



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland

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

Agenda

Planning Committee Meeting Thursday 3 July 2014

held at Murwillumbah Cultural and Civic Centre
commencing at 5.00pm

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

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

(a) the provisions of:

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

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

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

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

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

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

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

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

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

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

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

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

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SCHEDULE OF OUTSTANDING RESOLUTIONS

1 Schedule of Outstanding Resolutions



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

CODE OF MEETING PRACTICE:

Section 2.8 Outstanding Resolutions

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

COUNCIL MEETING - 23 JANUARY 2014

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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Cr K Milne
Cr M Armstrong

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

1. Allow the proponents the opportunity to consider consolidating proposed Lots 1 and 2 into one single lot.
2. Allow the proponents and Council to agree to the terms of a voluntary planning agreement that ensures that each allotment created is ultimately serviced by connection to the Council sewerage network, if on site effluent management results are deemed to be unsatisfactory in the long term, and that all other relevant infrastructure costs and environmental provisions (associated with Area E development) are paid.

3. Allow the proponents to submit an updated On Site Effluent Management Report that seeks to commit to high level treatment of effluent management (including nutrient reduction and potential composting toilets), and that all land application areas are minimised to result in minimal to no removal of existing native vegetation and to maximise the revegetation of native vegetation where possible.
4. The proponent to be responsible for the costs of preparing this Voluntary Planning Agreement (VPA), including the costs to Council.

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

PLANNING COMMITTEE - 6 MARCH 2014

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

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Cr K Milne
Cr M Armstrong

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

1. The increase in numbers of boats expected on the river in peak demand times.
2. Where these boats are expected to frequent, details on the safe carrying capacity in these areas, and how it could be ensured that boats do not congregate in the areas where safe carrying capacity is exceeded.
3. Potential legal liability for Council if boating collisions occur, if safe carrying capacity has been exceeded.

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

Current Status: A Councillors Workshop was held on 15 April 2014. The applicant has sought to make further changes to the plans and application. The officers will review any additional information. A further report will be submitted to a future Planning Committee meeting.

PLANNING COMMITTEE - 1 MAY 2014

- 8 [PR-PC] Development Application DA13/0654 for a Two Lot Subdivision, Remove Existing Dwelling and Construct Two Single Dwellings - Staged Development at Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740 No. 40 Queen Street, Fingal Head**

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**Cr W Polglase
Cr P Youngblutt**

RECOMMENDED that Development Application DA13/0654 for a two lot subdivision, remove existing dwelling and construct two single dwellings - staged development at Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740 No. 40 Queen Street, Fingal Head be deferred to enable the applicant to provide a report regarding the ecological studies of the site.

Current Status: Additional information has been received from the applicant. Council officers will undertake further assessment of this information and will report back to a future Planning Committee meeting.

- 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

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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. The officers are still awaiting further technical information from the applicant. Once this information is received the matter will be reported back to a future Planning Committee meeting.

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

2 [PR-PC] Unauthorised Earthworks and Pollution Events at Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum

SUBMITTED BY: Development Assessment



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Caring for the Environment
4.1	Protect the environment and natural beauty of the Tweed
4.1.3	Manage and regulate the natural and built environments

SUMMARY OF REPORT:

A Confidential report was submitted to 5 June 2014 Planning Committee Meeting informing Council that various complaints had been received from adjoining owners regarding alleged unauthorised works and resulting pollution incidents from the subject site, and that Council officers have conducted a series of investigations and taken initial compliance action.

On the basis of this report, Council resolved the following:

"That Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek:

- 1. Receives and notes this report;*
- 2. Defers consideration of its own further legal and enforcement actions, to provide more time to appraise the extent of compliance action being undertaken by the NSW Crown Lands Division relating to the Crown Reserve affecting the subject site; and*
- 3. A further report be submitted to the July Planning Committee Meeting providing an update of the action in Point 2, and advice on the options for further legal and enforcement action."*

On 17 June 2014 the NSW Trade and Investment Crown Lands Division (CLD) provided the following update in terms of their current investigation on compliance issues affecting the Crown Reserve on the subject site:

- The NSW Soil Conservation Service (SCS) provided a report to Crown Lands and to the site owner outlining required remediation works in regard to the affected Crown road reserve, and to the adjoining private property;
- Crown Lands has accepted the report and the recommendations;
- The owner has verbally agreed to undertake the works required, and this will be followed up with a formal agreement with Crown Lands, and has indicated work will commence as soon as possible;

- The SCS will inspect and provide Crown Lands with a report following completion of the works to SCS's satisfaction; and
- The owner has lodged an application to close and purchase the subject section of Crown road reserve, and Council will be notified in due course of this action.

The above advice provides Council with a clearer picture of the actions taken by Crown Lands in respect of this matter.

Therefore, in order to advance Council's consideration of any preferred compliance and enforcement actions relating to this matter, it is recommended that a teleconference be organised between the Councillors and Council's solicitors to discuss the options previously presented to Council, as outlined in a confidential attachment to the last June Planning Committee Meeting. A further report will then be brought back to the Planning Committee to determine preferred actions.

RECOMMENDATION:

That:

- A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- B. Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:**
- 1. A teleconference be organised between the Councillors and Council's solicitors to discuss the options previously presented to Council, as outlined in a confidential attachment to a report to the June Planning Committee Meeting; and**
 - 2. A further report be brought back to the Planning Committee following the teleconference to determine preferred actions.**

REPORT:

A Confidential report was submitted to 5 June 2014 Planning Committee Meeting informing Council that various complaints had been received from adjoining owners regarding alleged unauthorised works and resulting pollution incidents from the subject site, and that Council officers have conducted a series of investigations and taken initial compliance action.

On the basis of this report, Council resolved the following:

"That Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek:

- 1. Receives and notes this report;*
- 2. Defers consideration of its own further legal and enforcement actions, to provide more time to appraise the extent of compliance action being undertaken by the NSW Crown Lands Division relating to the Crown Reserve affecting the subject site; and*
- 3. A further report be submitted to the July Planning Committee Meeting providing an update of the action in Point 2, and advice on the options for further legal and enforcement action."*

On 17 June 2014 the NSW Trade and Investment Crown Lands Division (CLD) provided the following update in terms of their current investigation on compliance issues affecting the Crown Reserve on the subject site:

- The NSW Soil Conservation Service (SCS) provided a report to Crown Lands and to the site owner outlining required remediation works in regard to the affected Crown road reserve, and to the adjoining private property;
- Crown Lands has accepted the report and the recommendations;
- The owner has verbally agreed to undertake the works required, and this will be followed up with a formal agreement with Crown Lands, and has indicated work will commence as soon as possible;
- The SCS will inspect and provide Crown Lands with a report following completion of the works to SCS's satisfaction; and
- The owner has lodged an application to close and purchase the subject section of Crown road reserve, and Council will be notified in due course of this action.

The above advice provides Council with a clearer picture of the actions taken by Crown Lands in respect of this matter.

Therefore, in order to advance Council's consideration of any preferred compliance and enforcement actions relating to this matter, it is recommended that a teleconference be organised between the Councillors and Council's solicitors to discuss the options previously presented to Council, as outlined in a confidential attachment to the last June Planning Committee Meeting. A further report will then be brought back to the Planning Committee to determine preferred actions.

OPTIONS:

Option 1

That Council endorses the recommended actions:

1. A teleconference be organised between the Councillors and Council's solicitors to discuss the options previously presented to Council, as outlined in a confidential attachment to a report to the June Planning Committee Meeting; and
2. A further report be brought back to the Planning Committee following the teleconference to determine preferred actions.

Option 2

That Council determines an alternative action.

The officers recommend Option 1.

CONCLUSION:

It is the officers' view that the extent of unauthorised activity and subsequent pollution damage warrants further enforcement action by Council, and that this action should be coordinated with the initial action being undertaken by the Crown Lands Division.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Costs will be incurred if legal representatives are engaged to commence legal action against the owner.

c. Legal:

Compliance action may be required to be undertaken in the Land and Environment Court in respect to the unauthorised use and structures.

Yes, legal advice has been attached.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. A copy of the report and attachments on this matter from 5 June 2014 Planning Committee Meeting (ECM 3386362)

3 [PR-PC] Development Application DA14/0132 for Dual Use of Dwelling - Tourist Accommodation and Residential at Lot 72 DP 1030322 No. 30 Eclipse Lane, Casuarina

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0132 Pt1



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

This application has been called up for Council determination by Councillors Longland and Bagnall.

There was one objection to the development application.

The existing dwelling was approved on 24 March 2014 for single dwelling purposes only (DA14/0095). The dwelling is a two storey structure and features a pool on the northern boundary. The dwelling is located upon a 787.6m².

The proposed development does not require any physical alterations to the existing dwelling house.

The applicant has provided legal advice regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed LEP 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite. Importantly, the individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard.

The applicant advises that to address any issues associated with the short term letting of the dwelling, the following conditions are proposed:

- *The dwelling is to be let to a maximum of one tourist group comprising a maximum of 10 persons up to four adults and six children at any one time.*
- *A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July for inspection purposes.*
- *No more than four vehicles can be at the site at any one time with all parking to be within the property boundary.*
- *An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*
- *Tenants agree to not make excessive noise as part of the letting agreement.*
- *A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.*
- *Tenants agree to abide by a management policy (to be submitted to Council for approval prior to commencement of use).*

The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing four bedroom single dwelling for the purpose of short-term tourist accommodation.

Under LEP 2000, the site is zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands). The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council 5 March 2014. Tweed Local Environmental Plan 2014 (previously Draft Tweed Local Environmental Plan 2012) came into force on 4 April 2014.

When the application was submitted, LEP 2012 was in draft form however had been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

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

On that basis, it is the officer's view that the recently gazetted Tweed LEP 2014 should be given increased weighting in the determination of the subject development application, and as a prohibited use, should therefore be refused.

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the

proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

It is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a lot which is surrounded by residential dwellings. It is also considered that the amenity of the holiday users may also be adversely impacted due to the Eclipse Lane frontage and potential conflict from adjoining permanent residents.

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

RECOMMENDATION:

That Development Application DA14/0132 for dual use of dwelling - tourist accommodation and residential at Lot 72 DP 1030322 No. 30 Eclipse Lane, Casuarina be refused for the following reasons:

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

REPORT:

Applicant: Mr D Wright
Owner: Mr Daryl G Wright
Location: Lot 72 DP 1030322 No. 30 Eclipse Lane, Casuarina
Zoning: Part 2(e) Residential Tourist Zone and Part 7(f) Environmental Protection (Coastal Lands) (TLEP2000)
Cost: Not Applicable

Background:

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

History

The existing dwelling was approved on 24 March 2014 for single dwelling purposes only. The dwelling is a two storey structure and features a pool on the northern boundary. The dwelling is located upon a 787.6m².

Of note, an application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the recently gazetted LEP 2014. At the Meeting of 17 October 2013 Councillors resolved to approve the application, against officer recommendation, with the application brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at this meeting.

The applicant states in the Statement of Environmental Effects and references plans that there is a primary dwelling and secondary dwelling (studio) that is located on the site. A history search has determined that there is only a single dwelling approved (DA14/0095) and as such if this application was to be approved there would be a requirement for this to be confirmed.

The Subject Site

The site is regular and rectangular shaped with a 12.6m frontage to Eclipse Lane. The site has a total land area of 787.6m². The site is generally flat and features grassed landscape. On-site parking is within a double garage accessed off Eclipse Lane. The site could accommodate visitor parking in front of the double garage on the driveway.



Figure 1 - Aerial Photo of 30 Eclipse Lane - Casuarina

The approved dwelling is of two storey construction four bedrooms and three bathrooms with an outdoor living area orientated to the east with an in-ground pool on the northern boundary.

The Proposed Development

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

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

It is intended that the dwelling be leased via single booking to one tourist group comprising a maximum of 10 persons at any one time.

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

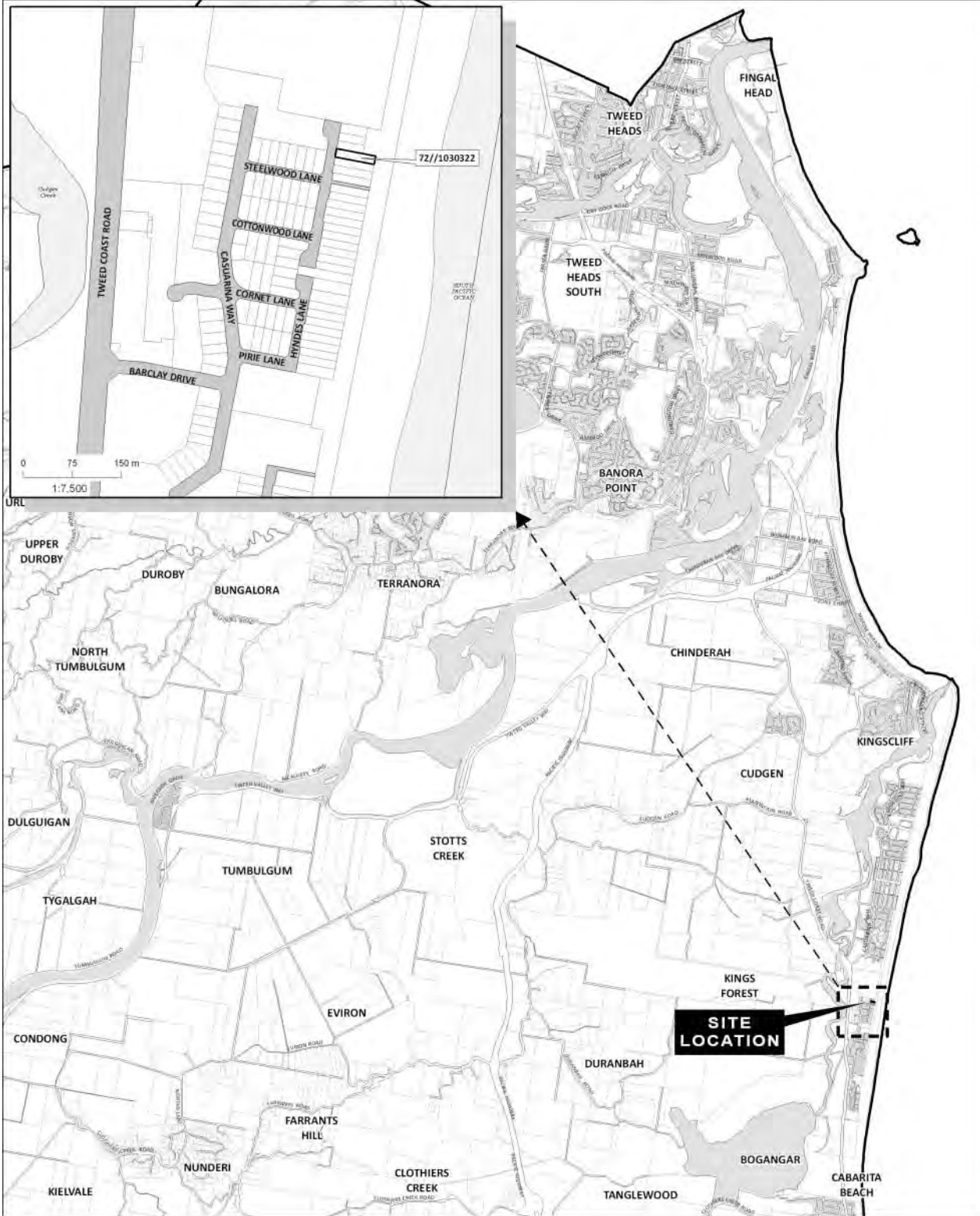
The applicant has proposed that a plan of management be submitted to Council for approval (upon condition) which will regulate use of the property, consistent with development consent conditions and existing S88B restrictions on the use of the land.

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

Summary

The development is prohibited by and inconsistent with the newly gazetted Tweed LEP 2014, specifically the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

SITE DIAGRAM:



Locality Plan
 Lot 72 DP 1030322
 No.30 Eclipse Lane, Casuarina

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a "Call Before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Callisto 10/06/2014 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p> <p>Scale: 1:75,000 @ A4 Portrait COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Grid: GDA94 Datum: Geoid of Australia 1994 Map: GDA of Australia 2000.50</p> <p>GDA</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484</p> <p>PO Box 816 Murwillumbah 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>
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DEVELOPMENT/ELEVATION PLANS:

DRAWING LIST

- SA-01 CONTEXT PLAN
- SA-02 GR FLOOR ENVIRONMENTAL EFFECTS
- SA-03 FF FLOOR ENVIRONMENTAL EFFECTS
- SA-04 GR FLOOR PRIVACY & VIEWS
- SA-05 FF FLOOR PRIVACY & VIEWS
- SA-06 SHADOW DIAGRAMS
- SA-07 EXISTING SURVEY PLAN
- DA-01 SITE / ROOF PLAN
- DA-02 GROUND FLOOR PLAN
- DA-03 FIRST FLOOR PLAN
- DA-04 NORTH & SOUTH ELEVATIONS
- DA-05 EAST & WEST ELEVATIONS
- DA-06 SECTIONS
- DA-07 DRIVEWAY SECTION
- DA-08 PERSPECTIVES
- SCH-01 WINDOW SCHEDULE

WRIGHT RESIDENCE

LOT 72, ECLIPSE LANE, CASUARINA, NSW

DATE: OCTOBER 2013 JOB No: 1316

ISSUE F

DEVELOPMENT APPLICATION



scott carpentier

100 6574 8888
0413 256 436
Casuarina NSW
scott@scottcarpentierproject.com.au
www.scottcarpentierproject.com.au

DATE: 20/10/13
ISSUE: 29/10/13
COIL: 01/11/13
DATE: 14/07/14

NOTES:
DO NOT SCALE (1:2000000)
This drawing is for information only and is not a contract of work.
All dimensions are to be taken from the finished work.

A	DATE	DISTRIBUTION
1	20/10/13	Issue Plan
2	29/10/13	Revised Issue Plan
3	01/11/13	Final Issue Plan
4	14/07/14	Development Application



EAST PERSPECTIVE



NORTH EAST AERIAL



SOUTH EAST AERIAL



NORTH EAST PERSPECTIVE



SOUTH EAST PERSPECTIVE



NORTH WEST AERIAL

WRIGHT RESIDENCE
 LOT 72, GILPSE LANE, CASWENA, NSW
PERSPECTIVES
 DATE: OCTOBER 2013
 SCALE: NTS
 DRAWING NO: DA-08

800 BELLAIR
 10/112/12/13/14
 Caswena, NSW, 2523
 www.scottscapartners.com.au



REVISION	DATE	DESCRIPTION
A	20/10/13	Initial Design
B	20/10/13	Revised Master Plan
C	18/12/13	Design Development
D	19/02/14	Design Development
E	19/02/14	Design Development
F	19/07/14	Developer Application

NOTES:
 DO NOT SCALE OFF DRAWINGS
 Refer any dimensions to the Architect unless to the contrary is stated.
 Work all dimensions on the plans to the nearest 100mm.
 All dimensions are to be confirmed with the Architect.

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

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

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

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

encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.

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

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

Clause 11 - Zone Objectives

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

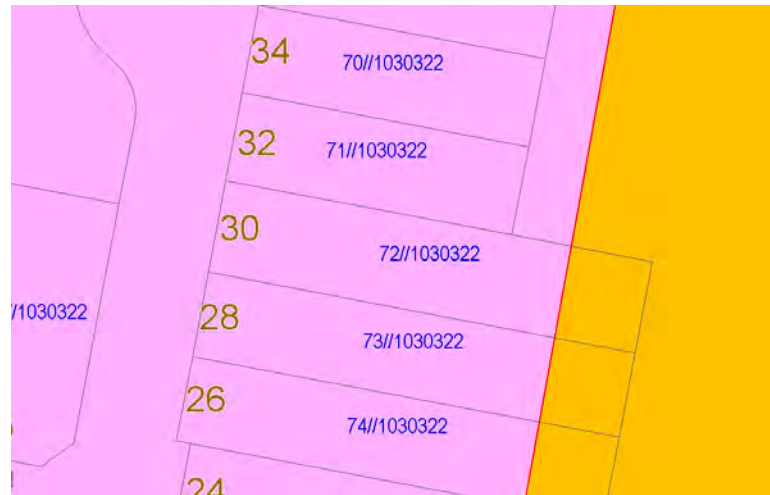


Figure 2: Split Zoning of the Site

The primary objective of that zone and consistency of the proposal with that objective has been outlined above. The secondary objective permits other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.

Clause 15 - Essential Services

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

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

Clause 35 - Acid Sulfate Soils

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

Clause 39A – Bushfire Protection

The site is bushfire prone. The application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose. A bush fire safety authority under section 100B of the Rural Fires Act 1997 was received from the service on 22 April 2014 inclusive of conditions regarding Asset Protection Zones, Evacuation and Emergency Management and Landscaping.

Clause 54 – Tree Preservation Order

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

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

Clause 33: Coastal hazard areas

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

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

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

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

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

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

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

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,

(e) serviced apartments,

But does not include:

(f) camping grounds, or

(g) caravan parks, or

(h) eco-tourist facilities.

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

4 Prohibited

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

Objectives of the R2 zone include the following:

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

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

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

The proposed use does not satisfy the objectives of the R2 Low Density Residential zone. Further detailed consideration against LEP 2014 is not considered necessary at this time given that consistency with the zone objectives cannot be demonstrated.

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

Tweed Development Control Plan

Section A1 - Residential and Tourist Development Code

The dwelling was approved on 24 March 2014 under DA14/095 which was generally compliant with DCP Section A1. No physical alterations are proposed to the existing building.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1.

Section A2-Site Access and Parking Code

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

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section. The proposal was placed on public exhibition for 14 days from 19 March 2014 to 2 April 2014. One submission was received during this time which is detailed elsewhere in this report.

Section B5-Casuarina Beach

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

Section B9-Tweed Coast Strategy

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

Section B25-Coastal Hazards

The rear (east) of the site is subject to the Maximum 2100 hazard line as per Councils updated 2014 mapping. It is noted that this mapping generally correlates to the 7(f) zoning on the site. As noted elsewhere in this report, the subject application relates to the use of an existing building which is located outside the 7(f) zone (and by extension the Maximum 2100 hazard line). As such, as the development itself does not include provision of any new buildings/structures and is in any event located outside of the maximum 2100 hazard line, the application is considered to be acceptable having regard to the provisions of this DCP.

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

Clause 92(a) Government Coastal Policy

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

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit at the Area Team Meeting and it is advised that as there is no change in BCA Building Class further comments are not required in relation to this.

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

Tweed Shire Coastline Management Plan 2005

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

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal is generally consistent with the objectives of the Management Plan.

Coastline Management Plan for the Tweed Coast Estuaries

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

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

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

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

Context and Setting

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

Amenity

Adjacent properties may be impacted by the constant nature of short-term visitors. The applicant has proposed the use of a plan of management to monitor and regulate amenity impacts that may arise from the development inclusive of those raised in submissions below. Notwithstanding, given the proximity of the development to residential dwellings, the issues raised in submissions (as addressed below) are considered warranted.

(c) Suitability of the site for the development

Surrounding Land Uses / Development

The site is not considered to be suitable for the proposed development as the future (imminent and certain) zoning under recently gazetted Tweed LEP 2014 prohibits the proposed use.

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

Public Notification

The proposal was placed on public exhibition for 14 days in accordance with DCP A11. During this time, one submission was received. Issues raised include the following:

- Impact upon existing residential amenity within the locality;
- Tourist accommodation is provided elsewhere in Casuarina: Beach Shacks, Pandanus Pocket etc;
- Management of the use;
- Lies in regards to use;
- Does the locality 'need' this type of development; and
- What is the dominant use.

Applicant's Justification

The submission was referred to the applicant who responded with the following:

"Using the most publicly accessible short term rental website as an example (www.stayz.com.au) there are currently over 30,000 properties listed for short term tourist accommodation Australia wide. The majority of rental properties listed are in the form of single dwellings, farm stays and bed and breakfast arrangements. It can be assumed that a large proportion of these properties do not have the relevant Council approval for short term tourist accommodation use. In direct relation to the Tweed Shire, properties are listed on the site within Tweed Heads, Tweed Heads South, Tumbulgum, Pottsville, Pottsville Beach, North Tumbulgum, Murwillumbah, Mount Warning, Kingscliff, Hastings Point, Fingal Head, Chillingham, Casuarina and Cabarita Beach.

A total of 532 properties are currently being advertised and used for holiday letting within the Tweed Shire on this website alone. Prohibition of this type of short term rental accommodation would see prospective tourists decide against holidaying in the Tweed. The type of people looking for larger, dwelling style holiday accommodation can be generalised as families or pairs of families, seeking to save on the cost of expensive hotel accommodation. Holidaymakers seeking this type of accommodation may well choose other

coastal holiday locations such as The Gold Coast and the Sunshine Coast where they are able to rent full sized dwellings for a short term purpose.

The proponent of DA14/0132 has taken the responsible steps to seek Council consent for the proposed dual use. By seeking consent and operating in accord with a development consent a level of surety is provided to the proponent, the adjoining neighbours and Council alike. A summary of the issues within the Kingscliff Ratepayers and Progress Association submission and comment against each is provided below, it is however again noted the submission is emotive and not based on planning grounds:

- 1. Many Years ago the community worked long and hard to separate Residential use from Tourist Use.*

This statement is incorrect, especially as it relates to the areas of Salt, Seaside City and Casuarina. The establishment of Salt, Seaside City and Casuarina and the subsequent zoning of these localities as both 2(f) Tourist and 2(e) Residential/Tourist was a direct result of seeking to integrate both residential and tourist uses. The objectives of these zones specifically sought a mix of these uses to create vibrant coastal communities that would contribute positively to Tweed Shire. The proposal is permissible with Consent under the TLEP 2000 under which the application was lodged. Further Council have previously approved such developments.

- 2. The management measures proposed for the dual use of dwellings houses and an assertion of the failure of these measures.*

The submission selectively touches on the management measures proposed within the application and incorrectly describes them as only providing a phone number to Tweed Shire Council. The management measures proposed are reproduced below. These measures are consistent with those considered appropriate by Tweed Shire Council in approving DA 13/0247 & DA13/0463 and provide an appropriate suite of mechanism to ensure appropriate use of the properties or where inappropriate use may occur that this can be dealt with in a swift manner.

The management measures proposed are as follows:

- The use of the dwelling for tourist accommodation is restricted to the following:*
 - The dwelling is to let to a maximum of one (1) tourist group comprising a maximum of ten (10) persons at any one time which may consist of up to four (4) adults and six (6) children.*
 - A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.*
 - No more than four (4) vehicles can be at the site at anyone time with all car parking to be located within the property boundary of the subject site.*
 - An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*

- *A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88b restrictions on the use of the land. A copy of the Plan of Management shall be submitted to council for approval by the General Manger or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.*
- *Tenants agree to not make excessive noise as part of the letting agreement.*
- *A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.*
- *Tenants agree to a management policy (to be submitted for Council approval prior to commencement of use).*

The inclusion of the above management measures will be enforceable by Council as they will form conditions of approval.

This issue is considered to be appropriately addressed and is consistent with that previously given support by Council.

3. *An assertion of 'lies' between owners of the dwelling houses proposed for dual usage and their neighbours;*

This has no relevance to the development application. The proponent has taken the responsible approach and sought Council consent for this use.

4. *An assertion that the sites are residential and therefore already provide their 'best use and fulfil their economic and employment generating potential for the area' in accord with one of the 2(f) Tourism Zone objectives*

The submission selectively quotes part of the second primary objective of the 2(f) Tourist zone in an attempt to make the case that as the sites are residential land that they already meet the objective. As discussed above under the 2(f) and 2(e) zonings within the TLEP 2000 the sites are not strictly for residential purposes. Holiday letting provides a significant contribution to the Tweed Shire economy and it is given that broadly allowing holiday letting directly meets the objectives of the 2(f) and 2(e) zones of the TLEP 2000. Further Council have previously approved such developments.

5. *That the rates for those properties already approved for dual use be levied as commercial properties; and*

This has no relevance to the development application. How the properties will be levied for ratings purposes is not a matter for consideration.

6. *That the determination of 'dominate use' for ratings purposes is between the owner and the tax department.*

This has no relevance to the development application. How the properties will be levied for ratings purposes is not a matter for consideration.

The above issues are generally unsubstantiated assertions not based on planning merit and/or relate to how rates should be levied for such proposals. All these are issues which are not a matter for consideration as part of a development application."

Assessment

It is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

Public Authority Referral

Referral to NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose.

Response

A bush fire safety authority under section 100B of the Rural Fires Act 1997 was received from the service on 22 April 2014 inclusive of conditions regarding Asset Protection Zones, Evacuation and Emergency Management and Landscaping.

(e) Public interest

Whilst the proposed development at present complies with the zoning controls under Tweed Local Environmental Plan 2000, it is certain and imminent that the Tweed LEP 2014 will prohibit the development. As such, the development is not considered to be in the public interest.

OPTIONS:

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

The Council officers recommend Option 1.

CONCLUSION:

The development is prohibited by and inconsistent with the Tweed LEP 2014, specifically the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Development Application DA14/0154 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 18 DP 1162599 No. 330 Casuarina Way, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0154 Pt1



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:

This application was called up for Council determination by Councillors Longland and Bagnall. The proposed development is for dual use of an existing dwelling for tourist accommodation purposes. The dwelling would be leased to a maximum of eight visitors at any one time as holiday accommodation.

The existing dwelling was approved on 6 February 2012 for residential purposes only. The dwelling is a two storey structure and features a pool in the north eastern corner. The dwelling is located upon a 451m² lot and is accessed via a shared driveway that services four dwellings in total.

During the public notification process, two submissions were received objecting to the proposed use for tourist accommodation. One of the two objections was from an adjoining resident who has already experienced adverse amenity impacts from the dwelling being rented for tourist accommodation. These amenity issues relate to noise emanating from the property, particularly the pool and the parking of vehicles in the shared driveway.

The applicant has provided legal advice regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed LEP 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being *'a building or place comprising 2 or more different land uses.'* This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite. Importantly, the individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. This is contrary to the applicant's advice that the dwelling will be only used for up to 10 weekends a year for holiday letting.

The site is currently zoned 2(e) Residential Tourist and is defined as 'tourist accommodation' under the recently superseded Tweed Local Environmental Plan 2000. Whilst the proposed tourist accommodation is considered permissible under the 2(e) Residential Tourist zone, it is prohibited under the R2 Low Density Residential zone of the recently gazetted Tweed Local Environmental Plan (LEP) 2014. The proposal is not considered to be consistent with the objectives of the R2 Low Density Residential zone under the new plan.

There are various legal precedents created through the NSW Land and Environment Court, which require consent authorities to give greater weight to draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

On that basis, it is considered that the Tweed LEP 2014 should be given increased weighting in the determination of the subject development application, and the proposal, as a prohibited use not in accordance with the objectives of the zone, should therefore be refused.

It is also considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a small lot and is surrounded by residential dwellings. It is also considered that the amenity of the holiday users may also be adversely impacted due to the Casuarina Way frontage and potential conflict from adjoining permanent residents.

RECOMMENDATION:

That Development Application DA14/0154 for dual use of existing dwelling - tourist accommodation and residential at Lot 18 DP 1162599 No. 330 Casuarina Way, Kingscliff be refused for the following reasons:

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

REPORT:

Applicant: Mr RJ Stevenson
Owner: Mr Robert J Stevenson & Mrs Jan M Stevenson
Location: Lot 18 DP 1162599 No. 330 Casuarina Way, Kingscliff
Zoning: 2(e) Residential Tourist (TLEP2000)
Cost: Not Applicable

Background:

The proposed development is for dual use of an existing dwelling for tourist accommodation purposes. The dwelling would be leased to a maximum of eight visitors at any one time as holiday accommodation.

History

The existing dwelling was approved on 21 February 2012 for residential purposes only. Since that time, the dwelling has been, on occasion, utilised for tourist accommodation on a commercial basis.

Of note, an application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Tweed LEP 2014 (albeit in draft form at that time). At the Meeting of 17 October 2013 Councillors resolved to approve the application, against officer recommendation, with the application brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at this meeting.

Proposed Development

The development application seeks the dual use of an existing dwelling for residential and tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short-term holiday letting purposes. The proposed development does not require any physical alterations to the existing dwelling.

The applicant advises that to address any issues associated with the short-term letting of the dwelling, the following conditions are proposed:

- The dwelling is to be let to a maximum of one tourist group comprising a maximum of eight persons up to four adults and four children at any one time;
- No more than two vehicles can be at the site at any one time;
- No animals are to be housed on the premises overnight in accordance with the Casuarina 88B Instrument;
- An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste;
- Tenants agree to not make excessive noise as part of the letting agreement; and
- Tenants agree to a management policy (to be submitted to Council for approval prior to commencement of use).

The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing two storey, three bedroom dwelling for the purpose of short-term tourist accommodation.

The Subject Site

The site is regular square shaped with a 21.6m frontage to Casuarina Way and accessed via a shared driveway that services a total of four single dwellings. The site has a total land area of 451.05m². The site is generally flat and features low landscaping on the street frontage to the rear of the dwelling. On-site parking is within a double garage accessed via the shared driveway. The site does not feature any visitor parking.



Figure 1 - Aerial Photo of 330 Casuarina Way - Kingscliff

The existing dwelling is of two storey construction three bedrooms and two bathrooms with an outdoor living area orientated to the north east with adjoining in ground pool.

