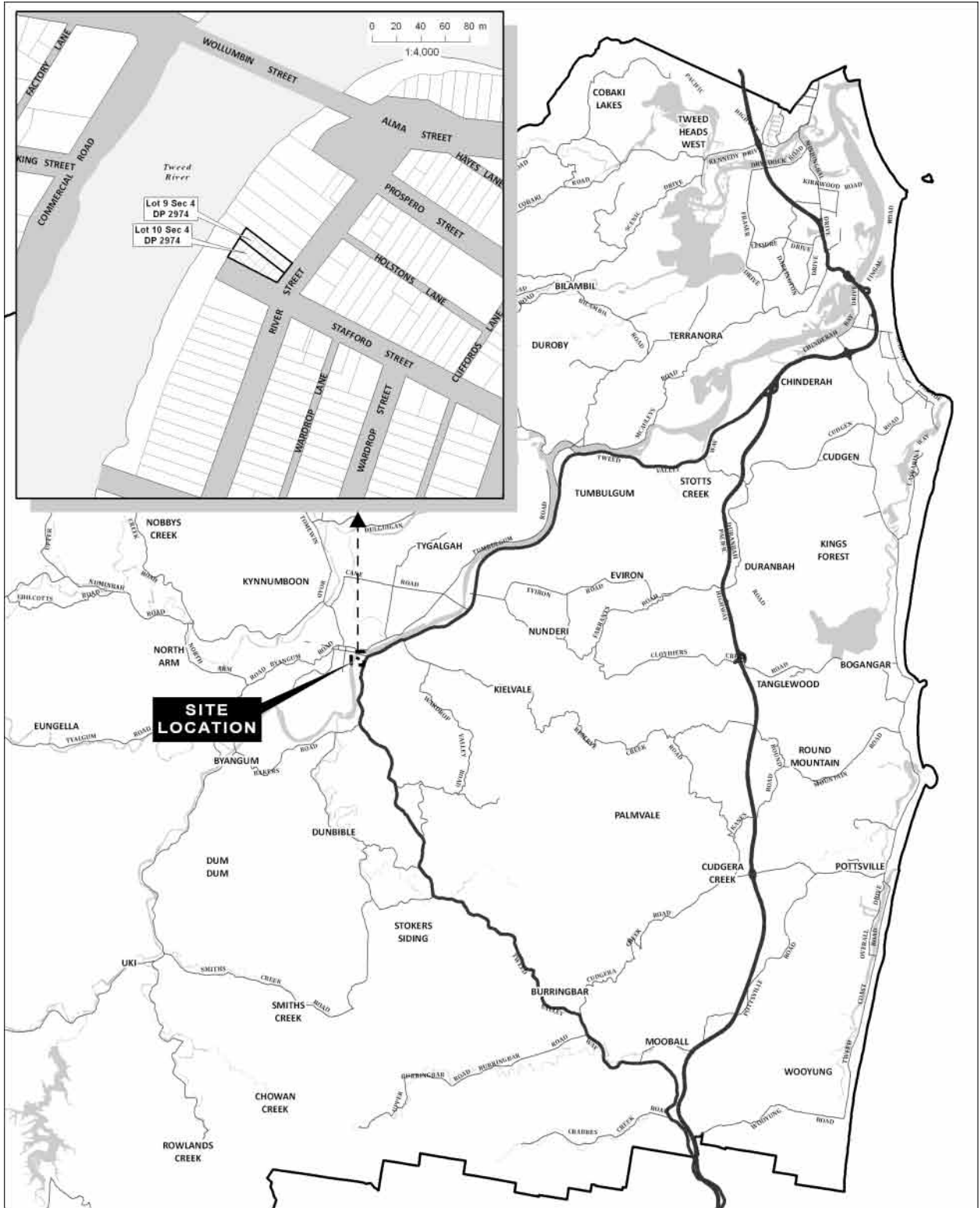
Sewer

Council's Water Unit has assessed the information provided for the Development Application in regards to Water Supply and Sewerage.

It was determined that a sewer line runs through the centre of the existing lots. Neither the Statement of Environmental Effects report nor the Architectural Plans indicate any consideration of the Council Works in Proximity Policy which states "*building over sewers precludes the construction of enclosed buildings directly over public sewers.*"

Direction was given to condition the development to ensure adequate distance and access can be granted to Council to ensure the sewer line can be adequately maintained. These conditions have been included in the recommendations.

SITE DIAGRAM:



Locality Plan

Lots 9 and 10 Section 4 DP 2974
No. 9 River Street, South Murwillumbah

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs (which may be incurred as a result of data being inaccurate in any way) and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate 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 1300. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 14 April, 2014
© Land and Property Management Authority (LPMA) & Tweed Shire Council.
Boundaries shown should be considered approximate only.



Map Projection: Universal Transverse Mercator
Datum: Geoid: datum of Australia 1984
Map: Grid of Australia, Zone 55

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484

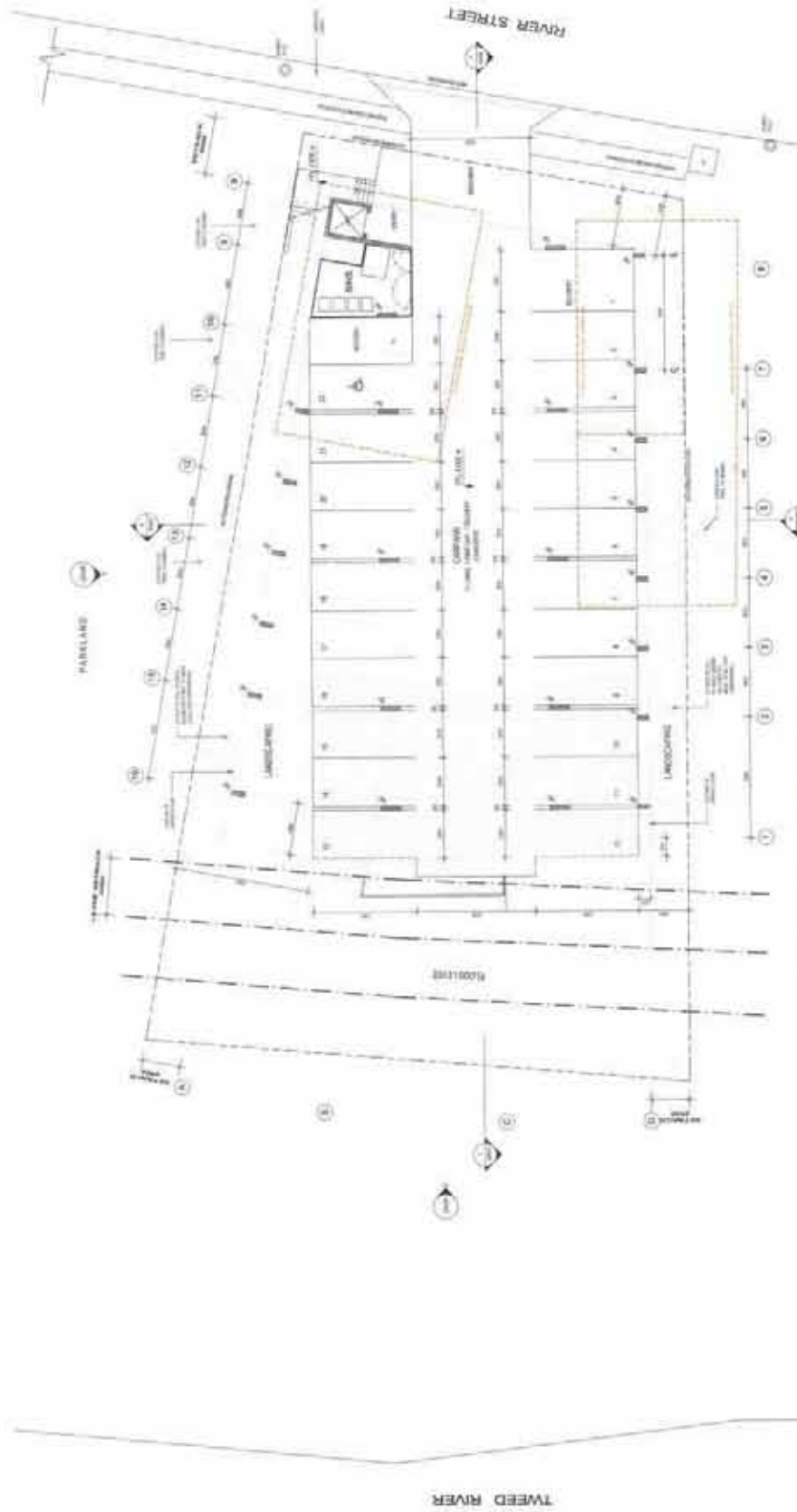
PD Box 816
Murwillumbah NSW 2484
T | (02) 6570 2400 | 1300 252 872
F | (02) 6570 2423
W | www.tweed.nsw.gov.au
E | planningforms@tweed.nsw.gov.au



Figure: 2.030200/030200/030200/030200/030200/030200/030200/030200/030200/030200

Author: 030200 - Planning Information Unit

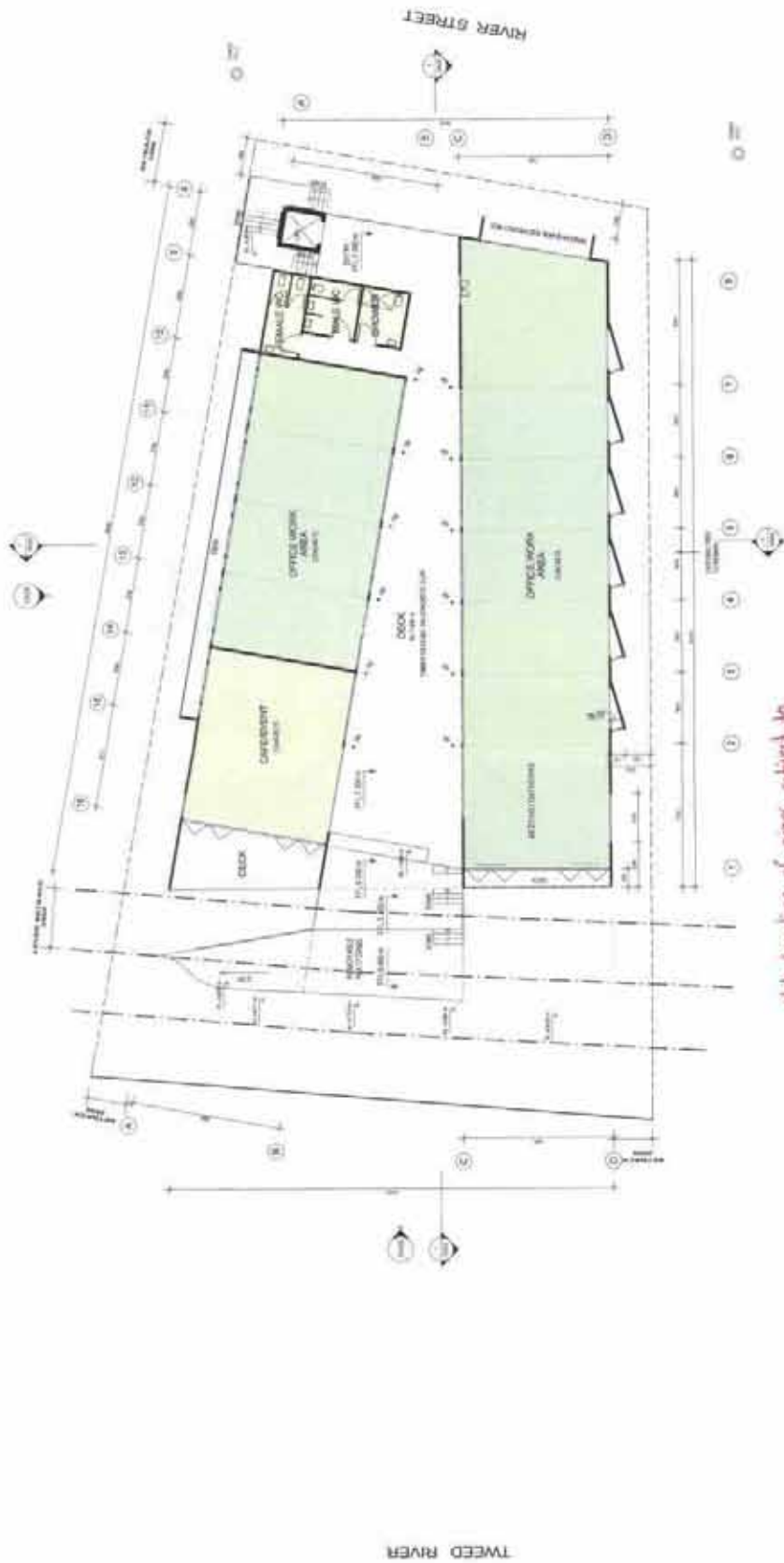
Date Printed: 14 April, 2014



Note: Location of piers subject to change due to location of existing Sewer pipeline.

LOWER FLOOR PLAN

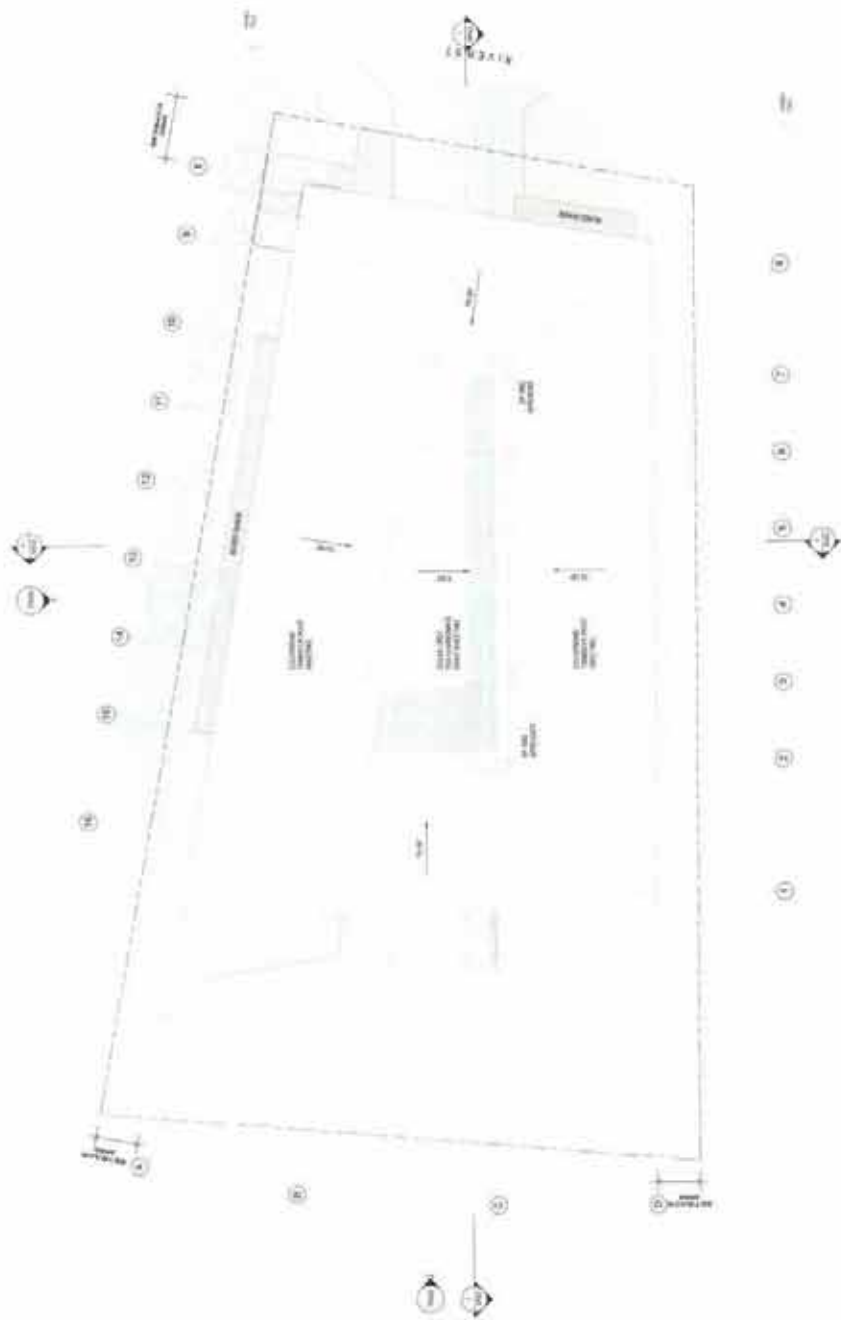
<p>DATE: 12/3/14 DRAWN BY: M. P. MULLIGAN CHECKED BY: R. J. COOPER PROJECT NO: 12372 DRAWING NO: DA11</p>	<p>PROJECT: LOWER FLOOR PLAN CLIENT: MR & MRS J. COOPER ADDRESS: 123 RIVER STREET, TWEED RIVER, NSW 2330</p>	<p>SCALE: 1:50 SHEET NO: 1 OF 1</p>
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Note location of piers subject to change due to location of existing sewer pipe line

UPPER FLOOR PLAN

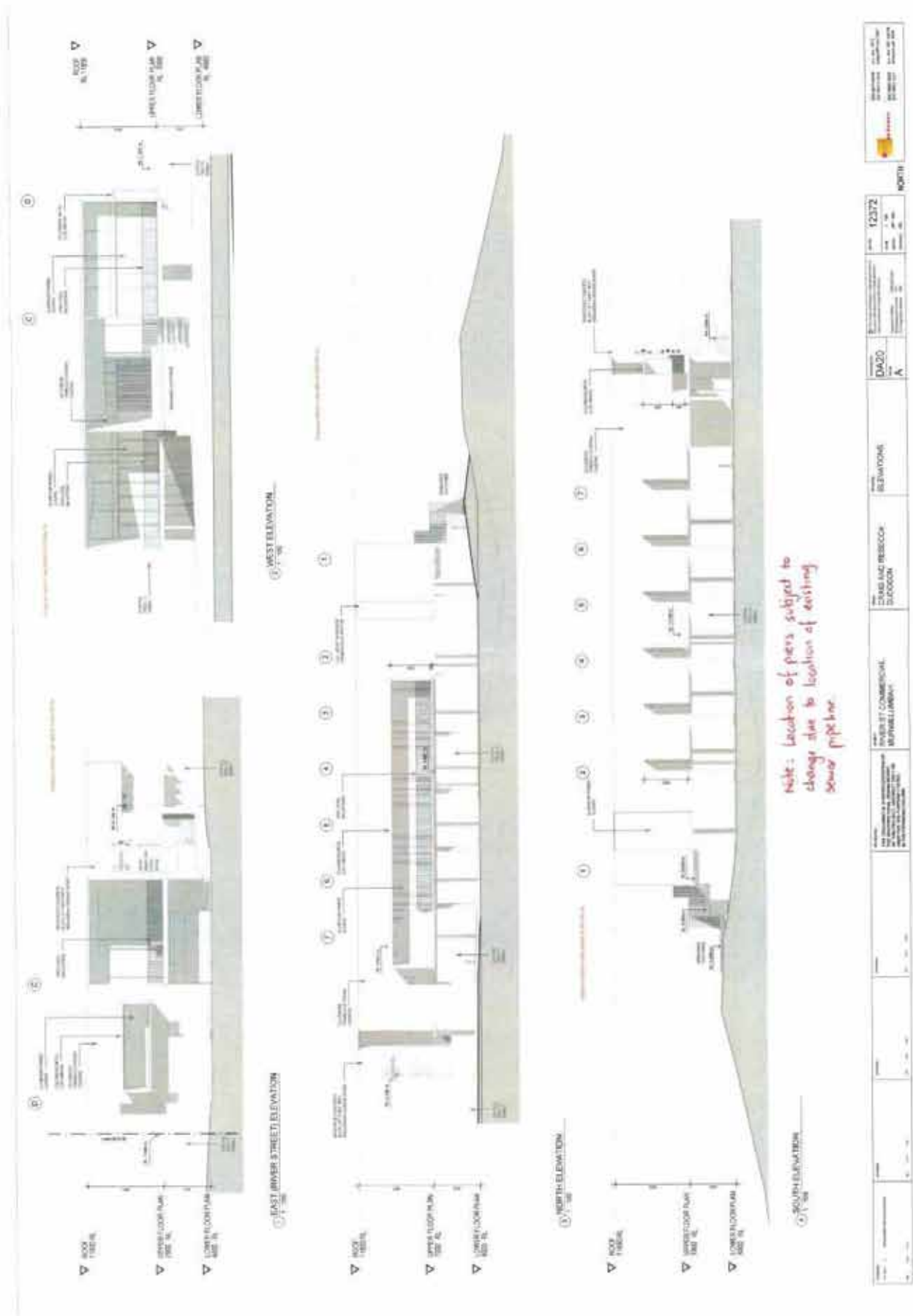
<p>13372</p> <p>DA 12</p> <p>UPPER FLOOR PLAN</p> <p>DAVID MUIR ARCHITECTURAL SOLUTIONS</p> <p>ROBERT COMBES/CH. MURPHY/LEIGHAN</p>	<p>13372</p> <p>DA 12</p> <p>UPPER FLOOR PLAN</p> <p>DAVID MUIR ARCHITECTURAL SOLUTIONS</p> <p>ROBERT COMBES/CH. MURPHY/LEIGHAN</p>	<p>13372</p> <p>DA 12</p> <p>UPPER FLOOR PLAN</p> <p>DAVID MUIR ARCHITECTURAL SOLUTIONS</p> <p>ROBERT COMBES/CH. MURPHY/LEIGHAN</p>	<p>13372</p> <p>DA 12</p> <p>UPPER FLOOR PLAN</p> <p>DAVID MUIR ARCHITECTURAL SOLUTIONS</p> <p>ROBERT COMBES/CH. MURPHY/LEIGHAN</p>	<p>13372</p> <p>DA 12</p> <p>UPPER FLOOR PLAN</p> <p>DAVID MUIR ARCHITECTURAL SOLUTIONS</p> <p>ROBERT COMBES/CH. MURPHY/LEIGHAN</p>
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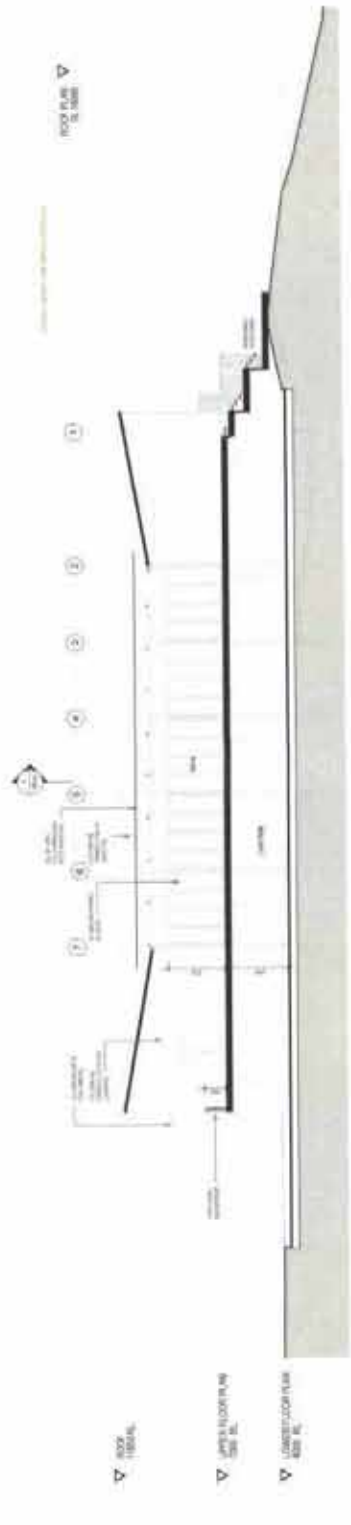
Note: Location of pres. subject to change due to location of existing sewer pipeline.

ROOF PLAN

PROJECT NO: 13372 DATE: A		NORTH	
PROJECT NAME:		CLIENT:	
ARCHITECT:		CONSULTANT:	
DRAWN BY:		CHECKED BY:	
SCALE:		DATE:	
PROJECT NO: 13372		DATE: A	
PROJECT NAME:		CLIENT:	
ARCHITECT:		CONSULTANT:	
DRAWN BY:		CHECKED BY:	
SCALE:		DATE:	



Note: Location of piers subject to change due to location of existing sewer pipeline.



PROJECT: DRAWING NO: DATE: SCALE:		12372	NORTH
DRAWN BY: CHECKED BY:		DIA22	SECTION:
PROJECT LOCATION: CLIENT:		ROAD AND RESURFACE DIVISION	SECTION:
PROJECT DESCRIPTION: MATERIALS:		COMMERCIAL MATERIALS	SECTION:
NO.	DATE	BY	CHECKED

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.

The proposed development is considered to meet the provisions of Clause 4.

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 thought to be consistent with the four principles of ESD in that the proposal aims to provide an economically sustainable development that will not have any detrimental impact on the natural, built or social environment. The proposal is consistent with the four 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.*

In this instance, the proposed development is considered to meet the objectives of the zone, whilst taking into account environmental constraints. 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 development will not have an unacceptable impact on the community, locality or the area of the Tweed Coast. The development is consistent with the stated future character of the Murwillumbah Town Centre.

Clause 11 - Zone Objectives

The subject site is located within the 3(c) Commercial and Trade zone.

The objectives of the 3(c) zone are identified as follows:

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 development includes car parking on the ground floor and commercial tenancies on the second floor including office space and a refreshment room (café). It is considered that this proposal will service the population catchment of those residents of Murwillumbah, and surrounding small towns.

Further, the area surrounding the site is highly utilised by local residents and visitors to the area. The subject site is conveniently located to take advantage of the high usage of public facilities in the area and provide for the commercial needs of these users.

The proposed development involves the construction of a commercial building that is two storeys in height. The design of the building is in keeping with contemporary building design of new construction around the subject site, whilst containing features essential to a viable commercial building. The proposed development and use of the site is one that complies with the objectives and underlying intent of the 3(c) zone.

Cumulatively, the development will not have an unacceptable impact on the community, locality or area of the Tweed Coast. The development is consistent with the character of the Murwillumbah area and will not have a detrimental impact upon the character of the locality and will provide further impetus to the areas renewal. Further to this, the Tweed Retail Strategy, Retail Matrix states that a further complex containing Commercial tenancies is acceptable and could be accommodated within Murwillumbah to the South of King Street. It is considered the catchment area for the proposal as outlined above is ample to maintain a viable commercial building that will not reduce the capacity of the existing Murwillumbah Town Centre.

Clause 15 - Essential Services

All relevant services are available to the site. The subject land has access to water, sewer, stormwater, electricity and telephone services.

Clause 16 - Height of Building

Council's building heights map indicates that a maximum building height of 3 storeys applies to this site.

The proposed development is compliant with Council's requirements as it is a maximum of two storeys in height.

Clause 17 - Social Impact Assessment

The proposed development is considered to have a positive impact upon the locality with the creation of both short and long term employment opportunities and more modern commercial office space.

Clause 34 - Flooding

The design flood level of the site is 7.0m AHD. The proposed finished floor level of the office building and cafe is 7.0m AHD.

According to the Flooding DCP the proposed ground floor use is compliant with the Flood Policy as it is not for a habitable use. Building materials and electrical wiring below the floor level would need to be designed to withstand possible submergence in water, in accordance with Council's standard requirements.

Clause 35 - Acid Sulfate Soils

The site is nominated as containing Class 4 Acid Sulfate Soils according to Council's Acid Sulfate Soils maps. Class 4 soils indicate that Acid Sulfate Soils may be disturbed if works extend greater than 2.0m below natural ground level.

The development is generally located at existing ground level, and above (filling required). The only works required below the existing ground level are footings, drainage and service provision. Works are not anticipated to extend beyond 2.0m below the existing ground level and hence are not anticipated to disturb Acid Sulfate Soils.

Clause 47 - Advertising Signs

The proposal includes two building and business identification boards. These boards are attached to the concrete block lift shaft and provide a total size of 4.5m by 2.0m each. It is considered that the signs are of an appropriate size and scale for the locality. The signage has complied with this clause.

Other Specific Clauses

There are no other clauses considered relevant to the proposal.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Rivers, streams and wetlands

The proposal will not impact upon the adjoining Tweed River. The site is separated from the river by flood level and Council reserve. Water quality will be maintained as conditioned through the Stormwater Management Plan. The site is not adjacent to an aquatic reserve under the Fisheries Management Act 1994 nor is it a protected area under Section 21AB of the Soil Conservation Act 1938. The proposal complies with Clause 15.

Clause 47 – Principles for Commercial and Industrial Development

The proposed commercial office and refreshment room (café) building is consistent with the provisions of the REP particularly in relation to Clause 47 pertaining to commercial development.

Clause 81: Development adjacent to the ocean or a waterway

Sufficient foreshore open space is available within the locality. The site is separated from the River by flood levy and Council reserve. The proposal building is of the highest architectural quality and is design to address and river and the building within the central Murwillumbah area. The proposal complies with Clause 81.

SEPP No. 55 - Remediation of Land

This Policy provides that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

Council's Environmental Health Officers have assessed the site in terms of land contamination as follows:

"No indication of contaminating activities from aerial photography (1962, 2000, 2004, 2007 & 2009). Aerial photography indicates residential style structures located on the sites since 1962. Council's Enlighten shows that there are no dip sites within 200m of the subject property. A site inspection undertaken on the 14/09/10 indicates that the southern building has been used for commercial purposes (swimming pool supplies). This contradicts the SEE which indicates the southern dwelling is used for residential purposes only. Further contaminated lands considerations would be required prior to any development consent being issued... A statement has been provided by the previous business owner dated 11 March 2011 indicating that packaged pool chemicals were only stored internal to the building. No further considerations required."

It is therefore considered that the proposal complies with the provisions of SEPP No. 55.

SEPP No. 64 - Advertising and Signage

The proposal includes two sign boards. A sign is located on the north and east sides of the concrete block lift tower. The signs provide a total area of 18m² consistent with that allowed for the frontage length and width under Section A4 of the TDCP 2008. None of the signs are to be illuminated. The proposed signage is integrated into the overall Architectural style of the building. It is therefore considered that the proposed complies with the provisions of SEPP No. 64.

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

It is noted that the Draft Tweed Local Environmental Plan (LEP) 2012 was gazetted (as amended) and became effective on 4 April 2014 as the Tweed Local Environmental Plan 2014. Under the Draft Tweed LEP the site is within the B5 – Business Development Zone. Within the B5 zone a commercial premise (child definition - office) is a use which is permitted with consent. Within the B5 zone a food and drink premise (child definition - restaurant or café) is prohibited.

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.

Although the LEP contains a savings provision for development applications made before the commencement of the plan the subject application must also have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.

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'. It is considered that this weighting has greater reference once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

Under the current LEP both uses are permitted with consent. Under the draft the office portion is permitted and the café portion is prohibited. It is considered that the café portion meets the objectives of the zone as outlined below and therefore warrant support.

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for retailing activities that are not suited to, or desirable in, other business zones or that serve the needs of other businesses in the zone.*
- *To accommodate a wide range of employment generating uses and associated support facilities including light industrial, transport and storage activities.*

The proposed development enables a mix of business being for an office and a café.

The proposed development will provide for a wide range of employment generating uses and will support the surrounding facilities by providing a service that can be utilised by the surrounding development.

As the proposed development meets the objectives of the draft Tweed LEP zoning it is considered that the development should be accepted in this instance.

There are no draft SEPPs or REPs applicable.

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

Tweed Development Control Plan

Section A2 – Car Parking Code

Under the provisions of this Plan, the proposal is defined as a "commercial premises" and a "refreshment room". The following table assesses the car parking requirements for the proposal based on the standards contained in Table 4.9C of the Development Control Plan. Council's DCP Section A2, requires the following car parks be provided.

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle Parking	Delivery, Service Vehicle parking	Res Parking	Staff Parking	Customer Parking
G2	Commercial premises	In CBD may reduce requirement to 1/75m ² 1st floor and 1/100m ² higher levels, if integration and sharing with other uses an option		1/100m ² GFA	1/200m ² GFA MIN 1 HRV SRV		1/40m ² GFA	included in staff parking
D12	Refreshment room	Internal dining area is to be defined. Footpath dining area to be considered in accordance with Councils Footpath Dining Policy		1/5 car park	1 HRV		1/staff at peak operating time	1/7m ² dining area

The applicant has provided the following calculations:

Parking Table				
Use	Parking Rates	Units	Spaces required	20% ESD Reduction
Office	1/40m ² GFA	349.6m ²	8.740	6.992
Refreshment Room	Staff - 1/staff at peak operating time Customer - 1/7m ² dining area	2 staff	2.000	1.600
		60m ² dining area	8.571	6.857
		Total Required	19.311	15.449
		Total Provided	21	21
		Result	+1.689	+5.551

The applicant is required to provide a total of 20 spaces. The applicant has provided 21 spaces. Additionally, a 20% reduction in the car parking numbers can be applied for ESD principles. This results in a total of 16 car parking spaces being required. As the applicant has provided a total of 21 spaces the proposal is considered to be compliant with the number required.

The applicant has requested a variation in the number and size of service vehicle spaces required. The following is what is required.

Parking Table			
Use	Service Vehicle and Rate	Units	Vehicle Required
Office	1/200m ² SRV	349.6m ²	1.748 HRV
Refreshment Room	1 HRV	-	1.000 HRV

It can be seen that a total of 3 HRV spaces are required to cater for the proposed development. The applicant provided the following justification:

"The provision of a HRV is onerous given the circumstances of and size of the development. To address these issues a service vehicle assessment has been prepared by Bitzios Consulting. It is requested that a condition of consent as proposed within the attached assessment be included within the approval.

Bitzios Consulting provided a 'service vehicle assessment' dated 11 February 2014. The correspondence provided the following relevant points:

- Deliveries are expected to be delivered in a vehicle no larger than a van with parking expected to be 1 to 2 minutes.*
- Café is relatively small with a GFA (gross floor area) of 68m².*
- Car park has been designed with a 2.7m high entrance, a HRV requires a minimum of 3.5m height clearance and would require a significant re-design of the building and carpark.*
- The applicant has had discussions with service operators and will not receive deliveries by a HRV or SRV (Small Rigid Vehicle). A SRV has a length of 6.385m therefore extending 385mm into the car park aisle).*
- Turning templates have been provided for a long wheel base van, which are adequate (further comment provided in Section 6.5)*

Council's Development Engineer has provided the following:

"Based on the small size of the café and the applicants discussions with service operators in which deliveries will not be received by a HRV or SRV a condition of consent can be applied as suggested by the applicant."

It is considered that the proposed SRV condition will satisfy the service needs for the proposed development and as such the variation should be accepted in this instance.

The proposed car parking is considered satisfactory and generally complies with Council's requirements under DCP Section A2.

Section A3 – Development of Flood Liable Land

The proposed development was referred to Council's Flooding Engineer who has provided the following assessment in relation to DCP Section A3:

"The design flood level is RL 7.0m AHD and Council's GIS indicates a ground level of approximately RL 3.0m AHD. The application proposes a floor level of RL 7.0m AHD.

The site is in a high flow area and Council's DCP Section A3 limits development to 50% of the site area with a maximum obstruction of 50% of any cross sectional area perpendicular to the direction of flow, below the design flood level. The enclosed areas underneath the first floor level appear to be less than 50% of the site area and less than 50% of the cross sectional area.

There are no habitable areas proposed so no minimum floor level applies but obviously the floor level of the function room needs to be RL 7.0m AHD or higher to avoid exceeding the 50% rule below the design flood level."

Based on the information provided above, the proposed development is consistent with this section of the DCP. Relevant conditions have been placed within the recommendations to ensure compliance with the provisions of DCP Section A3.

Section A4 – Advertising Signs Code

The proposal includes two sign boards. A sign is located on the north and east sides of the concrete block lift tower. The signs provide a total area of 18m² consistent with that allowed for the frontage length and width under Section A4 of the TDCP 2008. None of the signs are to be illuminated. The proposed signage is integrated into the overall Architectural style of the building. It is considered that the size and location of the signs will not significantly impact the amenity of the area and complies with this section of the DCP.

Section A11 – Public Notification of Development Proposals

The proposed development was advertised for a period of 30 days in accordance with this section of the DCP from Wednesday 4 December 2013 to Monday 6 January 2014. During this period there was two submissions received. One supporting the proposed development and one petition with 22 signatures. The main issues were amenity issues, flooding and traffic issues. These are discussed in greater detail below.

Section A15 – Waste Minimisation & Management

The proposal is to be serviced via four, 240 litre wheelie bins for recycling and two, 2m³ bulk bin for refuse. The bins are located as shown on the plan within the Preliminary Waste Management Plan. The bins are stored within a screened area under the building and are not visible from the street or adjoining properties.

The proposal is compliant with Section A15.

Section B22 – Murwillumbah Town Centre DCP

The proposed commercial development is considered to be consistent with the aims and objectives of section B22. The proposed development achieves a balance between building height and landscape character whilst fulfilling the requirements of the urban structure plan through commercial development within South Murwillumbah.

The subject site is located within the South Murwillumbah Riverfront Precinct pursuant to this DCP.

The Precinct is the eastern edge of the town centre and the main entry to the study area. As such, it is important to ensure that development is of a high quality and presentation as this area has the potential to greatly affect the perceived image of the Town. Likewise, the Precinct's river frontage is a feature that can be more clearly expressed in future development. The careful placement of built form can open up views of the River and the town centre, enhancing legibility and the entire "entry" experience.

The current LEP zoning is 3(c) Commerce and Trade and prohibits all residential development. The proposed commercial building is seen as being compatible with the zone and the design of the building is also sympathetic to the adjoining residential area which comprises of single detached dwellings.

The proposal is respectful of the existing residential approach to Murwillumbah and proposes street planting that will encourage future proposals to adopt a street planting regime for the Tweed Valley Way and therefore an aesthetically pleasing entrance into the Township of Murwillumbah.

The applicant has undertaken the following assessment of relevant controls:

4.1 Floor Space Ratio:	Refer TLEP 2000 and other shire wide controls. No FSR is nominated for the site.
4.2 Site Coverage:	Refer TLEP 2000 and other shire wide controls. Section A3 of the TDCP indicates a 50% site coverage. The proposal seeks a minor variation to this based on design and continued compliance with flood flow maintenance. Refer comment above under Section A3.
4.3 Building height:	Refer TLEP 2000 and other shire wide controls. The site is provided with a three (3) storey height limit under the TLEP 2000. The proposal is compliant.
4.4 Street frontage height:	N/A the site is not located within the Town Centre Core Precinct
4.5 Building Alignment and Orientation:	The proposed design aligns the buildings front to the street. The front elevation runs parallel with River Street and provides a clearly defined building entry to the street. The site has a single frontage (to from roadway) only.
4.6 Street Setbacks:	The site is not identified on Figure 4.4 of the DCP. In this regard the proposal has been designed consistent with the setbacks provided for the adjoining commercial area on the opposite side of River Street. This area is nominated with setbacks ranging between 2.5 and 4.5m.
4.7 Active frontages:	The site is not identified as requiring an active frontage. The design does however address River Street with clearly defined entry, tenancy windows and central deck corridor.
4.8 Rear Lane:	The site does not have access to a rear lane.
4.9 Corner Buildings:	The site has frontage to River Street and an unformed section of Stafford Street. The proposed design does address Stafford Street, however is done in a manner reflective of the residential development which is located on the other side of the unformed roadway.
4.10 Awnings:	The site is not shown as requiring a continuous awning to the street frontage
4.11 Signage:	The proposal plans provide detail of the proposed signage areas and their location on the building facade. The proposed signage is designed as a direct extension of the architecture of the building.

The proposed development is considered to be consistent with the controls as outlined in this section of the DCP.

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

Clause 92(a) Government Coastal Policy

Not applicable.

Clause 92(b) Applications for demolition

The applicant supplied a demolition works plan. Council's Building Services Unit has provided conditions of consent should the application be approved.

Clause 93 Fire Safety Considerations

Not applicable.

Clause 94 Buildings to be upgraded

Not applicable.

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

The proposed development is not impacted by a management plan. No further assessment is required.

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

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

This plan relates to the Cobaki and Terranora Broadwater and is therefore not applicable to the proposed development.

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

Context and Setting

There are no detrimental impacts envisaged as a result of the proposed commercial office building and refreshment room (café). The applicant has submitted a stormwater management plan to the satisfaction of Council's Development Engineer. Due to the commercial (office) nature of the development it is considered that there will be minimal impacts relating to noise, amenity or environmental impacts applicable in this instance.

The refreshment room (café) is located in the north-western portion of the site facing away from the residential blocks to the south east. A Noise Impact Assessment was submitted with the application which provides recommendations to ensure the amenity of the area is maintained. Council's Environmental Health Unit has assessed the report and has accepted the recommendations. These will be provided within the recommended conditions.

The proposal will assist in the further transformation of the area to a commercial street which is compatible with Council's Strategic planning policies.

Access, Transport and Traffic

The applicant has provided adequate parking on-site with a minor variation in the HRV car parking space to be suitable for a SRV.

Infrastructure Charges

The following charges have been calculated for the proposed office and café.

Office Space (Office Work Area & Meeting/Gathering) = 349.6m².

Cafe/Event = 67.7m² plus Amenities (Female WC, Male WC, Shower) = 23.9m².

Section 64 Charges

Water

$(349.6\text{m}^2 \times 0.004\text{ET}) + (91.6 \times 0.008) = 2.1312\text{ET} - 2\text{ET}$ (credit)

= 0.1312ET chargeable

Sewer

$(349.6\text{m}^2 \times 0.006\text{ET}) + (91.6 \times 0.013) = 3.2884\text{ET} - 2\text{ET}$ (credit)

= 1.2884ET chargeable

S.94 Contribution Plan No. 4 - TRCP

Commercial premises (office) rate = 16 trips per 100m²/GLA

Refreshment room (café) rate = 60 trips per 100m²/GLA

= $349.6 \times 16/100 = 55.936$ trips

= 67.7 (GLA) $\times 60/100 = 40.62$ trips

96.556 trips - 13trips (credit) = 83.556

40% employment generating discount

83.556 - 40% = 50.1336 trips chargeable

S.94 Contribution Plan No. 18 - Council Admin

No contribution levy under this plan is necessary as the charges for this commercial development do not equate higher than the existing two lot/house credit.

(c) Suitability of the site for the development

Surrounding Land Uses/Development

As stated previously in this report the development will not have an unacceptable impact on the adjoining land uses, community, locality or area of the Tweed Coast. The development is consistent with the character of the Murwillumbah area and will not have a detrimental impact upon the character of the locality and will provide for renewal of the South Murwillumbah area. Further to this, the Tweed Retail Strategy, Retail Matrix states that a further complex containing Commercial tenancies is acceptable and could be accommodated within Murwillumbah. It is considered the catchment area for the proposal as outlined above is ample to maintain a viable commercial building that will not reduce the capacity of the existing Murwillumbah Town Centre.

Amenity

It is considered that the development will not impact on the adjoining residential properties in terms of plant noise lighting etc. Appropriate conditions of consent have been imposed that address plant noise, lighting, construction hours, sediment and erosion control, dust etc.

The proposed development has specified the proposed hours of operation:

7 days per week

Office: 7am to 10pm Mon-Sat

7am to 8pm Sun & PHs

Cafe/Event: 8am to 8pm All days

Given the nature of the likely activities, the stated hours are considered unlikely to have unacceptable amenity impacts.

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

Public Notification

The proposed development was advertised for a period of 30 days from Wednesday 4 December 2013 to Monday 6 January 2014. During this period there was one submission received in the form of a petition with 22 signatures. The issues are outlined below:

Summary of Submissions	Response
<p>1. Amenity</p>	<p>Due to the commercial (office) nature of the development it is considered that there will be minimal impacts relating to noise, amenity or environmental impacts applicable in this instance.</p> <p>The refreshment room (café) is located in the north-western portion of the site facing away from the residential blocks to the south east. A Noise Impact Assessment was submitted with the application which provides recommendations to ensure the amenity of the area is maintained. Council's Environmental Health Unit has assessed the report and has accepted the recommendations. These will be provided within the recommended conditions.</p> <p>The proposed development has specified the proposed hours of operation:</p> <p>7 days per week</p> <p><u>Office:</u> 7am to 10pm Mon-Sat and 7am to 8pm Sun & Public Holidays.</p> <p><u>Cafe/Event:</u> 8am to 8pm All days</p> <p>Given the nature of the likely activities, the stated hours are considered unlikely to have unacceptable amenity impacts.</p> <p>It is therefore considered that the proposed development does not</p>

	warrant refusal in this instance.
2. Flooding	<p>The proposed development was referred to Council's Flooding Engineer who has provided the following assessment in relation to DCP Section A3:</p> <p>The design flood level is RL 7.0m AHD and Council's GIS indicates a ground level of approximately RL 3.0m AHD. The application proposes a floor level of RL 7.0m AHD.</p> <p>The site is in a high flow area and Council's DCP Section A3 limits development to 50% of the site area with a maximum obstruction of 50% of any cross sectional area perpendicular to the direction of flow, below the design flood level. The enclosed areas underneath the first floor level appear to be less than 50% of the site area and less than 50% of the cross sectional area.</p> <p>There are no habitable areas proposed so no minimum floor level applies but obviously the floor level of the function room needs to be RL 7.0m AHD or higher to avoid exceeding the 50% rule below the design flood level.</p> <p>Based on the information provided above, the proposed development is consistent with Council's Plans.</p> <p>It is therefore considered that the proposed development does not warrant refusal in this instance.</p>
3. Car Parking/Traffic	<p>The applicant is required to provide a total of 20 spaces. The applicant has provided 21 spaces as per Council's Development Control Plan A2. As the applicant has provided a total of 21 spaces the proposal is considered to be compliant with the number required.</p> <p>It is therefore considered that the proposed development does not warrant refusal in this instance.</p>

Public Authority Submissions Comment

The proposed development was referred to the Department of Primary Industries - Office of Water as a controlled activity approval under the Water Management Act 2000 is required. The Office of Water responded on 4 December 2013 with General Terms of Approval to be placed in the recommendations.

(e) Public interest

The proposed commercial office building and refreshment room (café) is considered consistent with the public interest as it seeks to utilise and revitalise a currently under utilised parcel of land within a designated commercial precinct of Murwillumbah.

OPTIONS:

That Council:

1. Approves the application, subject to the recommended conditions of consent; or
2. Refuses the application, providing reasons.

Council officers recommend Option 1.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposed development is not considered to result in adverse cumulative impacts, subject to compliance with conditions of consent. It is therefore considered the site is suitable for the development and warrants approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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7 [PR-PC] Development Application DA13/0577 for a 88 Lot Subdivision - Stages 15 to 18 Seabreeze Estate at Lot 1147 DP 1115395 Seabreeze Boulevard, Pottsville

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0577 Pt3



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council has received a development application for an 88 lot subdivision to be undertaken in four stages, nominated as Stages 15 to 18 (the Stage numbering being an extension of the previously approved and constructed Stages under the prior consent K99/1837).

The subject site is described as Lot 1147 DP 1115395 and has an area of 14.98 hectares and a frontage to Seabreeze Boulevard, Urunga Drive, Lennox Circuit and Tom Merchant Drive. The site is located on the northern side of the completed Seabreeze Estate. Adjoining land to the north comprises cane fields and the Koala Beach sports fields. To the east are the Seabreeze Estate sports fields and to the south and west are existing residential stages of Seabreeze Estate.

The proposed subdivision relates to the development of Stages 15 to 18 of the Seabreeze Estate and will comprise the following key elements:

- Stage 15: 24 lots;
- Stage 16: 14 detached dwelling lots;
- Stage 17: 44 lots, 1 child care centre (Lot 1702), 2 drainage reserves (Lots 1748 and 1749) and 1 park (lot 1701);
- Stage 18: 1 public reserve (Lot 1803) and 1 lot (Lot 1802) for a possible future school site. If the lot is not developed as a school, a separate development application will be lodged for the 65 lot subdivision layout over Stage 18 (generally as indicated by the broken lines on the application plans).

The following table provides a summary of the various lots in each Stage:

Lot Summary					
Stage	Residential lots	Public Reserve lots	Drainage reserve lots	Other	Total
15	24	-	-	-	24
16	14	-	-	-	14
17	44	1	2	1	48
18	-	1	-	1	2
Total	73	2	2	2	88

Please note that if the school site (proposed Lot 1802) does not eventuate, a separate application for a further 65 lot subdivision will be required. Conceptual subdivision developments have been submitted with this application to demonstrate and verify the suitability and compatibility of a 65 lot residential subdivision however the development of Lot 1802 does not form part of this consent.

Minor landform changes are proposed for road construction and lot shaping as well as the provision of all underground infrastructure including water, sewer, power and telephone services. Proposed Lot 1748 would comprise an existing open drainage channel and is to be dedicated as a drainage reserve. No works are proposed in Lot 1748, with the exception of possible connection of the proposed stormwater drainage within Stage 17.

Under the provisions of the Tweed Local Environmental Plan (LEP) 2000 the site is zoned 2(a) Low Density Residential with the northern part of Lot 1748 being zoned 7(l) Environmental Protection. Under the provisions of the Tweed LEP 2014, the zoning is closely aligned being R2 Low Density Residential and E2 Environmental Conservation. Please note that whilst the Tweed LEP 2014 was formally gazetted on 4 April 2014, the development application has been considered under the provisions of the Tweed LEP 2000 as the application was lodged prior to this date, on 20 November 2013 although a detailed assessment in respect of LEP 2014 has also been carried out.

The applicant was required to provide clarification in respect to the following matters: connectivity (several dead end roads and cul-de-sacs); provision of open space; housing density and orientation; clarification in respect to the town centre location and the future intent of development on Lots 1701 and 1702; the provision of a high level flood evacuation route to land above the Probable Maximum Flood (PMF) level and assurance that all roads provide access to flood free land.

Further information was also required in relation to: site regrading to ensure that landforming amendments to address flooding issues were satisfactory; the construction and operational phase of stormwater management requirements; the proposed future school site and discharge to existing drainage reserves around its boundary; sewer and water supply systems; contaminated land; surrounding land uses and buffers to agricultural lands and sports field; park embellishment and landscaping (street trees and lighting), particularly in respect of proposed Lot 1803 (Fig Tree Park) and in regard to the health of the *Ficus virens var. Sublanceolata* (White Fig).

The proposed subdivision is Integrated Development under Section 100B of the Rural Fires Act and under Sections 89, 90 and 91 of the Water Management Act 2000. Both the RFS and the Office of Water have provided General Terms of Approval that will be applied to any Development Consent.

The application was advertised for a period of 30 days from Wednesday 23 October 2013 to Friday 22 November 2013. One submission was received within this time as detailed within this report.

The applicant provided a response to the matters raised within Council's request for further information on 21 March 2014. Council Officers have considered the amended details and consider that the majority of issues raised have been satisfactorily addressed.

Having regard to the relevant statutory controls it is considered that the proposed 88 lot subdivision may be approved subject to a number of conditions of consent.

RECOMMENDATION:

That Development Application DA13/0577 for a 88 lot subdivision - stages 15 to 18 Seabreeze Estate at Lot 1147 DP 1115395; Seabreeze Boulevard, Pottsville 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:**
 - **17850 B Revision E (Proposed Subdivision - Stages 15, 16 & 18);**
 - **17683 B Revision C (Stage 17)**

Prepared by B & P Surveys and dated 29 January 2014, except where varied by the conditions of this consent.

[GEN0005]

2. **The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.**

[GEN0045]

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

[GEN0125]

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

[GEN0135]

5. **The applicant shall arrange for a site inspection to be carried out with Council's Environmental Health Officer and key representatives involved in the dewatering activity including consultants and personnel responsible under any Dewatering Management Plan approved by Council's General Manager or his delegate. Such site inspection shall be arranged and carried out prior to the commencement of any offsite dewatering activity occurring.**

[GEN0180]

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

[GENNS01]

7. The development must meet the Council Sewer - Works in Proximity Policy, regarding construction on or near the existing sewer. This includes landscaping and fencing near sewers and manholes.
8. The sewer layout plan submitted in this application (received via email from DAC on Friday 21 March, Plans SK4055 to SK4057) is considered to be preliminary and is subject to change to meet Council sewer design requirements.
9. The small unmarked area of land adjacent to the western side of Lot 1601, fronting Lennox Circuit, is to be incorporated as part of Lot 1601.
10. No roadworks are required in Tom Merchant Drive for the frontage of Lot 1702. The applicant is however advised that road frontage works will be necessary in conjunction with any future development proposal over that lot, and will be imposed accordingly at that time.

This is an advisory condition only.

11. The proposed Drainage Reserve adjoining the northern boundaries of Lots 1802 and 1803 has not been provided with a lot number, nor annexed to any particular 'Stage'.

This lot is to be dedicated to Council as Drainage Reserve in conjunction with the first Stage being released.

12. The relocated overland flowpath depicted on plan 'Amended Overland Flow Sketch' dated 2.9.2013 is not to be implemented as part of this development consent.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

13. Prior to the issue of a Civil Construction Certificate for each stage of the project, a Construction Management Plan shall be submitted to and approved by the Principle Certifying Authority. A copy of the approved plan shall be submitted to Council. The Plan shall address, but not be limited to, the following matters where relevant:
 - a) Hours of work;
 - b) Contact details of site manager;
 - c) Traffic and pedestrian management;
 - d) Noise and vibration management;
 - e) Construction waste management;
 - f) Erosion and sediment control; and,
 - g) Flora and fauna management.

Where construction work is to be undertaken in stages, the Proponent may, subject to agreement with the Principle Certifying Authority, stage the submission of the Construction Management Plan consistent with the staging of activities relating to that work. The Proponent shall submit a copy of the approved plan to Council.

[PCC0125]

14. All Construction Certificate Applications for subdivision works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the proposed development, prepared in accordance with Section D7.07 of Council's *Development Design Specification D7 - Stormwater Quality*. Such plans are to include measures, monitoring and adaptive management actions to ensure appropriate stormwater quality outcomes are achieved.

Permanent stormwater quality treatment shall comply with the *Tweed Urban Stormwater Quality Management Plan* and Council's *Development Design Specification D7 - Stormwater Quality*. Variations to these standards shall only be accepted where they are supported by best practice water sensitive urban design principles entailed in the "Water By Design" guidelines (being a program of the South East Queensland Healthy Waterways Partnership).

Treatment basins must be provided with a facility to bypass major stormwater flow events (greater than the Q3 month storm event), or otherwise cater for major storm flows without disturbing captured pollutants or damaging the structure.

Proposed treatment measures other than "deemed to comply" measures as specified in Council's *Development Design Specification D7*, must be supported by engineering calculations, including MUSIC modelling, to confirm that acceptable capacity and efficiency is achieved.

An Operational Manual for all stormwater quality control devices must be provided as part of the SWMP. This manual must be updated as required during the Defects Liability ("On-Maintenance") Period for the device and the final version of the manual must be handed over to Council at the formal commissioning of the device, at the completion of the Defects Liability Period ("Off Maintenance").

[PCC0165]

15. Proposed Lot 1803 shall be suitably embellished at no cost to Council including grassing, landscaping, seating, playground equipment and shade cover (as may be required) in accordance with detailed plans to accompany the Construction Certificate application. Where play equipment is installed a minimum area of 10m around the equipment is to be turfed and the remaining area seeded.

Where a developer pays Council to acquire and install play equipment, Council will NOT install the equipment until a minimum of 20% of the lots in that stage of the development are occupied. The embellishment shall be completed prior to the issue of a Subdivision Certificate.

[PCC0235]

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

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

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

[PCC0275]

17. **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]

18. **Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.**

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.**
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.**
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.**
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.**

[PCC0455]

19. **Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, Tweed Shire Council Development Control Plan Part A1 and Councils Development Design and Construction Specifications.**

Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

[PCC0475]

20. **All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.**

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

21. Design detail shall be provided to address the flood compatibility of the proposed subdivision including the following specific matters:
- (a) Design flood levels to be adopted for each subdivision Stage are:
 - STAGE 15 = RL 3.1m AHD
 - STAGE 16 = RL 3.2m AHD
 - STAGE 17 = RL 2.8m AHD
 - STAGE 18 = RL 3.1m AHD
 - (b) All residential allotments shall be filled to a minimum of the design flood level.
 - (c) All residential allotments shall be provided with a high level flood evacuation route in accordance with Development Control Plan Section A3 - Development of Flood Liable Land.
 - (d) Where batters exceeding 0.6m in height are required along road frontages to achieve the required fill level, typical driveway designs shall be provided with the construction certificate to ensure complaint vehicular access in accordance with the Driveway Access to Property - Design Specification.
[PCC0705]
22. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.
[PCC0865]
23. The proponent shall submit plans and specifications with an application for construction certificate for the following subdivision works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

URBAN ROADS and INFRASTRUCTURE

- (a) Construction of roads and all necessary stormwater, sewer, water, telecommunications and electrical infrastructure for each Stage, generally as nominated in the plans by Bradlees submitted to Council on 21.3.2014.

OTHER

- (b) Review and amend the finished surface levels for areas within and separating Stages 15 and 16 in order to eliminate or reduce the extent of proposed retaining walls. This will need to be addressed as part of the construction certificate submissions for those Stages.
- (c) All retaining walls are to be wholly contained within private lots.

- (d) The retaining wall shown within the western portion of Lot 1802 is not approved by this consent. Similarly, the proposed retaining walls bordering the existing Drainage Reserve and SPS site are unnecessary, unless required to facilitate road construction, provisioning of necessary public infrastructure, or smooth merging with future ground levels for Lot 1607.
- (e) The proposed road from Stage 15 that intersects with Lennox Circuit appears to have inappropriate sight distance for the posted 50km/h speed limit on these roads.

Should a 40km/h safe speed limit be required for satisfactory implementation, then appropriate traffic calming devices would be required, in accordance with AS1742.13 - Local Area Traffic Management. Full details are to be provided with the construction certificate application for Stage 15.

- (f) The sewer provisioning proposal is considered as being conceptual only. There are numerous bends and changes of angle (in the sewer lines) depicted without a sewer manhole, which must be rectified. Full design detail is to be submitted with construction certificate applications for all Stages.
- (g) All new roads are to be provided with a concrete footpath.
- (h) Provision of pedestrian/cycleway connectivity between existing infrastructure and Lot 1803 (proposed Public Reserve) is to be addressed with any approval being issued for works to be undertaken on this lot.

[PCC0875]

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

[PCC0935]

25. Prior to the issue of a Construction Certificate for subdivision works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works

- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations*

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

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

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

[PCC1105]

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

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

[PCC1155]

28. Where water is to be drawn from Councils reticulated system, the proponent shall:

- **Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.**
- **Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.**
- **Payment of relevant fees in accordance with Councils adopted fees and charges.**

[PCC1205]

29. The sewer layout plans provided within DA13/0577 do not meet the TSC Subdivision Design Standards for Sewer - D12 and prior to construction certificate, new plans meeting D12 must be provided.

30. Sewer plans provided within DA13/0577 are considered indicative only and updated plans meeting D12 must be provided.

31. Internal falls through manholes must be provided as per WSA02-2002.

32. Self cleansing flows through sewer reticulation must meet TSC Subdivision Design Standards for Sewer - D12.

33. Where proposed gravity sewer will not connect into existing stub, a new sewer connection may be required.

34. Locations of maintenance structures must meet D12.08.1 (d)

35. The construction certificate application shall include engineering calculations that confirm that the stormwater drainage system in Lennox Circuit has sufficient capacity to accept additional stormwater flows from Road 1, in accordance with the requirements of Development Design Specification D5 - Stormwater Drainage Design, or provide an alternate stormwater design.

36. The landforming plans for Stage 17 shall include the provision of trafficable maintenance paths within proposed drainage reserve allotment 1748 and 1749, to the satisfaction of the Director Engineering.

[PCCNS01]

37. A detailed landscape plan prepared by a qualified landscape architect must be submitted for all Public Reserves and roads to be dedicated to Council, including but not limited to areas of casual open space, structured open space, cycleways, pedestrian walkways and streetscapes prior to the issue of a Construction Certificate. Such a plan must be approved by the Manager, Recreation Services, Tweed Shire Council and include embellishments such as listed in Councils Subdivision Manual (Section A5 of the Tweed Development Control Plan) and Development Design Specification (D14) and related Standard Drawings and include grassing, landscaping, seating, park activation areas, playground equipment and shade cover. The plans must provide slope information, indicate all underground services and indicate any implications or constraints at or beyond the boundary that will affect ongoing management of the public land.

38. Any playgrounds included in landscape plans must comply with the guidelines established in the 'Playground Audit for Tweed Shire Council' (July 2009). Appendix 3 of this establishes a procedure for assessing nearby hazards and mitigation measures. New subdivisions designed after development of these guidelines must ensure no playground facility has a Facility Risk Rating exceeding 13 as defined in Table 3A7 of that document.
39. The plants listed in landscape plans are to include no noxious or environmental weed species, and utilise wherever practical species native to the local area. Such species are described in Tweed Shire Council's Native Species Planting Guide.
- [PCCNS02]
40. A site specific acid sulfate soil management plan shall be prepared in accordance with the *NSW Acid Sulfate Soil Manual, ASSMAC 1998* to the satisfaction of the General Manager or delegate. The plan shall include but not be limited to site investigations, treatment and validation measures and reporting.
- [PCCNS02]
41. The applicant must submit to Council for approval by Council's General Manager or his delegate prior to the issue of a construction certificate a detailed landscape plan for Lot 1803 'Proposed Public Reserve' as shown on the approved subdivision layout plan. The detailed landscape plan must:
- a. Be prepared by a qualified landscape architect or similar landscape design professional;
 - b. Be in general accordance with the *Amended Statement of Landscape Intent Seabreeze Residential Estate Stages 15-18 Issue C dated 13 March 2014 prepared by Boyds Bay Planning*;
 - c. Reflect the approved layout (including any amendments to that layout required by these conditions) and the conditions of this consent;
 - d. Comply with *Tweed Shire Council Development Design Specification D14 Landscaping Public Space Version 1.3*;
 - e. Contain no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species; and
 - f. Be consistent with arboricultural management recommendations detailed in the approved tree management plan for the *Ficus virens var. sublanceolata* (White Fig) or any future management recommendations current at the time of detailed landscape plan preparation that has been approved by Council's General Manager or delegate.

[PCCNS03]

42. An amended Dewatering Management Plan shall be prepared and submitted to Council's General Manager or his delegate for consideration and approval which details the following:
- a) A site plan drawn to scale which indicates the extent of the excavation area and estimated zone of influence of the dewatering activity relative to any adjoining buildings together with an assessment of any impacts likely to occur to any adjoining buildings as a result of the dewatering activities;
 - b) The location to be indicated on the site plan of the area that will be utilised for the positioning of any treatment tank or sedimentation pond on the site including any reserve area to be used for such purpose in the event of the need for additional treatment facilities to be incorporated on the site;
 - c) Details of the proposed method of mechanical aeration to be used in the event that it is necessary to aerate the groundwater to achieve an acceptable Dissolved Oxygen level prior to the offsite discharge of groundwater and where this will be incorporated on the site;
 - d) The provision of written advice from the operator of any on site groundwater treatment system stating that the system to be used will be able to treat the groundwater to the required treatment level prior to discharge.

Please note - particular attention is to be given to achieving the required detention times prior to discharge of the groundwater. Advice that the system is simply capable of achieving the necessary treatment will not be acceptable.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

43. 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]
44. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
 - (c) WorkCover Regulations 2000

[PCW0025]

45. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

46. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate.

[PCW0375]

47. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

48. Subdivision work in accordance with a development consent must not be commenced until:

(a) a Construction Certificate for the subdivision work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

(b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
- (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) to certify the compliance of the completed works. The SWAC must be accredited in accordance with Tweed Shire Council DCP Part A5 - Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

C4: Accredited Certifier - Stormwater management facilities construction compliance

C6: Accredited Certifier - Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

Note: For subdivisions creating 5 new allotments or less, OR the value of new public infrastructure is less than \$30,000, then the SWAC may be substituted for an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.

[PCW0815]

49. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

50. 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 to the satisfaction of the Principal Certifying Authority. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

[PCW0985]

51. 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]

52. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges prior to commencing any building works.

[PCW1135]

DURING CONSTRUCTION

53. 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]

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

[DUR0025]

55. 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]

56. 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]

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

[DUR0225]

58. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

59. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

[DUR0675]

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

[DUR0745]

61. During filling operations:

- **No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**
- **All fill and cut batters shall be contained wholly within the subject land.**

and upon completion,

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

[DUR0755]

62. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

64. 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]

65. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

66. 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]
67. 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]
68. 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]
69. All works shall be carried out in accordance with the Approved Acid Sulfate Soils Management Plan.
- [DUR1065]
70. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
- [DUR1795]
71. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
 - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
 - (c) That site fill areas have been compacted to the specified standard.
 - (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
- [DUR1805]
72. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
-

- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

73. 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]

74. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, cycleways - formwork/reinforcement
- (h) Final Practical Inspection - on maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final Practical Inspection - on maintenance
- (i) Off maintenance

Stormwater Quality Control Devices (other than proprietary devices)

For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media
- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

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

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

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

[DUR1895]

75. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[DUR1955]

76. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

77. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

78. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

79. Drainage Reserve

- (a) The proposed drainage reserves are to be dedicated to Council at no cost.
- (b) An accurate plan of the proposed drainage reserves shall be submitted to Council 60 days prior to lodgment of the relevant Application for Subdivision Certificate (form 13) to allow the land to be classified.

[DUR2295]

80. Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.

[DUR2315]

81. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

82. 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]

83. All water drawn from Councils reticulated system shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[DUR2575]

84. Dust and Erosion Management

(a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed areas are to be topsoiled and seeded immediately to protect them from water and wind erosion.

(b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.

(c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

[DUR2825]

85. 60 days prior to lodgment of Application for Subdivision Certificate, an accurate plan of the subdivision is to be submitted to Council indicating all public land to be dedicated to Council (including Drainage Reserves, Sewer Pump Stations, Parks, Sports Fields, Conservation Areas and other lands as defined and excluding Roads, etc). The function of all such public land is to be indicated to allow classification of the land parcel by Council as either Operational or Community Land, as detailed in the Local Government Act 1993.

[DURNS01]

86. No earthmoving equipment shall operate within Lot 1803 'Proposed Public Reserve' (as shown on the approved subdivision layout plan) for the purpose of retaining wall construction or any other civil works unless otherwise approved by Council's General Manager or delegate.

87. Landscaping of the site shall be carried out in accordance with the submitted / approved landscaping plans.
88. The applicant must complete all remedial tree management works on the *Ficus virens var. sublancoolata* (White Fig) situated within Lot 1803 'Proposed Public Reserve' (as shown on the approved subdivision layout) in accordance with Section 3 titled 'Observations and Works Requirements' of the approved tree management plan being *Tree Assessment and Management Plan Seabreeze Estate Pottsville dated 04 February 2014 prepared by Boyds Bay Environmental Services* during the first of any stage of the development approved by way of this consent. A project arborist who holds a minimum Australian Qualification Framework (AQF) Level 5 Diploma of Horticulture (Arboriculture) qualification must be engaged to undertake arboricultural work stipulated in the approved tree management plan.
89. All works adjacent to or within thirty (30) metres of the *Ficus virens var. sublancoolata* (White Fig) situated within Lot 1803 'Proposed Public Reserve' (as shown on the approved subdivision layout) onsite must be undertaken in accordance with the approved tree management plan being *Tree Assessment and Management Plan Seabreeze Estate Pottsville dated 04 February 2014 prepared by Boyds Bay Environmental Services* to ensure the is retained and protected. A project arborist who holds a minimum Australian Qualification Framework (AQF) Level 5 Diploma of Horticulture (Arboriculture) qualification must be engaged to undertake arboricultural work stipulated in the approved tree management plan. The applicant must comply with any directions given by the project arborist in respect to tree management measures to be employed onsite during construction to minimise/avoid any adverse impacts.

[DURNS02]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

90. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.
91. 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.

[PSC0005]

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Councils contributions sheet and 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:

Stage 15

Water DSP6:	23 ET @ \$12575 per ET	\$289,225
Sewer Hastings Point:	23 ET @ \$6042 per ET	\$138,966

Stage 16

Water DSP6:	14 ET @ \$12575 per ET	\$176,050
Sewer Hastings Point:	14 ET @ \$6042 per ET	\$84,588

Stage 17

Water DSP6:	45 ET @ \$12575 per ET	\$565,875
Sewer Hastings Point:	45 ET @ \$6042 per ET	\$271,890

Stage 18

Water DSP6:	1 ET @ \$12575 per ET	\$12,575
Sewer Hastings Point:	1 ET @ \$6042 per ET	\$6,042

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

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

[PSC0165]

92. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979, a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

Stage 15

(a) Tweed Road Contribution Plan: 149.5 Trips @ \$1330 per Trips (\$1,284 base rate + \$46 indexation) S94 Plan No. 4 Sector8_4	\$198,835
(b) Shirewide Library Facilities: 23 ET @ \$838 per ET (\$792 base rate + \$46 indexation) S94 Plan No. 11	\$19,274
(c) Bus Shelters: 23 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	\$1,472
(d) Eviron Cemetery: 23 ET @ \$123 per ET (\$101 base rate + \$22 indexation) S94 Plan No. 13	\$2,829
(e) Community Facilities (Tweed Coast - North) 23 ET @ \$1389 per ET (\$1,305.60 base rate + \$83.40 indexation) S94 Plan No. 15	\$31,947
(f) Extensions to Council Administration Offices & Technical Support Facilities 23 ET @ \$1860.31 per ET (\$1,759.90 base rate + \$100.41 indexation) S94 Plan No. 18	\$42,787.13
(g) Cycleways: 23 ET @ \$473 per ET (\$447 base rate + \$26 indexation) S94 Plan No. 22	\$10,879
(h) Regional Open Space (Casual) 23 ET @ \$1091 per ET (\$1,031 base rate + \$60 indexation) S94 Plan No. 26	\$25,093
(i) Regional Open Space (Structured): 23 ET @ \$3830 per ET (\$3,619 base rate + \$211 indexation) S94 Plan No. 26	\$88,090

Stage 16

- (a) **Tweed Road Contribution Plan:**
91 Trips @ \$1330 per Trips **\$121,030**
(\$1,284 base rate + \$46 indexation)
S94 Plan No. 4
Sector8_4
- (b) **Shirewide Library Facilities:**
14 ET @ \$838 per ET **\$11,732**
(\$792 base rate + \$46 indexation)
S94 Plan No. 11
- (c) **Bus Shelters:**
14 ET @ \$64 per ET **\$896**
(\$60 base rate + \$4 indexation)
S94 Plan No. 12
- (d) **Eviron Cemetery:**
14 ET @ \$123 per ET **\$1,722**
(\$101 base rate + \$22 indexation)
S94 Plan No. 13
- (e) **Community Facilities (Tweed Coast - North)**
14 ET @ \$1389 per ET **\$19,446**
(\$1,305.60 base rate + \$83.40 indexation)
S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
& Technical Support Facilities**
14 ET @ \$1860.31 per ET **\$26,044.34**
(\$1,759.90 base rate + \$100.41 indexation)
S94 Plan No. 18
- (g) **Cycleways:**
14 ET @ \$473 per ET **\$6,622**
(\$447 base rate + \$26 indexation)
S94 Plan No. 22
- (h) **Regional Open Space (Casual)**
14 ET @ \$1091 per ET **\$15,274**
(\$1,031 base rate + \$60 indexation)
S94 Plan No. 26
- (i) **Regional Open Space (Structured):**
14 ET @ \$3830 per ET **\$53,620**
(\$3,619 base rate + \$211 indexation)
S94 Plan No. 26

Stage 17

<p>(a) Tweed Road Contribution Plan: 292.5 Trips @ \$1330 per Trips (\$1,284 base rate + \$46 indexation) S94 Plan No. 4 Sector8_4</p>	<p>\$389,025</p>
<p>(b) Shirewide Library Facilities: 45 ET @ \$838 per ET (\$792 base rate + \$46 indexation) S94 Plan No. 11</p>	<p>\$37,710</p>
<p>(c) Bus Shelters: 45 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12</p>	<p>\$2,880</p>
<p>(d) Eviron Cemetery: 45 ET @ \$123 per ET (\$101 base rate + \$22 indexation) S94 Plan No. 13</p>	<p>\$5,535</p>
<p>(e) Community Facilities (Tweed Coast - North) 45 ET @ \$1389 per ET (\$1,305.60 base rate + \$83.40 indexation) S94 Plan No. 15</p>	<p>\$62,505</p>
<p>(f) Extensions to Council Administration Offices & Technical Support Facilities 45 ET @ \$1860.31 per ET (\$1,759.90 base rate + \$100.41 indexation) S94 Plan No. 18</p>	<p>\$83,713.95</p>
<p>(g) Cycleways: 45 ET @ \$473 per ET (\$447 base rate + \$26 indexation) S94 Plan No. 22</p>	<p>\$21,285</p>
<p>(h) Regional Open Space (Casual) 45 ET @ \$1091 per ET (\$1,031 base rate + \$60 indexation) S94 Plan No. 26</p>	<p>\$49,095</p>
<p>(i) Regional Open Space (Structured): 45 ET @ \$3830 per ET (\$3,619 base rate + \$211 indexation) S94 Plan No. 26</p>	<p>\$172,350</p>

Stage 18

- (a) **Tweed Road Contribution Plan:**
6.5 Trips @ \$1330 per Trips **\$8,645**
(\$1,284 base rate + \$46 indexation)
S94 Plan No. 4
Sector8_4
- (b) **Shirewide Library Facilities:**
1 ET @ \$838 per ET **\$838**
(\$792 base rate + \$46 indexation)
S94 Plan No. 11
- (c) **Bus Shelters:**
1 ET @ \$64 per ET **\$64**
(\$60 base rate + \$4 indexation)
S94 Plan No. 12
- (d) **Eviron Cemetery:**
1 ET @ \$123 per ET **\$123**
(\$101 base rate + \$22 indexation)
S94 Plan No. 13
- (e) **Community Facilities (Tweed Coast - North)**
1 ET @ \$1389 per ET **\$1,389**
(\$1,305.60 base rate + \$83.40 indexation)
S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
& Technical Support Facilities**
1 ET @ \$1860.31 per ET **\$1,860.31**
(\$1,759.90 base rate + \$100.41 indexation)
S94 Plan No. 18
- (g) **Cycleways:**
1 ET @ \$473 per ET **\$473**
(\$447 base rate + \$26 indexation)
S94 Plan No. 22
- (h) **Regional Open Space (Casual)**
1 ET @ \$1091 per ET **\$1,091**
(\$1,031 base rate + \$60 indexation)
S94 Plan No. 26
- (i) **Regional Open Space (Structured):**
1 ET @ \$3830 per ET **\$3,830**
(\$3,619 base rate + \$211 indexation)
S94 Plan No. 26

[PSC0175]

93. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of the Subdivision Certificate for each Stage of the subdivision hereby approved. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

[PSC0185]

94. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the plan of subdivision is registered.

It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

95. Prior to the issue of a Subdivision Certificate, a performance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

96. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

97. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

98. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.

Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[PSC0785]

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

[PSC0825]

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

[PSC0830]

101. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property;
- (b) Identify all allotments to be created as dual occupancies;
- (c) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity;
- (d) Extinguishment of superfluous Right Of Carriageways that were previously created to provide temporary turning areas for refuse vehicles and the general public (relevant to interface areas between adjoining Stages), but are now no longer required;
- (e) A designated visitor parking space is to be created within Lot 1718 due to its narrow street frontage, and is to be implemented in conjunction with construction of a dwelling on the site. An appropriate Restriction on Title is to be created over Lot 1718 accordingly;

- (f) Easements and Restrictions as required for all retaining walls - both new and existing;
- (g) Creation of a Drainage Easement and associated Restriction on Title over Lot 1607, to cater for a relief overland stormwater flowpath.

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]

102. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each new lot in the deposited plan.

[PSC0845]

103. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

104. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

105. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:

- (a) Compliance Certificate - Roads**
- (b) Compliance Certificate - Water Reticulation**
- (c) Compliance Certificate - Sewerage Reticulation**
- (d) Compliance Certificate - Drainage**

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.**
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".**

[PSC0915]

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

[PSC0925]

107. A formal asset handover of all water quality control devices is to be implemented at the completion of the maintenance period ("Off Maintenance"), whereby all relevant stakeholders will inspect the device and be issued with a current operational manual for the device.

[PSC1025]

108. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and gravity sewerage systems installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

109. Prior to the release of the subdivision certificates for Stage 15 (or the first Stage being released) and Stage 17, the proponent shall:

- (a) Include on the Plan of Subdivision provision for dedication of the drainage reserves at no cost to Council.**

- (b) Submit an accurate plan of the proposed drainage reserves to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.

[PSC1075]

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

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

[PSC1115]

111. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply to the front boundary of each allotment has been completed.

[PSC1165]

112. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

113. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the Developer is required (at the Developer's expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO's Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services.

[PSC1205]

114. Prior to dedication of the proposed drainage reserves (Lot 1748 and Lot 1749), the developer shall undertake maintenance on the overland flow paths to reinstate them to their original design capacity.

[PSCNS01]

115. The Plan of Subdivision accompanying the Subdivision Certificate for Stages 17 and 18 shall include dedication of the relevant public reserves at no cost to Council. Prior to dedication, the public reserves shall be embellished in accordance with the approved detailed landscape plans, at no cost to Council.

The exception to this is playground equipment and softfall. Council will undertake the installation when 20% or more of the relevant stage's allotments are occupied. The developer must provide the appropriate level area for the play equipment with a minimum fall of 1:100, and a bank guarantee or cash contribution equivalent to the value of such items.

[PSCNS02]

116. The developer is to undertake care and maintenance operations on all streetscapes, casual open space and structured open space for a minimum of 12 months after the Subdivision is registered with the Land and Property Management Authority (Land Titles Office). This is the establishment period for new plantings. Such maintenance will include all soft landscaping, particularly mowing and weed control. Any power and water consumption costs during this period must also be met by the developer.

117. A bond to ensure acceptable plant establishment and landscaping performance at time of handover to Council shall be lodged by the Developer prior to the issue of any Subdivision Certificate. The bond shall be held by Council for a minimum period of 12 months from the date of issue of the Subdivision Certificate (or longer if required by the approved Landscaping Plan) and may be utilised by Council during this period to undertake essential plant establishment or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

118. Prior to issue of a Subdivision Certificate, Work as Executed Plans (WAX) must be submitted for all landscaped casual and active open space. These must show all underground services, irrigation systems and the location of concrete paths, structures, other park infrastructure and garden bed outlines.

The plans are to be certified by a registered surveyor or consulting engineer.

Two categories of WAX plans are to be provided:

- a) The original approved plan with any variation to this indicated.
- b) Plan showing only the actual as constructed information,

The plans are to be submitted in the following formats:

- a) 2 paper copies of the same scale and format as the approved plan.
- b) A PDF version on CD or an approved medium.
- c) An electronic copy in DWG or DXF format on CD or an approved medium.

[PSCNS03]

119. A certification report is to be provided to Council prior to the issue of the first of any subdivision certificate from the project arborist confirming that all remedial tree management works on the *Ficus virens var. sublanceolata* (White Fig) have been successfully completed and provide an evaluation of the health of the tree and if necessary, include recommendations for any further arboricultural works to improve the health and long term viability of the tree.
120. All approved landscaping requirements must be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate.
121. The following restrictions apply to dog and cat ownership and control on all residential lots:
- a. Owners of dogs within the development shall have their yards fenced so as to securely contain a maximum of one (1) dog per allotment and the ownership of cats within the development shall be restricted to one de-sexed cat per allotment and such cats shall be restrained within the house or a secure night cage between the hours of 6.00pm and 6.00am.
 - b. No dog shall be registered without the construction of a dog-proof compound which must be approved by Council and the relevant fee paid by the applicant.
 - c. No owner can retrieve a dog that has been impounded unless they can demonstrate to Council they have a secure compound.

These ownership and control requirements shall be reinforced by a Restrictions as to User under Section 88B of the *Conveyancing Act, 1919-1964*.

[PSCNS04]

GENERAL TERMS OF APPROVAL UNDER THE WATER ACT 1912

1. Before commencing any works or using any existing works for the purpose of dewatering an approval under Part V of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
2. An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
3. When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.
4. All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.

5. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
6. The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
7. All vegetation clearing must be authorized under the Native Vegetation Conservation Act 1997, if applicable.
8. The approval to be granted may specify any precautions considered necessary to prevent pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
9. A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
10. The water extracted under the approval to be granted shall be used for the purpose of dewatering and for no other purpose. A proposed change in purpose will require a replacement license to be issued.
11. Works for construction of a bore must be completed within such period as specified by the Department.
12. Within two months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.
13. The Department has the right to vary the volumetric allocation of the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
14. The licensee must allow authorized officers of the Department, and it's authorized agents reasonable access to the licensed works with vehicles and equipment at any time for the purposes of:
 - 1) Inspecting the said work
 - 2) Taking samples of any water or material in the work and testing the samples
15. The licensee shall within 2 weeks of being notified install to the satisfaction of the Department in respect of location, type and construction an appliance(s) to measure the quantity of water extracted from the works. The appliance(s) to consist of either a measuring weir or weirs with automatic recorder, or meter or meter(s) of measurement as may be approved by the Department. The appliance(s) shall be maintained in good working order and condition. A record of all water extracted from the works shall be kept and supplied to the Department upon request. The licensee when requested must supply a test certificate as to the accuracy of the appliance(s) furnished either by the manufacturer or by some person duly qualified.

16. The authorised work shall not be used for discharge of polluted water into a river or lake otherwise than in accordance with the conditions of a licence granted under the protection of the Environment Operations Act 1997. A copy of the licence to discharge is to be provided to the Department.
17. The maximum term of this licence shall be twelve (12) months.
18. The authorised work shall not be used for the discharge of water unless the ph of the water is between 6.5 and 8.6, or the water has been treated to bring the ph to a level between 6.5 and 8.5 prior to discharge, or the water is discharged through the council's sewerage treatment system.
19. The licensee shall test the ph of any water extracted from the work prior to the commencement of discharge and at least twice daily thereafter and record the date, time and result of each test in the site log. A copy of the records of the ph testing is to be returned with the form 'AG'.
20. The work shall be managed in accordance with the constraints set out in an Acid Sulfate Soil Management Plan and Dewatering Management Plan approved by the Department.
21. The retention or holding pond must be lined with an impermeable material (such as clay or geotextile) to prevent seepage, leakage or infiltration of treated water.

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

1. The development proposal is to comply with the subdivision layout identified on the drawings prepared by B & P Surveys, numbered M31385 (17850B - Revision E) and M31385 (17683 - Revision C) dated 29 January 2014.
2. At the issue of subdivision certificate and in perpetuity the entire area of each newly created lot shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
3. Prior to issue of a subdivision certificate, a fire management plan is to be prepared for the drainage reserves (asset protection zones) that addresses the following requirements:
 - a) Contact person/department and details; and
 - b) Schedule and description of works for the construction of asset protection zones and their continued maintenance.
4. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
5. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006', except that a perimeter road is not required.

6. **Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.**
7. **General advice - consent authority to note**

Any future development application lodged for a 'special fire protection purpose' development within this subdivision will be subject to requirements as set out in 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: Newland Developers Pty Ltd
Owner: Metricon Qld Pty Ltd
Location: Lot 1147 DP 1115395 Seabreeze Boulevard, Pottsville
Zoning: 2(a) Low Density Residential and 7(l) Environmental Protection (Habitat)
Cost: \$4,683,802

Background:

Council has received a Development Application for Stages 15 to 18 of the Seabreeze Estate. This application relates to the final stages of the Seabreeze Estate.

The subject site is described as Lot 1147 DP 1115395 and has an area of 14.98 hectares and a frontage to Seabreeze Boulevard, Urunga Drive, Lennox Circuit and Tom Merchant Drive. The site is located on the northern side of the completed Seabreeze Estate. Adjoining land to the north comprises cane fields and the Koala Beach sports fields. To the east is the Seabreeze Estate sports fields and to the south and west are existing residential stages of Seabreeze Estate.



Snapshot of Site Plan showing location of proposed Stages 15 to 18

Stages 1 to 14 of Seabreeze Estate (comprising some 500 allotments) was originally approved under Development Consent No. K99/1837 in September 2000. The consent has been modified on a number of occasions since its original issue, the most recent being K99/1837.94 approved on 14 August 2012. Stage 1 to 14 has since been completed.

Land-forming of the site to achieve flood immunity was undertaken as part of the K99/1837 approval for Stages 1 to 14 of the Seabreeze Estate resulting in substantial filling to create a series of level development platforms and the construction of sections of retaining walls along the northern periphery of the subject site. As detailed within this report, several stormwater detention/treatment basins have been constructed to service the existing residential estate, largely occurring to the north of the site. Further, a flood levee was constructed along the northern periphery of the development to control flows.

The development application originally proposed an 89 lot subdivision however as a result of consultation within the development assessment process the application has since been amended. The development application now proposes an 88 lot subdivision, primarily on account of the deletion of proposed retail development lot (Lot 1701), and comprises the following key elements:

- Stage 15: 24 lots;
- Stage 16: 14 detached dwelling lots;
- Stage 17: 44 lots, 1 child care centre (Lot 1702), 2 drainage reserves (Lots 1748 and 1749) and 1 park (Lot 1701);
- Stage 18: 1 public reserve (Lot 1803) and 1 lot (Lot 1802) for a possible future school site. If the lot is not developed as a school, a separate development application will be lodged for the 65 lot subdivision layout over Stage 18 (generally as indicated by the broken lines on the application plans).

The proposed subdivision is summarised in the following table:

Lot Summary					
Stage	Residential lots	Public Reserve lots	Drainage reserve lots	Other	Total
15	24	-	-	-	24
16	14	-	-	-	14
17	44	1	2	1	48
18	-	1	-	1	2
Total	73	2	2	2	88

Minor landform changes are proposed for road construction and lot shaping as well as the provision of all underground infrastructure including water, sewer, power and telephone services. Proposed Lot 1748 would comprise an existing open drainage channel and is to be dedicated as a drainage reserve. No works are proposed in Lot 1748, with the exception of possible connection of the proposed stormwater drainage within Stage 17 (the northern part of Lot 1748 is zoned 7(l) Environmental Protection). The applicant advised that Lot 1748 would be dedicated subject to Council paying compensation, at market value, for the land on the basis that the drain is only required to address flooding issues arising from Council's inadequate flood modelling.

Following consideration of the proposed subdivision a further information request was sent to the applicant (dated 11 December 2013) to provide clarification in respect to a number of concerns, as detailed further within this report. A response to the further information request was received on 21 March 2014. Amendments have been proposed to the lot layout and lot configuration and additional details provided in respect to flooding, stormwater and drainage, landscaping and park embellishment.

The application was advertised for a period of 30 days from Wednesday 23 October 2013 to Friday 22 November 2013. One submission has been received that raised issues in relation to the proposed Town Centre Site B. As detailed further within this report, the original Town Centre Site A (on the corner of Seabreeze Boulevard and Watego Drive will remain as the nominated Town Centre site for the Seabreeze Estate. On this basis it is considered that the issues raised within the submission in respect to the proposed subdivision have been satisfactorily addressed.

As the proposed subdivision will result in the creation of more than 25 lots it would require a Master Plan under Clause 18 of the State Environmental Planning Policy (SEPP) No 71 - Coastal Protection. Planning & Infrastructure have provided the following in respect to the request for a Master Plan waiver:

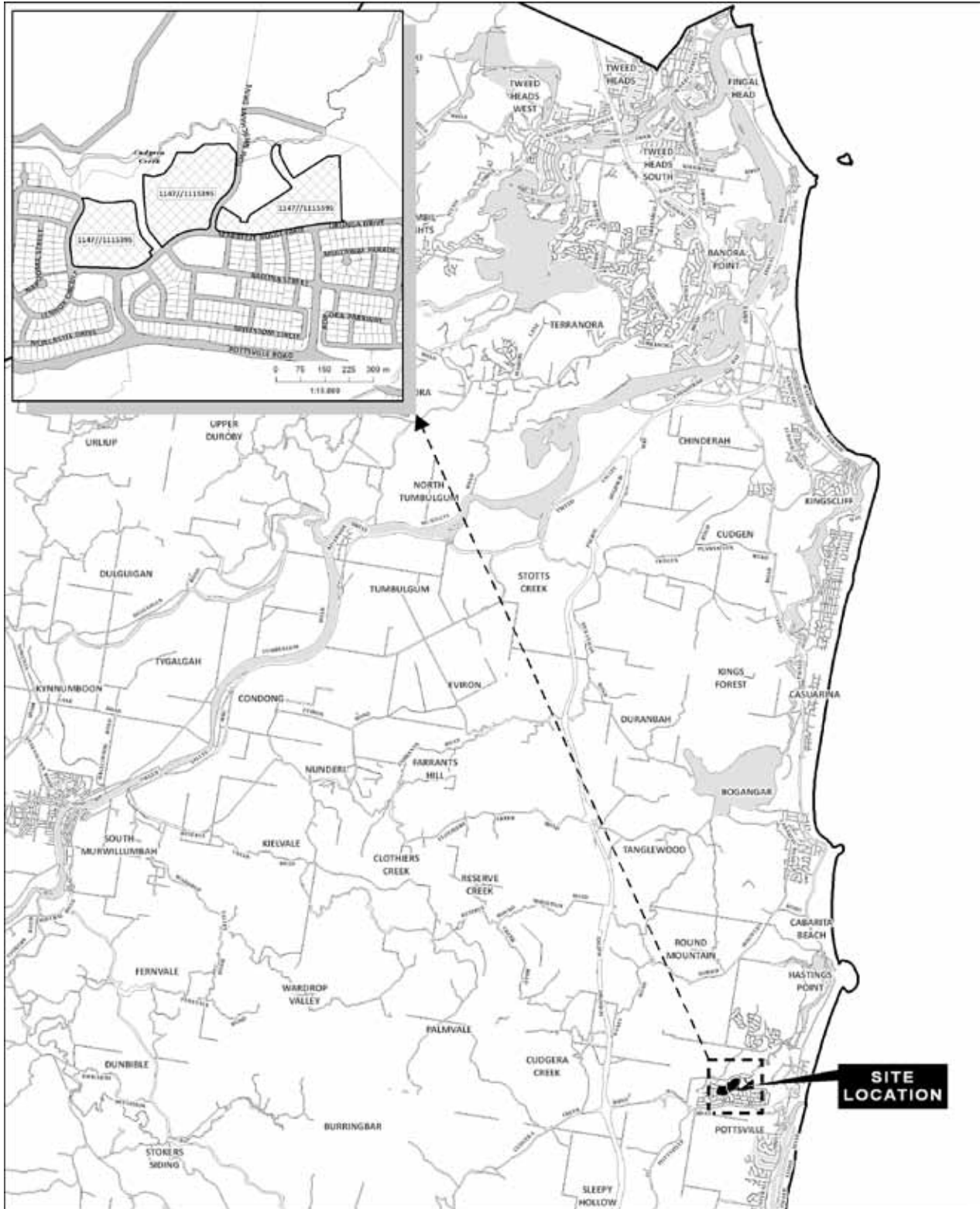
'The existing and draft planning controls applying to the land contain extensive requirements for subdivision and residential development. It is considered that these provisions are adequate to ensure the principles of SEPP 71 are not compromised. A Master Plan is not necessary in this instance.

Pursuant to clause 18(2) of SEPP 71, the need for a Master Plan has been waived'.

The proposed subdivision is Integrated Development under Section 100B of the Rural Fires Act and under Sections 89, 90 and 91 of the Water Management Act 2000. The RFS and the Office of Water have provided their General Terms of Approval that will be applied to the Development Consent.

Having regard to the relevant statutory controls it is considered that the proposed 88 lot subdivision may be approved subject to a number of conditions of consent.

SITE DIAGRAM:

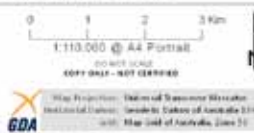


Locality Plan

Lot 1147 DP 1115395
Seabreeze Boulevard, Pottsville

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Cadastral: 14 April 2014
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Boundaries shown should be considered approximate only.



City: 486 Cultural Centre
3 Tumbulgon Road
Murrumbidgee NSW 2434
PO Box 916
Murrumbidgee NSW 2434
T (02) 6673 2400 | 1300 282 872
F (02) 6673 2429
W www.tweed.nsw.gov.au
E planning@tweed.nsw.gov.au



OVERALL SITE ANALYSIS PLAN:



OVERALL SITE ANALYSIS

<p>PROJECT: NETA 1 2013 SUBJECT: NEW PUMP AND NEW CONCRETE AND ASPHALT DRIVEWAY AND ROAD IMPROVEMENT 5</p>		<p>B.C.S. SURVEYS CONSULTANTS 45-46 HILLSIDE AVENUE NORTH BRISBANE QLD 4059 PHONE: (07) 552 1333 FAX: (07) 552 1334</p>
<p>PROJECT: NETA 1 2013 SUBJECT: NEW PUMP AND NEW CONCRETE AND ASPHALT DRIVEWAY AND ROAD IMPROVEMENT 5</p>		<p>AERIAL PHOTOGRAPH OVERLAY "OVERALL SITE ANALYSIS" PROJECT: NETA 1 2013 SUBJECT: NEW PUMP AND NEW CONCRETE AND ASPHALT DRIVEWAY AND ROAD IMPROVEMENT 5</p>
<p>CLIENT: ROYLAND DEVELOPERS PTY LTD</p>		<p>DATE: 04/05/14</p>

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

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

In general it is considered that the proposed subdivision would accord with the aims of the Tweed Local Environmental Plan (TLEP) 2000. The application has been referred to the relevant units in Council who have considered relevant details relating to flooding, land forming, and ecological impacts. It is considered that the proposal would be consistent with the nature and scale of low density residential development in the locality.

