



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr B Longland

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

# Agenda

## Planning and Regulation Reports

### **Ordinary Council Meeting**

### **Thursday 23 January 2014**

held at Murwillumbah Cultural and Civic Centre  
commencing at 4.45pm

## COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

## Items for Consideration of Council:

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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

(a) the provisions of:

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

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

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

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

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

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

(b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

(2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note:** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

(4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Definitions In this section:

- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
- (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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

**SUBMITTED BY: Director**



## **Civic Leadership**

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

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

### **SUMMARY OF REPORT:**

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

### **RECOMMENDATION:**

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

**REPORT:**

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

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

<b>DA No.</b>	DA13/0024
<b>Description of Development:</b>	40 lot subdivision, construction of internal road and associated infrastructure
<b>Property Address:</b>	Lot 1 DP 407094 Cudgen Road, Cudgen & Lot 1 DP 598073 No. 17 Collier Street, Cudgen
<b>Date Granted:</b>	18/12/2013
<b>Development Standard to be Varied:</b>	Clause 20(2)(a) - Minimum Lot Size 40ha
<b>Zoning:</b>	1(a) Rural, 1(b1) Agricultural Protection, 1(b2) Agricultural Protection, 2(a) Low Density Residential
<b>Justification:</b>	<p>The objection is in respect of the planning standard identified within Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(b2) Agricultural Protection zone. Council can assume concurrence to vary the standard applying to the 1(b1) Agricultural Protection zone of 10 hectares, as the variation is less than 10%.</p> <p>The SEPP No. 1 objection relates to the portion of the combined Lots 38 and 39 which is located within the 1(b2) zone. This equates to a total area of approximately 5.2382ha within the proposed lot which is under the 40ha minimum.</p> <p>The SEPP No. 1 objection was accepted as follows:</p> <ol style="list-style-type: none"> <li>1. No issues of state or regional significance are raised;</li> <li>2. Creation of the residue lot is an administrative matter; and</li> <li>3. Creation of the lot for stormwater drainage reserve is of minor significance.</li> </ol>
<b>Extent:</b>	The objection is in respect of the planning standard identified within Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(b2) Agricultural Protection zone. Council can assume concurrence to vary the standard applying to the 1(b1) Agricultural Protection zone of 10 hectares, as the variation is less than 10%.
<b>Authority:</b>	Tweed Shire Council under assumed concurrence.

<b>DA No.</b>	DA13/0328
<b>Description of Development:</b>	Creation of staged storage units (112 units) and conversion of existing light industrial building to storage units (24) with associated site filling and earthworks in addition to existing lawful development (light industry)
<b>Property Address:</b>	Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow
<b>Date Granted:</b>	18/12/2013
<b>Development Standard to be Varied:</b>	Clause 24 - setbacks to designated roads



<b>Zoning:</b>	1(a) Rural
<b>Justification:</b>	The SEPP 1 objection is required because a portion of existing Building F does not comply with the 30m development standard contained within Clause 24. The masonry office component of Building F is located 25.701m from Pottsville Mooball Road which represents a 14.33% or 4.299m variation to the development standard.
<b>Extent:</b>	The SEPP 1 objection is required because a portion of existing Building F does not comply with the 30m development standard contained within Clause 24. The masonry office component of Building F is located 25.701m from Pottsville Mooball Road which represents a 14.33% or 4.299m variation to the development standard.
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

<b>DA No.</b>	DA13/0513
<b>Description of Development:</b>	Dwelling alterations, additions and gatehouse (staged)
<b>Property Address:</b>	Lot 6 DP 1066506 No. 42 North Point Avenue, Kingscliff
<b>Date Granted:</b>	17/12/2013
<b>Development Standard to be Varied:</b>	Clause 32B(4)(b) - overshadowing
<b>Zoning:</b>	2(f) Tourism
<b>Justification:</b>	Area of the coastal reserve affected comprises a grassed area and coastal dune vegetation. The shadow will have minimal impact on any areas used by the public for formal recreational activities and Council has approved many dwellings along the Tweed Coast that have similar minor overshadowing encroachments.
<b>Extent:</b>	Shadow diagrams show the development will overshadow the adjacent foreshore reserve to the east. A SEPP 1 objection was submitted with the application.
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.



- 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

**SUBMITTED BY:** Development Assessment

**FILE REFERENCE:** DA13/0175 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:

This development application is being reported to Council as it is a subdivision that creates more than 50 lots. The development application was lodged on 17 April 2013.

A number of formal and informal amendments to the application have been made during the assessment process in response to Council's consolidated requests for further information. Council officers have provided ongoing, detailed advice (prior to lodgement and during assessment), extensions for the provision of further information and have met with the applicant when requested for discussions in an attempt to resolve matters of concern. However, subsequent modifications to the proposal have consistently failed to adequately address outstanding issues to Council's satisfaction.

The applicant has been given the option to withdraw the application and re-lodge an amended proposal once acceptable design solutions have been identified. This process is expected to be lengthy in consideration of the constraints of the land. The applicant has opted not to withdraw the application. As such, given lengthy delays in the submission of further information and the sub-standard content of the applicant's final submission on 21 November 2013, the application is now recommended for refusal.

Main areas of concern (and grounds for refusal) relate to:

- Failure of the applicant to satisfactorily resolve stormwater drainage issues for the outlet from Frangella Park (within proposed Lot 604);
- Inability for Council to accept dedication of Lot 604 without appropriate drainage improvements;
- An unacceptable impact on, and unwarranted risk to an identified threatened species (Grey-headed Flying Fox colony and associated habitat); and

- The cumulative effect of Council accepting multiple less-than-ideal elements of the proposal that result in substantial financial and maintenance responsibilities into the future.

Elements of the proposal that remain less than satisfactory include:

- Open drainage channel design, grades, construction materials and revegetation;
- Bio-retention basin design;
- MUSIC modelling: pollution reduction target;
- Sewer design: minimum grades/self cleansing velocity requirements;
- Pedestrian access to Frangella Park;
- Upgrade/embellishment of Frangella Park;
- Revegetation plant species/design for Rous River riparian buffer; and
- Impact of construction noise/haul routes.

It is intended that infrastructure will be handed over to Council once the subdivision is created which will be Council's responsibility to maintain into the future. Should the development application be approved in its current form, the ongoing cost of maintaining this infrastructure will be prohibitive and a burden to ratepayers. This is clearly not in the public interest.

The proposal was required to be notified to adjoining owners for a period of 30 days. One submission was received during the notification period objecting to the proposal. Issues raised have been resolved.

Having regard to relevant statutory controls and an assessment against Clauses 4, 5 and 8 in particular, of the Tweed Local Environmental Plan 2000, the proposed 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 is not considered suitable for the subject site and therefore the proposed development is recommended for refusal.

## **RECOMMENDATION:**

**That 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 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)(i), 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:**

- North Coast Regional Environmental Plan: Clauses 15 and 43

It is Council's view that the proposed development does not satisfy the provisions contained within:

**The Tweed Local Environmental Plan 2000:**

- Clause 4: Aims of this plan
- Clause 5: Ecologically sustainable development
- Clause 8(1): Consent Considerations
- Clause 31: Development adjoining waterbodies

5. 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 the design and proximity of the residential development to Frangella Park is considered unacceptable due to its impact upon the habitat of a threatened species, in particular that of the grey headed flying fox.

6. 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 Local Environmental Plan 2000 specifically as it relates to the aims of the plan, unacceptable cumulative impact and the ongoing economic burden on the Shire as a whole.

## REPORT:

**Applicant:** Barnby Developments Pty Ltd  
**Owner:** Ms Catharina LA Bayliss  
**Location:** Lot 332 DP 1158142 Silkpod Avenue, Murwillumbah  
**Zoning:** 2(c) Urban Expansion; 2(a) Low Density Residential  
**Cost:** \$5,000,000

## Background:

### History

On 10 August 2012, Tweed Local Environmental Plan Amendment No. 90 rezoned the subject land to 2(a) Low Density Residential in preparation for further stages of the Riva Vue residential development.

Council's Development Assessment Panel met with the applicant to discuss the future subdivision proposal on 22 August 2012. Council officers provided formal advice with regard to the concept plan. Stormwater Management requirements were highlighted. In particular, the applicant was advised as follows:

*"Proposed dedication of lot 501 to Council will not be supported by Council unless significant drainage improvements are undertaken to the site (including an investigation of the current leaching problem). This area will not meet the Casual Open Space requirements for this site and alternative arrangements for Open Space will need to be negotiated (embellishment of and connectivity to existing facilities may be considered or a contribution under Section 94). Verification of appropriate compaction and filling will be required."*

### The Subject Site

The subject site (as amended) is composed of one parcel of land. The residential subdivision and drainage channel will be contained on Lot 332 DP 1158142 which has an area of approximately 9.948 hectares. The site has been partly filled.

The majority of the site is managed grassland. However, there is a small stand of remnant vegetation to the west of Rous River Way. The site has historically been utilised for the production of sugar cane.

### The Proposed Development

The application has been amended three times during the course of assessment. The proposal is identified as integrated development as it is located within 40m of a waterbody. Accordingly, this necessitated an integrated referral to the NSW Office of Water.

#### *Original proposal (88 lot subdivision in two stages – 4 & 5)*

- § Creation of 85 residential lots with areas ranging from 569m<sup>2</sup> to 966m<sup>2</sup> – Lots 401 to 437 (37 lots) and Lots 502 to 549 (48 lots)
- § Dedication of proposed Lot 550 as a drainage reserve
- § Dedication of proposed Lot 501 as a drainage reserve
- § Construction and dedication of the proposed streets
- § Construction of stormwater drainage infrastructure including water quality infrastructure and a stormwater drainage channel outfall to the Rous River within Lot 22 DP 1080322

- § Provision of an underground water supply, reticulated sewer, power and telephone including NBN compatible services; and
- § Creation of proposed Lot 551 on the western side of the site. This lot will be consolidated with Lot 22 DP 1080322 to provide improved access to that lot from the proposed extension of Joshua Street.



**Figure 1: excerpt of original subdivision plan 19291 B Sheet 1 (14 August 2012)**

*Amendment 1 (received as informal modification on 6 June 2013)*

The revised plan introduces additional staging (Stages 6 and 7) in order to reduce the amount of contributions payable at the time of release of the Subdivision Certificate for each relevant stage.

It also amends the subdivision layout at the western end of the site adjacent to Joshua Street.

The amended layout was intended to resolve issues raised by the Lessee of the Child Care Centre on adjacent Lot 22 DP 1080322 with regard to car park access.

The applicant also considered it "*uneconomic*" to pipe overland flow from the intersection of Joshua Street and Rous River Way to Lot 545 (Lot 713 on the amended Layout Plan), to the extent that it would "*render the project commercially unviable*".



Figure 2: excerpt of amended subdivision plan 19291 B Sheet 1 Revision A (31 May 2013)

Amendment 2 (received 27 September 2013)

The formal amendment reduces the number of residential lots from 85 to 80 and increases the number of drainage reserves from two to four – Lots 627, 628, 629 and 630.

Amended drainage deleted the requirement for a new outfall to the Rous River adjacent to Lot 630. As such, drainage works on Lot 22 DP 1080322 are no longer included in the application and the application is contained wholly within Lot 332 DP 1158142.



Figure 3: excerpt of amended subdivision plan 19291 B Sheet 1 Revision D (26 September 2013)



*Amendment 3 (received 21 November 2013)*

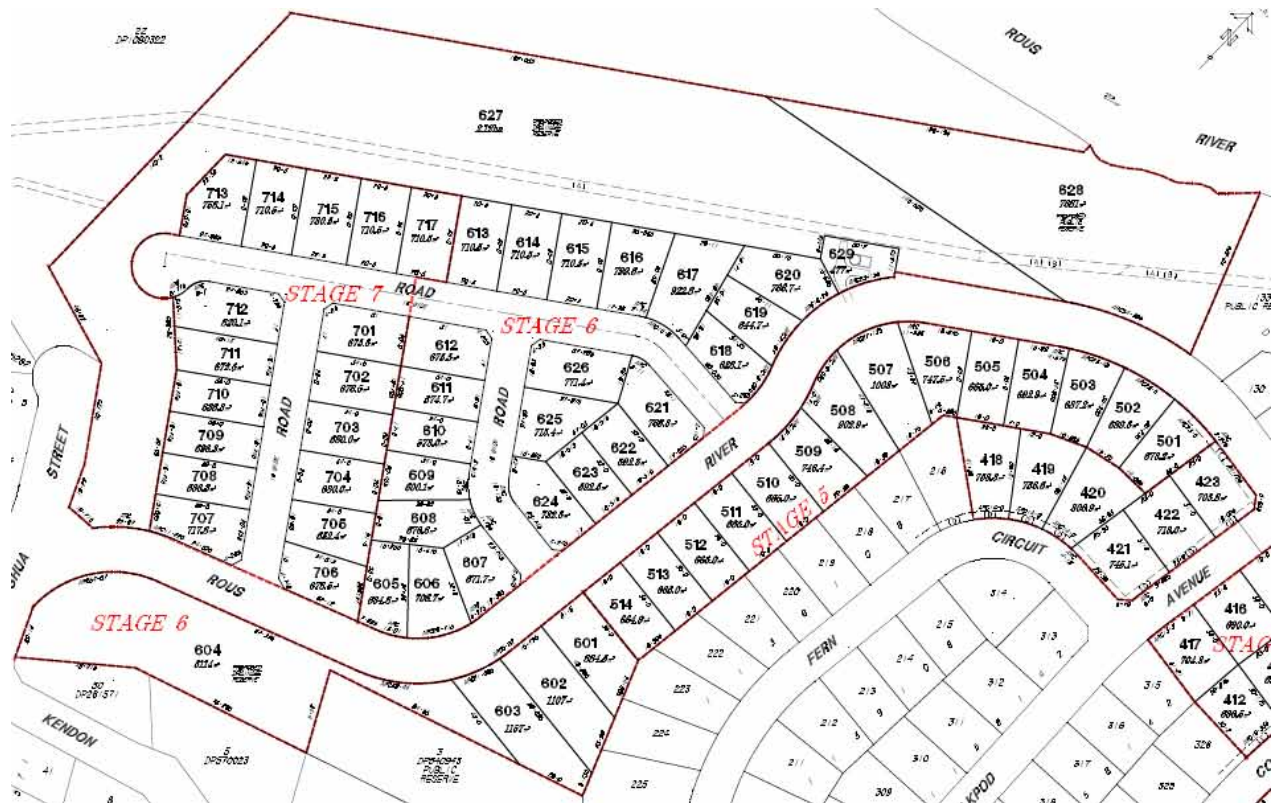
The final amendment is an 83 lot residential subdivision over four stages with (residential) lot areas ranging from 574.7m<sup>2</sup> to 1157m<sup>2</sup>:

- § Stage 4 contains Lots 401 to 423 (23 lots);
- § Stage 5 contains Lots 501 to 514 (14 lots);
- § Stage 6 contains Lots 601 to 629 (29 lots); and
- § Stage 7 contains Lots 701 to 717 (17 lots).

It includes a total of 79 residential lots, two drainage reserves, one public reserve (riparian buffer) and one sewer pump station site along with:

- § Dedication of drainage reserves (Lots 604 and 627);
- § Dedication of public reserve (Lot 628);
- § Dedication of sewer pump station site (Lot 629);
- § Construction and dedication of the proposed streets;
- § Construction of stormwater drainage infrastructure including water quality infrastructure and a stormwater drainage channel outfall to the Rous River within Lot 332 DP 11158142; and
- § Provision of an underground water supply, reticulated sewer, power and telephone including NBN compatible services.

The amended proposal incorporates a revised layout adjacent to Frangella Park (Lots 601, 602 and 603), renumbering of allotments and other consequential amendments.

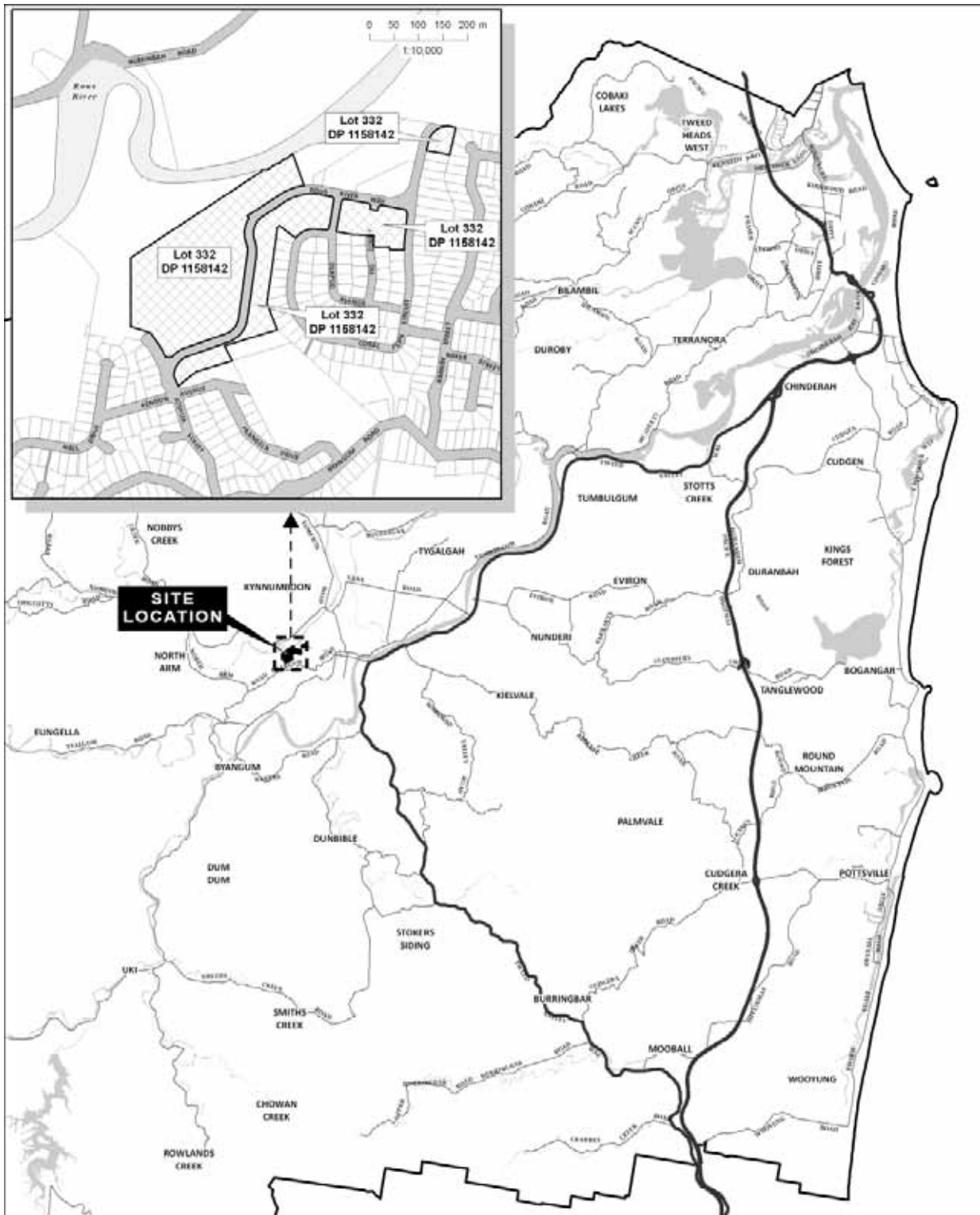


**Figure 4: excerpt of final subdivision plan 19291 B Sheet 1 Revision E (19 November 2013)**

Summary

Having regard to relevant statutory controls and an assessment against Clauses 4, 5 and 8 in particular, of the Tweed Local Environmental Plan 2000, the proposed 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 is not considered suitable for the subject site and therefore the proposed development is recommended for refusal.

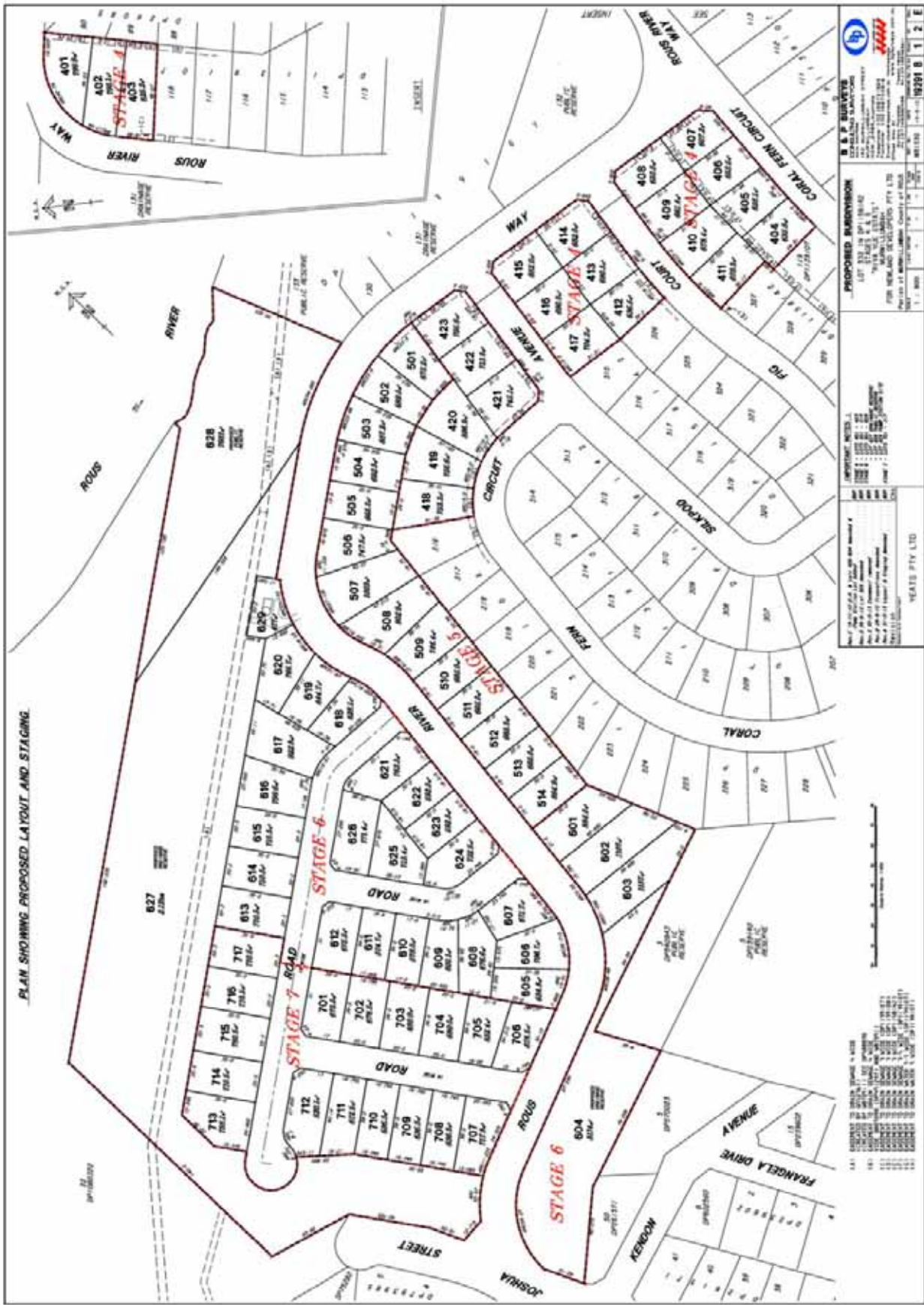
**SITE DIAGRAM:**

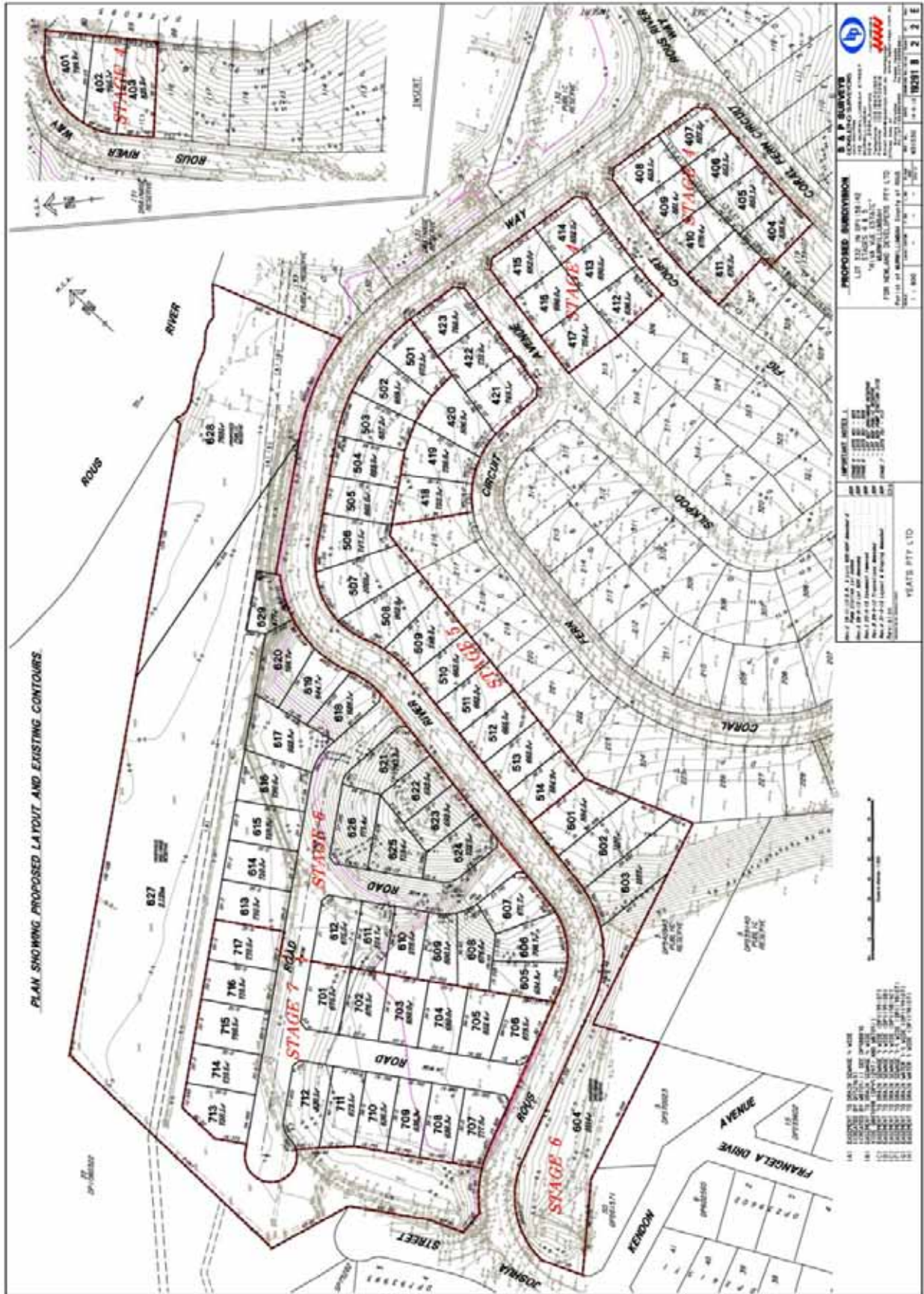


**Locality Plan**  
 Lot 332 DP 1158142  
 Silkpod Avenue, Murwillumbah

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DEVELOPMENT/ELEVATION PLANS:





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

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

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

Clause 4 - Aims of the Plan

One of the aims of the plan is:

- (d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

The provision of infrastructure and open space in association with the current subdivision plan is not economically viable, nor sustainable. The applicant has opted for a reduced functionality of stormwater drainage/infrastructure possibly due to economic constraints. The current design differs considerably from the original (and satisfactory) master plan presented during the rezoning process. In addition, design solutions do not cater for the retention and protection of a key habitat for a threatened species located in Frangella Park.