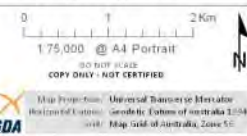
SITE DIAGRAM:



Locality Plan
 Lot 18 DP 1162599
 No.330 Casuarina Way, Kingscliff


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Cadastre 10/06/2014
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CLIENT: **ALINE PROJECTS**

PROJECT: **PROPOSED RESIDENCE LOT 18 CASUARINA WAY KINGSCLIFF**

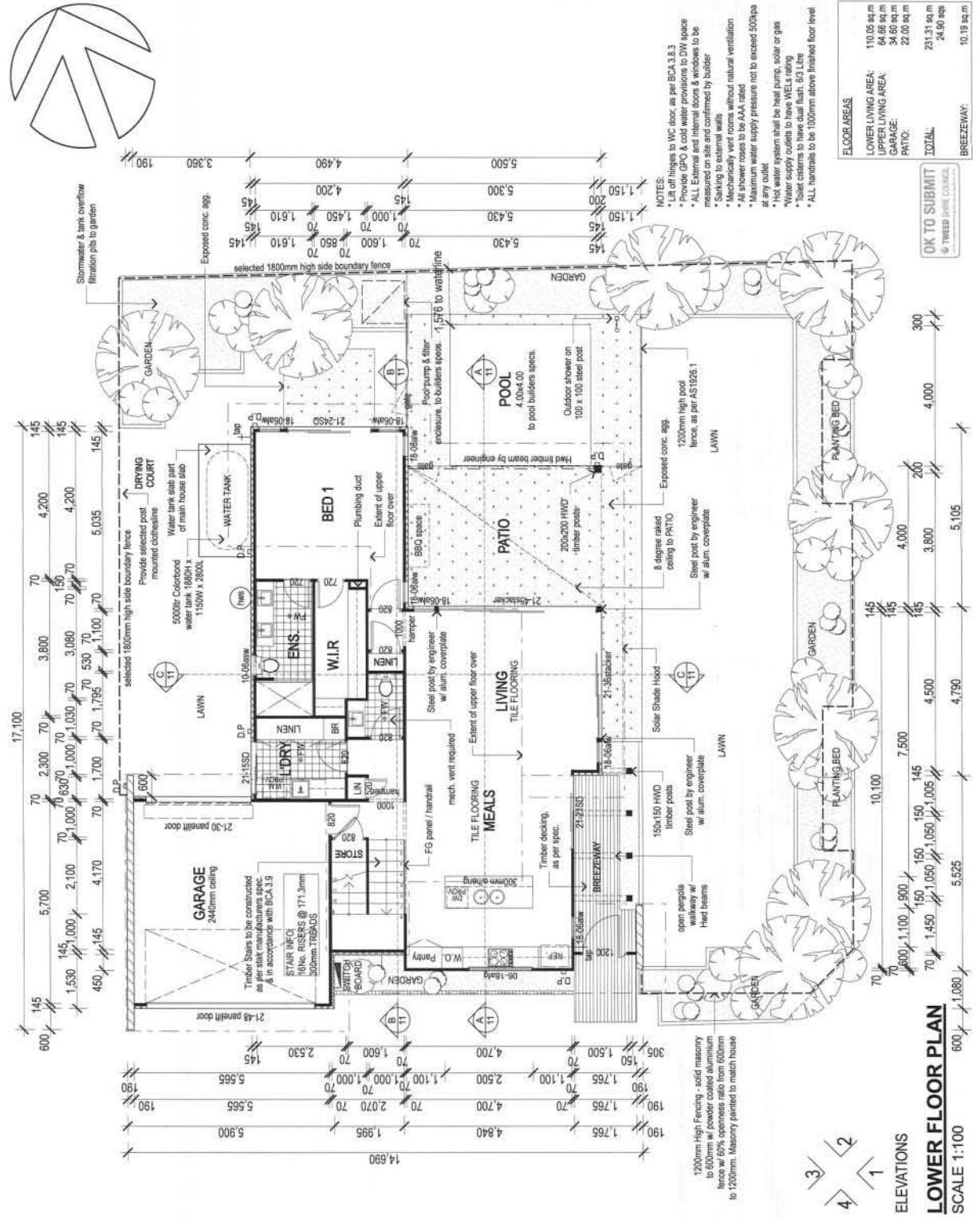
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DESIGN: CUSTOM







DATE: A 12/08/2011

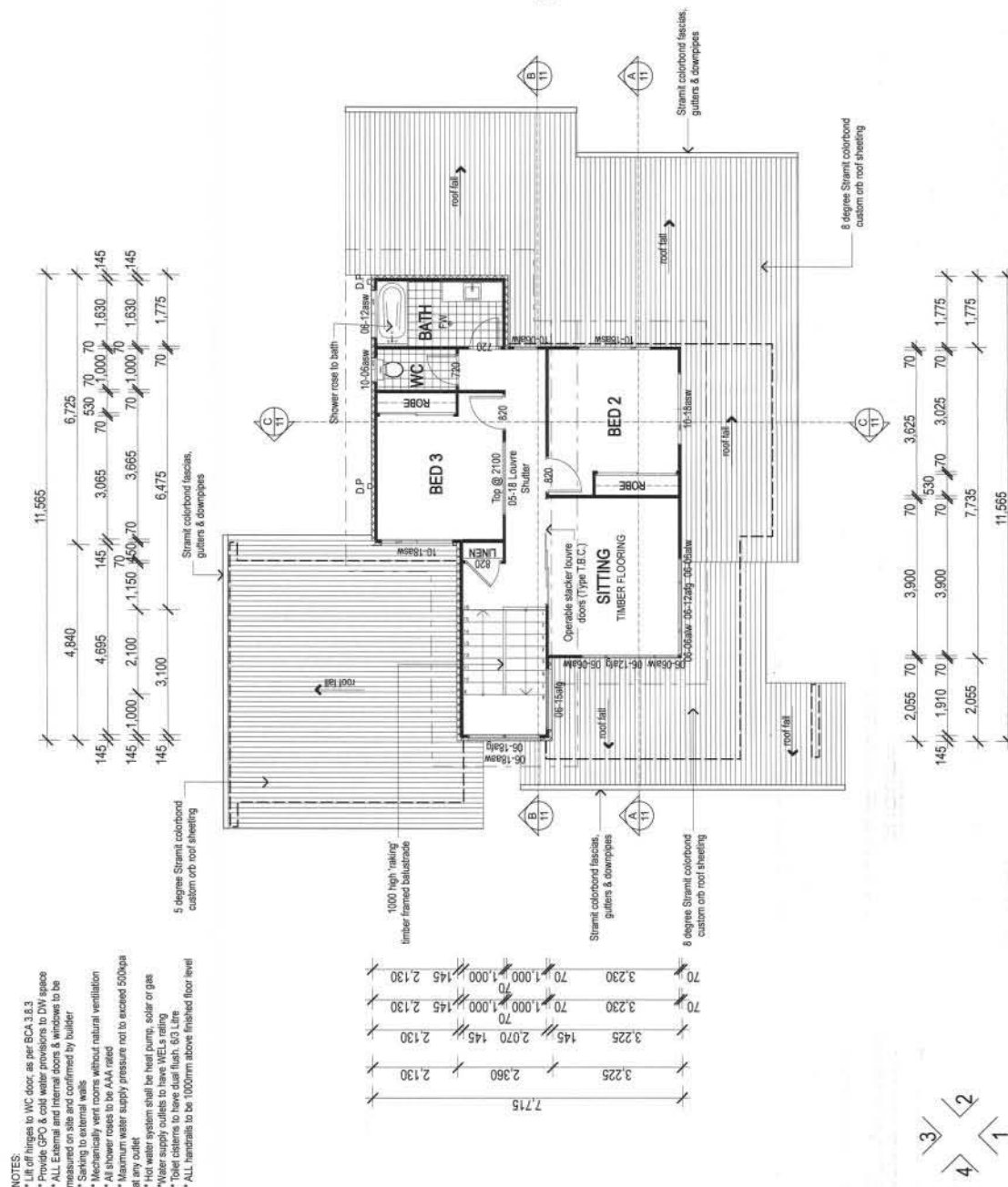
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AMENDMENTS: B20811 CH91011
D20811 J051011
E20811 K011111
F07011

SHEET NUMBER: 5 of 18
JOB NUMBER: **4359**

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ELEVATIONS
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SCALE 1:100



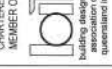
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CLIENT
ALINE PROJECTS

PROJECT
PROPOSED RESIDENCE LOT 18
CASUARINA WAY
KINGSCLIFF

DRAWN BY
RH

CHECKED BY
SO

DESIGN
CUSTOM

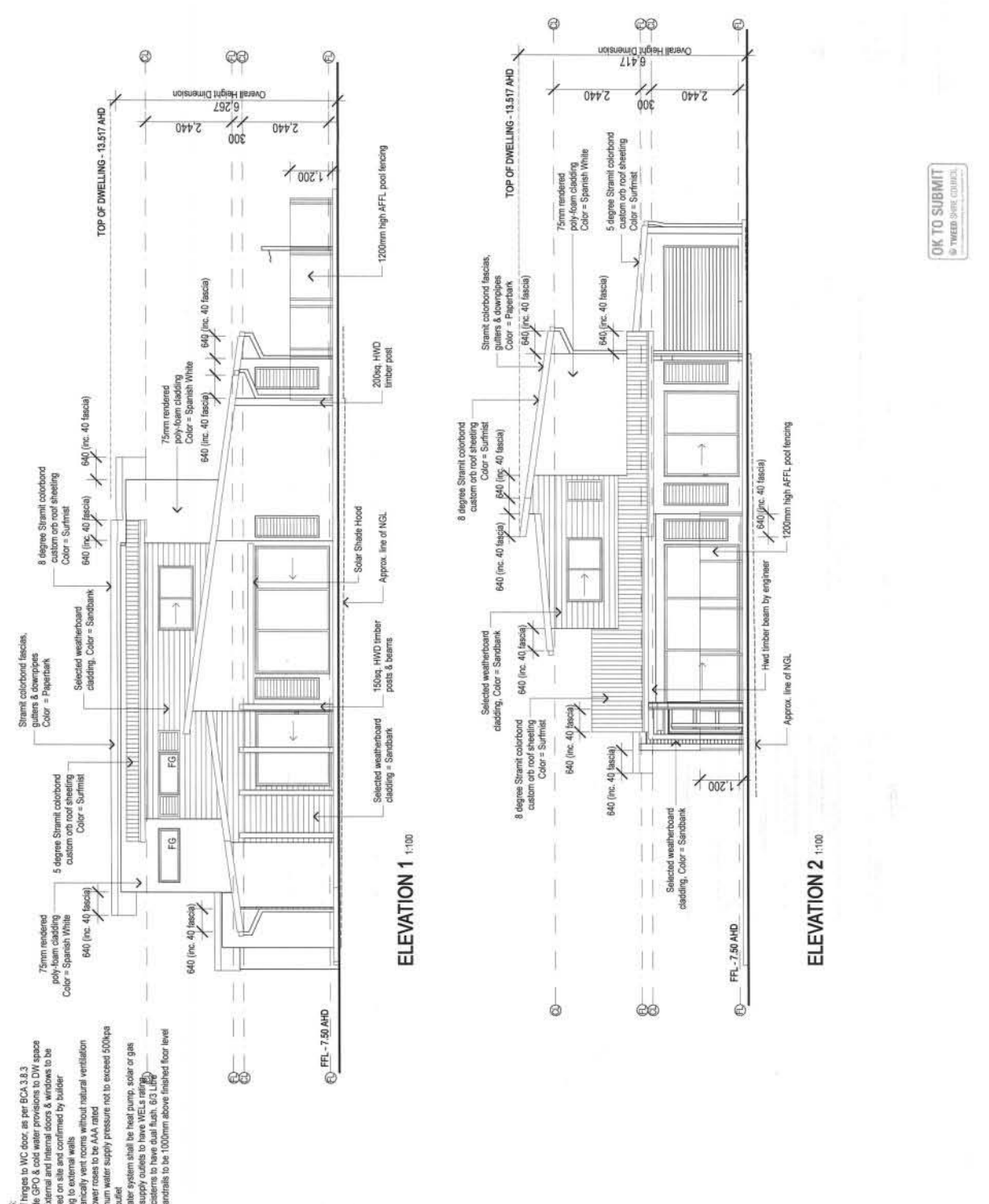
DATE
A 12/08/2011

SCALES
1:100 @ A3

AMENDMENTS
R252811 G197011
G252811 G197011
G252811 J251111
E252811 K211111
P252811

SHEET NUMBER
6 of 18


JOB NUMBER
4359



- NOTES**
- Lift off hinges to PVC door, as per BCA 3.9.3
 - Provide GPO & cold water provisions to DTV space
 - Mechanical exhaust fans to be installed on site and confirmed by builder
 - Sarking to external walls
 - Mechanically vent rooms without natural ventilation
 - All shower roses to be AAA rated
 - Maximum water supply pressure not to exceed 500kpa at any outlet
 - Hot water system shall be heat pump, solar or gas
 - Water supply outlets to have WELA rating
 - Toilet cisterns to have dual flush, 603 Liter
 - ALL handrails to be 1000mm above finished floor level

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

The proposed development is consistent with the aims of the Plan, with the proposed dual use not considered to compromise natural character, economic vitality, ecological integrity or cultural fabric.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the TWEED LEP 2000 relates to ecologically sustainable development. The TWEED LEP 2000 aims to promote development that is consistent with the four principles of ecologically sustainable development, being: the precautionary principle; intergenerational equity; conservation of biological diversity and ecological integrity; and, improved valuation, pricing and incentive mechanisms.

The proposed development is considered to be generally consistent with the four themes of ecologically sustainable development as the application does not result in any physical works on the site, but rather a change of use to the existing dwelling with no unacceptable environmental impacts such as loss of amenity or excessive noise anticipated.

Clause 8 - Consent Considerations

The subject development is located on land zoned 2(e) Residential Tourist, the primary objectives of which is:

‘to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.’

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

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

Clause 11 - Zone Objectives

The subject site is located within the 2(e) Residential Tourist zone. The development does not involve any changes to the existing dwelling and ancillary structures.

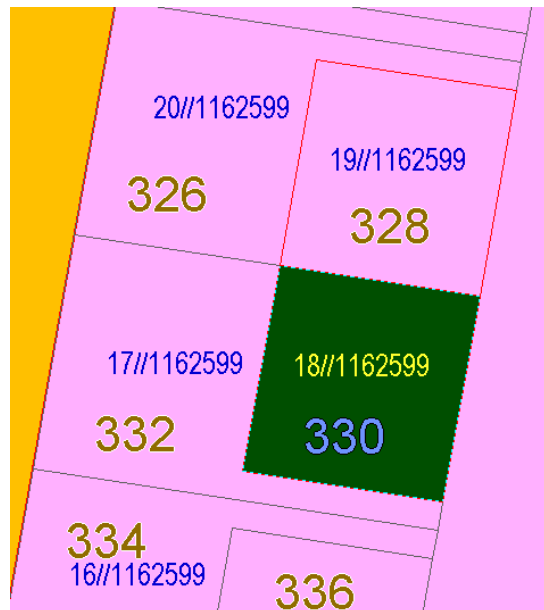


Figure 2 - Zoning of Site

The primary objective of that zone and consistency of the proposal with that objective has been outlined above. The secondary objective permits other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.

It is submitted that the proposal, being a form of residential/tourist development within an established residential area is suitable in scale and form as the appearance of a single dwelling is maintained. The proposal is not considered to have significant effects on the built character of the area.

Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services provided through the dwelling development, previously approved by Council.

Clause 16 - Height of Building

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

Clause 35 - Acid Sulfate Soils

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

Other Specific Clauses

Clause 54- Tree Preservation Order 2011 - The proposal does not require the removal of any vegetation to facilitate the dual use of the existing dwelling, including the removal of Koala food trees.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The subject land is designated coastal land and therefore this clause applies. The provisions of this clause state:

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
 - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposal is considered 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

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The existing dwelling is separated from Cudgen Creek and the ocean foreshore by similar residential lots. Public access points to the both Cudgen Creek and the foreshore are available to the north and south via Indigo Lane and Ocean Avenue. The development is generally consistent with the zone objectives of

Tweed LEP 2000, the requirements of relevant Council DCP's and consistent with ESD principles and objectives. It is therefore considered that the proposal satisfies the matters for consideration under SEPP 71.

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

The Tweed Local Environmental Plan 2014 was gazetted (as amended) on 4 April 2014 and is applicable to the site.

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 not considered to be in accordance with the aims of this plan having regard to its prohibition in the R2; Low density zone. The proposal will not result in a sustainable tourism industry appropriate in this locality of the Tweed.

1.4 Definitions

The Tweed LEP 2014 zoning applied to the subject site is R2: Low Density Residential. The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation* and *residential accommodation*:

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

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

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

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

4 Prohibited

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

Residential accommodation is permissible in the zone, however, as tourist and visitor accommodation is prohibited, approval of the development would result in creating Existing Use Rights for the dual use proposal.

2.3 Zone objectives and Land Use Table

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; and
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

The proposed development is compliant to the objectives of Zone R2 – Low Density Residential. The flexible use will allow the dwelling to be used for permanent residential purposes. It is noted that tourist accommodation is prohibited under the DTWEED LEP 2012. The R2 - Low density Zone is not an equivalent zone to the 2(e) Residential Tourist zone. It is noted Council are aware of this issue and amendments to the LEP to permit tourist accommodation in these area(s) is being considered.

Ability to use the dwelling for both permanent resident uses well as for short-term holiday letting will not detract from the surrounding low density character of the Collins Lane (Casuarina sic) area.

Whilst the applicants' justification above is noted, it is considered that the subject application would not comply with the zone objectives.

The proposed development constitutes the use of the dwelling for residential accommodation or tourist and visitor accommodation. Tourist and visitor accommodation is not considered to be consistent with the above objectives as it does not provide for the housing needs of the community or enable a land use which provides facilities or services to meet the day to day needs of residents.

Given that the tourist and visitor accommodation component of the proposed development is prohibited within the R2 Low density residential zone and inconsistent with the objectives of the zone, the application should be refused on this basis.

In light of the above advice, it is considered that the refusal of the proposed development is appropriate. The draft LEP was gazetted on 4 April 2014 as the Tweed LEP 2014, therefore the draft plan is considered to have been certain and imminent given that it was subsequently commenced.

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

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

This clause of the Tweed LEP 2014 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 is not considered to either offer opportunities with respect to provision of a new public access or impact upon any existing public access at the coastal foreshore.

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*

- (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
(ii) *the location, and*
(iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed development does not result in any development work as it relates solely to a change of use of an existing dwelling to dual use. As such the proposal is considered to be generally acceptable having regard to the above provisions.

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*

- (i) *any significant overshadowing of the coastal foreshore, and*
(ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development will not result in any overshadowing or loss of views from a public place to 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 a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (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

It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard as the application relates to a change of use of an existing building only.

- (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 nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

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 require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

- (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*

As outlined elsewhere in this report, the subject application relates only to a change of use of an existing structure with no development work proposed. The existing dwelling is Council approved and thus stormwater provisions would have been implemented through the original development work on the site. The proposal is considered not to contravene the above controls and satisfies the above clause.

- (d) *the proposed development will not:*
- (i) *be significantly affected by coastal hazards, or*
- (ii) *have a significant impact on coastal hazards, or*
- (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature which does not involve any development works.

In accordance with the advice provided above, as the draft LEP is now considered to be *certain and imminent* (in that the Tweed LEP 2014 is gazetted), the application is not supported and it is recommended that the application be refused. The application is recommended for refusal as the proposal is prohibited.

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 14 March 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.

Legal Advice from Applicant

The applicant has provided legal advice regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed LEP 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being "a building or place comprising 2 or more different land uses." This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite. Importantly, the individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. This is contrary to the applicant's advice that the dwelling will be only used for up to 10 weekends a year for holiday letting.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling was approved on 21 February 2012 by way of development application DA11/0633 and was assessed in accordance with the provisions of DCP A1. The dwelling was determined as generally compliant with this DCP. No works are proposed in conjunction with this application for use only.

A2-Site Access and Parking Code

The existing dwelling provides for a total of two on-site car parking spaces within a double garage. A variation has been requested to delete the requirement for staff and delivery vehicle parking as the nature of the proposal does not require it.

Due to the nature of the subject lot, the dwelling shares a battleaxe style driveway with three other dwellings all containing a double garage. The site does not contain any visitor parking. The site fronts Casuarina Way, therefore parking, while permitted is constrained within the road reserve due to a footpath and the volume of traffic experienced in the locality.

An adjoining owner has stated that visitors and cleaners park in the driveway, restricting access for other owner's onsite.

While the numbers of spaces are considered satisfactory for long term residents, the reality is that constant short-term rentals and maintenance staff may not adhere to the short-term letting conditions, adversely impacting upon adjoining residents' ability to use the driveway.

A4-Advertising Signs Code

No signage detail was provided for the subject proposal.

A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section. The proposal was notified to adjoining owners for 14 days from Wednesday 26 March to Wednesday 9 April 2014. Two submissions were received as a result of these processes. These submissions are discussed elsewhere in this report.

A13-Socio-Economic Impact Assessment (SIA)

The proposal does not exceed the threshold trigger for the preparation of a social impact assessment as identified within DCP A13, nor is the development designated. Therefore, a SIA is not required.

B5-Casuarina Beach

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

B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit at the Area Team Meeting and it is advised that as there is no change in BCA Building Class further comments are not required in relation.

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

The proposal does not impact upon coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The proposal does not impact upon coastline management strategies.

Tweed Coast Estuaries Management Plan 2004

The proposal does not impact upon estuaries management strategies.

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

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

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

Amenity

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

It is considered unrealistic that all short-term visitors will adhere to this management plan, resulting in adverse amenity impacts for adjoining owners, specifically, in regard to excessive noise and driveway obstructions. While the owner of the property states that the property will only be rented out for 10 weekends a year, this cannot be enforced, therefore occupancy can be up to 100%. A further statement from the applicant contradicts this stating the property will be let for more than six months per year.

The amenity of the tenants should also be considered. These short-term tenants should be permitted to enjoy the property within the bounds of the management plan for the dwelling. The potential for neighbourly conflict will remain, despite adherence to this management plan, given the proximity of the adjoining dwellings that are for long term rental or permanent residents.

Context and Setting

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

Access, Transport and Traffic

As previously mentioned, while the proposal does provide a double garage, access to this garage is shared with three other dwellings within a battle-axe design driveway. Access to the shared driveway is hindered if any resident does not park in the garage or on the street. Short-term tenants and tradesmen or cleaners are more likely to park in this driveway against the management policy due to unfamiliarity with the problems associated with parking in this way.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation was permissible within the Tweed LEP 2000 in the 2(e) zone. The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the new planning controls on the site it is not considered that the site is suitable for the proposed dual use (tourist and visitor component) development.

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

The proposal was notified to adjoining properties in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 26 March 2014 to Wednesday 9 April 2014. During this time, two submissions were received; including a submission from the Kingscliff Ratepayers and Progress Association (this submission covered eight dual use applications including the subject DA).

Issues raised include the following:

- Excessive noise from the onsite pool from 9am to 10pm at night.
- Disregard for permanent residents adjoining due to holiday status of property tenants.
- Holiday letting is not suitable in the subject location.
- Dwelling may only house 10 tenants however others can come to visit causing excessive noise. (note that the number of tenants has been reduced to eight).
- Driveway is regularly and consistently blocked by tenants and cleaners, blocking access for tenants at the rear.
- People come to party in large groups: excessive noise during day and late at night.
- The community have worked long and hard to separate tourist and community uses.
- Tenants cannot be controlled/supervised. A phone number to Tweed Shire Council for adjoining owners is of no assistance at 2am if an issue arises.
- Satisfactory evidence has not been provided that this type of development is needed in the Tweed.
- The residential use is fulfilling the potential for the site and tourist uses are not necessary.
- The properties should be rated as commercial.

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

- There are currently over 30000 properties listed for short-term accommodation Australia wide, 532 in the Tweed Shire alone. Rather than conduct the use through online booking, the proponent has taken reasonable steps to seek Council consent for the proposed use. This will give the owner a, Tweed Council and the adjoining owner's surety in regard to operating within the bounds of any consent granted.
- The objectives of the 2(e) zone is to integrate both residential and tourist uses. The proposal is permissible in the zone.
- Management measures proposed and imposed as conditions of approval ensure inappropriate use can be dealt with.
- The 2(e) zoning is not strictly for residential purposes.
- The rating of the property has no bearing on the Section 79C Assessment.

- The adjoining owner does not reside at the property at the rear of the site therefore would not be aware of the goings on at the subject site.
- The home is let out less than 10 times a year and is not intended to be a party house to avoid damage at the property.
- It should be noted that a letter of support was attached to the applicants response to the two submissions from an adjoining owner within the four dwelling complex.

Assessment

While the owners have the best intentions in regard to the use of the site consistent with the submitted management plan, the reality is normally quite different. Holiday makers operate on a different timeframe than permanent residents. Those renting the house for a holiday should be able to enjoy the property within reason without experiencing conflict with adjoining residents. Similarly, residents should reasonably expect the amenity of the locality to be reflective of the residential use of the site. Typically, residents would tolerate higher noise levels from adjoining owners on weekend, while for holiday makers, everyday is a weekend and noise levels are more likely to reflect this. This is not considered satisfactory.

It is recognised that the owner of 332 Casuarina Way does not reside at the property. However, the submission was made by a relative of the owner, who has resided at the property since new, therefore is well aware of the amenity issues occurring onsite.

The potential landuse conflict between permanent or long term rentals and holiday makers is intensified by the size of the subject site, the onsite pools proximity to neighbours and the shared driveway. These circumstances of the case provide increased potential for adverse amenity impacts that have not been satisfactorily justified.

Compliance for breeches of the proposed conditions of consent is also considered relevant to the assessment of this application. The approval of multiple applications for this type of use within the Kingscliff area will have implications for Council's Compliance Unit. The potential for breeches are high given the type of accommodation, as opposed to an onsite manager situation and an after hours contact. This potential for increased compliance matter in the Tweed is not desirable.

It is Council's intention to maintain availability of flexible tourist and visitor accommodation within larger scale developments at Casuarina rather than residential dwellings. This is reflected in the objectives of the new Tweed LEP 2014 R2 zoning and supported by State government policy.

(e) Public interest

Whilst the proposed development at present complies with the zoning controls under Tweed Local Environmental Plan 2000, the new Tweed LEP 2014 prohibits the development. As such, the development is not considered to be in the public interest.

OPTIONS:

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

The Council officers recommend Option 1.

CONCLUSION:

The development is prohibited by and inconsistent with the Tweed LEP 2014, specifically the objectives of the R2 Low Density Residential zone. The proposal is considered contrary to the amenity of the existing area and the use of the property for tourist purposes is likely to adversely impact the locality. In addition, given the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed application be refused development consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Development Application DA14/0059 for a Change of Use to Dual Use - Residential and Tourist Accommodation at Lot 22 DP 1030322 No. 38 Collins Lane, Casuarina

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0059 Pt1



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 has received a development application that seeks the dual use of an existing dwelling for tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes.

The proposed development does not require any physical alterations to the existing dwelling house which was approved by Council on 21 June 2004 under DA04/0269. The application was advertised for a period of 14 days, during which time one submission was received which is detailed further later in this report.

The applicant has provided legal advice regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed LEP 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite. Importantly, these individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard.

The site is zoned 2(e) Residential Tourist and 7(f) Environmental Protection and the development is defined as 'tourist accommodation' under the current Tweed Local Environmental Plan 2000 with the proposal permissible with consent in the 2(e) Residential Tourist zone, on which the dwelling is located.

It is noted that the draft Tweed Local Environmental Plan (LEP) 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. Under the draft Tweed LEP 2012, the entire site is zoned R2 Low Density Residential where tourist and

visitor accommodation would not be permissible. In addition, the proposal is not considered to be consistent with the objectives of the R2 Low Density Residential zone under this plan.

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

There are various legal precedents created through the NSW Land and Environment Court, which require consent authorities to give greater weight to draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

On that basis, it is the officer's view that the draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and the proposal, as a prohibited use not in accordance with the objectives of the zone, should therefore be refused.

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

RECOMMENDATION:

That Development Application DA14/0059 for a change of use to dual use - residential and tourist accommodation at Lot 22 DP 1030322 No. 38 Collins Lane, Casuarina be refused for the following reasons:

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

REPORT:

Applicant: Mr SG Douglas
Owner: Mr Scott G Douglas
Location: Lot 22 DP 1030322 No. 38 Collins Lane, Casuarina
Zoning: 7(f) Environmental Protection (Coastal Lands) (TLEP2000)
Cost: Not applicable

Background:

Proposed Development

The development application seeks the dual use of an existing dwelling for residential and tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes. The proposed development does not require any physical alterations to the existing dwelling house.

The applicant advises that to address any issues associated with the short term letting of the dwelling, the following conditions are proposed:

- The dwelling is to be let to a maximum of one tourist group comprising a maximum of 10 persons up to four adults and six children at any one time;
- No more than four vehicles can be at the site at any one time;
- No animals are to be housed on the premises overnight in accordance with the Casuarina 88B Instrument;
- An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste;
- Tenants agree to not make excessive noise as part of the letting agreement; and
- Tenants agree to a management policy (to be submitted to Council for approval prior to commencement of use).

The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing three bedroom single dwelling for the purpose of short-term tourist accommodation.

Site

The site is regular and rectangular shaped with a 12m frontage to Collins Lane and rear access to community land that provides a buffer to the coastal reserve. The site has a total land area of 746m² and is generally flat and landscaped to the rear of the existing dwelling. The existing dwelling was approved under DA04/0269 (see below) and consists of a part single, part two storey dwelling with three bedrooms, open kitchen/dining/living area, outdoor deck (orientated east), rumpus room and bathroom/toilet laundry facilities. There is a double garage and sufficient parking on the driveway for two additional vehicles, located at the Collins Lane frontage.

The site displays a dual zoning with the majority of the site zoned 2(e) Residential Tourist with a small portion to the east of the site zoned 7(f) Environmental Protection. Vegetated areas on the site are located to the eastern portion, within the 7(f) zone.

A Section 88B Instrument applies to the subject property restricting the keeping of dogs and specifically requires dog registration with Tweed Shire Council:

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

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

The restriction was put in place to mitigate the impacts of domestic animals such as dogs and cats upon native wildlife. Tweed Shire Council is empowered to release, vary or modify the restriction previously referred to.

History

The existing dwelling on site was approved on 21 June 2004 under DA04/0269.

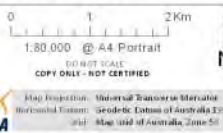
SITE DIAGRAM:



Locality Plan
 Lot 22 DP 1030322
 No.38 Collins Lane, Casuarina

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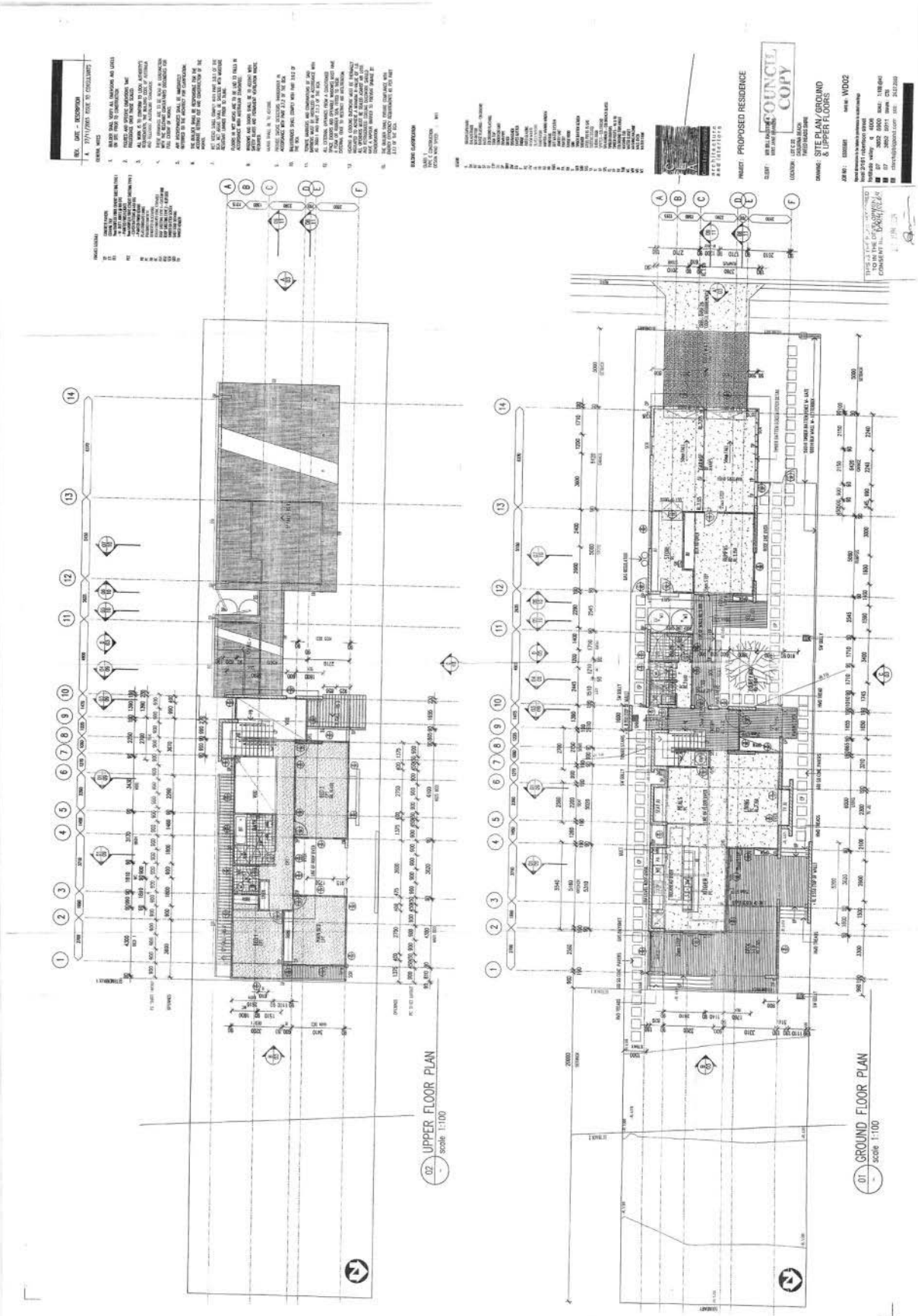
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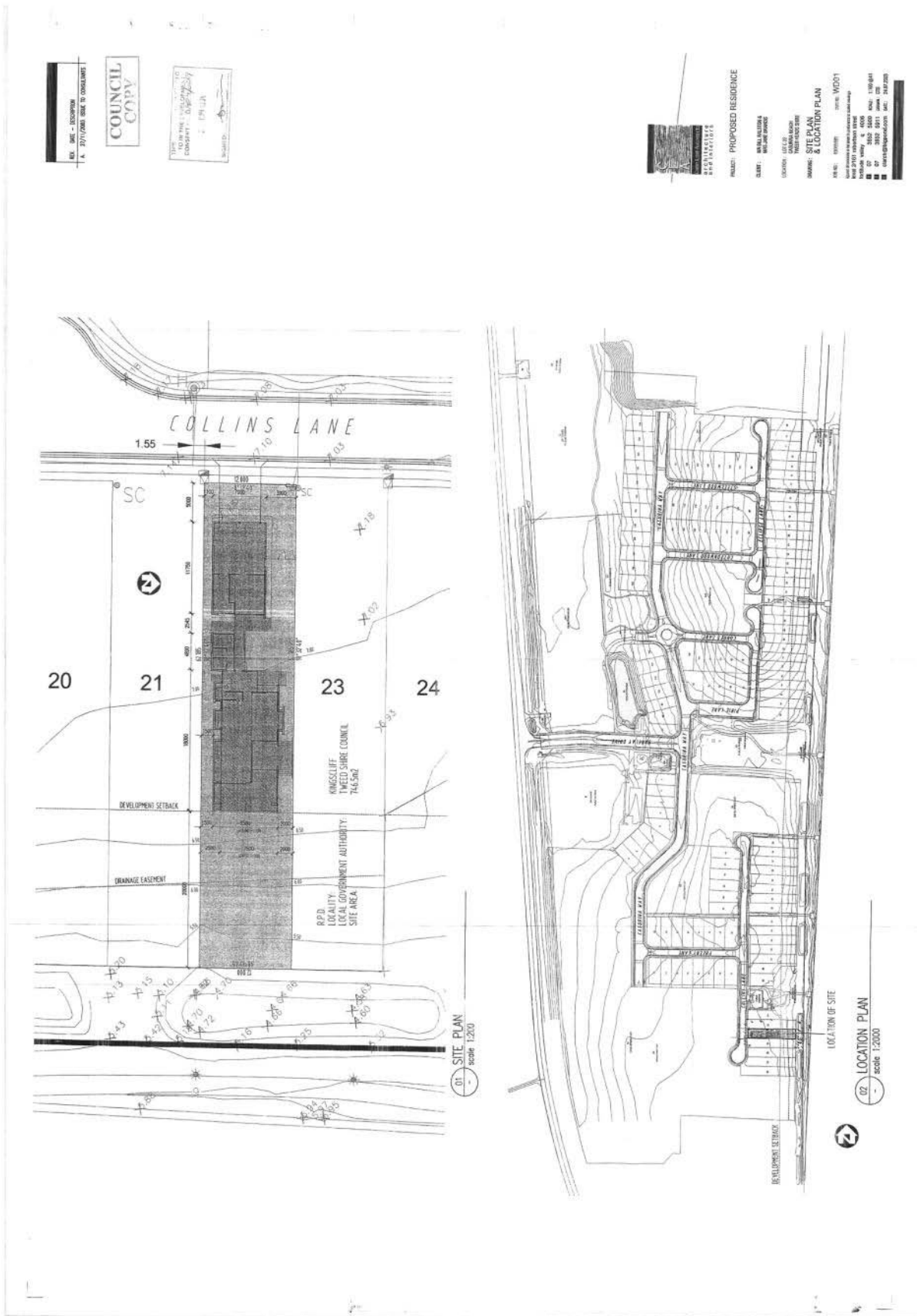


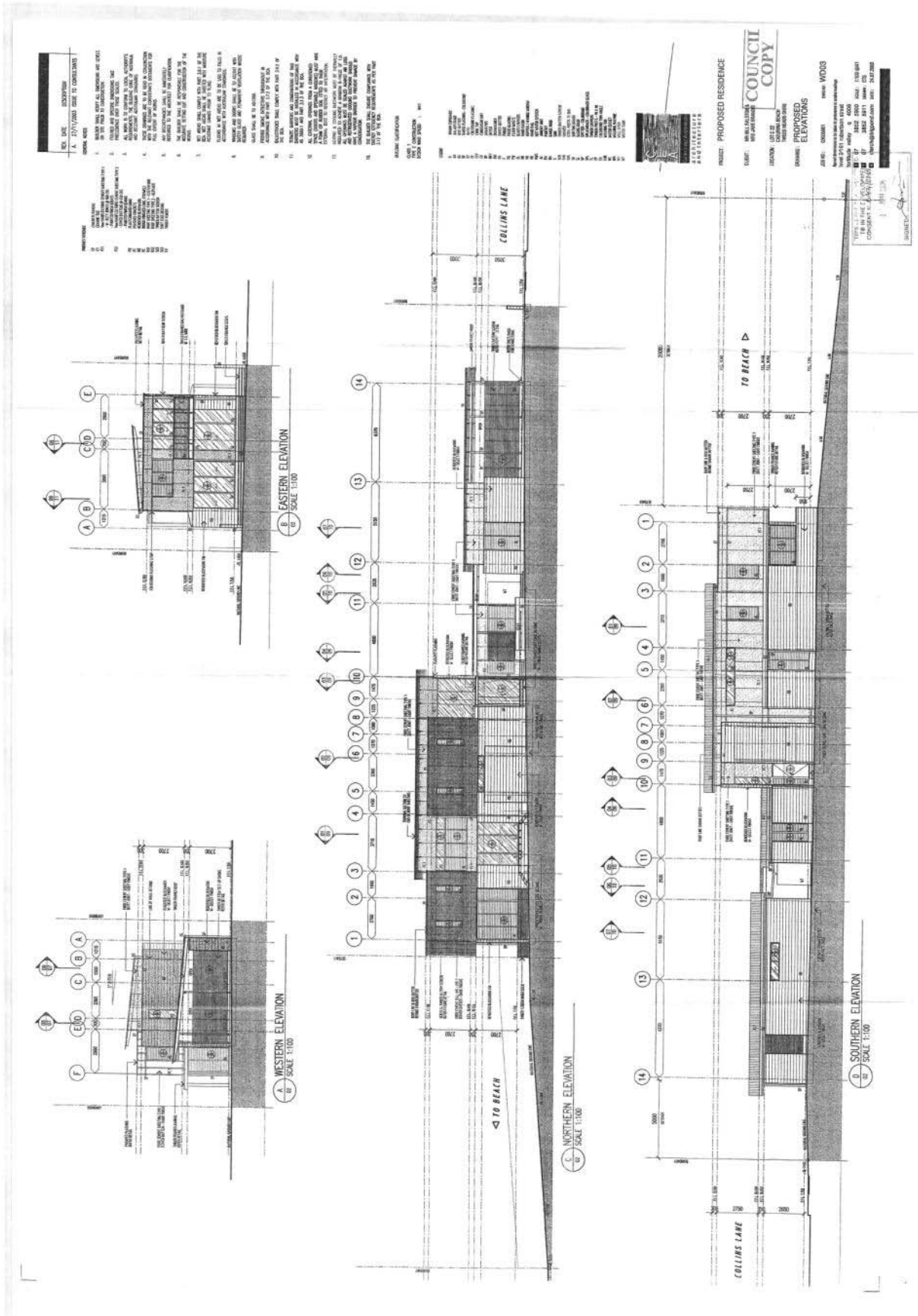
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DEVELOPMENT/ELEVATION PLANS:







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

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

Tweed Local Environmental Plan 2000

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.