Clause 5 - Ecologically Sustainable Development

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

It is considered that the proposal would be consistent with the objectives of the zone, as detailed further within this report. It is also considered that, given the site does not comprise any protected or endangered vegetation communities, that the proposal would be unlikely to result in irreversible environmental damage and would accord with the principles of ecological sustainable development, provided the development is carried out in accordance with the recommended conditions of consent.

Clause 8 - Consent Considerations

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

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

The land to which this application relates is zoned part 2(a) Low Density Residential and part 7(l) Environmental Protection (Habitat) under the provisions of LEP 2000. As detailed with Clause 11 it is considered that the proposed subdivision is generally consistent with the objectives of the 2(a) and 7(l) zones. The proposal is also consistent with the other aims and objectives of this Plan

and would be unlikely to have an unacceptable cumulative impact on the community, locality or on Tweed as a whole.

Clause 11 - Zone Objectives

The primary objectives of the 2(a) Low Density Residential zone are as follows:

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

Secondary objectives include:

- *To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*
- *To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.*

The development for the purposes of a subdivision is permissible, with consent, in the 2(a) zone. The proposal is consistent with the primary objective of the zone, in the provision of a low density residential environment with a predominantly detached housing character and amenity.

The proposed residential lots comply with the minimum lot size of 450m².

Development for the purpose of a childcare centre is permissible with consent in the 2(a) zone and a separate Development Application will be lodged at a future point for this use.

The primary objectives of the 7(l) Environmental Protection (Habitat) zone are:

- *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 include:

- *To protect areas of scenic value;*
- *To allow for other development that is compatible with the primary function of the zone.*

Dwelling houses are permissible with consent in the 7(l) zone provided they are on an allotment of at least 40 hectares or on an allotment referred to in Clause 57.

The area of 7(l) zoned land is limited to approximately 720m² at the northern end of proposed Lot 1748, that is proposed to be dedicated to Council as a drainage reserve as it contains an existing constructed open channel. The portion of land zoned 7(l) will therefore not include any residential development components.

The SEE advises that dedication of proposed Lot 1478 is authorised by Clause 20(3) of the LEP 2000 and also by Clause 111 of SEPP (Infrastructure) 2007, as detailed further within this report.

Clause 15 - Essential Services

An Engineering Services Report has been provided that indicates all necessary urban services are available to the site. Council's reticulated water and sewer infrastructure is available to the area with electricity and telecommunication services provided via Country Energy and Telstra.

It is noted that in respect to sewer provision the proposal is considered as conceptual only. There are multiple bends and changes of angles shown on proposed sewer plans (without manholes) that will require considerable attention prior to the final design.

It is noted that there is no requirement for a sewer pump station with the current proposal, although any future residential development of Lot 1802 (potential future school site) may require a Lift Station.

Suitable conditions will be applied to the consent in respect to the connection of sites to essential services.

Clause 17 - Social Impact Assessment

The threshold trigger for the preparation of a Social Impact Assessment (SIA) report for a subdivision (under the guidelines of Section A13 of the Tweed DCP) is 50 lots. The proposed subdivision comprises 88 lots and accordingly a SIA has been prepared. The SIA considers that the proposal would be consistent with the objectives of the zone and is generally consistent with the density controls and design guidelines pursuant to Section A5 - Subdivision Manual, Section B 15 - Seabreeze Estate and Section B21 - Pottsville.

It is considered that the proposal is generally consistent with the provisions of the relevant statutory controls and guidelines and would be in keeping with the general character and scale of built development within the Pottsville locality.

The proposal would be unlikely to create any adverse social or economic impacts and will result in the completion of the Seabreeze Estate.

Clause 19 - Subdivision

The proposed subdivision is permissible with consent in the 2(a) Low Density Residential Zone. The proposed residential lots comply with the minimum lot size per dwelling house of 450m².

Clause 20 - Subdivision in Zones 1(a), 1(b), 7(a), 7(e) and 7(l)

Clause 20(2) advises that consent may only be granted to the subdivision of land in the 7(l) zone if the area of each allotment created is at least 40 hectares. Clause 20(3) advises however that despite subclause (2), consent may be granted to the subdivision of land where an allotment created is less than 40 hectares if the allotment will be used for a purpose other than for an agricultural or residential purpose.

The drainage channel within the proposed reserve is existing. Therefore that part of Lot 1748 zoned 7(l), that is to be dedicated as a drainage reserve, is therefore authorised by Clause 20(3) as it will not be utilised for residential or agricultural purposes.

Clause 31 - Development Adjoining Waterbodies

This clause applies to land that adjoins the mean high-water mark of a waterbody. This clause seeks to ensure that the scenic quality, water quality, aquatic ecosystems and biodiversity values are not impacted by development as well as to ensure that adequate public access to waterways are provided.

The development site comprises proposed Lot 1748 that adjoins Cudgera Creek and therefore this clause applies. The proposed development however does not propose any works within Lot 1748 (that will be dedicated to Council as a drainage reserve). Therefore it is considered that the proposal is consistent with this clause.

Appropriate revegetation of the creek foreshore and setback criteria have been considered within previous approvals. No additional public access points to the creek are proposed at this stage and whilst there may be potential to consider improved creek access at a future point, Council Officers consider that any such access at this stage would be likely to have an adverse effect on bushland restoration plantings adjacent to the levee.

The application has been referred to the NSW Office of Water who have provided General Terms of Approval (GTAs) for works requiring a controlled activity approval that will be applied to any development consent.

It is considered that the proposed subdivision is generally consistent with this Clause.

Clause 34 - Flooding

The objectives of this Clause are to minimise future potential flood damage by ensuring that only appropriate development occurs on flood liable land and to minimise the effects of flooding on the community.

The SEE advised that the 'site is located above the design flood level with the existing site levels being generally higher than RL 3.0m AHD, with the exception of the proposed public reserve Lot 1803 which will require minor filling for embellishment and drainage. Minor reshaping will be required to ensure that all lots are drained to the proposed streets'.

It is acknowledged that the land has previously been filled so only requires relatively low scale regrading and provision of infrastructure with site levels generally varying between RL 3.5m - 4.5m AHD, with some lower sections at RL 2.5m AHD. The application advises that the design flood level (based on the current day 100 year ARI flood) varies from RL 2.7m - RL 3.1m AHD across the site. The majority of the site is well elevated above this level, with the exception of the western portion of Stage 16, where the subdivision adjoins Lennox Circuit.

The original application details did not provide any flood affectation mapping, however based on engineering design plans submitted with the Annexure 5 Engineering Services Report (ESR), it appears that lots 1061, 1602, 1603, 1611, 1612, 1613 and 1614 would be partially inundated in such an event. As detailed further within the assessment of Section A3 of the DCP, the design flood levels for 'greenfield' subdivisions be based on climate change affected 100 year ARI. This would increase the design flood level in Stage 16 to RL 3.6m AHD, which increases the potential flood affectation to all lots in this stage. The applicant was requested to provide commentary in respect to this matter or request a variation from this greenfield filling requirement and submit an amended fill design.

An Amended Engineering Services Report (March 2014, Revision 9) has been submitted to Council that provides further detail in respect to flood immunity and the provision of high level evacuation routes. It is generally considered that the proposed development is satisfactory from a flooding perspective however as detailed further within this report a number of conditions will be applied to any Development Consent to ensure that the proposed subdivision is consistent with the requirements of DCP A3.

An Amended Engineering Services Report (March 2014, Revision 9) has been submitted to Council for consideration that have provided level details as requested and has provided further detail in respect to the construction of batters along many of the external road frontages to accommodate increased fill levels due to flood immunity requirements.

Flood immunity

In relation to flood immunity of Stage 16 allotments (to ensure they are above the design flood level (DFL)), climate change affected design flood levels vary across the site, with RL 3.6m AHD being the worst case in Stage 16, off Lennox Circuit. The amended plans have changes all lot levels throughout Stages 15-18 to meet the minimum RL 3.6m AHD.

It is considered that whilst this conservative approach is acceptable from a flooding perspective, it appears unnecessary across the whole development and has other impacts on access and urban design in areas where the fill level could be reduced significantly to than now proposed (e.g. climate change affected DFL in Stage 17 is only RL 2.8m AHD). It appears that the consultant engineer has not reviewed Council's flood maps in detail with this regard.

As detailed within Section A3 of this report, clarification has been provided from Council's flood modelling consultants that RL 3.6m AHD is the acceptable design flood level in Stage 16, due to the irregular flood gradient that presents in the mapping in this location. It has therefore been recommended that the lower design flood level in this region should be adopted, based on predicted levels in the adjacent wetland and overland flow paths.

This scenario should have benefits for the extent of fill required for flood immunity under DCP A3. The following DFL for each subdivision stage are as follows:

Stage 15 = RL 3.1m AHD

Stage 16 = RL 3.2m AHD

Stage 17 = RL 2.8m AHD

Stage 18 = RL 3.1m AHD

A condition will be applied to any Development Consent to ensure that all residential allotments are filled to a minimum of the DFL.

High level evacuation route

The applicant was requested to provide level details of adjoining public roads to determine whether the high level evacuation route requirements as set out in DCP A3 are met or whether upgrades to existing road infrastructure are required.

The submitted Amended Engineering Services Report generally advises that there are no changes to road carriageway or verge levels in the revised plans. Level changes have been taken up by additional filling of the residential lots. The report has provided limited information in respect of proposed evacuation routes

and the area of concern remains Stage 16, where road levels are well below the required climate change affected DFL.

It is acknowledged that the existing road network may be deficient in some areas with respect to levels however this needs to be adequately addressed and alternate measures put in place (such as pedestrian accesses) due to potential impacts on public safety and emergency response. A condition will be applied to any Development Consent to ensure that all residential allotments are to be provided with a high level flood evacuation route in accordance with DCP A3.

Clause 35 - Acid Sulfate Soils

Under the provisions of Clause 34 the applicant has agreed that Acid Sulfate Soil (ASS) is present and has therefore submitted an ASS Management Plan. The Plan advises that the site was previously filled under development consent K99/1837 from material sourced from other stages of the Seabreeze Estate development and that excavations for site works will mostly be within fill material however some areas where ASS is identified will require excavation.

The Plan's management approach states a Phase 1 ASS Investigation would be undertaken prior to the commencement of bulk earthworks in accordance with relevant guidelines and provisions. The consent authority must therefore consider the adequacy of the Management Plan in accordance with the relevant guidelines and the likelihood of the proposed development resulting in the oxidation of ASS and discharge of acid water from the area of the proposed works.

It is considered the Management Plan has as yet to be prepared in consideration of site specific investigations. As complete mixing and validation is not proposed this may lead to the oxidation of ASS and therefore the discharge of acid water potentially into low lying floodplain adjoining Cudgera Creek. However it is considered that sufficient investigations have been carried out to determine that the proposed site works can be appropriately managed. Conditions of consent will be applied to any development consent to ensure that a site specific management plan is prepared detailing investigations, treatment and validation in accordance with the ASS Management Advisory Committee (ASSMAC) Guidelines.

Clause 39 - Remediation of Contaminated Lands

The objective of the clause is to ensure that contaminated land is adequately remediated prior to the development occurring.

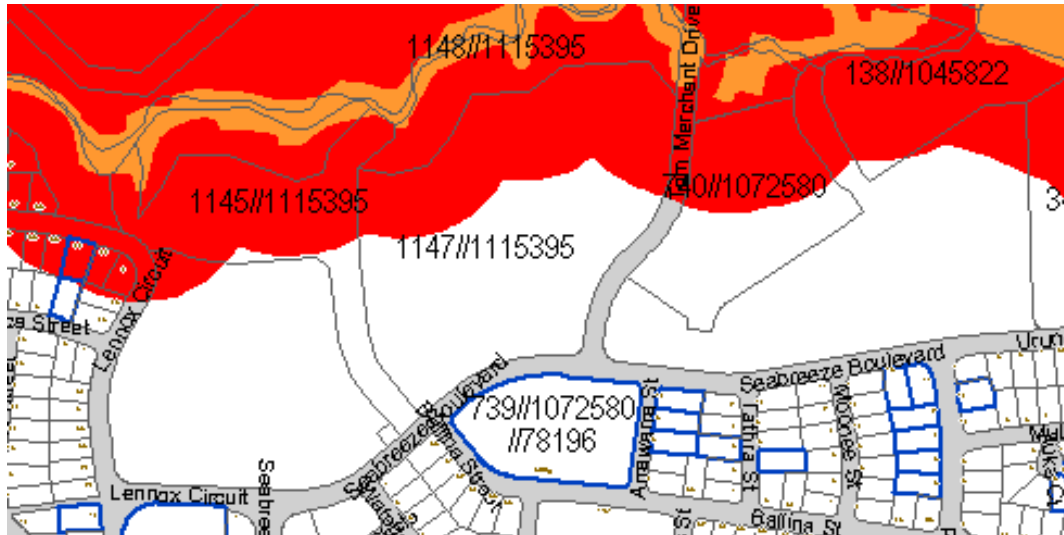
The application includes an Acid Sulfate Soil Management Plan (prepared by Gilbert & Sutherland, Dated August 2013) that provides a detailed assessment of the site based on extensive prior investigation and concludes that no indications, evidence or record of contamination has been observed. The Plan concludes that the subdivision area '*would be free from contamination*'.

Prior investigations and current statements provided have been prepared by a suitably qualified and experienced person however no consideration of land contamination since the 1999 approval for fill has been provided. On this basis further information was required to address any potential contamination considerations since the filling of land was undertaken under the original approval of development consent K99/1837.

The applicant has advised that since the filling work was completed the site has been grassed and regularly mowed and has not been used for any purpose since filling was completed and is therefore suitable for the proposed development and therefore no further clarification is required in respect of land contamination.

Clause 39A - Bushfire Prone Land

The northern portion of the subject land is bushfire prone as shown in the following extract of Council's GIS imagery:



A Bushfire Threat Assessment Report has been provided that states: *'The report has established the performance criteria of Planning for Bushfire Protection 2006 can be achieved having regard to asset protection zones, construction standards, water supply, gas and electrical services and landscaping'*.

The proposed development was referred to the NSW Rural Fire Service (RFS) in accordance with Section 91 of the EP & A Act 1979 as integrated development. The RFS have advised that insufficient information had been received to properly assess the application and the following points (as summarised) were required to enable further assessment:

1. No details provided regarding the proposed Special Fire Protection Purpose (SFPP) development (school);
2. Clarification of ownership (current and proposed) of the existing and proposed water quality treatment ponds and drainage reserves adjoining Lot 1147 DP 1115395;
3. Dimensions of the width of the proposed drainage reserve to the north of proposed Lot 1802;
4. Confirmation of Council's agreement to the ongoing management of the existing water quality treatment ponds with a copy of any Management Plan applying to the land;
5. The Bushfire Threat Assessment Report recommends that a perimeter road is not required and the report is to be amended to include consideration of the relevant performance criteria within *'Planning for Bushfire Protection 2006'* with respect to this recommendation.

In response the applicant has provided the following response to the points detailed above:

1. It is confirmed that the application is for a subdivision only. Any future school site on proposed Lot 1802 will be subject to a separate Development Application;
2. The existing drainage reserves are owned by Council and the proposed drainage reserves will also be dedicated to and owned by Tweed Shire Council;
3. The plan at Annexure 4 clearly shows the dimensions and widths of the proposed drainage reserve to the north of proposed Lot 1802;
4. Officers of Council have advised that '*Council maintains the drainage reserve and there is not a specific Management Plan. Council's Bushland Officer, John Turnbull foresees no issues in using the drainage reserve as an asset protection zone, and the existing maintenance regime (i.e. slashing) should adequately address RFS requirements for fuel reduction*';
5. An amended Bushfire Threat Assessment Report prepared by Bushfire Certifiers Pty Ltd, dated 3 March 2014 has been submitted that advises it is noted that a perimeter road is the 'preferred' option however other options are acceptable depending on merit. The report states that: '*the purpose of a perimeter road is to provide a control line from which to conduct hazard reduction or back burning options. Given that primary hazard is remnant vegetation along a creek line and some grassland with managed areas between the housing and the hazard it is unlikely that control lines for hazard reduction will be needed*'.

On 9 April 2014 the NSW RFS provided their General Terms of Approval (GTAs) to ensure adequate provision of inner protection areas; to ensure the drainage reserves to the north of Stages 16, 17 and 18 are managed as an asset protection zone; to ensure that a fire management plan is prepared for the drainage reserves and matters relating to infrastructure provision (water and utilities and access) and landscaping are in accordance with the RFS document '*Planning for Bush Fire Protection 2006*'.

Clause 52 - Zone Map Overlay Provisions

The objective of this clause is to apply special provisions relating principally to environmental protection within particular areas shown on the zone map. The subject land is shown crosshatched on the zone map and therefore Clause 52 applies.

Clause 52 continues to advise that consent must not be granted for development unless the consent authority has considered detailed plans of the development in respect to the adequacy of proposed measures in a soil and water management plan (for the purpose of maintaining and improving the quality of water entering Cudgera Creek); measures to control sediment erosion and disturbance from the development site as well as whether the proposed measures in a flora and fauna management plan for habitat enhancement and management along the eastern boundary of the land adjacent to Cudgera Creek are satisfactory.

With this respect the applicants have submitted an ASS Management Plan, Stormwater Management Plan and Stormwater Quality Treatment Plan. These reports advise that suitable measures will be in place to ensure that the development does not impact on matters relating to water quality.

A report from JWA Ecological Consultants dated 27 September 2013 has been prepared advising that the proposed development will have no implications in respect to Koala Habitat (as the site comprises no Koala feed trees or habitat having been previously cleared of vegetation). The report also advises that the proposal will be unlikely to impact on matters relating to the *Environmental Protection and Biodiversity Conservation (EPBC) Act 1999*. The report states that a number of listed threatened flora and fauna species are present within the wider locality however it is not considered likely that the proposed development will have any significant impact on a species listed as Threatened in the *Commonwealth Endangered Species Protection Act (1992)*.

It is considered that the proposal is generally in accordance with Clause 52.

Clause 53E - Specific Provisions for Seabreeze Estate - Stage 2

The objectives of this clause are:

- (a) To allow for future urban development and the conservation of ecological and riparian corridors and areas of visual significance on land to which this clause applies,
- (b) To ensure that development on land to which this clause applies occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.

On 3 December 2013 Council adopted the current version (1.3) of DCP B15 - Seabreeze Estate, Pottsville. This document sets a comprehensive and integrated set of objectives, criteria and measures to cover the essential aspects of residential and non-residential development. The adopted DCP has addressed each of the matters as set out in subsection (6) of the Clause, such as an overall staging plan; overall transport movement hierarchy; overall landscaping strategy and measures to accommodate appropriate neighbourhood commercial and retail uses. As detailed within this report, it is considered that the proposed subdivision is generally in accordance with the provisions of this document.

The clause also advises that development consent must not be granted until the consent authority is satisfied that adequate arrangements have been made to make the supply of water and electricity, the disposal and management of sewage and suitable road access available when required.

It is considered that adequate provision would be available to the proposed subdivision for essential services. Reticulated water supply and sufficient sewer capacity is available. The existing road network comprising Pottsville and Mooball Road, Seabreeze Boulevard and the proposed internal streets are considered suitable for the proposed subdivision. Electricity supply is available within the street network adjacent to the development site.

Clause 54 - Tree Preservation Order (TPO)

The subject land is covered by the TPO 2011 (Koala Habitat) with a small portion of the south of the site covered by the TPO 1990 and therefore this clause applies. The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

The site has been previously cleared of vegetation with the only remaining tree being the single White Fig (*Ficuns virens var. sublancoolata*). Appropriate measures will be made to reinstate the health of this tree to ensure its longevity.

It is considered that the proposal is unlikely to raise any implications in respect of Council's TPO on the subject land.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

A Land Use Conflict/Agricultural Land Use review has been carried out by Gilbert & Sutherland, dated 17 June 2013. The review included the consideration of the NSW Living and Working in Rural Areas Handbook prepared by NSW DPI and Northern Rivers CMA.

The review included details of a risk based assessment approach however the assessment has not adequately considered the impacts from the application of pesticides from aircraft, noise nuisance generated from farm activities and times of activities, dust generation from internal farm roads, smoke and ash and the strong northerly winds that are experienced along coastal areas.

The proposed separation distance of a minimum of approximately 80m does not comply with the recommended distance of 300m within the NSW Living and Working in Rural Areas Handbook, which is a guiding document based on best practice.

The Tweed Shire DCP A5 Subdivision Manual recommends a buffer of 150m including a biological buffer of 30m however allows a reduction to 80m where the application of chemicals be not from aircraft activities. It is therefore considered that as the application of chemicals may be from aircraft either now or in the future any consent provided to create proposed lots 1821 to 1831 may encroach on the activities of the northern adjoining rural activities due to the provisions of the NSW Pesticide Act and likely spray drift impacts particularly in adverse local weather conditions thereby exposing future residential occupiers to a potential public health risk.

The relaxation of the buffer distance beyond that of the Tweed Shire DCP A5 Subdivision Manual is not supported and therefore further clarification was requested from the applicant with this regard.

The applicant has advised that: *'the layout shown over Lot 1802 is conceptual only and has been included to provide an indication of the likely layout and future yields in the event that the school does not proceed' and it is 'emphasised that Lots 1821 to 1831... do not form part of this Development Application. Therefore Council's concerns in relation to this matter are not relevant. Agricultural buffer requirements in relation to any future school on Lot 1802 will need to be addressed in the design of the school and subsequent Development Application'.*

Whilst the site has been identified as a potential school site with a conceptual lot layout for residential lots, the proposed subdivision does not approve Lot 1802 as either a school site or for residential allotments. The future use of Lot 1802 will be subject to a future development application and merit assessment.

It is therefore considered that land use conflicts identified within Stage 18 may be addressed within any future development applications on the subject site.

Clause 15: Wetlands or Fishery Habitats

Clause 15 states that the council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered a number of matters such as: the need to maintain or improve the quality or quantity of flows of water to a wetland or habitat; and loss of habitat that is likely to be caused by the development; whether the development would result in pollution to the wetland; the need to ensure that native vegetation surrounding the wetland is conserved and so on.

The application has been referred to the NSW Office of Water (NOW) as the proposal incorporates the possible need for dewatering. NOW have advised that any take of water as a result of minor temporary dewatering activities that is estimated to be less than 3 megalitres per year (3ML/yr) will generally not require a license or approval. NOW advise that it is the applicant's responsibility to assess and monitor water take and impacts and to advise NOW if they exceed these conditions, at which time a license must be obtained.

General Terms of Approval (GTAs) will be applied to any Development Consent to ensure that a license is obtained for any dewatering in excess of 3ML/yr.

It is generally considered that the proposed subdivision would be unlikely to impact on matters relating to the drainage catchment or to Cudgen Creek. Conditions will be applied to the consent to ensure that suitable sediment and erosion controls are in place and the proposal is considered unlikely to result in any clearance of vegetation along the riparian buffer to the creek.

It is considered that the proposal is consistent with this Clause.

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 that 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 subject site is located approximately 1.5km from the coastal foreshore and will therefore not restrict public access to the coastal foreshore. As detailed within this report, the site has been previously cleared of vegetation and has been significantly disturbed over the years. It is therefore considered that the proposal would be unlikely to impact on matters relating to cultural heritage or ecological values of the locality.

It is generally considered that the proposed subdivision would provide a residential environment similar to that of the existing Seabreeze Estate, being low density residential allotments. It is therefore considered that the proposal would be consistent with the nature of built development in the locality.

Clause 43: Residential development

Clause 43 states that Council shall not grant consent to development for residential purposes unless:

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

- (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
- (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
- (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
- (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

In general it is considered that the proposed development has optimised the residential yield from the subject land. The zoning of the subject site is that of low density residential with a minimum site area of 450m² per lot. The proposed subdivision will retain a low density character consistent with surrounding built development in the locality.

The amended Subdivision Plans have improved the overall connectivity of the site and in general will allow for pedestrian thoroughfare within the subdivision.

Conditions will be applied to the Development Consent to ensure that suitable sediment and erosion controls are in place throughout the construction phase.

SEPP No. 14 - Coastal Wetlands

An area mapped as SEPP 14 wetland is located approximately 200m to the north and approximately 500m to the south of the subject site. The development site is buffered by wetlands and drainage reserve with Cudgera Creek being located to the north of the site and sports fields to the north and east. To the south the site is buffered from the wetland by the existing Seabreeze Estate and Pottsville Road. The proposed subdivision is therefore not considered to raise any implications in respect of SEPP 14.

SEPP (Infrastructure) 2007

This policy aims, amongst other things, to provide greater flexibility in the location of infrastructure and service facilities. The subject site incorporates a small portion (720m²) of land zoned 7(l) Environmental Protection within the current LEP 2000 and E2 Environmental Conservation within the Draft LEP 2012. This portion of environmentally sensitive zone land is located at the northern end of proposed Lot 1748, and is proposed to be dedicated to Council as a drainage reserve as it contains an existing constructed open channel.

The portion of land zoned 7(l) will therefore not include any residential development components. The SEE advises that dedication of proposed Lot 1478 is authorised by Clause 20(3) of the LEP 2000 and also by Clause 111 of SEPP (Infrastructure) 2007. Clause 111 states that development (such as construction works, routine maintenance or environmental management works) for the purpose of stormwater management systems may be carried out by or on behalf of a public authority without consent on any land.

On this basis development for the purpose of stormwater drainage works may be undertaken without development consent under the provisions of this SEPP.

SEPP No. 55 - Remediation of Land

The aim of SEPP 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

The application includes an Acid Sulfate Soil Management Plan (prepared by Gilbert & Sutherland, Dated August 2013) that provides a detailed assessment of the site based on extensive prior investigation and concludes that no indications, evidence or record of contamination has been observed. The Plan concludes that the subdivision area '*would be free from contamination*'.

Prior investigations and current statements provided have been prepared by a suitably qualified and experienced person however no consideration of land contamination since the 1999 approval for fill has been provided. On this basis further information was required to address any potential contamination considerations since the filling of land was undertaken under the original approval of development consent K99/1837.

The applicant has advised that since the filling work was completed the site has been grassed and regularly mowed and has not been used for any purpose since filling was completed and is therefore suitable for the proposed development.

On this basis no further consideration is required in respect to contaminated land.

SEPP No 71 – Coastal Protection

This 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 site is located within a 'sensitive coastal location' due to the location being within 100m of the mapped high water mark of Cudgera Creek. As the subdivision of land is located within a residential zone a Master Plan or waiver is required by Clause 18(1) of the SEPP.

Planning & Infrastructure have provided the following in respect to the request for a Master Plan waiver:

'The existing and draft planning controls applying to the land contain extensive requirements for subdivision and residential development. It is considered that these provisions are adequate to ensure the principles of SEPP 71 are not compromised. A Master Plan is not necessary in this instance.

Pursuant to clause 18(2) of SEPP 71, the need for a Master Plan has been waived'.

The proposed development will not alter the existing public access arrangements to the coastal foreshore or along Cudgera Creek. Given the sensitive nature of vegetation along Cudgera Creek riparian buffer and the nature of the levee bank in this location it is considered that providing an additional pedestrian access to the creek would not be favourable at this time, to ensure the longevity and protection of sensitive native vegetation.

It is considered that the proposed subdivision is generally consistent with the relevant provisions of the former LEP 2000 and LEP 2014 as well as the aims and objectives of DCP B15 - Seabreeze Estate. The proposed development would be unlikely to have any adverse impact on the amenity of the coastal foreshore in respect of overshadowing or loss of views as the site is located approximately 1.5km from the coastal foreshore.

The site has been previously cleared of substantial vegetation and has been highly disturbed. It is therefore considered that the proposal would be unlikely to impact on Threatened Species, wildlife corridors or habitats. Further, the site does not comprise any marine vegetation. Conditions will be applied to any Development Consent in relation to sediment and erosion controls to ensure no impact to water quality. As the site has been previously cleared and filled it is unlikely that the proposal would impact on matters relating to the conservation and preservation of items of heritage or archaeological significance however a condition shall be applied to ensure that should any relics be found that work is to cease immediately and appropriate authorities advised.

It is generally considered that the proposal is in accordance with the provisions of the SEPP.

SEPP (State and Regional Development) 2011

The SEPP nominates a range of developments for which the Minister is the consent authority or determination is made by joint regional planning panels depending on the class of development and certain developments on specified sites.

Clause 8 of the SEPP identifies State Significant Development as being development as specified in Schedule 1 or 2. The subject site or proposed development is not listed within either Schedule 1 or 2 of the SEPP.

Clause 20 identifies Regional Development as development described in Schedule 4A of the *Environmental Planning and Assessment Act* (EPA Act) 1979. The proposed subdivision has a capital investment value (CIV) of less than \$20 million (\$4,683,802.00); Council is not the applicant or the owner of the land; the development is not being carried out by Council; the proposal is not a Crown development; does not propose telecommunication facilities or the like; is not designated development and does not involve subdivision into more than 100 lots. Therefore the proposal is not deemed to be Regional Development.

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

The Draft Tweed LEP 2014 was formally gazetted on 4 April 2014. Prior to the gazettal of this document the provisions within the Draft LEP were of considerable weight given the document was considered to be certain and imminent at the time the development application was lodged. As detailed whilst the Tweed Local Environmental Plan (LEP) 2014 was formally gazetted on 4 April 2014, the development application has been considered under the provisions of the Tweed LEP 2000 as the application was lodged on 20 November 2013.

The relevant provisions of the Tweed LEP 2014 are as follows:

1.2 Aims of Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

1. *This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
2. *The particular aims of this Plan are as follows:*
 - (a) *give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
 - (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
 - (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
 - (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
 - (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
 - (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
 - (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
 - (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
 - (i) *to conserve or enhance areas of defined high ecological value,*
 - (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The subject land is zoned R2 Low Density Residential and E2 Environmental Conservation. The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible at this location.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is primarily zoned as R2 Low Density Residential with a small portion of Lot 1748 being zoned as E2 Environmental Conservation.

2.3 Zone objectives and Land Use Table

The LEP 2014 zones the development area as R2 Low Density Residential. The objectives of this zone are:

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

In general it is considered that the proposed subdivision would be consistent with the objectives of the R2 zone as the proposed allotments accord with the minimum allotment size and the proposal would not conflict with land uses within the zone. It is considered that the proposal would be in keeping with surrounding built development in the Seabreeze Estate.

A small portion of the site is also zoned E2 Environmental Conservation. The objectives of the E2 zone are as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values;*
- *To identify lands set aside primarily for conservation or environmental amenity,*
- *To protect, manage and restore environmentally sensitive areas including lands subject to coastal erosion.*
- *To prevent development that would adversely affect or be adversely affected by coastal processes.*

In respect of the E2 zone, the applicant advises that Clause 111 of the SEPP (Infrastructure) 2007 prevails over the LEP and provides that development for the purpose of stormwater drainage works may be undertaken without development consent.

It is considered that the proposed development would be unlikely to raise any matters in respect of the E2 zone.

2.6 Subdivision - consent requirements

This clause states that land to which this Plan applies may be subdivided, but only with development consent.

The application seeks an 88 lot subdivision.

4.1 Minimum subdivision lot size

The objectives of this clause are:

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

The minimum lot size remains as per the requirements of LEP 2000 at 450m² per lot in the R2 zone. The proposed subdivision complies with the minimum lot size requirements in the R2 Zone. The minimum lot size requirement in the E2 zone is 40 hectares. The area of E2 zoned land is limited to approximately 720m² at the northern end of proposed Lot 1748, that is proposed to be dedicated to Council as a drainage reserve as it contains an existing constructed open channel.

The portion of land zoned E2 will not include any residential development components.

The SEE advises that dedication of proposed Lot 1478 is authorised by Clause 111 of SEPP (Infrastructure) 2007. The exception to this development standard is also addressed below:

4.2 Exceptions to development standards

This clause seeks to provide flexibility in applying certain development standards to a particular development. Subdivision 6 states that development consent must not be granted in the E2 zone if:

- (a) *The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such lot by a development standard.*

The proposed subdivision will not result in 2 or more lots of less than the minimum area.

5.3 Development near zone boundaries

This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance between land zoned R2 and RU2 Rural Landscape is 50m. The northern boundary of the proposed subdivision would be approximately 70m (with Cudgen Creek as a buffer) between the R2 land and the RU2 land to the north.

5.5 Development within the coastal zone

The objectives of this clause are as follows:

- (a) *to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,*
- (b) *to implement the principles in the NSW Coastal Policy, and in particular to:*
 - (i) *protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and*
 - (ii) *protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and*

- (iii) provide opportunities for pedestrian public access to and along the coastal foreshore, and*
- (iv) recognise and accommodate coastal processes and climate change, and*
- (v) protect amenity and scenic quality, and*
- (vi) protect and preserve rock platforms, beach environments and beach amenity, and*
- (vii) protect and preserve native coastal vegetation, and*
- (viii) protect and preserve the marine environment, and*
- (ix) ensure that 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*
- (x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and*
- (xi) protect Aboriginal cultural places, values and customs, and*
- (xii) protect and preserve items of heritage, archaeological or historical significance.*

As previously detailed within this report it is considered that the proposed subdivision would be generally in keeping with the character, nature and scale of existing low density residential development in the locality. The subject land has been significantly altered as a result of the previous development approval K99/1837 (Stages 1 to 14 Seabreeze) that has largely shaped the nature of this remaining portion of the residential subdivision. Therefore the proposed subdivision is unlikely to impact on matters relating to ecology or habitat values. The proposed lots will meet the desired pattern of residential development, being consistent with this Plan as well as the aims and objectives of relevant DCPs specific to the locality.

The proposed development would be unlikely to result in significant landforming or earthworks to accommodate the proposal. The proposal seeks to retain the White Fig tree (*Ficus virens var. sublancoolata*) on proposed Lot 1803 (Fig Tree Park) and conditions will be applied to any Development Consent to ensure the health of this tree is remarkably improved from its current state. This tree contributes significantly to the visual amenity and ecological value of the area and it is anticipated that it will remain an important feature within the Seabreeze Estate.

Future development proposals will need to consider whether proposed built development is responsive to the site and contributes to the character of this coastal location. This is particularly important in the consideration of future development proposed Lot 1702 (that occupies a prominent location on the corner of Tom Merchant Drive and Seabreeze Boulevard). This site is a landmark location and the use of the corner site should be of a higher order than a single dwelling house and should represent a positive opportunity for the Seabreeze Estate.

Clause 5.9 Preservation of trees or vegetation

This clause seeks to preserve trees or vegetation and to protect the amenity of the area including biodiversity values. As detailed within this report the subject site has been significantly disturbed over the years and does not comprise any remnants of native vegetation or significant habitat for flora or fauna. Conditions will be applied to ensure that the existing White Fig Tree is suitably protected and its health enhanced.

5.10 Heritage conservation

The objectives are to conserve the environmental heritage of the Tweed as well as to conserve Archaeological objects and Aboriginal places of heritage significance. As detailed the subject land forms part of the broader Seabreeze Estate subdivision and has been earmarked for residential development for a number of years, subject to development consent K99/1837. A condition will be applied to any Development Consent in respect to the preservation of items of significance.

6.2 Public utility infrastructure

This clause seeks to ensure that development consent is not granted until the Council is satisfied that any public utility infrastructure is available. As detailed in this report it is considered that all necessary infrastructure will be able to be made available to the proposed development.

6.3 Development control plan

This clause requests that development on land in an urban release area occurs in a logical and cost-effective manner in accordance with any staging plan and only after a DCP has been prepared for the land. The proposed subdivision is generally consistent with DCP B15 - Seabreeze Estate that has been prepared for the subject land and it is considered that the proposed subdivision will allow for the timely and efficient release of the land.

In general the proposal provides for major circulation routes and connections to achieve safe movements for private vehicles, public transport and pedestrians. An overall landscaping strategy has been provided and further clarification will be requested via the issue of a Construction Certificate.

7.1 Acid sulfate soils

As detailed within this report it is considered unlikely that the proposal will raise any concerns in respect of ASS.

7.6 Flood planning

The objective of this clause is:

- (a) *To minimise the flood risk to life and property associated with the use of land;*
- (b) *To allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change;*
- (c) *To avoid significant adverse impacts on flood behaviour and the environment.*

As detailed within this report it is considered that matters in respect of flooding may be satisfactorily addressed without the requirement for large scale filling or retaining walls over the subject site. A number of conditions will be applied to the consent to amend the finished surface levels for Stages 15 and 16 in order to reduce the extent of proposed retaining walls whilst ensuring that the proposed lots are appropriately located above applicable flood levels.

7.8 Terrestrial biodiversity

This clause requires the consent authority to consider, amongst other things, whether the development is likely to have any adverse impact on the condition, ecological value and significance of the fauna or flora on the land or any potential to fragment or disturb the biodiversity structure or function of the land.

Matters relating to the ecological and habitat values of the subject land are considered within this report. It is generally considered that the proposed subdivision does not raise any particular concerns in respect of ecological values. A number of conditions will be applied to any Development Consent to ensure that the site is suitably landscaped; no native vegetation is cleared without prior approval; no earthworks to occur within proposed Lot 1803 (Fig Tree Park) without prior approval and in respect of dog and cat restrictions.

7.11 Earthworks and drainage

The objective of this clause is to ensure that development involving earthworks or drainage has regard for environmental and social values. It is generally considered that the proposal would be unlikely to raise any significant implications in respect of earthworks and drainage. Additional information has been provided in respect of flooding, stormwater management and drainage on the subject land and it is considered that any outstanding matters with this regard may be dealt with via conditions of consent.

7.14 Stormwater management

The objective of this clause is to minimise the impacts of urban stormwater on land. As detailed in this report it is generally considered that matters relating to stormwater management and retention on the subject land is acceptable.

It is considered that the proposal would be generally consistent with the provisions of the Tweed LEP 2014.

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

Tweed Development Control Plan

A1 - Residential and Tourist Development Code

A detailed assessment of the proposed house and dual occupancy sites under the specifications of Section A1 as indicative dwelling sites have not been provided.

The original proposed subdivision plan (Aerial Photography Overlay Drawing No 19396 B) proposed a number of lots, within Stage 15 in particular, that would have been constrained in configuration, being located at the head of a cul-de-sac. It was considered that such sites may have presented difficulties in achieving adequate compliance with DCP A1 as well as sufficient on-street parking (9m kerb frontage per allotment in a cul-de-sac), particularly for dual occupancy developments.

The applicant has since reconfigured Stage 15 of the proposed subdivision, deleting the cul-de-sac arrangement. Lots 1714 and 1715 are the only potential dual occupancy sites in a cul-de-sac arrangement and are 933m² and 1108m² in area to accommodate a compliant dual occupancy development and adequate on-site car parking provision. Please note that any future development applications would need to demonstrate the suitability of the site for potential dual occupancy development against the provisions of DCP A1.

The remaining lots are of regular shape and would generally be capable of compliance with A1 in relation to: the provision of deep soil zones and useable outdoor open space; access and vehicle parking; suitable setback distances and separation distances between dwellings.

A2 - Site Access and Parking Code

All proposed roads are considered satisfactory in relation to widths, vertical and horizontal alignments. There is a minor concern in respect to the new road as proposed in Stage 15, as detailed further within this report.

It is considered that the proposed lots (being a minimum of 450m² in area) would be capable of compliance with the requirements of DCP A2 in respect to site access and parking.

Any future development applications will need to provide consideration of site access and parking requirements, particularly with respect to any future school site.

A3 - Development of Flood Liable Land

The provisions of A3 apply to the site and require that in relation to development for the purpose of residential subdivision, all land other than road and reserves must be filled to the design flood level. The land has been previously filled and so only requires relatively low site regrading and provision of infrastructure. Site levels generally vary between RL 3.5m - 4.5m AHD, with some lower sections at RL 2.5m AHD.

The application advises that the design flood level (based on the current day 100 year ARI flood) varies from RL 2.7m - RL 3.1m AHD across the site. It is acknowledged that the majority of the site is well elevated above this level, with the exception of the western portion of Stage 16, where the subdivision adjoins Lennox Circuit. Limited information was provided in respect to flood affectation mapping and based on the engineering design plans (submitted with the Annexure 5 Engineering Services Report) it appears that lots 1061, 1602, 1603, 1611, 1612, 1613 and 1614 would be partially inundated in such an event.

DCP A3 requires that design flood levels for 'greenfield' subdivisions (defined in A3 as subdivisions exceeding 5 hectares, including residual lots, so applicable to this application) be based on a climate change affected 100 year ARI. This increases the design flood level in Stage 16 to RL 3.6m AHD, which increases the potential flood affectation to all lots in this stage.

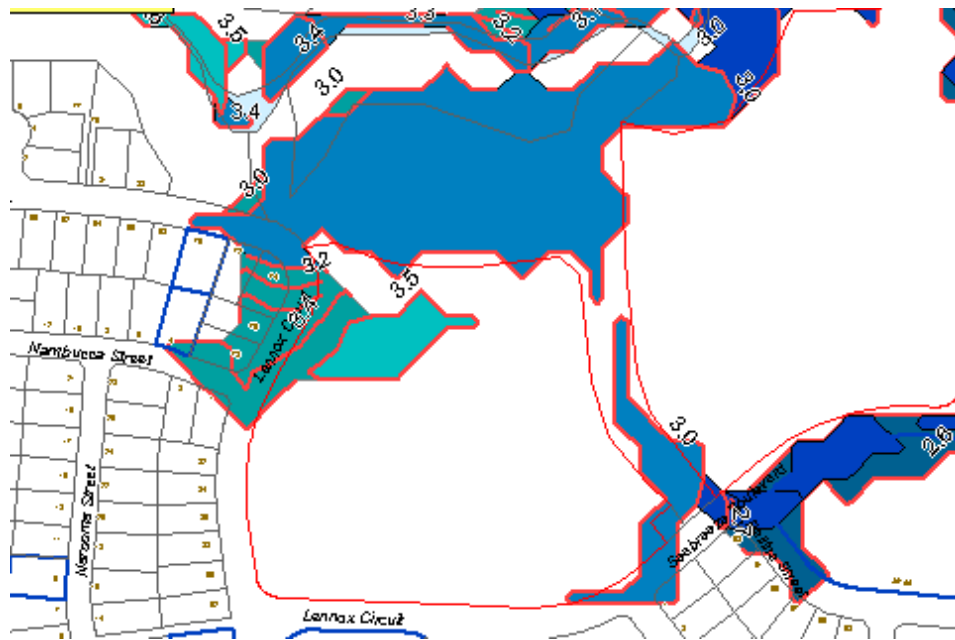
No information was originally provided in respect of this matter nor any variation from this 'greenfield' filling requirement requested. On this basis, the applicant was required to submit an amended fill design as it was considered that this may have some implications for road design, access and possibly lot layout.

An Amended Engineering Services Report (March 2014, Revision 9) has been submitted to Council for consideration. This report provides level details as requested and further detail in respect to the construction of batters along many of the external road frontages, to accommodate increased fill levels due to flood immunity requirements.

Flood immunity

Climate change affected design flood levels (DFL) vary across the site, with RL 3.6m AHD being the worst case in Stage 16, off Lennox Circuit. The amended plans have changed all lot levels throughout Stages 15-18 to meet the minimum RL 3.6m AHD. It is considered that whilst this conservative approach is acceptable from a flooding perspective, it appears unnecessary across the whole development and may have other impacts on access and urban design in areas where the fill level could be reduced significantly to than now proposed (e.g. climate change affected DFL in Stage 17 is only RL 2.8m AHD). It appears that the consultant engineer has not reviewed Council's flood maps in detail with this regard.

Confirmation has been requested from Council's flood modelling consultants that RL 3.6m AHD is the acceptable design flood level in Stage 16, due to the irregular flood gradient that presents in the mapping in this location, as shown in the following snapshot of Council's GIS flood mapping:



Extract of Council's GIS showing Climate Change flood levels within portion of proposed Stage 16 adjacent to Lennox Circuit (shown as light green)

It appears that there is an irregular gradient shown on Council's mapping that affects flood levels on Stages 15 to 16 adjacent to Lennox Circuit. Council's flood modelling consultants have confirmed that this is a modelling 'artefact' that does not represent the likely flood behaviour in such an event. It has therefore been recommended that the lower design flood level in this region should be adopted, based on predicted levels in the adjacent wetland and overland flow paths.

This scenario should have benefits for the extent of fill required for flood immunity under DCP A3. The following DFL for each subdivision stage are as follows:

Stage 15 = RL 3.1m AHD

Stage 16 = RL 3.2m AHD

Stage 17 = RL 2.8m AHD

Stage 18 = RL 3.1m AHD

A condition will be applied to any Development Consent to ensure that all residential allotments are filled to a minimum of the DFL.

High level evacuation route

DCP A3 requires that the subdivision provides high level flood evacuation routes to land above PMF for all residential lots. The application does not directly demonstrate compliance with this requirement, instead stating in the ESR that:

'given that the existing Seabreeze Boulevard and Lennox Circuit were constructed prior to the requirements for Probable Maximum Flood (PMF) access requirements... all new internal roads will be designed to Q100 level control ... except where the new roads connect with existing road levels'.

On review of the submitted engineering plans, it appears that all internal roads comply with the exception of the western end of Road 1 in Stage 16 being below the 100 year ARI level. However the applicant was requested to provide a level detail of the adjoining road network to demonstrate rising road access to flood free land, in compliance with A3, and to provide level details of adjoining public roads to determine whether the high level evacuation route requirements as set out in DCP A3 are met or whether upgrades to existing road infrastructure are required.

The submitted Amended Engineering Services Report generally advises that there are no changes to road carriageway or verge levels in the revised plans. Level changes have been taken up by additional filling of the residential lots. The report has provided limited information in respect of proposed evacuation routes and the area of concern remains Stage 16, where road levels are well below the required climate change affected DFL.

It is acknowledged that the existing road network may be deficient in some areas with respect to levels however this needs to be adequately addressed and alternate measures put in place (such as pedestrian accesses) due to potential impacts on public safety and emergency response. A condition will be applied to any Development Consent to ensure that all residential allotments are to be provided with a high level flood evacuation route in accordance with DCP A3.

Conclusion

The proposed allotment fill levels throughout all stages of the development have been significantly increased with associated batter construction on many road frontages. It is considered that this approach is not necessary over most of the site and so can be reduced on review of Council's climate change design flood mapping. This will rectify many of the concerns regarding access and urban design associated with the amended plans.

The outstanding matters may be suitably conditioned to ensure all residential lots are filled to a minimum of the applicable climate change affected DFL; to ensure that all residential lots are provided with a high level flood evacuation route; and to ensure adequate driveway designs to ensure compliant vehicular access (where batters exceeding 0.6m in height are required along road frontages).

A5 - Subdivision Manual

This DCP provides guidelines and development standards for the development of subdivisions. The overarching objectives are to ensure that new development should have a sense of identity; mixed uses to encourage vitality; a linked series of streets and parks; pedestrian priority and an acknowledgement of ecological interaction. Sections of the DCP of particular relevance to the application are detailed below.

A5.2.3 - NSW Coastal Policy & SEPP 71

For the subdivision of land within the coastal zone the NSW Minister of Planning becomes the consent authority, as required by SEPP 71. As previously detailed Planning & Infrastructure have advised that a Master Plan waiver is considered appropriate in this instance, given the subject land is covered by an adopted site specific DCP.

A5.4.4 - Physical Constraints

The applicant advises that Stages 15 to 18 are defined by the existing public reserves and street networks which are subject to Development Consent No. K99/1837. The site has been previously filled to the required levels as required under the previous consent K99/1837. However, subsequent alterations to the DFL necessitates minor filling to attain the ground levels currently required. Clarification was required in respect to the provision of high level flood evacuation routes for all land, site regrading (clarification as to whether retaining walls are required to provide flood immunity), drainage reserves and stormwater management, particularly in respect to the proposed future school site (Lot 1802).

An Amended Engineering Services Report has been provided that provides clarification in respect to DFL and the provision of flood evacuation routes. As detailed within this report, the revised plans indicate that all lots will be raised by approximately 1m unnecessarily. The applicant advises that the subdivision layout over Lot 1802 (school site) is conceptual only and that it is unreasonable and unnecessary to provide further detail of the possible future residential lots on the western side of the drain as they do not form part of this application. Any future development application for the school or future residential lots will need to provide further information in respect to landforming and flooding.

In general it is considered that the proposal responds to the natural landform and drainage system in the layout of streets and open space. Conditions will be applied to any Development Consent in respect of lot levels and modified bulk earthworks.

A5.4.5 - Environmental Constraints

Contaminated Land

This section requires matters relating to contaminated land to be considered. In general it is considered that matters pertaining to land contamination have been adequately addressed.

Bushfire Risk

A bushfire threat assessment is required to accompany all proposals where development adjoins bushland or other sources of potential fire risk. The subject development application has been referred to the NSW RFS with this regard who have provided General Terms of Approval that will be applied to any Development Consent. It is generally considered that the proposed subdivision accords with the document '*Planning for Bushfire Protection*' 2006 in respect of subdivision design, road layout and the provision of adequate asset protection zones.

Threatened species, population or ecological communities and their habitats

Vegetation across the site is dominated by regularly slashed pasture / turf-grass, with one large *Ficus virens var. sublanceolata* (White Fig) remaining on the central parcel. In relation to threatened species or ecological communities a report has been prepared by JWA consultants advising that the proposed development is unlikely to impact on threatened species given the site has been substantially cleared of vegetation and has been significantly disturbed over a number of years. The site does not comprise any Koala habitat and it is considered unlikely that the proposed development would impact on matters related to this threatened species, given the site has been substantially cleared of vegetation and disturbed over the years.

The applicant was advised that the land to the north-east of the site (adjacent to Lots 1731 to 1737) was the area noted within the *Management Plan for Threatened Species, Habitats and Ecological Communities on Pottsville Seabreeze Estate* (associated with the broader development consent (K99/1837)) as potentially comprising Wallum Froglet (*Crinia tinnula*) habitat. The applicant advises that the value of the pond on Lot 138 DP 1045822 (adjacent to Lots 1731 and 1737) comprises an artificial stormwater basin and therefore its ability to provide suitable frog habitat is limited because of the need for regular mowing and maintenance of the basin, including desilting. A revised Assessment of Significance (7 Part Test) has been provided with this regard that advises the site does not comprise Wallum Froglet habitat. As detailed further within this report it is considered that the proposal would be unlikely to impact on threatened species or their habitats.

Landscape Character

In respect of landscape visual character it is generally considered that the proposed subdivision would be consistent with existing neighbourhood and subdivision design within the Seabreeze Estate and the wider locality.

A5.4.6 - Landforming

The applicant advises that landforming of the site will be undertaken in accordance with the Engineering Services Report and that only minor landforming changes are required to achieve drainage to the lots. As detailed within this report, further clarification was required in respect to drainage and the provision of retaining walls. The applicant advises that 1:4 batters will be constructed along many of the external road frontages to accommodate increased fill levels due to flood immunity requirements. It is noted that batters of this size may not be necessary, as detailed within this report.

Numerous retaining walls are required at periphery areas of the site to retain the filling required to raise the lots to the required levels. In general, no engineering concerns are raised in respect of the periphery retaining walls however the 'internal' retaining walls within and separating Stages 15 and 16 are considered to be unnecessary and could be significantly reduced. Improved lot grading would also remove the requirement for such internal retaining walls.

Conditions will be applied to any Development Consent to amend the finished surface levels for Stages 15 and 16 in order to reduce the extent of proposed retaining walls. A condition will also be applied to ensure that all retaining walls are wholly contained within private lots.

A5.4.7 - Stormwater Runoff, Drainage, Waterways and Flooding

Drainage

Stormwater proposed to be discharged from Stage 15 and 16 is to be conveyed to the existing stormwater drainage network in Lennox Circuit adjacent to Stage 16. Stage 17 stormwater is proposed to discharge into the existing drainage reserves to the north. As such no additional stormwater treatment detention devices are proposed, rather the proposed lots will rely on the existing network.

The proposed Drainage Reserve adjoining the northern sides of Lots 1802 and 1803 have not been annexed to any particular Stage as such and have not been provided with a lot number. This lot is required to be dedicated as soon as possible and a condition will be applied to the consent to complete this as part of the first 'Stage' being released.

Proposed Lot 1748 - Drainage Reserve

Proposed Lot 1748 contains an existing open drainage channel that already accepts discharges from the minor and major subdivision drainage systems at the intersection of Seabreeze Boulevard and Urunga Street. This drain connects the street drainage system to the existing drainage reserves to the north, and is currently located within an easement for this purpose.

The applicant advises:

'Newland proposes to dedicate Lot 1748 subject to Council paying compensation, at market value, for the land on the basis that the drain is only required to address flooding issues from Council's inadequate flood modelling'.

This statement is factually incorrect and ignores the overall staging and masterplanning of Seabreeze Estate, where these trunk drainage systems were identified, designed and constructed. The applicant was advised that while historic issues with flooding in and around Seabreeze Estate are acknowledged and have been previously addressed, the drainage function of Lot 1748 is completely unrelated to these issues. On this basis it was advised that this parcel and Lot 1749 that provides a similar trunk drainage connection purpose, shall be dedicated to Council at no cost.

The applicant has advised that Council's comments in relation to Lot 1748 are noted but not necessarily agreed with however to avoid further delays and approval of the application the applicant has withdrawn its request for compensation in respect of dedication of Lot 1748 as a drainage reserve. Both lots will be dedicated to Council as drainage reserves as indicated on the amended Subdivision Plan.

Maintenance work will be required to the drainage areas prior to dedication so that the original design hydraulic capacity is achieved and remain accessible once houses are developed along the drainage reserve boundaries.

Stormwater drainage system - Lennox Circuit

The applicant was required to amend the stormwater drainage discharge point from Road 1 to align with the inlet zone of the existing wetland to the north. The Plan has been amended to connect to this catchment to the existing drainage in Lennox Circuit. It is considered that this is acceptable.

A condition will be applied to any Development Consent to ensure that the Construction Certificate application shall include engineering calculations that confirm that the stormwater drainage system in Lennox Circuit has sufficient capacity to accept the additional stormwater flows, in accordance with Development Design Specification D5 - Stormwater Drainage Design, or provide an acceptable stormwater design.

Stage 18 - Stormwater treatment regime

The applicant was requested to provide commentary on the proposed stormwater treatment regime should Stage 18 be utilised for residential subdivision instead of a school site and that discharge to the drainage reserve channel without treatment is not permitted.

The amended report emphasises that subdivision of Stage 18 is not subject to this application and this is acknowledged. Stormwater quality control, in accordance with D7, will need to be addressed in a future application, whether for a school site or a residential subdivision. It is noted that the proposed installation of a GPT to service residential subdivision of Stage 18 is not likely to be adequate however does not need to be pursued further at this stage.

Waterways and riparian vegetation

The subject land is in close proximity to Cudgera Creek. Matters relating to riparian buffer provision and revegetation of the creek bank have been previously considered within the assessment of K99/1837 and subsequent modifications. The application does not propose any alterations to the access arrangements to this area.

The area of the lot designated as an E2 Environmental Conservation land use currently acts as a conveyance channel for stormwater generated from a sub-catchment of the existing Seabreeze Estate. It is noted that no works are proposed within the drainage line however the channel is to be dedicated to Council for management as a drainage reserve (Lot 1748 - Operational Land). This arrangement is reflective of that previously established to the west along Cudgera Creek where two other stormwater channels designated as operational land continue to the top bank of Cudgera Creek.

It is noted that no services including reticulated water, sewer or power will be required to traverse the Cudgera Creek riparian reserve. Further, it is not anticipated that the proposal would involve any works within the proposed drainage easement (Lot 1748) as the drainage line currently meets hydraulic performance requirements to service existing lots to the south. Similarly it is envisaged that there will be no requirement to upgrade the outlet that remains within the E2 zone immediately adjacent to Cudgera Creek.

Flood liable land

Matters relating to flooding have been addressed within Section A3 of this report and as detailed suitable conditions will be applied to any Development Consent to ensure that the proposal is satisfactory with this regard, subject to a number of conditions being applied to any Development Consent.

Erosion and sediment control

The applicant has provided an Erosion and Sediment Control Plan however matters relating to erosion and sediment control will need to be formally approved as part of the construction certificate submission for civil works.

Further information in relation to erosion and sediment control is requested as part of the NSW Office of Water requirements for works requiring a controlled activity approval.

Buffers

Section A5 states that there is a requirement to buffer areas between subdivisions and other specified landuses to minimise landuse conflicts.

A number of proposed lots within Stage 18 of the proposal do not comply with the minimum buffer requirement of 150m and have the potential to encroach upon the rural activities to the north and expose future residential occupiers to a potential public health risk. Whilst this site has been identified as a potential school site or potential 65 lot residential subdivision, this application does not approve such a land use. Further consideration of buffers to agricultural land uses would need to be considered during any future development application to Council.

The potential for noise nuisance and lighting impacts on residents of allotments within Stage 17 (adjoining the sports fields and associated clubhouse to the east) has been raised with the applicant. The clubhouse was approved under Development Consent No. DA03/1655 that does not nominate any hours of use. The facilities are currently utilised by local hockey and cricket clubs with competitions being held in daylight hours with training being undertaken until the lights are required to be turned off at 9.00pm. The clubhouse does not provide for other uses such as private functions and comprises lighting to the northern portion of the field only.

Council's Recreational Services have advised that no increase or embellishment of the use of the clubhouse or sports field is anticipated in the planned future. The residential subdivision layout for the eastern side of Stage 17 adjoining the sports field has not attempted to address potential land use conflicts. It would have been preferable if the design could have attempted to utilise practical options of maximising separation distances through the incorporation of a road between the fields and allotments.

Whilst a perimeter road would not result in negating all impacts in association with the sports field and clubhouse, it would contribute to mitigation of impacts and therefore complaints received by adjoining land occupiers. Whilst the level of current use of the fields is a mitigating factor in the potential adverse impacts to the residential amenity for occupiers, residual concerns remain with this regard however it is considered that refusal of the application on these grounds is warranted.

A5.4.8 - Urban Structure

The objectives of this section, amongst other things, are to facilitate an environmentally sustainable approach to urban development by minimising car dependence, encourage containment of neighbourhoods and towns and provide a movement network that has a pattern of interconnected streets.

As detailed below, the original application proposed several dead end roads and cul-de-sacs with limited opportunity for walking or cycling. There was also minimal road frontage or public access to areas of open space. The application has been amended and now includes a road through Stage 15 and improved pedestrian connectivity, as detailed further within this report.

In general the proposal will avoid large scale changes to the natural landform or large scale earthworks (particularly given the bulk of works have been carried out under the original approval for the Seabreeze Estate). It is generally considered that the proposed development is consistent with this section.

A5.4.9 - Neighbourhood and Town Structure

The objectives of this section are to ensure new development provides for a highly interconnected neighbourhood with neighbourhood size and shape defined by an acceptable walking distance. It also seeks to ensure a highly interconnected and easily navigable street network with strong links between town and neighbourhood centres as well as a range of residential densities that increase toward the neighbourhood and town centres with at least 60% of dwellings within a 500m-850m radius from an existing or potential neighbourhood centre to be within a safe walking distance.

In respect to interconnectivity the applicant originally advised that *'The proposal provides a logical connection to the public road network [and...] Due to the urban infill nature of the site and the surrounding residential development there is no potential to improve the movement network surrounding the site'*.

In response it was considered that there was the potential to improve the connectivity of the proposed subdivision with the potential to delete the proposed cul-de-sac arrangement in Stage 15 and provide a perimeter road to improve pedestrian connectivity. A through road within Stage 15 has now been provided as has a pedestrian link through to the public reserve within Stage 17. The applicant advises that a perimeter road is not achievable given the constrained nature of the site, particularly in respect to the proposed school site as it would diminish the 6 hectare land parcel. It is generally considered that the proposed street network and pedestrian links will result in an improved situation with this regard.

Whilst the proposed retail development lot (Lot 1701) has been deleted, the proposed subdivision does include reference to a potential future school site (Lot 1802) and child care centre (Lot 1702) (that will be subject to future development applications). The proposed Town Centre site is also located in close proximity (approximately 100m) from the subject site to encourage walking and reduce reliance on the private car.

Matters relating to the proposed density of the development are detailed further within the assessment of DCP B15 however it was considered that there was potential to increase densities within close proximity to the town centre. The applicant has advised that they have explored the potential to increase the number of smaller lot opportunities, particularly in the vicinity of the future

neighbourhood centre (being Town Centre A on the corner of Seabreeze Boulevard and Watego Drive). The amended plans now provide seven lots within a range of 450m² to 500m² together with nine potential dual occupancy lots in excess of 900m² that yield a total of 20 per cent of the total. Further, 22 small lots (450m² to 600m²) in Stages 15 to 16 have been located in close proximity to the future neighbourhood centre.

It is generally considered that the proposed subdivision provides a range of lot sizes that will provide for a suitable mix of housing types, consistent with the character and scale of existing built development within the Seabreeze Estate and wider locality.

A5.4.10 - Movement Network

This section requires neighbourhoods to be highly interconnected with a logical street network. The proposed subdivision originally incorporated a number of dead end roads and cul-de-sacs with limited forms of pedestrian activity. One of the primary issues with the original Subdivision was the disconnected street pattern, with limited linkages to the surrounding road network or areas of open space and few opportunities for walking or cycling.

It was noted within the Development Assessment Panel (DAP) minutes of 10 April 2013 that Seabreeze Estate has avoided this type of road design which is not desirable from an urban design perspective. As the site is relatively flat and unconstrained and it was considered that the site may easily accommodate a more fluid road design that provides linkages with existing and future roads and opportunities for pedestrian connectivity.

The applicant was requested to improve the connectivity of the site. In particular it was considered that the cul-de-sac as proposed in Stage 15 was not justified and that a road connecting to Lennox Circuit would be preferable to facilitate a more fluid road design, provide linkages with existing and future roads and more opportunities for pedestrian connectivity.



Extract of original Site Plan showing cul-de-sac arrangement in Stage 15



Extract of amended Site Plan with amended lot configuration and road through to Lennox Circuit

Whilst a perimeter road has not been provided it is generally considered that the reconfiguration of lot layout and improved connectivity is an improvement to the original plan. The provision of a pedestrian access to the public reserve to the east of Stage 17 will also provide improved pedestrian linkages to areas of open space within the subdivision.

Cul-de-sac

In respect to cul-de-sacs, this section advises that cul-de-sacs can be occasionally used but not as the primary street type and the street network should have no more than 15 per cent of lots fronting cul-de-sacs. The original Site Plan proposed 43 of 89 lots fronting a cul-de-sac (48 per cent) which was not considered to be justified. With the deletion of the Stage 15 cul-de-sac the number of lots that front onto a cul-de-sac has been reduced by 12. This equates to 31 lots fronting cul-de-sacs (approximately 34 per cent).

Whilst this equates to a significant proportion of lots being accessed via a cul-de-sac arrangement, it is considered that this is generally justified given the location of the drainage reserves, existing built development and the proposed future school site.

Road design

The applicant was advised that whilst the deletion of the cul-de-sac formation within Stage 15 was considered an improvement from a connectivity perspective that adequate sight distances would need to be achieved between intersections. In respect of the new road intersecting with Lennox Circuit there is a potential that the required sight distance may not be achievable. A condition will be applied to any Development Consent to ensure that any required traffic devices for this new road (for example, to ensure that a 40km/h speed limit is enforced if necessary) would need to be in accordance with AS1742.13 - Local Area Traffic Management.

In respect of street design the proposed subdivision was considered to be generally acceptable. The applicant was advised that the peculiar road widths for the two cul-de-sac heads in the easternmost section of Stage 17 would result in excessively wide footpath areas in the vicinity of Lots 1730, 1736 and 1739. The applicant has since amended the proposed plans and has reshaped the proposed road widths with this regard.

The submitted Traffic Impact Report (TIA) compiled by Bitzios Consulting discusses the impact of the development under two scenarios, one with the proposed High School and one with a 65 residential lots at Stage 18. It is considered that the TIA provides adequate information to justify that additional road upgrades are not required to the existing road network. Furthermore, in both scenarios it is considered that the TIA provides adequate information to justify that additional road upgrades are not required to the existing network.

The Degrees of Saturation and Levels of Service for all relevant intersections are also expected to be within acceptable levels. The applicant has been advised that any proposed High School location would require further analysis to determine suitable access locations and traffic facilities.

Streetscape

The applicant has submitted a Statement of Landscape Intent that seeks to create landscape entry statements for the proposed subdivision; provide compatible landscape design; provide screening and buffering for privacy and noise and provide a visually stimulating yet low maintenance landscape.

The Landscape Plan states that native trees and shrubs will be planted along streets, pathways and open space areas to provide shade and amenity to the development. Proposed species will provide a visual and ecological link to the adjacent riparian vegetation along Cudgera Creek. The Landscape Plan advises that streetscape native trees will be planted in accordance with TSC tree planting location specifications.

It is generally considered that the proposed landscape intent is satisfactory. Conditions will be applied to the consent to ensure that suitable native street trees and vegetation are planted to improve the ecological value and streetscape amenity such as shade and visual interest.

Pedestrian path network

The DCP requires that a pedestrian path network must be provided principally using the street network but also utilising and linking open space corridors (dual use drainage corridors, parks and so on) and providing efficient and safe access from residences to points of attraction.

The original subdivision plans proposed limited road frontage or pedestrian access to areas of open space. The applicants advise that the subject land is relatively constrained, given the location of drainage reserves and existing built development thereby limiting the opportunity for a perimeter road. As detailed within this report the subdivision plans have been amended whereby the cul-de-sac in Stage 15 has been deleted and an additional pedestrian access point to the public reserve to the east of the site has been provided in Stage 17.

The applicant advises that 'the layout has been revised and in this regard we confirm that it is not appropriate to facilitate public pedestrian access to the drainage reserves abutting the site [...]. The existing and proposed street network provide appropriate connectivity to the existing and proposed casual open space areas, the existing sports fields and the future neighbourhood shops on the corner of Seabreeze Boulevard and Watego Drive'.

It is considered that the proposal provides sufficient pedestrian connectivity to points of interest and community facilities (potential school, childcare site, open space areas and neighbourhood shops) in and surrounding the proposed subdivision. A condition will be applied to any Development Consent for further detail in respect of pedestrian walkways and cycleways prior to the issue of a Construction Certificate.

Footpath in streets

The submitted TIA states that the development will provide 1.2m wide footpaths and integrate the existing pedestrian and cycle paths with the Seabreeze Estate. However, the Stage 15 plan does not depict a concrete footpath accordingly and therefore an appropriate condition will be applied.

It is considered that there should be some form of path or cycleway connectivity between existing infrastructure and Koala Beach to proposed Lot 1803 (Fig Tree Park). An appropriate condition will be applied to the consent to ensure that further clarification in respect to pedestrian links and cycleways are provided to Council with this regard prior to the issue of a Construction Certificate.

A5.4.11 - Open Space Network

Open space should meet the needs of the local and district communities; create a linked open space network and support the legibility of an urban environment. It also seeks to ensure that the location, layout and design of development surrounding public open space minimises potential problems relating to personal security and surveillance and poor visual amenity in relation to the park and its boundaries.



Proposed Location Plan - Public Reserves - Seabreeze Estate Stages 1 and 2 (as referenced in the report above)

The application proposes two public reserve lots (Lots 1701 and 1803) and two drainage reserve lots (Lots 1748 and 1749) as part of Stage 15-18 which contribute to the parks and public reserves already provided within Stages 1-14.

Local and casual open space provision is established on Council's long-established standard of 1.13 hectares per thousand population. The applicant has provided a breakdown of open space provisions as required under DCP A5 and the most recent Section 94 Contribution Plan rates for open space (10 - Cobaki Lajes and 19 Casuarina). Please note that the applicant's calculations have been based on an occupancy rate of 2.4 persons per lot and have attributed errors in figures to rounding.

However, Contribution Plan 20 - Seabreeze Estate which is most relevant to the Estate provides an occupancy rate of 2.7 persons per lot and advises that 1.7ha per 1000 population for structured open space (sports field provision) and 1.13ha per 1000 population for passive open space.

The following table provides a breakdown of Council's estimation in respect of casual and structured open space provision within the Seabreeze Estate based on the open space provisions as set out within Contribution Plan No. 20:

Seabreeze Estate - Open Space Calculations			
Stage	Residential Lots	Casual Open Space Required (1.13ha / 1000 pop x 2.7 persons per lot)	Structured Open Space Required (1.7ha / 1000 pop x 2.7 persons per lot)
1 - 14	508	15499.08m ² (1.549908 ha)	23317.2m ² (2.3317 ha)
15 - 17	82	2501.82m ² (0.2501 ha)	3763.8m ² (0.3763 ha)
18	Nil	Nil	Nil
TOTAL	587	18000.9m² (1.8009 ha)	27081m² (2.7081 ha)
Available Open Space			
Available Open Space (as shown in Public Reserves Location Plan above)		5.57879 ha in total of which greater than 2ha is usable: Lot 1446 – 9998m ² Lot 925 – 2230m ² Lot 833 – 4353m ² Lot 341 – 2615m ² Lot 343 – 18070m ² Lot 136 – 8277m ² Lot 135 – 2926m ² Lots 536 – 2822m ² Lot 635 – 1663m ² Lot 834 – 1664m ² Lot 1445 – 3261m ² Proposed Lot 1803 – 5794m ² Total = 6.367 ha	3.66 ha (Lot 342 DP 1048762) Total = 3.66 ha

As demonstrated in the table above proposed casual and structural open space provision is considered satisfactory. Please note that Section 94 Plan No. 20 - Seabreeze Open Space Developer Contributions are not levied on this basis.

In respect to lot layout and access to open space areas, the subdivision originally proposed limited road frontage and pedestrian access to the proposed park network with a significant number of allotments backing directly onto the northern boundary. The provision of a perimeter road was a preferred option to enable development to front all streets and open areas, thereby increasing the amenity and value of the open space areas whilst improving opportunities for passive surveillance. The applicant has since advised that the drainage reserves located at the northern boundary of Stage 16, 18 and 17 are not designed for recreational uses as they contain stormwater management facilities, although they do provide 'green space' within an urban setting and therefore *'the provision of pedestrian access to these areas is neither appropriate or necessary'*.

An additional pedestrian pathway has been proposed that links Stage 17 to the sports fields to the east of the site from Uranga Drive. The applicant advises that given the sports fields have *'good passive surveillance from Uranga Drive, it is considered that a perimeter road would serve no useful purpose'*. An additional pedestrian pathway has also been proposed to Lot 1803 (Fig Tree Park) within Stage 18 of the development. It is noted however that this will be dependent on the development of the future school site.

It is considered unfortunate that a number of proposed dwellings are oriented away from the areas of drainage and public reserves as this would have provided an improved outcome in respect to best planning practice, improving visual amenity and surveillance. However, it is noted that the existing drainage reserves are not intended as formal open space areas. Pathways have been provided within Stage 17 to the sports fields and to the Fig Tree park in Stage 18 (should the school site not proceed). Whilst a perimeter road adjacent to these areas of green spaces would have been preferable, the applicant's justification with this regard is considered satisfactory.

Landscaping

The applicant has submitted an *Amended Statement of Landscape Intent* (dated 13 March 2014 prepared by Boyds Bay Planning) that details the provision of landscaping within the proposed subdivision, within public open space (Fig Tree Park), road reserves and entry areas. The plan also details planting along the eastern boundary of Stage 17 (adjacent to the sports fields) in front of the proposed fencing to improve amenity and provide an additional buffer to the sports fields.

The plan indicates a goal of 70 per cent local natives and 30 per cent exotics to be achieved. This is not consistent with Council's general landscape policy of 80:20 (native:exotic) and shall be amended as part of the future detailed landscape plan. This is considered to be particularly important given the proximity of the Cudgera Creek riparian corridor.

Specific recommendations from the arborist report (in respect to landscape treatment and tree protection measures) have been incorporated into the report. Also, the report indicates that structures shall be excluded from the TPZ / canopy and that pathways traversing the TPZ shall be of porous product and will not involve any sub-grade preparation in order to avoid root disturbance.

Conditions will be applied to the consent to ensure that a detailed landscape plan must be submitted to Council prior to the issue of a Construction Certificate; that suitable plant species are utilised, incorporating native species (minimum 80 per cent) and is carried out in accordance with D14 - Landscaping Public Open Space.

Embellishment of open space

The applicant has provided further detail in respect to the embellishment of the Fig Tree Park such as the provision of park seating, play area with shade sail, concrete pedestrian paths, feature gardens adjacent to a BBQ and landscape buffer.

Conditions will be applied to any Development Consent in respect to the adequate timing (prior to Subdivision Certificate for Stage 18) and provision of the embellishment of open space in proposed Lot 1803. Appropriate conditions will also be applied in respect to the provision of any playgrounds comply with Council's guidelines as well as the provision of a bank guarantee or cash contribution to the value of such items.

A5.4.12 - Lot layout

This section requires lots to have appropriate area and dimensions to enable efficient siting and construction of dwellings, provision of private outdoor space, convenient parking as well as smaller lots and lots capable of supporting a higher density located close to town and neighbourhood centres.

It was advised that the proposed subdivision had the potential to increase the number of smaller lots in the vicinity of the neighbourhood centre, with larger lots on the outer fringes. It was also considered that the provision of narrower lot widths may facilitate an increase in density and allow for the provision of deep soil zones oriented to the rear, preferably to the north, of the allotment.

The proposed subdivision layout provides a minimum lot area of 450m² and it is considered that each lot is generally of regular shape and capable of comprising a building footprint with dimensions of 10m x 15m.

However, the original subdivision plan proposed lots of 900m² that were constrained in configuration, being located at the head of the cul-de-sac (being Lots 1505, 1508, 1714 and 1715). It was considered that such sites may present difficulties in achieving adequate compliance with DCP A1 as well as sufficient on-street parking (Council's Development Design Specification D1 - Road Design that requires a minimum of 9m kerb frontage per allotment in a cul-de-sac, unless alternative provision for parking is made).

The application details have since been amended so that Lots 1714 and 1715 are the only potential dual occupancy sites in a cul-de-sac arrangement. The applicant advises that the sites have a generous area (933m² and 1108m²) to facilitate flexible designs and accommodate compliant onsite parking and have provided a compliant kerb frontage sketch with this regard.

Lot 1718 however is a narrow-necked hatchet type shaped lot with a street frontage of only 6m and an area of 1160m², as shown in the extract of the proposed Site Plan below:



Extract of proposed Subdivision Plan showing constrained access Lot 1718

The street frontage for Lot 1718 does not allow for on-street visitor parking and the applicant has agreed to provide a designated off-street visitor parking space on the site. This would be implemented in conjunction with the construction of a dwelling on the site and will be enforced via creation of a Restriction on Title.

In respect to the small unmarked area of land adjacent to the western side of proposed Lot 1601, fronting Lennox Circuit, a condition will be applied to ensure that this lot is incorporated as part of Lot 1601.

The applicants have explored the potential to increase the number of small lot opportunities in the vicinity of the neighbourhood centre and considers that *'the range of lot sizes provides for a suitable mix of housing types and appropriate densities in the vicinity of the future town centre'*.

The proposed subdivision provides 22 small lots (i.e. 450m² to 600m²) in Stages 15 to 16, all of which are in close proximity to the neighbourhood centre. The proposal originally comprised approximately 40 per cent of sites of more than 600m² but less than 900m² in area. This has since been amended to account for approximately 30 per cent of total lots. In general it is considered that the revised lot layout and increased housing density in closer proximity to the proposed town centre site is acceptable.

It is considered that the proposed housing densities are generally in accordance with the provisions of the low density residential zoning and the provisions of DCP A1.

Schools and land for community use

The proposal incorporates a proposed school site at Stage 18 (being Lot 1802), having a total area of 5.692 hectares. The school site is severed by an existing drainage reserve within which is constructed an open drainage channel. It is acknowledged that the potential school site is less than the 6 hectare minimum specified in the Department of Education and Communities Guidelines. The applicant advises that the NSW Department of Education and Communities has

advised that, subject to the relocation of the open stormwater channel to the western boundary, the site broadly meets their requirements, particularly as it is adequate walking distance to the embellished sports fields, approximately 450m to the east of the site.

The suitability of proposed Lot 1802 as a future school site will be subject to a future development application and merit assessment.

Lot design and layout in bushfire prone areas

As detailed within this report the application has been referred to the NSW RFS for comment as the proposed subdivision is Integrated Development for bushfire purposes. It is considered that the subdivision design is capable of providing a building platform of a minimum of 10m x 15m that is capable of being protected from a bushfire hazard by an asset protection zone (APZ).

The NSW RFS have provided General Terms of Approval with this regard.

A5.4.13 - Infrastructure

All lots shall be fully serviced with sealed roads, kerb, gutter, water supply, sewerage, underground electricity and telecommunications.

It is noted that the Amended Engineering Services Report comprises a number of errors in respect of the proposed sewer design and therefore the submitted plans are considered to be preliminary and are subject to change to meet Council requirements prior to the issue of the Construction Certificate. Conditions will be applied to any Development Consent with this regard.

Please note that the residential subdivision as shown on Stage 18 is not approved as part of this application. Should the school site not proceed and a residential subdivision be proposed, the proposed layout of water and sewer design for Stage 18 will need to be addressed within any future development application.

The eastern portion of Lot 1147 is encumbered with the following easements:

- 2 x Easements for Drain Water Variable Width;
- 2 x Easements for Batter Variable Width.

Various easements (for sewer infrastructure and stormwater (relief overland flowpath)) are required to be created over various lots. Appropriate conditions have been included to address these requirements.

A7 - Child Care Centres

A child care centre would be permissible with consent in the 2(a) and R2 Low Density Residential zone and therefore this policy applies. This DCP advises that where located in residential zones Council shall strongly favour the location of child care centres adjacent to non-residential uses such as retail uses, schools, community facilities and the like.

The DCP states that the development of child care centres of 'infill' sites within low density residential areas unless: the lot has a minimum area of 800m², a 3m perimeter landscape buffer with adjacent properties and a minimum 1.8m high intervening fence; the applicant can demonstrate noise will not be detrimental to adjacent residents; car parking is provided in such locations that will minimise disturbance to adjacent neighbours; and the overall traffic impact to the immediate neighbourhood is not detrimental to the amenity.

It states that for new urban release areas there should be planned provision within a DCP for a particular release area to locate a child care centre immediately adjacent to retailing, commercial and community uses.

A11 - Public Notification of Development Proposals

The application was advertised for a period of 30 days from Wednesday 23 October 2013 to Friday 22 November 2013. One submission has been received that details the following matters:

- The proposed movement of the original 200m² shop site to a position on the corner of the connecting road between Sea Breeze and Koala Beach Estates;
- Agreement that only 1000m² would be used as a shop site with the remainder available for a child care centre as shops / commercial uses should be concentrated within the Pottsville town centre;
- Concerns in respect to the loss of the fig trees along the avenue on the approach to Seabreeze Estate and replacement with Tuckeroos and advised that the trees appear to be in good health and were not impacting the footpath or road reserve.

As detailed further within this report, the original Town Centre Site A (on the corner of Seabreeze Boulevard and Watego Drive will remain as the nominated Town Centre site for the Seabreeze Estate. On this basis it is considered that the issues raised within the submission in respect to the proposed subdivision have been satisfactorily addressed.

A13 - Socio-Economic Impact Assessment

The threshold trigger for the preparation of a Social Impact Assessment (SIA) report for a subdivision (under the guidelines of Section A13 of the Tweed DCP) is 50 lots. The proposed subdivision comprises 88 lots and accordingly a SIA has been prepared. The SIA considers that the proposal would be consistent with the objectives of the zone and is generally consistent with the density controls and design guidelines pursuant to Section A5 - Subdivision Manual, Section B 15 - Seabreeze Estate and Section B21 - Pottsville.

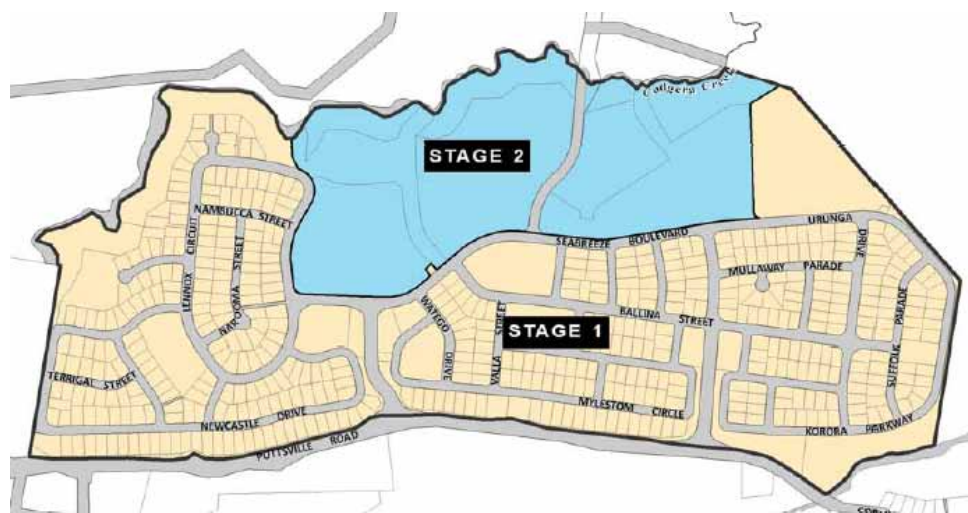
It is considered that the proposal is generally consistent with the provisions of the relevant statutory controls and guidelines and would be in keeping with the general character and scale of built development within the Pottsville locality. The proposal would be unlikely to create any adverse social or economic impacts and will result in the completion of the Seabreeze Estate.

A15 - Waste Minimisation and Management

A Waste Management Plan has been provided with the submitted details. It is considered that the proposal does not raise any specific concerns in respect to waste management.

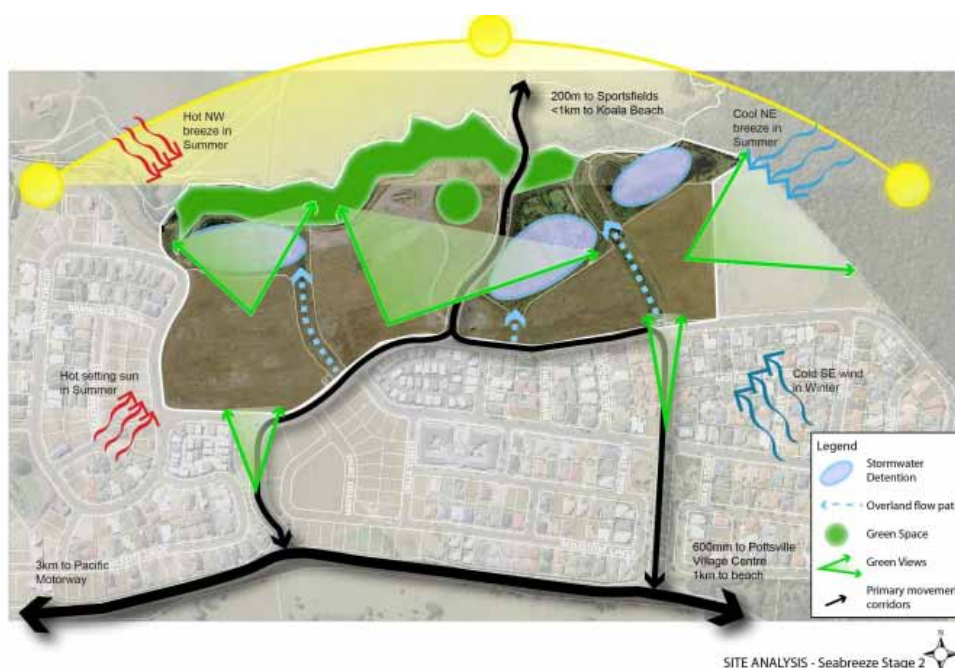
B15 - Seabreeze Estate, Pottsville

This DCP was adopted by Council on 21 November 2013 and sets a number of criteria to guide development within Stage 2 of the Seabreeze Estate, the location of which is shown in the following map:



Map 1A - Seabreeze Estate Stages 1 and 2

The DCP seeks to ensure that the site layout and building design take into consideration the existing characteristics, opportunities and constraints of the site; to consider the desired future character of the area and present opportunities to link open space and protect important features of the site and natural areas such as riparian vegetation and selected fig trees, as demonstrated in the Site Analysis as detailed below:



Map 2A - Site Analysis for Seabreeze Estate Stage 2

Map 2A demonstrates the location of stormwater detention basins and overland flow paths as well as the location of green space and 'green views' toward public reserves and the sports fields to the east.

A brief Site Analysis Plan has been provided that illustrates areas of public and drainage reserves, location of bushfire prone land, riparian rehabilitation areas and existing built development and roads within the Seabreeze Estate. The SEE advises that the site contains managed grasslands and the key constraint is the irregular shape of the land, the separation of the land by Tom Merchant Way and existing drainage reserves. Bush fire hazards and flooding are also constraints.

B15.2.3 - Habitat, Bushfire Management and Buffers

Habitat

A Species Impact Statement (SIS) has been prepared by JWA Consultants detailing that the proposed subdivision is unlikely to impact on habitat or threatened species. The site has been significantly disturbed over the years and comprises managed grasslands and drainage reserves. Ecological matters are considered in further detail within this report however in summary, it is generally considered that the proposal does not raise any significant concerns in respect to habitat values.

Conditions will be applied to the Development Consent in respect to ensure that no native vegetation is removed without prior approval; to ensure the protection of the White Fig Tree in proposed Lot 1803; in respect of landscaping (suitable native species) and in relation to the control of dog ownership.

Bushfire Management

The DCP advises that areas of the site at risk of exposure to bushfire hazard include land adjoining the Cudgera Creek riparian corridor and land adjacent to the closed forest areas and grasslands to the east and advises that the design of subdivisions should incorporate the provision of roads and buffer areas between housing lots and bushfire hazard.

The applicants have submitted a revised Bushfire Threat Assessment (dated 3 March 2014) that confirms Council will manage the drainage reserve and foresees no issues in respect of maintenance regimes (such as slashing).



Extract of Bushfire Threat Assessment report showing sediment ponds to the north of the proposed development to remain managed



Extract of Bushfire Threat Assessment report showing existing drainage channels to remain as managed land

The Report advises that adequate inner protection areas, services and access will be provided to the site. In respect to the perimeter road the Report advises that given that the primary hazard is remnant vegetation along a creek line and some grassland with managed areas between housing and the hazard, that it is unlikely that control lines for hazard reduction is needed.

Public roads will meet the criteria of the *Planning for Bushfire Development 2006* document (two-wheel drive, fall not exceeding 3 degrees, dead end roads no more than 200m in length).

It is noted that the proposed APZ associated with Stage 18 may extend within Lot 1148 (part of the Cudgera Creek riparian reserve), however this area of the reserve is currently maintained as a slashed paddock and has not been previously required as part of Stages 1-14 to be rehabilitated. In the event that the school site proceeds the APZ is likely to extend between 5 to 20m within Lot 1148 along the length of the Stage 18 frontage. It is not considered that this raises any significant implications in respect to the Cudgera Creek riparian reserve.

Buffers to Adjoining Uses

The DCP advises that the cultivation and management of agricultural crops (such as cane) has the potential to impact on the surrounding residents and that allotments should not be located closer than 150m from an existing area of sugar cane production on land to the north and north-west unless an appropriate mitigating riparian rainforest buffer is established to mitigate any potential impact of the proposal.

Matters relating to buffers to agricultural land uses are detailed further within this report. In summary, a number of conceptual residential lots located on Stage 18 (school site) would not meet the required separation distances. The applicant has advised that these lots are for indicative purposes only should the school site not go ahead however are not relevant at this stage of the development. These matters will be subject to merit assessment within any future development application.

As detailed previously, the potential for noise nuisance and lighting impacts on residents of allotments within Stage 17 (adjoining the sports fields and associated clubhouse to the east) has been raised with the applicant. The clubhouse was approved under Development Consent No. DA03/1655 that does not nominate any hours of use. The residential subdivision layout for the eastern side of Stage 17 adjoining the sports field has not attempted to address potential land use conflicts. It would have been preferable if the design could have attempted to utilise practical options of maximising separation distances through the incorporation of a road between the fields and allotments.

Whilst a perimeter road would not result in negating all impacts in association with the sports field and clubhouse, it would contribute to mitigation of impacts and therefore complaints received by adjoining land occupiers. Whilst the level of current use of the fields is a mitigating factor in the potential adverse impacts to the residential amenity for occupiers, residual concerns remain with this regard.

Contamination

Matters relating to land contamination have been previously considered within this report. It is considered that the proposed subdivision raises no implications in respect of land contamination.

B15.2.4 - Traffic Management and Movement Network

A Traffic Impact Assessment Report (TIA) has been prepared that advises the following key points as summarised below:

- The internal road network has been designed generally in accordance with the requirements of DCP A5;
- Proposed roads are to 'Access Street' standards and connect to the existing neighbourhood connector of Seabreeze Boulevard;
- The proposed development will generate additional trips on the basis of the potential future school site and child care site however the nature and proximity of these land uses will serve the surrounding residential estate and therefore attract a high proportion of walk-up, cycle and drive-by 'linked' trips;
- No planning or design has yet been undertaken for the potential future school site however it is noted that primary access for the site should be via Seabreeze Boulevard with a secondary access to Tom Merchant Drive; should include bus set-down facilities at an approximate rate of 1 space per 125 students; vehicle parking should be provided by taking into consideration Council's requirements as well as expected site specific daily demand; cycle storage provision; adequate pedestrian connections (primary pedestrian desire lines and limit conflicts with bus set-down areas and parking areas);
- Whilst no public transport is currently servicing Seabreeze, it is expected that the subdivision will incorporate a bus service in the future.

The application has been considered by Council's Development Traffic Advisory Group and Traffic Engineer. It is considered that the submitted TIA, that discusses the impact of both the high school and 65 lot residential subdivision scenarios in Stage 18, adequately justifies that additional road upgrades are not required to the existing road network.

The Degrees of Saturation and Levels of Service for all relevant intersections are expected to be within acceptable levels however any proposed future school would require further analysis to determine suitable access locations and traffic facilities.

B15.2.5 – Soil and Water Management

Detailed Stormwater Management Plans, Stormwater Quality Treatment Reviews, Wetland and Water Balance Report, Stormwater Quality Treatment Review and Dewatering Management Plans have been submitted to Council for review.

It is considered that the proposed subdivision would be unlikely to result in soil erosion, sedimentation and loss of water quality either during the construction phase or following implementation. Appropriate conditions will be applied to the Development Consent to ensure that satisfactory measures are in place to ensure adequate stormwater pollution control and run-off water quality measures are in place.

B15.2.6 - Flood Liable Land Development

Matters relating to the development of flood liable land have been considered in detailed within this report. It is considered that matters relating to flooding may be satisfactorily addressed via conditions of the consent.

B15.2.7 - Open Space Strategy

The objectives is to provide a safe and pleasant open space network which meets the diverse needs of future residents in terms of neighbourhood parks, play spaces, buffer regeneration areas and sportsfields and ensuring these spaces are appropriately located.



OPEN SPACE STRATEGY - Seabreeze
Stage 2 - MAP 6A

Map 6A - Open Space Strategy - Stage 2

Proposed Lot 1802 (Fig Tree Park) is located within the area specified for open space. To the east of the subject land is the existing sportsfield site. The remaining areas of green space are drainage reserves intended for stormwater retention purposes.

It is considered that the proposed overall open space provisions are adequate and in accordance with the desired character of the subdivision as detailed in DCP B15.

B15.2.8 - Services and Utilities Strategy

DCP B15 states that, as of 1 August 2012, land identified in Map 6.1 is restricted by the capacity of Council's wastewater treatment site to manage any increase in wastewater arising from new development. This is presently limited to a 200 ET maximum.



Map 6.1 - 'Greenfield Land'

Of the 200 ET available, a minimum of 63.5ET is allocated to the 'Potential Future School Site', and 7ET being allocated to the 'Town Centre' to the south of Seabreeze Avenue.

The submitted SEE originally provided limited information in respect of ET provision other than 'Densities are constrained by available sewer capacity'.