As such, it is put forth that the proposed development does not sustain economic development of the area and indeed, compromises the area's environmental qualities. Residential amenity in general will suffer as a consequence and Council will need to maintain a less than adequate system at an unknown cost into the future.

As such, the proposed development does not meet the objectives of Clause 4.

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.

As stated previously, the provision of less than adequate infrastructure to a large subdivision will result in expensive and ongoing maintenance costs, problematic operational/functional anomalies and potentially serious impacts upon the environmental features upon and adjacent to the site, inclusive of the Rous River which in itself is a key fish habitat and the colony of grey headed flying fox within Frangella Park, a threatened species community.

The precautionary principle should be activated in this case. There is a threat of irreversible environmental damage should Council's expectations for this residential subdivision not be met. As such, impacts upon inter-generational equity, conservation of biological diversity and ecological integrity have not been resolved.

The proposed development does not meet the objectives of Clause 5.

Clause 8 - Consent Considerations

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

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*

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

Although consistent with the relevant 2(a) zone, the cumulative impact of residential development serviced by the proposed infrastructure is of concern.

The applicant has reduced functionality of the provision of services, the negative impact of which is difficult to predict but may place a significant financial burden on Council and ratepayers. It is also not certain at this stage whether the applicant can comply with the required standard for the provision of reticulated sewer.

In this instance, it is imperative that hand over of infrastructure to Council from the developer will not result in the handing over of problematic services and substantial future maintenance and corrective costs.

In addition, drainage solutions need to be in place that preserve and support the established ecological community within Frangella Park. This has not been demonstrated.

Loss of important biodiversity in this locality and financial responsibility for less than adequate infrastructure constitutes an unacceptable cumulative impact on the community.

As such, the proposed development does not meet the provisions of Clause 8.

#### Clause 11 - Zone Objectives

Subdivision (and associated earthworks) within the 2(a) and 2(c) zones is permissible with consent with a minimum allotment size of 450m<sup>2</sup>. The location of future dwellings is permissible with consent on a minimum lot size of 450m<sup>2</sup>.

#### Clause 15 - Essential Services

Council's reticulated potable water supply and piped effluent disposal infrastructure is available within the area for connection. Electricity services are currently provided to the area via Country Energy infrastructure. Telecommunications services are currently provided to the area via Telstra infrastructure.

#### Clause 16 - Height of Building

There are no buildings proposed.

#### Clause 17 - Social Impact Assessment

As the subdivision entails creation of 50 or more lots, a socio-economic impact statement in accordance with Development Control Plan A13 is required. The applicant has provided such a statement.

It is agreed that the development represents a positive social and economic outcome by creating employment, providing new housing options and creating public space adjacent to the Rous River. However, the negative economic impacts on the locality and the Shire as a whole resulting from unsatisfactory drainage design on the site has not been addressed.

It is considered that the subdivision, as finally amended, is contrary to Council's expectations for the site and will represent an unacceptable financial burden to

ratepayers and the Shire in general. Approval cannot be recommended on this basis.

#### Clause 35 - Acid Sulfate Soils

An Acid Sulfate Soils Assessment and Management Plan was submitted for Stages 1 to 3 dated October 2004. The applicant submits that the existing assessment accurately reflects the soil conditions in the vicinity of Stages 4 to 7 of the proposed development and excavation, treatment and storage of these materials should be conducted in accordance with the approved Management Plan dated October 2004. This Management Plan was not approved.

Whilst it is accepted that the applicant could reasonably draw conclusions based on the investigations carried out to date, a number of variations have been introduced into the design since the 2004 report. These include a bio-retention basin and drainage channel to the north of the development within the lower areas of the allotment and in close proximity to the Rous River.

It is therefore considered that a further site specific Management Plan is required for Stages 4 to 7 to ensure the adequate management of any Acid Sulfate Soils encountered and protection of the environment.

Whilst Council's Environmental Health Unit has been able to condition provision of a Management Plan prior to the issue of a construction certificate, it is clear that the applicant had not supplied sufficient information upon lodgement with regard to the presence and adequate management of Acid Sulfate Soils over the site.

#### Other Specific Clauses

##### Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent.

##### Clause 31: Development Adjoining Waterbodies

The clause applies to land that adjoins the Mean High Water Mark of a waterbody.

The objectives of this clause include:

- Protection and enhancement of scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors;
- Provision of adequate public access to waterways, and
- Minimisation of the impact on development from known biting midge and mosquito breeding areas.

Acceptance of the infrastructure proposed in association with the subdivision development does not preclude negative impact upon the Rous River, the waterbody located adjacent to proposed Lot 628.

As such, the proposed development does not meet the objectives of Clause 31.

##### Clause 34 – Flooding

Clause 34 of the TLEP refers to flood liable land and requires Council to ensure that appropriate development occurs in order to minimise future flood damage on the local community.



The design flood level for this area is RL 4.7m AHD to RL 4.9m AHD with a probable maximum flood level of RL 9.2m AHD. Part of the site is located below the design flood level. As such, part of the site is proposed to be filled to RL 5.03m AHD which has been accepted by Council's flooding engineers.

#### Clause 39 – Remediation of Contaminated Land

This clause requires contaminated land to be remediated adequately prior to development occurring in accordance with SEPP 55.

A Preliminary Contamination Assessment has been submitted.

The report concluded “based on the available historical site information it is concluded that no potentially contaminating activities are apparent, except for cropping of sugar cane...” and further “on the basis of our historical desktop review and subsequent site investigations, no contamination has been identified within the investigation area. The historical land use and recent site activity associated with residential development has not resulted in any detectable contamination of the site. As such, the area investigated is considered suitable for the proposed residential land use.”

The report was prepared by a suitably qualified person and appears to have been prepared in accordance with the NSW EPA Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites, Nov 1997. As such, no further action is warranted.

#### Clause 54 – Tree Preservation Order

The objective of this clause is to enable the protection of vegetation for reasons of amenity or ecology. In effect, the TPO's prohibit clearing of vegetation without development consent.

The subject site is affected by the 1990 Tree Preservation Order (TPO). The 1990 TPO affects a small portion of existing Lot 332. No vegetation is proposed to be removed within this portion. As such, the proposal is consistent with this clause.

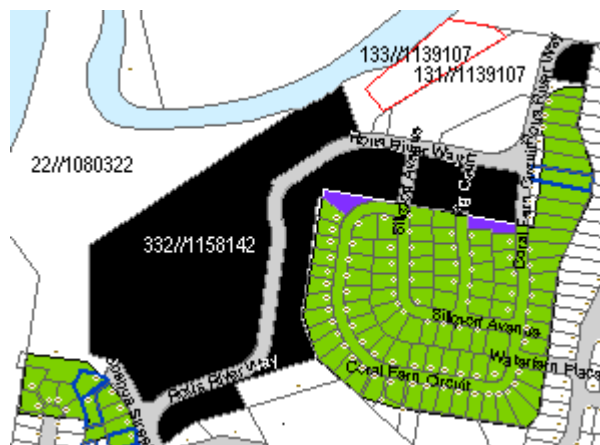


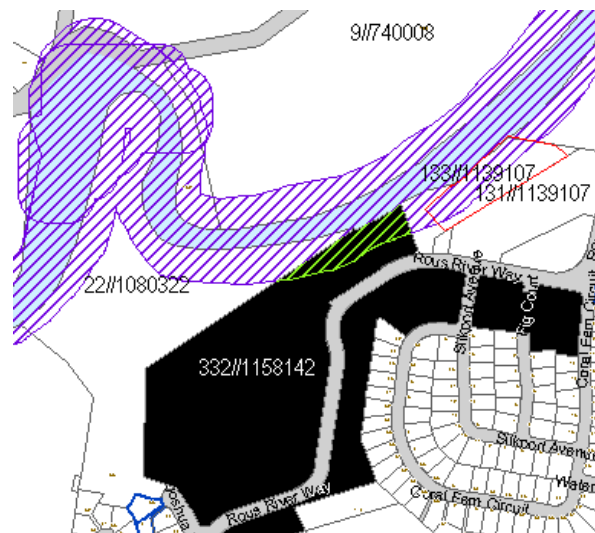
Figure 5: land affected by 1990 TPO (purple area denotes TPO within Lot 332)

### **State Environmental Planning Policies**

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

##### Clause 15: Wetlands or Fishery Habitats

The area of land adjacent to the Rous River (where the drainage channel is to be located) and the river itself is considered to contain key fish habitat.



**Figure 6: land/waterbody affected by Key Fish Habitat**

Unsatisfactory provision of drainage management within this area is likely to reduce the quality of the existing habitat. At the very least, Council must ensure that native vegetation surrounding the fishery habitat area is conserved.

With regard to the interface between the proposed constructed drainage channel and the existing channel, the applicant has not given consideration to existing conditions such as bed or bank profile/hydraulic capacity, nor the occurrence and likely impact on a cove of riparian vegetation associated with the existing channel.

As such, the proposed development does not meet the objectives of Clause 15.

**Clause 43: Residential development**

The issue here is whether the proposed development (and density) upon Lots 601, 602 and 603 adversely affects 'the environmental features of the land' via the lack of required separation distances between the Grey Headed Flying Fox camp and proposed residential lots to the north east.

In order to meet the required separation distances from the camp (taken from the line of existing vegetation and between 35 and 50m to any proposed lot boundary), Lot 603 requires deletion. Lots 601 and 602 require reconfiguration/amalgamation in order to achieve adequate setbacks.

An unacceptable negative ecological impact will result should the current layout of the residential development proceed without regard for required setbacks from the threatened species and its habitat.

As such, the proposed development does not meet the objectives of Clause 43.

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

Proposed Lot 628 is adjacent to Rous River and is a proposed public reserve.

The proposal does not contradict the objectives of this Clause as there is nominated foreshore open space that is accessible and open to the public within the vicinity of the proposed residential subdivision.

**SEPP (Rural Lands) 2008**

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It

provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

A Rural Land Assessment Report has been submitted.

The assessment has addressed requirements of, and criteria within the *SEPP (Rural Lands) 2008, Living and working in rural areas: a handbook for managing land use conflict issues on the NSW North Coast*, NSW DPI as well as Development Control Plan (DCP) Section A5.

The assessment concludes that land use conflicts are considered minimal and will be managed by an average width buffer of 150m (125m at minimum point) in accordance with Council's DCP Section A5 which requires incorporation of a riparian buffer of 50m width, including a 'biological buffer' with a minimum width of 30m.

The report advises that a detailed plan showing the biological buffer will be prepared and submitted to Council prior to the issuing of a construction certificate for the relevant stage of the subdivision.

Whilst the Environmental Health Unit has considered the report acceptable with the outcomes of the report to be incorporated into any consent issued, Council's Natural Resource Management Unit has requested these details in advance of determination. Assessment in this regard is discussed elsewhere in this report.

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

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

As such, the draft LEP is considered to be "certain and imminent" in terms of previous legal precedent and as such has determining weight.

Current and draft zoning for the subject site is as follows:

Current Zone	Min. Lot Size	Draft Zone	Min. Lot Size
2(a)	450m <sup>2</sup>	R2	450m <sup>2</sup>
2(c)	450m <sup>2</sup>	R2	450m <sup>2</sup>

None of the proposed allotments are less than 450m<sup>2</sup> which is consistent with the draft zoning.

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

Tweed Development Control Plan

A3 - Development of Flood Liable Land

The design flood level for this area is RL 4.7m AHD to RL 4.9m AHD with a probable maximum flood level of RL 9.2m AHD. Part of the site is located below the design flood level. As such, part of the site is proposed to be filled to RL 5.03m AHD which has been accepted by Council's flooding engineers.

A5 - Subdivision Manual

Part A5 of the Tweed Consolidated DCP provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State.

The application generally complies with the provisions of the DCP with regard to general lot layout. However, it is uncertain whether adequate infrastructure can be provided to satisfy sewer and drainage requirements.

A13-Socio-Economic Impact Assessment

As the subdivision entails creation of 50 or more lots, a socio-economic impact statement in accordance with Development Control Plan A13 is required. The applicant has provided such a statement.

It is agreed that the development represents a positive social and economic outcome by creating employment, providing new housing options and creating public space adjacent to the Rous River. However, the negative economic impacts on the locality and the Shire as a whole resulting from unsatisfactory drainage design on the site has not been addressed.

It is considered that the subdivision, as finally amended, is contrary to Council's expectations for the site and will represent an unacceptable financial burden to ratepayers and the Shire in general. Approval cannot be recommended on this basis.

A15 – Waste Minimisation and Management

A Waste Management Plan has been submitted and is considered acceptable.

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

Clause 92(a) Government Coastal Policy

The subject land is not located within the coastal policy area affected by the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*.

**(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 subject site is not located on the coastal foreshore and is not affected by coastal hazards.

**Tweed Coast Estuaries Management Plan 2004**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranorra Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

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

Surrounding Land Uses/Development

Stages 1 to 3 of Riva Vue Estate comprising low density residential development lay to the east of the subject site and existing similar residential development lay to the south west.

The Murwillumbah Sewerage Treatment Plan is located to the north east and to the north lay rural properties separated from the subject land by the Rous River.

To the west of the site on a small portion of Lot 22 DP 1080322 (otherwise vacant grazing land) is a child care centre.

#### Contamination

A Preliminary Contamination Assessment has been submitted.

The report concluded *“based on the available historical site information it is concluded that no potentially contaminating activities are apparent, except for cropping of sugar cane...”* and further *“on the basis of our historical desktop review and subsequent site investigations, no contamination has been identified within the investigation area. The historical land use and recent site activity associated with residential development has not resulted in any detectable contamination of the site. As such, the area investigated is considered suitable for the proposed residential land use.”*

The report was prepared by a suitably qualified person and appears to have been prepared in accordance with the NSW EPA Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites, Nov 1997. As such, no further action is warranted.

#### Odour Issues (proximity to Sewage Treatment Plant)

An Odour Assessment Report has been submitted with regard to the Sewage Treatment Plant (STP).

The report presented findings of odour dispersion modelling from potential odour sources within the STP. These results were compared to the criteria within the *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW* (NSW Office of Environment and Heritage, 2005). It concluded that *“the results of the modelling indicate that the plant is likely to comply with the relevant NSW odour criteria (C99 1sec = 2 ou) on the northern most edges of the proposed development site. This does not mean that no odour will be detected, but during most of the year odour levels will be low under normal operating conditions.”*

DCP Section A5 provides guidance for buffers to STPs: *400 metres between any current or proposed primary and secondary process units of any Sewerage Treatment Plan and the nearest boundary of any allotment created for tourism, rural housing, urban housing (including caravan parks) and community facilities (eg, halls, schools etc).*

There are three proposed allotments within a small separate area (Lots 401, 402 and 403) of Stage 4 that adjoins land zoned 5(a) Sewerage Treatment, the current location of the Murwillumbah STP.

The nearest proposed allotment is approximately 80m to the western effluent storage pond, 190m to the extended aeration area, 270m to the sludge drying area and 265m to the sludge lagoons. There are also a further 22 allotments within the 400m buffer guideline.

Based on the information provided within the Odour Assessment Report it should be considered that as these three allotments will likely experience some odour emissions during the year that a Section 88B restriction be placed over them.

As the DCP buffer is a guiding criteria only further comment was sought from the Water Unit.

Council's Water Unit advised that they would accept a reduced buffer zone given that odour modelling indicating minimal odour impact had been conducted and agreed that a Section 88B restriction be placed over Lots 401, 402 and 403.

#### Road Traffic Noise

Based on the information submitted within the Traffic Impact Assessment, it is not considered there will be a potential for a significant increase of road traffic noise due to the proposed development and a traffic noise impact assessment is not required.

#### Construction Noise

Cut and fill earthworks totalling approximately 48,000 cubic metres and the placement 35,000 cubic metres of imported structural fill material will be required to deliver the necessary finished surface levels of the residential subdivision.

No construction detail was submitted with the application. It is considered the importation of 35,000 cubic metres will significantly impact the amenity of surrounding residents and residents along haul routes.

Construction noise onsite has also not been addressed. Although reasonable to require a construction management plan prior to issue of a construction certificate for bulk earthworks, this is another aspect of the proposal that the applicant has not discussed in application documentation.

#### Stormwater/Drainage

##### *History*

A major issue that has remained outstanding from the original development of the 'Riva Vue' estate has been to rectify and address the drainage problem that exists downstream of Frangella Park.

This problem resulted from altering the previous stormwater regime for this locality by filling in a former 'cane drain' that was located approximately 130m east of the current open drain, re-routing and lengthening the open channel.

The immediate downstream open drain from Frangella Park (with a silted concrete invert) is boggy, overgrown and the source of multiple complaints from the adjoining long-time residents on the south side. Complaints have ranged from the generally swampy nature of the resultant grounds, overgrown vegetation and the vermin it could attract (including snakes), health concerns re: mosquitoes, odour and general lowering of overall amenity due to the unsightly appearance and now non-accessible poorly draining area.

Further downstream of this and the culvert under Rous River Way, the channel beside Joshua Street is continually 'slumping' and unable to retain its formed shape, which creates further problems for this already flatly graded channel. The overall gradient of this open channel, from Frangella Park to Rous River, is extremely flat.

The above-mentioned drainage concerns have been consistently raised with the applicant from the Planning Proposal stage (and all correspondences since) as being a necessity for prompt resolution with any further development of the site. The Planning Proposal provided opportunity to also provide connectivity with Frangella Park as part of the rectification process.

#### *Summary*

Council's Planning and Infrastructure Unit reviewed the proposal with regard to stormwater and drainage. In summary, the applicant has failed to address the existing drainage problems in Lot 604 and Frangella Park.

In addition, the cumulative effect of reluctantly accepting multiple less-than-ideal elements makes this proposal a poor overall outcome for Council. It is recommended that the subject application is refused for these reasons.

#### *Existing drainage problem in proposed Lot 604 (formerly Lot 501) and Frangella Park.*

Historically, Lot 604 and Frangella Park areas drained via an agricultural drain approximately 125m to the east of the current culverts under Rous River Way. The Stage 6 and 7 area including Rous River Way has been filled by the applicant in association with works on Stages 1 to 3 of the Riva Vue development.

This filling 'dammed off' the Lot 604/Frangella Park area, changing drainage characteristics and resulting in the wet, boggy, swamp conditions that are currently present.

Council has consistently held the position that the applicant must incorporate a solution to the drainage problem in Frangella Park and Lot 604 into any proposal to develop Stage 6 and 7 areas. This is evident in pre-lodgement documents (DAP minutes of 22 August 2012) and correspondence to the applicant during assessment.

The original Planning Proposal concept provided to Council showed the existing culvert removed and replaced to the east, providing greater opportunity to improve the drainage of upstream areas. Plans submitted with DA13/0175 have changed to a layout utilising existing culverts, thus restricting opportunities to improve upstream drainage.

This issue has been complicated by the presence of a Grey-Headed Flying Fox colony whose habitat is located in the copse of trees at the northern end of Frangella Park. Protection of this vulnerable listed species requires that their habitat is not disturbed, meaning no filling is acceptable in the area closest to the colony.

The solution proposed by the applicant involves some minor filling in Frangella Park and installation of a concrete lined low flow channel in Lot 604. It is highly unlikely that the works proposed will resolve the existing drainage issue. The applicant's solution to the problem in proposed Lot 604 and Frangella Park is not acceptable.

#### *Open channel design*

Original plans submitted with the application showed an open drain with 1 in 2 side slopes. Development Design Specification D5 - Stormwater Drainage Design section D5.13.5 states that *maximum side slopes on grass lined open*

*channels shall be 1 in 4, with a preference given to 1 in 6 side slopes.* The purpose of this clause is to allow safe access for maintenance (mowing) and also to provide easy egress for any persons caught in the stormwater drain during a storm event.

Following the first request for further information and a round of informal comments, the applicant supplied a revised set of plans that extensively utilised retaining walls in the formation of the open drainage channel. This was not acceptable to Council due to:

- The maintenance burden of the retaining walls on Council;
- Maintenance plant access restriction;
- Safety issues associated with restricted egress opportunities for any persons caught in the drain during a storm event; and
- Safety concerns related to the layout of channel combined with its proximity to the nearby child care facility and residential areas (existing and proposed).

Following a meeting with the applicant's consultants on 7 November 2013, a further revised set of plans was provided. Use of retaining walls had been reduced and in some cases moved into private land. The current amended plans are an improvement. However, the design is still unclear and in need of amendment to satisfy Council's requirements.

The current layout of the open drainage channel is not an ideal outcome for Council.

*Longitudinal grade of the open drainage channel and proposed concrete-lined low flow channel*

The original application plans outlined a trunk drainage system which piped flows from the existing culvert under Rous River Way to adjacent proposed Lot 713 (formerly Lot 545) where flows were then conveyed in an open channel with a gradient of 0.064%. No treatment of the invert was proposed. The channel was to be grassed.

The applicant then amended the staging, lot layout, and trunk drainage to delete the pipe infrastructure and extend the open channel back to the Rous River Way culverts.

Open drains with grassed inverts (or swales) require a certain grade to avoid water ponding in them and creating boggy, undesirable conditions. Water by Design's Technical Design Guidelines recommend a minimum gradient of 1% for swales. Development Design Specification D5 - Stormwater Drainage Design section D5.13.9 states that concrete inverts are required where *channel slope is less than or equal to 0.5%*.

Development Design Specification D5 - Stormwater Drainage Design section D5.13.6 provides further commentary of low flow provisions in open channels.

This was flagged to the applicant in correspondence dated 16 July 2013. Revised plans incorporated a concrete invert in the open drainage channel. Subsoil drainage was represented on the revised drawings. However, it is unclear where it drains to. Transverse subsoil drainage may be more feasible. Some further refining of the concrete invert cross-section may be required to allow maintenance plant to track upon it.



The grade and current invert cross-section of the open drainage channel is not an ideal outcome for Council.

#### *Bio-retention basin design*

The original Stormwater Management Plan proposed treatment measures involving rainwater tanks and a large bio-retention basin. The bio-retention basin was 90m long by 7m wide which is outside the recommendations of Water by Design's Bio-retention Technical Design Guidelines (BTDG) which advise a maximum length of 40m to avoid flow distribution and other associated issues.

Following a request for further information, the applicant amended the bio-retention basin layout to approximately 57m by 10.5m, which was an improvement, but still outside the abovementioned guidelines.

The bio-retention basin layout is not an ideal outcome for Council.

#### *MUSIC modelling*

The MUSIC modelling submitted with the application failed to meet the required pollution reduction target and instead stated that a coarse sediment forebay, not included in the model, would make up the difference.

This is not acceptable as a coarse sediment forebay does not provide additional treatment over the bio-retention basin. A coarse sediment forebay only stores sediment in a maintenance accessible area and avoids clogging of the bio-retention filter media. This is not an acceptable outcome for Council.

#### Sewer

The pipe design provided for sewer lengths 106, 107, 109 & 114 does not meet Sewerage Code of Australia WSA 02-2002 design standards Section 4.5.7:

- Minimum grades for self-cleansing is required as per WSA02-2002 Section 4.5.7.1 "Self cleansing of grit and debris shall be based on achieving a wetted cross section average velocity of 0.7 m/s at PDWF + GWI), and Section 4.5.7.2 "Reticulation sewers shall be graded to achieve self-cleansing at least once per day in accordance with the Water Agency's Requirements".

The applicant was required to submit plans and, if necessary, design calculations that demonstrate that self-cleansing of the sewer can be achieved. However, the applicant was not able to satisfy Council's request.

In addition to self cleansing velocity requirements, the design does not meet the following requirements:

- Table 4.7 regarding permanent upstream ends of sewers in residential area with EP  $\leq$  20.
- Table 4.6 regarding absolute minimum grades as constructed (ie: the design grade must meet Table 23.1 construction tolerances of 10%. For example, the minimum grade for a 150mm diameter pipe will be 1:165.)

In order to meet the self cleansing velocities within the design, Council require that Table 1 in Appendix A of the PWD Manual of Practise, Sewer Design, January 1987, is adopted for design in any future amendments.

This manual uses a 4 EP = 1 ET which should be converted to the Council D12 figures of 2.8 EP = 1 ET. This table (below) is included in the Council update of the D12 specification.

Pipe Size(mm)	150	225	300
Grade	Tenements	Tenements	Tenements
k (in mm)	1.5	1.5	1.5
80	1		
90	4		
100	9	16	
110	13	21	
120	19	29	40
130	26	36	47
140	33	44	54
150	43	51	61
160	50	59	70
180	69	74	87
200		94	109
220		119	131
250		161	171
300		266	263
350			384
400			556

**Table 1- Minimum Sewer Grading Table**

Although the Water Unit have reluctantly agreed to condition these requirements prior to the issue of a construction certificate, there is no certainty that these criteria will be achieved.

Development Assessment Engineering

In summary, it is recommended that the proposed development not be supported by Council and refusal is recommended.

The applicant has failed to satisfactorily address various stormwater-based issues of concern (refer stormwater comment above).

The prime concern is the inability to satisfactorily resolve the stormwater drainage issue for the outlet from Frangella Park (within Lot 604), rectification of which is unfortunately hindered by the recent habitation of the area by a Flying Fox colony. Dedication of Lot 604 without appropriate drainage improvements cannot be accepted.

Appropriate rectification could likely have been attained by filling and clearing works within the park, which can no longer be undertaken to the extent as proposed, due to the need to avoid disturbance of their habitat (refer flora/fauna comment below). Although given the opportunity, the applicant has not pursued investigation of alternatives.