Whilst it is considered that the proposal may contravene the vision of the plan with respect to the management of growth in a way to retain the desired character of the Tweed, it is not considered that refusal of the application with respect to this is warranted in this regard.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the TLEP 2000 relates to ecologically sustainable development. The TLEP 2000 aims to promote development that is consistent with the four principles of ecologically sustainable development, being: *the precautionary principle; intergenerational equity; conservation of biological diversity and ecological integrity; and, improved valuation, pricing and incentive mechanisms*.

The proposed development is considered to be generally consistent with the four principles of ecologically sustainable development. The application does not result in any physical works on the site, but rather a change of use to the existing dwelling with no unacceptable environmental impacts anticipated.

Clause 8 - Consent Considerations

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

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

In this instance, the subject development is located on a split zoned site, however the proposed use is to located within an existing dwelling which is wholly located on land zoned 2(e) Residential Tourist, the primary objectives of which are:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing*

and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.

- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the development (as 'tourist accommodation') could be seen to be consistent with the above objectives, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone Objectives

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

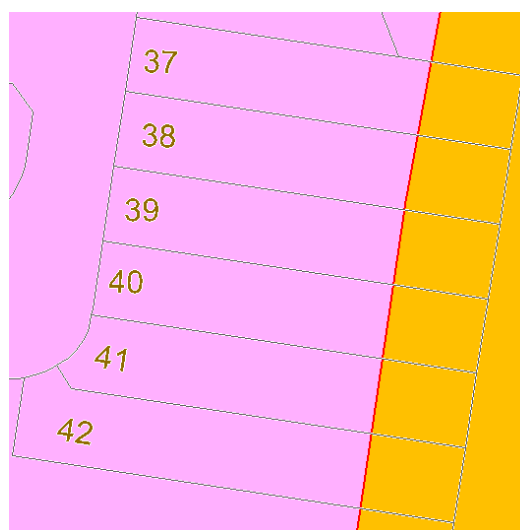


Figure 1: Split Zoning of the Site

The development area is zoned 2(f) Tourism which has the following zone objectives:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing*

and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.

- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the development could be seen to achieve consistency with these objectives, as outlined above the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services provided through the dwelling development, previously approved by Council.

Clause 16 - Height of Building

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

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

The objective of this clause is '*to protect land that may be susceptible to coastal erosion processes from inappropriate development.*'

In this instance it is noted that the site is partially identified as being within the 7(f) zone, however the existing dwelling to which this application relates is located entirely outside this zone. As such, the proposal is not considered to contravene the above objective.

Clause 35 - Acid Sulfate Soils

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

Clause 39A – Bushfire Protection

The site is bushfire prone. As such, the application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose. A bush fire safety authority under section 100B of the Rural Fires Act 1997 was received from the service on 11 March 2014 inclusive of conditions regarding Asset Protection Zones, Evacuation and Emergency Management, Design and Construction and Landscaping which would be attached to any consent. Having regard to this, the proposal is considered to be acceptable with respect to bushfire protection.

Clause 54 – Tree preservation order

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The proposal does not require or propose any removal of vegetation, given its nature as a change of use to an existing structure. As such, this clause is satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The subject land is designated coastal land and therefore this clause applies. The provisions of this clause state:

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
 - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the NSW Coastal Policy 1997, the Coastline Management Manual or the North Coast: Design Guidelines.

Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing of adjacent open space. The proposal does not contradict the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

Clause 33: Coastal hazard areas

The rear (east) of the site is subject to the Maximum 2100 hazard projection line as identified by Council's updated 2014 mapping. The subject application relates only to the use of a building previously approved by Council and does not include and encroachment into this area. The proposal is considered to be acceptable having regard to this clause.

Clause 43: Residential development

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

Clause 75: Tourism development

The plan generally refers to the location of large scale resort developments within prime tourism development area such as Kingscliff and Tweed Heads. The proposal does not meet the definition for small scale or low key tourism development as defined by the regional plan. The subject application is considered to be consistent with the above clause and the provisions of the North Coast Regional Environmental Plan generally.

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The proposal will not restrict public access to the foreshore or result in any additional overshadowing of foreshore area as the application relates to an extension of permissible uses on the site with no physical development proposed. It is considered that the proposal satisfies the matters for consideration under SEPP 71.

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

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

Part 1 Preliminary

1.2 Aims of Plan

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

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
 - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
 - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
 - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,

- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
- (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

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

1.4 Definitions

Under this Plan, the proposed use of the existing dwelling as tourist accommodation is defined as *Tourist and Visitor Accommodation*:

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

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

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

This is a prohibited use in the R2 Low Density Residential zone.

1.8A Savings provision relating to development applications

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

With respect to this it is noted that the subject application was lodged with Council on 30 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 under the provisions of this plan.

2.3 Zone objectives and Land Use Table

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; and
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

"The proposed development is compliant to the objectives of Zone R2 – Low Density Residential. The dwelling is currently used for low density purposes. It is noted that tourist accommodation is prohibited under the DLEP2012. However, ability to use the dwelling for both permanent residency as well as for short term holiday letting will not detract from the surrounding low density character of the Collins Lane area. The dwelling will still present as low density development and will be restricted in capacity as per recommended conditions.

The proposed development does not offend or compromise the objectives of the draft R2 zone and therefore should be supported as it is allowable with consent under the current TLEP2000."

Whilst the applicants' justification above is noted, it is considered that the subject application would not comply with the zone objectives.

The proposed development constitutes the use of the dwelling for tourist and visitor accommodation which is not considered to be consistent with the above objectives as it does not provide for the housing needs of the community or enable a land use which provides facilities or services to meet the day to day needs of residents.

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

Given that the proposed development is prohibited with the subject zone and not considered to be in accordance with the objectives of the zone, it is considered that the application should be refused on this basis.

It is considered that the refusal of the proposed development is appropriate. The draft LEP was gazetted on 4 April 2014 as the Tweed Local Environmental Plan 2014, therefore the draft plan is considered to have been certain and imminent given that it was subsequently commenced.

Approval of the development would result in creating continuance of existing use rights for the development, which is not considered to be good planning practice.

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

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 is not considered to either offer opportunities with respect to provision of a new public access or impact upon any existing public access at the coastal foreshore.

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

The proposed development does not result in any development work as it relates solely to a change of use of an existing dwelling to dual use. As such the proposal is considered to be generally acceptable having regard to the above provisions.

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

The proposed development will not result in any overshadowing or loss of views from a public place to 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 a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (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*

It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard as the application relates to a change of use of an existing building only.

- (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 nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

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 require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

- (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*

As outlined elsewhere in this report, the subject application relates only to a change of use of an existing structure with no development work proposed. The existing dwelling is Council approved and thus stormwater provisions would have been implemented through the original development work on the site. The proposal is considered not to contravene the above controls and satisfies the above clause.

- (d) the proposed development will not:*
 - (i) be significantly affected by coastal hazards, or*
 - (ii) have a significant impact on coastal hazards, or*
 - (iii) increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature which does not involve any development works.

In accordance with the advice provided above, as the draft LEP is now considered to be *certain and imminent* the application is not supported by Council officers and as such it is recommended that the application be refused. The application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 (since gazetted as LEP 2014) and also because the proposal is considered not to meet the objectives of the draft zone.

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

Tweed Development Control Plan

Section A1 - Residential and Tourist Development Code

The dwelling was approved on 21 June 2004 under DA04/0269, prior to the DCP A1 coming into force in April 2008. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2004 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however there is minimal landscaped areas at the front (west) of the property.

No physical alterations are proposed to the existing building. Car parking is provided on the site for four vehicles, as detailed below. No additional waste arrangements are considered to be required. The applicant has advised however that an additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1.

Section A2-Site Access and Parking Code

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

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section. The proposal was placed on public exhibition for 14 days from 12 February 2014 to 26 February 2014. One submission was received during this time which is detailed elsewhere in this report.

Section B5-Casuarina Beach

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

Section B9-Tweed Coast Strategy

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

Section B25-Coastal Hazards

The rear (east) of the site is subject to the Maximum 2100 hazard line as per Councils updated 2014 mapping. It is noted that this mapping generally correlates to the 7(f) zoning on the site. As noted elsewhere in this report, the subject application relates to the use of an existing building which is located outside the 7(f) zone (and by extension the Maximum 2100 hazard line). As the development itself does not include provision of any new buildings/structures and is located outside of the maximum 2100 hazard line, the application is considered to be acceptable having regard to the provisions of this DCP.

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

Clause 92(a) Government Coastal Policy

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

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit at the Area Team Meeting and it is advised that as there is no change in BCA Building Class further comments are not required in relation to this.

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

Tweed Shire Coastline Management Plan 2005

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

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

The proposed development is located within an area dominated by dwellings lawfully utilised for long-term residential purposes and large scale resort developments. It is intended that the large scale resorts provide tourist accommodation and flexible use options into the future, as distinct from single dwellings.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000. The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

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

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. During this time, one submission was received. Issues raised include the following:

- Previously elected Council have approved similar developments, therefore there is no purpose served in any property owners of the vicinity entering a submission against this type of Development Application.
- Submitter's have a good relationship with applicant and believe they can raise any issues as they arise with the applicant.
- There has been dog noise nuisance in the area, however is not confirmed that this has been from the subject property. In light of this it is requested that dogs be banned totally from this application.

The submission then goes on to outline issues with the ongoing tourist accommodation use of a neighbouring property (No.39 Collins Lane) approved under DA13/0247 including multiple families residing on the premises, available parking limited in area due to tourist vehicles, noise pollution, littering and the opening of gates at Nos 39- 41 Collins Lane which lets out dogs.

Council Officer Assessment

The following advice is considered to be relevant to the above submission.

The subject application is assessed on its merits with any submission taken into account as part of the assessment process.

The submitters' relationship with the applicant is not considered to be a substantive planning matter with respect to the assessment of this application.

It is noted that the submission does not specifically state that noise nuisance is from the subject allotment. In any event, it is noted that the S88B instrument (as outlined elsewhere in this report) contains restrictions regarding dog ownership. It is considered that ordinarily noise nuisance of this type would be addressed by Council's Rangers.

The issues raised are considered to mainly relate to a separate site from that to which this application relates. As such it is not considered appropriate to refuse this application based on any such potential non-compliance.

Referral to NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose. A bush fire safety authority under section 100B of the Rural Fires Act 1997 was received from the service on 11 March 2014 inclusive of conditions regarding Asset Protection Zones, Evacuation and Emergency Management, Design and Construction and Landscaping.

(e) Public interest

Whilst the proposed development complied with the zoning controls under Tweed Local Environmental Plan 2000 at the time of lodgement of the application, at that point it was certain and imminent that the Draft LEP 2012 would prohibit the development. After LEP 2014 was gazetted on 4 April 2014, it is considered that the proposed development is prohibited. As such, the development is not considered to be in the public interest.

OPTIONS:

That Council:

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

Council officers recommend Option 1.

CONCLUSION:

The proposal is prohibited within the R2 Low Density Residential zone and does not comply with the R2 Low Density Residential zone objectives within the draft LEP 2012. Given the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed application be refused development consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

6 [PR-PC] Development Application DA14/0206 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 305 DP 1070793 No. 3 Cactus Court, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0206 Pt1



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 has received a development application that seeks the dual use of an existing dwelling for tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes.

This application has been called up for Council determination by Councillors Longland and Bagnall.

There was one objection to the development application.

A concurrent application for the same use has been submitted for 12 Cactus Court under DA14/0120. This application is being concurrently reported to Council.

The proposed development does not require any physical alterations to the existing dwelling house.

The applicant has provided legal advice regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed LEP 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite. Importantly, these individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. Council is of the view that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard.

The applicant advises that to address any issues associated with the short term letting of the dwelling, the following conditions are proposed:

- *The dwelling is to be let to a maximum of one tourist group comprising a maximum of 10 persons up to four adults and six children at any one time.*
- *A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July for inspection purposes.*
- *No more than four vehicles can be at the site at any one time with all parking to be within the property boundary.*
- *An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*
- *Tenants agree to not make excessive noise as part of the letting agreement.*
- *A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.*
- *Tenants agree to abide by a management policy (to be submitted to Council for approval prior to commencement of use).*

The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing three bedroom single dwelling for the purpose of short-term tourist accommodation.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council 28 February 2014. Tweed Local Environmental Plan 2014 (previously Draft Tweed Local Environmental Plan 2012) came into force on 4 April 2014.

When the application was submitted, LEP 2012 was in draft form however had been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

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

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

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

Additionally, it is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a lot which has residential dwellings immediately adjacent to the east, south and west and in close proximity elsewhere.

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

RECOMMENDATION:

That Development Application DA14/0120 for dual use of existing dwelling (tourist accommodation) at Lot 489 DP 1070795 No. 12 Cactus Court, Kingscliff be refused for the following reasons:

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

REPORT:

Applicant: Edwina Leslie Humphries

Owner: Edwina Leslie Humphries

Location: Lot 305 DP 1070793 No. 3 Cactus Court, Kingscliff

Zoning: 2(f) Tourism (LEP 2000), R2 Low Density Residential (Draft LEP 2012 and current LEP 2014)

Cost: Not applicable

Background:

The application seeks consent for the dual use of an existing dwelling for tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes.

The application was submitted 3 April 2014. Tweed Local Environmental Plan 2014 came into force on 4 April 2014.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas at Salt is an anomaly contrary to the original master planning for Salt.

The site is a regular shaped allotment in Cactus Court (mid way down the street). The site has 15m street frontage to Cactus Court. The total area is 525m².

The site contains a two storey dwelling with swimming pool, approved by DA05/0584 (dwelling) and CDC07/0037 (swimming pool).

There are neighbours to the east, south and west. Each neighbouring allotment contains a single dwelling house.



Subject dwelling - 3 Cactus Court



Proximity to dwelling at 1 Cactus Court



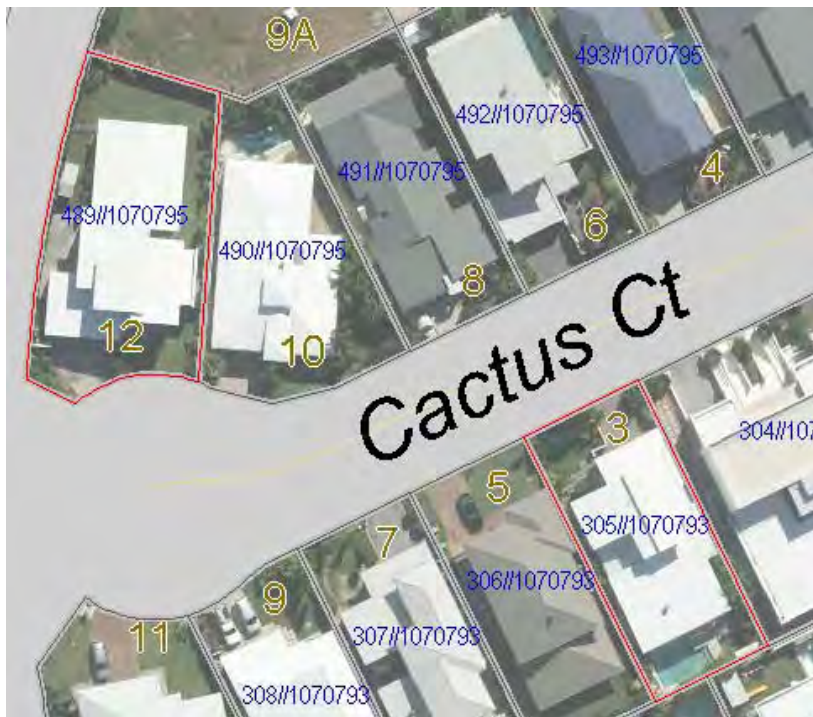
Proximity to dwelling at 5 Cactus Court

The subject dwelling is two storeys (3 bedrooms) with a large open plan kitchen and dining area located toward the rear. There is an internal courtyard facing the western boundary (off the living room) in close proximity to this boundary. The swimming pool is located in the rear yard close to the boundary and in proximity to the swimming pool on the adjoining Lot to the rear. The upper floor contains 2 bedrooms and a centrally located 'kids retreat'. The location of the dwelling in relation to surrounding development is shown below.



Current application – 3 Cactus Court (DA14/0206)

It is also worthy of note that another application for the same use has been submitted for 12 Cactus Court (see below figure). This application is being concurrently reported to Council.



Concurrent application – 12 Cactus Court (DA14/0120)

***both sites highlighted in red**

Of note, an historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Draft LEP 2012.

At the Meeting of 17 October 2013 Councillors resolved to approve the application, against officer's recommendation, with the application brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at this meeting.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding

the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

SITE DIAGRAM:



Locality Plan
 Lot 305 DP 1070793
 No.12 Cactus Court, Kingscliff

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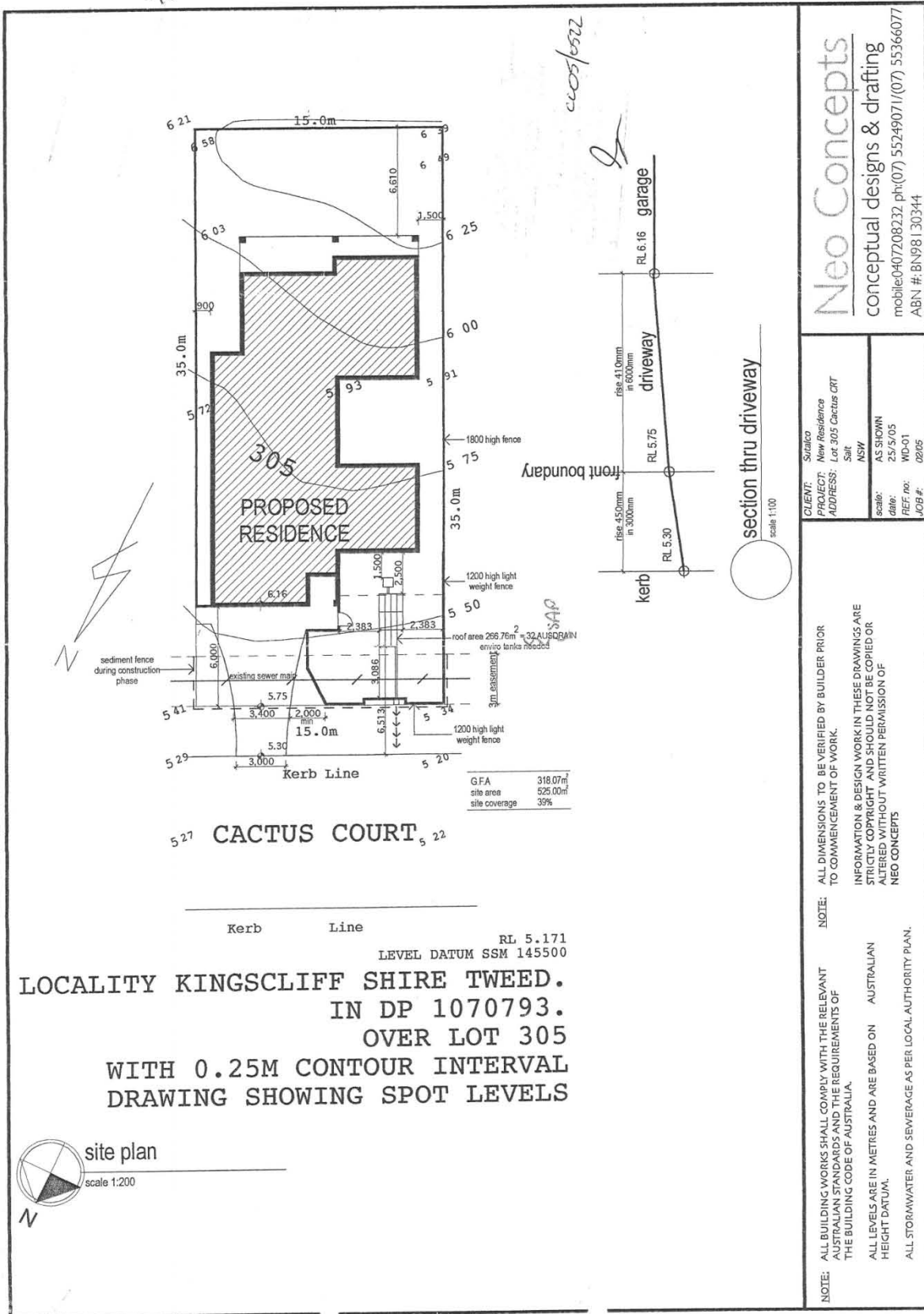
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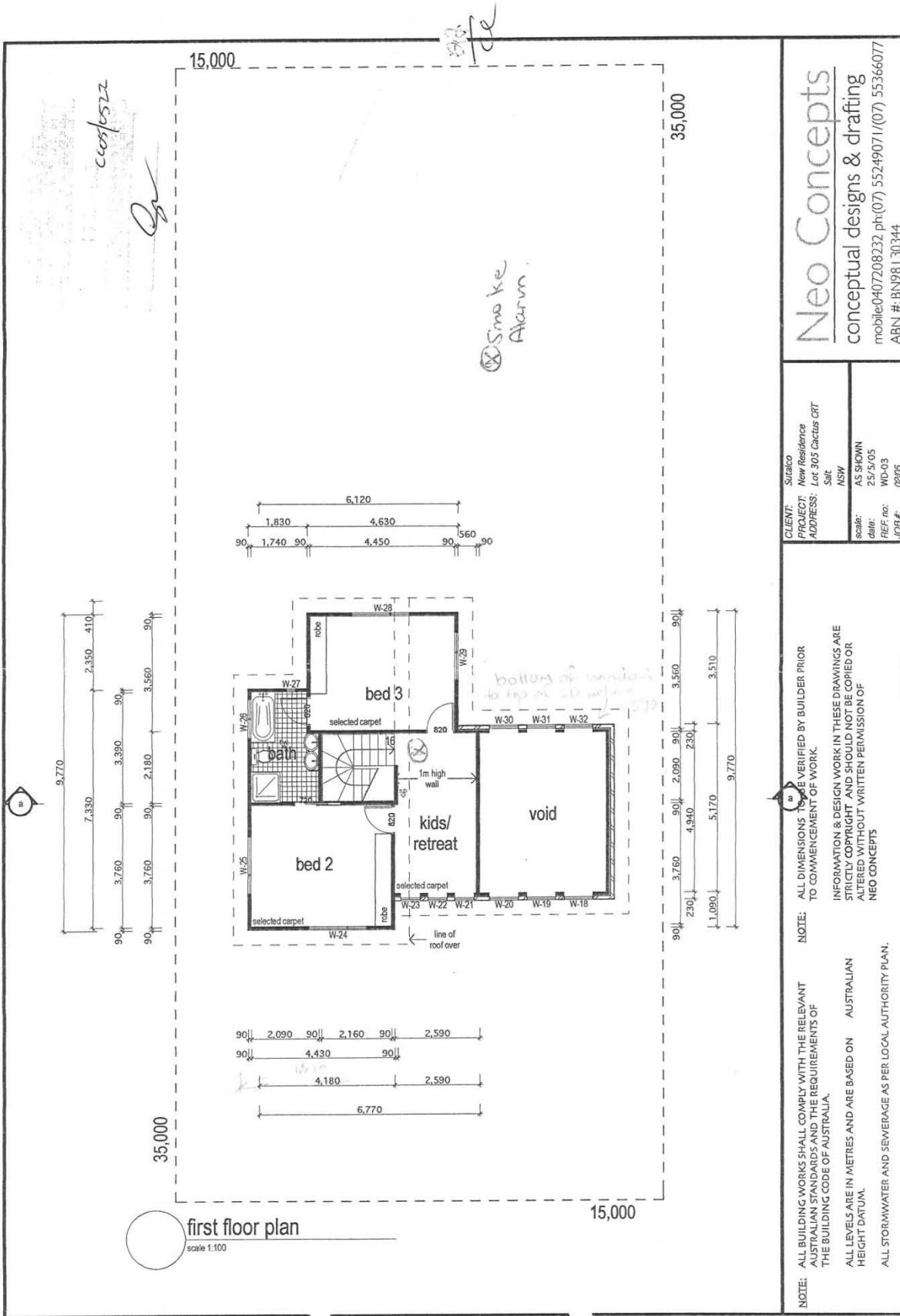


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DEVELOPMENT/ELEVATION PLANS:





east elevation
scale 1:100

north elevation
scale 1:100

front fence detail
scale 1:100

Handwritten notes: *cos/cos22*, *cfe*

Labels in drawings: upper floor, lower floor, rendered & painted as advised, privacy screen as advised, chosen LINEA weatherboard as advised, feature wall as advised, rock feature wall as advised, chosen mini orb or equivalent, alum. slats as advised, allow for junction overflow pit.

Neo Concepts
conceptual designs & drafting
mobile: 047208232 ph: (07) 55249071 / (07) 55366077
ABN #: BN98 130344

CLIENT: *Sulaco*
PROJECT: *New Residence*
ADDRESS: *Lot 305 Cactus CRT*
Site: *NSW*
AS SHOWN
date: *25/5/05*
REF no: *WD-04*
JOB #: *02/05*

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ALL LEVELS ARE IN METRES AND ARE BASED ON AUSTRALIAN HEIGHT DATUM.
ALL STORMWATER AND SEWERAGE AS PER LOCAL AUTHORITY PLAN.

west elevation
scale 1:100

south elevation
scale 1:100

cc05/0572

BR

<p>CLIENT: Suralco PROJECT: New Residence ADDRESS: Lot 305 Carthus CRT Salt NSW scale: AS SHOWN date: 25/5/05 REF. no: WD-05 JOB #: 02905</p>	<p>Neo Concepts conceptual designs & drafting mobile:0407208232 ph:(07) 55249071/(07) 55366077 ABN #: BN98130344</p>
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 ALL LEVELS ARE IN METRES AND ARE BASED ON AUSTRALIAN HEIGHT DATUM.
 ALL STORMWATER AND SEWERAGE AS PER LOCAL AUTHORITY PLAN.

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 2(f) Tourist, the primary objective of which is to:

- Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Whilst the development (as 'tourist accommodation') could be seen to be consistent with the above objectives, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone Objectives

The site is zoned 2(f) Tourism which has the following zone objectives:

- Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Whilst the development could be seen to achieve consistency with these objectives, as outlined above the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

Clause 15 - Essential Services

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

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

Clause 35 - Acid Sulfate Soils

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

Other Specific Clauses

The site is not bushfire prone and there is no tree preservation order located over the site. There are no other relevant LEP clauses.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

The proposal will not restrict public access to the foreshore and is not considered to impact adversely on any of the matters for consideration under SEPP 71.

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

Tweed Local Environmental Plan 2014 (draft LEP 2012)

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. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

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

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

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

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

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

4 Prohibited

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

Objectives of the R2 zone include the following:

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

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

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

The proposed use does not satisfy the objectives of the R2 Low Density Residential zone. Further detailed consideration against LEP 2014 is not considered necessary at this time given that consistency with the zone objectives cannot be demonstrated.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The existing dwelling and swimming pool on the allotment are both subject to development consent (issued by Council's Building Unit). The assessment report for the dwelling notes building line and fencing height variations which were ultimately considered acceptable as the application was approved. There is no need for further assessment of the existing dwelling under current DCP A1, particularly considering that no modifications to the building are proposed.

A2-Site Access and Parking Code

The dwelling contains a double garage and driveway parking would be available for two vehicles (maximum). All up, it is considered that parking could possibly be provided for four cars maximum. The applicant proposes a limitation on parking in that 'not more than four vehicles can be at the site at any one time with all car parking to be located within the property boundary of the subject site'. It is also requested that the 'staff' and 'HRV' requirements pertaining to tourist accommodation under the DCP be waived as these are not required.

It is considered that the existing on-site parking arrangements are sufficient for users of such a facility.

A3-Development of Flood Liable Land

The site is not flood prone.

A4-Advertising Signs Code

The application does not propose any signage. It is envisaged that the facility (if approved) would be advertised on line.

A11-Public Notification of Development Proposals

The application was placed on public exhibition (advertising) for 14 days from 7 May 2014 to 21 May 2014. During this time, one submission (objection) to the development were received which are addressed further in this report.

B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

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

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

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

The proposal does not impact upon coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The proposal does not impact upon coastline management strategies.

Tweed Coast Estuaries Management Plan 2004

The proposal does not impact upon estuaries management strategies.

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

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

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

Amenity

Adjacent properties may be impacted by the constant nature of short-term visitors. The applicant has proposed the use of a plan of management to monitor and regulate amenity impacts that may arise from the development inclusive of those raised in submissions below. Notwithstanding, given the proximity of the development to residential dwellings, the issues raised in submissions pertaining to noise, traffic, safety and security (as addressed below) are considered warranted.

Context and Setting

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

The proposed use of the dwelling as tourist accommodation is not consistent with the surrounding residential context.

(c) Suitability of the site for the development

The site is not considered to be suitable for the proposed development as the current zoning under LEP 2014 (imminent and certain at the time of lodgement of the application) prohibits the proposed use.

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

The application was placed on public exhibition (advertising) for 14 days from 7 May 2014 to 21 May 2014. During this time, one submission (objection) to the development was received. The matters raised are addressed below:

Matters raised	Council response
<p>Allowing a change of use of this property is completely unwarranted as Salt Village is already very well serviced with tourist accommodation. Allowing it to sneak into residential areas will erode the unique Salt lifestyle.</p>	<p>Council officers agree that the proposed tourist use is incompatible with surrounding residential land uses.</p>
<p>Increased traffic will be undesirable. There is the potential for the street to be cluttered with vehicles. There is not adequate off street parking to accommodate the proposed use.</p>	<p>It is acknowledged by Council staff that use of the dwelling as tourist accommodation could result in increased traffic. If approved, conditions would be applied requiring all parking to be within the property boundary (though it is noted that this may be difficult to enforce). However, the development as a whole is</p>

Matters raised	Council response
	considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
Increased noise from people and vehicles will be undesirable.	It is acknowledged by Council staff that use of the dwelling as tourist accommodation could result in increased noise from patrons inclusive of their vehicles. If approved, conditions would be applied requiring all parking to be within the property boundary (though it is noted that this may be difficult to enforce). However, the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
There will be an increased security risk for other residents in the street with strangers en masse staying in the dwelling.	Council officers agree that there may be amenity impacts were the application to be approved. Mitigation of such impacts could occur via conditions of consent. However the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
There is the potential for a negative impact on the value and desirability for purchase of other homes in the street. The street is presently a 'family friendly' street which is a selling factor. Allowing more vehicles and people would remove this benefit.	Property values are not a consideration for assessment under the NSW Planning legislation.
As No. 12 Cactus Court has also lodged an application for tourist use, the impacts of the development would be twofold.	Council officers agree that the impact of two dwellings being let as tourist accommodation would compound amenity impacts for existing residents. The development is recommended for refusal for other reasons.

It is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

(e) Public interest

Whilst the proposed development complied with the zoning controls under Tweed Local Environmental Plan 2000 at the time of lodgement of the application, at that

point it was certain and imminent that the Draft LEP 2012 would prohibit the development. After LEP 2014 was gazetted on 4 April 2014, it is abundantly clear that the proposed development is prohibited. As such, the development is not considered to be in the public interest.

OPTIONS:

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

Council officers recommend Option 1.

CONCLUSION:

The development is prohibited by and inconsistent with the Draft LEP 2012 in force at the time the application was lodged, and LEP 2014 which is now in force, specifically the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

7 [PR-PC] Development Application DA14/0120 for Dual Use of Existing Dwelling (Tourist Accommodation) at Lot 489 DP 1070795 No. 12 Cactus Court, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0120 Pt1



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 has received a development application that seeks the dual use of an existing dwelling for tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes.

This application has been called up for Council determination by Councillors Longland and Bagnall.

There were three objections to the development application.

A concurrent application for the same use has been submitted for 3 Cactus Court under DA14/0206. This application is being concurrently reported to Council.

The proposed development does not require any physical alterations to the existing dwelling house.

The applicant has provided legal advice regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed LEP 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite. Importantly, the individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard.

The applicant advises that to address any issues associated with the short term letting of the dwelling, the following conditions are proposed:

- The dwelling is to be let to a maximum of one tourist group comprising a maximum of 10 persons up to four adults and six children at any one time.
- A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July for inspection purposes.
- No more than four vehicles can be at the site at any one time with all parking to be within the property boundary.
- An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.
- Tenants agree to not make excessive noise as part of the letting agreement.
- A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
- Tenants agree to abide by a management policy (to be submitted to Council for approval prior to commencement of use).

The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing three bedroom single dwelling for the purpose of short-term tourist accommodation.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council 28 February 2014. Tweed Local Environmental Plan 2014 (previously Draft Tweed Local Environmental Plan 2012) came into force on 4 April 2014.

When the application was submitted, LEP 2012 was in draft form however had been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

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

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

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

Additionally, it is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on

a lot which has residential dwellings immediately adjacent to the north and east and in close proximity elsewhere.

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

RECOMMENDATION:

That Development Application DA14/0120 for dual use of existing dwelling (tourist accommodation) at Lot 489 DP 1070795 No. 12 Cactus Court, Kingscliff be refused for the following reasons:

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

REPORT:

Applicant: AM Yorston
Owner: Arna M Yorston
Location: Lot 489 DP 1070795 No. 12 Cactus Court, Kingscliff
Zoning: 2(f) Tourism (LEP 2000). R2 Low Density Residential (Draft LEP 2012 and current LEP 2014)
Cost: Not Applicable

Background:

The application seeks consent for the dual use of an existing dwelling for tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes.

The application was submitted 28 February 2014. Tweed Local Environmental Plan 2014 came into force on 4 April 2014.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas at Salt is an anomaly contrary to the original master planning for Salt.

The site is a slightly irregular shaped allotment at the end of a cul-de-sac in Cactus Court. The site has 15m street frontage to Cactus Court. The total area is 713m².

The site contains a single dwelling with swimming pool, approved by DA07/1357 (dwelling with building line and fencing variations) and DA07/1378 (swimming pool).

There are no neighbours to the west as the site is bound by Casuarina Way on its western boundary. There are neighbours to the north (Lot 505 DP 1137687) and east (Lot 490 DP 1070795) which both contain single dwelling houses.



Subject dwelling – 12 Cactus Court



Proximity to neighbouring dwelling – 10 Cactus Court



Dwelling at 9A Ulladulla Court (which adjoins the rear boundary of 12 Cactus Court)



Close up of corner of garage at 9A Ulladulla Court, showing proximity to 12 Cactus Court deck and entertaining area. The pool is to the left of the structure.

The subject dwelling is two storeys (4 bedrooms) with a large open plan kitchen, dining and lounge area located toward the rear. A large deck is located off this area in proximity to the rear (northern) boundary. The swimming pool is located adjacent to the eastern boundary. The upper floor contains 3 bedrooms and a centrally located games room. The location of the dwelling in relation to surrounding development is shown below. Note that since the capture of this aerial imagery, a dwelling has been constructed on the allotment to the north (9A Ulladulla Court) as per the above photographs.



Current application – 12 Cactus Court (DA14/0120)

It is also worthy of note that another application for the same use has been submitted for 3 Cactus Court under DA14/0206 (see below figure). This application is being concurrently reported to Council.



Concurrent application – 3 Cactus Court (DA14/0206)

***both sites highlighted in red**

Of note, an historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Draft LEP 2012.