The applicant was required to demonstrate compliance with ETs allocated to the proposed subdivision and has provided the following summary of available ETs:

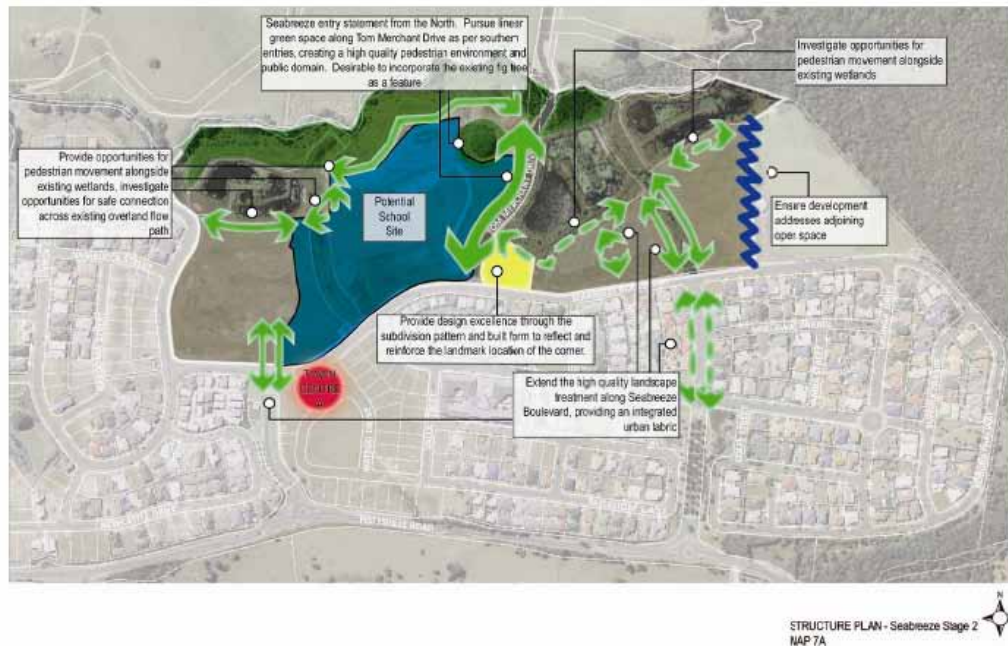
Lot	No. of ETs
Lot 1802 (potential school site)	63.5
Future town centre Stage 8	7
Lot 1702 (future child care centre)	18.5
0.1ET/person (approx 80 persons + residential approx 10ET)	
Residential lots - 82	82
Duplex lots - 9	9
Total	180

The applicant advises that it is noted 200ETs have been allocated in the event that the school site does not proceed and that on this basis the 20 'spare' ETs could be consumed on Lot 1702 and within Stage 18.

The proposed subdivision is generally consistent with the provisions of the DCP in respect to availability and provision of ETs in respect of water and sewer capacity.

B15.2.9 - Indicative layout for the Estate

The Structure Plan shows the indicative layout for development of the estate (Map 7 as shown below) and indicates the preferred location and siting of major elements of the estate (open space, principal roads, landscape features, neighbourhood shopping facilities and so on).



Map 7A - Structure Plan Stage 2 (please note following: red circle indicates location of Town Centre A; blue is potential school site; large green arrow in central portion entry statement, green arrows highlighting desire to encourage pedestrian movement alongside existing wetlands; yellow being prominent corner location; blue hatched line requiring address of adjoining open space)

The applicant advises that the proposed subdivision plan is generally in accordance with the Structure Plan for Stage 2, as summarised below:

School site

A school site in Stage 18 is proposed. Whilst the site is severed by an existing drainage channel it is considered that the site broadly meets the relevant requirements for a school site as governed by the NSW Department of Education and Communities. Site specific issues shall be considered within any future development application for a school.

Town Centre

The application originally proposed Town Centre B located on the corner of Tom Merchant Drive and Seabreeze Boulevard (proposed Lots 1701 and 1702). The applicant proposed to lodge a Modification Application in respect to Development Consent No K99/1837 to replace the Town Centre A site with conventional residential allotments and it was proposed as part of this application to pursue Town Centre B.

During a public workshop (21 October 2013 in respect to the proposed amendments to DCP B15), participants raised concerns that Town Centre B comprises a significantly larger area than that of Town Centre A, and that this may threaten the viability of the Pottsville Village Centre as well as impact on surrounding residential amenity. Concerns were also raised in respect to Town Centre B not being located as well as Town Centre A, that had been earmarked for over 12 years. It was relayed to Council Officers that Town Centre B should not be supported without certainty of the size and location of the proposed childcare centre and shop, which was beyond the level of information provided within the current application.

During the consideration of the Draft DCP B15 (at the Council Meeting of 21 November 2013), Councillors resolved to remove all references to Town Centre B. Therefore the applicant was requested to clarify their intention in respect to proposed Lots 1701 and 1702, noting that land uses such as a shop or childcare centre would be a permissible land use and that, given the landmark location of the site, development should be of a higher order than a single dwelling house and should represent a positive opportunity.

The applicant has removed all reference to Town Centre B within the subdivision plans in accordance with B15. Lot 1702 is intended for use as a future childcare centre and possibly integrated residential development that would be subject to a future development application.

Provide opportunities for pedestrian movements alongside the existing wetlands

The applicant advises that land has already been dedicated and rehabilitated in the public reserves adjacent to Cudgera Creek including:

- Lot 1129 DP 1118282 - 2.248 hectares;
- Lot 1148 DP 1115395 - 2.931 hectares;
- Lot 1328 DP 1118285 - 1.22 hectares.

In addition, the landowner has dedicated drainage reserves adjacent to the foreshore public reserves including

- Lot 1145 DP 115395 - north of Stage 16;
- Lot 740 DO 1072580 - north of Stage 17;
- Lot 138 DP 1045822 - north of Stage 17.

As part of the current application it is also proposed to dedicate an additional drainage reserve north of Stage 18 (proposed Lot 4, area 6275m²) (as required by Council as being part of the strategy to address flooding issues at Seabreeze Estate. Also, Proposed Lot 1803 (Fig Tree Park) will be dedicated and embellished.

The applicant considered that to provide additional 'public reserves' for pedestrian movements alongside existing wetlands is unreasonable and unnecessary given the land already dedicated for this purpose.

However, it was considered that there further improvements could be made in the provision of pedestrian connectivity to reflect best planning practice and improve the amenity of these areas. The applicant was required to provide further consideration of the provision of a footpath along the levy wall (along the northern boundary of Stage 18 connecting to Tom Merchant Drive and the proposed Fig

Tree Park). It was noted that, at the current time, this may not be supported due to restoration efforts being compromised in certain sections of the pathway however may be suitable at a later stage or compensated for elsewhere.

The applicant has confirmed that it is not appropriate *'to facilitate public pedestrian access to the drainage reserves abutting the site. The riparian rehabilitation buffer adjacent to Cudgera Creek together with the existing and proposed street network provides appropriate connectivity to existing and proposed casual open spaces areas, the existing sports fields and the future neighbourhood shops on the corner of Seabreeze Boulevard and Watego Drive'*.

Given the sensitive nature of the restoration area adjoining Cudgera Creek it is considered that a footpath in this location is not appropriate. In general it is considered that adequate opportunities for pedestrian linkages have been provided through the subdivision.

Interface with existing sports fields to east of site

A 1.8m high colourbond fence with planting has been proposed along the eastern boundary of the site in between the proposed residential lots in Stage 17 and the existing sports field site.

As detailed within this report it is considered that the potential for noise nuisance and lighting impacts on residents of allotments within Stage 17 (adjoining the sports fields and associated clubhouse to the east) remains of concern. The application has not attempted to address potential land use conflicts and it would have been preferable if the design could have attempted to utilise practical options of maximising separation distances through the incorporation of a road between the fields and allotments. Whilst a perimeter road would not result in negating all impacts in association with the sports field and clubhouse, it would contribute to mitigation of impacts and therefore complaints received by adjoining land occupiers.

Council's Recreational Services have advised that no increase or embellishment of the use of the clubhouse or sports field is anticipated in the planned future and whilst the level of current use of the fields is a mitigating factor in the potential adverse impacts to the residential amenity for occupiers, residual concerns remain with this regard. However, as detailed it is not considered that refusal of the application is warranted on this basis and any future application to expand or intensify the use of the sports fields or clubhouse would need to have consideration of any approved residential lots in close proximity to the site.

B15.3 - Environmental Design Elements

This section seeks to ensure that the future residential estate is of a high quality and liveability and environmentally compatible with its surroundings.

B15.3.2 - Site Analysis

As detailed above an overall site analysis has been provided. It is generally considered that the proposed subdivision takes consideration of the site constraints and opportunities.

B15.3.3 - Neighbourhood Design

Whilst the retail development component of this application has been deleted the development does provide for a potential future school site and childcare facility and would be located within walking distance to the Town Centre site. The

design also focuses on retaining the existing Fig Tree. It is considered that the proposal will provide an identifiable neighbourhood character.

B15.3.4 - Densities and Types of Development

This section seeks to provide a range of housing types, including detached dwellings, medium density townhouses and small lot houses and to recognise the need for dual occupancy development and ensure the density of the development does not exceed 200ET.

It is generally considered that the development provides a range of lot sizes with a number of smaller lots being within 300m walking distance of the Town Centre. The DCP recommends average densities of 16 - 24 dwelling units per hectare including duplexes, attached and detached houses.

The applicant advises that densities are constrained by the available sewer capacity and the established amenity of the Seabreeze Estate which is predominantly detached dwelling houses on lots of 600m² to 900m². The development provides a predominantly detached housing layout (72 lots) although provision has been made for nine potential dual occupancy lots (i.e. greater than 900m² in area) with the potential for integrated housing development on proposed Lot 1702.

B15.3.5 - Lot Sizes and Orientation

As previously detailed a range of lot sizes are provided between 450m² to 1108m². Generally lots are oriented on a north / south axis subject to constraints imposed such as existing cadastral boundaries, street alignments, drainage reserves and existing drainage channels.

It is generally considered that the lot size and orientation are acceptable and future non-compliances in respect to DCP A1 and the provision of useable outdoor space with adequate solar gain is unlikely.

B15.3.6 - Building Siting and Design

It is considered that the size and shape of the allotments, as amended, will enable flexibility in the design and siting of future dwellings, particularly with regard to the proposed dual occupancy sites.

B15.3.7 - Noise and Amenity Impact

The applicant considers that the proposal is separated from Mooball Pottsville Road and appropriate buffer treatment is proposed between Stage 17 lots and the existing sports fields immediately to the east.

As detailed within this report, the impact of the sports field immediately to the east of proposed Stage 17 is of concern however refusal of the application on this basis is not considered to be warranted. The existing use of the sports field and clubhouse is such that no significant impacts to residential amenity are envisaged.

B15.3.8 - Open Space Provision

Matters relating to open space have been addressed within this report. As discussed, the issue of limited road frontage to existing open space has been raised with the applicant who has since advised that the drainage reserves are not intended as formal areas of open space. Subsequently the lot layout has largely remained unchanged in this respect. Given the adjoining open space comprises stormwater infrastructure as opposed to a conservation area it is

considered that this is generally satisfactory although the opportunity to reflect best practice urban design outcomes to improve visual amenity and surveillance would have been preferable.

In summary the proposed subdivision provides adequate open space (Fig Tree Park and links to the existing sports fields) to meet the needs of existing and future occupants. Conditions shall be applied to any Development Consent to ensure appropriate embellishment of open space.

B15.3.9 - Streetscape and Landscape

As detailed in this report street tree planting will be undertaken with appropriate landscaping embellishment of public areas in accordance with the submitted Statement of Landscape Intent. Suitable conditions are to apply to any Development Consent with this regard.

B15.3.10 - Integrated Movement Network and Street Design

It is noted that street design is constrained by the location of existing streets, drainage reserves, open drainage channels and the need to provide a future school site. The applicant therefore considers that the proposal provides a reasonable balance in terms of integrated movement network and a commercially viable development.

As detailed the applicant has submitted revised plans that have deleted components of the original application that were not considered favourable, such as the cul-de-sac arrangement in Stage 15 and resultant lot layout. It is considered that the revised plans provide an adequate movement network.

B15.3.11 - Pedestrian and Bicycle Network

Cycleways and walkways are to be provided within the internal streets to satisfy this element in accordance with the provisions of A5. A condition will be applied to any Development Consent to ensure that further detail in respect to pedestrian walkways and cycleways are submitted to Council prior to the issue of a Construction Certificate.

B15.3.13 - Non-Residential Development

A future school site and child care centre are proposed that will be subject to a future development application and merit assessment. The subdivision is in close proximity to the Town Centre A and the Pottsville Town Centre that will provide a range of community facilities to meet the needs of future residents.

B15.3.13 - Hazard and Nuisance Mitigation

This section aims to recognise potential hazards such as bushfire, flooding, certain agricultural practices, ASS and so on do not cause a risk upon the amenity of residents or cause risk to persons, property or the environment. Matters relating to buffers to agricultural land uses, bushfire, flooding and ASS have been considered within this report.

DCPB21 - Pottsville Locality Based Development Code

This document seeks to set overarching objectives for future development within the Pottsville locality. Section 4.0 of the Code relates to the Seabreeze Estate and advises that the built form of the precinct is typical of suburban development in many parts of Australia and comprises a mixture of low and medium density housing, almost entirely in a detached built form.

It advises that the Seabreeze Estate was masterplanned from its inception and as such the precinct has maintained much of its planned intent and design. It is considered that the proposed subdivision is generally in keeping with surrounding built development within the Seabreeze Estate and within the wider Pottsville area. The subdivision will allow for low density residential development with neighbourhood facilities such as the potential future school site and childcare centre. Adequate open space has been provided that allows for the retention of the prominent Fig Tree with pedestrian footpaths provided to areas of open space.

Future development will be subject to development applications and will need to provide consideration of the desired built form and character of the area to ensure best practice site and building design.

The DCP advises that appropriate master planning is to be carried out for the subject lot to ensure matters relating to density, views, connection and interface with the public domain, open space, flood mitigation and so on are appropriately considered. A Master Plan was not required given the adoption of the DCP B15 site specific document however, as detailed within this report it is considered that the proposed subdivision is generally consistent with the desired pattern of residential development within the locality, being of a low density nature. The proposed subdivision is generally consistent with this DCP.

(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 NSW Coastal Policy 1997 document sets overarching objectives in respect of retaining the aesthetic qualities of both the natural and built environments.

As detailed within this report the site is highly modified over the years and forms part of a broader residential subdivision earmarked for such development. As such the subject development is unlikely to impact on matters relating to conservation values or cultural heritage or matters relating to coastal access or overshadowing.

Clause 92(b) Applications for demolition

Not applicable to the application as the proposal does not comprise any demolition.

Clause 93 Fire Safety Considerations

Not applicable as the proposal relates to a subdivision of land only.

Clause 94 Buildings to be upgraded

Not applicable as the proposal relates to a subdivision of land only.

(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.

Tweed Coast Estuaries Management Plan 2004

The subject land is located in close proximity to the Cudgera Creek however the proposal is unlikely to impact on matters relating to habitat or biodiversity values of the waterway given it does not propose any clearing of vegetation or earthworks in the immediate vicinity of the creek system. Conditions will be applied to the Development Consent in respect of sediment and erosion control.

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

Context and Setting

The proposed subdivision will provide a predominantly low density residential environment that consists primarily of detached dwellings. The proposal incorporates a potential future school site that will be subject to a future development application to assess likely impacts to surrounding residential amenity. The application proposes a public reserve (Fig Tree Park) and will retain the existing drainage reserves that will contribute to the areas of 'green space' and links to the riparian buffer along Cudgera Creek.

It is considered that the proposed subdivision will be in keeping with the context and setting of the existing built development within the Seabreeze Estate as well as the broader Pottsville locality.

Access, Transport and Traffic

As detailed within this report the proposed road network is satisfactory and will adequately cater for the scale and nature of the proposed subdivision. The TIA considers both scenarios of school site and 65 lot residential subdivision and does not raise any issues of major concern with regard to access, transport or traffic generation. It is noted that any future school application would need to demonstrate that suitable access locations and traffic facilities are provided.

It is considered that the road network is able to accommodate the proposed subdivision, subject to a number of conditions being applied to the consent.

Flora and Fauna

Clause 50 of the *EP & A Regulations 2000* requires the application to detail whether or not the site comprises critical habitat and whether or not the development is likely to have a significant effect on threatened species of communities.

Previous ecological assessment

The site has been highly disturbed by bulk earthworks pursuant to Development Consent No. K99/1837 and is surrounded by built development. The site itself is predominantly managed lands with low cut grass. Comprehensive evaluation of the sites ecological values has been previously undertaken as part of the Seabreeze Estate Stages 1 to 14 approval. With this regard a Species Impact Statement (SIS) was prepared by JWA Consulting and assessed by Council and NPWS as a concurrence agency. Based on the assessment concurrence conditions were imposed and the *Management Plan for Threatened Species, Their Habitats and Ecological Communities (TSMP) on Pottsville Seabreeze Estate* approved.

The SIS identified one Endangered Ecological Community (EEC) and listed five threatened flora species and seven threatened fauna species. Cudgera Creek was identified as the key area of habitat across the site given its riparian values and connectivity to Pottsville Environment Park and protected habitat within the Koala Beach Estate. The approved TSMP included the restoration of the Cudgera Creek riparian corridor, Brushbox / Hoop Pine Buffer Zone, Koala enhancement planting within Pottsville Environment Park, Fig Tree replacement and specific management actions for the conserved *Ficus sp.*, *Davidsonia jerseyana*, *Randia moorei*, *Syzygium hodgkinsoniae*, *Syzygium moorei*, Wollum Froglet, Koala and Black Flying Fox.

Current ecological values

Given the timeframe between the 2000 Survey and the current proposal the applicant has submitted a contemporary Assessment of Significance (7 Part Test) that has provided an assessment of vegetation communities on the site; determined the likelihood of threatened flora, fauna and Endangered Ecological Communities (EECs) as listed by the NSW *Threatened Species Conservation Act 1995*.

In summary, the site consists of low closed slashed grassland (mixed exotic species) of low conservation value, one White Fig (*Ficus virens var. Sublanceolata*). The recent survey did not record any listed species across the site however it is noted that the survey focussed on the development area only which is dominated by managed grassland. Given the marginal habitat values remaining across the area of the development footprint the assessment concluded that the Grey-headed Flying Fox was the only species considered 'possible' to use the habitat resources on site, primarily being the *Ficus* occurring within the proposed Park (Lot 1803). As such a determination that no significant impact on threatened species was anticipated and retention of the *Ficus* would mitigate any indirect impacts on the Grey-headed Flying Fox as a consequence of the development.

It is acknowledged that the development is restricted to a previously disturbed development footprint of limited habitat value that is buffered from Cudgera Creek riparian corridor by an existing rehabilitated conservation reserve dedicated to Council as community land (from the previous Stage 1 to 14 Seabreeze Estate). It is considered that all management actions in the approved TSMP were implemented during the construction phase and restoration works completed and subsequently accepted by Council.

Given the previous dedication of the Cudgera Creek Reserve and the proposed development reliance on the existing stormwater network it is considered that of the management actions referred to in the approved TSMP (Stages 1-14), the remaining actions of relevance to this stage of the development would appear to only relate to the long term retention of the *Ficus* (White Fig).

Ficus virens var. Sublanceolata (White Fig)

The *Ficus* has been identified in a suite of strategic concept plans including the recent Stage 2 Structure Plan (DCP B15) and management recommendations made within the approved TSMP. During fruiting period the tree is likely to support a suite of species as a favoured food resource such as the Grey-headed Flying Fox (particularly given the close proximity of a nearby Flying Fox camp - Pottsville Environment Park) and range of rainforest frugivores.

Whilst the proposal involves retention of the tree, due to extensive modifications to natural ground levels and subsequent alteration to surface and subsurface hydrology around the trees root zone, the tree appears to show signs of decline/poor health. Considering the significance of the tree in terms of ecological and aesthetic value the applicant was requested to prepare and submit a Tree Assessment and Tree Management Plan ('TATMP') for the White Fig to ensure all efforts are made to improve the long term health and vigour of the tree.

The submitted TATMP (dated 4 February prepared by Boyds Bay Environmental Services) provides a comprehensive assessment of the health of the tree and, based on the results of the evaluation, proposes a suite of management measures to be implemented as soon as practicable (upon issue of a Construction Certificate) to improve growing conditions, vigour and longevity of the tree. An average 30m setback from the *Ficus* to the proposed development to the south has been provided, consistent with the TSMP provisions. Proposed management actions are as follows:

- the construction of a 3-4m shallow swale to divert ponding water from the root plate;
- removal of rubbish and debris beneath the canopy;
- removal of weeds;
- Installation of organic compost layer and coarse grade forest mulch;
- removal of epiphytes and deadwood;
- installation of tree protection fencing; and
- ensuring that no infrastructure extends within the trees 15m Tree Protection Zone (TPZ).

It is considered that the TATMP (or future management recommendations) can be relied upon to direct future arboricultural remediation works. A condition will be applied to any Development Consent to ensure that the applicant completes all remedial tree management works on the *Ficus* prior to the release of the first Subdivision Certificate.

Wallum Froglet habitat

In addition to the management of the White Fig, the approved TSMP indicates an area that could potentially be utilised to establish Wallum Froglet habitat following stormwater basin construction situated in close proximity to proposed Lots 1731-1737 and opposite the *Ficus*. As such the applicant was requested to consider current habitat within this area of the site to determine the significance of the area and whether the Lot layout should be modified to ensure that an adequate buffer is provided.

Upon inspection of the site Council Officers consider that this area is not currently considered to offer habitat to the Wallum Froglet due to the area being largely elevated with steep banks into the basin that is currently devoid of any sedge species / appropriate dense vegetation cover. Habitat for the Wallum Froglet would be expected further to the east on the periphery of the site to the Pottsville Environment Park approximately 30metres from the proposed Lots. As such it is not considered that a detailed survey of the site is warranted. A revised Assessment of Significance has been prepared (JWA Consultants dated March

2014) in respect of lot layout and Wallum Froglet habitat that simply states that habitat does not exist in the location specified.

Control of cat and dog ownership

The applicant has been made aware of likely conditions to be imposed relating to dog and cat restriction. Conditions will be applied to any Development Consent with this regard.

Bushfire management

The long term management of the drainage reserves as an Asset Protection Zone (APZ) has been confirmed by Council Officers. It is intended that a Bushfire Management Plan be prepared by Council for the reserve network where a slashing regime will be maintained. As indicated in the submitted *Bushfire Assessment Report Subdivision Stages 15-18 Seabreeze Estate Rev C* (dated 3 March 2014), the area previously restored / vegetated along Cudgera Creek riparian reserve shall not be impacted through maintenance of the APZs.

It is noted that the APZ associated with Stage 18 (yet to be formally approved) may extend within Lot 1148, part of the Cudgera Creek riparian reserve. However, this area of the reserve is currently maintained as a slashed paddock and has not been previously been required as part of Stages 1-14 to be rehabilitated. In the event that the school proceeds, the APZ is likely to extend between 15-20m within Lot 1148, along the length of Stage 18 frontage.

The RFS have requested specifically that the drainage reserves to the north of Stages 16, 17 and 18 are to be managed as an asset protection zone. Council Officers have advised that there do not appear to be any significant implications for Council with this regard.

Conclusion

It is generally considered that the proposed subdivision does not raise any particular concerns in respect of ecological values. A number of conditions will be applied to any Development Consent to ensure that the site is suitably landscaped; no native vegetation is cleared without prior approval; no earthworks to occur within proposed Lot 1803 (Fig Tree Park) without prior approval and in respect of dog and cat restrictions.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject land is located within the Seabreeze Estate, a low density residential subdivision that comprises primarily detached dwellings. The nature and scale of the proposed subdivision would be consistent with surrounding built development. As detailed within this report, the potential future school and childcare centre would be subject to future development applications to assess the impact of such proposals on surrounding residential amenity in terms of traffic, noise and so on.

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

The application was advertised for a period of 30 days from Wednesday 23 October 2013 to Friday 22 November 2013. One submission has been received that raised the following issues:

- Concerns in respect to movement of original town centre site to proposed Town Centre B site;

- Retail uses should be located within central Pottsville or retention of Town Centre A (for mixed commercial uses);
- Concerns in respect to changes to the pond and fig tree avenue into the Estate (that are reportedly being cut down and replaced with Tuckeroos);
- Figs on the avenue into the Estate should be preserved as they are not causing damage to the roadway.

As detailed, references to proposed Town Centre B have been deleted and Town Centre Site A (on the corner of Seabreeze Boulevard and Watego Drive) will remain as the nominated Town Centre site for the Seabreeze Estate.

On this basis it is considered that the issues raised within the submission in respect to the proposed subdivision have been satisfactorily addressed. Matters relating to the retention of the fig trees on the entrance into the Estate and retention of drainage pond are separate matters.

(e) Public interest

In general, it is considered that the proposal would not impact to such an extent on matters relating to the public interest so as to warrant refusal of the application.

OPTIONS:

That Council:

1. Approves the development application and apply conditions of consent; or
2. Refuses the development application, and provides reasons for the refusal.

Council Officers recommend Option 1.

CONCLUSION:

The current application before Council seeks approval for an 88 lot subdivision for the final stages of the Seabreeze Estate, Pottsville. Further clarification was required in relation to a number of matters of key importance to the proposed application as detailed within this report. It is considered that matters relating to flooding, stormwater retention, lot layout and density have been adequately addressed.

The site has been altered over the years and is currently relatively devoid of significant vegetation. Conditions will be applied in respect to the retention of the existing White Fig Tree to ensure its longevity and improved health, given the important ecological and aesthetic value that this tree provides within the locality. Further detail will also be required in respect of landscaping (streetscape and open space areas) as well as in respect of embellishment of open space.

In general the proposal will provide a low density residential subdivision consistent with surrounding built development with adequate provision of open space, road connectivity and pedestrian linkages.

Following an assessment of the additional information against the relevant heads of consideration, and provided a number of conditions are applied to any consent, the application is recommended for approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may lodge an appeal against Council's determination in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Amended Statement of Landscape Intent (ECM 3341285)

- 8 [PR-PC] Development Application DA13/0654 for a Two Lot Subdivision, Remove Existing Dwelling and Construct Two Single Dwellings - Staged Development at Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740 No. 40 Queen Street, Fingal Head

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0654 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

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 given that it is not possible to calculate 10% of the shadow development standard, officers have resolved to report this application to full Council.

The SEPP No. 1 variation relates to Clause 32(b)(4)(b) of the NCREP which does not permit overshadowing of adjacent open space before 7pm midsummer (daylight saving time). Council has an instrument of assumed concurrence and it was therefore not necessary to refer the application to the Department of Planning and Infrastructure (DP&I) for concurrence purposes.

This development application was lodged 12 November 2013 which precedes gazettal date of the Tweed Local Environmental Plan 2014 (TLEP 2014). As such, and in accordance with Clause 1.8A of the TLEP 2014, this application is to be determined *as if this plan had been exhibited but had not commenced*.

The applicant seeks consent for a staged two lot subdivision with demolition of an existing dwelling (which encroaches into the Crown reserve) and construction of two single dwellings which require removal of vegetation.

Unsuccessful attempts to subdivide and develop the site date back to 2006. Council has consistently advised that subdivision of the land is not feasible given site constraints. As such, the proposed development is unsuitable for the site and would be more appropriately located on a site less constrained with regard to bush fire safety, proximity to sensitive vegetation and well established informal character.

Key issues with regard to the unsuitability of the proposal for the site include:

- Overdevelopment of a highly constrained site;
- Inability to achieve an Asset Protection Zone associated with the proposal without compromising sensitive vegetation;
- Unacceptable impact on an Endangered Ecological Community located on the site;
- Overshadowing of Crown land managed by Council for coastal environmental protection purposes;
- Inconsistency of dwelling designs with DCP A1 controls for residential development.

The proposal was required to be placed on public exhibition. 10 objections were received during the exhibition period. Matters raised within the submissions have been considered in the assessment of the proposal. The majority of objections have not been resolved.

Having regard to relevant statutory controls, the proposed two lot subdivision, removal of existing dwelling and construction of two single dwellings is not considered suitable for the location and therefore the proposed development is recommended for refusal.

RECOMMENDATION:

That:

A. Development Application DA13/0654 for a two lot subdivision, remove existing dwelling and construct two single dwellings - staged development at Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740 No. 40 Queen Street, Fingal Head be refused for the following reasons:

- 1. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(ii), the orderly and economic use and development of the land.**

It is Council's view that the proposal has the ability to impact negatively upon the subject site and adjacent land; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

- 2. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(vi), the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.**

It is Council's view that the proposal has the ability to impact upon the protection and conservation of native animals and plants; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.

It is Council's view that the proposed development is inconsistent with the aims of:

State Environmental Planning Policies:

- SEPP 26: Littoral Rainforests
- SEPP 71: Coastal Protection
- NCREP: Clauses 32B and 43

It is Council's view that the proposed development does not satisfy the provisions contained within:

The Tweed LEP 2000:

- Clause 4: Aims of this plan
- Clause 5: Ecologically sustainable development
- Clause 8(1): Consent Considerations
- Clause 11: The Zones
- Clause 39A: Bushfire Protection

The Draft Tweed LEP 2012:

- Clause 1.2: Aims of Plan
- Clause 2.3: Zone Objective and Land Use Table
- Clause 5.5: Development within the Coastal Zone

Development Control Plan 2008:

- Section A1 Part A: Dwelling Houses, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development
- Section A5: Subdivision Manual

Tweed Shire Coastline Management Plan 2005:

NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast.

4. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.

It is Council's view that in order to facilitate development and comply with bushfire and planning regulations, the development is likely to result in a significant and unacceptable impact on a candidate Endangered Ecological Community, threatened species and their habitat.

5. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.

It is Council's view that it is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the aims of the plan, unacceptable cumulative impact and ecologically sustainable development.

B. The following action be taken:

1. Report an additional *Archidendron hendersonii* record to the Office of Environment and Heritage to be recorded on the Bionet - Atlas of NSW Wildlife database.

REPORT:

Applicant: Mr R Nankivell

Owner: Mr Robert L Nankivell

Location: Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740 No. 40 Queen Street, Fingal Head

Zoning: 2(a) Low Density Residential, 6(a) Open Space and 6(b) Recreation

Cost: \$1,080,000

Background:

The Subject Site

The subject land is described as Lot 367 DP 755740, 40 Queen Street, Fingal Head and has a total area of 1011.78m². The site is a regular, rectangular shaped allotment with a frontage of 25.145m to Queen Street. It has a depth of 40.235m. There is an approximate 5m downward slope towards the street from the south east corner (rear) to the north-west corner (frontage). A long driveway to the rear of the site is accessed from the middle of the frontage. The site is bushfire prone and recognised as part of a Regional Fauna Corridor.



Figure 1: view to Queen Street from north eastern portion of site

An existing dwelling house is located to the rear of the site that encroaches onto Council administered Crown land (Reserve 1001008 - Lot 7011 DP 1065741) which is managed for coastal environmental protection purposes. The original dwelling was constructed prior to 1950. Council's Reserves Trust has allowed the aforementioned encroachment to remain until such time as there are building alterations or redevelopment of the site.



Figure 2: existing dwelling house to rear of site

Sensitive remnant vegetation is located on the northern side of the driveway. The assemblage of species onsite has been recognised by both Council and the Office of Environment and Heritage (OEH) as an Endangered Ecological Community (EEC) – 'Littoral rainforest in the NSW North Coast, Sydney Basin and South East Corner bioregions' as listed under the *Threatened Species Conservation Act 1995* and likely to be representative of a Critically Endangered Community being 'Littoral Rainforest and Coastal Vine Thickets of Eastern Australia' based on federal *Environment Protection and Biodiversity Conservation Act 1999* listing advice. Vegetation removal has taken place on site within the last two years.



Figure 3: north east portion of site following removal of vegetation (8 January 2014)



Figure 4: north east portion of site (19 June 2013)



Figure 5: subject site 2012

The Proposed Development

The proposal is a staged development involving subdivision of the subject site to create two rectangular shaped lots of equal size (505.85m²) with frontages to Queen Street.

Demolition of the existing dwelling encroaching into the adjoining reserve is included in the proposal along with construction of two-storey, single dwelling houses on each of the created lots. Vegetation removal is required to enable the proposal.

The subdivision component of the application is the same as that previously refused by way of DA06/0155 (refer Development History).

Three stages are indicated within the development proposal:

1. Subdivision, dwelling demolition, vegetation removal, compensatory planting, water/sewer connections.
2. Construction of single dwelling on proposed Lot 2.
3. Construction of single dwelling on proposed Lot 1.

Each dwelling has three bedrooms, three bathrooms, open plan living/kitchen/dining, double carport and swimming pool. The single dwelling house on Lot 2 also has a spa.

Amended plans received on 21 March 2014 indicate a reduction in height of the 'sub-floor' component of both dwellings, removing three storey components from the proposal. This has had little impact with regard to overall bulk and scale of the development on the site. Refer to an assessment of the proposal against DCP A1 Part A controls elsewhere in this report for further detail.

Development History

Council records indicate that the existing dwelling house located to the rear of the site was originally constructed prior to 1950, surrounded by littoral rainforest vegetation and within close proximity to the dunes.

Building application **237/50** was lodged on 2 August 1950 and approved 4 August 1950. The floor plan submitted indicates that the original structure comprised a 31.13m² (8.53m by 3.65m) rectangular building envelope containing a bedroom and kitchen/dining room, separated by a bathroom. The proposal added a second bedroom (2.44m x 4.57m) to the front elevation of the dwelling house creating an irregular shaped building envelope. The site plan submitted with 237/50 locates the dwelling house entirely within Lot 367:

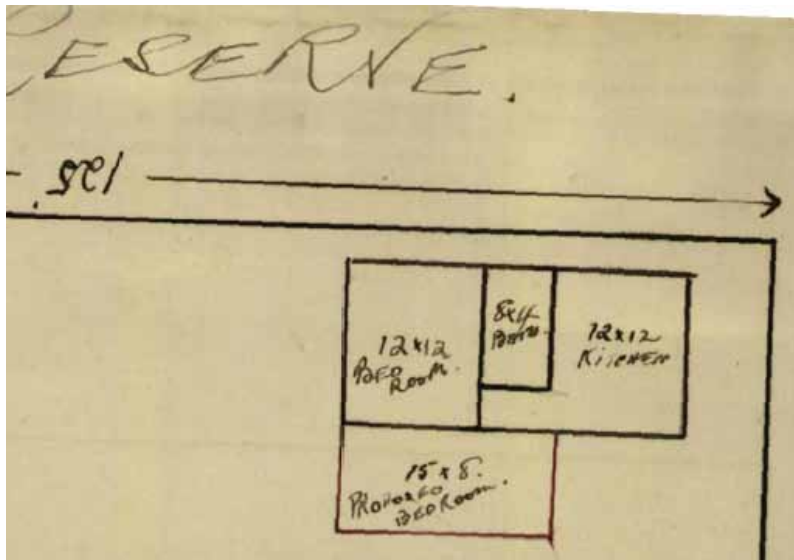


Figure 6: partial site plan with floor plan – 237/50

The angle of the structure depicted in 1962 aerial photography (below), suggests that this may not have been the case.



Figure 7: aerial imagery January 1962

The property was administered as part of a deceased estate until 20 February 2006 upon which ownership was transferred for a brief period to the estate executors.

Correspondence dated 14 August 2000 from Council's Reserve Trust to representatives of the previous owner's deceased estate who provided a survey plan (below), advised that Council would allow the encroachment of the existing dwelling house (and deck) into Reserve 1001008 to the rear of the site to remain until such time as there were any proposed building alterations or redevelopment of the site.

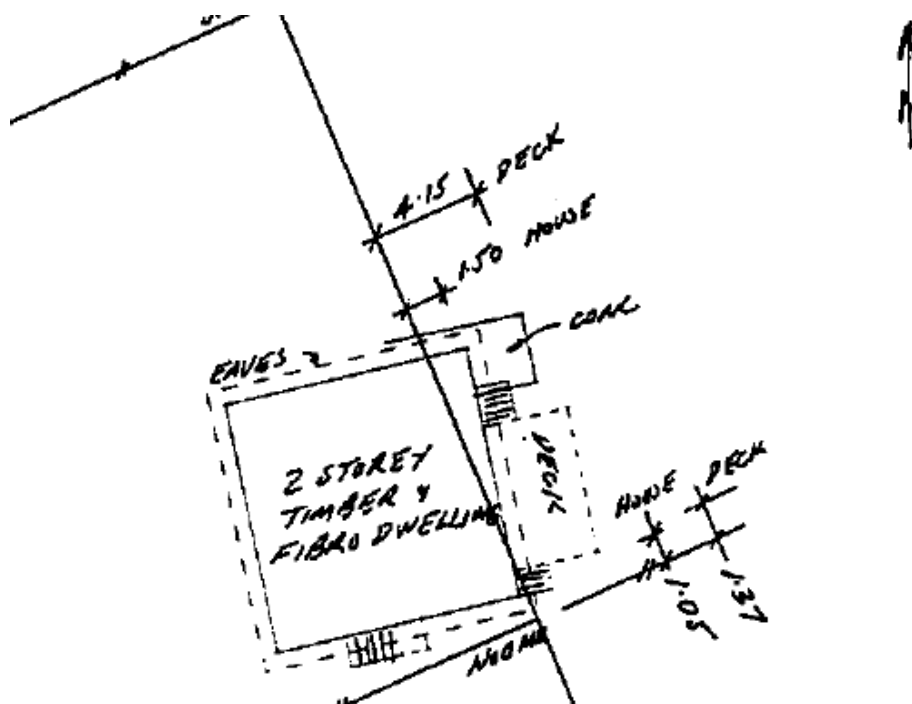


Figure 8: extract from survey plan February 2000

Subdivision proposal **DA06/0155** was lodged on 20 February 2006 to create two rectangular shaped lots of equal size (505.9m²) with frontages to Queen Street. This application was refused on 8 May 2006.



Figure 9: subdivision layout DA06/0155

The survey plan submitted with the application and dated 15 February 2006 indicates an increase in floor area (SW corner) and change in shape of the dwelling house with one timber deck addition to the rear further encroaching into the public reserve, consistent with the 2000 survey plan.

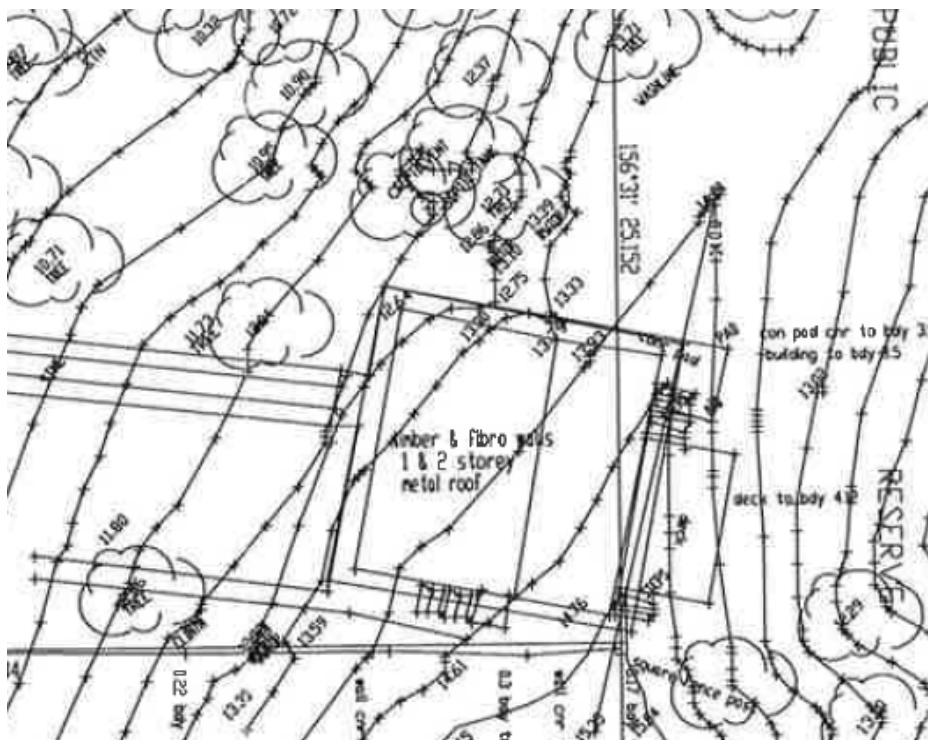


Figure 10: extract from survey plan 15/2/2006



Figure 11: deck addition at rear encroaching into public reserve

The subdivision plan nominated building envelopes on each lot for future two-storey residential development with a 6m front setback from Queen Street and a 10m rear setback from the public reserve. Significant removal of vegetation/habitat was required in order to create the building envelopes.

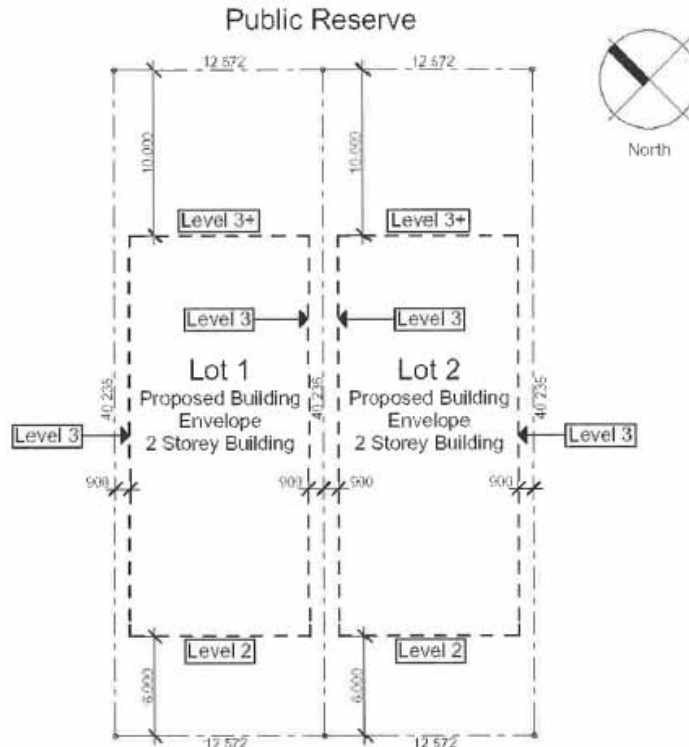


Figure 12: extract from building envelope plan (Appendix C of SEE)

Demolition of the existing dwelling house encroaching into the reserve was to be lodged separately as per the extract from the SEE below:

"The existing dwelling house is to be demolished to facilitate the subdivision of the land and to correct the current encroachment into the adjoining coastal reserve. A further development application for demolition will be prepared and submitted to Council for determination upon approval of this application."

Section 4.9 of the Bushfire Threat Assessment Report prepared by Planit Consulting and dated February 2006 states the following:

"...the proposed subdivision will not comply with the Planning for Bushfire Protection Guidelines in terms of setbacks. However variation is sought with the applicants fully aware of their responsibilities in terms of designing future dwellings which will in part be located within the Flame Zone."

Following integrated referral, the NSW Rural Fire Service (RFS) was not prepared to grant a Bush Fire Safety Authority. The proposed Asset Protection Zones (APZ's) were inconsistent with Planning for Bushfire Protection guidelines. Without full compliance with APZ's, the proposed development would be located in the 'Flame Zone'.

In the referral response dated 18 April 2006, the RFS stated that they were *'prepared to support an application for a single residential dwelling on this lot if it is suitably located and separated from the hazard'*.

Ownership of the land transferred to the current owner in June 2006. A review of aerial imagery up to May 2012 indicates that no significant vegetation removal or disturbance of the EEC had taken place on the site during this time.



Figure 13: May 2012 aerial imagery

On 23 March 2012, a Tree Preservation Order application to remove/lop trees on the site was refused. The application was lodged by the current owner on 6 March 2012 with reasons for removal/lopping based on proximity of the vegetation to the existing dwelling house and driveway.

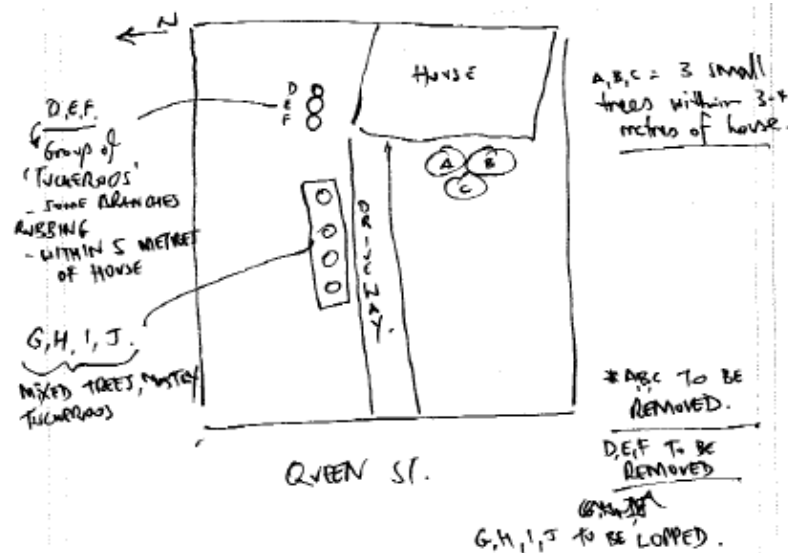


Figure 14: site diagram – tree removal application

Upon site inspection, it was noted that pruning and understorey clearing had already commenced. The applicant was formally advised that the littoral rainforest remnant connecting with the reserve to the rear of the site was listed as an Endangered Ecological Community (EEC) under the Threatened Species Conservation (TSC) Act and as Critically Endangered under the Environment Protection and Biodiversity Act. The applicant was advised to contact the Office of Environment and Heritage who administers the TSC Act.

DA12/0257 was lodged on 28 June 2012. The subdivision proposal to create two lots (473m² and 539m²) with a 'battle-axe' configuration to Queen Street was refused on 19 October 2012. The proposal included retention of the existing dwelling house that encroaches into the reserve and is located within the 'Flame Zone'.

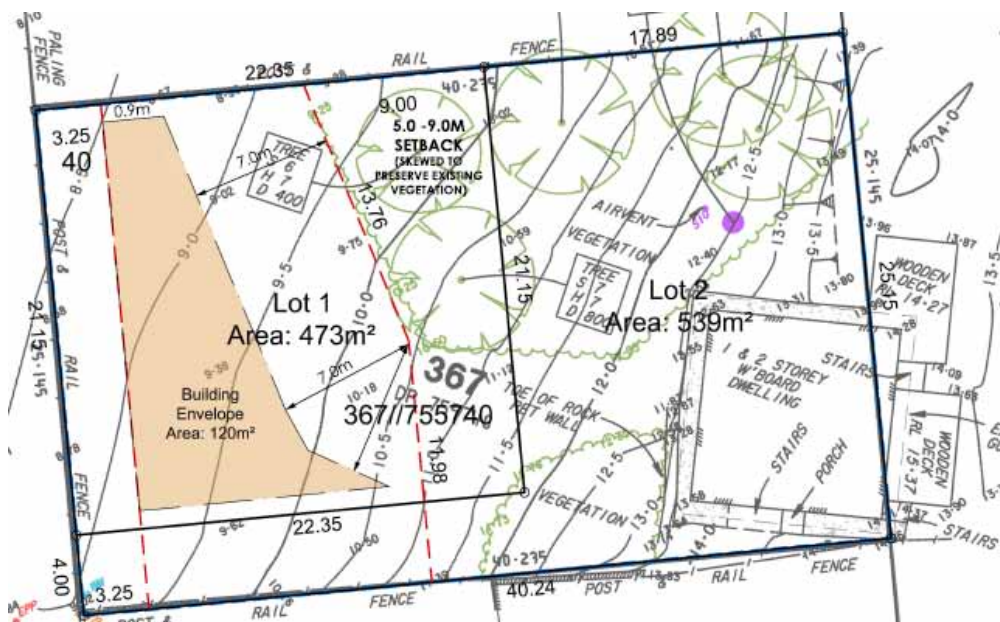


Figure 15: subdivision layout DA12/0257

The subdivision plan (above) submitted with the application and dated May 2012 indicates that the current owner had constructed a second timber deck addition to the rear, further encroaching into the public reserve without the benefit of land owner's/development consent.

A report was submitted to the Council Reserve Trust meeting of 25 September 2012 by Council's Natural Resource Management Unit in association with the assessment of DA12/0257. The report referenced the recent lower deck addition to the rear of the dwelling house as intensifying the existing encroachment which included the deck addition visible on 2000 and 2006 survey plans. It was considered that the encroaching wooden decks were adding to an already significant fire hazard and that they should be removed for bushfire safety reasons.

Council's Reserve Trust subsequently resolved that the encroachment of the existing dwelling house on the reserve be removed as a condition for the proposed subdivision of the lot should the development application be approved.

NSW RFS issued a Bush Fire Safety Authority dated 21 August 2012 taking the existing dwelling into account. The authority was based on stringent conditions requiring both proposed lots to be managed as inner protection areas with an APZ of 11m to the north-east, east and south-east of the existing dwelling house.

As such, Council's reasons for refusal were based on the following:

- Reliance upon continuing encroachment of the existing dwelling house onto the reserve in order to gain a development 'benefit'.
- Loss of protected EEC remnant vegetation (on-site and on the reserve) in order to rectify the building encroachment at the rear of the site, create a compliant building envelope at the front of the site and to achieve the required APZ's in accordance with the Bush Fire Safety Authority.
- Non-compliance with DCP A1 and DCP A2 controls with regard to solar access, useable open space and on-site parking resulting in increased pressure to remove/lop the EEC surrounding the existing dwelling house, and
- Non-compliance of the highly irregular building envelope with an area of 120m² at the front of the site with DCP A1, DCP A2 and DCP A5 controls with regard to external living, private/useable open space, on-site parking and building envelope size/configuration.

Certification of Vegetation Removal

On 4 April 2013, an application from the current owner under section 91 of the Threatened Species Conservation Act 1995 (TSC Act) for licence to harm threatened species, populations, ecological communities or to damage their habitats was received by the Office of Environment and Heritage (OEH). The application was lodged on the basis that the existing dwelling house to the rear of the site would be retained.

A description of the proposed action included:

- A. Remove two trees due to safety concerns, and
- B. Trim the branches of six trees to provide a buffer between the trees and the house, driveway and clothes line.

It was deemed by OEH that a license was not required and Certificate No. 1132165 was issued under section 95(2) of the TSC Act for the proposed action (subject to prescribed conditions) with an expiry date of 31 July 2013. The species of the two trees to be removed was not stipulated in the certificate. However, Condition 3 reads as follows:

- "3. *The property contains significant vegetation which consists of old growth trees and threatened species which are listed either Endangered or Vulnerable under the Threatened Species Conservation Act 1995. The trees nominated as part of this application may include the White Lace Flower (Archidendron hendersonii) and the Stinking Cryptocarya (Cryptocarya foetida). Any work associated with threatened species or old growth trees is to be undertaken with extreme caution to ensure the tree does not deteriorate in health.*"

It was evident during a site inspection undertaken by Council's NRM Unit on 8 January 2014 as part of the assessment of DA13/0654 that significant pruning had occurred to one *Archidendron hendersonii* and *Cryptocarya foetida* to a degree that would not be considered to comply with the conditions. These trees were not within an area of the site posing a risk.

Similarly, a Section 95(2) Certificate was issued on 11 June 2013 by OEH (to expire on 31 December 2013) to remove one *Sterculia quadrifida* (Peanut Tree). Cuttings were taken by Council's NRM Unit on 19 June 2013 prior to the tree being removed.

Section 95(2) Certificate No. 1132357 was issued by OEH on 10 September 2013 with an expiry date of 30 November 2013 to remove four Tuckeroo trees (*Cupaniopsis anacardioides*). Council's NRM Unit noted that during their site inspection on 8 January 2014 that one *Macadamia tetraphylla* had been removed contrary to the conditions of the certificate, specifically Condition 2:

- "2. *Prior to the commencement of works the arborist must be advised that individuals of the threatened flora species Macadamia tetraphylla, Cryptocarya foetida and Archidendron hendersonii are located in native vegetation within 5-10m of the four Tuckeroo trees to be removed and that these threatened species flora species must not be harmed.*"

Section 95(2) certificates contain standard information and warnings regarding contravention or failure to comply with conditions/restrictions attached to the certificates being an offence against section 133(4) of the National Parks and Wildlife Act 1974.

OEH advised on 8 April 2014 that no additional or current Section 95(2) certificates had been issued over the property to regulate vegetation works.

Vegetation Works/Compliance Matters (19 March 2014)

A site inspection was conducted at the subject site by Council officers on Wednesday 19 March 2014 in response to resident concerns regarding the removal/damage of littoral rainforest vegetation taking place on site. The Endangered Ecological Community (EEC) is considered a key factor in evaluating the merits of the current proposal which is the subject of this report.

Upon arriving at the site, maintenance contractors were in the process of packing up equipment. However, the following works undertaken by the contractors were observed:

- Brush-cutting of the understorey beneath the canopy of existing trees comprising the EEC. Brush-cutting was primarily undertaken within the western section of the community;
- Brush-cutting involved the removal of all understorey vegetation to approximately 10 -20mm of the ground surface within this area of the site with the exception of a number of small shrubs (eg. one *Diospyros fasciculosa*);
- Brush-cutting of regrowth of a *Cryptocarya foetida* was clearly evident whilst cut foliage from a suite of native saplings that would usually comprise part of an EEC

(eg. *Diospyros fasciculosa* and *Cupaniopsis anacardioides*) was observed on the ground;

- Leaf litter and cut foliage were raked into small piles.

Council officers approached the contractors and the following was clarified:

- The contractors had been engaged and directed to perform works by the applicant of the yet to be determined development application who was responsible for preparing the current ecological assessment for the site. The ecological assessment identifies listed species on site and acknowledges that the assemblage of vegetation is consistent with EEC classification;
- The contractors were met by a representative of the consultancy acting as applicant for the development application on 18 March 2014 to discuss the extent of works on the following day. The contractors were not made aware of listed threatened species such as *Archidendron hendersonii* and *Cryptocarya foetida* (the latter being previously extensively pruned and vulnerable to damage) nor the significance of the community which includes understorey-species and juvenile native seedlings/saplings;
- The contractors were employed to brush-cut, mow and apply herbicide in and around trees located on the northern side of the driveway in front of the house;
- The contractors indicated that herbicide (eg. glyphosate) had been intended to be applied. However, it was not applied only after being advised by concerned residents that the community was representative of an EEC and that threatened species occurred within the area that was to be chemically treated;
- The contractors ceased works upon discussion with concerned residents;
- The contractors indicated that they phoned the consultancy to confirm the scope of works and significance of the vegetation following confrontation by concerned residents.

It was observed that trees had been numbered from 1 – 10 with paint:



Figure 16: numbering of trees with paint 19 March 2014

It is noted that it is an offence for *'harming or picking threatened species, endangered populations or endangered ecological communities'* under section 118A of the National Parks and Wildlife Act 1974 and that the landowner has previously been required to apply for a Section 95(2) Certificate administered by OEH to conduct such works as pruning.

Of particular concern is that directions provided to contractors engaged to complete the works were given by consultants involved in the preparation of material (ecological assessments) submitted to support previous and current development applications lodged over the site with knowledge of the vegetation community status and the occurrence of listed species within the area affected by the works.

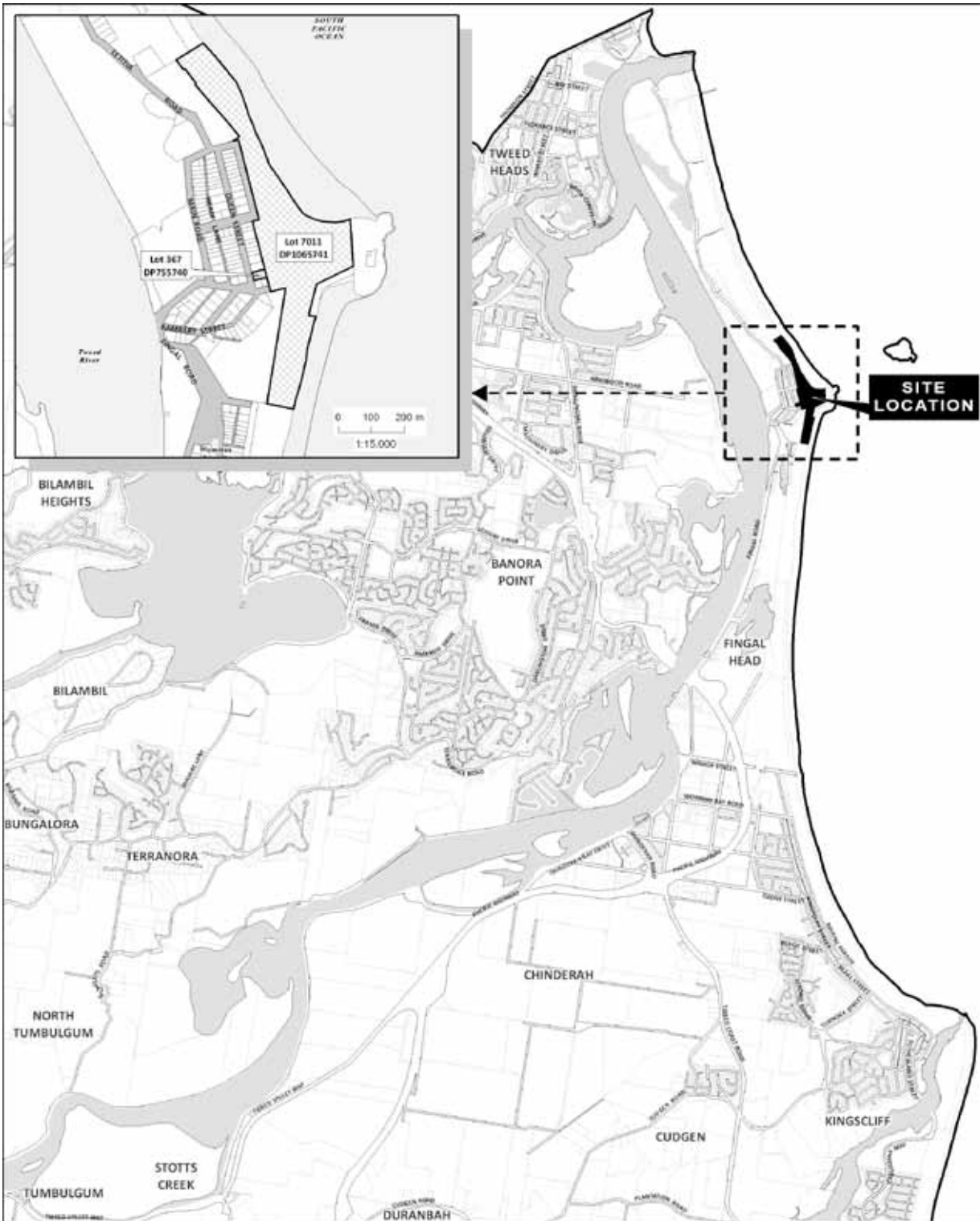
Furthermore, it is believed that the consultants were made aware of conditions of certificates issued by OEH under section 95(2) for previous works within the EEC. A recent search of the Public Register of section 91 applications failed to return results indicating that such works were legitimate and authorised by OEH.

Correspondence was forwarded to the consultants on 20 March 2014 clarifying the status of vegetation on site and alerting them to conditions of approvals issued by OEH under section 95(2) certificates for previous works within the EEC. The letter requests an explanation for the works and advises that no further works are to be carried out on the site (or adjoining site) without the necessary approvals in place. A response has not been received from the consultant.

Correspondence was forwarded on 27 March 2014 notifying OEH of vegetation works taking place on site on 19 March 2014 and requesting that return advice as to whether any current licences/certificates remain valid over the site authorising such works. OEH confirmed on 8 April 2014 that there are no current Section 95(2) certificates issued over the property to regulate vegetation works.

Correspondence was also forwarded to the Department of the Environment on 27 March 2014 requesting investigation of the removal/damage of vegetation forming part of an EEC comprising listed species potentially regulated by provisions of the Environment Protection and Biodiversity Conservation Act 1999. A response is yet to be received.

SITE DIAGRAM:



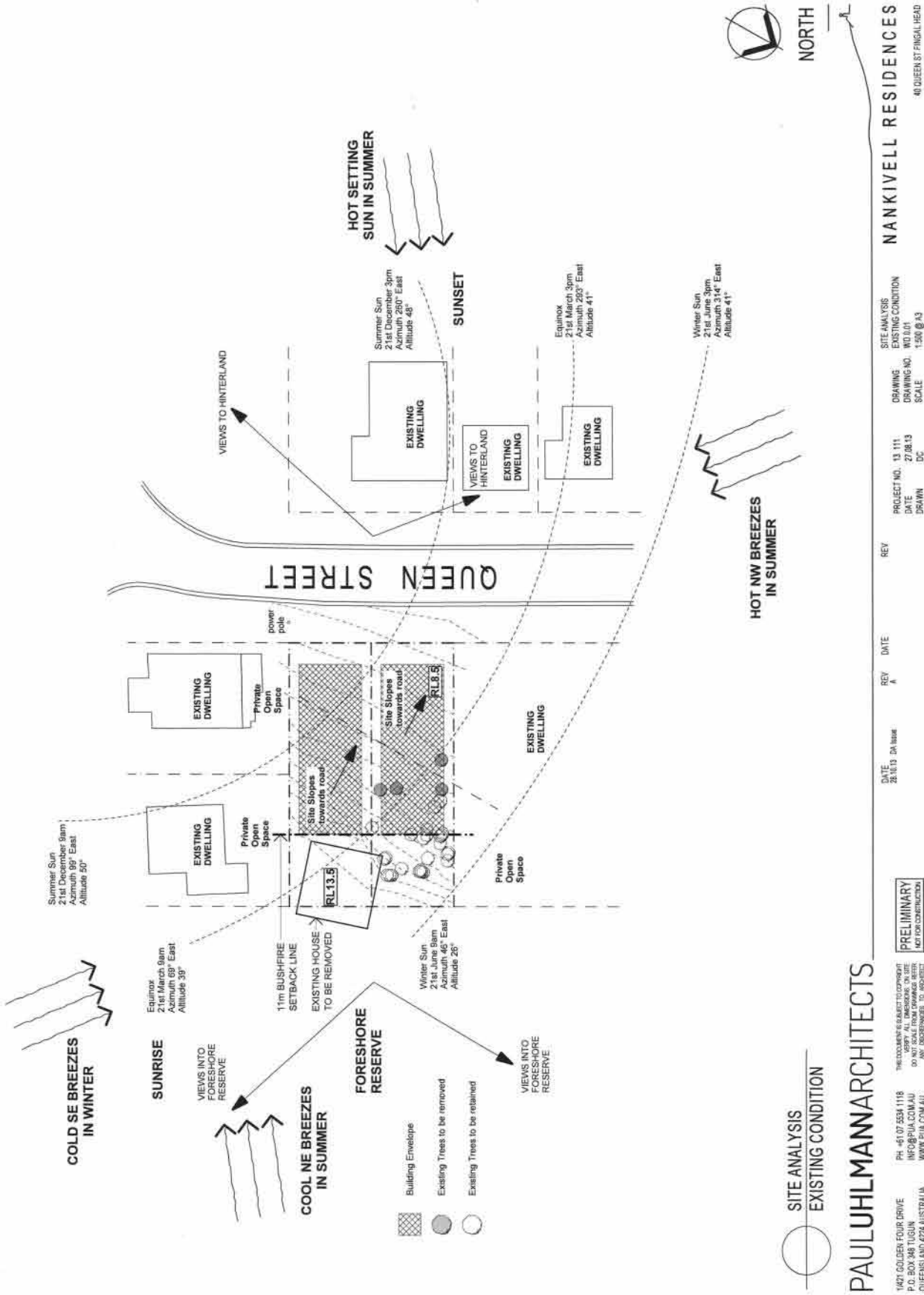
Locality Plan

Lot 367 DP 755740 No. 40 Queen Street, Fingal Head and
 Lot 7011 DP 1065741 Marine Parade, Fingal Head

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DEVELOPMENT/ELEVATION PLANS:





NANKIVELL RESIDENCES
40 QUEEN ST FRINGAL HEAD

SITE ANALYSIS
EXISTING CONDITION
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DATE 27.08.13
DRAWN DC

REV A
DATE 28.10.13

DATE 28.10.13

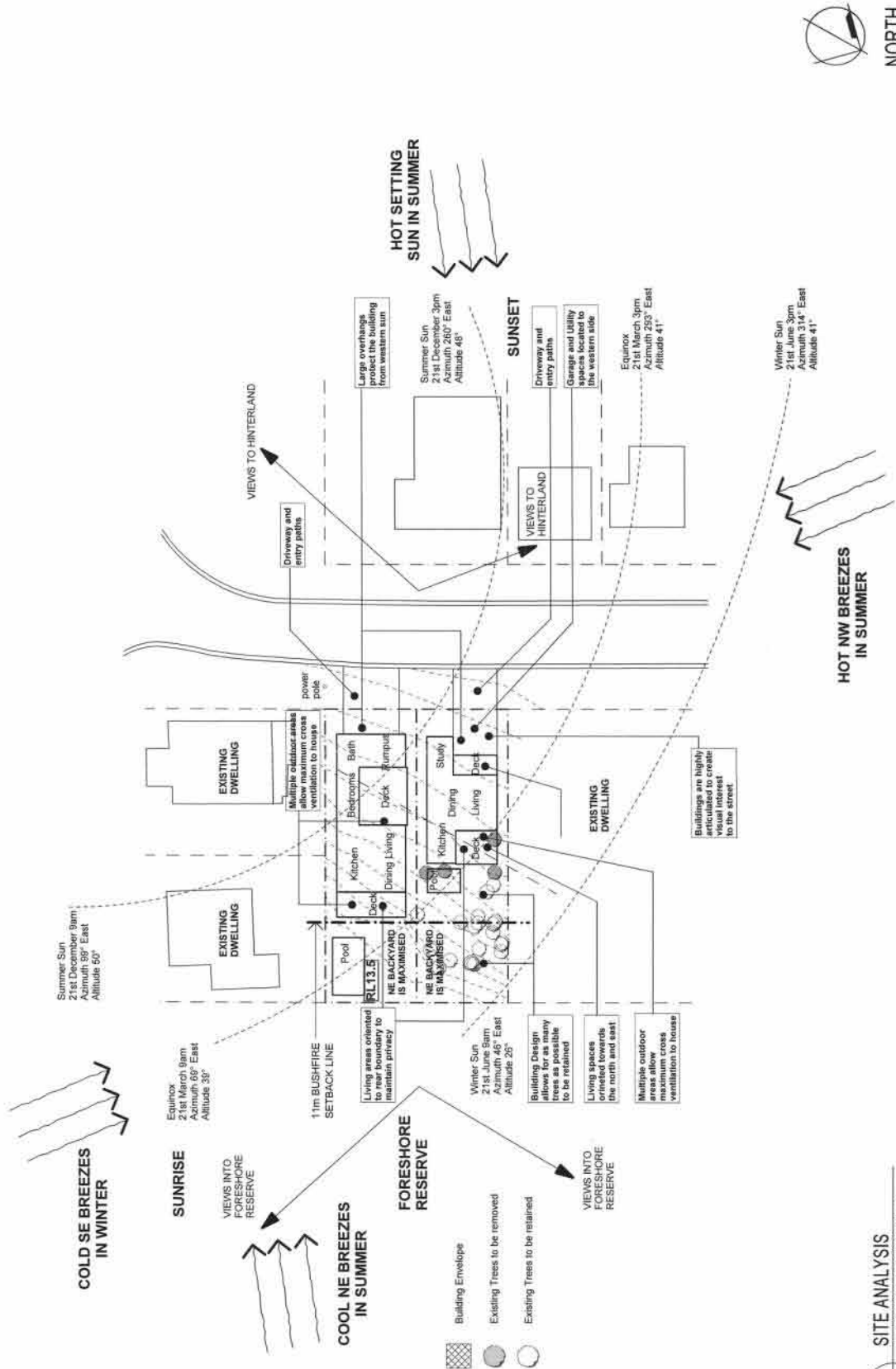
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P.O. BOX 348 TUGUN
QUEENSLAND 4224 AUSTRALIA
PH +61 07 3534 1118
INFO@PMA.COM.AU
WWW.PMA.COM.AU

PAULUHL MANN ARCHITECTS
SITE ANALYSIS
EXISTING CONDITION



**SITE ANALYSIS
DESIGN RESPONSE**

PAULUHL MANN ARCHITECTS

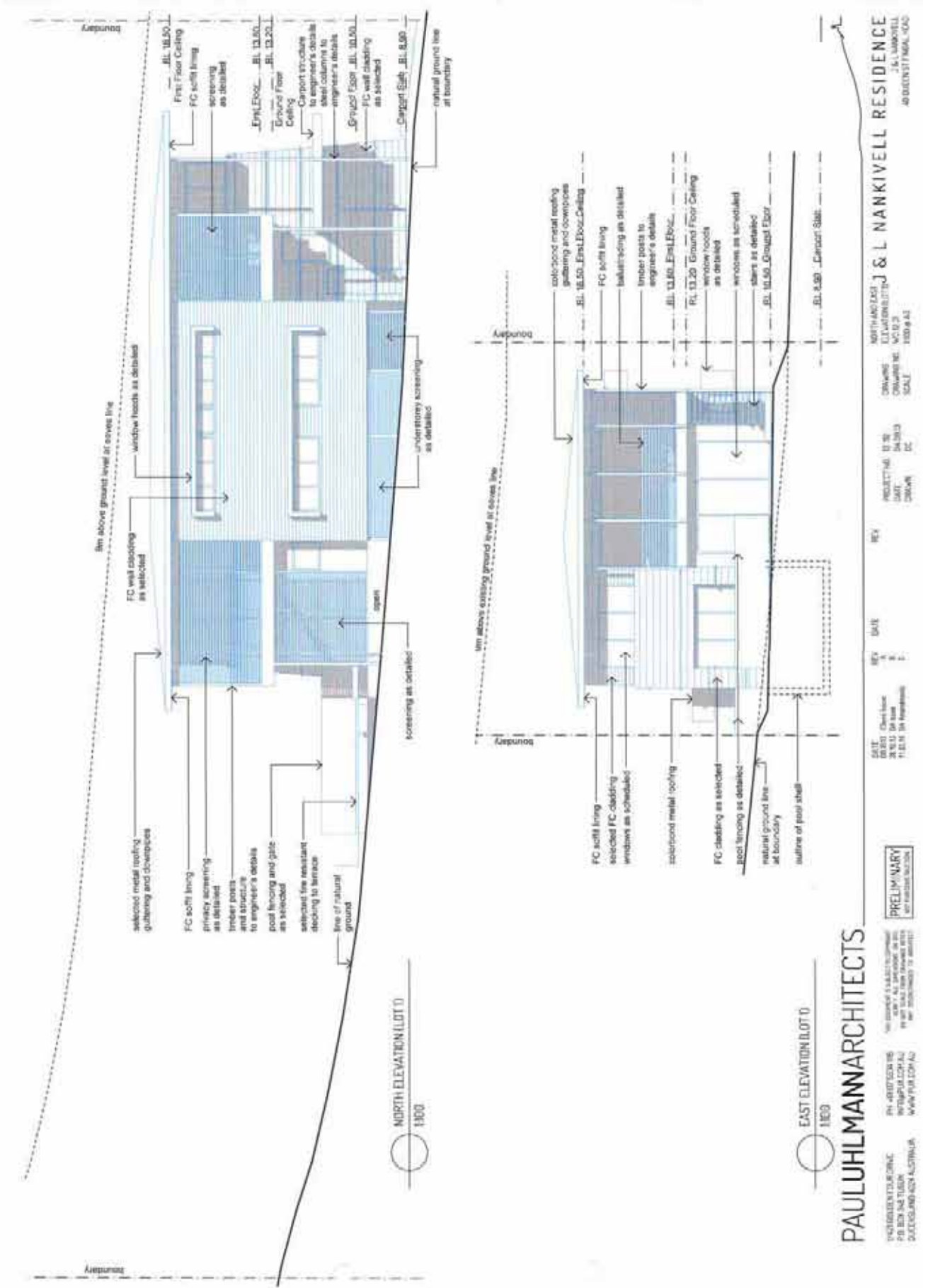
1421 GOLDEN FOUR DRIVE
P.O. BOX 348 TUGGIN
QUEENSLAND 4224 AUSTRALIA
PH: +61 07 5534 1118
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PROJECT NO. 13 111
DATE 27.08.13
DRAW DC
DRAWING NO. ND 0.0
SCALE 1:500 @ A3
SITE ANALYSIS
DESIGN RESPONSE

NANKIVELL RESIDENCES
40 QUEEN ST PINGAL HEAD







PAULUHLMAN ARCHITECTS

INDEPENDENT OFFICE
 2/8 BUNN STREET
 SUDBURY VIC 3488
 PH: 08 9428 1818
 WWW.PULMAN.COM.AU

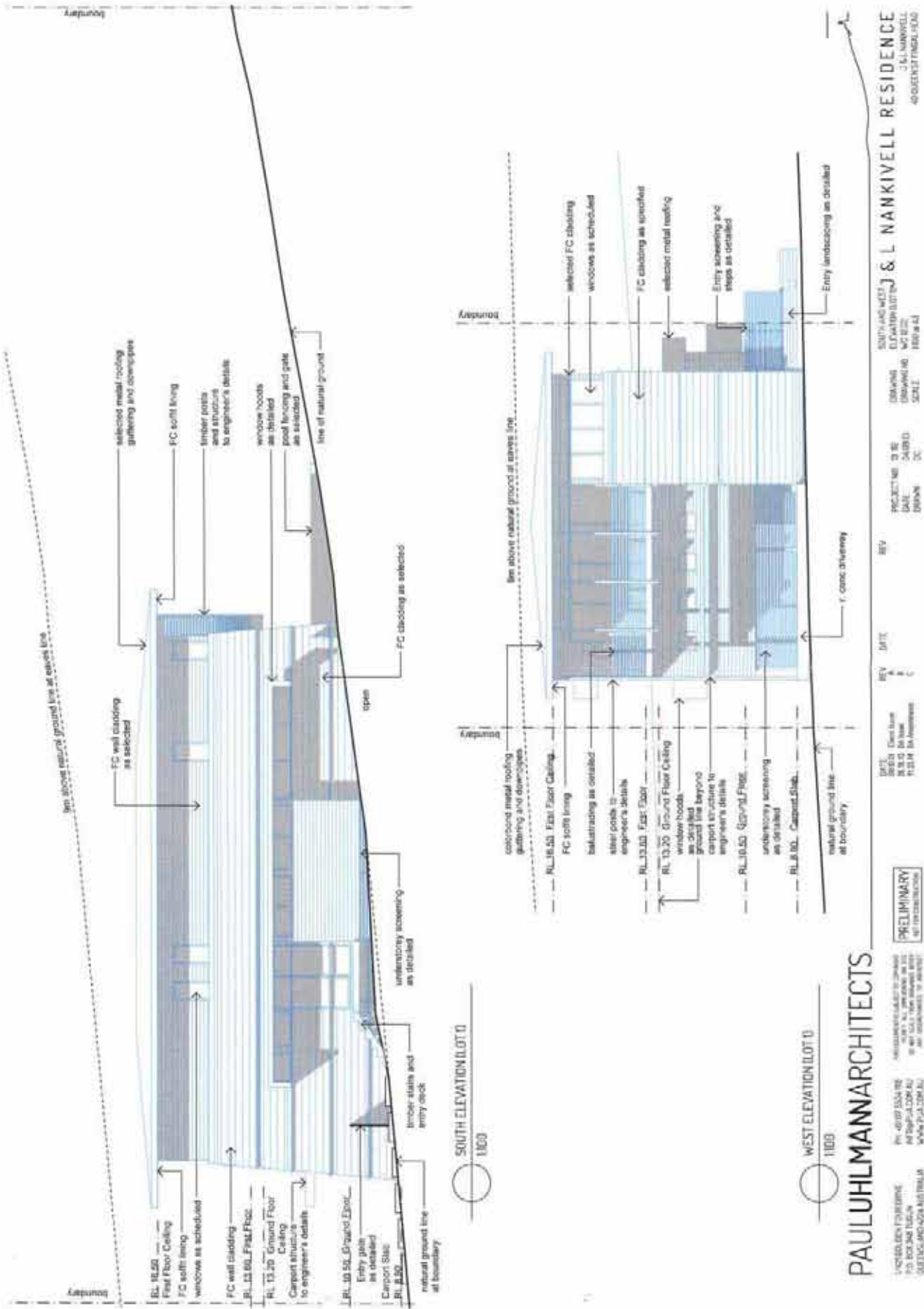
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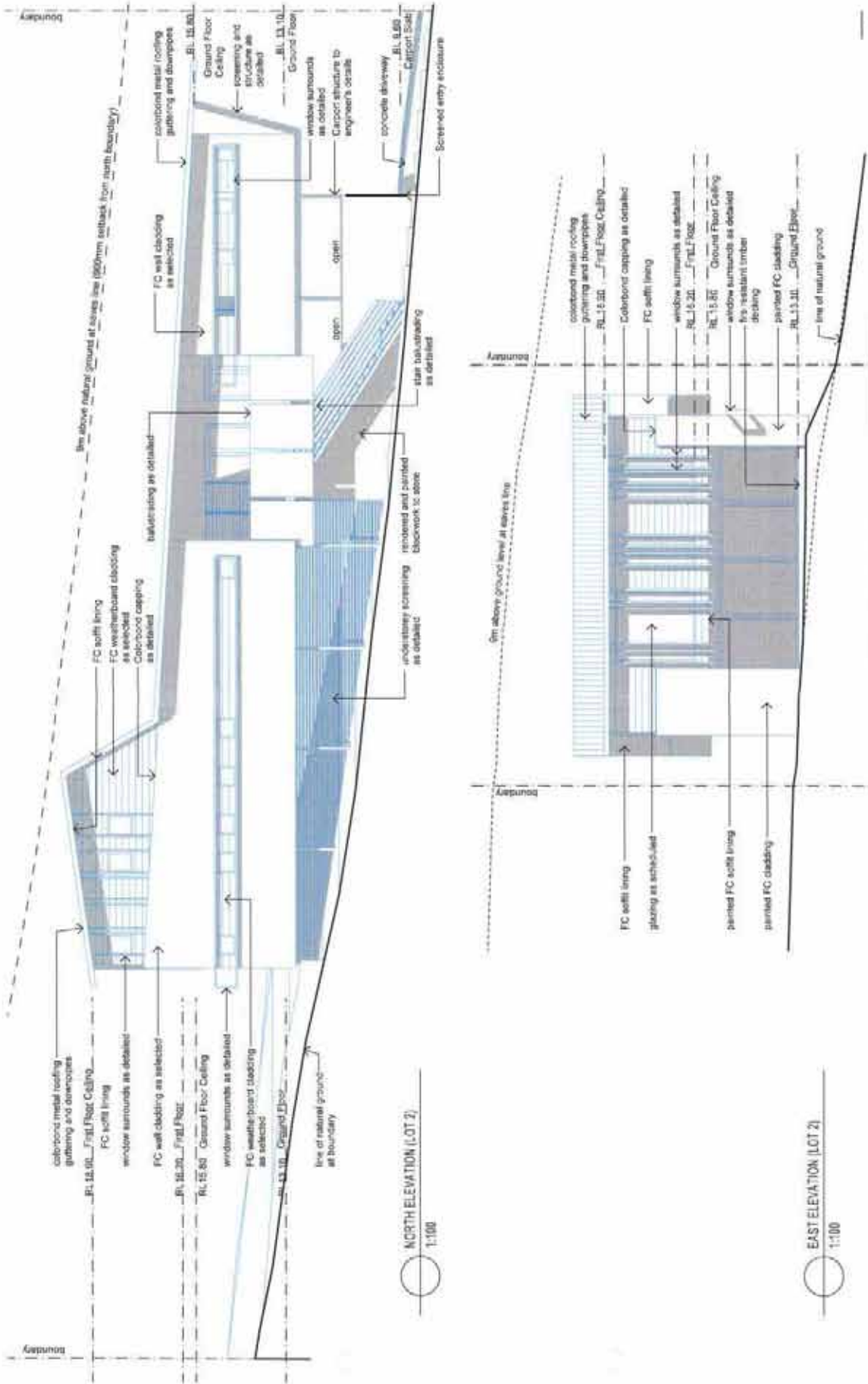
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 11.01.14 BY: [signature]

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2	11.01.14	2	11.01.14

PROJECT NO: 13-03
 DRAWN: DAVID
 CHECKED: DAVID
 SCALE: 1:100 @ A1

ARCHITECTS: NORTHWOOD & L NANKIVELL RESIDENCE
 CLIENTS: NORTHWOOD & L NANKIVELL
 ADDRESS: 17 NANKIVELL RD
 SUDBURY VIC 3488





NORTH ELEVATION (LOT 2)
1:100

EAST ELEVATION (LOT 2)
1:100

PAULUHLMANARCHITECTS

1481 GOLDEN FLOOR DRIVE, P.O. BOX 348 TONGAN, QUEENSLAND 4284 AUSTRALIA
 PH: +61 7 558 1118 FAX: +61 7 558 1119
 INFO@PULM.COM.AU WWW.PULM.COM.AU

DATE: 11.02.14 REVISIONS: 4

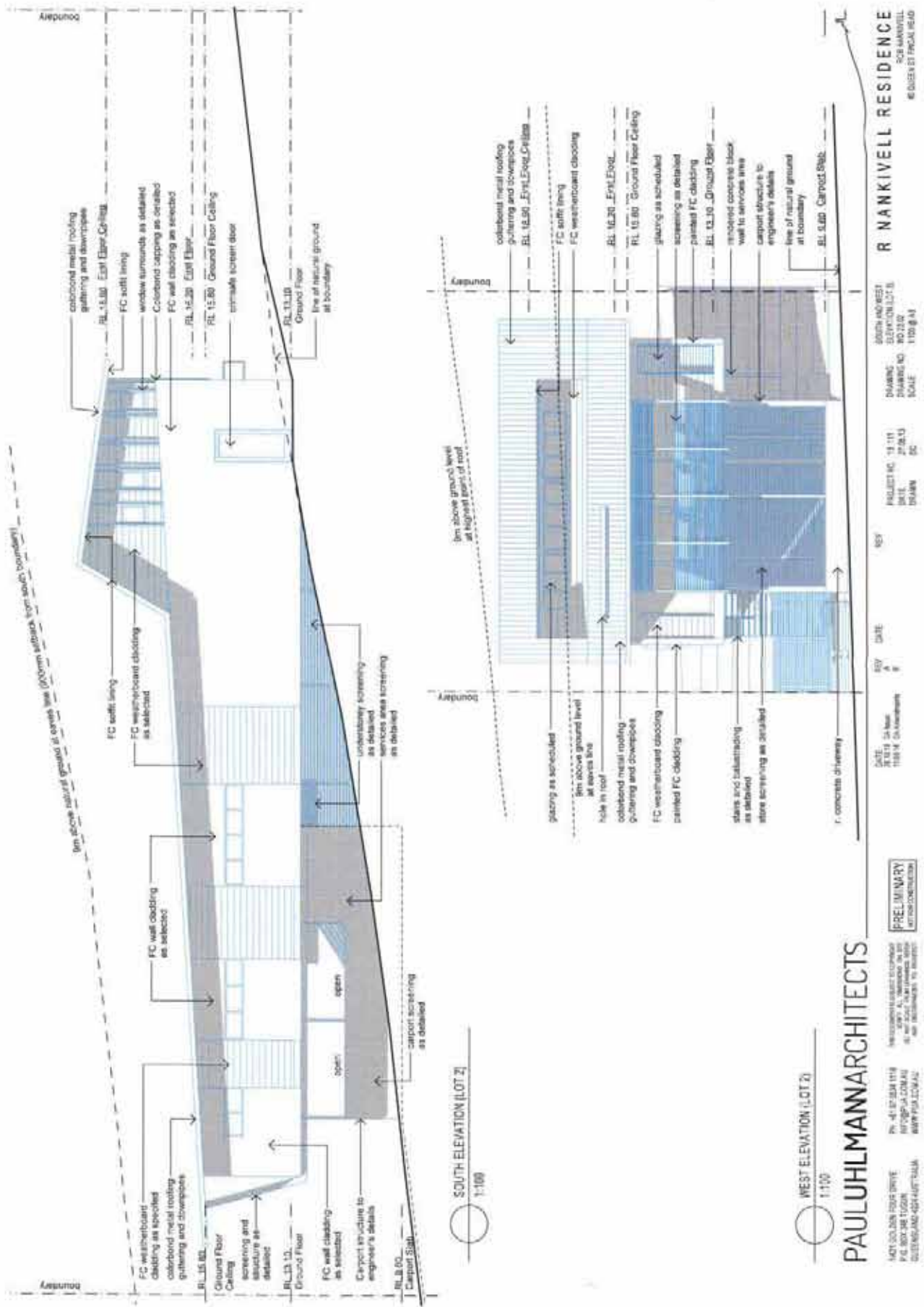
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3	3	11.02.14	SA/SL	F
4	4	11.02.14	SA/SL	F
5	5	11.02.14	SA/SL	F

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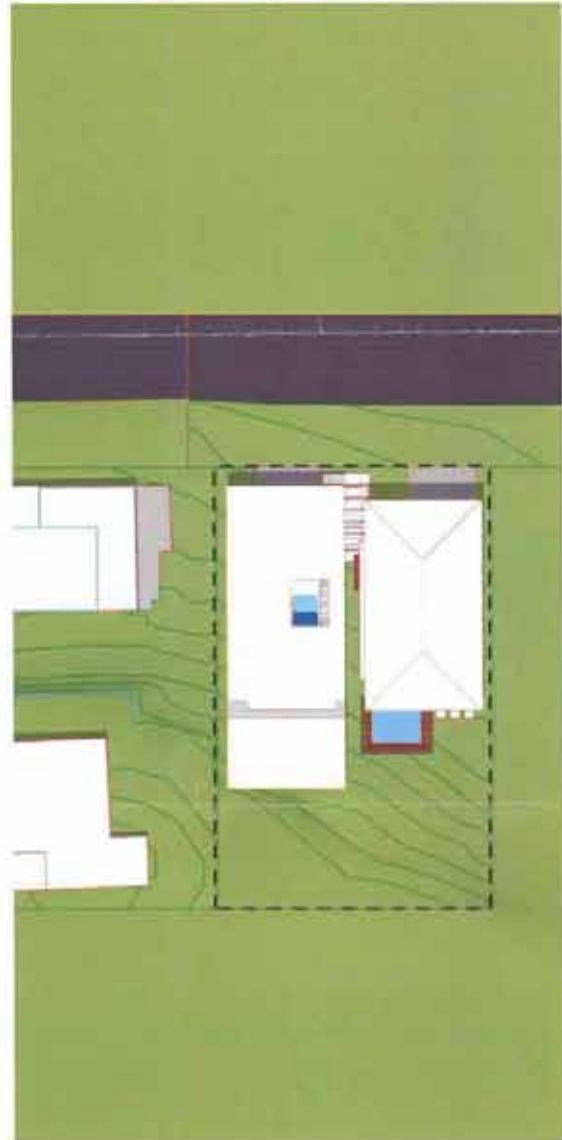
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 48 DUBES STREET TRICAL ROAD

APPROVALS:
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 STRUCTURAL: DC
 CIVIL: DC
 ELECTRICAL: DC
 MECHANICAL: DC
 PLUMBING: DC
 PAVEMENT: DC
 LANDSCAPE: DC
 CONSTRUCTION: DC





9am December 22



12pm December 22

PAULUHLMANN ARCHITECTS

1007 GOLDENTOP DRIVE
 5, 0, 804 240 TROON
 QUEENSLAND 4074 AUSTRALIA
 PH +61 07 5551 1116
 FAX +61 07 5551 1118
 INFO@P.A.A.COM.AU
 WWW.P.A.A.COM.AU

PRELIMINARY
L10/2012/RES/2012

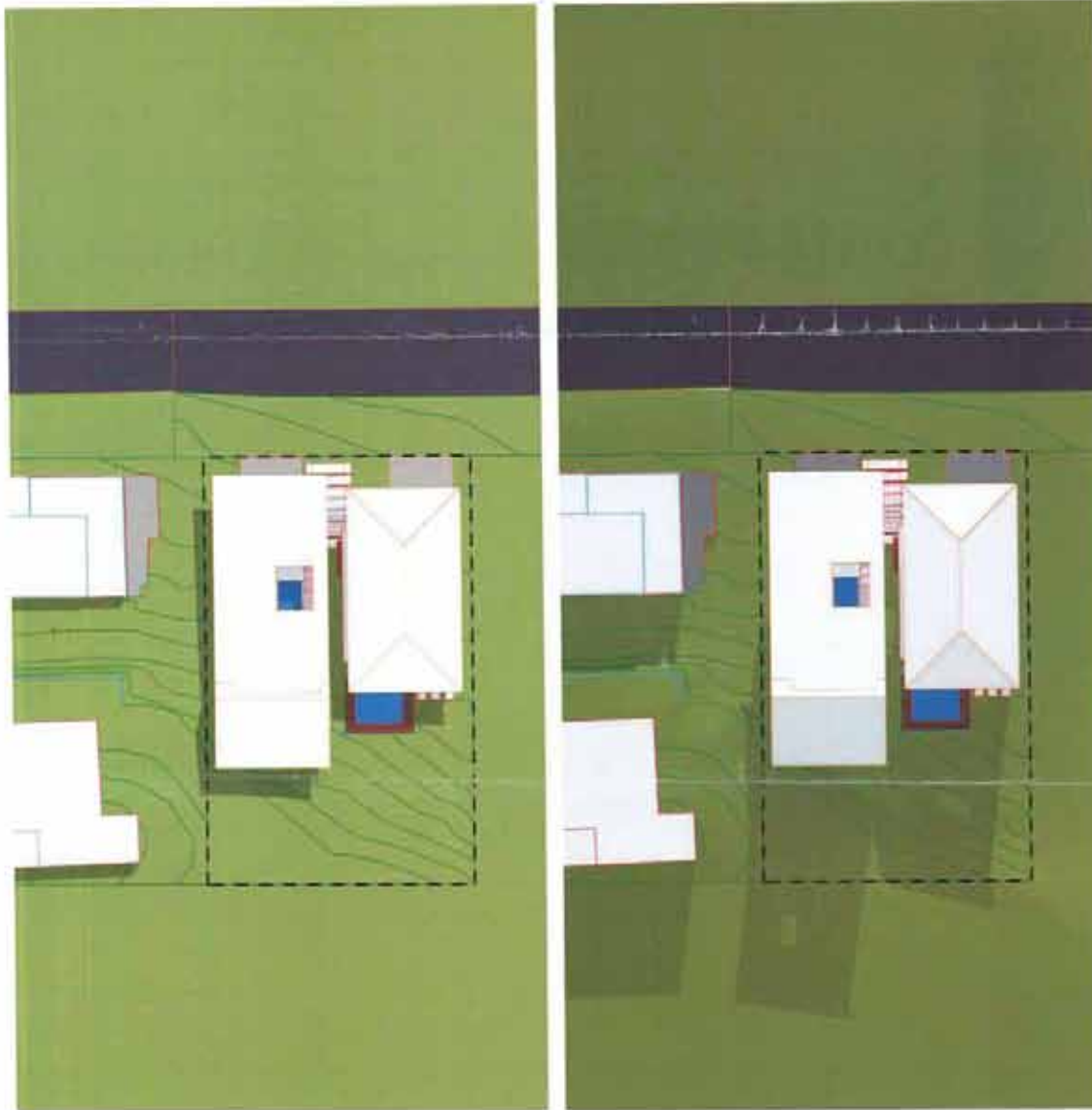
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 REV: 1

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 DATE: 27/01/13
 DRAWN: DC

DRAWING: 04/000 CHAMBER 1
 DRAWING NO: 00 0001
 SCALE: 1:50

NANKIVELL RESIDENCES

48 DUBBER STREET, TROON QLD 4074



3pm December 22

7:00pm December 22



NORTH

NANKIVELL RESIDENCES
40 QUEEN STREET, QUEENSLAND

PROJECT NO. 13 111
DATE 27/12/13
DRAWN DC

REV. DATE
1 12/12/13

SCALE 1:400
DRAWING NO. 101 0015

DATE 27/12/13
SCALE 1:400

DATE 27/12/13
SCALE 1:400

DATE 27/12/13
SCALE 1:400

PAULUHLMAN ARCHITECTS

PRELIMINARY
NOT FOR CONSTRUCTION

1401 GOLDEN BOULDER DRIVE
P.O. BOX 987 1000
QUEENSLAND 4038 AUSTRALIA
WWW.PULMAN.COM.AU



9am June 21



12pm June 21

PAULUHLMANNARCHITECTS

1847 GOLDENTOUR DRIVE
P.O. BOX 348 TUGGIN
QUEENSLAND 4284 AUSTRALIA
PH: 048 27 004 1178
PROJECT: 104 EDWARDS
WWW.PAULUHLMANN.AU

PRELIMINARY
NOT TO BE USED FOR CONSTRUCTION

SITE NUMBER: 104 EDWARDS
REV: 6
DATE: 18/06/2013

PROJECT NO.: 104 EDWARDS
DATE: 20/06/13
DRAWN: JC

DRAWN BY: J. COLEMAN
SCALE: 1:500

PROJECT: 104 EDWARDS
DRAWN BY: J. COLEMAN
SCALE: 1:500

NANKIVELL RESIDENCES

10 GREEN ETINGAL ROAD





3pm June 21

PAULUHLMANNARCHITECTS

14FT DOUGH FOGH DRIVE
PO BOX 387 COOR
GREENSANDS DEVALETTIA
TEL: 081 258 1118
INFO@PULMANN.COM.AU
WWW.PULMANN.COM.AU

PRELIMINARY
NOT FOR CONSTRUCTION

SITE
15.31.24 24.40.00.00

REV DATE

REV

PROJECT NO 13 111
DATE 22.08.13
DRAMA DC

DRAWING EXHIBIT D/ISSUES #
TRAINING NO 10.24
SCALE 1:800

NANKIVELL RESIDENCES
18 GREEN ST FINLAY HEND



9am June 21 3D



12pm June 21 3D

PAULUHLMANARCHITECTS

UNIT 5/101 SOUTH BRIDGE
 PG. 8/27 3RD FLOOR
 QUEENSLAND 4024 AUSTRALIA
 PH: +61 7 558 1118
 PROJECTS@PAULUHLMAN.COM.AU
 WWW.PAULUHLMAN.COM.AU

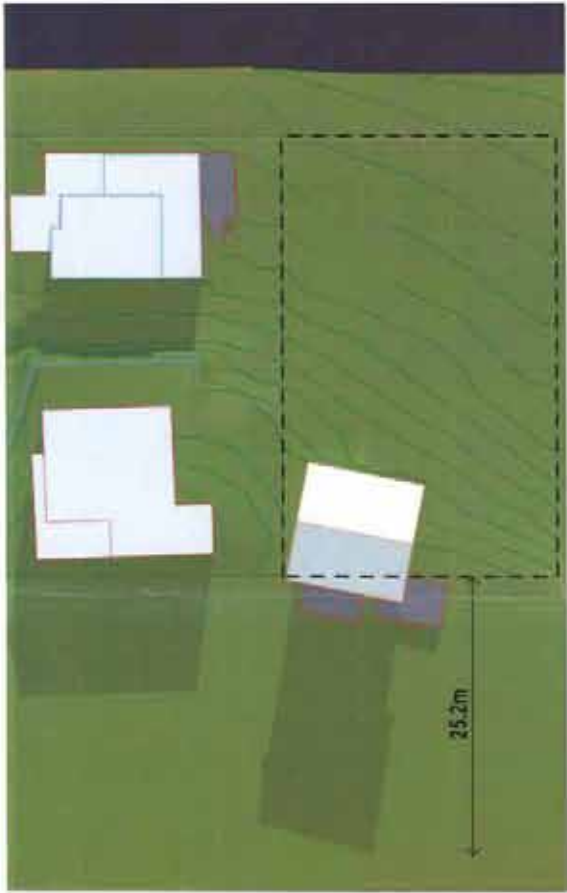
PRELIMINARY
 NOT TO BE USED FOR CONSTRUCTION

REV	DATE	BY	CHK	KEY
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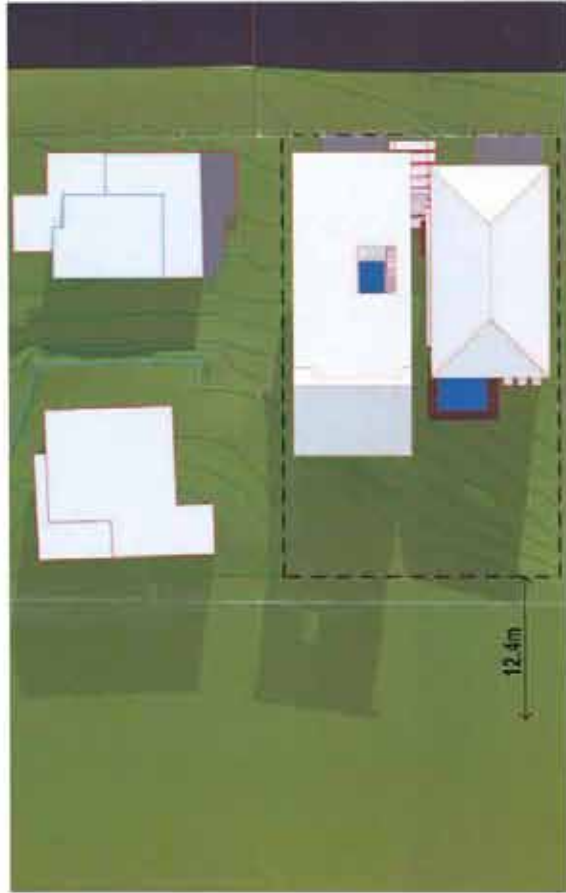
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 DATE: 23.03.13
 DRAWN: DC

DRAWING NO: RD 102B
 SCALE: 1:1

R NANKIVELL RESIDENCE
 40 GATES ST FRINGO FIELD



7:00pm December 22
(EXISTING RESIDENCE)



7:00pm December 22
(PROPOSED RESIDENCES)

PAULUHLMANNARCHITECTS

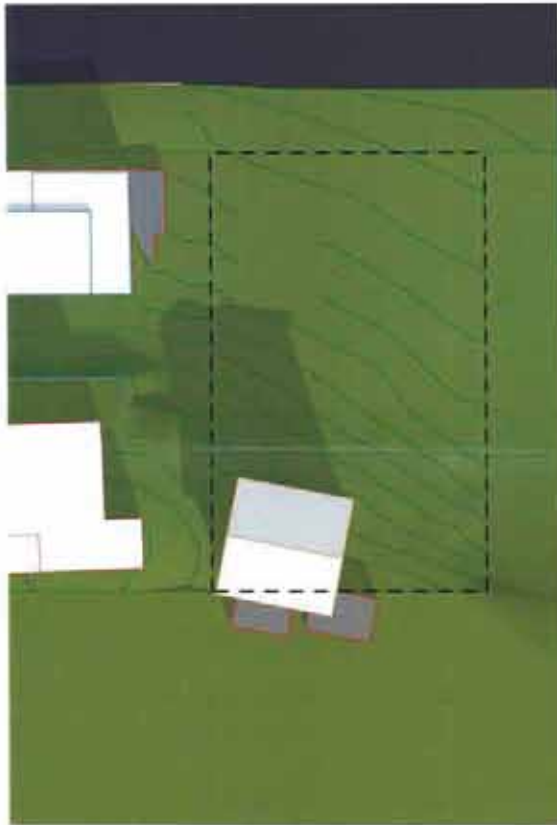
1467 GOLDFIELD DRIVE
 3, 2, BOY ABUTON
 GUTTENBERG QLD AUSTRALIA
 PHONE: 07 5561 1118
 INFO@PAULUHLMANN.COM.AU
 WWW.PAULUHLMANN.COM.AU
 REGISTERED ARCHITECTS IN QLD
 ARCHITECTS IN NSW, VIC, WA, TAS, NT
 ARCHITECTS IN SA, ACT, NT, QLD, WA, TAS, NT, SA, ACT, NT, QLD, WA, TAS, NT

PRELIMINARY
 NOT TO BE USED FOR CONSTRUCTION

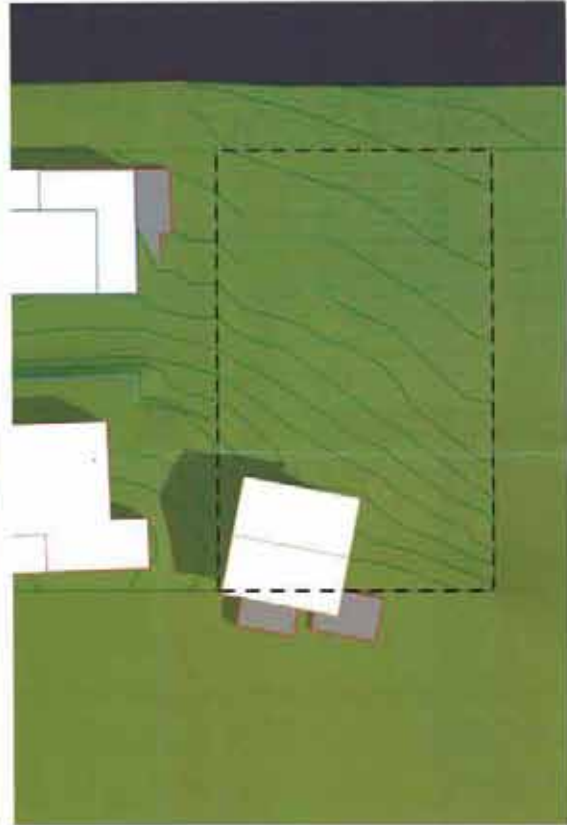
PROJECT NO. 15/11/11
 DATE: 27/04/13
 DRAWN: JC
 CHECKED: JC
 CLIENT: RANKIVELL RESIDENCE
 ADDRESS: 46 ROSEN ETTRINGAL ROAD
 SCALE: 1:500

REF: RANKIVELL RESIDENCE
 DATE: 27/04/13
 SCALE: 1:500

DATE: 27/04/13
 SCALE: 1:500



9am June 21
(EXISTING RESIDENCE)

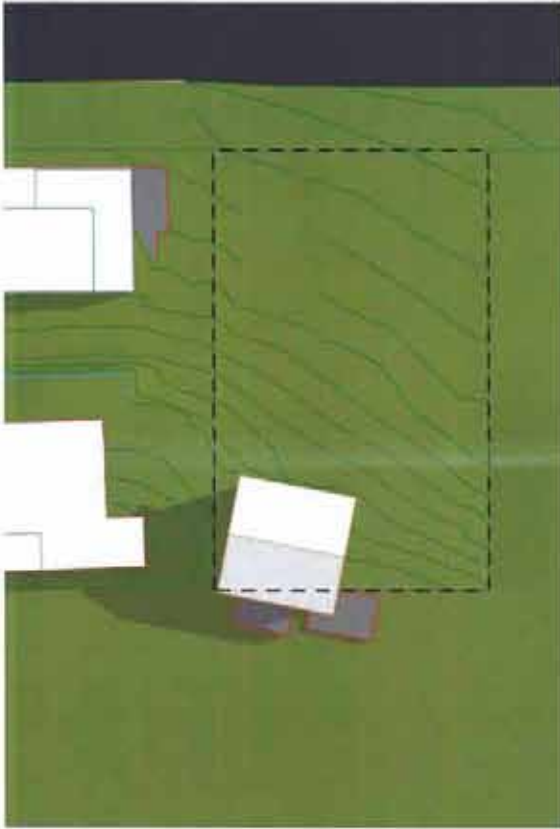


12pm June 21
(EXISTING RESIDENCE)

PAULUHLMANARCHITECTS

14/11 COLLEGE DRIVE
P.O. BOX 38 TUGGIN
GREENLAND 4224 NSW
PH: 41 87 824 1118
WWW.PAULUHLMAN.COM.AU
PRELIMINARY
NOT FOR CONSTRUCTION

DATE: 11/2/14 10:46am
REV: A
KEY
PROJECT NO: 13-11
DATE: 27/8/13
DRAWN: DC
DRAWING: 04/04/13
SCALE: 1:50
R. NANKIVELL RESIDENCE
RCS NANKIVELL
16 QUEENST FISHGILL RD



3pm June 21
(EXISTING RESIDENCE)

PAULUHLMANNARCHITECTS

1401 GOLDEN FOGUE DRIVE
P.O. BOX 98 7009
DUNEDIN 9024 NEW ZEALAND
PH: +61 3 758 1118
INFO@PAULUHLMANN.COM.NZ
WWW.PAULUHLMANN.COM.NZ
MULTI-DISCIPLINARY ARCHITECTURE
INTERIOR DESIGN
Landscape Architecture
CONSTRUCTION MANAGEMENT
PROJECT MANAGEMENT

DATE: 12/04/14 3:00pm
REV: 1
DATE: 12/04/14
REV: 1
PROJECT NO: 13-111
SITE: 13-111
DRAWN: JG
SCALE: 1:500
DRAWING: SHADOW STUDY
PROJECT NO: 13-111
SCALE: 1:500
R NANKIVELL RESIDENCE
100 NANKIVELL
REDDEN ST PUNGA 1610



WESTERN PERSPECTIVE

PAULUHLMANARCHITECTS

1421 GOLDEN FOUR DRIVE
P.O. BOX 348 TUGUN
QUEENSLAND 4224 AUSTRALIA
PH +61 07 5334 1118
INFO@PJA.COM.AU
WWW.PJA.COM.AU

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DATE	REV	DATE	REV
11.03.14	01	12.03.14	01
11.03.14	02	12.03.14	02

NANKIVELL RESIDENCES

40 QUEEN ST TINGALHEAD



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.