Public Open Space

In summary, matters regarding the amount of, and access to, embellished casual open space should have been able to be resolved by the applicant during the assessment of the proposal through application of thoughtful design. However, this has not occurred.

A more difficult matter to resolve surrounds drainage issues on Lot 604. This problem has been raised with the developers repeatedly since the problem was created via the construction of Rous River Way. In short, Council cannot accept the maintenance burden this land parcel represents.

#### *Frangella Park*

The final lot layout allows an area for an access path from Rous River Way to Frangella Park. The Statement of Landscaping Intent (SLI) indicates an access path.

However, the SLI does not:

- Indicate how the path will deal with slope issues - cross sections provided are not adequate;
- Improve the visibility of Frangella Park;
- Address drainage issues on Lot 604 or attempt to utilise this parcel to improve access to, and visibility of Frangella Park; and
- Address the impediment to accessing Frangella Park created by Rous River Way.

#### *Landscaping concepts / detail for upgraded park embellishment*

The SLI proposes one shelter shed and an access path as an upgrade to Frangella Park. This is not considered a reasonable level of embellishment.

Council's Subdivision Manual (DCP Section A5) specifies 95% of residents are to be located within 400m walking distance of a local park, with embellishment to include items listed in Table A5-8.2.1. While the embellishment guidelines may require some sensible interpretation (eg. paving for ball games is not always required), it is reasonable to expect more park embellishment than is proposed.

It appears that significantly less than 95% of residences in Stages 4,5,6 & 7 will be within 400m walking distance of the nearest embellished park, being 'Rous River Way Park' on Lot 132 DP 1139107

#### *Drainage Issues adjacent to Frangella Park*

The SLI does not attempt to address this matter. It also confuses a reference to cross sections B-B and C-C.

Council's Biodiversity Planning Officer indicates that filling and vegetation clearing proposed for Council owned Lot 3 cannot be supported due to impacts on flora and fauna.

Council's Infrastructure Engineer and Development Engineer both indicate the civil works proposed within Lot 604 will not address the drainage issues created by previous works, particularly construction of Rous River Way.

The drainage issues are significant and the parcel cannot be accepted by Council without resolution of these significant issues being satisfactorily addressed.

#### Flora and Fauna

The following comments have been supplied by Council's Natural Resource Management Unit. In short, refusal is recommended.

Based on the current layout and uncertainty regarding the scope of earthworks that may be necessary to satisfy engineering requirements, Council officers

cannot be confident that the proposed development could proceed without unacceptable negative ecological impact on the identified Grey-headed Flying Fox colony occupying Frangella Park immediately adjacent to the subject site.

It is not considered that the threat to threatened species could adequately be managed or impacts mitigated through conditions of approval. As such, components of the application that may have an impact on Grey-headed Flying Fox and associated habitat cannot be supported and subsequently it is recommended that the application be refused on this basis.

Council officers strongly advise against any proposal to substantially modify the habitat of this threatened species.

*Impact of filling/vegetation removal on Grey-headed Flying Fox (GhFF) occupying Frangella Park and inadequate separation distances between the GhFF camp and proposed lots.*

The applicant submitted a Revised Assessment of Significance (7-Part Test) Version 5.0 Lot 332 on DP1158142 Stages 4 and 5 Riva Vue Estate Murwillumbah dated 20 November 2013 and prepared by JWA Ecological Consultants. Of particular interest is the evaluation of the impact of filling within Frangella Park for drainage purposes on a Grey-headed Flying Fox camp.

The filling was previously not shown on the engineering drawings when the 'Version 4.0 7-Part Test report' was prepared, however it was noted that the report included the recommendation '*Filling for the purposes of improved drainage should avoid disturbance to individuals or trees within the camp*'.

The contemporary 'Version 5.0 7-Part Test' report now specifically contemplates filling within the reserve consistent with the updated engineering drawings where an area of approximately 700m<sup>2</sup> is to be removed and filled to a depth of 300mm. Figure 8 of the report shows the GhFF camp to be outside the immediate earthworks footprint and as such no further consideration for the management of GhFF has been provided.

Upon review of Figure 8 and recommendations provided in the report, it is not accepted that impact on the colony would be avoided particularly given that the animals are mobile and highly likely to use the entire contiguous unit of vegetation rather than the small area shown as the camp on Figure 8.

The extent of vegetation to be removed is likely to be greater than that shown on the plans provided (access, long term impacts associated with root disturbance), whilst the applicant has made no attempt to consider the impact of filling on the broader unit of vegetation as a result of site conditions being modified (soil moisture levels).

Furthermore no consideration has been given to management of the animals during any such construction activity (spotter catcher, noise, timing etc) or remediation of the site following works. The report is considered to be poorly conceived and has clearly not adequately taken into account both direct and indirect impacts. An assessment cannot provide confidence that the proposed development could proceed without unacceptable negative impact on the local GhFF population and associated wetland area.

The applicant provided an amended layout plan to address separation distance between the GhFF camp and proposed lots to the north-east. The revised layout still does not satisfy setback requirements specifically detailed in the 'Table of

Outstanding Matters' and reiterated to the ecological consultant via phone (contrary to the statement detailed on pp.26 Point 2 of the Ver.5, 7 Part Test).

The 'Extent of Grey Headed Flying Fox Camp' as shown on the *Ver. 5.0 7 Part Test Figure 8 and Dwg. YC0390-SK4-11 Rev. A prepared by Yeats Consulting* is not accepted. Any separation distances shall be taken from the line of existing vegetation and be maximised where possible to between 35m and 50m to any proposed lot boundary. This essentially results in the deletion of Lot 603, potential deletion of Lot 602 or amalgamation/reconfiguration of Lot 601 and part Lot 602 to achieve adequate setbacks.

#### *Design of Constructed Drainage Channel*

The applicant was requested to provide further information regarding the design of the constructed channel to ensure the function of the corridor/buffer to the Rous River would not be compromised.

Issues with the revised plans include:

- A concrete invert remains as part of the design as shown on *Dwg. No. YC0390-C5-411 Sheet 1 of 2 Rev. C* depicted as Typical Section D - Drainage Channel D where the channel traverses part of the riparian buffer. It would be preferable that alternative 'natural' materials (rip rap) be used in this section of the channel to enable establishment of sedges and improve habitat value during low flow conditions.
- The interface between the constructed channel and the existing channel on *Dwg. No. YC0390-C5-411* is shown as 'Join Neatly to Existing Flow Path'. It does not appear consideration has been given to the existing conditions such as bed or bank profile/hydraulic capacity, nor the occurrence and likely impact on a cove of riparian vegetation associated with the existing channel.
- It is unclear whether future revegetation of the bed and banks of the constructed channel has been factored into the stormwater modelling (i.e roughness co-efficient) to ensure revegetation effort would not be restricted in order to satisfactorily convey flows. It is noted that the Statement of Landscape Intent indicates that the drainage channel will be turfed.
- Downstream scour protection/armouring at the confluence point with the Rous River channel is absent from the plans. The necessity for bed/bank protection at this location needs to be further investigated.

These matters remain unresolved.

#### *Statement of Landscape Intent (SLI)*

The applicant submitted a revised SLI being *Landscape Statement of Intent and Visual Concepts Riva Vue Estate Issue C dated 19 November 2013 prepared by Boyds Bay Landscape Planning* whereby the location of the Rous River channel is inaccurately depicted in the position of the riparian buffer.

Consequently no treatment is shown for the Rous River buffer, whilst a note is made to an area further landward that appears to align with the existing sewer easement indicating 'Riparian plantings to be as per JWA report'. Any such planting schedule in any of the previously submitted JWA reports for the site could not be located. A number of the plant species that were recommended for revegetation (area not specified) are inappropriate.

The landscape plans showing stages remain inconsistent with the latest subdivision plans. Other issues in respect to landscaping/rehabilitation previously raised have clearly not been addressed.

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

For all of the above reasons, the site is considered unsuitable for the development and should be refused. Apart from the stated planning reasons for refusal, 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 protected status of the Grey Headed Flying Fox, it is considered that the development represents an unwarranted risk to the species.

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

Public Authority Submissions Comment

The application was referred to the NSW Office of Water (NOW) as the proposed drainage channel works into the Rous River require a Controlled Activity Approval (CAA) under the *Water Management Act 2000*.

A response was received from NOW on 15 May 2013 supplying General Terms of Approval (GTA's) to be placed on any development consent should it be issued. A CAA must be obtained from NOW by the applicant prior to the issue of a construction certificate.

Public Submissions Comment

The proposal was required to be advertised in the Tweed Link and notified to adjoining owners for a period of 30 days from Wednesday 1 May to Friday 31 May 2013. One submission was received during the exhibition period.

The submission raised issues with regard to the impact of the proposed development upon the existing child care centre located on a small portion of Lot 22 DP 1080322.

The original subdivision plan indicated the creation of a roadway and footpath traversing the leased property area for the child care centre negatively impacting upon egress of vehicles from the premises.

The applicant's response to the submission involved deleting works within Lot 22 DP 1080322 and reconfiguring the lot layout to be wholly within Lot 332 DP 1158142.

As such, the matter was resolved satisfactorily.

**(e) Public interest**

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 and result in hand-over of sub-standard infrastructure to Council to maintain into the future at an undetermined cost. Therefore it is in the public interest for this application to be refused.

**OPTIONS:**

1. Refuse this application in accordance with the reasons supplied.

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 application submitted is deficient in detail. However, sufficient information has been submitted to determine that the nature of the proposal is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application.

Having regard to relevant statutory controls and an assessment against Clauses 4, 5 and 8 in particular, of the TLEP 2000, the proposed 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 is not considered suitable for the intended site and therefore the proposed development is recommended for refusal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable.

**c. Legal:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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18 [PR-CM] Development Application DA13/0201 for a Telecommunications Facility at Lot 1 DP 397082 No. 80 Depot Road, Kings Forest

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0201 Pt2



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

#### Updated Information

At its meeting of 12 December 2013, Council resolved the following in respect of this matter:

***"RESOLVED*** that Development Application DA13/0201 for a telecommunications facility at Lot 1 DP 397082 No. 80 Depot Road, Kings Forest receives in principle support and that conditions of consent be brought forward for consideration at the January 2014 meeting and that the conditions of consent be provided to the Department of Education for their comment.

If Council wishes to approve the development draft conditions of consent are provided in the 'Options' section of this report.

#### Original Report

The subject application seeks consent for the construction of a 'NextG' Telstra Mobile Telecommunications Base Station inclusive of a 30m high monopole, triangular headframe, two panel antennas, equipment shelter and 2.4m high chain-link security fence with double access gates within the former garbage depot site on Depot Road, Kings Forest.

The telecommunications facility is proposed adjacent to 'Precinct 3' (Community Facilities/Education) of the Kings Forest Residential Township. Concept Plan approval for MP06\_0318 was issued by the Department of Planning and Infrastructure on 11 August 2013 as consent for Kings Forest Project Application No. 1 (MP08\_0194). The approved Concept Plan nominates the site for a State School.

A formal submission was received from the Department of Education and Communities on 5 November 2013. The Department does not support the proposal for a telecommunications facility. The submission requests that Council adopt a precautionary approach, in line with the Department's policy, in order to avoid a community sensitive location.

The Department has a preference for a distance of at least 500 metres from the boundary of the property known as 'Precinct 3'. The proposed location for the telecommunications facility is approximately 20 metres from the boundary with Lot 1 DP 781633, 86 Melaleuca Road, Kings Forest which contains 'Precinct 3'. Further, a 500 metre buffer from the

boundary of the property known as 'Precinct 3' excludes the location of a telecommunications facility on any portion of the subject site.

The location of telecommunications facilities rely on compliance with the provisions of SEPP (Infrastructure) 2007. The proposal generally complies with the provisions of Clause 115(3) of the SEPP. However, the proposal conflicts with the approved Concept Plan for the Kings Forest Residential Township and stands to render the future government school site unsuitable.

Two written submissions were lodged objecting to the proposal within the two-week exhibition period in May 2013.

Notwithstanding the resolution of Council at the December 2013 meeting, it still remains the recommendation of Council officers that the application be refused.

**RECOMMENDATION:**

**That Council determines Development Application DA13/0201 for a telecommunications facility at Lot 1 DP 397082 No. 80 Depot Road, Kings Forest.**

## REPORT:

**Applicant:** Service Stream Mobile Communications  
**Owner:** Tweed Shire Council  
**Location:** Lot 1 DP 397082 No. 80 Depot Road, Kings Forest  
**Zoning:** 5(a) Garbage Depot  
**Cost:** \$250,000

### Background:

The subject site is legally described as Lot 1 DP 397082 located at 80 Depot Road, Kings Forest. The site has an area of 8.094 hectares, is zoned 5(a) Special Uses (Garbage Depot) and is bounded by land zoned 2(c) Urban Expansion. The site is adjacent to the Kings Forest Residential Township development, west of Casuarina.

### History

At its meeting of 24 January 2012, Council resolved to enter into a lease with Telstra Corporation Limited for an area of approximately 33m<sup>2</sup> at the subject site.

Council correspondence granting owner's consent for the applicant to lodge a development application was issued on 24 September 2012.

Upon lodgement of the application, preliminary assessment revealed a substantial increase in the proposed lease area.

At its meeting of 20 June 2013, Council resolved to rectify an error and increase the lease area to 80m<sup>2</sup> (consistent with the subject application), thereby re-issuing owner's consent for the application to be lodged and allowing further consideration of the proposal.

Sports fields, an associated access road, carparking, lighting, amenities building/clubhouse and sewer rising main were approved on the same site by way of DA09/0836 on 9 September 2011.

DA09/0186 approved the placement of approximately 50,000m<sup>3</sup> of clean fill on the subject site on 26 June 2009 in order to achieve levels required for the abovementioned future sports fields.

In June 2013 during assessment of the subject application, an alternative site was offered to the applicant for the location of the telecommunications facility within the Kings Forest development at the north western tip of Precinct 9 (residential). As far as Council is aware, the applicant has not accepted the offer.

### The Subject Site

The site is accessed via Depot Road, Cudgen and has an approximate land area of 8.094 hectares. The site is bounded by residential, agricultural protection and environmental protection land.

A wetland system borders the site to the west and south and is identified as SEPP 14 Coastal Wetlands. The site is identified as a subregional fauna corridor and is adjacent to a regional fauna corridor to the east.

A large scale residential subdivision known as 'Kings Forest Residential Township' is planned to the east, south and west of the site. Of note is the location of Precinct 3, a community facilities/education precinct adjoining the proposed site to the east.



Figure 1: Kings Forest Precincts adjacent subject site



The area of the site upon which the telecommunications facility is proposed is identified as contaminated land (asbestos) on Council's GIS mapping system, as highlighted in red below.



Figure 2: Contaminated area of site

No Aboriginal heritage sites are recorded or have been declared in or near the subject site.

### The Proposed Development

The subject application was lodged in May 2013 and seeks consent for the construction of monopole (telecommunications facility) and associated infrastructure to provide improved NextG capacity in the Kings Forest locality and surrounding rural/residential areas. The Telstra proposal comprises the following:

- One 30m high monopole (maximum height including antennas is 31.6m/RL 41.6m AHD);

- Two Telstra panel antennas (2.63m and 2.09m long) mounted on a triangular headframe at Centre Line 30.0m (with the capacity to increase the number of antennas to 6 in the future at 29.3m, 30.0m and 30.9m);
- Equipment Shelter on elevated concrete piers;
- 2.4m high chain link security fencing around the proposed compound;
- 3m wide double access gates;
- 3m wide access track; and
- Minimal clearing for the access track and lease area.

The construction phase (approximately five weeks) will require three to six workers on site and an average of four to six vehicle movements. Operational visits to the site will be minimal and approximately only 4 to 6 times a year for maintenance purposes.

The complex will take up a lease area of approximately 10.0m x 8.0m (80m<sup>2</sup>).

The primary purpose of this proposal is to provide coverage for future residential development at Kings Forest. Of 10 sites investigated in Duranbah and Kings Forest, only two owners were willing to lease land for the location of the facility. One of two possible sites was considered unsuitable (zoning, visual impact, radio frequency objectives) and the preferred option was Council owned land at 80 Depot Road, Kings Forest.

Existing telecommunications facilities are located at Kingscliff (Telstra – approximately 3.3kms from the proposed site), Mantra Resort (Optus – approximately 2.5kms from the proposed site) and Casuarina (Telstra – approximately 2.2km from the proposed site).

The applicant states that there were no viable co-location opportunities in the area deemed appropriate or in a location to provide sufficient network coverage capacity.

Prior to lodgement of the development application, the applicant undertook community consultation as follows:

- Four-page A5 flyer dated 9 November 2012 distributed by door knock and letter drop to approximately 45 residences offering the opportunity to provide comment or questions no later than Friday 23 November 2012. One comment and one objection was received.
- Ad in the Tweed Border Mail (7 and 14 November 2012), Tweed Gold Coast Sun (8 and 15 November 2012), Tweed Link (6 and 13 November 2012) summarising the proposal and inviting written submissions by 23 November 2012.

Maximum estimated RF EME levels at 1.5m above ground level and within a 136.96m distance from the two (2) proposed antennas at 80 Depot Road in 360 degree circular bands is 0.27%. No figures were given to estimate RF EME levels with an additional six panel antennas installed in the future as proposed.

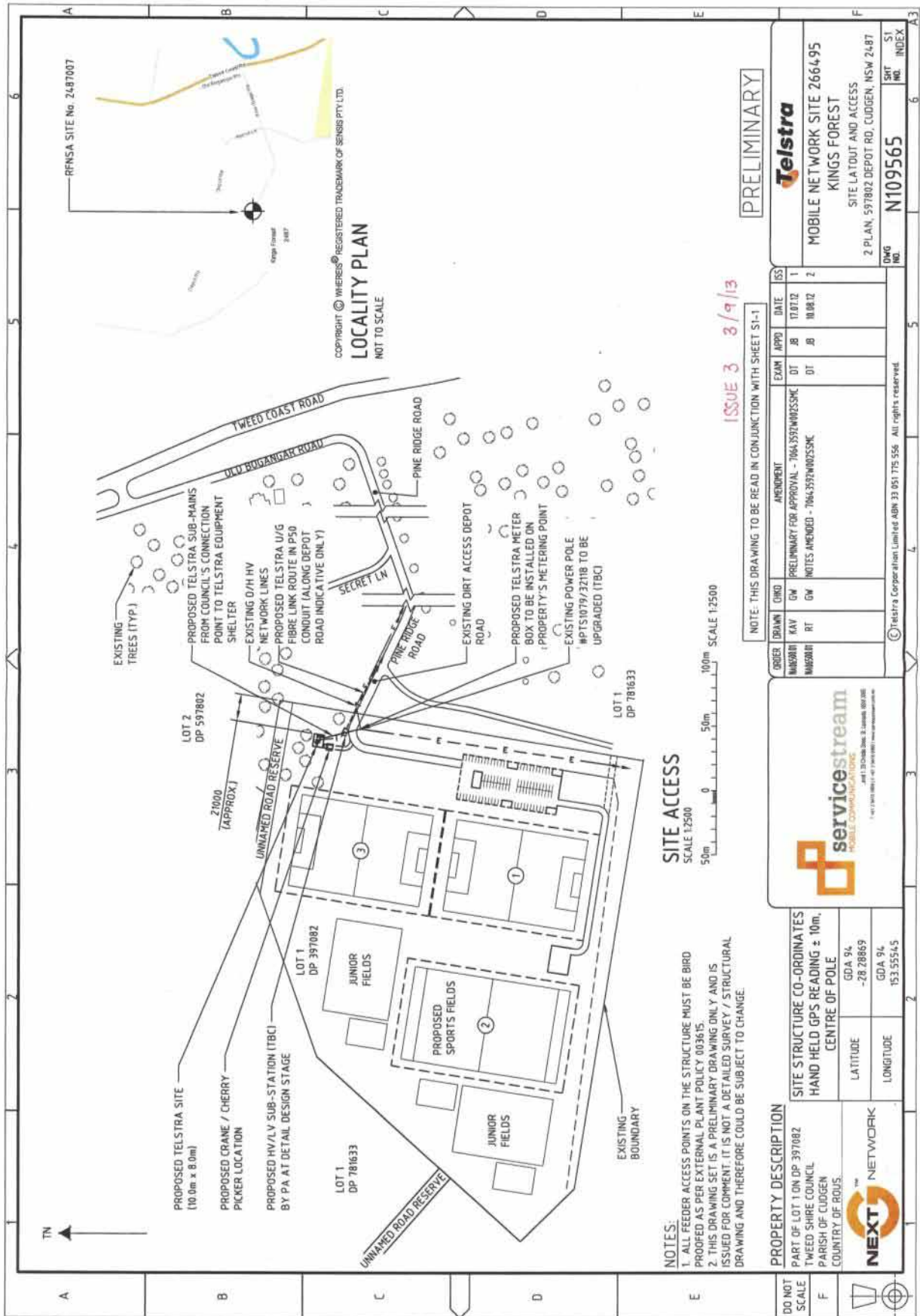
**SITE DIAGRAM:**

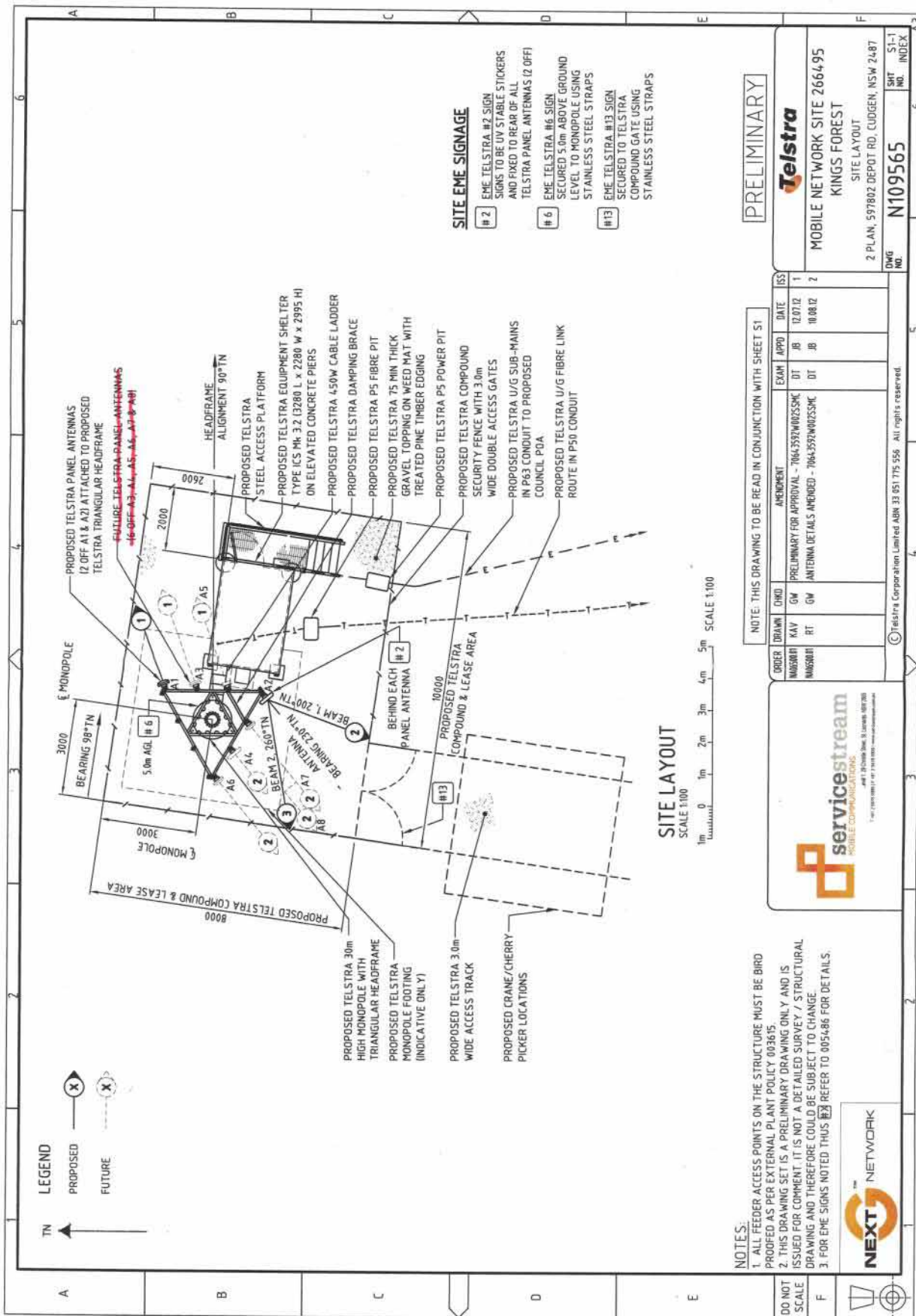


**Locality Plan**  
 Lot 1 DP 397082  
 No. 80 Depot Road, Kings Forest

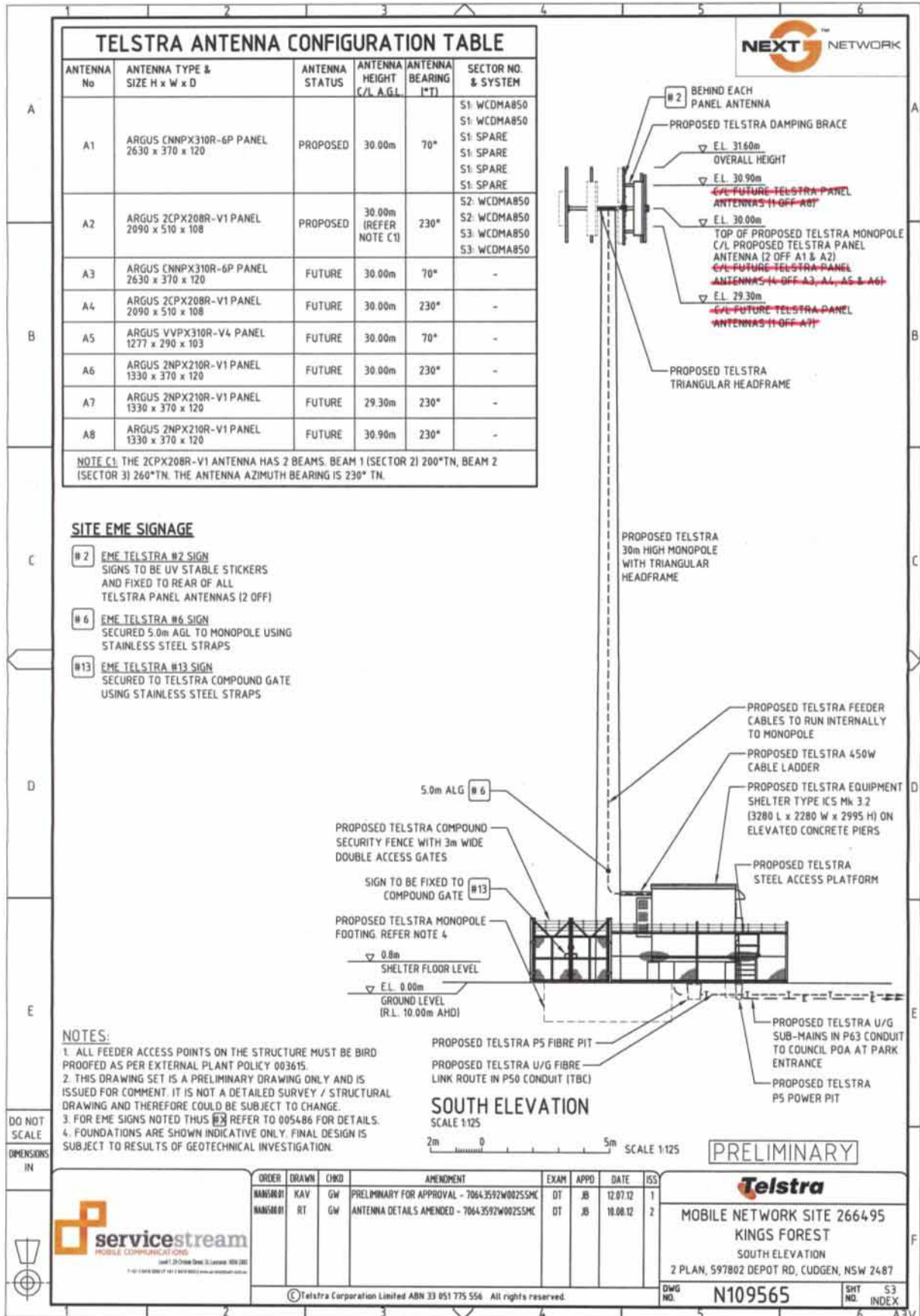
<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, the user does not rely on representations or warranties expressed or implied, statutory or otherwise, absolute accuracy, reliability, completeness or suitability for any particular purpose and disclaimer of responsibility, and all liability (including without limitation, liability in contract) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is provided for the general customer and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavation a "dig before you dig" enquiry must be made by calling 811. The information contained on this document remains valid for 15 days only from the date of supply.</small></p>	<p>Cadastral 22/10/2013                  © Land and Property Information (LPI) &amp; Tweed Shire Council                  Boundaries shown should be considered approximate only.</p> <p>1:75,000 @ A4 Portrait                  GDA 94                  GDA 94</p> <p><small>Stop! Dig Here! National Database Sites are indicated by a yellow circle. Symbols for Heritage Sites are indicated by a yellow circle with a cross. Map data © Australian Data Service.</small></p>	<p>Civic and Cultural Centre                  2 Tumbidgee Road                  Murwillumbah NSW 2484                  PO Box 818                  Murwillumbah NSW 2484</p> <p>T   (02) 6670 2400   1300 200 872                  F   (02) 6670 2429                  W   www.tweed.nsw.gov.au                  E   planning@tweed.nsw.gov.au</p> <p><b>TWEED</b>                  SHIRE COUNCIL</p>
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DEVELOPMENT/ELEVATION PLANS:









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

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

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

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

*“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”*

The proposal is incompatible with an approved future use of adjacent land for community facility/education purposes. As such, the proposal will have a detrimental impact on sustainable future economic development of the area and warrants refusal.