At the Meeting of 17 October 2013 Councillors resolved to approve the application, against officer recommendation, with the application brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at this meeting.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

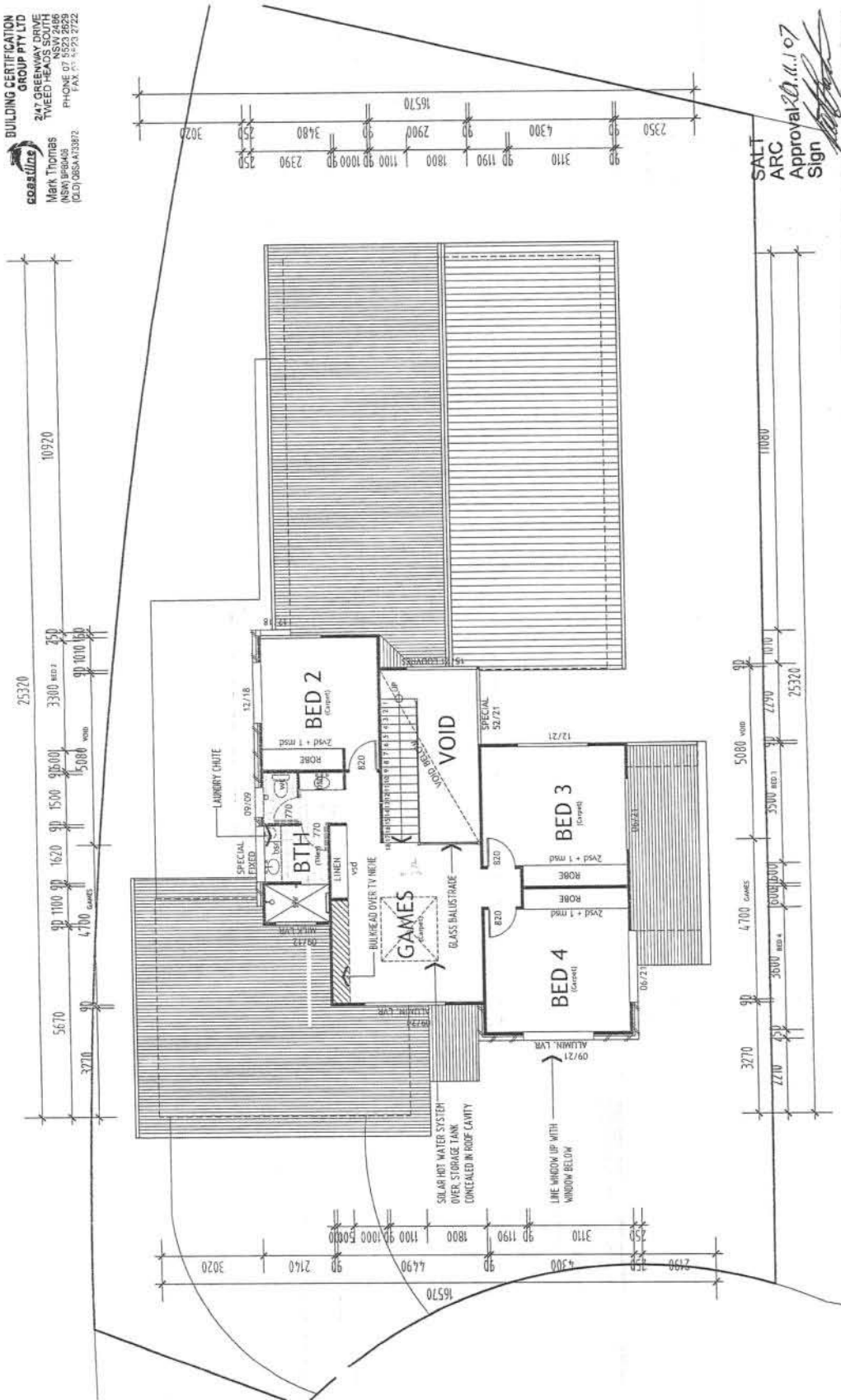
SITE DIAGRAM:




Locality Plan
 Lot 489 DP 1070795
 No.12 Cactus Court, Kingscliff

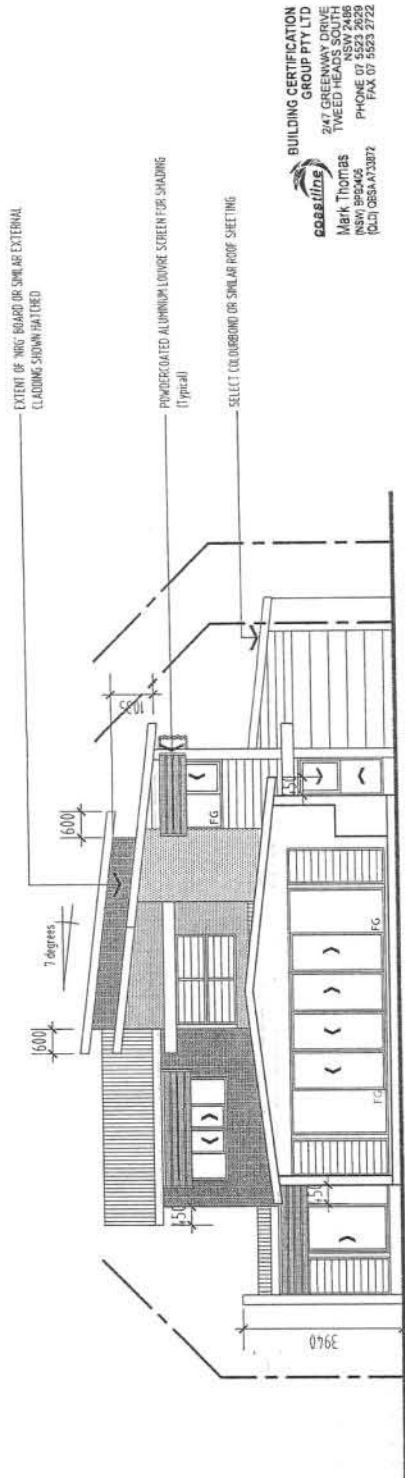
<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility 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 is to be considered indicative and diagrammatic only. It should not be used for surveys or construction purposes and prior to any excavations a 'Dig Before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral 10/06/2014 © Land and Property Information (LPI) & Tweed Shire Council Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km 1:75,000 A4 Portrait 30 416 2046 COPY ONLY - NOT CERTIFIED</p> <p>Map Projections: Universal Transverse Mercator Horizontal Datum: Geoidetic Datum of New Zealand 2000 Ref: Map 586 of Australia, Zone 56</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 672 F (02) 6670 2429 W www.tweed.nsw.gov.au E planningreform@tweed.nsw.gov.au</p>	
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SALT
 ARC
 Approval 20.11.107
 Sign

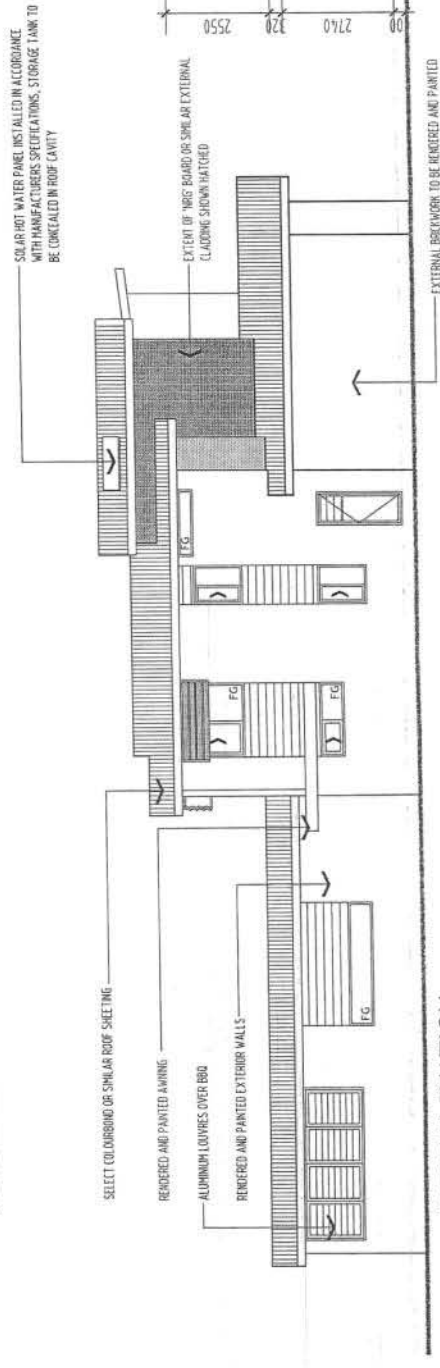
ISSUE DATE: AMENDMENT A 30/08/12 CLEAR ISSUE	BY:		JOB: PROPOSED RESIDENCE LOT 489 CACTUS COURT SALT, KINGSCLIFF	DATE: 25/10/07 DRAWN: CHECKED:	SCALE: 1:100 JOB NO:	DRAWING NO: 04 of 18	ISSUE NO: A	THE CONTRACTOR SHALL NOTE THE FOLLOWING: ALL DRAWINGS MUST BE READ IN CONNECTION WITH THE BUILDING SPECIFICATION, DETAILS AND ACCOMPANYING CONSULTANT'S DRAWINGS. FOR THIS JOB MUST BE SUBMITTED TO THE BUILDER BEFORE WORK IS COMMENCED. CONTRACTORS MUST VERIFY ALL DIMENSIONS OF THE JOB AGAINST THE ARCHITECTURE AND WORK ON THE DRAWING, NOT PRINTED DIMENSIONS, TAKE PRECEDENCE OVER SCALE.
			CLIENT: MR P. QUARMBY & MS L. RICHARDS	DRAWING TITLE: UPPER FLOOR PLAN				



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Mark Thomas
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NORTH ELEVATION



WEST ELEVATION

SALT
 ARC
 Approval 20/11/107
 Sign *[Signature]*

ISSUE DATE: 25/10/07	DATE: 25/10/07	SCALE: 1:100	ISSUE NO: A
BY: [Signature]	DRAWN: [Signature]	JOB NO: 09 of 18	DRAWING TITLE: NORTH & WEST ELEVATIONS
PROJECT: PROPOSED RESIDENCE LOT 489 CACTUS COURT SALT, KINGSCLIFF	CHECKED: [Signature]	CLIENT: MR P QUARMBY & MS L RICHARDS	THE CONTRACTOR SHALL NOTE THE FOLLOWING: THIS DRAWING MUST BE READ IN CONJUNCTION WITH THE BUILDING CERTIFICATION DRAWING, DETAILS AND ACCOMPANYING SHOP DRAWINGS FOR THIS JOB. THIS JOB MUST BE SUBMITTED TO THE LOCAL COUNCIL FOR APPROVAL BEFORE COMMENCING ANY WORK OR PREPARING SHOP DRAWINGS. VISITED DIMENSIONS TAKE PRECEDENCE OVER SCALE.

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 2(f) Tourist, the primary objective of which is to:

- Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Whilst the development (as 'tourist accommodation') could be seen to be consistent with the above objectives, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone Objectives

The site is zoned 2(f) Tourism which has the following zone objectives:

- Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Whilst the development could be seen to achieve consistency with these objectives, as outlined above the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

Clause 15 - Essential Services

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

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

Clause 35 - Acid Sulfate Soils

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

Other Specific Clauses

The site is not bushfire prone and there is no tree preservation order located over the site. There are no other relevant LEP clauses.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

The proposal will not restrict public access to the foreshore and is not considered to impact adversely on any of the matters for consideration under SEPP 71.

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

Tweed Local Environmental Plan 2014 (draft LEP 2012)

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. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

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

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

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

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

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

4 Prohibited

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

Objectives of the R2 zone include the following:

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

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

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

The proposed use does not satisfy the objectives of the R2 Low Density Residential zone. Further detailed consideration against LEP 2014 is not considered necessary at this time given that consistency with the zone objectives cannot be demonstrated.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The existing dwelling and swimming pool on the allotment are both subject to development consent (issued by Council's Building Unit). The assessment report for the dwelling notes building line and fencing height variations which were ultimately considered acceptable as the application was approved. There is no need for further assessment of the existing dwelling under current DCP A1, particularly considering that no modifications to the building are proposed.

A2-Site Access and Parking Code

The dwelling contains a double garage which has the capability to 'drive through' to a paved area at the rear of the property. Driveway parking would be available for two vehicles (maximum). All up, it is considered that parking could probably

reasonably be provided for five cars maximum. The applicant proposes a limitation on parking in that 'not more than four vehicles can be at the site at any one time with all car parking to be located within the property boundary of the subject site'. It is also requested that the 'staff' and 'HRV' requirements pertaining to tourist accommodation under the DCP be waived as these are not required.

It is considered that the existing on-site parking arrangements are sufficient for users of such a facility.

A3-Development of Flood Liable Land

The site is partially covered by the Probable Maximum Flood (PMF). It is not covered by the 1 in 100 year flood mapping nor is identified as an area of low or high flood velocity.

In relation to DCP A3, advice was sought from Council's Flooding Engineer who advised that DCP A3 does not apply as the existing dwelling has a floor level equal to the PMF (thus refuge is not required). Adequate access to the road network is required. Further consideration is not required.

A4-Advertising Signs Code

The application does not propose any signage. It is envisaged that the facility (if approved) would be advertised on line.

A11-Public Notification of Development Proposals

The application was placed on public exhibition (advertising) for 14 days from 19 March 2014 to 2 April 2014. During this time, three submissions (objections) to the development were received which are addressed further in this report.

B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

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

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

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

The proposal does not impact upon coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The proposal does not impact upon coastline management strategies.

Tweed Coast Estuaries Management Plan 2004

The proposal does not impact upon estuaries management strategies.

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

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

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

Amenity

Adjacent properties may be impacted by the constant nature of short-term visitors. The applicant has proposed the use of a plan of management to monitor and regulate amenity impacts that may arise from the development inclusive of those raised in submissions below. Notwithstanding, given the proximity of the development to residential dwellings, the issues raised in submissions pertaining to noise, traffic, safety and security (as addressed below) are considered warranted.

Context and Setting

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

The proposed use of the dwelling as tourist accommodation is not consistent with the surrounding residential context.

(c) Suitability of the site for the development

The site is not considered to be suitable for the proposed development as the current zoning under LEP 2014 (imminent and certain at the time of lodgement of the application) prohibits the proposed use.

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

The application was placed on public exhibition (advertising) for 14 days from 19 March 2014 to 2 April 2014. During this time, three submissions (objections) to the development were received. The matters raised are addressed below:

Matters raised	Council response
<p>A traffic hazard exists now as a cleaning/laundry business is already operating in the garage of the property. I bought here as this was a quiet court which now gets very busy with traffic and is unsafe at times as staff park in the street, and drop off and collect linen at all times of the day. It can become difficult to back out of my driveway. Tourist accommodation will only make this worse.</p>	<p>There is no development history pertaining to the operation of a business or a home business from the subject address. This issue will be referred to Council's Compliance Officer for further investigation. It is acknowledged by Council staff that use of the dwelling as tourist accommodation could result in increased traffic. If approved, conditions would be applied requiring all parking to be within the property boundary (though it is noted that this may be difficult to enforce). However, the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.</p>

Matters raised	Council response
Use of the dwelling by tourists creates a security issue as there is no guarantee on the type or state of the persons who will be staying in the house. I should be able to feel secure in my own home.	Council officers agree that there may be amenity impacts were the application to be approved. Mitigation of such impacts could occur via conditions of consent. However the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
There is enough tourist accommodation in the area without creating more in a residential court.	Council officers agree that the proposed tourist use is incompatible with surrounding residential land uses.
Tourism facilities should be concentrated in a particular area and not be allowed to develop piecemeal. This would be in the public interest.	Council officers agree that the proposed tourist use is incompatible with surrounding residential land uses.
Residents purchased in a residential area because of the quietness normally associated with such zoning and did not envisage tourists who understandably are likely to be exuberant. This would create a security and safety issue for me and my grandchildren who come and go frequently.	Council officers agree that there may be amenity impacts were the application to be approved. Mitigation of such impacts could occur via conditions of consent. However the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
The existing business operating at 12 Cactus Court creates traffic and parking problems.	As above. During inspection of the site, there were vehicles parked in the driveway but not outside the boundary of the site. The issue of a possible unlawful business will be referred to Council's Compliance Officer.
Anecdotal evidence suggests that the proposed management measures do not work (for existing residential properties which are tourist let)	Council officers agree that there may be amenity impacts were the application to be approved, regardless of the existence of a management agreement. Mitigation of such impacts could occur via conditions of consent. However the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
Providing a phone number to TSC does not assist neighbours (in houses or units) at 2am when the tourists decide to use the pool etc, nor does it provide a written record.	This is not actually proposed by the application. The conditions proposed by the applicant state that 'a 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies'. If approved, this would be applied as a condition of consent. However the application is recommended for refusal for other reasons.
People living near the holiday letting properties (houses and units) have been lied to (the use is allowable) and bullied into believing that the dual use is a right of the owners.	This is not a matter of consideration for the application. The application has lawfully been submitted and a merit assessment of the application has been undertaken in accordance with the relevant planning legislation.

Matters raised	Council response
The sites are already achieving the aims of the TLEP 2000 by providing residential accommodation in accordance with the zoning.	The 2(f) zoning permits tourist development with consent. This is not relevant to the subject application.
Councillors have recently allowed holiday letting in residential houses (Collins Lane) and allowed the dual use of a tourist complex (Casuarina Beach). As they are now commercial operations, they should be rated as commercial. We request that Council changes the rating of dual use properties to commercial.	Matters concerning property rating are not relevant to assessment of the subject application.

The applicant has also provided a response to the public submissions as shown below (received from Planit Consulting 11 June 2014):

“Kingscliff Ratepayers and Progress Association Submission date 17 April 2014.

This submission is a 'bulk' submission against a number of current development applications before Tweed Shire Council. All of these applications seek to use existing dwelling houses for both permanent residential and tourist letting. In reviewing the submission it is emotive, not based on planning grounds and we considered it has been made by the association without a full understanding of the contribution holiday letting makes to Tweed Shire.

Using the most publicly accessible short term rental website as an example (www.stayz.com.au) there are currently over 30,000 properties listed for short term tourist accommodation Australia wide. The majority of rental properties listed are in the form of single dwellings, farm stays and bed and breakfast arrangements. It can be assumed that a large proportion of these properties do not have the relevant Council approval for short term tourist accommodation use. In direct relation to the Tweed Shire, properties are listed on the site within Tweed Heads. Tweed Heads South, Tumbulgum, Pottsville, Pottsville Beach, North Tumbulgum, Murwillumbah, Mount Warning, Kingscliff, Hastings Point, Fingal Head, Chillingham, Casuarina and Cabarita Beach.

A total of 532 properties are currently being advertised and used for holiday letting within the Tweed Shire on this website alone. Prohibition of this type of short term rental accommodation would see prospective tourists decide against holidaying in the Tweed. The type of people looking for larger, dwelling style holiday accommodation can be generalised as families or pairs of families, seeking to save on the cost of expensive hotel accommodation. Holidaymakers seeking this type of accommodation may well choose other coastal holiday locations such as The Gold Coast and The Sunshine Coast where they are able to rent full sized dwellings for a short term purpose.

The proponent of DA14/0120 has taken the responsible steps to seek Council consent for the proposed dual use. By seeking consent and operating in accord with a development consent a level of surety is provided to the proponent, the adjoining neighbours and Council alike. A summary of the issues within the Kingscliff Ratepayers and Progress Association submission and comment against each is provided below, it is however again noted the submission is emotive and not based on planning grounds:

1. Many years ago the community worked long and hard to separate Residential use from Tourist Use.

This statement is incorrect, especially as it relates to the areas of Salt, Seaside City and Casuarina. The establishment of Salt, Seaside City and Casuarina and the subsequent zoning of these localities as both 2(f) Tourist and 2(e) Residential Tourist was a direct result of seeking to integrate both residential and tourist uses. The objectives of these zones specifically sought a mix of these uses to create vibrant coastal communities that would contribute positively to Tweed Shire. The proposal is permissible with Consent under the TLEP 2000 under which the application was lodged. Further Council have previously approved such developments.

2. The management measures proposed for the dual use of dwellings houses and an assertion of the failure of these measures.

The submission selectively touches on the management measures proposed within the application and incorrectly describes them as only providing a phone number to Tweed Shire Council. The management measures proposed are reproduced below. These measures are consistent with those considered appropriate by Tweed Shire Council in approving DA13/0247 & DA 13/0463 and provide an appropriate suite of mechanisms to ensure appropriate use of the properties or where inappropriate use may occur that this can be dealt with in a swift manner.

The management measures proposed are as follows:

The use of the dwelling for tourist accommodation is restricted to the following:

- The dwelling is to let to a maximum of one (1) tourist group comprising 8 maximum of ten (10) persons at any one time which may consist of up to four (4) adults and six (6) children.*
- A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.*
- No more than four (4) vehicles can be at the site at any one time with all car parking to be located within the property boundary of the subject site.*
- An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*
- A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to council for approval by the General Manger or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.*
- Tenants agree to not make excessive noise as part of the letting agreement.*

- *A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.*
- *Tenants agree to a management policy (to be submitted for Council approval prior to commencement of use).*

The inclusion of the above management measures will be enforceable by Council as they will form conditions of approval.

This issue is considered to be appropriately addressed and is consistent with that previously given support by Council.

3. *An assertion of 'lies' between owners of the dwelling houses proposed for dual usage and their neighbours.*

This has no relevance to the development application. The proponent has taken the responsible approach and sought Council consent for this use.

4. *An assertion that the sites are residential and therefore already provide their 'best use and fulfil their economic and employment generating potential for the area' in accord with one of the 2(f) Tourism Zone objectives:*

The submission selectively quotes part of the second primary objective of the 2(f) Tourist zone in an attempt to make the case that as the sites are residential land that they already meet the objective. As discussed above under the 2(f) and 2(e) zonings within the TLEP 2000 the sites are not strictly for residential purposes. Holiday letting provides a significant contribution to the Tweed Shire economy and it is given that broadly allowing holiday letting directly meets the objectives of the 2(f) and 2(e) zones of the TLEP 2000. Further Council have previously approved such developments.

5. *That the rates for those properties already approved for dual use be levied as commercial properties.*

This has no relevance to the development application. How the properties will be levied for ratings purposes is not a matter for consideration.

6. *That the determination of 'dominate use' for ratings purposes is between the owner and the tax department.*

This has no relevance to the development application. How the properties will be levied for ratings purposes is not a matter for consideration.

The above issues are generally unsubstantiated assertions not based on planning merit and/or relate to how rates should be levied for such proposals. All these are issues which are not a matter for consideration as part of a development application.

Neighbour Submission dated 2/04/2014

The proponent of DA14/0120 has taken the responsible steps to seek Council consent for the proposed dual use. By seeking consent and operating in accord with a development consent a level of surety is provided to the proponent, the adjoining neighbours and Council alike. The submission is emotive and not based on planning grounds; the submission raises issues of potential security and safety issues. The submission also claims an existing business is operating

at the property. The dwelling is to be holiday let to families and the emotive claim of security and safety risks is unfounded and cannot be supported. We are unaware of the business referred to within the submission and as such question its accuracy or relevance to the application.

To address amenity issues the proposal includes specific measures. These measures are consistent with those considered appropriate by Tweed Shire Council in approving DA 13/0247 & DA13/0463 and provide an appropriate suite of mechanism to ensure appropriate use of the properties or where inappropriate use may occur that this can be dealt with in a swift manner. The proposed measures are reproduced below:

*****Planning Staff Comment – the mitigation measures are listed above and it is not considered necessary to reproduce them again here.**

The above commitments will form conditions of consent as they did with DA13/0247 and DA13/0463 and as they will be conditions of consent they are fully enforceable by Tweed Shire Council. With regards to signage the application does not propose sign age.

The proponent has no issue with a condition restricting the use of the properties pool when used for tourist accommodation to 7am to 10pm.

Neighbour Submission dated 23/03/2014

The proponent of DA14/0144 has taken the responsible steps to seek Council consent for the proposed dual use. By seeking consent and operating in accord with a development consent a level of surety is provided to the proponent, the adjoining neighbours and Council alike.

The submission is emotive and not based on planning grounds; the submission raises issues of potential security and safety issues. The submission also claims an existing business is operating at the property. The dwelling is to be holiday let to families and the emotive claim of security and safety risks is unfounded and cannot be supported. We are unaware of the business referred to within the submission and as such question its accuracy or relevance to the application. To address amenity issues the proposal includes specific measures. These measures are consistent with those considered appropriate by Tweed Shire Council in approving DA13/0247 & DA13/0463 and provide an appropriate suite of mechanism to ensure appropriate use of the properties or where inappropriate use may occur that this can be dealt with in a swift manner. The proposed measures are reproduced below:

*****Planning Staff Comment – again, the mitigation measures are listed above and it is not considered necessary to reproduce them again here.**

The above commitments will form conditions of consent as they did with DA 13/0247 and DA13/0463 and as they will be conditions of consent they are fully enforceable by Tweed Shire Council. With regards to signage the application does not propose signage.

The proponent has no issue with a condition restricting the use of the properties pool when used for tourist accommodation to 7am to 10pm.

The three submissions received raise no issues which would prevent Tweed Shire Council approving the development application”.

Planning Comment

It is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

(e) Public interest

Whilst the proposed development complied with the zoning controls under Tweed Local Environmental Plan 2000 at the time of lodgement of the application, at that point it was certain and imminent that the Draft LEP 2012 would prohibit the development. After LEP 2014 was gazetted on 4 April 2014, it is abundantly clear that the proposed development is prohibited. As such, the development is not considered to be in the public interest.

OPTIONS:

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

Council officers recommend Option 1.

CONCLUSION:

The development is prohibited by and inconsistent with the Draft LEP 2012 in force at the time the application was lodged, and LEP 2014 which is now in force, specifically the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

8 [PR-PC] Development Application DA14/0160 for Dual Use of Existing Dwelling - Tourist Accommodation and residential at Lot 38 DP 1066506 No. 1 North Point Avenue, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0160 Pt1



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 has received a development application that seeks to allow the use of an existing dwelling for tourist accommodation purposes. The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing five bedroom single dwelling for the purpose of short-term tourist accommodation.

The application has been called up for Council determination by Councillors Longland and Bagnall.

There were four objections to the proposal.

The proposed development does not require any physical alterations to the existing dwelling house.

Legal advice has been provided to Council regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed Local Environmental Plan (LEP) 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite.

Importantly, these individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. Council is of the view that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard. The applicant has proposed a number of measures to address any issues associated with the short term letting of the dwelling, as detailed further within this report.

The site is zoned 2(f) Tourism and the development is defined as 'tourist accommodation' under the current Tweed Local Environmental Plan 2000 with the proposal permissible with consent in the 2(f) zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council on 18 March 2014. LEP 2014 (previously Draft Tweed LEP 2012) came into force on 4 April 2014. Although LEP 2014 contains a savings provision for development applications made before commencement of the plan, the 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 1979*.

There are various legal precedents created through the NSW Land and Environment Court, which require consent authorities to give greater weight to draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

On this basis it is considered that the Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and the proposal should therefore be refused.

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

Additionally, it is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a lot which has residential dwellings in close proximity to the side and rear boundaries.

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

RECOMMENDATION:

That Development Application DA14/0160 for a dual use of existing dwelling - tourist accommodation and residential at Lot 38 DP 1066506; No. 1 North Point Avenue, Kingscliff be refused for the following reasons:

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

3. **The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - *the public interest* in that the development is not considered to be in the public interest.**

REPORT:

Applicant: Mr T Naprawski
Owner: Mr Tony Naprawski & Mrs Michelle L Naprawski
Location: Lot 38 DP 1066506 No. 1 North Point Avenue, Kingscliff
Zoning: 2(f) Tourism (TLEP2000)
Cost: Not Applicable

Background:

Proposed Development

The development application seeks the dual use of an existing dwelling for residential and tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes (tourist accommodation). The proposed development does not require any physical alterations to the existing dwelling house.

The application was submitted on 18 March 2014. LEP 2014 came into force on 4 April 2014.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone.

The applicant's Statement of Environmental Effects (SEE) advises that the typical occupancy would entail small family groups with the following requirements:

- *The dwelling is to be let to a maximum of one (1) tourist group comprising a maximum of ten (10) persons at any one time;*
- *No Animals/Pets are permitted on the site;*
- *No more than four (4) vehicles can be on-site at any one time;*
- *A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay;*
- *Tenants agree to not make excessive noise as part of the letting agreement;*
- *All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site;*
- *Tenants agree to a management policy (to be submitted for Council approval prior to commencement of use).*

Site

The site occupies a corner allotment with a frontage of approximately 30m to Shipstern Street and 17m to Northpoint Avenue. The site has a land area of 665m² and is regular in shape.



Extract of Council's GIS aerial imagery - Lot 38 DP 1066506

The site comprises a two storey dwelling five bedroom dwelling. The ground floor comprises a triple garage, bedroom, study/bedroom, bathroom, laundry, media room and lounge/kitchen/dining area. The ground floor also comprises an integrated alfresco area and pool located toward the centre of the property. The first floor comprises three bedrooms, ensuite bathrooms and a balcony facing the street.

The existing dwelling was approved under DA06/0290 on 20 July 2006. The dwelling comprises a setback of approximately 500mm on the northern boundary (side) at its closest point (swimming pool); 2.7m on the western boundary (rear) and approximately 6m on the southern and eastern boundaries.

The site is zoned 2(f) Tourism. The site has previously been cleared of native vegetation and currently comprises landscaping typical of a newly established residential property.

A Section 88B Restriction applies to the property in respect to the keeping of cats and dogs, as follows:

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

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

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

No person occupying a lot burdened shall keep upon such lot more than one cat and such cat is to be de-sexed and any such cat must be restrained within the building of the lot burdened or within a secure night-cage on the lot burdened within the hours of 6.00pm to 6.00am daily."

The restriction was put in place to mitigate the impacts of domestic animals such as dogs and cats upon native wildlife. Tweed Shire Council is empowered to release, vary or modify the restriction previously referred to.

It is also worthy to note that a number of applications for the same use has been submitted for a number of properties within close proximity to the subject site (see figure below):



Concurrent applications at Nos. 17 (DA14/0161) and 18 (DA14/0160) Malibu Street and 18 Northpoint Avenue (DA14/0183) (highlighted in red)

These applications are being concurrently reported to Council, with the exception of DA14/0183 at No. 18 Northpoint Avenue.

History

Of note, a historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Draft LEP 2012. At the Meeting of 17 October 2013, Councillors resolved to approve the application, contrary to Council Officer's recommendation, and the application was brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at that meeting.

Following the approval of this application an additional development application DA13/0463 for the dual use of No. 3 Collins Lane, Casuarina was approved on 21 November 2013 under delegated authority, as directed as appropriate by Councillors at that time.


With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas of Salt is an anomaly contrary to the original master planning for Salt.

SITE DIAGRAM:



Locality Plan
 Lot 38 DP 1066506
 No.1 North Point Ave, Kingscliff

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is consistent with the aims of the Plan, with the proposed dual use not considered to compromise natural character, economic vitality, ecological integrity or cultural fabric.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally consistent with the four principles of ecologically sustainable development. The application does not result in any physical works on the site, but rather a change of use to the existing dwelling with no unacceptable environmental impacts anticipated.

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 site is located in the 2(f) Tourism zone, the primary objective of which is to:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the proposed dual use of the existing dwelling (tourist accommodation) could be seen to be consistent with the objectives of the zone, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone Objectives

The subject site is located within the 2(f) Tourism zone which has the following zone objectives:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the development could be seen to achieve consistency with these objectives, as outlined above, the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services provided through the dwelling development, previously approved by Council.

Clause 16 - Height of Building

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

Clause 35 - Acid Sulfate Soils

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

Clause 39A – Bushfire Protection

The site is bushfire prone. As such, the application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose. A bush fire safety authority under section 100B of the Rural Fires Act 1997 was received from the service on 3 June 2014 inclusive of conditions regarding Asset Protection Zones, Evacuation and Emergency Management, Design and Construction and Landscaping which would be attached to any consent. Having regard to this, the proposal is considered to be acceptable with respect to bushfire protection.

Clause 53 - Development of specific sites

Clause 53(2) of the LEP 2000 is the mechanism by which additional purposes may be permitted on certain land, as listed in Schedule 3 of the Plan.

The proposed change of use is not a development for the purpose of a dwelling house, hotel, motel or tourist resort. The proposal seeks flexible use of an existing dwelling for both permanent residential accommodation and tourist accommodation. The use of 'tourist accommodation' is permissible with development consent as listed within the table to 2(f) under Clause 11 of the TLEP 20000. The proposal does not rely upon Clause 53(2) of the TLEP 2000 for permissibility'.

Clause 53B Height Restrictions - Coast Road, South Kingscliff

The existing dwelling is one to which Clause 53B applies and which prescribes a two storey height limit. The application does not raise any implications in respect to this clause.

Clause 54 – Tree preservation order

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The proposal does not require or propose any removal of vegetation, given its nature as a change of use to an existing structure. As such, this clause is satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the *NSW Coastal Policy 1997*, the *Coastline Management Manual* or the *North Coast: Design Guidelines*.

Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing.

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The proposal will not restrict public access to the foreshore or result in any additional overshadowing of foreshore area as the application relates to an extension of permissible uses on the site with no physical development proposed. It is considered that the proposal satisfies the matters for consideration under SEPP 71.

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

It is noted that the Draft Tweed LEP 2012 was gazetted (as amended) on 4 April 2014 as the Tweed LEP 2014. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

Part 1 Preliminary

1.4 Definitions

The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation*:

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

- (a) *backpackers' accommodation,*
- (b) *bed and breakfast accommodation,*
- (c) *farm stay accommodation,*
- (d) *hotel or motel accommodation,*
- (e) *serviced apartments,*

But does not include:

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

'Tourist and visitor accommodation' is a prohibited use in the R2 zone by its inclusion in Item 4 as below:

4 Prohibited

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

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 February 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. As such this clause is applicable to this development application.

Notwithstanding, 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 1979*.

Part 2 Permitted or prohibited development

2.1 Land use zones

The subject site is located in the R2 Low Density Residential zone.

2.3 Zone objectives and Land Use Table

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; and*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

"Notwithstanding that 'tourist accommodation' has not been included in the proposed R2 zone; the ability to use the dwelling for both permanent residencies as well as for short term holiday letting will not detract from the surrounding low density character of the residential area.

The dwelling house would maintain the physical appearance of the low residential development and with the implementations of appropriate conditions, the dual use of the dwelling (tourist accommodation) would not impose amenity impacts to the low density residential locality."

Whilst the applicants' justification above is noted, it is considered that the subject application would not comply with the zone objectives.

The proposed development constitutes the use of the dwelling for tourist and visitor accommodation which is not considered to be consistent with the above objectives as it does not provide for the housing needs of the community or enable a land use which provides facilities or services to meet the day to day needs of residents.

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

Given that the proposed development is prohibited in the R2 zone and not considered to be in accordance with the objectives of the zone, it is considered that the application should be refused on this basis.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

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

The subject is not considered to either offer opportunities with respect to provision of a new public access or impact upon any existing public access at the coastal foreshore.

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

The proposed development does not result in any development work as it relates solely to a change of use of an existing dwelling to dual use. As such the proposal is considered to be generally acceptable having regard to the above provisions.

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

The proposed development will not result in any overshadowing or loss of views from a public place to 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 a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (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*

It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard as the application relates to a change of use of an existing building only.

- (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 nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

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 require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

- (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*

As outlined elsewhere in this report, the subject application relates only to a change of use of an existing structure with no development work proposed. The existing dwelling is Council approved and thus stormwater provisions would have been implemented through the original development work on the site. The proposal is considered not to contravene the above controls and satisfies the above clause.

- (d) the proposed development will not:*

- (i) be significantly affected by coastal hazards, or
(ii) have a significant impact on coastal hazards, or
(iii) increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature which does not involve any development works.

There are no other provisions in LEP 2014 that are specifically relevant to the proposal.

In accordance with the advice provided above, the application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and LEP 2014, and also because the proposal is considered not to meet the objectives of the R2 zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling was approved on 20 July 2006 under DA06/0290. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2005 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however, there are minimal setbacks provided, particularly to the northern boundary.

No physical alterations are proposed to the existing building. Car parking is provided on the site for four vehicles, as detailed below. No additional waste arrangements are considered to be required. The applicant advises that the existing dwelling provides an appropriate area for private open space and outdoor recreation and is in walking distance to the beach.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1. However, it is noted that the existing dwelling is located in close proximity to the boundaries of the site, particularly on the northern elevation taking into consideration the location of the pool up to 500mm to the boundary. The dwelling is also two storeys with an upper level deck. It is therefore considered that the scale of the dwelling and proximity to the site boundaries may have the capacity to impact on surrounding residential amenity in terms of noise and disturbance.

A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces (two/three spaces within a triple garage and two within the driveway).

A variation has been requested to delete the requirement for staff and delivery vehicle parking as outlined under this DCP as the nature of the proposal does not require it. It is considered that the existing on-site parking arrangements are sufficient for an extended family group.

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with DCP A11. The proposal was placed on public exhibition for 14 days from 14 April 2014 to 1 May 2014.

Four submissions were received during this time which is detailed elsewhere in this report.

Section B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

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

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit and it is advised that as there is no change in BCA Building Class further comments are not required with this regard.

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

Tweed Shire Coastline Management Plan 2005

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

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

The subject site is located within an area dominated by dwellings lawfully utilised for long-term residential purposes and large scale tourist resort developments. It is intended that the large scale resorts provide tourist accommodation and flexible use options in the future, as distinct from single dwellings.

Whilst the proposal does not comprise any physical alterations to the existing dwelling, it is considered that the use of the dwelling for tourist accommodation purposes may have the potential to affect surrounding residential amenity by reason of noise and disturbance and may detract from the character of the dwelling and the surrounding area.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000.

The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

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

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. Four submissions were received, the issues raised are detailed below. The applicant was given opportunity to respond to the matters raised in the submissions however has not provided a response to Council to date.

Contravention of Draft LEP 2012:

- The proposal would contravene objectives of R2 zone;
- The use of the dwelling for short term tourist accommodation purposes would ruin the residential amenity forever;
- There will be no protection of the existing amenity and character of the area.

Noise and disturbance:

- Property is allegedly already being let for holiday purposes and has allegedly been causing noise/amenity impacts;
- Families are currently frequenting holiday lets in the area on a weekly basis;
- Often have parties (weddings, birthdays, schoolies), BBQs, stay up late, play loud music;
- Holidaymakers have disregard for surrounding residents;
- Allegedly up to 16 persons have been sta

Parking

- Often a number of vehicles parked outside of property. Vehicles are often towing boats, caravans and the like that are left outside of property and used as additional accommodation;
- Parking is often on the street which is dangerous given the property is located on a blind corner.

Rubbish

- Over holiday seasons the garbage bins are inadequate to cope with the level of rubbish and recycling material which is often just left on the footpath;
- It is left to the residents to clear the area up.