The subject site comprises and is adjacent to Littoral Rainforest, a Critically Endangered Community (EEC) listed under the Environment Protection and Biodiversity Conservation Act (EPBC) 1999. This EEC is of national environmental significance.

The development proposes the subdivision of the lot to create two equal size allotments with frontage to Queen Street. Bushfire regulations require the creation of an Asset Protection Zone which will have an unacceptable impact upon the ecological features of the site.

Council considers that the unique natural and developed character of Fingal Head would not be retained and that the ecological integrity of the locality would not be enhanced. Redevelopment of the site as proposed would necessitate the loss of EEC. It is therefore considered that the proposal would not be consistent with Clause 4 of the TLEP 2000 and would set a harmful precedent for similar development in the locality.

Clause 5 - Ecologically Sustainable Development

The four principles of Ecologically sustainable development are the precautionary principle, inter-generational equity, conservation of biological diversity and ecological integrity and improved valuation, and pricing and incentive mechanisms.

The proposed development, in order to comply with bushfire and planning regulations, would be likely to result in a significant impact on threatened species (Littoral Rainforest that is an Endangered Ecological Community). Therefore the proposal does not accord with these principles.

Clause 8 - Consent Considerations

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 objective of the zone within which it is located, and
- (b) it has considered those other aims and objectives of this plan that are relevant to the development, and

- (c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

The proposed subdivision would result in:

- Overdevelopment of the site necessitating the removal of significant vegetation (EEC Littoral Rainforest).
- Loss of informal residential character due to the bulk and scale of the proposed dwellings.
- Overshadowing of adjacent residential and community land.

For the reasons outlined further within this report, it is considered that the subject site is not capable of providing a low density residential environment with detached housing character and amenity, without the loss of EEC and negative impact upon the surrounding locality.

The development would therefore be inconsistent with subsection (a), (b) and (c) of Clause 8.

Clause 11 - Zone Objectives

The subject site is located within 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.

As detailed above, the proposed subdivision would result in:

- Overdevelopment of the site necessitating the removal of significant vegetation (EEC Littoral Rainforest).
- Loss of informal residential character due to the bulk and scale of the proposed dwellings;
- Overshadowing of adjacent residential and community land.

The development would therefore be inconsistent with the primary objective of the zone.

Clause 15 - Essential Services

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

The subject site has existing access to essential services.

The existing dwelling appears to be connected to an on-site sewage management facility.

Connection to Council's reticulated sewer is expected for new residential allotments with access to such services. Existing on-site facilities would need to be suitably decommissioned.

Clause 16 - Height of Building

The subject site is located within an area that has been mapped as having a height of 2 storeys with a building height restriction of 9m.

The application as originally submitted represented a three storey height with a maximum building height of 9m. An amended proposal submitted 21 March 2014 has lowered sub-floor areas from 200mm to 700mm to remove the three storey component. Maximum proposed building height is approximately 8.5m.

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. Given the minor scale and nature of the development it is considered that the proposal does not require a social impact assessment.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as being Class 5 acid sulfate soil (ASS). Given the minor works proposed at the site, interception of ASS is unlikely. A minor works plan has been submitted. Although minor cut and fill is proposed, all fill is to be retained on the site. No further concerns are raised in relation to ASS.

Other Specific Clauses

Clause 19: Subdivision (General)

The objective of the clause is to provide a comprehensive system of planning controls for the subdivision of land in the Tweed local government area.

The development application proposes the subdivision of the existing lot to form two lots and therefore this clause applies. The proponent is seeking consent from Council to carry out the subdivision and is therefore consistent with this clause.

Clause 36 – Coastal erosion outside Zone 7(f)

The objective of the clause is:

- *To protect land that may be subject to coastal erosion (but not within Zone 7(f)) from inappropriate development.*

The subject site is in close proximity to a coastal Reserve however is located approximately 180m from the sea. Given the presence of the coastal reserve, cliff and fore dunes, as well as the steeply sloping nature of the land, it is considered unlikely that the subject site would be affected by the behaviour of the sea and would be unlikely to impact on the beach or dune system.

The subject site is not located within the Coastal Erosion Hazard line. However, subsection (2)(a)(iii) states that the consent authority should consider *the likelihood of the proposed development adversely affecting the landscape or scenic quality of the locality.*

Whilst the proposal would be unlikely to impact on the scenic quality of the locality, the development would be likely to result in the loss of significant EEC which would set an undesirable precedent for the locality.

Clause 39: Remediation of Contaminated Land

The objective of the clause is to ensure that contaminated land is adequately remediated prior to the development occurring.

The application has been referred to Council's Environmental Health Unit who have advised that the submission indicates that there is no known historic contamination of the subject allotment. A search of historic aerial photography has shown that a dwelling was present circa 1962 with no sand mining and that there does not appear to be any trigger for further consideration of potential contamination of the site.

Clause 39A: Bushfire Protection

The subject site is bushfire prone and on this basis this clause applies. The objective of the clause is *to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.*

The proposal is identified as Integrated Development. Accordingly the proposal was referred to the NSW Rural Fire Service for general terms of approval in accordance with Section 91 of the EP&A Act 1979.

A bush fire safety authority response was received on 31 January 2014 as required under section 100B of the 'Rural Fires Act 1997' and was issued subject to a number of conditions relating to asset protection zones, water and utilities and design/construction.

General terms of approval relate to the subdivision of the land and the building work.

Condition 2 nominates the entire property to be managed as an inner protection area (IPA):

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

General advice for the consent authority to note advises of the necessity for vegetation clearing in association with the proposal in order to achieve compliance with Condition 2:

The required asset protection zones, for proposed Lots 1 and 2 (managed as Inner Protection Areas), to achieve satisfactory building separation from vegetation located on the adjoining lot to the east will require the clearing of vegetation.

Council is further advised that the necessary approvals for vegetation clearing would need to be in place prior to the establishment of the proposed asset protection zones:

This bush fire safety authority does not authorise the clearing of any vegetation, nor does it include an assessment of potential flora and fauna impacts of clearing vegetation for the purpose of establishing the proposed asset protection zones. Approvals necessary for the clearing of vegetation should be obtained prior to the establishment of the proposed asset protection zones.

Establishment of the proposed asset protection zones results in additional vegetation clearance and an unacceptable impact upon the EEC located upon the site (EEC).

A detailed discussion of the impacts of the proposal upon Flora and Fauna is presented elsewhere in this report.

Clause 54: Tree Preservation Order

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

As previously detailed, a TPO application was lodged with Council in March 2012. Within this application it was advised that there were no koala food trees on the subject site but that any removal of protected Littoral Rainforest species would require a specific approval from the OEH, not Council.

As such, there is no further consideration of this clause required.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

It is acknowledged that the proposal will not restrict public access to the coastal foreshore or impact directly on coastal processes.

A SEPP 1 objection has been lodged with regard to Clause 32B(4)(b) with regard to overshadowing of the proposal onto adjacent coastal land. Refer below for a full discussion of the SEPP 1 objection to the development standard.

Clause 43: Residential development

Clause 43 states that Council shall not grant consent to development for residential purposes unless:

- (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,
- (b) it is satisfied that the proposed road widths are not excessive for the function of the road,
- (c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,
- (d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and
- (e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

As detailed within this report, it is considered that the subject site is not capable of further subdivision, given the presence of EEC on the site. It is therefore considered that the proposal is not be consistent with section (a) of Clause 43.

SEPP No. 1 - Development Standards

A SEPP 1 objection to Clause 32(b)(4)(b) of the NCREP is required to accompany the development application. The clause reads as follows:

The Council must not consent to the carrying out of development:

- (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).*

Proposed dwellings on both Lots 1 and 2 overshadow the adjoining Crown reserve (waterfront open space) to the rear of the site prior to 7pm midsummer:

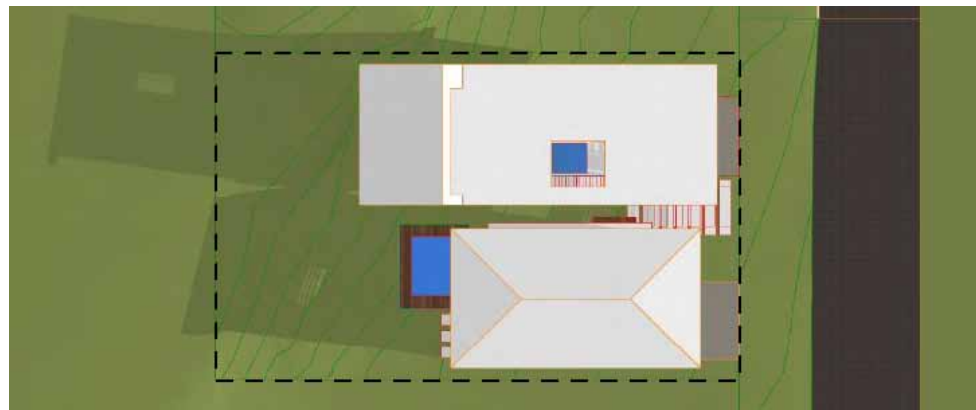


Figure 17: extract from WD 100.02 (Shadow Diagrams 2 Rev B) – 7:00pm December 22

The degree of overshadowing is likely to impact upon regeneration of remnant vegetation located on the adjoining site once the encroaching dwelling house is removed. As such, it is considered that the proposal is inconsistent with the aims of the clause.

The applicant states that the degree of overshadowing is minor, that it does not impact upon any active recreation areas within the reserve and that the area affected is currently unmanaged bushland not actively used by members of the public.

These statements have been disputed in objections received with regard to the development. The area is managed by a local conservation group and often frequented by members of the public. This will occur with greater intensity once the encroachment into the Crown reserve by the existing dwelling is rectified as the land is returned to the community.

Overshadowing into the Crown reserve by the proposed dwellings reduces the ability for threatened species to regenerate once the existing dwelling house is removed from the rear of the site. This contributes to loss of ecological integrity on land managed for the purposes of coastal protection.

It is not considered unreasonable or unjustified to request adherence to this standard given the importance of the vegetation concerned and the opportunity to enhance a significant ecological community.

A suitable building envelope for the site may be created that does not impact upon threatened species both on the site and on the adjacent Crown reserve.

The SEPP 1 objection is not supported.

SEPP No 71 – Coastal Protection

(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.

The proposal would not impact on existing public access to and along the coastal foreshore.

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

The development does not provide any new public access to or along the foreshore.

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

The subject site, by reason of its size and the presence of protected Littoral Rainforest, is considered to be incapable of being subdivided. Council is of the opinion that the subdivision of the site would constitute overdevelopment of a highly constrained site. Further, the creation of asset protection zones in association with the proposed building envelopes requires clearance of sensitive vegetation. The proposal is therefore not considered to be suitable in this location.

(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 does overshadow the adjacent coastal land before 7pm in midsummer. The significance of this overshadowing is discussed elsewhere in this report.

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

The proposal, if approved, would establish a harmful precedent for the subdivision of lots that are constrained by the presence of protected EEC. Council is of the opinion that the proposal for two lots on the site constitutes overdevelopment. Whilst not specifically prevalent from any public vantage points as such, it is considered that the proposal would neither protect nor improve the scenic qualities of the NSW coast.

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

As detailed within this report, the EEC is impacted by the proposal with regard to the need for removal of vegetation to create the building envelopes and vegetation clearance required in order to establish asset protection zones

in accordance with the bush fire safety authority issued by the NSW Rural Fire Service. Council's Ecologist has advised that this would result in an unacceptable impact upon the remnant vegetation located on the site. On this basis it is considered that the proposal would not conserve the EEC listed under the Threatened Species Conservation Act 1995.

- (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 application would be unlikely to impact on fish or marine vegetation.

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

As detailed within this report, the locality constitutes a Regional Fauna Corridor. The proposed subdivision would undoubtedly result in the removal of threatened Littoral Rainforest species and connectivity of associated habitat with the Crown reserve to the rear of the site.

- (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 development would be unlikely to impact on coastal processes or hazards.

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

It is considered unlikely that the proposal would cause conflict between land and water based coastal activities.

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

The SEE does not provide any specific information on the impact of the proposal on matters of cultural heritage.

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

It is considered unlikely that the proposal would impact on the water quality of coastal waterbodies.

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

Please refer to point (l) above.

- (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 of specific relevance to the development application.

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

- (i) the cumulative impacts of the proposed development on the environment.

In order to satisfy bush fire requirements, the proposal requires removal of significant vegetation. On this basis it is considered that the proposal would have a negative cumulative impact on the environment.

- (ii) measures to ensure that water and energy usage by the proposed development is efficient.

It is considered that the proposal would be likely to satisfy efficient water and energy use criteria (as outlined by submitted BASIX certificates).

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

It is noted that the draft Tweed Local Environmental Plan 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. The subject application is assessed against the provisions of the Tweed Local Environmental Plan 2014 below:

Part 1 Preliminary

1.2 Aims of Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
 - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
 - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
 - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
 - (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
 - (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
 - (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
 - (i) to conserve or enhance areas of defined high ecological value,

- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be inconsistent with the aims of this plan, specifically (c), (d) and (i).

1.4 Definitions

Under this Plan, the proposed development as 'subdivision' is not defined. Proposed land use following subdivision is 'dwelling house' which is defined as follows:

Dwelling house means a building containing only one dwelling.

This land use is permitted with consent in the R2 Low Density Residential zone.

1.8A Savings provision relating to development applications

This clause states that if a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

With respect to this it is noted that the subject application was lodged with Council on 12 November 2013, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014 and as such this clause is applicable to this development application. Notwithstanding this, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned as R2 Low Density Residential under the provisions of this plan. The proposed lots each have an area of 505.85m² which exceeds the minimum lot size of 450m² over the subject site.

The Crown reserve to the rear of the site upon which demolition of the existing dwelling house is proposed, is still zoned 6(a) Open Space under the TLEP 2000 as it is land affected by a 'deferred matter'. As such, TLEP 2014 does not apply to this land.

2.3 Zone objectives and Land Use Table

This document zones the development area as R2 Low Density Residential. The objectives of this 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.*

It is acknowledged that proposed lot areas accord with the established minimum lot size for the locality. However, as detailed within this report, Council does not support subdivision given site constraints. On this basis it is considered that the proposal does not accord with the objectives of the R2 zone.

The Crown reserve to the rear of the site upon which demolition of the existing dwelling house is proposed, is still zoned 6(a) Open Space under the TLEP 2000 as it is land affected by a 'deferred matter'. As such, TLEP 2014 does not apply to this land.

2.6 Subdivision – consent requirements.

Subdivision of land requires development consent. The development application includes subdivision for consent consideration.

2.7 Demolition requires development consent

This clause states that the demolition of a building or work may be carried out only with development consent, unless another EPI allows it without consent. The applicant has confirmed (correspondence dated 3 March 2014) that the proposal includes demolition of the existing dwelling house. As this application has been submitted in order to obtain development consent, the proposal is considered to be in accordance with this clause.

The application has been reviewed by Councils Building Unit who have considered recommended conditions of consent with respect to the demolition to be undertaken on the site should the application be considered favourably.

Part 4 Principal development standards

4.1 Minimum subdivision lot size

The size of the proposed lots (505.85m²) is not less than the minimum size shown on the Lot Size Map in relation to the land (450m²).

4.3 Height of buildings

Maximum building height under this clause is 9m. The proposed dwelling houses have a maximum building height of approximately 8.5m.

4.4 Floor Space Ratio

Maximum floor space ratio for the subject site is 0.8:1. The proposal has a floor space ratio of 0.39:1 (Lot 1) and 0.54:1 (Lot 2) which does not exceed the development standard.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

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

The subject application does not propose any amendments to existing public access to or along the coastal foreshore.

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

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

The proposed development is permissible on the subject site. However, the bulk and scale of the built form design is considered inconsistent with the low-key and informal character of the beachside locality as outlined throughout this report. As such the proposal is considered to be unsuitable at this location.

- (c) the impact of the proposed development on the amenity of the coastal foreshore including:*
 - (i) any significant overshadowing of the coastal foreshore, and*
 - (ii) any loss of views from a public place to the coastal foreshore,*

The proposed development results in some overshadowing of land identified as 'coastal foreshore'. Proposed building height to the rear of the site contributes to overshadowing. This may impact upon regeneration of sensitive vegetation once the existing dwelling is removed.

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

The proposed development requires the removal of sensitive vegetation and impacts upon an EEC that contributes to visual amenity and scenic qualities of the coast. As such, the proposal does not result in coastal protection.

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

As previously discussed, the proposal impacts upon native coastal vegetation, existing wildlife corridors and native fauna, flora and their habitats via vegetation clearance within an EEC. As such, it is considered that the proposal will have an unacceptable impact on local biodiversity/ecosystems in this regard.

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

The proposed development is considered to result in an unacceptable cumulative impact on the coastal catchment given the site's residential zoning and the permissibility of similar development at this location which could set a precedent for the future.

This clause goes on to further state:

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

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

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

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

The proposal requires connection to Councils reticulation sewer system.

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

Roof water from future dwellings is proposed to be directed to 3000 litre rainwater tanks with overflow to the street network.

This document further states that full details of Water Quality Management Measures will be provided with any future Construction Certificate Application in accordance with the provisions of "Tweed Urban Stormwater Quality Management Plan, April 2000".

Having regard to the above, it is considered that the subject application would be in accordance with the above controls, with no untreated stormwater being discharged to the sea, beach or the like.

- (d) *the proposed development will not:*
- (i) *be significantly affected by coastal hazards, or*
 - (ii) *have a significant impact on coastal hazards, or*
 - (iii) *increase the risk of coastal hazards in relation to any other land.*

The subject site is not located in an area affected by coastal hazards.

Part 7 Additional Local Provisions

7.1 Acid sulfate soils

As previously outlined in this report, works undertaken on Class 5 ASS are intended to be managed by a minor works plan.

7.6 Stormwater management

Roof water from future dwellings is proposed to be directed to 3000 litre rainwater tanks with overflow to the street network.

7.10 Essential Services

All essential services are available to the site.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

An assessment of the proposal against Part A of Section A1 of the DCP has been carried out as it relates to a dwelling house – i.e. only one dwelling per allotment.

1.4. Objectives of this Section

Objectives 2 and 3 in 1.4 read as follows:

2. *Ensure that development is compatible with the local natural and built character, scale and amenity;*
3. *Ensure quality residential and tourist development which responds to the features of the site and the Tweed's subtropical climate; and*

Following assessment of the proposal, it is clear that the development is not compatible with the local natural and built character, scale and amenity. It also does not respond well to the ecological features of the site.

3.1 Streetscape

The context of the development is informal and low-rise. The locality is historically a beachside holiday area. Formal urban design of such bulk and scale is inconsistent with the existing streetscape character. The proposed development does not '*recognise and respect the existing qualities and unique characteristics of the place*'.

The development does not respond well to the streetscape. The bulk and scale is imposing, particularly to the front and side boundaries. The dwelling to the south of the development is impacted by the bulky frontage which results in overshadowing in the winter months.

The design includes prominent garaging, a reduced front setback and proximity of roof forms to the boundaries. There has been little consideration of the new dwelling houses' size, shape, elevations, setbacks, height and roof form within the streetscape and from adjoining properties. There is no landscaping to the street.

The proposal does not meet objective 01:

01. *To ensure new development is compatible with, and complements the positive characteristics of the existing built, landscape and topographic elements of the streetscape.*

Entrance to each dwelling is via a central stairway to elevated side entrances. The building entry areas/front doors are not clearly identifiable from the street and are accessible only behind a screened/gated arrangement. This is typical of the formal urban design.

The design is not compatible with other buildings and sites along the street, *particularly those that are older and more established*. The location and height of level changes over the allotment are unnecessary. A site-responsive and low-impact design that steps down the site from rear boundary to front boundary should be possible without the need for imposing bulk and scale. The design attempts to fit in large floor areas and double carports as well as substantial external living areas on a constrained site.

As such, the proposal does not comply with the following controls:

- C1. *All dwellings should address and offer passive surveillance over the street by ensuring important elements such as front doors, building entry areas and windows are prominent in the building façade (including secondary dwellings) with the entrance clearly identifiable from the 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.

3.2 View and Vistas

The dwellings are long and narrow. Building height has been maximised. Roof lines are minimal between dwellings and encroach into the front setback (within 1.7m of front boundary). This serves to reduce the view corridor down the residential street (Queen Street) which is typically vegetated (within front setbacks of existing dwellings) within the vicinity of the subject site. The height and width of the buildings at the front boundary and lack of separation between dwellings (1.8m between roof lines) also serves to reduce the ability of dwellings across the street being able to retain any existing views of the natural bushland to the rear and upslope of the subject site.

The proposal does not meet the following objectives:

- 01. To ensure existing public views and vistas particularly those of important natural features such as ridgelines, water or bushland, are retained in so far as it is practical to do so.*
- 02. To ensure public view corridors, particularly those down streets and between buildings, are not unnecessarily reduced or obliterated.*

As such, the proposal does not comply with the following controls:

- 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.**

2.2 Landscaping, deep soil zones and external living areas

Landscaping requirements for the site include the following:

At least 450m ² but less than 600m ²	30% of the site including at least two deep soil zones measuring a minimum of 3m in any direction
All urban lot sizes	At least 50% of the landscaped area is to be behind the building line of the primary road frontage.

30% of the 505.85m² lots is 151.75m².

A hatched landscaped area of 268.47m² is nominated on Drawing No. WD11.04 for Lot 1 and a hatched landscaped area of 153.6m² is nominated on Drawing No. WD21.05 for Lot 2 - essentially all of the area of the lots that are not covered with structures. Two Deep Soil Zones of 3m x 3m are located in the NE corner of each lot adjacent to each other. However, a landscape plan has not been supplied for the development and there is no supporting information regarding proposed plantings to substantiate the nominated landscaped areas.

The existing indigenous vegetation on the site has been unsuccessfully integrated with the design and the remaining local native vegetation on the site will be compromised by the development.

As such, the proposal represents a variation to the following controls:

- C4. Existing landscape elements on sites such as natural rock outcrops, watercourses, dune vegetation, indigenous vegetation and mature trees should be retained and integrated with the design of the buildings.*
- C5. On lots adjoining indigenous/native vegetation, protect and retain indigenous native vegetation and use native indigenous plant species for a distance of 10m from any lot boundaries adjoining bushland.*

3.1 Setbacks

As stated previously in this report, the front setback for both dwellings as an average of dwellings within proximity of the subject site is not supported.

The applicant has neglected to take into account all existing/approved front setbacks within a 40m vicinity of the subject site and arrives at an average of 3.8m. A front setback between 5.275m – 7.275m is required based on a calculated average of 6.275m. Given the building height of the front elevations, adherence to a minimum front setback of 5.275m is expected.

As such, the proposal represents a variation to the following control:

- C2. In established areas and on infill sites dwelling houses are to be consistent with the front setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings within 40 metres or a variation justified under a streetscape analysis. This setback may be varied up to 1 metre where justified through a streetscape analysis.*

The proximity of the considerable bulk and scale of the dwellings to the front boundary is contrary to the following objective:

- O1. To establish the desired spatial framing of the street, define the street edge and enable a transition between public and private space.*

The upper level overhang associated with the dwelling on Lot 2 does not comply with requirements in Control C3 that allow an articulation zone into the front façade as it exceeds 25% of the frontage width.

4.3 Solar Access and Natural Ventilation

The proposed development will result in some overshadowing to both southern adjoining dwellings as their associated private open space areas are oriented to the north. The most significant overshadowing occurs over the private open space and deep soil zone areas of 42 Queen Street which are oriented to the northern boundary on this constrained lot.

Dwelling plans were granted for 42 Queen Street on 24 December 2013 that include demolition of the existing dwelling (evident in May 2012 aerial imagery below) and construction of a single storey/part two storey dwelling with a larger building footprint (DA13/0584).

The existing north-facing verandah will be replaced by a building elevation with living room windows and an inset "winter" verandah with a setback of 5.505m. The area between the northern elevation and the boundary will function as a ground level external living area. It is nominated as a deep soil zone with and will be required to be landscaped as such.



Figure 19: May 2012 aerial imagery – adjoining sites to the south

Amended plans submitted by the applicant plot the adjoining dwelling at 42 Queen Street to scale in relation to the common boundary with proposed Lot 2.

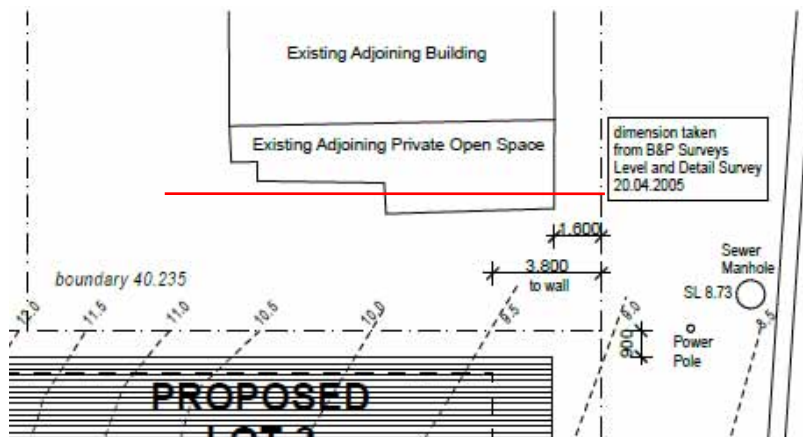


Figure 20: excerpt from Site Plan WD 0.03 Rev C – adjoining existing development at 42 Queen Street

The edge of the existing verandah is setback 4m at its closest point and 5.8m at its farthest point. The horizontal line across the verandah (above) represents an approximate setback of 5.5m. This will be the new building line as approved by DA13/0584.

Shadow diagrams submitted by the applicant confirm the scale of midwinter overshadowing to the properties to the south (42 Queen Street and 1 Lighthouse Parade) at 9am, 12 noon and 3pm on June 21.



Figure 21: excerpt from Shadow Diagrams 3 Rev B – 9am June 21

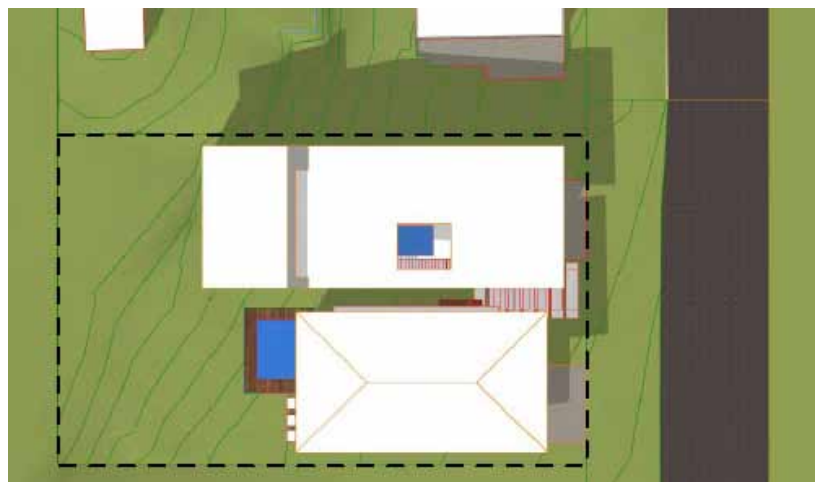


Figure 22: excerpt from Shadow Diagrams 3 Rev B – 12 noon June 21



Figure 23: excerpt from Shadow Diagrams 4 Rev B – 3pm June 21

Most of the northern setback of 42 Queen Street (existing dwelling) is overshadowed between 9am and 12 noon and 70% of the rear yard is overshadowed at 3pm. As such, sunlight to at least 50% of the principle area of private open space is easily reduced to less than 2 hours between 9am and 3pm on June 21. The overshadowing is considered unacceptable and does not comply with Control 4.

Overshadowing is intensified with regard to the approved plans for 42 Queen Street in that windows to the living areas are unlikely to receive at least three hours of sunlight between 9am and 3pm on June 21 which is also inconsistent with Control C4:

C4. For neighbouring properties ensure:

- i. Sunlight to at least 50% of the principle areas of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and*
- ii. Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on June 21, and*
- iii. Where existing overshadowing by buildings is greater than this, sunlight is not to be further reduced by more than 20%.*

4.4 Building Form

As stated previously in this assessment, the overall bulk and scale of both dwellings impacts upon the streetscape with regard to building height in proximity to the front boundary, views from adjoining properties and overshadowing to adjoining properties.

The proposal is not consistent with the following objective:

- 01. To minimise the visual impact and bulk of development when viewed from adjoining properties, the street, waterways, and areas for public recreation purposes.*

The proposed dwelling on Lot 1 addresses the street by way of an 8m wall plate height adjacent to the carport area. This expanse is unbroken and devoid of articulation and presents as a 'tower'. This is contrary to the objective requiring the minimisation of visual impact and bulk when viewed from the street and represents a variation to the following control:

- C2. Walls in excess of 15m in length and/or 4m in height must be articulated, landscaped, or otherwise treated in order to provide visual relief. Planning and design principle 4 above identifies various articulation techniques.*

There is little visual relief with regard to the dwelling proposed on Lot 1. The southern elevation extends to 17m in width with an average height of 6.75m. It is noted that this elevation will be adjacent to the northern elevation of the dwelling proposed on Lot 2. However, it will be visible from the streetscape (and from the adjacent dwelling) and is inconsistent with the character of the area. There is little articulation and few elements of architectural interest evident.

The roof line of the dwelling on Lot 2 extends unbroken for a length of 20m with no varying pitches to reduce the overall visual bulk. It slopes towards the street as a cantilevered building section over the carport area but has no articulation for the entire length.

Similarly, the single roof form of the dwelling on Lot 1 extends unbroken for a length of 19m.

The design is an unacceptable outcome for the site. As such, the proposal is considered to represent a variation to the following control:

- C1. Building siting, height, scale, and roof form must to relate to the **surrounding development**, topography and the existing site conditions.*

The bulk and mass of both dwellings does not respond to the constraints of the site. The designs do not comply with frontage setbacks to reduce proximity to the street and mitigate impacts upon adjoining dwellings.

Summary

Both dwelling designs are inconsistent with the informal, low-density, low-rise, casual holiday character of the locality. The designs are typical of residences in urban areas such as Tweed Heads and Banora Point or in Greenfield subdivisions along the Tweed Coast.

The designs are imposing and formal. Front elevations are dominated by car parking areas with reduced setbacks and little or no area for landscaping.

The designs incorporate architectural elements of a commercial nature which do not integrate well with the established residential streetscape.

Whilst ensuring privacy, the designs create sterile façades – at odds with the existing character of the locality which promotes an open and friendly atmosphere at a human scale.

A2-Site Access and Parking Code

Double carports are located to the front of the dwellings under upper level roofs that accommodate two car spaces for each dwelling. This is consistent with DCP A2 requirements.

A5-Subdivision Manual

A5.4.5 – Environmental Constraints

Section A5 of the DCP states that housing and other forms of urban development are designed to integrate with natural features, not dominate or remove them.

Section A5.4.5 relates to significant vegetation and advises that *‘Development sites must be assessed to determine if there are areas of significant vegetation’*. Table A5-2 relates to the vegetation condition codes as follows:

TABLE A5-2: VEGETATION CONDITION CODES		
Condition Code	Condition Category	General Site Criteria
1.	Old-Growth /Undisturbed /Excellent Condition	<ul style="list-style-type: none"> • Vegetation with negligible unnatural disturbance • A significant proportion of plants with age-related features (such as tree hollows) and a species composition characteristic of the ecologically mature forest ecosystem • May include non-woody communities (eg. heathland, sedgeland, etc.) of native vegetation in excellent condition • Abundant habitat for wildlife • Mature upper stratum • A well developed understorey will usually be present
2.	Relatively Natural/Good Condition	<ul style="list-style-type: none"> • Vegetation that is relatively homogenous and intact • Minimal canopy disturbance • Understorey usually present • Advanced regrowth may be present • May have a history of logging or burning but has retained a significant component of its original vegetation diversity. May contain a low to moderate proportion of weed species in the understorey
3.	Heavily Modified /Disturbed /Poor Condition	<ul style="list-style-type: none"> • Vegetation that has been substantially modified by clearing for agriculture, logging, mining or other disturbance • Canopy removal typically between 70% & 30% • Includes recent regeneration • Understorey usually disturbed or absent • May have extensive weed invasion in the understorey • May include medium to advanced regrowth

Figure 24: Vegetation Condition Codes

Council's Ecologist has advised that the site is of high ecological status, due to the presence of Littoral Rainforest on and adjacent the lot. It is considered that the vegetation may be classified as Condition 2 with components of Littoral Rainforest that is relatively homogenous and intact, with minimal canopy disturbance, understorey and advanced regrowth present.

Section A5 advises that proposals for sites that contain significant vegetation must:

- *Demonstrate that the development proposal does not detract from the ecological, scenic landscape or local identity values of the significant vegetation;*
- *Include significant vegetation where possible into the open space/drainage network or within road reserves;*
- *Provide a street and lot layout; and/or lot sizes and shapes that will enable the proposed development to take place whilst also providing sufficient space (outside building platforms) on lots to enable significant individual trees or small stands of vegetation to be retained.*

Whilst some significant vegetation is proposed to be retained it is considered that to comply with bushfire requirements, the proposal necessitates vegetation clearance.

It is therefore considered that the proposed subdivision results in the loss of significant vegetation and detracts from the ecological values on the site, contrary to the requirements set out within Section A5 of the DCP.

A11-Public Notification of Development Proposals

The development application was notified to adjoining properties for a period of 14 days as integrated development under s100B of the Rural Fires Act 1997.

(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. As previously detailed the proposed development will not impact on coastal lands in terms of restriction of public access.

Clause 92(a) requires Council to provide an assessment of the proposal against the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*. This document acknowledges that whilst there is a focus on conservation initiatives in coastal areas, there is a need for local housing strategies in order to utilise land in existing urban centres.

As detailed within this report, Council does not support removal of vegetation within the protected EEC. With this regard the Policy states that *SEPP 26 Littoral Rainforests will be rigorously enforced and extended where appropriate in recognition that what remains of these valuable ecosystems needs to be fully protected from inappropriate development*.

Whilst the subject site is not specifically covered by the SEPP 26 Policy, Council's Ecologist, and the applicant's Flora and Fauna Assessment has acknowledged the presence of such vegetation on the site. It is therefore considered that the site is not capable of subdivision without the removal or damage to such protected species. Therefore the proposal is not consistent with the clause.

Clause 92(b) Applications for demolition

The application has been reviewed by Councils Building Unit who have considered recommended conditions of consent with respect to the demolition to be undertaken on the site should the application be considered favourably.

- (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. The subject site is not located within the Coastal Erosion Hazard Zone. The proposal seeks to remove vegetation which is not supported for the reasons outlined within this report.

One of the key objectives of the Plan is to protect, rehabilitate and improve the natural environment and to promote ecologically sustainable development. It is considered that the subdivision of the lot would result in the removal or damage to a protected EEC (Littoral Rainforest). On this basis it is considered that subdivision of the site is not consistent with the Plan.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Flora and Fauna

Ecological Values

With reference to the Tweed Vegetation Management Strategy 2004 (TVMS) mapping (updated 2009), vegetation occurring immediately to the east of the site extending across the Crown reserve is identified as *TVMS Code 310 - Banksia Dry Sclerophyll Open Forest to Shrub-land*.

However, from site inspection, this community is more closely described as Littoral Rainforest which corresponds with TVMS classification code 101. An approximate area of 340m² of Littoral Rainforest extends across the subject site that forms 10% of a broader linear remnant unit covering an area of approximately 3400m² - approximately 10% of the remnant.



Figure 25: Remnant Littoral Rainforest Unit of approximately 3400m²

The mapped *TVMS Code 310 - Banksia Dry Sclerophyll Open Forest to Shrubland* community is assigned 'Moderate Ecological Status' as shown on *Map 4 of 7* titled *Ecological Values* in the *TVMS 2004*, dated August 2004.

However where evaluated as *TVMS Code 101 Littoral Rainforest* (in accordance with Table 3.5 Criteria for Mapped Categories of Ecological Status) the community is assessed as having 'Very High Ecological Status' due to High Biodiversity (Rainforest) Status, Significant Species and Threatened Communities criterion.

As previously discussed in this report and with reference to DCP A5 Subdivision Manual - Section A5.4.5, the community meets the definition of 'Significant Vegetation' as classified as Type 1 Regionally Significant Natural Area.

With reference to the listing advice for 'Critically Endangered' - *Littoral Rainforest and Coastal Vine Thickets of Eastern Australia* under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the remnant unit of 3400m² would be considered to satisfy the eligibility threshold criteria necessary for classification such as:

- greater than 1000m²;
- less than 70% cover of transformer weeds; and
- 25% native plant diversity of characteristic species or 30% canopy cover of one rainforest species (i.e. *Cupaniopsis anacardioides*).

In addition to being considered eligible for listing under the EPBC Act as a 'Critically Endangered Community' the remnant unit is recognised as a candidate 'Endangered Ecological Community' - *Littoral Rainforest in the South East Corner, Sydney Basin and NSW North Coast bioregions* under the *Threatened Species Conservation Act 1995* (TSCA Act).

With reference to the Far North Coast Regional Conservation Plan 2010 (FNCRCP), an estimated 90% of Littoral Rainforest has been cleared since European settlement within the Far North Coast (Ballina, Byron, Richmond Valley, Tweed). TVMS (Table 2.4) estimates an area of approximately 102 hectares of this community remaining within the shire.

Table 2.4 Areas and Proportions of Mapped Vegetation Types in Tweed Shire

Code	Vegetation Type	Area (ha)	% of Mapped Bushland	% of Shire
Rainforest and Riparian Communities				
101	Littoral Rainforest	102	0.15	0.08
102	Sub-tropical / Warm Temperate Rainforest on Bedrock Substrates	8919	12.99	6.77
103	Dry Rainforest	157	0.23	0.12
104	Lowland Rainforest on Floodplain	283	0.41	0.21
105	Myrtaceous Riparian Low Closed Forest to Woodland	472	0.69	0.36
106	River Sheoak Open Forest	635	0.92	0.48
107	Cool Temperate Rainforest	1	0.002	0.001

Figure 26: extract from Table 2.4 of FNCRCP

Patches are generally linear in shape and remain as small fragmented units. Estimates of occupancy of the ecological community in NSW (derived to inform the Scientific Determination for EPBC listing) indicates that the majority of individual patches (92%) are less than 10 hectares in size.

The Site

Several listed species are known to occur onsite including:

- *Cryptocarya foetida* (Stinking Cryptocarya) - Vulnerable Threatened Species Conservation Act (TSC Act) and EPBC Act. The one individual has been significantly damaged through past landscape maintenance practices.



Figure 27: *cryptocarya foetida* 2012 (left) and 2014 (right)

- *Archidendron hendersonii* (White Lace Flower) - Vulnerable TSC Act. Two individuals occur onsite. One of the stems has not been identified on the site plan nor specifically recognised in the Ecological Assessment (EA) provided with application documentation. The stem identified on the site plan shows evidence of recent damage that may have occurred during pruning activity on adjacent trees. The other stem (not identified on the plan) has been significantly damaged and the architecture of the tree altered.



Figure 28: damaged *Archidendron hendersonii* not identified on site plan

- *Macadamia tetraphylla* (Queensland Nut) - Vulnerable TSC Act and EPBC Act. A single stem was previously recorded but has not been identified in the current EA. During site inspection, the severed stem of the previously identified tree was identified by low growing remaining foliage. No record of permit granted by OEH was returned from OEH Public Register search.



Figure 29: *Macadamia tetraphylla* 2012 (left) and severed stem 2014 (right)

- Other listed flora and fauna species considered to have a moderate to high likelihood of occurring/utilising habitat on and immediately adjacent to the site include:

Species	Common Name	Status	No. Records Fingal	Notes
Fauna				
<i>Ptilinopus regina</i>	Rose-crowned Fruit-Dove	Vulnerable	-	Ukerebagh NR
<i>Pteropus poliocephalus</i>	Grey headed Flying Fox	Vulnerable*	-	Soorley St Banora Pt
<i>Syconycteris australis</i>	Common Blossum Bat	Vulnerable	2/2 SEPP Wetland	Often roosts within Littoral R/f
<i>Mormopterus beccarii</i>	Beccari's Freetail-bat	Vulnerable	1/3 SEPP Wetland	Other records Banora, Ukerebagh NR
<i>Miniopterus australis</i>	Little Bentwing-bat	Vulnerable	-	Soorley St Banora Pt
<i>Burhinus grallarius</i>	Bush Stone-curlew	Endangered (E1)	-	Coolangatta/TH Gold Course
Flora				
<i>Archidendron hendersonii</i>	White Lace Flower	Vulnerable	4/12	Possible duplication. Only one record for the subject site.
<i>Cryptocarya foetida</i>	Stinking Cryptocarya	Vulnerable	19/27	Possible duplication
<i>Syzygium moorei</i>	Durobby	Vulnerable	3/7	Assumed to occur (100m record precision) as part of same remnant Littoral Rainforest unit to the north

Table 1: Bionet - Atlas of NSW Wildlife Search (2.5km buffer, listed species > 1980)

Council Assessment - Review of Existing Vegetation (EA) 40 Queen Street, Fingal dated October 2013 and prepared by Planit Consulting.

The EA did not consider the potential impact on the Littoral Rainforest vegetation community arising from the establishment and maintenance of Asset Protection Zones, nor the long term effects of shading from the proposed two storey dwellings.

The EA concluded that the community was representative of an EEC - *Littoral Rainforest in the South East Corner, Sydney Basin and NSW North Coast bioregions.*

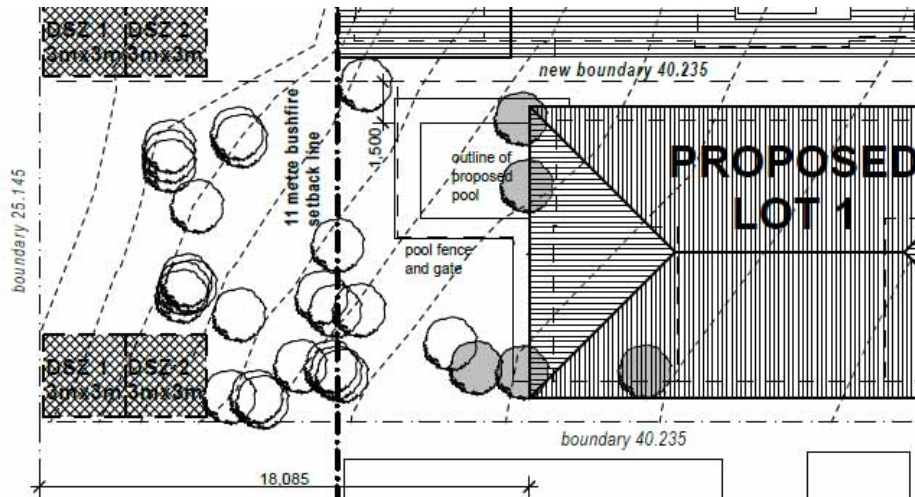


Figure 30: extract from Site Plan WD 0.03 Rev B – Tree Removal

Page 11 of the EA concludes that four trees comprising part of the EEC would be required to be removed to facilitate the development. However, page 17 of the EA indicates that five trees have been identified for removal which is consistent with the accompanying *Tree Report*, prepared by Northern Tree Care and dated 28 October 2013 (revised 30 October 2013).

The loss of four to five trees necessary to establish the proposed dwellings has been estimated at 80m² of Littoral Rainforest. This would appear to be inaccurate as the report clearly does not consider modification of the community for bushfire hazard mitigation purposes.

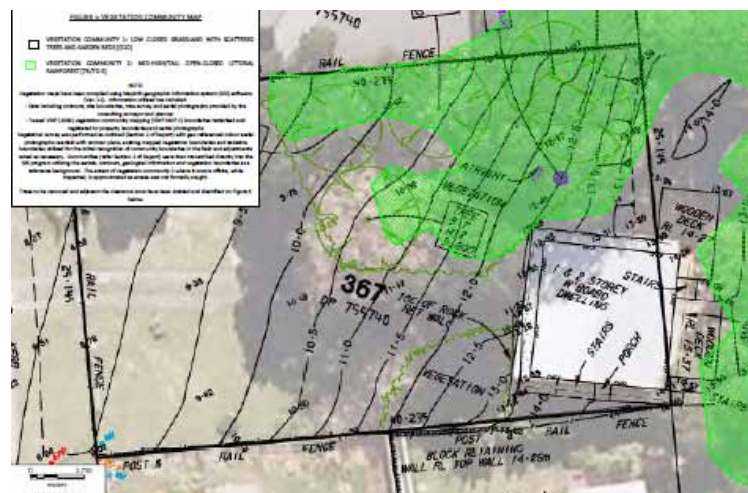


Figure 31: Vegetation Community Map (Page 13 of EA – Figure 7)

Furthermore, the extent of *Vegetation Community 2: Mid High/Tall Open-Closed Littoral Rainforest* depicted above in Figure 7 of the EA (Vegetation Community Map) is considered to be imprecise following site inspection, as it does not account for the complete extent of the Littoral Rainforest canopy. Even in the case where disturbance for bushfire management purposes is not required the area of 80m² disturbance is an underestimate.

The EA rejects classification of vegetation on the site as a *Critically Endangered Community* under the EPBC Act on the basis that patch size is less than 1000m² which did not meet diagnostic criteria as stated in Commonwealth listing advice. This is contrary to Council's determination.

As previously discussed, two stems of two listed species were not identified on submitted plans or within the EA. Page 10 of the EA suggests that 'several individuals of White Lace Flower (*Archidendron hendersonii*)' were recorded yet only one was shown on the plan.

The *Macadamia tetraphylla* was previously described in *Review of Existing Vegetation Lot 367 DP755740 dated February 2012 and prepared by Planit Consulting* (submitted as part of the application documentation for refused two lot subdivision DA12/0257) and recorded during a 2014 site inspection as significantly damaged.

When the location of the second White Lace Flower (*Archidendron hendersonii*) is translated onto the development layout the tree appears to occur within the location of the proposed swimming pool associated with Lot 1 and therefore would require removal. As such, the statement below made on page 17 of the EA indicating that 'individuals of threatened fauna shall be retained' is misleading.

The development design is considered to have adequately addressed the importance of the residual stand of trees in the northeast of the site via the following:

- The individuals of threatened flora shall be retained;
- The majority of the endangered ecological community shall be retained (5 trees removed)

Figure 32: extract from page 17 of EA

The lower strata (shrub and ground layer) is reported as being absent on page 9 of the EA. This was consistent with observations made by Council officers during a 2014 inspection. However it is contrary to what was reported in the previous EA associated with DA12/0257 where '*the shrub layer varies from being dense on the southern fringes to sparse elsewhere, throughout and includes smaller specimens from the small tree layer....*'. Evidence of more structural diverse mid-lower stratum can also be seen in earlier site photographs.

There is no record of permit or certificate issue from OEH to remove understorey vegetation on the site.

It is noted that littoral rainforest communities, due to exposure and proximity to the ocean, may lack species diversity within the understorey or may exhibit a merged height/structural continuum. However, the reduced understorey vegetation observed onsite would not be expected to occur under natural conditions.

The EA included an Assessment of Significance (Seven Part Test) performed on the EEC *Littoral Rainforest in the South East Corner, Sydney Basin and NSW North Coast bioregions* to qualitatively and quantitatively identify and analyse potential direct and indirect impacts on the EEC arising from the proposed development.

Based on the Seven Part Test it, the EA concluded that a Species Impact Statement was not required and that impacts would be considered to be of a minor nature that could be mitigated through providing compensatory planting either on or off site.

However, the potential impact on threatened communities, species and their habitats is considered significant by Council, contrary to the EA conclusions particularly given that the Seven Part Test did not contemplate all direct and indirect ecological impacts as a result of the proposed development such as vegetation removal for bushfire management purposes.

Council Assessment - Tree Report 40 Queen Street, Fingal Head dated 30 October 2013 (Ver. 2) prepared by Northern Tree Care.

The Tree Report also did not consider the potential impact on the Littoral Rainforest vegetation community arising from the establishment and maintenance of Asset Protection Zones with the exception of recommending removal of Tree No. 25 being a Tuckeroo (*Cupaniopsis anacardioides*).

The Tree Report estimated the age of some trees to be up to 70 years old and noted previous damage/pruning of trees forming part of the EEC.

The Tree Report identified four trees requiring removal to facilitate building envelopes with removal of an additional tree posing future impending risk to a proposed dwelling and for bushfire management purposes.

The following table contains Council's review of information presented in the Tree Report with regard to trees proposed to be removed.

Tree No.	Species	Common Name	Ht (m)	Dbh (mm)	Crown (m)	TPZ (m)	Comments
23	<i>Archidendron hendersonii</i>	White Lace Flower	9	250	5	3.0	The report indicates encroachment within the trees Tree Protection Zone (TPZ) of 0.5m. The report hasn't contemplated the roofline of proposed dwelling on Lot 2 that would likely restrict growth of the canopy nor potential impacts associated with construction of Lot 2 dwelling footings. The extent of excavation for the pool associated with Lot 1 has been calculated to the outer shell of the pool, over excavation has not been contemplated and given the slumping nature of underlying sands, excavation would likely extend within the structural root zone of the trees that may have an adverse impact on the health and long term viability of the listed trees without adequate arboricultural supervision. This tree is a listed species and should be provided adequate area for canopy growth whilst all form of excavation should be restricted from the TPZ to be confident of tree

Tree No.	Species	Common Name	Ht (m)	Dbh (mm)	Crown (m)	TPZ (m)	Comments
							survival.
25	Cupaniopsis anacardioides	Tuckeroo	10	230 + 180	8	4.92	This tree has been estimated to be aged 50-70 years old and forms a substantial proportion of the western edge canopy. With reference to the proposal plans Dwelling 1 would significantly encroach within the trees TPZ when calculated in accordance with AS4970. The tree's health may be compromised in the long term due to encroachment and also require substantial pruning affecting the architecture of the tree. The tree has been recommended to be removed due to avoid future risk of property damage on the proposed dwelling and for bushfire management purposes. It is considered that the tree poses low risk due to form (lean predominantly to the west) under current site conditions.
26	Notelaea longifolia	(Mock Olive)	4	140	3		This tree falls within the footprint of Lot 1 dwelling and as such would require removal.
27	Arytera divaricata	Coogera	4	170	3		This tree falls within the footprint of Lot 1 dwelling (pool) and as such would require removal
28	Syzygium oleosum	Lilli Pilli	5	160+90	3		This tree falls within the footprint of Lot 1 dwelling (pool) and as such would require removal

Tree No.	Species	Common Name	Ht (m)	Dbh (mm)	Crown (m)	TPZ (m)	Comments
29	Diospyros fasciculosa	Grey Ebony	5		4-5		This tree is in good condition with good single leader form. Comprises part of the outermost western edge, occurs within the footprint of Lot 1 dwelling and as such would require removal.
30	Cryptocarya foetida	Stinking Cryptocarya	100 mm	30	-		The individual has been severely damaged by frequent pruning. The report recommends transplanting to ensure the tree is not further damaged/disturbed during construction. This suggests that the risk to vegetation within the EEC is at risk during the construction phase. Previous experience with transplanting semi-mature species in the Lauraceae family has proved difficult with limited success.

Table 2: Required Tree Removal/Impact

In addition to the five trees identified in the report that have been recommended for removal, an additional two semi-mature stems not shown on the plans but forming part of the EEC would likely be impacted. These trees were identified during a site inspection and are described as:

- *Denhamia celastroides* (Denhamia) - approximately 170mm dbh with 3 - 4m canopy spread situated immediately to the south of Tree No. 25 on the edge of the development footprint of dwelling No. 1;
- *Archidendron hendersonii* (White Lace Flower) - estimated dbh difficult to ascertain due to severe pruning but with high density regrowth. Likely a semi-mature tree, situated within the footprint of the proposed pool for dwelling 1.

Other vegetation within the EEC not adequately considered as part of the Tree Report comprises a number of semi-mature/mature canopy trees situated immediately adjacent, and to the east of the existing dwelling. The impact on those trees during any demolition and construction of the proposed pool for Lot 2 is considered critical in evaluating all impacts associated with the development proposal.

Bushfire Threat Assessment Report and RFS Referral

Application documentation included a report addressing bushfire threat (*Bushfire Threat Assessment Report 100B dated 8 November 2013 and prepared by BCA Check Pty Ltd*). The report recommends the entire property (Lots 1 and 2) to be maintained as an Inner Protection Area in accordance with the NSW Rural Fire

Serve document *Standards for Asset Protection Zones* with landscaping to future dwellings to be maintained in accordance with Appendix 5 of *'Planning for Bush Fire Protection 2006'*.

NSW Rural Fire Service returned General Terms of Approval (GTA) for the development application that included the following which is generally consistent with the recommendations of the bushfire threat report:

- *The entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones.*

General advice was also provided to the consent authority clarifying the extent of vegetation removal required in order to comply with the aforementioned GTA:

- *The required asset protection zones, for proposed Lots 1 and 2 (managed as Inner Protection Areas), to achieve satisfactory building separation from vegetation located on the adjoining lot to the east, will require the clearing of vegetation.*

In accordance with *Planning for Bushfire Protection 2006* tree canopy cover of less than 15% shall be established and maintained within an IPA with provision for a minimum two metre separation distance between vegetation and any part of roofline associated with a dwelling.

Trees shall have lower limbs removed up to a height of two metres above the ground and groundcover managed.

The document *Standards for Asset Protection Zones* elaborates further on APZ requirements indicating that a two to five metre separation distance should be maintained between vegetation and structures and that tree crowns shall be separated by two to five metres. Where trees are retained they are to be restricted to islands/clumps having an areal extent (surface space) of no greater than 20% of the APZ.

As the existing canopy cover of the Littoral Rainforest is currently estimated at over 70% projection, significant removal of vegetation would be required to meet APZ requirements as suggested in the RFS conditions and recommended by the bushfire threat report.

Rehabilitation and Restoration

The applicant has proposed two options to offset the loss of vegetation as outlined at Section 2.1.3 of the Statement of Environmental Effects (SEE):

- Compensatory planting onsite - to be undertaken within the 11 metre setback on Lot 2 at a ratio of 10:1; or,
- Compensatory planting offsite - 50 plantings within a Tweed Coastal Reserve.

Proposed onsite compensatory planting is not considered acceptable given the value of the remnant, lack of available area onsite and previous demonstrated land management practices. Bushfire restrictions limit opportunity on the site. In addition, the 11 metre setback area is already nominated as part of a required deep soil zone.

The proposed alternative option for offsite compensation is not considered acceptable given the shortage of available public receiving sites and limited evidence proving that compensatory planting of this community type is a successful option.

In reinforcing the importance of the EEC and requirement for close scrutiny when considering offsetting the *Far North Coast Regional Conservation Plan* indicates that 'as a general rule, areas of EEC's not in low condition should be retained wherever possible as their loss cannot be offset by positive actions elsewhere'.

Furthermore, page 22 of the EA recommends weed control within the patch of remnant vegetation. It is noted that no ecological remediation work has been proposed following demolition of the existing dwelling particularly in the area of encroachment within Crown Reserve.

Legislative Provisions

Legislation	Section(s)	Comment
<i>Environmental Protection & Biodiversity Protection Act (1999)</i>	Schedules	<p>The site supports a part of a remnant unit classified as Littoral Rainforest and Coastal Vine Thicket of Eastern Australia listed as Critically Endangered community listed under the <i>EPBC Act</i>. The community comprises two listed flora species that occur onsite being <i>Macadamia tetraphylla</i> (Queensland Nut - Vulnerable) and <i>Cryptocarya foetida</i> (Stinking Cryptocarya - Vulnerable).</p> <p>The proposal involves removal of vegetation that comprises part of the Littoral Rainforest Community and as such referral should be made by the applicant to determine whether the proposal would be considered a controlled action.</p>
<i>Environmental Planning & Assessment Act (1979)</i>	Section 5A (significant effect on threatened species, populations or ecological communities, or their habitats)	<p>The remnant Littoral Rainforest community described above is also classified under the <i>Threatened Species Conservation Act</i> as it is considered to be representative of an Endangered Ecological Community being Littoral Rainforest in the South East Corner, Sydney Basin and NSW North Coast bioregions. The onsite portion of the remnant unit comprises both federally and State listed flora species being <i>Macadamia tetraphylla</i> (Queensland Nut - Vulnerable) and <i>Cryptocarya foetida</i> (Stinking Cryptocarya - Vulnerable), whilst <i>Archidendron hendersonii</i> (White Lace Flower) is listed as Vulnerable under the TSC Act.</p> <p>Several listed species such as Grey headed Flying Fox and Common Blossom Bat were evaluated as having a high likelihood of utilising the broader tract of remnant vegetation based on verified records and habitat values.</p> <p>The applicant has neglected to consider the full suite of potential ecological impacts and as such threatened species provisions have not been adequately met to be confident that the development could proceed without adverse impact on local populations.</p>

Legislation	Section(s)	Comment
<i>Native Vegetation Act 2003</i>		N/A – not rural land.
<i>Threatened Species Conservation Act 1995</i>	Section (94) & Schedules 1, 1A, 2 and 3	See above on Section 5A re: potential for impact to EEC.
<i>SEPP 14 Coastal Wetlands</i>		Not applicable to the site, however a gazetted SEPP 14 Coastal Wetland occurs within 200m and to the west of the site associated with the Tweed River.
<i>SEPP 26 Littoral Rainforest</i>		Not applicable to the site, however a gazetted SEPP 26 Littoral Rainforest occurs within 250m and to the south of the site within the Crown Reserve Lot 713 in DP728231.
<i>SEPP 71</i>		The site is within the coastal zone and Clause 8 matters require satisfaction. A sensitive Coastal location exists to the east within 80m of the site. Table 1 Clause 8 (g) pertaining to conserving animals (within the meaning of the <i>Threatened Species Conservation Act, 1995</i>) and plants (within the meaning of that Act) and their habitats has not be adequately addressed. The site's significant ecological values as captured under the TSC Act have the potential to be adversely impacted to the degree of affecting long term local viability of the EEC community and listed species that may not be avoided/mitigated through conditions of approval.

Table 3: Legislative Provisions

Environmental Impact Assessment and Planning Provisions

Vegetation and Habitat Modification

The remaining area of remnant vegetation identified onsite (when considered as part of a broader contiguous patch/remnant unit extending over the adjacent Crown Reserve) is representative of a *Critically Endangered* community under the EPBC Act. This vegetation association is further recognised as an *Endangered Ecological Community* under the TSC Act providing potential habitat for a suite of listed fauna species evaluated as having a moderate to high likelihood of occurrence (based on local validated records) by providing foraging resource for disperser species such as the Grey-headed Flying Fox and Rose-crowned Fruit-Dove and roosting opportunities for the Common Blossom Bat.

The onsite component of the broader remnant unit covers an areal extent of approximately 340m² with an estimated canopy projection of greater than 70%, comprising several stems of listed threatened flora species, two of which have dual listing under both federal and state legislation described above.

It has been determined that to enable construction of the proposed dwellings seven rainforest trees comprising part of the EEC, including one listed species being *Archidendron hendersonii*, would require removal, whilst there is a high to

very high likelihood that an additional *Archidendron hendersonii* stem would be negatively affected during the construction and operational phase.

Furthermore it is understood that significant modification to the remaining stand of vegetation on the existing site would be necessary for bushfire hazard reduction purposes that would involve selective canopy and mid-stratum vegetation removal, the clearing of the understory and lower stratum (to two metres) and pruning of any retained trees (if applicable) to maintain adequate separation distance from dwellings (two to five metres). This existing vegetated area would then be maintained in the long term as an APZ preventing natural restoration.

The selective removal of vegetation and structural modification to the patch of Littoral Rainforest occurring onsite would not only be expected to have a direct adverse impact on the ecological value of the patch (onsite) yet also have an unacceptable impact on the integrity, function and dynamics of the broader unit extending over the Crown Reserve by increasing edge to area ratios (narrowing of the remnant) altering the microclimate, allowing for greater light penetration, subsequently increasing susceptibility to weed invasion and reducing resilience (loss of seed sources and potential dispersers) particularly given the exposed nature of the site and influence of salt laden winds.

The loss of listed species is also of concern given the limited and fragmented distribution of plants such as *Archidendron hendersonii* particularly where forming part of a poorly represented community where the local population may potentially be placed at risk of extinction in the long term due to depressed genetic diversity which as an example would limit the ability of the species to locally recover following a random natural event. It is considered that the removal/damage, long term decline of any listed species either directly or indirectly as a result of the development in this instance is unacceptable.

As the existing dwelling straddles the Lot boundary and extends into Crown Reserve concerns have been raised as to the likely impact on existing vegetation occurring within the Crown Reserve (that is part of the EEC) during demolition of the existing dwelling particularly in the absence of strict vegetation management controls, none of which have been recommended by the applicant.

Furthermore shading from the proposed dwellings may also have an adverse long term indirect impact on the integrity of the community by arresting successional processes particularly following a storm event and the creation of a canopy gap by artificially shading the gap and therefore limiting light penetration and delaying/suppressing the natural recruitment of pioneer species to enable rapid canopy cover.

Conclusion

Council is of the opinion that the development would have a significant, unacceptable impact on the integrity, function and long term viability of the EEC and local population of those listed species comprising the community.

Given the onsite values, it is expected that the vegetation community remain undisturbed by any proposed development and if development were to progress in another form, rehabilitated to improve the value and integrity of the community.

Context and Setting

The proposed bulk and scale of the building design with lack of open space between dwellings and need for vegetation removal is not in keeping with surrounding residential development that has retained a low-rise, low-key character that integrates and promotes retention of existing vegetation.

Cumulative Impact

The approval of the application in its current form would set a harmful precedent for damage/removal of an Endangered Ecological Community to support increased density on a constrained site.

Asbestos/Lead

Asbestos and lead are likely to be present within the existing dwelling. Demolition of the existing dwelling would need to be conditioned to take this into account.

(c) Suitability of the site for the development

The site is considered unsuitable for the proposed development. Apart from the stated planning reasons for refusal with regard to dwelling design and impact upon the locality, it is considered that insufficient ecological survey and assessment has been provided to support the conclusion that there will not be a significant impact upon threatened species, populations or ecological communities. Given the federal and State significance of the vegetation on site, it is considered that the development represents an unwarranted risk and results in an unacceptable outcome for the Shire as a whole.

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

Referral to NSW Rural Fire Service

Refer to a previous discussion in this report of bush fire requirements at Clause 39A: Bushfire Protection (TLEP 2000).

Public Submissions

10 submissions were made during the exhibition period objecting to the proposed development. A summary of objector concerns is as follows:

- Overshadowing impact (adjoining residential) – reduction in midwinter solar access and reduced access to northerly breezes/natural cross ventilation.
- Overshadowing impact (Crown reserve) – this land is managed bushland actively used by members of the public – habitat will be impacted.
- Non-compliant front setback.
- Bulk and scale of proposed dwellings.
- Spa/pool pumps located on boundary.
- Asbestos audit required for demolition of existing dwelling house.
- Inadequate side setbacks.
- Design inconsistent with coastal village character.
- Proposal represents lack of respect for the natural beauty of the local environment and values of the local community.
- Similar applications already refused.

- Negative impact on natural vista and streetscape.
- Relatively dense development with two, large overbearing houses close to the front boundary.
- The removal and pruning of trees comprising part of an EEC – Littoral Rainforest to facilitate the development and the potential loss/decline of one listed tree (*Archidendron hendersonii*).
- The loss of biodiversity, decline in available seed sources and further restriction of connected corridor north-south and east-west.
- Cumulative impact on the integrity and value of the community as a result of direct vegetation removal particularly given that the community has previously been affected as a result of selective clearing activity undertaken under OEH approval.
- Impact on Bush Stone Curlew habitat given previous incidental reports of animals utilising the remnant.
- Modification to understorey since the last development application was lodged.
- Concern in relation to the long term success and lack of offset areas within Fingal Head suitable to accommodate any planting necessary to compensate for the loss of littoral rainforest trees.
- Further disturbance to the EEC likely to occur in order to upgrade services (sewer).
- The proposed development would cast a shadow on the EEC Littoral Rainforest community.

Objections addressed by applicant in amended application documentation submitted 21 March 2014 include:

- Removal of three storey height component.
- Reduction in width of carport associated with Lot 2.
- Presentation of fully labelled ground survey lines on plans.
- Inclusion of adjacent building envelopes in shadow diagrams.
- Recalculation of front setback requirement.
- Side setback intrusions deleted.
- Repositioning of swimming pool associated with Lot 1.
- Intention to lodge additional ecological assessment.
- Request for asbestos removal to be conditioned.

The applicant supplied three letters of support and four pro forma documents from five adjoining properties generally affirming that the proposal was consistent with the character of Fingal Head. These adjoining residents were notified of the development by Council and were given an opportunity to lodge formal submissions within the prescribed exhibition period (Monday 23 December 2013 to Thursday 9 January 2014) with regard to the development application.

Amendments made to the proposal do not alter Council's assessment of the application, nor do they resolve the bulk of objector concerns.

Council Review - Relocation of Swimming pool (Lot 1)

Realignment of the swimming pool associated with Lot 1 is not considered sufficient to ensure retention of the listed *Archidendron hendersonii* identified as Tree No. 23 in the submitted Tree Report.

As previously discussed in this assessment, the report has not considered the roofline of the proposed dwelling on Lot 2 that is likely to restrict growth of the tree canopy, nor has it considered potential impacts associated with construction of footings for the Lot 2 dwelling.

The extent of excavation for the pool associated with Lot 1 has been calculated to the outer shell of the pool. Over excavation has not been taken into account and given the slumping nature of underlying sands, excavation would likely extend within the structural root zone of the tree.

The building footprint of the Lot 2 dwelling appears to remain unchanged adjacent to the tree and as such, potential impacts associated with footings and conflict with the roofline have not been addressed.

The retraction of the pool on Lot 1 by one metre still results in encroachment within the trees TPZ. Again, over excavation has not been taken into account. Council still holds concerns for the long term viability of the tree should the proposal proceed.

As detailed previously in this assessment, an additional *Archidendron hendersonii* is located within close proximity of the swimming pool associated with Lot 1. As neither the EA or Tree Report identified the tree, it is difficult to ascertain the accurate position of the tree in relation to the proposed dwelling and swimming pool on Lot 1. However, it is highly likely that the tree occurs within the footprint of the pool and as such realigning the pool by one metre would still involve removal of the tree and/or significant disturbance.

Council Review - Retention of additional tree (Lot 1)

Tree no. 25 *Cupaniopsis anacardioides* (as described in the Tree Report) is shown on the revised set of plans as 'to be retained'. This change to the plans from indicating removal of the tree has not occurred on the basis that the design of the dwelling has been modified, nor is it justified/supported by an arboricultural professional.

The previous Tree Report indicates that *'because of the size, shape and lean of the tree it is not possible to construct a building within approximately 5m of the tree without causing significant damage to the tree and to comply with the bushfire requirements'*. As such, the report recommended the tree be removed.

Given that bushfire requirements remain unchanged and the design of the dwelling is largely unaltered (roof line remains unchanged) there is no clear supporting information to suggest that impacts can be mitigated and the long term viability of the tree maintained during or following construction.

It is Council's opinion that the tree would be negatively impacted as a result of dwelling construction due to reasons indicated in the arborist's report (substantial pruning) and likely disturbance to the tree's root plate.

(e) Public interest

Approval of the proposal would set a harmful precedent for the loss of informal character within the locality and continued encroachment of residential development upon vegetation of State and federal significance.

It is therefore considered that the development will negatively impact on matters relating to the public interest and environmentally sustainable future development of the Shire.

OPTIONS:

That Council:

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

The Council officers recommend Option 1.

CONCLUSION:

The issues considered in the assessment of the proposal are considered valid and contribute to the reasons for refusal. Approval of the proposed development could potentially set an unwarranted precedent for the location of residential development adjacent to fragile ecosystems, resulting in fragmentation and destruction of significant environmental assets.

Further, the proposed dwelling designs are not consistent with residential design controls as contained within Section A1 of the DCP 2008.

Therefore the application 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 Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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- 9 [PR-PC] Development Application DA13/0519 for the Demolition of Existing Dwelling and Shed, New Three-Storey Dwelling and Concrete Swimming Pool on Lot 176 and New Three-Storey Dwelling and Concrete Swimming Pool on Lot 177 at Lot 176 and 177 DP 755701 Tweed River Islands, Cudgen

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: DA13/0519 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council is in receipt of this development application seeking the demolition of an existing dwelling house and associated structures and the construction of two new dwellings and associated infrastructure on two separate allotments.

This Development Application has been reported to Council following a call up from Councillor Milne.

The officers' assessment of the application has given particular consideration to potential impacts of the proposed development on the following matters:

Ecology

The site of the proposed development is an island surrounded by environmentally sensitive areas including waterways and coastal wetlands. No works in waterways or the coastal wetlands is sought by the application rather the proposed development includes measures aimed at rehabilitating the environmentally sensitive areas of the subject allotments.

Aboriginal heritage

Aboriginal heritage items have previously been identified on land surrounding the site of the proposed development. An Aboriginal due diligence cultural heritage assessment was performed in support of the application including a site walkover involving local Aboriginal stakeholders. No Aboriginal heritage items were identified and the assessment concluded the site of the proposed development is highly disturbed with low likelihood of artefacts being present. Further Aboriginal consultation has recommended on-site monitoring during ground excavation works be required during construction of the proposed development.

Scenic quality

The proposed development involves the construction of two dwelling houses on an island in the Tweed River. The scenic quality of the site and surrounds is considered to be high and detailed consideration of the impact of the proposed development on this scenic quality has been undertaken. It is recommended that the proposed development will not have a significant adverse impact on scenic quality.

Waste management

During receipt of the application Council officers have considered various options to manage waste water. The site's characteristics including flooding, high water table and distance to the existing reticulated sewer network presents challenges in terms of effluent treatment and disposal for the proposed development. The current design including on-site treatment and application to land is considered by Council officers to be the most appropriate method of effluent management for the proposed development given the site challenges.

Following consideration of the above key issues Council officers are satisfied the proposed development is consistent with the Council adopted environmental planning controls including the *Tweed Local Environmental Plan 2000*, the recently gazetted *Tweed Local Environmental Plan 2014* and the *Tweed Development Control Plan 2008*. The application is therefore recommended to be approved, with accompanying conditions.

RECOMMENDATION:

That Development Application DA13/0519 for the demolition of existing dwelling and shed, new three-storey dwelling and concrete swimming pool on Lot 176 and new three-storey dwelling and concrete swimming pool on Lot 177 at Lot 176 and 177 DP 755701 Tweed River Islands, Cudgen be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and its Annexures as prepared by Daryl Anderson Consulting Pty Ltd and dated August 2013 and the plans approved by Council, except where varied by the conditions of this consent and the following documents and reports:**
 - On-site Sewage Management Design Report HMC2014.021 prepared by HMC Environmental Consulting Pty Ltd and dated March 2014;**
 - Due Diligence Cultural Heritage Assessment Report prepared by Everick Heritage Consultants Pty Ltd and dated December 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. 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]

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

[GEN0320]

5. 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]

6. This consent does not approve the existing bridge crossing Boyds Channel to Lot 176, nor any works required for its continuing use to access the proposed development.

Note: The applicant is responsible for obtaining any approvals and supporting environmental impact assessment, as statutorily required, prior to any works as required to enable continuing use of the existing bridge.

[GENNS01]

7. The Wetland Protection Area ('WPA') and Riparian Buffer Zone - Active Management ('RBZ-AM') described in the Wetland Plan of Management (WPoM) being *Appendix 2 - Wetland Plan of Management in Assessment of Significance (7-part Test) Lots 176 & 177 DP755701 Dodds Island Chinderah dated August 2013 prepared by JWA Ecological Consultants* (as amended by conditions of this consent) shall be managed in accordance with provisions of that plan (WPoM) for the life of the development.

[GENNS02]

8. No native trees may be removed to facilitate development (including fencing) unless separate approval has been received from Council's General Manager or delegate.

[GENNS03]

9. No ancillary services and/or infrastructure associated with the approved development shall be situated within fifty (50) metres of the Tweed River measured landward from the top of high bank unless otherwise approved by Council's General Manager or delegate.

[GENNS04]

10. Any fencing shall either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of floodwater or debris. Given the site is located in a High Flow region, fencing shall be of an open style with a minimum of 65% of unimpeded openings or approved equivalent.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

12. **Stormwater**

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.

[PCC1135]

13. A construction certificate application for works that involve any of the following:

- . installation of stormwater management measures and 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 subdivision works, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

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

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

[PCC1155]

15. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device. The minimum storage tank capacity shall reflect the dry seasonal periods experienced in the locality and shall be in addition to any fire fighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum storage capacity required shall be 15,000L per bedroom with a minimum 20,000L to be provided. Details of the intended method of water storage are to be submitted to the Principal Certifying Authority for approval.

[PCC1215]

16. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system for each dwelling house under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

Any approval to install an on site sewage treatment and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the On-site Sewage Management Design Report V2, prepared by HMC Environmental Consulting PL and dated March 2014 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate. Each system shall be at least capable of achieving advanced secondary effluent quality criteria as stipulated in Section 2 of the Report.

[PCC1285]

17. The applicant shall provide engineered flood protection design specifications and drawings/plans from a suitably qualified and experienced person detailing construction standards to adequately secure and prevent floatation of the wastewater treatment devices, containment tanks and wet weather storage tanks during flood events.

[PCCNS01]

18. Prior to the issue of a construction certificate the applicant must amend the Wetland Plan of Management (WPoM) being Appendix 2 - Wetland Plan of Management in Assessment of Significance (7-part Test) Lots 176 & 177 DP755701 Dodds Island Chinderah dated August 2013 prepared by JWA Ecological Consultants as follows:

- a. Depict on Appendix 2 - Figure 1, a 50 metre setback line measured landward from the top of high bank to the Tweed River;
- b. Identify an additional management/protection zone to be described as 'Riparian Buffer Zone - Active Management' (RBZ-AM). The RBZ-AM shall be measured a minimum ten (10) metres landward from the top of high bank along the length of the Tweed River channel frontage, or to the outermost projection of existing riparian vegetation associated with the river, whichever is greater;
- c. Clearly Depict on Appendix 2 - Figure 1, both the RBZ-AM described above and the Wetland Protection Area (WPA) being SEPP14 Coastal Wetland and 100metre buffer;

- d. The landward limit of the RBZ-AM shall be protected through the installation of a fauna friendly fence. The purpose of the fencing is to exclude livestock from the actively managed riparian zone in order to facilitate re-establishment of native riverine vegetation and subsequently improve river-bank stability;
- e. Consider alternative fauna friendly fencing designs to reduce incidence of native fauna entanglement and amend the report accordingly;
- f. Provide a site based fencing plan detailing fence alignment, specifications and locations of gates and access points where appropriate;
- g. Modify statements in the plan to use non-ambiguous more enforceable terminology (i.e. must, shall); and
- h. Stipulate in the WPoM that the following activities must not be undertaken within the WPA or RBZ-AM unless otherwise approved by Council's General Manager or delegate:
 - i. Clearing, lopping or removal of any native plants;
 - ii. Erection of any fixtures or improvements, including buildings or structures;
 - iii. Construction of any trails or paths;
 - iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign within the management area;
 - v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the management area; and
 - vi. Performance of any other acts which may have detrimental impact on the values of the management area.
- i. Include a habitat restoration component within the WPoM for both the WPA (Zone 1) and RBZ-AM (Zone 2) to detail and include the following:
 - i. An appraisal of the present condition of the management zones and level of expected resilience;
 - ii. A management strategy for each of the zones, including the methods and techniques to be used for ecological restoration to achieve each objective detailed below;
 - iii. The objective within the WPA (Zone 1) is to treat and remove all declared weeds (under the *Noxious Weeds Act 1993* (Far North Coast Weeds)) using an assisted natural regeneration approach to improve the ecological integrity of the zone;
 - iv. The objective within the RBZ-AM (Zone 2) is to treat and remove all declared and environmental weeds using an assisted natural regeneration approach to facilitate/encourage re-establishment of native vegetation;
 - v. Include appropriate performance criteria (i.e. increased number and abundance of native species, nil fruiting of weed species after primary treatment);
 - vi. Provide a schedule of works (i.e. number of primary rotations) and timing for establishment (prior to issue of occupation certificate) and maintenance phase (ongoing) including monitoring and reporting (i.e. daily record sheets) requirements; and

- vii. Provide an adaptive management statement detailing how potential problems/issues may be overcome and the necessity for any such changes to be approved by Council's General Manager or delegate.

The amended WPoM incorporating the habitat restoration component shall be submitted and approved by Council's General Manager or their delegate prior to issue of the first of any construction certificate.

[PCCNS02]

19. Prior to the issue of a construction certificate the applicant shall prepare a landscaping plan that details landscaping measures within the curtilage of each dwelling house site in accordance with the ecological considerations of the site. The landscaping plan shall address exposure of each dwelling house to the Tweed River and shall consider the perspective illustrations as submitted in support of the development application. The landscaping plan shall be to the satisfaction of the General Manager or their delegate and address any requirements of *Planning for Bushfire Protection 2006* in terms of asset protection zones.

[PCCNS03]

20. Prior to the issue of a construction certificate the applicant shall submit a revised Due Diligence Cultural Heritage Assessment Report to the satisfaction of the Council's General Manager or their delegate. The revised report shall address consultation performed with the Tweed Shire Council Aboriginal Advisory Committee and stipulate the requirement for on-site monitoring of initial excavation works for the project by the Aboriginal stakeholders for the project.

[PCCNS04]

PRIOR TO COMMENCEMENT OF WORK

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

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

[PCW0215]

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

[PCW0225]

23. Residential building work:

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

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

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

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

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

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

[PCW0235]

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

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

[PCW0245]

25. 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]

26. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with 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]

27. All roof waters are to be disposed of through properly jointed pipes to the satisfaction of the Principal Certifying Authority. All PVC pipes to be installed in accordance with the provisions of AS/NZS3500.3.2. Note A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

28. Prior to commencement of works engineer's details are to be provided to the Principal Certifying Authority confirming the dwelling and the associated sewage treatment structures/tanks have been designed to withstand the expected flood flow rates for the area and that the support structures below probable maximum flood level are capable of withstanding flood forces (water flow, debris impact, and buoyancy) and continuous submergence for up to one week. For design purposes the anticipated velocities are 1m/s.

[PCWNS01]

DURING CONSTRUCTION

29. Construction of the right of carriageway serving lot 177 is to be to a 4m wide concrete/bitumen sealed standard, in accordance with the provision of Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications. The finished

level of the driveway and associated works shall be no greater than 300mm above natural ground level.

[DUR0055]

30. 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]

31. 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]

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

[DUR0245]

33. 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]

34. 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]

35. 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]

36. 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]

37. 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]

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

[DUR0905]

39. 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]

40. All works shall be carried out in accordance with the Acid Sulfate Soils Investigation and Management Plan prepared by HMC Environmental Consulting dated August 2013 and numbered HMC2013.067ASS. Tweed Shire Council's Environmental Health Unit shall be provided with 24 hours notification of commencement excavation works.

[DUR1065]

41. A survey certificate is to be submitted by a Registered Surveyor to the nominated Principal Certifying Authority certifying that all habitable floor areas are constructed above RL 3.7metres AHD, and the PMF Refuge area has been constructed above RL 8.1 metres AHD. Certification of those levels by a registered surveyor must be submitted to the Principal Certifying Authority prior to proceeding past the relevant floor levels to ensure that each floor is above designated flood levels.

[DUR1445]

42. 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]

43. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
44. 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]
45. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate. [DUR2425]
46. 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]
47. 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]
48. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
49. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
50. 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]

- 51. Council's Environmental Health Unit shall be provided with 24 hrs notice of the commencement of demolition works. Evidence of the appropriate disposal of demolition materials shall be submitted within 3 days of completion of works.**

[DURNS01]

- 52. Upon completion of the ground floor joists a survey certificate is to be provided to the Principal Certifying Authority verifying the buildings have been constructed to the ground floor levels as nominated on the approved plans.**

[DURNS03]

- 53. Subject to the requirements of the local electricity authority, all electrical wiring, power 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 shall be provided with earth leakage devices.**

[DURNS04]

- 54. The Probable Maximum Flood (PMF) Refuge area is to be constructed in accordance with Council's DCP - Section A3 - Development of Flood Liable Land. The PMF Refuge shall comply with the controls within Section A3.2.6 - Emergency Responce Provisions of the DCP.**

[DURNS05]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 55. 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]

- 56. 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]

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

[POC0435]

- 58. Prior to the occupation of any building and prior to the issue of any occupation certificate approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council for each dwelling.**

[POC1040]

59. The applicant must provide to Council, prior to the issue of an occupation certificate, certification from a qualified professional that all works/measures in the approved Wetland Plan of Management (WPoM):
- a. Have been implemented on-site (i.e. fencing); and
 - b. Ecological restoration works are properly established following a minimum establishment period of twelve (12) months. Where ecological restoration works have not been established for a minimum period of twelve (12) months the proponent must seek the approval of Council's General Manager or their delegate, and address any requirements as stipulated, in order to satisfy the condition prior to obtaining an occupation certificate. [POCNS01]
60. All property boundary fencing shall be inspected by Council prior to issue of an occupation certificate to ensure:
- a. Fencing is to a standard necessary to restrict livestock movement to adjoining riverine areas;
 - b. Fencing is accurately aligned along property boundaries consistent with that shown on the certified survey plan for Lot 176 in DP755701 and Lot 177 in DP755701; and
 - c. Where deemed appropriate, in order to facilitate native fauna movement and/or reduce risk of native wildlife entanglement/injury, fencing shall be of a fauna friendly design. [POCNS02]
61. A right of carriageway for access and services shall be created by registration for the provision of lawful access to Lot 177 DP 755701. An appropriate plan of Subdivision and Section 88B Instrument shall be lodged with the Consent Authority prior to the issue of an Occupation Certificate.