Clause 5 - Ecologically Sustainable Development

The objective of the TLEP 2000 is to promote development that is consistent with the four principles of ecological sustainable development as follows:

- a) not creating irreversible environmental damage;
- b) the environment is maintained for the benefit of future generations;
- c) the biological diversity and ecological integrity is retained and a fundamental consideration;
- d) the environmental qualities of the locality are retained.

The subject site and surrounding locality is recognised for its high conservation and biodiversity value. Council’s Natural Resource Management (NRM) Unit has advised that the development should not be refused on an ecological basis.

Therefore on the basis of the submitted information it is considered that the proposal would be consistent with the objective of this clause.

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 5(a) Special Uses (Garbage Depot), the primary objective of which is to:

*Identify land which is developed or is proposed to be developed, generally by public bodies for community facilities and services, roads, railways, utilities and similar things.*

The proposed telecommunications facility is considered consistent with the primary objective of the zone in that the land is to be utilised for a telecommunications utility facility.

Other aims and objectives of this plan that are relevant have been considered and addressed within this report.

The development is considered to have an unacceptable cumulative impact on the community, locality or catchment (Kings Forest Residential Township). Future use of 'Precinct 3' (Community Facilities / Education) will be affected by its being carried out which will impact upon the area of Tweed as a whole.

#### Clause 11 - Zone Objectives

The subject site is located within the 5(a) Special Uses (Garbage Depot) zone.



Figure 3: Tweed LEP 2000 zoning

The primary objective of that zone and consistency of the proposal with that objective has been outlined above. The secondary objective provides flexibility in the development of the land, particularly if it is not yet or is no longer required for the relevant special use.

The site is no longer utilised for the relevant special purpose and is intended to be utilised in the future for the purpose of public recreation (sports fields).

The proposed development is defined as a 'Telecommunications Facility' under the provisions of the TLEP 2000. The proposed development is **only permissible** within the 5(a) zone if it is a 'use which is compatible with adjacent uses allowed (with or without consent) in adjacent zones'.

Regardless of permissibility within the 5(a) or adjacent zone(s), telecommunications facilities are assessed for compliance against the provisions of SEPP (Infrastructure) 2007 and not local zoning.

#### Clause 15 - Essential Services

The proposed development does not require the provision of water or sewerage. An electricity supply is available via an underground route from the nearest source.

#### Clause 16 - Height of Building

The site is identified on Council's Building Heights Map as being affected by a three storey height limit. The proposed structure has a total height of 31.6 metres

(note: as per definition pursuant to TLEP 2000, the structure cannot be measured by storeys as there is no space between two floors). Therefore, the proposal complies with Clause 16 of the TLEP 2000.

#### Clause 17 - Social Impact Assessment

Section A13 of Council DCP, identifies the types of developments that require a social impact assessment, the proposed telecommunication tower is not identified as an item requiring social impact assessment.

The proposal did receive submissions objecting to the proposal in the proposed location. Issues raised in submissions are addressed elsewhere in this report.

#### Clause 34 – Flooding

The subject site is affected by the Probable Maximum Flood level (PMF). There are no requirements for the creation of a refuge or an evacuation route for this type of development. As such, this clause is satisfied.

#### Clause 35 - Acid Sulfate Soils

The land is classified as Class 3 on the Acid Sulfate Soil Planning Maps. The applicant did not address construction requirements, any potential disturbance of ASS or likely dewatering requirement.

Council requested provision of a preliminary assessment in July 2013 which was not supplied.

#### Clause 39 – Remediation of Contaminated Land

Council requested provision of a contaminated land investigation report in July 2013 addressing matters such as landfill activities, soil contamination, dewatering activities, cap disturbance and gas ingress/migration of buildings and utility trenches.

The applicant submitted a Report on Preliminary Site Investigation (Project 80360.00) prepared by Douglas Partners dated October 2013.

The report concluded that the proposed development is not within the area of and would not compromise the landfill cap.

The report indicated groundwater was intercepted during investigations but did not address whether dewatering activities were required as per Council's request.

The report identified that materials at depth are contaminated and therefore any excavated soil is required to be appropriately managed.

The report indicates that methane is present in the soil gas at the site as a result of the migration of buried landfill material. Whilst the current proposal for the equipment shelter will be placed on piers eliminating the potential for gas accumulation in the enclosed structures, service pits will need to be suitably vented to prevent the potential accumulation of landfill gas. The report also recommends that additional work, health and safety measures will need to be considered during construction.

#### Clause 39A – Bushfire Protection

The subject site is identified as being prone to bushfire.



Figure 4: location of proposed site within 30-100m buffer to Category 1 vegetation

The applicant has noted that the site would be unmanned when operational and hence would not pose a threat to human life in the event of a bushfire. As the proposal is not a habitable building, the applicant suggests that referral to the NSW Rural Fire Service (RFS) is not required.

Council has previously received comments from the NSW RFS in Sydney in relation to other telecommunications facilities that have been assessed, noting the following:

*'RFS has a draft policy for telecommunications towers in bush fire prone areas. When the RFS is asked for comment on new towers:*

- A 10m APZ (asset protection zone) shall be provided around the tower, buildings and associated infrastructure.*

*In this case the equipment shelter.*

- The equipment shelter shall comply with section 8 (BAL 40) Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas'.*

#### Clause 54 – Tree Preservation Order (TPO)

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The 2004 TPO applies to the adjacent site to the north.

The proposal does not require removal of koala habitat trees but does propose removal of several slash pines. This has been included in the proposal and there are no concerns raised regarding the removal of such vegetation. As such, this clause is satisfied.

#### State Environmental Planning Policies

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

#### Clause 32B: Coastal Lands

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

### SEPP No. 14 - Coastal Wetlands

The subject site is mapped on Councils GIS systems as being affected by the 100m buffer to SEPP 14 wetlands which occur to the west and north of the site, as hatched in blue below. Assessment of the proposal with regard to SEPP 14 is not required and the development application is not identified as designated development.



Figure 5: location of proposed site within 100m buffer to coastal wetlands

Therefore SEPP 14 is not applicable and the development application is not considered to be designated development.

### SEPP No. 44 - Koala Habitat Protection

SEPP 44 aims to encourage the conservation and management of natural vegetation areas that provide core or potential habitat for koalas to ensure permanent free-living populations will be maintained over their present range.

Core koala habitat refers to an area of land with a resident population of koalas, evidence attributes such as breeding females and recent sightings of and historical records of a population.

Potential koala habitat refers to areas of native vegetation where the trees of the types listed in Schedule 2 of SEPP 44 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

The site itself has been cleared of vegetation but is adjacent to primary and secondary habitat land. A SEPP 44 assessment was required to be provided as part of a Flora and Fauna assessment.



Figure 6: proximity of primary (orange) and secondary (green) koala habitat to proposed site

Potential koala habitat in proximity to the proposed development was surveyed for use by koalas. Three sites at or greater than 500m from the proposed base station on the northern and eastern periphery of the study area indicated use by koalas, with results reflecting existing knowledge about the distribution of core koala habitat in the area.

No core koala habitat exists in the immediate vicinity of the proposed base station. The report indicates that any tree removal will be restricted to exotic species and given the mobile nature of the species, the proposed development was not considered to be a concern for this species.

As such, the proposal is consistent with SEPP 44 and there is no requirement for a plan of management.

#### SEPP No 55 – Remediation of Land

In order to comply with this legislation and in addition to matters discussed previously in this report (Clause 39 – Remediation of Contaminated Land), the applicant would need to submit a Remediation Action Plan (RAP), a revised Construction Management Plan and an Environmental Management Plan for approval prior to any operation of the facility.

#### SEPP No 71 – Coastal Protection

The subject land is identified as being within the SEPP 71 boundary. Part of the southern portion of the site is a sensitive coastal location.

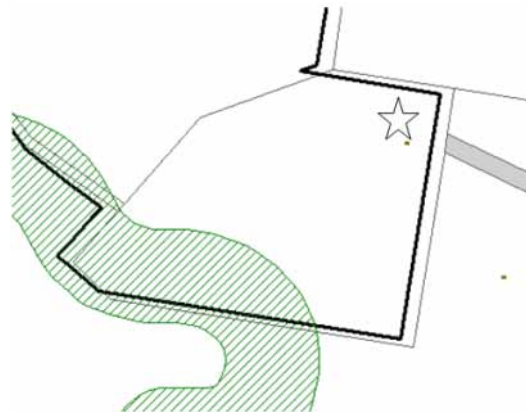


Figure 7: sensitive coastal location in south west portion of site

The site does not adjoin and will not restrict public access to the coastal foreshore. The development is generally consistent with the zone objectives of TLEP 2000, the requirements of relevant Council DCPs and consistent with ESD principles and objectives. It is therefore considered that the proposal satisfies the matters for consideration under SEPP 71.

#### SEPP (Major Development / Major Projects)

In November 2006, the Kings Forest site was designated as a State Significant Site as an amendment to the Major Projects SEPP.

Following the State Significant Site declaration and the inclusion of Kings Forest in Schedule 3 of the Major Projects SEPP, the Minister was requested to authorise lodgement of a Concept Plan for the urban and recreational development of the site.

On 9 January 2007, the Minister authorised a Concept Plan for the Kings Forest site and the Director-General's Environmental Assessment Requirements (DGRs) were issued in August 2007.

The Department of Planning accepted the Environmental Assessment (EA) prepared for the Concept Plan and placed the EAR on exhibition from 17 December 2008 until 19 February 2009.

The subject site was included within the Kings Forest State Significant Site area and was identified as a future sports field.

The proposed secondary use for the site as a mobile phone base station conflicts with implementation of the approved Concept Plan for Precinct 3 of the Kings Forest Residential Township and State Significant Site.

#### SEPP (Infrastructure) 2007

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

#### **115 Development permitted with consent**

- (1) *Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.*
- (2) *(Repealed)*
- (3) *Before determining a development application for development to which this clause applies, **the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities** that are issued by the Director-General for the purposes of this clause and published in the Gazette.*

The guidelines referred to in Clause 115(3) of the SEPP are found within the *NSW Telecommunications Facilities Guideline Including Broadband July 2010*. Section 2 of the Guideline is specific to site selection, design, construction and operation principles for telecommunications facilities and **requires development carried out under Clause 115 of the SEPP to be consistent with the principles set out in the Guideline** in order to follow best practice.

#### **NSW Telecommunications Facilities Guideline Including Broadband**

Principle 1: *A telecommunications facility is to be designed and sited to minimise visual impact.*

Principle 2: *Telecommunications facilities should be co-located wherever practical.*

Principle 3: *Health standards for exposure to radio emissions will be met.*

Principle 4: *Minimise disturbance and risk, and maximise compliance.*

#### **Principle 1 (Visual Impact)**

- (d) *Ancillary facilities associated with the telecommunications facility should be screened or housed, using the same colour as the prevailing background to*



*reduce its visibility, including the use of existing vegetation where available, or new landscaping where possible and practical.*

- (e) *A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.*
- (h) *The relevant local government authority must be consulted where the pruning, lopping or removal of any tree or other vegetation would contravene a Tree Preservation Order applying to the land or where a permit or development consent is required.*

Although the proposed location is adjacent to existing vegetation, the proposed facility (being a total of 31.6m in height) will be visible above the tree line. The applicant states that the facility will be 'mostly screened from the surrounding residential areas'.



Figure 8: Photomontage from SEE taken from the intersection of Depot Road and Secret Lane

Little information was provided upon application with regard to the impact upon vegetation and fauna. A report provided 4 September 2013 states that several slash pines are to be removed to make way for the proposal. Removal of vegetation has been assessed as part of the application.

The proposal is generally consistent with Principle 1 of the NSW Telecommunications Facilities Guidelines.

### **Principle 2 (Co-location)**

- (e) *If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.*

*Note: Co-location is 'not practicable' where there is no existing tower or other suitable telecommunications facility that can provide equivalent site technical specifications including meeting requirements for coverage objectives, radio traffic capacity demands and sufficient call quality.*

The applicant has stated that co-location on other communications towers had been considered. No existing facilities or structures in the local area were deemed appropriate or in a location to provide sufficient network coverage capacity. Therefore, the proposed development is considered to be consistent with Principle 2 of the Guidelines.

### **Principle 3 (Health Standards)**

- (a) *A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.*
- (b) *An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate compliance with the Mobile Phone Networks Code.*

An EME report has been submitted detailing the estimated maximum cumulative EME levels produced by the proposal. Council's Environmental Health Unit is satisfied that the proposed development is well within emissions standards. Therefore, the proposed development is considered to be consistent with Principle 3 of the Guidelines.

**Principle 4 (Minimise disturbance)**

- (k) *Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.*
- (l) *The likelihood of impacting on threatened species and communities should be identified in consultation with relevant state or local government authorities and disturbance to identified species and communities avoided wherever possible.*

Additional information has been provided in the form of a Flora and Fauna Survey report by ecological consultants Biolink Pty Ltd on work carried out over a 10-day period in August 2013. Survey work focused on an area within a 500m radius of the proposed base station and was supported by a search of the NSW Wildlife Atlas database for threatened species records within 5km of the site.

The report identified three hollow-bearing Scribbly Gum *Eucalyptus racemosa* within the study area, which were targeted during microchiropteran call detection surveys. 22.5 hours of survey effort recorded at least five species of microchiropteran bat including confident identifications of two threatened species, Little Bent-wing Bat *Miniopterus australis* and Yellow-bellied Sheath-tail Bat *Saccolaimus flaviventris*, with nine and two passes recorded, respectively.

Overall, microchiropteran activity was low, and the levels of activity recorded in the vicinity of the hollow-bearing trees indicated that local, resident populations do not currently utilise the site. Whilst it is acknowledged that some localised impact may occur in the form of avoidance behaviour by microchiropterans, any such impact is likely to be non-significant for purposes of s5A of the EP&A Act.

As discussed earlier in this report, potential koala habitat in proximity to the proposed development was surveyed for use by koalas. Three sites at or greater than 500m from the proposed base station on the northern and eastern periphery of the study area indicated use by koalas, with results reflecting existing knowledge about the distribution of core koala habitat in the area.

No core koala habitat exists in the immediate vicinity of the proposed base station. The report indicates that any tree removal will be restricted to exotic species, and given the mobile nature of the species, the proposed development was not considered to be a concern for this species.

A similar conclusion was made regarding the threatened Grey-headed Flying Fox *Pteropus poliocephalus*, Spotted Harrier *Circus assimilis* and Grass Owl *Tyto longimembris* which were either recorded during this assessment or known to occur adjacent to the site.

Whilst not considered significant, the report does raise some concern for potential indirect and long-term effects of EME on the smaller organisms such as the Wallum Froglet (recorded by this study and known to occur in lands to the south) and insect communities (food source for microbats and birds).

In this regard, it is noted that the applicant's additional information presents no further examination of alternative sites in the locality.

It is possible that locating the tower on a different site in the Kings Forest vicinity may further reduce concerns surrounding any residual ecological impact. It is noted that recent correspondence from an objector considers Kings Forest Precinct 9 as containing a suitable alternative location.

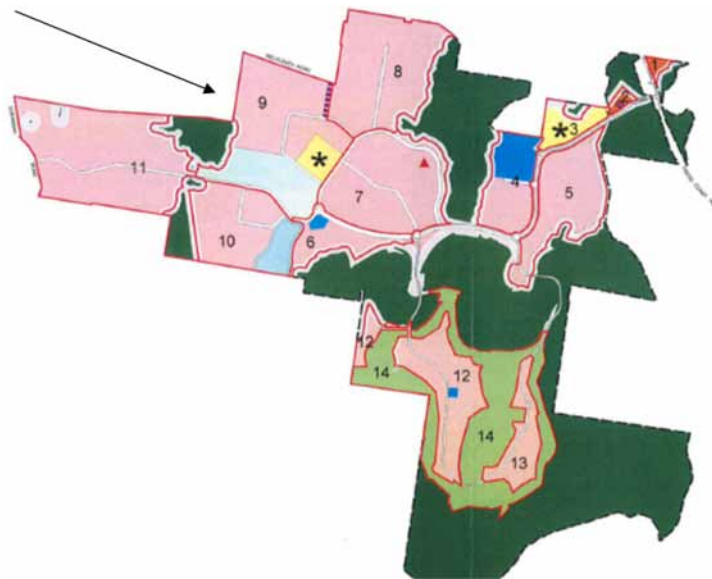


Figure 9: Kings Forest Precinct Plan (21 August 2012)

### **Conclusion:**

The proposed development is considered to be *generally* consistent with the four principles set out in the NSW Telecommunications Facilities Guidelines. Therefore, the proposal *generally* complies with the provisions of Clause 115(3) of the Infrastructure SEPP.

### **Telecommunications Act 1997**

As detailed within the previous assessment, Part 1 of Schedule 3 of the Telecommunications Act authorises a carrier to enter on land and exercise any of the following powers:

- Inspect the land
- Install a facility

- Maintain a facility

A Carrier's power to install a facility is contingent upon:

- a) The Carrier being authorised to do so by a Facility Installation Permit, or
- b) The facility being a low-impact facility (as defined by the *Telecommunications (Low Impact Facilities) Determination 1997* (as amended), or
- c) The facility being temporary and used for a defence organisation for defence purposes, or
- d) If other conditions are satisfied in relation to the facility concerned.

The proponent (Telstra) does not hold a Facility Installation Permit and the proposed development is not a temporary facility for use by a defence organisation or for defence purposes. Further, as the proposal involves the installation of a 30m monopole it does not constitute a low-impact facility under the *Telecommunications (Low-Impact Facilities) Determination 1997* (as amended).

On this basis the proponent is not empowered to undertake the proposed works without approval under NSW legislation and therefore must obtain development consent from Tweed Shire Council.

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

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

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

The subject site is proposed to be zoned RE1 – Public Recreation in the Draft Tweed Local Environmental Plan 2012.

The proposed telecommunication facility is prohibited in this zone. Any telecommunications facility would have to rely on compliance with the provisions of the Infrastructure SEPP in order to be permissible in this zone.



Figure 10: Draft Tweed LEP 2012 zoning

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposed land use (telecommunications facility) is not identified within the policy, therefore a strict development standard is not available to use. The applicant states that *the facility will be unmanned and remotely operated on a day to day basis and only visited for maintenance 2-6 times per year.*

It is apparent from the proposed plans that the site could accommodate adequate onsite parking in front of the compound.

A3-Development of Flood Liable Land

The site is identified as Probable Maximum Flood affected. To overcome any possible flood concerns, the equipment shelter has been raised on concrete piers. As the proposal is not for residential development, there are no further concerns.

A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section. The proposal was advertised and notified to adjoining owners for 14 days from 15 May to 29 May 2013. Two submissions were received as a result of this process which are discussed elsewhere in this report.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals whilst protecting the essential values of the coast. This application does not represent an integrated approach to providing community facilities and public infrastructure as highlighted by the plan in order to meet the requirements of future communities.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is not considered that the proposed telecommunications facility contradicts the objectives of the Government Coastal Policy.

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

The proposal does not impact upon coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The proposal does not impact upon coastline management strategies.

Tweed Coast Estuaries Management Plan 2004

The proposal does not impact upon estuaries management strategies.

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

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

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

Public Health and Safety

The applicant submitted an EME Environmental Report as required by the Guideline. It shows the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the ACMA and the Electromagnetic Radiation Standard. The Report is formatted in compliance with the Industry Code C564:2011 Mobile Phone Base Station Deployment (Mobile Phone Networks Code).

Neither the SEE nor the EME Environmental Report discussed the requirement for a specific buffer surrounding the facility. Clarification of buffer requirements was requested of the applicant, specifically whether a 200m buffer to any school building is or is not required, as this was raised in a submission objecting to the development.

The applicant stated that "the proposed facility is approximately 90m away from the proposed location of the school boundary". Scaled from submitted plans, the distance between the 80m<sup>2</sup> facility site and the boundary with adjacent land is approximately 20m.

Documentation provided by the applicant indicates:

*"Regulations are in place to limit the strength and level of the radio frequency signals in the environment from all radio transmitters including Telstra's mobile network base stations. They are not based on distance, or creating exclusion zones for residential or other sensitive areas. That is why from a public health perspective telecommunications facilities are permissible in any environment, including on apartment buildings and hospitals, and even within school grounds.*

and:

*The concept of "exclusion zones" for schools and residential areas is not supported by the WHO (World Health Organisation) or ARPANSA (Australian Radiation Protection and Nuclear Safety Agency) as an effective precautionary measure to reduce the general public's exposure to radiofrequency EME."*

Fact sheets dated March 2008 and published by the Mobile Carriers Forum were provided by the applicant. Information on the fact sheet *Do Exclusion Zones actually work?* does not include any recommendation for buffer zones from mobile phone base stations and states that "there is no science-based reason to set up exclusion zones around such areas".

It is noted that both submissions object to the lack of buffer distance from the proposed facility to Precinct 3.

The Department of Education and Communities provided a formal submission to Council regarding the proposal on 5 November 2013. Lack of support for the proposal is based on implementation of a precautionary approach, based on departmental policy (similar to the *Industry Code – Mobile Phone Base Station Deployment*), that avoids location of mobile phone base stations within proximity to community sensitive land uses.

The Department has a preference for a distance of at least 500 metres from the boundary of the property known as 'Precinct 3'. Further, a 500 metre buffer from the boundary of the property known as 'Precinct 3' excludes the location of a telecommunications facility on any portion of the subject site.

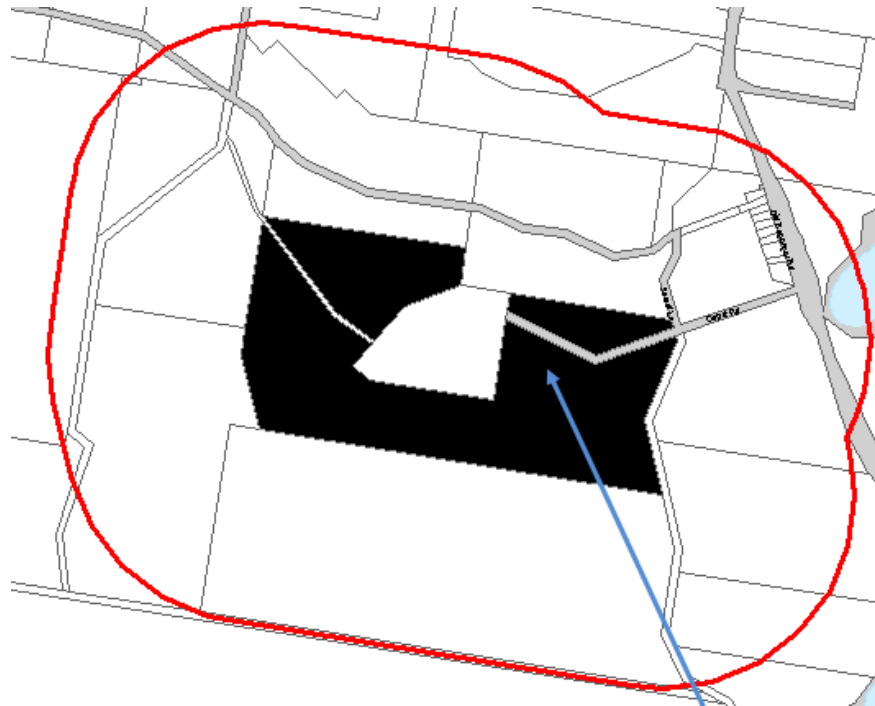


Figure 11: 500m buffer around Lot 1 DP 781633 and 'Precinct 3'

As such, the proposal is not consistent with State government policy intended to ensure student / staff public health and safety is protected / maintained via adequate separation of special and sensitive land uses.

