



TWEED
SHIRE COUNCIL

Mayor: Cr G Bagnall

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

Agenda

Planning Committee Meeting Thursday 2 October 2014

held at Murwillumbah Cultural and Civic Centre
commencing at 5.00pm

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

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

(a) the provisions of:

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

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

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

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

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

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

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

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

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

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

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

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
 - (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
 - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

THIS PAGE IS BLANK

Items for Consideration of Council:

ITEM	PRECIS	PAGE
SCHEDULE OF OUTSTANDING RESOLUTIONS		7
1	[SOR-PC] Schedule of Outstanding Resolutions - Planning Committee	7
REPORTS FROM THE DIRECTOR PLANNING AND REGULATION		8
2	[PR-PC] Development Application DA13/0385 for a Two Lot Subdivision and Single Dwelling with Attached Secondary Dwelling at Lot 63 DP 804148 No. 3-6 Trutes Terrace, Terranora	8
3	[PR-PC] Development Application DA13/0602 for a Two Lot Subdivision at Lot 6 DP 619881 No. 332 Clothiers Creek Road, Nunderi	87
4	[PR-PC] Development Application DA14/0050 for a Detached Dual Occupancy at Lot 7 DP 22375 No. 204 Kennedy Drive, Tweed Heads West	126
5	[PR-PC] Class 1 Appeal Outcome - Development Application DA13/0678 for the Erection of an Outbuilding with Shower and Toilet at Lot 2 SP 38780 No. 2/1 Beatrice Court, Pottsville	176
6	[PR-PC] Further Report Regarding the Recommended Discontinuance of Planning Proposal PP10/0005 'Hundred Hills' Murwillumbah for Stockland Development (Sub 3) Pty Ltd	182
7	[PR-PC] PP13/0004 Wooyung Properties - Request to Prepare a Planning Proposal - Lot 1 DP 779817 and Lot 2 DP 408972 Wooyung Road, Wooyung	185
8	[PR-PC] Draft Design Excellence Guideline	205
9	[PR-PC] Community Resilience Innovation Program Grants	208
10	[PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	211
CONFIDENTIAL ITEMS FOR CONSIDERATION		213
REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE		213
REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE		213
C1	[PR-PC] Unauthorised Works at Lot 1 DP 613261 Cudgen Road, Cudgen	213
C2	[PR-PC] Class 1 Appeal - Development Application DA13/0201 for a Telecommunications Facility at Lot 100 DP 1192162 (Formerly Lot 1 DP 397082) Depot Road, Kingscliff	214
C3	[PR-PC] Class 1 Appeal - Development Application DA13/0654 for a Two Lot Subdivision, Remove Existing Dwelling and Construct Two	215

ITEM	PRECIS	PAGE
	Single Dwellings - Staged Development at Lot 7011 DP 1065741 Marine Parade, Fingal Head; Lot 367 DP 755740 No. 40 Queen Street, Fingal Head	

SCHEDULE OF OUTSTANDING RESOLUTIONS

1 [SOR-PC] Schedule of Outstanding Resolutions - Planning Committee



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

CODE OF MEETING PRACTICE:

Section 2.8 Outstanding Resolutions

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

PLANNING COMMITTEE - 1 MAY 2014

- 11 [PR-PC] Development Application DA10/0737 for Alterations to Existing Highway Service Centre Comprising of Two New Diesel Refuelling Points, Expansion of Truck Refuelling Canopy, New Truck Parking Area (36 New Bays) and the Replacement of Existing Truck Parking Area with Additional Car Parking Spaces and Dedicated Bus Drop-off Area (Application includes LEP Amendment) at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah

P 48

Cr W Polglase
Cr P Youngblutt

RECOMMENDED that Development Application DA10/0737 for alterations to existing highway service centre comprising of two new diesel refuelling points expansion of truck refuelling canopy new truck parking area (36 new bays) and the replacement of existing truck parking area with additional car parking spaces and dedicated bus drop-off area (application includes LEP Amendment) at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah be deferred for a workshop with Council.

Current Status: A Councillors Workshop has been held on 22 May 2014. John Fraser, Project Manager at BP, confirmed on 22 September that the additional studies requested are close to being finalised for submitting, and BP's Lawyers are working toward negotiation on the Cost Agreement relating to the planning proposal. Once this information is received the matter will be further assessed and reported back to a future Planning Committee meeting.

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA13/0385 Pt2

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- | | |
|-------|--|
| 1 | Civic Leadership |
| 1.2 | Improve decision making by engaging stakeholders and taking into account community input |
| 1.2.1 | Council will be underpinned by good governance and transparency in its decision making process |
-

SUMMARY OF REPORT:

Council Resolution Information

Council at its meeting of 23 January 2014 resolved as follows:

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

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

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 was undertaken on 16 January 2014 to further discuss this application.

The report is now resubmitted to Council for its determination.

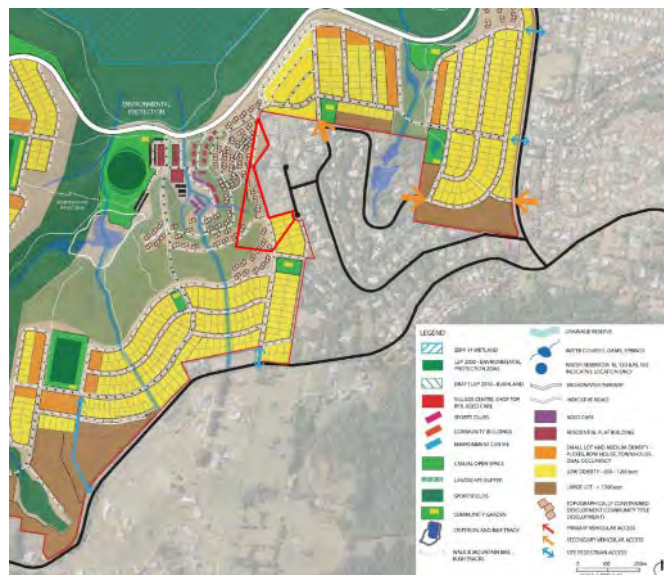
Updated Report

On 18 July 2013 Council received a Development Application seeking approval to create a three lot subdivision from one existing allotment currently with an allotment size of 2.769ha. The proposed subdivision seeks approval for proposed Lot 1 with a land size of 1900m² (which will remain vacant with a future house option), proposed Lot 2 with a land size of 3030m² (which will maintain an existing dwelling) and proposed Lot 3 with a land size of 2.2ha. It was also proposed as part of this Development Application to construct a dwelling with attached secondary dwelling over proposed Lot 3.

On 11 February 2014 amended plans were received updating the proposal in accordance with the Council Resolution from 23 January 2014. This incorporated a two lot subdivision and a dwelling with attached secondary dwelling over proposed Lot 2. Further information was required in regards to the NSW Rural Fire Service requirements which was submitted on 21 June 2014 and was referred to the NSW RFS.

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

Furthermore, the proposed two 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 amended on-site sewage management design report by HMC and it is considered that the proposed on-site sewage management systems will provide an acceptable level of environmental impact and are adequate for the development.

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. As such, the applicant has agreed to prepare and enter into a Voluntary Planning Agreement as requested within the Council Resolution of 23 January 2014.

It is however considered that the application be refused on issues as identified throughout this report.

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.

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 two 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.

In summary the proposed is recommended for refusal as a result of the following:

- The proposed two lot subdivision is considered an underdevelopment of prime residential land having regard to the endorsed DCP for the site.
- The proposed two lot subdivision cannot physically connect to any existing or currently proposed sewer reticulation systems as required by Council's Development Control Plans.
- The proposed two lot subdivision is considered to severely undermine the broader strategic plans for Area E.

In regard to the Voluntary Planning Agreement (VPA), the applicant has accepted that they will be required to prepare and enter into a VPA at no cost to Council.

Council's Planning and Infrastructure Engineer has outlined the requirements of a VPA for the site as follows:

- *The developer will enter into a VPA based on the Altitude Aspire agreement*
- *All requirements for payment of contributions for roads, open space and environmental land will be generally the same, with payment to be made with the subdivision certificate*
- *The created allotments will connect to water from Trutes Terrace / Parkes Lane, so will pay normal s64 through the DA consent, but nothing further in the VPA.*
- *The created allotments will be serviced initially by onsite effluent disposal systems.*
- *At such time as a sewerage system is available in Area E to service this area, the VPA will require each allotment to be connected to the system, and pay headworks and reticulation contributions, at a rate to be determined in the future.*

Based on this information, a condition of consent has been prepared so that the Applicant will be required to prepare and enter into a Voluntary Planning Agreement. The final configuration of the VPA will be negotiated between the applicant and Council at a later date.

A full set of recommended conditions of consent has been provided in the Options section of this report (Option 2), should Council determine to approve this application.

RECOMMENDATION:

That Development Application DA13/0385 for a two 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 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.**
- 5. The proposal is not in the public interest as the development would have negative flow on affects for the remainder of the release area.**

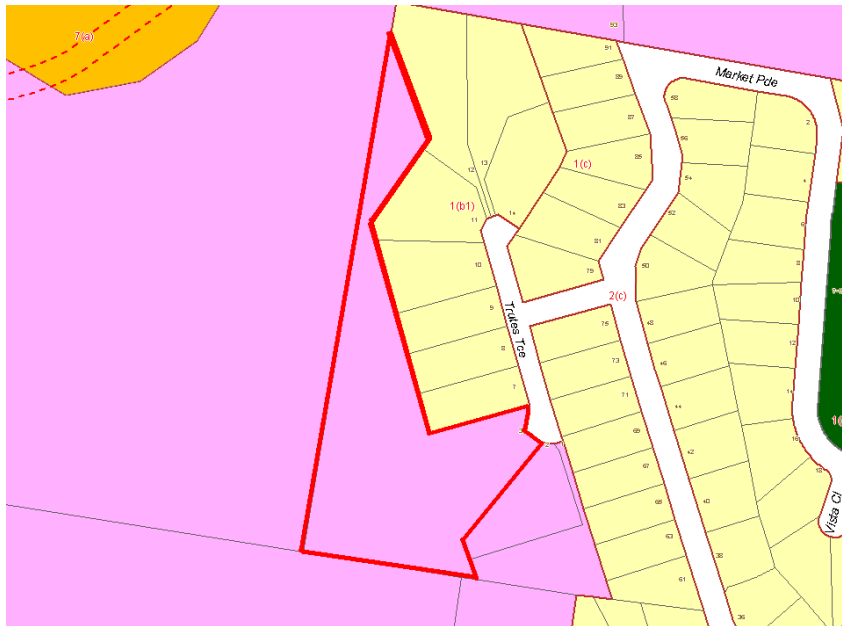
REPORT:

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: R1 - General Residential
Cost: \$829,800

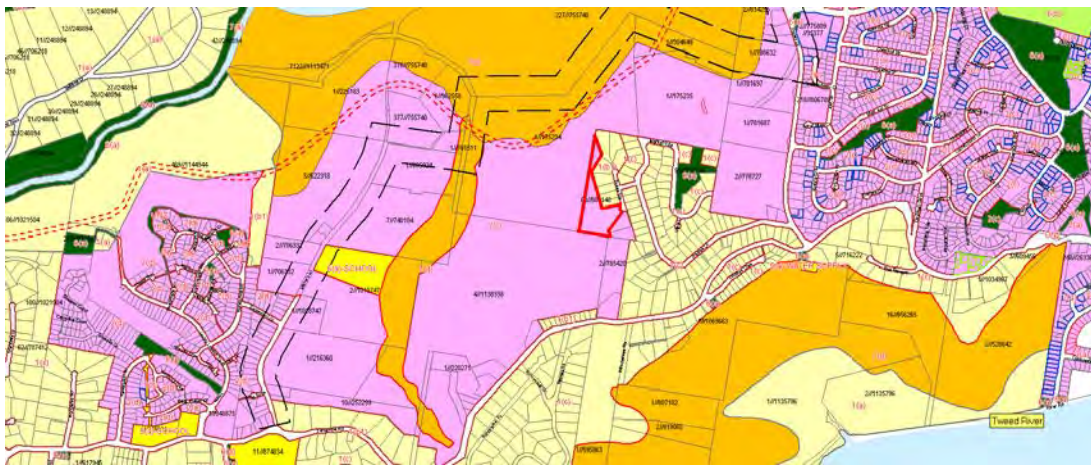
Background:

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 two 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 4,930m²;
- Proposed Lot 2 with a total area of 22,223m².

Lot 1 will bound the existing dwelling on-site. The access arrangement maintains frontage to Trutes Terrace.

Lot 2 forms the residual land and will support the single dwelling with attached secondary dwelling that is proposed as part of this application. An access handle is retained to allow for frontage to Trutes Terrace.

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

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

The attached secondary dwelling is located on the ground floor and is fitout with a single bedroom and one bathroom as well as its own kitchen and laundry. The attached secondary dwelling has a floor area of 55.7m² and is compliant with the maximum floor area requirements of the Draft LEP 2012 (60m²).

The existing shed on-site is to be relocated onto the created Lot 2. This shed will be ancillary to the proposed dwelling and will be accessible from the driveway.

History of original application

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

'Area E' Urban Land Release Area

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

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

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

Therefore, given the subject land is within the Area E Urban Land Release Area and the development cannot proceed without an infrastructure framework and Council is

proposing a VPA similar to that drafted for 'Altitude Aspire'. However for an additional 2 lots as proposed by this application seems unviable. Should you wish to proceed with the subject application please advise whether you will be entering into a Voluntary Planning Agreement (the drafting of which would also need to be funded by you). If you are not prepared to enter into this voluntary planning agreement or provide another mechanism for infrastructure contributions within Area E then Council would recommend the withdrawal of the subject application. Alternatively Council will determine the application based on the information provided to date.

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

Sewer Infrastructure

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

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

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

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

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

Engineering Issues

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

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

Minor Engineering matters:

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

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

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

As a result of the information request further research was done in regards to servicing the site as the applicant requested that onsite effluent service the proposed development until adequate servicing is available. The onsite sewerage design as submitted was considered to be unsatisfactory for proposed Lot 1 as Council prefers lot sizes of 4000m² to ensure sufficient room for recreational activities.

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

It was determined that the onsite effluent disposal as designed would require 100% vegetation clearance which lots less than 4000m² would require. Notwithstanding, on site effluent disposal at this location is not supported by Council Officers given Tweed DCP Section A5. The application was requested to be withdrawn as a result of this.

The application was previously been reported to Council for refusal. However, Council Resolution from 24 January 2014 has given the applicant an opportunity to reduce the number of allotments from three to two which was undertaken and submitted on 11 February 2014. Further information was required from the NSW RFS in regards to the amended proposal and as such an amended Bushfire Threat Assessment was received on 21 June 2014 and forwarded onto RFS for assessment.

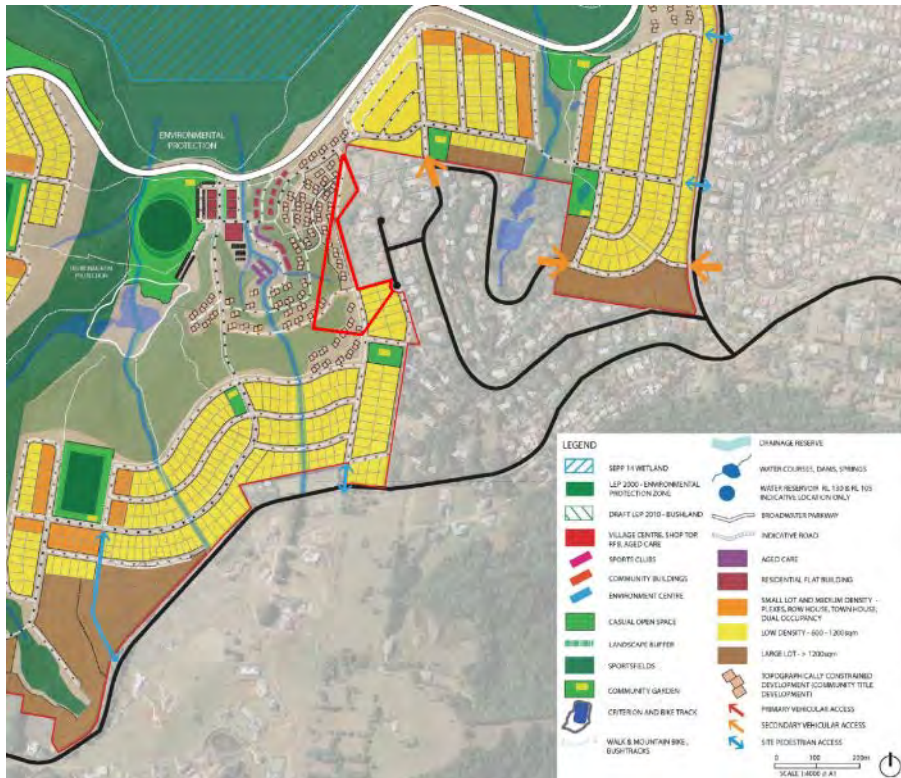
Summary

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

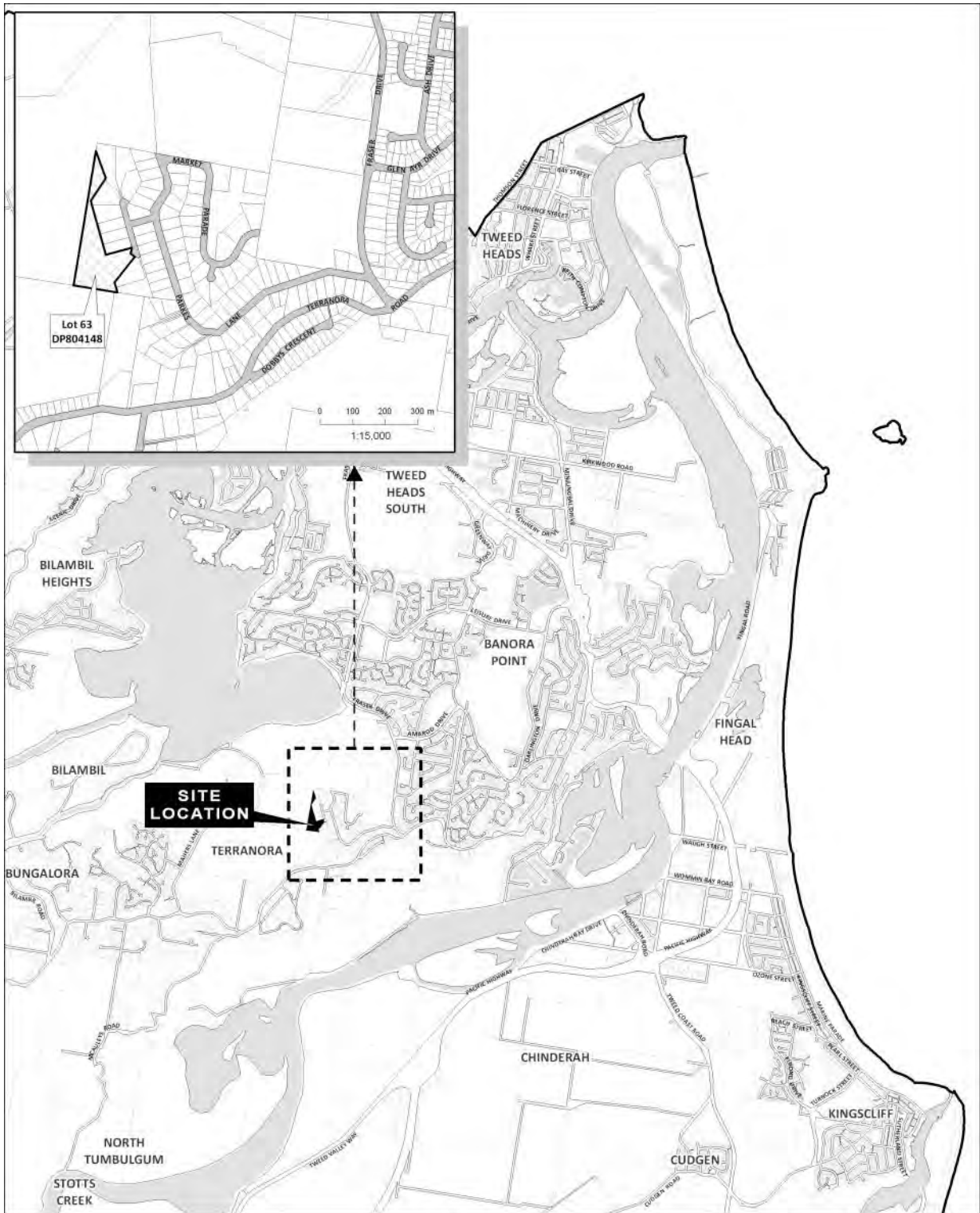
The proposed development is located in the 2(c) Urban Expansion zone which is intended for future urban development. The DCP Structure plan shows the subject site should accommodate approximately six low density residential homes and approximately 13 houses over a community title developments as shown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

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs, which may be incurred as a result of data being inaccurate in any way, and for any reason. This information is supplied for the general guidance and it is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a 'Call before you Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 5 days only from the date of supply.

Cadastral 26/11/2013
 © Land and Property Information (LPI) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

0 0.5 1 Km
 1:50,000 A4 Portrait
 GDA94 DATUM
 CSPP ONLY - NOT CERTIFIED
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: GDA94
 Vertical Datum: CGVD08
 GDA94 Map Grid of Australia, Zone 56

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

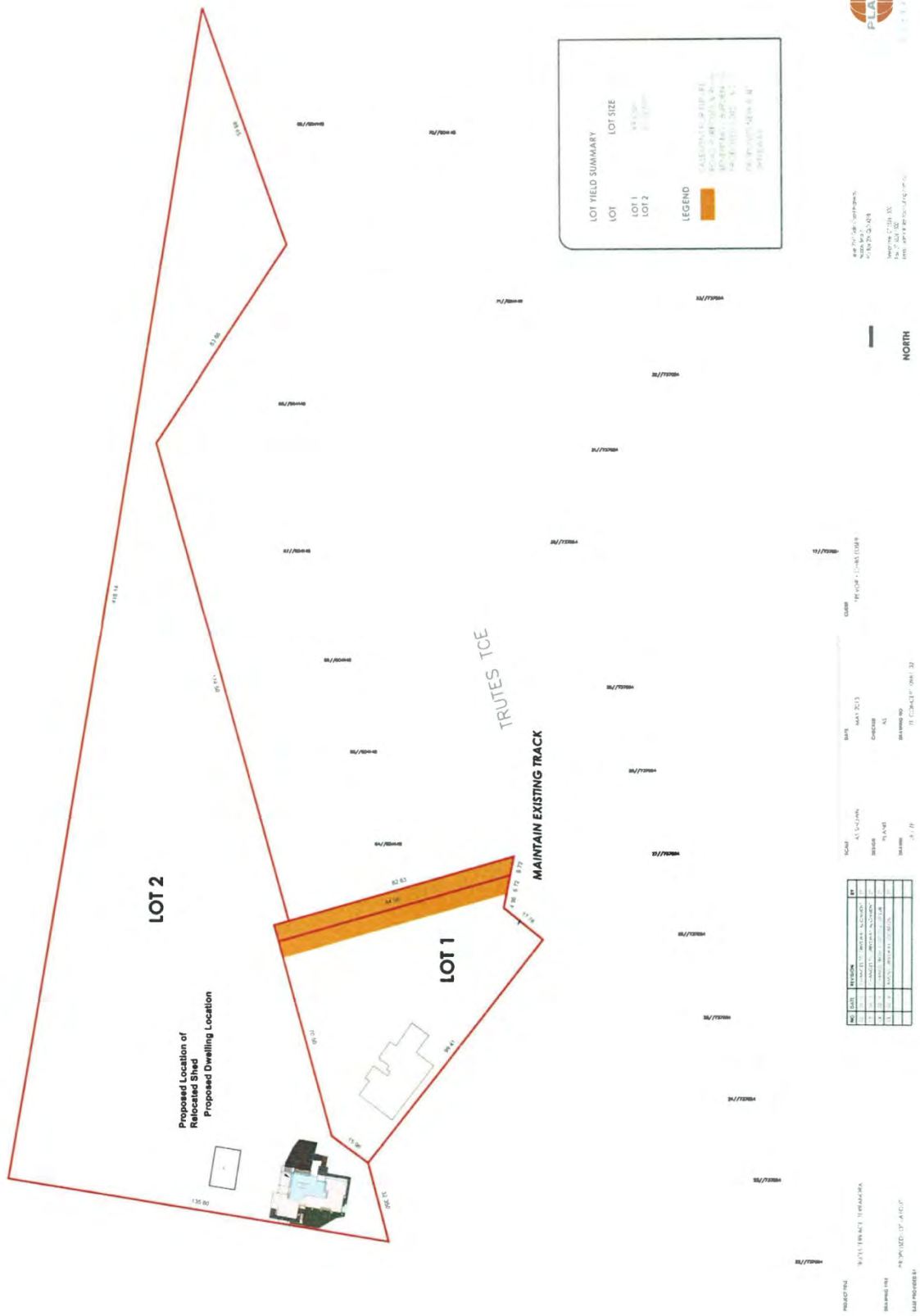
TWEED
 SHIRE COUNCIL

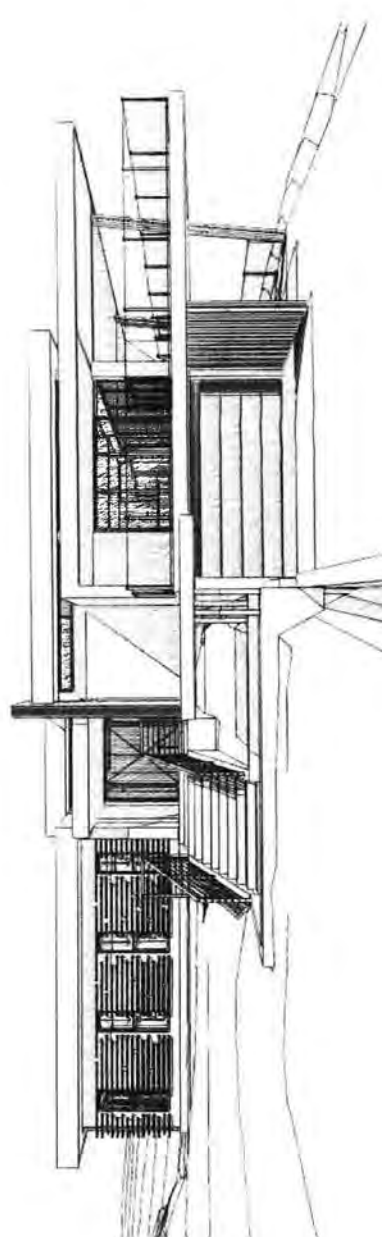
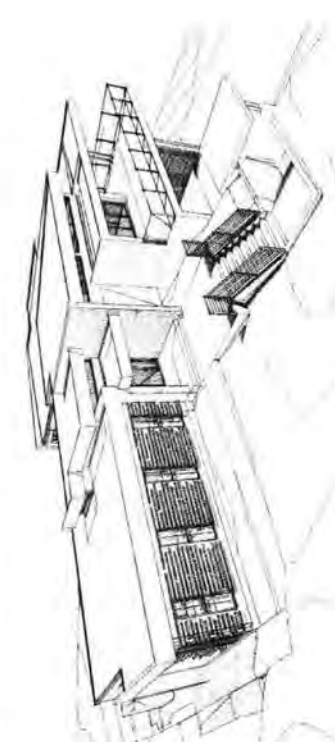
\\gisweb\GIS\TERRANORA\DP804148\FIGURES\FIGURE_1\LocalityPlan_241014

\\gisweb\BMAP\Map - Planning Database - Local

Local Plan 2012 - 2017

DEVELOPMENT/ELEVATION PLANS:





11/10/14 10:44:14 AM
 CLIENT: [illegible]
 PROJECT: [illegible]
 JOB NO. 047012
 PROJECT: [illegible]

drawing list:

no.	description
101	PERSPECTIVES 1
102	SITE PLAN
103	SURVEY
201	GROUND FLOOR PLAN
202	GROUND FLOOR DIMENSION PLAN
203	GROUND FLOOR SLAB PLAN
304	FIRST FLOOR PLAN
205	FIRST FLOOR DIMENSION PLAN
206	FIRST FLOOR SLAB PLAN
207	ROOF PLAN
301	NORTHERN & EASTERN ELEVATIONS
302	SOUTHERN & WESTERN ELEVATIONS
303	SECTION AA & BB
304	SECTION CC & DD
305	SECTION EE & FF
401	WINDOW SCHEDULE
402	DOOR SCHEDULE
403	DETAILS 1
404	DETAILS 2

issue	date	description
A	17/12/2012	PRESENTATION
B	04/02/2013	WORKING DRAWINGS
C	22/05/2013	SHADOW DIAGRAMS
D	25/04/2014	WORKING DRAWINGS AMENDMENTS
E		
F		
G		
H		

raywells
 Building Design
 www.raywells.net 07 5520 2827

WORKING DRAWINGS

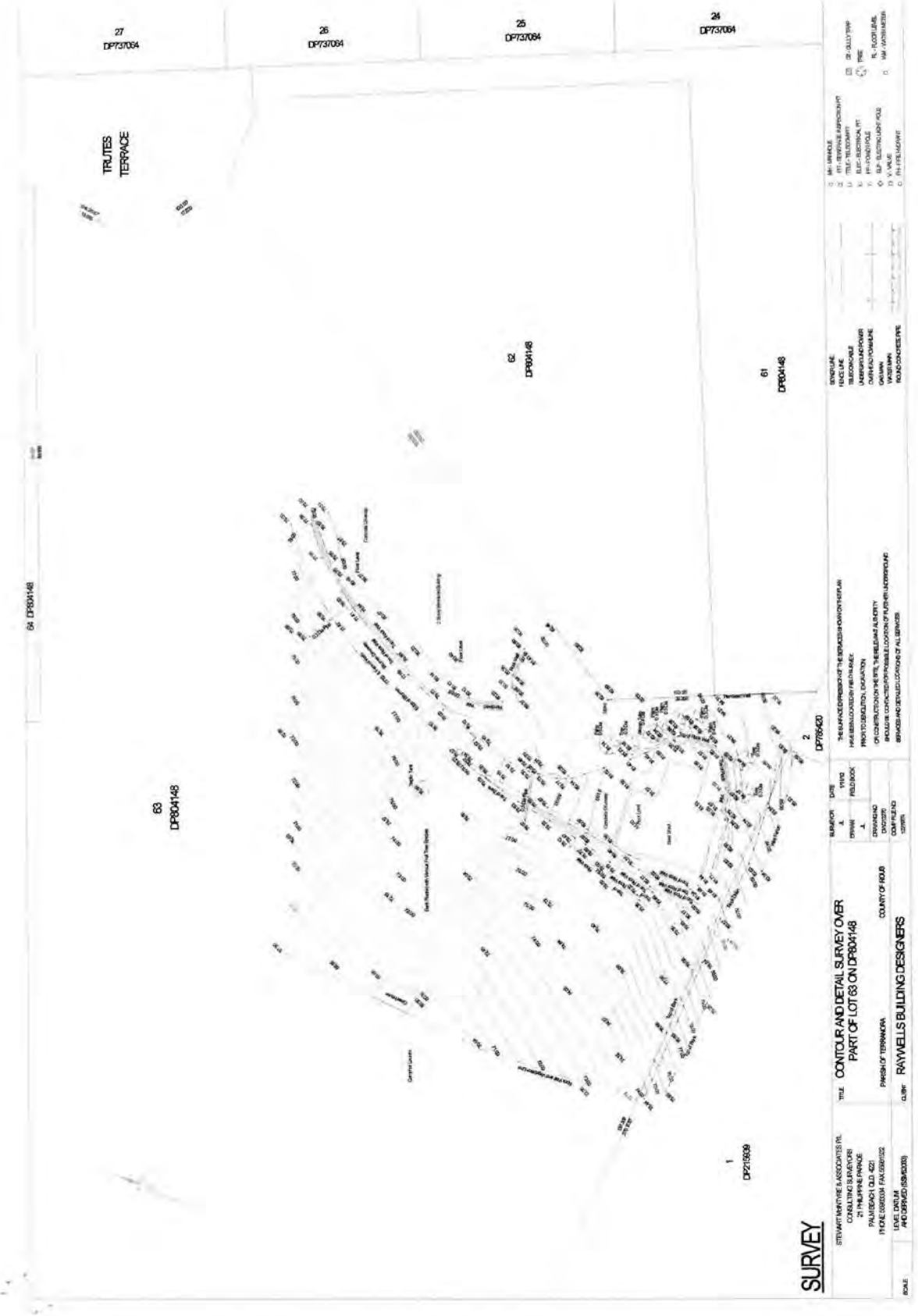
3D RENDERINGS ARE INDICATIVE ONLY - REFER TO PLANS & ELEVATIONS FOR DETAILS, SPECIFICATIONS & DIMENSIONS



raywells
building designers
www.raywells.nz 07 550 2827

rev.	date	description	int.	rev.	date	description	int.	client	project number	drawing number
A	17/12/2013	RESPONSE						Trevor and Chris Ester	047012	101
B	24/02/2014	WORKING DRAWINGS						Proposed New Building	scale	N
C	27/04/2014	WORKING DRAWINGS AMENDMENTS						26 Trusses	scale	D
D									DOWN	CHECKED
E										

Copyright. All documents are the property of Raywells Building Designers. All rights reserved. This may not be used to create other works.



SURVEY

STEWART WATKINS & ASSOCIATES PT.
CONSULTING SURVEYORS
25 THURLOW PARKWAY
PUNAHUWHIA QLD 4221
PHONE: 082353 1410
FAX: 082353 1411

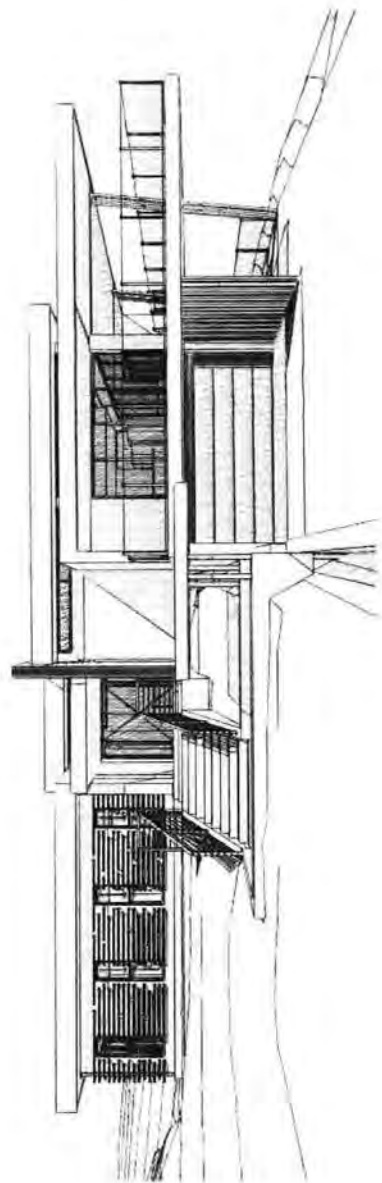
TITLE: **CONTOUR AND DETAIL SURVEY OVER PART OF LOT 63 ON DP90148**
PARISH OF TERANGA
COUNTY OF RIBOD
CLIENT: **RAYWELLS BUILDING DESIGNERS**

DATE: 10/09/14
SCALE: AS SHOWN

THE SURVEY IS A PRODUCT OF THE SERVICES PROVIDED BY THIS FIRM. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF THE DATA PROVIDED TO HIM BY THE CLIENT. THE SURVEYOR IS NOT RESPONSIBLE FOR THE ACCURACY OF THE DATA PROVIDED TO HIM BY THE CLIENT. THE SURVEYOR IS NOT RESPONSIBLE FOR THE ACCURACY OF THE DATA PROVIDED TO HIM BY THE CLIENT.