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 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 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. [POCNS03]

62. Prior to issue of an occupation certificate, a survey certificate is to be provided to the Principal Certifying Authority confirming the buildings have been constructed to an overall height above natural ground as nominated on the approved plans.

[POCNS04]

63. Prior to the issue of an occupation certificate the approved landscaping plan shall be implemented to the satisfaction of the nominated Principal Certifying Authority.

[POCNS05]

USE

64. 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 or recreational users in proximity to the buildings 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 their 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]

65. The buildings are to be used for single dwelling purposes only. Use of the buildings or site for tourist accommodation or commercial premises is not permitted by this consent.

[USE0505]

66. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device. Minimum storage tank capacity shall be 20,000 litres for the first bedroom, then an additional 15,000 litres per bedroom thereafter and shall be in addition to any water volume requirements stipulated by the NSW Rural Fire Services. Installation, water collection, and maintenance of rainwater tanks used for drinking purposes must comply with NSW Health requirements.

[USE1470]

REPORT:

Applicant: Joyworld (Australia) Pty Limited
Owner: Joyworld (Australia) Pty Limited
Location: Lot 176 and 177 DP 755701 Tweed River Islands, Cudgen
Zoning: 1(b2) Agricultural Protection; 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: \$3,207,000

Background:

Council is in receipt of this development application seeking the demolition of an existing dwelling house and associated structures and the construction of two new dwellings and associated infrastructure on two separate allotments.

The proposed development

In response to initial concerns raised by Council officer, the application was modified to address effluent management issues. The resulting revised application now comprises the following:

- Demolition of the existing dwelling house and shed on Lot 176;
- Construction of a new dwelling house, attached garage and swimming pool on Lot 176, including:
 - Kitchen, bathrooms, internal and external living areas, and three car garage on the ground floor;
 - Five bedrooms and five bathrooms, living area and probable maximum flood (PMF) refuge area on the first floor;
 - Post and bearer structural system including concrete piers approximately 1.5m above natural ground level (to enable the passage of flood waters);
 - External cladding including masonry, timber, glazing and colour bonded metal roof.
- Construction of a new dwelling house, attached garage and swimming pool on Lot 177, comprising:
 - Kitchen, bathrooms, internal and external living areas, and three car garage on the ground floor;
 - Five bedrooms and five bathrooms, living areas and PMF flood refuge area on the first floor;
 - Post and bearer structural system including concrete piers approximately 1.5m above natural ground level (to enable the passage of flood waters);
 - External cladding including masonry, timber, glazing and colour bonded metal roof.
- Upgrading of the existing gravel driveway from the bridge to the dwellings to a concrete standard with a minimum 4m width;

- Provision of an on-site sewerage management system (OSSMS) comprising secondary treatment with nutrient reduction for each dwelling house and application of treated effluent to two separate 1200m² land areas via sub-surface drip line. Each dwelling house will also be provided a 10 000 litre wet weather storage tank for treated effluent storage during flood inundation of the site, following which either collection from a liquid waste contractor will occur or application to land as appropriate. Each OSSMS will be engineered to be protected from damage during flooding events.
- Creation of a right of carriageway/easement for services 5m wide over the proposed driveway, benefiting Lot 177 and burdening Lot 176. All necessary services will be contained within the right of carriageway/easement.

Further key aspects of the application have also been identified in the Council officer's assessment of the proposed development:

- There is no existing gravel access to the proposed building site on Lot 177 and the construction of an entirely new concrete driveway to this location required consideration.
- Stormwater management would be via rainwater tank overflow into existing agricultural drains on the site and into the surrounding waterways.
- Access to the site via an existing timber bridge which crosses Boyds Channel from Dodds Lane.
- Management measures including fencing and monitoring to rehabilitate and restore surrounding environmental sensitive areas.

The site and surrounding environment

The land the subject of the application has the following characteristics and constraints.

- Lot 176 has a land area of 12.14 hectares and Lot 177 has a land area of 22.86ha, totalling 35 hectares for both allotments;
- The land is low and flat ranging in levels from approximately R.L. 0.43m AHD to 2.0m AHD;
- The land is flood prone and mapped as a high flow area;
- The eastern side of Lot 176 and the western side of Lot 177 is mapped as bushfire prone land;
- The eastern portion of Lot 177 is mapped as a state significant coastal wetland protected by *State Environmental Planning Policy No. 14 – Coastal Wetlands*;
- Endangered Ecological Communities (EECs) are present on the eastern portion of Lot 177;
- The entire site is mapped as being potentially affected by Class 2 Acid Sulfate Soils (ASS).
- The site is an island surrounded by waterways including the Tweed River on the northern side and a channel named Boyds Channel on the eastern, southern and western sides;
- Existing site improvements include a dwelling and shed on Lot 176 serviced by an On-Site Sewage Management System and gravel driveway;

- Access to the site is via an existing entirely timber multi-span girder bridge deck on piers which crosses Boyds Channel from Dodds Lane onto Lot 176. An existing gravel track provides access from the bridge to the existing dwelling on Lot 176;
- The site is currently used for agricultural purposes including the keeping of livestock;
- Numerous drains traverse the site;
- The site is not serviced by reticulated water or sewer;
- The site is adjacent the Pacific Motorway (on the southern side of Boyds Channel).

Surrounding land uses are primarily rural residential and agricultural including ancillary development such as dwellings and farm sheds.

The adjacent Tweed River is used for commercial fishing purposes and recreational activities.

While the site of the proposed development itself is highly disturbed from historical agricultural use the land and waterways surrounding the site are considered to be environmentally sensitive. Threatened flora and fauna species and Aboriginal heritage items have previously been identified on land within proximity to the subject site.

Development history

Previous land use of the site was for agricultural purposes and included sugar cane harvesting.

Two previous applications determined by Council dealt with development when the site was identified as Portion 176 and Portion 177, including the following:

- Notice No. 88/338 granted Council consent to the erection of a rural workers dwelling on Portions 176 and 177 to be constructed on Portion 177. It appears this development was not commenced. The information submitted in support of that application indicates the current dwelling and access to it on Lot 176 existed at that time however a search of Council's available records failed to provide evidence of Council approval for the existing dwelling, shed and access.
- Apparent unlawful filling of the wetland at the eastern side of and adjacent Portion 177. Notice No. 90/409 indicates subsequent refusal by Council of the construction of an earth bund and drainage culverts on Portion 177.

In 1992 Council was advised the existing timber bridge was to be upgraded including an increase in the size of the timber pylons and deck. Council responded by indicating they raised no objection to the work being carried out.

The site has an extensive history within Council including numerous Development Assessment Panel meetings regarding the concept of tourist accommodation and associated facilities such as marinas and retirement resort at the site.

In 2011 Council provided advice that both Lot 176 and Lot 177 possess dwelling entitlements pursuant to Clause 57 of the *Tweed Local Environmental Plan 2000*.

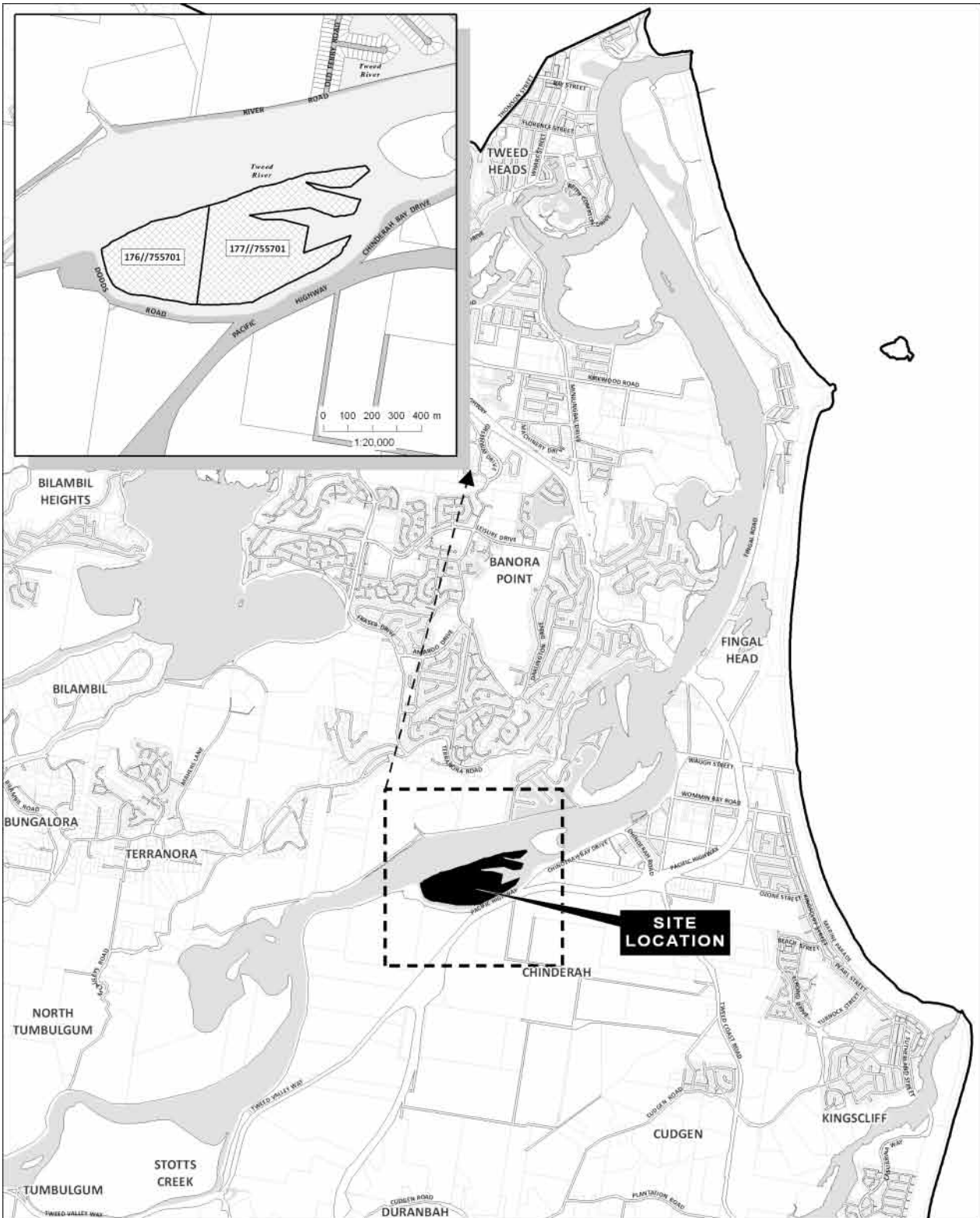
A concept of the current development application was discussed and minuted at Council's Development Assessment Panel meeting on the 3 April 2013.

Statutory consideration

The proposed development requires the lodgement and determination of a development application pursuant to the *Environmental Planning and Assessment Act 1979* (the Act) and has been considered by Council officers under Section 79C of the Act, including relevant environmental planning considerations the subject of this report.

The proposed development is considered to be consistent with the matters listed under Section 79C including, amongst others, the provisions of the *Tweed Local Environmental Plan 2000*, the *Tweed Local Environmental Plan 2014* and the *Tweed Development Control Plan 2008*, and accordingly the application is recommended to be approved.

SITE DIAGRAM:

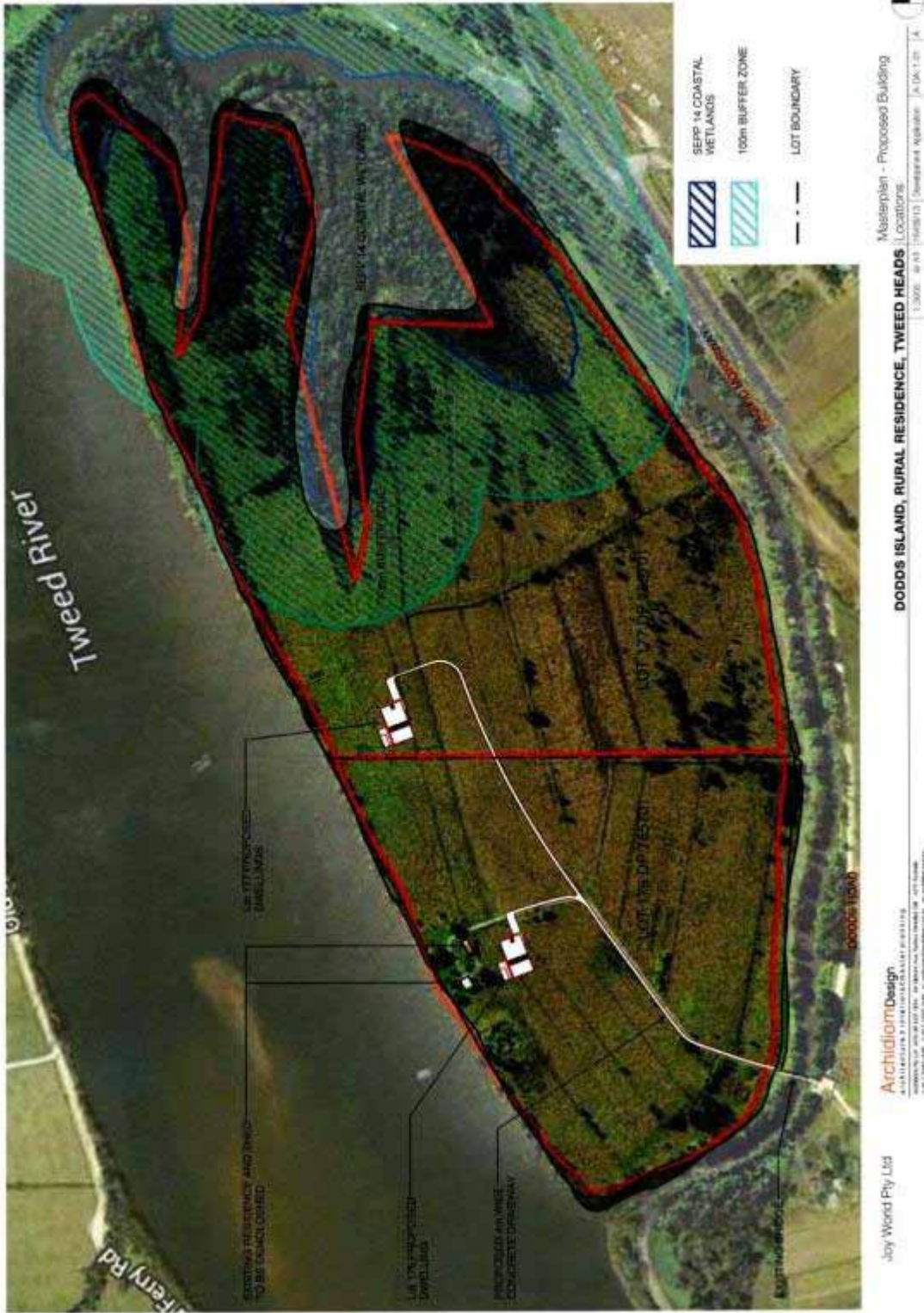


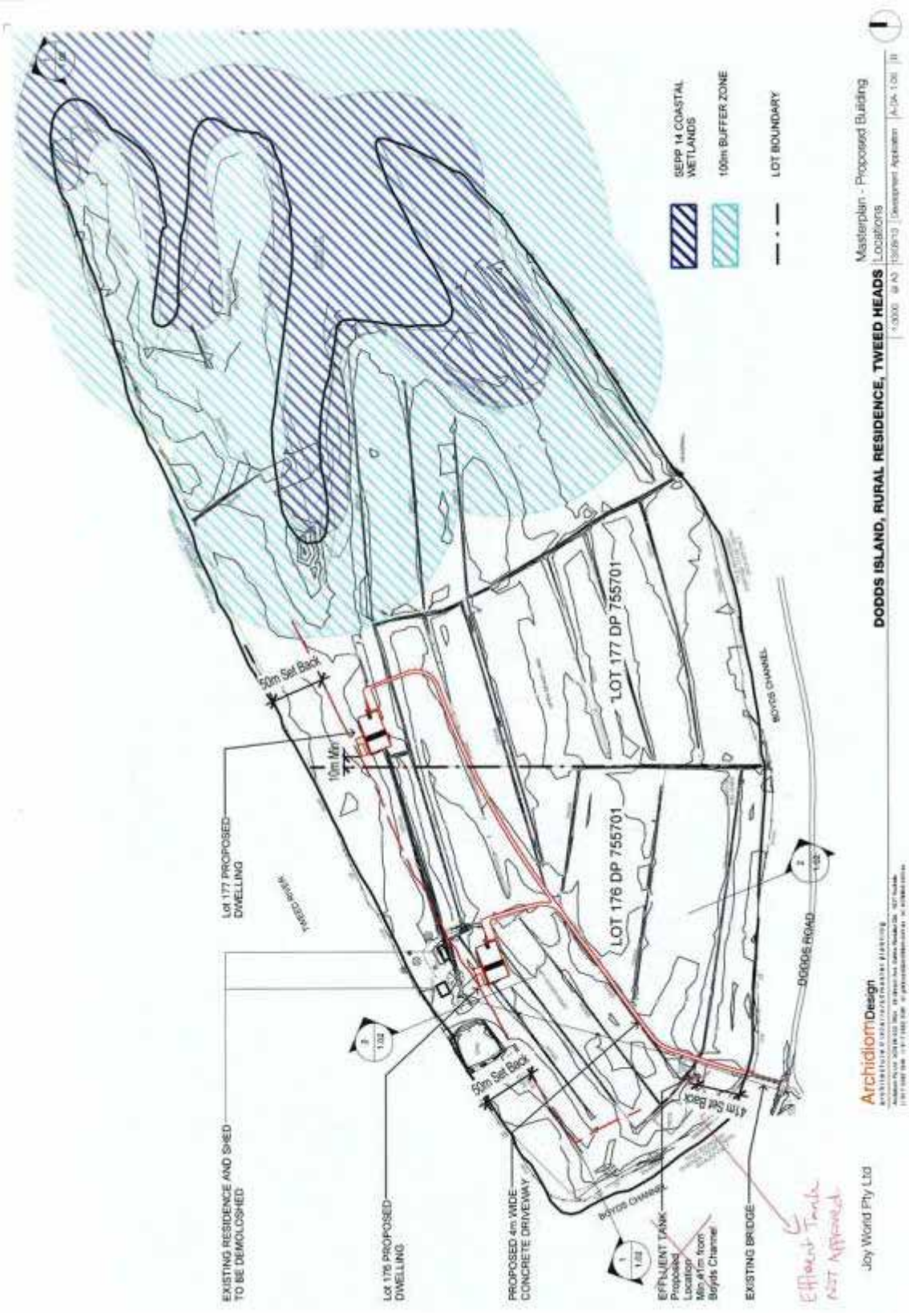
Locality Plan

Lots 176 and 177 DP 755701
Dodds Island, Cudgen

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability as negligent) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p>Cadastral 31/04/2014 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 Km 1:50,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p><small>Map projection: Universal Transverse Mercator Datum: GDA94 Geoid: Geoid of Australia 2004 Maid: Map Grid of Australia, Zone 56</small></p>	<p>Civic and Cultural Centre 3 Tambulgun Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>
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DEVELOPMENT/ELEVATION PLANS:







Joy Works Pty Ltd

Archidorm Design

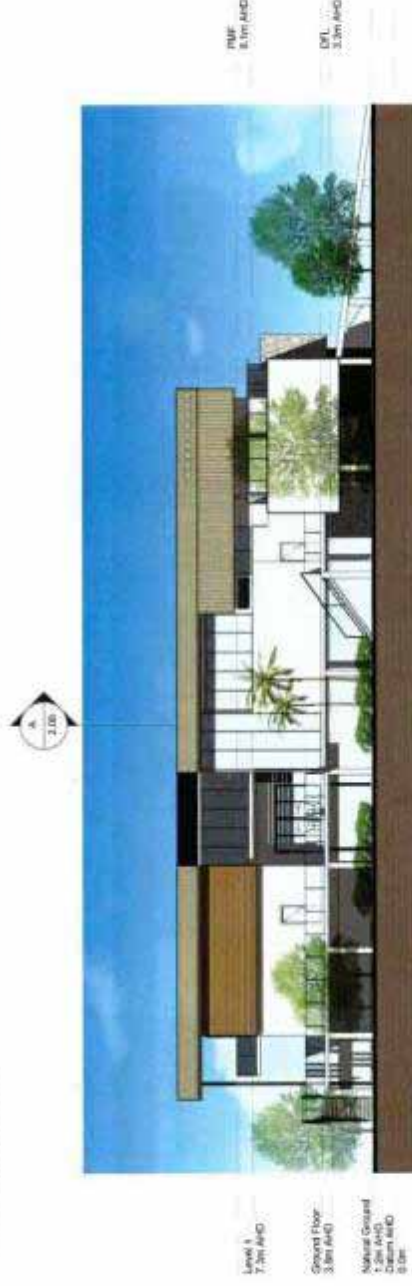
ARCHITECTS OF RESIDENTIAL AND COMMERCIAL BUILDINGS
 10/11-13/15 DODD STREET, TWEED HEADS, NSW 2486
 TEL: 07 5522 4444 FAX: 07 5522 4445

DODDS ISLAND, RURAL RESIDENCE, TWEED HEADS LOT 178 - Elevations

1:100 19/02/2013 [Developer Submission] [A-20-2013]



EASTERN ELEVATION

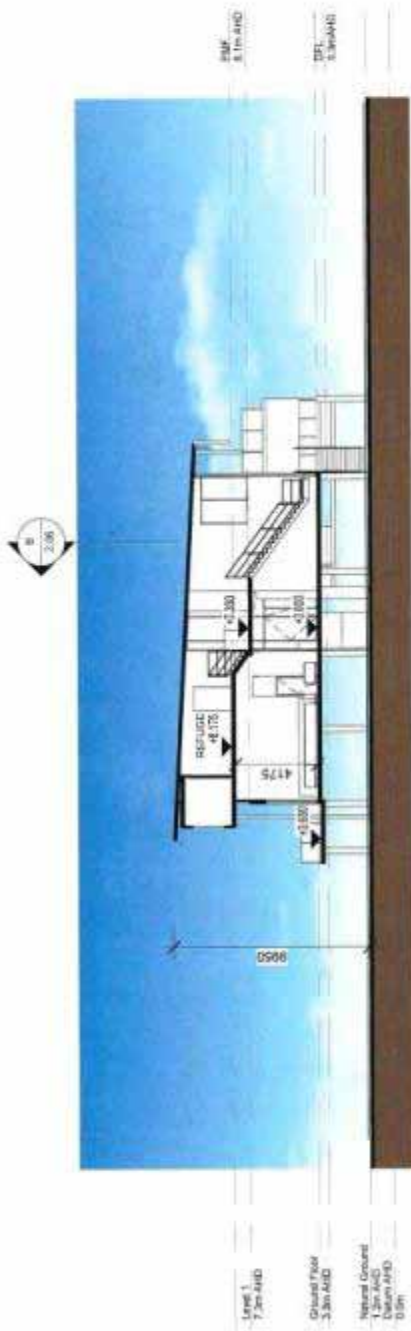


SOUTHERN ELEVATION

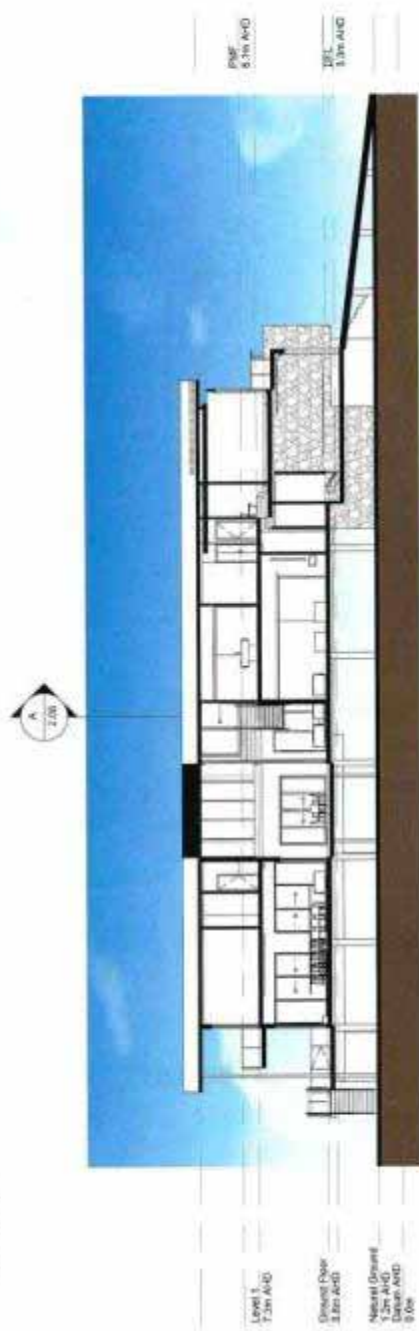
Joy World Pty Ltd

ArchidiomDesign
 ARCHIDIOM DESIGN PTY LTD
 2/10 FLEMING ROAD, BENTLEY, VIC 3207
 T: 03 9497 0000 F: 03 9497 0001 E: info@archidiomdesign.com.au W: www.archidiomdesign.com.au

DODDS ISLAND, RURAL RESIDENCE, TWEED HEADS LOT 176 - Elevations
 1:200 - @ A3 (200X300) (DRAFT/REV APPROVAL) | A-C4-2.06 - (A)



SECTION A



SECTION B

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DODDS ISLAND, RURAL RESIDENCE, TWEED HEADS | LOT 176 - Sections

1:200 | 01 43 3638913 | Developer: Applicant | A374-2014 | A



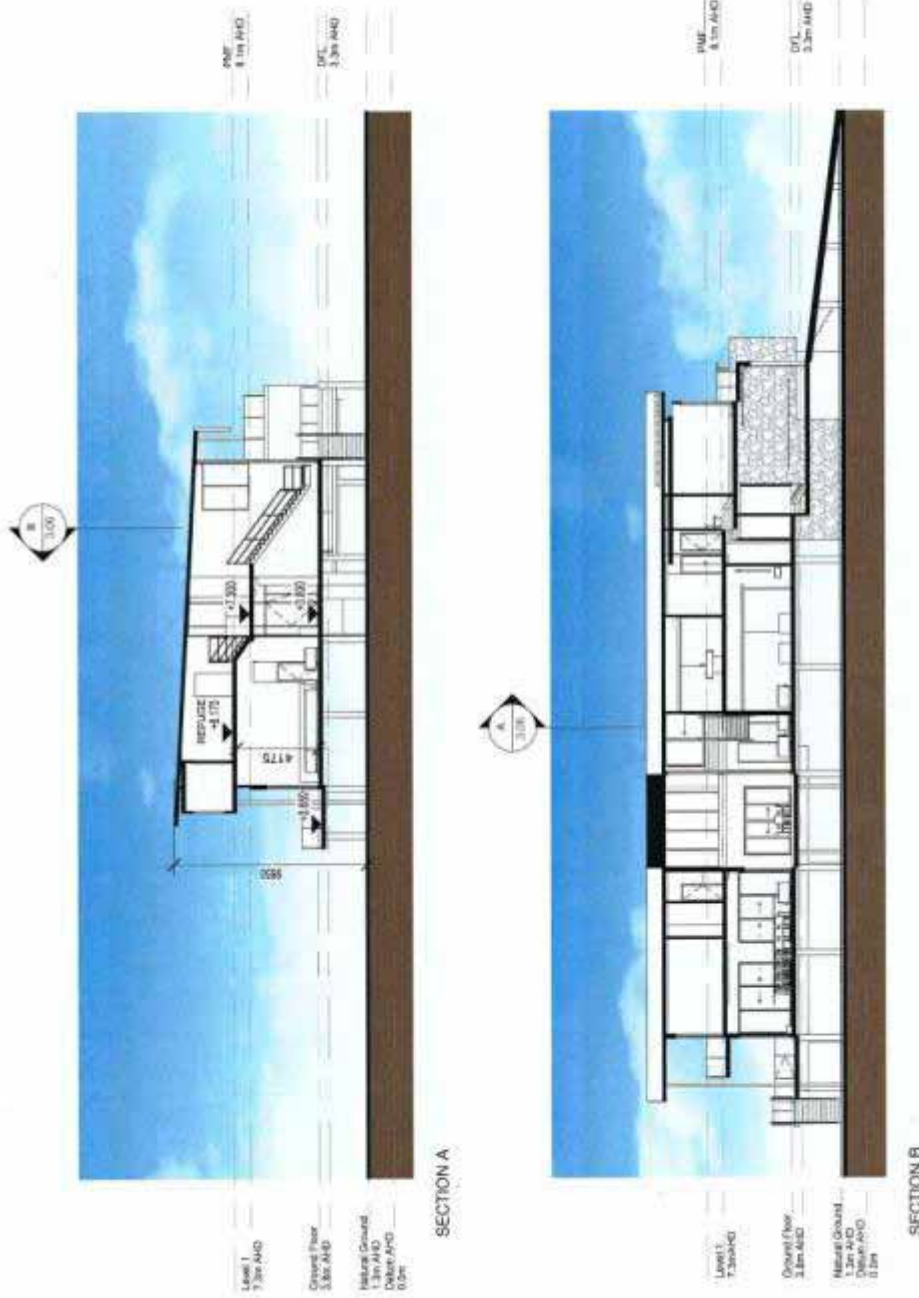
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Archidiorium Design

ARCHITECTURE & INTERIOR DESIGN & BUILDING
 1/111 BROADWAY, SUITE 201, BROADWAY, SYDNEY NSW 1570
 02 9550 0000 | 02 9550 0000 | www.archidiorium.com.au

DODDS ISLAND, RURAL RESIDENCE, TWEED HEADS - LOT 177 - Elevations

1:250 @ A3 | 15/03/2013 | Developer Approval | A-04-304 | A



Joy Wood Pty Ltd

ArchidomDesign

ArchidomDesign Pty Ltd
1/61-1/63 Sturt Street, Tweed Heads NSW 2486
Tel: 07 553 5444 Fax: 07 553 5445 Email: info@archidomdesign.com.au

DODDS ISLAND, RURAL RESIDENCE, TWEED HEADS, LOT 177 - Sections

1:200 10 40 (top) 10 (bottom) (Designation: Section) (A-PA-016) (A)



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Archidiom Design
ARCHITECTURE & INTERIOR DESIGN
ARCHITECTS OF JOY
111 BROADWAY, SUITE 1000 - 4171
1201 10th Ave, Suite 1000, Los Angeles, CA 90015

DODDS ISLAND, RURAL RESIDENCE, TWEED HEADS | Perspective 1
| NTS | 01 A2 | 15/05/13 | Conceptual Approach | R-04-420 | A



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ARCHITECTURE | INTERIORS | LANDSCAPE PLANNING
ADDRESS: 100/26 000 Sts. 37 DODDS ISLAND, QUEENSLAND 4217 AUSTRALIA
4 (7) 5551 5544 4 (7) 5551 5544 4 (7) 5551 5544 4 (7) 5551 5544 4 (7) 5551 5544

DODDS ISLAND, RURAL RESIDENCE, TWEED HEADS | Perspective 2

NT0 00.00 | 10/03/13 | Development Application | JA-DR-101 | A

APPENDIX 3 Site Plan – Layout of On-site Sewage Management System





EASTERN ELEVATION



SOUTHERN ELEVATION

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 1/100-110/112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000

DODDS ISLAND, RURAL RESIDENCE, TWEED HEADS LOT 177 - Elevations

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

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the four principles of ecologically sustainable development listed in the TLEP 2000, namely the precautionary principle, inter-generational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

There are considered to be no potential environmental impacts not identified and predicted impacts suitably mitigated. The application is supported by ecological assessment that concludes the proposed development will not have a significant impact on ecological processes and flora and fauna species and rather includes restorative and rehabilitative measures aimed at improving biological diversity and ecological integrity of the site.

An objective of Clause 5 is to promote development that is consistent with the four principles and therefore the proposed development is supportable under Clause 5.

Clause 8 - Consent Considerations

The proposed development is considered to be consistent with Clause 8 of the TLEP 2000 which reads as follows:

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

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

To address Clause 8(1)(a) the zone objectives are addressed below under Clause 11.

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

To address Clause 8(1)(c) this report in its entirety considers the cumulative impact of the proposed development including its compatibility with adjoining land uses and environmental sensitive areas, and its impacts to scenic quality, amongst others. Having regard to the aims, objectives and controls of planning instruments and documents applicable to the site and these matters the proposed development is acceptable.

Based on the proposed development's acceptableness under the TLEP 2000 and other planning provisions applicable to the site and proposal, if the proposal was accumulated successively in the community, locality or catchment or on the area of Tweed as a whole, the outcome would also be acceptable and any precedent that is set is also acceptable. The Tweed historically through the implementation of its environmental planning instrument and controls has provided for dwelling houses on agricultural land in proximity to environmentally sensitive areas.

Clause 11 – The zones

The proposed development is a permissible land use and is consistent with the objectives of the relevant zone.

The site is mapped as being within the 1(b2) Agricultural Protection and 7(a) Environmental Protection (Wetlands and Littoral Rainforests) zones. Development of the 7(a) zone portion of the land is not sought by the application with works proposed on the land zoned 1(b2) only.

The proposed development is allowed only with consent in the 1(b) zone because it comprises dwelling houses each on an allotment referred to in Clause 57 (Protection of existing dwelling entitlement).

The primary and secondary objective of the 1(b) zone is:

To protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.

To allow other development that is compatible with agricultural activities.

The proposed dwellings are substantial in their design when compared to typical dwellings constructed on agricultural land and it is apparent the proposed development is aimed at providing a high level of recreational amenity and enjoyment to its occupants rather than catering to agricultural pursuits of the land. Nevertheless the proposed development does not involve subdivision that would fragment the land or place economic pressure for pursuing land uses alternative to agriculture. Nor does the proposed development restrict continuing agricultural use of the land.

Clause 13 – Development of uncoloured land on the zone map

The site adjoins uncoloured land on the zone map including Boyds Channel and the Tweed River. The application does not seek approval for development of this land however Council officer consideration of the application, including the Natural Resource Management Unit, has considered the provisions of Clause 13 including ongoing use of the existing bridge crossing Boyds Channel from Dodds Lane to access the proposed development. Ongoing use of the existing bridge to access the proposed development is not considered to contravene the provisions of Clause 13.

It is noted that a structural certification report for the bridge submitted with the development application recommends a number of repairs and improvements to preserve the bridge's structural integrity. These repairs and improvements are not sought by the application and a condition of consent is recommended to this effect, requiring environmental assessment and approval of such works where statutorily required.

Clause 15 - Essential Services

The proposed development requires on-site provision of potable water and effluent management, and satisfies Clause 15.

The officers have considered various options to manage waste water generated by the proposed development including on-site storage and pump-out by liquid waste collection contractor, connection to the reticulated network and on-site treatment and disposal. The preferred option as deemed acceptable by Council's Environmental Health Officer includes treating effluent from each dwelling house to a secondary standard with nutrient reduction and applying to land via subsurface drip irrigation. During flood inundation events at the site treated effluent will be stored in tanks and following retreatment of flood waters will either be collected or applied to land via the drip line application method outlined.

Clause 16 - Height of Building

The proposed development is three storeys and complies with the statutory height limit under the TLEP 2000.

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

The proposed development requires habitable areas to be located at a certain height to address the environmental characteristics of the land (flood prone). This results in a higher building than required in order to meet the design inclusions sought by the applicant. The height and scale of the proposed development is unlikely to impact surrounding development given the site is a 35 hectare island however visual impacts as a result of the scale of the proposed development, particularly from public vantage points, have been considered elsewhere in this report, and are acceptable. Therefore in addition to compliance with the three storeys statutory height limit applicable to the site the proposed development is considered to also demonstrate consistency with the objective of building heights under the TLEP 2000.

Clause 22 – Development near designated roads

The site has frontage to the Pacific Highway and clause 22 of the TLEP has been considered pursuant to 22(2)(a). The proposed development would be approximately 450m from the Pacific Highway at the closet point being the dwelling on Lot 177. Accordingly the development does not compromise Clause 22(4)(a)-(h).

Clause 23 – Control of access

The site would continue to be accessed via Dodd's Lane via the Pacific Highway, and consent under Clause 23 is not required.

Clause 24 – Set backs to designated roads

The development at its closet point, the dwelling on Lot 177, is approximately 450m from the Pacific Highway and therefore complies with the setback distance of 30m required by Clause 24.

Clause 25 – Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The proposed development is consistent with Clause 25 which applies because the proposed development is occurring on land adjacent to Zone 7(a); no work is proposed in Zone 7(a).

An assessment of significance was performed in support of the application which concluded the proposed development would not have a significant impact on flora and fauna species or endangered ecological communities.

A Wetland Plan of Management was included as a component of the development application to address *State Environmental Planning Policy No 14 – Coastal Wetlands* and Clause 25 of the TLEP 2000. Council's Natural Resource Management Unit is satisfied the Wetland Plan of Management addresses relevant statutory guidelines and conditions of consent have been recommended to address more specific restoration requirements.

Clause 31 – Development adjoining waterbodies

The proposed development is considered to be consistent with Clause 31. Clause 31 applies because the site adjoins the mean high-water mark of the Tweed River and Boyds Channel.

Clause 31 – Development adjoining waterbodies, reads:

(1) *Objectives*

to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.

to provide adequate public access to waterways.

to minimise the impact on development from known biting midge and mosquito breeding areas.

(2) *This clause applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody.*

(3) *Consent must not be granted to development on land to which this clause applies, within such distance as is determined by the consent authority of the mean high-water mark or, where there is no mean high-water mark, the top of the bank or shore of a stream, creek, river, lagoon or lake unless it is satisfied that:*

(a) *the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the riverine or estuarine area or its function as a wildlife corridor or habitat, and*

(b) *adequate arrangements for public access to and use of foreshore areas have been made in those cases where the consent authority considers that public access to and use of foreshore areas are appropriate and desirable requirements, and*

(c) *the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the Local Government Act 1993 that applies to the land or to land that may be affected by the development, and*

- (d) *the development addresses the impact of increased demand from domestic water supply on stream flow.*
- (e) *the development addresses the likely impact of biting midge and mosquitoes on residents and tourists and the measures to be used to ameliorate the identified impact.*
- (4) *The consent authority may require as a condition of consent to any development that the following be carried out:*
 - (a) *the rehabilitation of land adjoining the waterbed to create a vegetated riparian zone or wetland,*
 - (b) *works to stabilise the bank or shoreline of a waterbed.*
- (5) *In determining a distance for the purposes of this clause, the consent authority shall have regard to:*
 - (a) *the preservation of the scenic quality of foreshores, and*
 - (b) *minimising the risk of pollution of waterways, and*
 - (c) *the protection of foreshore ecosystems, and*
 - (d) *the intended or planned use for the foreshore.*

The impact of the proposed development on scenic quality is assessed below. In terms of the remainder of Clause 31 Council's assessing officer recommends the proposed development is consistent with its provisions, including the objectives, for the following reasons:

- A 50 metre setback between the Tweed River and any built form is proposed to be established including fencing of a 10 metre riparian zone installed from the Tweed River landward to exclude stock and encourage natural regeneration with an expectation of improving bank stability and ecological function.
- Public access to and use of foreshore areas is not considered applicable given the entire site is privately owned land.
- The proposed development is not contrary to the objectives and actions of the Upper Tweed Estuary Management Plan 1996.
- The proposed development comprises two dwelling houses on 35 hectares of land and therefore is unlikely to impact stream flow from increased demand for water supply.
- The proposed development at its closest point is over 300 metres from the nearest Saltmarsh Mosquito breeding area. This compares to 50 metres for properties at Oxley Cove on the northern side of the Tweed River and 10 metres for properties from Midge breeding areas in South Kingscliff urban areas. Therefore there is predicted to be a minimal impact on the proposed development from mosquito breeding areas.

In terms of the impact on scenic quality Council's assessing officer recommends the proposed development will not have a significant adverse effect. The assessment performed in order to make this recommendation is outlined below.

The planning control infers the site because of its proximity to the Tweed River has scenic quality, and that whether the proposed development proceeds depends on whether the proposed development would have a significant adverse effect on this scenic quality.

The subjective nature of the planning control in this instance necessitated qualitative assessment based on several Land and Environment (LEC) planning principles, as well as Council and government studies and guidelines. As noted on the LEC website planning principles assist make a planning decision where policies are expressed in qualitative terms allowing for more than one interpretation or where policies lack clarity. LEC planning principles are therefore considered to assist in this instance.

The assessment process adopted included identifying the elements of the site and its surrounds that contributed to scenic quality, and evaluating whether the proposed development would have a significant adverse effect on those elements.

Scenic quality is not defined by the TLEP 2000 or the Act.

The Collins English Dictionary of 1902 defines Scenic as an adjective for describing picturesque and Quality as a noun meaning attribute, characteristic, and degree of excellence.

In order to understand the attributes and characteristics that give the site scenic quality a visual survey of the site and its surrounds via land and water was performed.

In addition to visual survey performed by Council's assessing officer, consideration was also given to a 2004 pilot study performed on behalf of the then NSW Department of Planning which included the subject site. In *Corkery, N. 2004, Visual Management System for NSW Coast (Tweed Pilot), prepared for the Comprehensive Coastal Assessment (DoP) by URS Asia Pacific, North Sydney* Dodd's Island was identified as part of a visual landscape unit that was assessed as having level 4 visual quality (level 1 being low visual quality, level 5 being high visual quality).

The overall visual quality rating for each landscape unit under the pilot study was based on the results of qualitatively assessing criteria for each landscape unit including visual integrity, diversity/contrast, balance/harmony, distinctiveness, adjacent scenery, rarity, and ability to accept change. While the criteria were assessed across an entire landscape unit, the study does assist the types of issues to be considered when identifying elements that give a site its scenic quality.

Further consideration was also given to *Brouwer, C. 1995, Tweed Shire Scenic Landscape Evaluation Report, prepared for Tweed Shire Council by Catherine Brouwer Landscape Architects, Teneriffe*. In Brouwer 1995 the Tweed River, while having low accessibility, was determined to be a significant feature of the Cudgen Scenic District.

In summary the Tweed River and its surrounds is considered to have high scenic quality. In the officers' opinion it is the sites harmony in terms of openness, being largely devoid of built form, as well as adjacent scenery including the Tweed River and wetland estuaries that contribute to the site's scenic quality.

The assessing officer also noted that several elements detract from the sites scenic quality including bank erosion, the site being largely devoid of native vegetation in contrast to surrounding foreshore areas, and the site being currently occupied by an old house and shed located within 25m of the River bank.



Photos of the site as viewed from the adjoining Tweed River.



Photos of the site surrounds as viewed from the Tweed River.

In *Project Venture Development v Pittwater Council* Senior Commissioner Roseth makes the point that most people are not trained planners or urban designers and experience the urban environment without applying [detailed] analysis...[and] respond intuitively to what they see around them. SC Roseth continues by stating a photomontage of a proposed development in its context provides the opportunity to view the proposed development the same way that a member of the public would.

Several photomontages depicting the proposed development from public vantage points surrounding the site were submitted in support of the application, and illustrate the following in relation to the proposed development's impact to scenic quality:

- The proposed development will be visible from the opposite side of Tweed River from Old Ferry Road, Terranora.
- The proposed development will be slightly visible from Winchelsea Way, Terranora.
- The proposed development will not be visible from the Pacific Motorway or the Tweed Valley Way.

As previously mentioned a visual survey of the site from the Tweed River was also performed. That survey indicated the proposed development would be visually prominent when viewed from the Tweed River. As a result of both the photomontages and the visual survey it is considered that the following points are important for determining the level of impact to scenic quality:

- The height, scale and finishes of the proposed development will only replace some openness of the site.
- The backdrop to the proposed development is vast including vegetation within the immediate and medium background and hills beyond.
- The proposed development will not penetrate the skyline and will remain below the tops of surrounding hills and vegetation when viewed from land based public vantage points.
- The proposed development will not affect public views to significant landmarks. While the proposed development will be viewed from the Tweed River, it will not affect existing public views of the Tweed River.
- The proposed development is consistent with the built form that is characteristic of existing views from the Tweed River.

In summary it is concluded that the proposed development will only have an immediate visual impact when viewed from the Tweed River including during construction of the buildings and their initial occupation, particularly as a result of the change to the openness of the site.

In *Super Studio v Waverley [2004] NSW LEC 91*, SC Roseth states "that the acceptability of an impact depends not only on the extent of the impact but also on reasonableness of, and necessity for, the development that causes it. In his judgement SC Roseth continues by inferring that just because a type of development will be new when compared to that surrounding does not make the development inappropriate, only that its impact should be assessed with heightened sensitivity, and further that it [the development] is only acceptable if its impact were minor or negligible.

Further, in *Tenacity Consulting v Waringah [2004] NSW LEC 140* SC Roseth in relation to view sharing establishes the step of assessing the reasonableness of the proposal that is causing the impact, stating “[a] development that complies with all planning controls would be considered more reasonable than one that breaches them.”

The applicant has included measures to protect scenic quality including a setback of both buildings from the bank of the Tweed River of 50m. Also, landscaping is proposed that will partially screen the buildings and the old buildings at the site will be removed. These measures as well as the proposed development’s consistency with the relevant planning controls are considered to make the proposed development reasonable. In addition the proposed development includes measures that will further enhance the scenic and environmental qualities of the site including bank rehabilitation and the protection and monitoring of the coastal wetlands.

The resultant short term impact to scenic quality is considered to be minor and therefore acceptable based on the reasonableness of the proposed development.

It is recommended that the long term impact to scenic quality will be negligible. This is because over time the buildings will weather, surrounding vegetation and landscaping will mature, and the public will become accustomed to the development in its location. There are various examples of this within the surrounding locality and as viewed from the Tweed River.

While a short term minor impact and long term negligible impact is predicted to scenic quality as a result of the proposed development the overall impact is recommended as not being significant. This is not just because the predicted impact is acceptable but also because it is not extensive in terms of time, space and intensity (Department of Planning 1996).

Also the proposed development does not contravene the recommendations concerning management and protection of visual and landscape quality as outlined in Corkery 2004 and Brouwer 1995.

Clause 34 – Flooding

The site of the proposed development is subject to flooding. Council’s Flooding and Stormwater Engineer has reviewed the application and is satisfied the proposed development is consistent with the matters for consideration of Clause 34 and conditions of consent are recommended.

The design flood level for the site is RL 3.2m AHD and the probable maximum flood level is RL 8.1m AHD. Measures are proposed to ensure the proposed development allows the free flow of flood waters, that habitable floor areas are above the design floor level and a flood refuge will be constructed above the probable maximum flood level.

Clause 35 – Acid sulfate soils

The site is mapped as potentially being affected by Class 2 Acid Sulfate Soils (ASS). An ASS Management Plan has been prepared and is deemed adequate by Council’s Environmental Health Officer. Clause 35 is satisfied.

Clause 39 – Remediation of contaminated land

The development application is supported by a preliminary site investigation (PSI) which includes soil sampling and concludes the proposed dwelling sites are considered suitable for the proposed land use. The PSI states further sampling and laboratory analysis is not required, nor is a remediation action plan required. Council's Environmental Health Officer has deemed the PSI as being adequate.

Clause 39A - Bushfire protection

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

Part of the site is bushfire prone land. In accordance with Clause 39A of the TLEP 2000 and Section 79BA of the EP&A Act Council has had regard to provisions of *Planning for Bushfire Protection 2006 (PBP 2006)*.

The sites of the proposed dwelling houses are not bushfire prone land and are greater than 100 metres from the nearest bush fire prone vegetation. The resultant bushfire attack level of each dwelling house has been determined as LOW. No special construction requirements are warranted however measures are proposed regarding access, asset protection zones which satisfy the provisions of *PBP 2006* for the site.

Clause 44 – Development of land within likely or known archaeological sites

Aboriginal heritage items have previously been identified on land surrounding the site. In accordance with the provisions of Clause 44 of the TLEP 2000 Council officers have considered a Due Diligence Cultural Heritage Assessment for the proposed development. The assessment, including site walkover by an archaeologist and representatives of the traditional owners and Local Aboriginal Land Council, identified no Aboriginal objects or places within the project area, and found the project area has significant ground disturbance. The assessment recommends standard management measures to protect previously unidentified Aboriginal heritage items during construction. This includes site monitoring of initial excavation works at the site as resolved by the Tweed Shire Council Aboriginal Advisory Committee meeting on 7 February 2014. Conditions of consent to this effect are recommended.

Clause 44 is satisfied by the proposed development.

Clause 54 – Tree preservation order

The application does not propose clearing of vegetation protected by Tree Preservation Orders applicable at the site and a condition of consent is recommended to this effect.

Clause 57 – Protection of existing dwelling entitlement

Council's Development Assessment Unit has provided advice that Lot 176 and Lot 177 each have a dwelling entitlement pursuant to Clause 57 of the TLEP 2000. This results in the proposed development being allowed subject to development consent.

State Environmental Planning Policies

State Environmental Planning Policy No. 14 – Coastal Wetlands

Part of Lot 177 is mapped as SEPP 14 Coastal Wetlands. The proposed development will not be performed on land mapped as SEPP 14 and the Policy is not triggered.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The site does not meet the test under SEPP 44 to be considered as 'Potential Koala Habitat'. Subsequently further consideration as to whether the vegetation represents 'Core Koala Habitat' is not required avoiding the necessity for a Koala Plan of Management.

It is noted that detailed fauna survey was not undertaken within the unit of vegetation to determine presence or absence of Koala. However given the scale and intensity of the development, the establishment of adequate setback distances and with implementation of a site based Wetland Plan of Management, Koala habitat would not be expected to be negatively affected and retained to remain available for Koala and other fauna species with a preference to this habitat type.

State Environmental Planning Policy No. 71 – Coastal Protection

The land is mapped as being within the coastal zone and therefore SEPP 71 applies. SEPP 71 requires the matters for consideration set out in Clause 8 to be taken into account by a consent authority when it determines a development application to carry out development on land to which this Policy applies. The proposed development is considered to be consistent with the Clause 2 Aims and Clause 8 Matters for consideration of this policy. An assessment against these matters is below.

(a) *The aims of this Policy set out in Clause 2:*

Aim	Consideration
(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and	The proposal is not contrary to this aim.
(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and	There is no opportunity for the proposal to protect and improve existing public access to and along the Tweed River due to the natural attributes of the river therefore this aim is satisfied.
(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and	There is no opportunity for the proposal to identify and realise new opportunities for public access to and along the Tweed River and Boyd's Channel as this would be incompatible with the natural attributes therefore this aim is satisfied.

Aim	Consideration
(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and	A due diligence Aboriginal Cultural Heritage Assessment performed for the proposed development identified no Aboriginal heritage items within the footprint of the proposed development and concluded the site was highly disturbed, therefore the proposed development is consistent with the aim of protecting and preserving Aboriginal cultural heritage.
(e) to ensure that the visual amenity of the coast is protected, and	"Coast" is not defined by the Policy however it is taken to mean all land covered by SEPP71. The application is supported by information which indicates the proposal will not detract from the visual amenity of the coast.
(f) to protect and preserve beach environments and beach amenity, and	The proposal is setback from the Tweed River a distance of 50m which is aimed at protecting and preserving the beach environment and amenity of the Tweed River.
(g) to protect and preserve native coastal vegetation, and	The proposal includes measures to protect and preserve native coastal vegetation of the site which has been considered by Councils NRM section as adequate.
(h) to protect and preserve the marine environment of New South Wales, and	The proposal will not impact the marine environment of New South Wales. The proposal is setback 50m from the Tweed River. The proposal includes measures and conditions of consent will be imposed to ensure the surrounding marine environment is protected and preserved.
(i) to protect and preserve rock platforms, and	The site does not possess rock platforms and therefore satisfies this aim.
(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and	The proposal is not inconsistent with the principles of ESD.

Aim	Consideration
(k) to ensure that 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	The proposal incorporates contemporary dwelling houses that are permissible on the land and meet the design controls for bulk, scale and size as are in force in the Tweed Shire. The application is supported by visual representations of the proposal that indicate the buildings and associated landscaping will not detract from the natural scenic quality of the surrounding area.
(l) to encourage a strategic approach to coastal management.	The proposal has been considered against Council's adopted Coastal Management Plan and is satisfactory; therefore the proposal is consistent with the strategic approach to coastal management adopted by Council.

(b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.

The site characteristics do not present an opportunity for the proposal to retain and improve existing public access to and along the Tweed River and Boyds Channel for pedestrians or persons with a disability.

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

There are no opportunities for the proposal to provide new public access to and along the foreshore of the Tweed River or Boyds Channel due to these estuary's characteristics. The proposal will not restrict ongoing use of the Tweed River by the public.

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

The proposal meets the standards and controls in force for that type of development in the Tweed; the proposal is a suitable development.

(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 incorporates setbacks from the foreshore of the Tweed River and Boyds Channel which is aimed at mitigating detrimental impacts including shadowing of the foreshore. The proposal will not result in loss of views from a public place to the foreshore.

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

The proposal incorporates setbacks and landscaping which will protect the scenic qualities of the Tweed River 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 sites ecological values are to be protected and conserved through implementation of an amended site based Wetland Plan of Management, ensuring adequate waterway and wetland setbacks are established and construction of additional stock exclusion to the Tweed River riparian zone imposed as conditions of approval.

(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 sites ecological values are to be protected and conserved through implementation of an amended site based Wetland Plan of Management, ensuring adequate waterway and wetland setbacks are established and construction of additional stock exclusion to the Tweed River riparian zone imposed as conditions of approval.

(i) existing wildlife corridors and the impact of development on these corridors,

The proposed development is not predicted to impact existing wildlife corridors. The proposed development includes no significant vegetation removal or works in waterways.

(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 site is affected by flooding. The proposed development is consistent with controls related to development on flood prone land. No significant impacts to or from the proposed development are predicted from this hazard. Measures to protect the Tweed River bank from erosion are proposed as part of the proposed development.

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

The proposal is not expected to result in conflicts between land-based and water-based coastal activities due to its setbacks from the adjoining foreshores and no proposal to develop below mean high water mark.

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

Standard management measures to protect previously unidentified Aboriginal heritage items are proposed as part of construction of the proposed development including site monitoring during excavation works.

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

The proposal includes measures to minimise impact on the water quality of the Tweed River and Boyds Channel. The proposed setbacks of the development from adjoining waterbodies as well as measures to protect adjoining wetlands and prevent bank erosions are expected to reduce any impacts on water quality.

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

There are no items of Aboriginal or Non-Aboriginal heritage predicted to occur at the site, nevertheless measures are proposed to avoid impacts in the case they are discovered during construction of the development.

- (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.

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

*the cumulative impacts of the proposed development on the environment;
and*

The proposal has been assessed as complying with the applicable standards and controls of the Tweed LEP 2000, Draft LEP 2013 and Tweed DCP 2008, and the cumulative impact if the proposal was duplicated would therefore be acceptable.

measures to ensure that water and energy usage by the proposed development is efficient.

The application is supported by BASIX certificates for each dwelling house which demonstrate the proposed dwellings meet water and energy efficiency requirements of the NSW Government.

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

The development application is supported by a BASIX certificate and a condition of consent is recommended requiring implementation of its statement of commitments, the Policy is therefore satisfied.

State Environmental Planning Policy (Rural Lands) 2008

The proposed development is satisfactory in regard to the provisions of this SEPP.

The aims of the SEPP are, amongst others:

- to facilitate the orderly and economic use and development of rural lands for rural and related purposes;
- to implement measures designed to reduce land use conflicts.

Clause 7 of the SEPP outlines Rural Planning Principles that Council's consider when preparing LEPs so is not applicable to the proposal.

As the site the subject of the proposal is not mapped as state or regionally significant farmland, the proposal has been considered against Clause 10 of the SEPP only which includes matters to be considered in determining development applications for rural subdivisions or rural dwellings. These matters are as follows.

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

Existing uses of the land in the vicinity of the development are rural and agricultural, including houses on rural lots, and sugar cane harvesting and ancillary development such as sheds.

- (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 preferred and predominant land uses of the land surrounding the development are those described under (a) above. The proposal will not have a significant impact on those land uses because the proposal will allow the continued use of the land and surrounding land for agricultural purposes. The applicant maintains the subject site is unsuitable for sugar cane harvesting however can be continued to be used as environmental protection and grazing, subject to management measures, and the proposal is suitably distanced from adjoining sugar cane harvesting uses so that it will not affect the ability of that land to continue to be used for those purposes.

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

The proposal will not compromise the ability for the land and surrounding land to be used for agricultural purposes and therefore is considered to be compatible with agricultural land uses. The proposal is not inconsistent with other agricultural communities in the Tweed which also cater to dwelling houses and ancillary development including swimming pools.

- (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 is not within a rural residential zone however it would not be incompatible with uses allowed within nearby rural residential zones (located on the northern side of the Tweed River).

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

The proposal is adequately setback from surrounding properties and intensive agricultural land uses which is considered a suitable measure to minimise any compatibility issues.

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The proposed development will not cause a loss of prime crop or pasture land.

Clause 15: Wetlands or Fishery Habitats

The proposed development will not affect the quality of water flows to the adjacent water bodies, will not affect fishers, will not lead to a loss of habitat, will not prevent public access to foreshores and reserves and includes measures to avoid pollution of the adjacent water bodies. The proposed development is satisfactory in relation to Clause 15.

Clause 29A: Natural areas and water catchment

The proposed development does not include clearing of natural vegetation.

Clause 32B: Coastal Lands

The proposed development does not contravene the NSW Coastal Policy 1997, the Coastline Management Manual or the North Coast: Design Guidelines. The proposed development will not impede public access to the foreshore. The proposed development will not result in beaches or waterfront open space being overshadowed. The development controls of Clause 32B do not prevent the proposed development proceeding.

Clause 33: Coastal hazard areas

Council officers recommend that as a condition of development consent disturbed foreshore areas are rehabilitated, satisfying the provisions of Clause 33.

Clause 81: Development adjacent to the ocean or a waterway

The proposed development is on land within 100 metres of the Tweed River however there is no existing foreshore open space that requires public access to be maintained. Impacts to the amenity of the Tweed River and consistency with the Upper Tweed Estuary Management Plan have been considered as a result of the proposed development, and are considered to be satisfactory. Therefore the proposed development is consistent with Clause 81.

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

Tweed Local Environmental Plan 2014

The subject development application was made prior to the commencement of the Tweed Local Environmental Plan 2014 and in accordance with Clause 1.8A the application has been considered as if the Tweed LEP 2014 had been exhibited but had not commenced. Nevertheless the proposed development is considered to be consistent with the relevant provisions of the Tweed LEP 2014, as outlined below.

Clause 1.2 Aims of Plan

The proposed development does not detract from the Aims of the TLEP 2014.

Clause 2.3 Zone objectives and Land Use Table

Under the provisions of the TLEP 2014 the site of the proposed development is zoned RU1 Primary Production. Dwelling houses are permitted with consent in the RU1 zone, satisfying the zoning table.

Clause 4.3 Height of buildings

The proposed development complies with the building height limit of 10 metres under the TLEP 2014.

Clause 5.5 Development within the coastal zone

As outlined elsewhere within this report the proposed development will not restrict public access to foreshore areas, will not overshadow the foreshore and is of a scale and density that will not detract from the scenic qualities of the coast, including measures aimed at protecting the adjacent Tweed River. The proposed development complies.

Clause 5.10 Heritage conservation

Council's assessing officer has considered an Aboriginal cultural heritage assessment in their consideration of the application and is satisfied with the measures proposed to protect previously unidentified heritage items. The provisions of clause 5.10 have been addressed.

Clause 7.6 Flood planning

The impacts to and from flooding as a result of the proposed development have been considered elsewhere in this report, and the proposed development is satisfactory, the proposed development is compatible with the flood hazard of the land and significant adverse impacts on flood behaviour as a result of the proposed development are not predicted.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed development is reasonable having regard to the design controls of Section A1 of the Tweed DCP. The proposed development will provide a high level of liveability for its occupants while impacts to the surrounding built and natural environment are expected to be minor.

A3-Development of Flood Liable Land

Council's Flooding and Stormwater Engineer is satisfied the proposed development is compliant with the provisions of Section A3 of the Tweed DCP and has recommended the application proceed subject to conditions.

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

The proposed development is consistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*, concerning in particular demolition of the existing structures at the site and application of the NSW Government Coastal Policy.

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

The proposed development does not contravene the provisions of the Tweed Coastline Management Plan nor the Upper Tweed Estuary Management 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

Particular consideration has been given to the potential impacts of the proposed development on ecological values at the site including flora and fauna, which included consideration of the application by Council's Natural Resource Management (NRM) Unit. Council's NRM Unit supports the application proceeding, subject to conditions of consent.

The proposed development complies with the relevant planning controls of the Tweed LEP 2000, Tweed LEP 2014 and the Tweed DCP 2008.

Accordingly the proposed development is not predicted to have a detrimental impact on the surrounding natural or built environment, socially or economically in the locality.

(c) Suitability of the site for the development

The site is not devoid of hazards and challenges however the proposed development is considered to have addressed these and is suitable.

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

The application did not require the approval or concurrence of any authorities nor were public submissions invited. No submissions have been received.

(e) Public interest

The proposed development has been considered on its merits, including its consistency with the applicable planning provisions including the Tweed LEP 2000, Tweed LEP 2014 and the Tweed DCP 2008. On that basis, it has been concluded that the proposed development will not have a significant impact on scenic quality and amenity of the site, and it is recommended the application be approved subject to conditions of development consent.

OPTIONS:

That Council:

1. Approves the development application subject to conditions of consent consistent with the recommendation of this report.
2. Refuses the development application, providing reasons.

Council officers recommend Option 1.

CONCLUSION:

Council officers have considered the impacts of the proposed development in accordance with the statutory planning instruments applicable to the site and proposed development including the Tweed LEP 2000, Tweed LEP 2014 and the Tweed DCP 2008. The proposed development complies with the relevant provisions of those instruments and is considered not to have a significant impact on the environment. The proposed development is recommended to be approved, subject to conditions of consent.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal the determination of the application in the Land and Environment Court.

d. Communication/Engagement:

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

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

10 [PR-PC] Development Application DA13/0449 for a Service Station and Two Lot Subdivision at Fraser Drive, Banora Point; Kirkwood Road, Tweed Heads South; Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0449 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This application proposes the development of a service station and a two lot subdivision at the above address. The service station consists of eight refuelling points under a covered canopy, with an ancillary shop and coffee shop also located on the site. The proposal also includes the development of ancillary car parking, access points and signage. The proposed subdivision generally relates to separating the portion of the site on which the service station is to be located from the remainder of the existing land parcel (Lot 1 DP 1074784). In this regard two new allotments would be created with proposed Lot 1 having an area of 7.394ha, being the residual lot and proposed Lot 2 having an area of 2,141m², being the service station lot.

The site is currently dual zoned 2(e) Residential Tourist and 6(b) Recreation and the proposed service station development would be defined as a 'service station' and the subdivision as 'subdivision' under the current Tweed Local Environmental Plan 2000. The proposed service station is permissible with consent in the 2(e) Residential Tourist zone, in which it is mainly located.

It is noted that the draft Tweed Local Environmental Plan (LEP) 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. Under the Draft Tweed LEP 2012, the entire site is zoned RE2 Private Recreation where a Service station is prohibited. In addition, the proposal is not considered to be consistent with the objectives of the RE2 Private Recreation zone under the draft plan.

Although this LEP contains a savings provision for development applications made before commencement of the plan the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.

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'. It is considered that this weighting

has greater relevance once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

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 the proposed service station, 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.

RECOMMENDATION:

That Development Application DA13/0449 for a service station and two lot subdivision at Fraser Drive, Banora Point; Kirkwood Road, Tweed Heads South; Lot 1 DP 1074784 No. 136-150 Dry Dock Road, 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 service station development is prohibited within the RE2 Private Recreation 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 service station is inconsistent with the objectives of the RE Private Recreation zone.**

REPORT:

Applicant: Mormatsal Investments Pty Ltd
Owner: Mormatsal Investments Pty Ltd
Location: Fraser Drive, Banora Point; Kirkwood Road, Tweed Heads South; Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South
Zoning: 2(e) Residential Tourist and 6(b) Recreation
Cost: \$950,000

Background:

Proposed Development

Council is in receipt of an application for a proposed service station and a two lot subdivision at the above address. Specifically the proposed development consists of the following:

Service Station

The proposed service station consists of eight fuelling points under a one storey canopy. There is an ancillary shop and coffee shop building proposed with a Gross Floor Area (GFA) of 83.7m² and 88.1m² respectively.

Advertising signage, ancillary to the service station, has been proposed as part of this application including a 9.2m high pylon sign, two wall signs and a top hamper sign.

Access to the service station is to be provided from Fraser Drive and the, as of yet, unconstructed Kirkwood Road. The applicant proposes to form a section of Kirkwood Road to allow egress only from the development. This would essentially form a temporary access which would be incompatible with Council's upgrade plans for Kirkwood Road (Approved under Ptv10/0032. Once Council completes the Kirkwood Road extension to Fraser Drive, the development would be limited to left in/left out access to Kirkwood Road. The proposed development also provides nine car parking spaces on site.

The development would include two staff, with the service station fuel and shop facilities operating 24 hours, seven days per week.

The subject application necessitated approval from NSW Office of Water with respect to dewatering works to be undertaken to facilitate the development of underground fuel tanks. The application included an Integrated referral in this regard. A response has been received outlining General Terms of Approval in this regard.

Subdivision

The proposed two lot subdivision essentially creates a separate allotment for the proposed service station, with the proposed layout generally consistent with the current split zoning on the subject site. The proposed lot configuration is as follows:

- Proposed Lot 1 = 7.394 ha.
- Proposed Lot 2 = 2,141m². This allotment contains the proposed service station as well as 80m² to be dedicated as road reserve in future to facilitate the Kirkwood Road upgrade at this location.

It is noted that the proposed allotment configuration has been slightly amended from that originally provided in order to include an access to the service station from Fraser Drive, which is located on land zoned 6(b) Private Recreation.

The application was placed on public exhibition for a period of 30 days, during which time three submissions were received. These have been addressed in detail elsewhere in this report.

Site Details

The proposed development is to be located on a site legally identified as Lot 1 DP 1074784 and is more commonly known as No. 136-150 Dry Dock Road. This site covers a total area of 7.6 hectares and is irregular in shape. The site is bordered to the north, west and south by road reserve, being the developed Dry Dock Road and Fraser Drive and the currently undeveloped Kirkwood road respectively. An approval have been issued under PTV10/0032 for the development of Kirkwood Road, however work to this area has not commenced to date.

It is also noted that the subject application extends to the Kirkwood Road and Fraser Drive road reserves where works are required to allow access to the proposed service station. These land parcels have been included as part of the application.

The site itself has been previously developed with a building which has been variously approved for use as a clubhouse for water sports, a restaurant and reception area as part of a tourist facility and, most recently, a hotel. This building was vacant at the time of site inspection, however it is noted that Council is currently in receipt of two development applications related to the use of this structure (see history below). There is also an area provided for carparking associated with this building. There is a large lake located to the centre of the site which extends north and eventually joins Terranora Creek.

The proposed service station is to be located to the south west corner of the site, adjacent to Fraser Drive and Kirkwood Road, this area of the site is currently grassed, with the site boundary to Fraser Drive exhibiting a number of mature trees, an assessment of the impact of the proposal on this vegetation is provided elsewhere in this report.

History

Council's electronic records indicate the following development history, potentially relevant to the subject application on this site:

DA14/0171 - change of use of part of the existing building to a general store. Not determined

DA13/0669 - re-use of existing buildings for a proposed tourist facility comprising tavern, cafe, restaurant, shop, playground and pontoon. Not determined.

Both of these applications relate to the use of the existing vacant building located towards the northern portion of the site.

DA13/0114 - two lot subdivision, erection of a service station and associated road upgrade works. Withdrawn 25 July 2013.

This proposal generally relates to a similar development to that under consideration through this application. The applicant was advised that Council officers would not be supporting the development proposal as it was not considered to be consistent with the Draft LEP 2012 and the DA was subsequently withdrawn.

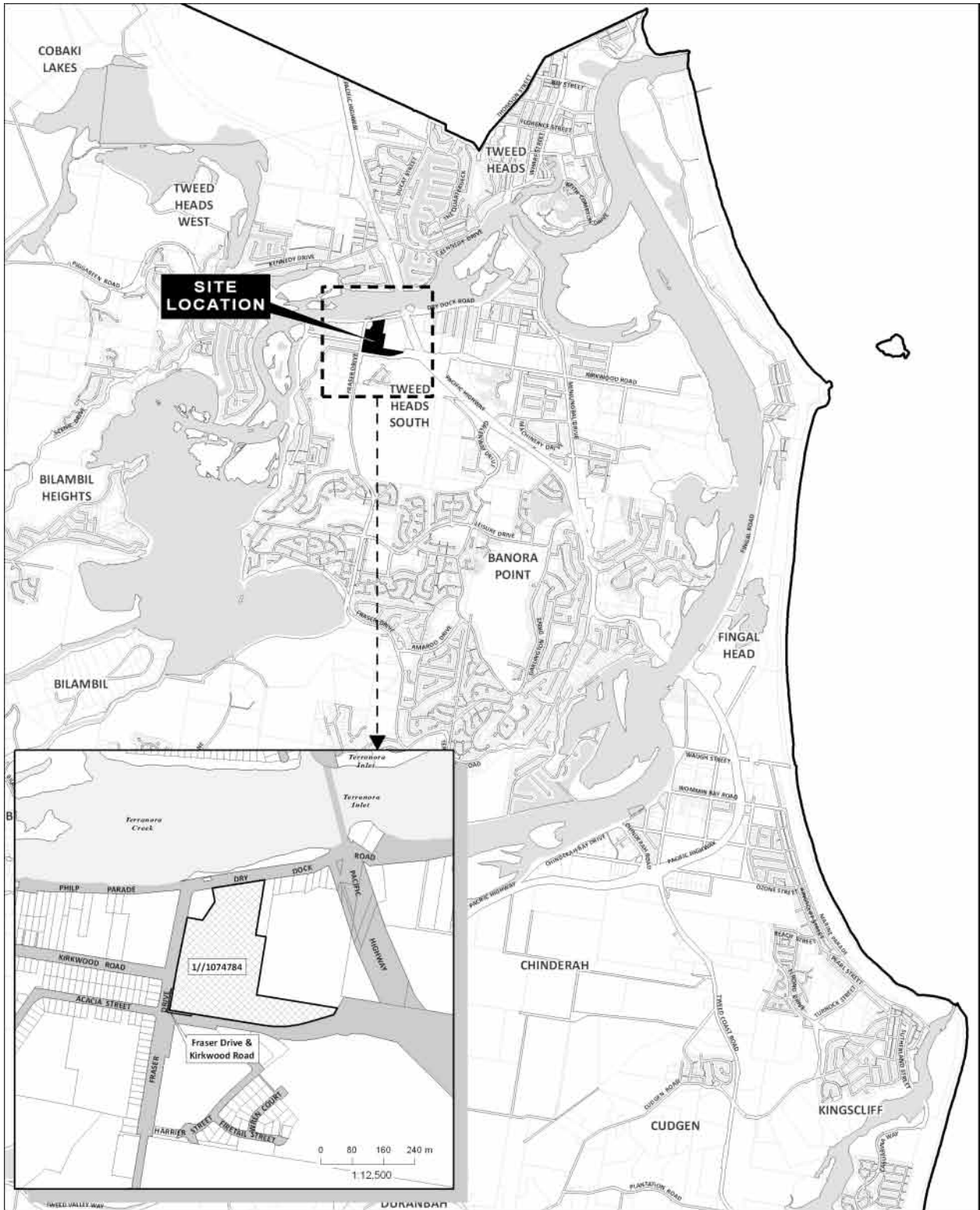
DA05/0696 - Use of existing premises for purpose of a hotel. Approved 31 August 2005. Subsequent S96 amendments to this application were also approved.

0006/2001DA - Tourist Resort and 271 accommodation units and the use of the existing premises for reception/recreation and restaurant.

D95/259 - Alterations and additions to an existing club.

D94/196 - Club.

SITE DIAGRAM:



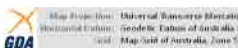
Locality Plan

Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South;
Kirkwood Road, Tweed Heads South; Fraser Drive, Banora Point

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Cadastral 14/04/2014
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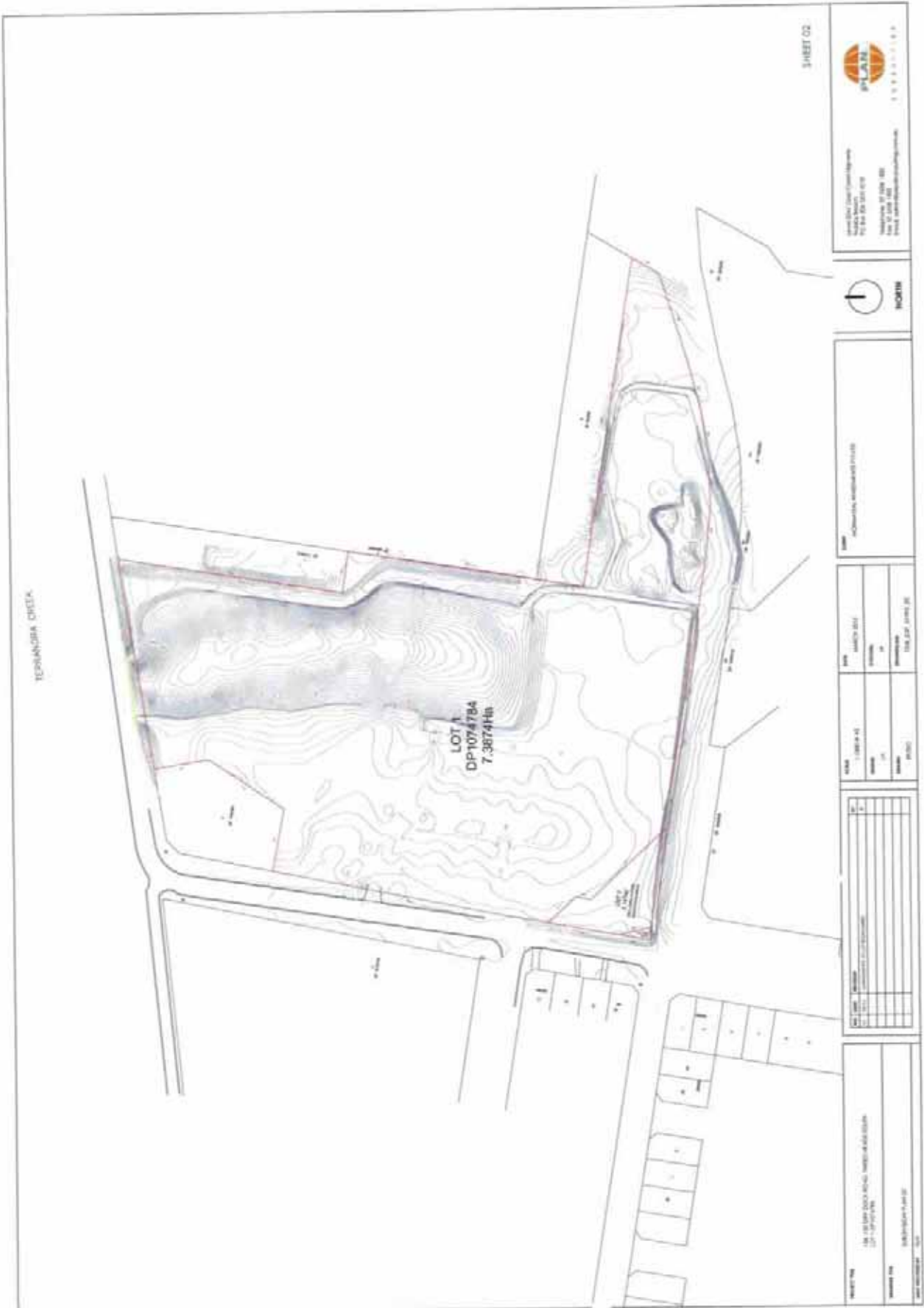
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Civic and Cultural Centre
3 Tambulung Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au





SHEET 02



Professional Land Assessment Network
 P.L.A.N.
 Incorporated in NSW, 2002
 100-110 Pitt Street Sydney NSW 2000
 www.plan-assessment.com.au

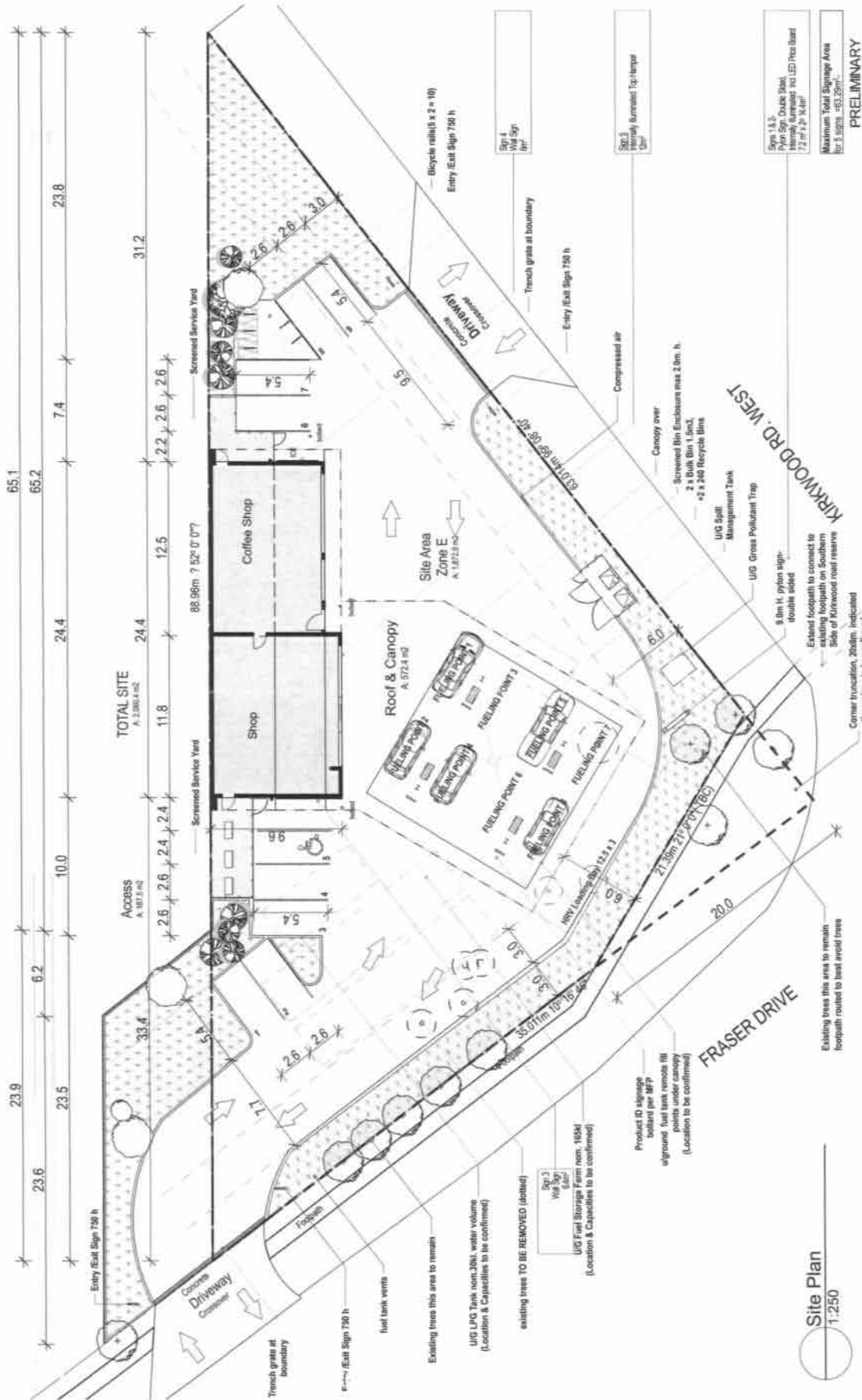


DATE: 10/05/2013
 DRAWN BY: [Name]
 CHECKED BY: [Name]

NO.	REVISION	DATE	BY	FOR
1	ISSUED FOR TENDERS	10/05/2013	[Name]	[Name]
2	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
3	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
4	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
5	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
6	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
7	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
8	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
9	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
10	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]

NO.	REVISION	DATE	BY	FOR
1	ISSUED FOR TENDERS	10/05/2013	[Name]	[Name]
2	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
3	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
4	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
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6	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
7	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
8	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
9	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]
10	REVISED TO REFLECT COMMENTS	10/05/2013	[Name]	[Name]

PROJECT NO: [Number]
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: 10/05/2013



Site Plan
1:250

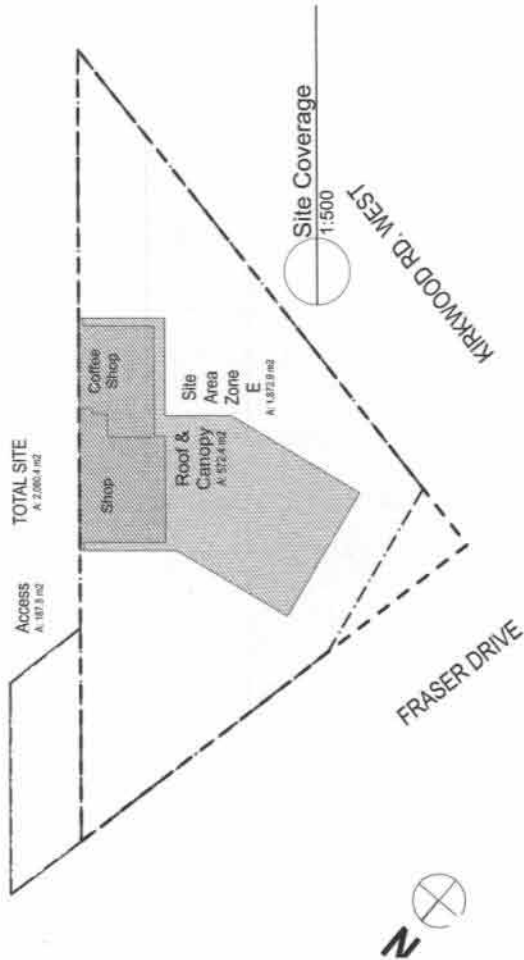
Sign 1 & 2 Covers Sign Internally illuminated LED Photo Board 7.2 m x 2.2 m x 4.4 m for 5 signs - \$63,200
Sign 3 Internally illuminated sign holder 1.5 m
Sign 4 Wall Sign 1.0 m
Sign 5 Internally illuminated sign holder 1.5 m
Maximum Total Signage Area for 5 signs - \$63,200

PRELIMINARY

CLIENT: Asset Recyclers Limited	PROJECT: Fraser Drive Service Station	DRAWING: Proposed Use Site Plan	SCALE: 1:250 @ A3	JOB NO.:
			DATE: 08/03/14	483
			DESIGN: MW	DWG NO.:
			DRAWN: AC	D402.02
				ISSUE NO.:
				PT



Lightwave Architectural Pty Ltd
140 Spring Street, Suite 101
Melbourne, VIC 3000
Tel: 03 9646 1000
Fax: 03 9646 1001
www.lightwavearchitectural.com.au

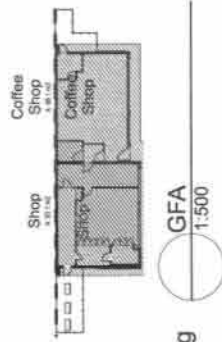
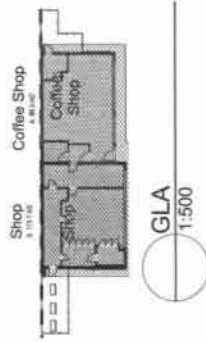


Site Coverage

Use	Area
Shop	121.1 m ²
Coffee Shop	95.9 m ²
Area Under Roof	572.4 m ²
Site Area	2060.4 m ²
Site Coverage	27.8 %

Signage Schedule

No.	Type	Area
1	Pylon- Double sided Internally	7.2 m ²
2	Illuminated with LED Price Board	7.2 m ²
3	Wall Sign	6.4 m ²
4	Wall Sign	6.0 m ²
5	Internally Illuminated Top Hamper Sign	12.0 m ²
Total		38.8 m²
Maximum Permissible		63.29 m²

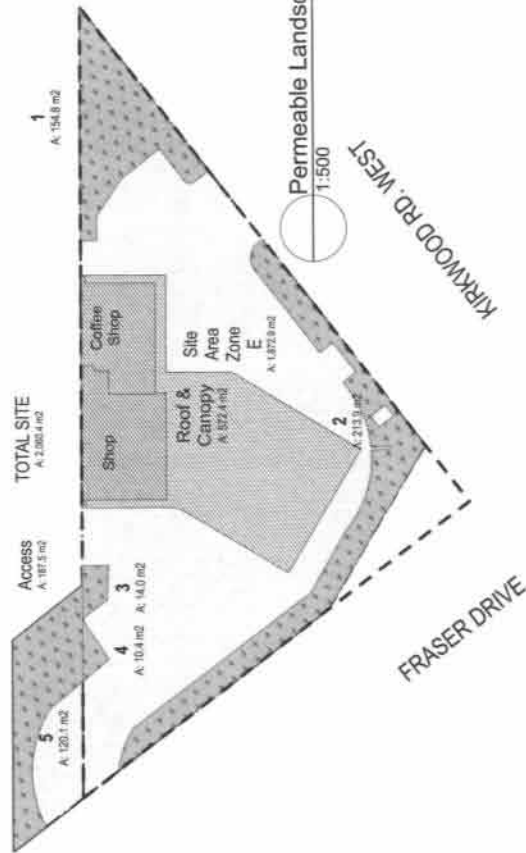


Carpark Calculations

Parking Rates	Units	Spaces required	20% ESD Reductor
2 staff	2 staff	2	1.6
88.11 m ² GFA	0.8811 x 2.5 = 2.20275	3.08385	2.467
83.75 m ² GFA	0.8375 x 2.5 = 2.09375	2.93125	2.345
Total Required	8.015	9	6.412
Total Provided	9		9

Bicycle Parking

Spaces required	Spaces provided
9	10 X Class 3



Permeable Landscaped Areas

Location	Measured Area
1	154.7 m ²
2	213.9 m ²
3	14.0 m ²
4	10.3 m ²
5	120.1 m ²
Total	513.1 m²
Landscaped Area	24.9%
Roofed Area	572.4 m²
Pavement beyond roofed areas	974.9 m²
Total Site	2060.4 m²

PRELIMINARY

Lightwave Architectural
100-1000
100-1000
100-1000

LIGHTWAVE ARCHITECTURAL



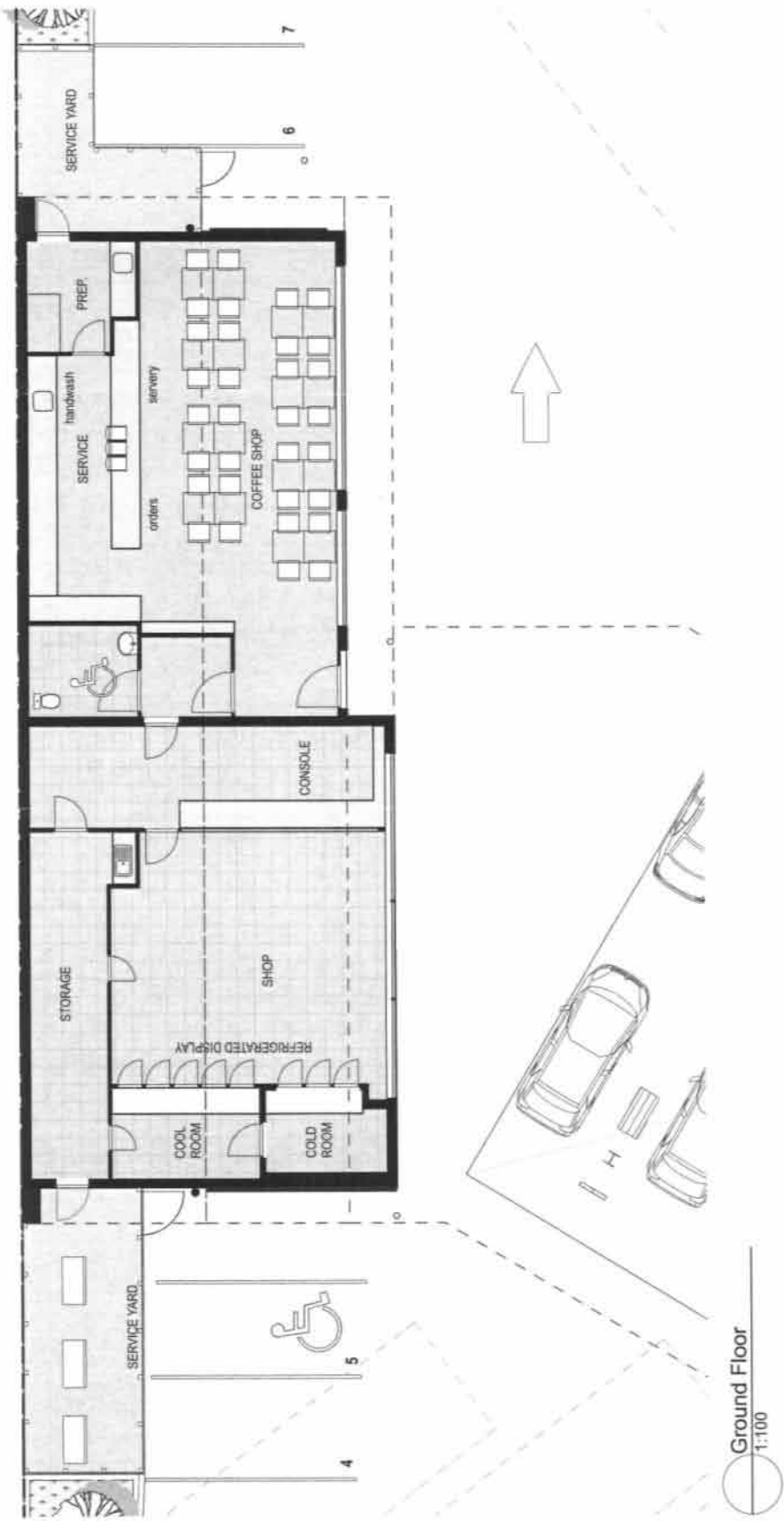
CLIENT: Asset Reproductions Limited

PROJECT: Fraser Drive Service Station

DRAWING: Site Calculations

SCALE: 1:500, 1:1 @ A3
DATE: 09/01/14
DESIGN: MY
DRAWN: AC

JOB NO: 1493
DWG NO: DMS101
ISSUE NO: PB



PRELIMINARY

JOB NO.: 1493
 DMC NO.: DA.B.01
 ISSUE NO.: PW

SCALE: 1:100 @ A3
 DATE: 08/03/14
 DESIGN: MW
 DRAWING: AC

DRAWING:
 Floor Plan

PROJECT:
 Fosseur Drive Service Station

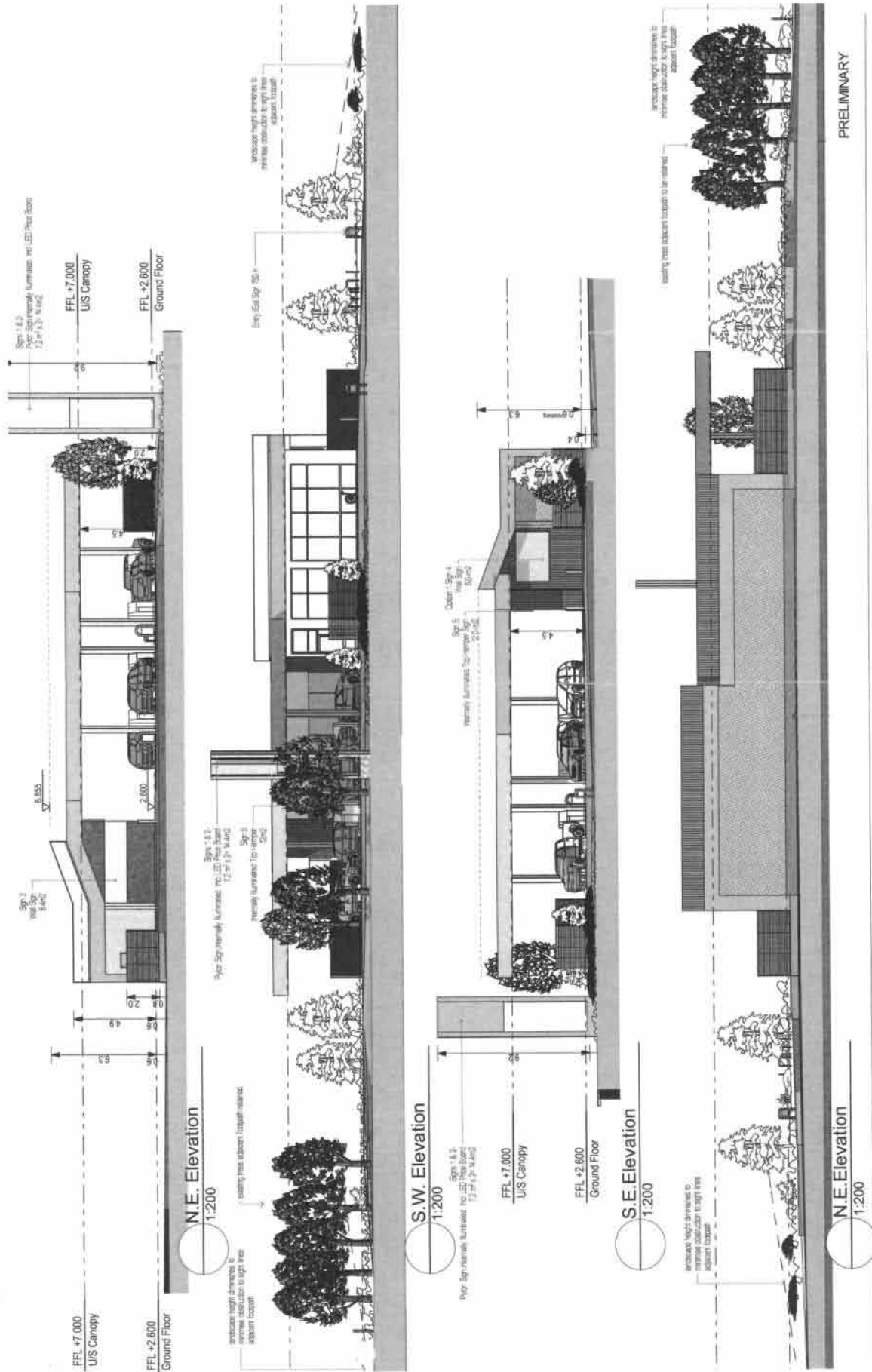
CLIENT:
 Asset Resolutions Limited



100 Southdown Road
 Suite 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

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PRELIMINARY

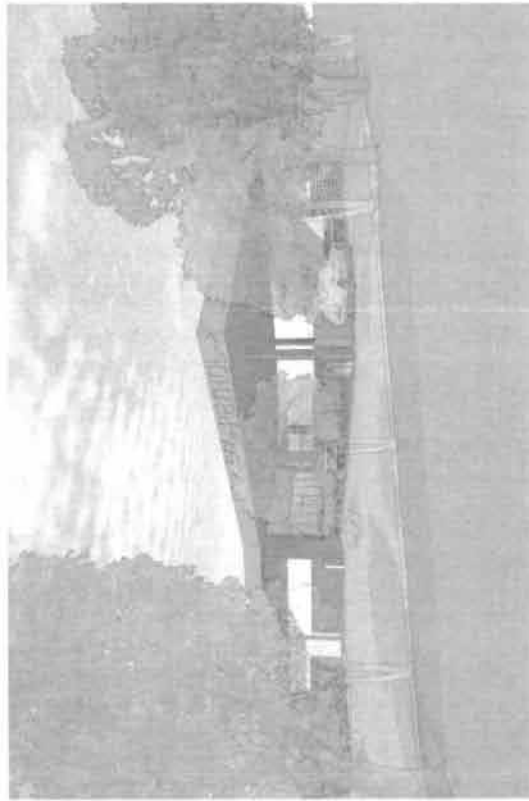
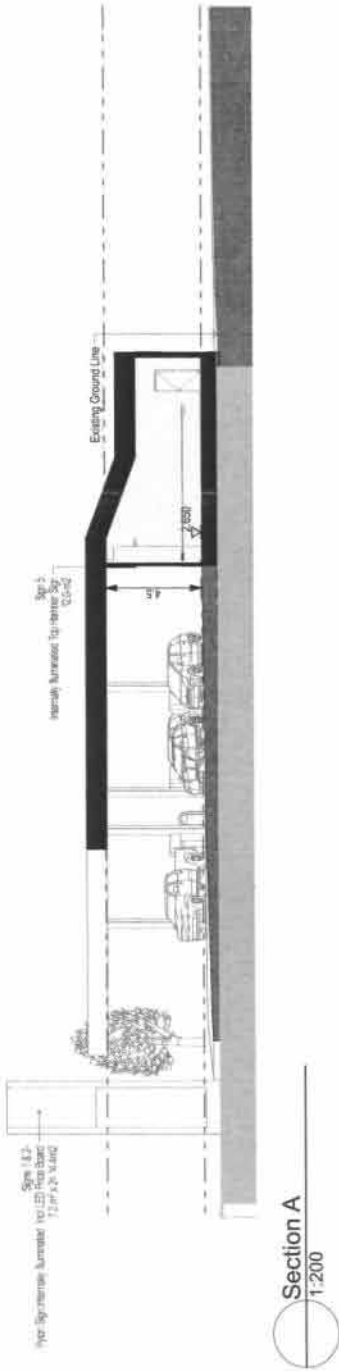
JOB NO.: M83
 DATE: 09/01/14
 DESIGN: MW
 DRAWING: AC

SCALE: 1:200 @ A3
 PROJECT: Fraser Drive Service Station
 DRAWING: Elevations

CLIENT: Asset Resolutions Limited

Lightwave Architectural
 10000 Fraser Drive
 Suite 101
 Fraser Drive
 BC V5A 1S6





1 Artists Impression-From Kirkwood Road

PRELIMINARY

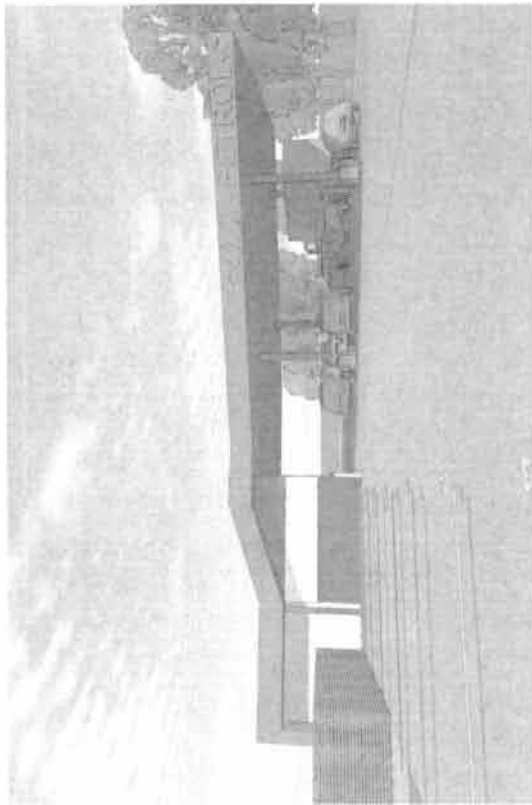
SCALE: 1:333.33, 1:200, 1:4 @ A3
 DATE: 18/02/13
 DESIGN: MW
 DRAWN: AC

PROJECT: Fraser Drive Service Station

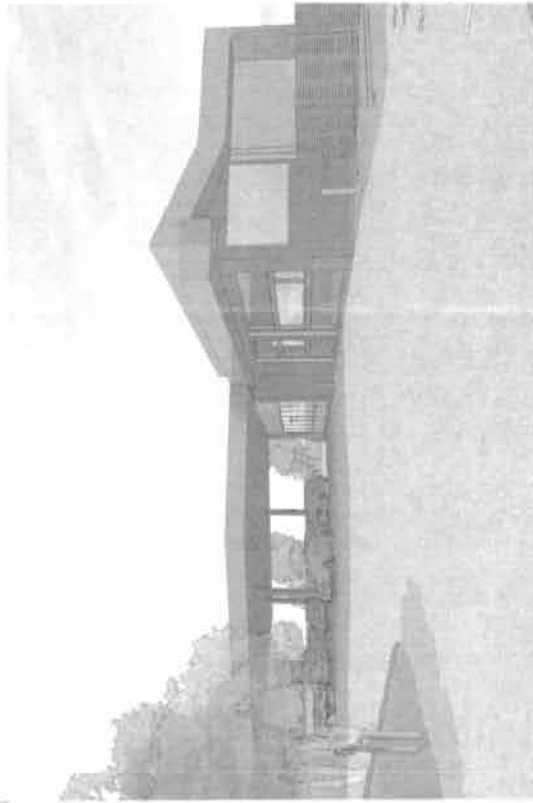
CLIENT: Asset Resolutions Limited

Lightwave Architectural
 100 St Albans Road
 St Albans, WA 6107
 Australia
 Phone: +61 8 9447 1111
 Fax: +61 8 9447 1112
 Email: info@lightwavearchitectural.com.au





2 Artists Impression- From Fraser Drive



3 Artists Impression

PRELIMINARY



LIGHTWAVE
ARCHITECTURAL

10000 16th Street NW
Suite 200
Northridge, CA 91329
Tel: 818.708.1111
www.lightwavearch.com

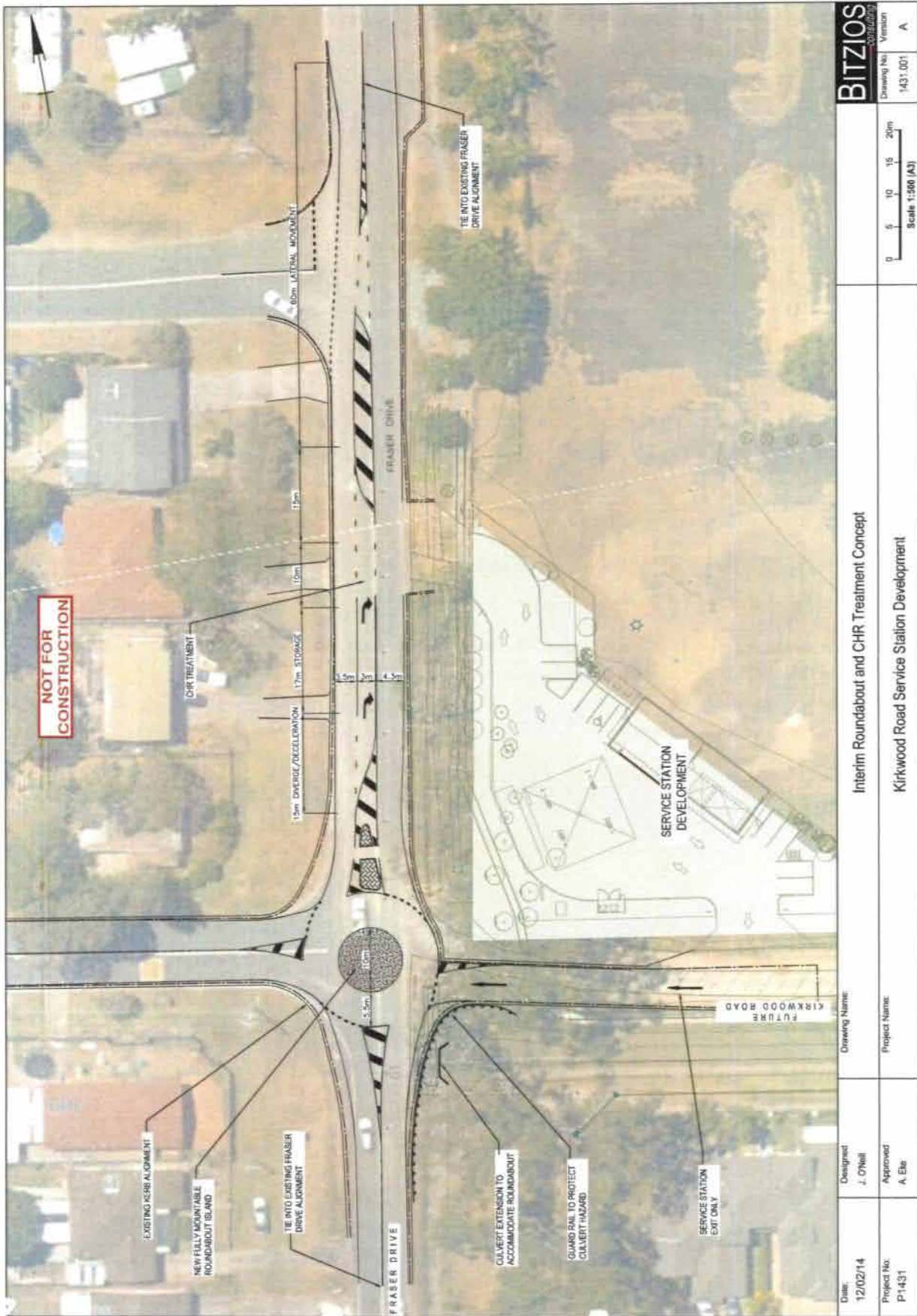
CLIENT
Asak Resolutions Limited

PROJECT
Fraser Drive Service Station

DRAWING
Artists Impressions

SCALE: 1/4" @ A3
DATE: 09/02/13
DESIGN: MW
DRAWING: AC

JOB NO.: 1483
DWG NO.: DA30.02
ISSUE NO.: P3



Date:	12/02/14	Designed:	J. O'Neil	Drawing Name:	Interim Roundabout and CHR Treatment Concept
Project No.:	P1431	Approved:	A. Ebe	Project Name:	Kirkwood Road Service Station Development

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 Tweed Local Environmental Plan (TLEP) 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is “*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*”. Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

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

Clause 5 - Ecologically Sustainable Development

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

Broadly, the subject proposal is considered consistent with the above criteria, as the proposed development is not likely to have significant ramifications for ecologically sustainable development (having regard to the environmental offsets proposed, as reviewed by Councils Natural Resource Management Unit and discussed elsewhere in this report). The proposal is not considered to warrant refusal in this regard.