#### Amenity

The nominated construction period is from four to six weeks. Operation of the premises will not require day to day attendance of staff. However an air-conditioning unit is proposed to be installed and operational to service the equipment shelter. Issues include future potential noise and light spill nuisance.

#### Visual Impact

The proposed monopole is 30m in height and located on generally flat ground. Some level of screening is afforded to the development from existing mature tree species that are currently located to the north of the proposed site.

The proponents have advised that there would be 'minimal potential visual impact' as a result of the proposed development, however it is expected that any impact could be addressed by the incorporation of specific measures into the design of the facility such as slim-line form, neutral colour and landscaping.

A certain level of visual impact will arise as a result of the proposed development.

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

#### Contamination

The site history includes use as a landfill. The bulk of the site has been capped and future intended use is as a sports ground. A report prepared for Tweed Shire Council, Assessment of Remediation Options and Remediation Action Plan

prepared by Coffey dated 30 June 2003 indicates a cap of 0.5m thickness exists within the subject area.

The report states:

*“protection of gas ingress and/or ventilation will be required for any buildings and other facilities that may be located on or adjacent to the site in the future, due to the potential for ingress and accumulation of landfill gas. Additionally, there is a need to minimise the opportunities for gas to ingress and migrate offsite via subsurface utility trenches and pipes. The provision of gas management measures to buildings and services constructed on land immediately adjacent to the landfill should be a development approval condition of any future development.”*

As discussed elsewhere in this report, the applicant has addressed contamination issues in a report provided to Council 18 October 2013. Council's Environmental Health Unit has reviewed the information provided as satisfactory.

### Proximity to Precinct 3 of Kings Forest

As discussed elsewhere in this report, proximity of the telecommunications facility to Precinct 3 (Community Facilities / Education) within the approved Kings Forest Residential Township Concept Plan will compromise future development of the land for the purposes of a government state school as the site will then not comply with the following Department of Community and Education policies:

- Mobile Telecommunications Facilities

While the Department cannot state a specific separation distance between a proposed mobile telecommunications facility and a school or TAFE campus, the Department has a preference for a distance of at least 500 metres from the boundary of the property.

Figure 12: excerpt from DEC Mobile Telecommunications Facilities policy

- Advisory Notes for Developers and Consent Authority for Master Planning New Education Facility Sites

Land use	Not located within or immediately adjacent to:
	<ol style="list-style-type: none"><li>1. In close proximity to special uses such as: airports, correction centre, electricity substations, mobile phone towers, contaminated lands, sewage treatment plants, sewage systems, electrical transmission lines, waste disposal facility, waste, treatment or resource management facilities, waste or resource transfer station, water recycling facility, water supply system, wind farms and the like (preferable to be 500m to 2km away).</li><li>2. Inappropriate retail and commercial development such as: bottle shops, brothels, home occupation (sex services), methadone clinics, pubs, registered clubs, restricted premises, sex service premises or the like</li><li>3. Development with potential undesirable impacts or risks such as: heavy industry, airport flight paths, bulky goods premises, crematorium, depots, freight transport facility, hazardous or offensive development, hostel, hotel or motel accommodation, intensive agriculture, mining and extraction industries, tourist and visitor accommodation, vehicle repair workshops or the like</li></ol>
	<i>Reason: Ensure student and staff/personnel security and health are protected and maintained. Ensure no rezoning.</i>

Figure 13: excerpt from DEC Advisory Notes (highlighted)



Co-location with Sports Field Use

Council's Recreational Services Unit stated no objection to the co-location of the telecommunications facility use with the sports field use (primary land use). The telecommunications facility is identified as a secondary use.

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

The proposal was advertised and notified to adjoining properties in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 15 May to Wednesday 29 May 2013. During this time, two submissions were received.

Concerns were also raised before the application was advertised and after the applicant had supplied further information to support the proposal.

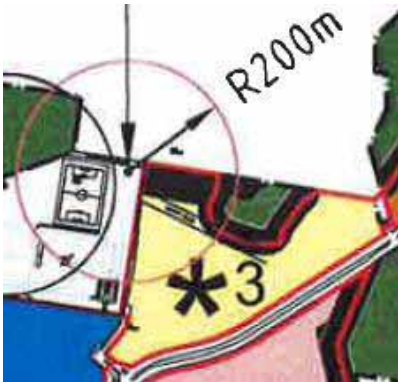
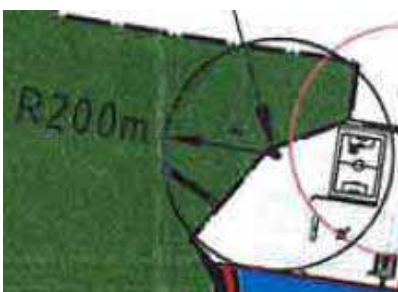
Issues raised include the following:

- Contamination
- Koala Habitat
- Visual Impact
- Human health
- Required buffer distance
- Environmental value / health
- Noise
- Premature development
- Conflict of interest
- Alternative sites available

Although forwarded copies of the submissions on 3 July, 2013, the applicant chose not to respond directly to the matters raised.

Objection	Response
A geotechnical survey needs to be carried out to assess risk as the site is classified as contaminated land. Siting of the monopole is adjacent a dam. Stormwater from the site travels via dams straight into wetlands on our property. Saturation of the ground poses an environmental threat to adjacent land.	Geotechnical report provided to Council 18 October 2013 and assessed by the Environmental Health Unit as satisfactory.
Koala habitat trees are planned to be planted just north of the lease area via the Koala Connection Program.	Existing screening vegetation will be removed in association with this project. Impact upon future koala population not determined.
The proposal does not respond appropriately to its rural landscape setting. Screening trees (mature pines) in the supplied photomontage are planned to be removed and replaced with Koala food trees. The structure is	A landscaping plan was not supplied by applicant.

Objection	Response
<p>in full view from all other angles. Replanting will take into account species best for Koalas, not for screening value. Essential Energy also has restrictions on vegetation height within proximity to power lines.</p>	
<p>The monopole will be highly visible from about 70% of our property including present house site and planned future house site.</p>	<p>Visibility issues addressed elsewhere in this report.</p>
<p>Health concerns from electromagnetic energy generated from the facility.</p>	<p>Council's Environmental Health Unit has assessed the proposed development in terms of EME requirements.</p> <p>The Department of Education and Communities does not support the proposal because it does not meet the required minimum 500m buffer from a future educational facility.</p>
<p>The close proximity of the sports fields and the planned educational facilities should be taken into account with regard to Electromagnetic Field Radiation. The existing power line should be calculated into total EMF radiation levels.</p>	<p>As above.</p>
<p>The present powerline at the entrance to the site is not in service and has not been for many years.</p>	<p>The applicant would need to liaise with Council with regard to the provision of electricity to the site.</p>
<p>Air conditioning units for the facility will be going 24/7. This is in contradiction to the intention of creating and improving a Koala/wildlife corridor adjacent to the monopole.</p>	<p>Council's Environmental Health Unit has assessed the proposed development in terms of air conditioning noise.</p>
<p>There is a multitude of endangered species around this site.</p>	<p>A Flora and Fauna report was provided 4 September 2013, assessed by Council's NRM Unit and found to be satisfactory.</p>
<p>The DA for the monopole is premature. Development of the land could be decades away. Why has the DA been submitted at such an early stage in a sensitive location? Which area will this really service?</p>	<p>The concept plan for the Kings Forest Residential Township has been approved. The proposal conflicts with a sensitive land use in Precinct 3 and has been recommended for refusal.</p>
<p>Why is there no ecological buffer on Lot 1 DP 397082?</p>	<p>This is a matter relating to the assessment of DA09/0836 for the sports fields development.</p>
<p>Conflict of Interest – Council accepting lease money and giving approval.</p>	<p>DA's are submitted over Council land subject to external lease arrangements. The Development Assessment Unit retains objectivity in assessing such proposals.</p>

Objection	Response
Telstra have advised us that there is no budget for landscaping.	Landscaping would be required of the applicant should any approval be granted.
Telstra have advised us that elevated positions around Kings Forest would be preferred for several reasons including radiofrequency objectives, reduced height and reduced visual impact. We feel that choice of the proposed site could well be biased through principles of cost reduction and contractual issues rather than suitability of the site.	An alternative site has been offered in Precinct 9 of the Kings Forest development. Council is not aware of the applicant's motives for the current site selection.
LEDA have advised use that they are willing to discuss alternative sites which we feel are available.	An alternative site has been offered in Precinct 9 of the Kings Forest development.
<p>The location of the proposal will significantly impact on the development potential of Precinct 3, particularly having regard to the requirement for a 200m buffer.</p> 	<p>The applicant has not relied upon any distance related policy for the siting of the facility.</p> <p>The Department of Education and Communities does not support the proposal as it does not meet the required minimum 500m distance from the boundary of Precinct 3.</p>
<p>Siting of the facility on the western side of the subject land would eliminate any potential adverse impacts by way of buffers to Precinct 3.</p> 	<p>Siting the facility on the western side of the subject land does not comply with DEC's minimum 500m distance policy from the boundary of Precinct 3.</p>
<p>Following submission of further information by the applicant on 4 September 2013, the objectors were given the opportunity to provide additional comment.</p>	
<p>Money generated from the lease will pay for the Kingscliff Soccer Club's ground maintenance.</p>	<p>Manager Recreation Services advised that the grounds would be maintained with or without the lease in place.</p>

<p>The Flora and Fauna report was done in a very limited timeframe which can cloud results. There was no mention of the Glossy Black Cockatoo or habitat for threatened species (Wallum Sedge Frog, microbats). Dry weather conditions have influenced insect activity.</p>	<p>The Flora and Fauna report was provided 4 September 2013, assessed by Council's NRM Unit and found to be satisfactory.</p>
<p>The planned Koala Corridor to the north and Acid Frog Compensation habitat to the east are both within the range of highest radiation around this Monopole. Reference made to a previous Biolink report by the same author deems a negative impact upon these species.</p>	<p>Council's assessment of the Flora and Fauna report does not raise these issues as problematic.</p>
<p>All of the previous comments regarding visual impact still apply. What exactly is the height of the structure including the fill? The Casuarina monopole was reduced from 30m to 20m in response to objections.</p>	<p>Height of the structure located upon fill will be RL 41.6m AHD.</p>
<p>EME levels increase due to future antennas and co-location of other carriers once the facility has been established. Additional sources of EME should be taken into account.</p>	<p>Additional and future sources of EME have not been taken into account by the applicant.</p>
<p>The EME figures do not give any clarification on EME levels in planned Koala corridor trees once established.</p>	<p>This is consistent with application documentation.</p>
<p>Asbestos guidelines should be observed prior to earthworks being undertaken.</p>	<p>Suitable conditions of consent would apply should an approval be granted.</p>
<p>The Department of Education and Communities indicates that in terms of land use, school sites should not be located within or immediately adjacent to, inter alia, mobile phone towers.</p> <p>The proposed facility will be approximately 50m from the nearest part of the community facility Precinct No. 3 shown on the approved Kings Forest Revised Concept Plan and Precinct Plan.</p> <p>The proposed siting of the facility is inconsistent with the Department's guideline. If the facility were to be approved and erected, Precinct 3 would not be suitable for a school.</p>	<p>The Department of Education and Communities does not support the proposal as it does not meet the required minimum 500m distance from the boundary of Precinct 3.</p>

<p>An alternative site on the western side of the sports fields is the more logical and suitable in the circumstances.</p>	<p>Council will not consider this alternative location.</p> <p>Siting the facility on the western side of the subject land does not comply with DEC's minimum 500m distance policy from the boundary of Precinct 3.</p>
<p>Any decision by Council in respect of this DA which might compromise implementation of the Concept Plan and the Project Approval would be inappropriate and unnecessary given that there are suitable alternative sites within the Depot Road sports fields and Precinct 9.</p>	<p>Council will not consider an alternative location within the sports fields site.</p> <p>Siting the facility on the western side of the subject land does not comply with DEC's minimum 500m distance policy from the boundary of Precinct 3.</p>

**(e) Public interest**

Council currently has no specific policies in relation to telecommunication tower developments. The proposal is a permissible form of development in the 5(a) zone and therefore can be assessed by Council.

Concerns with regard to health risks are considered within the body of this report and are supported by the formal submission from the Department of Education and Communities.

Strict guidelines have been put in place by the Department with regard to master planning new education facility sites. The Concept Plan nominating 'Precinct 3' for a future government educational facility within Kings Forest Residential Township has been approved. Development of the State Significant Site would be negatively impacted if the telecommunications facility were approved in this location.

It is therefore considered that the development will negatively impact on matters relating to the public interest and sustainable future economic development of the Shire.

**OPTIONS:**

Option 1

That Development Application DA13/0201 for a telecommunications facility at Lot 1 DP 397082 No. 80 Depot Road, Kings Forest be refused for the following reasons:

1. The development application is contrary to Clause 4 of the Tweed Local Environmental Plan 2000, in that the proposed development does not meet the aims of the plan.
2. The development application is contrary to Clause 8(1) of the Tweed Local Environmental Plan 2000, in that the proposed development will have an unacceptable cumulative impact on the Kings Forest locality.
3. The development application is not consistent with and is not supported by Department of Education and Communities policy regarding the installation of mobile telecommunication facilities within proximity to education facility sites.

4. Accordingly, the development application is not considered to be in the public interest.

or

Option 2

That Development Application DA13/0201 for a telecommunications facility at Lot 1 DP 397082 No. 80 Depot Road, Kings Forest be approved with the following conditions:

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and:
  - Plan No N109565 Sheet S1 Issue 3 (Site Layout and Access) as amended in red, prepared by Telstra and dated 3 September 2013
  - Plan No N109565 Sheet S1-1 Issue 2 (Site Layout) as amended in red, prepared by Telstra and dated 10 August 2012
  - Plan No N109565 Sheet S3 Issue 2 (South Elevation) as amended in red, prepared by Telstra and dated 10 August 2012,except where varied by the conditions of this consent.

[GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]
4. The 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. Pruning or removal of vegetation to establish and maintain a 10m inner protection zone around the facility to meet bushfire safety standards or to provide access to the site must be carried out to the minimum extent necessary.

[GENNS01]
6. The mobile phone tower may not exceed a maximum height of RL 41.6m AHD including any attached antenna, aerials or other appurtenances.

[GENNS02]
7. Any construction certificate issued for this development must include details for the construction of the access track extension.

[GENNS03]

8. This development consent does not include any further expansion of the approved infrastructure which consists of two (2) panel antennas (2.63m and 2.09m long) mounted on a triangular headframe at Centre Line 30.0m. Any further expansion of the infrastructure will require separate development consent where statutorily required.

[GENNS04]

9. Any costs associated with providing access to the facility shall be borne by the proponent.

[GENNS05]

10. The provision of electricity and other services as required shall be subject to negotiation with Council and the owners of adjacent land.

[GENNS06]

### **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. 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]

13. A construction certificate application for works that involve any of the following:

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

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

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

[PCC1145]

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

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

- 15. Prior to the issue of a construction certificate, a Remediation Action Plan in accordance with the Report on Preliminary Site Investigation (Project 80360.00) prepared by Douglas Partners and dated October 2013 shall be submitted to Council for approval to the satisfaction of the General Manager or delegate.

[PCCNS01]

- 16. Prior to the issue of a construction certificate, the revised Construction Management Plan, incorporating the recommendations of the approved Remediation Action Plan shall be submitted to Council for approval to the satisfaction of the General Manager or delegate.

[PCCNS02]

- 17. An acid sulphate soils investigation, and management plan where required, shall be carried out in accordance with the Acid Sulfate Soil Manual, ASSMAC 1998 and submitted to Council for approval to the satisfaction of the General Manager or delegate prior to the issue of a construction certificate.

[PCCNS03]

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

- 18. 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]

- 19. 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]

- 20. 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]

- 21. **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]

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

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

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

[PCW0985]

## DURING CONSTRUCTION

23. 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]

24. 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]

25. 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]

26. 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]

27. 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]

28. 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]

29. 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]
30. 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]
31. 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]
32. Landscaping of the site shall be carried out in accordance with the approved landscaping plans.
- [DUR1045]
33. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]
34. 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]
35. 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]
36. 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]
37. Air conditioning units and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.
- [DUR2835]
38. During construction and subsequent operation of the facility, vehicle speeds along the access road shall not exceed 40km/h.
- [DURNS01]

39. The landfill cap shall not be penetrated or disturbed.

[DURNS02]

40. Where an acid sulphate soils management plan is required as identified within the approved investigation report, all works shall be carried out in accordance with the approved plan.

[DURNS03]

### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

41. 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]

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

[POC0475]

43. Prior to this issue of any Occupation Certificate the Principal Certifying Authority shall be provided with certification from a practising structural engineer which states that the completed telecommunications tower will be structurally adequate for its intended use in this location.

[POCNS01]

44. Prior to the issue of any occupation certificate, an Environmental Management Plan shall be submitted to Council for approval to the satisfaction of the General Manager or delegate. The Plan shall include a recommendation for the wording as to the creation of a restriction as to user under Section 88B of the Conveyancing Act to manage the risk associated with landfill gas in the subsoils at the site.

[POCNS02]

45. Prior to the issue of any occupation certificate, a restriction as to user under Section 88B of the Conveyancing Act is to be created to the satisfaction of the General Manager or delegate regarding the use of the area in accordance with the approved Environmental Management Plan.

[POCNS03]

### **USE**

46. 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]

47. 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]

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]

49. 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]

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

[USE0875]

**CONDITIONS OF APPROVAL IN RELATION TO SECTION 79BA OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

1. At the commencement of building works and in perpetuity the entire leased area 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'.
2. The equipment shelter shall comply with section 8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'.

Council officers recommend Option 1.

**CONCLUSION:**

In general it is considered that the proposed telecommunication facility is suitable with regard to design and community need.

However, the location of the telecommunications facility adjacent to a future government school site is not appropriate. Its proximity compromises implementation of an approved sensitive land use and would render the site unsuitable for its intended purpose as an educational facility.

For this reason the proposal is recommended for refusal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable.

**c. Legal:**

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.	DEC submission (ECM 3254334)
Attachment 2.	DEC Advisory Notes for Developers and Consent Authority for Master Planning New Education Facility Sites (ECM 3254335)
Attachment 3.	Clause 4.1 Site Selection (Industry Code C564:2011 Mobile Phone Base Station Deployment) <i>Communications Alliance Ltd 2011</i> (ECM 3254337)
Attachment 4.	Report from Telstra in response to submission by DEC (ECM 3254338)

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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

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0385 Pt1

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## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

#### Updated Information

Council at its meeting of 12 December 2013 resolved as follows:

***"RESOLVED*** that this item be deferred to a future Council meeting and to provide advice about alternative effluent disposal."

A Councillors Workshop is scheduled for 16 January 2014 to further discuss this application.

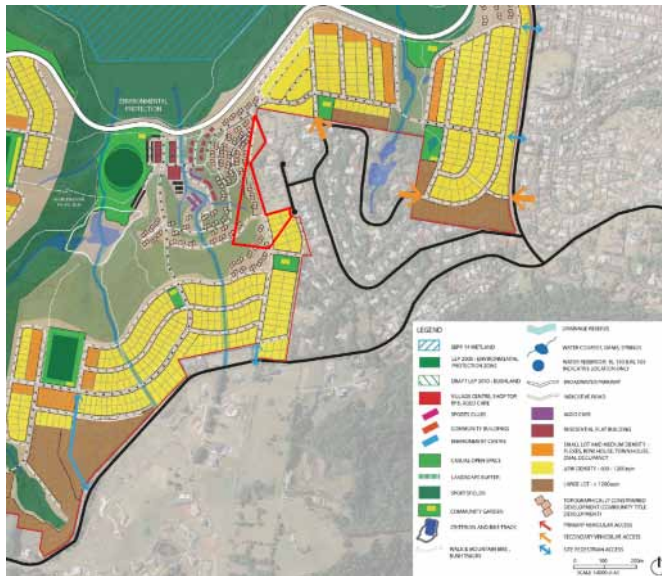
The report is now resubmitted to Council for its determination.

#### Previous Report

On 18 July 2013 Council received a Development Application seeking approval to create a three lot subdivision from one existing allotment currently with an allotment size of 2.769ha. The proposed subdivision seeks approval for proposed Lot 1 with a land size of 1900m<sup>2</sup> (which will remain vacant with a future house option), proposed Lot 2 with a land size of 3030m<sup>2</sup> (which will maintain an existing dwelling) and proposed Lot 3 with a land size of 2.2ha. It is also proposed as part of this Development Application to construct a dwelling with attached secondary dwelling over proposed Lot 3.

The existing parcel of land and all the proposed allotments are located within the mapped urban land release area at Terranora known as "Area E" which is one of Council's major urban land release areas.

On 13 December 2011 Council resolved to endorse the Draft Development Control Plan B24 Area E Urban Release Development Code and this DCP shows that the subject site could theoretically accommodate 6 low density residential homes and approximately 13 additional homes under a community title development as shown on the below figure.



**Area E Indicative Structure Plan (Figure 2.2 Draft DCP B24 page 22 from the Subdivision Section)**

The proposed three lot subdivision is considered an underdevelopment of prime residential land having regard to the endorsed DCP for the site.

Furthermore, the proposed three lot subdivision cannot physically connect to any existing or currently proposed sewer reticulation systems and accordingly the applicants have requested consideration for onsite effluent disposal.

Council's Water Unit staff have reviewed this proposal and have indicated that prior to the Parkes Lane sewerage system being implemented (at a point when it will be economic to do so) development should be refused.

Council's Environmental Health Officer's have reviewed the proposed onsite effluent disposal scheme and are of the opinion that the two smaller allotments would need to be almost entirely cleared of vegetation to ensure viable onsite effluent disposal areas. Council's minimum size criteria for onsite effluent is normally 4000m<sup>2</sup> allotments and the proposed allotments are only 1900m<sup>2</sup> and 3030m<sup>2</sup>. Therefore on site effluent is not considered to be a viable option as it results in large urban lots completely cleared of vegetation (contrary to the existing larger allotments in a leafy environment) in an area nominated for higher density residential purposes.

It should also be noted that whilst Council adopted the Draft Development Control Plan B24 Area E Urban Release Development Code Council also specifically required an appropriate framework of Developer Contributions to be in place before final adoption of the DCP.

All lots within "Area E" need to contribute to the costs of sports fields, the proposed road being Broadwater Parkway, environmental restoration and local drainage issues. The costs of such facilities equates to approximately \$40,000 per allotment within Area E based on the densities as set by the DCP. If the densities as per the DCP are not utilised each lot will have to pay even more for these required facilities. In addition each proposed allotment of land would need to pay the normal Developer Contributions for Water and Sewer (\$18,500 per allotment), Roads (\$13,400), and all the normal S94 Contributions applicable to all lots within the Shire (approximately \$10,000). When all of these figures are combined it equates to each lot having to pay \$81,900 in developer contributions per allotment of land. Such contributions are not viable for minor subdivisions and can only be justified when land within Area E is developed to its intended population in a coordinated manner. For example Altitude Aspire which is currently being developed in the eastern portion of Area E proposed 255 allotments of land based on the above developer contributions and they have agreed to



enter into a Voluntary Planning Agreement to cover the site specific contributions listed above. However the proposed under utilisation of land within a planned urban land release area cannot be considered desirable or viable in this location given the constraints of the site. In this instance the applicant has not proposed a mechanism for paying the site specific contributions (\$40,000 per allotment) and accordingly the proposed subdivision is considered premature in light of the rest of the release area.

It is considered that the overarching purpose of the Environmental Planning and Assessment Act 1979 and its associated documents is to secure the orderly development of land. This includes having the necessary infrastructure available in order to service the development. Furthermore, the proposed three lot subdivision is considered to severely undermine the broader strategic plans for the subject site and represents a massive under development of prime residential land. For these reasons the application is recommended for refusal.

#### **RECOMMENDATION:**

**That Development Application DA13/0385 for a three lot subdivision and single dwelling with attached secondary dwelling at Lot 63 DP 804148 No. 3-6 Trutes Terrace, Terranora be refused for the following reasons:**

- 1. The proposed subdivision is not considered to comply with the Environmental Planning and Assessment Act 1979 as it fails to secure the orderly development of land. Furthermore, the proposal is not consistent with the provisions of the Tweed Local Environmental Plan 2000 and in particular Clause 4(a), Clause 8(1)(a), (b) and (c)] and Clause 11, as the subdivision is premature having regard to the broader release area in which it is located and represents an under utilisation of urban land within an approved urban land release area.**
- 2. The proposed subdivision is not consistent with the provisions of Tweed Development Control Plan Part A5 and in particular Section A5.4.13 Infrastructure, as the sites cannot be adequately serviced with reticulated sewer.**
- 3. The proposed subdivision does not satisfy the objectives or density yield provisions in accordance with Tweed Development Control Plan Section B 24 Draft Area E Urban Release Development Code.**
- 4. The application has not been supported with an appropriate funding mechanism to establish an infrastructure regime to cater for the required on site services within the 'Area E' urban land release area. The "Area E Urban Land Release Area" does not have an applicable S94 Contribution Plan and the applicant has not established a suitable funding mechanism to reflect the urban land release area requirements as other development in the release area have had to do.**
- 5. The proposal is premature and would undermine the whole release area. If approved the application would have a negative cumulative impact on the remainder of the release area and potentially set an undesirable precedent.**
- 6. The proposal is not in the public interest as the development would have negative flow on affects for the remainder of the release area.**

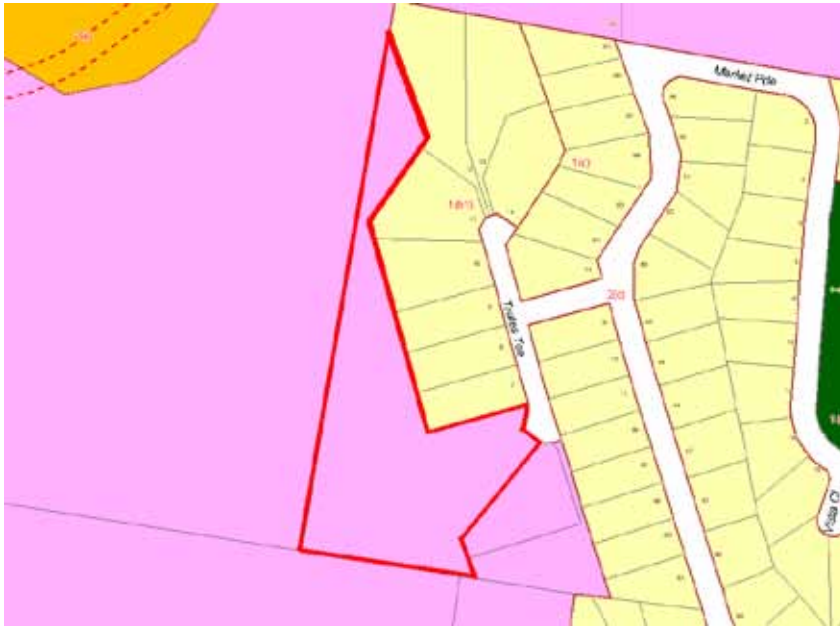
**REPORT:**

**Applicant:** Mr T Edser and Mrs C Edser  
**Owner:** Mr Trevor E Edser & Mrs Christine I Edser  
**Location:** Lot 63 DP 804148 No. 3-6 Trutes Terrace, Terranora  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$829,800

**Background:**

The Subject Site

The subject site is located on the western side of Trutes Terrace and currently comprises a total area of 2.769 hectares. It comprises one parcel of 2(c) Urban Expansion zoned land.