LEGEND:
 1. UNFINISHED
 2. FINISHED
 3. UNFINISHED
 4. FINISHED
 5. UNFINISHED
 6. FINISHED
 7. UNFINISHED
 8. FINISHED
 9. UNFINISHED
 10. FINISHED

DP737064
 DP737064
 DP737064
 DP737064



11-2014-0001

client:

job no: 087012

project:

drawing list:

no.	description
101	PERSPECTIVES 1
102	SITE PLAN
103	SURVEY
201	GROUND FLOOR PLAN
202	GROUND FLOOR DIMENSION PLAN
203	GROUND FLOOR SLAB PLAN
204	FIRST FLOOR PLAN
205	FIRST FLOOR DIMENSION PLAN
206	FIRST FLOOR SLAB PLAN
207	ROOF PLAN
301	NORTHERN & EASTERN ELEVATIONS
302	SOUTHERN & WESTERN ELEVATIONS
303	SECTION AA & BB
304	SECTION CC & DD
305	SECTION EE & FF
401	WINDOW SCHEDULE
402	DOOR SCHEDULE
403	DETAILS 1
404	DETAILS 2

issue	date	description
A	17/12/2012	PRESENTATION
B	04/02/2013	WORKING DRAWINGS
C	22/05/2013	SHADOW DIAGRAMS
D	28/04/2014	WORKING DRAWINGS AMENDMENTS
E		
F		
G		
H		

raywells
Building Design Inc.

www.raywells.net 07 5520 2827
2/33 township drive, burleigh heads Qld

WORKING DRAWINGS

3D RENDERINGS ARE INDICATIVE ONLY - REFER TO PLANS & ELEVATIONS FOR DETAILS, SPECIFICATIONS & DIMENSIONS



raywells
building designers
www.raywells.net 07 5520 2827
2/33 Township Drive, Burleigh Heads QLD

Legend

rev.	date	description	int.	rev.	date
A	22/05/2014	ISSUED FOR PERMIT			
B	22/05/2014	WORKING DRAWINGS			
C	22/05/2014	ISSUED FOR PERMIT			
D	22/05/2014	WORKING DRAWINGS (AMENDED)			

rev.	date	description	int.	rev.	date

Client: **Taney and Chris Eder**
 Council: **Proposed New Building**
 Address: **3-6 Trues Terrace,**
 Location: **Teranora, NSW, 2486**

Scale: **1/50**
 Status: **ST**
 Checked: **Sam**

Project number: **047012**
 Drawing number: **101**
 Drawing title: **PERSPECTIVES 1**



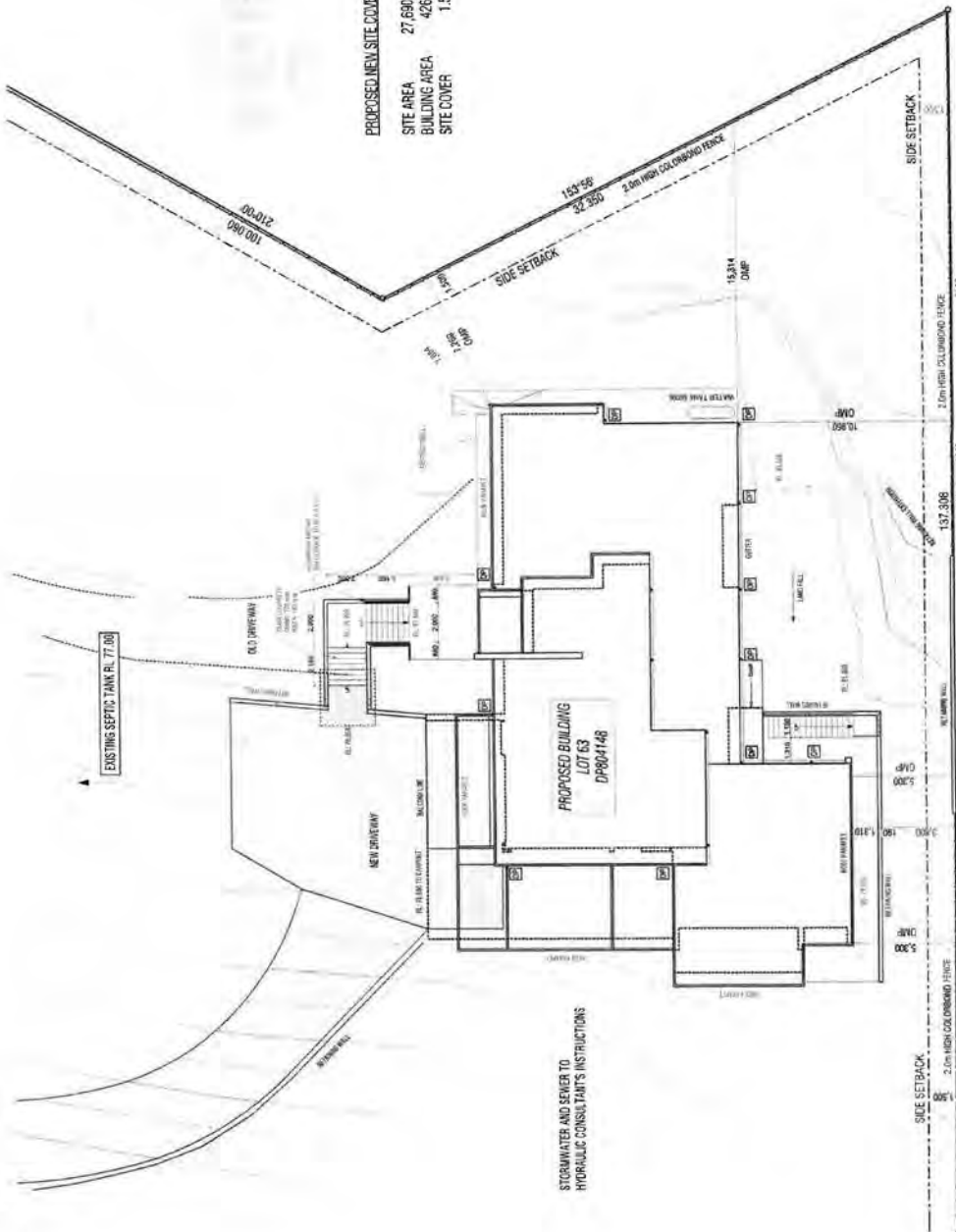
Copyright: This document is the property of raywells building designers Pty Ltd and may not be used in whole or in part for reproduction without the prior written consent of raywells building designers Pty Ltd.

WORKING DRAWINGS

SITE NOTES

- GROUND SURFACE WATER**
FALL GROUND MIN 50 mm IN FIRST 1 m FROM BUILDING
- THE HEIGHT OR SLAB ABOVE EXTERNAL FINISHED SURFACE TO BE NOT LESS THAN:**
(A) 150 mm ABOVE FINISHED GROUND LEVEL
(B) 100 mm ABOVE FINISHED GROUND LEVEL
(C) 50 mm ABOVE PAVED OR CONCRETE AREAS WITH FALL AWAY FROM BUILDING
- EDGE DRAINAGE**
EDGE GUTTERS TO HAVE A MIN. FALL OF 1:50
BOX GUTTERS TO HAVE A MIN. FALL OF 1:100
- CATCHMENT AREA**
30m² 115 mm D GUTTER
4m² 125 mm D GUTTER
50m² 150 mm D GUTTER
60m² 150 mm D GUTTER
- DOWNPIPES**
MIN. SIZE 90 mm DIA.
MAX. SPACING OF DOWNPIPES IS 12 m
DOWNPIPES TO BE SPACED AS CLOSE AS POSSIBLE TO VALLEY GUTTERS AND IF MORE THAN 12 m FROM VALLEY PROVISION FOR DOWNPIPS IS NEEDED.
- STORMWATER**
STORMWATER LINES FOR 2 OR MORE DOWNPIPES TO BE 75 mm DIA. AND ALL BRANCHES TO BE 80 mm DIA.
STORMWATER LINES SHALL BE TO A MIN. FALL OF 1:50 AND WHERE POSSIBLE PLACED AS SHOWN.
100 mm COVER TO STORMWATER DRAINAGE
- STORMWATER AND SEWER TO HYDRAULIC CONSULTANTS INSTRUCTIONS**
STORMWATER AND SEWER TO HYDRAULIC CONSULTANTS INSTRUCTIONS AND LEVELS PROVIDED BY

PROPOSED NEW SITE COVER
SITE AREA 27 690m²
BUILDING AREA 428m²
SITE COVER 1.5%



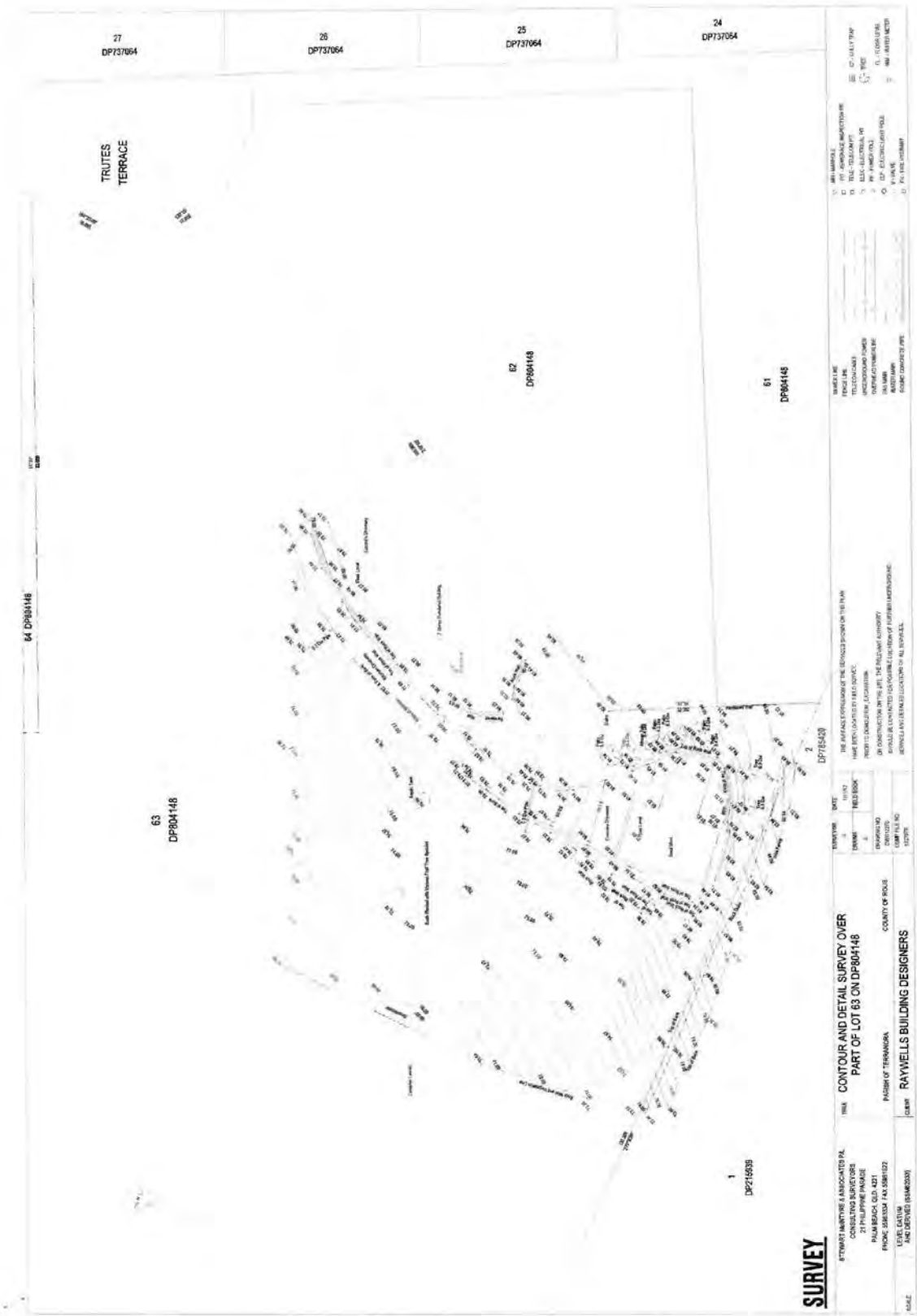
raywells
www.raywells.com.au 07 5321 2627
19/11 Invering Drive, Brisbane, QLD 4000

rbd

REV.	DATE	DESCRIPTION	BY	CHKD.
1	10/09/14	ISSUED FOR PERMIT	TRAYNOR	CHESNOLD
2	10/09/14	ISSUED FOR PERMIT	TRAYNOR	CHESNOLD
3	10/09/14	ISSUED FOR PERMIT	TRAYNOR	CHESNOLD
4	10/09/14	ISSUED FOR PERMIT	TRAYNOR	CHESNOLD

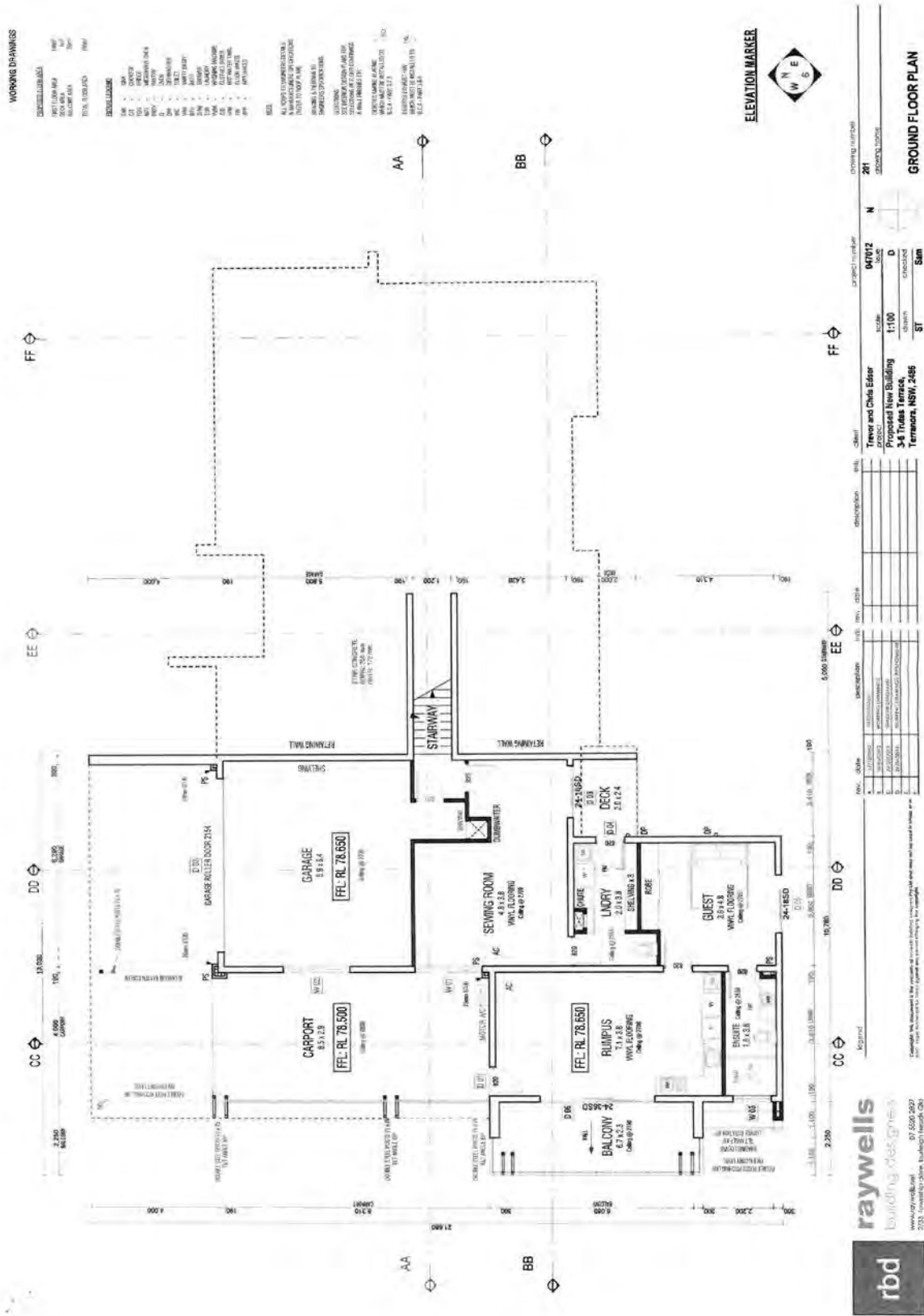
Traynor and Chris Esler
 Proposed New Building
 3-5 Trades Terrace,
 Tenarone, NSW, 2488

PROJECT NUMBER: **AG012**
 DRAWING NUMBER: **107**
 SCALE: **1:200**
 SHEET: **ST** OF **5**



SURVEY

6700001 MARYKAYE & ASSOCIATES PTY LTD 27 PHILLIPPE AVENUE PALM BEACH QLD 4217 PHONE 55863337 FAX 55861022 LEVEL DATUM AUSTRALIAN DATUM (AMSD2000)	TITLE CONTOUR AND DETAIL SURVEY OVER PART OF LOT 63 ON DP804148 PARISH OF TERRANGRA COUNTY OF MOORE DATE RAYWELLS BUILDING DESIGNERS	DRAWN BY CHECKED BY DATE 15/09/14	SHEET NO 1 OF 2	THE SURVEY IS A REPRESENTATION OF THE SERVICES PROVIDED BY THE SURVEYOR TO THE CLIENT AND IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE SURVEYOR. THIS SURVEY IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE SURVEYOR. THE SURVEYOR IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT.	1. ALL WORK IS TO BE ACCORDING TO THE SURVEYING ACT 1981 AND THE SURVEYING REGULATIONS 1982. 2. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. 3. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. 4. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. 5. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. 6. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. 7. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. 8. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. 9. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE. 10. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE.
--	--	--	--------------------------	---	---



- WORKING DRAWINGS**
- FOUNDATION PLAN
 - GROUND FLOOR PLAN
 - SECTION A-A
 - SECTION B-B
 - SECTION C-C
 - SECTION D-D
 - SECTION E-E
 - SECTION F-F



GROUND FLOOR PLAN

NO.	DESCRIPTION	DATE	BY	CHECKED
1	ISSUED FOR PERMIT	04/01/12	...	...
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

PROJECT INFORMATION

Project Name	Trevor and Chris Elder
Address	Proposed New Building 3-4 Tulas Terrace, Terranora, NSW, 2486
Scale	1:100
Client	ST
Designer	Raywells
Drawn	...
Checked	...
Date	...

REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	04/01/12
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

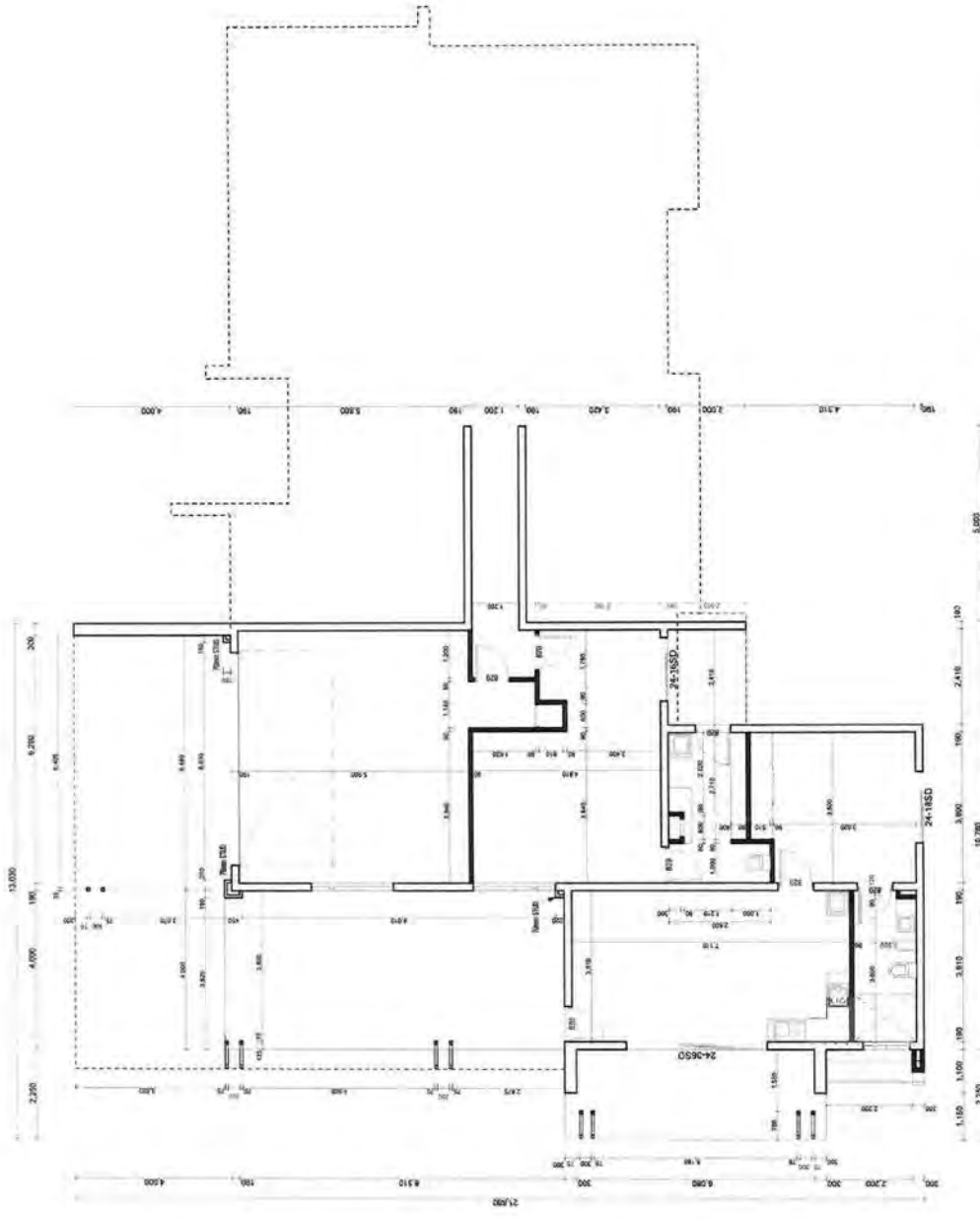
REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	04/01/12
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	04/01/12
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74	...	

WORKING DRAWINGS



ELEVATION MARKER



drawing number
262
drawing name
GROUND FLOOR DIMENSION
PLAN

project number
D47072
scale
1:100
sheet
D
drawing status
ST
revision
01

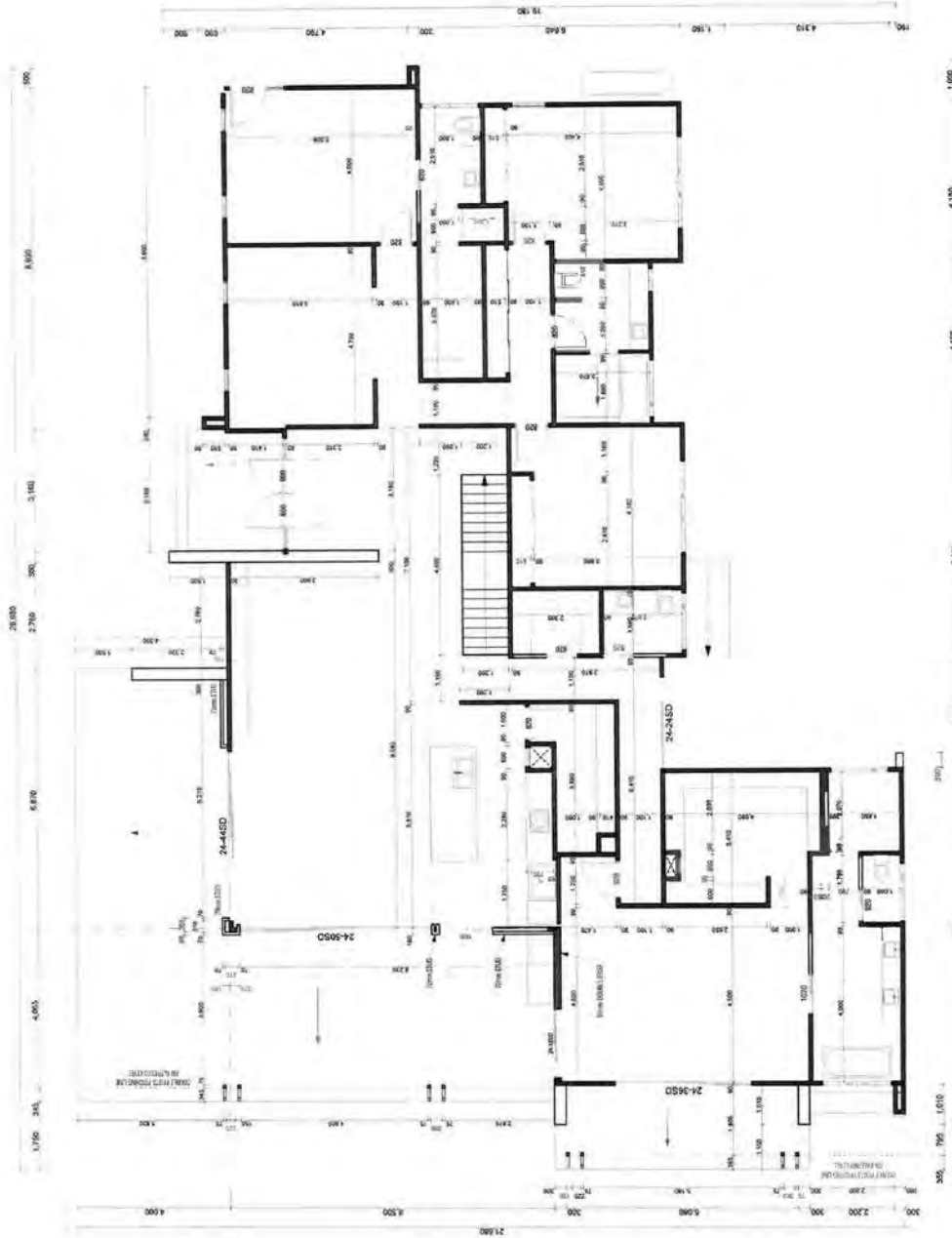
client
Trevor and Chris Eder
Proposed New Building
34 Trossa Terrace,
Teranora, NSW, 2466

no.	date	description	rev.	by	check
1	27/12/2012	ISSUED FOR PERMIT			
2	08/03/2013	ISSUED FOR PERMIT			
3	07/07/13	ISSUED FOR PERMIT			

raywells
building design
www.raywells.com.au 07 5520 9577
203 townville drive, toowoomba qld 4330



WORKING DRAWINGS



ELEVATION MARKER



DRAWING NUMBER	285
PROJECT	Proposed New Building
SCALE	1:100
DATE	11/10/14
BY	ST
CHECKED	ST
DATE	11/10/14
PROJECT NUMBER	047912
CLIENT	Trenor and Chris Ester
ADDRESS	24 Thomas Torrens, NSW 2468



PROJECT NUMBER	047912
CLIENT	Trenor and Chris Ester
ADDRESS	24 Thomas Torrens, NSW 2468
SCALE	1:100
DATE	11/10/14
BY	ST
CHECKED	ST
DATE	11/10/14

raywells
building designers

www.raywells.com.au
02 5333 2027
2721, Township Drive, Traralgon, VIC 3844

rbd

Raywells Building Designers
24 Thomas Torrens, NSW 2468

Proposed New Building
24 Thomas Torrens, NSW 2468

Scale: 1:100
Date: 11/10/14

Project Number: 047912
Client: Trenor and Chris Ester

Address: 24 Thomas Torrens, NSW 2468

Scale: 1:100
Date: 11/10/14

Project Number: 047912
Client: Trenor and Chris Ester

Address: 24 Thomas Torrens, NSW 2468

Scale: 1:100
Date: 11/10/14

Project Number: 047912
Client: Trenor and Chris Ester

Address: 24 Thomas Torrens, NSW 2468

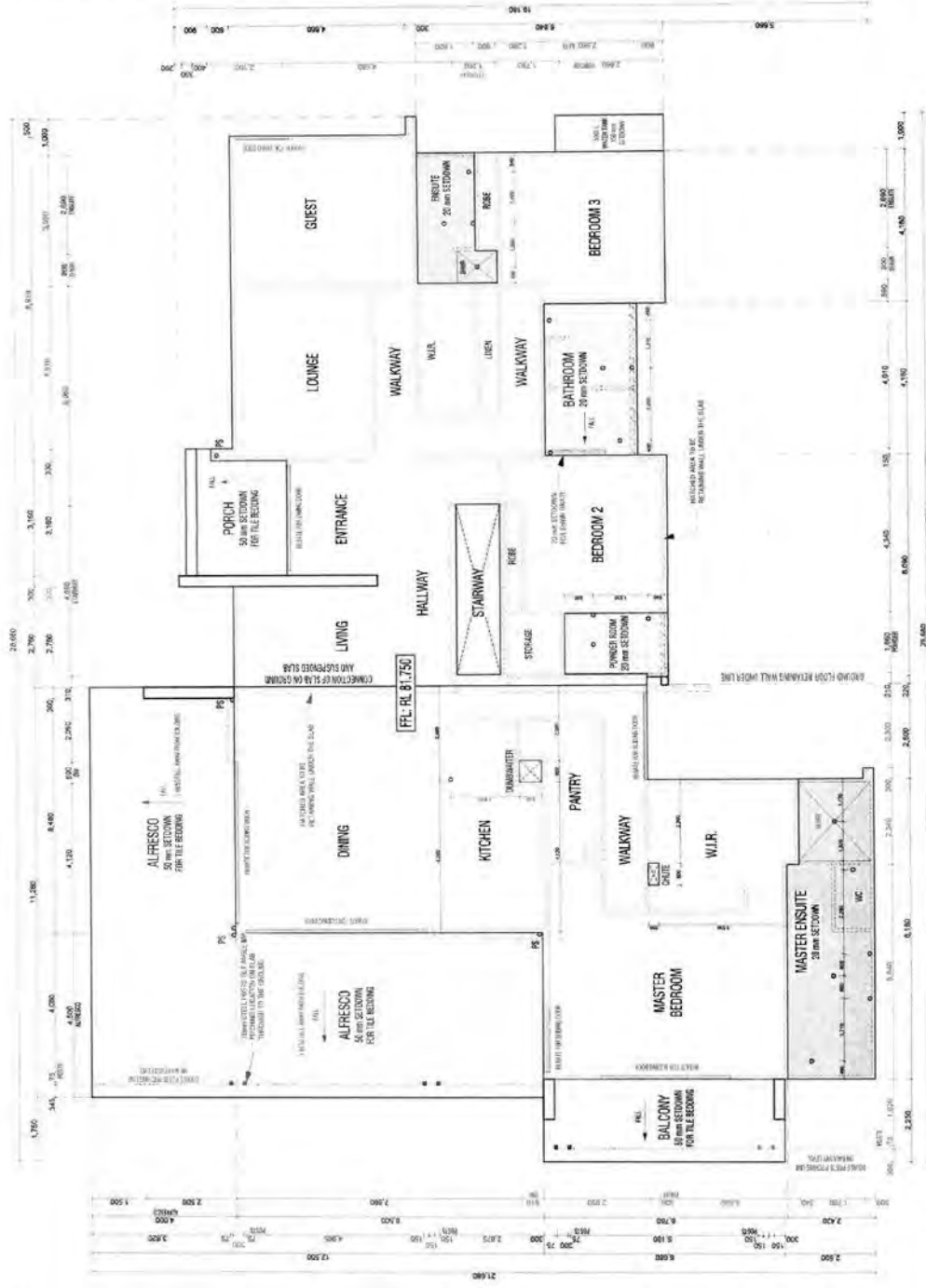
WORKING DRAWINGS

ABBREVIATIONS
 100mm FLOOR SLAB
 100mm WALL
 100mm CEILING
 100mm
 100mm

GENERAL NOTES
 ALL WORK TO BE DONE IN ACCORDANCE WITH THE BUILDING REGULATIONS 2006 AND THE BUILDING ACT 2006.
 ALL WORK TO BE DONE IN ACCORDANCE WITH THE BUILDING REGULATIONS 2006 AND THE BUILDING ACT 2006.
 ALL WORK TO BE DONE IN ACCORDANCE WITH THE BUILDING REGULATIONS 2006 AND THE BUILDING ACT 2006.

KEY
 ALL WORK TO BE DONE IN ACCORDANCE WITH THE BUILDING REGULATIONS 2006 AND THE BUILDING ACT 2006.
 ALL WORK TO BE DONE IN ACCORDANCE WITH THE BUILDING REGULATIONS 2006 AND THE BUILDING ACT 2006.
 ALL WORK TO BE DONE IN ACCORDANCE WITH THE BUILDING REGULATIONS 2006 AND THE BUILDING ACT 2006.

ELEVATION MARKER



raywells
 raywells.co.nz
 7033 Inverloch Drive, Inverloch, VIC 3207

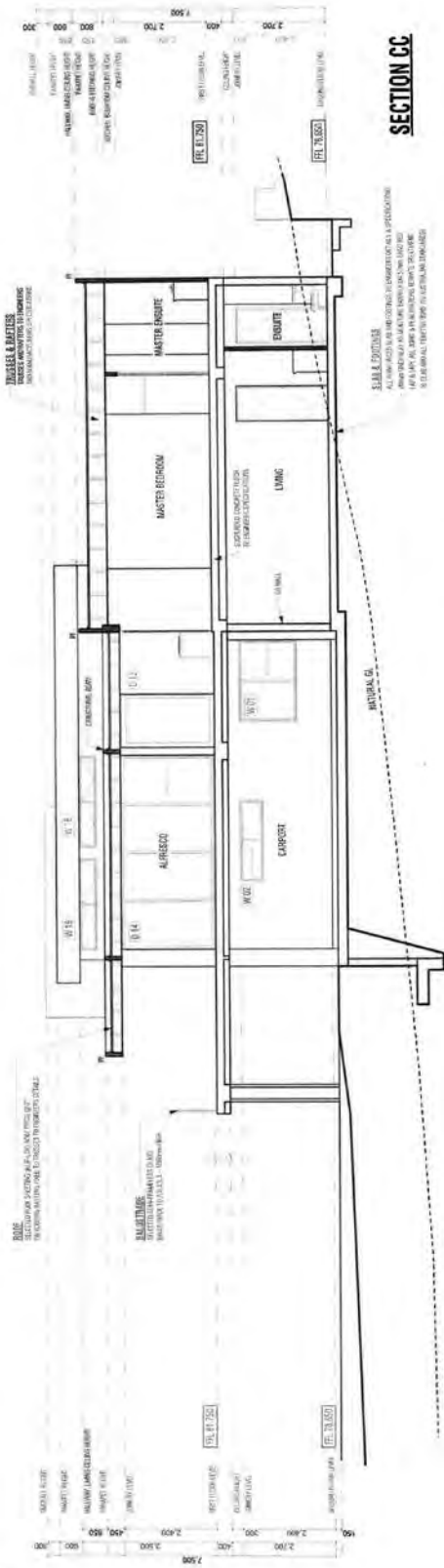
rbd

Project Number: 047012
 Project Name: Trevor and Chris Eder
 Project Address: Proposed New Building, 34-36 Trues Terrace, Terenure, NSW, 2406

Scale: 1:100
 Date: 08/10/14

Sheet: 206 of 206
 Title: FIRST FLOOR SLAB PLAN

WORKING DRAWINGS



SECTION CC



SECTION DD

raywells
 raywells.com.au
 07 5527 2837
 2/23 JAMES STREET, TERNORA, NSW 2486

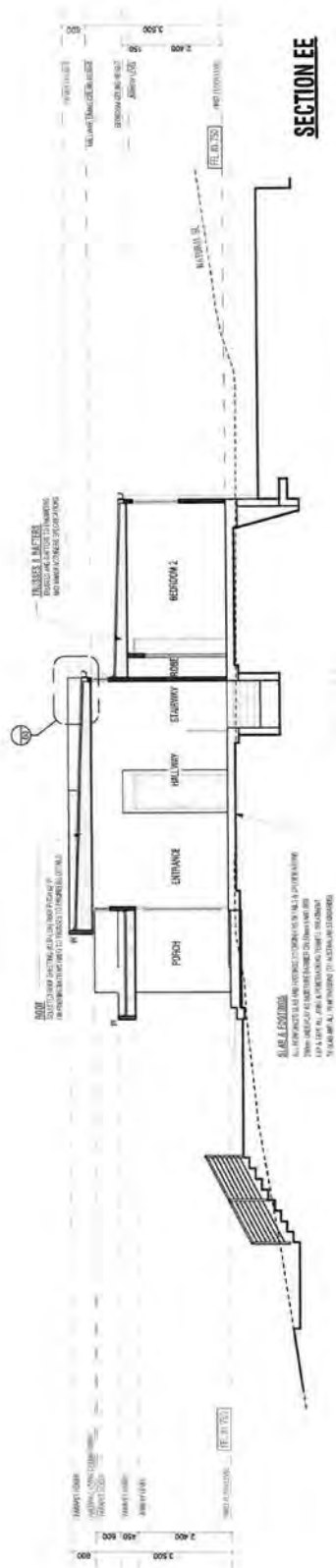
rbd

Travis and Chris Ecker
 Proposed New Building
 3-6 Trues Terrace
 Ternora, NSW, 2486

drawing number: 304
 GENERAL NOTES

revision number: 04702
 scale: 1:100
 sheet: D
 of: 24
 ST Sum

WORKING DRAWINGS



SECTION EE



SECTION FF

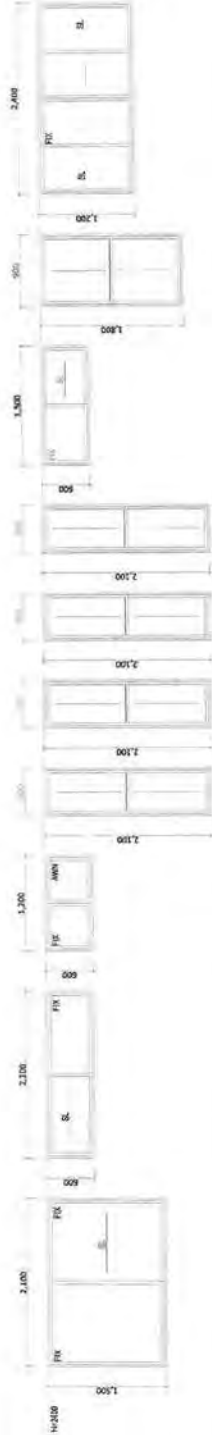
REV.	DATE	DESCRIPTION	BY	CHKD.
1		ISSUED FOR PERMIT		
2		REVISIONS		
3		REVISIONS		
4		REVISIONS		
5		REVISIONS		