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 development site is zoned 2(e) Residential Tourist and 6(b) Recreation. It is noted that the proposed service station is to be located primarily (See clause 14 below) on the 2(e) Residential Tourist zoned land with the subdivision relating to both zones. Subdivision on land zoned 6(b) Recreation is not inconsistent with the primary objective of the zone, outlined under Clause 11 considerations below.

The proposed service station is assessed as being consistent with the primary objective of the zone (also reproduced under Clause 11 considerations below) by virtue of providing a related facility to the established residential and tourist uses in the area.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed development generally complies with the aims and objectives of each, however it is noted that the proposal is not consistent with development considerations under the Draft LEP 2012.

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to its nature and scale.

Clause 11 - Zone Objectives

As noted above, the subject site is zoned for 2(e) Residential Tourist and 6(b) Recreation uses under the TLEP.

The primary objective of each zone is:

2(e) Residential Tourist

- *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.*

6 (b) Private Recreation

- *to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.*

The secondary objective of each zone is:

2(e) Residential Tourist

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

6 (b) Private Recreation

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

The proposed subdivision and service station development is a permissible development in the 2(e) Residential Tourist zone and in this regard whilst not specifically providing facilities for tourist development is considered on a general level to provide ancillary services for tourist services. The proposal is not considered to contravene the objectives of the zone. Furthermore, the proposed subdivision is not considered to contravene any of the above objectives.

The proposed development is considered to be acceptable having regard to the above objectives for the applicable zones.

Clause 14- Development near zone boundaries

The objective of this clause is '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 a more logical and appropriate development of the site.'

This clause applies to land which is within 20 metres of a boundary between any two of a number of zones, including zones 2 (e) and 6 (b) and as such is applicable to the proposed development.

In this instance, the proposed service station development is primarily contained within the land zoned 2(e) Residential Tourist on the site, however an access handle to the site encroaches onto land zoned 6(b) Recreation. This encroachment relates to an area of approximately 230m² and is within 10m of the boundary between land zones.

Under this clause development that would otherwise be prohibited may, with consent, be carried out on land to which this clause applies if the development may be carried out in the adjoining zone. Consent may only be granted if the consent authority is satisfied that the proposed development is more appropriate, due to planning, design, ownership, servicing or similar criteria, than the development that would otherwise be allowed.

The development of a service station is prohibited on 6(b) zoned land but as outlined elsewhere in this report is permissible on the adjoining 2(e) zoned land. The proposal has been located to this area in order to avoid the removal of approximately four mature trees which are located to the site roadside boundary, which is considered appropriate and warrants the support of the proposed development from a planning perspective in this instance.

Having regard to the above, the proposed development is considered to be acceptable with respect to the provisions of Clause 14.

Clause 15 - Essential Services

The objectives of this clause are:

- to ensure that development does not occur without adequate measures to protect the environment and the community's health.
- to ensure that development occurs in a coordinated and efficient manner.

The subject site has access to essential services including water and sewer infrastructure, however the subject application was reviewed by Council's Water Unit who have advised that alternative water supply and sewer infrastructure connections to Council's existing systems may be required.

In this regard it is noted that if the proposed development cannot meet gravity sewer connection requirements, a pressure sewer pump design would be required for the site.

Furthermore water services to the site would need to meet the relevant commercial development fire flow and backflow prevention requirements. In this regard the water connection for the proposed development would need to be sized accordingly to take into account commercial development requirements for water supply.

The applicant has requested that any such requirements be conditioned in the event of approval and as such, recommended conditions of consent have been forwarded by Council's Water Unit. Electricity and telecommunications services are available to the site. Having regard to the provisions of this clause, the proposed development is considered to be acceptable.

Clause 16 - Height of Building

Clause 16 of the TLEP 2000 ensures development is undertaken in accordance with the building height plan. The subject land is identified as being in an area where development of up to three storeys is allowed. For the purposes of commercial building a storey is defined as being up to 5 metres in height.

The proposed service station development displays a maximum height of 6.3m whilst it is noted that a pylon sign has a maximum height of 9.2m. As such the proposed development would constitute two storey buildings under this clause and as such are acceptable in a three storey height limit area.

Clause 17 - Social Impact Assessment

This clause relates to social impact assessment, with the objective "*to ensure proper consideration of development that may have a significant social or economic impact*". Council has prepared DCP A13 - Socio-Economic Impact Assessment which includes development proposals which require a socio-economic impact assessment to be prepared. A place of employment of greater than 25 persons would require a socio-economic impact assessment to be prepared, however it is noted that the submitted information outlines that there would be two staff on site. As such a socio-economic impact assessment is not required through DCP A13. In any event it is considered that the proposed development is relatively minor in scale and permissible with consent under the Tweed LEP 2000 at this location. It is not considered that a social impact assessment is required in this instance.

Clause 35 - Acid Sulfate Soils

The subject site demonstrates predominately Class 2 Acid Sulfate Soils with a minor section of the site to the east, away from the development (disturbance) location demonstrating Class 5 Acid Sulfate Soils.

The application has been reviewed by Councils Environmental Health Section in this regard who have provided the following comments:

The site is class 2 ASS, an ASS Investigation and Management Plan has been submitted with the Application. This Investigation and Management Plan have been assessed and are considered to be satisfactory.

Having regard to the above advice and recommended conditions it is considered that the proposal is acceptable in terms of impact upon Acid Sulfate Soils and does not contravene the provisions of this clause.

Other Specific Clauses

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent. As the submitted application seeks consent for the proposed subdivision the proposal is considered to be in accordance with this clause.

Clause 22 – Designated Roads

The subject site has frontage to Fraser Drive and access to the proposed service station is also proposed to this road which, to the south-west of the site is a Council designated road. As such this clause applies to this site. This clause states that the consent authority may grant consent to development on land to which this clause applies only if the following is satisfied:

- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

The proposal is not considered to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road.

- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

The subject application has been reviewed by Councils Traffic Engineer who has raised no concerns with respect to the above criteria. In the event of approval recommended conditions of consent have been provided with respect to formal road access points to be created to Council standards.

- (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*

The proposed development is not considered to prejudice any future road widening works. It is noted that Fraser Drive is to be upgraded to a four lane road in the future. This application has been reviewed by Council's Traffic Engineer with no concerns raised in this regard. The proposal is considered to be acceptable having regard to this objective.

- (d) *where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*

Not applicable. The subject site is zoned 2(e) Residential Tourist.

- (e) *the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*

The proposed development is not considered to be a type which is particularly sensitive to traffic noise as outlined above. The application has been reviewed generally in terms of noise by Councils Environmental Health Unit and it is considered that the proposal is acceptable.

- (f) *the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and*

The proposal is not considered to detract from the scenic values of the locality, due to variation in colours and materials to the building design and proposed landscaping.

(g) *where practicable, access to the land is provided by a road other than the designated road, and*

Given the layout of the proposed development, it is considered that the subject proposal cannot practically provide vehicular access except from the designated road.

(h) *in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:*

- (i) *would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*
- (ii) *would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
- (iii) *would not compromise highway safety and efficiency, and*
- (iv) *would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

Not applicable. The subject site is zoned 2(e) Residential Tourist.

Having regard to the above, the proposal is considered to comply with the objectives of clause 22 and sub clause 4.

Clause 32- Aircraft noise

The subject site is located within both the 25-30 ANEF and 30-35 ANEF area as designated under the 2031 Aircraft Noise Exposure Forecast, with the proposed service station being located in the 25- 30 ANEF area only. The objectives of this clause are:

- to prevent certain noise sensitive developments from locating in proximity to Coolangatta Airport and its flight paths, and
- to minimise the noise impact from the operation of Coolangatta Airport on development in its vicinity.

Under this Clause, when deciding whether to grant consent to development for the purpose of a community building, place of assembly, place of public worship or retail, commercial or light industrial purposes within the 25 or higher ANEF contour the consent authority must consider Australian Standard AS 2021–1994 (*Acoustics—Aircraft noise intrusion—Building siting and construction*).

The submitted information has indicated that the use of Service Station is not a listed use within this clause, however Councils Environmental Health Section has requested that an Aircraft Noise Assessment Report is to be submitted for consideration as the proposal is for commercial purposes. In response to this request the applicant has submitted an Aircraft Noise Assessment from CRG Acoustical Consultants. The following comments have been received from Council's Environmental Health Unit with respect to this clause:

This assessment has considered Council's further information request and has provided recommended acoustic treatments to mitigate aircraft noise. It is considered that suitable conditions can be placed on any Consent in relation to this assessment and its recommendations.

Having regard to the above comments and the submitted Aircraft Noise Assessment, the proposed development is considered to satisfy the provisions of this clause and is considered acceptable.

Clause 34 – Flooding

The objectives of the Clause are as follows:

- *To minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.*
- *To minimise the adverse effect of flooding on the community.*

The subject site is indicated as being flood prone, being partially located in the 1 in 100 year (Q100) flood area as well as being entirely affected by the Probable Maximum Flood (PMF) level. The proposed service station development is located in both the PMF and Q100 flood areas.

The design flood level at this location is 2.6m. The application was referred to Councils Infrastructure Engineer with respect to flooding on the site. It was advised that 'The proposed development is on flood liable land but is non-habitable in nature. The applicant proposes to fill the land to ensure that the finished floor levels of the buildings are at design flood level (2.6m AHD). The proposal is acceptable in terms of flooding.'

Having regard to the advice provided above it is considered that the subject application is acceptable having regard to the provisions and objectives of this clause.

Clause 37- Electricity transmission line corridor

The objective of this clause is to cater for the alignment of and development in proximity to, major transmission lines. The southern section of the site, including the proposed service station location, is covered by this clause.

This clause outlines that the consent authority must not grant consent unless it has:

- (a) notified NorthPower of the proposed development, and
- (b) considered any representations received from NorthPower within 21 days of such notification.

Essential Energy have replaced NorthPower as the energy company to be notified of the proposal. In accordance with the above Essential Energy were notified of the application and provided comments indicating that 'Essential Energy wishes to advise that it has no objections to the above development application'. As such this clause is considered to be satisfied in this instance.

Clause 38- Future road corridors

The subject development site is located on land which is partially mapped as being a future road under the provisions of this clause. The objective of the clause is 'to cater for the alignment of, and development in proximity to, future roads.'

This clause outlines that development, other than exempt development or agriculture, must not be carried out on land in or adjoining a future road corridor shown on the zone map, except with development consent. Furthermore, this clause requires Council to consider the effect of that development on the future alignment of the road corridor.

In this instance it is noted that the future road corridor was provided for the development of Kirkwood Road to the western side of Pacific Motorway, for which a specific alignment was approved under PTV10/0032 which is located to the south site boundary. The subject application has been reviewed by Council officers with respect to the Kirkwood Road upgrade with no objections raised to the proposal in relation to this. In the event of an approval of this application, recommended conditions of consent have been provided which require the proposal to be compatible with the Kirkwood Road alignment. As such, the proposed development is considered to be acceptable having regard to future road development to which this clause relates.

Clause 39 – Remediation of Contaminated Land

The objective of this clause is '*to ensure that contaminated land is adequately remediated prior to development occurring.*' It is noted that the subject development area is currently grassed.

The application has been reviewed in terms of land contamination by Council's Environmental Health Unit with no issues raised with respect to the proposed development area being contaminated. The proposed development is not considered to contravene the provisions of this clause.

Clause 47- Advertising signs

The objective of the advertising provisions is to ensure that outdoor advertising:

- a) Conveys advertisers' messages and images while complementing and conforming to both the building on which it is displayed and the character of the locality, and
- b) Does not adversely affect the locality in terms of appearance, size, illumination or overshadowing or in any other way, and
- c) Does not lead to visual clutter through the proliferation of signs, and
- d) Does not detract from the rural character or scenic qualities of the area of Tweed.

In this instance it is noted that the proposed development has included a proposed signage schedule as part of this application. Whilst the specific details of the graphic to be displayed on this signage has not been provided the location and dimensioning has been submitted for Council assessment. In this instance the following signage has been proposed:

- Double sided Pylon sign (Height of 9.2m), internally illuminated with LED Price Board. Total area 7.2m² to each side (14.4m²);
- Wall Sign located to the North West Shop Elevation. Total area 6.4m²;
- Wall Sign located to the South East Coffee Shop Elevation. Total area 6 m²;
- Internally Illuminated Top Hamper Sign located to the service station canopy. Total area 12m².

The proposed signage is considered to conform to the objectives outlined above given its nature and scale, typical to signage associated with the proposed development. Subject to monitoring of the graphic content of actual signage as a condition of consent on any approval, the subject application is considered to be acceptable under the provisions of this clause.

The application has been referred to Councils Traffic Engineer who has raised no concerns with respect to the proposal having an impact on the surrounding road network. The signage is not considered to adversely affect the locality due to its size and it is considered that a development proposal of this nature would provide advertising signage. The proposal does not lead to a visual clutter through the proliferation of signs and does not detract from the scenic qualities of the Tweed. As such the proposal is considered to be acceptable having regard to this clause.

Clause 54- Tree preservation order

The proposed development would necessitate the removal of a number of trees to the south west corner of the subject site. This area of the site is covered by both Councils 1990 and 2011 koala habitat tree preservation orders. The objective of this clause is '*to enable the protection of vegetation for reasons of amenity or ecology.*'

The subject application was referred to Councils Natural Resource Management (NRM) Unit with respect to vegetation removal on the site. Whilst this is discussed in more detail later in this report it is considered that the subject application is acceptable having regard to the provisions of this clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The subject land is designated coastal land and therefore this clause applies. The provisions of this clause state:

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
 - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the NSW Coastal Policy 1997, the Coastline Management Manual or the North Coast: Design Guidelines. Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing of adjacent open space. The proposal does not contradict the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

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 located adjacent to Fraser Drive, which is a Council Designated road as well as being located adjacent to the proposed alignment for the Kirkwood Road (west) upgrade which will provide direct access from the site to the Pacific Motorway (approx 500m) and additional access to the Tweed Heads and Tweed Heads South urban areas. Accessibility to the site is considered to be acceptable and the proposal satisfies this clause.

Clause 81: Development adjacent to the ocean or a waterway

This clause states that Council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied of the following:

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

To the north of Dry Dock Road, which is the road reserve which borders the northern section of the site, it is noted that there is a portion of foreshore open space which is accessible from the public road by way of walkway. This area extends from the motorway bridge to the west and includes an area in close proximity to the north of the site. In this regard the proposal is considered to be compliant with the provisions of this control.

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

It is noted that the buildings proposed as part of this application are located to the south of the subject site, approximately 300m from the waterway, and therefore outside of the area covered by this clause (i.e. within 100m of waterway). In any event it is considered that the proposed development will not detract from the amenity of the waterway.

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

The provisions of the Coastal Zone Management Plan for Cobaki and Terranora Broadwater which are applicable to the subject site are detailed elsewhere in this report. It is considered that the proposed development is consistent with the principles of this plan.

The subject application is considered to be consistent with the above clause and the provisions of the North Coast Regional Environmental Plan generally.

SEPP No. 33 – Hazardous and Offensive Development

The subject application has been reviewed with respect to this SEPP by Council's Environmental Health Unit as the subject application includes services for fuel storage and handling. The following comment has been provided with respect to this:

"A multi-level risk assessment incorporating an assessment in relation to the provisions of SEPP 33 has been submitted with the application. This assessment concludes that there is negligible risk to adjoining premises as a result of the proposed storage and handling of dangerous goods such as petroleum and LPG."

Recommended conditions of consent have been provided which would ensure that the development would comply with all requirements of NSW WorkCover relating to the storage and handling of dangerous goods. The proposal is considered to be acceptable having regard to the provisions of this clause.

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.

The subject application has been reviewed by Council's Environmental Health Unit with respect to land contamination, who have raised no concerns in relation to contamination on the site. Having regard to the advice provided, the subject application is considered to be acceptable with respect to contaminated land and would not contravene the provisions of this SEPP.

SEPP No. 64 – Advertising and Signage

The aims of this policy relate to ensuring that signage and advertising are compatible with the desired amenity and visual character of the subject locality. To comply with the policy, signage should be:

- (i) Compatible with the desired amenity and visual character of the area;
- (ii) Provide effective communication in suitable locations;
- (iii) Signage should be of high quality design and finish.

Clause 8 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 8 assessment criteria, as set out below:

1. Character of the area: The proposed signage is considered to be compatible with the proposed character of the area, being associated with a service station development proposed on the site and in this regard is an extension of the proposed development to which this application relates. 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 signage is to be located at various points around the proposed service station including adjacent to the road reserve where the proposed pylon sign is to be located. It is not considered to obscure, compromise or dominate any important views or reduce the quality of vistas. The proposal is considered to respect the viewing rights of other advertisers.
4. Streetscape, setting or landscape: The subject signage is considered to be appropriate in terms of scale, proportion and form having regard to the proposed service station development and associated streetscape and setting. The proposed signage 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 proposed signage appears compatible with the size, scale and proportion of the proposed service station development it is to be associated with, thus the proposal will not impinge on 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 signage 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 signage has not been provided with the subject application. In the event of this application being approved it is considered appropriate that a condition would be applied to any consent requiring that the signage detail be forward to Council for written approval prior to the signage being implemented. The proposed advertisement sign does not contain any safety devices or platforms.
7. Illumination: The proposed pylon sign and top hamper sign are to be illuminated. It is considered that in the event of approval of this application appropriate conditions of consent would be applied ensuring that illumination would not result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, or detract from the amenity of any residence or other form of accommodation. If appropriate, further standard conditions of consent would be applied with respect to hours of illumination and the ability to adjust illumination intensity.
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 signage has been reviewed by Councils Traffic engineer with no issues raised with respect to this aspect of the proposal. The sign is not considered to obscure any sightlines from public areas or encroach onto the footpath or car park of the subject site.

It is considered that the proposal, as submitted is consistent with the aims and objectives of SEPP 64 – Advertising and Signage and the requirements of Schedule 1 of the policy.

SEPP No 71 – Coastal Protection

The subject development site is partially within the coastal zone (as per the NSW Government Coastal Policy 1997) due to its proximity to Terranora Creek at this location and as a result is subject to the provisions of State Environmental Planning Policy No.71. It is noted that the area identified as being subject to SEPP71 provisions is located to the northern site boundary and does not include the proposed service station location. Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

(a) the aims of this Policy set out in clause 2,

The proposal is generally in accordance with the aims of this policy.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

The proposal will not impact on public access along the foreshore, as this site is not located at the public foreshore.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

It is not considered that this application offers any opportunities to provide new public access to the foreshore.

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

The proposal is considered suitable, having regard to its permissibility in this area.

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

The proposal will not result in any detrimental impact on the coastal foreshore given its scale and the distance of physical works on site from same (approx 300m).

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

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

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

The proposal has been reviewed by Council officers from the Natural Resource Management (NRM) Unit. Whilst it is noted that the proposed development will result in the removal of vegetation to the roadside boundary which are considered to be of ecologically significant value offering refuge and forage resource opportunities to a suite of local fauna species, given the land-use designation under the LEP 2000, the restricted land area available for development within the

zone and the potential impact of approved Kirkwood Road upgrade on existing vegetation, NRM have resolved to accept an offset for the loss of vegetation at a ratio of 1:10 (loss: replace) with revegetation to be provided on the existing allotment and using local native species. Having regard to this, the proposal is considered acceptable under the above provision.

(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 is not considered to have an adverse impact upon marine environments or habitats.

(i) existing wildlife corridors and the impact of development on these corridors,

The proposed development is not considered to impact negatively on wildlife corridors.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards.

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

The proposal is not considered to cause any conflict between land-based and water-based activities.

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

The subject development is not considered to impact on any traditional Aboriginal cultural values.

(m) likely impacts of development on the water quality of coastal water bodies,

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items

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

Not applicable to the subject application.

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

(i) the cumulative impacts of the proposed development on the environment, and

This development is not considered to have a negative cumulative impact on the environment.

- (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

The proposed development application has not addressed water or energy usage requirements in the submitted application; however it is considered that these are to be satisfied where statutorily required through detailed design at the construction phase and would be required to achieve compliance with the Building Code of Australia.

Conclusion

It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No.71 – Coastal Protection

SEPP (Infrastructure) 2007

Schedule 3 of this SEPP outlines traffic generating development which is required to be referred to the RTA, now Roads and Maritime Services (RMS). There are two levels of referral required, with development in Column 2 requiring a full referral to the RMS, whilst development in Column 3 can be dealt with by way of referral to the Development Traffic Advisory Group (DTAG). Under Column 3 of this Schedule a service station of any size or capacity with access to a classified road or to a road that connects (within 90m) of a classified road is required to be referred to DTAG for comment. As such the application was reviewed by DTAG with the following comments provided:

"The Committee noted that on the Council's ultimate concept design for Kirkwood Road a noise barrier two metres high is proposed to be constructed across the Kirkwood Road frontage of the site. A driveway egress from the site would reduce the effectiveness of this wall.

The proposed accesses to the proposed development are considered to be satisfactory as a single lane roundabout is proposed for the intersection of Kirkwood Road and Fraser Drive and auxiliary left turn and right lanes are proposed for the northern access on to Fraser Drive. The impact to through traffic on Fraser Drive has been assessed as minimal."

Having regard to the above comment, the proposed development is considered to be acceptable, in particular noting that the impact to through traffic on Fraser Drive has been assessed as minimal. Having regard to the above, the proposed development is considered to be acceptable having regard to the provisions of this SEPP.

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

It is noted that the draft Tweed Local Environmental Plan 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. The subject application is assessed against the provisions of the Tweed Local Environmental Plan 2014 below:

Part 1 Preliminary

1.2 Aims of Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
 - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
 - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
 - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
 - (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
 - (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
 - (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
 - (i) to conserve or enhance areas of defined high ecological value,
 - (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible at this location.

1.4 Definitions

Under this Plan, the proposed development would be defined as a 'service station' whilst subdivision of the site is also proposed. A service station is defined as follows:

service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,

- (b) *the cleaning of motor vehicles,*
- (c) *installation of accessories,*
- (d) *inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),*
- (e) *the ancillary retail selling or hiring of general merchandise or services or both.*

This is prohibited in the RE2 zone.

1.8A Savings provision relating to development applications

This clause states that if a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

With respect to this it is noted that the subject application was lodged with Council on 20 August 2013, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014 and as such this clause is applicable to this development application. Notwithstanding this, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned as RE2 – Private Recreation under the provisions of this plan.

2.3 Zone objectives and Land Use Table

The Draft Tweed Local Environmental Plan (LEP) 2012 zones the subject site RE2 Private Recreation. The objectives of the RE2 Zone are as follows:

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

- *To enable land to be used for private open space or recreational purposes.*

In assessing the proposals compliance with this objective, the scale of the proposal and its location on the subject site must be directly considered. The proposed development is located on Lot 1 DP1074784 which is a large site of 7.601 hectares. The proposed service station located on the corner of Fraser Drive and yet to be

formed Kirkwood Road is situated on 1954m² of land. This represents 2.57% of the total allotment area.

At only 2.57% of the total site area it is unreasonable to assert that the proposal will prevent the land (Lot 1 DP1074784) from being used for private open space or recreational purposes. The service station is located such that access to it and its operation does not pose a restriction beyond the bounds of the area proposed for the service station. The proposed service station will have no impact upon the lands ability to be used for private open space or recreational purposes and the proposal is compliant with this objective.

- *To provide a range of recreational settings and activities and compatible land uses.*

A service station in this location does not limit the range of recreational or other activities and settings that can occur on the site. A range of recreational activities require fuel and minor convenience services, given the sites location and the known future development of Kirkwood Road, a service station in the proposed location will provide for this associated need. As such a service station is a compatible land use in the locality.

As discussed above the proposal utilises 2.57% of the total land area of the site and cannot be considered the primary or dominate use on the land. The proposed service station is reasonable sized and at scale intended to service future passing traffic from the Kirkwood Road interchange and the current and future recreational users accessing the nearby recreation facilities. The proposal is complaint with the objective.

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

The subject site is largely cleared and has been subject to a number of urban land uses. Importantly the proposed zoning change under the DTLEP 2012 is a result of rationalising zonings to the property boundaries rather than a specific action to protect a natural feature essential for recreation purposes. The proposed use of the small portion of the site for a service station will not impact upon the existing environment nor will it prevent the remaining 97.43% of the subject site from providing an attractive setting for recreation purposes. The proposal complies with this objective.

The proposed use is permitted under the Tweed Local Environmental Plan 2000 and the sites location is such that it does not compromise the objectives of the RE2 zone. The proposal is appropriate given the site location and future development within the area. Council can and should issue consent for the development.

Whilst the applicants' justification above is noted, it is considered that the subject application would not, irrespective of overall site area, comply with the zone objectives. These objectives relate to recreational, private open space and natural environment related activities. The proposed development constitutes a service station which is not considered to be consistent with the above objectives of the RE2 Private Recreation zone as

the use does not provide for a recreational, private open space or natural environment purposes.

Given that the proposed development is prohibited with the subject zone and not considered to be in accordance with the objectives of the zone, it is considered that the subject application should be refused on this basis.

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 LEP was gazetted on 4 April 2014 as the Tweed Local Environmental Plan 2014, therefore the draft plan is considered to have been certain and imminent given that it was subsequently commenced.

Approval of the development would result in creating Existing Use Rights for the development, which is not considered to be good planning practice.

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.

It is noted that the applicant has been advised of this non-compliance and was recommended to withdraw the application as Council officers would not support the proposed development.

Part 4 Principal development standards

4.3 Height of buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the site has a maximum building height of 10m (Control) as identified on the building height map.

The proposed service station development displays a maximum height of 6.3m whilst it is noted that a pylon sign has a maximum height of 9.2m, which complies with the height of buildings allowable in this area. As such, this is considered acceptable and the proposal is not considered to contravene the provisions of this Clause.

In accordance with the advice provided above, as the draft LEP is now considered to be *certain and imminent* the application is not supported by Council officers and as such it is recommended that the application be refused due to non-compliance with this draft LEP. The application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and also because the proposal is considered not to meet the objectives of the draft zone.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposed development is subject to the provisions of DCP A2 with respect to site access and parking.

Access

Access will be provided to the site via two new crossovers, one to Fraser Drive and one to Kirkwood Road. The proposal has been designed to allow Articulated Vehicle (AV) and Heavy Rigid Vehicle (HRV) access to the service station site. This has been reviewed by Council's Traffic Engineer and Development Engineering Section who have raised no objection to the access arrangements to the site. As such these provisions are considered to be acceptable.

Parking

The proposed development would generate car parking requirement under DCP as a service station development (C17). Under this control, car parking is required at a rate of one space per staff and customer parking at a rate of 4 per work bay and 3.5 per 100m² convenience or retail store.

In this instance, the proposal is stated as having two staff which equates to two car spaces. The coffee shop component of the service station is identified as having a GFA of 88.11m² and the Service Station shop a GFA of 83.75m² which generates a requirement of 6.015 spaces. As such the proposal generates a total requirement of 8.015 spaces, rounded up to 9. A total of 9 spaces have been provided which is compliant with these requirements. Five bicycle spaces would also be required as part of this application. Whilst these have not been demonstrated on the submitted site plan it is considered that there is adequate space on site to provide the requisite bicycle parking.

It is considered that the proposed development has adequate parking and access arrangements as outlined above and as such the proposal is consistent with DCP A2.

A3-Development of Flood Liable Land

The subject site is indicated as being flood liable, being affected by both Councils PMF flood level and having a design flood level of 2.6m AHD. The proposal was referred to Councils Infrastructure Engineer who commented that 'The proposed development is on flood liable land but is non-habitable in nature. The applicant

proposes to fill the land to ensure that the finished floor levels of the buildings are at design flood level (2.6mAHD). The proposal is acceptable in terms of flooding.'

Having regard to these comments, it is considered that the proposed development is generally in accordance with the provisions of DCP A3 and is acceptable in terms of development on flood liable land.

A4-Advertising Signs Code

This plan sets out the maximum signage requirements for business premises, including the different types and sizes of acceptable advertising signage. The aims of this DCP are to:

- Promote a high standard of signage quality and prevent excessive advertising and visual clutter by encouraging the rationalisation of existing and proposed signs.
- Ensure that advertising signs do not detract from the scenic beauty and amenity of the Shire.
- Ensure that advertising and advertising structures are compatible and compliment the character of a building site or area.
- Promote adequate and effective advertising and recognise the legitimate need for signs to provide for directions, business identification and promotion.
- Provide appropriate opportunities for advertising signs for the Tourist Industry to give effect to the Tweed Shire Tourism Strategy.
- Ensure that advertising signs do not reduce the safety of any road, pedestrian path or navigable waterway.
- Ensure that advertising signs are constructed and maintained in a safe and tidy condition.
- Ensure that a fair and consistent approach is taken by Council in dealing with advertising sign applications.

The proposed signage is considered to be in keeping with the amenity of the area and generally minimises the visual impact of signs in the area due to the scale of the signage, consistent with the overall development proposal. The proposed development does not contravene the above objectives and would allow for appropriate advertisement of the service station development.

DCP A4 specifies that a maximum of five business identification signs shall be permitted per business premise. The proposed signage is compliant with this control, with five signs proposed as part of this application, detailed as follows:

- Double sided Pylon sign (Height of 9.2m), internally illuminated with LED Price Board. Total area 7.2m^2 to each side (14.4m^2);
- Wall Sign located to the North West Shop Elevation. Total area 6.4m^2 ;
- Wall Sign located to the South East Coffee Shop Elevation. Total area 6m^2 ;
- Internally Illuminated Top hamper Sign located to the service station canopy. Total area 12m^2 .

Furthermore, it is noted that under A4.2.4 there is a maximum area of signs per business outlined which is calculated by multiplying the first 10 metres of the frontage of the premises by 1 and each metre thereafter by 0.5 and then expressing this figure in square metres. In this instance the proposed service station has a frontage of approximately 115m (10m x 1 & 105m x 0.5) which equates to a maximum area of signs of approximately 63m². As the proposed cumulative signage covers an area of 38.8m² the proposed development is in accordance with this control.

Having regard to the above, the proposal is considered to be generally acceptable having regard to the provisions and objectives of this DCP.

A5-Subdivision Manual

Tweed Development Control Plan A5 -Subdivision Manual aims to:

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

This DCP contains Council's guidelines for the preparation of applications for subdivision and aims to facilitate Council's assessment and consideration of such applications. The subject application has been referred to Council's Development Engineer who has reviewed the subject application and indicated that the proposal would be acceptable subject to appropriate conditions of consent. Where applicable these matters have been discussed below.

Environmental Constraints – this section of the DCP relates to issues such as contamination, bushfire and flooding etc. These matters are discussed in detail elsewhere in this report with the conclusion being that the proposal is generally acceptable with respect to environmental constraints on the site.

Landforming – Council's Development Engineering Section has advised that:

Only minor land filling is proposed, including the filling of perimeter swales to achieve compliant road verges.

It is considered that the proposal is acceptable in this regard subject to the provisions of standard conditions of consent as recommended in the event that the application is approved.

Stormwater Runoff, Drainage, Waterways & Flooding – Council's Development Engineering Section and Planning and Infrastructure Engineer have reviewed the application with respect to the above aspects. The proposal is considered to be generally acceptable subject to the imposition of applicable conditions of consent where required. The proposal considered acceptable having regard to the issues to be discussed under this section.

Urban Structure – The proposed subdivision is considered to provide acceptable access, orientation and configuration of lots which does not contravene the provisions of this section of the DCP.

Infrastructure – Council's Development Engineering Section and Water Unit have assessed the proposed development against the relevant standards pertaining to road ways, water & sewer provisions, electricity and flood protection, with the proposal assessed as being acceptable. Appropriate conditions of consent would be applied in the event of approval of the application.

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

DCP A11 – Public Notification of Development Proposals

The proposed development was advertised and notified from 4 September 2013 to 4 October 2013. During this time three public submissions were received, the content of which is detailed elsewhere in this report.

DCP Section A15 – Waste Minimisation and Management

This DCP aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

A Waste Management Plan has not been prepared as required by this DCP, however the submitted application has been reviewed by Council's Waste Management Unit who have raised no concerns with respect to waste management issues for the subject development. Having regard to this advice, the proposed development is considered to be generally acceptable having regard to the provisions of this DCP.

DCP B3 – Banora Point West- Tweed Heads South

The subject site is partially located within the area to which this DCP applies, with the southern section of the site, including the proposed service station location being in this area. The general aims of the DCP are to:

- Present Council's objectives with regard to development of Banora Point West - Tweed Heads South;
- Provide more detailed provisions than that contained in the Tweed Local Environmental Plan 2000;
- Provide guidelines for determination of the merits of developments within Banora Point West - Tweed Heads South as required by Section 90(1)(a) of the Environmental Planning and Assessment Act, 1979; and
- Give detailed guidance to those wishing to develop within the Banora Point West - Tweed Heads South Area, to indicate Council's policies with respect to development, and to form a basis for negotiations should a departure from the provision of this plan be requested.

The subject site is specifically located in the Special Uses (Aquatic Club) Area in Precinct 2. The subject site is not located within a specially nominated Neighbourhood Business or Local Shop sites as identified by this DCP. However, the subject application is not considered to warrant refusal on this basis, particularly given that these sites are not at the exclusion of all other commercial development in the precinct, and the scale of the proposal.

Section B3.9 Traffic and Transport outlines that distributor roads (including Kirkwood Road and Fraser Drive) are expected to carry large volumes of traffic in the future. To increase traffic safety and to avoid the need for wide road reservations, vehicular access to a distributor road may only be made by way of another road. Thus, direct access from individual private properties to a distributor road is prohibited. Furthermore it is noted that Subdividers creating allotments adjoining distributor roads are required to prepare restrictions as to user under Section 88B of the Conveyancing Act to effectively prevent direct vehicular access to and from allotments across the distributor road.

The proposed service station proposes access to both Fraser Drive and the proposed Kirkwood Road when constructed. With respect to this it is noted that the proposed service station development has been reviewed by Council's Traffic Engineer, Development Engineering Section and has been referred to the Development Traffic Advisory Group (DTAG) for comment. No issues have been raised with respect to the proposed development providing access directly to any of these distributor roads and it is considered that given the advice received in this regard, the provisions of the DCP should not be implemented in this instance.

Having regard to the above, it is considered that the proposed development is generally in accordance with this DCP and represents an acceptable development at this location.

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

Clause 92(a) Government Coastal Policy

The subject allotment is governed by the requirements of Clause 92(a) Government Coastal Policy. The subject application is not considered to pose a threat to coastal processes.

Clause 92(b) Applications for demolition

Not applicable. There is no demolition included in this application.

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

Tweed Shire Coastline Management Plan 2005

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

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal offers a spatial separation from the coastal foreshore and in any event would not be considered to contravene the above issues. The proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by the Tweed Coast Estuaries Management Plan 2004.

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

The subject site is located within the Terranora Broadwater Catchment under this Management Plan. Specifically the site is located within the Urban zone of this catchment. The Terranora Broadwater is listed as being one of the few remaining rich and diverse habitats in the Tweed River System. In addition, it is stated that this Broadwater has high conservation value, providing significant aquatic habitat with extensive wetland vegetation. The Broadwater is also highly valued for its cultural, tourism, recreational and economic values.

The subject application relates to a subdivision of land and the development of a service station. It is noted that the proposed service station is located approximately 300m from any foreshore area and as such this element of the proposed development is not considered to result in a significant or unacceptable impact on the Broadwater as it relates to a development in an area identified as the urban zone and comprises of a minor intensification of development on the site. Furthermore, the subdivision element of this application is not considered to contravene any of the provisions of this Management Plan. The proposal is considered to be acceptable having regard to 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

Construction

The construction of the proposed development will be subject to standard conditions being included on any consent issued. It is noted that Council's Building Unit have reviewed the application and had no objection to its development subject to conditions. The development phase of the proposal will present some interruption to the ambience of the surrounding area but this is temporary in nature and amenity can be adequately protected via conditions of consent in the event of approval.

Waste

The submitted application was forwarded to Councils Waste Unit for comment with respect to waste management for the subject development. A response has been received advising the following:

'There are no obvious waste management issues for DA13/0449. The proposed plans indicate a bin storage area which houses up to 3 bulk bins for the development and pg16 of the traffic management plan states that refuse collection will be conducted from a dedicated hardstand area within the site. No further information or comment necessary from waste unit for this development.'

Having regard to the advice provided above the proposed development is therefore considered to be acceptable in this regard.

Stormwater

The subject application was reviewed by Councils Planning and Infrastructure Engineering Section who have provided the comments with respect to stormwater management for the proposed development in relation to both existing and proposed drainage.

"Currently, the majority of the site drains to an open channel that straddles the southern boundary of the site. The applicant states that flows are then conveyed 'east for approximately 80m where they are collected by a 750mm diameter reinforced concrete pipe. The 750mm pipe flows south (beneath Kirkwood Road West) and discharges into a 10m wide grassed swale...' Upon site inspection, the 750mm RCP could not be located. It is more likely that flows continue along the open channel and ultimately discharge to the canal (Terranora Creek) to the north east. A small portion of the pre-developed site drains to a swale parallel to Fraser Drive.

The applicant proposes to discharge post-development stormwater via a culvert under the future Kirkwood Rd West to the open swale on the southern side of the road reserve and ultimately to the Fraser Drive system and Terranora Creek. This layout is undesirable to Council due to the planned Kirkwood Road West project. It is also unlikely that a legal point of discharge (LPOD) to this system exists.

Discharging stormwater via a culvert under Kirkwood Rd is not acceptable. The proposal must be amended so discharge to the existing LPOD is maintained. However, Kirkwood Road West concept plans show the drain along the northern Kirkwood Rd boundary at least partially filled. The amended proposal shall ensure this overland flow path is located wholly within the residual lot and maintains sufficient capacity after the portions of the existing drain in the road reserve are filled. This may involve moving/augmenting the existing drain to the north of its current location. An easement over the drainage path will be required on the residual lot."

Further information was requested from the applicant with respect to the above advice, and provided for further review by Council's Planning and Infrastructure Engineering Section who have provided the following advice:

"The drainage system has been amended to discharge to the open drain to the East, which flows to the canal in the north-east and to Terranora Creek. An easement is proposed over Lot 1 DP1074784 to ensure this drainage path is maintained and the applicant notes that should the existing drainage channel be filled as part of the future Kirkwood Road West upgrade, a cut off/diversion channel may be constructed within the adjoining land. No works on the existing drain are proposed until Kirkwood Road West is constructed.

Some concern is raised in relation to the possibility of, when it comes time to build Kirkwood Rd West, landowners have changed and they may be opposed to the existing drain being moved further into Lot 1 DP1074784. This is unlikely but can be mitigated by ensuring appropriate easements are granted benefiting both the upstream lot and Tweed Shire Council (being the landowners of Kirkwood Rd).

The proposal is now acceptable in terms of flooding and stormwater."

Having regard to the above advice and recommended conditions of consent, the proposal is considered to be acceptable with respect to stormwater provision on the site.

Kirkwood Road Project

The subject site is bordered to the south by the Kirkwood Road reserve. It is noted that under PTV10/0032, approval was granted for the Kirkwood Road Project over two stages as follows:

Stage 1- Kirkwood Road upgrade to the east of the Pacific Motorway, from the motorway to the developed Kirkwood Road alignment at the junction of the Oxley Street road reserve. This section of road was formally opened in January 2014.

Stage 2- The development of Kirkwood Road to the west of the Pacific Motorway, including a bridge over the motorway. This section of road would border the subject site to the south and in particular must be considered in the context of the proposed development. Construction has not started on this stage of the Kirkwood Road Project to date.

The subject application was referred to Councils Senior Contract Engineer responsible for the Kirkwood Road Project and the Development Traffic Advisory Group (DTAG) for advice with respect to the proposed service station connecting to proposed Stage 2 of the Kirkwood Road project and the surrounding road network. The application has also been reviewed by Council's Traffic Engineer and Development Engineering Section with respect to this.

The subject application proposes to form a section of Kirkwood Road to allow egress only from the development. The temporary access would be incompatible with Council's upgrade plans for Kirkwood Road. Once Council completes the Kirkwood Road extension to Fraser Drive, the development would be limited to left in/left out access to Kirkwood Road. Councils Traffic Engineer has supported the required upgrades/amendments as specified and it is considered that the subject application is acceptable having regard to the proposed Kirkwood Road Project.

Food

The application as originally submitted advised that the development will incorporate a food shop within the service station. The subject has been subsequently updated to reflect that a coffee shop is to be provided within the area initially proposed to be developed as workshop. The application has been reviewed by Councils Environmental Health Unit in this regard who have advised that '*Appropriate standard conditions will need to be placed on any consent in respect to the sale and handling of food within the proposed shop.*'

It has been further advised that these conditions would be applicable to the proposed development of a coffee shop on the subject site.

Dewatering

The subject application incorporates dewatering in relation to the proposed service station underground tanks which are to be developed. In this regard it is noted that the proposed application incorporated an Integrated referral to New South Wales Office of Water in this regard. General Terms of Approval for works requiring a license under Part 5 of the Water Act have been received in this regard which would be attached to any consent.

The application has also been reviewed by Council's Environmental Health Unit in this regard who requested information demonstrating that the location of the dewatering treatment system and associated facilities would be on the proposed service station site. An amended Dewatering Management Plan has been submitted with an amended site plan that now locates the dewatering treatment system on the Service Station site which has been assessed as being acceptable.

Noise

An Environmental Noise Impact Report prepared by CRG Acoustical Consultants has been submitted with the application. This Report makes a number of recommendations in respect to measures required to ensure that the construction of and operations of the proposed service station do not cause offensive noise impacts to the occupants of neighbouring residences. In this regard the application has been reviewed by Council's Environmental Health Unit who have provided a proposed condition of consent which would require the recommendations contained within this report to be implemented in the event of approval. The proposed development is assessed as being acceptable subject to these recommended conditions being implemented on any consent.

Underground Petroleum Storage Systems (UPSS) Regulation

The installation of the underground storage tanks for fuel on the site and the operation of the service station would be required to comply with the provisions of the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008. The application has been reviewed by Council's Environmental Health Unit in relation to this matter who have advised that in the event of approval a condition would be applied to any consent requiring that the installation and operation of the service station shall comply with the provisions of the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located in an area where there is a diverse range of surrounding land uses and development. To the east and west the site is surrounded by caravan holiday parks, whilst to the south and south west residential development is evidenced adjacent to the subject site. It is also noted that the Pacific Coast Christian School is located to the south west of the site.

Flora and Fauna

The proposed service station development is located to the south west corner of the site which is mapped as having a very high ecological status. Given the likely impact of the proposed development on this vegetation it was considered appropriate to refer the application to Council's NRM Unit who have provided the following advice:

"The applicant was requested to provide an arborist report and consider alternative service station layout designs in an attempt to maximise tree retention across the site. The previous design involved the complete removal of all vegetation (24 trees in total). In response the applicant submitted a revised layout plan showing the Fraser Drive site access point situated further to the north. As a result approximately four trees previously impacted by site access are

avoided and shown to be retained. The design of the service station (built form/pavement) however was not substantially modified to allow for retention of more significant vegetation occurring along the Fraser Drive boundary nor was an arborist report submitted. In total nine of the 19 trees occurring within the development footprint are proposed to be removed that include several local native mature Eucalyptus pilularis (Blackbutt) (x2), (includes one hollow bearing tree), mature Melaleuca quinquenervia (Broad-leaved Paperbark) (4), semi-mature Lophostemon suaveolens (Swamp Box) (x1) and exotic Cinnamomum camphora (Camphor Laurel) (x2). An additional two trees are likely to be removed as part of the Kirkwood Road West upgrade and Fraser Drive intersection works, these trees occur within the road reserve and as such have been offset as a function of the road upgrade package (see PTV10/0032) at Avondale Park Banora.

The trees proposed to be removed to accommodate the development are considered to be of ecologically significant value offering refuge and forage resource opportunities to a suite of local fauna species. However, given the land-use designation under the LEP 2000 (2(e) Residential zone), restricted land area available for development within the zone, impact of Kirkwood Road upgrade on existing vegetation, NRM have resolved to accept an offset for the loss of vegetation only where the development were supported on town planning/land-use grounds and likely to proceed.

In the case where the land-use under the LEP2000 is to be relied upon for the assessment of the application (limited application of Draft LEP 2012 land use provisions) and the development were to proceed the offset for the loss of vegetation shall be provided at a ratio of 1:10 (loss: replace) - revegetation using local native species, managed for a period of five (5) years by the developer and secured on site under a long term statutory management arrangement (Section 88B Restriction). The Compensatory Rehabilitation/Restoration Plan identifies an area of 1400m² situated to the south-east of (proposed) Lot 1 as the offset receiving area. The plan shall not be approved until such time as amendments are made pursuant to conditions of the consent to ensure acceptable outcomes are achieved.

To ensure that the long term health and viability of vegetation identified as 'to be retained and protected' is maintained and the trees protected during both the construction and operational phase of the development a detailed arborist report is to be submitted and approved by Council for implementation."

Given the above advice, it is considered that subject to appropriate measures being implemented including the provision of an environmental offset area (at an appropriate loss to replace ratio) to the south east of the subject site, the proposed development does not warrant refusal based on the removal of vegetation in this instance. In the event of approval of this application, recommended conditions would be attached to any consent as provided by Council's NRM Unit.

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

Public Submissions

The subject application was notified to surrounding properties and advertised for a period of 30 days. During this period three public submissions were received and the contents of these submissions were forwarded to the applicant for comment. An assessment of the submissions, the applicant's response and Council officer assessment is provided below:

Submission No. 1- Public submission

This submission objects to the proposed development as it is considered that a service station should not be constructed in proximity to a natural water source. Leakage from underground tanks would devastate the waterway, marine life and birdlife.

It is further considered that the ground is not solid enough to allow excavation and sinking of storage tanks.

Applicant Response

The proposal would use the latest fuel storage tanks for service station fuel storage, these are specifically designed to minimise the potential for fuel leakage. Further as is required under environmental licences the storage tanks would be tested regularly for leakage to ensure any issues are addressed to prevent site contamination. This issue is not considered to be based on planning grounds and should not be considered.

The assertion (with respect to the ground not being solid enough to allow excavation and sinking of tanks) is not made on fact and is not valid grounds for objection. No stability issues are known on the site and construction techniques would be selected based upon geotechnical work undertaken prior to construction.

Council Officer Assessment

As outlined elsewhere in this report the proposed development has been reviewed by Councils Environmental Health Unit with respect to both the underground storage tanks and fuel storage and handling. It is noted that the proposed development would be required to comply with the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008 and NSW WorkCover relating to the storage and handling of dangerous goods, given the nature of the proposed development. The proposed development is not considered to warrant refusal based on the issues raised in this submission.

Submission No. 2- Parents & Friends Fellowship of Pacific Coast Christian School

This submission raises general concerns with respect to pedestrian access for school students when crossing Fraser Drive. It is considered that this issue would be exacerbated by increasing the road size from two lanes to four. The proposed service station is considered to be a 'draw card' for before and after school snacks and it is requested that Council review the development application to consider a suitable and safe passage for students

Applicant Response

The proposal specifically includes pedestrian access facilities including refuge island and footpath extensions within Fraser Drive to ensure safe pedestrian access. We agree that adequate pedestrian access to the development is important and the proposal has been designed to provide this.

Council Officer Assessment

It is noted that the submission is not considered to constitute a specific objection to the proposed development but rather seeks to ensure that adequate pedestrian pathways are provided to the site.

The applicant advises that the proposal specifically includes pedestrian access facilities including refuge island and footpath extensions within Fraser Drive to ensure safe pedestrian access. This submitted information has been reviewed by Council's Traffic Engineer with no issues raised in this regard. It is further noted that the upgrade of Fraser Drive to a four lane road is not related to this Development Application and at which time the upgrade occurs, the revised road layout would be required to provide for adequate pedestrian crossings in the subject area. The proposed development is considered to be acceptable in this regard.

Submission No. 3- Public submission

This submission outlines an objection to the proposed development on the following grounds:

It is surrounded by housing and is a quiet area and the addition of a petrol station would increase the traffic volume and noise in the area. The other concern is the proximity of this development to the Tweed River as any seepage of fuel into the river would be disastrous to the environment.

Applicant Response

The proposal has been supported by detailed traffic impact assessment. As outlined within the document the majority of the traffic increase which will occur within the local area will occur independent of the proposed development. The amount of trips that would be generated directly by the service station is minor only and will not result in adverse amenity impacts within the locality.

Council Officer Assessment

Given the scale of the proposal, it is not considered that the service station would attract additional traffic volume to this area to any significant level but would rather service the needs of the local community.

The objection on grounds of seepage of fuel from the proposed development has been addressed under Submission No. 1 above, with the proposal considered acceptable in this regard as it would be required to comply with the appropriate provisions regarding the handling and storage of fuel as well as the underground tanks.

Having regard to the information provided above, the proposal is not considered to warrant refusal based on the issues raised in these submissions through the public exhibition period.

Public Authority Submissions

NSW Department of Primary Industries (Office of Water)

The subject application was lodged as a nominated integrated development with a permit required from New South Wales (NSW) Office of Water under Sections 89, 90 and 91 of the Water Management Act 2000 for dewatering. General Terms of Approval have been received from NSW Office of Water which would be placed on any consent in the event of approval.

Essential Energy

As the proposed development is to be located within land designated as being an electricity transmission line corridor the application required referral to Essential Energy (see clause 37 of Tweed LEP assessment above). Correspondence has been received from Essential Energy stating that '*Essential Energy wishes to advise that it has no objections to the above development application.*' The proposed development is considered to be acceptable in this regard.

Gold Coast Airport Pty Ltd (GCAPL)

Council has received correspondence from a Planning consultant on behalf of Gold Coast Airport advising that that the site is within the area affected by the airport's Lighting Zone Map, which requires that roofs of buildings be constructed of non-reflective materials. It is requested that the following condition be imposed on any consent for the proposed service station:

"The subject land is within the Lighting Zone for Gold Coast Airport, in which use of non-reflective roof surfaces is mandatory. Any proposed use of reflective roof materials requires approval from Gold Coast Airport Pty Ltd, prior to issue of an occupation certificate. (Note: Colorbond is a pre-approved material, with the exception of roof colours having solar absorption equal to or less than 0.35)."

The comments received have been noted and in the event of approval of the subject application, it is considered appropriate that the above recommended condition be applied to any consent.

(e) Public interest

The proposed development is not considered to compromise the public interest given its nature and scale.

OPTIONS:

That Council:

1. Refuses the application; or
2. Grants 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.

Council officers recommend Option 1.

CONCLUSION:

The proposal is prohibited within the RE2 Private Recreation zone under the draft LEP 2012 and does not comply with the RE2 Private Recreation zone objectives within the draft LEP 2012. Given that this draft LEP is considered to be '*certain and imminent*' and the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed development be refused on this basis.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy, Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 11 [PR-PC] Development Application DA10/0737 for Alterations to Existing Highway Service Centre Comprising of Two New Diesel Refuelling Points, Expansion of Truck Refuelling Canopy, New Truck Parking Area (36 New Bays) and the Replacement of Existing Truck Parking Area with Additional Car Parking Spaces and Dedicated Bus Drop-Off Area (Application includes LEP Amendment) at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA10/0737 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council received a combined development application and LEP amendment for an extension to the existing highway service centre at Chinderah, which is prohibited on the subject site on 12 November 2010. Council requested further information on issues such as flooding, stormwater, access, parking, noise and ecology on 18 February 2011. Council received a response to the information request on 14 June 2012. All of the issues except for ecology are considered to be satisfactorily addressed through a combination of the submitted information and recommended conditions.

The most recent Ecological Report dated December 2013 was reviewed by Council's Natural Resource Management Unit (NRM). NRM advised that the development does not provide any further information that suggests Council's assessment and recommendation of the application should be reconsidered and the report also does not proposal any modification or reduction in the development footprint as recommended by Council. Therefore the proposed development should be refused for the following reasons:

1. The site is not suitable for the development due to its high ecological value; and
2. Much of the site contains candidate Endangered Ecological Communities as well as an Endangered species. The development is considered likely to result in a significant impact on threatened species, populations or ecological communities listed under the Threatened species Conservation Act 1995.

To date (3 years 4 months and 19 days has elapsed) Council has not received adequate information to address Council's ecological concerns. The proposal is prohibited and is therefore recommended for refusal.

RECOMMENDATION:

That:

- A. Council not proceed with the Local Environmental Plan amendment for the subject site and advise the applicant of Council's decision.**
- B. Development Application DA10/0737 for alterations to existing highway service centre comprising of two new diesel refuelling points expansion of truck refuelling canopy new truck parking area (36 new bays) and the replacement of existing truck parking area with additional car parking spaces and dedicated bus drop-off area (application includes LEP Amendment) at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah be refused for the following reason:**
 - 1. The proposed development is defined as a Service Station and is prohibited on the subject site.**

REPORT:

Applicant: BP Australia Pty Ltd
Owner: BP Australia Limited
Location: Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah
Zoning: 1(a) Rural, Uncoloured Land, 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: \$4,500,000

Background:

Council received the subject development application on 12 November 2010. Council requested further information on issues such as; flooding, stormwater, access, parking, noise and ecology on 18 February 2011. Council wrote to the applicant on 3 June 2011 asking for the information requested to be provided within 21 days from the date of the subject letter as the application will be determined on the information currently provided. The applicant responded on 8 June 2011, stating that they were undertaking relevant actions to respond to Council's request for further information. Council wrote to the applicant on 21 March 2012, advising that the information provided to date is not sufficient for a proper assessment of the proposed LEP amendment and given the time that elapsed the Planning Reforms Unit has deferred the proposal from the works program. The development is prohibited and Council requested the withdrawal of the application. Council advised the applicant that should the application not be withdrawn within 14 days of the date of the letter dated 21 March 2012, the application will be recommended for refusal. The applicant wrote to Council on 29 March 2012, requesting that Council reconsider its position with respect to deferring the LEP amendment and determination of the development application. The application was reported to Council on 15 May 2012. Due to insufficient information and a number of outstanding issues such as; flooding, stormwater, access, parking, noise and ecology, the report recommended that Council should not proceed with the Local Environmental Plan amendment and to refuse the application as the proposal is prohibited on the subject site. Council resolved to defer the application for a period of four weeks, at the request of the applicant.

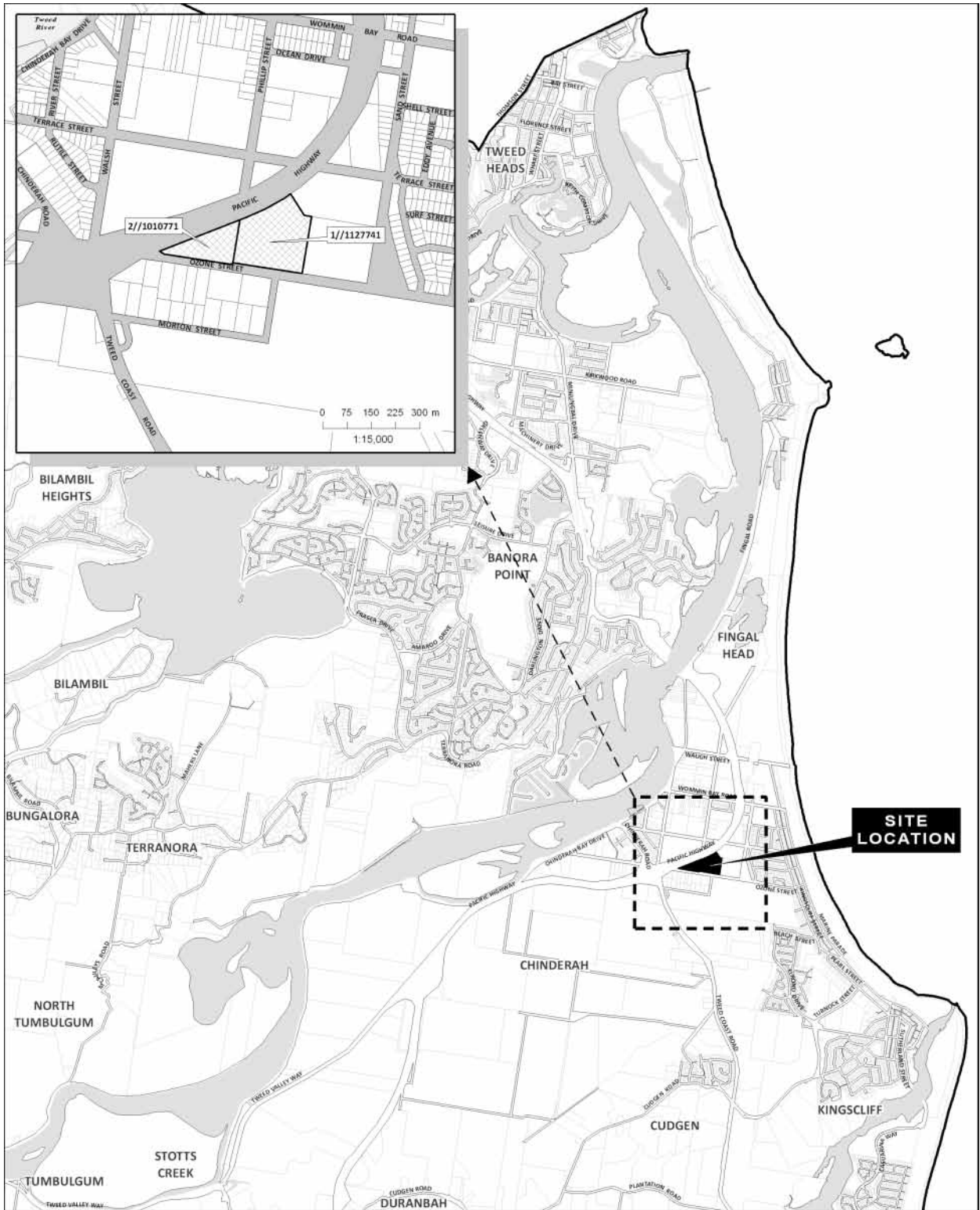
The applicant submitted information on 14 June 2012 to address issues such as flooding, stormwater, access, parking, noise and ecology. All of the issues except for ecology are considered to be satisfactorily addressed through a combination of the submitted information and recommended conditions. Council sent a letter to the applicant on 9 April 2013 advising that the proposed development is recommended for refusal due to the site high ecological value; however, if the proposed development footprint was substantially reduced Council would reassess the amended development. Council also offered a meeting with the landowner and consultants if a redesign substantially reducing the development footprint is proposed. The applicant wrote to Council on 24 April 2013 advising that their ecologist consultant would be away until 11 May 2013, and after that date a meeting would be requested with Council to discuss Council's concerns. The applicant wrote to Council on 11 July 2013 advising that the consultant's ecological assessment is currently being reviewed. A meeting was held with Council officers and the landowner's representatives on 24 September 2013. The meeting resolved that the applicant was to provide comments in relation to the Cost and Expenses Agreement, the applicant was to provide an amended Ecology Report, the applicant advised that they wished to retain the original layout and size of the proposal and that they would not be reducing the development footprint. The applicant submitted comments in relation to the Cost and Expenses Agreement on 24 October 2013.

The applicant submitted an Ecology Report dated December 2013 on 17 January 2014.

On 20 February 2014 Council's NRM unit advised that the development does not provide any further information that suggests Council's assessment and recommendation of the application should be reconsidered and the report also does not proposal any modification or reduction in the development footprint as recommended by Council. Therefore the proposed development should be refused for the following reasons:

1. The site is not suitable for the development due to its high ecological value.
2. Much of the site contains candidate Endangered Ecological Communities as well as an Endangered species. The development is considered likely to result in a significant impact on threatened species, populations or ecological communities listed under the Threatened species Conservation Act 1995.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 1127741 and Lot 2 DP 1010771
No. 1 Ozone Street, Chinderah

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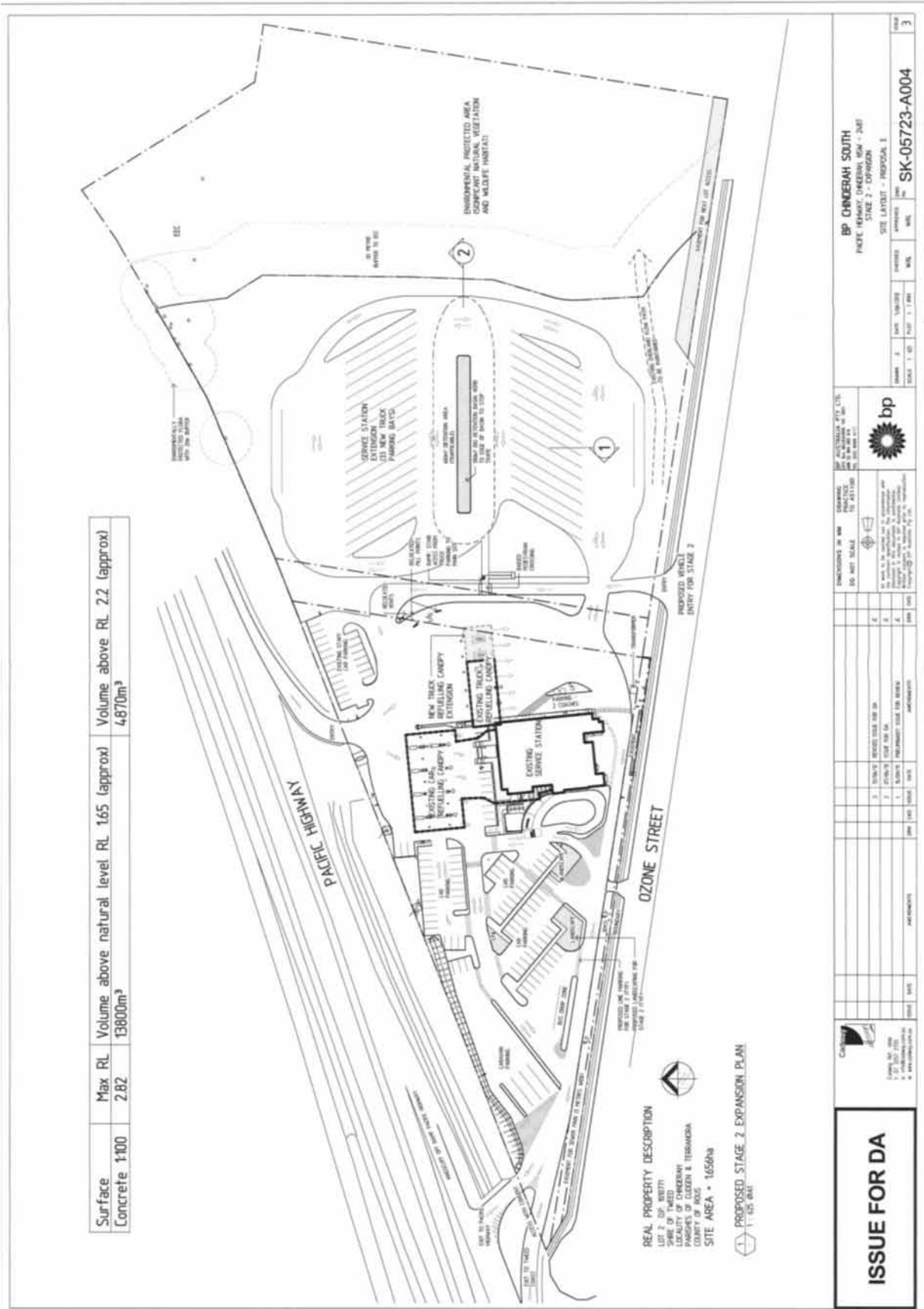
Cadastral 14/04/2014
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Boundaries shown should be considered approximate only.

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DO NOT SCALE
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geoid 96, Datum of Australia 2004
GDA
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Civic and Cultural Centre
3 Tumbulgum Road
Murrumbidgee NSW 2484
PO Box 818
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



Date Printed: 14 April 2014



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 development is considered not to be consistent with the aims of this plan, by creating a significant adverse impact on the environmental qualities of the site. The site contains candidate Endangered Ecological Communities as well as an Endangered species. The development is considered likely to result in a significant impact on threatened species, populations or ecological communities listed under the Threatened species Conservation Act 1995. The site is zoned Part 1(a) Rural and Part 7(a) Environmental Protection (Wetlands and Littoral Rainforests). The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

State Environmental Planning Policies

The proposed development is considered not suitable for the site with the development is considered likely to result in a significant impact on threatened species, populations or ecological communities listed under the Threatened species Conservation Act 1995. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

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

The subject site has multiple zones being: Zone E2 Environmental Conservation and Zone RU2 Rural Landscape. The proposed development (Highway Service Centre) is prohibited within both zones.

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

Tweed Development Control Plan

The proposed development is considered not suitable for the site. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

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

Clause 92(a) Government Coastal Policy

The site is located within the Government Coastal Policy area; however, the proposed development is considered not suitable for the site. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

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

Tweed Shire Coastline Management Plan 2005

The site is not covered by the policy.

Tweed Coast Estuaries Management Plan 2004

The site is not covered by the policy.

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

The site is not covered by the policy.

(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 proposed development is considered not suitable for the site. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

Council has identified issues in relation to; flooding, stormwater, access, parking, noise and ecology. To date the applicant has not provided an adequate response in relation to ecology.

(c) Suitability of the site for the development

The proposed development is considered not suitable for the site. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

Council has identified issues in relation to; flooding, stormwater, access, parking, noise and ecology. To-date the applicant has not provided an adequate response in relation to ecology.

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

Nil.

(e) Public interest

The proposed development is considered not suitable for the site. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

The site is not suitable for the development due to its high ecological value. Much of the site contains candidate Endangered Ecological Communities as well as an Endangered species. The development is considered likely to result in a significant impact on threatened species, populations or ecological communities listed under the Threatened species Conservation Act 1995.

As such Council considers the likely impacts on the natural environments unacceptable and therefore not in the public's interest.

OPTIONS:

That Council:

1. Refuses the development application and LEP amendment.
2. Supports the development application and LEP amendment.

Council officers recommend Option 1.

CONCLUSION:

Council considers that the site is not suitable for the development due to its high ecological value, with much of the site containing candidate Endangered Ecological Communities as well as an Endangered species. The development is considered likely to result in a significant impact on threatened species, populations or ecological communities listed under the Threatened species Conservation Act 1995. The development is prohibited and Council requested the withdrawal of the application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000 and the development is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

There is not a right of Appeal available in the NSW Land and Environment Court, as the LEP determinations are not appealable on merit grounds and the proposal is prohibited.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

12 [PR-PC] Development Application DA14/0089 for the Demolition of Existing Dwelling and Construction of Two Storey Dwelling with Attached Triple Garage at Lot 10 DP 28597 No. 438 Terranora Road, Terranora

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: DA14/0089 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:

An application has been lodged to demolish an existing two storey dwelling house and construct a new two storey dwelling house with attached triple garage on the subject allotment. The existing swimming pool will be retained.

The application is supported by an objection under *State Environmental Planning Policy No. 1* related to Clause 24 of the Tweed Local Environmental Plan 2000. As the subject allotment fronts Terranora Road, a Council designated road, Clause 24 requires the development to be setback 30m from the road. The proposed development would be setback 8.7m and as the variation is greater than 10%, the application is referred to Council for determination in accordance with instructions provided by Planning and Infrastructure NSW.

The application was lodged prior to the commencement of the Tweed LEP 2014 and therefore the savings provision of Section 1.8A needs to be considered. It is noted that under the Tweed LEP 2014 such a clause does not exist and a SEPP 1 objection would not be required.

The remaining minor issue relates to the proposed location of the garage in front of the dwelling house, which is inconsistent with the design controls of Tweed Development Control Plan (DCP) Section A1 Part A.

These issues are outlined further in this report. In summary the SEPP 1 objection is well founded and is recommended to be supported and the variation to the Tweed DCP design control is considered acceptable.

RECOMMENDATION:

That:

1. **State Environmental Planning Policy No. 1 objection to Clause 24 of the Tweed Local Environmental Plan 2000 regarding the setback to a designated road be supported and the concurrence of the Director General of the Department of Planning and Infrastructure be assumed.**
2. **Development Application DA14/0089 for the demolition of existing dwelling and construction of two storey dwelling with attached triple garage at Lot 10 DP 28597 No. 438 Terranora Road, Terranora be approved subject to the following conditions:**

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan No 1309 sheets CD2.1(B), CD2.2(B) CD2.3, CD3.1(B) prepared by Three Chairs Short Architects and dated 10/04/14 except where varied by the conditions of this consent.**
[GEN0005]
2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
3. **The 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]
4. **The height of the dwelling shall not exceed RL 133.65m AHD. A certificate shall be provided from a registered surveyor confirming this maximum height at frame stage.**
[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. **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]
6. **The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.**
[PCC0945]

7. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

Any approval to install an on site sewage treatment and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the On site Sewage Management Assessment Ref: 2014.002 OSSM, prepared by HMC Environmental Consulting Pty Ltd and dated January 2014 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

8. 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.

[PCC1285]

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

[PCC1325]

PRIOR TO COMMENCEMENT OF WORK

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. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

12. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

13. 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]

14. 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]

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

[PCW1005]

DURING CONSTRUCTION

16. 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]

17. 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]

18. 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]

19. 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]

20. 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]

21. 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]

22. 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]

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

[DUR0445]

24. 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]

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

[DUR0905]

26. 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]

27. Swimming Pools (Building)

- (a) Access to the existing swimming pool shall be restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.2 - 2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008 prior to the issue of an occupation certificate.
- (b) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.
- (c) Once the pool is complete please register it at www.swimmingpoolregister.nsw.gov.au.

[DUR2075]

28. 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]

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

[DUR2545]

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

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and**
- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-**
 - (i) the method of protection; and**
 - (ii) the date of installation of the system; and**
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and**
 - (iv) the need to maintain and inspect the system on a regular basis.**

[POC0235]

35. 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]
36. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.
[POC0435]
37. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.
[POC1035]
38. Prior to the occupation of any building and prior to the issue of any occupation certificate approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.
[POC1040]
39. Prior to the issue of an occupation certificate or use of the dwelling a 1.50m high privacy screen, of a design which will restrict visual contact with the adjoining property shall be erected along the common boundary with the property which adjoins to the west where the retained yard area is proposed outside the family room.
[POCNS01]

USE

40. On the availability of any available option for connection to a reticulated sewage system, the property owner shall decommission the existing On Site Sewage Management System to the satisfaction of Council's Environmental Health Officer and connect the property to the reticulated sewage system. Such connection to the reticulated sewage system shall occur within 60 days or such time as Council's General Manager or Delegate may require of the date of the reticulated sewage system becoming available to the property.
[USENS01]

REPORT:

Applicant: Mr Ms Janda and Ms AK Janda
Owner: Mr Manmohan S Janda & Mrs Amarjeet K Janda
Location: Lot 10 DP 28597 No. 438 Terranora Road, Terranora
Zoning: 1(b1) Agricultural Protection
Est Cost: \$700,000

Background:

Proposal

A development application has been received to demolish an existing two storey dwelling house and construct a new two storey dwelling house with an attached triple car garage on the subject allotment. An existing in-ground swimming pool in the rear yard will remain.

Site

The allotment is zoned 1(b1) Agricultural Protection under Tweed Local Environmental Plan 2000 and is located on the northern side of Terranora Road which is identified as a Council Designated Road.

The front of the site has a gentle slope downhill from Terranora Road which increases to a steep slope at the rear.

The allotment has a maximum depth of 48.28m and encompasses an area of 911.2m².

Issues

Under the provisions of part 5, clause 24 of the Tweed LEP 2000 the proposed dwelling house is required to observe a minimum building alignment to Terranora Road of 30m.

The dwelling is proposed to be set back 8.70m from Terranora Road.

It is not physically possible for a dwelling house to observe a 30m set back on this allotment as the length of the allotment is only 48.28m and is subject to mandatory rear boundary setbacks under the provisions of DCP A1.

The allotment is also constrained by the presence of an existing in-ground concrete swimming pool at the rear of the allotment which is to be retained which further restricts the available building location.

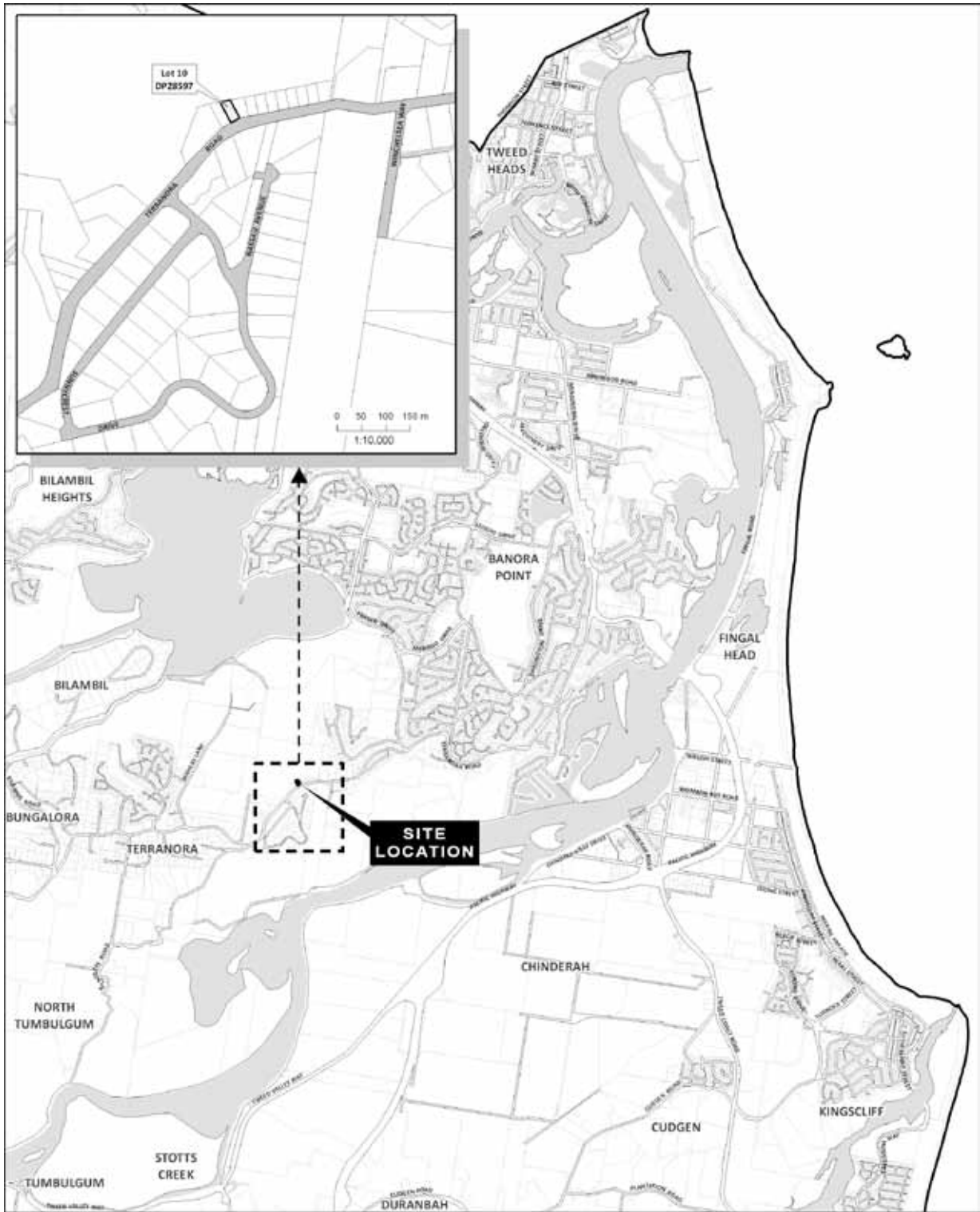
The Applicant has lodged an objection to this requirement under the provisions of State Environmental Planning Policy No. 1 (SEPP No. 1) to consider a reduced building alignment of 8.70m to the Terranora Road frontage of the allotment.

The SEPP No. 1 objection is considered below in this report.

The proposal does not satisfy the mandatory control of Development Control Plan A1 in relation to the location of the garage in front of the dwelling.

These matters are further considered below in this report.