Security

- Increased break-ins over holiday season to homes and cars as supported by reports made to police station;
- The number of different people staying in the area makes surveillance difficult and it is difficult to carry out Neighbourhood Watch.

Insurance and Risk of Injury

- High movement of people in and out of properties could end in serious injury or death as a result of poor maintenance of property and the pool;
- Questions in respect of personal liability and whether such measures are in place or supervised.

Character of area

- The area was sold as a residential area where people reside and that the resorts (Manta, Peppers, Bale) were for holiday makers. A number of residents in locality have relocated due to noise and inconvenience;
- Unnecessary and inappropriate that council sees fit to approve private residences as tourist accommodation;
- Keep holiday makers in the resorts;
- If all properties were approved for tourist accommodation it could potentially see 10 persons or more in each dwelling and would result in a higher density within the area;
- Used as a party venue - there are plenty of commercial venues that have been established for parties;
- Plenty of affordable tourist accommodation on the coast and at Peppers and Mantra just one street away;
- Concerns about the number of development applications received for tourist accommodation in the locality (proposed holiday accommodation at 13 Shipstern Street, 1 Northpoint Avenue and 18 Malibu Street).

Enforcement of conditions

- Concerns that the property will not be managed in accordance with the proposed management plan and conditions;

- Concerns about who is going to enforce the conditions of consent should the application be approved;
- The property is already being used for tourism purposes and based on situation to date it is alleged that holidaymakers do what they like, when they like.

Planning Comment

It is noted that issues such as increased noise and disturbance resulting from the use of the dwelling for short term tourist accommodation may have a significant detrimental impact on the amenity of surrounding residents. Whilst it is acknowledged that a family living permanently in the dwelling may also have the ability to make noise, it is considered that those on holiday may have an increased propensity to make noise on a louder and more frequent basis, particularly if the property was to be used for parties or the like.

It is noted that should the application be approved a number of conditions may be applied to ensure that the tourist accommodation is operated in accordance with an approved Management Plan (in respect of number of occupants, tenant behaviour and onsite parking). However, it is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

(e) Public interest

The proposed development would be permissible with consent under the provisions of the former LEP 2000. However, approval of the application does raise questions in respect to the suitability of the proposed tourist accommodation located predominantly within a residential area.

However the draft LEP 2012 and gazetted LEP 2014 prohibits the development and it is considered that the proposal would not be in accordance with the objectives of the R2 zone. As such, the proposed development is not considered to be in the public interest.

OPTIONS:

That Council:

1. Refuses the application; or
2. Grants in-principle support for the application and a report to be brought back to a future Council meeting with recommended conditions of consent for Council to determine.

Council officers recommend Option 1.

CONCLUSION:

The proposal is prohibited within the R2 Low Density Residential zone and does not comply with the R2 Low Density Residential zone objectives within the draft LEP 2012. Given the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed application be refused development consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

9 [PR-PC] Development Application DA14/0161 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 115 DP 1066504 No. 17 Malibu Street, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0161 Pt1



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 has received a development application that seeks to allow the use of an existing dwelling for tourist accommodation purposes. The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing five bedroom single dwelling for the purpose of short-term tourist accommodation.

This application has been called up for Council's determination by Councillors Longland and Bagnall.

One submission was received for the proposal.

The proposed development does not require any physical alterations to the existing dwelling house.

Legal advice has been provided to Council regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed Local Environmental Plan (LEP) 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite.

Importantly, these individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard. The applicant has proposed a number of measures to address any issues associated with the short term letting of the dwelling, as detailed further within this report.

The site is zoned 2(f) Tourism and the development is defined as 'tourist accommodation' under the current Tweed Local Environmental Plan 2000 with the proposal permissible with consent in the 2(f) zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council on 18 March 2014. LEP 2014 (previously Draft Tweed LEP 2012) came into force on 4 April 2014. Although LEP 2014 contains a savings provision for development applications made before commencement of the plan, the 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 1979*.

There are various legal precedents created through the NSW Land and Environment Court, which require consent authorities to give greater weight to draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

On this basis it is considered that the Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and the proposal should therefore be refused.

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

Additionally, it is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a lot which has residential dwellings in close proximity to the side and rear boundaries.

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

RECOMMENDATION:

That Development Application DA14/0161 for dual use of existing dwelling - tourist accommodation and residential at Lot 115 DP 1066504 No. 17 Malibu Street, Kingscliff be refused for the following reasons:

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

3. **The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - *the public interest* in that the development is not considered to be in the public interest.**

REPORT:

Applicant: Mr T Naprawski
Owner: Mr Tony Naprawski & Mrs Michelle L Naprawski
Location: Lot 115 DP 1066504 No. 17 Malibu Street, Kingscliff
Zoning: 2(f) Tourism (TLEP2000)
Cost: Not Applicable

Background:

Proposed Development

The development application seeks the dual use of an existing dwelling for residential and tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes (tourist accommodation). The proposed development does not require any physical alterations to the existing dwelling house.

The application was submitted on 18 March 2014. LEP 2014 came into force on 4 April 2014. Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone.

The applicant's Statement of Environmental Effects (SEE) advises that the typical occupancy would entail small family groups with the following requirements:

- *The dwelling is to be let to a maximum of one (1) tourist group comprising a maximum of ten (10) persons at any one time;*
- *No Animals/Pets are permitted on the site;*
- *No more than four (4) vehicles can be on-site at any one time;*
- *A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay;*
- *Tenants agree to not make excessive noise as part of the letting agreement;*
- *All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site;*
- *Tenants agree to a management policy (to be submitted for Council approval prior to commencement of use).*

Site

The site is located in an established residential environment and has a frontage of approximately 17m to Malibu Street. The site has a land area of 625m² and is regular in shape.



Extract of Council's GIS aerial imagery - Lot 115 DP 1066504, No. 17 Malibu Street

The site comprises a two storey three/four bedroom dwelling. The ground floor comprises a double garage, open plan living/kitchen/dining area, bathroom and media/guest room. A patio and swimming pool is located at the rear of the property. The upper floor comprises two bedrooms with ensuite bathrooms.

The existing dwelling and swimming pool was approved under DA05/0835 on 14 September 2005. The dwelling comprises a setback of approximately 1m on the eastern and 3m to the western (side) boundaries. A rear setback of approximately 6m is provided at 8m to the front.

The site is zoned 2(f) Tourism. The site has previously been cleared of native vegetation and currently comprises landscaping typical of a newly established residential property.

A Section 88B Instrument applies to the subject property that states that '*No main dwelling may be used for any purpose other than a single private dwelling*'.

It is also worthy to note that a number of applications for the same use has been submitted for a number of properties within close proximity to the subject site (see figure below):



Concurrent applications at Nos. 1 Northpoint Avenue (DA14/0160), 18 (DA14/0160) Malibu Street and 18 Northpoint Avenue (DA14/0183) (highlighted in red)

These applications are being concurrently reported to Council, with the exception of DA14/0183 at No. 18 Northpoint Avenue.

History

Of note, a historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Draft LEP 2012. At the Meeting of 17 October 2013, Councillors resolved to approve the application, contrary to Council Officer's recommendation, and the application was brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at that meeting.

Following the approval of this application an additional development application DA13/0463 for the dual use of No. 3 Collins Lane, Casuarina was approved on 21 November 2013 under delegated authority, as directed as appropriate by Councillors at that time.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas of Salt is an anomaly contrary to the original master planning for Salt.

SITE DIAGRAM:



Locality Plan
 Lot 115 DP 1066504
 No.17 Malibu Street, Kingscliff

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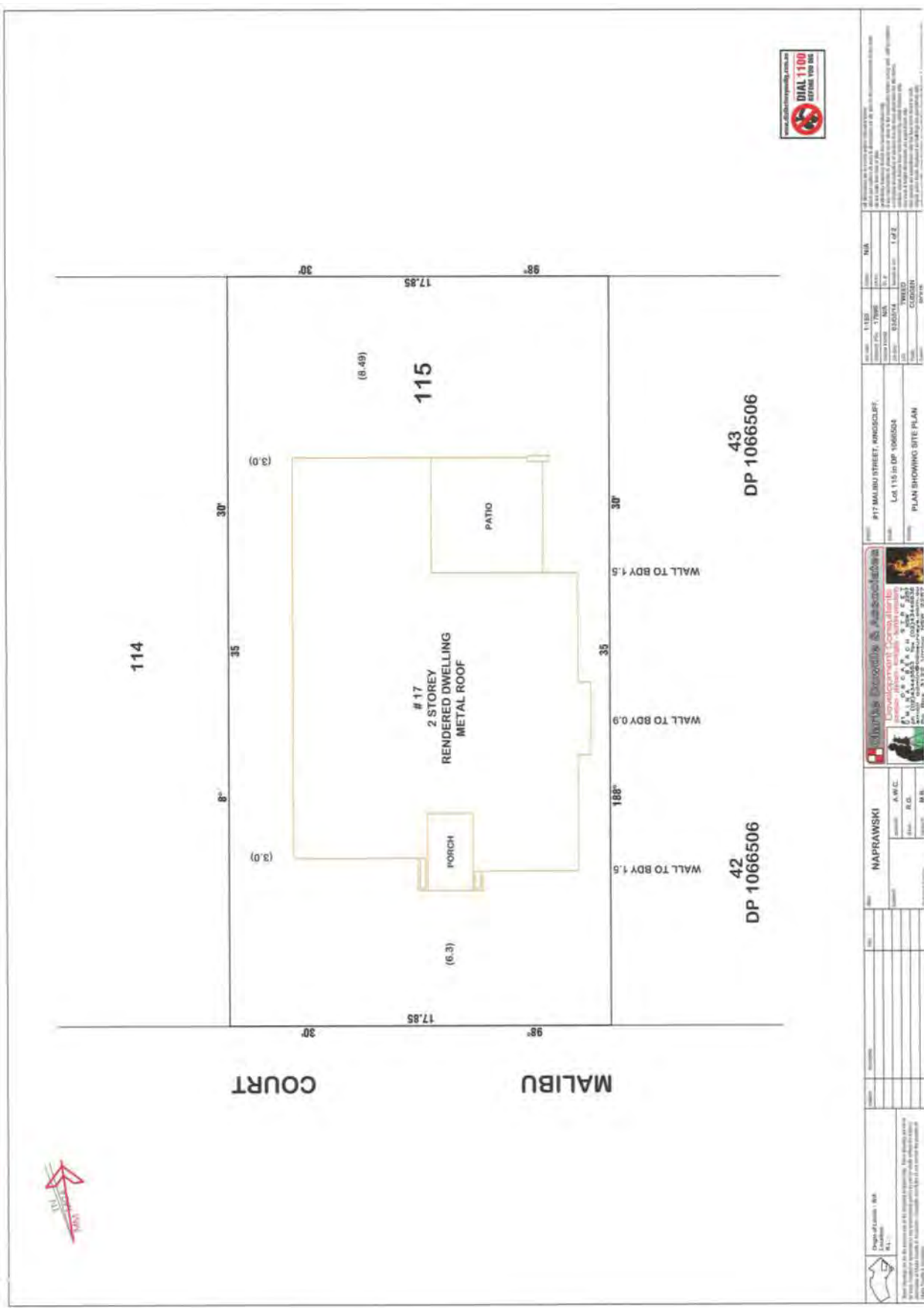
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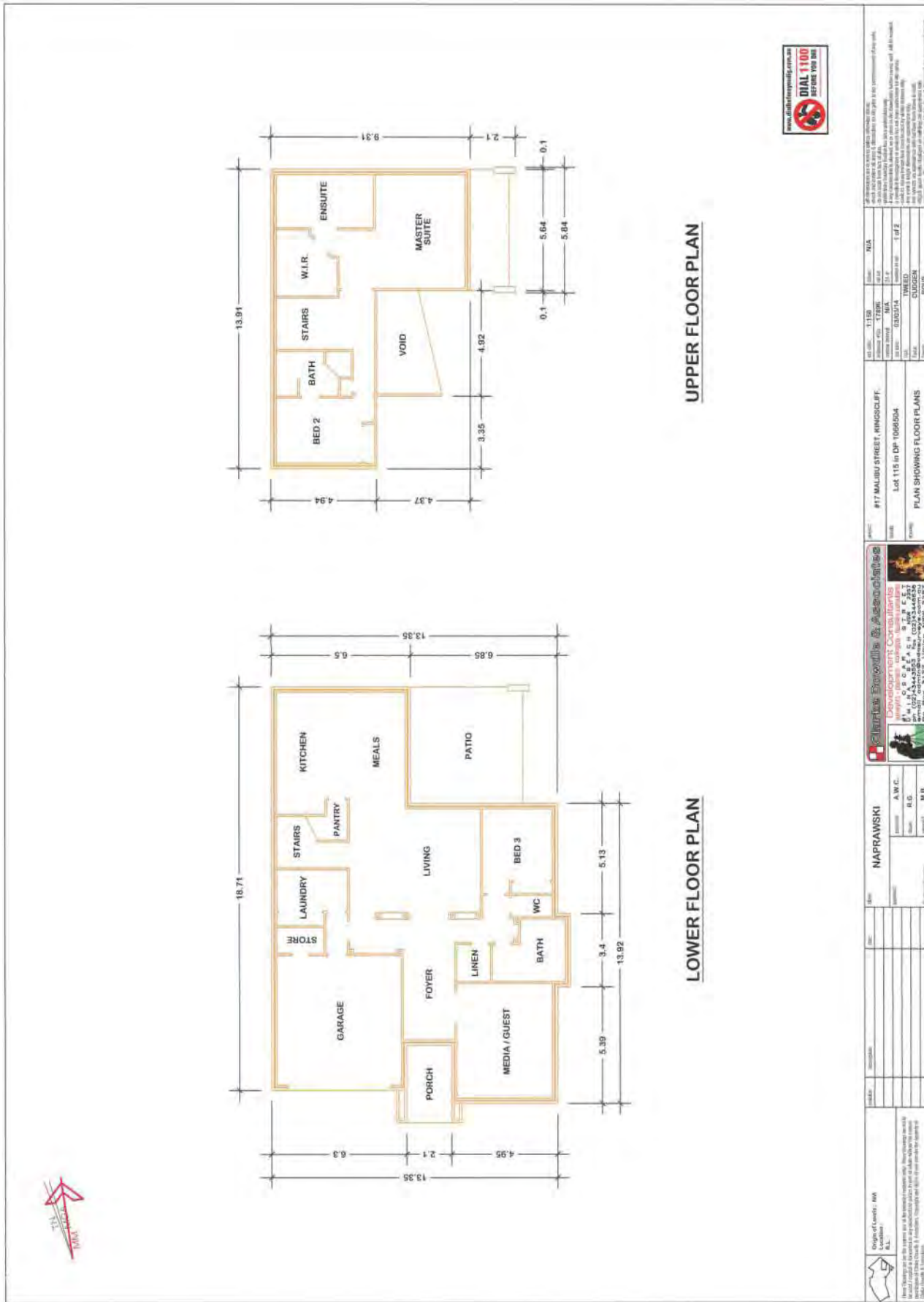
Civic and Cultural Centre
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 Murwillumbah NSW 2484
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 F | (02) 6670 2429
 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:



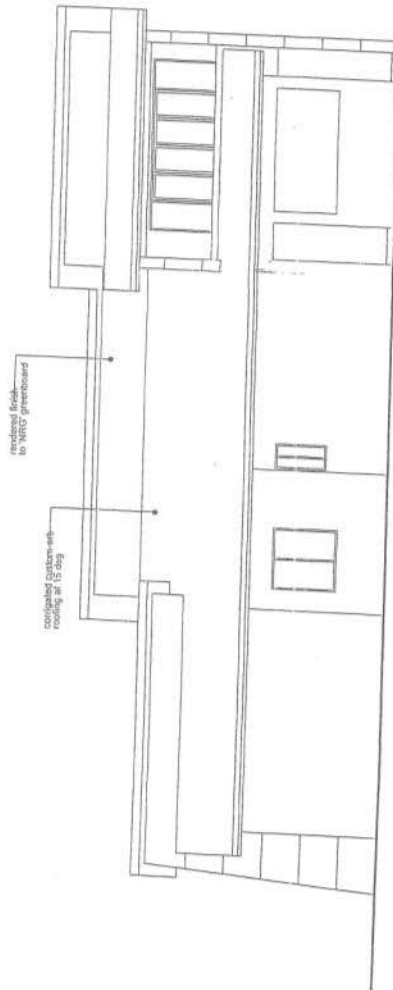
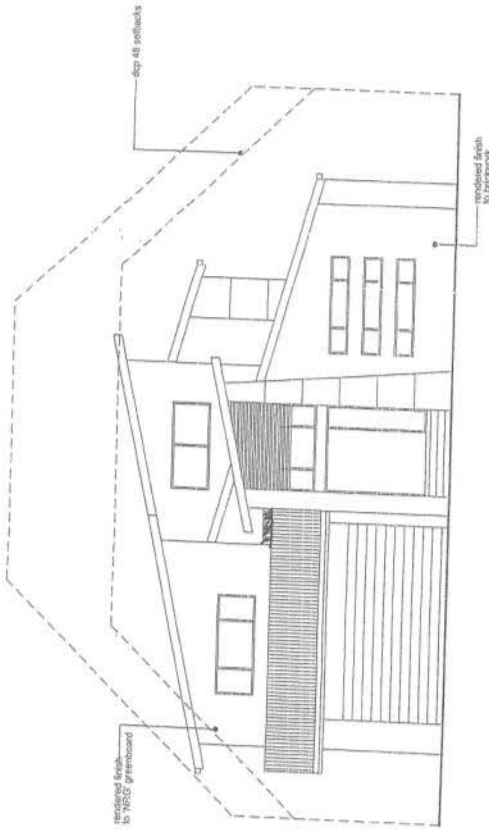
		Project: #17 MALIBU STREET, ANKOSCUPF Lot: Lot 115 in DP 1066506 Plan: PLAN SHOWING SITE PLAN	
Client: N/A Site: N/A Scale: 1:100 Date: 03/07/14 Drawn by: L.F.Z. Checked by: M.A.L. Project No.: 09/14	Author: N.A.P. Designer: M.A.L. Project No.: 09/14	Project Name: N/A Site: N/A Scale: 1:100 Date: 03/07/14 Drawn by: L.F.Z. Checked by: M.A.L. Project No.: 09/14	Project Name: N/A Site: N/A Scale: 1:100 Date: 03/07/14 Drawn by: L.F.Z. Checked by: M.A.L. Project No.: 09/14



<p>Origin of Code: N/A Location: N/A</p>		<p>Project: #17 MALIBU STREET, HINGSCLOVE Title: LOT 115 in DP 1066504 Drawing: PLAN SHOWING FLOOR PLANS</p>	
<p>Scale: 1:100 Date: 03/07/14 Author: TWEED Checker: CUDDEN</p>	<p>Client: N/A Design: T & P Project: 1 of 2</p>	<p>Project: #17 MALIBU STREET, HINGSCLOVE Title: LOT 115 in DP 1066504 Drawing: PLAN SHOWING FLOOR PLANS</p>	
<p>Scale: 1:100 Date: 03/07/14 Author: TWEED Checker: CUDDEN</p>		<p>Project: #17 MALIBU STREET, HINGSCLOVE Title: LOT 115 in DP 1066504 Drawing: PLAN SHOWING FLOOR PLANS</p>	

qsp	
ph: 07 5338881 fax: 07 5525851 level 2, 200 Pitt Street Sydney NSW 2000 po: 111/200 Pitt Street Sydney NSW 2000 web: www.qsp.com.au email: info@qsp.com.au	
client	N. Convery
project	proposed residence lot 115 malibu circuit "salt" kingscliff
date	24/06/05
status	ba-issuue
amendments	
date	
comments	allow for 48 setbacks & remove front fence
scale	1:100 ON A3
drawn by	DC
job no.	05/035
sheet no.	05

spasfire
 BUILDING CERTIFICATION
 GROUP PTY LTD
 247 GREENWAY DRIVE
 TWEED HEADS SOUTH
 NSW 2446
 Andrew Duggan
 1850 PMSW 7002 PHONE 07 5523 2629
 1850 PMSW 7188 FAX 07 5523 2722



spasfire
 Building Certifications

q u a d r a n t s o u t h p a c i f i c p t y i t d

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is consistent with the aims of the Plan, with the proposed dual use not considered to compromise natural character, economic vitality, ecological integrity or cultural fabric.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally consistent with the four principles of ecologically sustainable development. The application does not result in any physical works on the site, but rather a change of use to the existing dwelling with no unacceptable environmental impacts anticipated.

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 site is located in the 2(f) Tourism zone, the primary objective of which is to:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the proposed dual use of the existing dwelling (tourist accommodation) could be seen to be consistent with the objectives of the zone, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone Objectives

The subject site is located within the 2(f) Tourism zone which has the following zone objectives:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the development could be seen to achieve consistency with these objectives, as outlined above, the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services provided through the dwelling development, previously approved by Council.

Clause 16 - Height of Building

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

Clause 35 - Acid Sulfate Soils

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

Clause 53 - Development of specific sites

Clause 53(2) of the LEP 2000 is the mechanism by which additional purposes may be permitted on certain land, as listed in Schedule 3 of the Plan.

The proposed change of use is not a development for the purpose of a dwelling house, hotel, motel or tourist resort. The proposal seeks flexible use of an existing dwelling for both permanent residential accommodation and tourist accommodation. The use of 'tourist accommodation' is permissible with development consent as listed within the table to 2(f) under Clause 11 of the

TLEP 20000. The proposal does not rely upon Clause 53(2) of the TLEP 2000 for permissibility.

Clause 53B Height Restrictions - Coast Road, South Kingscliff

The existing dwelling is one to which Clause 53B applies and which prescribes a two storey height limit. The application does not raise any implications in respect to this clause.

Clause 54 – Tree preservation order

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The proposal does not require or propose any removal of vegetation, given its nature as a change of use to an existing structure. As such, this clause is satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the *NSW Coastal Policy 1997*, the *Coastline Management Manual* or the *North Coast: Design Guidelines*.

Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing.

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The proposal will not restrict public access to the foreshore or result in any additional overshadowing of foreshore area as the application relates to an extension of permissible uses on the site with no physical development proposed. It is considered that the proposal satisfies the matters for consideration under SEPP 71.

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

It is noted that the Draft Tweed LEP 2012 was gazetted (as amended) on 4 April 2014 as the Tweed LEP 2014. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

1.4 Definitions

The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation*:

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

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

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

'Tourist and visitor accommodation' is a prohibited use in the R2 zone by its inclusion in Item 4 as below:

4 Prohibited

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

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 February 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. As such this clause is applicable to this development application.

Notwithstanding, 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 1979*.

Part 2 Permitted or prohibited development

2.1 Land use zones

The subject site is located in the R2 Low Density Residential zone.

2.3 Zone objectives and Land Use Table

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; and
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

"Notwithstanding that 'tourist accommodation' has not been included in the proposed R2 zone; the ability to use the dwelling for both permanent residencies as well as for short term holiday letting will not detract from the surrounding low density character of the residential area.

The dwelling house would maintain the physical appearance of the low residential development and with the implementations of appropriate conditions, the dual use of the dwelling (tourist accommodation) would not impose amenity impacts to the low density residential locality."

Whilst the applicants' justification above is noted, it is considered that the subject application would not comply with the zone objectives.

The proposed development constitutes the use of the dwelling for tourist and visitor accommodation which is not considered to be consistent with the above objectives as it does not provide for the housing needs of the community or enable a land use which provides facilities or services to meet the day to day needs of residents.

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

Given that the proposed development is prohibited in the R2 zone and not considered to be in accordance with the objectives of the zone, it is considered that the application should be refused on this basis.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

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

The subject is not considered to either offer opportunities with respect to provision of a new public access or impact upon any existing public access at the coastal foreshore.

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

The proposed development does not result in any development work as it relates solely to a change of use of an existing dwelling to dual use. As such the proposal is considered to be generally acceptable having regard to the above provisions.

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

The proposed development will not result in any overshadowing or loss of views from a public place to 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 a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (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

It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard as the application relates to a change of use of an existing building only.

- (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 nature of the development, and proposed conditions of consent which are considered to mitigate potential

amenity impacts.

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 require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

(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*

As outlined elsewhere in this report, the subject application relates only to a change of use of an existing structure with no development work proposed. The existing dwelling is Council approved and thus stormwater provisions would have been implemented through the original development work on the site. The proposal is considered not to contravene the above controls and satisfies the above clause.

(d) *the proposed development will not:*

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

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

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

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature which does not involve any development works.

There are no other provisions in LEP 2014 that are specifically relevant to the proposal.

In accordance with the advice provided above, the application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and LEP 2014, and also because the proposal is considered not to meet the objectives of the R2 zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling was approved under DA05/0835 on 14 September 2005. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2005 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however there are minimal setbacks are provided, particularly to the east (side boundary).

No physical alterations are proposed to the existing building. Car parking is provided on the site for four vehicles, as detailed below. No additional waste arrangements are considered to be required. The applicant advises that the existing dwelling provides an appropriate area for private open space and outdoor recreation and is in walking distance to the beach.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1. However, it is noted that the existing two storey dwelling is located in close proximity to the boundaries of the site, particularly on the eastern elevation. The site also comprises a pool within the rear setback that is located in close proximity to the rear boundary. It is considered that the scale of the dwelling and proximity to the site boundaries may have the capacity to adversely impact on surrounding residential amenity in terms of noise and disturbance.

A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces (two spaces with a double garage and two within the driveway).

A variation has been requested to delete the requirement for staff and delivery vehicle parking as outlined under this DCP as the nature of the proposal does not require it. It is considered that the existing on-site parking arrangements are sufficient for an extended family group.

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with DCP A11. The proposal was placed on public exhibition for 14 days from 14 April 2014 to 1 May 2014.

One submission was received during this time which is detailed elsewhere in this report.

Section B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

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

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit and it is advised that as there is no change in BCA Building Class further comments are not required with this regard.

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

Tweed Shire Coastline Management Plan 2005

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

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

The subject site is located within an area dominated by dwellings lawfully utilised for long-term residential purposes and large scale tourist resort developments. It is intended that the large scale resorts provide tourist accommodation and flexible use options in the future, as distinct from single dwellings.

Whilst the proposal does not comprise any physical alterations to the existing dwelling, it is considered that the use of the dwelling for tourist accommodation purposes may have the potential to affect surrounding residential amenity by reason of noise and disturbance and may detract from the character of the dwelling and the surrounding area.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000.

The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

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

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. One submission was received. The applicant was given opportunity to respond to the matters raised in the submissions however has not provided a response to Council to date. The matters raised within this submission are detailed below:

- Of the 16 homes in the street, 12 are owner occupied, 2 are long term rentals and until now 2 have been holiday homes used solely by the owners;
- A community spirit has existed in the locality;
- Earlier in the year it is alleged that No. 18 Malibu Street commenced holiday renting their home and since then there has been noise, disturbance and anti-social behaviour in the locality;
- Bins have been left out through the week (associated smells);
- Parking problems in the street with holidaymakers cars being parked on either side preventing the garbage truck from collecting rubbish;
- Behaviour is disrespectful;
- Tourism accommodation should be restricted to properties where onsite management is provided;
- As area is being rezoned for residential accommodation, this should not be allowed;
- Concerns about the number of applications for this use that have been lodged with Council;
- First hand problems with conditions not being enforced.

Planning Comment

Issues such as increased noise and disturbance resulting from the use of the dwelling for short term tourist accommodation may have a significant detrimental impact on the amenity of surrounding residents. It is noted that should the application be approved a number of conditions may be applied to ensure that the tourist accommodation is operated in accordance with an approved Management Plan (in respect of number of occupants, tenant behaviour and onsite parking). However, it is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

(e) Public interest

The proposed development would be permissible with consent under the provisions of the former LEP 2000. However, approval of the application does raise questions in respect to the suitability of the proposed tourist accommodation located predominantly within a residential area.

However the draft LEP 2012 and gazetted LEP 2014 prohibits the development and it is considered that the proposal would not be in accordance with the objectives of the R2 zone. As such, the proposed development is not considered to be in the public interest.

OPTIONS:

That Council:

1. Refuses the application; or
2. Grants in-principle support for the application and a report to be brought back to a future Council meeting with recommended conditions of consent for Council to determine.

Council officers recommend Option 1.

CONCLUSION:

The proposal is prohibited within the R2 Low Density Residential zone and does not comply with the R2 Low Density Residential zone objectives within the draft LEP 2012. Given the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed application be refused development consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

10 [PR-PC] Development Application DA14/0131 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 98 DP 1066504 No. 18 Malibu Street, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0131 Pt1



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 has received a development application that seeks to allow the use of an existing dwelling for tourist accommodation purposes. The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing five bedroom single dwelling for the purpose of short-term tourist accommodation.

This application has been called up for Council determination by Councillors Longland and Bagnall.

There were seven objections to the proposal (please note that one person submitted two objections).

The proposed development does not require any physical alterations to the existing dwelling house.

Legal advice has been provided to Council regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed Local Environmental Plan (LEP) 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite.

Importantly, these individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard. The applicant has proposed a number of measures to address any issues associated with the short term letting of the dwelling, as detailed further within this report.

The site is zoned 2(f) Tourism and the development is defined as 'tourist accommodation' under the current Tweed Local Environmental Plan 2000 with the proposal permissible with consent in the 2(f) zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council on 28 February 2014. LEP 2014 (previously Draft Tweed LEP 2012) came into force on 4 April 2014. Although LEP 2014 contains a savings provision for development applications made before commencement of the plan, the 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 1979*.

There are various legal precedents created through the NSW Land and Environment Court, which require consent authorities to give greater weight to draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

On this basis it is considered that the Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and the proposal should therefore be refused.

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

Additionally, it is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a lot which has residential dwellings in close proximity to the side and rear boundaries.

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

RECOMMENDATION:

That Development Application DA14/0131 for a dual use of existing dwelling - tourist accommodation and residential at Lot 98 DP 1066504 No. 18 Malibu Street, Kingscliff be refused for the following reasons:

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

3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - *the public interest* in that the development is not considered to be in the public interest.

REPORT:

Applicant: Mrs NE McPherson
Owner: Mr Scott M McPherson & Mrs Nicole E McPherson
Location: Lot 98 DP 1066504 No. 18 Malibu Street, Kingscliff
Zoning: 2(f) Tourism (TLEP2000)
Cost: Not Applicable

Background:

Proposed Development

The development application seeks the dual use of an existing dwelling for residential and tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes. The proposed development does not require any physical alterations to the existing dwelling house.

The application was submitted on 28 February 2014. LEP 2014 came into force on 4 April 2014.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone.

The applicant's Statement of Environmental Effects (SEE) advises that:

'To address any issues associated with the short term letting of the dwelling, the following conditions are suggested for inclusion as part of the approval:

- *The use of the dwelling for tourist accommodation is restricted to the following:*
 - *The dwelling is to let to a maximum of one (1) tourist group comprising a maximum of ten (10) persons at any one time which may consist of up to four (4) adults and six (6) children.*
 - *A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.*
 - *No more than four (4) vehicles can be at the site at any one time with all car parking to be located within the property boundary of the subject site.*
 - *An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*
 - *A Plan of Management is to incorporate and convey a clear understanding of the terms of conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.*
 - *Tenants agree to not make excessive noise as part of the letting agreement.*

- A 24 hour contract (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
- Tenants agree to a management policy (to be submitted for Council approval prior to commencement of use).

Site

The site is regular and rectangular shaped with a frontage of approximately 17m to Malibu Street, Kingscliff. The site is located near the end of North Point Avenue and Malibu Street. The allotment comprises a land area of 621m² and currently comprises an existing two storey dwelling as shown in the image below:



Extract of Council's GIS aerial imagery - 18 Malibu Street

The existing dwelling was approved under DA05/0657 and consists of: two bedrooms, open plan bar/rumpus retreat and double garage, two small decks with access onto the garden and one deck at the front of the property on the ground floor and four bedrooms, kitchen, living room, cinema room and bathrooms on the second floor. The second floor also comprises a large deck that faces onto Malibu Street. A subsequent modification (DA05/0657.06) approved a swimming pool in the front setback, a fence height variation and the addition of a deck on the upper level.

The dwelling comprises a side setback of approximately 1.7m to the east and 3.4m to the west (side boundaries); approximately 5m to the south (rear boundary) and 6m to the north (front boundary).

The site has previously been cleared of native vegetation and currently comprises landscaping typical of a newly established residential property.

A Section 88B Instrument applies to the subject property that states that '*No main dwelling may be used for any purpose other than a single private dwelling*'.

It is also worthy to note that a number of applications for the same use has been submitted for a number of properties within close proximity to the subject site (see figure below):



Concurrent applications at Nos. 1 Northpoint Avenue (DA14/0160), 17 Malibu Street (DA14/0161) and 18 Northpoint Avenue (DA14/0183) (highlighted in red)

These applications are being concurrently reported to Council, with the exception of DA14/0183 at No. 18 Northpoint Avenue.

History

Of note, a historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Draft LEP 2012. At the Meeting of 17 October 2013, Councillors resolved to approve the application, contrary to Council Officer's recommendation, and the application was brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at that meeting.

Following the approval of this application an additional development application DA13/0463 for the dual use of No. 3 Collins Lane, Casuarina was approved on 21 November 2013 under delegated authority, as directed as appropriate by Councillors at that time.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas of Salt is an anomaly contrary to the original master planning for Salt.