PROJECT NUMBER: 04702
DATE: N
SCALE: 1:100
PROJECT NAME: Proposed New Building
CLIENT: 3-5 Trues Terrace, Terranora, NSW, 2486
DRAWN BY: ST
CHECKED BY: Sun


 www.raywells.com.au
 07 4397 9527
 205 Lisarua Drive, Brisbane QLD 4001



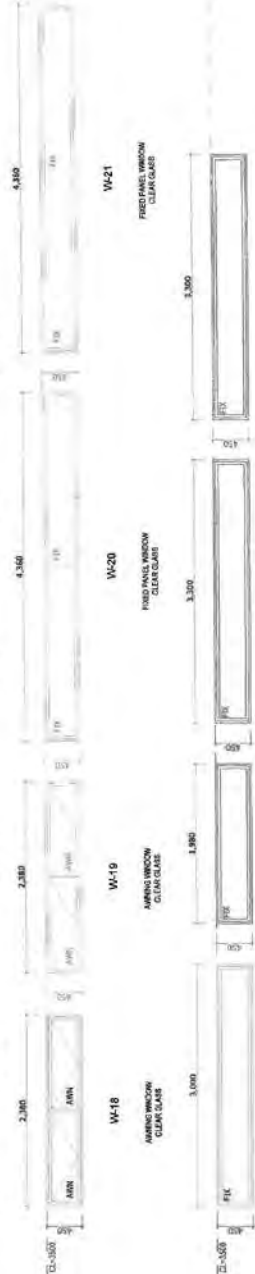
WIPERIS DRAWINGS



W-01 WINDOW SLIDER CLEAR GLASS
 W-02 WINDOW SLIDER WHITE GLASS
 W-03 WINDOW WITH FIXED PANEL WHITE GLASS
 W-04 DOUBLE HUNG CLEAR GLASS
 W-05 DOUBLE HUNG CLEAR GLASS
 W-06 DOUBLE HUNG CLEAR GLASS
 W-07 DOUBLE HUNG CLEAR GLASS
 W-08 WINDOW SLIDER WHITE GLASS
 W-09 DOUBLE HUNG CLEAR GLASS
 W-10 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS



W-11 WINDOW SLIDER WHITE GLASS
 W-12 WINDOW SLIDER WHITE GLASS
 W-13 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS
 W-14 WINDOW SLIDER WHITE GLASS
 W-15 WINDOW SLIDER WHITE GLASS
 W-16 WINDOW SLIDER WHITE GLASS
 W-17 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS



W-18 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS
 W-19 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS
 W-20 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS
 W-21 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS
 W-22 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS
 W-23 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS
 W-24 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS
 W-25 WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS

raywells building designers
 www.raywells.net 07 5520 2827
 2/151 Townsville Drive, Durrucki, Ipswich QLD

rbd

Legend

NO.	QD16	DESCRIPTION	INTL.	TRK.	DATA	DESCRIPTION	INTL.	TRK.	DATA	PROJECT NUMBER	DRAWING NUMBER
1	FIXED PANEL WINDOW	FIXED PANEL WINDOW CLEAR GLASS								047012	401
2	WINDOW SLIDER	WINDOW SLIDER WHITE GLASS								047012	401
3	DOUBLE HUNG	DOUBLE HUNG CLEAR GLASS								047012	401
4	WINDOW WITH FIXED PANEL	WINDOW WITH FIXED PANEL TO CENTRE CLEAR GLASS								047012	401

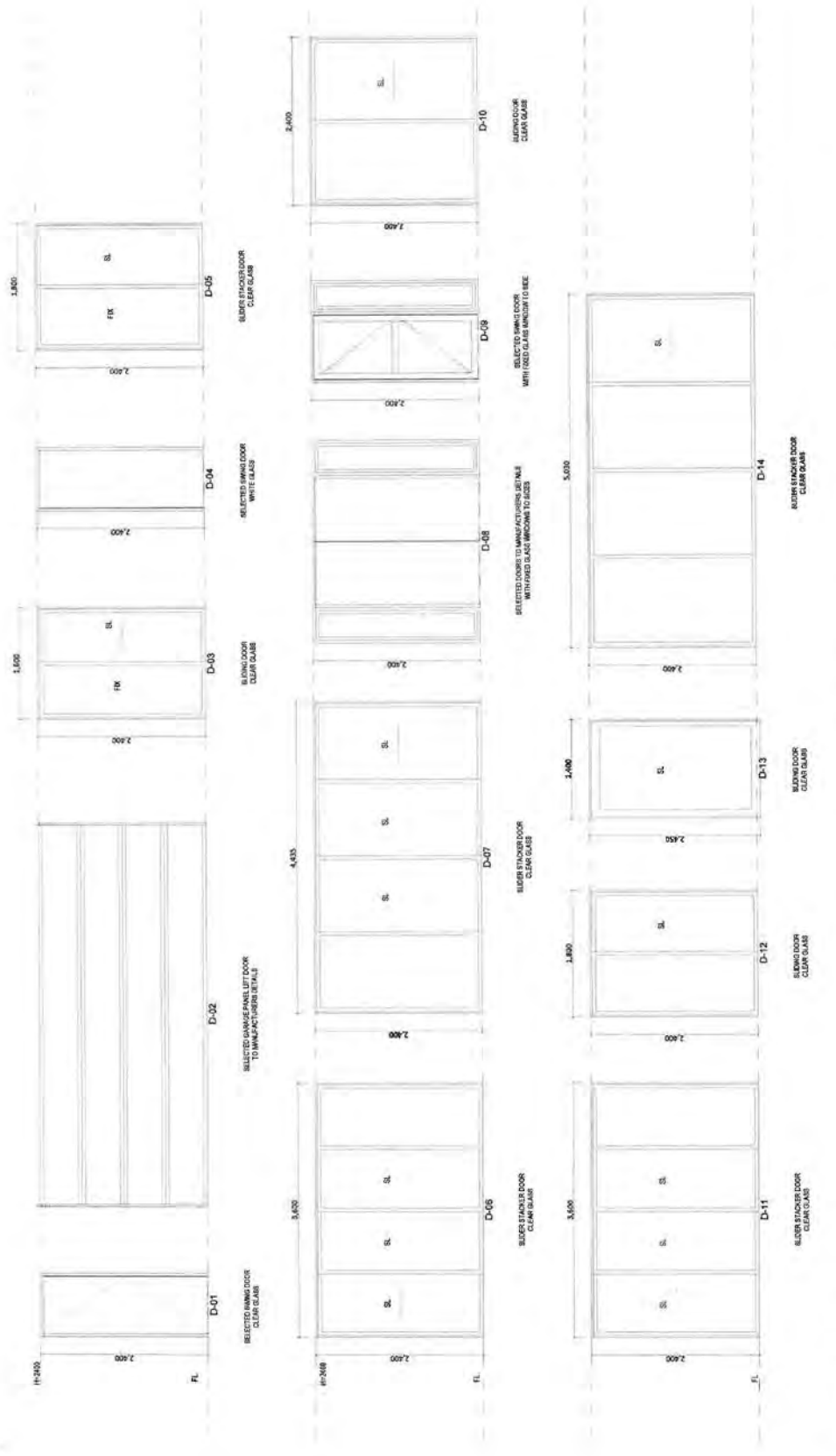
Scale: 1:50
 Date: 08/09/14
 Drawn: D
 Checked: ST
 Project Name: 345 Totara Terrace, Tarrarewa, NSW, 2488

Project Number: 047012
 Drawing Number: 401

Scale: 1:50
 Date: 08/09/14
 Drawn: D
 Checked: ST

WINDOW SCHEDULE

WORKING DRAWINGS



REV.	DATE	DESCRIPTION	BY	CHK	DATE	DESCRIPTION	BY	CHK	DATE
A	11/02/14	ISSUED FOR PERMIT							
B	14/02/14	REVISIONS TO PERMIT							
C	04/03/14	REVISIONS TO PERMIT							
D	04/03/14	REVISIONS TO PERMIT							

drawing number	462
drawing title	DOOR SCHEDULE
project number	047012
client	Treor and Chris Eder
scope	Proposed New Building
scale	1:50
status	ISSUED
author	ST
checked	ST
sum	57

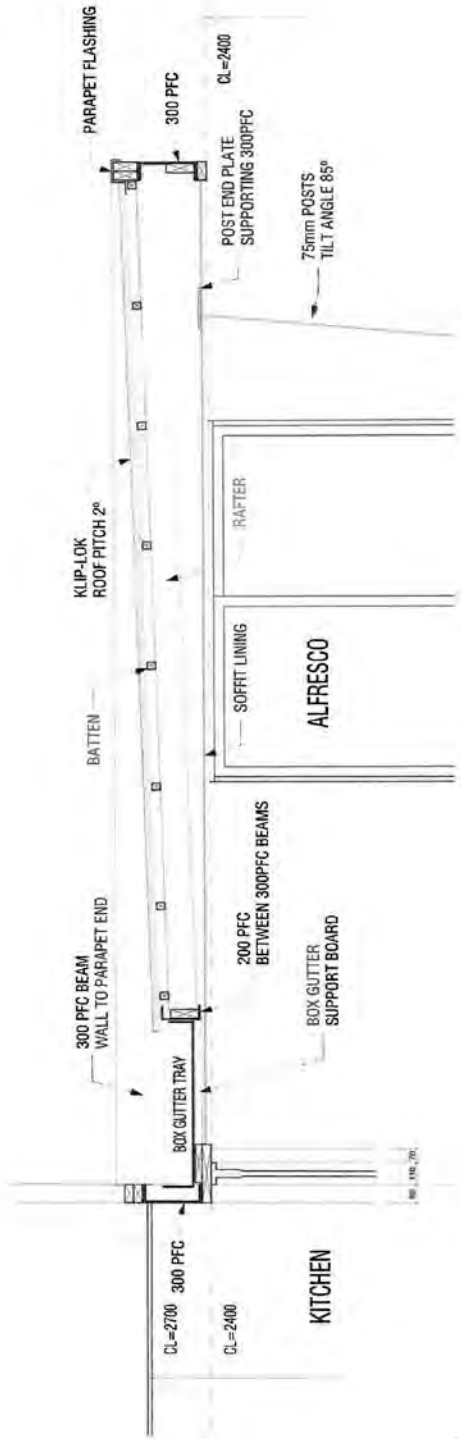
REV.	DATE	DESCRIPTION	BY	CHK	DATE
A	11/02/14	ISSUED FOR PERMIT			
B	14/02/14	REVISIONS TO PERMIT			
C	04/03/14	REVISIONS TO PERMIT			
D	04/03/14	REVISIONS TO PERMIT			

raywells
building designers

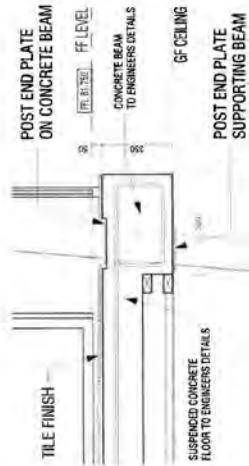
www.raywells.co.uk 07 532 2627
278 Cornhill St, Exeter, Devon, EX1 1NB

rbd

WORKING DRAWINGS



D1
Scale 1:20



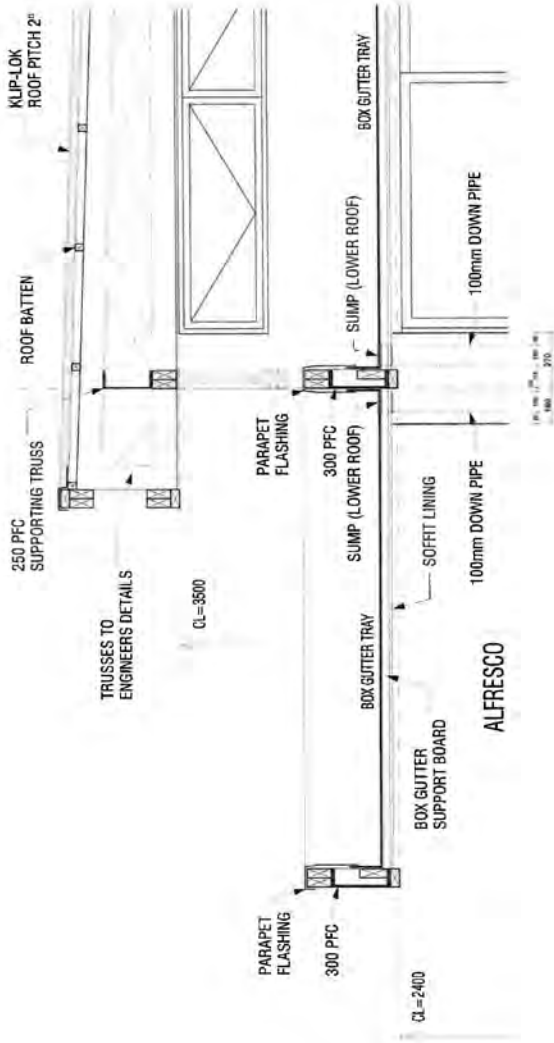
D2
Scale 1:20

raywells
building design
rbd
2/3 Fernhill Place, Brisbane QLD 4001
Tel: (07) 3851 9977
Fax: (07) 3851 9978

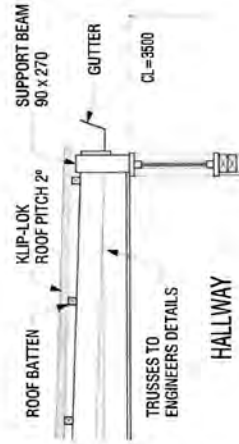
REV.	DATE	DESCRIPTION	BY	CHK.	DATE	PROJECT	SCALE	PROJECT NUMBER	DETAILS NUMBER
1	10/08/14	ISSUED FOR PERMIT				Traver and Chris Eder	1:20	AP012	N
2	10/08/14	ISSUED FOR PERMIT				Proposed New Building	1:20	1004	D
3	10/08/14	ISSUED FOR PERMIT				3-6 Trueta Terrace,	1:20	1004	D
4	10/08/14	ISSUED FOR PERMIT				Tennant, NSW, 2466	1:20	1004	D
5	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
6	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
7	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
8	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
9	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
10	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
11	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
12	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
13	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
14	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
15	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
16	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
17	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
18	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
19	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
20	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
21	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
22	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
23	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
24	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
25	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
26	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
27	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
28	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
29	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
30	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
31	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
32	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
33	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
34	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
35	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
36	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
37	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
38	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
39	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
40	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
41	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
42	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
43	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
44	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
45	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
46	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
47	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
48	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
49	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
50	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
51	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
52	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
53	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
54	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
55	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
56	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
57	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
58	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
59	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
60	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
61	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
62	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
63	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
64	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
65	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
66	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
67	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
68	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
69	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
70	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
71	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
72	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
73	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
74	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
75	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
76	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
77	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
78	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
79	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
80	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
81	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
82	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
83	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
84	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
85	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
86	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
87	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
88	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
89	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
90	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
91	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
92	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
93	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
94	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
95	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
96	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
97	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
98	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
99	10/08/14	ISSUED FOR PERMIT					1:20	1004	D
100	10/08/14	ISSUED FOR PERMIT					1:20	1004	D

DETAILS 1

WORKING DRAWINGS



D4
Scale 1:20



D3
Scale 1:20

REV.	DATE	DESCRIPTION	BY	CHKD.	STATUS	ISSUE NO.	PROJ. NO.	PROJ. NAME	CLIENT	PROJ. LOCATION	PROJ. NUMBER
1	17/10/14	ISSUE FOR PERMIT	...	...	...	...	...	Treyor and Chris Ecker	Proposed New Building	94 Trudon Terrace, Terranora, NSW, 2486	404
2	20/10/14	ISSUE FOR PERMIT	...	...	...	...	...	Treyor and Chris Ecker	Proposed New Building	94 Trudon Terrace, Terranora, NSW, 2486	404
3	20/10/14	ISSUE FOR PERMIT	...	...	...	...	...	Treyor and Chris Ecker	Proposed New Building	94 Trudon Terrace, Terranora, NSW, 2486	404
4	20/10/14	ISSUE FOR PERMIT	...	...	...	...	...	Treyor and Chris Ecker	Proposed New Building	94 Trudon Terrace, Terranora, NSW, 2486	404

raywells
www.raywells.com.au
07 3520 2327
2721 Bourke Street, Lutghugh, Queensland

rbd

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The aims of this plan are:

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

Strategic Plans

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

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

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

Tweed Shire 2000+ Strategy

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

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

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

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

- *A relatively high portion of large residential lots (i.e. minimum size of 800m²) because of existing development and scenic values*
- *Defined areas of potential dual occupancy and medium density development*
- *Controls over clearing of vegetation on land containing vegetation with habitat significance*
- *Housing not located directly adjoining wetlands or other significant vegetation, buffer areas provided with these based on local characteristics of vegetation, drainage and topography*
- *Houses not permitted on prominent ridgelines*

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

Tweed 4/24 Strategic Plan

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

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

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

Continued urban expansion over the next two decades is inevitable. Substantial areas of land at Cobaki Lakes, Bilambil Heights, Kings Forest and elsewhere have been zoned for development for many years.

Population growth has slowed somewhat in recent years, but remains strong.

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

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

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

Four-Year Priorities

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

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

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

Community Strategic Plan 2011/2021

The Strategic Plan 2011/2021 is the current plan and was adopted by Council on 14 December 2010. *The Tweed Community Strategic Plan 2011/2021 is the community's 10-year vision for the Tweed, to protect the qualities that make the Tweed a great place to live and to create communities which are strong and well connected. This plan creates a framework to implement Council's four-year Delivery Program and annual Operational Plan, which will align the community's*

aspirations with the necessary strategy development, planning and resourcing required to achieve the long-term vision and deliver the outcomes.

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

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

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

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

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

The proposed development is not considered to be consistent with the aims of the TLEP 2000. The proposed development is not considered to be consistent with the vision of the shire "to manage growth so that the unique natural and developed character of the Tweed Shire is retained." The proposed development is for a two 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.

Under the original proposal, to accommodate the onsite effluent as proposed for Lot 1, 100% vegetation clearance was required to ensure onsite effluent is accommodated. It was considered that this was not suitable in terms of ecologically sustainable development. However, as the proposal has been amended it is considered that this is no longer required and will have minimal impact upon the ecology of the locality.

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 one additional lot 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.

However, as requested through the Council resolution an amended application with onsite effluent being utilised and the subdivision being reduced to a two lot subdivision then onsite effluent can be accommodated for the proposal. It is considered that the proposal should still be recommended although conditions have been included within the options.

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 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 2 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 30 July 2014 with eight conditions of consent to be included in the recommendations.

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 an additional

residential allotment 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 2 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 Tweed Local Environmental Plan 2014 as gazetted on 4 April 2014 was in draft form when the previous report was submitted to Council. The LEP relates to the subject site and zones the land R1 - General Residential. Within the R1 - General Residential zone the minimum subdivision size is 450m². The proposal complies with this minimum allotment size.

Clause 1.2 - Aims of Plan provides the following:

- (2) *The particular aims of this Plan are as follows:*
 - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents.*

The greater strategic plan for the area is for future urban development as per Council's Strategic policies outlined above. It is considered that the proposed development is not consistent with the aims of the LEP 2014 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. The application was amended to reduce the number to two allotments and are assessed as follows:

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 two allotments for residential development. The proposal is to utilise onsite effluent disposal instead of servicing the site with sewer until it is available. With the two lot subdivision the onsite effluent disposal can be accommodated without major environmental impact.

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 30 July 2014 with eight conditions of consent to be included in the recommendations.

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

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

A5.4.8 Urban Structure

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

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

A5.4.10 Movement Network

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

A5.4.11 Open Space Network

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

A5.4.12 Lot Layout

Whilst the proposal complies with the minimum lot size for dwelling houses of 450m² and are of a regular shape capable of accommodating a building platform with a minimum dimension of 10m x 15m, the proposed development is located within the urban release area being Area E the two 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:

"An Amended On-Site Sewage Management Design Report for 3-6 Trutes Terrace, Terranora prepared by HMC Environmental Consulting Pty Ltd dated April 2013 As Amended February 2014 (Report: HMC 2013.027) has been submitted.

Council's Environmental Health Officer advised on 14/02/14 that the amended on-site sewage management design report by HMC has been reviewed and it is considered that the proposed on-site sewage management systems will provide an acceptable level of environmental impact and are adequate for the development. General conditions to apply."

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. It was not considered to be a requirement to readvertise the amended plan. 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.*

The proposed development is not considered to have any undue impact upon the environment in the locality.

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 both 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.*

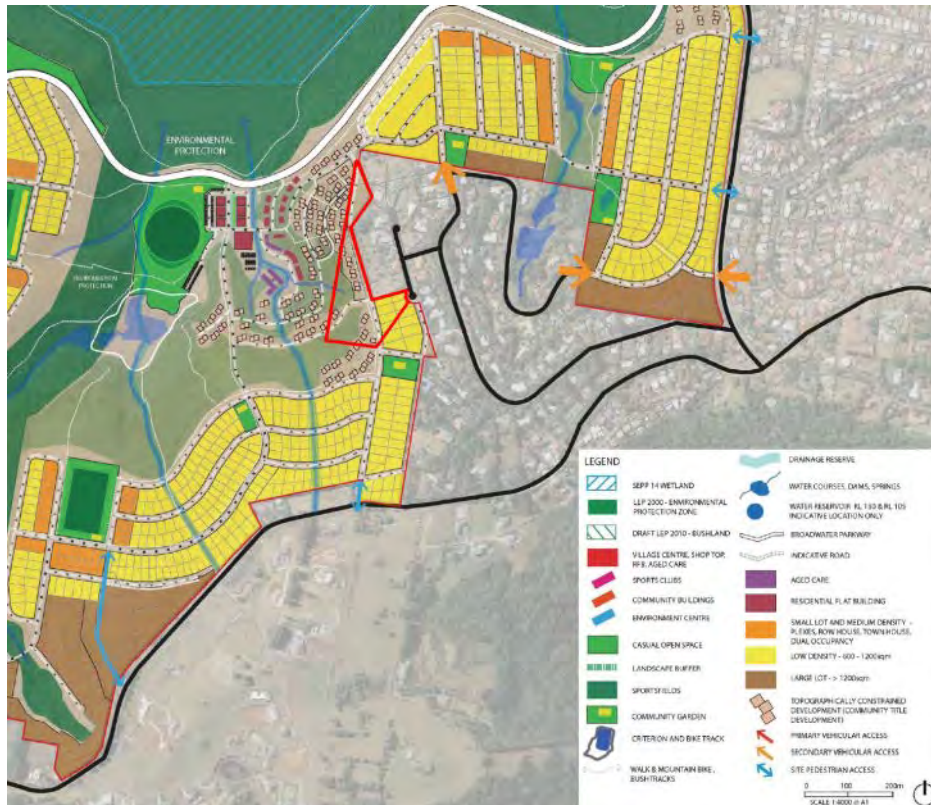
The proposed development is for a two lot subdivision. It is considered that open space is not required as a part of this application and contributions could be levied for this component.

2.8 Design Principle 6 - Dwelling and Allotment Mix

Objectives

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

The proposed development represents an under-utilisation of the site. As seen in the figure below, there site is envisaged for a broad range of housing types and sizes. The proposed development is for a two 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 two 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 30 July 2014 with eight conditions of consent to be included in the recommendations.

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.

(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. The proposed amendment reduced the number of lots and therefore was not considered to require re-advertising. 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 30 July 2014 with eight conditions of consent to be included in the recommendations.

(e) Public interest

The proposed two 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. Refuse this application in accordance with the officers' recommendation; or
2. Approve the application with the conditions below.

The officers recommend Option 1.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan:
 - Proposed Lot Layout dated 02/14 prepared by Planit Consulting and dated 02/14, except where varied by the conditions of this consent.
 - and Plan Nos:
 - 101 - Perspectives 1 - Issue D
 - 102 - Site Plan - Issue D
 - 103 - Survey - Issue D
 - 201 - Ground Floor Plan - Issue D
 - 202 - Ground Floor Dimension Plan - Issue D
 - 203 - Ground Floor Slab Plan- Issue D
 - 204 - First Floor Plan - Issue D
 - 205 - First Floor Dimension Plan - Issue D
 - 206 - First Floor Slab Plan - Issue D
 - 207 - Roof Plan - Issue D
 - 301 - Northern and Eastern Elevations - Issue D
 - 302 - Southern and Western Elevations - Issue D
 - 303 - Section AA & BB - Issue D
 - 304 - Section CC & DD - Issue D
 - 305 - Section EE & FF - Issue D
 - 401 - Window Schedule - Issue D
 - 402 - Door Schedule - Issue D
 - 403 - Details 1 - Issue D
 - 404 - Details - Issue D
 - prepared by Raywells Building Designers and dated 29/4/2014, except where varied by the conditions of this consent.

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

[GEN0115]
 3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]
 4. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]
 5. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]
 6. Evidence of registration of the plan of subdivision will be required prior to the issuing of a construction certificate for the dwelling on proposed Lot 2.

[GENNS01]
 7. The septic disposal area for the existing dwelling shall be located wholly on the proposed new lot.

[GENNS02]
-

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

9. The Construction Certificate Application for subdivision works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the proposed development, prepared in accordance with Section D7.07 of Council's *Development Design Specification D7 - Stormwater Quality*. Such plans are to include measures, monitoring and adaptive management actions to ensure appropriate stormwater quality outcomes are achieved. [PCC0125]

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

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

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

10. **Prior** to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment. [PCC0165]

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

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

[PCC0275]

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. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

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

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

If Council is nominated as the PCA for the subdivision construction certificate, then earthworks details are to be included on those plans and a separate S68 stormwater application will not be required.

[PCC0485]

14. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

15. The proponent shall submit plans and specifications with an application for construction certificate for the following subdivision works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

OTHER: Right of Way / Driveways

- (a) Construction of the right of carriageway serving lots 1 and 2 to a 4m wide concrete standard, in accordance with the provision of Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

The driveway is required to:

- Have a one-way crossfall in lieu of an inverted crown.
- Be located centrally within the reciprocal Rights-of-Way.
- Provide an evenly splayed footpath crossing.
- Include stormwater management and dispersal details.
- Include provision of service conduits.

- (b) The subdivision will require construction of all driveway works within the Rights-of-Way as well as the individual driveway to the existing dwelling.
- (c) Construction of the internal driveway beyond the reciprocal Rights-of-Way to the proposed dwelling on Lot 2 may be undertaken as part of the subdivision works or deferred to be part of the dwelling construction certificate. [PCC0875]
16. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate. [PCC0935]
17. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate. [PCC0945]
18. Prior to the issue of a **Construction Certificate** for subdivision works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.
- (a) copies of compliance certificates relied upon
- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, electricity supply and telecommunication infrastructure)

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

- [PCC0985]
19. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application for subdivision works shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.

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

[PCC1105]

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

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

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

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

[PCC1145]

21. 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]

22. Where water is to be drawn from Councils reticulated system, the proponent shall:

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

23. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

Any approval to install an onsite sewage treatment and disposal system shall comply

with the recommended onsite sewage treatment and disposal method as detailed in the Amended On-Site Sewage Management Design Report for 3-6 Trutes Terrace, Terranora prepared by HMC Environmental Consulting Pty Ltd dated April 2013 As Amended February 2014 (Report: HMC 2013.027) including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

[PCC1285]

24. The proposed dwelling on proposed Lot 2 shall be located in accordance with the Preliminary Site Contamination Investigation for 3-6 Trutes Terrace, Terranora prepared by HMC Environmental Consulting Pty Ltd dated April 2013 (Report: HMC2013.027 CL). Proposed changes to this location will require an additional contaminated land investigation of the subject site to the satisfaction of Council's General Manager or delegate.
25. The 'Proposed Lot Layout' plan by Planit version 05 does not allocate the northern half of the reciprocal Right-of-Way strip to any property, and for the purposes of subdivision, this strip is to be part of proposed Lot 2.
26. The proposed retaining wall shown to be constructed on the southern boundary of proposed Lot 2 (as part of future dwelling construction) is to be relocated to be a minimum of 900mm from the boundary.
27. The width of the proposed easement to cater for a future road is to be determined after detailed engineering plans for the future road are prepared. These plans must cater for a 14.5m wide road (7.5m carriageway plus 2 x 3.5m wide footpaths) PLUS all associated road batters (5:1 batters are preferred, but 4:1 batters will be accepted).
28. As the proposal conflicts with the preferred road layout as depicted on TSC DCP B24 Figure 2.8 'Diagrammatic Road network', the retention of a future north-south road within the site and connectivity to the DCP preferred road layout at the boundaries of the site, are to be demonstrated. This will require preparation of a complete alternate road layout for the site.

[PCCNS01]

This is to ensure that no adjoining properties that are developed in accordance with the DCP are hindered or disadvantaged by this proposal.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

29. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.
30. **Prior** to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
 - (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
 - (c) WorkCover Regulations 2000

[PCW0005]

[PCW0025]

31. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
32. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least **2 days** prior to work commencing.
- [PCW0225]
33. Residential building work:
- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

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

[PCW0235]

- 34. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one 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]

- 35. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate.

[PCW0375]

- 36. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

- 37. Subdivision work in accordance with a development consent must not be commenced until:

- (a) a Construction Certificate for the subdivision work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

- (b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
- (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) to certify the compliance of the completed works. The SWAC must be accredited in accordance with Tweed Shire Council DCP Part A5 - Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

C4: Accredited Certifier - Stormwater management facilities construction compliance

C6: Accredited Certifier - Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

Note: For subdivisions creating 5 new allotments or less, OR the value of new public infrastructure is less than \$30,000, then the SWAC may be substituted for an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.

[PCW0815]

38. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

39. 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]

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

[PCW1005]

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

[PCW1065]

DURING CONSTRUCTION

42. 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.

43. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: [DUR0005]

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.

44. 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: [DUR0205]

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.

45. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building. [DUR0215]

46. 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). [DUR0245]

[DUR0375]

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

[DUR0395]

48. 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]

49. 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]

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

[DUR0445]

51. During filling operations,

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

and upon completion,

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

[DUR0755]

52. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

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

Please note timber retaining walls are not permitted.

[DUR0835]

55. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority.
Please note timber retaining walls are not permitted.

[DUR0845]

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

[DUR0905]

57. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

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

[DUR0995]

59. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
 - Dust during filling operations and also from construction vehicles.
 - Material removed from the site by wind.
- [DUR1005]
60. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited.
- [DUR1015]
61. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
- [DUR1795]
62. 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]
63. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks / Access works

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Driveways - formwork/reinforcement
- (e) Final Practical Inspection - on maintenance
- (f) Off Maintenance inspection

Water Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final Practical Inspection - on maintenance

- (i) Off maintenance

Stormwater Quality Control Devices (other than proprietary devices)

For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media
- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

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

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

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

[DUR1895]

- 64. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

- 65. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[DUR1955]

- 66. 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]

- 67. 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 blown from the site.

[DUR2185]

- 68. Inter allotment drainage shall be provided to **all** lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

- 69. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion

control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

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

[DUR2445]

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

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

[DUR2485]

72. Plumbing

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

[DUR2495]

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

[DUR2505]

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

[DUR2545]

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

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

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

[DUR2555]

76. All water drawn from Councils reticulated system shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[DUR2575]

77. Dust and Erosion Management

- (a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed areas are to be topsoiled and seeded immediately to protect them from water and wind erosion.
- (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.
- (c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

[DUR2825]

78. Air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the **NSW Protection of the Environment Operations (Noise Control) Regulation 2008**.

[DUR2835]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

79. 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]

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

[POC0225]

81. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

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

[POC0435]

83. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

(a) Tweed Road Contribution Plan: 6.5 Trips @ \$2969 per Trips (\$1,988 base rate + \$981 indexation) S94 Plan No. 4 Sector5_4	\$12,737.34*
(b) Open Space (Casual): 1 ET @ \$549 per ET (\$502 base rate + \$47 indexation) S94 Plan No. 5	\$362.34*
(c) Open Space (Structured): 1 ET @ \$629 per ET (\$575 base rate + \$54 indexation) S94 Plan No. 5	\$415.14*
(d) Shirewide Library Facilities: 1 ET @ \$847 per ET (\$792 base rate + \$55 indexation) S94 Plan No. 11	\$559.02*
(e) Bus Shelters: 1 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	\$42.24*
(f) Eviron Cemetery: 1 ET @ \$124 per ET (\$101 base rate + \$23 indexation) S94 Plan No. 13	\$81.84*
(g) Community Facilities (Tweed Coast - North) 1 ET @ \$1404 per ET (\$1,305.60 base rate + \$98.40 indexation) S94 Plan No. 15	\$926.64*
(h) Extensions to Council Administration Offices & Technical Support Facilities 1 ET @ \$1880.38 per ET (\$1,759.90 base rate + \$120.48 indexation) S94 Plan No. 18	\$1,241.05*
(i) Cycleways: 1 ET @ \$478 per ET (\$447 base rate + \$31 indexation) S94 Plan No. 22	\$315.48*
(j) Regional Open Space (Casual) 1 ET @ \$1103 per ET	\$727.98*

(\$1,031 base rate + \$72 indexation)

S94 Plan No. 26

- (k) Regional Open Space (Structured):
1 ET @ \$3872 per ET \$2,590.93*

(\$3,619 base rate + \$253 indexation)

S94 Plan No. 26

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

[POC0395/PSC0175]

88. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of the subdivision certificate. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

[PSC0185]

89. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the plan of subdivision is registered.

It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

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

The submission shall include copies of all undertaken test results.

[PSC0395]

91. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate **PRIOR** to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

92. Prior to the issue of a **Subdivision Certificate**, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

93. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the relevant dwelling and/or subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.

- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.
- (c) Easements and Restrictions as required by TSC Development Design Specification D6.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

- [PSC0785]
94. A Subdivision Certificate will not be issued by the General Manager until such time as all relevant conditions of this Development Consent have been complied with.

[PSC0825]

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

[PSC0830]

96. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over **ALL** public services/infrastructure on private property.
- (b) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 "Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.
- (c) Creation of reciprocal Rights-of-Way over the shared access driveway.
- (d) Easement for Stormwater Drainage over Lot 2 benefiting Lot 1
- (e) Easements for future road construction. The overall Easement width must cater for associated road batters and drainage works.
- (f) Positive Covenant requiring connection to a reticulated sewer infrastructure system once it becomes available. Associated Sec.64 contributions would also be payable at that time.
- (g) Positive Covenant requiring compliance with the requirements of the Voluntary Planning Agreement (VPA), including payment of all applicable contributions, once the site is physically connected to the DCP release area.
- (h) The proposed dwelling site on proposed Lot 2 shall be located in accordance with the Preliminary Site Contamination Investigation for 3-6 Trutes Terrace, Terranora prepared by HMC Environmental Consulting Pty Ltd dated April 2013 (Report: HMC2013.027 CL) or to the satisfaction of Council's General Manager or delegate. A contaminated lands investigation will be required for any changes to the proposed dwelling location.

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

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

[PSC0835]

97. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each new lot in the deposited plan.

[PSC0845]

98. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

99. Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

100. In conjunction with the application for a **Subdivision Certificate**, the applicant must also apply to Council (OR PCA if applicable) for a Compliance Certificate for Subdivision Works. This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following:

- (a) Roads / Driveways
- (b) Water Reticulation
- (c) Drainage
- (d) Bulk Earthworks
- (e) Retaining Walls

Note:

- 1. All compliance certificate applications for Subdivision Works must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.

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

[PSC0915]

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

[PSC0925]

102. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes installed, including joints and junctions, will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

103. Prior to issuing a Subdivision Certificate, reticulated water supply shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]

104. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

105. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

106. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the Developer is required (at the Developer's expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO's Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services.

[PSC1205]

107. Prior to the issue of a Subdivision Certificate the owner is to enter into a Voluntary Planning Agreement in accordance with the email dated 30 July 2014 from Planit Consulting regarding the payment of contributions in relation to the Area E Urban Release Area.

[PSCNS01]

USE

108. Air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the **NSW Protection of the Environment Operations (Noise Control) Regulation 2008.**

[USE1510]

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 two 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:

The applicant has a right to appeal Council's determination of this application in the NSW Land and Environment Court, which would incur costs to Council.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PR-PC] Development Application DA13/0602 for a Two Lot Subdivision at Lot 6 DP 619881 No. 332 Clothiers Creek Road, Nunderi

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA13/0602 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.2	Improve decision making by engaging stakeholders and taking into account community input
1.2.1	Council will be underpinned by good governance and transparency in its decision making process

SUMMARY OF REPORT:

The subject application seeks consent for a two lot subdivision. Under the Tweed Local Environmental Plan 2000 the site was zoned 1(c) Rural Living, with a minimum lot size of 1ha. The configuration of these proposed allotments is as follows:

- Proposed Lot 1 = 8,200m². The lot contains an existing dwelling, swimming pool and shed as well as the existing access from public road.
- Proposed Lot 2 = 10,238m². (A nominated house site has been identified on this allotment). A dam is located to the south of the site as well as the location of a Council approved shed, which had not been constructed at the time of site visit (approved under DA13/0545).