SITE DIAGRAM:



Locality Plan

Lot 10 DP 28597
No. 438 Terranora Road, Terranora

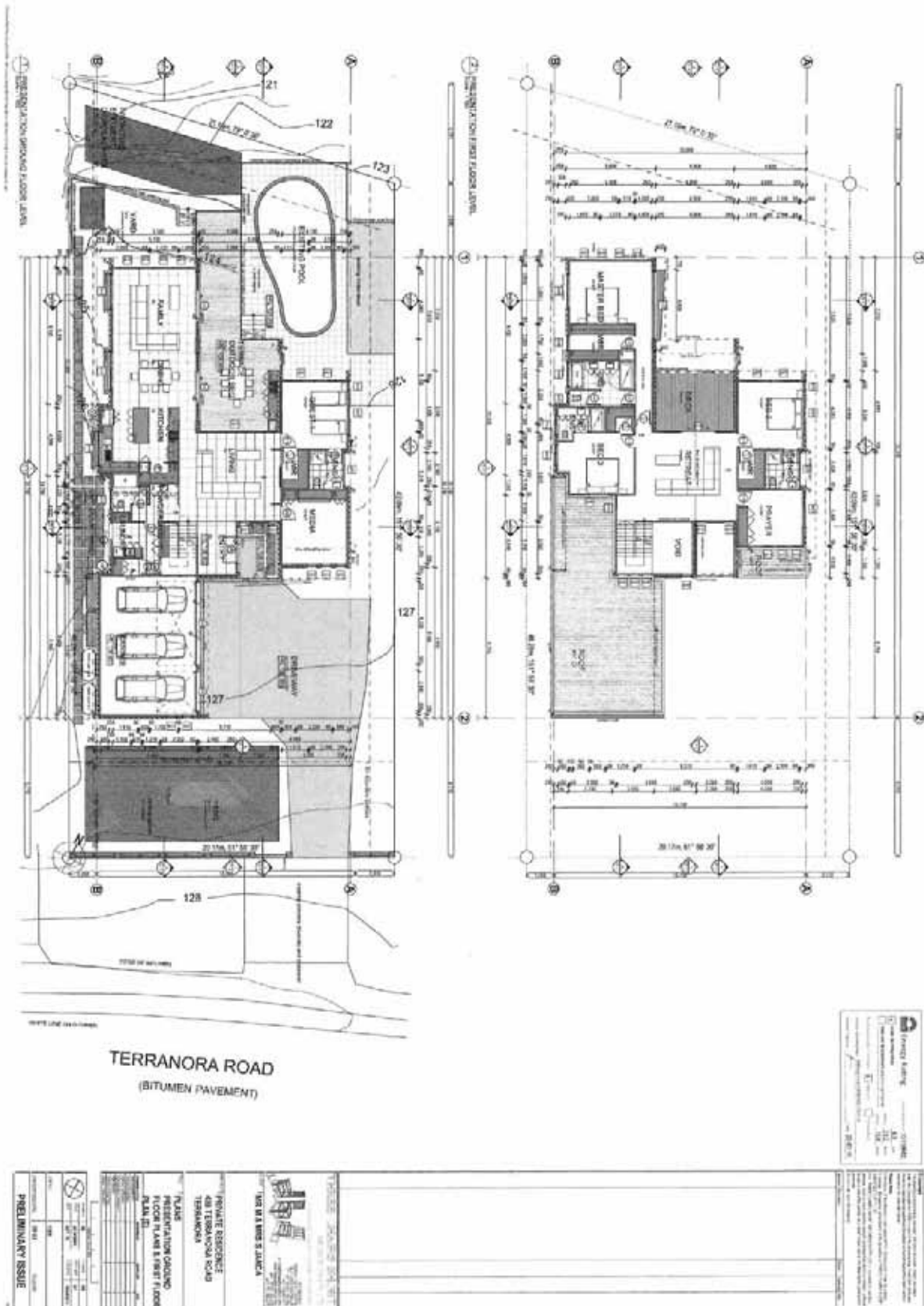
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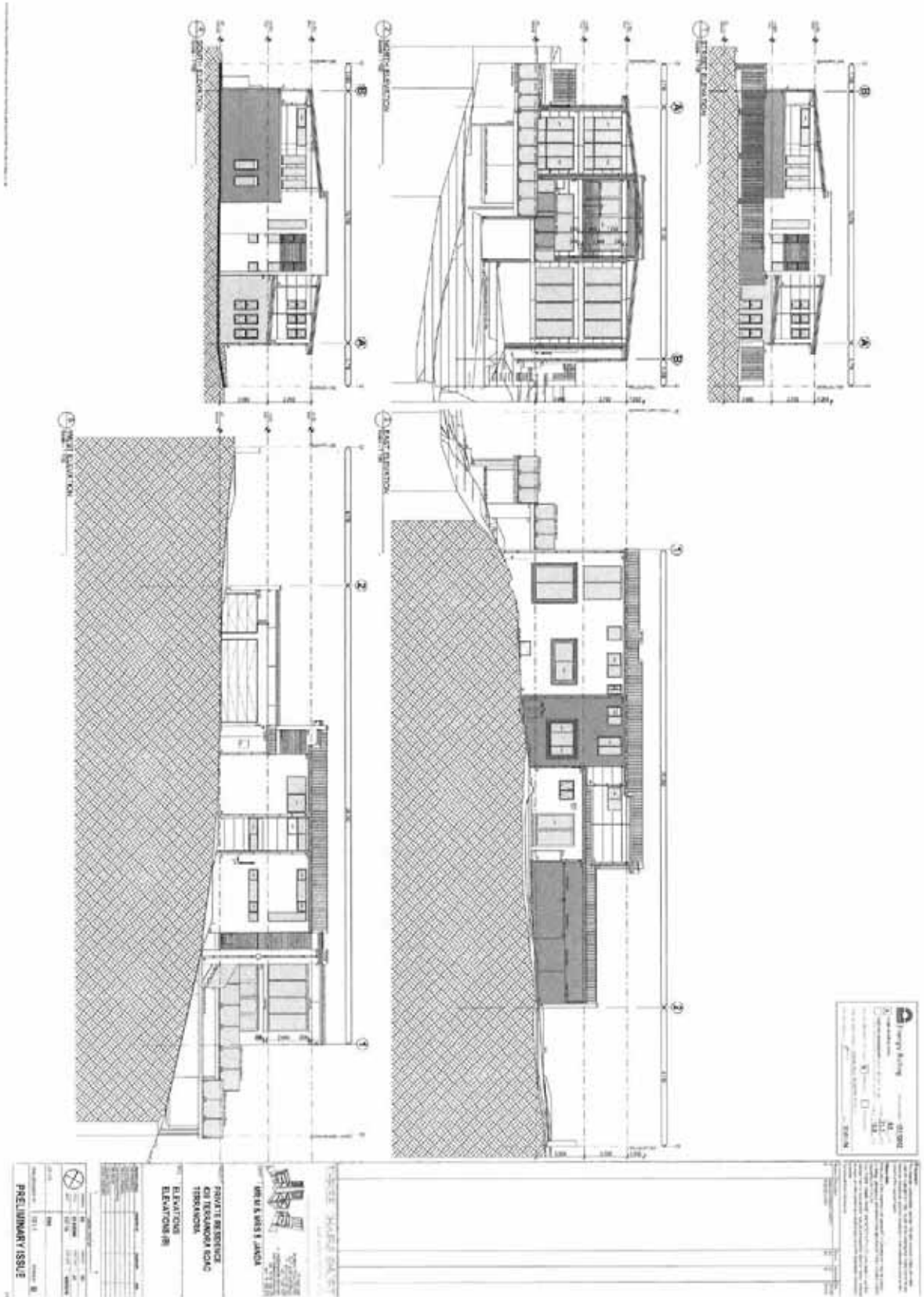
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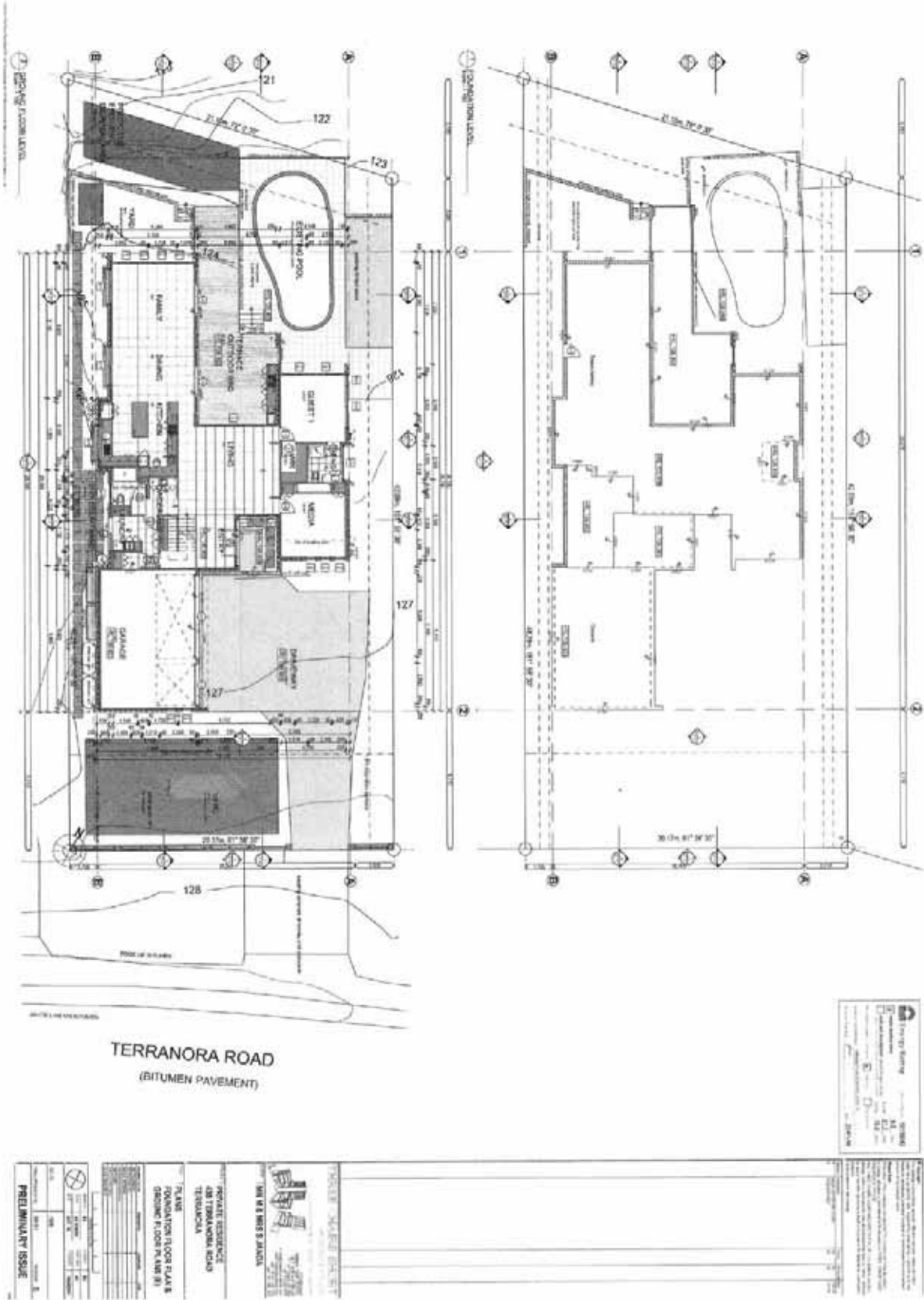
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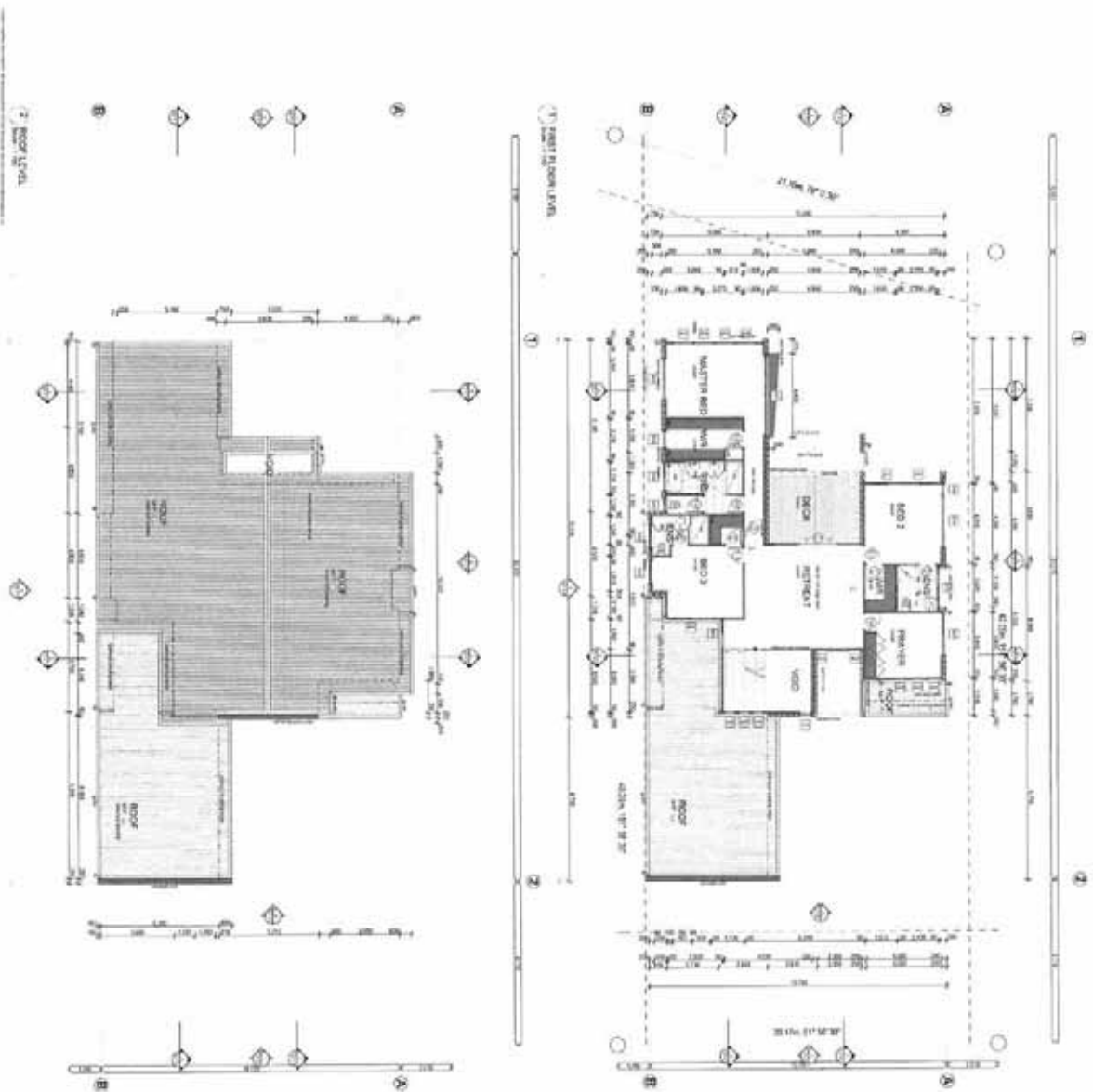
Civic and Cultural Centre
3 Tumbulgum Road
Murumbidgee NSW 2434
PO Box 816
MURUMBIDGEE NSW 2434
T (02) 6670 2400 | 1300 200 872
F (02) 6670 2428
W www.tweed.nsw.gov.au
E planning@tweed.nsw.gov.au

DEVELOPMENT/ELEVATION PLANS:









<p>PROFESSIONAL SEAL</p> <p>REGISTERED ARCHITECT</p> <p>NO. 123456789</p> <p>DATE: 10/05/2014</p> <p>SCALE: 1:100</p>		<p>PROJECT INFORMATION</p> <p>PROJECT NAME: [REDACTED]</p> <p>CLIENT: [REDACTED]</p> <p>ADDRESS: [REDACTED]</p> <p>DATE: 10/05/2014</p>										
<p>ARCHITECT</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>		<p>PLANNING PERMISSION</p> <p>PLANNING PERMISSION NO. [REDACTED]</p> <p>DATE OF PERMISSION: [REDACTED]</p>										
<p>REVISIONS</p> <table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td>1</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>2</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> </table>		NO.	DESCRIPTION	DATE	1	[REDACTED]	[REDACTED]	2	[REDACTED]	[REDACTED]	<p>NOTES</p> <p>1. ALL WORK TO BE IN ACCORDANCE WITH THE PLANNING PERMISSION.</p> <p>2. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT.</p>	
NO.	DESCRIPTION	DATE										
1	[REDACTED]	[REDACTED]										
2	[REDACTED]	[REDACTED]										

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

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

Tweed Local Environmental Plan 2000

The following clauses of the Tweed LEP 2000 are applicable to the proposal and the site.

Clause 4 - Aims of the Plan

The proposal satisfies the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is in keeping with ecologically sustainable development principles and is in line with community expectations for the site having regard to the zoning provisions, development control plan provisions and the limitations of the site.

Clause 11 - Zone Objectives

The proposal is not inconsistent with the primary objective of the zone as it is replacing an existing single dwelling house and will not result in further fragmentation of the allotment.

Clause 15 - Essential Services

The allotment does not have access to a reticulation sewerage system and subsequently an application to install an on-site sewage management system has been submitted.

The application is supported by an *on-site sewage management assessment* report prepared by an environmental consultant.

This report has been assessed by Council's Environmental Health Unit who has accepted the design subject to the property being promptly connected to any reticulated sewerage system which may become available to the site in the future.

Clause 16 - Height of Building

The height of the proposed dwelling house is two storeys with an overall height of 6.75m.

The property is subject to a three storey height limit so the proposal satisfies this requirement.

Clause 17 - Social Impact Assessment

The proposal is not considered to have a significant social or economic impact.

Clause 24 – Designated Roads

Terranora Road is a designated road which requires a thirty metre building alignment. The proposal does not satisfy this requirement and a SEPP No. 1 objection has been lodged in this regard.

The SEPP No. 1 objection is discussed below and it is recommended that the objection be supported.

The Tweed Local Environmental Plan 2014

The Tweed LEP 2014 has recently been gazetted and commenced and the provisions of this plan raise no major concerns for the proposal. The proposal is permissible with consent.

The development application was lodged prior to the commencement of the Tweed LEP 2014 and as required by the savings provision Section 1.8A, it was assessed under the provisions of the Tweed LEP 2000.

The provisions of the Tweed LEP 2014 were also taken into consideration during the assessment of this application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The subject site is zoned 1(b1) Agricultural Protection however the size of the allotment (911m²) and the presence of an existing dwelling house on the allotment would preclude it from being used for any significant agricultural activity.

Allotments which adjoin to the west and east are similarly unsuited to agricultural activity despite the zoning.

The allotment to the north is zoned 2(c) Urban Expansion and is earmarked for future residential development.

The proposed development will therefore have no adverse impact on the use of adjoining or adjacent agricultural land and will not cause a loss of prime crop or pasture land.

SEPP No. 1 - Development Standards

A SEPP No. 1 objection has been lodged against the requirement under clause 24 of the Tweed LEP 2000 for the dwelling to observe a 30m building alignment to Terranora Road, which is a designated road.

The Applicant has made the following submission in support of their request for a SEPP No. 1 variation:

“The proposed dwelling will be located a minimum of 7.96m from the alignment of Terranora Road and therefore the development does not comply with the 30m setback requirement.

It is submitted that the development standard requiring a 30m setback is unreasonable and unnecessary in the circumstances of the case for the following reasons:

- There are other similar structures located along Terranora Road that also encroach within the 30m setback from the designated road.*
- The existing house is also within the 30m setback.*
- The depth of the allotment varies from only 42m to 48m.*
- The dwelling house will generally maintain the status quo of the site for residential purposes and the existing building alignment of the site and the adjoining properties.*
- It is unlikely that the structure would significantly compromise traffic safety along Terranora Road.*

- *No additional vehicular accesses are proposed. The existing access arrangements will be retained.*

For the above reasons Council is requested to uphold the objection and grant consent to the development application as proposed”

The site has a maximum depth of 48.239m and therefore enforcing a 30m set back to Terranora Road would result in an unusable building envelope when the mandatory rear setback for a deep soil zone is applied.

The allotment is also burdened by an existing swimming pool at the rear of the allotment which will be retained and further reduces the available building envelope.

Other dwellings in this area which front Terranora Road have previously been granted SEPP No. 1 objections for setbacks less than 30m.

The objectives of part 5 (Roads) clauses 22, 23 and 24 of the Tweed LEP and a response to each objective is as follows:

Clause 22 – Development near designated roads

- **To protect and improve the capacity, efficiency and safety of designated roads.**

Response - there will be no new vehicular access to the subject site off Terranora Road and therefore the capacity, efficiency and safety of this road will not be compromised.

Vehicular access to the site is existing and no changes are proposed.

- **To prevent development on designated roads that would detract from the scenic attractiveness of the area of the Tweed.**

Response - the proposed development will comprise a residential dwelling house which will be consistent with the rural residential character of the area.

A single dwelling house already exists on the allotment and the proposal is to demolish the existing dwelling and construct a new dwelling house.

This subdivision was approved to permit the construction of single dwelling houses and due to the physical limitations of the allotments it is impractical to enforce a thirty metre building alignment to Terranora Road.

The proposal will therefore not have an adverse impact on the scenic attractiveness of the area.

- **To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.**

Response – the site contains an existing dwelling house which will be demolished and a new dwelling house is proposed to be constructed.

The new dwelling house will be located closer to Terranora Road than the present one however an existing front fence and landscaping will reduce the impact of traffic noise. The new dwelling house has been designed with a triple garage in front of the dwelling to reduce noise impact and rooms such as bedrooms have been located away from the front of the dwelling similarly to reduce the impact of road noise.

Clause 23 – Control of access

- **To control access to designated roads.**

Response – no new vehicular access is proposed off Terranora Road.

Clause 24 – Set backs to designated roads

- **To control development along designated roads.**

Response - the allotment has a maximum depth of only 48m with an existing swimming pool in the rear yard which limits the available building envelope.

It is impractical to require a dwelling house to observe a thirty building setback with the physical restrictions of the site.

The proposed setback is considered to be reasonable in the circumstances and is worthy of approval.

The Tweed LEP 2014 has recently commenced however, as the application was lodged prior to the commencement of this instrument it has been assessed under the provisions of the Tweed LEP 2000.

The applicant's SEPP No. 1 objection is well founded and is consistent with the aims of SEPP No. 1 therefore it is recommended to be supported.

SEPP No 71 – Coastal Protection

The subject site falls within the coastal protection zone as identified under SEPP 71 and referral to the Department of Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from sensitive coastal locations. Potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, wildlife corridors, the suitability of the site for the development and any measures to reduce other adverse environmental impacts have been considered and having regard to these items, the property distance from any waterway or foreshore; and the existence of developments of similar design and scale on nearby and adjoining properties, it is considered that the proposed development is consistent with the matters for consideration under SEPP 71.

The site is located in a coastal zone and it is considered that the development meets the land use expectations of the residential subdivision and is unlikely to result in any detrimental impacts on the coastal environment and its use by the community.

SEPP (Building Sustainability Index: BASIX) 2004

Basix certificate number 523697S has been submitted in support of the application, satisfying the policy.

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

The is no draft planning instrument on display at this time which is applicable to this proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed development has been considered against the controls of the DCP.

The proposal generally complies with the controls of the DCP so a full assessment of this instrument has not been included in this report.

The departures from the controls are identified as follows:

3.1 Setbacks

C1. The minimum setback from the street for a dwelling is 6.0m however as the allotment fronts a designated road the required setback under the provisions of clause 24 the Tweed LEP 2000 is 30m.

The Applicant has lodged an objection to this standard under the provisions of SEPP1 and is discussed elsewhere in this report.

The objection is considered to be worthy of support.

C5. Garages & carports...are to be setback a minimum of 1.0m from the dwellings front façade, unless it can be demonstrated how the design mitigates the dominance of the garage door to the street elevation.

Assessment

The garage will be located totally in front of the dwelling however the entrance will be from the side so the garage door will not face the street.

The front wall of the garage, facing the street has windows to provide an element of visual relief.

The allotment also has an existing front courtyard wall and landscaping which will screen the garage from the street.

It is considered that the garage has been designed to minimise the dominance of the door on the streetscape and will therefore satisfy the objectives of the control.

6.3 Swimming pools & spas

The site has an existing swimming pool which is proposed to retain.

The swimming pool safety fencing does not comply with current pool fencing standards and due to the extent of the building works proposed the pool fencing shall be upgraded as part of the approved works.

A11 - Public Notification of Development Proposals

In accordance with the provisions of DCP A11, adjoining & affected property owners were notified of the proposal.

One submission was received which was concerned about the height of the dwelling, amended plans were submitted which satisfied the objector's concerns.

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

Clause 92(a) Government Coastal Policy

The proposal is not inconsistent with the aims & objectives of the policy

Clause 92(b) Applications for demolition

The proposal includes the demolition of the existing dwelling house on the allotment.

A 'demolition work plan' and 'waste management plan' have been supplied in support of the application.

These applications adequately address the issue of demolition and disposal of waste from the site.

Clause 93 Fire Safety Considerations

The proposed building is a dwelling house with a classification of class 1a & 10a under the provisions of part A3 of the National Construction Code.

No specific fire safety considerations are required apart from the installation of smoke detectors in accordance with part 3.7.2 of the National Construction Code and Australian Standard AS3786.

Clause 94 Buildings to be upgraded

The existing dwelling house is proposed to be demolished therefore no upgrading is required.

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

No coastal management plan is applicable to this application.

- (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 development is considered to be unlikely to result in any significant adverse impacts on the existing natural & built environment. The proposal is consistent with the present land use pattern in this locality and the development is not considered to be out of character with previously approved developments. The proposed building alignment is considered to be acceptable and the side boundary clearances are compliant.

Access, Transport and Traffic

The allotment has an existing driveway which will remain unchanged.

The proposed dwelling house will replace an existing dwelling house therefore there is not expected to be any increase in traffic generated by the proposal.

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

The site, despite its zoning is suitable for the development and is consistent with existing and future surrounding developments in the locality.

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

One submission was received which questioned the height of the proposed dwelling in relation to the existing dwelling and the possible impact of the proposal on distant coastal views.

A site visit to the objector's dwelling was carried out and an assessment was made on the impact of the distant coastal views from the objector's ground floor living area.

Notwithstanding that the proposed new dwelling house will have a greater impact on the views from the objectors dwelling house than the existing dwelling house it is considered that the loss of view is not significant and that panoramic coastal views will still be available.

It is considered that the proposal satisfies established view sharing principles.

(e) Public interest

Despite the objection received, the application has been considered on its merits.

The proposed development generally complies with the applicable planning controls and is considered to be a reasonable design response to the site constraints.

Accordingly the proposal is considered to be consistent with the public interest.

OPTIONS:

That Council:

1. Approve the application with conditions, or
2. Refuse the application, providing reasons.

Council officers recommend Option 1.

CONCLUSION:

Under the circumstances it is considered that the proposal to construct the dwelling house with a minimum building line of 8.71m to Terranora Road is reasonable for conditional approval.

The SEPP No. 1 objection to reduce the statutory building line has been considered and under the circumstances it is considered that the objection is well founded and should be supported.

The variations from the statutory controls in Development Control Plan A1 are considered to be justifiable due to the circumstances of the site and acceptance of these variations is recommended.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Refusal of the application may expose Council to a challenge in the Land & Environment Court.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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13 [PR-PC] Development Application DA13/0594 for a Detached Dual Occupancy at Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0594 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 3 April 2014, Council resolved the following in respect of this matter:

"RECOMMENDED that Development Application DA13/0594 for a detached dual occupancy at Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads be deferred for a workshop and be reported back to a future meeting."

A Councillors Workshop was held on 24 April 2014.

The report is now submitted for Council determination.

Previous Report

Council is in receipt of a Development Application for a detached dual occupancy at 40 Enid Street, Tweed Heads which is within the City Centre Support Precinct.

The proposal includes single storey development to the Enid Street frontage and two-storey development to the rear of the lot with a shared driveway adjacent to the southern side boundary.

The land has an area of 594.4m² and is zoned R3 Medium Density Residential under Tweed City Centre Local Environmental Plan 2012 (TCCLEP 2012). The proposal is permissible with consent. However, the density proposed is considered low and does not meet the objectives of the zone or the desired future character for the City Centre Support Precinct as outlined in Development Control Plan B2 (DCP B2).

The proposed development is considered an under utilisation of urban land which is zoned for medium density purposes. Expectations for the site are informed by a 34m building height limit and a floor space ratio of 3.25:1. A development with up to 10 storeys is anticipated for the subject site.

Subject to a separate report on this agenda is an adjacent townhouse development at 36-38 Enid Street, Tweed Heads which also represents an under utilisation of urban land. There currently exists a realistic opportunity for 36-40 Enid Street to be amalgamated and developed to its fullest extent with a combined area of 1783.2m².

The applicant was advised prior to lodgement that the proposal was contrary to Council's vision for future development of Tweed Heads. It was strongly recommended that the proposal be redesigned to take advantage of the 34m building height limit and greater floor space ratio controls. The proposal as submitted results in cumulative variations to DCP A1 Part A that represents an unacceptable outcome for the site.

Variation of the TCCLEP 2012 and DCP B2 will set an undesirable precedent for development in this strategic area of the Shire and will undermine the strategic planning objectives set by the Planning Instruments.

RECOMMENDATION:

That Development Application DA13/0594 for a detached dual occupancy at Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads be refused for the following reasons:

- 1. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.**

It is Council's view that the proposed development is inconsistent with the vision and objectives contained within:

The Tweed City Centre LEP 2012:

- Clause 1.2: Aims of this plan - – proposed density of the site is not consistent with the desired future character of the area**
 - Clause 2.3: Land Use Table - the proposal does not meet the requirements for medium density residential development within the context of the locality.**
 - Clause 4.3: Height of Buildings - the proposal does not maximise density on the site commensurate with the objectives of the clause.**
 - Clause 4.4: Floor Space Ratio - the proposal does not incorporate increased building height and site amalgamation at a key location in the area of Tweed City Centre.**
- 2. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

The proposal represents a significant variation to building height and floor space ratio for the locality as prescribed within the Tweed City Centre Local Environmental Plan 2012.

The proposal is inconsistent with the future desired character of the City Centre Support Precinct as defined within Development Control Plan B2 – Tweed Heads.

3. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed City Centre LEP 2012 specifically as it relates to residential development controls and density objectives of the R3 Medium Density Residential zone.

REPORT:

Applicant: C Paddison
Owner: Astute Builders Pty Ltd
Location: Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads
Zoning: R3 Medium Density Residential
Cost: \$250,000

Background:

Council is in receipt of a Development Application for a detached dual occupancy at 40 Enid Street, Tweed Heads which is within the City Centre Support Precinct. The proposal represents an under utilisation of urban land which is zoned for medium density purposes. Expectations for the site are informed by a 34m building height limit and a floor space ratio of 3.25:1. A development with up to 10 storeys is anticipated for the subject site.

The Subject Site

The subject site is comprised of a vacant, rectangular shaped lot with an area of 594.4m². The site is generally flat, grassed and cleared of vegetation.

To the north of the site are two vacant lots of the same size, the subject of a townhouse proposal. To the south of the site is older housing stock: a part two/part three-storey brick and tile residential flat building.



Figure 1: locality image

Along Beryl Street to the rear of the site is an older style, two-storey dwelling utilised for residential/commercial purposes. Development along Beryl Street is zoned B3 – Commercial Core. Older two and three storey housing stock is located opposite the site. Residential unit development comprising seven storeys is located nearby on the corner of Enid Street and Frances Street casting shadow over 24 Enid Street.

Proposal

The applicant seeks consent for a detached dual occupancy. The proposal includes:

- 1 x 3-bedroom single storey dwelling house;
- 1 x 3-bedroom two-storey dwelling house;

- Stacked configuration;
- Shared driveway and access from Enid Street;
- Associated resident and visitor car parking;
- Associated landscaping.

Summary

Having regard to dimensional controls and future desired character of the locality, the proposed detached dual occupancy development is considered inconsistent with the visions and objectives of the TCCLEP 2012 and DCP B2. The proposal is considered unsuitable for the location and is therefore recommended for refusal.

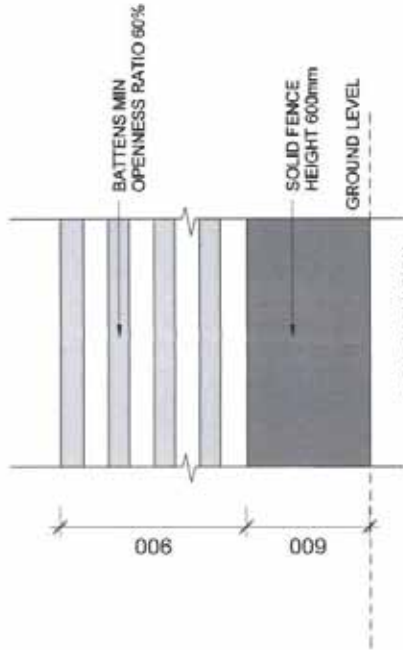
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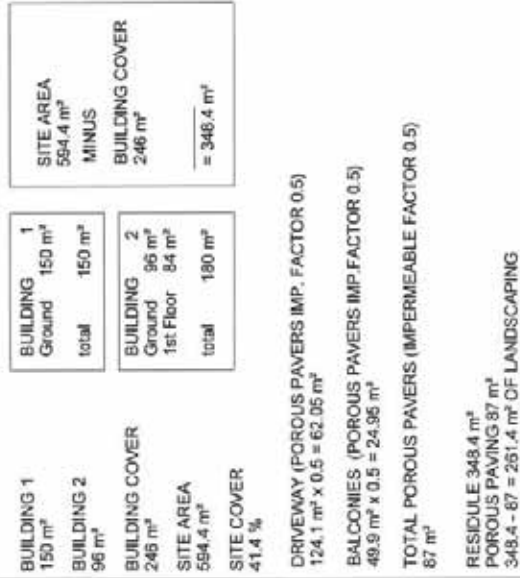
Locality Plan
 Lots 24 Section 5 DP 4043
 No. 40 Enid Street, Tweed Heads

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DEVELOPMENT/ELEVATION PLANS:



2 Fence Detail
Scale: 1 : 20



1 Site Plan
Scale: 1 : 200

BUILDING 1
150 m²

BUILDING 2
96 m²

BUILDING COVER
245 m²

SITE AREA
594.4 m²

SITE COVER
41.4 %

DRIVEWAY (POROUS PAVERS IMP. FACTOR 0.5)
124.1 m² x 0.5 = 62.05 m²

BALCONIES (POROUS PAVERS IMP. FACTOR 0.5)
49.9 m² x 0.5 = 24.95 m²

TOTAL POROUS PAVERS (IMPERMEABLE FACTOR 0.5)
87 m²

RESIDUE 348.4 m²

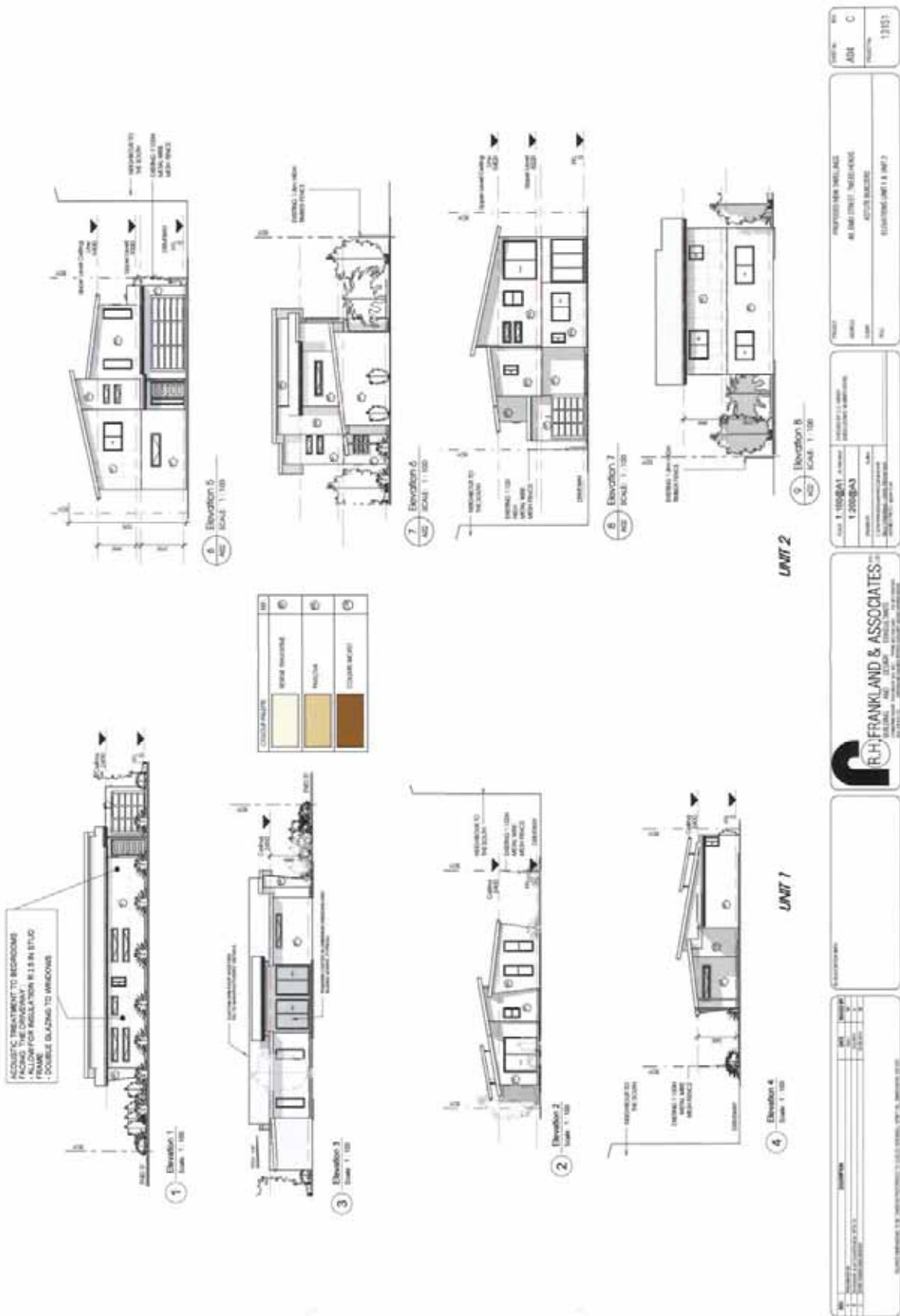
POROUS PAVING 87 m²

348.4 - 87 = 261.4 m² OF LANDSCAPING

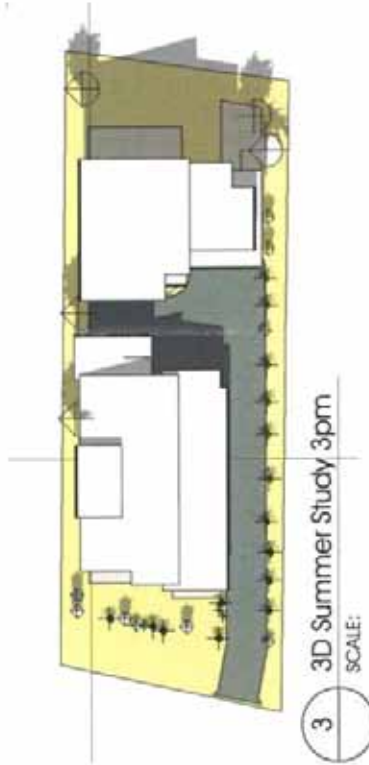
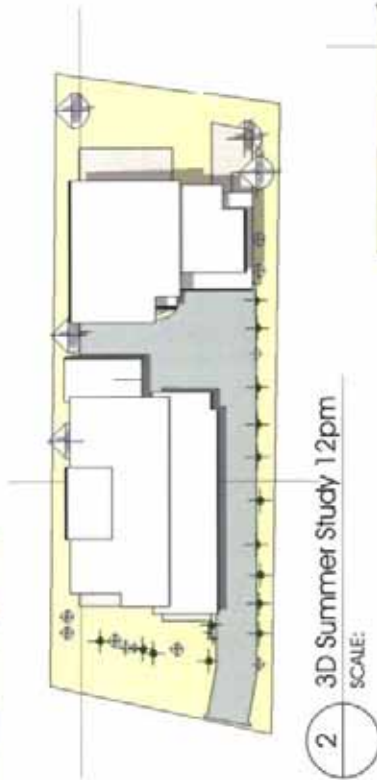
BUILDING 1 Ground 150 m ² total	BUILDING 2 Ground 96 m ² 1st Floor 84 m ² total	SITE AREA 594.4 m ²	SITE COVER 41.4 %
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SITE AREA 594.4 m ²	MINUS BUILDING COVER 246 m ²	= 348.4 m ²
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PREPARED BY: [] DATE: [] CHECKED BY: [] DATE: [] DRAWN BY: [] DATE: []	SCALE: As indicated NUMBER: Author	PROJECT: PROPOSED NEW DWELLINGS ADDRESS: 40, ENMD STREET, TWEED HEADS CLIENT: ASTUTE BUILDERS TITLE: SITE CONCEPT PLAN	SHEET No. A01 No. C PROJECT No. 13151
			CONSULTANT: R.H. FRANKLAND & ASSOCIATES PTY LTD BUILDING AND DESIGN CONSULTANTS 11 MURRAY STREET, TWEED HEADS, NSW 2486 TEL: (07) 5531 1175 FAX: (07) 5531 1175







REF	DESCRIPTION	DATE	ADDED BY
A	PRELIMINARY	06/11/13	AV

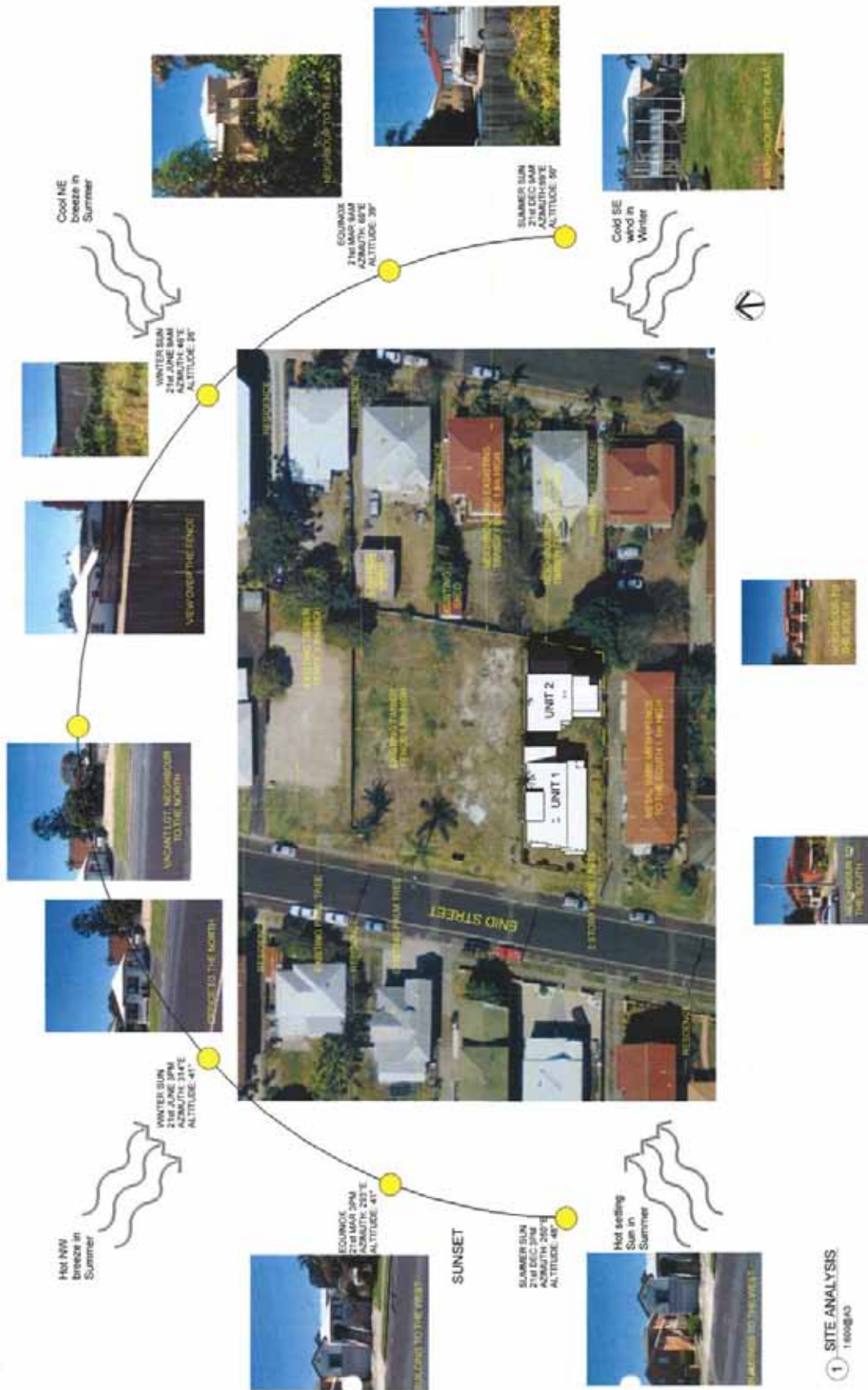
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R.H. FRANKLAND & ASSOCIATES INC.
 BUILDING AND DESIGN CONSULTANTS
 21 WHITE OAK AVENUE SUITE 201, WESTVILLE, QLD 4215
 AUSTRALIA TEL: (07) 5531 1111 BELLAIR ROAD NUMBER 3028B

SCALE:	DRAWN BY: J.L. SMITH
DATE:	DESIGNED BY: NADINE HARRIS
CHECKED BY:	AUTHOR:

PROJECT:	PROPOSED NEW DWELLINGS
ADDRESS:	40, END STREET, TWEED HEADS
CLIENT:	ASTUTE BUILDERS
TITLE:	3D SUN STUDY SUMMER

DRAWING NO.:	A07
REV.:	A
PROJECT NO.:	13151



1 SITE ANALYSIS
1:600@A3

DATE: _____	SCALE: _____	PROJECT: _____	PROJECT REF: _____
BY: _____	DATE: _____	REVISION: _____	DATE: _____
		PROJECT NO: 13101 SHEET NO: _____	



① SUN STUDY SUMMER 9am
1:800g-A3



② SUN STUDY SUMMER 12pm
1:800g-A3



③ SUN STUDY SUMMER 3pm
1:800g-A3

① SUN STUDY SUMMER
1:800g-A3

NO.	DATE	BY	REVISION	DESCRIPTION
 R.H. FRANKLAND & ASSOCIATES ARCHITECTS & PLANNERS 100/1000 WILSON ROAD, SUITE 100, WILSON, QLD 4207 PHONE: (07) 5531 1111 FAX: (07) 5531 1112				
PROJECT		PROPOSED DEVELOPMENT		
SITE		40 END STREET (WEST SIDE),		
DRAWN		KYLE MALONE		
CHECKED		DAVID FRANKLAND		
DATE		28/11/2013		
SCALE		AS SHOWN ON PLANS		
PROJECT NO.		13151		



① SUN STUDY WINTER 8am
1:500@A3



② SUN STUDY WINTER 12pm
1:500@A3



③ SUN STUDY WINTER 3pm
1:500@A3

○ SUN STUDY WINTER
1:500@A3

DATE	PROJECT	PROJECT NO.
		AT1
DATE	PROJECT	PROJECT NO.
		13151
DATE	PROJECT	PROJECT NO.
		13151
DATE	PROJECT	PROJECT NO.
		13151
 R.H. FRANKLAND & ASSOCIATES ARCHITECTS 155/157, SOUTH BEACH ROAD, SOUTH BEACH, WEST AUSTRALIA 6015 TEL: (08) 9439 3000 FAX: (08) 9439 3001		
PHOTOGRAPH BY: PHOTOSUN 48 END STREET, WEST BEACH ADRIAN BULLOCK EASTLEY WALES		

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

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

Tweed City Centre Local Environmental Plan 2012

Clause 1.2 - Aims of the Plan

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

The particular aims of this Plan are as follows:

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

The proposed detached dual occupancy creates a density that is much lower than that envisaged for this locality. As such, the proposal is inconsistent with the aims of the plan as outlined above.

Clause 2.3 – Land Use Table

The subject land is within the R3 Medium Density Residential zone. The proposed development is defined as multi-dwelling housing which is permitted with consent.

The objectives of the zone are:

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Density of residential development in this location within the Tweed Heads area is defined by building height limits and floor space ratios. As such, there is an expectation that medium density housing in this context will be characterised by taller residential unit buildings on consolidated lots that meet the numerical controls.

The detached dual occupancy proposal is not consistent with the vision for residential development within Tweed Heads and represents a lower density than that required to achieve future desired character. As such, the proposal is considered to be inconsistent with the aims and objectives of the land use table.

Clause 4.3 – Height of Buildings

- (1) The objectives of this clause are as follows:
 - (a) to establish the maximum height for which a building can be designed,
 - (b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,
 - (c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,
 - (d) to encourage greater population density in less car-dependent urban areas,
 - (e) to enable a transition in building heights between urban areas comprised of different characteristics,
 - (f) to limit the impact of the height of a building on the existing natural and built environment,
 - (g) to prevent gross overshadowing impacts on the natural and built environment.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Heights of Buildings Map.

There is a 34m building height limit over this site. It is expected that when the opportunity arises, lots may be consolidated and a development may result that takes advantage of the greater density that can be achieved in accordance with Council's vision and objectives for the Tweed City Centre.

The detached dual occupancy proposal represents an underutilisation of urban land and a missed opportunity to consolidate lots in order to achieve a development consistent with the aforementioned vision.

The proposal does not specifically meet objectives (b), (c) and (d) of this clause.

Clause 4.4 – Floor Space Ratio

A floor space ratio of 3.25:1 has been nominated for the subject site. The detached dual occupancy proposal achieves a floor space ratio of 0.55:1 which is considerably less than that nominated.

The proposal is inconsistent with this clause, specifically objective (1)(e):

- (e) to encourage increased building height and site amalgamation at key locations in the area of Tweed City Centre.

Clause 5.5 – Development within the Coastal Zone

The proposal is located within the coastal zone, however, as the site is located at a significant distance from waterways, within an existing urbanised area the proposal is considered not to impact upon the coast zone.

Existing public access to the coastal foreshore remains unchanged and the development will not impede access to the foreshore.

Proposed effluent and stormwater disposal will not impact on the foreshore as the proposed detached dual occupancy is to connect to reticulated water and sewer.

The development will not be impacted by coastal hazards or impact on coastal hazards or increase the risk of coastal hazards in relation to any other land.

Clause 5.9 – Preservation of Trees or Vegetation

The proposed development is within the Tree Preservation Order 2011 - Koala Habitat Study Area. The proposal is located within an area that has been previously cleared. As such, this clause is satisfied.

Clause 6.1 – Acid Sulfate Soils

Class 2 Acid Sulfate Soils are identified on the subject site.

The objective of this clause is *to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*

The soil analysis provided with application documentation confirms potential for acid sulfate soil materials below 2m depth but considers a precautionary approach to consider works below 1.5m depth. A management plan was submitted which was considered satisfactory.

Clause 6.2 – Flood Planning

The whole site is not considered flood prone but is nominated within the Flood Planning Map as being prone to Probable Maximum Flood levels.

The proposed residential development is not required to provide a refuge or a floor response assessment plan. It is therefore considered that this clause is not impacted upon as a result of this application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 43: Residential development

The proposal generally complies with this clause. However, density of residential development on the subject site has not been maximised given that environmental features of the land would not be adversely affected.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality. It will not restrict public access to the foreshore.

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

There are no draft environmental planning instruments relevant to this proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

DCP B2 prevails over DCP A1 with regard to front building setback/building lines within Enid Street and its location within the City Centre Support Precinct. A 4m front setback is accepted as opposed to the average of neighbouring dwellings within 40m requirement for infill development.

The design of the proposal results in cumulative variations to DCP A1 Part A. The variations include:

- Absence of a clearly identifiable dwelling entrance from the street at the front of Unit 1 other than a glass sliding door into the master bedroom;
- Reduction in depth of rear setback from 6m to 5m;
- Unresponsive building siting and overall site design resulting in lack of solar access during winter months to primary windows and doors of living space and external living areas;
- Inadequate solar access to private open space;
- Non-compliance of access/egress of vehicles in accordance with DCP A2

Although not subject to the same controls as the adjacent townhouse proposal, the detached dual occupancy has similar design characteristics:

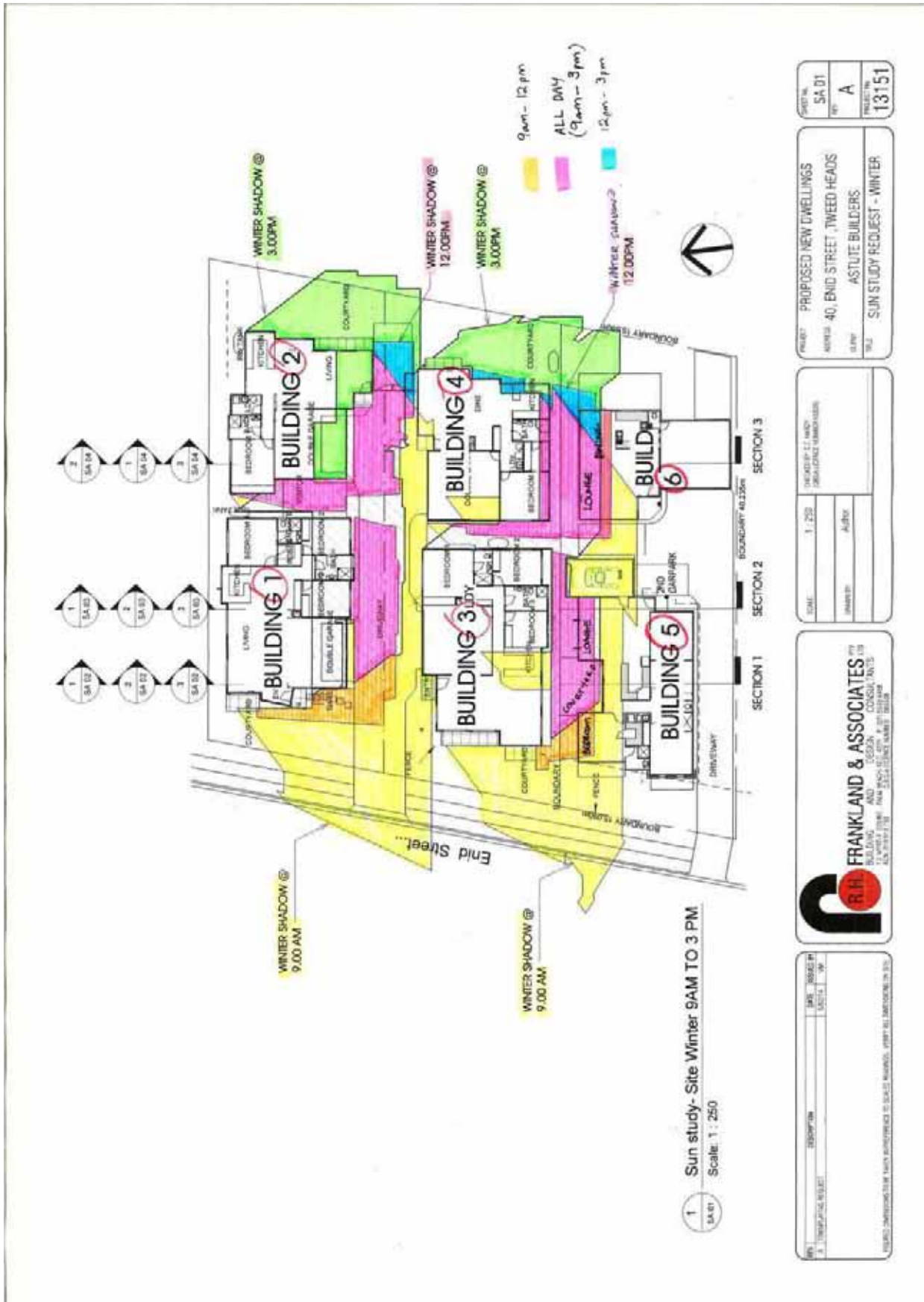
- Reduction of side setback of walls containing primary windows of living rooms to side boundaries from 4m to 1.5 – 1.55m;
- Nil separation between walls containing primary windows of sleeping rooms of Unit 1 to the shared driveway;
- Reduction of setback to the side boundary with a northerly aspect for both units.

The variations (requested and identified) result from the proposed low density and broader building footprint to cater for single and two-storey development on 15m wide allotments. The variations are cumulative and while some may be supported individually on their own merit in a locality in which the proposed density is appropriate, it can be concluded that *en masse* these variations are indicative that the proposed development is unsuitable for the site.

Of concern is the degree of overshadowing to the detached dual occupancy from the northern adjoining allotment which is the subject of a separate report. Due to overshadowing from Buildings 3 and 4 of the adjacent townhouse development and a reduced northern side setback of the detached dual occupancy development, there is no solar access to lounge windows and external courtyard of the single storey unit, or to the lounge windows of the two-storey unit from 9am to 3pm on June 21.

Refer to Figure 2 below for clarification of the degree of overshadowing.

FIGURE 2 - COMPOSITE SHADOW DIAGRAM



On balance, the proposal results in an unacceptable outcome and cumulative variations to DCP A1 that as a whole, cannot be supported.

A2-Site Access and Parking Code

Carparking requirements in accordance with DCP A2 are as follows:

A4	Multi dwelling housing	More than one dwelling on an allotment	1/15 units	2/unit (class 2 AS 2890.1)	1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, and 2 spaces for 3 or more bedroom units. Plus 1 space per 4 units for visitor parking.
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A double garage is provided for the two-storey unit (3-bdrm) which is adequate. Two stacked spaces associated with the single storey unit (3-bdrm) and one adjacent visitor space are located in the middle of the site.

The stacked parking space represents an obstacle within the configuration for all other vehicle movements. Removal of the stacked parking space would represent non-compliance with numerical parking requirements.

The proposed parking configuration does not allow vehicles to manoeuvre safely and in accordance with DCP requirements.

A3-Development of Flood Liable Land

As discussed previously in this report, the proposal is not located on flood liable land. There is no further consideration required.

B2-Tweed Heads

The subject site is located within the City Centre Support Precinct.



Figure 3: City Centre Support Precinct

Future desired character of this precinct is described as follows:

City Centre Support Precinct

The City Centre Support Precinct is located to the south of the City Centre Core and adjoins the Ridgeline and Razorback Precinct, the Tweed River Precinct and the Civic/Campus Precinct and the Southern Boat Harbour Precinct.

The objective for future development in this precinct is to allow for a similar range of land uses to the City Centre Core although at a lower density and without the extent of active street front uses as in the City Centre Core.

Future development on consolidated allotments will be up to 10 storeys fronting Wharf Street and 14 fronting Pearl Street with residential land uses only to the west of Beryl Street and Boyd Street. The objective for future development west of Beryl Street and Boyd Street is to create a residential precinct with high quality urban design and buildings that respond to the topography of the land. Buildings up to 10 storeys will be encouraged along Thomson Street and Florence Street will function as an interface between City Centre Support Precinct and lower density Ridgeline and Razorback Precinct.

Figure 4: objectives of the City Centre Support Precinct

The subject site is located west of Beryl Street. High quality urban design and buildings that respond to the topography of the land are expected in this location.

As such, the proposal for a single storey and two-storey detached dual occupancy is inconsistent with the objectives for future development in this precinct.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

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

This plan relates to the Cobaki and Terranora Broadwater and is therefore not applicable to the proposed development.

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

Context and Setting

The proposed development is inconsistent with the future desired character of the locality which currently comprises older housing stock interspersed with redeveloped land of higher density.

Following assessment of the application, there is a concern that the level of privacy afforded to these structures in the future will be severely diminished as redevelopment of the area to 34m building height occurs over time.

(c) Suitability of the site for the development

The proposal is not considered suitable for the site given the requirement to increase density on sites in key locations that may be amalgamated in order to achieve the aims and objectives of the TCCLEP 2012.

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

Public:

The proposal was notified for a period of 14 days from Friday 1 November to Friday 15 November 2013. During this time, no submissions were received.

(e) Public interest

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed City Centre LEP 2012 specifically as it relates to residential development controls and density objectives of the R3 Medium Density Residential zone.

OPTIONS:

1. Refuse the development 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.

Council officers recommend Option 1.

CONCLUSION:

The development is unsuitable for the site and inconsistent with the Tweed City Centre LEP 2012, specifically the density objectives of the R3 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 lodge a Class One appeal in the NSW Land and Environment Court relating to any Council determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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14 [PR-PC] Development Application DA13/0591 - Erection of Four Townhouses at Lots 25 and 26 Section 5 DP 4043 Nos. 36 and 38 Enid Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0591 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 3 April 2014, Council resolved the following in respect of this matter:

"RECOMMENDED that Development Application DA13/0591 for the erection of four townhouses at Lots 25 and 26 Section 5 DP 4043 No. 36 and 38 Enid Street, Tweed Heads be deferred for a workshop and be reported back to a future meeting."

A Councillors Workshop was held on 24 April 2014.

The report is now submitted for Council determination.

Previous Report

Council is in receipt of a Development Application to erect four townhouses at 36-38 Enid Street, Tweed Heads which is within the City Centre Support Precinct.

The proposal includes single storey development to the Enid Street frontage and two-storey development to the rear of the lots. A shared driveway is located in the middle of the development.

The land has an area of 1188.8m² and is zoned R3 Medium Density Residential under Tweed City Centre Local Environmental Plan 2012 (TCCLEP 2012). The proposal is permissible with consent. However, the density proposed is considered low and does not meet the objectives of the zone or the desired future character for the City Centre Support Precinct as outlined in Development Control Plan B2 (DCP B2).

The proposed development is considered an under utilisation of urban land which is zoned for medium density purposes. Expectations for the site are informed by a 34m building height limit and a floor space ratio of 3.25:1. A development with up to 10 storeys is anticipated for the subject site.

Subject to a separate report on this agenda is an adjacent dual occupancy development at 40 Enid Street, Tweed Heads which also represents an under utilisation of urban land.

There currently exists a realistic opportunity for 36–40 Enid Street to be amalgamated and developed to its fullest extent with a combined area of 1783.2m².

The applicant was advised prior to lodgement that the proposal was contrary to Council's vision for future development of Tweed Heads. It was strongly recommended that the proposal be redesigned to take advantage of the 34m building height limit and greater floor space ratio controls. The proposal as submitted results in cumulative variations to DCP A1 Part B that represents an unacceptable outcome for the site.

Variation of the TCCLEP 2012 and DCP B2 will set an undesirable precedent for development in this strategic area of the Shire and will undermine the strategic planning objectives set by the Planning Instruments.

RECOMMENDATION:

That Development Application DA13/0591 for the erection of four townhouses at Lots 25 and 26 Section 5 DP 4043 Nos. 36-38 Enid Street, Tweed Heads be refused for the following reasons:

- 1. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.**

It is Council's view that the proposed development is inconsistent with the vision and objectives contained within:

The Tweed City Centre LEP 2012:

- Clause 1.2: Aims of this plan** - – proposed density of the site is not consistent with the desired future character of the area
- Clause 2.3: Land Use Table** - the proposal does not meet the requirements for medium density residential development within the context of the locality.
- Clause 4.3: Height of Buildings** - the proposal does not maximise density on the site commensurate with the objectives of the clause.
- Clause 4.4: Floor Space Ratio** - the proposal does not incorporate increased building height and site amalgamation at a key location in the area of Tweed City Centre.

- 2. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

The proposal represents a significant variation to building height and floor space ratio for the locality as prescribed within the Tweed City Centre Local Environmental Plan 2012.

The proposal is inconsistent with the future desired character of the City Centre Support Precinct as defined within Development Control Plan B2 – Tweed Heads.

3. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed City Centre LEP 2012 specifically as it relates to residential development controls and density objectives of the R3 Medium Density Residential zone.

REPORT:

Applicant: Mr L Cotterill and Mrs W Cotterill
Owner: Mr Lance M Cotterill & Mrs Wendy Cotterill
Location: Lots 25 and 26 Section 5 DP 4043 Nos. 36-38 Enid Street, Tweed Heads
Zoning: R3 Medium Density Residential
Cost: \$500,000

Background:

Council is in receipt of a Development Application to erect four townhouses at 36-38 Enid Street, Tweed Heads which is within the City Centre Support Precinct. The proposal represents an under utilisation of urban land which is zoned for medium density purposes. Expectations for the site are informed by a 34m building height limit and a floor space ratio of 3.25:1. A development with up to 10 storeys is anticipated for the subject site.

The Subject Site

The subject site is comprised of two vacant, rectangular shaped lots, each with an area of 594.4m². The sites are generally flat, grassed and cleared of vegetation.

To the north of the site is a vacant lot utilised as an informal car park in association with the Legacy Club of Coolangatta/Tweed Heads. To the south of the site is a vacant lot, the subject of a dual occupancy proposal. Further south is older housing stock: a part two/part three-storey brick and tile residential flat building.



Figure 1: locality image

Along Beryl Street to the rear of the site are older style, two-storey dwellings utilised for residential and commercial purposes. Development along Beryl Street is zoned B3 – Commercial Core. Older housing stock is located opposite the site, inclusive of a part two/part three-storey brick and tile residential flat building and a two-storey dwelling. Residential unit development comprising seven storeys is located nearby on the corner of Enid Street and Frances Street casting shadow over 24 Enid Street.

Proposal

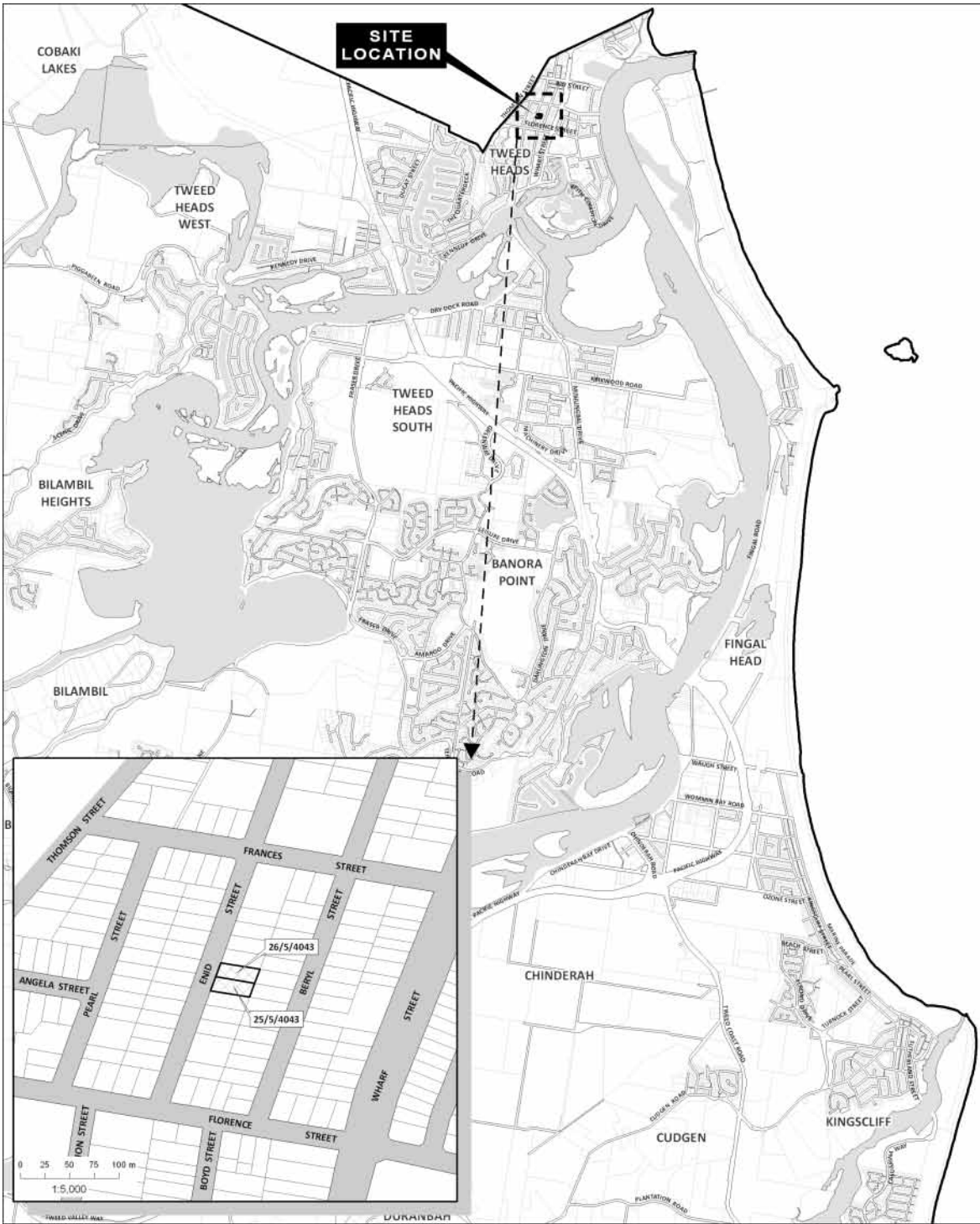
The applicant seeks consent for the erection of four townhouses. The proposal includes:

- 2 x 3-bedroom single storey villas;
- 2 x 4-bedroom two-storey townhouses;
- Shared central driveway and access from Enid Street;
- Associated resident and visitor car parking;
- Associated landscaping;
- Consolidation of allotments.

Summary

Having regard to dimensional controls and future desired character of the locality, the proposed townhouse development is considered inconsistent with the visions and objectives of the TCCLEP 2012 and DCP B2. The proposal is considered unsuitable for the location and is therefore recommended for refusal.

SITE DIAGRAM:



Locality Plan

Lots 25 & 26 Section 5 DP 4043
No. 38 Enid Street, Tweed Heads

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Cadastral 12/03/2014
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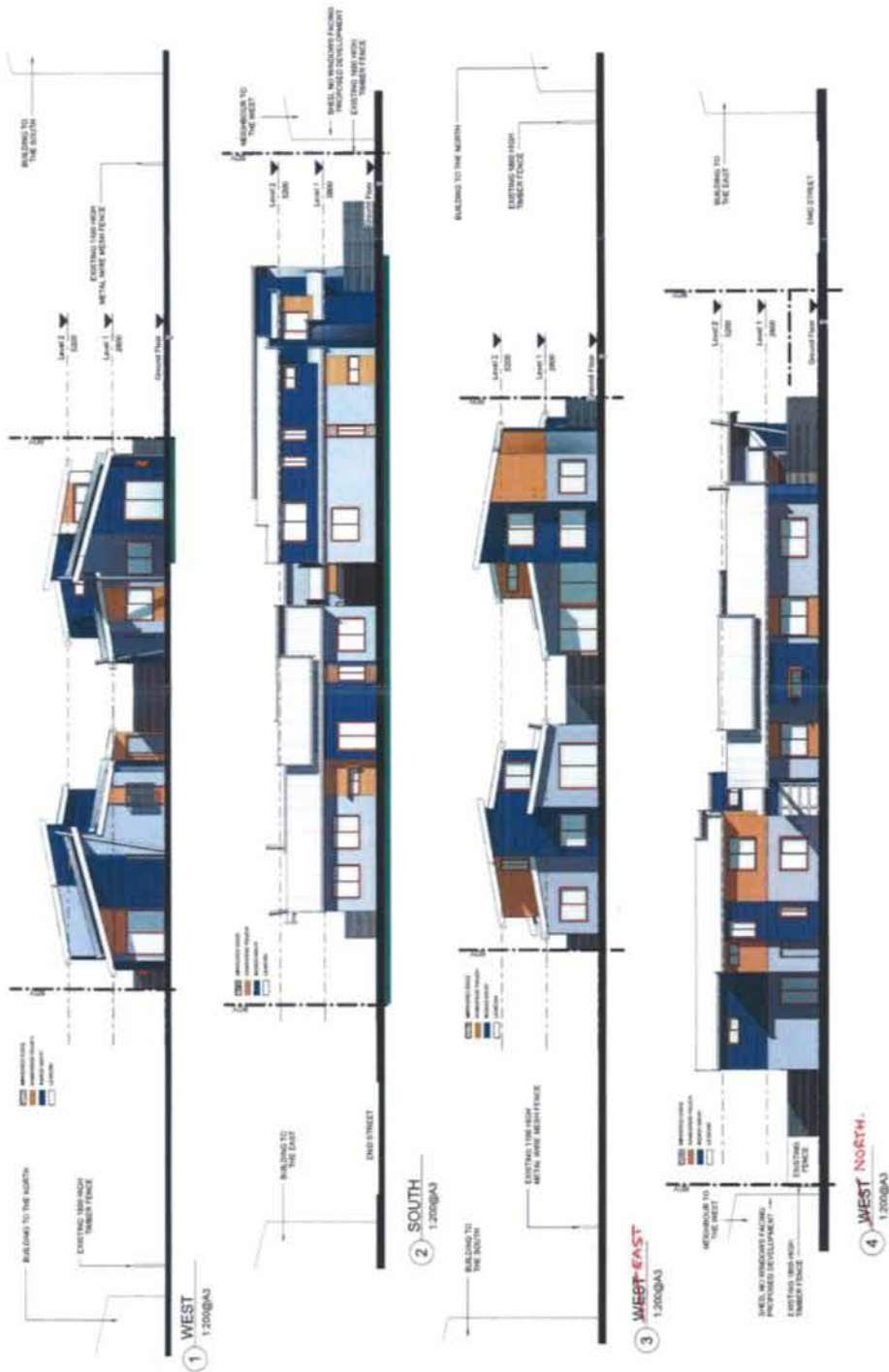
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Horizontal datum: Geoidetic Datum of Australia 1984
Map unit of measure: GDA 2011

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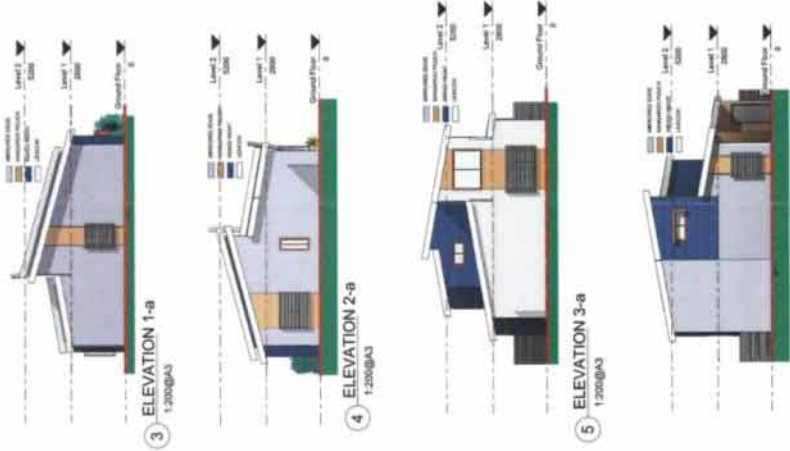
Civic and Cultural Centre
3 Tunbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:



<p>R.H. FRANKLAND & ASSOCIATES ARCHITECTS</p>		<p>DATE: 11/04/14</p> <p>SCALE: 1:200</p> <p>PROJECT: 13152</p>
<p>PROJECT: 13152</p> <p>ADDRESS: 34-48 END STREET, WEST HAVES</p> <p>CLIENT: LAMPS, EXTERIOR, ELEVATIONS</p>		<p>DATE: 11/04/14</p> <p>SCALE: 1:200</p> <p>PROJECT: 13152</p>
<p>PROJECT: 13152</p> <p>ADDRESS: 34-48 END STREET, WEST HAVES</p> <p>CLIENT: LAMPS, EXTERIOR, ELEVATIONS</p>		<p>DATE: 11/04/14</p> <p>SCALE: 1:200</p> <p>PROJECT: 13152</p>

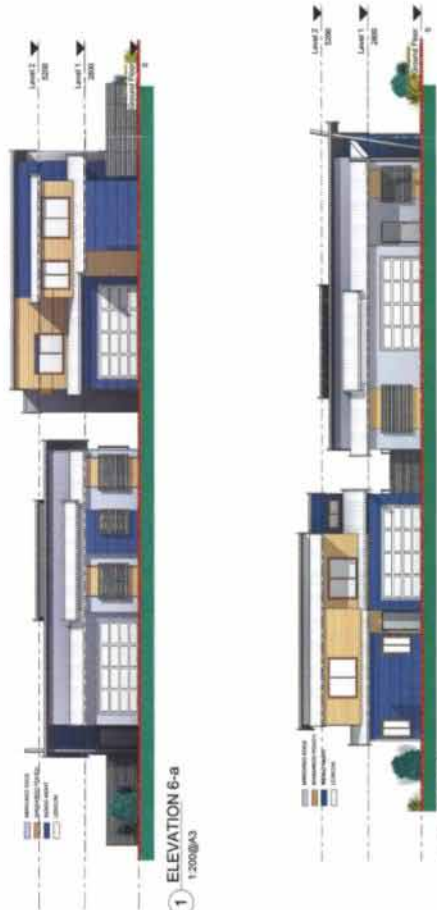


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2 ELEVATION 6-a
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REVISION	
SCALE	1:150

PROJECT	WEST OF FARM
ADDRESS	96-98 KING STREET, WEST HADSD
OWNER	LANCE COSTELLO
DATE	ELEVATIONS 1

SCALE	1:200
DATE	10/10/13
PROJECT	WEST OF FARM
ADDRESS	96-98 KING STREET, WEST HADSD
OWNER	LANCE COSTELLO
DATE	10/10/13

R.H. FRANKLAND & ASSOCIATES
 ARCHITECTS
 100-100 KING STREET, WEST HADSD
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NO.	DATE	BY	REVISION

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1 SUN STUDY SUMMER 9am
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<p>PROJECT: 20-14-016 STREET TAMED WINGS OWNER: JAMES COTTRELL DATE: SUN STUDY SUMMER</p>		<p>TP21 13152</p>
<p>CLIENT: R.H. FRANKLAND & ASSOCIATES ADDRESS: 100-1000 100-1000 100-1000</p>	<p>DATE: 10/10/13 SCALE: 1:1000 DRAWN BY: JAMES COTTRELL CHECKED BY: JAMES COTTRELL</p>	<p>PROJECT NO: 13152</p>
<p>R.H. FRANKLAND & ASSOCIATES ARCHITECTS 100-1000 100-1000 100-1000</p>		
<p>REVISIONS:</p>	<p>DATE:</p>	<p>BY:</p>
<p>NOTES: PROJECT NO. 13152, 100-1000 100-1000 100-1000</p>		



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1:800@A3

<p>PROJECT: WEST OF END 34-38 THE STREET, WEST HAVES LANDS CONTROL DIA 13/07/2013</p>		<p>DATE: 13/07/2013</p>
<p>CLIENT: R.H. FRANKLAND & ASSOCIATES LTD 18, BELMONT ROAD, CLONMEL, CO. Wick TEL: 047 873 2222 FAX: 047 873 2223</p>		<p>SCALE: 1:800</p>
<p>PROJECT NO: 13/07/2013</p>		<p>DATE: 13/07/2013</p>
<p>PROJECT NO: 13/07/2013</p>		<p>DATE: 13/07/2013</p>

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

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

Tweed City Centre Local Environmental Plan 2012

Clause 1.2 - Aims of the Plan

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

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- (c) to encourage the responsible sustainable management and conservation of Tweed City Centre's natural and environmentally sensitive areas, the built environment and cultural heritage,*
- (d) to promote development that is consistent with the principles of ecologically sustainable development,*
- (e) to promote the economic revitalisation of Tweed City Centre,*
- (f) to strengthen Tweed City Centre as a multi functional and innovative regional centre that encourages employment and economic growth,*
- (g) to protect and enhance the vitality, identity and diversity of Tweed City Centre,*
- (h) to facilitate building design excellence appropriate to a regional city in Tweed City Centre.*

The proposed townhousing creates a density that is much lower than that envisaged for this locality. As such, the proposal is inconsistent with the aims of the plan as outlined above.

Clause 2.3 – Land Use Table

The subject land is within the R3 Medium Density Residential zone. The proposed development is defined as multi-dwelling housing which is permitted with consent.

The objectives of the zone are:

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Density of residential development in this location within the Tweed Heads area is defined by building height limits and floor space ratios. As such, there is an expectation that medium density housing in this context will be characterised by taller residential unit buildings on consolidated lots that meet the numerical controls.

The townhouse proposal is not consistent with the vision for residential development within Tweed Heads and represents a lower density than that required to achieve future desired character. As such, the proposal is considered to be inconsistent with the aims and objectives of the land use table.

Clause 4.3 – Height of Buildings

- (1) The objectives of this clause are as follows:
 - (a) to establish the maximum height for which a building can be designed,
 - (b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,
 - (c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,
 - (d) to encourage greater population density in less car-dependent urban areas,
 - (e) to enable a transition in building heights between urban areas comprised of different characteristics,
 - (f) to limit the impact of the height of a building on the existing natural and built environment,
 - (g) to prevent gross overshadowing impacts on the natural and built environment.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Heights of Buildings Map.

There is a 34m building height limit over this site. It is expected that when the opportunity arises, lots may be consolidated and a development may result that takes advantage of the greater density that can be achieved in accordance with Council's vision and objectives for the Tweed City Centre.

The townhouse proposal represents an underutilisation of urban land and a missed opportunity to consolidate lots in order to achieve a development consistent with the aforementioned vision.

The proposal does not specifically meet objectives (b), (c) and (d) of this clause.

Clause 4.4 – Floor Space Ratio

A floor space ratio of 3.25:1 has been nominated for the subject site. The townhouse proposal achieves a floor space ratio of 0.47:1 which is considerably less than that nominated.

The proposal is inconsistent with this clause, specifically objective (1)(e):

- (e) to encourage increased building height and site amalgamation at key locations in the area of Tweed City Centre.

Clause 5.5 – Development within the Coastal Zone

The proposal is located within the coastal zone, however, as the site is located at a significant distance from waterways, within an existing urbanised area the proposal is considered not to impact upon the coast zone.

Existing public access to the coastal foreshore remains unchanged and the development will not impede access to the foreshore.

Proposed effluent and stormwater disposal will not impact on the foreshore as the proposed townhouses are to connect to reticulated water and sewer.

The development will not be impacted by coastal hazards or impact on coastal hazards or increase the risk of coastal hazards in relation to any other land.

Clause 5.9 – Preservation of Trees or Vegetation

The proposed development is within the Tree Preservation Order 2011 - Koala Habitat Study Area. The proposal is located within an area that has been previously cleared. As such, this clause is satisfied.

Clause 6.1 – Acid Sulfate Soils

Class 2 Acid Sulfate Soils are identified on the subject site.

The objective of this clause is *to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*

The soil analysis provided with application documentation confirms potential for acid sulfate soil materials below 2m depth but considers a precautionary approach to consider works below 1.5m depth. A management plan was submitted which was considered satisfactory.

Clause 6.2 – Flood Planning

The whole site is not considered flood prone but is nominated within the Flood Planning Map as being prone to Probable Maximum Flood levels.

The proposed residential development is not required to provide a refuge or a floor response assessment plan. It is therefore considered that this clause is not impacted upon as a result of this application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 43: Residential development

The proposal generally complies with this clause. However, density of residential development on the subject site has not been maximised given that environmental features of the land would not be adversely affected.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality. It will not restrict public access to the foreshore.

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

There are no draft environmental planning instruments relevant to this proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

DCP B2 prevails over DCP A1 with regard to front building setback/building lines within Enid Street and its location within the City Centre Support Precinct. A 4m front setback is accepted as opposed to the 6m requirement.

The design of the proposal results in cumulative variations to DCP A1 Part B. The variations include:

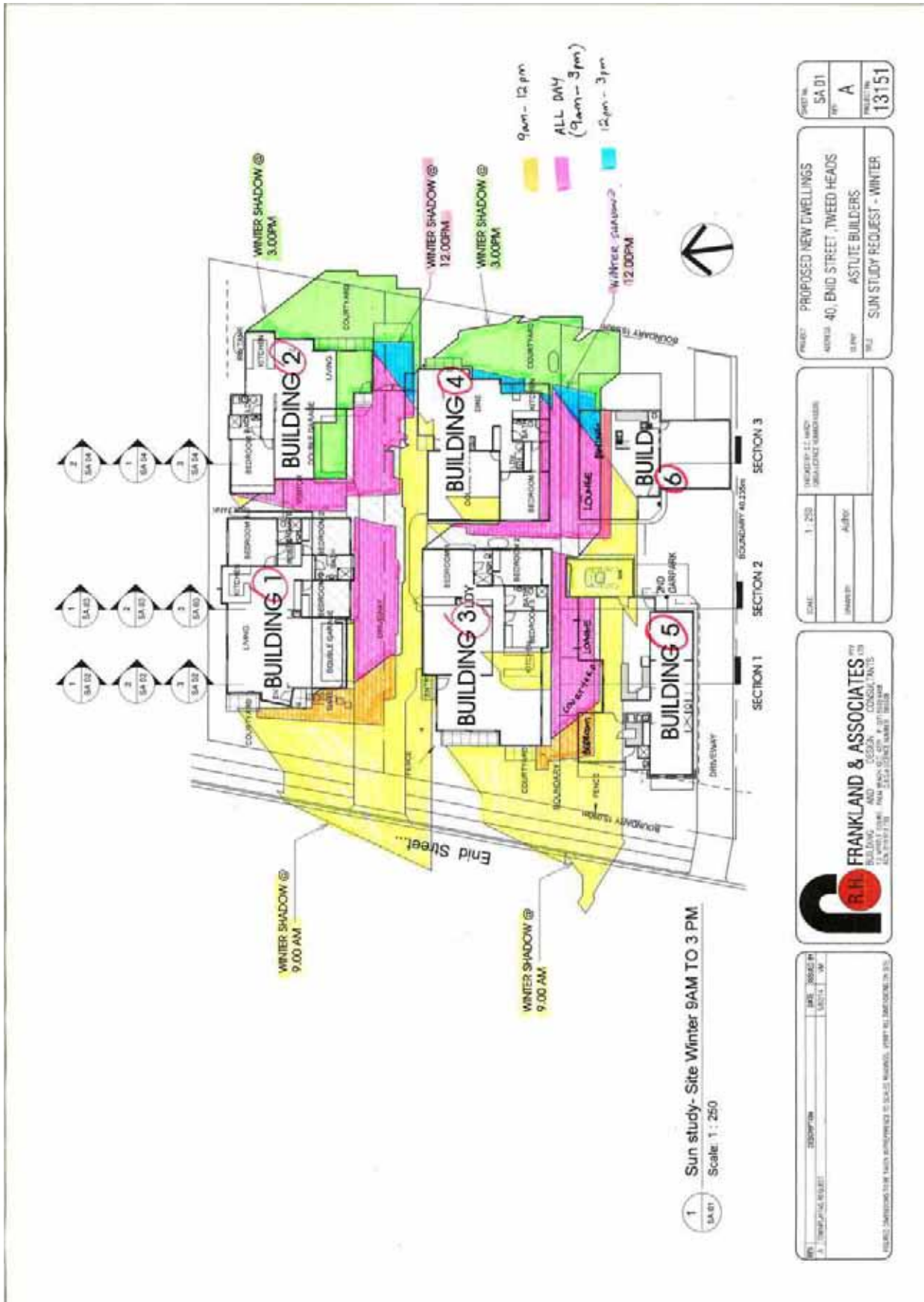
- Reduction in width of rear deep soil zone from 7.242m to 5m;
- Reduction of side setback of walls containing primary windows of living rooms to side boundaries from 4m to 1.525m;
- Reduction of minimum separation between walls containing primary windows/doors of living rooms to side boundaries from 4m to 1.525m;
- Reduction of minimum separation between walls containing windows/doors of living rooms to shared driveways from 4m to 2.2m and 0m;
- Reduction of minimum separation between walls containing primary windows/doors of sleeping rooms to shared driveways from 3m to 0m;
- Reduction of minimum setback to the side boundary with a northerly aspect for Buildings 1 and 2 from 4m to 1.525m;
- Reduction of solar access to living area windows of neighbouring properties to less than three hours of sunlight between 9am and 3pm on 21 June.

The variations (requested and identified) result from the proposed low density and broader building footprint to cater for single and two-storey development on 15m wide allotments. The variations are cumulative and while some may be supported individually on their own merit, in a locality in which the proposed density is appropriate, it can be concluded that *en masse* these variations are indicative that the proposed development is unsuitable for the site.

Of concern is the degree of overshadowing to the proposed dual occupancy on the southern adjoining allotment which is the subject of a separate report. Due to overshadowing from Buildings 3 and 4 of the townhouse development and a reduced northern side setback of the dual occupancy development, there is no solar access to lounge windows and external courtyard of the single storey dwelling, or to the lounge windows of the two-storey dwelling from 9am to 3pm on June 21.

Redevelopment of currently vacant 34 Enid Street would result in a similar degree of overshadowing to Buildings 1 and 2 as the adjacent dual occupancy.
Refer to Figure 2 below for clarification of the degree of overshadowing.

FIGURE 2 - COMPOSITE SHADOW DIAGRAM



On balance, the proposal results in an unacceptable outcome and cumulative variations to DCP A1 that as a whole, cannot be supported.

A2-Site Access and Parking Code

Carparking requirements in accordance with DCP A2 are as follows:

A4	Multi dwelling housing	More than one dwelling on an allotment	1/15 units	2/unit (class 2 AS 2890.1)	1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, and 2 spaces for 3 or more bedroom units. Plus 1 space per 4 units for visitor parking.
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A double garage is provided for each townhouse (2 x 3-bdrm + 2 x 4-bdrm) which is adequate. One visitor space between Buildings 1 and 2 caters for disabled access which is satisfactory. There is one single driveway for the four units which minimises hard surfaces along the frontage.

A3-Development of Flood Liable Land

As discussed previously in this report, the proposal is not located on flood liable land. There is no further consideration required.

B2-Tweed Heads

The subject site is located within the City Centre Support Precinct.

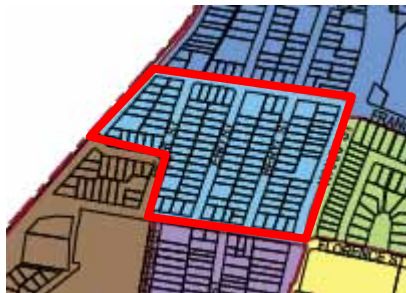


Figure 3: City Centre Support Precinct

Future desired character of this precinct is described as follows:

City Centre Support Precinct

The City Centre Support Precinct is located to the south of the City Centre Core and adjoins the Ridgeline and Razorback Precinct, the Tweed River Precinct and the Civic/Campus Precinct and the Southern Boat Harbour Precinct.

The objective for future development in this precinct is to allow for a similar range of land uses to the City Centre Core although at a lower density and without the extent of active street front uses as in the City Centre Core.

Future development on consolidated allotments will be up to 10 storeys fronting Wharf Street and 14 fronting Pearl Street with residential land uses only to the west of Beryl Street and Boyd Street. The objective for future development west of Beryl Street and Boyd Street is to create a residential precinct with high quality urban design and buildings that respond to the topography of the land. Buildings up to 10 storeys will be encouraged along Thomson Street and Florence Street will function as an interface between City Centre Support Precinct and lower density Ridgeline and Razorback Precinct.

Figure 4: objectives of the City Centre Support Precinct

The subject site is located west of Beryl Street. High quality urban design and buildings that respond to the topography of the land are expected in this location.

As such, the proposal for single storey and two-storey townhousing is inconsistent with the objectives for future development in this precinct.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

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

This plan relates to the Cobaki and Terranora Broadwater and is therefore not applicable to the proposed development.

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

Context and Setting

The proposed development is inconsistent with the future desired character of the locality which currently comprises older housing stock interspersed with redeveloped land of higher density.

Following assessment of the application, there is a concern that the level of privacy afforded to these structures in the future will be severely diminished as redevelopment of the area to 34m building height occurs over time.

(c) Suitability of the site for the development

The proposal is not considered suitable for the site given the requirement to increase density on sites in key locations that may be amalgamated in order to achieve the aims and objectives of the TCCLEP 2012.

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

Public:

The proposal was notified for a period of 14 days from Wednesday 6 November to Wednesday 20 November 2013. During this time, no submissions were received.

(e) Public interest

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed City Centre LEP 2012 specifically as it relates to residential development controls and density objectives of the R3 Medium Density Residential zone.

OPTIONS:

1. Refuse the development 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.

CONCLUSION:

The development is unsuitable for the site and inconsistent with the Tweed City Centre LEP 2012, specifically the density objectives of the R3 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 lodge a Class One appeal in the NSW Land and Environment Court relating to any Council determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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15 [PR-PC] DA10/0800 Cobaki Estate Subdivision of Precinct 1 and 2 Comprised of 475 Residential Lots (Including 1 Residual Lot) and Lots for Drainage, Open Space and Urban Infrastructure

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA10/0800 Pt17



Civic Leadership



Caring for the Environment

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
4	Caring for the Environment
4.1	Protect the environment and natural beauty of the Tweed
4.1.3	Manage and regulate the natural and built environments

SUMMARY OF REPORT:

This report has been prepared to provide Council with an update on the status of assessment in relation to Precinct 1 and 2 of the Cobaki development.

As stated in previous Council reports, unauthorised works have been undertaken by the applicant in the Northern Hillside in the past.

At Council's meeting of 18 April 2013, it was resolved that:

"Council endorses that the unauthorised works at the Northern Hillside of the Cobaki site be addressed at this stage through the conditions of development consent for Precinct 1 and 2 (DA10/0800)."

Following the recent approval of the S96 application for Precincts 1 and 2 (DA10/0800.03), the applicant is now seeking a construction certificate to undertake bulk earthworks within Precinct 1 and 2. Prior to the issue of a construction certificate, Condition 50 of DA10/0800 must be satisfied.

Condition 50 reads:

50. *In accordance with Condition C18 of Concept Plan MP06_0316, a detailed description is to be provided to the satisfaction of the General Manager or delegate demonstrating compliance with previous Tweed Shire Council consent conditions intended to preserve wildlife corridors and protect and offset threatened species, populations and ecological communities and their habitats outside of the Concept Plan habitat requirements, or relevant reasons (such as subsequent amendments) as to why compliance was not required or may be transferred to current DAs. Such description is to include extracts of all relevant plans referred to in the conditions listed below sufficient to understand the land areas of relevance to the conditions and any overlap with current applications. Additional offset must be proposed if clearing of native vegetation has been undertaken not in accordance with the below development consents. Conditions to be addressed are as follows:*

(a) *D94/0438.04 Conditions 23, 24, 34a, 35, 36a, 37 and 38.*

(b) *K99/1124.06 Conditions 10, 15A, 30, 31, 41, 81, 83A, 90, 91, 92A, 93, 94A, 95A, 96, 97, 98, 99,*

100, 101, 102A, 103, 104, 105, 106, 107, 108, 109 and Schedule B (National Parks imposed conditions via concurrence for Species Impact Statement.

(c) 1262/2001DA.02 Condition 9, 16, 17, 18.

Where required the development consents are to be modified in accordance with Section 80A(1) of the Environmental Planning and Assessment Act and Regulations to be consistent with this consent.

The applicant has submitted a compliance check in relation to Condition 50, which has been subject to detailed analysis from Council. The outcome of the assessment is that insufficient information has been provided by the applicant. As such, it is not considered that the provisions of Condition 50 of DA10/0800 have been adequately satisfied. Further information is required from the applicant in order to ascertain as to whether Condition 50 has complied with.

RECOMMENDATION:

That Council supports the request of further information from the applicant in relation to Condition 50 of Development Consent DA10/0800 as outlined in this report.

REPORT:

Background:

Previous Council reports have addressed the issue of unauthorised works in the "Northern Hillside" area, which was the subject of a Section 96 application for residential subdivision of Precincts 1 and 2, for which Council was the consent authority.

The Council meeting of 18 April 2013, considered two main compliance options for Council with regard to the Northern Hillside unauthorised works:

- The first option was to allow the planning process to simply take its course. The JRPP approval for Precinct 1 and 2 (DA10/0800) incorporates specific conditions which require the proponent to take into consideration previous consents. Condition 9 of DA10/0800 requires all existing consents applicable to Precinct 1 and 2 to be modified (where relevant) to be consistent with DA10/0800. Condition 50 requires a detailed description demonstrating compliance with previous consents, with particular regard to ecological conditions of consent. This condition will involve the reconciliation of K99/1124; or
- The second option was to obtain advice from Council's solicitors in terms of potential legal proceedings for compensatory measures (rather than rectification) relating to the loss of environmental vegetation and habitat in the Northern Hillside.