*Lot 63 DP 804148*



*Subject site within Area E Urban Release Area*

The Proposed Development

The application seeks consent to subdivide the 2(c) zoned land (which comprises one allotment) to create three allotments.

The existing allotment comprises:

- Lot 63 DP 804148 with a total site area of approximately 2.769ha.

The proposed layout is as follows:

- Proposed Lot 1 with a total area of 1,900m<sup>2</sup>;
- Proposed Lot 2 with a total area of 3,030m<sup>2</sup>
- Proposed Lot 3 with a total area of 22,223m<sup>2</sup> (2.2223ha)

Lot 1 will remain vacant as part of this proposal. It has been sized to support a single dwelling as part of a future development application. The lot will have direct street frontage to Trutes Terrace.

Lot 2 is a battle-axe shaped lot that will bound the existing dwelling on-site. The access handle arrangement maintains frontage to Trutes Terrace.

Lot 3 forms the residual land and will support the single dwelling with attached secondary dwelling that is proposed as part of this application. An access handle is retained to allow for frontage to Trutes Terrace.

The proposed dwelling with attached secondary dwelling has a maximum total height of 7.5m. It has been designed to incorporate two storeys.

The single dwelling incorporates four bedrooms and three bathrooms with an open plan living, dining and outdoor entertaining area.

The attached secondary dwelling is located on the ground floor and is fitout with a single bedroom and one bathroom as well as its own kitchen and laundry. The attached secondary dwelling has a floor area of 55.7m<sup>2</sup> and is compliant with the maximum floor area requirements of the Draft LEP 2012 (60m<sup>2</sup>).

The existing shed on-site is to be relocated onto the created Lot 3. This shed will be ancillary to the proposed dwelling and will be accessible from the driveway.

### History

Upon review of the submitted detail Council responded to the applicant with the following information request:

"Area E Urban Land Release Area

The proposed development falls within the mapped urban land release area of 'Area E'. The Tweed LEP (Clause 53 D - Specific provisions for Terranora Urban Release Area E) requires this urban land release area to have a site specific DCP that considered certain aspects of developing the site.

*Council has drafted a site specific DCP (Draft Tweed DCP Section B24 – Area E Urban Release Development Code). This DCP has been endorsed by Council but not yet adopted as the infrastructure framework for the release area has not yet been established.*

You may be aware that Metricon are progressing with a project in Area E called 'Altitude Aspire'. This project is being assessed by the NSW Department of Planning and the only reason that this proposal is being considered is that the proponents have agreed to enter into a Voluntary Planning Agreement (VPA) with Tweed Shire Council to cover costs associated with Area E in regards to drainage, sports fields, the Broadwater Parkway construction and environmental restoration. The approximate cost for these matters is \$40,000 per lot within Altitude Aspire in addition to the normal infrastructure charges. It is anticipated that all lots within Area E will need to enter into a similar VPA to ensure that adequate infrastructure is provided within the release area.

Therefore, given the subject land is within the Area E Urban Land Release Area and the development cannot proceed without an infrastructure framework and Council is proposing a VPA similar to that drafted for 'Altitude Aspire'. However for an additional 2 lots as proposed by this application seems unviable. Should you wish to proceed with the subject application please advise whether you will be entering into a Voluntary Planning Agreement (the drafting of which would also need to be funded by you). If you are not prepared to enter into this voluntary planning agreement or provide another mechanism for infrastructure contributions within Area E then Council would recommend the withdrawal of the subject application. Alternatively Council will determine the application based on the information provided to date.

Should you decide to proceed with the application despite the comments above you should also be aware of the following issues that are yet resolved within the application:

#### **Sewer Infrastructure**

Council's System Engineer has provided the following information in relation to Development Control Plan Section A5:

"The site as it exists is not serviced by Council sewer. On-site treatment exists for the existing dwelling and the Statement of Environmental Effects Report proposes the new lots shall also be serviced by onsite treatment. The Tweed Shire Council Development Control Plan: Section A5- Subdivision Manual requires that land in Zone 2(c) Urban Expansion must provide sewerage services to the lot as specified in Development Design Specification D12. Pressure sewer currently exists up to 30 Parkes Lane (approximately 640 meters via road easement from the proposed development), however the downstream system has capacity limitations and no further extension can be permitted at this stage. The Parkes Lane limited sewer scheme was developed on a strictly limited basis of only permitting an additional 10 ET connection of which 5 are already connected or allocated. This scheme involves an additional charge of \$4320 per ET.

It is intended to provide a sewerage system to the Parkes Lane area when other development within Area E progresses to a point at which it will be economic. Prior to that, the development should be refused unless the developer can demonstrate how the requirement to connect to sewer in the short term can be met."

It is therefore considered that the proposed development does not comply with Council's Development Control Plan Section A5 - Subdivision Manual and as such the applicant is either requested to enter into a VPA as outlined in point 1 or withdraw the proposed development.

#### **Engineering Issues**

Council's Development Engineer has provided the following information that is required to be addressed if the applicant continues with the proposed development.

It is noted that the proposal includes a series of retaining walls along and near to the southern boundary of proposed Lot 3. It is requested that the applicant demonstrate how these comply with the requirements of TSC DCP A1 and TSC Development Design Specification D6.

#### **Minor Engineering matters:**

The applicant is to be advised of the following minor issues relating to the proposed driveway access, which can either be addressed as part of this submission or alternatively can be covered by consent conditions:

The driveway design nominates an inverted crown whereas the preferred cross-section is a one-way crossfall.

The vehicular footpath crossing from Trutes Terrace is to be evenly splayed.

As a result of the information request further research was done in regards to servicing the site as the applicant requested that onsite effluent service the proposed development until adequate servicing is available. The onsite sewerage design as submitted was considered

to be unsatisfactory for proposed Lot 1 as Council prefers lot sizes of 4000m<sup>2</sup> to ensure sufficient room for recreational activities.

The applicant outlined that through use of a Voluntary Planning Agreement, the proposed subdivision and lots created would comply with Section A5 of the Tweed DCP 2008 once sewer infrastructure becomes available at reasonable cost.

It was determined that the onsite effluent disposal as designed would require 100% vegetation clearance which lots less than 4000m<sup>2</sup> would require. Notwithstanding, on site effluent disposal at this location is not be supported by Council Officers given Tweed DCP Section A5. The application was requested to be withdrawn as a result of this.

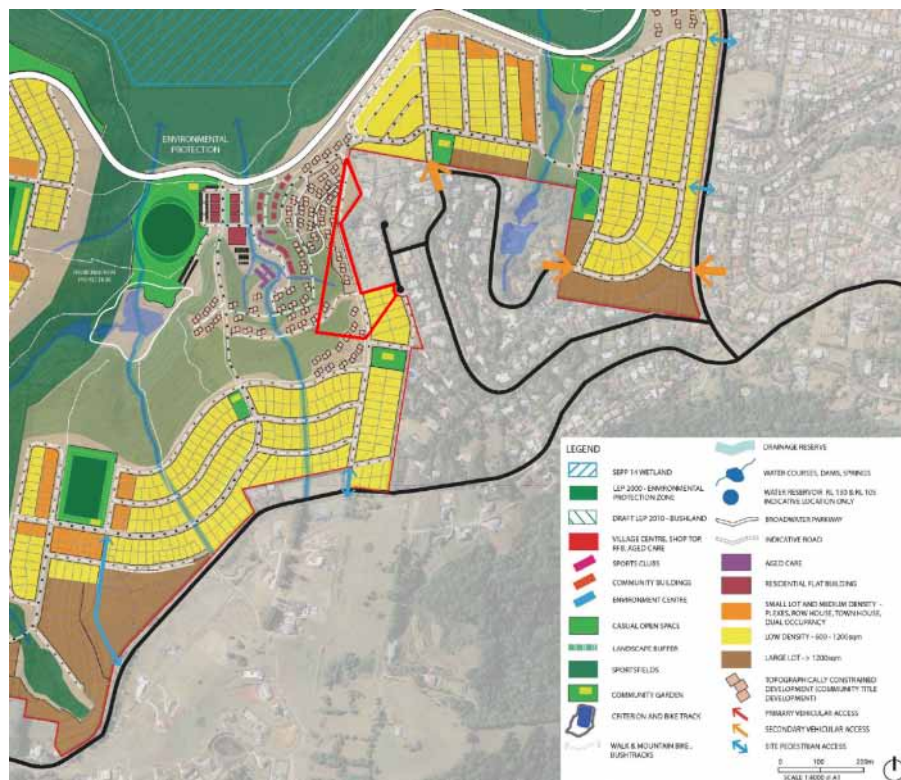
Summary

Having regard to relevant statutory controls in particular Section 79C Clause 1(a)(iii):

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

(iii) any development control plan

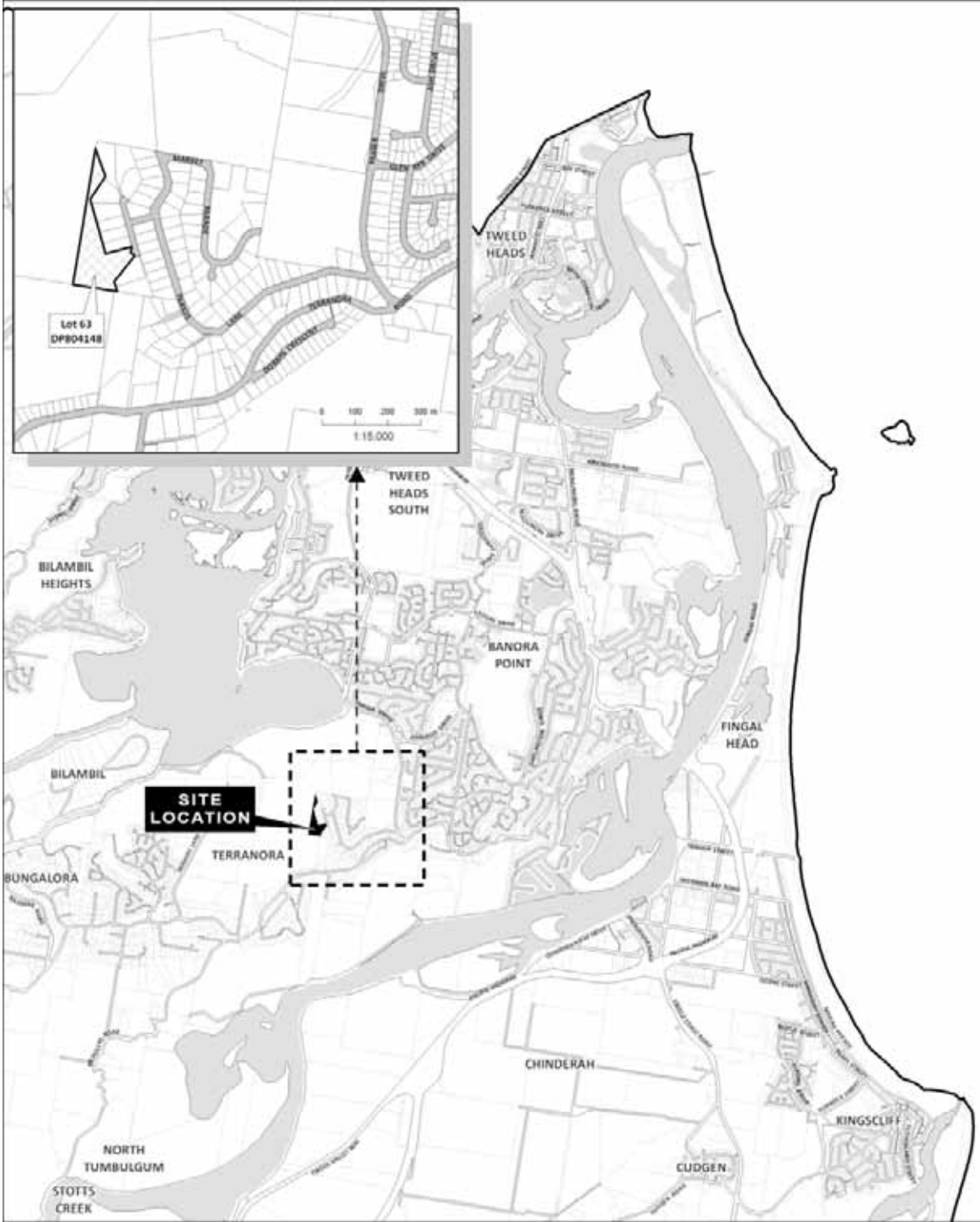
The proposed development is located in the 2(c) Urban Expansion zone which is intended for future urban development. The DCP Structure plan shows the subject site should accommodate approximately six low density residential homes and approximately 13 houses over a community title developments as shown on the figure below. The proposed subdivision is a massive under development and should be refused.



**Area E Indicative Structure Plan (Figure 2.2 Draft DCP B24 page 22 from the Subdivision Section)**

An assessment against the provisions of the urban subdivision objectives of Council's Development Control Plan Section A5 and Section B24 was deemed appropriate. The proposed development was assessed against the Tweed LEP 2000 and other relevant statutory controls and it was determined that the proposed two lot subdivision is not considered suitable. The proposed development is recommended for refusal.

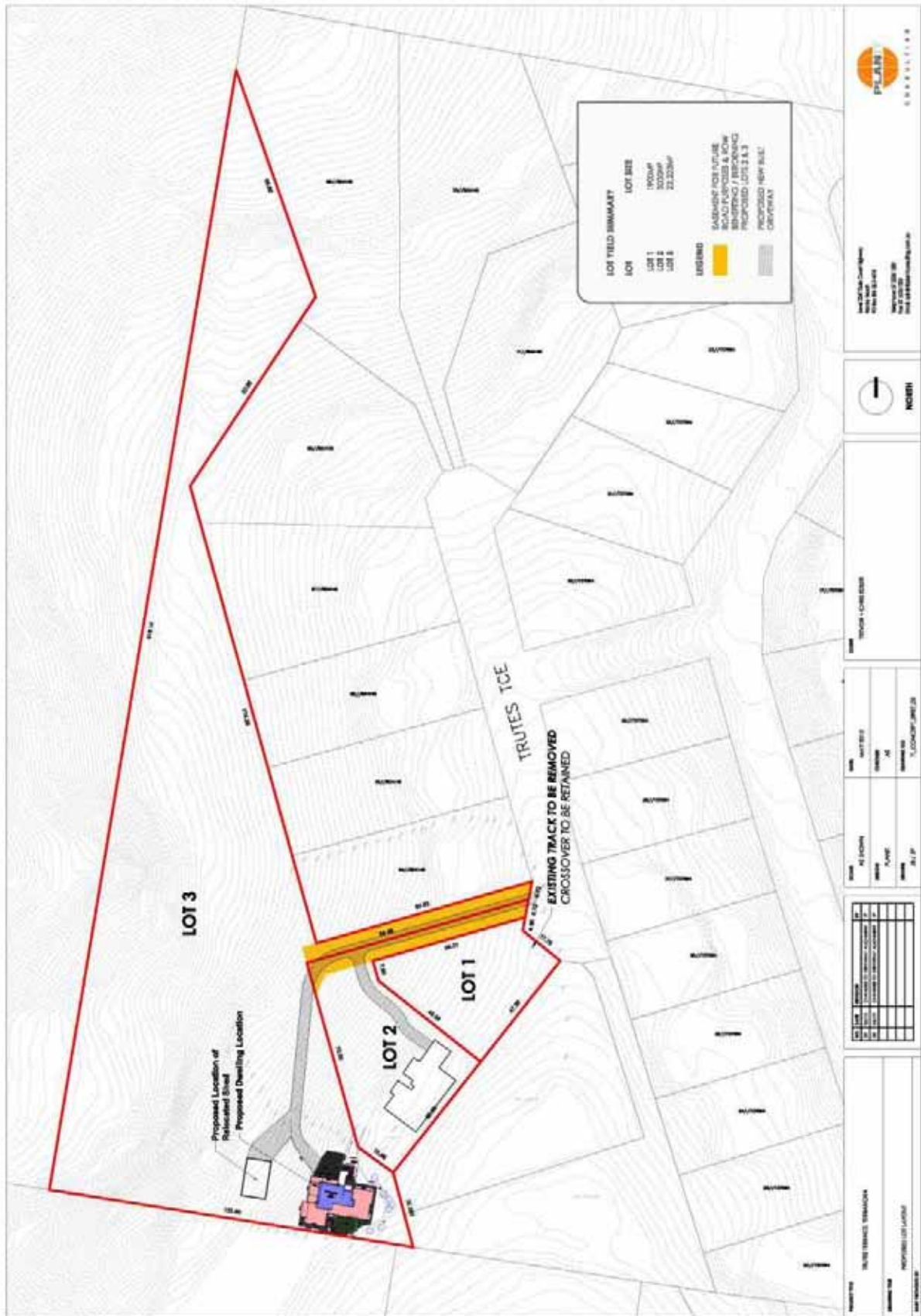
**SITE DIAGRAM:**

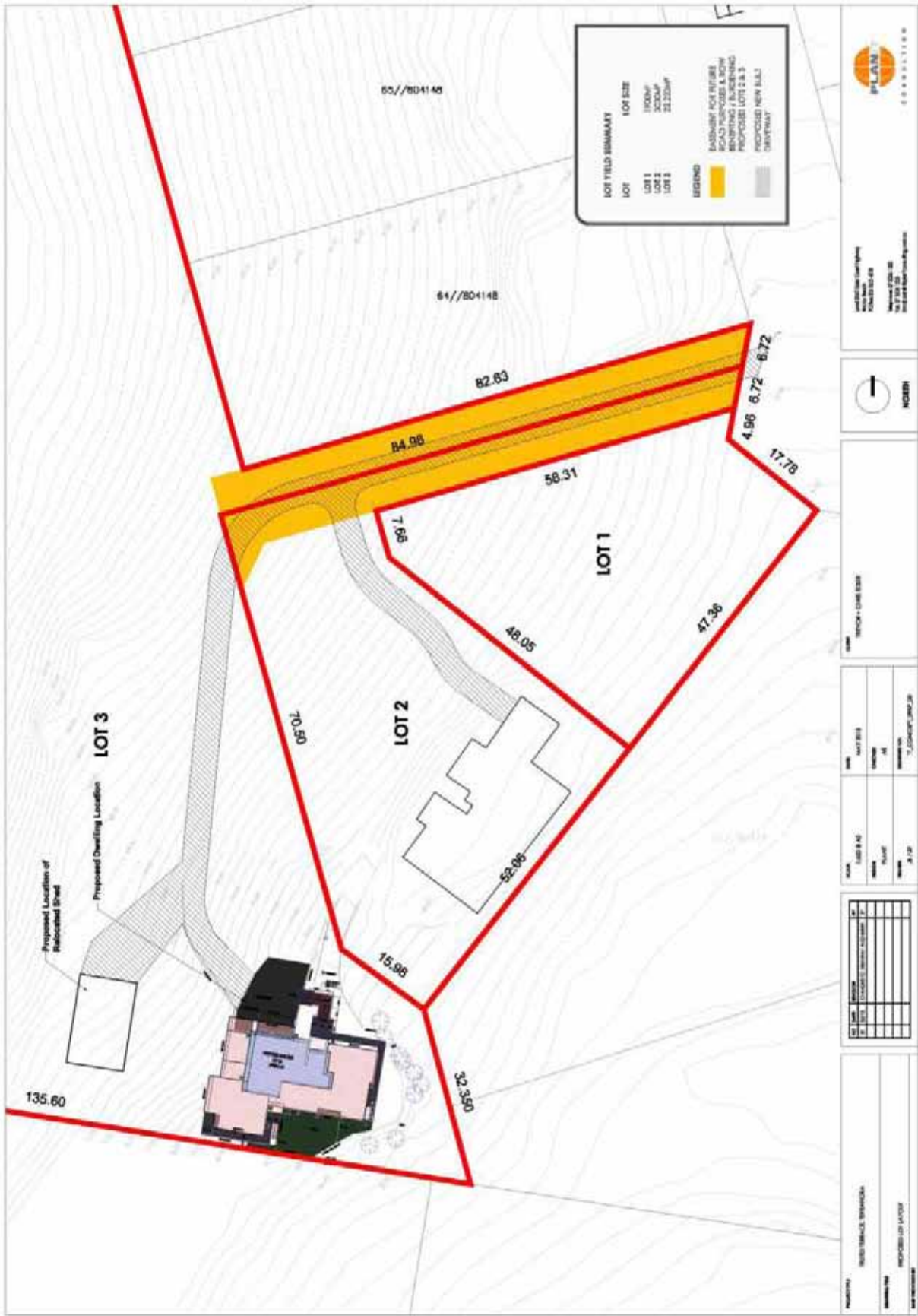


**Locality Plan**  
 Lot 63 DP 804148  
 No. 3-6 Trutes Terrace, Terranora

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied as to the accuracy 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 contract) for all expenses, losses, damages (including without limitation, liability in contract) which may be incurred or a result of data being inaccurate or not used, and for any reason. This information is supplied for the general guidance and it is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavation a 'dig before you dig' enquiry must be made by calling 8111. The information contained on this document remains valid for 12 three months from the date of issue.</p>	<p>Created: 26/11/2013                  © Land and Property Information (LPI) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p>		<p><b>Shire and Cultural Centre</b>                  3 Tumbulgum Road                  Murumbidgee NSW 2434</p> <p>PO Box 216                  Murumbidgee NSW 2434</p> <p>T 1 (02) 8470 2400   1000 282 812                  F 1 (02) 8470 2429                  W www.tweed-shire.nsw.gov.au                  E planning@tweed-shire.nsw.gov.au</p>	
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DEVELOPMENT/ELEVATION PLANS:







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

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

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

Clause 4 - Aims of the Plan

The aims of this plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:*
- “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and*
- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Shire 2000+ Strategy*
  - *Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

Strategic Plans

Clause 4 of the Tweed Local Environmental Plan 2000 states the following:

- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Shire 2000+ Strategy*

An assessment has been undertaken in regards to Council’s Strategic plans. There are three strategic plans which will be addressed with the Tweed Shire 2000+ Strategy and the Tweed 4/24 Strategic Plan being superseded plans and the most recent plan in force being the Community Strategic Plan 2011/2021. Although the earlier plans have been superseded they are still important in outlining the overall strategic plan for the Terranora area and the direction

Council has been working towards strategically for the area. Each of the plans have been assessed below.

### **Tweed Shire 2000+ Strategy**

The Strategic Plan for Tweed 2000+ which has now been superseded was adopted on 17 December 1996. The Plan provides the broad directions for future planning in the Tweed. Within the policies and actions section, references specifically to Terranora 'Area E' are made as follows:

**117. Green Belts** *Open space green belts will be addressed by:*

- (e) *limiting development of Area 'E; at Terranora to the north-facing slope of the Terranora Ridge, so that the southern face remains as a forested backdrop to the Tweed River and agricultural land.*

**122. Terranora (Area E)** - *Subject to meeting other strategic requirements for integrated planning, the detailed local area planning for Terranora should include the following principles:*

- *A relatively high portion of large residential lots (i.e. minimum size of 800m<sup>2</sup>) because of existing development and scenic values*
- *Defined areas of potential dual occupancy and medium density development*
- *Controls over clearing of vegetation on land containing vegetation with habitat significance*
- *Housing not located directly adjoining wetlands or other significant vegetation, buffer areas provided with these based on local characteristics of vegetation, drainage and topography*
- *Houses not permitted on prominent ridgelines*

From the information above it can be seen that there are a number of strategic directions for the Terranora area. It identifies a number of issues which need to be addressed prior to the release of the urban land including *an infrastructure plan and development control plan*. If this subdivision was to be approved it would create a situation where there are increased numbers of owners and therefore this would make it increasingly difficult to strategically plan the area. The cumulative impact of approving this application could be that a number of other land owners in the locality undertake similar subdivisions thereby increasing the number of owners and allotments not suitably serviced for urban subdivision. The approval of this subdivision would create an undesirable precedent for the area. It is therefore considered that the proposed development should be refused.

### **Tweed 4/24 Strategic Plan**

The Tweed 4/24 Strategic Plan which has now been superseded was adopted in September 2004. A key element of the strategy is as follows:

**Urban Development.** *Implement current plans for urban expansion including Cobaki and Bilambil Heights. Complete assessments of Terranora 'Area E' and Kings Forest. Retain green belts or buffers between settlements.*

Furthermore, Part 7 - Managing Urban Development outlines the following:

*Continued urban expansion over the next two decades is inevitable. Substantial areas of land at Cobaki Lakes, Bilambil Heights, Kings Forest and elsewhere have been zoned for development for many years. Population growth has slowed somewhat in recent years, but remains strong.*

*Further urban development depends on improved infrastructure, including roads, water and sewerage, drainage and flood control, parks and a wide range of community facilities (education, health, police etc). Whilst some of this infrastructure is Council's responsibility, State and Federal governments, the private sector and community organisations all have important roles to play. Adequate funding and effective coordination are essential.*

**Challenges and Opportunities** - *At current growth rates there is sufficient zoned land in the Tweed for 20-25 years residential development. In the short term there appears to be no need for Council to consider additional major release areas beyond those in the current Residential Development Strategy (Kings Forest, Terranora 'Area E' and Kielvale. However, the capacity of existing zoned residential land needs to be confirmed it is possible that some areas zoned for development may prove unsuitable or may not be released for many years. The likely extent of redevelopment for higher density housing in existing urban areas also needs to be assessed.*

**Strategic Directions** - *Council will liaise with developers to seek the timely release of zoned urban land to meet market needs. Master Plans for Kings Forest, Bilambil Heights (subject to adequate road access) and 'Area E' at Terranora (subject to rezoning) will be completed as quickly as possible.*

#### **Four-Year Priorities**

Urban Planning - *Review the likely capacity and timing of proposed urban release areas (Cobaki Lakes, Kings Forest, Terranora 'Area E' and Bilambil Heights) taking into account:*

- *Housing demand and affordability*
- *Infrastructure, road access and environmental issues*
- *Redevelopment potential in existing areas*
- *Needs for land for non-residential uses*
- *Possible alternative locations for development.*

It can be seen from the information above that Terranora 'Area E' is still regarded as an area for future urban development. A number of infrastructure improvements need to be completed before this can happen. It puts the onus on not only Council but landowners in the area. If the urban release is to go forward then Council needs to take a coordinated approach to the development. If this subdivision was to go forward then there would be an increase in land owners which could make it increasingly difficult to plan the area.