The application includes a State Environmental Planning Policy (SEPP) No. 1 Objection in relation to Clause 21(2)(d) of the Tweed Local Environmental Plan 2000 relating to lot area. Concurrence has been received from the Director General of NSW Planning & Infrastructure with respect to the SEPP 1 Objection.

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all SEPP No. 1 variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, this application is reported to Council for determination. The standard is varied by approximately 18%.

The proposed development is considered to demonstrate general compliance with the relevant planning instruments, apart from the proposed SEPP No. 1 objection. However it is considered that sufficient justification has been provided in this instance and the proposed development is recommended for conditional approval.

RECOMMENDATION:

That:

- A. Development Application DA13/0602 for a two lot subdivision at Lot 6 DP 619881 No. 332 Clothiers Creek Road, Nunderi be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the submitted plans as follows:**

- **Plan of Proposed Subdivision prepared by Robert. A. Harries and dated 25 August 2014; and**
- **Area Subject to Ecological Restoration Program Plan, prepared by Robert. A. Harries, as amended in red and dated 4 September 2014,**

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0125]

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

[GEN0135]

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

[GEN0290]

- 5. Property access shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.**

[GEN0330]

- 6. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve.**

Application shall include engineering plans and specifications to provide a bitumen sealed access off Clothiers Creek Road (minimum 3.0m wide) plus associated drainage to the property boundary in accordance with Section A2 - "*Site Access and Parking Code*" of Council's consolidated Tweed Development Control Plan and Council's "*Driveway Access to Property - Part 1*" Design Specification June 2004.

[GENNS01]

- 7. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of**

the Local Government Act for the following works (as applicable, but not limited to);

a. water,

- Relocation of the existing water main (if applicable) to locate it within proposed Lot 1.
- Installation of a new domestic water main within (to service) proposed Lot 2.

b. sewerage,

c. drainage works, including;

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

[GENNS02]

8. Stormwater Management of the subdivision must be in accordance with Council's *Development Design Specification D7 - Stormwater Quality and* should incorporate water sensitive design principles where possible.

[GENNS03]

9. Erosion and Sediment Control shall be designed, installed and maintained in accordance with Tweed Shire Council Development Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[GENNS04]

10. Each lot shall be connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements (as applicable).

11. The areas identified in red on Area Subject to Ecological Restoration Program Plan, prepared by Robert. A. Harries, as amended in red and dated 4 September 2014, must be subject to an ecological restoration program and managed for conservation purposes in perpetuity. For the purposes of this consent the areas identified on this plan shall be described as the 'conservation area'.

12. All native trees shown on the Plan of Proposed Subdivision prepared by Robert. A. Harries and dated 25 August 2014 shall be retained and protected.

13. All ecological restoration works are to be carried out in accordance with a Council approved Habitat Restoration Plan.

[GENNS05]

PRIOR TO COMMENCEMENT OF WORK

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

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

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

[PCW0985]

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

[PCW1170]

DURING CONSTRUCTION

16. All proposed works are to be carried out in accordance with the conditions of development consent, approved Management Plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

18. 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 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]

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

[DUR0815]

- 20. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**

[DUR0985]

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

[DUR0995]

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

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

[DUR1005]

- 23. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**

[DUR1795]

- 24. Any damage caused to public infrastructure (roads and services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate.**

[DUR1875]

- 25. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.**

[DUR1885]

26. Regular inspections shall be carried out on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

[DUR2375]

27. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

28. Prior to issue of a Subdivision Certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP6:	1 ET @ \$12907 per ET	\$12,907
--------------------	------------------------------	-----------------

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

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

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

[PSC0165]

30. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan: 6.5 Trips @ \$1892 per Trips (\$1,807 base rate + \$85 indexation) S94 Plan No. 4 Sector10_4	\$12,298
(b) Open Space (Casual): 1 ET @ \$549 per ET (\$502 base rate + \$47 indexation) S94 Plan No. 5	\$549
(c) Open Space (Structured): 1 ET @ \$629 per ET (\$575 base rate + \$54 indexation) S94 Plan No. 5	\$629
(d) Shirewide Library Facilities: 1 ET @ \$847 per ET (\$792 base rate + \$55 indexation) S94 Plan No. 11	\$847
(e) Bus Shelters: 1 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	\$64
(f) Eviron Cemetery: 1 ET @ \$124 per ET (\$101 base rate + \$23 indexation) S94 Plan No. 13	\$124

(g) Community Facilities (Tweed Coast - North) 1 ET @ \$1404 per ET (\$1,305.60 base rate + \$98.40 indexation) S94 Plan No. 15	\$1,404
(h) Extensions to Council Administration Offices & Technical Support Facilities 1 ET @ \$1880.38 per ET (\$1,759.90 base rate + \$120.48 indexation) S94 Plan No. 18	\$1,880.38
(i) Cycleways: 1 ET @ \$478 per ET (\$447 base rate + \$31 indexation) S94 Plan No. 22	\$478
(j) Regional Open Space (Casual) 1 ET @ \$1103 per ET (\$1,031 base rate + \$72 indexation) S94 Plan No. 26	\$1,103
(k) Regional Open Space (Structured): 1 ET @ \$3872 per ET (\$3,619 base rate + \$253 indexation) S94 Plan No. 26	\$3,872

[PSC0175]

31. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

32. Prior to the issue of a Subdivision Certificate, Summary Work as Executed (WAX) Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, services and structures are wholly contained within the relevant easement created by the subdivision (as applicable);
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

33. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

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

[PSC0830]

35. The creation of easements for services, Rights Of Way and Restrictions As To User (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for services and drainage over ALL public services/infrastructure on private property.
- (b) Right of Way over the applicable portion of proposed Lot 1 to provide access rights for proposed Lot 2.
- (c) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right Of Way or Easement shall make provision for maintenance of the Right Of Way or Easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis (as applicable).

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

[PSC0835]

36. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each new lot in the deposited plan.

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

[PSC0845]

37. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

38. Prior to issuing a Subdivision Certificate, reticulated water supply (including household connections) shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]

39. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of telephone supply at the front boundary of all allotments has been completed.

[PSC1165]

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

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1175]

41. Prior to the issue of a Subdivision Certificate, Council shall undertake a final inspection of the works and be satisfied that all conditions of consent have been complied with.

42. Prior to the issue of a Subdivision Certificate, the applicant must submit for approval to the PCA a detailed report from a suitably qualified Geotechnical Engineer certifying that the earthworks and regrading works undertaken on the subject site prior to the issue of this consent will not jeopardise the geotechnical stability of any neighbouring property. In the event that a retaining wall is required to achieve this it is to be designed and constructed in accordance with AS4678-2002 Earth Retaining Structures.

[PSCNS01]

43. Prior to the issue of subdivision certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

Any approval to install an on site sewage treatment and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the On-site Sewage Management Design Report - Proposed Subdivision (reference HMC2013.091B) prepared by HMC Environmental Consulting Pty. Ltd and dated September 2013 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

[PSCNS02]

44. Prior to the issue of the subdivision certificate the existing septic tank and disposal trench shall be decommissioned in accordance with NSW Health guidelines (refer to Advisory Note 3 dated May 2006).

[PSCNS04]

45. A Habitat Restoration Plan is required to be prepared by a person qualified in Bushland Regeneration or Ecological Restoration and with knowledge and experience in local vegetation communities for all areas described as 'conservation area' on the Area Subject to Ecological Restoration Program Plan, prepared by Robert. A. Harries, as amended in red and dated 4 September 2014. The restoration plan shall be submitted to Council and approved by the General Manager or delegate prior to issuing the subdivision certificate and shall include:

- a. an appraisal of the present condition of remnant vegetation;
- b. a plan overlaying an aerial photograph of the site which divides the area into zones for regeneration and zones for planting (if appropriate), including connections between existing vegetation where appropriate;
- c. a management strategy for each of the zones, including the approach, methods and techniques to be used for vegetation restoration;
- d. a schedule of local native plant species to be used for planting (if appropriate);
- e. a program of works to be undertaken to remove invasive weed species;
- f. a schedule of timing of proposed works;
- g. a maintenance, monitoring and reporting schedule with developer commitment for a period not less than five (5) years; and

- h. an adaptive management statement detailing how potential problems arising may be overcome and requiring approval of the General Manager or delegate for such changes.

46. The following restrictions as to user under Section 88B of the *Conveyancing Act* are to be created to Council's satisfaction prior to release of the subdivision certificate:

- a. Restriction as to user regarding the 'conservation area' as shown on the Area Subject to Ecological Restoration Program Plan, prepared by Robert. A. Harries, as amended in red and dated 4 September. This area must be subject to an approved ecological restoration program and managed as a natural area in perpetuity. The following activities are not permitted within this area

- i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this consent. The clearing, lopping or removal of any native plants within the conservation for the purpose of maintenance of the existing power line infrastructure to be restricted to the minimum extent possible.
- ii. Erection of any fixtures or improvements, including buildings or structures unless approved prior to the issue of this consent;
- iii. Construction of any trails or paths unless otherwise existing prior to the issue of this consent;
- iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area;
- v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the conservation area;
- vi. Performance of any other acts which may have detrimental impact on the values of the conservation area.

Burden: Part Lot 1 and Part Lot 2. Benefit: Tweed Shire Council

- b. Restriction as to user regarding the retention of all native vegetation identified on the Area Subject to Ecological Restoration Program Plan, prepared by Robert. A. Harries, as amended in red and dated 4 September - All native vegetation shown on the approved plan shall be retained and protected.

Burden: Part Lot 1 and Part Lot 2 Benefit: Tweed Shire Council.

[PSCNS05]

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

- 1. The proposed development is to comply with the Subdivision and Site Plan, prepared by Robert. A. Harris, titled 'Plan of Proposed Subdivision Lot 6 DP 619881 332 Clothiers Creek Road, Nunderi', reference 332 Clothiers and dated 11/10/13, except where modified by conditions of this Bush Fire Safety Authority.**

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

- 2. At the commencement of building works and in perpetuity the property around the existing dwelling on proposed lot 1 shall be managed as follows:**
 - North for a distance of 20 metres as an Inner Protection Area.
 - East for a distance of 20 metres as an Inner Protection Area.
 - South for a distance of 15 metres as an Inner Protection Area.
 - West to the boundary as an Inner Protection Area.

Requirements for an Inner Protection Area are outlined within section 4.1.3 and appendix 5 of 'Planning for Bush Fire Protection 2006' (PBP) and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- 3. Electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'**
- 4. In recognition that no reticulated water supply is available to the development, a total of 20,000 litres fire fighting water supply shall be provided for fire fighting purposes on proposed lot 1. The fire fighting water supply shall be installed and maintained in the following manner:**
 - a) Fire fighting water supply may be provided by a tank, a swimming pool or a dam that shall be located no more than 20 metres from the approved structure.**
 - b) A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply.**

Note: Where a pool is to be used as the non-reticulated water supply, suitable access for a Category 1 Tanker (Medium Rigid Vehicle) must be available at all times.

- c) New above ground fire fighting water supply storage's are to be manufactured using non combustible material (concrete, metal, etc). Where existing fire fighting water supply storage's are constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials, they shall be shielded from the impact of radiant heat and direct flame contact.**
- d) Non combustible materials (concrete, metal, etc) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.**
- e) A 65mm metal Storz outlet with a gate or ball valve shall be fitted to any fire fighting water supply tank(s) and accessible for a fire fighting truck.**
- f) The gate or ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.**
- g) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.**
- h) Any below ground fire fighting water supply tank(s) constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials shall be shielded from the impact of radiant heat and direct flame contact.**
- i) An 'SWS' marker shall be obtained and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
 - 1. Markers must be fixed in a suitable location so as to be highly visible; and**
 - 2. Markers should be positioned adjacent to the most appropriate access for the static water supply.****

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

- B. A Penalty Infringement Notice be issued to the owner of Lot 6 DP 619881 No. 332 Clothiers Creek Road, Nunderi for development without consent.**

REPORT:

Applicant: R Harries
Owner: Mr Robert A Harries
Location: Lot 6 DP 619881; No. 332 Clothiers Creek Road NUNDERI
Zoning: 1(c) Rural Living
Cost: \$30000.00

Background:

Proposed Development

The subject application seeks consent for a two lot subdivision to land zoned 1(c) Rural Living under the provisions of Tweed Local Environmental Plan 2000 (TLEP 2000). The site is bordered by similarly zoned properties, with exception to the south where the site is bordered by land zoned 1(a) Rural. The proposed subdivision would result in the following lot configuration:

- Proposed Lot 1 = 8,200m². The lot contains an existing dwelling, swimming pool and shed as well as the existing access from public road.
- Proposed Lot 2 = 10,238m² (A nominated house site has been identified on this allotment. A dam is located to the south of the site as well as the location of a Council approved shed, which had not been constructed at the time of site visit (approved under DA13/0545).

The proposal includes the provision of a Right of Carriageway over proposed Lot 1 to provide access to proposed Lot 2.

The proposal was submitted as integrated development under the Rural Fires Act, with a response outlining General Terms of Approval being received from NSW Rural Fire Service.

The application was notified to surrounding properties with one submission received, which is detailed elsewhere in this report.

The application involves a SEPP No. 1 Objection to Clause 21(2)(d) of the Tweed Local Environmental Plan 2000 relating to lot area. The SEPP No. 1 Objection is considered reasonable and is supported in this instance.

Site Details

The subject property is legally described as Lot 6 DP 619881 and is more commonly known as 332 Clothiers Creek Road, Nunderi. The property has an area of 1.843 hectares and contains an existing residential dwelling with associated swimming pool and shed. Vehicular access to the site is provided by way of an existing driveway from Clothiers Creek Road. The property is irregular in shape.

The site slopes down from the roadside boundary, falling more steeply to the southern portion of the site. The site contains mature vegetation away from the existing dwelling and the proposed house site. On site inspection it was noted that some vegetation clearing and earthworks have been undertaken in recent times on the site. This matter is addressed elsewhere in this report. To the south, the site contains a dam which is located adjacent to a Council approved site for a shed.

History

Council's records demonstrate the following development history relevant to the subject site; DA13/0545- Rural farm shed. Approved 28 October 2013. This shed was not constructed at the time of site inspection.

Permit 5677- Erection of a private dwelling. Approved 31 May 1976. This approval was over Lot 2 DP 582718, from which the current lot was subsequently created

Summary

Having regard to the site's characteristics, proximity of surrounding rural residential and agricultural development, amenity issues and an assessment against SEPP 1 and the Tweed Local Environmental Plan (TLEP) 2000 in particular, the proposed two lot subdivision is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

The subject subdivision application is considered generally in keeping with the above, and it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

Clause 5 - Ecologically Sustainable Development

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

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

Clause 8 - Consent Considerations

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

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

The subject site is located within the 1 (c) Rural Living zone, the primary objectives of which are:

- to enable rural residential development in selected areas possessing particular environmental and servicing attributes which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment and do not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

- to provide rural residential development of a design integration, quality and scale compatible with, and making a positive contribution to, the character of the rural area in the vicinity.

The proposed subdivision is considered to be generally consistent with these primary objectives outlined above as the development would provide rural residential development in a location which would not compromise the viability of rural activities on land in the vicinity, detract from the quality of the rural or natural environment and would not create unreasonable or uneconomic demands for the provision or extension of public amenities or services. Whilst the proposed development does not meet the minimum lot size requirements, it is noted that a SEPP 1 Objection has been provided in this regard, which is detailed elsewhere in this report.

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

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the permissible nature of the development at this location.

The proposal is considered to meet the provisions of Clause 8(a).

Clause 11 - Zone Objectives

The subject site is located within the 1 (c) Rural Living zone. The primary objectives of this zone are:

- to enable rural residential development in selected areas possessing particular environmental and servicing attributes which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment and do not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.
- to provide rural residential development of a design integration, quality and scale compatible with, and making a positive contribution to, the character of the rural area in the vicinity.

The secondary objective of this zone is:

- to enable other development that is compatible with rural residential development.

As outlined under Clause 8 above, the proposal is considered to be in accordance with the provisions of the primary objectives of this zone through its enabling of future rural residential development on the site.

Clause 15 - Essential Services

Council's reticulated potable water supply is available to the area. A water reticulation service exists for the existing dwelling (located on proposed Lot 1). This will be maintained. Recommended conditions of consent shall require the provision of service for proposed Lot 2 in accordance with Council standards.

Council's sewer infrastructure is not available within the area. The applicant has provided a report prepared by an Environmental Consultant which has recommended that the existing septic system on proposed Lot 1 be decommissioned and a new on-site sewage management (OSSM) system

installed. An OSSM is also proposed to service proposed Lot 2. This has been reviewed by Council's Environmental Health Unit who have provided recommended conditions of consent with respect to the proposed system.

Furthermore, recommended conditions of consent have been provided requiring that adequate electricity and telecommunication services are supplied to the site.

Having regard to the above, it is considered that the proposed development would be adequately serviced by water, sewer, electricity and telecommunication services.

Clause 16 - Height of Building

The subject site displays a maximum building height of three storeys in accordance with this clause. Whilst this application relates to the subdivision of the site only, it is noted that any future dwellings on the site would be limited to a three storey height limit.

Clause 17 - Social Impact Assessment

The objective of this clause is to ensure proper consideration of development that may have a significant social or economic impact. Council has prepared Development Control Plan (DCP) Section A13 - Socio-Economic Impact Assessment which outlines that a residential subdivision consisting of greater than 50 lots/dwellings in all stages would necessitate a Social Impact Assessment to be prepared and submitted with a development application. As this application relates to a two lot residential subdivision it is considered that a Social Impact Assessment is not required in this instance.

Clause 35 - Acid Sulfate Soils

The objectives of this clause are:

- to manage disturbance of acid sulfate soils to minimise impacts on water quality, ecosystems, infrastructure and agricultural and urban activities.
- to require special consideration and development consent for works, including some agricultural and infrastructure-related works, that would disturb soils or ground water levels in areas identified as having acid sulfate soils.
- to provide for a regime of self-regulation by those organisations which have demonstrated to the Council their ability to manage acid sulfate soils issues.

The subject site displays Class 5 Acid Sulfate Soils in accordance with this Clause. Specified works under in this area consists of works within 500 metres of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD in adjacent Class 1, 2, 3 or 4 land. The proposed development relates to a subdivision of land and as such it is not considered that any such specified works would be required as part of this application. This application has been reviewed by Councils Environmental Health Unit who have raised no concerns with respect to disturbance of acid sulfate soils. The proposal is considered to be acceptable having regard to the provisions of this clause.

Clause 34 – Flooding

The objectives of this clause are:

- to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.

- to minimise the adverse effect of flooding on the community

The subject site is indicated as being partially flood prone on Councils mapping system through approximately 645m² (3.5%) of the site being within the Probable Maximum Flood (PMF) level area. Under Part (2) of this Clause, Council must not grant consent to development of flood liable land unless it has considered the following:

- (a) *the extent and nature of the flooding hazard affecting the land, and*

The extent and nature of the flooding hazard affecting the subject site is considered to be minimal with only a small proportion of the site being impacted by Councils flood mapping.

- (b) *whether or not the development would increase the risk or severity of flooding of other land in the vicinity, and*

The proposed subdivision is not considered to result in an increased risk of flooding of other land in the area given that the flood prone area is located to the south of the site, away from any area to be developed as part of this application.

- (c) *whether the risk or severity of flooding affecting the development could be reasonably mitigated, and*

Given the level of flooding associated with the proposal it is not considered that there are any mitigation measures required as part of this application.

- (d) *the impact of the development on emergency services, and*

Councils emergency services provisions with respect to flooding are outlined under Section A3 - Development of Flood Liable Land. Under this plan Emergency Response Provisions are not required on this subdivision as the development area is less than 5ha. In any case, it is noted that the site provides a high level road evacuation route for any future residents from the dwelling and proposed dwelling site to land above the PMF level at Clothiers Creek Road.

- (e) *the provisions of Section A3 - Development of Flood Liable Land of Tweed Development Control Plan.*

The application has been assessed with respect to DCP Section A3 specifically elsewhere in this report. It is considered that the proposal is in accordance with the provisions of this Section of the DCP.

The subject application is considered to be acceptable having regard to the requirements of Clause 34.

Other Specific Clauses

Clause 19 – Subdivision (General)

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

Clause 21 – Subdivision in Zone 1(c)

The objective of this clause is to ensure that the semi-rural character and environmental values of the locality are protected. This clause goes on to further state that consent may be granted to the subdivision of land in Zone 1 (c) for residential purposes only if:

- (a) *each allotment will be connected to a reticulated water supply system, or a tank water supply will be provided to the satisfaction of the consent authority, and*

Each proposed allotment is to be connected to Council's reticulated water supply, available at Clothiers Creek Road. Proposal complies with this control.

- (b) *the consent authority is satisfied that each allotment created is capable of accommodating adequate facilities for the treatment and disposal of sewage or will be connected to the Council's reticulated sewerage system, and*

The subject application has been reviewed by Council's Environmental Health Unit with respect to the proposed on-site effluent management systems, with no objection raised with respect to the ability of either proposed allotment to adequately service sewage.

- (c) *in the case of land to be connected to the Council's reticulated sewerage system - the area of each lot created is not less than 0.4 hectare, and*

Not applicable. The proposed subdivision is not to be connected to Council's reticulated sewerage system.

- (d) *in the case of land not to be connected to the Council's reticulated sewerage system - the area of each lot created is not less than 1 hectare.*

The proposed development does not comply with this control. Proposed Lot 1 has a total area of 8,200m² which is 1,800m² short of the required 1 hectare allotment area. A SEPP 1 Objection has been submitted with respect to this control which is addressed elsewhere in this report. In this regard the applicant contends that proposed Lot 2 meets the 1ha minimum lot size and proposed Lot 1 is capable of being serviced by way of an on-site effluent disposal system notwithstanding its total area being 8,200m². The SEPP 1 Objection to the above development standard is supported in this instance.

Clause 22 – Designated Roads

The subject site has access and frontage to Clothiers Creek Road which is a Council designated road. As such this clause applies to this site. This clause states that the consent authority may grant consent to development on land to which this clause applies only if the following is satisfied:

- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

The proposal is not considered to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road having regard to the scale of the proposal which would allow the development of one additional dwelling on the site.

- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

The subject site will maintain a single access point to the site, and the application will formalise this access point through the provision of a sealed entranceway. Council's Development Engineering Section has provided a recommended condition of consent which requires a formal road access to be created to Council standards.

(c) the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and

The proposal is not considered to impede future road works. It is noted that there is approximately 5m between the current road edge and the site boundary as per Councils aerial imagery. The proposal is considered to be acceptable having regard to this objective.

(d) where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and

Not applicable. The subject site is zoned 1(c) Rural Living.

(e) the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and

The proposed development is for the subdivision of land only. Any future development application for a dwelling on proposed Lot 2 would be assessed on its merits with any such requirements as outlined above detailed at that time.

(f) the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and

The proposal is not considered to detract from the scenic values of the locality, given its nature as a subdivision. The future residential dwelling is not considered to be visible from the Designated Road and is acceptable in this regard.

(g) where practicable, access to the land is provided by a road other than the designated road, and

The subject site cannot practically provide vehicular access except from the designated road.

(h) in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:

(i) would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and

(ii) would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and

(iii) would not compromise highway safety and efficiency, and

(iv) would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.

Not applicable. The subject site is zoned 1(c) Rural Living.

Having regard to the above, the proposal is considered to comply with the objectives of clause 22 and sub clause 4.

Clause 24 – Set backs to Designated Roads

The objective of this clause is to control development along designated roads and applies to land in the 1(c) zone. This clause goes on to outline that a dwelling house must not be erected on land to which this clause applies if the distance between the proposed building and any designated road would be less than the distance specified in Column 2 of the Table. In this instance the required distance is 30 metres.

Whilst this application relates to the subdivision of land only, it is noted that a proposed house site is nominated for proposed Lot 2. This is set back approximately 70 metres from Clothiers Creek Road and as such would be in accordance with this clause.

Clause 39 – Remediation of contaminated lands

The objective of this clause is:

- *to ensure that contaminated land is adequately remediated prior to development occurring.*

In this regard the subject application was referred to Councils Environmental Health Unit for comment. Comments have been received outlining the following:

‘Given that there were no obvious indications of potentially contaminating activities and that the property as stated in the SEE has been used as a low density residential allotment for a prolonged period, the proposed development is considered suitable and no further information in regards to contaminated land is required.’

Having regard to the received information the proposal is considered to be acceptable having regard to the provisions of this clause.

Clause 39A – Bushfire prone land

The objective of this clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

In this regard it is noted that the subject development site is entirely mapped as being bushfire prone by virtue of being located within the Vegetation Category 1 area and the 30m and 100m vegetation buffer.

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

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

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land. This application relates to the subdivision of land only, however the proposal would enable the development of an additional dwelling under future application on proposed Lot 2.

The proposed density of the site is not considered to adversely affect environmental features of the land. In this regard it is noted that a SEPP 1 Objection has been submitted as part of this application to allow the creation of an undersized allotment. This is assessed elsewhere in this report, with the proposal considered to be acceptable in this regard.

Furthermore, the proposed road network is considered to be adequate to service the proposal and standard recommended conditions of consent have been provided with respect to erosion and sediment control. The proposal is considered to be acceptable having regard to this clause.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size in the 1(c) zone for subdivision purposes as contained within Clause 21(2) (d) of the Tweed LEP 2000.

Clause 21(2) (d) of the Tweed LEP 2000 states that:

Consent may be granted to the subdivision of land in Zone 1 (c) for residential purposes only if:

(d) in the case of land not to be connected to the Council's reticulated sewerage system - the area of each lot created is not less than 1 hectare.

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

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

"This development standard outlines the desire of Tweed Shire Council to ensure that each created allotment for residential purposes within the 1 (c) zone is capable of being serviced by an on-site effluent disposal system whilst maintaining private open space and recreational areas. The objection is deemed to be well founded on the grounds that Proposed Lot 2 meets the 1 ha minimum lot size and Proposed Lot 1 is capable of being serviced by way of an on-site effluent disposal system notwithstanding its total area being 8200m². Although Proposed Lot 1 falls 1800m² short of the minimum lot size, it has been demonstrated that this allotment can be appropriately serviced by way of an on-site effluent disposal system. Both allotments remain compliant with the zoning objectives.

The argument for a SEPP 1 Objection is considered to be well founded and therefore justified in the situation.

Imposing strict compliance with Clause 21(2d) on the development would effectively nullify the subdivision of a site that is capable of housing two (2) dwellings. It has been demonstrated that the Council requirement for a minimum lot area of 1 ha is not required in this instance.

The proposed non compliance raises no matters of significance for State or Regional Planning and no public benefit results from maintaining the development standard in this particular case. Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However in this instance, enforcing compliance with Clause 21 (2d) would effectively prevent the land from being used in an orderly and economic use and would represent an onerous and unnecessary prevention of the creation of an additional residential land parcel in the Nunderi area.

In this regard, the proposals extent of compliance with all other requirements of the TLEP2000 is noted. The proposed non-compliance with Clause 21(2d) is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it relates to a specific development situation presented by the local context."

Assessment of the applicant's submission:

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

- 1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The objective of Clause 21(2) (d) of the Tweed LEP is achieved despite the variation to the development standard pertaining to minimum allotment size. The objective of this clause is to ensure that the semi-rural character and environmental values of the locality are protected. The proposed subdivision is not considered to compromise the semi-rural character or environmental values of the area.

The applicant's submission in relation to being well founded and is supported.

- 2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and**

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal provides for a Torrens Title subdivision that incorporates one new allotment and no unreasonable burden on public infrastructure.

It is not considered that the granting of this application would hinder the attainment of such objectives.

- 3. It is also important to consider:**
 - a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
 - b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 21(2) (d) of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

As stated previously in this report, concurrence was granted in this instance by the Director General for the following reasons:

- The proposal is consistent with the objectives of the standard;
- Non-compliance with the development standard does not raise a matter of significance for State or regional environmental planning; and
- There is no public benefit in upholding the development standard.

The SEPP 1 Objection is supported in this instance.

SEPP No. 44 - Koala Habitat Protection

This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline as follows:

- (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
- (b) by encouraging the identification of areas of core koala habitat, and
- (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.

This SEPP outlines three steps under Part 2 *Development control of koala habitat* with respect to determining whether development consent can be granted on land identified as koala habitat under this document. These steps are outlined below:

Step 1—is the land potential koala habitat?

Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat. In this instance, Council's mapping system identifies the land as having some secondary koala habitat, therefore it is considered that the land is potentially koala habitat as per this clause.

If the council is satisfied that the land is a potential koala habitat, it must comply with clause 8 (step 2), detailed below.

Step 2 - is the land core koala habitat?

Before a council may grant consent to an application for consent to carry out development on land that it is satisfied is a potential koala habitat, it must satisfy itself whether or not the land is a core koala habitat.

In response to this the applicant has provided a Flora and Fauna Assessment, including a 7-Part test to satisfy 'Section 5A' of the Environmental Planning and Assessment Act 1979. This assessment outlines that minimal koala food trees occur on the site and that the proposed development will not lead to an increase in any of the known threatening processes to the koala.

The subject application has also been forwarded for comment by Council's Natural Resource Management (NRM) Unit who have raised no issue with respect to the site not being identified as a core koala habitat. In this regard it is noted that recommended conditions of consent have been provided, which would require an extensive area of the site to be subject to an ecological restoration program and managed for conservation purposes in perpetuity, as detailed later in this report.

Council officers are satisfied that the land is not a core koala habitat, and therefore is not prevented, because of this Policy from granting consent to the development application.

As the land is not identified as a core koala habitat, it is not necessary to assess the proposal under the third step which relates to the granting of consent on land identified as core koala habitat. Having regard to the above, it is considered that the subject development is acceptable having regard to the provisions of this SEPP and the recommended conditions of consent which require the provision of specific conservation areas on the site.

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

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

Part 1 Preliminary

1.2 Aims of Plan

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

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
 - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
 - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
 - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
 - (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
 - (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
 - (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,

- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

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

1.8A Savings provision relating to development applications

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

With respect to this it is noted that the subject application was lodged with Council on 22 October 2013, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014 and as such this clause is applicable to this development application. Notwithstanding this, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned as R5 Large Lot Residential under the provisions of this plan.

2.3 Zone objectives and Land Use Table

The Draft TLEP 2012 zones the development area as R5 Large Lot Residential. The objectives of the R5 Large Lot Residential zone are:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To maintain the rural and scenic character of the land.

The proposed subdivision development is considered to be generally consistent with the objectives of the zone through the provision of future residential housing in a rural setting.

2.6 Subdivision- consent requirements

This clause states that land to which this Plan applies may be subdivided, but only with development consent. As this application has been submitted in order to obtain development consent, the proposal is considered to be in accordance with this clause.

Part 4 Principal development standards

4.1 Minimum subdivision size

The objectives of this clause are:

- (a) to ensure minimum lot sizes are appropriate for the zones to which they apply and for the land uses permitted in those zones,
- (b) to minimise unplanned rural residential development.

This clause applies to a subdivision of any land shown on the Lot Size Map. The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map. In this case, the subject site is identified as 'Y' under the Lot size map which has a minimum lot size of 1 Hectare. The proposed development results in an allotment with a total area of 0.82ha which does not meet the minimum lot size.

Under Clause 4.6 (below) there are provisions for exceptions to development standards in certain instances.

4.6 Exceptions to development standards

Under this clause a degree of flexibility is allowed in applying development standards to particular development. Part (6) of this clause states that 'development consent must not be granted under this clause for a subdivision of land in Zone R5 Large Lot Residential if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

In this instance it is noted that the proposal would not comply with subclause (b) as proposed Lot 1 has a total area of 8200m², which is 82% of the development standard, rather than the required 90%. As such, the proposed subdivision would not comply with the specific area provisions of this clause.

In conclusion, whilst the proposed development would not comply with Clause 4.6 by virtue of being a variation to development standards of greater than permitted, it is considered that the proposed subdivision is consistent with the zone objectives, in particular *'to provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality'* and *'to ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.'* The proposed development is considered to be generally acceptable having regard to the provisions of this LEP and refusal is not recommended in this instance.

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

Tweed Development Control Plan

Section A2-Site Access and Parking Code

The subject application results in the creation of an extra allotment which generates additional parking and access requirements. In this instance it is considered that both proposed allotments would have ample space to provide for car-parking requirements, given the area of each lot.

The site is currently accessed via a crossover to Clothiers Creek Road. It is proposed to utilise this crossover for access to both allotments proposed under this application with a Right Of Way easement over the entry portion of the existing driveway for proposed Lot 2.

The application has been reviewed by Councils Development Engineering Unit who have raised no objection to the proposed access arrangements. A recommended condition of consent has been provided which requires the access off Clothiers Creek Road to be sealed to the property boundary. The proposal is considered to be acceptable with respect to the access and requisite parking provisions.

Section A3-Development of Flood Liable Land

The subject site is identified as being flood prone and as such the provisions of this Section of the DCP apply to the proposed development. In this regard it is noted that the site is partially covered by the Probable Maximum Flood (PMF) level (approx 2.5% of total site area) to the south of the site.

The subject application has been reviewed by Councils Development Engineering Section who have provided the following advice in this regard:

"The existing dwelling and building envelope for the created allotment are not influenced by the PMF. As such, no further flood assessment is required as part of this application."

The proposed development is considered to be generally consistent with the provisions of Section A3, given the application relates to the subdivision of land which is minimally affected by the PMF level.

Section A5-Subdivision Manual

Tweed Development Control Plan Section A5 -Subdivision Manual aims to:

- Present Council's strategic plan objectives for the development of subdivisions.
- Achieve the highest quality and 'best practice' of subdivision development in the Shire
- Implement the policies and provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development.
- Provide guidelines and development standards for the development of subdivisions.

This Section of the DCP contains Council's guidelines for the preparation of applications for subdivision and aims to facilitate Council's assessment and consideration of such applications. A number of factors are required to be

assessed including environmental constraints, land forming, design specifications, storm water runoff, drainage, waterways and flooding, setbacks and buffers (where appropriate). The subject application has been referred to Council's Development Engineering Unit who have reviewed the subject application with respect to the relevant provisions of Section A5 and indicated that the proposal would be acceptable subject to appropriate conditions of consent. Where relevant these matters have been discussed below:

Environmental Constraints – this section of the DCP relates to issues such as contamination, bushfire and access etc. These matters are discussed in detail elsewhere in this report with the conclusion being that the proposal is acceptable subject to appropriate conditions of consent. In particular it is noted that General Terms of Approval have been received from the Rural Fire Service with respect to the site being bushfire prone.

Rural Watercourses and Drainage - The proposed subdivision is not considered to impede the natural watercourse and drainage system. The location and flow of natural drainage paths will be retained.

Subdivision Structure - The proposed subdivision is consistent with the zone objectives and is consistent with the existing character and amenity of the adjoining rural neighbourhood to the north, east and west of the subject land. The proposed subdivision is not an isolated large lot residential development and is not anticipated to provide an unsustainable demand on public amenities and services.

Movement Network - The subject land gains access from Clothiers Creek Road via an existing driveway. A Right of Carriageway will be provided over the existing bitumen driveway which will benefit proposed Lot 2 in order to allow access to both allotments for the subject development. The proposed subdivision will not result in an unacceptable impact in terms of additional traffic accessing or using the surrounding road network.

Water Supply and Waste Water - Connection to Council's reticulated water system is available for both proposed allotments, however, as outlined elsewhere in this report, connection to Council's reticulated sewage system is not available. In this regard on-site sewerage management systems have been proposed to service the waste-water needs of the proposal. The applicant has provided an OSSM report for the proposed subdivision which has been reviewed by Council's Environmental Health Section who have provided appropriate conditions of consent in this regard. The proposal is considered to be acceptable having regard to water supply and wastewater on the site.

In light of the above, the proposed subdivision is considered to meet the provisions of Section A5 of Council's Consolidated DCP.

A11-Public Notification of Development Proposals

The proposed development was notified for a period of 14 days from 1 November 2013 to 15 November 2013. Council received one public submission during this time which is detailed elsewhere in this report.

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

Clause 92(a) Government Coastal Policy

The subject land is not affected by the coastal policy.

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

Tweed Shire Coastline Management Plan 2005

The subject site is located over 10km from the coastal foreshore and as such is not considered to impact on the provisions of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these Creeks and as such the proposal is not considered to impact on the provisions of this Plan.

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

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

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

Access, Transport and Traffic

The proposed two-lot subdivision has frontage to Clothiers Creek Road which is a Council designated road. Access to proposed Lots 1 and 2 will be via the existing crossover which is to be upgraded. A Right of Carriageway over this entranceway will allow proposed Lot 2 to utilise this entrance.

Currently no footpaths are constructed in Clothiers Creek Road. Adequate area for parking and manoeuvring is available to each proposed allotment. The proposed development will not generate any significant additional traffic to the Clothiers Creek Road or Nunderi area. The road network in this area is considered to have capacity to cater for any additional traffic resultant from this subdivision.