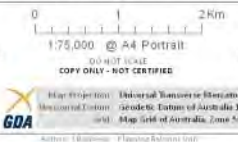
SITE DIAGRAM:



Locality Plan
 Lot 98 DP 1066504
 No.18 Malibu Street, Kingscliff

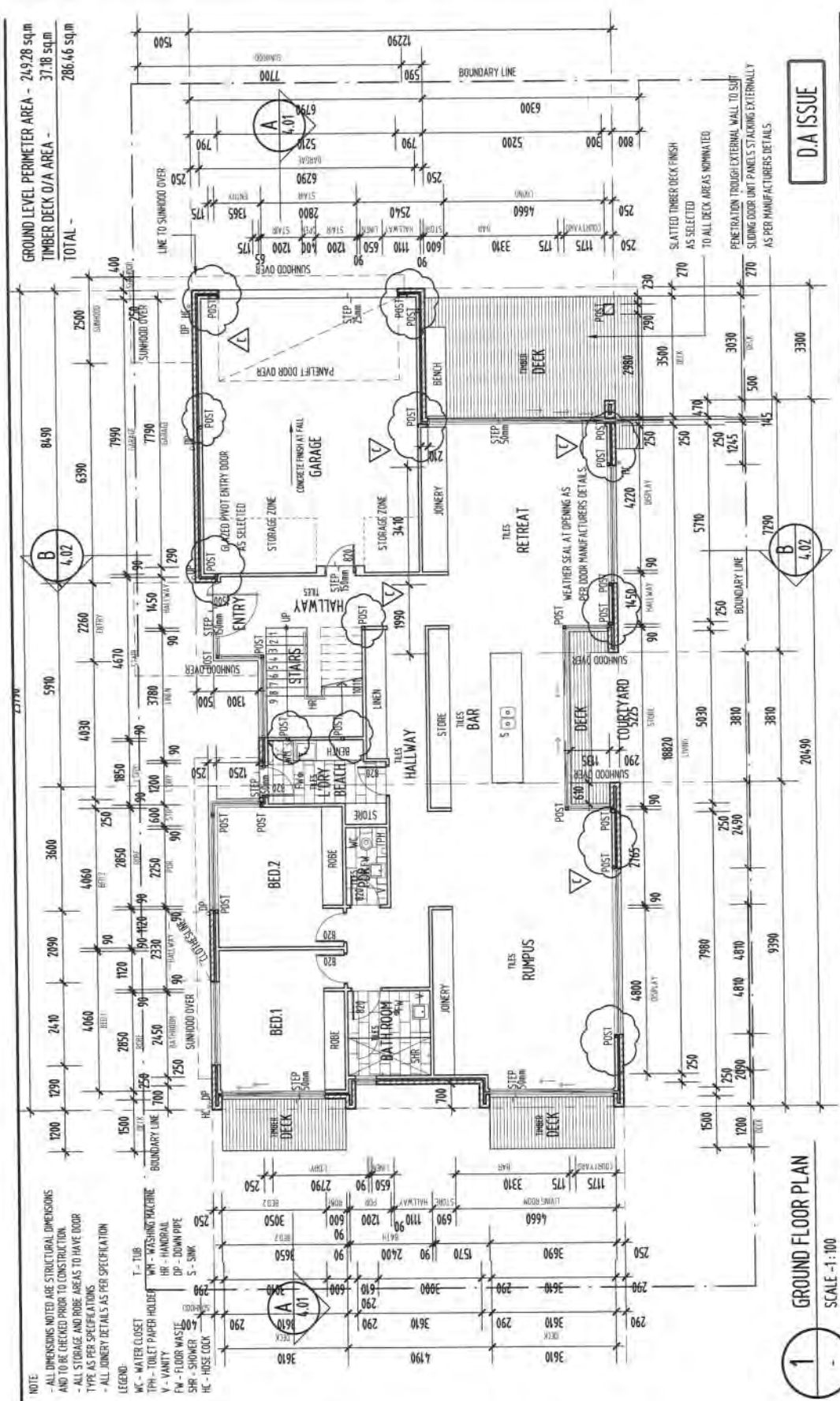
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1 GROUND FLOOR PLAN
 SCALE: 1:100

D.A ISSUE

B G D

Bayden Goddard Design
 Architects

101-105 WILSON ROAD, BAYVIEW, VIC 3185
 TEL: 03 9437 1000 FAX: 03 9437 1001

SCALE	DATE	BY	REVISION
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S: VEDELAGO
 PROPOSED PRIVATE RESIDENCE
 LOT 98 - SALT

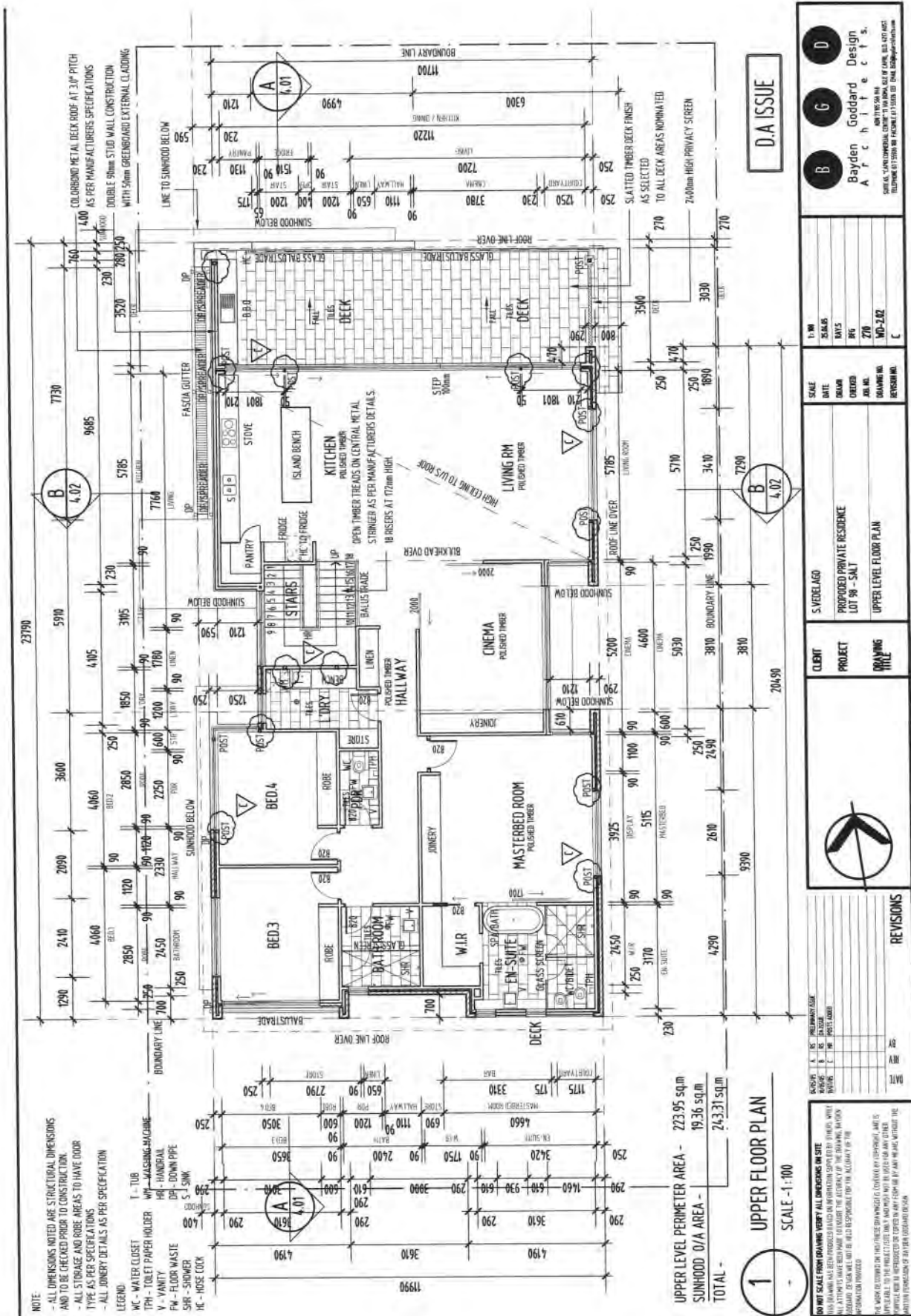
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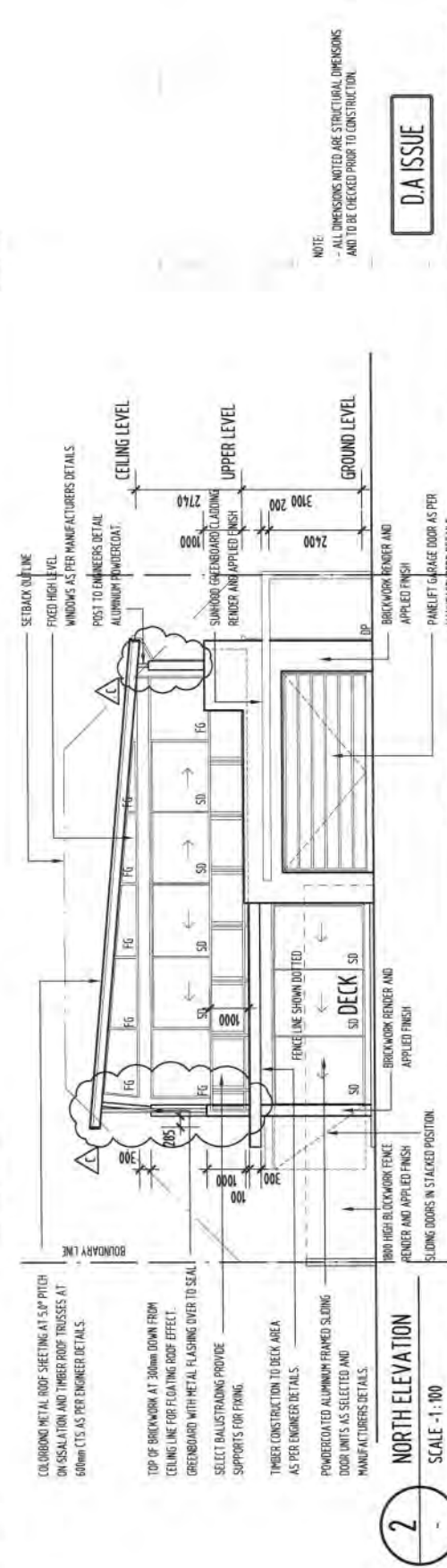
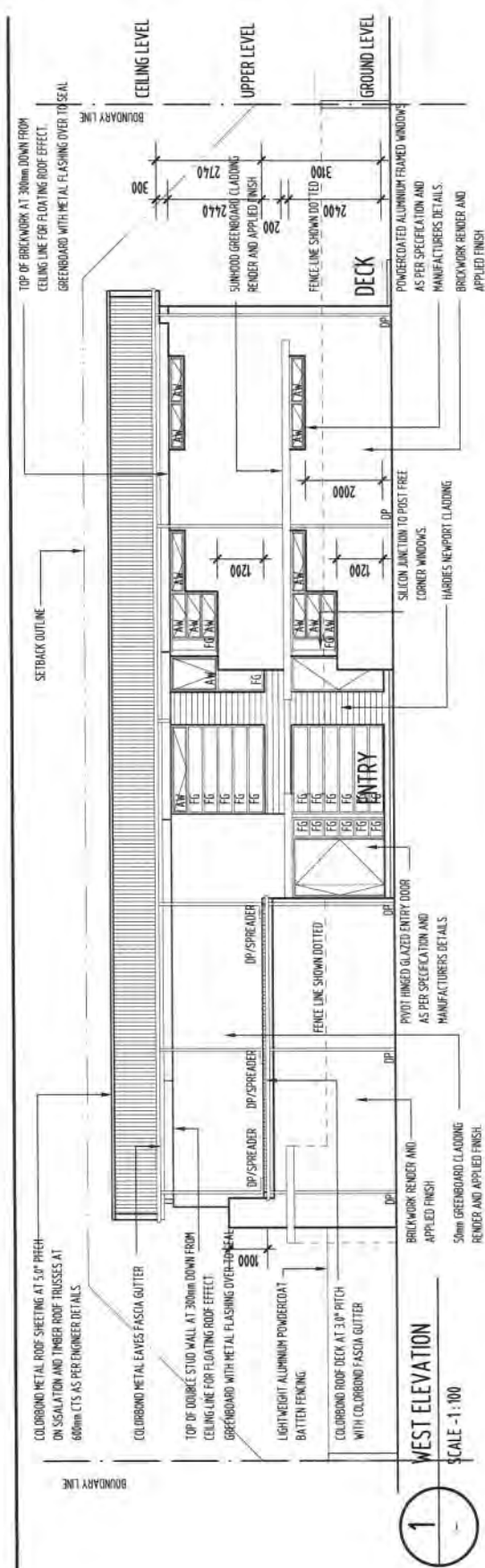


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NO.	DATE	BY	REVISION
1			

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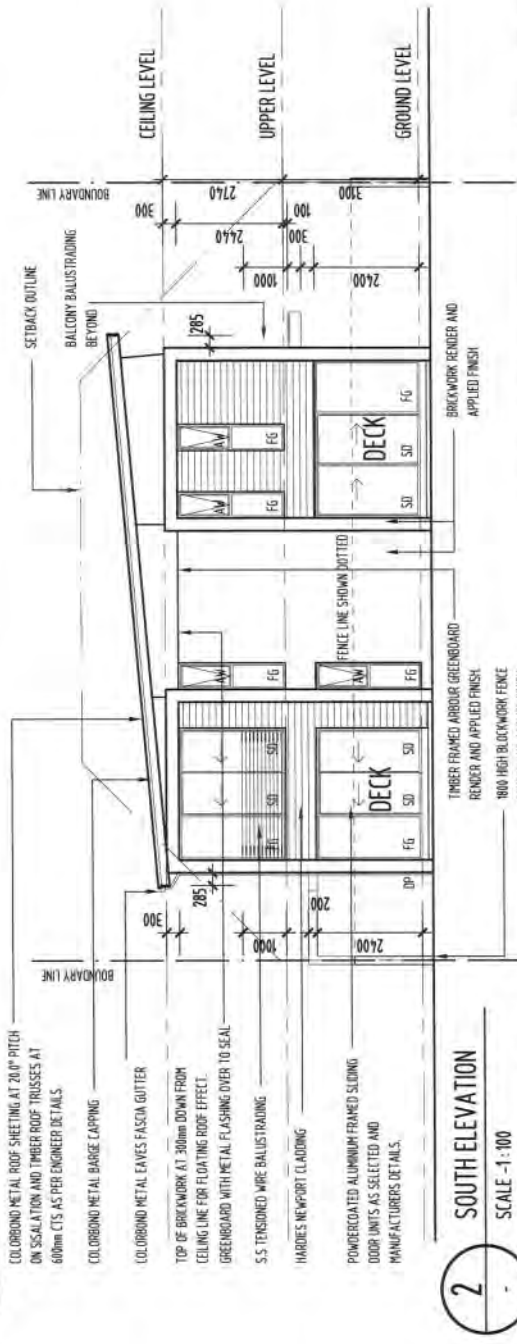
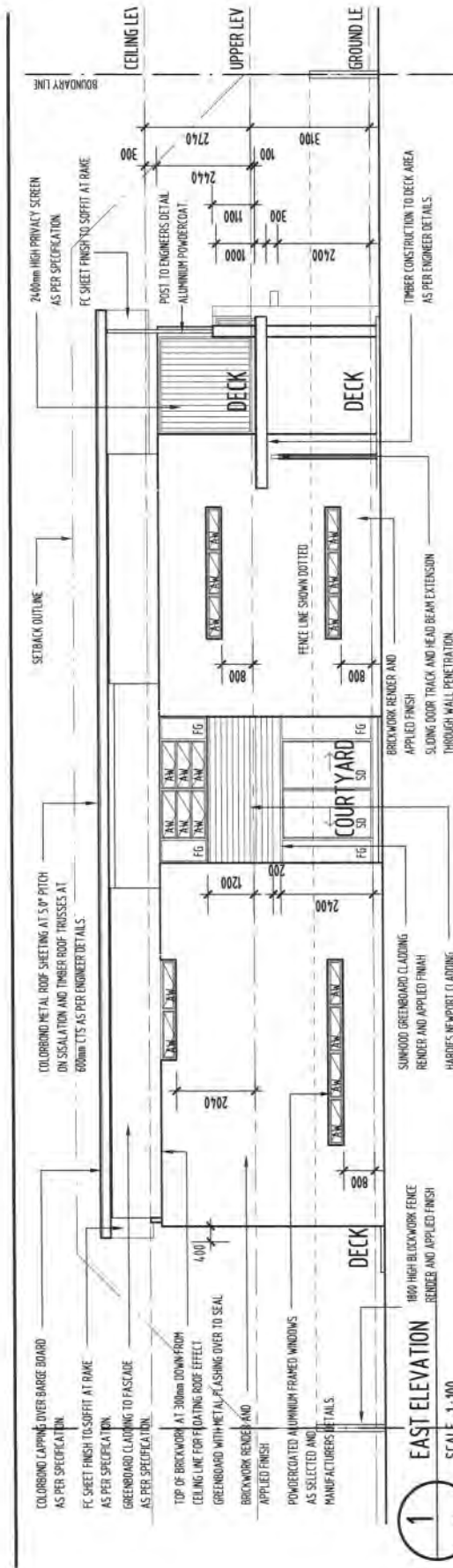
CLIENT: S. VEDELAGO
 PROJECT: PROPOSED PRIVATE RESIDENCE LOT 98 - SALT
 DRAWING TITLE: NORTH AND WEST ELEVATIONS

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D A I S S U E

B G D
 Bayden Goddard
 Architects

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 LOCATION: 1/500 M. VICERIE ST. SAULT
 PROJECT: 98-LOT1



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is consistent with the aims of the Plan, with the proposed dual use not considered to compromise natural character, economic vitality, ecological integrity or cultural fabric.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally consistent with the four principles of ecologically sustainable development. The application does not result in any physical works on the site, but rather a change of use to the existing dwelling with no unacceptable environmental impacts anticipated.

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 site is located in the 2(f) Tourism zone, the primary objective of which is to:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the proposed dual use of the existing dwelling (tourist accommodation) could be seen to be consistent with the objectives of the zone, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone Objectives

The subject site is located within the 2(f) Tourism zone which has the following zone objectives:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the development could be seen to achieve consistency with these objectives, as outlined above, the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services provided through the dwelling development, previously approved by Council.

Clause 16 - Height of Building

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

Clause 35 - Acid Sulfate Soils

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

Clause 53 - Development of specific sites

Clause 53(2) of the LEP 2000 is the mechanism by which additional purposes may be permitted on certain land, as listed in Schedule 3 of the Plan.

The proposed change of use is not a development for the purpose of a dwelling house, hotel, motel or tourist resort. The proposal seeks flexible use of an existing dwelling for both permanent residential accommodation and tourist accommodation. The use of 'tourist accommodation' is permissible with development consent as listed within the table to 2(f) under Clause 11 of the

TLEP 20000. The proposal does not rely upon Clause 53(2) of the TLEP 2000 for permissibility'.

Clause 53B Height Restrictions - Coast Road, South Kingscliff

The existing dwelling is one to which Clause 53B applies and which prescribes a two storey height limit. The application does not raise any implications in respect to this clause.

Clause 54 – Tree preservation order

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The proposal does not require or propose any removal of vegetation, given its nature as a change of use to an existing structure. As such, this clause is satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the *NSW Coastal Policy 1997*, the *Coastline Management Manual* or the *North Coast: Design Guidelines*.

Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing.

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The proposal will not restrict public access to the foreshore or result in any additional overshadowing of foreshore area as the application relates to an extension of permissible uses on the site with no physical development proposed. It is considered that the proposal satisfies the matters for consideration under SEPP 71.

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

It is noted that the Draft Tweed LEP 2012 was gazetted (as amended) on 4 April 2014 as the Tweed LEP 2014. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

1.4 Definitions

The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation*:

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

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

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

'Tourist and visitor accommodation' is a prohibited use in the R2 zone by its inclusion in Item 4 as below:

4 Prohibited

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

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 February 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. As such this clause is applicable to this development application.

Notwithstanding, 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 1979*.

Part 2 Permitted or prohibited development

2.1 Land use zones

The subject site is located in the R2 Low Density Residential zone.

2.3 Zone objectives and Land Use Table

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; and
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

"The proposed development is compliant to the objectives of Zone R2 – Low Density Residential. The dwelling is currently used for low density purposes. It is noted that tourist accommodation is prohibited under the DLEP2012. However, ability to use the dwelling for both permanent residency as well as for short term holiday letting will not detract from the surrounding low density character of Malibu Street and the surrounding area. The dwelling will still present as low density development and will be restricted in capacity as per recommended conditions.

The proposed development does not offend or compromise the objectives of the draft R2 zone and therefore should be supported as it is allowable with consent under the current TLEP 2000."

Whilst the applicants' justification above is noted, it is considered that the subject application would not comply with the zone objectives.

The proposed development constitutes the use of the dwelling for tourist and visitor accommodation which is not considered to be consistent with the above objectives as it does not provide for the housing needs of the community or enable a land use which provides facilities or services to meet the day to day needs of residents.

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

Given that the proposed development is prohibited in the R2 zone and not considered to be in accordance with the objectives of the zone, it is considered that the application should be refused on this basis.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

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

The subject is not considered to either offer opportunities with respect to provision of a new public access or impact upon any existing public access at the coastal foreshore.

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

The proposed development does not result in any development work as it relates solely to a change of use of an existing dwelling to dual use. As such the proposal is considered to be generally acceptable having regard to the above provisions.

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

The proposed development will not result in any overshadowing or loss of views from a public place to 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 a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (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*

It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard as the application relates to a change of use of an existing building only.

- (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 nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

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 require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

- (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*

As outlined elsewhere in this report, the subject application relates only to a change of use of an existing structure with no development work proposed. The existing dwelling is Council approved and thus stormwater provisions would have been implemented through the original development work on the site. The proposal is considered not to contravene the above controls and satisfies the above clause.

- (d) *the proposed development will not:*
- (i) *be significantly affected by coastal hazards, or*
 - (ii) *have a significant impact on coastal hazards, or*
 - (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature which does not involve any development works.

There are no other provisions in LEP 2014 that are specifically relevant to the proposal.

In accordance with the advice provided above, the application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and LEP 2014, and also because the proposal is considered not to meet the objectives of the R2 zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling was approved on 2 September 2005 under DA05/0657. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2005 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however there are minimal setbacks provided to the east (side boundary) and landscaped areas at the front (north) of the property, particularly considering the approval of a swimming pool in the front setback. The SEE advises that landscaping features have been implemented to increase privacy and that these elements will be retained.

No physical alterations are proposed to the existing building. Car parking is provided on the site for four vehicles, as detailed below. No additional waste arrangements are considered to be required. The applicant has advised however that an additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1. However, it is noted that the existing dwelling is located in close proximity to the boundaries of the site and, being two storeys with an upper level deck, may have the capacity to impact on surrounding residential amenity in terms of noise and disturbance.

Section A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces (two spaces with a double garage and two within the driveway).

A variation has been requested to delete the requirement for staff and delivery vehicle parking as outlined under this DCP as the nature of the proposal does not require it. It is considered that the existing on-site parking arrangements are sufficient for an extended family group.

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with DCP A11. The proposal was placed on public exhibition for 14 days from 19 March 2014 to 2 April 2014.

Seven submissions (please note that one person made two submissions) were received during this time which is detailed elsewhere in this report.

Section B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is

not considered that the proposed dual use of the existing dwelling for tourist accommodation contradicts the objectives of the Government Coastal Policy.

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit and it is advised that as there is no change in BCA Building Class further comments are not required with this regard.

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

Tweed Shire Coastline Management Plan 2005

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

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

The subject site is located within an area dominated by dwellings lawfully utilised for long-term residential purposes and large scale tourist resort developments. It

is intended that the large scale resorts provide tourist accommodation and flexible use options in the future, as distinct from single dwellings.

Whilst the proposal does not comprise any physical alterations to the existing dwelling, it is considered that the use of the dwelling for tourist accommodation purposes may have the potential to affect surrounding residential amenity by reason of noise and disturbance and may detract from the character of the dwelling and the surrounding area.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000.

The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

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

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. Seven submissions were received, the issues raised are detailed in the following table. Please note that the applicant was given opportunity to respond to the submissions received. The applicant's response is also detailed within the following table:

Issues raised in submissions	Response from applicant (summarised)
<p>Noise and disturbance:</p> <ul style="list-style-type: none"> • The property is already advertising on the internet offering holiday accommodation; • Families currently frequenting holiday lets in the area on a weekly basis; • Often have parties (weddings, birthdays, schoolies), BBQs, stay up late, play loud music; • Holidaymakers drinking on front balcony disturbing sleep; • Numerous reports of antisocial behaviour have been logged with the police. This is detrimental to the amenity of existing residents; • Over past 8 years the area has been quiet and family oriented with the majority of housing being for long-term accommodation however since holiday rentals have commenced increased noise, and disturbance have commenced; • People on holiday forget that people live in the area; 	<ul style="list-style-type: none"> • Property is in close proximity to the beach and therefore disruption would be minimal; • Are not in the middle of the street and therefore do not impact on many homes; • Two properties in close proximity are 'understanding' of rental needs; • We will not be operating by 'stealth'. We bought the property six months ago and have since sought consent; • Area is located in a high tourism locality; • As per definition of LEP 2000, the location is not exclusively residential; • The entertainment area to the house is to the front / street and therefore most conversation is diffused by street noise; • Noise could be generated by a

Issues raised in submissions	Response from applicant (summarised)
<ul style="list-style-type: none"> • Dual use does not specify what mix of holiday or tourist accommodation so it could in fact be 100% holiday rental use (as has been experienced in the area); • Antisocial behaviour and loud noise in association with pool; • Barking dogs often left on their own in unfamiliar environment. 	<p>family living at the property;</p> <ul style="list-style-type: none"> • House would be pet free and non-smoking.
<p>Parking:</p> <ul style="list-style-type: none"> • Often a number of vehicles, boats and so on. Particularly during holiday season it is difficult to get parking outside of other properties; • Cars have been parked on either side of the street preventing rubbish collection; • Cars have been parked on the footpath. 	<ul style="list-style-type: none"> • There is sufficient space for parking off of the street; • Neighbours almost always park their cars on the street.
<p>Rubbish:</p> <ul style="list-style-type: none"> • Garbage bins are inadequate, particularly during the holiday season. Rubbish often piled up on footpath with residents left to clear it up; • Odour issues with bins being left out at the start of the week for collection on Fridays. 	<ul style="list-style-type: none"> • Unaware of bins being left out until bin night; • Bins have been upgraded to largest possible
<p>Security:</p> <ul style="list-style-type: none"> • There has been an increase in the number of break-ins and whilst holiday makers may not be directly to blame the problem escalates every holiday period. Influx of holiday makers creates problems with neighbourhood watch; • No site manager to report issues to. 	<ul style="list-style-type: none"> • There would be a management company whom people could report complaints to.
<p>Insurance and risk of injury:</p> <ul style="list-style-type: none"> • High movement of people in and out of properties could end in serious injury or death as a result of poor maintenance of property and the pool; • Questions in respect of personal liability and whether such measures are in place or supervised. 	
<p>Difficulties in enforcing conditions:</p> <ul style="list-style-type: none"> • Difficult to enforce the number of people staying in the house (usually rented out to 3 families with up to 12 persons); 	<ul style="list-style-type: none"> • We will have one management company (Corporate Bodies) who reside two streets from the house;

Issues raised in submissions	Response from applicant (summarised)
<ul style="list-style-type: none"> • Difficulty in maintaining a visitor log book as multiple agents manage the property (Stayz and so on); • Insufficient space to accommodate parking associated with holiday let and holidaymakers park on the street or on verge; • Difficult to enforce noise management and would need an onsite manager to adequately police otherwise calls directed to the police who are already stretched; • Who will answer a phone complaint at 12am? This will lead to an increase in the number of complaints directed to Council and the police; • If application as approved would there be any opportunity to revoke the consent if the conditions were not complied with? • Needs to be tighter controls on such uses such as at Byron Shire. 	<ul style="list-style-type: none"> • They are on call 24/7; • There will therefore be a 'go to person' for issues; • No groups will be allowed to stay and number of guests will be restricted to 10; • Tenant behaviour guidelines will be provided and a Rental Agreement must be signed with Corporate Bodies (must agree to terms - behaviour, noise, rubbish, car parking and so on); • Do not have 4-5 families holidaying in this property.
<p>Character of area:</p> <ul style="list-style-type: none"> • The area was sold as a residential area where people reside and that the resorts (Manta, Peppers, Bale) were for holiday makers. A number of residents in locality have relocated due to noise and inconvenience; • Unnecessary and inappropriate that council sees fit to approve private residences as tourist accommodation; • Keep holiday makers in the resorts; • Resorts have alleged that they are struggling and therefore is there a need for dual use? • Holiday rental business for the owners has a gross annual turnover of over \$100,000 a year however no regulation to how the users must behave; • The original town planning for the vision of Salt did not include this type of development; • Area not suitable for 'party houses'; • The Department of Planning has decided to rezone the area for residential accommodation only and therefore tourist accommodation should not be approved; 	<ul style="list-style-type: none"> • Dual use accommodation was permitted under the former Tweed LEP 2000; • A savings provision is contained within Tweed LEP 2014 and therefore the proposal can be approved by Council; • A number of submissions received do not appear to be in respect to our specific property and therefore assume that most residents are comfortable with our application; • Two immediate neighbours (being 17 Malibu St and 7 Northpoint Avenue have expressed 'understanding' for holiday letting); • More than 75 homes offering casual holiday letting in Kingscliff area (as per Stayz) and over 273 properties advertising for casual holiday letting. The coast is a major holiday destination and brings revenue to the local area and economy.

Issues raised in submissions	Response from applicant (summarised)
<ul style="list-style-type: none"> Concerns about the number of development applications received for tourist accommodation in the locality 	

Planning Comment

It is noted that issues such as increased noise and disturbance resulting from the use of the dwelling for short term tourist accommodation may have a significant detrimental impact on the amenity of surrounding residents. Whilst it is acknowledged that a family living permanently in the dwelling may also have the ability to make noise, it is considered that those on holiday may have an increased propensity to make noise on a louder and more frequent basis, particularly if the property was to be used for parties or the like.

It is noted that should the application be approved a number of conditions may be applied to ensure that the tourist accommodation is operated in accordance with an approved Management Plan (in respect of number of occupants, tenant behaviour and onsite parking). However, it is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

(e) Public interest

The proposed development would be permissible with consent under the provisions of the former LEP 2000. However, approval of the application does raise questions in respect to the suitability of the proposed tourist accommodation located predominantly within a residential area.

However the draft LEP 2012 and gazetted LEP 2014 prohibits the development and it is considered that the proposal would not be in accordance with the objectives of the R2 zone. As such, the proposed development is not considered to be in the public interest.

OPTIONS:

That Council:

1. Refuses the application; or
2. Grants in-principle support for the application and a report to be brought back to a future Council meeting with recommended conditions of consent for Council to determine.

Council officers recommend Option 1.

CONCLUSION:

The proposal is prohibited within the R2 Low Density Residential zone and does not comply with the R2 Low Density Residential zone objectives within the draft LEP 2012. Given the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed application be refused development consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

11 [PR-PC] Development Application DA14/0199 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 77 DP 1066472 No. 3 Cathedral Court, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0199 Pt1



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 has received a development application that seeks to allow the use of an existing dwelling for tourist accommodation purposes. The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing five bedroom single dwelling for the purpose of short-term tourist accommodation.

This application has been called up for Council's determination by Councillors Longland and Bagnall.

One submission was received for the proposal.

The proposed development does not require any physical alterations to the existing dwelling house.

Legal advice has been provided to Council regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed Local Environmental Plan (LEP) 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite.

Importantly, the individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard. The applicant has proposed a number of measures to address any issues associated with the short term letting of the dwelling, as detailed further within this report.

The site is zoned 2(f) Tourism and the development is defined as 'tourist accommodation' under the current Tweed Local Environmental Plan 2000 with the proposal permissible with consent in the 2(f) zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council on 2 April 2014. LEP 2014 (previously Draft Tweed LEP 2012) came into force on 4 April 2014. Although LEP 2014 contains a savings provision for development applications made before commencement of the plan, the 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 1979*.

There are various legal precedents created through the NSW Land and Environment Court, which require consent authorities to give greater weight to draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

On this basis it is considered that the Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and the proposal should therefore be refused.

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

Additionally, it is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a lot which has residential dwellings in close proximity to the side and rear boundaries.

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

RECOMMENDATION:

That Development Application DA14/0199 for dual use of existing dwelling - tourist accommodation and residential at Lot 77 DP 1066472 No. 3 Cathedral Court, Kingscliff be refused for the following reasons:

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

3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - *the public interest* in that the development is not considered to be in the public interest.

REPORT:

Applicant: T Allen
Owner: Mrs Turiee H Allen
Location: Lot 77 DP 1066472 No. 3 Cathedral Court, Kingscliff
Zoning: 2(f) Tourism (TLEP2000)
Cost: Not Applicable

Background:

Proposed Development

The development application seeks the dual use of an existing dwelling for residential and tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes (tourist accommodation). The proposed development does not require any physical alterations to the existing dwelling house.

The application was submitted on 2 April 2014. LEP 2014 came into force on 4 April 2014.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone.

The applicant's Statement of Environmental Effects (SEE) advises that:

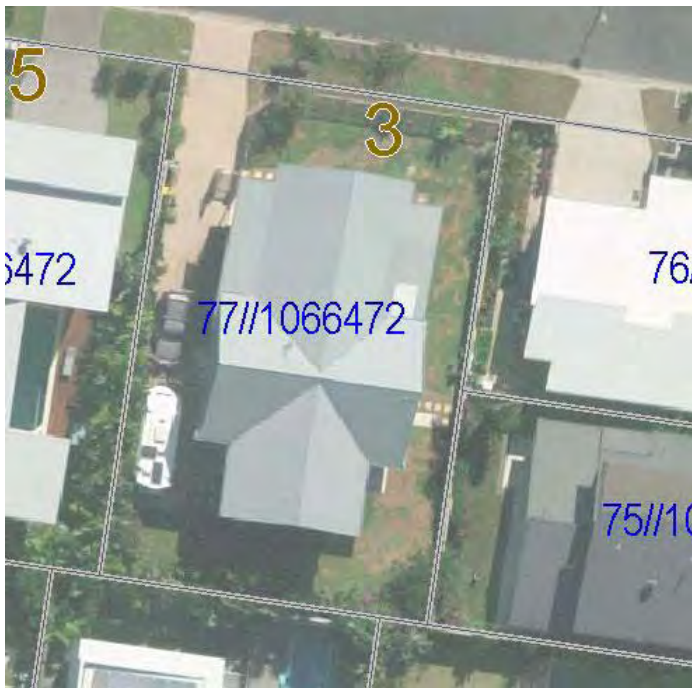
'To address any issues associated with the short term letting of the dwelling, the following conditions are suggested for inclusion as part of the approval:

- *The use of the dwelling for tourist accommodation is restricted to the following:*
 - *The dwelling is to let to a maximum of one (1) tourist group comprising a maximum of ten (10) persons at any one time which may consist of up to four (4) adults and six (6) children.*
 - *A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.*
 - *No more than four (4) vehicles can be at the site at any one time with all car parking to be located within the property boundary of the subject site.*
 - *An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*
 - *A Plan of Management is to incorporate and convey a clear understanding of the terms of conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.*
 - *Tenants agree to not make excessive noise as part of the letting agreement.*

- A 24 hour contract (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
- Tenants agree to a management policy (to be submitted for Council approval prior to commencement of use).

Site

The site is regular and rectangular in shape with a frontage of approximately 22m to Cathedral Court, Kingscliff. The allotment comprises a land area of 787m² and is located near the end of Cathedral Court and North Point Avenue.



Extract of Council's GIS aerial imagery - Lot 77 DP 1066472, No. 3 Cathedral Court

The site comprises a two storey three bedroom dwelling house. On the ground floor is a large open plan gales room, double garage and external patio oriented toward the front of the house. The first floor comprises the living/kitchen/dining area and verandah that is also oriented to the front toward Cathedral Court. The first floor also comprises three bedrooms and bathrooms. There is a deck located on the third floor with views out to the ocean.

The existing dwelling was approved under DA05/0189 on 2 May 2005. The dwelling comprises a setback of approximately 3m on the eastern and 5m on the western boundary (side). A rear setback of approximately 5m is provided and a front setback of approximately 6m. The driveway is located on the western boundary and runs down toward the centre of the site with the garage located at the rear of the property.

The site has previously been cleared of native vegetation and currently comprises landscaping typical of a newly established residential property.

A Section 88B Instrument applies to the subject property that states that '*No main dwelling may be used for any purpose other than a single private dwelling*'.

History

Of note, a historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane,

Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Draft LEP 2012. At the Meeting of 17 October 2013, Councillors resolved to approve the application, contrary to Council Officer's recommendation, and the application was brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at that meeting.

Following the approval of this application an additional development application DA13/0463 for the dual use of No. 3 Collins Lane, Casuarina was approved on 21 November 2013 under delegated authority, as directed as appropriate by Councillors at that time.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas of Salt is an anomaly contrary to the original master planning for Salt.

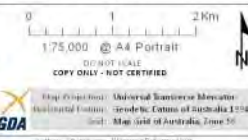
SITE DIAGRAM:



Locality Plan
 Lot 77 DP 1066472
 No.3 Cathedral Court, Kingscliff

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential 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 construction a 'field before you buy' survey must be made by calling 110. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral 11/06/2014
 Land and Property Information (LPI) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.



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 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au



Scale 1:75,000 11 June 2014

DEVELOPMENT/ELEVATION PLANS:

NOTES:
 1. DO NOT SCALE OFF DRAWINGS. REFER TO DIMENSIONS.
 2. ALL DIMENSIONS ARE UNLESS OTHERWISE SPECIFIED TO BE IN METERS.
 3. CONSTRUCTION SHALL BE TO THE STANDARD SPECIFICATIONS FOR CONSTRUCTION.
 4. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER CONSULTANTS.
 5. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.
 6. ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.
 7. ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.
 8. ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.
 9. ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.

THE TITLE OF THE PROJECT IS: SHOWNING BETWEEN BUILDING

OWNER: [Blank]

DATE: [Blank]

PROJECT: NEW 4 UNIT RESIDENCE

CONTRACT NO.: [Blank]

CLIENT: P & T ALLEN

PROJECT: PROPOSED RESIDENCE Lot 11, 94/1

THIS SITE PLANS FLOOR PLANS.

SCALE (AT A1 SIZE): 1:100

DATE: 10/07/14

PROJECT NO.: VS274

WITZIG SCHULZ ARCHITECTS
 10/07/14
 10/07/14

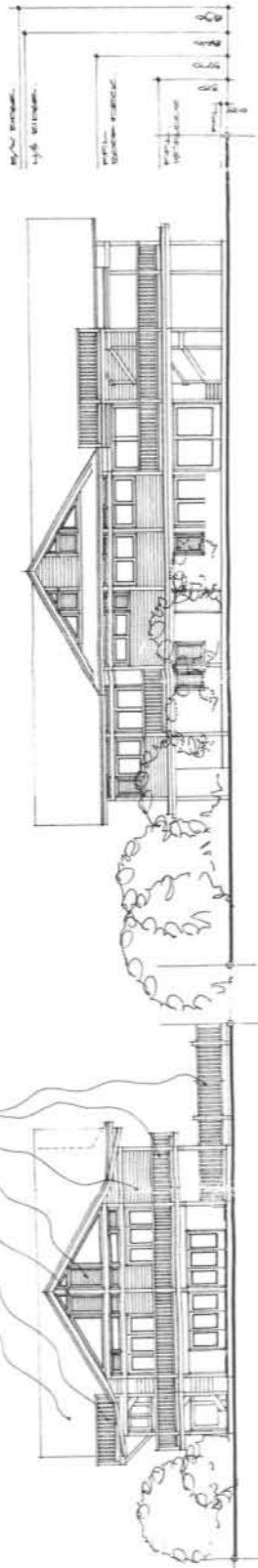
LOOKOUT PLAN

FIRST FLOOR PLAN

SITE/GROUND FLOOR PLAN

PLANS

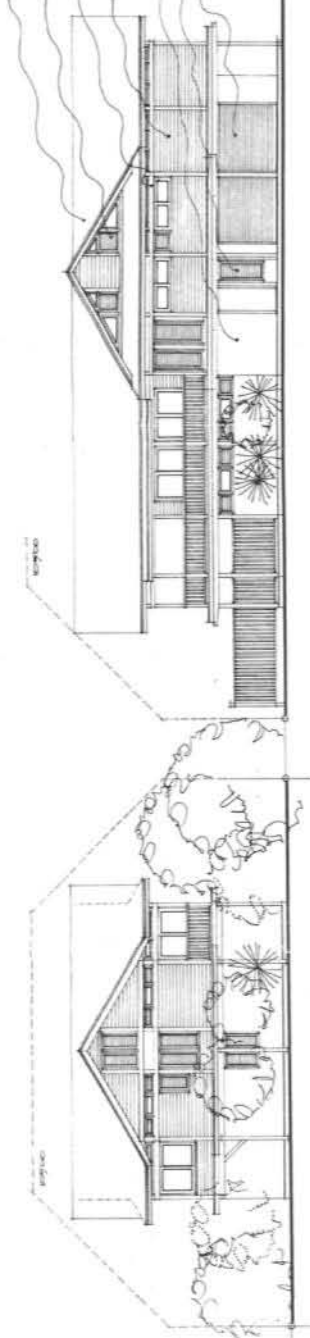
ADDITIONAL 'NETRA' FROM SHEDDING:
SEE CHECK.
THREE-PANED WINDOWS & DOORS
THREE-LANED
OFFICERS BOARD CLADDING
THREE-BAYED
SILLINGS & STAIRS
RENDERING TO CORNER.