The Council resolution of 18 April 2013 was:

Council endorses that the unauthorised works at the Northern Hillside of the Cobaki site be addressed at this stage through the conditions of development consent for Precinct 1 and 2 (DA10/0800).

Following the recent approval of the S96 application for Precincts 1 and 2 (DA10/0800.03), the applicant is now seeking a construction certificate to undertake bulk earthworks within Precinct 1 and 2. Prior to the issue of a construction certificate for Precinct 1 and 2, the provisions of Condition 50 of DA10/0800 must be satisfied.

ASSESSMENT:

Condition 50 of DA10/0800 (Precincts 1 & 2) requires the applicant to undertake a reconciliation of conditions of consent from D94/0438.04, K99/1124.06 and 1262/2001DA.02 across the Cobaki development site applicable to that area. The condition requires the applicant to demonstrate compliance with consent conditions, including extracts of all relevant plans and propose additional offset if clearing has been undertaken not in accordance with the development consents.

50. *In accordance with Condition C18 of Concept Plan MP06_0316, a detailed description is to be provided to the satisfaction of the General Manager or delegate demonstrating compliance with previous Tweed Shire Council consent conditions intended to preserve wildlife corridors and protect and offset threatened species, populations and ecological communities and their habitats outside of the Concept Plan habitat requirements, or relevant reasons (such as subsequent amendments) as to why compliance was not required or may be transferred to current DAs. Such description is to include extracts of all relevant plans referred to in the conditions listed below sufficient to understand the land areas of relevance to the conditions and any overlap with current applications. Additional offset must be proposed if clearing of native vegetation has been undertaken not in accordance with the below development consents. Conditions to be addressed are as follows:*

- (a) *D94/0438.04 Conditions 23, 24, 34a, 35, 36a, 37 and 38.*
- (b) *K99/1124.06 Conditions 10, 15A, 30, 31, 41, 81, 83A, 90, 91, 92A, 93, 94A, 95A, 96, 97, 98, 99, 100, 101, 102A, 103, 104, 105, 106, 107, 108, 109 and Schedule B (National Parks imposed conditions via concurrence for Species Impact Statement.*
- (c) *1262/2001DA.02 Condition 9, 16, 17, 18.*

Where required the development consents are to be modified in accordance with Section 80A(1) of the Environmental Planning and Assessment Act and Regulations to be consistent with this consent.

The following table incorporates each of the individual conditions noted above for each of the old consent, the applicant's response in terms of compliance and Council comment with regard to whether compliance has been achieved or whether further information is required.

D94/0438.04 - Proposed bulk earthworks

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
34a	Environmental impact of proposed works to be mitigated by implementation of the 17 point recommendations by James Warren, Environmental and Biological Consultant, on page 34 (section 5.2) of his report, November 1994 entitled "Flora and Fauna Assessment" submitted with the development application or by the implementation of such alternative proposals approved by Council based on supporting evidence submitted by the proponent in relation to interim works.		This condition has not been fully complied with. Additional information is required in order to determine the extent of compliance as detailed below.

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	17 point recommendations to ameliorate impacts (JWA 1994)		
	#1 Cut areas have been designed around the need to conserve trees which were considered likely to provide habitat for protected fauna and in particular endangered fauna. This planning has allowed the retention of the bulk of the potential habitat trees.	Bulk earthworks have been undertaken within Precinct 1 and 2 under development consent K99/1124. Refer to comments below in relation to that consent.	Further information is required in order to determine the extent of compliance with this recommendation. See comments relating to K99/1124 Condition 90 (3) below regarding old growth trees.
	#2 The bulk of the vegetation and habitat trees on the hills in Cut Area 5 occur on the mid to lower slopes. Most of this vegetation has been conserved around the lower slopes.	This recommendation is not applicable to DA10/0800.	Noted. No further information required.
	#3 Embellishment plantings should take place in the conserved Cut Area 5 habitat. These plantings should include a high density of the preferred Koala food trees Grey gum and Tallowwood. The number of these preferred Koala food trees should be planted in a ratio of at least twice the number lost as a result of the cut activities. A rehabilitation plan should be prepared prior to the commencement of earthworks and submitted as part of the subsequent development applications.	This recommendation is not applicable to DA10/0800.	Noted. No further information required.
	#4 The Bangalow palm association in Cut Area 5 will be conserved.	This recommendation is not applicable to DA10/0800.	Noted. No further information required.

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	#5 Cut Area 1 will not include any Mt Woodgee vegetation. All of this vegetation will be conserved.	Bulk earthworks have been undertaken within Precinct 1 and 2 under development consent K99/1124. Refer to comments below in relation to that consent.	Further information is required to demonstrate the extent of compliance with this condition. Excerpts of plans showing the extent of cut in Cut Area 1 and the extent of Mt Woodgee vegetation removed and retained during works are required.
	#6 All significant plant species will be conserved.	Leda submits that this has been generally complied with.	Further detail is required to demonstrate the extent of compliance with this recommendation and the proposed measures to offset any removal of significant plant species.
	#7 Great care should be taken to ensure soil removal and filling activities are carried out so as to minimise impacts on land not subject to these activities.	Fill activities in the vicinity of Precinct 1 and 2 have been undertaken to minimise impacts of adjoining land.	Additional information is required to demonstrate the extent of compliance with this recommendation. Any impacts on adjoining lands are to be documented and their extent quantified, along with any proposed ameliorative measures.
	#8 Cut and fill activities should be carried out between January and April so as to give fauna maximum opportunity to recover from the site activities. Food is still reasonably abundant and most Vespertilionid bats have given birth by December/January. Sugar gliders have also completed weaning their young. Common brushtails breed and give birth in autumn and spring however breeding occurs in all months of the year.	Where possible work has been targeted for this period.	Additional information is required to demonstrate the extent of compliance with this recommendation. Detail of timing of works is requested.
	#9 Regeneration of habitat should occur between the proposed Boyd Street extension town roundabout (and associated road) and the Crown land to the east. These activities will assist the long term viability of the Wallum Froglet population.	The Boyd Street extension town roundabout and the Crown Reserve are not located within Precinct 1 or 2. This recommendation is not applicable to DA10/0800.	Noted. No further information required.

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	#10 An extensive replanting program will occur in selected locations of the site as part of the open space program for subsequent development. The low lying south-eastern portion of the site - approximately 15 hectares will be rehabilitated as an extension to the adjacent Crown Land and Cobaki Creek. A rehabilitation plan for this area will be prepared prior to commencement of earthworks.	The saltmarsh area is not located within Precinct 1 or 2. This recommendation is not applicable to DA10/0800. The rehabilitation of the salt marsh is proposed under other contemporary approvals. In addition approximately 15ha is subject to an 88B restriction in favour of TSC.	Noted. No further information required.
	#11 A vegetated buffer of 15 metres should be provided between Fill Area 8 and the 7(l) Habitat zone. Depending on site conditions after filling has occurred it is likely that natural regeneration in this area will be sufficient to provide this buffer rather than carrying out a replanting program.	Condition 50 of S94/194 requires a 20m buffer. The consent was modified on 7 December 2011 S94/194.09 to allow minor encroachments in the buffer to facilitate the construction of road works and drainage. The road work to be undertaken will continue under S94/194.	Noted. No further information required.
	#12 Sedimentation ponds will be constructed to protect adjacent habitats from pollution.	We understand that erosion and sedimentation controls measures were installed for Precinct 1 and 2 under the bulk earthworks approval as per the approved CC plan. Contemporary sediment and erosion controls are to be implemented under DA08/0800.	Noted. No further information required.
	#13 Approximately 1.2 hectares will be rehabilitated in the north-eastern corner of the site as Potoroo habitat. A rehabilitation plan is to be prepared as a condition of consent for a previous approval.	Rehabilitation stage not yet reached. Addressed by proposed Potoroo Management Plan under the Concept Plan and associated consents. The Potoroo habitat is not located in Precinct 1 or 2.	Noted. No further information required.

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>#14 Where fill and road construction (Fill Area 9) passes through the Tree Heath Association (<i>E. signata/E. robusta</i>), detailed site survey in conjunction with an Ecologist should determine the exact route so as to avoid potential habitat trees where possible. The wide spacing of trees in this area should allow for maximum conservation of trees.</p>	<p>Fill Area 9 is not within Precinct 1 or 2. This recommendation is not applicable to DA10/0800.</p>	<p>Noted. No further information required.</p>
	<p>#15 Where Fill Areas 2, 3, 4, 5 and 6 pass across Sandy Lane, conservation of the roadside fringes of mature Forest red gums should be a priority.</p>	<p>Only Fill Area 2 is located within Precinct 1-2. The earthworks in that area have been undertaken under development Consent K99/1124. Refer to comments below in relation to that consent.</p>	<p>Further detail is required in order to determine the extent of compliance with this recommendation. It is unclear where Forest Red Gums to be retained are located. Reference to relevant plans and evidence of retention or removal of Forest Red Gums is to be provided.</p>
	<p>#16 The trees utilised in the habitat rehabilitation areas will achieve sustainable use status as follows:</p> <ul style="list-style-type: none"> - Paperbarks and Banksias can be utilised by Queensland blossom bats after 3-5 years growth - Eucalypts favoured by Koalas can be utilised by Koalas as a food source after 6-7 years of growth - Habitat will be available immediately for frogs to utilise <p>Seedlings will take up to 60-70 years to develop hollows suitable for bats or arboreal mammals</p>	<p>Rehabilitation stage not yet reached. Addressed by proposed regeneration under the Concept Plan and associated consents.</p>	<p>No further information required.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	#17 All plantings should be carried out as soon as possible and the developer is to be responsible for the care and survival of all plantings for a period of at least 12 months.	Rehabilitation stage not yet reached. Addressed by proposed regeneration under the Concept Plan and associated consents.	Recommendation not complied with. The SRRMP (SMEC June 2013) addresses rehabilitation commitments in Rehabilitation Areas 1, 2, 3, 4A and 13 which are associated with Precincts 1 and 2. Note that in these contemporary plans, fencing and buffer planting is to commence prior to the commencement of bulk earthworks.
35	Applicant to provide details showing that sedimentation pond P1 does not encroach upon or adversely affect the proposed Potoroo Rehabilitation Area as identified in the Management Plan for the Long-Neck Potoroo at Cobaki (September 1994 - J Warren).	Future works in that part of the site far north-east is not affected by the proposed work in DA10/0800. The sediment pond is constructed in the location shown on the approved CC plan, see attachment "D". That part of the site is also subject to the revised Potoroo Management Plan under the contemporary approvals.	Noted. No further information required.
36a	Vegetation Rehabilitation Plan to be submitted for proposed work (cut and fill areas) indicating permanent and temporary revegetation, method of revegetation, plants, fencing, topsoil spreading, mulching, watering, and including vegetated buffers, embellishment plantings, koala food trees, etc, nominated in J Warren's "Flora and Fauna Assessment" November 1994 recommended amelioration measures, or by such alternative plan as approved by Council in relation to interim works.	The rehabilitation stage has not yet been reached. Leda notes that extensive regeneration and rehabilitation works will be implemented under the Concept Plan (and associated consents).	No Vegetation Rehabilitation Plan has been submitted. It is noted however that the SRRMP (SMEC June 2013) addresses rehabilitation commitments in Rehabilitation Areas 1, 2, 3 4A and 13 which are associated with Precincts 1 and 2. Note that in contemporary plans, initial phases of rehabilitation (fencing and buffer planting) is to commence prior to the commencement of bulk earthworks.
37	Secure fence to be established and maintained around Scribbly Gums to protect these trees during site works.	The scribbly gums to be protected have been fenced. The scribbly gums are not in the area of Precincts 1-2.	Noted. No further information required.
38	Earthworks and disturbance for fill area F9 to provide for 20 metre wide vegetated buffer to the 7(l) zoned Tree and Shrub Heathland areas in accordance with C5 of Section 6.12 of Development Control Plan No 17.	Fill area F9 is located adjacent to the Cobaki Parkway and is not in the area of Precincts 1-2.	Noted. No further information required.

K99/1124.06 - 560 Lot residential subdivision

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
10	The only vegetation that can be removed is that directly required to be removed by earthworks, servicing of the development or providing a house site. No other vegetation is to be removed.	The vegetation removal associated with work undertaken to date is generally in accordance with the approved residential development foot print of development consent K99/1124.	Further information is required to determine the extent of compliance with this condition. Please provide detail of the extent of vegetation that has been removed and retained during works undertaken to date. Additional offset is to be provided if clearing has been undertaken beyond that approved under K99/1124.
30	Where tree clearing is to be undertaken and the exclusions and exemption under the Native Vegetation Conservation Act 1997 do not apply, a consent will be required from the Department of Land and Water Conservation for tree removal prior to commencing work.	Not Applicable - Native Vegetation Conservation Act 1997 has since been repealed. Exemptions applied to Urban zoned land, which applied to Precincts 1-2.	Native Vegetation Conservation Act 1997 was repealed in 2005, replaced by the Native Vegetation Act 2003. Exemptions would have applied to Urban zoned land, but parts of precincts 1&2 are zoned Recreation & Environmental Protection. Further assessment is required in this regard.
41	The Vegetation Rehabilitation Plan required by Condition 36 of Development Consent 94/438 is to be submitted and approved prior to commencing earthworks and prior to release of the Construction Certificate for Stage 1 of the proposed development. All recommendations of the Vegetation Rehabilitation Plan are to be complied with prior to the release of the linen plan to ensure that the rehabilitation is maintained by the developer for a period of 1 year or until the landscaping is established, whichever occurs first. The amount of bond shall be 20% of the estimated cost of the rehabilitation works.	Not Applicable - Condition is not activated for the Purpose of Bulk Earthworks (refer to Condition 110). Extensive Site Regeneration & Revegetation and Buffer Management Plans are proposed under DA10/0800.	Condition not complied with. Certain actions (fencing, buffer planting etc) under contemporary Site Regeneration and Buffer Plans are required prior to commencement of earthworks. Evidence that these actions have been undertaken is required. Reference to the relevant contemporary plans is required.

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
81	An Environmental Officer shall be engaged to implement this consent and monitor and oversee the environmental effects of development during construction phases. Such officer to be appropriately (professionally) qualified environmentalist; tasks to be as set out in the Management Plan accompanying the Statement of Environmental Effects by Sinclair Knight Merz that was submitted with DA S94/194, as amended by conditions of consent:	An Environmental Officer is currently appointed under the Concept Plan (and associated consents) to monitor the ongoing development of the site.	Noted. See comments below regarding compliance with i - iv of this condition.
	i. All significant old growth trees which are to be retained as identified in the Species Impact Statement prepared by Peter Parker dated August 1999 (Figure 4.4) are to be clearly marked prior to commencement of works. This is to be monitored by the Environmental Officer to ensure that the trees are not damaged, destroyed or removed.		i. See comment at Condition 90 (3) below.
	ii. The flora and fauna survey, (Section 4 of the Species Impact Statement prepared by Peter Parker dated August 1999) identifies and maps a number of threatened species at the site (Figure 4.2). No development shall occur at the site and in areas proximate to these locations and buffer plantings of suitable native plant species shall be provided between the locations and nearby urban development or roads. This work is to be to the satisfaction of the Director General of the National Parks and Wildlife Service and shall be completed prior to release of the linen plan for the relevant stage.		ii. See comment at Condition 90 (1) below.
	iii. Stock that currently graze		iii. See Comment at

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	over the site shall be removed prior to the issue of a Subdivision Certificate.		Condition 90 (2) below.
	iv. A monitoring report shall be provided to Council and the National Parks and Wildlife Service six (6) months after the commencement of works and then at twelve (12) monthly intervals and continue for two (2) years after all works are completed. This report will identify the protection afforded to threatened plant species, buffer and corridor plantings, the occupation of the Osprey of its nest site and any breeding results and bushfire impacts.		iv. See comment at Condition 90 (5) below.
83A	A buffer area of at least 100 metres radius is to be provided around the Osprey Nesting Site as shown on Figure 6BA prepared by Cardno and Davies dated July 1999 and identified as public reserve 8 (lot 303) on plan 6400-163 prepared by Michel Group Services dated 8/8/2008. No development works are to be carried out within this buffer area.	A buffer has been provided.	<p>This condition has not been complied with.</p> <p>Inspection of aerial photography indicates that works have been carried out within the 100m buffer to the Osprey nest. Substantial work is evident in aerial photography dated 2000/2001, 2007 and 2009 (see Figure 1 at the end of this table).</p> <p>Additionally, information provided by DAC (see response to Condition 90) details the loss of four old growth trees from within this 100m buffer.</p> <p>Further information is required detailing the extent and type of vegetation removal within the buffer area and any proposed offsets.</p>
90	The development must be undertaken in accordance with the ameliorative measures documented in Section 6 of the SIS, including all those measures referred to in Section 2.3 of this report (a copy of which is attached and marked Schedule B), and Tweed Shire Council's consent conditions, particularly those referred to in Section 3 of this report, unless modified by the concurrence conditions. Some		Further information is required regarding the extent of compliance with this condition, however it appears that in some cases this condition has not been fully complied with. Further comment relating to each ameliorative measure is provided below.

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>of these ameliorative measures and consent conditions form the basis of concurrence conditions.</p> <p><u>Reason</u></p> <p>To ensure compliance with the ameliorative measures proposed in the SIS and Tweed Shire Council's consent conditions.</p>		
	<p>1. <i>The flora and fauna survey report identified a number of threatened plant species at the site. No development will occur at these sites and in areas proximate to these locations and buffer plantings of suitable native species will be provided between these locations and nearby urban development or roads.</i></p>	<p>Threatened Flora Species in Precincts 1 and 2 have been checked on site. All are present.</p>	<p>The SIS identified threatened flora species within areas now known as Area 13A, Area 1 (Mt Woodgee), the western end of Area 1 and Area 3 (Site Regeneration and Revegetation Plans JWA 2013 refer). Subsequent mapping (JWA October 2009) identified numerous additional individuals in these locations as well as Area 13C and adjacent vegetation, the northern end of Area 4, adjacent to the southern boundary of Area 1 and the northwest of Precinct 2. Later mapping (JWA October 2010, June 2013) demonstrated the loss of a number of these individuals.</p> <p>From the information provided, it is not possible to determine which threatened flora species have been checked on site and which individuals remain. It is clear however that removal of threatened flora species has occurred. The extent of threatened species removal to date is to be documented, along with the approval, if any, under which they were removed. Any proposed offsets are to be described.</p> <p>See comment below with regard to buffer plantings.</p>
	<p>2. <i>Stock that currently graze over the whole of the site will be removed. Stock grazing on the endangered plant Spiny Gardenia and a number of locally significant species will thus be</i></p>	<p>Stage not reached.</p>	<p>The wording of this ameliorative measure provides no indication of the required timing of fencing and buffer plantings to protect significant vegetation from grazing.</p> <p>It is noted that the timing for buffer planting is given in</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p><i>eliminated. Vegetation within environmental protection zones and in conservation areas at the site will be protected from stock and buffer plantings will be provided between these sites and proximate developed areas.</i></p>		<p>Condition 81ii above as <i>shall be completed prior to release of the linen plan for the relevant stage.</i> Similarly, the timing for removal of stock is given in Condition 81iii above as <i>prior to issue of Subdivision Certificate.</i></p> <p>However the most recent SRRP (SMEC June 2013) states that fencing and buffer planting of the relevant rehabilitation areas is to occur prior to earthworks.</p> <p>In either case, it is noted that as stated, the stage for fencing, buffer planting and removal of stock has not yet been reached.</p> <p>It should be noted however that to date, bulk earthworks have been carried out over much of the Precinct 1 & 2 area. Given that the intent of the recommendation was to protect significant species and vegetation from damage, installation of protective measures should have been viewed as an action to be undertaken as a matter of priority.</p> <p>Evidence will be required that fencing and buffer planting has occurred prior to the commencement of any earthworks under DA10/0800.</p>
	<p>3. <i>The flora and fauna survey report identified and mapped all of the significant old-growth trees at the site. The Master Plan identifies how these old-growth trees will be integrated within the development and how most of these trees will be retained for conservation purposes.</i></p>	<p>The site has been inspected and in the area affected by DA10/0800 (Precinct 1-2). In the 14 years since the report was prepared some trees are no longer present. Leda notes that 3 are in the development footprint. Details of the tree description and status are provided on the attached schedule "Attachment E". The trees were not rare but may have provided hollows etc. Leda will undertake to provide appropriate nesting boxes in areas not immediately within the future urbanised area. In addition, the proposed</p>	<p>The Species Impact Statement (Peter Parker 1999) identified three old growth trees within the Precinct 1 & 2 area.</p> <p>The applicant advises that each of these trees has been removed. It should be noted that two of these trees were located within the area now known as Area 13C, which contains threatened flora species and is protected by covenant.</p> <p>A further 66 old growth trees were mapped by the SIS (Parker 1999) as occurring within the wider K99/1124 area. The applicant assessed the presence/absence (at April 2012) of 27 of these trees, and found that 11 were not present.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
		<p>extensive regeneration work to be undertaken as part of the Concept Plan and contemporary approvals is considered to offset the trees that are no longer present.</p>	<p>According to the lot layout on Figure 6BA by Cardno Davies (July 1999) at least 5 of these trees were within reserve areas. The remaining 39 old growth trees have not been assessed for presence.</p> <p>As per Condition 81, each of the old growth trees should have been clearly marked prior to commencement of works and protected during works. Neither of these conditions has been adequately met. A contemporary assessment of the presence of each old growth tree is requested, along with evidence that each remaining tree has been clearly marked and protected.</p> <p>The loss of old growth trees from the site is considered significant, given the finite nature of this resource in the landscape and the proposed undertaking to provide appropriate nesting boxes is unclear with regard to number, type, location, timeframe for installation and adequacy of offset. Further information is required to describe proposed offsets.</p>
	<p>4. <i>A substantial area of flora and fauna habitat will be retained to support the interchange of genetically viable wildlife populations over the long-term. Wildlife corridors will be provided throughout the proposed development to assist in the passage of arboreal fauna and provide nesting and foraging sites for avifauna.</i></p>	<p>Stage not reached. Issue addressed by contemporary management plans under DA10/0800.</p>	<p>Noted. No further information required.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>5. <i>A monitoring report will be provided to Council and the NPWS six months after the commencement (activation) of a development consent and at 12 monthly intervals for a period of two years. This report will identify the protection afforded to threatened plant species, buffer and corridor plantings, the occupation by the osprey of its nest site and any breeding results, bushfire impacts. It will also address any other matter that Council or the NPWS choose to list.</i></p>	<p>An Environmental Officer is currently appointed under the Concept Plan (and associated consents) to monitor the ongoing development of the site.</p>	<p>Recommendation not complied with. No monitoring reports have been provided to Council.</p>
	<p>6. <i>A substantial part of the site is zoned for environmental protection. These areas of support the better quality wildlife habitats, although they are not currently managed for environmental purpose.</i></p>	<p>These areas remain and will be revegetated and rehabilitated as part of the development works under DA10/0800.</p>	<p>Noted. No further information required.</p>
	<p>7. <i>Part of the site containing high quality wildlife habitat which is not zoned for environmental protection will be retained and conserved.</i></p>	<p>These additional habitat areas remain on the site.</p>	<p>Noted. No further information required.</p>
	<p>8. <i>Previously proposed development that had the potential to cause environmental harm, has been removed from this proposal. This includes the golf course and residential development that would have significantly impacted on the Spiny Gardenia and old-growth trees.</i></p>	<p>Noted.</p>	<p>Noted. No further information required.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>9. <i>A bushfire management plan will be prepared and adopted to protect and minimise the impact of fire on important ecological communities. The objects of a bushfire management will be “to reduce the risk of fire and protect wildlife habitats and private property”. The fire break areas have been detailed on Maps identified as Key 1-3 in section 3 of the SIS. These were inspected by Mr Peter Parker to ensure that the clearing of native bushland is minimised. Setback requirements, emergency access routes and fire hazard reduction areas will be reaffirmed as conditions of development consent.</i></p>	<p>Stage not reached under K99/1124. Issue addressed by contemporary bushfire planning under DA10/0800.</p>	<p>Further detail is requested regarding how this issue has been addressed under contemporary planning. Please provide detail of the status of bush fire planning in relation to DA10/0800.</p>
<p>92A</p>	<p>The fire break proposed within Lot 249 and public reserve 5 or any other land zoned Environment Protection 7 (I) must not cause any disturbance of conservation value vegetation associations and threatened flora species.</p> <p><u>Reason</u></p> <p>To ensure impacts on high conservation value vegetation associations and threatened flora species are minimised and are consistent with the impacts identified in the SIS.</p>	<p>Not Applicable - Stage not reached. Issue addressed by contemporary bushfire planning under DA10/0800.</p>	<p>Further detail is requested regarding how this issue has been addressed under contemporary planning. Please provide detail of the status of bush fire planning and excerpts of relevant plans in relation to DA10/0800, demonstrating the extent of compliance with this recommendation.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
93	<p>In construction of fire breaks, a buffer of at least five (5) metres must be provided around the two known specimens of the threatened flora species <i>Randia mooreii</i> occurring in the Mount Woodgee wildlife corridor (refer to Appendix 3 - letter from Peter Park). These specimens and the buffer area around them must be obviously marked and brought to the attention of plant operators prior to construction of fire breaks.</p> <p><u>Reason</u></p> <p>To ensure impacts on threatened flora species are minimised and are consistent with the impacts identified in the SIS.</p>	<p>The 2 trees have been located by inspection. A fire break has not yet been created, but work not required until Subdivision Certificate Stage.</p>	<p>Further information (excerpts of plans) is required to demonstrate that creation of fire breaks (APZs) will enable the provision of these buffers. Please provide evidence that the plants and the buffer area around them is clearly marked.</p>
94A	<p>The vegetated areas of Lot 140 and the 2(c) zoned part of Lot 306, containing the threatened flora species <i>Randia mooreii</i>, must not be disturbed. With the exception of one (1) only neighbourhood park of not more than 400m² in Lot 140, the cleared parts of these areas must be revegetated with appropriate indigenous native species to provide a buffer. These areas must be managed for conservation purposes and, due to the fire sensitive nature of the existing vegetation associations, these areas must be protected from fire.</p> <p><u>Reason</u></p> <p>To ensure impacts on threatened flora species are minimised and are consistent with the impacts are identified in the SIS, and allow for the rehabilitation and conservation of their habitat.</p>	<p>The <i>Randia mooreii</i> has been located by inspection. The vegetated areas referred to have not been disturbed.</p>	<p>Further information is required to determine compliance with this condition. Please provide excerpts of plans showing the areas to which this condition relates, the location of threatened flora species, the location of the proposed buffer and evidence that the vegetated areas have not been disturbed.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
95A	<p>The neighbourhood park proposed in Lot 140 must not be located within 50 metres of the threatened flora species <i>Randia mooreii</i>.</p> <p><u>Reason</u></p> <p>To minimise potential for impacts on threatened flora species.</p>	<p>Not Applicable - The urban layout under K99/1124 is no longer required. It has [been] replaced by Concept Plan and associated consents.</p>	<p>Further information is required to determine compliance with this condition. Please provide excerpts of plans showing the areas to which this condition relates.</p>
96	<p>Proposed neighbourhood parks must be located in existing clearings or else retain existing vegetation within them.</p> <p><u>Reason</u></p> <p>To minimise impacts on existing vegetation and habitat and maintain effective corridor linkages.</p>	<p>Not Applicable - The urban layout under K99/1124 is no longer required. It has [been] replaced by Concept Plan and associated consents.</p>	<p>Noted. No further information required.</p>
97	<p>Any neighbourhood parks within wildlife corridors must be located and orientated so as not to obstruct corridor linkages. In this respect, the neighbourhood park proposed in the wildlife corridor between Lots 415 and 416, must not be constructed, as it presents an obstruction of the corridor linkage. This proposed park may be relocated to the other side of Road No. 32 where the corridor is wider.</p> <p><u>Reason</u></p> <p>To maintain effective wildlife corridor linkages by minimising 'bottle necks' which compromise the effectiveness of identified corridors.</p>	<p>Not Applicable - The urban layout under K99/1124 is no longer required. It has [been] replaced by Concept Plan and associated consents.</p>	<p>Noted. No further information required.</p>
98	<p>Within areas identified as wildlife corridors all existing vegetation including understorey must be retained, except where fire breaks are proposed.</p> <p><u>Reason</u></p> <p>To minimise impacts on existing vegetation and habitat and maintain and improve corridor linkages.</p>	<p>Not Applicable - The urban layout under K99/1124 is no longer required. It has [been] replaced by Concept Plan and associated consents.</p>	<p>A number of the wildlife corridors identified under K99/1124 remain in the current urban layout. Please provide further detail regarding the extent of compliance with this condition. If clearing has occurred in these areas, detail of the extent and proposed offsetting arrangements are required.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
99	<p>Sewer crossings within wildlife corridors must be limited to those 'possible sewer crossings' identified in the response from Cardno MBK to NPWS request for further information (refer to Appendix 2) and must not result in the removal of, or damage to, any existing trees.</p> <p><u>Reason</u></p> <p>To minimise impacts on existing vegetation and habitat and maintain effective corridor linkages.</p>	<p>Not Applicable - Condition is not activated for the purpose of Bulk Earthworks (refer to Condition 110).</p>	<p>Further information is required to demonstrate the extent of compliance with this condition with regard to the retention of the existing trees that it refers to.</p>
100	<p>Native understorey within wildlife corridors must be allowed to regenerate. Where natural revegetation has not occurred within a two year period of livestock being removed from the site, a revegetation program must be undertaken using indigenous species of local provenance that typically occur within local examples of the vegetation association concerned. Fire may be used to encourage natural revegetation where appropriate (ie. where no fire sensitive native species occur).</p> <p><u>Reason</u></p> <p>To rehabilitate existing vegetation associations and provide an effective wildlife corridor and conservation area for a range of fauna species, particularly terrestrial subject species recorded in the locality.</p>	<p>Not Applicable - To be implemented prior to Subdivision Certificate under this consent. Replaced by Concept Plan Management Plans.</p>	<p>Further information is required to demonstrate compliance with this condition. Please provide reference to the relevant part of the management plans referred to.</p>
101	<p>A program to monitor the revegetation of native vegetation within the wildfire corridors must be undertaken which documents the existing understorey and evaluates the revegetation of native vegetation over the initial two year period after stock are moved from the site. The results of this monitoring program are to be utilised to determine if active</p>	<p>Not Applicable - Condition is not activated for the purpose of Bulk Earthworks (refer to Condition 110).</p>	<p>Further information is required to demonstrate compliance with this condition.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>revegetation of areas are required. The results of the monitoring and revegetation program are to be reported to Council and the NPWS as part of the monitoring report referred to in Condition 81 iv of Council's consent conditions (refer to Section 3 of this report).</p> <p><u>Reason</u></p> <p>To ensure natural regeneration of any native understorey species present, either as extant plants or propagules, is utilised and identify areas where active revegetation of understorey is necessary.</p>		
<p>102A</p>	<p>The location of the ROTAP species <i>Cassia brewsteri</i> var. <i>marksiana</i> (Brush Cassia) in Lot 306 identified on drawing 6400-163 prepared by Michel Group Services, dated 8/8/2008 and as indicated by the constraints key and map (Figures 15AA and 15BA), is to be determined and clearly marked. A buffer of five metres radius is to be established around this species and planted with appropriate indigenous species of local provenance.</p> <p><u>Reason</u></p> <p>To ensure species of high conservation value are retained and managed for conservation purposes.</p>	<p>2 trees located - buffer planting not yet undertaken as stage not reached.</p>	<p>Further information is required to demonstrate compliance with this condition. Please provide excerpts of plans showing where these trees are located and when inspection was undertaken. Please provide reference to the relevant plan detailing appropriate buffer planting and timing of buffer installation.</p>
<p>103</p>	<p>Any occurrences of the ROTAP species <i>Archidendron muellerianum</i> (Veiny Lace Flower), which the flora inventory (Appendix 2 of the SIS) records within a Blackbutt dominated association, must be located, clearly marked and protected from disturbance. If works are proposed for areas where this species occurs, a translocation program must be prepared and endorsed by NPWS, prior to its implementation and the</p>	<p>Not applicable - species was not identified on work area.</p>	<p>Further information is required to demonstrate compliance with this condition. Please provide detail of any areas of Blackbutt association that have been disturbed and evidence of inspections carried out for <i>Archidendron muellerianum</i> prior to works occurring.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>commencement of such works. The progress in locating this species and results of any translocation program must be reported as part of the monitoring reports referred to in Council's Consent Condition 81 iv.</p> <p><u>Reason</u></p> <p>To ensure species of high conservation value are retained and managed for conservation purposes, subject to any translocation program required satisfying NPWS policy requirements and guidelines.</p>		
104	<p>In regard to Council's Consent Condition 81 ii, buffer plantings proximate to threatened flora species must consist of indigenous species of local provenance that typical occur within local examples of the vegetation association concerned. Where substantial variation in the landform occurs within such areas plantings must replicate vegetation associations suited to the landform (eg. Areas up slope from drainage lines supporting rainforest associations be planted with species typical of local wet sclerophyll associations - sclerophyll canopy species with rainforest understorey).</p> <p><u>Reason</u></p> <p>To ensure revegetation undertaken is appropriate for conservation purposes.</p>	<p>Not Applicable - Condition is not activated for the purpose of Bulk Earthworks (refer to Condition 110).</p>	<p>Further information is required to demonstrate compliance with this condition. Please provide reference to relevant plans where applicable.</p>
105	<p>In regard to Council's Consent Condition 84 iii, any exotic species to be use in landscape plantings must be non-fertile hybrids.</p> <p><u>Reason</u></p> <p>To minimise the potential for exotic species to establish in the natural environment as a result of landscape plantings.</p>	<p>Not Applicable - Condition is not activated for the purpose of Bulk Earthworks (refer to Condition 110).</p>	<p>Further information is required to demonstrate compliance with this condition. Please provide reference to relevant landscaping/management plans where applicable.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
106	<p>Threatened species must not be used in any plantings undertaken, such as, landscaping, revegetation and buffer plantings.</p> <p><u>Reason</u></p> <p>To minimise potential for any future impacts on threatened species, particularly in relation to the genetic integrity of populations.</p>	<p>Not Applicable - Condition is not activated for the purpose of Bulk Earthworks (refer to Condition 110).</p>	<p>Further information is required to demonstrate compliance with this condition. Please provide reference to relevant landscaping/management plans where applicable.</p>
108	<p>When undertaking site preparation works such as clearing and excavation, if any threatened species or roost sites of threatened fauna are found, works on the site must cease and the NPWS be notified within 24 hours. NPWS will determine the specific protective measures that are required. NPWS will provide written notification of any protective measures. Works must not recommence until such written notification is received.</p> <p><u>Reason</u></p> <p>To minimise any potential for impacts on threatened species that may not have been identified and addressed by the SIS.</p>	<p>No additional threatened species or roost sites identified during site work.</p>	<p>Council officers to consult with National Parks and Wildlife Service to reconcile their mapping in accordance with this condition.</p>
109	<p>The burning of material from clearing of vegetation (as subject to Council's Consent Condition 86) shall be minimised by mulching of suitable material for landscaping. Transfer of excess vegetation, timber, logs, rocks and topsoil to revegetation areas within the subject site shall be undertaken where feasible. This should aim to maximise use of excess vegetation, topsoil and other material in enhancing the creation of new flora and fauna habitat in areas where revegetation is to be undertaken. Burning of cleared material should be undertaken (subject to</p>	<p>Burning of material has been minimised.</p>	<p>Further information is required to demonstrate the extent of compliance with this condition including evidence of maximising transfer of excess vegetation, timber, logs, rocks and topsoil to revegetation areas as per the condition.</p>

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>Council's Consent Condition 86) if this material contains a high proportion of weed species so as to avoid transfer of weed propagules to revegetation areas.</p> <p><u>Reason</u></p> <p>To maximise use of excess vegetation, topsoil and other material in enhancing the creation of new flora and fauna habitat in areas of the project where rehabilitation is undertaken.</p>		
Schedule B	<p>2.3 Ameliorative Measures</p> <p>The SIS proposes a range of ameliorative strategies to mitigate impacts on threatened species as follows:</p>		<p>Comments are provided at Condition 90 above.</p>
	<p>1. The flora and fauna survey report identified a number of threatened plant species at the site. No development will occur at these sites and in areas proximate to these locations and buffer plantings of suitable native species will be provided between these locations and nearby urban development or roads.</p>	<p>See comments above regarding threatened species.</p>	
	<p>2. <i>Stock that currently graze over the whole of the site will be removed. Stock grazing on the endangered plant Spiny Gardenia and a number of locally significant species will thus be eliminated. Vegetation within environmental protection zones and in conservation areas at the site will be protected from stock and buffer plantings will be provided between these sites and proximate developed areas.</i></p>	<p>Only partial bulk earthworks have been undertaken.</p> <p>Stage not reached.</p>	

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>3. <i>The flora and fauna survey report identified and mapped all of the significant old-growth trees at the site. The Master Plan identifies how these old-growth trees will be integrated within the development and how most of these trees will be retained for conservation purposes.</i></p>	<p>Noted.</p>	
	<p>4. <i>A substantial area of flora and fauna habitat will be retained to support the interchange of genetically viable wildlife populations over the long-term. Wildlife corridors will be provided throughout the proposed development to assist in the passage of arboreal fauna and provide nesting and foraging sites for avifauna.</i></p>	<p>Noted - Stage not reached.</p>	
	<p>5. <i>A monitoring report will be provided to Council and the NPWS six months after the commencement (activation) of a development consent and at 12 monthly intervals for a period of two years. This report will identify the protection afforded to threatened plant species, buffer and corridor plantings, the occupation by the osprey of its nest site and any breeding results, bushfire impacts. It will also address any other matter that Council or the NPWS choose to list.</i></p>	<p>See comments above regarding environmental officer.</p>	

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>6. <i>A substantial part of the site is zoned for environmental protection. These areas of support the better quality wildlife habitats, although they are not currently managed for environmental purpose.</i></p>	<p>Noted.</p>	
	<p>7. <i>Part of the site containing high quality wildlife habitat which is not zoned for environmental protection will be retained and conserved.</i></p>	<p>Noted.</p>	
	<p>8. <i>Previously proposed development that had the potential to cause environmental harm, has been removed from this proposal. This includes the golf course and residential development that would have significantly impacted on the Spiny Gardenia and old-growth trees.</i></p>	<p>Noted.</p>	
	<p>9. <i>A bushfire management plan will be prepared and adopted to protect and minimise the impact of fire on important ecological communities. The objects of a bushfire management will be "to reduce the risk of fire and protect wildlife habitats and private property". The fire break areas have been detailed on Maps identified as Key 1-3 in section 3 of the SIS. These were inspected by Mr Peter Parker to ensure that the clearing of native bushland is minimised. Setback requirements, emergency access routes and fire hazard reduction areas will be reaffirmed as conditions</i></p>	<p>Only partial bulk earthworks have been undertaken. Stage not reached.</p>	

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<i>of development consent.</i>		
	Section 11 (Concurrence conditions) of this report makes reference to the above ameliorative measures and in some cases elaborates on them or modifies them.		

1262/2001DA.02 - subdivision involving the creation of eight master lots and bulk earthworks

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
9	The only vegetation that can be removed is that directly required to be removed by earthworks, servicing of the development or providing a house site. No other vegetation is to be removed.	The south-eastern part of Precinct 2 overlays a small part of the site which has been subject to earthworks under DA1262/2001.02. The bulk earthworks plans under DA1262/2001.02 show that the part of the site to the north of Sandy Lane is affected by filling of up to 2.4m depth (refer to stamped approved plan No. 2764/9/7-04 Rev C dated July 2003, CMBK) see attachment "F". Therefore any vegetation in that area would have been required to be removed in order to undertake the earthworks.	Further information is required to determine the extent of compliance with this condition. Please provide detail of the extent of vegetation that has been removed and retained during works undertaken to date. Additional offset is to be provided if clearing has been undertaken beyond that approved under DA1262/2001.
16	An Environmental Officer shall be engaged to implement this consent and monitor and oversee the environmental effects of development during construction phases. Such officer to be an appropriately (professionally) qualified environmentalist, tasks to be as set out in the Management Plan accompanying the Statement of Environmental Effects by Sinclair Knight Merz that was submitted with DA S94/194, as amended by conditions of consent:	Not Applicable - Condition is not activated for the purpose of Bulk Earthworks (refer to Condition 6).	Further information is required to determine the extent of compliance with this condition.

Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
	<p>i. All significant old growth trees which are to be retained as identified in the Species Impact Statement prepared by Peter Parker dated August 1999 (Figure 4.4) are to be clearly marked prior to commencement of works. This is to be monitored by the Environmental Officer to ensure that the trees are not damaged, destroyed or removed, with the exception of those trees to be removed as identified in the Flora and Fauna Assessment prepared by Peter Parker dated April 2002.</p>		<p>i. See comments in relation to K99/1124 Condition 90 (3) above. Evidence is required that the old growth trees to be retained have been clearly marked. If trees have been removed outside of those approved under D94/0438, then these should be identified and any proposed offsets detailed.</p>
	<p>ii. Stock that currently graze over the site of Lots 1 to 8 of this consent shall be removed prior to the issue of a Subdivision Certificate.</p>		<p>ii. Stage not reached. No further information required.</p>
<p>18</p>	<p>The Vegetation Rehabilitation Plan required by Condition 36 of Development Consent 94/438 is to be submitted and approved prior to commencing earthworks and prior to release of the Construction Certificate for the proposed development. All recommendations of the Vegetation Rehabilitation Plan are to be complied with prior to the release of the Subdivision Certificate to ensure that the rehabilitation is maintained by the developer for a period of 1 year or until the landscaping is established, whichever occurs first. The amount of bond shall be 20% of the estimated cost of the rehabilitation works.</p>	<p>Council has issued the Construction Certificate and must have been satisfied that the required rehabilitation plan was provided. The rehabilitation stage has not yet been reached under 1262/2001DA. It is intended to proceed with rehabilitation under the Concept Plan (and associated consents). The rehabilitation under the contemporary consents is far more extensive than that proposed under 1262/2001DA.</p>	<p>Condition not complied with. Certain actions (fencing, buffer planting etc) under contemporary Site Regeneration and Buffer Plans are required prior to commencement of earthworks. Evidence that these actions have been undertaken is required. Reference to the relevant sections of the relevant contemporary plans is required.</p>







Condition		Compliance/Issues (DAC 10 October 2013)	Council comment
			
2000		2001	
			
2004		2007	
			
2009		2012	

Figure 1. Red dashed line indicates 100m buffer to osprey nest. K99/1124 Condition 83A refers.

As noted within the above assessment table, the applicant's compliance report is considered to be deficient in providing sufficient detail for a large extent of the applicable conditions. As such, Council does not consider that Condition 50 of DA10/0800 has been satisfied at this point. Further detail is required from the applicant in order to adequately finalise the assessment of Condition 50.

OPTIONS:

That Council:

1. Supports the request of further information from the applicant in relation to Condition 50 of Development Consent DA10/0800 as outlined in this report; or
2. Accepts the applicant's compliance assessment and considers Condition 50 of Development Consent DA10/0800 as being satisfied.

Council officers recommend Option 1.

CONCLUSION:

Option 1 above will allow further detailed analysis of compliance against the relevant ecological conditions applied to former consents across the site that relate directly to Precinct 1 and 2. This process would also address the impact of unlawful works within that same area, providing the applicant an opportunity to propose any necessary compensatory measures (if applicable).

Option 2 will allow the construction certificate for Precinct 1 and 2 bulk earthworks to be issued, subject to the satisfaction of all other applicable pre construction certificate conditions of consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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16 [PR-PC] Cobaki Estate Central Open Space Project Approval 08_0200 - Compliance Issues

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA10/0853 Pt22



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This report provides information for Council on recent activities at the Cobaki development site. The Cobaki Estate Central Open Space Project Approval 08_0200 was for a seven lot subdivision and construction of the central open space (COS) area which includes drainage infrastructure. The approval was issued on 28 February 2011 and has been modified twice on 29 May 2013 (Mod 1) and 3 April 2014 (Mod 2).

The modifications involve including extraction areas in Precincts 1 and 2 (Mod. 1) and Precincts 9 and 11 (Mod.2) to win material to be used as fill in the Central Open Space Area.

Works in Precinct 9 and 11 commenced without the required approvals in place. Planning and Infrastructure have advised they are investigating the issue.

Approvals have now been issued by Planning and Infrastructure and the Private Certifier. Works that have been carried out without the required approval have been regularised by the Modification approval however a construction certificate cannot be issued for those works.

RECOMMENDATION:

That the report on Cobaki Estate Central Open Space Project Approval 08_0200 - Compliance Issues be received and noted.

REPORT:

Applicant: Leda Manorstead Pty Ltd

Owner: Leda Manorstead Pty Ltd

Location: Lot 1 DP 570076 & Lot 200 DP 755740 & Lot 54 DP 755740 & Part Lot 199 DP 755740; Piggabeen Road COBAKI LAKES; Lot 1 DP 562222 & Lot 1 DP 570077 & Lot 1 DP 823679 & Lot 2 DP 566529 & Lot 201 DP 755740 & Lot 202 DP 755740 & Lot 205 DP 755740 & Lot 206 DP 755740 & Lot 209 DP 755740 & Lot 228 DP 755740 & Lot 305 DP 755740 & Lot 46 DP 755740 & Lot 55 DP 755740 & Part Lot 199 DP 755740; Sandy Lane COBAKI LAKES

Background:

The Cobaki Estate Central Open Space Project Approval 08_0200 was for a seven lot subdivision and construction of the central open space (COS) area which includes drainage infrastructure. The approval was issued on 28 February 2011 and has been modified twice on 29 May 2013 (Mod 1) and 3 April 2014 (Mod 2).

The modifications involve including extraction areas in Precincts 1 and 2 (Mod. 1) and Precincts 9 and 11 (Mod.2) to win material to be used as fill in the Central Open Space Area.

The Central Open Space Area is intended to be dedicated to Council and will ultimately include the main stormwater collection and treatment infrastructure for the site and passive and structured (playing fields) open space.

The extraction and placement of the material required a two-step approval process being the modification to the Project Approval followed by a construction certificate or modification to a construction certificate.

The construction certificate (and ultimately the subdivision certificate) has been issued by a Private Certifier who is the Principal Certifier Authority (PCA).

During January this year works commenced in Precinct 9 and the COS without the necessary modification approval and construction certificate.

The proponents advised they had stopped work when this issue was raised with them. The proponents advised that 17,510m³ had been extracted from Precinct 9 and placed in the COS.

Subdivision works can only be carried out lawfully when a construction certificate has been issued.

On 4 April 2014 an inspection of the site revealed that extensive earthworks were underway at Precincts 9 and 11 with the material transported and placed within the COS. The construction certificate had not been issued. It is estimated that several hundred thousand cubic metres of material had been extracted and placed within the COS.

Planning and Infrastructure are investigating the unauthorised works and will keep Council informed about the compliance investigation for the January and April events related to Precinct 9 and 11 and the follow up for the "Missing Link" road works and saltmarsh.

OPTIONS:

Receive and note.

CONCLUSION:

This report is for the information of Council to provide an update on recent activity at the Cobaki Estate.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Legal advice has been sought regarding asset dedication and unauthorised works.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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17 [PR-PC] Royal Terranora Resort No. 61 Marana Street, Bilambil Heights - Compliance Issues and Planning Proposal Update

SUBMITTED BY: Development Assessment

FILE REFERENCE: PP10/0002 Pt4 and DA3300/35 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process

SUMMARY OF REPORT:

The purpose of this report is to update Council on the status of the compliance action and Planning Proposal for the Royal Terranora Resort - Bilambil Heights.

Council on 30 May 1984 granted approval for the *erection of a holiday village comprising forty two (42) units* on the subject site. The approval included a condition that *'units are to be utilised for short term tourist accommodation at all times and cannot be strata subdivided and sold for permanent occupation.'*

As a result of recent compliance action it was noted that the development is operating unlawfully and is not being used for short term tourist accommodation. The owner of the site, PS Developments was advised of the unlawful use and requested to rectify the breach. Subsequently, Council has received numerous letters from the occupants requesting that they not be evicted from the site.

PS Developments in May 2010 lodged a planning proposal seeking to rezone the site from the current 6(b) Recreation zone under the Tweed Local Environmental Plan (LEP) 2000 to a 2(c) Urban Expansion zone or R1 General Residential under the draft Tweed LEP 2012. The planning request was reported to Council on 20 July 2010. Despite a number of commitments made by the applicant, the planning proposal continues to be subject to many delays.

Correspondence dated 19 March 2014 received from Planit Consulting on behalf of the owner PS Developments acknowledged the unlawful activity and requested Council consider holding future enforcement action in abeyance until their Planning Proposal (PP10/0002) has been finalised.

RECOMMENDATION:

That:

- 1. Planning Proposal PP10/0002 be referred to NSW Planning and Infrastructure for a Gateway Determination in accordance with s56 of the *Environmental Planning and Assessment Act, 1979*, following the completion of all remaining studies;**
- 2. The Minister for Planning and Infrastructure be advised that delegation of the Plan making functions will be sought in this instance;**
- 3. The Planning Proposal be publicly exhibited, where required, in accordance with the requirements of the Gateway Determination; and**
- 4. Enforcement action arising from the unlawful use of the site be held in abeyance subject to:**
 - A Building Safety Audit be undertaken and completed within 14 days of Council's Resolution on this Item. The scope of the audit to be discussed with Council Officers prior to commencement and a copy to be provided to Council when completed. Complete required works identified as part of the Building Safety Audit within three months of Council's resolution;**
 - The resolution of Council to refer the Planning Proposal to NSW Planning and Infrastructure for a Gateway Determination;**
 - Completion of the Planning Proposal in accordance with the timeframe included within this report; and**
 - Lodgement of a Development Application upon gazettal of the draft Local Environmental Plan (Planning Proposal) for a change of use to regularise the residential use of the premises.**

REPORT:

Background

Compliance Action

Council on 24 February 2014 received a complaint regarding air-conditioning units at 61 Marana Street Bilambil (Royal Terranora Resort). The inspection revealed that the air-conditioning issue was not a Council matter and was a matter for the site management to address. However, during the inspection and conversation with the complainant, it was noted that the premises are operating contrary to Council's approval. Council's approval granted 30 May 1984 was for the erection of a holiday village comprising 42 units. The approval, in part, included the following condition:

- 7 *The units are to be utilised for short term tourist accommodation at all times and cannot be strata subdivided and sold for permanent occupation.*

Subsequently, a S96 application was lodged and approved (in September 2013) seeking to amend the Development Consent T4/3116 to allow for the potential strata subdivision of the holiday units, by way of amending Condition 7. The amended condition reads as follows:

- 7A. *The units are to be utilised for the purposes of short term tourist accommodation at all times. The units shall not be utilised for the purposes of short term or long term residential occupancy by the owner(s) or any other party at any time.*

As a result of the site inspection, correspondence was forwarded to PS Developments, dated 26 February 2014, advising them of the complaint and subsequent findings. PS Developments were requested to comply with the conditions of approval, in particular Conditions 7/7A. To avoid enforcement action being initiated, they were given 30 days from the date of Council's correspondence to ensure compliance with the conditions of Development Consent T4/3116.

Following this correspondence, Council received 83 letters/pro-forma and one petition from residents of the Royal Terranora Resort requesting that they not be evicted from the site.

Correspondence dated 19 March 2014 was received from Planit Consulting on behalf of the owner PS Developments acknowledged the unlawful activity and requested Council consider holding future enforcement action in abeyance until their Planning Proposal (PP10/0002) has been finalised.

Correspondence dated 26 March 2014 was forwarded to PS Developments advising that Council Officer's were preparing a report for Council's May meeting regarding the compliance matter and the status of the Planning Proposal PP10/0002.

A meeting was held with Adam Smith of Planit Consulting on 31 March 2014, to discuss the matter and explore possible ways forward.

Further correspondence dated 7 April 2014 was received from Planit Consulting reaffirming commitments made at the meeting on 31 March 2014, these being:

- *The owner of the property will pursue the rezoning of the land with vigour and will attend in the immediate term to the payment of Council cost associated with same.*
- *The owners of the property will ensure that a building safety audit is undertaken in the immediate term, with a view to assessing any potential problems associated with the use of the building for permanent habitation. In this regard the owner understands that any liability associated with the continued occupation of the building rest with themselves and not Council.*

Recent Section 96 Application

In September 2013 Council determined a Section 96 application allowing the strata subdivision of the 42 units within T4/3116 over the subject site. The original application, approved 30 May 1984, included 30 x one bedroom and 12 x two bedroom (total of 42) single storey units (8 blocks of 6 units) with associated garages underneath. A subsequent Section 96 application increased the number of units to 48. A total of 52 off street car parking spaces were required. The approval is for short term tourist and visitor accommodation use. Permanent residential use is prohibited in the 6(b) Recreation zone and draft RE2 Private Recreation zone under the draft Local Environmental Plan (LEP) 2012.

The approval was conditioned, in part, as follows:

- 7A. *The units are to be utilised for the purposes of short term tourist accommodation at all times. The units shall not be utilised for the purposes of short term or long term residential occupancy by the owner(s) or any other party at any time.*
- 10.1 *A Visitor Log Book shall be maintained as a record of the use of each tourist accommodation unit specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.*
- 10.2 *A restriction as to user applicable under Section 88B of the Conveyancing Act shall be imposed in association with any future Strata Division of the holiday village, defining approved use of the units as follows:

Positive covenant over each individual unit title prohibiting use of the units for the purposes of short term or long term residential occupancy by any party.

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.*
- 10.3 *Any future Strata Plan of Management is to incorporate and convey a clear understanding of the approved use of the units to individual owners consistent with Conditions 7A and 10.2. A copy of the Strata Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to issue of a Strata Certificate.*

Planning Proposal PP10/0002 context

The Royal Terranora Resort site is also subject to a Planning Proposal PP10/0002 (the planning proposal) seeking to rezone the site from the current 6(b) Recreation zone under the Tweed Local Environmental Plan (LEP) 2000 to a 2(c) Urban Expansion zone or R1 General Residential under the draft Tweed LEP 2012.

The subject site is identified within the *Town and Village Growth Boundary* of the *Far North Coast Regional Strategy 2006* (FNCRS) and is in the vicinity of the wider Bilambil urban release areas of the "Rise" and Cobaki. Notwithstanding, there are significant constraints on the surrounding road capacity, in particular Kennedy Drive, which may limit the ability of the site's future development in the short term as future redevelopment relies on the construction of road infrastructure arising from the adjoining "Rise" and Cobaki developments.

The planning proposal request was lodged in May 2010 and reported to Council on 20 July 2010. Council at this time resolved that:

1. *Planning Proposal PP10/0002 for Lot 30 DP 850230 No. 61 Marana Street, Bilambil Heights not be referred to the Department of Planning for a gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 based on insufficient capacity within the Kennedy Drive catchment to accommodate urban growth exceeding that which already has potential under existing Local Environmental Plan 2000 zonings west of Cobaki Bridge.*
2. *The Proponent be advised that additional traffic assessment is required and should be submitted as an addendum to the planning proposal that clearly demonstrates the capacity of the catchment. Any addendum information requiring reassessment is to be subject to the draft fees and charges recommended in Planning Reforms Work Program listed in the Council agenda of 20 July 2010.*

Subsequently the proponent prepared the additional traffic assessment and the planning proposal was reported to Council on 15 February 2011, at which it was resolved that:

1. *Council notes the revision to the Tweed Planning Proposal Assessment Process.*
2. *Council proceeds with the Planning Proposal PP10/0002 – Lot 30 DP 850230 No. 61 Marana Street, Bilambil Heights (Royal Terranora Resort), to seek additional studies as required to support and inform the amended planning proposal, and that the planning proposal be linked to the preparation of a Development Control Plan for the subject site.*
3. *Any Development Control Plan for the subject site provide a staging strategy for the redevelopment and ensure future redevelopment of the site is capped at the equivalent traffic generation as would currently and reasonably be permitted under the 6(b) zone, until such time as the Kennedy Drive bypass (consisting of dedication and construction of the full length of Cobaki Parkway, the new bridge over Cobaki Creek and the Scenic Drive Deviation) is completed and dedicated to Council.*
4. *The amended planning proposal and supporting studies be subject to a subsequent report to Council seeking resolution to refer the Planning Proposal to the Department of Planning for a gateway determination.*

Status of the planning proposal since reporting to Council in 2010 and 2011

Assessment of the planning proposal identified a number of matters which required further assessment and studies in order for Council to be confident the proposal is suitable to proceed.

Consistent with the Planning Reform Unit's (PRU) process for the preparation of a planning proposal, a Memorandum of Understanding (MOU) has been prepared; outlining the studies required, their scope, terms of reference, methodology and report outcomes.

The MOU outlines the requirement for studies in relation to:

1. Traffic
2. Flora and fauna
3. Bushfire
4. Geotechnical, landforming and bulk earthworks
5. Stormwater management

6. Contaminated land
7. Aboriginal cultural heritage due diligence
8. Structure and staging plan

The MOU was signed and executed in September 2011 with an expectation, as detailed in the MOU itself, that the studies would be completed in a timely manner. The studies are expected to inform the final drafting of the Tweed Shire Council planning proposal request to the gateway.

The status of the progress of the studies to date is as follows:

Study	Receipt of draft study	Feedback following internal review	Receipt of final study	Status	Comments
Traffic	30 May 2012	3 July 2012	29 Nov 2013	Awaiting further updates	Traffic capacity needs to be further considered and integrated with a more detailed staging and structure plan given the capacity trip constraints for Kennedy Drive which limits trip generation to 363 per day for this site.
Flora and fauna	4 June 2012	29 August 2013	29 Nov 2013	Awaiting further updates	The plans and report provide insufficient detail to be accepted as final documents and require updates.
Bushfire	4 June 2102	29 August 2013	29 Nov 2013	OK as final	Whilst the method of calculation of the APZ is not clear the report has been agreed as final, subject to detailed assessment at the future DA stage.
Geotechnical, landforming and bulk earthworks	30 May 2012	3 July 2012	29 Nov 2013	Awaiting further updates	All documentation is to be submitted as a single report rather than a number of addendums for ease of assessment and understanding during public exhibition.
Stormwater management	30 May 2012	3 July 2012	29 Nov 2013	Awaiting further updates	As and included above.
Contaminated land	30 May 2012	8 June 2012	29 Nov 2013	Awaiting further updates	Final appears to be the same report submitted without inclusion of feedback provided and has not been accepted as final. Given 18 months has lapsed since the assessment was undertaken there is need for a Statutory Declaration advising of any additional activity on site and

Study	Receipt of draft study	Feedback following internal review	Receipt of final study	Status	Comments
					to confirm the assessment is still valid.
Aboriginal cultural heritage due diligence	30 May 2012	29 August 2013	29 Nov 2013	OK as final	
Structure and staging plan	29 Nov 2013	20 Dec 2013	Draft submitted as final	Awaiting further updates	Insufficient detail provided to determine the traffic implications based on the staging of the future development. Further work to be submitted

Cost and Expenses agreement

The planning proposal commenced under a Stage 1, 2 and 3 fee structure. Given the time since the planning proposal commenced a new fee structure, based on a cost recovery *Costs and Expenses Agreement (C&EA)* and consistent with the provisions of Clause 11 of the *Environmental Planning and Assessment Regulation 2000*, commenced in July 2012. The proponent was advised of this change and a C&EA was drafted and forwarded for the owner's consideration and execution on 19 November 2012.

Owner feedback on the C&EA was received on 18 March 2014 and the signed C&EA was received on 8 April 2014.

Gateway determination

As noted above, there is currently no Council resolution to refer the planning proposal to the Gateway for Determination, awaiting completion of the studies.

Should Council support proceeding with the planning proposal as an interim strategy to address the unlawful activity discussed above, and in the interest of keeping the planning proposal alive and progressing, Council may consider resolving to refer the planning proposal for a Gateway Determination following completion of the studies through this report.

This would reduce the timeframe required to complete the project by seeking endorsement to refer to the gateway now rather than once studies are completed and by allowing the planning proposal to be publicly exhibited as soon as possible following the gateway determination.

Development Control Plan (DCP)

The Council resolution of 15 February 2011 seeks the preparation of a Development Control Plan (DCP) to provide a staging strategy to ensure future development of the site is capped at the equivalent traffic generation as would currently and reasonably be permitted under the 6(b) zone, until such time as the Kennedy Drive bypass is completed and dedicated to Council.

The trip generation of the site is limited by the traffic capacity in Kennedy Drive. The MOU identifies a maximum trip generation of 363 per day (total including the current short term accommodation) until such time as the Kennedy Drive bypass is completed and dedicated to Council. The traffic assessment and the Structure and Staging Plan (the plan) identify

Stage 1 of the development as 40 detached dwellings, as shown in blue on the following map. The current short term tourist accommodation has not been staged on this plan.

The traffic assessment identifies 40 detached lots within stage 1 as generating 360 trips per day and concludes that the proposed development be capped at 40 additional lots. However, should the existing 48 short term units be considered “medium density residential flat buildings” (permanent residential occupation) and based on a maximum 2 bedrooms, trip generation, based on the Roads and Maritime Services (RMS) Guide is estimated at 216 trips per day, leaving a spare capacity of 147 trips, which equates to an additional 16 single dwelling lots. Clarification on the relationship of the Structure and Staging Plan and the Traffic assessment has been sought in the final reports.

The preparation of a development control plan has not as yet commenced, and may not be required if the proponent is able to integrate the structure and staging plan with the traffic assessment of trip generation based on that staging plan. The preparation of a development control plan would also be subject to a C&EA and fees and charges, as current at the time.

Further updates on any requirement for a development control plan will be provided following the completion of all studies and gateway determination.

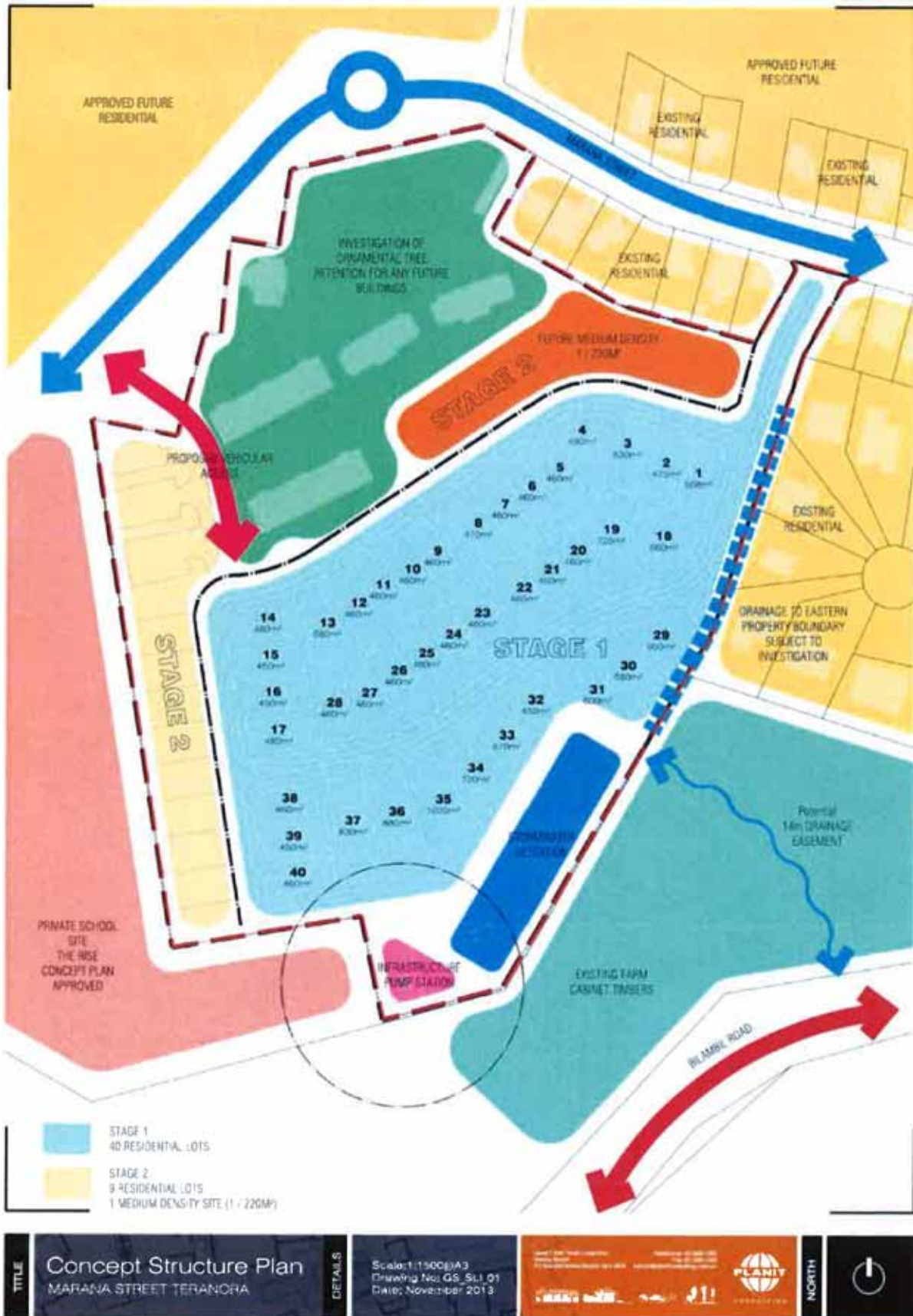


Figure 2.2: Proposed Site Plan

PRU work plan

The planning proposal was discussed in the RPU Work Program report to Council in May 2013. This report discussed the slow progress of the planning proposal and Council resolved, in part, that:

3. *Council approves...Recommendation 3 – Planning Proposals PP10/0002 & PP10/0005 within the report and the proponent(s) of the projects detailed are, on request, to provide to the Coordinator Planning Reform a sufficiently detailed schedule demonstrating commitment to progress the project(s) through to completion within an agreed timeframe and a failure to comply within a reasonable time or to show adequate commitment to the completion of the project(s) will terminate Council’s resourcing of the projects(s).*

A letter was sent to the proponent on 24 July 2013 advising the MOU was signed in September 2011; however, studies were still not completed, advising of Council’s resolution and seeking commitment to a completion timeframe.

The proponent agreed in writing on 13 August 2013 to the following timeframe:

Submit all remaining studies to Council	31 Aug 2013
Submit all updated (final) studies including Council feedback	6 Sept 2013
Finalise all remaining studies post feedback	End Oct 2013

This timeframe was in line with that suggested by Council staff, which also included:

Preparation of the Planning Proposal Version 1 for the Gateway	Mid Nov 2013
Gateway referral	End Nov 2013
Subject to Gateway determination, public exhibition	Jan- Feb 2014
Assessment of submission and report to Council	April 2014
Referral of the planning proposal for making	May 2014

On 5 November 2013 the proponent was advised in writing of the end of October completion date for studies, that the planning proposal preparation had commenced and that final studies were required no later than 20 November 2013 in order to meet Council’s timeframe commitments.

On 20 December the proponent was advised that a number of the required studies were not sufficiently complete to be accepted as final. At the time of writing, the revised studies are yet to be received; thereby currently only two out of eight studies are considered complete.

Despite the above commitment, and a number of subsequent deadlines, the planning proposal continues to be subject to delays.

Summary

This planning proposal has been on the PRU work program for four years and progress has been very slow: two and a half years has lapsed since the signing of the MOU and final studies are still not yet complete. As noted above, the slow progress has previously been reported to Council.

The planning proposal, and therefore the rezoning of the land through an LEP amendment, cannot be considered either imminent or certain. The planning proposal is estimated to require approximately 6-9 months to complete should it is made a priority by both the property owner and Council.

Based on the steps required for completion, and the support of Council deferring any further action on the unlawful activity, the following timeframe is suggested:

Task	Deadline
Resolution of Council to proceed to the Gateway	May 2014
Submission of all remaining studies to the satisfaction of Council's requirements outlined in the signed MOU (as final)	15 July 2014
Prepare Planning Proposal V1 for submission to the NSW P&I for a Gateway Determination	End July 2014
Public exhibition of the PP V2 subject to gateway determination and consultation requirements (assumed 28 days)	Sept 2014
Review submission and report PPV3 to Council	Oct/Nov 2014
Subject to the resolution of Council finalise the PP and refer to the NSW P&I for the plan to be made	End Dec 2014

Should Council support resourcing the completion of the planning proposal, it is recommended that a resolution be sought to refer the planning proposal to the Gateway following completion of all remaining studies.

A decision by Council to hold enforcement action in abeyance, subject to the completion of the planning proposal, should be linked to the above timeframe. Should the above timeframe not be met, enforcement proceedings may be commenced.

OPTIONS:

1. No further action be undertaken, or
2. The matter be referred to Council's lawyers to initiate enforcement action, or
3. Future enforcement action be held in abeyance subject to the following occurring:
 - A Building Safety Audit be undertaken and completed within 14 days of Council's Resolution on this Item. The scope of the audit to be discussed with Council Officers prior to commencement and a copy to be provided to Council when completed. Complete required works identified as part of the Building Safety Audit within three months of Council's resolution; and
 - The resolution of Council to refer the Planning Proposal to NSW P&I for a Gateway Determination;
 - Completion of the Planning Proposal in accordance with the timeframe included within this report; and
 - Lodgement of a Development Application upon gazettal of the draft Local Environmental Plan (Planning Proposal) for a change of use to regularise the residential use of the premises.

Option 3 is recommended.

CONCLUSION:

PS Developments in May 2010 lodged a planning proposal seeking to rezone the site from the current 6(b) Recreation zone under the Tweed Local Environmental Plan (LEP) 2000 to a 2(c) Urban Expansion zone or R1 General Residential under the draft Tweed LEP 2012 (now LEP 2014). The planning request was reported to Council on 20 July 2010. Despite a number of commitments made by the applicant, the planning proposal continues to be subject to many delays.

As a result of a recent complaint investigation, it was noted that the Royal Terranora Resort is operating unlawfully by way of not complying with the conditions of approval. As a result of compliance action being taken Council has received numerous letters from the occupants requesting that they not be evicted from the site.

As a result of the compliance action, PS Developments has acknowledged the unlawful activity and requested Council consider holding future enforcement action in abeyance until their Planning Proposal (PP10/0002) has been finalised.

COUNCIL IMPLICATIONS:

a. Policy:

Enforcement - Unlawful Activity - Version 1.2.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Council needs to carefully manage the risks of the current unauthorised use. It is considered that these risks will be minimised through the recommended actions.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

18 [PR-PC] Draft Tweed Development Control Plan - Section A17 - Business Development, Enterprise Corridor and Business Park Zones

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/A17 Pt1



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This report updates Council on the public exhibition process of the draft Tweed Development Control Plan - Section A17 - Business Development, Enterprise Corridor and Business Park Zones (draft DCP).

Council resolved on 12 December 2013 to publicly exhibit the draft DCP, which occurred from 14 January - 28 February 2014. During the exhibition period 37 submissions were received, primarily in relation to the site specific controls for Lot 10 DP 1084319, being the Boyds Bay Business Park (currently known as the Boyds Bay Garden World retail nursery site). Submissions received detailed a desire for Council to accommodate a proposed Masters Home Improvement Store development by amending the draft DCP provisions relating to the Boyds Bay Business Park site to reflect the application currently lodged with Council.

This report concludes that subject to minor amendments, which are contained in the draft DCP attached to this report, the draft DCP is now suitable for adoption. The implementation of the draft DCP will assist in providing an appropriate planning framework for employment purposes outside of the Shire's CBD areas and enable the development of the Boyds Bay Business Park by satisfying the provisions of Clause 7.13 of the Tweed Local Environmental Plan 2014.

Whilst adoption of the draft DCP is sought, Council officers recommend a subsequent amendment be prepared for public exhibition. The proposed future amendment seeks to extend the land to which Section A17 applies to also include IN1 General Industrial zoned land.

RECOMMENDATION:

That Council:

- 1. Adopts the Tweed Development Control Plan, Section A17 – Business Development, Enterprise Corridor and Business Park Zones, as provided as Attachment 1 to this report;**

- 2. 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 Clause 7.13 of the Tweed Local Environmental Plan 2014 – Development requiring the preparation of a development control plan;**
- 3. Forwards a copy of the Development Control Plan Section A17 to the Director-General of the NSW Planning and Infrastructure in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000;**
- 4. Prepares an amendment to the Tweed Development Control Plan, Section A17 to expand land affected by Section A17 to include the IN1 General Industrial zone;**
- 5. When prepared, the amendment is to be publically exhibited for a minimum period of 30 days, in accordance with section 74E of the Environmental Planning Assessment Act 1979; and**
- 6. Following public exhibition a further report is to be submitted to Council detailing the content and response to submissions received.**

REPORT:

Council resolved on 12 December 2013 to publicly exhibit Section A17 of the Tweed Development Control Plan, titled Business Development, Enterprise Corridor and Business Park Zones (draft DCP). The draft DCP originated from Clause 53G of the Tweed Local Environmental Plan 2000, which required the preparation of a DCP for the Boyds Bay Business Park site (currently known as the Boyds Bay Garden World site), however was also considered to satisfy a wider benefit by guiding development more generally within the Business Development, Enterprise Corridor and Business Park zones.

The Tweed Local Environmental Plan 2000 as it related to the Boyds Bay Business Park site has since been repealed by the Tweed Local Environmental Plan 2014 (LEP 2014). Nonetheless, the requirement for a DCP has been maintained within the LEP 2014, specifically by way of Clause 7.13, which details as follows:

7.13 Development requiring the preparation of a development control plan

- (1) The objective of this clause is to ensure that development on certain land occurs in accordance with a site-specific development control plan.*
- (2) This clause applies to development on land identified as “DCP required” on the Key Sites Map.*
- (3) Development consent must not be granted for development on land to which this clause applies unless a development control plan that provides for the matters specified in subclause (4) has been prepared for the land.*
- (4) The development control plan must provide for all of the following:*
 - (a) design principles drawn from an analysis of the site and its context,*
 - (b) phasing of development,*
 - (c) distribution of land uses, including open space,*
 - (d) subdivision pattern and provision of services,*
 - (e) building envelopes and built form controls,*
 - (f) impact on, and improvements to, the public domain,*
 - (g) identification and conservation of native flora and fauna habitat and habitat corridors on the site, including any threatened species, populations or ecological communities,*
 - (h) identification, extent and management of watercourses, wetlands and riparian lands and any buffer areas,*
 - (i) environmental constraints, including climate change, acid sulfate soils, flooding, contamination and remediation.*

Public Exhibition

The draft DCP was publicly exhibited from 14 January - 28 February 2014, during which 37 submissions were received. The following table provides a summary of the submissions received, relevant planning comments and details where amendment to the draft DCP is warranted.

Issue	Planning Comment
<p>Objection was raised that the site specific controls relating to the Boyds Bay Business Park were excessive and should be amended/removed to assist in facilitating a Masters Home Improvement store, as per the Development Application currently being assessed by Council's Development Assessment Unit. Specific comments included as follows:</p> <p><i>The DCP requirements for extensive architectural detailing may be appropriate in the Tweed Town Centre, but does not make sense on the Boyds Bay Garden World Site. People visiting the site will be going there because of the key attraction – namely a Masters Store.</i></p> <p><i>Masters operates nationwide and has its own distinct corporate design and branding. They know what makes a shopping experience convenient, safe and comfortable for their customers and design their stores accordingly. In my view, Council should be encouraging businesses like Masters to come to the Tweed to provide much needed employment. Council should not be putting up design hurdles or seek to change the well tested design of a “standard” Masters Store via the DCP.</i></p> <p><i>All Masters Stores are required to comply with a 'Design Brief' aimed at ensuring uniformity in corporate presentation as well as a consistent, air-conditioned, safe and pleasant shopping experience for customers. Accordingly, it is suggested that the DCP design criteria</i></p>	<p>The draft DCP involves a much wider scope than facilitating a single development proposal. In this regard, the draft DCP firstly applies at a shire-wide level and then secondly provides a framework towards realising the potential and best practice planning outcomes for the Boyds Bay Business Park. Accordingly, there is no value in preparing a DCP if only to replicate a Development Application, particularly prior to the conclusion of the application.</p> <p>The planning framework established to facilitate the rezoning of the Boyds Bay Business Park included a number relevant provisions, including encouraging a range of compatible uses, promoting good urban design through integration of all buildings, structures and landscaped areas with strong visual and aesthetic appeal, and facilitating the development of the site as a “stand alone” destination. In addition, various components of the Community Strategic Plan 2013/2026, particularly Objective 2.6, seek to improve urban design in new urban development. In light of the existing planning provisions, the Boyds Bay Business Park specific controls within the draft DCP provides a suite of tangible objectives and controls to realise the requirements of the LEP. With specific relation to building appearance, the following provisions are detailed:</p> <p><i>Objective 7 - To ensure the development includes architectural features that are visually appealing, reduce building mass and create an attractive streetscape.</i></p> <p><i>Control 2(6) Large floor plate development to incorporate appropriate roof form (which may include varying roof heights) and building form articulation to reduce the amenity impacts such as overshadowing to the south and to result in a higher quality built form outcome.</i></p> <p>In addition to the site specific controls, the draft DCP also contains building form provisions applicable throughout the B5, B6 and B7 zones. The objectives of the planning framework include:</p> <p><i>Objective 1 - To encourage building form, and the use of architectural features, materials and colours that contribute to improved building design and the desired streetscape character.</i></p> <p><i>Objective 2 - To encourage finishes and building materials appropriate to the local climatic conditions, solar orientation and site specific features.</i></p> <p><i>Objective 3 - To encourage a mix of materials which serve to break down the overall scale, bulk and mass of large buildings.</i></p> <p>Of note, the draft DCP does not include any provisions that mandate internal layouts or types of building cooling, limiting any variation to a regular 'design brief' to external appearance and general site and climatic response.</p> <p>It is acknowledged that several developers likely to establish within the B5, B6 and B7 zones will have generic building designs that they wish to pursue to afford greater brand association and familiarity. Many of these developers already pursue building designs that embody a number of the objectives listed above, however designs that don't reflect these objectives may need to be more particular with site selection, or use of</p>

Issue	Planning Comment
<p><i>need to include design options which better reflect the market and design realities of large floor plate retailing.</i></p> <p><i>The elevations and roof treatments need to be reviewed having regard to the construction constraints associated with the flight path of the Gold Coast Airport.</i></p> <p><i>As stated in the Tweed Shire Council's Youth profile the Tweed has a relatively low index of disadvantage, which means it is more highly disadvantaged than many other areas. There is also high unemployment rate in our Shire and the Masters development would increase long-term employment opportunities in our area.</i></p> <p><i>Any opportunity for growth and employment as positive for the Tweed community.</i></p>	<p>other design measures (i.e. landscaping, car parking shading, water sensitive urban design corridors adjoining pedestrian pathways), or incorporate some design brief changes in order to meet the objectives stated. In light of the existing planning framework, the provisions of the draft DCP are not considered unnecessarily onerous or restrictive, and are compatible with best practice planning and design.</p> <p>Whilst Council's project team acknowledge the potential investment and employment that may be created from the development of a Masters Home Improvement Store, the site, through various strategic processes has been identified as possessing greater opportunities for both employment and development intensity. Accordingly, controls are included within the draft DCP to preserve those opportunities for the future and to encourage greater levels of employment on the site, as opposed to detailing a DCP that purely reflects the intentions of one developer or development.</p> <p>Conclusion: The design controls drafted within the Draft DCP are considered to be appropriate to the site when considering site analysis, the Planning Proposal provisions, LEP 2014 framework and the provisions of the Community Strategic Plan 2013/2026. It is acknowledged that many large floorplate developers have a traditional brief to provide homogenous buildings, however it is appropriate that the detail of those designs and any specific non-compliances be assessed on merit within a Development Application. Accordingly, no amendments to the draft are recommended as a result of the concerns raised.</p>
<p>Concern was raised that the Draft Business DCP needs to incorporate clear savings provisions with respect to the application of the DCP for Development Applications lodged prior to the DCP being formally endorsed by Council.</p>	<p>It is not a regular practice by the Planning Reforms Unit to incorporate savings provisions within Sections of the Tweed Development Control Plan, rather, assessing officers apply the provisions of any new or amended Section to applications already lodged with Council pragmatically. Clause 7.13 of the LEP 2014 requires the preparation of a DCP before consent can be issued for the Boyds Bay Business Park and is one of the key drivers for preparing the draft DCP. Any savings provision which precludes the current Development Application for the Masters store from being subject to the draft DCP is considered to undermine Clause 7.13 and potentially restrict Council from issuing development consent.</p> <p>Conclusion: A savings provision is not considered necessary as it dilutes the requirements of the LEP 2014 and could potentially delay any consent from being issued for the Boyds Bay Business Park. Accordingly no change is recommended.</p>
<p>Concern was raised that the provision of pedestrian pathways between each row of parking within the car park area, as displayed in Figure 8.2 was unwarranted for the following reasons:</p> <ul style="list-style-type: none"> • <i>Within large open car parks, it is common practice throughout Australia that pedestrians and vehicles 'share' the car park area.</i> • <i>Pedestrian pathways need to be 'protected' by wheel stops or raised kerbs. These</i> 	<p>In relation of pedestrian movement within the Boyds Bay Business Park, the following site specific requirements are made within the draft DCP:</p> <p><i>Objective 9 - Provide public domain and legibility treatments to support the high volume of pedestrian movement in and around the site.</i></p> <p><i>Control 2(v) - Incorporate a pedestrian network connecting buildings, car parking areas and key outdoor amenity areas.</i></p> <p><i>Incorporate pedestrian pathways within the car parking areas to enable safe movement of pedestrians with trolleys and bulky goods between stores and the car park.</i></p> <p>In light of the above, no controls are contained within the draft DCP that require pedestrian pathways within each row of parking, rather controls require any proponent to demonstrate the inclusion of a pedestrian</p>

Issue	Planning Comment
<p><i>present a potential trip hazard for pedestrians and present obstacles with respect to manoeuvring trolleys and parents with prams.</i></p> <ul style="list-style-type: none"> · <i>The provision of pedestrian pathways impedes the opportunity for the parking of trailers in a 'drive through' manner across two parking bays.</i> · <i>Drainage throughout the car park is most straightforward if there are as few obstacles as possible within the car park.</i> 	<p>network that connects buildings, car parking areas and outdoor amenity areas, acknowledging that pedestrians will likely be moving with trolleys and bulky goods. Figure 8.2 of the draft DCP provides an indicative configuration of the site, which includes pedestrian corridors centrally within each car parking aisle, however this does not form a development control. The draft DCP clearly details that illustrations are indicative only and are provided to illustrate certain provisions in the Section.</p> <p>Conclusion: The draft DCP does not require the provision of pedestrian pathways between each row of parking within the car park area as an objective or development control. No amendment is recommended.</p>
<p>Concern was raised in relation to the specified buffer distances to land uses adjoining the Boyds Bay Business Park; particularly suggesting that this issue could be better addressed via a merit based approach, rather than requiring compliance with a numerical standard.</p>	<p>The buffer distance controls established for the Boyds Bay Business Park were based on 3D modelling of potential built forms and acknowledge the sensitivities and of the adjoining land uses. Nonetheless, within the NSW Planning System, it is common industry practice that numerical controls prescribed within a DCP are not viewed as development standards, rather as means of achieving an acceptable solution to an overarching objective. This practice is reinforced throughout the Tweed Development Control Plan, which prescribes the process for applications which propose an alternative solution to achieve the DCP's objective/s.</p> <p>Specific to the Boyds Bay Business Park, the overarching objectives are:</p> <p style="padding-left: 40px;"><i>Objective 6 - To ensure that development scale, height, buffers and interface treatments are provided to maintain the amenity of adjoining properties, and,</i></p> <p style="padding-left: 40px;"><i>Objective 10 - To integrate site landscaping and water sensitive urban design to address cross site stormwater flows and minimise hardstand areas.</i></p> <p>Accordingly, it is open to Council to consider alternatives to the prescribed numerical buffers. The ability for any alternative solution proposed is assessed on its merits against the objectives stated.</p> <p>Conclusion: In light of the above, it is not considered necessary to amend or remove the existing control, as alternatives to the numerical solutions provided can be pursued within a Development Application.</p>
<p>Concerns were raised that the suggested uses/opportunities provided in the Draft DCP are unclear and inconsistent having regard to the terms of the proposed B7 Business Park zone under the Draft TLEP 2012. Notably retail premises are proposed to be prohibition in the B7 zone yet the draft DCP suggests that retail focussed activities, notably direct factory outlet centres are possible.</p>	<p>The concerns identified are relevant and inconsistencies between the draft DCP and the LEP 2014 are present in the Boyds Bay Business Park - Summary Data Sheet.</p> <p>Conclusion: It is recommended that the Boyds Bay Business Park - Summary Data Sheet be deleted from the draft DCP.</p>
<p>Concern was raised that the Draft Business DCP does not satisfy the</p>	<p>The Boyds Bay Business Park is zoned B7 Business Park within the LEP 2014. The B7 zone prohibits all retail premises, with the exception</p>

Issue	Planning Comment
<p>requirements of Clause 53G(8) of the Tweed Local Environmental Plan 2000 (as it relates to the Boyds Bay Business Park), as it does not give adequate provisions to ensure that development will not conflict with the hierarchy of retail centres in the Tweed.</p>	<p>of Bulky goods premises; Garden centres; Food and drink premises; Hardware and building supplies; Kiosks and Neighbourhood shops. Accordingly, the range of permissible retail based land uses is limited and as such is not likely to undermine existing centres, particularly Tweed Heads South as the focal retail centre. In addition to the limited retailing uses permitted, the Boyds Bay Business Park is isolated from other business based land zonings, constrained by site area and is also constrained by permissible building height and activity as a result of its proximity to the Gold Coast Airport. Finally, through the recent LEP amendment process, the economic impact of the Business Parks' rezoning and future development on existing centres was investigated and concluded as satisfactory.</p> <p>In light of the above considerations, the draft DCP establishes the following aim and objectives to reaffirm the previous Planning Proposal framework:</p> <p style="padding-left: 40px;"><i>Aim - Support an integrated design approach that establishes a variety of complementary business land uses which respond to site constraints within a quality urban and building design within a business park setting.</i></p> <p style="padding-left: 40px;"><i>Objective 2 - Ensure opportunities for a variety of land uses, tenancy types and sizes.</i></p> <p>The cumulative suite of planning considerations detailed above are considered to ensure that the development of the Boyds Bay Business Park does not conflict with Council's established retail principles.</p> <p>Conclusion: In light of the applicable land use restrictions, site constraints and specific aim and objectives of the draft DCP no amendments are recommended.</p>
<p>Concern was raised in relation to the opportunities for retail activities within the DCP, particularly measures to accommodate and control appropriate neighbourhood commercial and retail uses, to ensure that development will not conflict with the hierarchy of retail centres in the Shire, outside of 'ancillary buildings and structures' and that the 'business theme' of proposed development in the B7 Business Park zone should be demonstrated for all development in this zone, and the proposal should be justified on economic and land use planning grounds.</p>	<p>The draft DCP includes provisions to guide retailing ancillary to a primary land use. These controls are predominately relevant to ancillary retail development within the B7 Business Park zone, as the B5 Business Development zone permits a wide range of stand-alone retail activities. Accordingly, the relationship with Council's Retail Principles, specific to each of the zones, is provided below.</p> <p>B5 Business Development - The localities of South Tweed Heads (namely Industry Drive, Machinery Drive, Greenway Drive and Corporation Circuit) and Murwillumbah (South Murwillumbah and Tweed Valley Way south of Quarry Road and north of Colin Street) include the use of the B5 zone within the LEP 2014. Both of these localities are considered to be existing primary retail centres. In light of the B5 zoned locations within the Shire, further retail expansion and development is considered to compliment and reinforce Council's adopted retail principles, therefore negating a need to 'control' the specific scale of retail activities.</p> <p>B6 Enterprise Corridor - No applicable comments as the zone is not currently included within the LEP 2014.</p> <p>B7 Business Development - As detailed previously, a limited range of stand-alone retail activities is permissible within the zone, however the draft DCP acknowledges that many permissible land uses may seek to provide factory outlet or 'seconds' retail floorspace. Both Objectives and Controls are included within the draft DCP to regulate such 'Shop' activities to daily convenience needs or products ancillary to the premises core function and to retain the retail primacy of existing retail centres.</p> <p>An area open to greater interpretation revolves around land uses such as Bulky goods, Garden centres and Hardware and building supplies.</p>

Issue	Planning Comment
	<p>These land uses are widely acknowledged as retail premises, however by their nature (large floorplate, use of trailers to transport purchased goods, customer patronage is heavily vehicle dependant) are often located 'out of centre' to other retail based uses.</p> <p>As concluded previously, the Boyds Bay Business Park, which is likely to have a primary focus around these larger floorplate retail uses, is not considered to undermine Council's retail principles due to site limitations and the draft DCP framework.</p> <p>The submission received requests that an 'economic impact statement' be submitted to ensure that <i>'the overriding 'business theme' or business niche of a newly proposed business park should be justified not only through a site analysis and land use planning process, but through sound economic planning and modelling...'</i> as detailed within the draft DCP. In this regard, strictly requiring an economic impact statement with an application is not considered necessary as any fundamental economic impact concerns would have primarily been addressed within the Planning Proposal process. Once the suitability of the overarching suite of permissible land uses is resolved, any specific land use concerns can be addressed through the Development Application process with the usual consideration of the Retail Principles and Section A13 (Socio Economic Impact Assessment) of the Tweed Development Control Plan. Accordingly, it is not considered necessary to replicate existing adopted provisions and holistically require an Economic Impact Assessment/Statement.</p> <p>Conclusion: The combination of permitted land uses, DCP provisions (both within the draft DCP and the existing Section A13) and cross referencing to Council's adopted retail principles is considered to provide a sufficient framework regarding retailing activities. No specific amendment to the draft DCP is recommended.</p>

Additional Matters

In addition to the amendments recommended by way of public submissions, several minor amendments have been pursued in order to clarify objectives and controls, as well as improve document legibility and use. These amendments are included within Attachment 1 and are not considered to necessitate re-exhibition of the draft DCP.

Future Amendment

The recently made LEP 2014 has resulted in a wider selection of business and industrial zonings applicable to the Tweed. In light of the wider spectrum of zones used, a review of Section A17 has been undertaken to determine the appropriateness of its area of application. This review concluded that the draft DCP remains appropriate to the B5, B6 and B7 zones as made.

In addition to the existing applicable zones, officers identified that the IN1 General Industrial zone is likely to include many of the development types envisaged within the draft DCP, and as such its application could be expanded. By way of background, the IN1 General Industrial zone includes the following objectives:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*

- *To enable land uses that provide facilities or services to meet the day to day needs of workers in the area.*

The provisions of the draft DCP as they relate to Site Design, Building Envelope, Building Design, Landscaping and Ancillary Buildings and Structures, are considered to be of high relevance to development within this zone. As is considered best practice, the appropriateness of the objectives and controls within the draft DCP should be verified through public exhibition, affording landowners and developers within the IN1 zone the opportunity to review and provide comment prior to further consideration by Council.

As discussed throughout this report, the need for the draft DCP originates from an LEP requirement to provide appropriate site planning to realise the potential of the Boyds Bay Business Park. There is an imperative need to conclude these strategic investigations so that a comprehensive planning framework is provided to facilitate the Boyds Bay Business Park. In this regard, it is considered appropriate that no further amendments that necessitate the re-exhibition of the draft DCP be pursued unless essential. Accordingly, this report concludes that the draft DCP should be adopted and that post adoption, an amendment be prepared to expand the land to which the DCP applies to include the IN1 General Industrial zone. This amendment would then be separately publically exhibited and submissions received reported to the Council at a future stage.

OPTIONS:

That Council:

1. Approves the draft DCP as provided within Attachment 1 of this report, or
2. Defers the matter for a workshop.

Council officers recommend Option 1.

CONCLUSION:

A key component of unlocking the development potential of the Boyds Bay Business Park is the adoption of the draft DCP.

Public exhibition of the draft DCP attracted a number of submissions (37), however the issues as discussed within this report are not considered significant or prohibitive.

The revised draft DCP is provided as Attachment 1 to this report and is recommended for adoption. The adoption of the draft DCP will enable the development of the Boyds Bay Business Park, facilitating an outcome that is consistent with vision that has been embedded since reviewing the zoning of the site in 2010.

Post adoption of the draft DCP it is considered appropriate to facilitate an amendment and public exhibition to expand the extent of application to include development within the IN1 General Industrial zone. The expansion of land affected by the DCP would guide industrial development outside of the B5, B6 and B7 zones and assist establishing a comprehensive planning framework.

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. Tweed Development Control Plan - Section A17 (ECM 3341381)

Attachment 2. Council report of Thursday 12 December 2013 (ECM 3340875)

19 [PR-PC] 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 there are no variations for the month of April 2014 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C1 [PR-PC] Proposed Action for Unauthorised Building Work (Demolition of Structure) on Lot 17 Section 5 DP 8568, No. 45 Charles Street, Tweed Heads

REASON FOR CONFIDENTIALITY:

This report has been made Confidential so as not to prejudice any future legal proceedings.

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