Dwelling entitlement

As outlined elsewhere in this report, the existing dwelling on site is to be located on proposed Lot 1 which has an area of 8,200m². As this lot does not meet the minimum lot area for the zone the applicant was advised that subject to the approval of the proposed development, the existing dwelling on the undersized proposed Lot 1 would be reliant on the continuance of existing use rights as per the provisions of Part 4, Division 10 - Existing Uses, of the Environmental Planning and Assessment Act. In this regard, proposed Lot 1 would not have a dwelling entitlement.

A response has been received from the applicant on this matter acknowledging that existing use rights would be relied upon should any further development of the proposed Lot 1 be carried out in the future. It was requested that Council proceed with the assessment of this development application.

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

Surrounding Land Uses/Development

The property is generally surrounded by rural residential development to the north, east and west in a wider area which exhibits a large quantity of large lot

residential development. In this regard, the proposal is considered to be consistent with the established surrounding landuses.

Amenity

The subject application has been reviewed by Councils Environmental Health Unit with respect to amenity, with the following comments provided in this regard:

"The proposed OSSM installation works and access construction works have the potential to cause noise and dust impacts at adjacent premises during construction. However, it is considered that such potential impacts may be managed by applying appropriate standard conditions."

Having regard to these comments the proposal is considered to be acceptable with respect to potential amenity impacts arising from the proposed development.

Flora and Fauna

The subject site displays mature vegetation to the north and south boundaries, with a band of area, generally to the centre of the site which has been historically cleared of vegetation. This area contains the existing dwelling and ancillary structures as well as the proposed house site.

Council's electronic mapping system displays that the vegetated area to the north and south of the site is Secondary (Class B) Koala habitat.

In this regard it is noted that the subject application is for the subdivision of the site only, with vegetation removal works not required as part of this application. On site inspection, and through the public submission received, it is noted that there has been vegetation removal on this site.

The applicant has advised that *'Tree removal carried out on-site has been undertaken over a prolonged period. The intent was to remove noxious weed species (camphor laurels), trees with a potential threat to property (termite damage) and other trees which are not considered protected or listed as koala food trees.'*

The applicant has further advised that vegetation removal has been undertaken on the site (in 2009) by Country Energy to clear trees beneath power lines. It is noted that a Management Agreement for the control of noxious weeds has been provided to Council for this property in July 2010.

The subject application has been reviewed by Council's NRM Unit with respect to flora and fauna species on the site who have recommended a number of conditions to be applied to any consent including requiring a significant portion of the site to be included within an ecological restoration program and managed for conservation purposes in perpetuity. Subject to these conditions being applied to any consent, the proposed development is considered to be acceptable with respect to flora and fauna considerations.

Works undertaken on the site

During a site inspection it was observed that development works had been undertaken on the site with respect to the provision of an access track. Furthermore, it was noted that vegetation removal had been undertaken on site. The applicant was requested to clarify the extent of works undertaken and under what approval/s.

Vegetation removal has been addressed above, with the work considered to have been mainly undertaken for the purposes of camphor laurel removal. The

applicant has advised that the remaining vegetation removed does not relate to any protected gum tree or sally wattle species.

The application has been reviewed by Council's NRM Unit with respect to this who have advised the following:

"In respect to previous vegetation removal it is acknowledged that Council's series of TPO mapping does not apply to the subject site. However, the Native Vegetation Act does regulate removal of protected re-growth and remnant vegetation on land zoned 1(c) Rural Living (TLEP2000) and R5 - Large lot residential (Draft TLEP2012). It is understood however that when the clearing was carried out, under the NV Act and associated Native Vegetation Regulation 2005 (Repealed) in force at the time the works may have been permissible under exemptions for Routine Agricultural Maintenance Activity (RAMA's) i.e. 4 meters clearing for roads and tracks.

Upon interpretation of the current Native Vegetation Act and Regulation the applicant may be eligible for exemptions under a routine agricultural management activity for non-rural infrastructure that may involve the following:

- *Clearing up to 6 metres from a property boundary fence;*
- *The maintenance of 6metre wide access trail track to the approved shed;*
- *Clearing carried out in accordance with a bushfire management plan under the Rural Fires Act.*

Having regard to the information provided by the applicant and reviewed by Council's NRM Unit, including recommended conditions of consent which require a significant portion of the site to be subject to an ecological restoration program and managed for conservation purposes in perpetuity, it is considered that adequate ecological measures have been provided to ensure the ongoing restoration of the site.

The works relating to the access track are mainly located on proposed Lot 2 and it is noted that regrading works and earthworks have been undertaken from the location of the proposed house site to a shed pad to the south of the site.

It has been advised that the works were undertaken in order to enable use of the private access track on site and to access the approved shed location. The applicant has further advised that these works were undertaken over an extended period of time in order to minimise soil erosion and that the works meet the requirements of SEPP (Exempt and Complying Development Codes) 2008, Part 2, Subdivision 15.

With respect to these works, it is noted that cut or fill levels are limited to 600mm below or above the ground level under the Codes SEPP. From site inspection, the cut evidenced was greater than the allowable height and as such would not comply with these standards. In any event these exempt development works cannot be undertaken on a flood control lot. As outlined elsewhere in this report, the site is affected by flooding, with a small portion within the Probable Maximum Flood Level area and as such is considered a flood control lot. The applicant has not provided any certification by Council or a suitably qualified engineer with respect to the flooding impact on the allotment in order to allow the work to be undertaken through the Codes SEPP.

As such, it is considered that the proposed works have been undertaken without the relevant consent and a Penalty Infringement Notice (PIN) should be issued for the works.

Furthermore, it is considered appropriate that a relevant condition of consent be applied to any approval requiring a detailed report from a suitably qualified Geotechnical Engineer confirming that the earthworks and regrading works undertaken on the subject site will not jeopardise the geotechnical stability of any neighbouring property.

Site Orientation

Views from the existing dwelling and proposed dwelling sites are in a southern direction across the existing adjoining agricultural lands. The proposed house site for Lot 2 is not considered to visually impede the existing dwelling or adjoining dwelling's view corridors.

Effluent Disposal

As outlined elsewhere in this report Council's reticulated sewer system is not available to this property. As such an On-Site Sewage Management system is proposed to service a future dwelling on proposed Lot 2 as well as upgrading the existing system on proposed Lot 1. The application has been reviewed by Councils Environmental Health Unit in this regard with the following comment provided:

‘..it is considered the location of the LAA's from the surface water as being adequate in maintaining public health and environmental protection. A condition to be applied ensuring that recommendations of the OSSM Design Report are implemented.

It is considered that the proposed OSSM's in the addendum for proposed lot 1 and 2 are capable of supporting the development. The On-site Sewage Management Design Report – Proposed Subdivision (reference HMC2013.094) prepared by HMC Environmental Consulting Pty. Ltd and dated December 2013 is in general accordance with AS/NZS 1547:2012 and AS/NZS 1547:2012 and NSW Health Environment and Health Protection Guideline “On-Site Sewage Management for Single Households” 1998 NSW Health.’

Given the above advice, it is considered that the proposed on-site sewerage systems for each allotment are acceptable and will not result in any adverse impacts with respect to public health. In this regard the proposal is considered acceptable.

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

Public submission

The subject application was advertised for a period of 14 days from 1 November 2013 to 15 November 2013. During this time one public submission was received from an adjoining property owner. The issues raised in this submission were forwarded to the applicant for comment. The details of this submission, the applicant's response and Council officer assessment of the issue are outlined below.

Issue Raised	Applicant Response & Council Officer Assessment
<p>The objector has previously discussed the works undertaken on site with Council's Compliance Officer, at which point excavation work had taken place and a number of trees removed for a fire break, despite a development application not having been submitted.</p>	<p><u>Applicant Response</u></p> <p>Tree removal carried out on-site has been undertaken over a prolonged period. The intent was to remove noxious weed species (camphor laurels), trees with a potential threat to property (termite damage) and other trees which are not considered protected or listed as koala food trees.</p> <p><u>Council Officer Assessment</u></p> <p>Council records indicate that two Customer Request Management (reference ILL13/0700 & ILL13/0915) were created in response to complaints received on 5 and 6 September 2013 with respect to works being undertaken on the site. This was investigated by Council's Compliance Officer who inspected the land and noted the earthworks on the track were minor at top but more significant to the south.</p> <p>Council's Compliance Officer was advised that a DA was to be lodged with Council for a shed and it was requested that any such application include the earthworks/pad. No trees were noted as being touched.</p> <p>The works undertaken at the time of the site inspection for this Development Application are outlined elsewhere in this report, with it being considered that the vegetation removal was acceptable, however the earthworks were not approved or consisted of exempt development. In this regard, a Penalty Infringement Notice is recommended to be issued for the earthworks undertaken and a recommended condition of consent has been applied which requires that the work undertaken be certified by a geotechnical engineer.</p>
<p>The applicant has created a new road cutting which is mapped as an existing track and is 'not so close to our boundary'. This road has been developed in the last few months by a large excavator and now undercuts the objector's property (Lot 5 DP 772121).</p>	<p><u>Applicant Response</u></p> <p>The applicant has provided a diagram indicating the distance between the 'private access track' and the adjoining property. This identifies a distance of 15- 25m between this track and the common property boundary. It is advised that all resultant stormwater from the private access track is directed to vegetated areas of the site for infiltration, with no impact on the adjoining properties. No retaining wall or rock retention is considered to be required for the private access track on-site. The applicant also advises that regrading and earthworks have been undertaken in accordance with SEPP (Exempt and Complying Codes) 2008.</p> <p><u>Council Officer Assessment</u></p> <p>As outlined above, it is recommended that a PIN be issued for the earthworks undertaken whilst the works are to be certified by a suitably qualified geotechnical engineer to ensure there</p>

Issue Raised	Applicant Response & Council Officer Assessment
	is no risk to geotechnical stability of adjoining properties.
The applicant has undertaken subdivision works prior to lodgement of the application for the 'road and other excavations.' It is further advised that the objector has 'grave concerns regards the undercutting of our property by the excavation for the access road and the very real risk of erosion and land slip.	<p><u>Applicant Response</u></p> <p>The applicant's response with respect to undercutting is outlined above.</p> <p><u>Council Officer Assessment</u></p> <p>As outlined above, it is recommended that a PIN be issued for the earthworks undertaken whilst the works are to be certified by a suitably qualified geotechnical engineer to ensure there is no risk to geotechnical stability of adjoining properties.</p>
It is requested that the applicant build a geotechnically engineered retaining wall which runs the full length of the 'area at risk' and is of a height which gives protection from the objectors property (Lot 5 DP 772121) protection from erosion and slippage. It is also requested that engineered drainage be provided for the stormwater run off that has occurred to the property boundary.	<p><u>Applicant Response</u></p> <p>The applicant's response with respect to providing a retaining wall is outlined above.</p> <p><u>Council Officer Assessment</u></p> <p>As outlined above, it is recommended that a PIN be issued for the earthworks undertaken whilst the works are to be certified by a suitably qualified geotechnical engineer to ensure there is no risk to geotechnical stability of adjoining properties. Dependant on this report, the applicant may have to provide a retaining wall.</p> <p>The submission is not considered to warrant refusal of this application, with the issues raised considered to be appropriately addressed where applicable by a condition of consent.</p>

Department of Planning & Infrastructure

Concurrence of the Director-General of the Department of Planning and Infrastructure was required for the proposed development given the proposal results in an allotment which does not meet the minimum lot size (Clause 21(2) (d) of the Tweed Local Environmental Plan 2000) and as such, the application was referred to this agency. A response has been received outlining that concurrence has been granted for the following reasons:

- The proposal is consistent with the objectives of the standard;
- Non-compliance with the development standard does not raise a matter of significance for State or regional environmental planning; and
- There is no public benefit in upholding the development standard.

NSW Rural Fire Service

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

(e) Public interest

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan.

The development is not considered to contravene the interests of the general public.

OPTIONS:

That Council:

1. Approves the development application subject to recommended conditions of consent and issues a \$1,500 Penalty Infringement Notice (PIN) to the landowner for unauthorised works; or
2. Approves the development application subject to recommended conditions of consent; or
3. Refuses the development application for specified reasons.

Council officers recommend Option 1.

CONCLUSION:

The proposed two lot subdivision is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant has the right of appeal in the NSW Land Environment Court if dissatisfied with the determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Development Application DA14/0050 for a Detached Dual Occupancy at Lot 7 DP 22375 No. 204 Kennedy Drive, Tweed Heads West

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0050 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.2	Improve decision making by engaging stakeholders and taking into account community input
1.2.1	Council will be underpinned by good governance and transparency in its decision making process

SUMMARY OF REPORT:

Updated information

At the Planning Committee Meeting held on Thursday 4 September 2014, Council resolved that the above development application for a detached dual occupancy at Lot 7 DP 22375 No. 204 Kennedy Drive, Tweed Heads West be deferred for a workshop on the impacts of the development on Terranora Broadwater and be brought back to the October Planning Committee Meeting.

A workshop was held on 11 September 2014 to discuss the application at which a written submission from the applicant and information arising from a discussion with Council's Natural Resource Management (NRM) Unit was presented to the Councillors.

The applicant had been requested to consider amending the existing proposal to incorporate the following, consistent with the Planning Committee resolution:

- An increased rear setback of the proposed second dwelling to the River.
- Create an enhanced riparian treatment in the site's rear frontage to the River.

A written response has been received on behalf of the applicant which states the following:

"Unfortunately there is no opportunity to increase the rear setback. Doing this will only adversely impact on the on-site car parking requirements and arrangement which is not desirable. Each dwelling needed to provide two parking spaces and those have been suitably positioned to enable satisfactory turning and manoeuvrability on the site and to allow vehicles to leave the site onto Kennedy Drive in a forward direction. Another two visitor spaces have been provided at the front of the site to maintain the safety of traffic on Kennedy Drive on which there is no opportunity for parking along that street.

As the submitted plans indicate the proposed dwelling is setback further than the buildings on the neighbouring allotments and satisfies the minimum rear setback distance in DCP Section A1 - Residential and Tourist development Code.

The submitted landscape plan does include some additional plantings to the rear of the site including a compliant rear deep soil zone. No additional landscaping is proposed as this space is also private useable open space for the new dwelling and further landscaping will not allow it to be a useable area. It is located immediately adjacent to the external living area of the new house and is private. Additional plantings to create a riparian zone will also reduce the views out over the river which currently enhances the site and the proposed development. The existing vegetation along the river bank outside of the subject site will not be disturbed.

Much effort has gone into the design of the proposed development whilst also giving consideration to the adjoining developments, building amenity, on-site parking and the safety of traffic on Kennedy Drive, whilst achieving satisfactory compliance with Council's statutory and DCP requirements."

The Planning Committee resolution was also discussed with Council's NRM Unit who have advised that a 2m wide riparian landscape area could be conditioned to the south site boundary and also provided appropriate species to be utilised in the event of such a condition being applied. It was also advised that planting taller species in the vicinity of mangroves on the land to the south would best allow for maintenance of existing view whilst providing riparian habitat values. Such a condition could be added as follows:

"9.1 A detailed plan of riparian landscaping to a minimum 2.0m wide area along the south site boundary is to be submitted to Council for approval by Council's General Manager or delegate prior to the issue of a Construction Certificate. Such a plan could include the following recommended planting list for this area:

- *Lomandra longifolia*
- *Dianella caerulea*
- *Crinum pedunculatum*
- *Austromyrtus dulcis*
- *Hibiscus tiliaceus*
- *Cupaniopsis anacardioides*
- *Melaleuca quinquenervia*
- *Casuarina glauca"*

Please note that the comments from Council's NRM Unit did not infer a requirement or necessity for riparian landscaping in this instance but instead provided possible species to be incorporated to a condition of consent as per the Planning Committee resolution.

In this instance, the Council officer recommendation remains as per the previous report to Council, however an additional option has been created in the 'Options' section of this report which provides for Council to approve the development application as per the recommended conditions of consent with an additional condition of consent requiring riparian landscaping to the south site boundary.

Previous Report

The subject application seeks consent for the removal of an existing carport and the development of a second residential unit to create a detached dual occupancy on the site. The proposed development consists of a three bedroom residential unit and is single storey in height and provides for access off Kennedy Drive.

The application includes a State Environmental Planning Policy (SEPP) No. 1 objection in relation to Clause 32B(4)(b) of the North Coast Regional Environmental Plan 1988 (NCREP)

relating to overshadowing. In this regard, it is referred to Council for determination. Whilst Council has received a relaxation for Development Applications to be determined by full Council for variations to Clause 32B(4)(a) of the NCREP, this relaxation does not extend to Clause 32B(4)(b).

The proposed development is considered to demonstrate general compliance with the relevant planning instruments, apart from the proposed SEPP No. 1 objection. However it is considered that sufficient justification has been provided in this instance, and although there are two proposed variations to Tweed Shire Council Development Control Plan Section A1 Residential and Tourist Development Code, the proposed development is recommended for conditional approval.

It is noted that the subject application was lodged with Council on 29 January 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014 and as such this application also requires consideration under the provisions of the Tweed Local Environmental Plan 2000.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 32B(4)(b) of North Coast Regional Environmental Plan regarding the overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. Development Application DA14/0050 for a detached dual occupancy at Lot 7 DP 22375; No. 204 Kennedy Drive, Tweed Heads West be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans:**
 - Site Plan and Notes (Drawing No. 268 sheet 2 of 17) prepared by Jemade Design and Construction Pty Ltd and dated 4 September 2013;**
 - Floor Plan (Drawing No. 268 sheet 5 of 17) prepared by Jemade Design and Construction Pty Ltd and dated 4 September 2013;**
 - Roof Plan (Drawing No. 268 sheet 6 of 17) prepared by Jemade Design and Construction Pty Ltd and dated 4 September 2013;**
 - Elevations (Drawing No. 268 sheet 7 of 17) prepared by Jemade Design and Construction Pty Ltd and dated 4 September 2013;**
 - Sections (Drawing No. 268 sheet 8 of 17) prepared by Jemade Design and Construction Pty Ltd and dated 4 September 2013; and;**
 - Sections (Drawing No. 268 sheet 9 of 17) prepared by Jemade Design and Construction Pty Ltd and dated 4 September 2013,**

except where varied by the conditions of this consent.

[GEN0005]

2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
3. **The approved development shall not result in any clearing of native vegetation without prior approval from the relevant authority.**
[GEN0290]
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. **All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management and to the written satisfaction of the General Manager or his delegate.**
6. **The subject land is within the Lighting Zone for Gold Coast Airport, in which use of non-reflective roof surfaces is mandatory. Any proposed use of reflective roof materials requires approval from Gold Coast Airport Pty Ltd, prior to issue of an occupation certificate. (Note: Colorbond is a pre-approved material, with the exception of roof colours having solar absorption equal to or less than 0.35).**
[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.
[PCC0065]
8. **In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.**
[PCC0285]
9. **A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.**
[PCC0585]

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

- (a) Design flood level of RL 2.6m AHD.
- (b) The minimum habitable floor level for the building is RL 3.1m AHD.
- (c) All building materials used below Council's design flood level must not be susceptible to water damage.
- (d) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (e) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

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

[PCC0945]

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

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

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

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

[PCC1145]

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

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

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

[PCC1155]

14. Prior to the issue of a Construction Certificate the applicant is to submit for the written approval of Council's General Manager or delegate a revised site layout plan which clearly demonstrates the extent of the proposed internal driveway on site.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

16. Prior to the commencement of works, the applicant is to indicate their compliance with the provisions of the Noise Level Impact Assessment - Aircraft Noise for No 204 Kennedy Drive Tweed Heads prepared by Craig Hill Acoustics Reference 204 Kennedy 300414/1 and dated 30 April 2014 by providing to the Principal Certifying Authority appropriate details on the building components and systems intended to be used in the construction of the dwelling with the corresponding STC/RW ratings. Such details shall also reference the window and door systems to be installed with the corresponding STC/RW ratings.

[PCW0135]

17. 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]

18. 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]

19. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried

out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

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

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

[PCW0985]

22. 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]

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

[PCW1065]

24. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection

fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

25. 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]

26. 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]

27. The development shall be carried out in accordance with the provisions of the Noise Level Impact Assessment - Aircraft Noise for No 204 Kennedy Drive Tweed Heads prepared by Craig Hill Acoustics reference 204 Kennedy 300414/1 and dated 30 April 2014.

[DUR0275]

28. If window systems to be used are not openable or are required to remain closed in order to satisfy the requirements of the Noise Level Impact Assessment - Aircraft Noise for No 204 Kennedy Drive Tweed Heads prepared by Craig Hill Acoustics reference 204 Kennedy 300414/1 and dated 30 April 2014, then a system of mechanical ventilation complying with the relevant provisions of the Building Code of Australia shall be installed to service all habitable areas of the dwelling.

[DUR0295]

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

[DUR0375]

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

[DUR0395]

31. 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]

32. 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]

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

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

[DUR0645]

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

[DUR0905]

35. 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]

36. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

37. 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]

38. 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 blown from the site.

[DUR2185]

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

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

[DUR2485]

40. Plumbing

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

[DUR2495]

41. An isolation cock is to be provided to the water services for the dwelling in a readily accessible and identifiable position.

[DUR2505]

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

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

46. 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]

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

[POC0355]

48. **Section 94 Contributions**

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

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

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

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

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

- | | |
|--|---------|
| (a) Tweed Road Contribution Plan:
1.3 Trips @ \$853 per Trips
(\$815 base rate + \$38 indexation)
S94 Plan No. 4
Sector1_4 | \$1,109 |
| (b) Open Space (Casual):
0.75 ET @ \$549 per ET
(\$502 base rate + \$47 indexation)
S94 Plan No. 5 | \$412 |
| (c) Open Space (Structured):
0.75 ET @ \$629 per ET
(\$575 base rate + \$54 indexation)
S94 Plan No. 5 | \$472 |

(d) Shirewide Library Facilities: 0.75 ET @ \$847 per ET (\$792 base rate + \$55 indexation) S94 Plan No. 11	\$635
(e) Bus Shelters: 0.75 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	\$48
(f) Eviron Cemetery: 0.75 ET @ \$124 per ET (\$101 base rate + \$23 indexation) S94 Plan No. 13	\$93
(g) Community Facilities (Tweed Coast - North) 0.75 ET @ \$1404 per ET (\$1,305.60 base rate + \$98.40 indexation) S94 Plan No. 15	\$1,053
(h) Extensions to Council Administration Offices & Technical Support Facilities 0.75 ET @ \$1880.38 per ET (\$1,759.90 base rate + \$120.48 indexation) S94 Plan No. 18	\$1,410.29
(i) Cycleways: 0.75 ET @ \$478 per ET (\$447 base rate + \$31 indexation) S94 Plan No. 22	\$359
(j) Regional Open Space (Casual) 0.75 ET @ \$1103 per ET (\$1,031 base rate + \$72 indexation) S94 Plan No. 26	\$827
(k) Regional Open Space (Structured): 0.75 ET @ \$3872 per ET (\$3,619 base rate + \$253 indexation) S94 Plan No. 26	\$2,904

[POC0395]

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

[POC0435]

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

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

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

Water DSP4:	1 ET @ \$12907 per ET	\$12,907
Sewer Tweed Heads:	1 ET @ \$6201 per ET	\$6,201

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

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

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

[POC0675]

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

[POC1045]

USE

52. 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]

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

[USE0165]

54. All externally mounted air conditioning units, rainwater tank pumps or 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 such plant 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 plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

55. 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]

56. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

REPORT:

Applicant: N Griffin
Owner: Mr Nicholas JP Griffin
Location: Lot 7 DP 22375 No. 204 Kennedy Drive, Tweed Heads West
Zoning: 2(a) Low Density Residential
Cost: \$160,000

Background:

Proposed Development

The proposal is for the development of a second residential unit on the above site to create a detached dual occupancy. The proposed residential unit is to be located to the rear (south) of the site and an existing carport attached to the existing dwelling is to be removed from the site in order to facilitate access to the rear portion of the site.

The proposed residential unit is a single storey structure, with a maximum height of 5m. The proposed unit consists of three bedrooms (one with ensuite/walk-in-wardrobe), an open kitchen/living/dining area, a bathroom and a laundry. The proposal includes a breezeway feature and an outdoor deck. The proposed unit has a gross floor area of approximately 114m².

Additional car parking is proposed on site through the provision of six spaces to serve both the proposed and the existing unit on site.

Two variations to Councils Development Control Plan (DCP) Section A1 Residential and Tourist Development Code are proposed as part of this Development Application. These relate to the proposed front deep soil zone and the rear building setback. These are assessed in detail elsewhere in this report, with the variations being supported in this instance.

The application was notified to surrounding properties for a period of 14 days however Council did not receive any submissions relating to the proposal.

The application involves a SEPP No. 1 Objection to Clause 32B(4)(b) of the NCREP. The SEPP No. 1 Objection is considered reasonable and is supported in this instance. The subject application has been reported to Council for determination due to this variation to Clause 32B(4)(b) of the NCREP.

Site Details

The subject property is legally described as Lot 7 DP 22375 and more commonly referred to as No. 204 Kennedy Drive, Tweed Heads West. The property has an area of approximately 973m² which currently contains a single storey detached dwelling with attached carport. The site is rectangular in shape with street frontage to Kennedy Drive. Frontage width is approximately 16m. The subject property is zoned 2(a) Low Density Residential under the provisions of Tweed Local Environmental Plan 2000 (TLEP 2000).

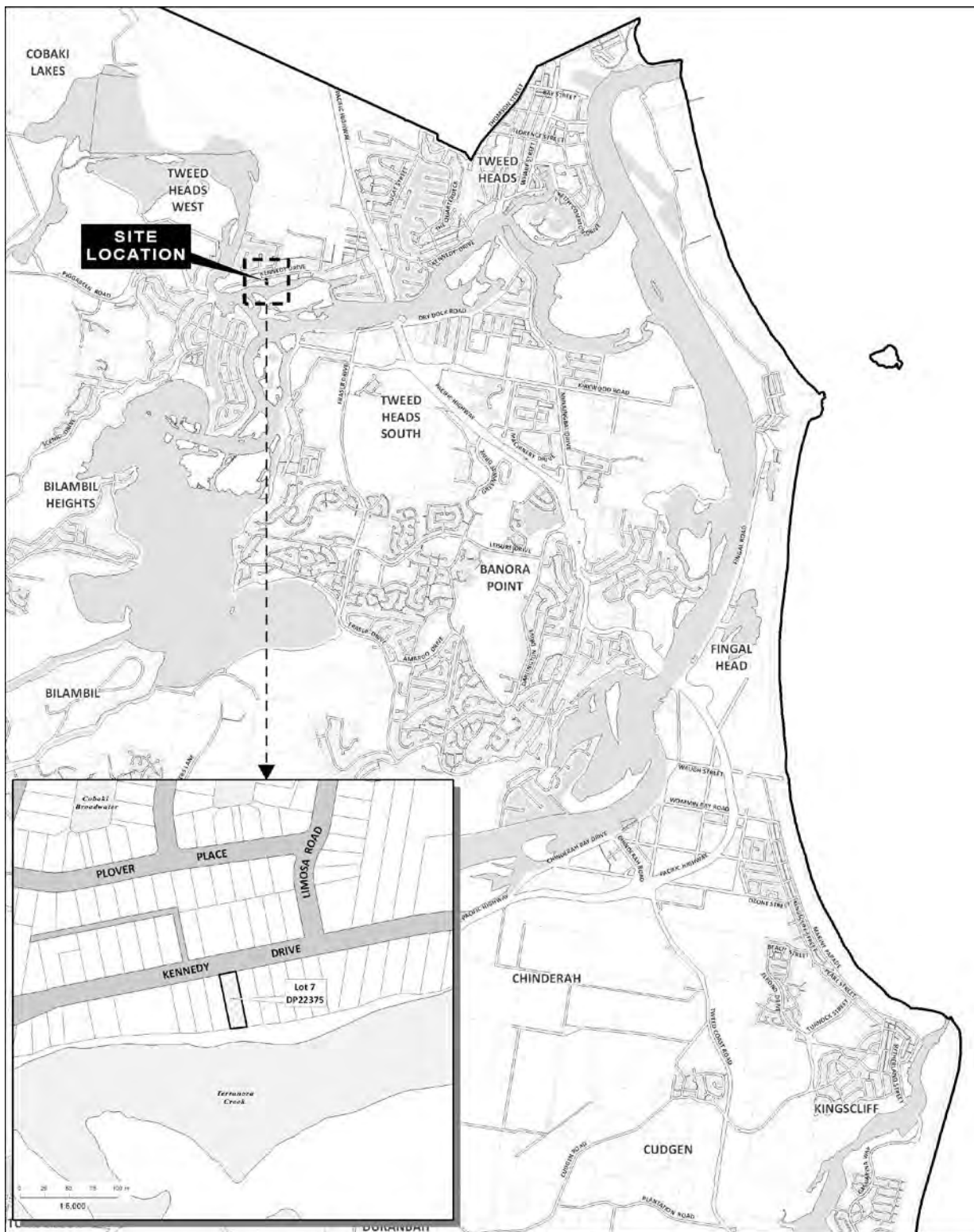
Surrounding land is generally utilised for multi-dwelling housing, accessed from Kennedy Drive, although there are instances of single detached dwellings in this area. The site itself is bordered to the east and west by multi-dwelling housing, to the north by Kennedy Drive (road reserve) and to the south by Crown lands which zoned 6(a) Open Space. This portion of land leads to Terranora Creek, located to the south of the site.

History

Council's electronic system displays the following historical application over the subject site:

T4/1529: Development Application- the erection of seven (7) home units. Approved 4 May 1982. It is considered that this development was not commenced on the subject site and has subsequently lapsed.

SITE DIAGRAM:



Locality Plan

Lot 7 DP22375
No. 204 Kennedy Drive, Tweed Heads West

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties, expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and illustrative only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you dig" enquiry must be made by calling 1310. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral 12/08/2014
© Land and Property Information (LPI) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

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

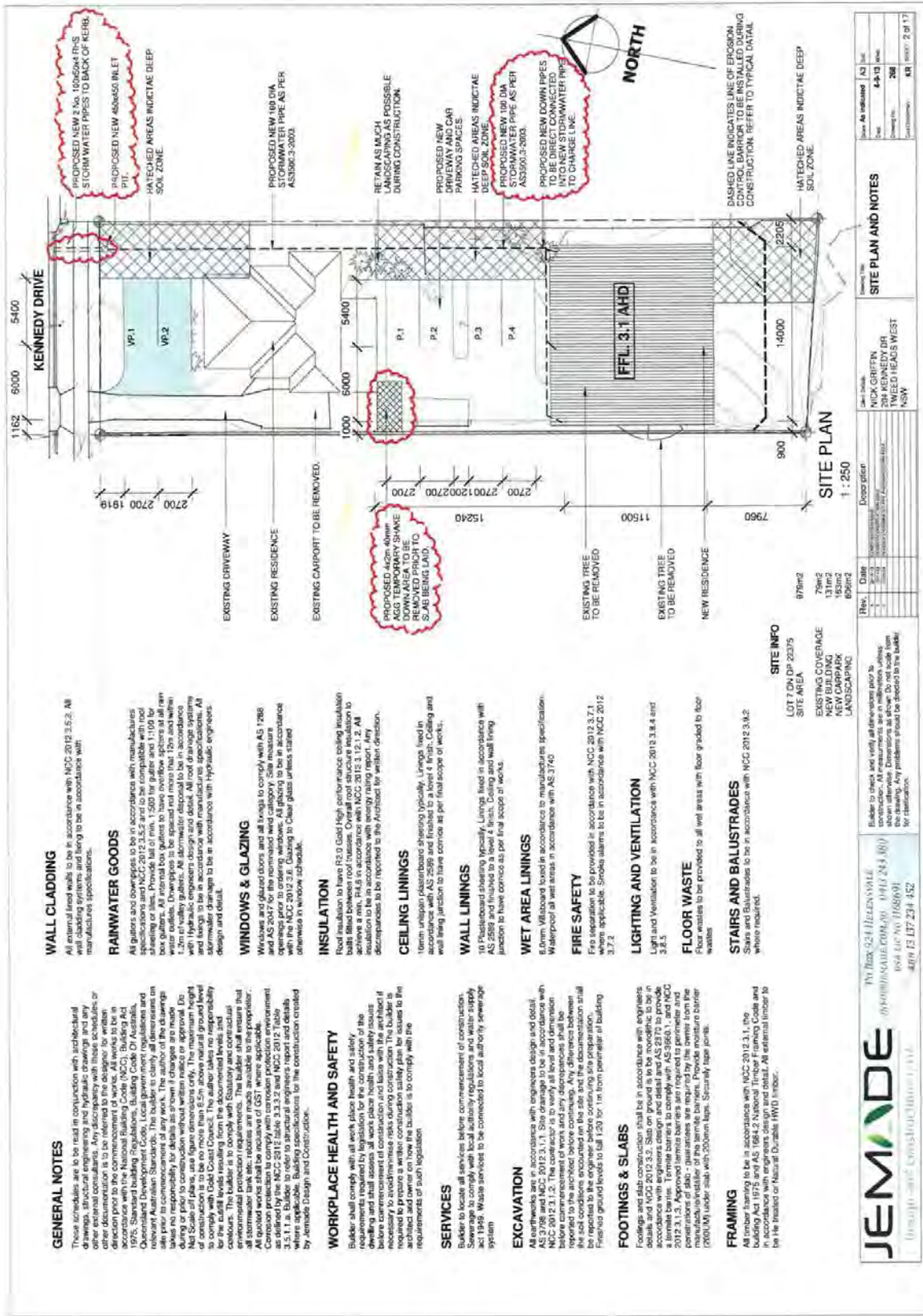
Map Data provided: Universal Transverse Mercator, GDA 1984 datum, Zone 56, East of Australia 110°E
© GDA

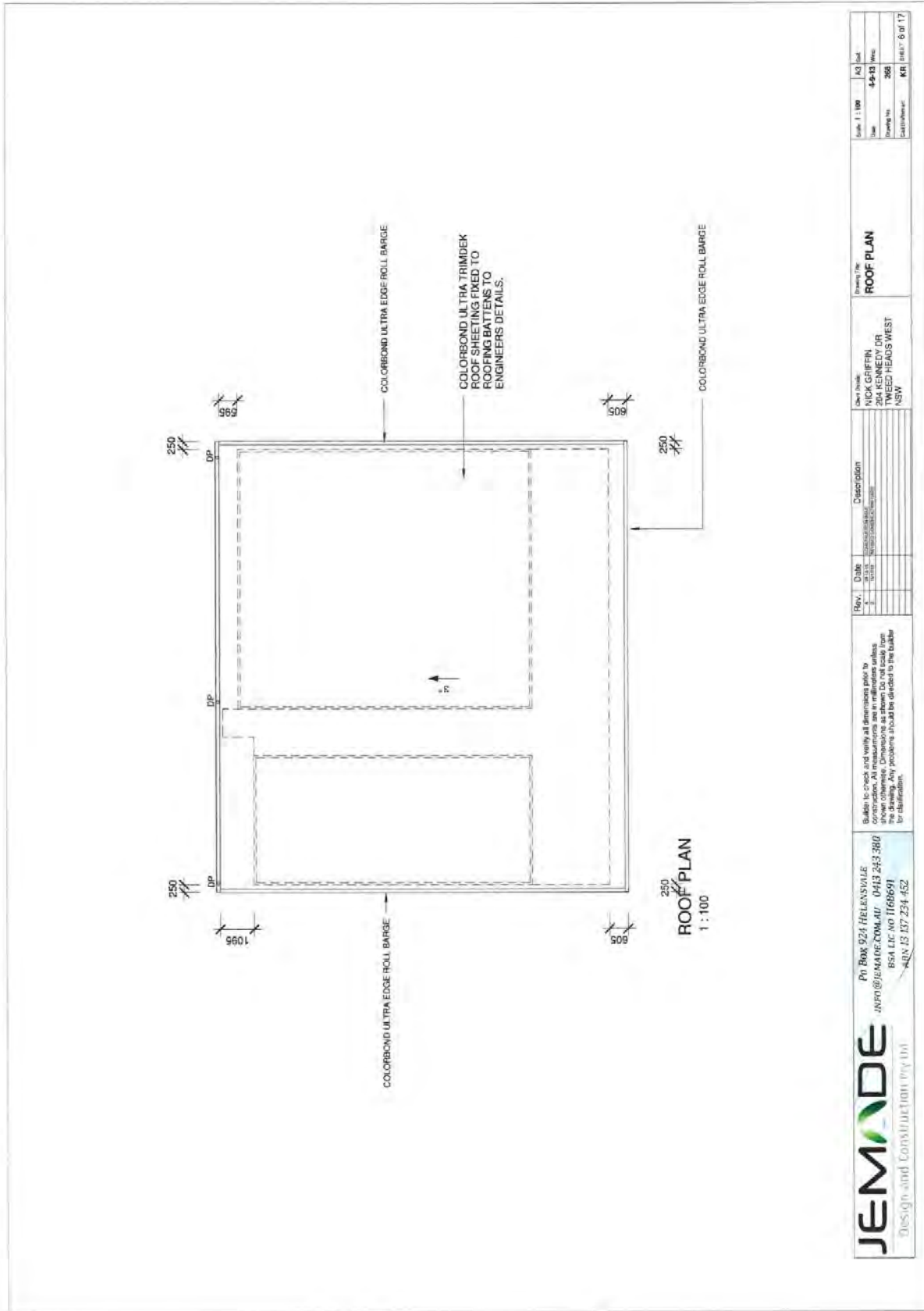
Civic and Cultural Centre
3 Tumbulgum Road
Murumbidgee NSW 2684