NORTH ELEVATION

EAST ELEVATION

CELLAR RAKES 'NETRA'
SEAM SURT THE
THREE-PANED WINDOWS
& DOORS
RENDERING TO
THREE-BAYED
CLADDING TO
SILLINGS & STAIRS
THREE-LANED
RENDERING TO CORNER



SOUTH ELEVATION

WEST ELEVATION

NO.	AMENDMENT	DATE
THE DRAWING IS THE PROPERTY OF WITZIG SCHULZ ARCHITECTS		
CONTRACT NUMBER: 1401-1402-1403		
CONTRACTOR: [Name]		
CONTRACT: [Name]		
PROJECT: [Name]		
DRAWN BY: [Name]		
CHECKED BY: [Name]		
DATE: [Date]		
SCALE: [Scale]		
PROJECT NO: [Number]		
SHEET NO: [Number]		
WITZIG SCHULZ ARCHITECTS		
FIRST FLOOR		
1000-1000 STREET		
MELBOURNE, AUSTRALIA 3000		
TEL: [Phone Number]		
FAX: [Fax Number]		

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is consistent with the aims of the Plan, with the proposed dual use not considered to compromise natural character, economic vitality, ecological integrity or cultural fabric.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally consistent with the four principles of ecologically sustainable development. The application does not result in any physical works on the site, but rather a change of use to the existing dwelling with no unacceptable environmental impacts anticipated.

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 site is located in the 2(f) Tourism zone, the primary objective of which is to:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the proposed dual use of the existing dwelling (tourist accommodation) could be seen to be consistent with the objectives of the zone, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone Objectives

The subject site is located within the 2(f) Tourism zone which has the following zone objectives:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the development could be seen to achieve consistency with these objectives, as outlined above, the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services provided through the dwelling development, previously approved by Council.

Clause 16 - Height of Building

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

Clause 35 - Acid Sulfate Soils

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

Clause 39A – Bushfire Protection

The site is bushfire prone. As such, the application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose. A bush fire safety authority under section 100B of the Rural Fires Act 1997 was received from the service on 12 May 2014 inclusive of conditions regarding Asset Protection Zones, Evacuation and Emergency Management, Design and Construction and Landscaping which would be attached to any consent. Having regard to this, the proposal is considered to be acceptable with respect to bushfire protection.

Clause 53 - Development of specific sites

Clause 53(2) of the LEP 2000 is the mechanism by which additional purposes may be permitted on certain land, as listed in Schedule 3 of the Plan. The applicant advises that *'the proposed change of use is not a development for the purpose of a dwelling house, hotel, motel or tourist resort. The proposal seeks flexible use of an existing dwelling for both permanent residential accommodation and tourist accommodation. The use of 'tourist accommodation' is permissible with development consent as listed within the table to 2(f) under Clause 11 of the TLEP 2000. The proposal does not rely upon Clause 53(2) of the TLEP 2000 for permissibility'*.

Clause 53B Height Restrictions - Coast Road, South Kingscliff

The existing dwelling is one to which Clause 53B applies and which prescribes a two storey height limit. The application does not raise any implications in respect to this clause.

Clause 54 – Tree preservation order

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The proposal does not require or propose any removal of vegetation, given its nature as a change of use to an existing structure. As such, this clause is satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the *NSW Coastal Policy 1997*, the *Coastline Management Manual* or the *North Coast: Design Guidelines*.

Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing.

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The proposal will not restrict public access to the foreshore or result in any additional overshadowing of foreshore area as the application relates to an extension of permissible uses on the site with no physical development proposed. It is considered that the proposal satisfies the matters for consideration under SEPP 71.

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

It is noted that the Draft Tweed LEP 2012 was gazetted (as amended) on 4 April 2014 as the Tweed LEP 2014. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

1.4 Definitions

The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation*:

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

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

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

'Tourist and visitor accommodation' is a prohibited use in the R2 zone by its inclusion in Item 4 as below:

4 Prohibited

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

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 February 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. As such this clause is applicable to this development application.

Notwithstanding, 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 1979*.

Part 2 Permitted or prohibited development

2.1 Land use zones

The subject site is located in the R2 Low Density Residential zone.

2.3 Zone objectives and Land Use Table

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; and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

'The proposed development is compliant to the objectives of Zone R2 – Low Density Residential. The dwelling is currently used for low density purposes. It is noted that tourist accommodation is prohibited under the DLEP 2012. However, ability to use the dwelling for both permanent residency as well as for short term holiday letting will not detract from the surrounding low density character of Cathedral Court and the surrounding area. The dwelling will still present as low density development and will be restricted in capacity as per recommended conditions.

The proposed development does not offend or compromise the objectives of the draft R2 zone and therefore should be supported as it is allowable with consent under the current TLEP 2000'.

Whilst the applicants' justification above is noted, it is considered that the subject application would not comply with the zone objectives.

The proposed development constitutes the use of the dwelling for tourist and visitor accommodation which is not considered to be consistent with the above objectives as it does not provide for the housing needs of the community or enable a land use which provides facilities or services to meet the day to day needs of residents.

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

Given that the proposed development is prohibited in the R2 zone and not considered to be in accordance with the objectives of the zone, it is considered that the application should be refused on this basis.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

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

The subject is not considered to either offer opportunities with respect to provision of a new public access or impact upon any existing public access at the coastal foreshore.

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

The proposed development does not result in any development work as it relates solely to a change of use of an existing dwelling to dual use. As such the proposal is considered to be generally acceptable having regard to the above provisions.

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

The proposed development will not result in any overshadowing or loss of views from a public place to 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 a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (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*

It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard as the application relates to a change of use of an existing building only.

- (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 nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

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 require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

- (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*

As outlined elsewhere in this report, the subject application relates only to a change of use of an existing structure with no development work proposed. The existing dwelling is Council approved and thus stormwater provisions would have been implemented through the original development work on the site. The proposal is considered not to contravene the above controls and satisfies the above clause.

- (d) the proposed development will not:*
- (i) be significantly affected by coastal hazards, or*
- (ii) have a significant impact on coastal hazards, or*
- (iii) increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature which does not involve any development works.

There are no other provisions in LEP 2014 that are specifically relevant to the proposal.

In accordance with the advice provided above, the application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and LEP 2014, and also because the proposal is considered not to meet the objectives of the R2 zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The existing dwelling was approved under DA05/0189 on 2 May 2005. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2005 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however it is noted that the property comprises a large verandah on the first floor and deck on the second floor (with a GFA of approximately 15m²).

No physical alterations are proposed to the existing building. Car parking is provided on the site for four vehicles, as detailed below. No additional waste arrangements are considered to be required. The applicant advises that the existing landscaping features have been implemented to increase privacy and that these will be retained.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1. However, it is noted that the existing two storey dwelling is located in relatively close proximity to the boundaries of the site. The dwelling is also two storeys with an upper level deck. It is therefore considered that the scale and layout of the dwelling, and proximity to the site boundaries, may have the capacity to impact on surrounding residential amenity in terms of noise and disturbance.

A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces (two spaces within a double garage and two within the driveway).

A variation has been requested to delete the requirement for staff and delivery vehicle parking as outlined under this DCP as the nature of the proposal does not require it. It is considered that the existing on-site parking arrangements are sufficient for an extended family group.

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with DCP A11. The proposal was placed on public exhibition for 14 days from 16 April 2014 to 5 May 2014.

One submission was received during this time, the matters raised are detailed further in this report.

Section B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

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

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit and it is advised that as there is no change in BCA Building Class further comments are not required with this regard.

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

Tweed Shire Coastline Management Plan 2005

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

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

The subject site is located within an area dominated by dwellings lawfully utilised for long-term residential purposes and large scale tourist resort developments. It is intended that the large scale resorts provide tourist accommodation and flexible use options in the future, as distinct from single dwellings.

Whilst the proposal does not comprise any physical alterations to the existing dwelling, it is considered that the use of the dwelling for tourist accommodation purposes may have the potential to affect surrounding residential amenity by reason of noise and disturbance and may detract from the character of the dwelling and the surrounding area.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000.

The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

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

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. One submission was received from the Kingscliff Ratepayers and Progress Association. The applicant was given opportunity to respond to the matters raised in the submissions however has not provided a response to Council to date. The matters raised within this submission, and the applicant's response to the matters raised, are detailed within the table below:

Issues raised in submissions	Response from applicant (summarised)
<ul style="list-style-type: none"> • Concerns about residential properties (at 6 Cathedral Court and 18 Malibu Street) are already advertising on the internet offering holiday accommodation; • Such property owners should be reminded by Council that they do not have approval for such a use 	<ul style="list-style-type: none"> • Not relevant to the application; • The applicant seeks approval for the dual use of the property.
<ul style="list-style-type: none"> • The community worked hard to separate residential and tourism uses; • Developers at that time illustrated that tourist resorts were needed on the Tweed Coast; 	<ul style="list-style-type: none"> • This statement is incorrect especially as it relates to Salt, Seaside City and Casuarina. The establishment of the 2(f) zoning was as a direct result of seeking to integrate both residential and tourist uses and to create a vibrant mix of

Issues raised in submissions	Response from applicant (summarised)
<ul style="list-style-type: none"> Many tourist property owners have complained about lack of occupancy as tourists using unapproved sites instead; 	<p>uses.</p> <ul style="list-style-type: none"> The proposal is permissible under LEP 2000 and Council have previously approved such developments.
<ul style="list-style-type: none"> Proponents of dual use have offered ways that tourists could be controlled/supervised however evidence suggests that this does not work; Concerns with the enforcement of conditions (i.e. who will answer a phone complaint in early hours of morning); 	<ul style="list-style-type: none"> Detailed management measures are suggested, not just providing a phone number to Council; These measures are consistent with those previously considered appropriate by Council by approving DA13/0247 and DA13/0463; Applicant details range of management measures proposed as detailed previously in this report.
<ul style="list-style-type: none"> Properties that have been approved for dual use purposes should be rated as a commercial operation. Do not believe that to prove a 'dominant use' should be the responsibility of Council. 	<ul style="list-style-type: none"> This has no relevance to the application and how the properties are rated is not a matter for consideration.

Planning Comment

It is noted that should the application be approved a number of conditions may be applied to ensure that the tourist accommodation is operated in accordance with an approved Management Plan (in respect of number of occupants, tenant behaviour and onsite parking).

However, it is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

(e) Public interest

The proposed development would be permissible with consent under the provisions of the former LEP 2000. However, approval of the application does raise questions in respect to the suitability of the proposed tourist accommodation located predominantly within a residential area.

However the draft LEP 2012 and gazetted LEP 2014 prohibits the development and it is considered that the proposal would not be in accordance with the objectives of the R2 zone. As such, the proposed development is not considered to be in the public interest.

OPTIONS:

OPTIONS:

That Council:

1. Refuses the application; or
2. Grants in-principle support for the application and a report to be brought back to a future Council meeting with recommended conditions of consent for Council to determine.

Council officers recommend Option 1.

CONCLUSION:

The proposal is prohibited within the R2 Low Density Residential zone and does not comply with the R2 Low Density Residential zone objectives within the draft LEP 2012. Given the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed application be refused development consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

12 [PR-PC] Development Application DA14/0169 for a Boundary Adjustment at Lot 1 DP 326434 Lilly Pilly Road, Tyalgum Creek; Lot 4 DP 774793 No. 217 Stoddarts Road, Tyalgum Creek

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0169 Pt1



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 proposes a boundary adjustment subdivision involving two rural lots. The boundary adjustment will transfer land (6.67ha) from existing Lot 4 DP 774793 to Lot 1 DP326434, in the Tyalgum Creek locality.

The existing lot configuration is as follows:

- Lot 1 DP 326434 of 2.302ha;
- Lot 4 DP 774793 of 46.67ha.

The proposed lot configuration is as follows:

- Lot A - 8.972ha
- Lot B - 40ha

The subject lots are zoned 1(a) Rural under the current Tweed Local Environmental Plan 2000. The development would be defined as a 'Boundary Adjustment' subdivision and is permissible with development consent. Pursuant to Clause 20 of the TLEP 2000, the minimum subdivision size within the 1(a) Rural zone is 40ha. While the proposed Lot B will be consistent with this provision, the proposed Lot A will be well below this minimum lot area.

Both lots have been utilised for agricultural pursuits, namely dairy farming and more recently permaculture. It is proposed to continue the existing land uses. Lot 4 also contains a shed for the undertaking of a timber furniture making business. The boundary adjustment is proposed to create a more usable Lot A being the smaller lot without compromising the ability of Lot B to maintain agriculture pursuits.

The application advises that the area of land (6.67ha.) to be transferred has taken into account the slope of the site and a natural boundary formed by a ridgeline. The proposal will create a more usable lot layout that will promote future residential and agricultural uses on the site without creating any additional dwelling entitlements.

The application is supported by a SEPP 1 Objection to vary this minimum lot size development standard. In accordance with the provisions of SEPP 1, concurrence is required for the Department of Planning and Infrastructure. Council does not have assumed concurrence for this application as both Lots are not undersized. Existing Lot 1 and proposed Lot A will be undersize by a variation greater than 10%, despite an increased Lot size from 2.302ha to 8.972ha. Concurrence has been granted for the SEPP 1 variation by the Department of Planning by correspondence dated 1 May 2014.

The application is Integrated Development as a Bush Fire Safety Authority is required under Section 100B of the Rural Fires Act 1997. The Rural Fire Service has issued a Bushfire Safety Authority for the proposed development by correspondence dated 20 May 2014.

The proposal will generate some works for the upgrade of the existing unformed crown road reserve currently the subject of a road closure approval. These works will provide a satisfactory right-of carriageway for proposed Lot A. The road will be required to be constructed in accordance with the general terms of approval issued by the Rural Fire Service. The consent has been conditioned accordingly.

The proposal through design and construction can comply with all relevant provisions including the Tweed Local Environmental Plan 2000 and Tweed Shire Council Development Control Plan 2008.

This report will provide sufficient justification to support the proposed SEPP 1 variation and ensuing boundary adjustment subdivision.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 20(2)(a) of Tweed Local Environmental Plan 2000 regarding minimum lot size 40ha be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. Development Application DA14/0169 for a boundary adjustment at Lot 1 DP 326434 Lilly Pilly Road, Tyalgum Creek; Lot 4 DP 774793 No. 217 Stoddarts Road, Tyalgum Creek be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos Appendix D prepared by Joe Davidson Town Planning and dated 20 March 2014, except where varied by the conditions of this consent.**
- 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. Pursuant to Section 68 of the Local Government Act , 1993 any future development application for a dwelling shall be supported by an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993 and pay the appropriate fee.**
[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. 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.

Construction of Right of Carriageway

- (a) The proposed right of carriageway is to be constructed to the following standards from the existing Stoddarts Road to the property boundary of proposed Lot A previously known as Lot 1 in DP 326434:
- 1) 3.6m wide full width bitumen seal on a 150mm depth roadbase gravel. The carriageway shall be 1m wider than the pavement and any associated batters, catch drains or service corridors.
 - 2) The above details are to be shown on the application for a Construction Certificate.

[PCC0875]

5. 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
- stormwater drainage
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations*

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

[PCC0985]

6. 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]
7. As the subject site is located within 40 metres of a watercourse, any required permits are to be obtained from the NSW Office of Water (Department of Primary Industries) pursuant to s.89, 90 and 91 of the Water Management Act 2000, prior to issue of a Construction Certificate.
- [PCC1330]

DURING CONSTRUCTION

8. 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]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

9. 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]
10. 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]
11. 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) **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.**
- (b) **The creation of a Right of Carriageway over road reserve within Lot 4 in DP 774793 and in favour of Lot 1 in DP 326434 and Lot 18 in DP 755748.**

[PSC0835]

12. **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]

13. **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]

14. **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]

15. **The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to each allotment.**

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations.

Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

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

[PSC1175]

16. Prior to the issue of the Subdivision Certificate, the applicant shall comply with the recommendations of the Tweed Shire Council Road Closure Report dated 2 March 2006 and the following requirements.
 1. The closure and purchase of the road reserve within Lot 4 in DP 774793 subject to the creation of a Right of Carriageway being created over the site of the formed tracks in favour of Lot 1 in DP 326434 and Lot 18 in DP 755748;
 2. The applicant bears all the survey and legal costs and purchases the subject land as determined in value by a registered valuer approved and engaged by Council;
 3. The title of the road reserve be consolidated with the applicant's land; and
 4. All necessary documentation is executed under Common Seal of Council.

[PSCNS01]

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

1. Any alteration to the electricity supply network required to service the proposed lots shall comply with the acceptable solutions for electricity services in section 4.1.3 of 'Planning for Bushfire Protection 2006'.
2. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on proposed Lot B over the property access road to proposed Lot A. The restriction to use shall require the access to be constructed and maintained in accordance with the acceptable solutions for property access in Section 4.1.3(2) of 'Planning for Bush Fire Protection 2006'. The property access shall be constructed prior to the issue of subdivision certificate.

REPORT:

Applicant: Joe Davidson Town Planning
Owner: Mr Gary G McGuiness
Location: Lot 1 DP 326434 Lilly Pilly Road, Tyalgum Creek; Lot 4 DP 774793 No. 217 Stoddarts Road, Tyalgum Creek
Zoning: 1(a) Rural
Est Cost: Nil

Background:

The site is commonly identified as Lot 1 DP 326434 Lilly Pilly Road and Lot 4 DP 774793, 217 Stoddarts Road, Tyalgum Creek. Existing Lot 1 has frontage to Lilly Pilly Road (not constructed) while existing Lot 4 has frontage to Lilly Pilly Road and Stoddarts Road (partially constructed and ends before reaching Lot 1). Both lots also have frontage to Tyalgum Creek. The lots and surrounding land were originally cleared for dairy farming. Both lots do not currently feature any residential buildings although existing Lot 4 does feature farm buildings including former dairy bales, currently being used for timber furniture production.

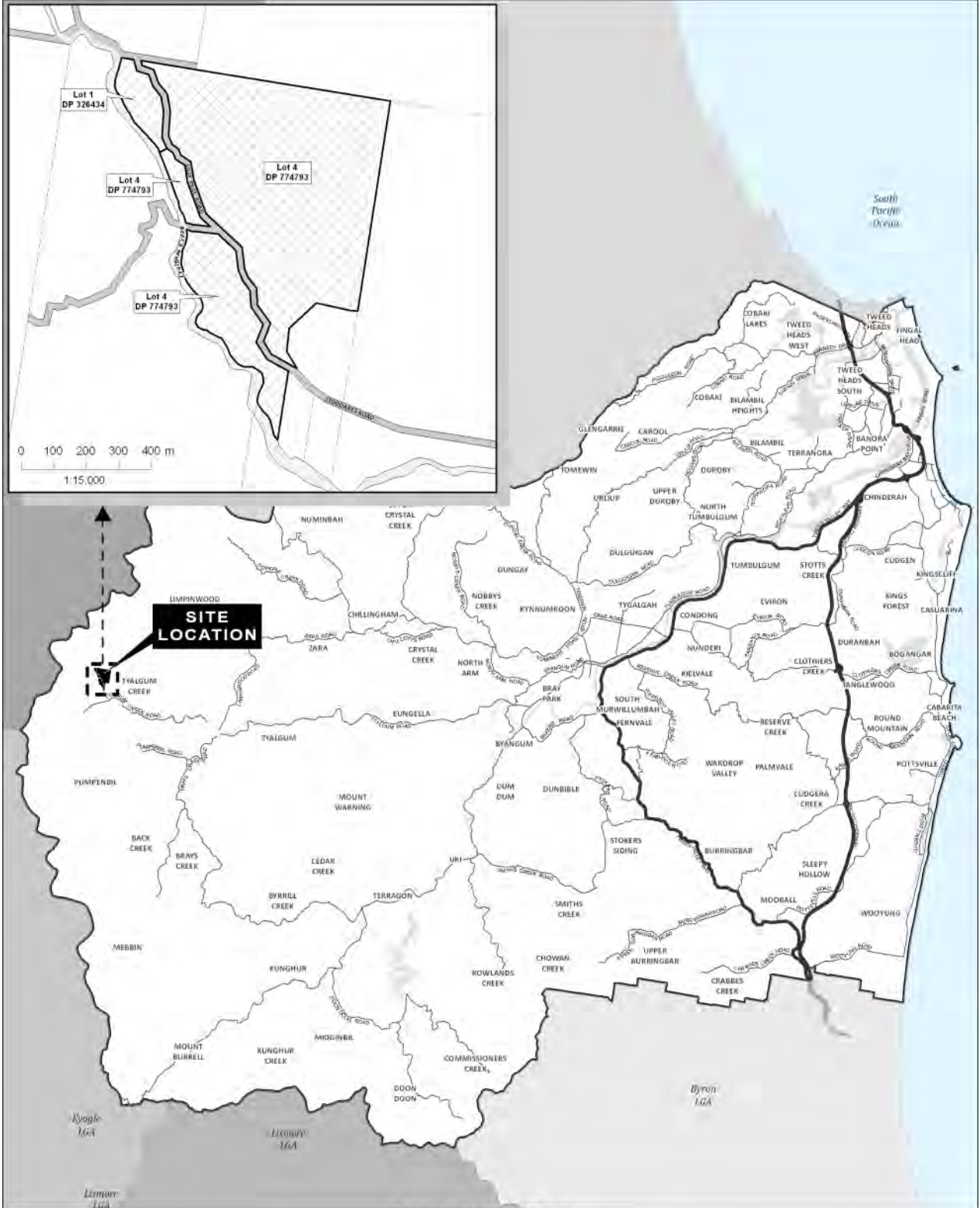
The proposed common boundary between the lots takes into account the slope of the site and a natural boundary formed by a ridgeline. Both lots will continue to have access from an existing partially constructed Crown road (Stoddarts Road). A Crown road closure has been approved within the subject site, however is not yet completed. This closure is proposed to remove the Crown road reserve at the south eastern end of Lot 4, providing access via right of carriageway over Lot 4 to the boundary of Lot 1.

Each lot contains significant stands of vegetation. The application does not propose the removal of any vegetation to complete the subdivision. The unconstructed portion of Stoddarts Road is maintained grassland. A potential building envelope upon existing Lot 1 is regularly maintained through mowing and weeds removal. Some vegetation removal may be required in conjunction with asset protection zones for any future dwelling on either lot. However, such will be assessed in conjunction with a development application for these dwellings. This proposed boundary adjustment will provide additional land area to assist in the provision of satisfactory asset protection zones.

A dwelling is permissible upon existing Lot 4 due to the provisions of Clause 20 of the TLEP 2000. Any development consent issued for the subject application will not impact upon the ability of the proposed Lot B to accommodate a dwelling as the 40ha minimum will be maintained. Council records indicate that previous advice has been given acknowledging that existing Lot 1 has the benefit of a dwelling entitlement by virtue of Clause 57 of the TLEP 2000. However this dwelling entitlement will not be retained following any development consent for this boundary adjustment subdivision. The applicant has been advised that development consent should be obtained for a dwelling upon existing Lot 1 and commenced prior to the registration of any subdivision issued for this application.

No other development is proposed as part of the application.

SITE DIAGRAM:

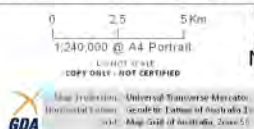


Locality Plan

Lot 1 DP 326434; Lilly Pilly Road, Tyalgum Creek;
 Lot 4 DP 774793; No.217 Stoddarts Road, Tyalgum Creek

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 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 is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any transactions a 'Call before you Dig' enquiry must be made by calling 8110. The information contained on this document remains valid for 30 days only from the date of supply.

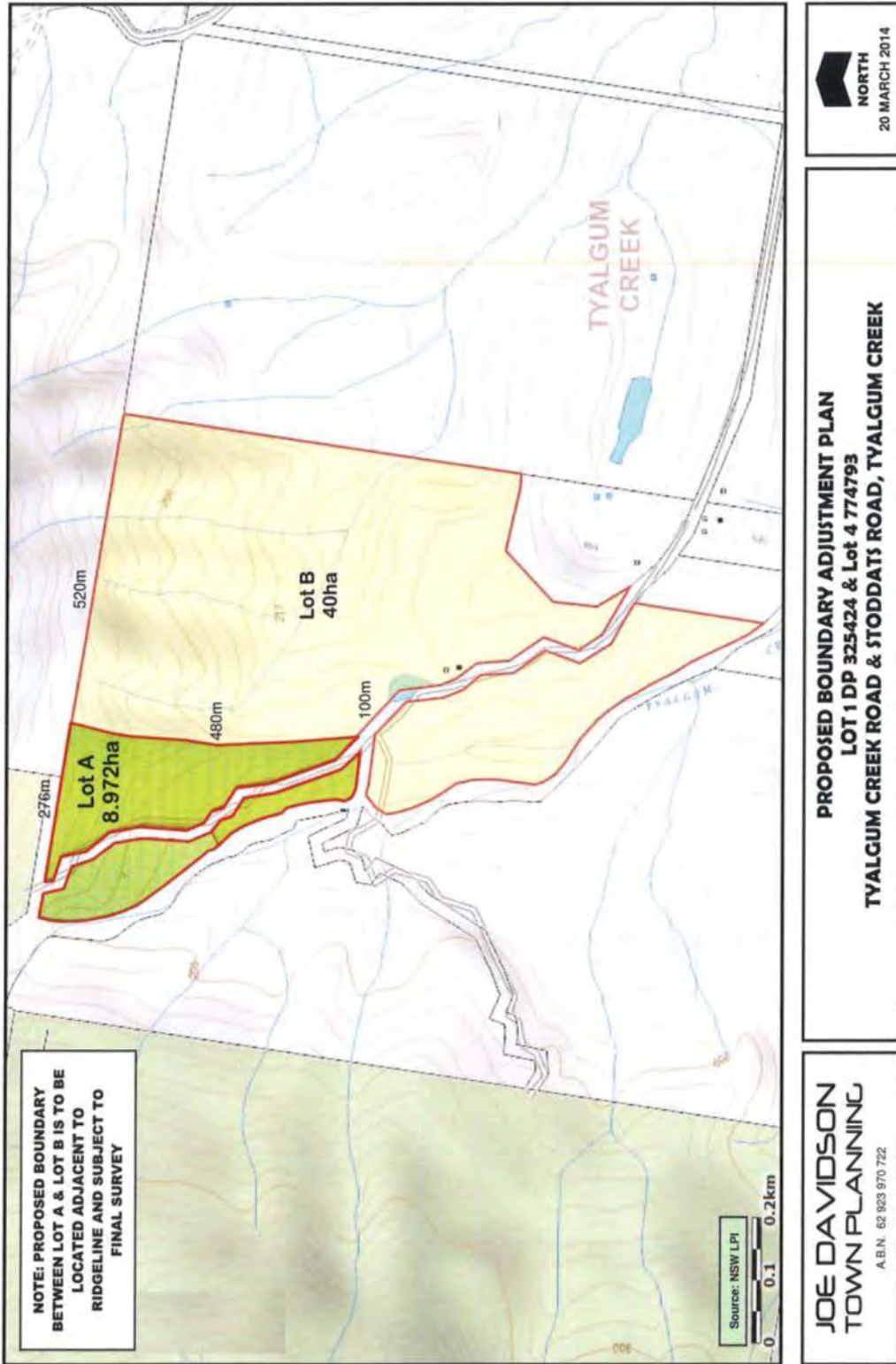
Cadastral: 13 June, 2014
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 Boundaries shown should be considered approximate only.



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SUBDIVISION PLAN:



JOE DAVIDSON TOWN PLANNING

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 development application is considered suitably in keeping with the above, as is not considered likely to result in a reduction of existing amenity for nearby rural properties or the shire as a whole, subject to conditions of consent.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP 2000 aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The proposed development is considered to be in keeping with the ESD principles.

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 1(a) Rural, the primary objectives of which are outlined in Clause 11 assessment below.

The proposed subdivision is consistent with the objectives of the zone as the new subdivision layout does not substantially reduce the area of the larger property, maintaining a minimum lot size capable of sustaining an agricultural use, but will substantially increase the area of the smaller lot, expanding opportunities for rural uses upon this new lot.

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

The proposal is not considered to contribute to any unacceptable cumulative impact in the community or catchment, subject to conditions of consent.

Clause 11 - Zone Objectives

The subject site is zoned 1(a) Rural.

The primary objectives for land zoned 1(a) Rural are:

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

The secondary objectives of the zone are:

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

The proposed subdivision is permissible with consent and is considered to be consistent with the zone objectives applicable to the site for the following reasons:

- The agricultural viability of the land will be maintained and improved through the creation of the subject lots.
- No additional lots or dwelling opportunities will be created resulting in fragmentation of the agricultural land or land use conflict.
- The existing rural character of the locality will not be adversely impacted by the proposed boundary adjustment.

Clause 15 - Essential Services

Clause 15 of the TLEP requires that Council be satisfied that the subject land has the benefit of essential services before issuing consent. The proposal does not include the provision of any dwellings upon the two vacant allotments. Council's Environmental Health Unit has advised that the two lots are not significantly constrained to prevent an onsite sewerage management system to be provided. Any consent granted will be conditioned to require any future application for a dwelling on either lot to be supported by an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993.

The lots are not connected to town water. Electricity and telecommunication services are available to both parcels.

Clause 16 - Height of Building

No buildings proposed.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP relates to social impact assessment, with the objective *to ensure proper consideration of development that may have a significant social or economic impact.*

If a consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality, a socio-economic impact statement is required.

It is considered that the adjustment of a boundary between two vacant rural lots in the Tyalgum area will not have any adverse social impact upon the locality or local government area.

Clause 35 - Acid Sulfate Soils

The subject land is not identified as containing any potential acid sulphate soils.

Other Specific Clauses

Clause 20 - Subdivision in Zones 1 (a), 1 (b), 7 (a), 7 (d) and 7 (l)

The objectives of this Clause are:

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

Clause 20(2) provides that the development consent may only be granted to the subdivision of land within the 1(a) Rural zones if the area of each allotment to be created is at least 40ha.

The proposed boundary adjustment is unable to comply with this minimum lot size requirement as existing Lot 1 is well below the 40ha minimum. An objection has been made under State Environmental Planning Policy (SEPP) No.1 to vary the 40ha minimum. The application has provided evidence to support this variation request to why the standard is unreasonable and unnecessary in the circumstances.

The Department of Planning have granted concurrence for this variation via correspondence dated 1 May 2014.

Clause 29 Development adjacent to Zone 8 (a) National Parks and Nature Reserves

The objective of this Clause is:

- *to ensure that development of land adjacent to Zone 8 (a) does not have a significant impact on wildlife habitat.*

The subject sites share a common boundary with a National Park. The proposed boundary adjustment will not require any works to be undertaken that will involve the removal of vegetation onsite or adjoining. The subdivision will not result in

uses upon the sites that will have a detrimental impact upon the adjoining National Park. Therefore, the potential for disturbance of native flora and fauna as a result of the boundary adjustment is considered negligible in this instance.

Clause 31 Development adjoining waterbodies

The objectives of this zone are:

- *to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.*
- *to provide adequate public access to waterways.*
- *to minimise the impact on development from known biting midge and mosquito breeding areas.*

The subject land parcels are located in the upper reaches of Tyalgum Creek. No opportunities for public access to the water way will be altered as a result of the proposed boundary adjustment. The development will generate works onsite for the construction of a right of carriageway in accordance with the Rural Fire Service, general terms of approval. A condition of consent will be included requiring appropriate approvals pursuant to s.89, 90 and 91 of the Water Management Act 2000, due to the proximity of Tyalgum Creek.

Therefore the scenic quality, water quality and environmental features of the land and surrounds will not be impacted as a result of this subdivision.

Clause 39 Remediation of Public Land

The proposal will be assessed in accordance with the provisions of SEPP 55. This matter is discussed below.

Clause 39A Bushfire Protection

The proposal requires a Bushfire Safety Authority under Section 100B of the Rural Fires Act 1997. This BSA has been issued by the RFS by correspondence dated 20 May 2014 and will be incorporated into any consent granted.

It should be noted that a separate application will be required for any future dwelling proposal for either lot.

Clause 57 Protection of Existing Dwelling Entitlement

A dwelling entitlement will be retained upon proposed Lot B given the lot area will remain consistent with the minimum 40ha minimum.

Existing Lot 1 currently enjoys a dwelling entitlement consistent with correspondence from Tweed Council dated 28 March 2013. However, due to the provisions of Clause 11 of the TLEP 2000, the proposed boundary adjustment subdivision will result in this dwelling entitlement being lost. The provisions of Clause 57 of the TLEP 2000 do not encompass boundary adjustment subdivision such as this application.

If the land owner wishes to gain development consent for a dwelling upon Lot 1, an application and approval must be sought and enacted prior to any boundary adjustment taking place. Advice in regard to the loss of a dwelling entitlement upon proposed Lot 1 will be included within any covering letter issued for the development consent, if granted.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

Clause 12 provides that consideration must be given to the likely impact of the proposed development on the use of the adjoining or adjacent agricultural land; whether the development will cause loss of prime agricultural land, prime crop or pasture land.

As detailed in Figure 1, an adjoining lot to the west has been cleared of vegetation however, further to the west and adjoining both lots to the north is extensive vegetation within a National Park and escarpment. The proposal will not impact upon this adjoining land and any existing uses as the current status of both lots will not be altered in regard to use or external boundaries.



Figure 1 - Subject Lots with dense vegetation to the north- west zoned 8(a) National Parks and Nature Reserves and 7(d) Environmental Protection (Scenic Escarpment) land to the north

It is considered that the proposed boundary adjustment will not result in a loss of prime agricultural land and may improve the opportunity for agricultural purposes upon proposed Lot A.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard identified within Clause 20 (2)(a) of the Tweed LEP, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(a) zone.

The SEPP 1 objection relates to proposed Lot A being below 40 hectares. 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.

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*). 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.

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 contends that *strict compliance with the 40ha is unreasonable in the case of the proposed boundary adjustment as the combined areas of the two allotments involved are well below the 80ha required to achieve this. The existing allotment configuration does not comply, so it is therefore unreasonable for a new configuration that transfers 6.67ha from the larger lot to the smaller lot to comply.*

It is considered that the standard is unreasonable and unnecessary in this instance as one lot will remain compliant with the minimum standard (40ha) while the small lot will be increased in area to improve its agricultural viability. There are also no additional lots or dwellings proposed.

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

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 boundary adjustment subdivision between two lots. The existing lot configuration limits the potential for agriculture upon the smaller lot. The proposed lot layout will increase the agricultural viability of existing Lot 1 by providing cleared land for agricultural purposes. However, the proposed adjustment to lot boundaries will maintain a 40ha minimum for proposed Lot B for agricultural viability. It is therefore considered that the proposal is consistent with the objects specified in s 5(a)(i) and (ii).

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 20(2)(a) of the Tweed LEP is not considered to raise any matter of significance for State or Regional planning.

There would also be little public benefit in maintaining the development standard in this case as existing Lot 1 does not comply with the 40 hectare minimum lot size. The purpose of the subdivision is to increase the area of land available for agricultural purposes as well as providing a suitable dwelling envelope with satisfactory bushfire asset protection zones.

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.

The Director-General's concurrence is required for variation to the 40ha minimum lot size development standard as both lots are not below the minimum lot size, preventing Council from assuming concurrence.

Concurrence was granted from the NSW Department of Planning and Environment by letter dated 1 May 2014 for the following reasons:

- Both allotments have existing dwelling eligibility,
- The land has limited agricultural potential,
- The residue lot will remain above the minimum lot size.

On this basis it is considered that the SEPP 1 objection is reasonable and that the proposed development is satisfactory.

SEPP No. 44 - Koala Habitat Protection

The land is not potential koala habitat based on Council's mapping and the proposal will not require the removal of any natural vegetation. Therefore, no further assessment of the proposal in this regard is necessary.

SEPP No. 55 - Remediation of Land

Council's Environmental Health Unit is satisfied with statutory declaration addressing historical land uses for a 50 year period up until 2004. A second Statutory Declaration for land use onsite, from 2004 has also been submitted by the applicant. These two declarations satisfy the provisions of SEPP55 and no additional information is required for the subject boundary adjustment.

SEPP (Rural Lands) 2008

The subject land is within the 1(a) Rural Zone and the provisions of this SEPP apply to the proposed development.

Clause 7 Rural Planning Principles

The Rural Planning Principles are as follows:

- the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*

- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The development is compliant with the rural subdivision principles in the SEPP as the proposed subdivision will not affect the continuance and potential productive sustainable activities to be undertaken. The existing Lot 1 at present has limited capacity for agricultural activities whereas the proposed boundary adjustment will increase the agricultural capacity for proposed Lot A.

As previously detailed, the site is surrounded by densely vegetated areas. The proposed boundary adjustment will not affect the status quo as it does not involve clearance of vegetation or fencing. It is therefore considered that the proposed development will not impact on the ecological values of the allotments.