#### **Community Strategic Plan 2011/2021**

The Strategic Plan 2011/2021 is the current plan and was adopted by Council on 14 December 2010. *The Tweed Community Strategic Plan 2011/2021 is the community's 10-year vision for the Tweed, to protect the qualities that make the Tweed a great place to live and to create communities which are strong and well*

*connected. This plan creates a framework to implement Council's four-year Delivery Program and annual Operational Plan, which will align the community's aspirations with the necessary strategy development, planning and resourcing required to achieve the long-term vision and deliver the outcomes.*

The Community Strategic Plan outlines a number of other plans and policies which are to be used in conjunction with the Plan. These include the Tweed Urban and Employment Land Release Strategy 2009 which was implemented on 17 March 2009. This document is intended to examine growth options that would guide Tweed Shire towards 2031. Section 11 and 13 of this Plan relates to the directions for urban land development and implementation. Council could take a range of planning approaches or a combination of planning approaches to deal with growth and change over the next 25 years. A number of these are outlined as follows:

**11.1 Rely on Existing Zoned Areas** - *This option would see Council not rezone any more land for residential development over the life of the Strategy (till 2031) relying on existing zoned land to meet the demands of the market. Given the amount of land that Council has already zoned and the predicted growth rates, it is an option that would have some advantages. These would include allowing Council to concentrate on servicing the existing established areas and current zoned lands with infrastructure and social services; allow Council to focus on urban design issues; and allow Council to review existing planning controls (particularly DCP's) to better address local issues.*

**13.1.3 Land Release** - *The potential urban release lands nominated in this Strategy are considered in a short, medium and long term land release program based on a 0-10 year, 10-20 year and 20+ year time frame. This Strategy recognises the large existing supply of zoned land located predominantly at Kings Forest, Cobaki Lakes, Bilambil Heights, Area E and West Kingscliff and the role that these lands will play in supplying the residential needs of the Tweed over the next 10 years in particular.*

Terranora 'Area E' is still considered to be a major land release area identified within the strategic plan for Tweed Shire. For effective urban planning to be undertaken it is considered that the fragmentation of urban expansion zoned land should be limited. If this subdivision is approved it will set a precedent for other land owners to undertake similar types of developments reducing Council's ability to move forward with its urban release of the area.

Based on the above strategic plans outlined for the Terranora 'Area E' urban land release area it is considered that the proposed development would have a negative cumulative impact on the surrounding locality. It is therefore recommended that the proposed subdivision be refused.

The proposed development is not considered to be consistent with the aims of the TLEP 2000. The proposed development is not considered to be consistent with the vision of the shire "to manage growth so that the unique natural and developed character of the Tweed Shire is retained." The proposed development is for a three lot subdivision which does not comply with the primary objective of the zone as seen below, and the consent considerations contained within the TLEP 2000.

*Tweed Shire 2000+ Strategy* has been superseded through by both Tweed 4/24 and the adoption of the Community Strategic Plan 2011/2021. All three documents include references to Terranora 'Area E'; urban release area and have been assessed above.

The proposed development is non-compliant with the TLEP 2000 in terms of creating negative cumulative impacts being that it creates a precedent for other similar types of development to go ahead in the area. It is considered not to be in keeping with the aim of the plan in particular, that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

#### Clause 5 - Ecologically Sustainable Development

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

To accommodate the onsite effluent as proposed for Lot 1, 100% vegetation clearance would be required and maintained to ensure onsite effluent is accommodated. It is considered that conservation of biological diversity and ecological integrity may be impacted, were this application to be approved.

#### Clause 8 - Consent Considerations

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

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

The land is within the 2(c) zone and the proposed subdivision is not consistent with the primary objective of the zone which is as follows:

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

It is considered that the proposed subdivision does not ensure optimum utilisation of the land. A secondary objective of the zone is to:

*"enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan."*

As the proposed development does not comply with Council's Development Control Plan Section A5 - Subdivision Manual as detailed later in this report it is considered that it also does not meet the secondary objective of the zone.

The proposed development if approved may result in unacceptable cumulative impacts. The creation of two additional freehold lots is an under utilisation of land and may encourage, or allow for further subdivision development in the

surrounding locality due to precedence. The subject site is within the 2(c) Urban Expansion zoned land and has been identified for future urban development. Allowing this subdivision could create a negative cumulative effect being the first subdivisions in the urban expansion area of 'Area E' which is underutilised and not serviced by the essential services outlined in Council's Development Control Plans (DCPs). It could lead to a number of other residents within the locality applying for similar subdivisions and hence reducing the likeliness of the area to be strategically planned for its future urban purposes. It is therefore recommended that the application be refused.

#### Clause 11 - Zone Objectives

The subject land is zoned 2(c) Urban Expansion. The objectives of the 2(c) zone include:

##### *Primary objective*

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

##### *Secondary objectives*

- *To allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- *To ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*
- *Enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.*

The proposed subdivision is to create an allotment for the purpose of creating two additional lots for residential purposes. The proposal has not ensured its optimum utilisation as the zone is for future urban development. It is considered that the intent of the proposed subdivision does not satisfy the objectives of the Tweed LEP as both proposed lots will not be serviced in accordance with Council's Development Control Plan. Additionally, the subdivision may lead to establishing land use which conflicts with the future urban expansion and strategic planning for the Terranora area.

The proposal is therefore not consistent with the relevant zone objectives and recommended for refusal.

#### Clause 15 - Essential Services

Council's Strategic and Asset Engineer has provided the following:

##### *Water*

*The site is currently serviced by an existing Council water main in Trutes Terrace. The developer proposes to leave this existing connection in place to the existing dwelling and to provide additional connection points for the proposed lots within the access handles of each allotment. This will require the construction of two new service connections from the existing line to the proposed Lots 2 and 3.*

*Water pressures at this location are around 80m and therefore sufficient protection such as a pressure limiting valve should be installed.*

### *Sewer*

*The site as it exists is not serviced by Council sewer. On-site treatment exists for the existing dwelling and the Statement of Environmental Effects Report proposes the new lots shall also be serviced by onsite treatment. The Tweed Shire Council Development Control Plan: Section A5-Subdivision Manual requires that land in Zone 2(c) Urban Expansion must provide sewerage services to the lot as specified in Development Design Specification D12.*

*Pressure sewer currently exists up to 30 Parkes Lane (approximately 640 meters via road easement from the proposed development), however the downstream system has capacity limitations and no further extension can be permitted at this stage. The Parkes Lane limited sewer scheme was developed on a strictly limited basis of only permitting an additional 10 ET connection of which 5 are already connected or allocated. This scheme involves an additional charge of \$4320 per ET.*

*It is intended to provide a sewerage system to the Parkes Lane area when other development within Area E progresses to a point at which it will be economic. Prior to that, the development should be refused unless the developer can demonstrate how the requirement to connect to sewer in the short term can be met.*

*The alternative is for Council to find a way to circumvent the requirement of DCP Section A5.*

### *Recommendation*

*The development should be refused on the basis that it cannot meet DCP Section A5.*

Electricity services are currently provided to the area via Essential Energy infrastructure.

Telecommunication services are currently provided to the area via Telstra infrastructure.

As the proposed development cannot provide the essential services as required by Council it is considered appropriate to refuse the application.

### Clause 16 - Height of Building

The site has a maximum building height of 9m from the finished ground level and a storey limit of three. The proposed dwelling with attached secondary dwelling has a maximum total height of 7.5m. It has been designed to incorporate two storeys. The proposal complies with the clause.

### Clause 17 - Social Impact Assessment

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

### Clause 19 - Subdivision

The objective of this clause is to provide a comprehensive system of planning controls for the subdivision of land in the Tweed local government area. The proposed development does not satisfy the provisions outlined for Area E and is accordingly recommended for refusal.

#### Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP 2000 requires Acid Sulfate Soils (ASS) management in relation to development where such is likely to be impacted upon. The subject site exhibits Class 5 ASS however, given the elevated nature of this site, acid sulfate soil is not considered a constraint. The applicant has provided an Acid Sulfate Soil Minor Works Plan and it is considered that ASS will not be impacted.

#### Clause 38 - Future Road Corridor

The objective of Clause 38 is to cater for the alignment of, and development in proximity to, future roads. Due to the location of the development within the 'Area E' Urban Release Area a 13.45m wide easement for future road purposes which will both benefit and burden Lots 2 and 3 is required. This has been included in the subdivision and can be conditioned if approved.

#### Clause 39 - Remediation of Contaminated Land

A Preliminary Site Contamination Assessment has been carried out which was reviewed by Council's Environmental Health Unit who responded with the following:

*'dwelling sites on proposed lot 1 and 3 within the proposed subdivision of Lot 63 DP 804148 are unlikely to be significantly impacted by potential contaminants of concern and therefore suitable for the proposed residential use and in relation to potential site contamination associated with current or former agricultural activities, no remediation is required.'*

It is therefore considered that the proposed complies with this clause.

#### Clause 39A - Bushfire Protection

The subject site has a portion which is identified as being bushfire prone land. The proposed development was referred to the NSW Rural Fire Service who responded on 5 September 2013 with one condition of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

#### Clause 53D - Specific provisions for Terranora Urban Release Area E

The site forms part of the Terranora 'Area E' Urban Release Area and is subject to an assessment against Clause 53D of the TLEP 2000. Clause 53D(3)(a) specifies that the consent authority must not consent to development on land to which this clause applies unless it is satisfied that a development control plan has been prepared for the land.

Development Control Plan Section B24 has been adopted but not made by Council on 13 December 2011 and applies to the whole of the Urban Release Area.

At the Council meeting of 26 June 2012, Council resolved (Item 352) that:

*"Clause 53D(3)(a) of the Tweed Local Environmental Plan 2000 is considered satisfied for minor works which do not affect the overall strategic objectives for Area E Terranora".*

Minor development is considered not to intensify existing uses over the Urban Release Area. It is considered that a subdivision of land creating additional



residential allotments is not minor in nature and may affect the overall strategic objectives of Terranora 'Area E'.

The proposal does not raise any issues with regard to contamination, proximity to wetlands or non-compliance with Council's Tweed Urban Stormwater Quality Management Plan.

In addition, 'Area E' does not yet have an adopted S94 Contributions regime. Any increase in density could not be considered until an appropriate S94 regime is endorsed. This application does not propose to increase density on site and is therefore able to be considered as minor.

As such, this clause is considered to be unsatisfactory and refusal of the application is recommended.

### **State Environmental Planning Policies**

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

##### **Clause 32B: Coastal Lands**

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

- (a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies. [In this case, the proposed granny flat does not contradict the strategic aims and objectives of the policy, owing to its residential nature and lack of impact on any adjoining water body.]
- (b) Council is also required to consider the Coastline Management Manual.
- (c) A consideration of the North Coast: Design Guidelines is required.
- (d) Public access to the foreshore must not be impeded. This proposal does not restrict access to any public foreshore area.
- (e&f) Council is required to consider whether the development would result in overshadowing of beaches or adjacent open space. This application does not result in overshadowing of any beaches or adjacent open space.

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

##### **Clause 43: Residential development**

- (1) The council shall not grant consent to development for residential purposes unless:
  - (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,
  - (b) it is satisfied that the proposed road widths are not excessive for the function of the road,
  - (c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,
  - (d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and

(e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

As a single dwelling development with attached secondary dwelling, the proposed density reflects the surrounding density. However, the proposed development is recommended for refusal as the proposed is unable to be serviced by Council sewer and is underutilised as 2(c) Urban Expansion zoned land.

The proposal is therefore considered to be inconsistent with the relevant provision (a) of Clause 43 of NCREP 1988.

SEPP No. 55 - Remediation of Land

A Preliminary Site Contamination Investigation for Lot 63 DP 804148 prepared by HMC Environmental Consulting Pty Ltd dated April 2013 (Report: HMC 2013.027 CL) has been submitted. Council's Environmental Health Unit have assessed the report and have provided the following:

*'HMC have advised that in relation to current or past landuse associated with agricultural activities, the two new nominated dwelling sites on proposed lot 1 and 3 within the proposed subdivision of Lot 63 DP 804148 are unlikely to be significantly impacted by potential contaminants of concern and therefore suitable for the proposed residential use and in relation to potential site contamination associated with current or former agricultural activities, no remediation is required.'*

It is therefore considered that the proposed development is in accordance with the requirements of the SEPP.

SEPP No 71 – Coastal Protection

The subject land does not have frontage to the coastal foreshore reserve and therefore will not restrict public access to the foreshore. The development is not consistent with the zone objectives of TLEP 2000 as outlined in the report above. The proposed development additionally does not meet the minimum requirements of the relevant Council DCPs and is inconsistent with ESD principles and objectives. It is therefore considered that the proposal does not satisfy the matters for consideration under SEPP 71 and is recommended for refusal.

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

The Draft Tweed Local Environmental Plan 2012 relates to the subject site and zones the land R1 - General Residential. Within the R1 - General Residential zone the minimum subdivision size is 450m<sup>2</sup>. The proposal complies with this minimum allotment size.

Clause 1.2 - Aims of Plan provides the following:

(2) *The particular aims of this Plan are as follows:*

(a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents.*

The greater strategic plan for the area is for future urban development as per Council's Strategic policies outlined above. It is considered that the proposed development is not consistent with the aims of the Draft LEP 2012 and is recommended for refusal.

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

## Tweed Development Control Plan

### A1 – Residential and Tourist Development Code

Given there is a site specific Development Control Plan for the subject site this Section of the DCP only applies to the extent of any inconsistency. The provisions in the site specific DCP are sufficient in this instance to assess the application.

### A5-Subdivision Manual

The proposed subdivision has been assessed against section A5. The subject application was referred to Councils Development Engineering Section who provided comment on the application against the provisions of DCP A5. Further information was requested in relation to a number of DCP A5 issues relating to retaining walls and the proposed driveways. This information was not received as the applicant was advised that the proposal would be refused.

Relevant sections of A5 are addressed in more detail below:

#### A5.4.3 Physical Constraints

The Subdivision Manual (A5) requires that master planning of the site is undertaken to identify physical constraints, including environmental constraints on the development site or adjacent land. The intent is that urban form responds to the natural landform and drainage system, topographical features and environmental constraints. The proposal is not considered to be consistent with the approved DCP for the site, as detailed within this report.

#### A5.4. Environmental Constraints

A5 also requires that site constraints are identified including contaminated land, landslip, bushfire threatened species, ecological communities, coastal lands, significant vegetation, landscape character, acid sulfate soils, heritage or cultural items.

As detailed within this report, this application relates to the subdivision of a single allotment into three allotments for residential development. The proposal is to utilise onsite effluent disposal instead of servicing the site with sewer until it is available. As a result of this the proposed Lot 1 would require to be cleared of all vegetation to ensure the onsite effluent can be accommodated. It is considered that this may raise issues with the ecological communities and landscape character.

The proposed development is also located in an area as identified on the bushfire prone land maps. The proposed development was referred to the NSW Rural Fire Service who responded on 5 September 2013 with one condition of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

#### A5.4.7 Storm Water Runoff, Drainage, Waterways and Flooding

The site is not flood prone and is not located in close proximity to waterways. The proposed development is not considered to increase the severity of stormwater runoff, impact drainage or increase the risk of flooding in the locality.

#### A5.4.8 Urban Structure

The Subdivision Manual seeks to ensure neighbourhood design is walkable, connected and includes an interconnected street network. It also considers that a network of well distributed parks should be provided that offer a variety of safe, appropriate and attractive public open spaces and to ensure a site responsive approach to urban development that avoids unjustifiable changes to the natural landform.

The urban structure has been dictated by the Draft Tweed DCP B24. The urban structure is considered to be inconsistent with the provisions of the DCP as the site is located within an urban release area which is not adequately serviced and is an underutilisation of the site in terms of dwelling density.

#### A5.4.10 Movement Network

This section of the Subdivision Manual seeks to ensure adequate street network and intersection design. The proposed development has included a future road reserve to adequately cater for the release of the urban area being Area E. It is considered that the proposal is inadequate in terms of the movement network given the inconsistency with the site specific DCP.

#### A5.4.11 Open Space Network

The proposed additional allotments do not generate the need for additional parks, however each lot would be required to contribute to the cost of local parks under a funding mechanism which has not been established.

#### A5.4.12 Lot Layout

Whilst the proposal complies with the minimum lot size for dwelling houses of 450m<sup>2</sup> and are of a regular shape capable of accommodating a building platform with a minimum dimension of 10m x 15m, the proposed development is located within the urban release area being Area E the three lot residential subdivision is considered to be an underutilisation of the site in terms of density. The development is therefore recommended for refusal.

#### A5.4.13 Infrastructure

The proposed development was referred to Council's Strategic and Asset Engineer who provided the following:

*"The site as it exists is not serviced by Council sewer. On-site treatment exists for the existing dwelling and the Statement of Environmental Effects Report proposes the new lots shall also be serviced by onsite treatment. The Tweed Shire Council Development Control Plan: Section A5- Subdivision Manual requires that land in Zone 2(c) Urban Expansion must provide sewerage services to the lot as specified in Development Design Specification D12.*

*Pressure sewer currently exists up to 30 Parkes Lane (approximately 640 meters via road easement from the proposed development), however the downstream system has capacity limitations and no further extension can be permitted at this stage. The Parkes Lane limited sewer scheme was developed on a strictly limited basis of only permitting an additional 10 ET connection of which 5 are already connected or allocated. This scheme involves an additional charge of \$4320 per ET.*

*It is intended to provide a sewerage system to the Parkes Lane area when other development within Area E progresses to a point at which it will be economic. Prior to that, the development should be refused unless the developer can*

*demonstrate how the requirement to connect to sewer in the short term can be met.*

*The site is currently serviced by an existing Council water main in Trutes Terrace. The developer proposes to leave this existing connection in place to the existing dwelling and to provide additional connection points for the proposed lots within the access handles of each allotment. This will require the construction of two new service connections from the existing line to the proposed Lots 2 and 3.*

*Water pressures at this location are around 80m and therefore sufficient protection such as a pressure limiting valve should be installed.*

*The current site is not provided with sewerage reticulation and previous approval had allowed for an on-site sewage management system to service the site. Under Section A5 of this DCP the subdivision would require connection to sewage.*

*Following further correspondence with the applicant and a meeting with members of Councils Development Engineering Section, it was considered that it is unlikely that the applicant would be willing to provide information in relation to the number of issues raised in the Request for Further Information letter in relation to the provision of sewer facilities for each site. It is therefore considered appropriate to assess the application based on the information on the file.*

The proposed development is considered to be in contravention of DCP A5, in particular Section A5.4.13 Infrastructure, and as such should be refused.

It is noted that Council's Environmental Health Officer made the following comment:

*"On-site Sewage Management - Proposed Lot 1 is considered restrictive in size for a dwelling and associated structures and may not provide adequate area for social and recreational uses and landscaping/deep soil zones.*

*Consideration should also be given to whether it is desirable to remove the majority of existing vegetation on the proposed lots 1 and 2 for land application areas."*

It was considered that the removal of 100% of the vegetation on site to cater for the proposed on-site effluent is not a desirable situation. As such it is considered appropriate to refuse the application based on the constraints.

Based on the information provided and the Council's strategic planning direction it is considered that the application is required to comply with the urban standards of this section of the Development Control Plan. The application is therefore recommended for refusal.

#### A11-Public Notification of Development Proposals

The proposed development was notified to surrounding neighbours for a period of 14 days finishing on Monday 19 August 2013 in accordance with the Development Control Plan. From this notification period there were no submissions received in relation to the proposal. The proposed development therefore complies with this section of the DCP.

#### B24-Draft Area E Urban Release Development Code

It should be noted that Development Control Plan B24 Area E Urban Release Development Code has been adopted but not yet in effect.

The aims of this section of the Development Control Plan are to ensure:

1. *Quality residential development that responds to aspect, slope and climate;*
2. *Protection and enhancement of natural bushland areas, waterways and land of high ecological value;*
3. *Provision of quality open space and public domain areas that meet the needs of the local and regional community;*
4. *Provision of integrated into pedestrian and cycleway networks;*
5. *Co-ordinated infrastructure provision to ensure efficient use of the land and efficient infrastructure supply and provision.*

It is considered that the development does not provide adequate infrastructure for the proposal and as such should be refused.

*Proposed dwelling with attached secondary dwelling*

Tweed DCP Section B24 has items relating to Development Applications in regards to design specifications as follows:

2.3 Design Principle 1 - Environment

*Objectives*

- *The environmental lands, natural watercourses and other natural systems are protected and retained.*
- *To preserve and protect land of high ecological significance from urban development.*
- *To encourage the enhancement of land with high environmental qualities.*
- *To provide for the rehabilitation and enhancement of degraded habitat and ensure that comprehensive rehabilitation plans form part of any future development applications or masterplans.*
- *To provide for the protection and improvement of existing hydrological conditions in Terranora Broadwater.*
- *To provide a natural growth boundary to residential development and visual relief for the proposed urban environment.*
- *To integrate localised 'green belts' into the urban footprint.*
- *To create additional wildlife corridors.*
- *To embody urban development within a park-like setting.*

If the development were to be approved with the on-site effluent disposal as requested there would be a requirement for all vegetation for Proposed Lot 1 to be removed. The proposed would therefore not enhance the environment. As such, the proposed development is recommended for refusal.

2.4 Design Principle 2 - Landscape Character and Views

*Objectives*

- *Maintain the integrity of ridge lines, valleys and natural topographic features as an important part of the localities character.*

- *Promote subdivision design which reduces the need for benching and significant cut and fill.*
- *To ensure site modifications, retaining walls and engineered elements do not adversely impact on the streetscape, or precincts character.*
- *The watercourses and vegetated drainage lines running through the site provide excellent visual, recreational, educational and environmental preservation opportunities and are to be integrated with opportunity for pedestrian links between.*
- *Realise and retain key visual character components of the site through a contemporary urban structure and built form.*
- *Provide view sharing and maintenance of view fields.*
- *Maintain important regional and local views.*
- *Preserve the visual amenity of and within the site.*
- *The identification and retention of green breaks, important feature trees/stands of trees and important view fields.*

The proposed development generally complies with this design principle. It is considered that the dwelling and attached secondary dwelling would not decrease the visual amenity of the area.

## 2.5 Design Principle 3 - Landforming

### *Objectives*

- *Maintaining and respecting the landform – buildings and civil works are to be designed to landform rather than landform designed to buildings and civil works;*
- *Maintain the integrity of ridge lines, valleys and natural topographic features as an important part of the locality's character;*
- *Promote subdivision, building design and structural systems which reduce the need for benching and significant cut and fill;*
- *Understand the design relationship of slope to appropriate construction types to minimise cut and fill and respond to upslope, down slope, side slope and combination slope with appropriate design consideration;*
- *Adopt an overall bulk earthworks strategy that includes:*
  - *subdivision design which reduces the need for benching and significant cut and fill;*
  - *to limit modification of site levels at boundaries to maintain amenity to adjoining properties;*
  - *to ensure site modifications, retaining walls and engineered elements do not adversely impact on the streetscape character;*
  - *ensure that fencing on top of retaining walls does not adversely impact amenity of neighbouring properties or de-stabilise retaining walls;*
  - *where possible, the use of the stone found on the site should be incorporated into the retaining walls, although it is understood that this stone would not be suitable for structural elements of retaining walls.*

The proposed development only proposes minor earthworks. It is considered that the proposed development is consistent with this design principle.

## 2.6 Design Principle 4 - Road Layout Traffic and Transport

### Objectives

- *As well as providing access for vehicles, streets and roads are to be pedestrian safe and friendly environments.*
- *Integrate the principles of WSUD into street and open space design.*
- *Progressively implement the construction of Broadwater Parkway, the primary road for the Area E Urban Release Area.*
- *The design of Broadwater Parkway is to create a sense of place through a range of public domain treatments and address pedestrian movement and comfort, efficient vehicle movement, and establish a key entry statement and journey to the overall character and appearance Area E.*
- *A road layout and design that provides integration between the existing urban fabric, particularly to the East and West, for an efficient bus transport option. Suitable locations and attractive bus shelter designs should be determined to further encourage this sustainable mode of transport.*
- *A road network and layout that establishes a clear and legible configuration contributing to way finding and establishing a strong streetscape character in terms of carriage widths, verge, street trees and implementation of water sensitive urban design principles.*
- *Adequate integrated bicycle facilities (parking and on/off street routes). Particular consideration should be given to providing East-West links throughout Area E that traverse the same contour, or provide minimal transition in elevation to further encourage this healthy and sustainable form of transport.*

The proposed development has incorporated a future road reserve through all three allotments as it is a requirement for access for the future development when Area E is released. It is considered that the road reserve is adequate to cater for any future development. It is however noted that development of the area should not be undertaken until adequate services can be provided for the urban release area. As such the proposal is recommended for refusal.