PO Box 816
Murumbidgee NSW 2684
T | (02) 6970 2400 | 1300 292 872
F | (02) 6970 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au

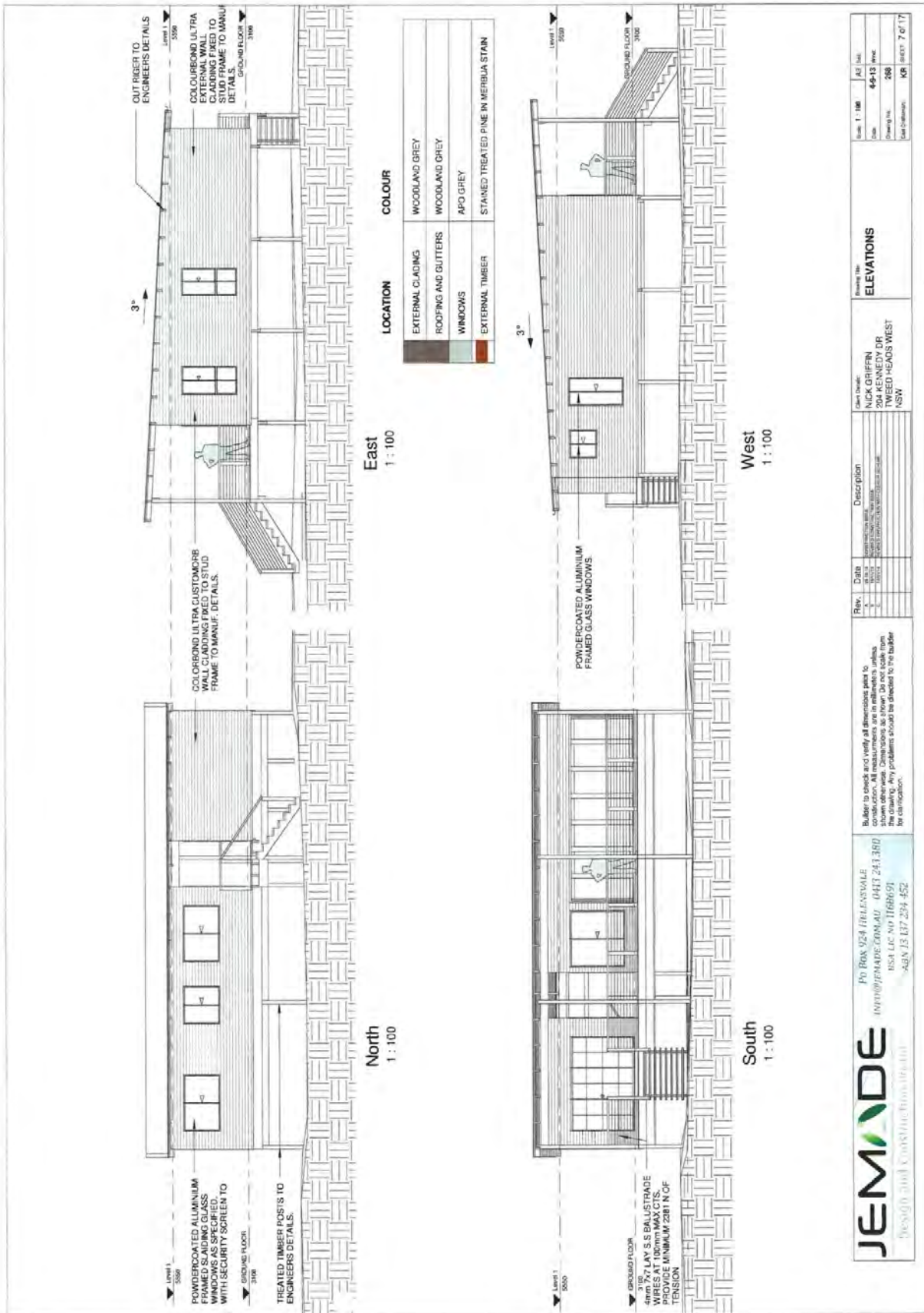


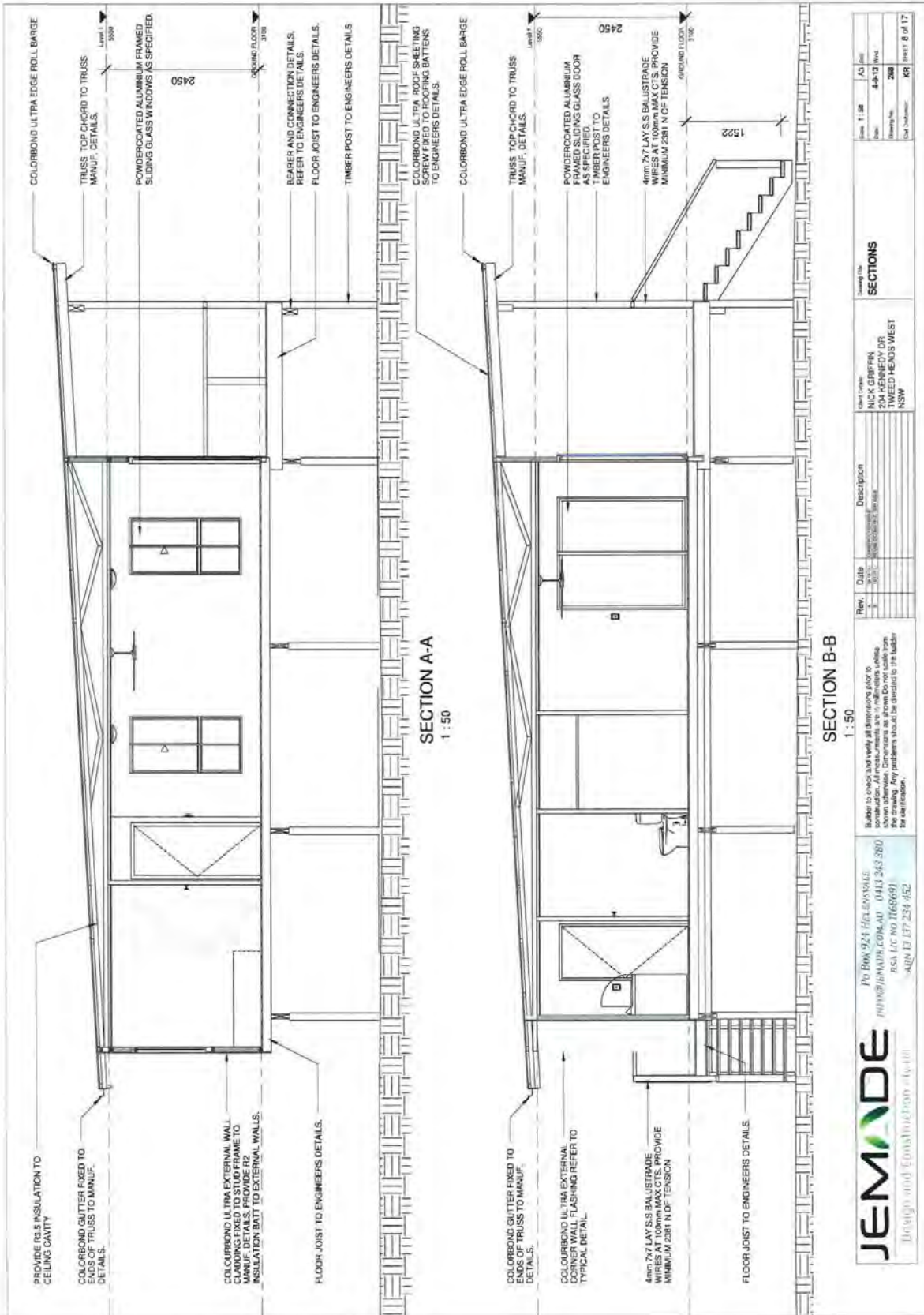
DEVELOPMENT/ELEVATION PLANS:





 Design and Construction Pty Ltd		PO Box 924 HELENSVILLE INFO@JEMADE.COM.AU 0413 243 380 BSA LIC NO 1168691 ASN IS 137 234 452		Guide to check and verify all dimensions prior to construction. Dimensions as shown. Do not scale from the drawing. Any problems should be directed to the builder for clarification.		Rev. 1 Date 10/10/14	Description ROOF PLAN	Client Name NICK GRIFFIN 204 KENNEDY DR WHEED HEADS WEST NSW	Scale 1:100 Date 4-9-13 Drawing No 205 Draftsman KR (REV. 6 of 17)
--	--	---	--	---	--	-------------------------	--------------------------	--	---





JEMADE
Design and Construction

PO Box 924 HELENSVALE
HIV@JEMADE.COM.AU 0413 243 380
NSW Lic No 1168691
NSW Lic No 177 234 452

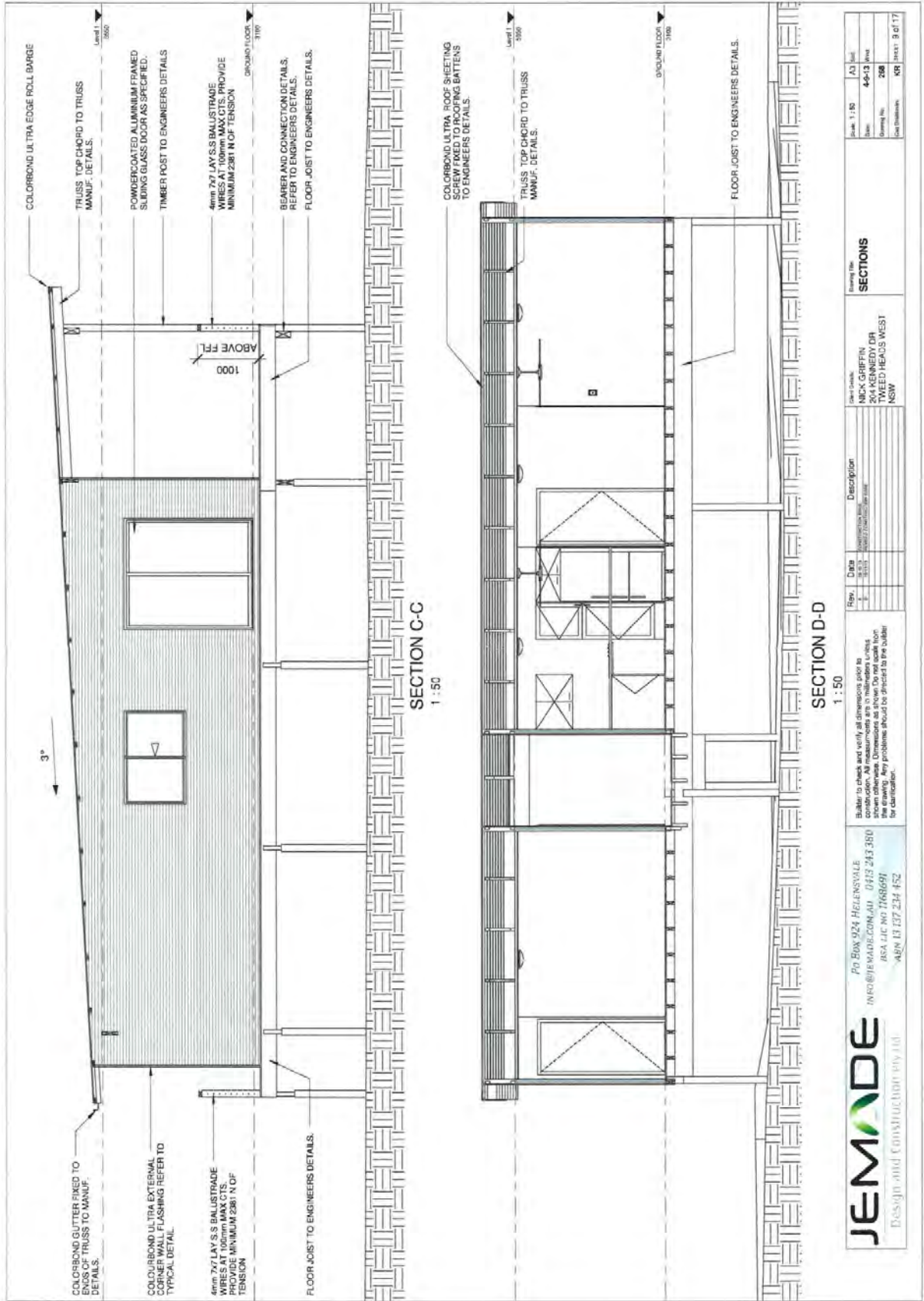
Rev.	Date	Description
1	10/01/14	ISSUED FOR TENDER

Drawn by: **SECTIONS**

Check by: **NICK GIBBERN, 234 KENNEDY DR, TWEED HEADS WEST, NSW**

Scale: 1:50
Date: 4-8-14 (Week)
Drawing No: 208
Client/Author: KSC (Sheet 8 of 17)

Submit to check and verify all dimensions prior to construction. All measurements are in millimeters unless otherwise stated. Any problems should be directed to the leader for clarification.



JEMADE
Design and construction Pty Ltd

PO BOX 924 HELENSVILLE
INFO@JEMADE.COM.AU 013 243 380
JSA LIC NO 168691
ASN 13 137 234 452

Client Details:
NICK GRIFPIN
201 KENNEDY DR
HELENSVILLE
NSW

Project Name:
SECTIONS

Rev. Date Description
1 15/11/14

Issue: 1:50 A3
Date: 4-10-14
Drawing No: 208
Scale: KR
Sheet: 9 of 17

Subject to check and verify all dimensions prior to construction. All measurements are in millimeters unless shown otherwise. Dimensions as shown. Do not scale from the drawing. Any problems should be directed to the author for clarification.

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

The development would generally accord with the aims of the plan, providing for a residential use within an area zoned for this purpose at a density which is considered to be suitable.

Clause 5 - Ecologically Sustainable Development

The intent of this clause is to provide for development which is compatible with principles of ecological sustainable development (ESD) including the precautionary principle, inter-generational equity, ecological and environmental factors. The scale and nature of the proposal is not considered to conflict with principles of ESD.

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 2(a) - Low Density Residential, the objectives of which are noted below. The proposal is considered to be consistent with the primary objective of this zone, and maintains a predominantly detached housing character on the site.

- (b) *it has considered those other aims and objectives of this plan (the LEP) that are relevant to the development, and*

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

- (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.*

Given the nature and scale of the proposed development it is considered that the proposal would not have an unacceptable cumulative impact on the community, locality or on the Tweed as a whole as a result of its being carried out.

Clause 11 - Zone Objectives

The subject site is zoned 2(a) Low Density Residential. The objectives of the 2(a) zone are as follows:

Primary objectives:

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

Secondary objectives:

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

The proposed development is considered to maintain a low density residential environment and a detached housing character at this location and is therefore in accordance with the primary objective of the zone as outlined above.

Clause 15 - Essential Services

The primary objective of this Clause is to ensure that development does not occur without adequate measures to protect the environment and the community's health. The subject site is serviced with water, sewer, stormwater, power and telecommunications infrastructure and so it is considered that essential services are available to the site.

During assessment it was noted that as the sewer main in front of the property is only approximately 700mm deep, due to the length of the allotment it may be too shallow for the proposed second dwelling to gravitate to.

As such the proposal was referred to Councils Water Unit for comment with respect to this who have provided the following advice:

"Should the owner not be able to demonstrate that they can provide a suitable gravity connection between the new building and the junction at the front of the property, they may need to install a sewer ejection pumping station. Generally we would expect the owner to install and own and operate the sewer ejection pumping station. A plumber can install the pump well and pipework and an electrician will be needed to connect the pumping station to the property.

An estimate that you could provide the owner for the typical cost of installation is \$14,800. This is the amount Council have charged in the past at selected urban subdivisions where we have completed the installation."

Having regard to the potential cost implications associated with providing upgraded sewer infrastructure as outlined above, it was considered appropriate to advise the applicant of the potential financial imposition in this regard. This was provided to the applicant along with a wider request for further information (RFI)

letter. The applicant has provided a response outlining that the sewer infrastructure would not need to be upgraded in this regard.

Irrespective of this, it is considered that the proposal can achieve suitable sewerage and other essential services to the proposed development. Accordingly, the proposal complies with the provisions of this clause.

Clause 16 - Height of Building

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

The proposed development demonstrates a single level design, constructed on raised stilts with a maximum height of approximately 5m. This constitutes a two storey development for residential development under this clause as it exceeds the maximum 4.5m allowed per storey. In any event, the proposal is in accordance with the maximum building height allowable on the site as outlined above and is in accordance with Clause 16.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP 2000 relates to social impact assessment, with the objective “to ensure proper consideration of development that may have a significant social or economic impact”. Tweed Shire Council Development Control Plan (DCP) A13 requires a social impact assessment for the development of multi dwelling housing when more than 50 units are proposed. The requirements of DCP A13 therefore do not trigger the need for a social impact assessment and Clause 17 does not apply to the proposed development.

Clause 22 – Designated Roads

The subject site has access and frontage to Kennedy Drive which is a Council designated road. As such this clause applies to this site. This clause states that the consent authority may grant consent to development on land to which this clause applies only if the following is satisfied:

- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

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

- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

The subject site will maintain the existing access point to Kennedy Drive. In this manner, the proposal is considered to be acceptable having regard to the existing access point to the site.

- (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*

The proposed development is not considered to prejudice any future road widening works. In this regard it is noted that the proposed development works

are located away from Kennedy Drive, to the rear of the site. The proposal is considered to be acceptable having regard to this objective.

(d) where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and

Not applicable. The subject site is zoned 2(a) Low Density Residential.

(e) the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and

The proposed development is to be located to the rear of the site, away from the designated road. Having regard to this, the proposal is not considered to be particularly sensitive to traffic noise in this instance.

(f) the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and

The proposal is not considered to detract from the scenic values of the locality, due to variation in colours and materials to the building design and proposed landscaping

(g) where practicable, access to the land is provided by a road other than the designated road, and

The subject site cannot practically provide vehicular access except from the designated road.

(h) in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:

(i) would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and

(ii) would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and

(iii) would not compromise highway safety and efficiency, and

(iv) would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.

Not applicable. The subject site is zoned 2 (a) Low Density Residential.

Having regard to the above, the proposal is considered to comply with the objectives of clause 22 and sub clause 4.

Clause 32 – Aircraft Noise

The objectives of this clause are to prevent certain noise sensitive developments from locating in proximity to the Coolangatta airport and to minimise the noise impact from the operation of the Coolangatta airport on development in its vicinity. The subject site is mapped as being within the 20-25 ANEF contour and therefore this clause applies to the proposed development.

Under part (5) of this clause Council is required to consider Australian Standard AS 2021–1994(*Acoustics—Aircraft noise intrusion—Building siting and construction*) when deciding whether to grant consent for residential development between the 20 and 25 ANEF contours. The application has been reviewed by Council's Environmental Health Unit who have advised that in relation to Table

2.1 of AS2021-2000 (the updated Australian Standard) the erection of a dwelling is conditionally acceptable in the 20-25 ANEF Contour for Gold Coast Airport. Recommended conditions of consent have been provided in this regard and the proposed development is considered to satisfactorily address the requirements of this clause.

Clause 34 – Flooding

The objectives of the Clause are as follows:

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

The subject site is indicated as being flood prone, being entirely located within the 1 in 100 year (Q100) flood level and the Probable Maximum Flood area. The Q100 flood level is identified as being RL 2.6m AHD which results in a required minimum floor level of RL 3.1m AHD which is proposed in this instance. The proposal was assessed by Council flooding engineers (Planning and Infrastructure) and considered acceptable. The requirement to fill the site to the design flood level has been waived in this instance. The proposed development is considered to be acceptable having regard to the provisions and objectives of this clause.

Clause 35 - Acid Sulfate Soils

The Acid Sulfate Soil (ASS) Planning Map on Council's GIS mapping system indicates that the proposed property is located on Class 1 and 2 Land, with the majority of the site being within the Class 2 area. The application has been reviewed by Council's Environmental Health Section who have advised the following:

"The subject site is indicated as being class 1 and 2 on Council's ASS Planning Maps. The development is for a single detached dual occupancy dwelling and accordingly the applicant may rely on Council's ASS Minor Works Plan to address any ASS issues encountered upon excavation of the site for dwelling footings.

A completed ASS Minor Works Plan has been submitted with the application."

Having regard to the advice above it is considered that the proposal will not contravene the provisions of this Clause.

Clause 39 – Remediation of Contaminated land

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

In this regard the application was reviewed by Council's Environmental Health Unit who have advised the following:

"A check of Council's historical aerial photography indicates the following:

1976 Run 3 3243-4069-1 and 1987 Run 3 3583-158-1 indicates that a dwelling was in existence on the subject site.

A check of Council's GIS has revealed that there are no known cattle tick dip sites within 200m of the subject site."

Having regard to the above advice it is considered unlikely that there is land contamination in this instance. As such the proposal is considered to be acceptable having regard to this Clause.

Clause 51A - Multi-dwelling housing densities in Zone 2 (a)

The objective of this zone is to control the density of multi-dwelling housing in Zone 2 (a) (the Low Density Residential zone) by the use of a development standard.

This clause goes on to further state that multi-dwelling housing proposed to be erected on land within Zone 2 (a) is to be at a density not greater than one dwelling per 450 square metres of site area at this location. As the subject application relates to a density of two dwellings on a 973m² allotment (486.5m² per dwelling) the proposed development is in accordance with the provisions of this clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

Given the development comprises the construction of a second residential unit on residential zoned land, it is considered unlikely that the proposal will impact on the coastal values or cultural heritage. However, it is important to note that the proposal will create overshadowing of the waterfront open space before 3:00pm midwinter. As noted elsewhere within this report a SEPP No. 1 objection is sought to the provisions of the Clause 32B of the NCREP. The SEPP No. 1 objection is supported in this specific situation.

The provisions of this clause state:

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*

- (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposal seeks a variation to the provision of Clause 32B (4)(b). The proposed development casts a shadow upon Terranora Creek waterway to the south of the site before 3.00pm midwinter. Under the SEPP No. 1 assessment below this variation is supported. The proposal is considered to be generally consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the waterway 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

The provisions of Clause 43 of the REP relate to residential development on urban zoned land. The provisions state:

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

The proposed development is not considered to adversely affect environmental features of the site or generate any unreasonable burden onto the local road network. The proposed dual occupancy density is considered to be a reasonable response to the land use character of the area and the 2(a) Low Density Residential zoning of the site. The proposed development will not result in the creation of any adverse physical impacts upon the locality.

Clause 81: Development adjacent to the ocean or a waterway

The subject sites' eastern boundary is located adjacent to Terranora Creek, a waterway. This clause states that council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied of the following:

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

From Councils mapping system it is noted that there is a public park located approximately 220m to the west of the site which provides access to the waterway. This is considered to constitute a sufficient amount of foreshore open space at this location.

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

The subject application proposes the erection of a second residential unit on the site. This building is not considered to detract from the amenity of the waterway, given its relatively minor scale and the setback of the building from the south site boundary. In this regard it is noted that the proposed building is set back further from the waterway than the structures on the adjoining lots to either the east or west.

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

The Tweed Shire Coastline Management Plan applies to the subject site. The subject application is assessed in terms of this document elsewhere in this report, with it noted that the development is generally in accordance with the principles of this plan.

The submitted application is considered to be acceptable when assessed against the provisions of this clause.

SEPP No. 1 - Development Standards

SEPP No. 1 provides a mechanism in which a variation to a statutory development standard can be assessed and supported.

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

The subject application contains a SEPP No. 1 objection in relation to:

NORTH COAST REGIONAL ENVIRONMENTAL PLAN - REG 32B

Development control-coastal lands

32B Development control-coastal lands

(4) The council must not consent to the carrying out of development:

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

The proposed development overshadows a portion of the foreshore reserve to the south of the site. In this regard the proposal will result in a shadow extending into the adjacent foreshore reserve prior to 3:00pm midwinter (standard time). It

is considered that approximately 20m² of shadow is cast at 8.00am midwinter (standard time).

A 5 part test was outlined by Chief Justice Preston in recent decision *Wehbe v Pittwater Council* (2007) NSW LEC 827. He also rephrased the assessment process as follows:

1. ***The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The applicant provided the following reasons in support of the SEPP 1 Objection:

“The objectives of the development standard include:

- To ensure that overshadowing of public areas such as beaches and foreshore open space does not occur at such times of the day as would affect the amenity and enjoyment of such areas by the public;
- To ensure that such public areas are not alienated from public use by inappropriate overshadowing caused by urban development.

The proposed development will result in overshadowing of the foreshore and beach areas prior to the prescribed times contained within this clause.

It is submitted that the development standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- Existing buildings along Kennedy Drive result in overshadowing of the foreshore areas prior to the relevant times in both mid winter and mid-summer.
- Existing trees on the foreshore area result in significant overshadowing of the foreshore reserve prior to the relevant times.
- The immediate foreshore area to be overshadowed is not useable passive open space areas and do not contain any public amenities or facilities at which members of the community would be expected to congregate. The overshadowing will therefore not alienate the physical use of the area.

The NSW Government Coastal Policy contains at Table 3 a strategic action in relation to beaches and waterfront open space which is referred to in Clause 32B of the North Coast REP. The principle contained in the Coastal Policy is that:

“Beaches and waterfront open space will be protected from overshadowing. The standard to be applied will vary according to local circumstances. However, generally the standard to be applied is:

In cities or large towns no overshadowing before 3pm mid winter and 6.30pm summer daylight saving time;

Elsewhere no overshadowing before 4pm mid winter and 7pm midsummer daylight saving time.

The policy contains a note relating to this standard which states that:

"The suggested standard in principle may be difficult to apply in highly urbanised environments. An LEP or Development Control Plan which is tailored to local conditions and which has the overriding objective of minimising overshadowing may be required in these situations."

It is apparent from the note to the policy that it is difficult to achieve the objective of nil overshadowing of waterfront open space or beach areas in urban environments and it is therefore submitted that strict compliance with this development standard is not appropriated in the circumstances of this case.

Council is therefore requested to uphold the objection and grant consent to the application.

Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. Whilst the applicant has not explicitly stated same, it is considered from the above information that they have chosen the first way to demonstrate this, namely that *the objectives of the standard are achieved notwithstanding non-compliance with the standard.*

It is considered that the objective of the standard contained within Clause 32(b) is related to the protection of the recreational integrity of foreshore open space areas and the need to restrict adverse impacts upon same by the erection of buildings in close proximity. In this instance it is noted that the subject application would result in a minor area (approximately 20m²) of land being overshadowed and it is further noted that this area is not considered to be easily accessible to the public as a recreational area, being a narrow strip of land which does not link up with surrounding pathways. In this instance, it is considered that compliance with the development standard is unreasonable and unnecessary.

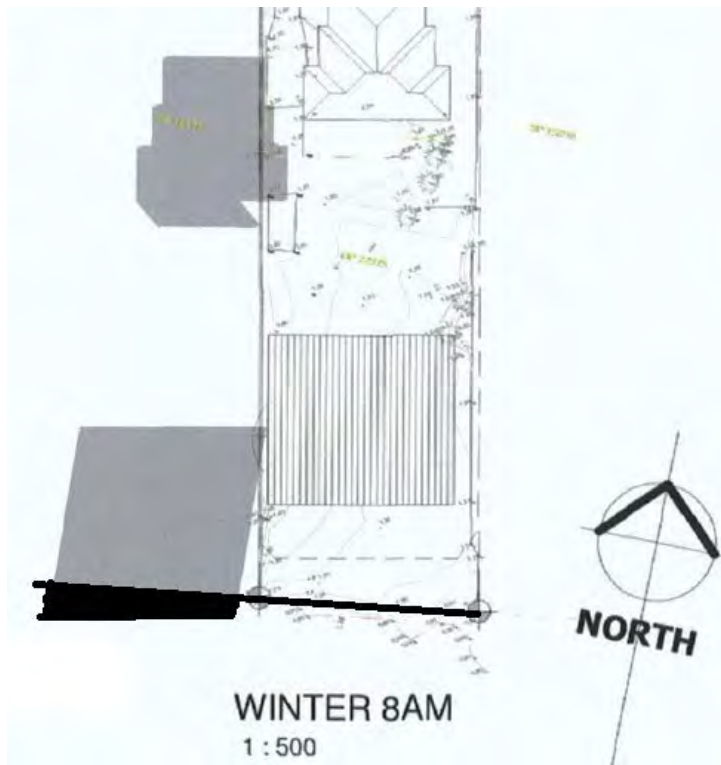


Figure 1: Extent of overshadowing on foreshore reserve (in black)

2. ***The consent authority must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3”.***

The aims of the policy are as follows:

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

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

The proposed development will not affect the proper management or conservation of natural resources as it is proposed within an existing residential environment. The proposed development is considered to be an orderly and economic use of the land. The proposal is consistent with the established development in the area.

3. *The consent authority must be satisfied that a consideration of the matters in clause 8(a) “whether non-compliance with the development standard raises any matters of significance for State or regional environmental planning; and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

It is considered that the proposed overshadowing is relatively minor (approximately 20m²) and will not raise any matters for state or regional planning. The overshadowing will not impede the overall objectives of the clause. It will not reduce the quality of the useable foreshore area for the benefit and enjoyment of the public.

With regard to the justification provided by the applicant above it is considered appropriate that State Environmental Planning Policy No. 1 objection to Clause 32B(4)(b) of the North Coast Regional Environmental Plan 1988 relating to overshadowing be supported in this instance and the concurrence of the Director-General of the Department of Planning be assumed.

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

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

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

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

It is noted that Terranora Creek is located to the south of the site; however the proposal will not impact on public access along the foreshore, as currently the site does not offer any public access to the foreshore.

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

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

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

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

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

The proposal will not result in any detrimental impact on the coastal foreshore, however, it is to be noted that the development will create overshadowing of waterfront open space (approx. 20m²) at 8:00am. It is however noted a SEPP 1

objection is sought to the provisions of the Clause 32B of the NCREP, which is supported in this instance.

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

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

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

The proposal would not impact negatively any animals or their habitats.

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

The proposal is not considered to have an adverse impact upon marine environments or habitats.

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

The proposed development is not considered to impact negatively on wildlife corridors.

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

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

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

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

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

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

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

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

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

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

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

Not applicable to the subject application.

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

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

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

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

The proposed development application has not addressed water or energy usage requirements in the submitted application; however it is considered that these are to be satisfied where statutorily required through detailed design at the construction phase and would be required to achieve compliance with the Building Code of Australia.

Conclusion

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

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

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

Part 1 Preliminary

1.2 Aims of Plan

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

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
 - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
 - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,

- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
- (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

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

1.8A Savings provision relating to development applications

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

With respect to this it is noted that the subject application was lodged with Council on 29 January 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014 and as such this clause is applicable to this development application. Notwithstanding this, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned as R2 Low Density Residential zone under the provisions of this plan.

2.3 Zone objectives and Land Use Table

The Draft TLEP 2012 zones the development area as R2 Low Density Residential. The objectives of the R2 Low Density Residential zone are:

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

In this zone, the proposed development is permissible with consent, being defined as a 'Dual occupancies (detached)' which means:

"2 detached dwellings on one lot of land, but does not include a secondary dwelling."

The proposed development is considered to be consistent with the objectives of the zone.

Part 4 Principal development standards

4.3 Height of buildings

The proposed development displays a maximum building height of approximately 5m. In accordance with this clause the subject site is covered by building height control J-9m. As such the proposal is considered to be compliant with this clause.

4.4 Floor space ratios

The proposed site displays a permissible floor space ratio of 0.8:1 (Control J). In this instance it is noted that this application relates to a previously developed site, however given the total site area of approximately 973m² and the (existing & proposed) development covering a total area of approximately 277m² (existing 95m², proposed 182m²). This equates to a floor space ratio of approximately 0.28:1, consistent with this clause.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

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

The subject site is not located in close proximity to any public access to or considered to represent an opportunity for a new public access.

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

The proposed development is permissible on the subject site and meets Councils requirements with respect to appropriate building design. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

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

It is be noted that the development will create overshadowing of waterfront open space (approx. 20m²) at 8:00am. It is further noted that a SEPP 1 objection is

sought to the provisions of the Clause 32B of the NCREP (detailed elsewhere in this report), which is supported in this instance.

As such, the proposal will not result in any detrimental impact on the amenity of the coastal foreshore,

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

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

(e) how biodiversity and ecosystems, including:

(i) native coastal vegetation and existing wildlife corridors, and

(ii) rock platforms, and

(iii) water quality of coastal waterbodies, and

(iv) native fauna and native flora, and their habitats, can be conserved, and

The proposed development is to be undertaken in an area site which has been previously developed for residential purposes. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems.

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

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

This clause goes on to further state;

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

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

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

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

The proposed development does not propose a non-reticulated sewerage system.

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

The subject application would discharge stormwater consistent with the established development on the site and Council officer requirements. The proposal is considered acceptable in this regard.

- (d) *the proposed development will not:*
 - (i) *be significantly affected by coastal hazards, or*
 - (ii) *have a significant impact on coastal hazards, or*
 - (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above.

Part 7 Additional local provisions

7.9 Development in areas subject to aircraft noise

The subject development site is located in an ANEF contour area of 20 or greater and as such this clause is applicable to the proposed development. The objectives of this clause are as follows;

- (a) *to prevent certain noise sensitive developments from being located near the Gold Coast Airport and its flight paths,*
- (b) *to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,*
- (c) *to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.*

Before determining a development application for development to which this clause applies, the consent authority must assess an application as per below:

- (a) *must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and*

The development will result in an increase in the number of people affected by aircraft noise as the application relates to the development of a second residential unit on the site.

- (b) *must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and*

In relation to Table 2.1 of AS2021-2000 the erection of a dwelling is conditionally acceptable in the 20-25 ANEF Contour for Gold Coast Airport within which the subject site is situated.

- (c) *must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.*

The submitted Acoustic Report has provided sufficient detail to satisfy council that the development will be capable of meeting the indoor sound levels as shown in Table 3.3 of AS 2021-2000 subject to building components used in the construction of the dwelling achieving the Weighted Sound Reduction Index (Rw) values as required within Table 4.1 of the Acoustic Report.

Having regard to the above, the subject development is considered to be generally acceptable having regard to this clause.

The subject application is considered to be generally in accordance with the provisions of Draft 2012 LEP.

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

Tweed Development Control Plan

Section A1-Residential and Tourist Development Code

Dual Occupancies

A detailed assessment of Section A1 is appended to the file, noting that the proposed development generally achieves compliance with the applicable development standards with the exception of rear setback controls, which contains a variation to allow for the proposed addition to be located within a 12m rear setback and the provision of a minimum landscaping/deep soil zone of 5m in any direction.

Proposed variation

Landscape

Control C1

On a site of this size a landscaped area and deep soil zone of 40% of the site including at least two deep soil zones measuring a minimum of 5m in any direction is required. The proposal includes a front deep soil zone with dimensions of 4.4m x 11m which does not meet the 5m minimum.

Relevant Objectives

- O1. To enhance the appearance and amenity of development, integrate with the character of the locality and the streetscape and soften the visual impact of urban development.*
- O5. To enable natural infiltration of rainwater and reduction in stormwater runoff and promote water sensitive urban design.*

Council Officer comment

The subject application provides three deep soil zone areas to the eastern boundary of the site. The area located adjacent to Kennedy Drive does not meet the minimum 5m dimension in any given direction, having a width of 4.4m, which represents a variation to the above control. In this instance the applicant has advised that the proposed area is much greater than that required, being 4.4m x 11m (50.6m²) rather than the 5m x 5m (25m²) area required.

It is also advised that an additional area has been proposed to the centre of the site. Whilst this represents a variation to the area controls it is considered that the area provided exceeds that required by the development control, being over 50m² where 25² is required. In addition, it is accepted that the proposed development relates to a developed site and therefore there are pre-existing constraints to the potential areas for landscaping.

The proposed variation is considered to be generally acceptable having regard to the applicable control objectives outlined above as adequate area is provided for natural infiltration of rainwater and the appearance and amenity of the development is considered to integrate with the established character of the site

and surrounding area. The variation is not considered to result in any unacceptable impact in this regard and is supported in this instance.

Proposed variation

Front and rear setbacks

Control C1

The minimum setback from the rear boundary for a dwelling is 12 metres where a building is 4.5m in height or greater and on a site of this size. A 7.5m rear setback is proposed.

Relevant Objectives

- O3. To provide appropriate separation between dwellings for sunlight access, ventilation, visual and acoustic privacy and access to the rear of the allotment.*
- O4. To minimise overlooking and overshadowing to the site and of adjoining allotments.*
- O5. To facilitate a landscape setting for residential buildings and retention of the rear yard landscape zone.*

Council Officer comment

Under the above setback controls, a setback of 12m to the rear site boundary is required in this instance which is not achieved through this proposed development, with an actual setback of approximately 7.5m proposed.

A variation has been sought in this regard.

In support of this variation the applicant has advised that the variation should be supported in this instance as the adjoining development to the east and west both consist of buildings within the 12m required setback, being located approximately 3m from the rear boundary. It is further advised that as this elevation overlooks a waterway rather than another residential allotment, there would not be any privacy issues raised with respect to the proposed variation in this instance.

It is considered that the proposed variation does not lead to any unacceptable impacts in relation to providing visual separation between dwellings, or overlooking/overshadowing impacts, given that the rear setback is located adjacent to a waterway.

To impose a strict 12m setback to this boundary would essentially prohibit future development of a second unit on the site. It is further noted that the proposal was notified to surrounding properties with no objections received with respect to the proposal.

The above specific objectives are not considered to be compromised through the development of a residential unit as proposed as it is considered that adequate separation is provided between dwellings and the variation does not lead to overlooking or overshadowing given the rear setback is adjoined by Crown lands and a waterway rather than any residential units. Furthermore an adequate rear landscape zone is considered to be provided to the rear of this site.

The subject application relates to the development within an established area and it is assessed that the proposed development is acceptable having regard to the above. The proposed variation is supported in this instance.

The proposal is considered to be generally acceptable with regard to the provisions of DCP Section A1 and the variations are considered justified in this instance.

Section A2 – Site Access and Parking Code

DCP A2 provides for the consideration of on-site access and vehicle and bicycle parking, to ensure that sufficient facilities are provided and the road network is not compromised, whilst ensuring consistency with ESD principles.

Access arrangements are not proposed to be amended as a result of this application with the existing access point to Kennedy Drive to be maintained.

When considering the requirements of Table 4.9a – Access & Parking Generation – Residential Accommodation Group of DCP Section A2, dual occupancy developments are to be provided with one space per dwelling plus driveway provision for the parking of another vehicle (2 spaces per dwelling). Based on that requirement, the proposed development is required to have a total of four car parking spaces. The application is noted to propose a total of six spaces which complies with these requirements. Bicycle parking and loading areas are not required for dual occupancy developments. The requirements of DCP A2 are considered satisfied.

Section A3-Development of Flood Liable Land

The subject site is indicated as being flood prone, being entirely located within the 1 in 100 year (Q100) flood level and the Probable Maximum Flood area. The Q100 flood level is identified as being RL 2.6m AHD which results in an adopted minimum floor level of RL 3.1m AHD.

The proposal was assessed by Council flooding engineers (Planning and Infrastructure) and considered acceptable. A finished floor level of 3.1m AHD has been proposed in accordance with the requirements of this DCP.

Initially, the applicant was requested to fill the rear of the site (where the development is to be located) to the design flood level, however the applicant has requested that this not be carried out. This request has been reviewed by Council's Planning and Infrastructure Unit who have advised that '*the applicant's justification is adequate and the requirement for fill may be waived in this case.*'

The proposed development is not considered to adversely affect the current flood pattern and levels in the area. The development is considered to be consistent with DCP section A3.

Section A11-Public Notification of Development Proposals

The application was notified for a period of 14 days from Wednesday 26 February 2014 to Wednesday 12 March 2014 in accordance with the requirements of Clause A11.2.10 of the DCP. No submissions were received as a result of the notification process.

Section A15-Waste Minimisation and Management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development. It is considered appropriate that a standard condition be applied in the event of consent requiring that all waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management. As such, the proposal

is considered to be acceptable having regard to waste management and the provisions of this Section of the DCP.

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

Clause 92(a) Government Coastal Policy

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises a residential development on an appropriately zoned site. The development will not restrict access to any foreshore areas and whilst the proposal will result in overshadowing of foreshore area this has been determined as acceptable in this instance having regard to the SEPP No. 1 objection submitted with this application.

Clause 92(b) Applications for demolition

Councils Building Unit have provided recommended conditions of consent with respect to the demolition of existing carport on the site.

(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. Given the location of the site is approximately 4 km from the coastline, the proposed development will not impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. The Management Plan objectives at Clause 3.1.1 are therefore satisfied.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these creeks and as such this management plan does not apply to the subject application.

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

The subject site is located within the Terranora Broadwater Catchment under this Management Plan. Specifically the site is located within the Urban zone of this catchment. The Terranora Broadwater is listed as being one of the few remaining rich and diverse habitats in the Tweed River System. In addition, it is stated that this Broadwater has high conservation value, providing significant aquatic habitat with extensive wetland vegetation. The Broadwater is also highly valued for its cultural, tourism, recreational and economic values.

The subject application relates to the development of a second unit to create a dual occupancy development. It is noted that the proposal is setback approximately 7.5m from the waterway and as such this element of the proposed development is not considered to result in a significant or unacceptable impact on the Broadwater as it relates to a residential development in an area identified as the urban zone and comprises a minor intensification of development on the site.

It is further noted that recommended conditions of consent have been provided with respect to stormwater discharge on the site by Council's Planning and

Infrastructure engineers. The proposal is considered to be acceptable having regard to this plan.

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

Context and Setting

The proposed development is not considered to have any significant impact upon the residential amenity of the occupants of adjoining properties. The proposal is considered reasonable and appropriate, given the site is located within an area zoned for residential use. The proposed development does not compromise the existing character of the area.

Access, Transport and Traffic

The proposal is not considered likely to generate significant volumes of traffic so as to be detrimental to the character of the area. The subject site is considered to be able to accommodate the additional traffic and parking requirements generated by this proposed development.

Flora and Fauna

The site has been previously cleared of significant vegetation and is located within an established residential area. On this basis it is considered that there will be no significant impact to flora or fauna in the locality. A landscaping plan consisting of 80% local native species would be required as a condition of consent in the event of approval.

Construction and Demolition

The construction of the proposed development will be subject to standard conditions being included on any consent issued. It is noted that Council's Building Unit have reviewed the application and had no objection to its development subject to conditions. The development phase of the proposal will present some interruption to the ambience of the surrounding area but this is only temporary in nature and amenity can be adequately protected via conditions.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within an existing residential area. The bulk and form of the proposal is considered acceptable and generally in keeping with surrounding development. It is considered that the proposed second dwelling would not be out of character with the established residential development in the area.

Availability of Utilities and Services

The subject site is serviced by Council's water, sewer and drainage services which are available to the proposal within Kennedy Drive. As such the proposal is considered to be acceptable in this regard.

Aircraft Noise Levels

As noted elsewhere in this report, the proposed site is located between the 20 and 25 ANEF aircraft noise contours. As such the applicant was required to submit an Acoustic Assessment Report with respect to this. Following submission of this, Councils Environmental Health Section have reviewed the

report and provided recommended conditions of consent with respect to the proposed development.

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

As outlined elsewhere in this report, no public submissions were received with respect to the proposed development during the public exhibition period. The subject application did attract a submission on behalf of Gold Coast Airport Pty Ltd, detailed below:

"Gold Coast Airport Pty Ltd

It is advised that the above application for a detached dual occupancy is of interest to Gold Coast Airport Pty Ltd (GCAPL). The property is within the 20 ANEF for the airport, and is also affected by the Lighting Zone, which imposes restrictions on lighting and reflective roof materials.

The Statement of Environmental Effects accompanying the application notes that the site is within the 20 ANEF, and puts forward the view that "the building could be suitably treated to ensure compliance with AS2021-1994" [now AS2021-2000]. The report does not indicate that the building will be suitably treated, or describe the building shell treatments and other insulating measures to be undertaken to effect reduction of aircraft noise to the required extent. There also do not appear to be any obvious noise attenuation measures shown on the plans of the proposed building.

The Council is required by Clause 32 to take the standards of AS2021 into account, which in relation to residential development of this type require aircraft noise reduction so as to achieve indoor design sound levels not exceeding 50 dB(A) for sleeping areas, 55 dB(A) for other habitable spaces and 60 dB(A) for bathrooms, toilets and laundries [AS2021-2000; Table 3.3].

It may be appropriate to seek further information from the applicant on this aspect of the proposal. In any event, it is suggested that a condition should be imposed on any consent stipulating that the design and construction of the building achieve indoor design sound levels not exceeding those set out in Table 3.3 of AS2021-2000 for residential buildings.

Non-reflective roofing material is required within the airport's Lighting Zone. The plans of the proposed development show that the intended roof material is Colorbond "Woodland Grey", which is a compliant (pre-approved) material in terms of reflectivity. However, it is suggested that the Council's standard condition in respect of reflective roofs be imposed on any consent:

The subject land is within the Lighting Zone for Gold Coast Airport, in which use of non-reflective roof surfaces is mandatory. Any proposed use of reflective roof materials requires approval from Gold Coast Airport Pty Ltd, prior to issue of an occupation certificate. (Note: Colorbond is a pre-approved material, with the exception of roof colours having solar absorption equal to or less than 0.35).

Please let us know if any other information is required."

Council officer consideration of submission

The applicant was issued a request for further information letter requiring the preparation of an Aircraft Noise Impact Report prepared by a suitably qualified acoustic consultant. This was prepared by the applicant and submitted to Council

for assessment by Councils' Environmental Health Unit with the Acoustic Report being assessed as satisfactory.

The proposed condition with respect to the use of non-reflective roof materials is considered to be appropriate in this instance and has been attached as a recommended condition of consent.

The subject application is therefore considered acceptable having regard to the issues raised in this submission.

NSW Office of Water

The subject development, although located within 40m of a waterway, does not require a Controlled Activity Approval as such an approval is not required for the erection of single dwellings or dual occupancy dwellings that have development consent.

(e) Public interest

Given the nature of the development, being for a dual occupancy development on an appropriately zoned site within an established residential area, it is considered that the proposal would be unlikely to impact on the public interest.

OPTIONS:

1. Approves the development application with the recommended conditions of consent; or
2. Approves the development application as per the above with the following additional condition:

"9.1 A detailed plan of riparian landscaping to a minimum 2.0m wide area along the south site boundary is to be submitted to Council for approval by Council's General Manager or delegate prior to the issue of a Construction Certificate. Such a plan could include the following recommended planting list for this area:

- *Lomandra longifolia*
- *Dianella caerulea*
- *Crinum pedunculatum*
- *Austromyrtus dulcis*
- *Hibiscus tiliaceus*
- *Cupaniopsis anacardioides*
- *Melaleuca quinquenervia*
- *Casuarina glauca*"

3. Refuses the application for stated reasons.

Council Officers recommend Option 1.

CONCLUSION:

The subject application seeks consent for the demolition of the existing carport on site and the construction of a second three bedroom residential unit on the site. The proposed building is single storey in height and is to be accessed off Kennedy Drive. It is considered that sufficient justification has been provided to support the SEPP No. 1 Objection made in

relation to minor overshadowing of the foreshore and the proposed variations to DCP A1. The above assessment is considered to demonstrate that the proposal is generally acceptable with respect to the appropriate legislative considerations.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant has the right of appeal in the NSW Land Environment Court if dissatisfied with the determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Class 1 Appeal Outcome - Development Application DA13/0678 for the Erection of an Outbuilding with Shower and Toilet at Lot 2 SP 38780 No. 2/1 Beatrice Court, Pottsville

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA13/0678 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.2	Improve decision making by engaging stakeholders and taking into account community input
1.2.1	Council will be underpinned by good governance and transparency in its decision making process

SUMMARY OF REPORT:

The application sought approval for the erection of an outbuilding (41.7m²) ancillary to an existing residential development.

The application was reported to Council Planning Committee Meeting 1 May 2014. Council resolved to refuse the application for the following reasons:

- "1. *In accordance with Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 (as amended), the proposed development is not considered to be compliant with the following development control plan controls:*
 - i. The development does not satisfy the requirements of Tweed DCP 2008 - Section A1, Residential and Tourist Code, particularly Section 2.2 in that it does not provide sufficient deep soil zones to either the rear or front of the property and it does not satisfactorily integrate with the character of the locality and streetscape in terms of its visual impact on existing urban development;*
 - ii. The development does not satisfy the requirements of Tweed DCP 2008 - Section A1, Residential and Tourist Code, particularly Section 4.5, in that it fails to satisfactorily address the need for acoustic privacy due to its location (as a workshop/boat storage facility) less than one metre from the main bedroom window of the adjoining property.*
 - iii. The development does not satisfy the requirements of Tweed DCP 2008 - Section A1, Residential and Tourist Code, particularly Section 6.2 in that the proposed structure is not visually consistent with the design of the existing dwelling, it fails to reinforce the desired future character and streetscape of the area, particularly the Beatrice Court precinct, and it fails to preserve the amenity of the adjoining property."*

Council engaged solicitors and planning consultants to defend the appeal given the application was recommended for approval. The site inspection, conference and hearing were held on 28 and 29 August 2014. The appeal was upheld and development consent is

granted to DA13/0678 for the erection of an out building with shower and toilet subject to the conditions in the Court Order. Attached to this report is a summary received from Council's Solicitors dated 5 September 2014 (ECM 3462772) and Court Order dated 29 August 2014 (ECM 3458283). The cost of defending the appeal totalled \$33,055.75.

RECOMMENDATION:

That Council notes that the appeal was upheld and development consent is granted to DA13/0678 for the erection of an out building with shower and toilet at Lot 2 SP 38780 No 2/1 Beatrice Court, Pottsville subject to the conditions in the Court Order.

REPORT:

Applicant: Mrs J Sladen
Owner: Mrs Janice Sladen & Mr Peter R Sladen
Location: Lot 2 SP 38780 No. 2/1 Beatrice Court, Pottsville
Zoning: R2 - Low Density Residential
Cost: \$24,000

Background:

The application sought approval for the erection of an outbuilding (41.7m²) ancillary to an existing residential development.

The application was refused at the Council meeting on 1 May 2014 for the following reasons:

- "1. *In accordance with Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 (as amended), the proposed development is not considered to be compliant with the following development control plan controls:*
 - i. The development does not satisfy the requirements of Tweed DCP 2008 - Section A1, Residential and Tourist Code, particularly Section 2.2 in that it does not provide sufficient deep soil zones to either the rear or front of the property and it does not satisfactorily integrate with the character of the locality and streetscape in terms of its visual impact on existing urban development;*
 - ii. The development does not satisfy the requirements of Tweed DCP 2008 - Section A1, Residential and Tourist Code, particularly Section 4.5, in that it fails to satisfactorily address the need for acoustic privacy due to its location (as a workshop/boat storage facility) less than one metre from the main bedroom window of the adjoining property.*
 - iii. The development does not satisfy the requirements of Tweed DCP 2008 - Section A1, Residential and Tourist Code, particularly Section 6.2 in that the proposed structure is not visually consistent with the design of the existing dwelling, it fails to reinforce the desired future character and streetscape of the area, particularly the Beatrice Court precinct, and it fails to preserve the amenity of the adjoining property."*

An appeal was lodged with the Land and Environment Court. The appeal was upheld on 29 August 2014 and development consent is granted to DA13/0678 for the erection of an out building with shower and toilet at Lot 2 SP 38780 No 2/1 Beatrice Court, Pottsville subject to the conditions in the Court Order. A summary of the decision by the commissioner is provided as follows:

- "17 For the determination of this matter, I have carefully considered the evidence, the submissions and undertaken a view.*
- 18 I understand from Mr Lonergan's evidence that an outbuilding of the form proposed is permissible. The proposed building envelope complies with all the relevant numerical controls, including its rear setback.*
- 19 In my assessment, the amendment to lower the building and bring its eave line in line with neighbouring properties, together with its subdued colours to match the existing dwelling should result in an acceptable streetscape impact, particularly taking into account that the building profile will be screened to some extent and framed by other building background.*

- 20 *It seems to me that various types of outbuildings are common in this neighbourhood and therefore it is not an unreasonable expectation for the applicant. With regard to the impact on No 2, I am satisfied that the amended proposal does not impact on the outlook from the front bedroom window to such an extent to warrant refusal. The primary outlook is directly towards the front lawn/garden area and the outbuilding is in a secondary viewing corridor, as agreed by Mr Lonergan.*
- 21 *Consequently, the main impact is potential noise arising from uses within the outbuilding and any emissions through the opening of the rear door proximate to the neighbour's bedroom window in No 2.*
- 22 *These concerns are that excessive noise will result from the use of the proposed outbuilding and also that the provision of the rear door to the yard area will cause a reduction in acoustic amenity.*
- 23 *In this regard I note the applicant's submission that the intent of the rear opening is to enable a small trailer to be parked and pass through in order to dispose of grass clippings and other materials. Accordingly, I have considered the applicant's further option that the rear door be reduced in width to minimise its usage and also to incorporate a door operation specification which minimises noise emission.*
- 24 *Having viewed the surrounding neighbourhood, it is apparent that many neighbouring dwelling incorporate outbuildings, which are of different forms and sizes. I am therefore satisfied this application is reasonable in the circumstances and it does not warrant refusal on the basis of speculation that it will result in undue noise nuisance. Assuming the subject residents adopt a good neighbour approach - noise minimisation should not be an issue - or it could be subject to other Orders.*
- 25 *In summary then, I consider this amended application for an outbuilding merits conditional consent.*
- 26 *The prevailing control is the Tweed Local Environmental Plan 2000 (the LEP) under which the site is in the 2(a) zone and the proposal is permissible.*

5.2 The primary objective of this zone is as follows:

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

The secondary objective of this zone is as follows:

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

- 27 *Clause 8 of the LEP relevantly provides:*

8 Consent considerations

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

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

28 *In accordance with the aforementioned reasons, I am satisfied that the proposal is consistent with primary zone objective and it is acceptable within the aims and objectives of the plan and that its approval will not have unacceptable cumulative impacts on the locality and community. Therefore the cl 8 consent considerations are satisfied. I am also satisfied that the amended proposal demonstrates reasonable compliance with the DCP 2008.*

29 *Accordingly the Court orders that:*

- (1) *The appeal is upheld.*
- (2) *Development consent is granted to DA 13/0678 for the erection of an outbuilding with shower and toilet at Lot 2 SP 38780, No 2/1 Beatrice Court, Pottsville subject to the conditions in Annexure A.*
- (3) *The exhibits may be returned except for 1, 2, A, B and C."*

OPTIONS:

Not applicable.

CONCLUSION:

Council is to note that the appeal was upheld and development consent is granted to DA13/0678 for the erection of an out building with shower and toilet at Lot 2 SP 38780 No 2/1 Beatrice Court, Pottsville subject to the conditions in the Court Order.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The appeal was funded from the Development Assessment legal budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Summary of hearing received from Council's Solicitors dated 5 September 2014 (ECM 3465659)

Attachment 2. Court Order dated 29 August 2014 (ECM 3465660)

6 [PR-PC] Further Report Regarding the Recommended Discontinuance of Planning Proposal PP10/0005 'Hundred Hills' Murwillumbah for Stockland Development (Sub 3) Pty Ltd

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP10/0005 Pt3

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
 - 1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community
-

SUMMARY OF REPORT:

Council considered a report at its Planning Committee meeting of 4 September 2014 in relation to three planning proposals, for which a discontinuance of these proposals was sought. This report responds to one of those matters being the Planning Proposal (PP10/0005), for Hundred Hills Murwillumbah (Stockland Development (Sub 3) Pty Ltd), which Council deferred from consideration until the October meeting.

Prior to the September meeting the Applicant for that proposal reaffirmed their commitment to work with Council through to completion of the LEP amendment sought and in a timely manner. In response, it is now recommended that consideration of the matter be further deferred until February 2015, at the earliest.

RECOMMENDATION:

That further consideration of the recommendation to discontinue Planning Proposal PP10/0005 Hundred Hills Murwillumbah be deferred to the February 2015 Planning Committee Meeting, to enable adequate time for the Applicant to demonstrate their renewed commitment to completing the Local Environmental Plan amendment sought.

REPORT:

Council considered a report at its Planning Committee meeting of 4 September 2014 in relation to three current planning proposal requests that were earmarked for discontinuance. Two of the proposals were to be discontinued at the request of their respective Applicants' and Council accepted their withdrawal.

Panning Proposal (PP10/0005); 'Hundred Hills' Murwillumbah for Stockland Development (Sub 3) Pty Ltd (Stockland), was recommended for discontinuance on the alternative ground that there had been unsatisfactory progress.

Prior to the September meeting a representative from the Stockland company made representation to the Councillors, via community access, and reaffirmed the company's commitment to the project. In good faith Council resolved to defer a consideration of this matter until the October meeting:

"Council defers consideration of the officers' recommendation to discontinue Planning Proposal PP10/0005 Hundred Hills Murwillumbah until the October Planning Committee Meeting"

Stockland has expressed their commitment to assist Council officers with finalising the planning proposal through to completion; since the meeting, they are currently reviewing the cost agreement documentation and have submitted the outstanding 'bulk earthworks' report for review.

Based on the above, and the typical procedural and assessment timeframes involved, it would be appropriate to allow a reasonable timeframe in the circumstances for that commitment to be demonstrated. This would reasonably require 3 to 4 months, and is recommended that consideration of this matter be further deferred until February 2015.

OPTIONS:

That Council:

1. Adopts the Council officer's recommendation to defer further consideration of the discontinuance of the matter until February 2015, at the earliest, or
2. Considers the discontinuance of the matter as presented in the Council Report of 4 September 2014 (attached) and having regard to any subsequent relevant information, and resolve accordingly.

Council officers recommend Option 1.

CONCLUSION:

Planning Proposal PP10/0005 was first reported to Council on the 19 October 2010 and has a chequered history of progress performance. The chronology of events and outstanding matters is detailed in the 4 September Council Report (attached) and highlights an untenable project performance that in the view of the Council officers needed to be brought to account. It was recommended that the matter be discontinued, and Council resolved to defer consideration of that issue until October. During the intervening period Stockland have pledged to provide Council with the information and documentation it requires to complete the amendment to the Tweed Local Environmental Plan.

The planning proposal is identified on Council's Planning Reforms Work Plan 2014/15 as a Priority 3 project and such is not demanding of significant resources, correspondingly it does not impact on the resourcing and scheduling of the 'priority' projects, and as such the deferral of consideration of the matter for a reasonable period of time is supported. It is recommended that a further report be deferred until February 2015 at the earliest.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

No direct budget implications, as planning proposals are based on a contract for cost servicing and recovery.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Report presented to 4 September 2014 Planning Committee meeting (ECM 3468450)

7 [PR-PC] PP13/0004 Wooyung Properties - Request to Prepare a Planning Proposal - Lot 1 DP 779817 and Lot 2 DP 408972 Wooyung Road, Wooyung

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP13/0004 Pt3

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

On 9 September 2013 Council received a request from Wooyung Properties to prepare a planning proposal for development on Lot 1 DP 779817 and Lot 2 DP 408972 Wooyung Road, Wooyung.

The request seeks to amend the Tweed Local Environmental Plan 2014 to enable a 25 lot residential development and community title subdivision in exchange for surrendering the 500 unit tourist development previously approved under Development Consent D88/0640 granted in 1988.

The location of house sites proposed, aligned along elevated land on the eastern boundary adjoining the coastal dune system, and the western portion of the site, with few exceptions, would require the clearing of endangered or critically endangered ecological communities.

Peer review of the strategic merit of the request by Parsons Brinkerhoff (PB) concluded that the proposal lacked strategic merit; however, to allow a fuller consideration of the proposal on a site-by-site basis, a detailed ecological impact assessment was undertaken by PB, which reinforced concerns about the impact on sensitive coastal vegetation communities.

This was further validated by the Office of Environment and Heritage (OEH) which raised concerns about impacts on the Billinudgel Nature Reserve, the assessment of impacts on significant biodiversity values of the site, the assessment of Aboriginal cultural heritage, and flooding matters.

Notwithstanding this advice, the department did qualify its response noting that from an ecological impact perspective, options for development of at least part of the site might be possible through the use of BioBanking and Biocertification; options which the proponent should pursue with OEH.

The central cleared section of the property, while being relatively unconstrained by native vegetation, is low-lying, contains potential acid sulfate soil, and is subject to inundation from flood events which would make development of this part of the site extremely difficult if not impossible.

Due to the lack of strategic merit, potential impact on endangered or critically endangered ecological communities, and limitations imposed by flooding, the request to prepare a planning proposal is not supported.

This proposal relies heavily on the concept of *comparative merit*, the comparison of environmental impacts of Development Consent D88/0640 against that of the current proposal to justify clearing of endangered and critically endangered ecological communities. Comparative merit is a concept outside the NSW planning framework, and given the lack of evidence to avoid such communities, is not considered an appropriate mechanism to validate the planning proposal.

While it was the intention of Council officers to continue discussions with the proponent regarding alternatives to the concept presented in the proposal, the proponent has lodged a request with the Department of Planning and Environment (DPE) for a pre-Gateway review. This action has required officers to finalise an assessment of the current proposal based on investigations and consultation to date. Due to the deadline for a response required by DPE, the department has been advised of the intention to present a report to Council with a recommendation to not proceed. The Department's response to the pre-Gateway review is expected within 28 days.

RECOMMENDATION:

That:

- 1. The request to prepare a planning proposal PP13/0004 Wooyung Properties - Lot 1 DP 779817 and Lot 2 DP 408972 Wooyung Road, Wooyung, not proceed;**
- 2. The proponent be encouraged to pursue a concept more in keeping with the constraints affecting the site.**

REPORT:

On 9 September 2013 Council received a request from Wooyung Properties to prepare a planning proposal for development on Lot 1 DP 779817 and Lot 2 DP 408972 Wooyung Road, Wooyung, refer to Figures 1 and 2.

The request seeks to amend the Tweed Local Environmental Plan 2014 to enable residential development and surrender the existing 500 unit tourist development previously approved under Development Consent D88/0640 granted in 1988.

The concept presented in the request includes:

- 25 dwelling houses on allotments ranging from 1,050m² to 2,600m²,
- Community title subdivision (one dwelling per allotment and one residual Community Association allotment of approximately 78 hectares),
- Environmental protection works (revegetation of the cleared floodplain area), and
- Environmental facilities. (Refer to Figure 3 for the location of dwellings).

This report provides details of investigations into the strategic merits of the request and further studies commissioned by Council in assessment of the request.

While the conclusion of this report is that the development as proposed is not supported due to lack of strategic merit, potential impacts on sensitive environmental land and vegetation, and flooding impacts, it is proposed that the proponent is encouraged to present a concept more attune to the constraints affecting the site, which presents a more favourable environmental outcome than the current request or the existing approved development application.

Proponent request for pre-Gateway review

While it was the original intention of Council officers to continue discussions with the proponent into options more suitable to the constraints of the site, this report to Council has been brought forward as a result of advice received from the Department of Planning and Environment (DPE) dated 29 August 2014 that the proponent has requested a pre-Gateway review based on the failure of Council to indicate its support within 90 days of the lodgement of the request.

A pre-Gateway review requires the Department of Planning and Environment to determine whether the planning proposal should be referred to the Joint Regional Planning Panel (JRPP) for assessment and a decision regarding whether the planning proposal should proceed or not.

Should the department decide that the proposal should not proceed, then referral to the JRPP will not occur and the proposal will continue to be dealt with by Council. If the proposal is referred to the JRPP, recommendations will be made regarding requirements to allow the proposal to proceed to the Gateway for a determination. The department has 28 days from receipt of the recommendation of their regional office to determine whether to refer to the JRPP or not.

Notwithstanding any advice from the department, it is the recommendation of Council officers, consistent with previous advice to the proponent and the department regarding previous proposals for the site, that the proposal should not proceed.

Council was given 14 days to respond to the DPE letter, making it necessary to respond to the department prior to Council having an opportunity to review this report and response to DPE. A response from the department is expected within the coming month.

The department has been advised that Council officers have previously advised the proponent that the development potential of the site was severely limited; however, officers have been working with the proponent to undertake more detailed assessment of the environmental constraints affecting the site, as reported below, but would, in light of this pre-Gateway review, be presenting a report to Council recommending that the proposal should not be proceeded with.

A further report to Council will be prepared once the department's response has been received.

FIGURE 1: LOCALITY PLAN



Locality Plan

Planning Proposal - PP13/0004 - Wooyung Properties
 Lot 1 DP779817 & Lot 1 DP408972; No.440 Wooyung Road, Wooyung

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and declines all responsibility and all liability (including indirect or consequential damage) and costs which may be incurred as a result of data being provided by any user, and for any reason. This information is supplied for the general guidance and to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any construction a 'Total Before You Dig' enquiry must be made by calling 1100. The information contained in this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 16 September, 2014 © Land and Property Management Authority (LPM) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>		<p>Civic and Cultural Centre 3 Tambourine Road Murrumbidgee NSW 2484</p> <p>PO Box 816 Murrumbidgee NSW 2484</p> <p>T | (02) 6670 2400 | 1300 292 872 F | (02) 6670 2429 W | www.tweed.nsw.gov.au E | planning@tweed.nsw.gov.au</p>	<p>TWEED SHIRE COUNCIL</p>
---	--	--	--	---------------------------------------

FIGURE 2: AERIAL IMAGE OF SITE - 2012



SOURCE:
Aerial imagery was captured on
0th to 9th May 2012 ©AAM Pty Ltd

Aerial Photo - taken May 2012
 Planning Proposal - PP13/0004 - Wooyung Properties
 Lot 1 DP779817 & Lot 1 DP408972; No.440 Wooyung Road, Wooyung

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and declines all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and it to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 3300. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 16 September, 2014
 © Land and Property Management Authority (LPMA) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

0 50 100 150 200 250 M
 1:10,000 @ A4 Portrait
 DO NOT SCALE
 COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoid for Eastern of Australia 1994
 GDA
 Map Grid of Australia, Zone 55

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



Site history

The site has a long and contentious history of development applications and refusals by both Council and the DPE.

In 1988 development consent was granted for a 500 bed tourist resort incorporating substantial created lakes and islands, with a development footprint of approximately 45 hectares. A copy of the concept plan can be viewed in Figure 10.

The property was purchased by Wooyung Properties in 2008; in 2010 DA09/0341 was lodged for a single dwelling house in the north east corner of the property which was subsequently refused, predominantly on environmental grounds.

In 2012 a planning proposal concept was presented to Council for initial review and response, which was not supported, but it was noted that an alternative proposal which demonstrated a greater sense of social responsibility, accountability and compliance with contemporary standards through adoption of appropriate environmental mitigation strategies might be developed.

The site is currently zoned RU2 Rural Landscape and Deferred Matter as seen in Figure 4. The deferred matter zoning relates to the review of environmental zones being undertaken by DPE which, once completed, will provide directions on the application of environmental zones across the Far North Coast group of councils.

This report details assessment of the most recent request to prepare a planning proposal received on 9 September 2013.

Assessment of concept proposed

On 27 February 2014 Parsons Brinckerhoff (PB) was engaged to undertake an assessment of the planning proposal and provide advice on the strategic merit of the concept presented. This review indicated that consistent with previous advice from Council and the DPE the proposal could not be supported on strategic merit and environmental impact grounds.

Strategic Merit

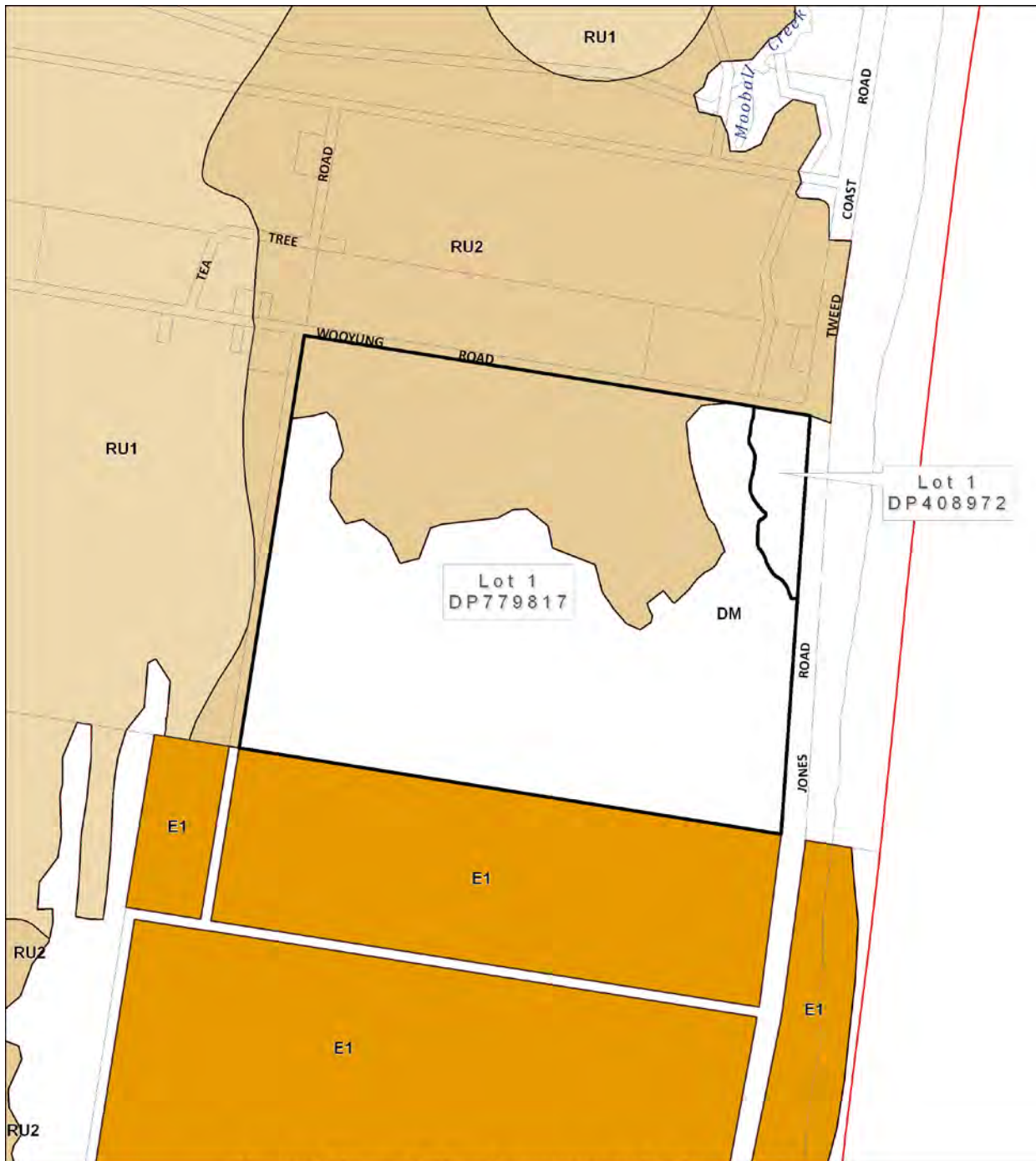
PB concluded that the proposal is not consistent with the Far North Coast Regional Strategy 2006 (FNCRS), or the Tweed Urban and Employment Release Strategy 2009.

The FNCRS states that in Coastal Areas, only land within a Town and Village Growth Boundary may be released for urban purposes, and that no further rezoning for rural residential development (other than in an approved land release strategy) will be permitted in the Coastal Area. The site is not within a Town and Village Growth Boundary or part of an approved land release strategy.

The site is also not within any areas identified for future urban development within the Tweed Urban and Employment Release Strategy 2009.

The site itself, and the Wooyung areas generally, have not been identified as future development areas within either the FNCRS or the Tweed Urban and Land Release Strategy. As a consequence the proposed development is inconsistent with the growth expectations within both documents, and is not supported on these grounds.

FIGURE 4: LEP 2014 ZONING MAP



Tweed Local Environmental Plan 2014

Planning Proposal - PP13/0004 - Wooyung Properties
 Lot 1 DP779817 & Lot 1 DP408972; No.440 Wooyung Road, Wooyung

Tweed Local Environmental Plan 2014 LAND ZONING		
B1 Neighbourhood Centre	B5 Business Development	R1 General Residential
B2 Local Centre	B7 Business Park	R2 Low Density Residential
B3 Commercial Core	E1 National Parks & Nature Reserves	R3 Medium Density Residential
B4 Mixed Use	IN1 General Industrial	R6 Large Lot Residential
	IN4 Working Waterfront	RE1 Public Recreation
		RE2 Private Recreation
		RU1 Primary Production
		RU2 Rural Landscape
		RU5 Village
		SP1 Special Activities
		SP2 Infrastructure
		SP3 Tourist
		W1 Natural Waterways
		W2 Recreational Waterways
		W3 Working Waterways
		DM Deferred Matter
		MD SEPP (Major Development) 2005
		TCC Tweed City Centre LEP 2012

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way, and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a 'Call before you Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 33 days only from the date of supply.

Cadastral: 16 September, 2014
 © Land and Property Management Authority (LPMA) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

Scale: 1:10,000 @ A4 Portrait
 COPY ONLY - NOT CERTIFIED

Elleg Products: Universal Traverser or Mercator
 Mathematical Datum: Geoidetic Datum of Australia 1984
 Zone: Map Grid of Australia, Zone 55

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

TWEED SHIRE COUNCIL

Scale Printed: 13 September 2014

Environmental constraints

The strategic merit assessment undertaken by PB identified a range of environmental constraints affecting the site which were considered to be critical in determining the impact of the development concept as proposed. After consultation with the proponent, PB was further engaged to undertake an Ecological Impact Assessment to provide a detailed response to the site-specific information provided by the proponent. The major environmental constraints affecting the site include:

- native vegetation of national and state significance,
- proximity to the coast and dune system, and,
- flooding.