## 2.7 Design Principle 5 - Open Space

### Objectives

- *Ensure a mix of active and passive open space to service the community;*
- *To integrate road layout with open space and pedestrian/cycle paths to achieve good access, connectivity and site permeability;*
- *The primary role of the open space is to ensure that the passive and active recreation needs of the proposed community are met. However, the open space is also expected to provide visual relief to the urban environment and to be designed to contribute towards an overall identity and a new 'sense of place' for the community (responsive to the unimproved nature and vistas characteristic of the undeveloped site);*



- *The design of the individual open spaces and overall network is to facilitate use by the community. Open space should incorporate design aspects of safety, accessibility, activity (through embellishments) and utility (e.g. slope, dimensions). The network in the area should acknowledge its role in the 'bigger system' by building upon and connecting to open spaces in surrounding areas;*
- *Ensure a diverse range of quality open spaces is anticipated to allow for diversity of recreation use and flexibility to meet the changing recreation needs of future generations;*
- *Ensure the provision of a structured open space facility within the Area E Urban Release Area;*
- *Encourage the delivery of alternate forms, uses and facilities for public open space;*
- *Provide a series of well designed public open spaces that contributes to the identity, amenity and wellbeing of the community;*
- *Provide open space that is conveniently and safely accessible to users, particularly pedestrians and cyclists;*
- *Ensure green linkages are provided through the residential precincts to connect the open space system into the greater (external) network;*
- *The open space areas are designed to ensure that land is not fragmented by physical barriers preventing use by those that it intends to service, including inhibited groups such as the frail;*
- *To ensure that open space areas comprise suitable dimensions, quality of land and are unencumbered by hazards;*
- *Provide opportunity for community gardens.*

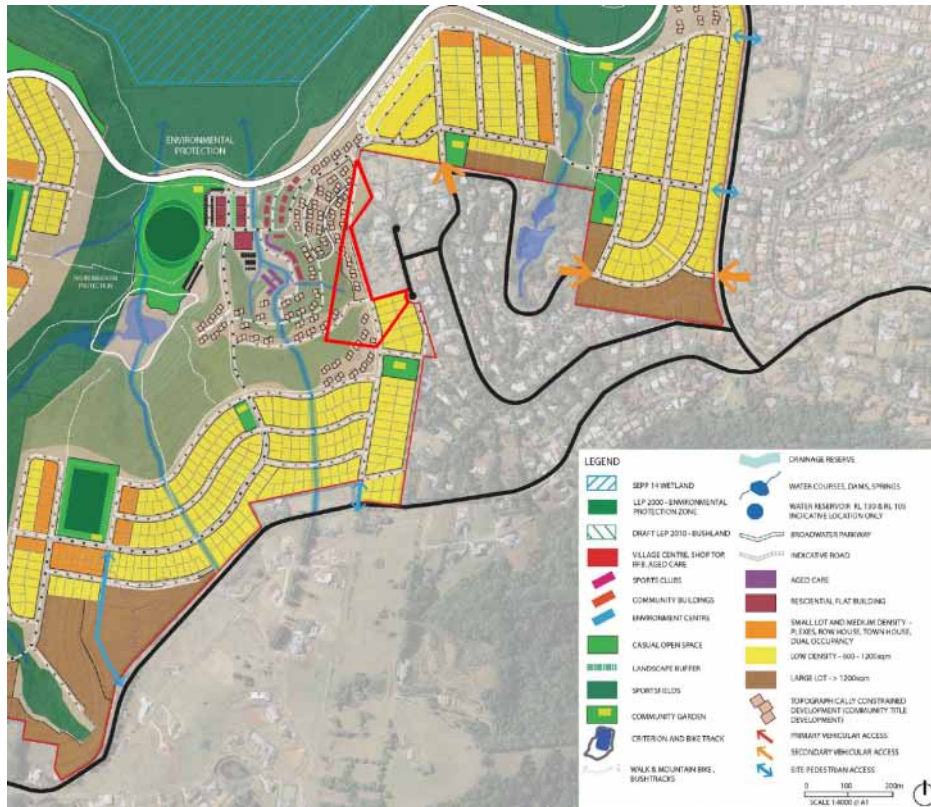
The proposed development is for a three lot subdivision. It is considered that open space is not required as a part of this application and contributions could be levied for this component.

## 2.8 Design Principle 6 - Dwelling and Allotment Mix

### *Objectives*

- *To provide for a range of lot sizes and medium density integrated sites which will provide a broader range of housing types, sizes and housing choice for future occupants.*

The proposed development represents an under-utilisation of the site. As seen in the figure below, the site is envisaged for a broad range of housing types and sizes. The proposed development is for a three lot subdivision with a detached dwelling and attached secondary dwelling. The proposal has not ensured its optimum utilisation as the zone is for future urban development. It is therefore recommended that the proposed development should be refused.



Area E Indicative Structure Plan (Figure 2.2 Draft DCP B24 page 22 from the Subdivision Section)

## 2.9 Design Principle 7 - Urban Design, Streetscape and Public Domain

### Objectives

- Public domain areas both within the village centre and residential areas are embellished to a high standard and reinforce the landscape character of the locality.
- Public domain areas are safe and accessible to all users.

Not applicable. It is considered that a three lot subdivision does not require public domain enhancements.

## 2.10 Design Principle 8 - Solar orientation

### Objectives

- Encourage subdivision design which maximises opportunity for good solar orientation and access to prevailing breezes in terms of street layout and lot configuration;
- Encourage buildings which respond to the natural environment and climatic condition of the location;

The proposed development has been oriented for good solar orientation and has access to prevailing breezes. The applicant has provided shadow diagrams which comply with the provisions.

## 2.11 Design Principle 9 - Hazards and Resilience

### Objectives

- Ensure that development is appropriately designed to accommodate for potential climate change impacts.

- *Ensure that any soil contamination is identified and suitably mitigated prior to the development of Area E.*
- *Provide only suitable development and landuses within land identified as affected by a Probable Maximum Flood.*
- *Minimise the disturbance of acid sulfate soils.*
- *Provide a subdivision layout that responds to and manages bushfire hazards.*
- *Incorporate design elements and urban buffers, such as lot size and orientation, perimeter roads or overland drainage reserves, to enable the maintenance of existing vegetation and provide adequate separation of residential landuses from any hazard.*
- *Ensure areas identified as 'currently unsuitable' are excluded from development for urban purposes or other purposes that are sensitive to soil stability.*

The proposed development is located within a mapped bushfire prone area. The proposed development was referred to the NSW Rural Fire Service who responded on 5 September 2013 with one condition of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

## 2.12 Design Principle 10 - Infrastructure

### *Objectives*

- *Progressively implement the design and construction of essential services for Area E and ensure coordinated and efficient delivery;*
- *Convey external catchment flows safely through the site;*
- *Preserve existing catchment boundaries and utilise existing water courses and gully lines for conveyance where practical and environmentally sustainable;*
- *Provision of minor and major stormwater collection and conveyance systems for the development land;*
- *Provision of stormwater quality control devices to meet Council's stormwater quality objectives in accordance with Development Design Specification D7 – Stormwater Quality;*
- *Provision of stormwater detention / retention devices and level spreaders to ensure that stormwater discharge from the development does not create significant adverse impacts on receiving water bodies, wetlands and environmental land.*

Section 2.12 - Design Principle 10: Infrastructure has the following:

*A sewerage strategy for Area E was developed in the Banora Point Sewerage Strategy Study (September 1999). This strategy provides for a new regional sewer pump station to be constructed within Area E. Flow from the Terranora Village sub-regional pump station (SPS3033) will be intercepted and re-pumped through a new 375 diameter sewer rising main (SRM) direct to the Banora Point*

*Wastewater Treatment Plant, unloading the existing SPS3018 Fraser Drive. Recent analysis has shown that:*

- *The estimated inflow to SPS3018 has increased over that anticipated when the 1999 Strategy was prepared.*
- *The disused 150 diameter SRM was placed in service some years ago to reduce the effect of the additional load.*
- *The existing SPS3018 is performing below the estimated peak wet weather flow.*
- *SPS3018 cannot be satisfactorily upgraded to adequately cope with the estimated interim inflow on the existing site.*
- *The corridor expected to contain the new 375 diameter SRM already has two active mains and it is considered that no additional mains should be constructed in that corridor other than the proposed 375 diameter main.*

*Accordingly, further investigation of staging options is required to determine a suitable interim strategy to enable development to proceed.*

The proposed development does not comply with the Development Control Plan in relation to servicing the site.

The development does not ensure co-ordinated infrastructure provision to ensure efficient use of the land. The proposed development is also an underutilisation of the land. The application should therefore be refused.

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

Clause 92(a) Government Coastal Policy

The proposed development is consistent with the objectives and strategic actions of the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

No demolition is proposed with the application.

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

The site is not located within a coastal zone management area.

**Tweed Shire Coastline Management Plan 2005**

The site is not affected by the Tweed Shire Coastline Management Plan 2005. No further assessment is required.

**Tweed Coast Estuaries Management Plan 2004**

The site is not affected by the Tweed Coast Estuaries Management Plan 2004. No further assessment is required.

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

The site is not affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater. No further assessment is required.

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

### Context and Setting

The proposed subdivision whilst considered minor in nature by itself, could set an undesirable precedent and create a negative cumulative impact upon the locality. As outlined previously, the subdivision is located within the Terranora 'Area E' Urban Release Area. If this application was to be approved it would create a precedent for a number of other similar applications to come in creating a large number of smaller allotments with numerous landowners making it difficult to strategically plan the area as envisaged by the adopted DCP. A number of infrastructure issues need to be rectified before this happens.

### Flora and Fauna

The proposed development would require Lot 1 to be cleared of all vegetation to ensure the On-site Effluent is sufficient. It is considered that the clearing of 100% of the vegetation on the proposed lot is undesirable and should not be supported in this instance.

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

### Surrounding Landuses/Development

The proposed development is located within the Terranora 'Area E' Urban Release Area. The surrounding sites are currently of a similar size as the subject site and utilised for residential purposes. The sites are located within the 2(c) Urban Expansion zone and are earmarked for future urban development. The fragmentation of land zoned urban expansion in the area should be limited until such time that the urban release is going to be undertaken. The cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, would be significant.

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

### Public Submissions

The proposed development was notified for a period of 14 days finishing on Monday 19 August 2013 in accordance with the Act and Regulations. There were no submissions received in relation to the proposed development.

### Rural Fire Service

The proposed development was referred to the NSW Rural Fire Service who responded on 5 September 2013 with one condition of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

## **(e) Public interest**

The proposed three lot subdivision and dwelling with attached secondary dwelling is of a relatively minor scale and nature however should the application be approved, it would set a harmful precedent for the continued urban release of the area. As such it is considered that the proposal is not in the public interest.

## **OPTIONS:**

That Council:

1. Refuses this application in accordance with the recommendation for refusal; or

2. Requests the applicant to withdraw their Development Application and re-lodge an amended application which better align with the site specific Development Control Plan and which considers and establishes a Developer Contributions funding mechanism for services within Area E including (but not limited to) sports fields, the Broadwater Parkway, environmental restoration, and drainage issues.

**CONCLUSION:**

It is considered that the overarching purpose of the Environmental Planning and Assessment Act 1979 and its associated documents is to secure the orderly development of land. This includes having the necessary infrastructure available in order to service the development. The proposed three lot subdivision cannot be adequately serviced with reticulated sewer and is considered to severely undermine the broader strategic plans for the subject site as it represents a massive under development of prime residential land. For these reasons the application is recommended for refusal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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20 [PR-CM] Reforming the Aboriginal Cultural Heritage System in NSW

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/LEP/2010/Heritage/ACH



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

This is a report on the NSW Government's proposed model for stand-alone Aboriginal cultural heritage legislation, which is the current phase of the Government's broader Aboriginal cultural heritage legislative reform.

The consultation documents; *Reforming the Aboriginal Cultural Heritage System in NSW*, released by the Office of Environment and Heritage are being exhibited and are open for public submission until 14 February 2014.

An evaluation of the proposed structural reform based upon the information within the consultation documents illuminated both new positive elements arising from the reform as well as uncertainty from the lack of clarity and detail in the documentation and which collectively prompted the need for this report and the drafting of a submission.

Whilst reform of heritage laws is proposed at both the Commonwealth and State level, this report and the submission drafted is concerned only with the NSW State reforms.

### RECOMMENDATION:

**That Council endorses and forwards the submission on "*Reforming the Aboriginal Cultural Heritage System in NSW*" to the NSW State Department: Office of Environment and Heritage.**

## REPORT:

### Background

#### Commonwealth Reform

The Australian Government; Department of Environment, Water Heritage and the Arts, commenced its review of reforming the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, as well as other related Acts, and released its discussion paper: *Indigenous Heritage Law Reform*, in August 2009.

The Commonwealth recognised that achieving a system to ensure Indigenous Australians would have the best opportunities to protect their heritage, to cut red tape and duplication, would require significant change and would need to culminate with a nationally consistent approach to protection. A key recommendation of the reform was a system of accreditation and best practice standards premised on three critical elements: clarifying responsibilities, improving procedures, and making sure that protective and enforcement measures worked effectively.

In its most basic interpretation the reform would yield one of two opportunities for the States and Territories: a system of accreditation for their own laws to be based on a consistent set of standards, or alternatively the adoption by a State or Territory of the Commonwealth's model codes.

In response to the Commonwealth's approach to reform, the New South Wales Government committed to reviewing the State's laws. Central to the review undertaken by the Aboriginal Cultural and Heritage Reform Working Party, as appointed in 2011, was the level of consistency or 'compliance' of the current legislative scheme with the national system proposed by the Commonwealth, using the 20 proposed Commonwealth accreditation standards as the benchmark.

The Working Party reported that the current State legislative scheme would not likely meet the proposed new accreditation standards and this in turn presented the NSW Government with an opportunity to reform the State's heritage protection laws if it was to retain legislative independence in this area.

#### NSW State Reform

It is evident that views have changed since the legal protection of aboriginal heritage was included within the *National Parks and Wildlife Act 1974* (NPWA) and sufficiently so that there now prevails an acknowledgement of the right of Aboriginal people to have a substantial say in the manner in which their cultural heritage is protected and managed.

It is broadly accepted that the NPWA has limited roles for Aboriginal people specifically relating to their involvement and oversight of aboriginal heritage and is concentrated instead on the protection and conservation of 'places' and 'objects'. This reflects the Act's origin of having an archaeological perspective with its predominant focus over tangible cultural heritage, which belies the longstanding disconnect between Aboriginal and non-Aboriginal peoples understanding of what constitutes Aboriginal cultural significance.

In late 2011 the Office of Environment and Heritage (OEH) commenced a process to develop options for the reform of the State's Aboriginal heritage laws, aimed at improving the protection of Aboriginal cultural heritage. Consistent with the recommendations of the Commonwealth's heritage law reform proposal of 2009, the State Government was to embark on a reform that would have central to it the clear demarcation of the roles and responsibilities of the key stakeholders, and one that would see government shifting into a



support-based role for Aboriginal people who would be represented through various committees and councils.

A discussion paper seeking community and industry feedback on a wide range of matters related to the management and protection of Aboriginal cultural heritage was released at this time. Consultation based on the discussion paper was held throughout NSW in late 2011, with Council staff and community representatives attending sessions in Coffs Harbour and Tweed Heads.

Following this initial consultation, an Aboriginal Culture and Heritage Reform Working Party was established to advise the NSW Government on options for the protection and management of Aboriginal culture and heritage. The terms of reference for the working party are outlined in the exhibition material.

The working party developed a discussion paper and broadly the majority of the recommendations of the working party have been incorporated into material currently on exhibition, which includes:

- *Reforming the Aboriginal Cultural Heritage System in NSW Discussion Paper*
- *Comparing the NSW Aboriginal heritage system with other Australian systems*
- *How the Aboriginal heritage system works*
- A suite of Fact Sheets

The full suite of exhibition information may be accessed on the OEH website at: <http://www.environment.nsw.gov.au/achreform/>

Submissions on the proposed legislation reforms are invited, with the closing date recently extended to 28 March 2014.

### **OEH Information sessions**

A number of Council staff attended an OEH Aboriginal Cultural Heritage legislation reform information session at Ballina on 27 November 2013. The session provided a brief overview of the changes, including the linkages of this legislative review to a large number of Acts concurrently under review, including:

- The Environmental Planning and Assessment Act (Planning Reform Bill)
- Stand alone Draft Aboriginal Cultural Heritage legislation
- National Parks and Wildlife Act amendments
- Aboriginal Land Rights Act
- Native Vegetation Act
- Protection of the Environment Operations Act
- Strata Titles Act

The session did not provide extensive explanation of the legislative reforms, focussing instead on small group discussion based on several 'themes' of the proposed reforms.

### **Aboriginal Community liaison**

A number of representatives from the Tweed/Byron Aboriginal community also attended the OEH legislation reform information session in Ballina.

The draft Tweed Shire Council submission was forwarded to the Aboriginal Advisory Committee (AAC) in late November for their review. The AAC members considered the

submission at their meeting of Friday 5 December 2013. The committee were supportive of Council making a submission and raised no concerns with the content of the submission. The members of the AAC will be collating their own submission(s) raising similar and further concerns with the proposed legislative reforms.

### **Discussion**

Generally the intent to reform Aboriginal Cultural heritage (ACH) legislation to ensure more appropriate understanding and recognition of the wider range of Aboriginal cultural heritage issues? and to incorporate that into stand alone legislation is supported. Similarly the premise that the Aboriginal people who hold local knowledge are the appropriate people to identify their Aboriginal cultural heritage, what is significant and how potential impact on this cultural heritage should be managed, is also supported.

In general the legislation proposes the following:

- Stand-alone Aboriginal cultural heritage legislation.
- New definitions for Aboriginal cultural heritage.
- Establishment of Local Aboriginal Cultural Committees LACHC comprised of up to 10 Aboriginal community members under the governance of the OEH Heritage Division. The size/boundary of the area a LACHC is yet to be determined.
- The committee will be a single point of contact tasked with preparing the mapping, plans of management, assessment and management of all development referrals, negotiation with the development industry on Project Agreements.
- Mapping and Plans of management are to be approved by the OEH. OEH will maintain an ACH register. Mapping is to identify 'no or low ACH', 'high ACH value' and 'incomplete ACH value'.
- Introduction of Project Agreements for consideration in the planning process
- Links to the planning system.
- Maintenance of compliance and enforcement penalties, defences and exemptions.
- A process for managing unexpected finds.

Despite the many positive reforms proposed there remain several areas of concern and these are addressed in more detail within the submission attached. A summary of those concerns follows.

### Qualification of ACH Advisory Committee Members

It is proposed that the legislature will create a new stand-alone Act to be known as the *Aboriginal Cultural Heritage Act* (ACH Act), complete with a corresponding *Regulation*. The Regulation, as is the longstanding legislative practice, will provide the machinery of how the Act will actually work by providing the detail on timeframes, appointments, penalties, standardised procedures and practices and the like. Importantly the ACH Regulation will set out the requirements and terms of reference for the establishment of the new Aboriginal Cultural Heritage Advisory Committees.

The Government is proposing to regulate the qualifications of the committee members through the Regulations and will seek to limit entry to only those Aboriginal people with relevant skills, knowledge of planning and legislation and experience in ACH matters.

The concern is that many Aboriginal people within the local community possess extensive knowledge and experience with their cultural heritage but may not possess those other 'relevant skills'. The implication from a definition of 'relevant skills' that is too narrow would

likely operate to exclude certain members of the community who might otherwise be best placed to speak for country and possess the greatest knowledge about the culturally significant issue.

It is recommended that any such definition be sufficiently flexible, for example s79 of the *Evidence of Act 1995* (NSW) which speaks of "specialised knowledge", to capture rather than exclude members whose knowledge is sufficiently specialised in at least Aboriginal cultural heritage plus one other area. If, as the Government claims, the Aboriginal committees are to be supported by government, then the Government's Aboriginal Liaison Officers should be able to provide the committees with the relevant expertise on planning and legislation in the interim to the government instituting training and education programs.

#### Resourcing

The discussion paper addresses resourcing of Project Plans to inform development and local planning decisions however, there is no information on the significant financial resourcing that will be required if, as proposed, the Local Aboriginal Cultural Heritage Committees will have the responsibility for preparing the ACH mapping, plans of management. Equally, how the Committees will be resourced to manage case by case assessment of applications within the proposed 'fit-for-purpose' regulatory scheme and to negotiate with large and powerful development industries and businesses remains very unclear and uncertain, particularly in an environment where the ACH Regulation is set to include tight timeframes for this to occur.

#### Mapping and Plans of Management

The preparation of the mapping and plans of management represents a significant body of work and may require significant resourcing. The discussion paper does not provide sufficient information on the timing and methodology for the preparation of the mapping and plans of management and consequently the extent of the resourcing required is indeterminable.

Consistency in the approach by Aboriginal groups across the State to the identification and mapping of ACH significance and the structure of the plans of management will be critical to the understanding of how mapping has been developed and how it is being used across the State.

Consistency will also be a critical factor in providing resourcing and skills development to enable Aboriginal communities to develop the required maps and plans of management with the leadership and resourcing they will require within the required timeframes. Who will deliver this assistance and support, state or local, also remains unclear because the documentation also fails to address how government itself will be resourced to deliver those services.

#### Security of data and information

A key factor in the development of ACH mapping is agreement with the community on the level of information accessible to the wider community. The discussion paper is insufficiently detailed to enable a reasonable understanding of how the more sensitive ACH data is to be managed and protected.

#### Flexible regulatory processes - Project Agreements

The proposed legislation identifies a 10 day turn around for the Local ACH Committee (LACHC) to reach agreement on a Project Agreement. If no agreement is reached a project may proceed with caution, that is, it is considered deemed to satisfy consultation requirements. This is an area of great concern given that the LACHC will be required to

liaise with the communities they represent, reach agreement between Aboriginal community representatives and negotiate with the developer.

Where the 10 day timeframe is not met, an applicant may proceed with caution and without a 'Project Agreement'. Without an agreement being reached with the LACHC, the developer could not be expected to know what values and significance exist and therefore what, if any, protective measures are required.

It is widely known and accepted that proper identification and consideration of the issues takes substantially longer than 10 days to achieve. Whilst many Aboriginal and non-Aboriginal people would agree that current timeframes are often too long, a rigid application of 10 days without distinguishing the nuances and complexities that can and often do occur between projects on a site by site basis will lead to a failure of the Act to deliver the "better protection" the reforms claim to ensure.

The NSW Government has a long history of benchmarking its performance on time performance indicators. It is not a system that has been applied uniformly and consistently either neither across the planning system nor between the State and local authorities. More information and detail is required on how this time performance benchmark is likely to improve rather than hinder the protection of the State's Aboriginal cultural heritage.

As an alternative the Government could evaluate performance indicators to monitor the impact of time delay relative the constraint(s) of a proposal. This may lead to periods of assessment greater than 10 days; however it will provide a more accurate barometer of how it impacts on the economics of the proposal and therefore the economy as a whole, which, reading between the lines, is a further and considerable driving force for the reforms. The economic impact, where it occurs, can then be calibrated (cost benefit tested) against the potential loss of the culturally significant matter, where it exists, to determine whether the longer timeframes are justified.

Calibration of the system is essential and should both proceed from a precautionary standpoint and be preferred to the hardline approach this particular reform proposes.

#### Relationship to the Local Environmental Plan

The proposed legislation is unclear as to whether the mapping of ACH is to be included within a Council's local environmental plan (LEP), translated into the proposed planning legislation reforms as a "Local Plan". The term "local land-use plan" used in the proposed legislation is not used in the Planning Administration Bill 2013 and it is not clear if this reference means the LEP/Local Plan or more generically other strategic planning.

The standard LEP template has been structured to address ACH together with European heritage within Clause 5.10, as listed in Schedule 5 Environmental Heritage and as mapped on the 'Heritage Map'. This is supported by the Ministerial *S117 Direction*.

TSC has been actively working towards meeting the objectives for including ACH within the LEP through the development of the Aboriginal Cultural Heritage Management Plan, which includes mapping layers, a thematic history and a comprehensive management plan, with the mapping to be included in the Tweed Shire LEPs and the management plan to guide "what happens" where subject land is mapped.

#### **Context with the TSC Aboriginal Cultural Heritage Management Plan**

TSC is well advanced in the preparation of a draft Aboriginal Cultural Heritage Management Plan (ACHMP) with the assistance of heritage consultants Converge Heritage + Community and the Aboriginal community. This project has been ongoing for 18 months and has incorporated extensive consultation with the Aboriginal community.

The ACHMP project has been a collaborative process bringing together the leadership and skills of the consultants and Council, the local knowledge and information of the Aboriginal community, the input of other State agencies, and the support and financial resources of both TSC and Office of Environment and Heritage (OEH). The support and co-operation of all involved has been critical to the process and has resulted in the development of draft mapping, a draft management plan and relationship building between the Council and the Aboriginal community.

An overview of this project was given to a Councillor workshop on 7 November 2013.

The intent of the proposed legislation appears to generally correlate with the draft mapping currently being prepared, though the application of the mapping and its end inclusion within the Tweed Local Environmental Plans remains unclear at this stage.

Notwithstanding, the information and mapping developed in the TSC ACHMP should be able to inform and/or be adapted to the proposed stand alone ACH legislation.

#### **OPTIONS:**

1. Council resolve to forward the attachment as a Tweed Shire Council submission to the Office of Environment and Heritage; or
2. Council resolved not to forward the attached submission to the Office of Environment and Heritage; or
3. Council resolve to defer sending a submission subject to further discussion at a Councillor workshop.

#### **CONCLUSION:**

The reform of Aboriginal heritage laws in NSW aims to expand the protection of Aboriginal cultural heritage to include tangible and intangible cultural heritage and to be developed as stand-alone legislation. This is a new approach and is supported however, as is common with legislative reform the extent of potential implications cannot be fully understood in the absence of the legislation itself.

It is clear from the discussion papers that the State Government is shifting toward a model of heritage protection whereby the process of identification and management is prepared and maintained by Aboriginal people, which is an acknowledgement of those people who are best placed to do so; the Aboriginal people are the custodians of their cultural knowledge for their country and represent the only people who can both articulate the elasticity of its significance and understand its currency when subjected to negotiation.

The Government's approach to the reform and the model presently being canvassed with the broader community marks a clear shift from the current system of heritage protection in NSW. It incorporates many positive reforms however there remains significant gaps in the information about the roles and functions of key stakeholders. There is little discussion about the role of local government as it is today; managing and protecting cultural heritage through LEPs and DCPs, and whether it will continue to have a strategic function or whether it will become simply a recipient of the plans and mapping prepared by the ACH Committees through the development and planning proposal assessment systems.

Similarly the resources, including financial, time and planning/legislative skills, required of the local Aboriginal communities and the Local Aboriginal Cultural Heritage Committees

would appear to be extensive and these are not addressed sufficiently to enable a proper assessment of critical elements of the performance of the reforms proposed.

In addition, Tweed Council is well advanced in the preparation of a shire-wide Aboriginal cultural heritage management plan, which seeks to recognise and protect Aboriginal cultural heritage identified through a rigorous assessment process undertaken in consultation with the Tweed Aboriginal community. It is anticipated that the methodology followed will broadly be consistent with the proposed legislative reforms and whilst this is welcomed and should bring about a more expedient implementation of the Shire's Aboriginal cultural heritage protection it is also unclear whether Council will be asked to hand-over its data to the EOH or ACH Committee. Ultimately, it is unclear how the process will affect the positive relationship that exists between the Council and the Tweed's Aboriginal community. The reliance and trust each has with the other is essential for the effective ongoing management of development and strategic planning assessment processes.

It is in the interest of the Council and its communities to raise its concerns with the Government's proposed Aboriginal Cultural Heritage legislative reforms and the Submission attached to this report is therefore recommended for endorsement by Council.

#### **COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**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:**

Attachment 1. Submission on Reforming the Aboriginal Cultural Heritage System in NSW (ECM 3258993)

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