Native vegetation

The study area contains large areas of native vegetation that were assessed by PB as being in good condition as defined in the *BioBanking Operation Manual* (Seidel & Briggs 2008).

All of the native vegetation within the study area is listed as an endangered ecological community under the NSW *Threatened Species Conservation Act 1995* (TSC Act), belonging to one of the following communities:

- Littoral Rainforest
- Coastal Cypress Pine Forest
- Swamp Sclerophyll Forest on Coastal Floodplains
- Freshwater Wetlands on Coastal Floodplains
- Swamp Oak Floodplain Forest (refer to Figure 5).

The Littoral Rainforest community is also listed as Critically Endangered under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Two areas of Littoral Rainforest are mapped as SEPP 26 – Littoral Rainforest areas. These areas and lands within a 100 m buffer zone around mapped SEPP 26 areas are considered to be environmentally sensitive areas of State significance (refer to Figure 6).

These communities provide suitable habitat for a number of threatened plant and animal species listed under the TSC Act, and EPBC Act. As such, the vegetation within the study area is of high conservation significance, sensitive and highly constrained from a housing development perspective.

Twelve dwellings are planned within, and will require removal of Littoral Rainforest to create building footprints (along with access to and from the dwellings and associated infrastructure including effluent disposal). Of these, eleven dwellings (14, 15 and 17 to 25) are located within mapped SEPP 26 Littoral Rainforest areas or within the 100 metre SEPP 26 buffer zone (refer to Figure 6). Nine dwellings are proposed within Coastal Cypress Pine Forest; five of these within forest considered by PB to be in good condition. The remaining four dwellings are located within Swamp Sclerophyll Forest on Coastal Floodplains.

The above vegetation communities are relatively scarce in the Tweed; for example, only approximately 98 hectares of Littoral Rainforest and 28 hectares of Coastal Cypress Pine Forest remain in the Shire.

The majority of houses are proposed to be located in areas of vegetation that are in good condition. PB's assessment suggests that no avoidance or minimisation strategies to deal with reducing impacts to biodiversity have been utilised in the subdivision design provided in the planning proposal, apart from locating four houses and the helipad in disturbed areas.

Development in the cleared portion of the study area was dismissed on financial considerations and the flood prone nature of the land.

PB's assessment also concludes that, should the proposal go ahead, there is potential for a high magnitude residual impact to occur in the form of direct vegetation removal, and reduced habitat quality and patch size. These impacts will be irreversible and permanent.

FIGURE 5: MAJOR VEGETATION COMMUNITIES

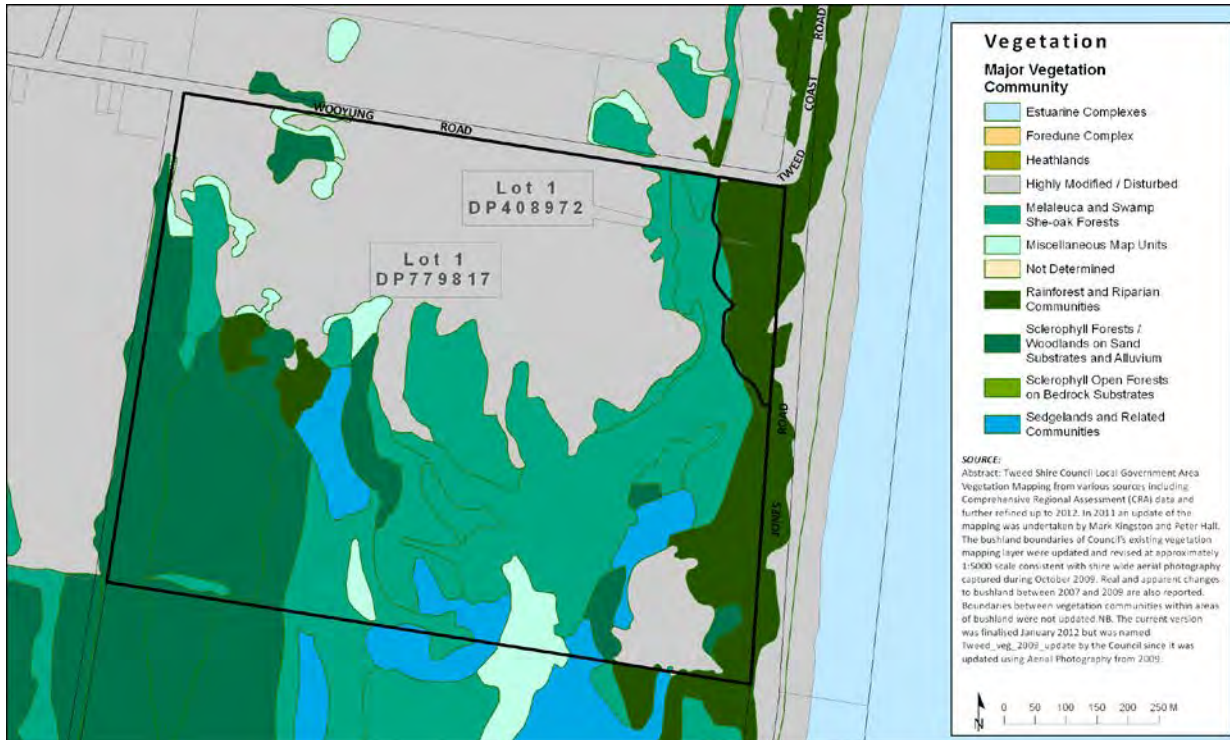
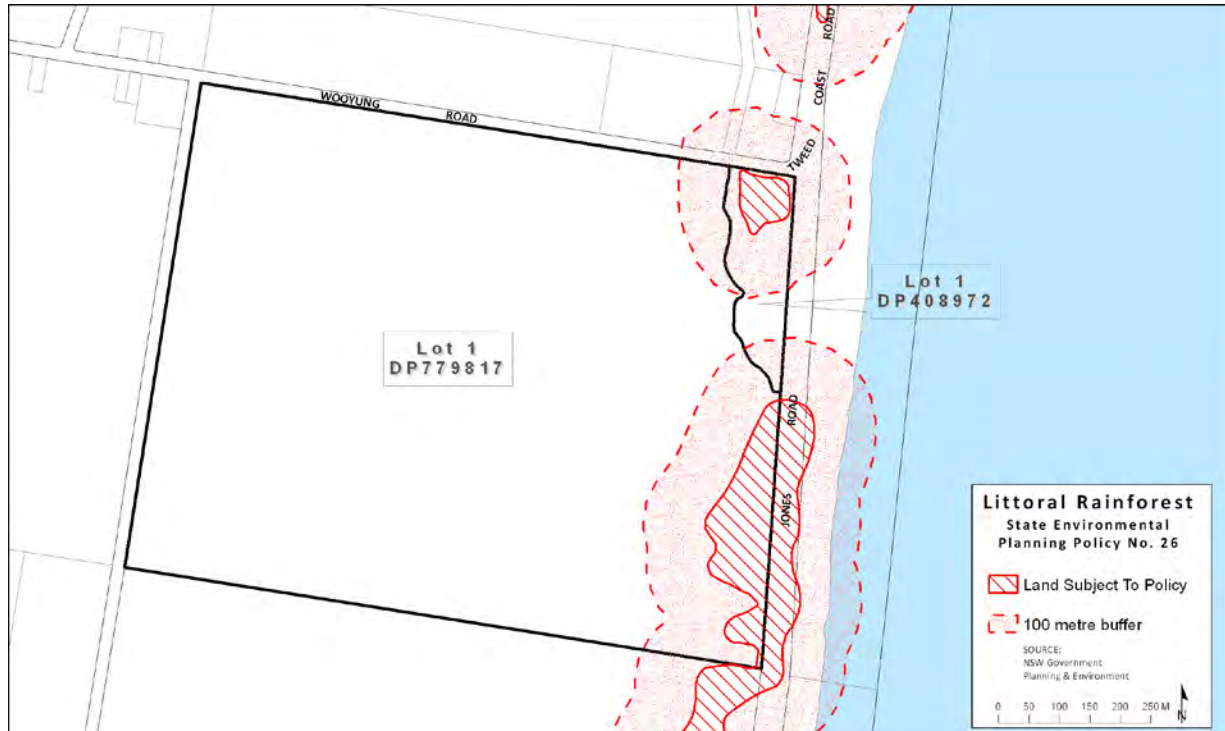


FIGURE 6: SEPP 26 LITTORAL RAINFOREST AND 100 METRE BUFFER

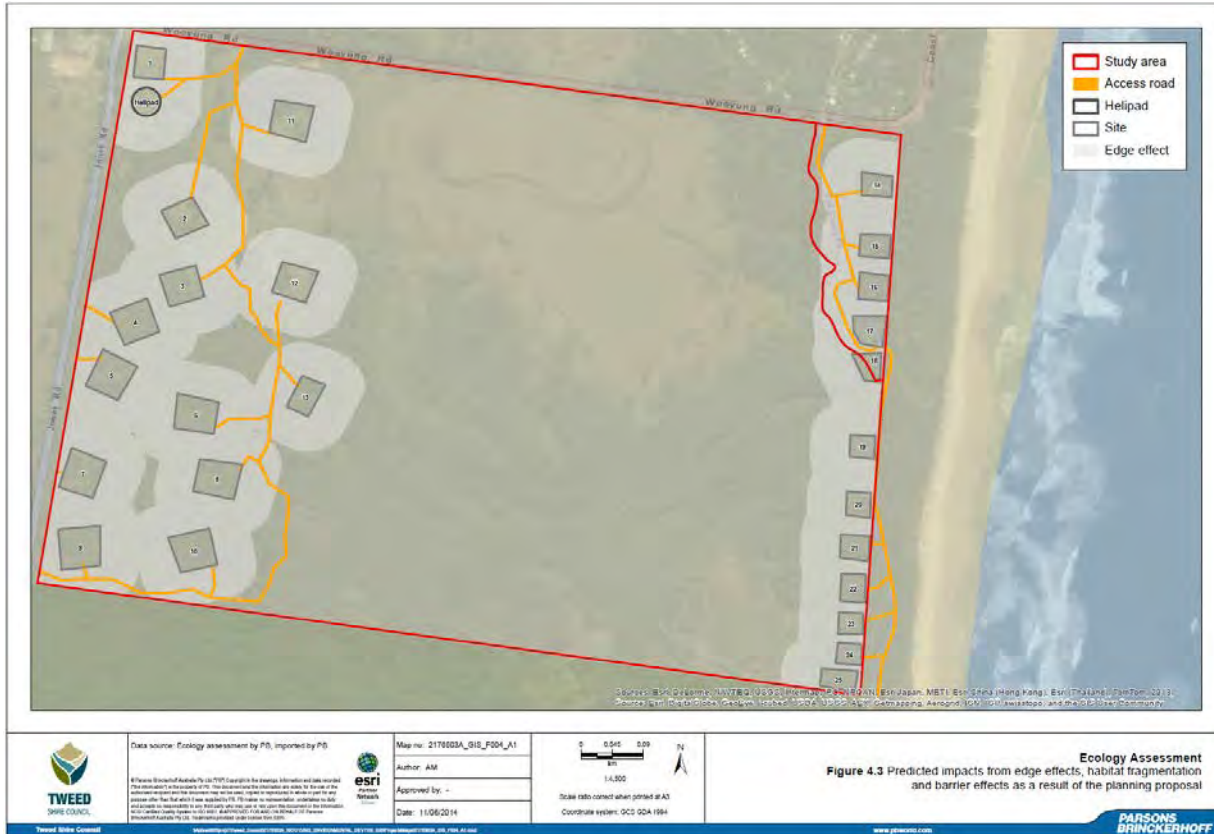


In addition, assuming a minimal 50 metre edge effect, approximately half of the vegetation on site would become degraded to some extent as a result of the proposal. The potential edge effect of the proposed development can be seen in Figure 7.

The proponent has offered to offset the impact of clearing of SEPP 26 Littoral Rainforest with revegetation of the cleared area of the site. While this would produce a net increase in the overall area of native vegetation on the site, advice from PB and Council's Natural Resource Management Unit suggests that it would not be possible to recreated and/or enhance the area. The cleared land is floodplain and subject to routine inundation, which creates unsuitable conditions for establishing Littoral Rainforest. No offsets have been proposed to address the impact of removal of other EECs.

Given the biodiversity value of the vegetation on the site and the potential significant impact of the planning proposal should it go ahead, the proposal cannot be supported in its current format.

FIGURE 7: PREDICTED IMPACTS FROM EDGE EFFECTS



Comparative merit argument put forward by proponent to support this proposal

A core aspect of the proponent’s request relies on the proposition that the impact of the approved tourist resort, were it to be established, would be substantially greater than what is now proposed through this proposal. Comparative merit (between the two proposals) is used as the foundation for justifying the reasonableness of this proposal.

The request to prepare a planning proposal states:

“It is generally agreed by Wooyung Properties, Council staff and Department staff that the planning proposal and consequent development application are unlikely to be approved if assessed only on environmental impacts and merits, due to the location of proposed dwellings in sensitive environmental areas.

However the environmental impact of this proposal does not sit in isolation. The merit of the proposal rests on its demonstrably superior outcomes compared to the development approved under consent 88/640.

Compared to the existing consent, this new proposal offers substantial social and cultural benefits for the Aboriginal community and local residents, and significant environmental net benefits particularly for ecological communities and threatened species habitat.”

In terms of the potential impact of the current proposal, while the overall area of native vegetation to be impacted is lessened, different communities will be impacted, in particular, SEPP 26 Littoral Rainforest. PB advised that due to the fragmentation of this vegetation community and the potential for edge effects, the development consent issued in 1988 may have less impact than the development outlined in the proposal.

In correspondence to the proponent dated 21 July 2012 (refer to Attachment 4), the proponent was advised that the concept of *comparative merit assessment* is not widely used, tested or universally accepted within the NSW planning framework, and it is unlikely

that this proposal would be approved based on a merit assessment of its environmental impact, a point acknowledged by the proponent.

Advice has been presented from Dr Steven Berveling (Barrister) that the question of net community benefit would, in the present case, require a comparison of merits of the proposed development against those of the development arising from Development Consent D88/0640 and concludes that comparative merit is an appropriate method.

Neither Dr Berveling nor the proposal provide any consideration of the reasonableness of, or details about how this concept should operate in the context of this proposal, especially given the proponent's acknowledgment that the proposal is unlikely to be approved if assessed only on its environmental impacts and merits.

Further advice was provided to the proponent encouraging them to pursue a proposal more attune to the constraints and opportunities presented by the site, and/or how the potential impact of consent D88/0640 could be lessened. Notwithstanding this advice the proponent has pursued lodgement of the planning proposal without due consideration of this advice.

To summarise, the concept of comparative merit is not considered a reasonable approach to justification of an alternative development proposal which will also have environmental impacts on Critically Endangered ecological community (SEPP 26 Littoral Rainforest).

Office of Environment and Heritage response

The Office of Environment and Heritage (OEH) have advised that the proposal appears to have disregarded the significant environmental values of the site and has relied on comparative merit for its justification. OEH is of the view that the proposal falls short on being innovative or striving for ecologically sustainable development and does little to foster the social licence for development.

OEH is unable to support the proposal in its current form and raised the following key issues for further consideration by Council:

- The adequate assessment of impacts on significant biodiversity values of the site;
- The adequate assessment of Aboriginal cultural heritage matters;
- Consideration of management issues with the adjoining Billinudgel Nature Reserve, and,
- The adequate assessment of flooding matters. A copy of the department's response can be found in Attachment 3.

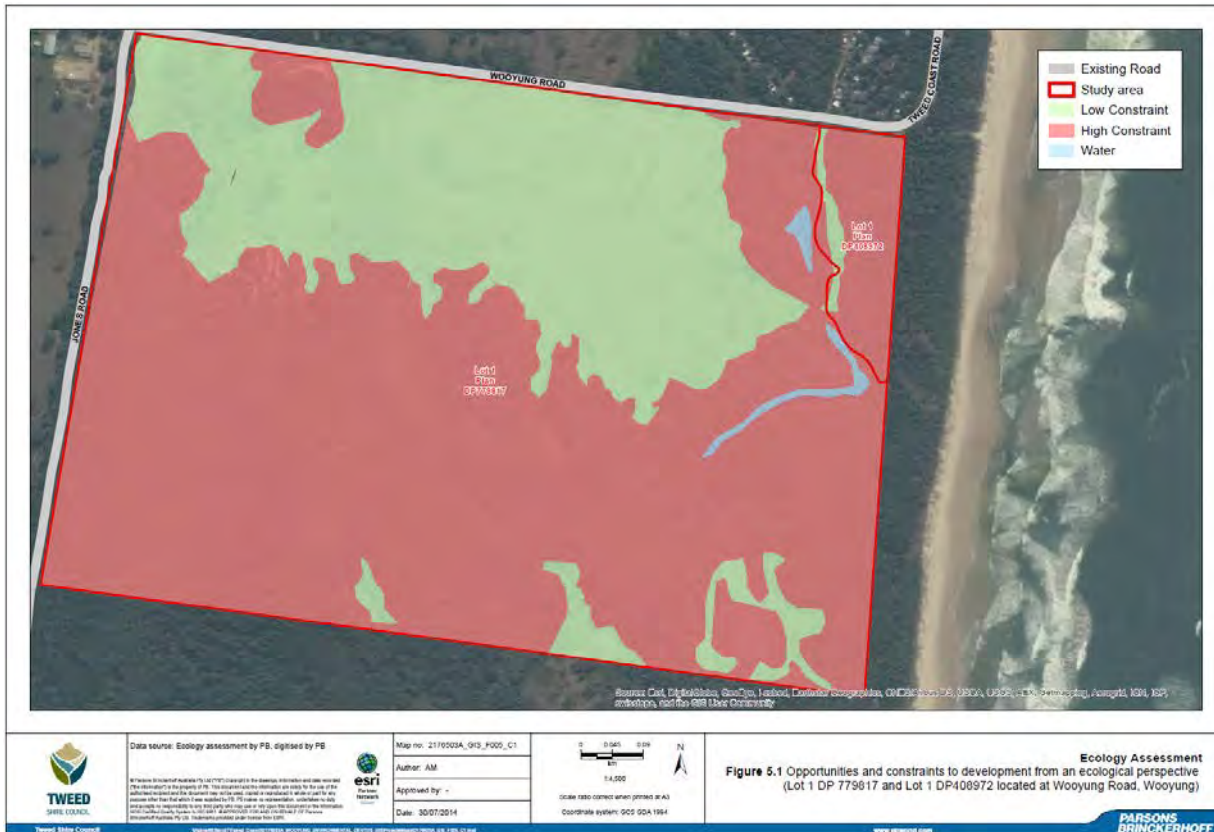
In addition to the department's written advice, an onsite inspection was conducted with officers from the department on 4 September 2014. The purpose of the meeting was for the department to make an initial presentation on the potential for BioBanking and Biocertification to be applied across the Shire, using the property as a case study.

The area of the property examined was the north western corner, an area of degraded vegetation and cleared grazing land. While potential environmental benefits can be accrued through the use of BioBanking and Biocertification, no conclusion was drawn about the applicability of this approach to the Wooyung property, or how the BioBanking and Biocertification might apply more strategically across the Shire. The proponent has been advised of the outcome of the meeting and provided with details should they wish to pursue this approach further.

Notwithstanding any potential for BioBanking and Biocertification to apply to at least part of the property, based on the above advice the current request is not supported.

In an attempt to better visualise those areas where ecological constraints are significant and the relatively unconstrained (from an ecological perspective) PB produced an opportunity and constraints map as seen in Figure 8.

FIGURE 8: ECOLOGICALLY CONSTRAINED LAND (PB AUGUST 2014)



Proximity to the coast and dune system

The concept plan as presented proposed 12 houses located adjoining the eastern boundary and the coastal dune system, many of which are within SEPP 26 Littoral Rainforest (refer to Figures 6 and 7).

The southern seven dwellings lie within the 2100 year Coastal Hazard line, and the remaining five to the north are immediately adjoining or party affected by the line.

The coastline hazards and underlying coastal processes affecting the Tweed coast have been identified and defined by the *Tweed Shire Coastline Hazard Definition Study* (TSC, 2001). The Study delineates the landward extent of the hazard zones for the Immediate, 50 year and 100 year planning timeframes. Of the natural processes investigated, the significant issue identified and mapped for the Tweed Coastline Management Plan project is the potential for beach erosion and shoreline recession.

Tweed DCP B26 Coastal Hazards acknowledges that to achieve a more sustainable use of the Tweed coastline as a whole, it is a high priority for Council to continue its integrated planning and management of the individual beaches and the coastline reserve as well as privately owned land in proximity to the coast.

In general, DCP B26 recommends that the precautionary principle should be applied to development which may pose serious or irreversible environmental damage to ensure that environmental degradation can be avoided, remedied or mitigated. Development proposals shall include strategies to avoid or mitigate potential adverse environmental effects.

While not prohibiting housing in the 2100 year Coastal Hazard line, given the potential impact of development on sensitive coastal vegetation, it is not a preferred location for the construction of residential dwellings.

Flooding

The central cleared section of the property between the coastal dune and a sand ridge to the west and adjoining Wooyung Road represents the largest contiguous area not constrained by native vegetation. However, this section of the property is inundated by the 1 in 100 year (1% AEP) flood event as seen in Figure 9a, and contains potential acid sulfate soil; which will significantly impact development potential.

In addition, those areas of land above the 1% AEP flood level (the coastal dune and the western ridge) are inundated by the larger probable maximum flood (PMF). While these areas may represent “low islands” during the lower intensity storm event, these parts of the site cannot be relied upon for evacuation or refuge.

Council’s Flood Risk Management Policy limits consideration of land subject to planning proposals which seek to facilitate additional habitable land use on the floodplain to land that is classified as either “high islands” (land above PMF level), or land that has flood free access (rising evacuation routes to land above PMF level). As Figure 9b illustrates, the closest land above PMF lies approximately 700 metres to the west along Wooyung Road. The subject land does not contain “high islands” or flood free access, and is therefore contrary to Council’s policy and cannot be supported.

FIGURE 9: FLOODING, SHOWING ARI 100 YEAR AND PMF FLOOD INUNDATION

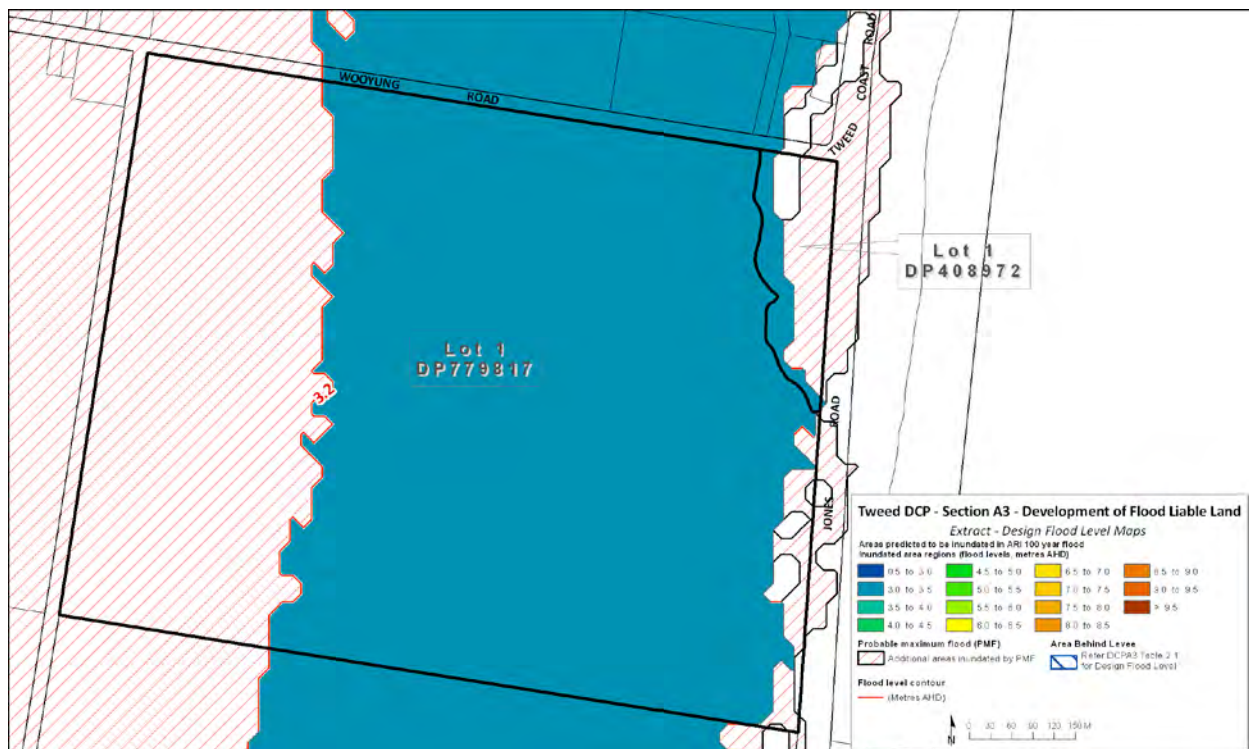


FIGURE 10: APPROVED DEVELOPMENT CONSENT 88/640 GRANTED IN 1988



Concept Plan 17th July 2013
 Planning Proposal - PP13/0004 - Wooyung Properties
 Lot 1 DP779817 & Lot 1 DP408972; No.440 Wooyung Road, Wooyung

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before you Dig' enquiry must be made by calling 1310. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 16 September, 2014
 © Land and Property Management Authority (LPMA) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

0 30 60 90 120 150 M
 1:6,000 @ A4 Portrait
 DO NOT SCALE
 COPY ONLY - NOT CERTIFIED

Map 11 from form: Universal Transverse Mercator
 Horizontal Datum: Geocentric Datum of Australia 1984
 Grid: Map Grid of Australia, Zone 56

GDA

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



OPTIONS:

That:

1. (a) The request to prepare a planning proposal PP13/0004 Wooyung Properties Lot 1 DP 779817 and Lot 2 DP 408972 Wooyung Road, Wooyung, not proceed;
(b) The proponent be encouraged to pursue a concept more in keeping with the constraints affecting the site.; or
2. The request to prepare a planning proposal not be proceeded with; or
3. That the request to prepare a planning proposal be proceeded with.

CONCLUSION:

The property Lot 1 DP 79817 and Lot 2 DP 408972 Wooyung Road, Wooyung is recognised by all parties as being heavily constrained by a range of environmental factors. All vegetation on the property is listed as either Endangered or Critically Endangered. The remainder of the land is low lying, either containing potential acid sulfate soil, or impacted by the 1 in 100 year flood event and inundated under the probable maximum flood, with some land lying within the 2100 year Coastal Hazard line. Consequently, the site presents some of the most difficult constraints to integration of a residential development.

Apart from the environmental constraints, some of which present critical barriers to the proposed development, the proposal lacks strategic merit, based upon its inability to align with requirements of either the Far North Coast Regional Strategy 2006, or the Tweed Urban and Employment Land Release Strategy 2009.

A peer review of the proposal was conducted by Parsons Brinkerhoff who also undertook a detailed ecological impact assessment, both of which support the conclusions presented above.

While the Office of Environment and Heritage was unable to support the proposal in its current form and raised concerns about the adequacy of the assessment of impacts on the significant biodiversity values, Aboriginal cultural heritage matters, proximity to the Billinudgel Nature Reserve, and flooding matters, they did clarify their comments by advising that from an ecological perspective, opportunities do exist on site for development of parts of the site with minimal impacts to biodiversity. The proponent is encouraged to pursue these options with the department.

Considering the detailed advice from peer review, the Office of Environment and Heritage and Council officers, a recommendation is presented to Council that the proposal not be proceeded with, but that a proposal more attune to the constraints of the site be considered.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1: Strategic Merit Assessment – PB 22 August 2014 (ECM 3468580)

Attachment 2: Ecological Impact Assessment – PB 22 August 2014 (ECM 3468581)

Attachment 3: Letter from Office of Environment and Heritage; 22 July 2014 (ECM 3468582)

Attachment 4: Letter to proponent 31 July 2012 (ECM 3468583)

8 [PR-PC] Draft Design Excellence Guideline

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: GT1/LEP/2012 Pt4

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This report provides Council with an updated Draft Design Excellence Guideline (draft Guideline), that is based on the feedback from the Councillor Workshop held on 11 September 2014.

This report concludes that the draft Guideline, with the public consultation amendment, is now appropriate for adoption. It will provide a more comprehensive guide for any applicant wishing to proceed with a development that attracts the Architectural Design Competition provisions of the Tweed City Centre Local Environmental Plan 2012, and which in turn will better enable its successful implementation by Council.

RECOMMENDATION:

That Council endorses the Tweed Shire Council Design Excellence Guideline - version 1.2, as amended and provided as an attachment to this report.

REPORT:

At its meeting of 4 September 2014, Council considered a report relating to a Draft Design Excellence Guideline (the Guideline), resolving to defer the matter for a workshop. For background purposes the previous report is provided as Attachment 1.

The purpose of the workshop was to consider the option of providing the jury panel the opportunity to include consideration of public preferences on the various designs and the option of including a Green Star rating. The Councillor Workshop was undertaken on 11 September 2014 and there was general support to include a provision enabling community involvement prior to the judging of competition entries however, to not require the mandatory Green Star benchmarking until such time as an appropriate sustainable rating tool is more universally adopted by Council.

To enable community involvement, a new clause (Clause 2.4) has been drafted within the Guideline. The clause prescribes the exhibition of submitted competition entries for a minimum period of 7 days at the close of the competition submission period. The NSW Department of Planning and Environment (DPE) Design Excellence Guideline, being the prevailing guideline, states *'The jury will convene for the review of the competition submissions as soon as possible following the close of the competition'*. Accordingly, the exhibition process needs to be succinct to enable feedback to be received, collated and provided to the jury prior to the judging of entries. The condensed exhibition period is also reflective of the level of detail anticipated at competition stage, being predominately conceptual.

A copy of the amended Guideline can be found as Attachment 2 of this report.

OPTIONS:

1. Adopts the Design Excellence Guideline as amended and provided as an attachment to this report, or,
2. Rejects the Design Excellence Guideline and rely upon the Department of Planning & Environment's Director General's Design Excellence Guidelines.

Council officers recommend Option 1.

CONCLUSION:

In order to facilitate the effective implementation of the Tweed City Centre Local Environmental Plan 2012 (TCC LEP), minimise information gaps and reduce developer risk, a Design Excellence Guideline (the Guideline) has been prepared by Planning Reform staff to be utilised in concert with NSW State Government Guidelines. The Guideline has been publically exhibited and amendments made to facilitate an efficient process for development undertaking an Architectural Design Competition (ADC), and therefore assist with the implementation of the aims of the TCC LEP, particularly as it relates to key sites and tall buildings.

The Guideline is now considered appropriate for Council adoption, which is recommended within this report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Planning Committee Report of 4 September 2014 (ECM 3466866)

Attachment 2. Draft Design Excellence Guideline - version 1.2 (ECM 3467381)

9 [PR-PC] Community Resilience Innovation Program Grants

SUBMITTED BY: Building and Environmental Health

Valid



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.4 Provide education and advocacy to promote and support the efforts of the police, emergency services and community groups to improve the safety of neighbourhoods and roads
-

SUMMARY OF REPORT:

Council has been notified of a successful grant application by the NSW Ministry of Police and Emergency Services Community Resilience Innovation Program Grants Program. The offer of \$28,476 was granted to Tweed Shire Council, in partnership with the NSW State Emergency Service, for the project 'Emergency Preparedness for Vulnerable Communities within Flood-prone Caravan Parks'.

RECOMMENDATION:

That Council accepts the grant of \$28,476 from the NSW Ministry of Police and Emergency Services - Community Resilience Innovation Program for the implementation of Emergency Preparedness for Vulnerable Communities within Flood-prone Caravan Parks across the Tweed and includes the grant funding in the December Quarterly Budget Review.

REPORT:

Council has been notified of a successful grant application of \$28,476 from the NSW Ministry of Police and Emergency Services (MPES) - Community Resilience Innovation Program Grants Program 2014. The project is titled 'Emergency Preparedness for Vulnerable Communities within Flood-prone Caravan Parks'.

Council, in partnership with the Richmond Tweed State Emergency Service (SES) developed the project with the aim of reducing loss, both physical and monetary, within one of the main vulnerable communities in the Tweed Shire. The Tweed Shire Disaster Management Plan (Displan) identifies vulnerable groups where the occupants of certain locations are considered to be potentially vulnerable to an emergency incident. This list includes 33 caravan parks within the Tweed, however of these 33, 14 are additionally located within high hazard areas for flood.

Research suggests these parks contain vulnerable people, who are often unaware of their risks and are unaware of how to deal with emergency situations. Both the SES and Council have seen this during previous years in times of flood and storm, and similar situations are evident within all flood prone caravan parks across the State. It is for this reason the project submission received letters of support from Fire & Rescue NSW (FRNSW), Rural Fire Service (RFS), Australian Red Cross (ARC) and the Caravan and Camping Association as these agencies could see the value and importance of the project.

The project aims to reduce the burden placed on emergency service agencies during times of disaster, by improving the level of resilience of managers and residents in high risk caravan parks through:

- Assisting park managers and owners to understand and fulfil their obligations;
- Ensuring that at risk caravan parks have emergency management procedures in place;
- Ensuring emergency plans are appropriate and communicated effectively;
- Providing long and short stay residents with the knowledge and understanding of:
 - Park emergency management/evacuation procedures;
 - Risks faced by their community;
 - Importance of having adequate and appropriate insurance;
 - Access to emergency contact information.
- Developing a network of park managers, flood wardens and local SES units to assist in information sharing and evacuation/assistance during severe weather events;
- Collaboration across other local emergency service agencies such as ARC (through their RediPlan), FRNSW in promoting the Smoke Alarm Legislation and the availability of their Smoke Alarm and Battery Replacement for the Elderly (SABRE) program; and the RFS in informing residents of the level of bushfire risk (where relevant) and the location of their closest Neighbourhood Safer Place (NSP).

Council's contribution to the project is limited to an in-kind contribution of \$4,500.

Of the 14 caravan parks that are designated for the project, Council and the SES have already undertaken and implemented the warden program within 5 of the caravan parks. The project ran with the assistance of ARC volunteers, FRNSW Tweed Head station

officers, and SES volunteers. Through these five parks alone, 600 residents, face to face, have been reached.

Both the NSW SES State Headquarters and ARC have indicated their intention to formally request permission to roll-out the project using the templates already developed across other local government areas throughout NSW using their existing SES and ARC volunteer networks. One of the project deliverables nominated was to develop a 'how to guide' for other councils. It is the intention to provide this to the Local Government Association, Caravan and Camping Association, ARC and State NSW SES Headquarters with all templates to support the expanded roll-out of the project.

OPTIONS:

1. Accepts the grant offer from NSW MPES.
2. Declines the grant offer from NSW MPES.

CONCLUSION:

The grant offer represents an excellent opportunity to partner with the NSW SES and target vulnerable communities. The project will assist in increasing community preparedness, encourage community sector cooperation and enhance disaster resilience.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Operates within current budget allocations.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Director

Valid



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 September 2014 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

DA No.	DA14/0088
Description of Development:	House pad and dwelling with attached double garage
Property Address:	Lot 6 DP 777940 No. 1282 Tyalgum Road, Tyalgum
Date Granted:	10/9/2014
Development Standard to be Varied:	Clause 22 - Development near designated roads
Zoning:	1(a) Rural
Justification:	The proposed development does not comply with Clause 24 of the Tweed Local Environmental Plan 2000 (Setbacks to Designated Roads), which prescribes a 30m setback for dwelling houses. A SEPP 1 variation is required. No written request from the applicant was received, however given consent has previously been granted for filling of the land to create a dwelling pad in the nominated position, it is understood that a SEPP 1 variation to the minimum setback control was previously considered and justified based on the constraints on the site. This previous consideration extends to the current application.
Extent:	As above
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C1 [PR-PC] Unauthorised Works at Lot 1 DP 613261 Cudgen Road, Cudgen

REASON FOR CONFIDENTIALITY:

This report has been made Confidential due to the perceived ramifications of Council's decision.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
-
-

C2 [PR-PC] Class 1 Appeal - Development Application DA13/0201 for a Telecommunications Facility at Lot 100 DP 1192162 (Formerly Lot 1 DP 397082) Depot Road, Kingscliff

REASON FOR CONFIDENTIALITY:

This report has been made Confidential so as not to prejudice any future legal proceedings.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
-
-

C3 [PR-PC] Class 1 Appeal - Development Application DA13/0654 for a Two Lot Subdivision, Remove Existing Dwelling and Construct Two Single Dwellings - Staged Development at Lot 7011 DP 1065741 Marine Parade, Fingal Head; Lot 367 DP 755740 No. 40 Queen Street, Fingal Head

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA13/0654 Pt2

REASON FOR CONFIDENTIALITY:

This report has been made Confidential so as not to prejudice any future legal proceedings.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
-