Clause 8 - Rural Subdivision Principles

The Rural Subdivision Principles are as follows:

- (a) *the minimisation of rural land fragmentation,*
- (b) *the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*
- (c) *the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*
- (d) *the consideration of the natural and physical constraints and opportunities of land,*
- (e) *ensuring that planning for dwelling opportunities takes account of those constraints.*

There will be no conflicts of rural land uses given the proposed future uses and proposed lot boundary movement. It is considered unlikely that any potential increase in agricultural activities upon proposed Lot A will impact on surrounding rural land uses. No new dwelling entitlements will be created as a result of the proposal.

The proposal will have no impact upon the nature of existing agricultural holdings or the planned future supply of rural residential land as the subdivision involves the alteration of internal boundaries and the locality is not identified for rural residential use.

Clause 10 - Matters to be considered in determining development applications for rural subdivisions or rural dwellings

The matters to be considered in determining a development application are stated and addressed as follows:

- (1) *This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.*
- (2) *A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:*
 - (a) *subdivision of land proposed to be used for the purposes of a dwelling,*
 - (b) *erection of a dwelling.*

- (3) *The following matters are to be taken into account:*
- (a) *the existing uses and approved uses of land in the vicinity of the development,*
 - (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
 - (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
 - (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
 - (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

As stated previously in this report, the proposed boundary adjustment subdivision will not change the status quo; no additional lots or new dwelling entitlements will be created. It is considered that the proposed new lot configurations will not affect the current orderly and economic use of the land, although there may be the potential for increased agricultural viability at proposed Lot A.

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

The Tweed Local Environment Plan 2014 commenced on 4 April 2014. The subject land is zoned RU2 - Rural Landscape. Subdivision is permissible within the RU2 zone. The minimum Lot size within the RU2 zone is 40ha pursuant to Clause 4.1. As previously mentioned proposed Lot A does not meet the minimum Lot size standard. However, in accordance with savings provision 1.8A of the TLEP 2014, 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.

Therefore, the application will be assessed having regard to the provisions of the TLEP 2000.

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

Tweed Development Control Plan

A5-Subdivision Manual

Council's Development Engineer has reviewed the application. The proposed works such as road construction and service provision will be required to be undertaken in accordance with the provisions of this DCP.

Electricity and telecommunication services are available to the area. Conditions of consent will require the applicant to provide services in accordance with the standards of the relevant supply authority.

No flood levels are available for the land, despite proximity to Tyalgum Creek. The status quo will not change in this regard as a result of the boundary adjustment and is considered satisfactory in this regard.

Existing Lot 1 has frontage to Lilly Pilly Road and Lot 4 has frontage to both Stoddard's Road and Lilly Pilly Road. Stoddarts Road is a bitumen sealed road in fair condition and 5m wide.

No upgrading to the existing road is required by Council. However, the RFS have granted general terms of approval subject to the provision of minimum property access requirements. Therefore, the existing unformed road will likely require upgrading to meet RFS standards. The road is currently partially gravel and partially maintained grassland. The consent will be conditioned to require a construction certificate prior to the commencement of these works.

Road Closure

The applicant has received approval from Council for the closure of Stoddarts Road from the southern boundary of Lot 4 in DP 774793 to Lot 1 in DP 326434 and boundary of Lot 18 in DP 755748.

The applicant has two applications with the Department Lands for this road closure which should be finalised in the near future and will include a Right of Carriageway over the existing Stoddarts Road carriageway and provide access to Lot 18 in DP 755748 and Lot 1 in DP 326434 (proposed Lot A).

It is proposed to include a condition of consent requiring all conditions of the proposed road closure to be completed prior to the issue of the subdivision certificate. This will result in proposed Lot A being accessed via a right of carriageway from the new end of Stoddarts Road.

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

Bushfire

The application required an Integrated Referral to the NSW Rural Fire Service (RFS) due to the bushfire prone nature of the land. In a response dated 20 May 2014, a Bushfire Safety Authority was granted subject to certain general terms of approval applied to any Development Consent granted.

It should be noted that the RFS were formally advised of the proposed road closure, despite the omission of this information from the Statement of Environmental Effects. This issue has been incorporated into the general terms of approval.

As a result, a restriction shall be placed on the land use pursuant Section 88B of the Conveyancing Act 1919 burdening proposed Lot B to secure access for proposed Lot A in conjunction with the standards for road construction required by the general terms of approval.

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

Not applicable

Tweed Shire Coastline Management Plan 2005

Not applicable

Tweed Coast Estuaries Management Plan 2004

Not applicable

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

Not applicable

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

Context and Setting

The development does not seek to remove any vegetation as part of the boundary adjustment proposal. While the lot boundaries between each lot will be altered, external boundaries will not be impacted by the proposal. The internal boundary change will improve the amenity of the smaller lot while not prejudicing the larger lot that will continue to meet the minimum lot size for the 1(a) Rural zoning.

Access, Transport and Traffic

Access to both sites will be retained as existing, despite the closure of Stoddarts Road. The proposal will not result in any additional traffic as no additional lots are being created. The upgrading of the existing crown road the subject of a current road closure has been previously discussed within this report.

Flora and Fauna

No vegetation removed will result from the change of boundaries. The road upgrade will not require the removal of vegetation. Weeding will be undertaken in conjunction with ongoing farm activities.

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

Surrounding Landuses/Development

The properties have a combined area of 48.972ha. The proposed lot configuration provides for two lots of 8.972ha and 40ha respectively. There is sufficient unconstrained land to accommodate future dwellings on either site, subject to separate Council approval.

The lots are surrounded by rural properties in the Tyalgum Creek locality. Existing uses upon either lot or adjoining sites are not considered to be in conflict with one another.

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

The application did not require notification under Council's Notification Policy.

- (e) Public interest**

The application is not considered contrary to the public interest as the application satisfies the objectives of the Tweed Local Environmental Plan 2014.

OPTIONS:

1. Approves the application in accordance with the recommended conditions.
2. Refuses the application, providing reasons.

Council officers recommend Option 1.

CONCLUSION:

The proposal seeks to make better use of existing land for agricultural purposes thereby improving the agricultural capabilities of Proposed Lot A, while maintaining the viability of existing Lot 4. Therefore, it is considered that the proposal will not result in any adverse cumulative impacts and will not change the status quo of the land. The proposed development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and relevant policies and therefore warrants approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 13 [PR-PC] Development Application DA13/0175 for a 86 Lot Residential Subdivision in Four Stages Comprising 81 Residential Lots with Dedication of Two Lots as Drainage Reserves, One Lot as Public Reserve, One Lot as Riparian Buffer and One Lot as Sewer Pump Station Site at Lot 2 DP 534521 No. 210 Murwillumbah Street, Murwillumbah; Lot 332 DP 1158142 Silkpod Avenue, Murwillumbah

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0175 Pt3



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 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:

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

A report recommending refusal of the staged subdivision proposal was considered at Council's meeting of 23 January 2014 (copy attached). It was resolved at that meeting that the development application be deferred for a Workshop.

A Workshop was held on 27 February 2014 with the applicant in attendance. A decision on the application was deferred at 3 April 2014 Planning Committee meeting pending submission and assessment of an amended proposal.

An amended proposal was lodged on 14 April 2014 that has generally satisfied Council officers' concerns.

In summary, the amended proposal includes the additional dedication of one lot as reserve buffer to the endangered Grey-headed Flying Fox colony and increases the number of residential lots by two from 79 to 81. Works are no longer required or proposed in Frangela Drive Reserve. Instead, Council will be undertaking upgrade works in Rous River Park in agreement with and on behalf of the applicant. An alternative drainage channel route has been proposed that more closely aligns with that preferred by Council's Engineers and some minor road works are proposed on land upon which Council's Sewer Treatment Plant is located.

The subdivision design is now generally considered suitable for the subject site and therefore the proposed development is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA13/0175 for a 86 lot residential subdivision in four stages comprising 81 residential lots with dedication of two lots as drainage reserves, one lot as public reserve, one lot as riparian buffer and one lot as sewer pump station site at Lot 2 DP 534521 No. 210 Murwillumbah Street, Murwillumbah; Lot 332 DP 1158142 Silkpod Avenue, Murwillumbah be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and:

- Drawing No. 19291 B Sheet 1 of 2 Revision G Reference No. M31530 (Proposed Subdivision Plan with Layout and Staging) as amended in red prepared by B & P Surveys Consulting Surveyors and dated 4 April 2014,**
- Drawing No. 19291 B Sheet 2 of 2 Revision G Reference No. M31530 (Proposed Layout and Existing Contours) as amended in red prepared by B & P Surveys Consulting Surveyors and dated 4 April 2014,**

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0045]

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

[GEN0125]

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

[GEN0135]

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

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

[GEN0155]

6. The north-eastern termination of Rous River Way is located on Council land: Lot 2 DP 534521. The applicant is required to obtain owner's consent to enter the land for any works intended to be undertaken on the property, prior to the issuing of a construction certificate for Stage 4.

[GENNS01]

7. Plan SK 4342 Revision A (Earthworks Cut/Fill Shade Plan) prepared by Bradlees and dated 28 March 2014 is to be resubmitted as part of the construction

certificate application, but amended to clearly show both the cut and fill areas as well as the depths/heights intended.

[GENNS02]

8. The applicant shall not remove, damage or disturb native vegetation without prior approval from the relevant authority or unless such activity has been prescribed in the approved site based Vegetation and Fauna Management Plan.
[GENNS03]
9. The constructed bed and banks of the open drainage channel traversing proposed Lot 604 (as shown on Drawing No. SK 4340 Rev. A prepared by Bradlees and dated 28 March 2014) shall be excised from Lot 604, amalgamated into Lot 627 and managed as a drainage reserve. The balance of Lot 604 shall be described as 'Public Conservation Reserve' for the purpose of providing a riparian buffer to the Rous River with dedication to Council as part of Stage 6 of the development.
[GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

[PCC0125]

11. 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.

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

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

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

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

The SWMP shall include:

- a) Detailed bio-retention basin design in accordance with *Water By Design's Bio-Retention Technical Design Guidelines*.
- b) Details of bio-retention construction and establishment methods in accordance with *Water by Design Construction and Establishment Guidelines*.
- c) A bio-retention maintenance plan in accordance with *Water by Designs Maintaining Vegetated Stormwater Assets*.
- d) In addition to the hydraulic calculation required under Development Design Specification D5 - Stormwater Drainage Design, hydraulic calculations shall be provided to verify the adequacy of the major twin 1500mm pipes under low flow. Reference should be made to QUDM section 7.11. Q1 flows shall be used.
- e) The outlet of the twin 1500mm piped drains reasonably aligned with the direction of flow in the open drain in accordance with QUDM Section 8.05.
- f) Plans and cross-sections of service locations at Road 1 showing, as far as is practicable, all services located outside the extents of the zone of excavation of the twin 1500mm drainage pipes.
- g) A maintenance plan for the major twin 1500mm pipe system.
- h) Swale drains with a longitudinal gradient less than 0.5% shall have a gabion mattress base installed.
- i) Details of appropriate drain safety measures in accordance with QUDM Section 12.

[PCC0165]

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

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

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

[PCC0275]

13. 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]

14. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

15. 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]

16. Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678 and Council's Development Design and Construction Specifications.

Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

[PCC0475]

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

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

[PCC0485]

18. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and to minimise the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval as part of each construction certificate application.

[PCC0675]

19. 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 each Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

20. 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 Council's Development Design and Construction specifications.

URBAN ROAD

- (a) Construction of urban bitumen sealed road formations for all roads within the subdivision, generally in accordance with Plans SK 4343 to SK 4349 Revision A prepared by Bradlees and dated 28 March 2014.
- (b) Construction of a 2.5m wide cycleway within the northern/western footpath area of Rous River Way.
- (c) A concrete footpath is to be provided for the entire frontage of Lot 602.
- (d) Reconstruction of Rous River Way must be fully completed as part of Stage 5 works. This is to include the re-shaping of Lot 602 with the new stormwater outlet.
- (e) The north-eastern termination of Rous River Way is not to end with a bulb, as the 9m carriageway width is to extend to the (prolongation of) the eastern boundary of Lot 401. A turn-around provision shall be constructed at the end of the road, utilising two vehicular footpath crossing slabs (5m wide) to facilitate turn-around manoeuvring.

These crossings would need to be signposted as "No Parking. Vehicle turn-around area" or similar.

OTHER

- (f) The footpath levels in Joshua Street fronting Lots 713 - 715 are to be evenly graded and fall is to be attained from the front of the lots to the existing kerb line.**
- (g) A concrete footpath is required for the frontage of Lots 713 - 715 in Joshua Street.**
- (h) Indicative driveway layouts including long-sections, shall be provided in accordance with Council's Driveway Access to Property specifications, for all lots fronting Joshua Street.**
- (i) Retaining walls shall be designed and constructed in accordance with Development Design Specification D6 - Site Regrading. All retaining walls should be located on private land. Any retaining walls required to be on land to be dedicated to Council shall be of a structural nature, unless aesthetic requirements preclude.**
- (j) The design for the open channel emanating from the northern end of Joshua Street must locate and detail any existing stormwater lines that discharge into the vicinity, and appropriately cater for their discharges.**
- (k) Access is required across the main stormwater channel within the Rous River riparian buffer area for rehabilitation works and on-going maintenance. To facilitate this an extended rock 'path' across the channel in the form of 'reno mattresses' is required.**
- (l) Provision of inter-allotment drainage for ALL lots that do not drain to a street frontage. In this regard Lots 605 to 608, 613 to 620, 717 to 721 have been overlooked but require inter-allotment drainage.**
- (m) Reverse footpath crossfall is to be provided at the low point at the end of Road 3, to facilitate overland flowpath provisioning to the open channel.**
- (n) Provide a cross-section of the triple stormwater pipes bisecting and encumbering Lots 718 and 719. Ensure the pipe within Lot 719 is located away from the side boundary to ensure clearance from fence posts.**
- (o) Geotechnical investigation is required for the area generally covered by Lots 404 to 417, to verify satisfactory settlement has been achieved where pre-loading for prior bulk earthworks was previously undertaken (pressure plates were damaged prior to finalisation of settlement monitoring).**
- (p) Geotechnical assessment is to be carried out on the known areas of 'slumping' on the eastern side of Joshua Street, to ensure site filling in that location is effectively undertaken.**
- (q) The maintenance track to the bio-filtration basins is to be constructed of heavy duty reinforced concrete, and must not encroach into the existing**

SRM easement (current infringement noted on Plan SK 4359 Revision A prepared by Bradlees and dated 28 March 2014).

SEWER/WATER:

- 1. Construction of the proposed water and sewer assets must meet the Council Development Design Specification - D12 for Sewerage Systems and D11 for Water Supply.**
- 2. Water supply design to meet D11.07.3; reticulation mains shall be looped to eliminate dead ends and D11.08.1(c); stop valves shall be located so that approximately 20 dwellings can be isolated for shutdowns. The design shall include a 150mm diameter water main in Rous River Way from Joshua Street to the existing 200mm diameter main.**
- 3. Sewerage system design to meet D12.08.13; house connections shall not be made to manholes or maintenance shafts.**
- 4. Some of the proposed invert levels on Plans SK 4353 to SK4355 (Revision A prepared by Bradlees and dated 28 March 2014) do not meet D12.08.10. Therefore the invert levels on the plan are considered to be preliminary and are subject to change to meet Council requirements.**
- 5. Inset A on plan SK 4353 (Revision A prepared by Bradlees and dated 28 March 2014) does not meet D12.20 3(d), 8(a) and 9(a) in relation to the location and layout of the sewer pump station and is therefore considered to be preliminary and is subject to change to meet Council requirements. In particular, the size and shape of Lot 603 does not cater for the required 50m buffer, with the final size and shape of Lot 603 needing to be determined on the basis of final design of the pump station. It is expected that Lot 603 will need to increase in size.**
- 6. The sewer pump station lot of land is to be dedicated to Council. The size and shape of the allotment shall be determined on the basis of final design of the sewer pumping station and hence the approved subdivision plan (as amended in red) is subject to future amendment to meet Council requirements and sewer design.**
- 7. Lots 401 and 402 are to be serviced by extending the line from Lot 403.**
- 8. Lots 408 and 415 are to be serviced by 'cut-in' junctions on existing lines along Rous River Way.**
- 9. Lots 409 - 411 are to be serviced by the existing road crossing coming from Lot 412.**
- 10. Lots 416 and 417 are to be serviced by the existing road crossing coming from lot 421.**
- 11. SMH at rear of Lot 615 will require a vent due to rising main connection.**

12. Lots 613, 614, 701 - 706, 717 - 721 all have sewer connections on the **HIGH SIDE** of the lot. Ensure sewer junctions are deep enough to service 90% of each lot being serviced, in accordance with D12.05.2.
13. The construction certificate application shall include detailed design of any required changes to Council's existing sewer rising mains, and the pumping implications of this. [PCC0875]
21. 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]
22. Prior to the issue of a Construction Certificate for subdivision works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.
- (a) copies of compliance certificates relied upon
- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations.*

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier. [PCC0985]

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

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

[PCC1105]

24. 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]

25. 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]

26. 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 Council's nomination of point of extraction.

- Where a current standpipe approval has been issued application must be made for Council's nomination of a point of extraction specific to the development.
 - Payment of relevant fees in accordance with Councils adopted fees and charges.
- [PCC1205]
27. As works will be undertaken within 40 metres of a watercourse, any required permits are to be obtained from the NSW Office of Water (Department of Primary Industries) pursuant to s 89, s 90 and s 91 of the *Water Management Act 2000*, prior to issue of any relevant Construction Certificate.
- [PCC1330]
28. A Riparian and Biological buffer planting report shall be prepared to the satisfaction of the General Manager or delegate addressing the requirements of the Rural Land Assessment Report prepared by Sedgman Yeats dated 31 January 2013 Revision No. 9.
29. An Acid Sulfate Soils Management Plan shall be submitted and approved by the General Manager or delegate. The plan shall incorporate the construction work detail, including any dewatering required, and appropriate treatment methodology in accordance with the Acid Sulfate Soils Manual, ASSMAC 1998.
30. A construction noise management plan shall be submitted and approved by the General Manager or delegate. The plan shall be prepared in accordance with the Interim Construction Noise Guideline, NSW DECC July 2009.
- [PCCNS01]
31. All roads and lots are to be filled to the Design Flood Level of RL 4.9m AHD. In this regard the rear of Lots 718 and 719 are to be raised.
- [PCCNS02]
32. Existing ground levels at all boundaries of the subject site are to be preserved.
- [PCCNS03]
33. Retaining walls shall be designed and constructed in accordance with Development Design Specification D6 - Site Regrading. All retaining walls should be located on private land. Any retaining walls required to be on land to be dedicated to Council shall be of a structural nature, unless aesthetic requirements preclude.
- [PCCNS04]
34. 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. Reference should be made to Council's Native Species Planting Guide for Tweed and Byron Shires.
- [PCCNS05]
35. A Habitat Restoration Plan (HRP) is required to be prepared generally in accordance with Council's *Draft Guideline for the Preparation and Implementation of Habitat Restoration Plans (2010)* by a person suitably qualified in Bushland Regeneration or Ecological Restoration and with knowledge and experience in local vegetation communities (eg. wetlands, rainforest, riparian areas, dunal areas) to address the following areas:
-

- a. The 'Public Conservation Reserve' as shown on the approved subdivision plans described as the Rous River Buffer pursuant to Condition 9 of this development consent.
- b. Existing Community Land identified as Lot 133 DP1139107: a 3000m² area of existing Council land contiguous with the Rous River Buffer described above, extending for a width of 50 metres landward from the top of bank of the Rous River. This riparian restoration zone is required to compensate for the loss of native remnant vegetation at a ratio of 1:1 (replace:loss) described as *Grey Ironbark/White Mahogany/Grey Gum Open Forest Complex sub type Pink Bloodwood and/or Tallowwood and/or Flooded Gum and/or Brushbox* to be removed to facilitate the development.

The HRP shall be submitted and approved by Council's General Manager or delegate prior to issue of the first construction certificate for any stage of the development and shall include the following:

- a. An appraisal of the present condition of remnant vegetation;
 - b. Plan overlaying an aerial photograph of the site which divides the area into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate;
 - c. Management strategy for each of the zones including the approach, methods and techniques to be used for vegetation restoration;
 - d. Schedule of local native plant species to be used for planting;
 - e. Program of works to be undertaken to remove invasive weed species;
 - f. Schedule of timing of proposed works;
 - g. Maintenance, monitoring and reporting schedule with developer commitment for a period of 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.
- [PCCNS06]
36. A Vegetation and Fauna Management Plan (V&FMP) shall be prepared by a suitably qualified ecologist to be implemented during the construction phase for all relevant stages of the development. The V&FMP shall be submitted and approved by Council's General Manager or delegate prior to issue of the first construction certificate for any stage of the development. The V&FMP shall include (but not be limited to) the following:
- a. Particulars and locations of vegetation to be removed and vegetation to be retained in order to facilitate the development;
 - b. A statement of the reasons why the damage is necessary and any relevant factors associated with the purpose of the proposed damage;
 - c. Details of all proposed infrastructure, site access and services;
 - d. Details of strategies and methods to be implemented to protect vegetation to be retained in accordance with the *Australian Standard AS 4970-2009 Protection of trees on development sites*;

- e. **Methods for the reuse of felled vegetation from the subject site;**
 - f. **Disposal methods for remaining debris after the above methods have been employed;**
 - g. **Identification of known and potential habitat trees (displaying values such as hollows, fissures, nests, drays, arboreal termitaria used as nests etc) and description of fauna species known/likely to utilise habitat features;**
 - h. **Information on how trees are to be inspected for denning or nesting animals including constraints for inspecting trees (to provide acceptable alternative methods) and summary of removal and relocation methods for each faunal group (including observed species and species likely to occur in the area to be disturbed);**
 - i. **Considerations relating to time periods for when fauna is to be removed/flushed prior to clearing.**
 - j. **Details of special equipment required (such as cameras, elevated platforms etc);**
 - k. **Identification of general locations that wildlife will be relocated/translocated to if required (based on habitat requirements);**
 - l. **Specify that all fauna management procedures shall be undertaken by a suitably qualified wildlife specialist who holds a Wildlife Conservation License with an extended authority issued by the NSW Department of Environment & Heritage; and**
 - m. **Provide details of appropriate Flying Fox camp signage to be installed in Lot 601 at the developer's expense prior to issue of the subdivision certificate for Stage 6.**
- [PCCNS07]
37. **The applicant shall prepare detailed engineering design plans for the length of the open drainage channel (as shown on Drawing. No. SK 4340 Rev. A prepared by Bradlees and dated 28 March 2014) where aligned adjacent to the Rous River Buffer. The design shall generally be consistent with the *Queensland Urban Design Manual 2013 - Section 9.0 Open Channel Hydraulics*, and be based on the concept of 'Natural Channel Design' in order to ensure compatibility with the long term management intent of the Rous River Buffer. The design of the open channel shall be approved by Council's General Manager or delegate prior to the issue of the construction certificate for Stage 6.**
- [PCCNS08]
38. **A detailed landscape plan prepared by a qualified landscape architect must be submitted for all streetscapes, pedestrian walkways or cycle paths in stages 4, 5, 6 and 7. Such a plan must be approved by the Manager Recreation Services, Tweed Shire Council and be consistent with Council's Subdivision Manual (Section A5 of the Tweed Development Control Plan) and Development Design Specification (D14) and any relevant Standard Drawing.**
- [PCCNS09]

39. Any playgrounds included in landscape plans must comply with the guidelines established in the 'Playground Audit for Tweed Shire Council' (July 2009). Appendix 3 of this establishes a procedure for assessing nearby hazards and mitigation measures. New subdivisions designed after development of these guidelines must ensure no playground facility has a Facility Risk Rating exceeding 13 as defined in Table 3A7 of that document.

[PCCNS10]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

41. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

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

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

[PCW0375]

43. 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]

44. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and roads are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to Council prior to commencement of ANY works on the site.

[PCW0775]

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

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

[PCW0815]

46. 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]

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

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]

48. A community liaison officer and community liaison contact phone number shall be available on a 24-hour basis during construction works. Details of the contact person and telephone number shall be clearly displayed at the site entry. Details of the contact person and telephone number shall be locally advertised a minimum of fourteen (14) days prior to the commencement of works and local, directly affected residents notified by means of an individual letter drop to each household.

[PCWNS01]

DURING CONSTRUCTION

49. 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]

50. 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]

51. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem

to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

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

[DUR0745]

53. During filling operations

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**
- All fill and cut batters shall be contained wholly within the subject land.**

and upon completion,

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

[DUR0755]

- 54. 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]

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

[DUR0815]

- 56. 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]

57. 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]
58. 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]
59. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate. [DUR1015]
60. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development. [DUR1025]
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. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
 - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
 - (c) That site fill areas have been compacted to the specified standard.
 - (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
- [DUR1805]
63. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results

shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:

- (a) That the pavement layers have been compacted in accordance with Council's Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

64. Provision of temporary turning areas and associated signage for refuse vehicles at the end of roads which will be extended in subsequent stages. The temporary turning areas shall be constructed with a minimum 150mm pavement (CBR 45) and shall have a right of carriageway registered over the turning area until such time as the road is extended.

[DUR1835]

65. 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 Council's Development Design and Construction Specifications prior to the issue of a Subdivision Certificate.

[DUR1875]

66. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, cycleways - formwork/reinforcement
- (h) Final Practical Inspection - on maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

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

Sewer Pump Station and Lift Stations

- (a) Excavation
- (b) Formwork/reinforcement
- (c) Hydraulics
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) 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]

67. 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 a Subdivision Certificate.

[DUR1955]

68. 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]

69. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Council's Property Service Form and be accompanied by the prescribed fees as tabled in Council's current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Council's Road Naming Policy.

[DUR2035]

70. **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]
71. **Drainage Reserves**
- (a) **The proposed drainage reserves are to be dedicated to Council at no cost, as part of Stage 6.**
- (b) **An accurate plan of the proposed drainage reserves shall be submitted to Council 60 days prior to lodgment of Application for Subdivision Certificate (form 13) to allow the land to be classified.** [DUR2295]
72. **All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.** [DUR2355]
73. **All stormwater discharged from the site including dewatering discharge is to be directed to a sediment pond prior to final discharge into any waterway in accordance with Council's Design and Construction Specifications.** [DUR2365]
74. **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]
75. **The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.** [DUR2425]
76. **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 Council's Engineering Division to arrange a suitable inspection.** [DUR2445]
77. **An accurate plan of the sewage pumping station site shall be submitted to Council 60 days prior to lodgement of the Application for Subdivision Certificate to allow the land to be classified.**

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.

[DUR2635]

78. Dust and Erosion Management

- (a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed area's 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]

79. All works shall be carried out in accordance with the approved construction noise management plan.

[DURNS01]

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

[DURNS02]

81. All operations must comply with the approved Vegetation and Fauna Management Plan. In the event that any threatened species, populations, ecological communities or their habitats not addressed in the report are discovered during operations, appropriate Plans of Management for those species must be formulated to the satisfaction of the General Manager or delegate and/or if required the Department of Environment and Heritage. No further site clearing will take place until any respective Plan(s) of Management is/are approved.

[DURNS03]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

82. 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]

83. 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:

Stage 4

Water DSP2:	23 ET @ \$12575 per ET	\$289,225
Sewer Murwillumbah:	23 ET @ \$6042 per ET	\$138,966

Stage 5

Water DSP2:	15 ET @ \$12575 per ET	\$188,625
Sewer Murwillumbah:	15 ET @ \$6042 per ET	\$90,630

Stage 6

Water DSP2:	22 ET @ \$12575 per ET	\$276,650
Sewer Murwillumbah:	22 ET @ \$6042 per ET	\$132,924

Stage 7

Water DSP2:	21 ET @ \$12575 per ET	\$264,075
Sewer Murwillumbah:	21 ET @ \$6042 per ET	\$126,882

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]

84. 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.

Stage 4

(a) Tweed Road Contribution Plan: 149.5 Trips @ \$1364 per Trips (\$1,317 base rate + \$47 indexation) S94 Plan No. 4 Sector9_4	\$203,918
(b) Open Space (Structured): 23 ET @ \$622 per ET (\$575 base rate + \$47 indexation) S94 Plan No. 5	\$14,306
(c) Shirewide Library Facilities: 23 ET @ \$838 per ET (\$792 base rate + \$46 indexation) S94 Plan No. 11	\$19,274
(d) Bus Shelters: 23 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	\$1,472
(e) Eviron Cemetery: 23 ET @ \$123 per ET (\$101 base rate + \$22 indexation) S94 Plan No. 13	\$2,829
(f) Community Facilities (Tweed Coast - North) 23 ET @ \$1389 per ET (\$1,305.60 base rate + \$83.40 indexation) S94 Plan No. 15	\$31,947
(g) Extensions to Council Administration Offices & Technical Support Facilities 23 ET @ \$1860.31 per ET (\$1,759.90 base rate + \$100.41 indexation) S94 Plan No. 18	\$42,787.13
(h) Cycleways: 23 ET @ \$473 per ET (\$447 base rate + \$26 indexation) S94 Plan No. 22	\$10,879

- | | | |
|-----|--|----------|
| (i) | Regional Open Space (Casual)
23 ET @ \$1091 per ET
(\$1,031 base rate + \$60 indexation)
S94 Plan No. 26 | \$25,093 |
| (j) | Regional Open Space (Structured):
23 ET @ \$3830 per ET
(\$3,619 base rate + \$211 indexation)
S94 Plan No. 26 | \$88,090 |

Stage 5

- | | | |
|-----|---|-------------|
| (a) | Tweed Road Contribution Plan:
97.5 Trips @ \$1364 per Trips
(\$1,317 base rate + \$47 indexation)
S94 Plan No. 4
Sector9_4 | \$132,990 |
| (b) | Open Space (Structured):
15 ET @ \$622 per ET
(\$575 base rate + \$47 indexation)
S94 Plan No. 5 | \$9,330 |
| (c) | Shirewide Library Facilities:
15 ET @ \$838 per ET
(\$792 base rate + \$46 indexation)
S94 Plan No. 11 | \$12,570 |
| (d) | Bus Shelters:
15 ET @ \$64 per ET
(\$60 base rate + \$4 indexation)
S94 Plan No. 12 | \$960 |
| (e) | Eviron Cemetery:
15 ET @ \$123 per ET
(\$101 base rate + \$22 indexation)
S94 Plan No. 13 | \$1,845 |
| (f) | Community Facilities (Tweed Coast - North)
15 ET @ \$1389 per ET
(\$1,305.60 base rate + \$83.40 indexation)
S94 Plan No. 15 | \$20,835 |
| (g) | Extensions to Council Administration Offices
& Technical Support Facilities
15 ET @ \$1860.31 per ET
(\$1,759.90 base rate + \$100.41 indexation)
S94 Plan No. 18 | \$27,904.65 |

- (h) **Cycleways:**
15 ET @ \$473 per ET \$7,095
(\$447 base rate + \$26 indexation)
S94 Plan No. 22
- (i) **Regional Open Space (Casual)**
15 ET @ \$1091 per ET \$16,365
(\$1,031 base rate + \$60 indexation)
S94 Plan No. 26
- (j) **Regional Open Space (Structured):**
15 ET @ \$3830 per ET \$57,450
(\$3,619 base rate + \$211 indexation)
S94 Plan No. 26

Stage 6

- (a) **Tweed Road Contribution Plan:**
143 Trips @ \$1364 per Trips \$195,052
(\$1,317 base rate + \$47 indexation)
S94 Plan No. 4
Sector9_4
- (b) **Open Space (Structured):**
22 ET @ \$622 per ET \$13,684
(\$575 base rate + \$47 indexation)
S94 Plan No. 5
- (c) **Shirewide Library Facilities:**
22 ET @ \$838 per ET \$18,436
(\$792 base rate + \$46 indexation)
S94 Plan No. 11
- (d) **Bus Shelters:**
22 ET @ \$64 per ET \$1,408
(\$60 base rate + \$4 indexation)
S94 Plan No. 12
- (e) **Eviron Cemetery:**
22 ET @ \$123 per ET \$2,706
(\$101 base rate + \$22 indexation)
S94 Plan No. 13
- (f) **Community Facilities (Tweed Coast - North)**
22 ET @ \$1389 per ET \$30,558
(\$1,305.60 base rate + \$83.40 indexation)
S94 Plan No. 15

-
- (g) **Extensions to Council Administration Offices
& Technical Support Facilities**
 22 ET @ \$1860.31 per ET **\$40,926.82**
 (\$1,759.90 base rate + \$100.41 indexation)
 S94 Plan No. 18
 - (h) **Cycleways:**
 22 ET @ \$473 per ET **\$10,406**
 (\$447 base rate + \$26 indexation)
 S94 Plan No. 22
 - (i) **Regional Open Space (Casual)**
 22 ET @ \$1091 per ET **\$24,002**
 (\$1,031 base rate + \$60 indexation)
 S94 Plan No. 26
 - (j) **Regional Open Space (Structured):**
 22 ET @ \$3830 per ET **\$84,260**
 (\$3,619 base rate + \$211 indexation)
 S94 Plan No. 26

Stage 7

- (a) **Tweed Road Contribution Plan:**
 136.5 Trips @ \$1364 per Trips **\$186,186**
 (\$1,317 base rate + \$47 indexation)
 S94 Plan No. 4
 Sector9_4
- (b) **Open Space (Structured):**
 21 ET @ \$622 per ET **\$13,062**
 (\$575 base rate + \$47 indexation)
 S94 Plan No. 5
- (c) **Shirewide Library Facilities:**
 21 ET @ \$838 per ET **\$17,598**
 (\$792 base rate + \$46 indexation)
 S94 Plan No. 11
- (d) **Bus Shelters:**
 21 ET @ \$64 per ET **\$1,344**
 (\$60 base rate + \$4 indexation)
 S94 Plan No. 12
- (e) **Eviron Cemetery:**
 21 ET @ \$123 per ET **\$2,583**
 (\$101 base rate + \$22 indexation)
 S94 Plan No. 13

(f) Community Facilities (Tweed Coast - North) 21 ET @ \$1389 per ET (\$1,305.60 base rate + \$83.40 indexation) S94 Plan No. 15	\$29,169
(g) Extensions to Council Administration Offices & Technical Support Facilities 21 ET @ \$1860.31 per ET (\$1,759.90 base rate + \$100.41 indexation) S94 Plan No. 18	\$39,066.51
(h) Cycleways: 21 ET @ \$473 per ET (\$447 base rate + \$26 indexation) S94 Plan No. 22	\$9,933
(i) Regional Open Space (Casual) 21 ET @ \$1091 per ET (\$1,031 base rate + \$60 indexation) S94 Plan No. 26	\$22,911
(j) Regional Open Space (Structured): 21 ET @ \$3830 per ET (\$3,619 base rate + \$211 indexation) S94 Plan No. 26	\$80,430

[PSC0175]

85. Section 94 Contributions

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

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

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

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4

- Version 5 prior to the issue of the subdivision certificate. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

[PSC0185]

86. 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]

87. Prior to the issue of a Subdivision Certificate, a performance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

88. A bond to ensure acceptable plant establishment, landscaping performance and habitat restoration at time of handover to Council shall be lodged by the Developer prior to the issue of the Subdivision Certificate. The bond shall be held by Council for a period of 12 months from the date of issue of the Subdivision Certificate or until all plantings are fully established and may be utilised by Council during this period to undertake essential plant establishment

or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

The amount of the bond shall be 20% of the estimated cost of the landscaping/habitat restoration or \$3000 whichever is the greater.

[PSC0235]

89. 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]

90. 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]

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

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

- (a) 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.

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

[PSC0785]

92. Upon completion of all works on the site relevant to Stage 6 and prior to the issue of a Subdivision Certificate for that Stage, a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and roads.

The dilapidation reports shall take into consideration the findings of the original reports and advise if any damages have occurred that could be attributed to the work the subject of this development consent. If damages have occurred the PCA is to be provided with evidence that the damages have been satisfactorily repaired prior to the issue of a Subdivision Certificate.

A copy of the dilapidation report is to be provided to the Principle Certifying Authority and to Council.

[PSC0795]

93. 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]

94. 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]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) Identify all allotments to be created as dual occupancies.
- (c) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.
- (d) Extinguishment of superfluous Right Of Carriageways that were previously created to provide temporary turning areas for refuse vehicles and the general public, but are now no longer required.
- (e) The existing 'Right of Carriageway 16 wide' and 'Easement for Services 16 wide' within the Fig Court road extension area, are to be extinguished as part of Stage 4.

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]

96. 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]

97. 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]

98. 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]

99. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Sewerage Pump Station
- (e) Compliance Certificate - Drainage

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".
[PSC0915]
100. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.
[PSC0925]
101. A formal asset handover of all water quality control devices is to be implemented at the completion of the maintenance period ("Off Maintenance"), whereby all relevant stakeholders will inspect the device and be issued with a current operational manual for the device.
[PSC1025]
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 and gravity sewerage systems installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.
- Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.
- All costs associated with the CCTV inspection and repairs shall be borne by the applicants.
[PSC1065]
103. As part of the release of the subdivision certificate for Stage 6, the proponent shall:
- (a) Dedicate the proposed drainage reserves and public reserves at no cost to Council.
- NOTE: The open stormwater channel that traverses Lot 604 is to be dedicated as Drainage Reserve (part of Lot 627).
- (b) Submit an accurate plan of the proposed drainage reserves to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.
[PSC1075]
104. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.
-

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

[PSC1115]

105. The site of the sewage pumping station shall be transferred to Council in fee simple, at no cost to Council within 28 days of the date of registration of the plan of subdivision.

[PSC1125]

106. 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]

107. Electricity

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

(b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

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

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

[PSC1185]

108. 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]

109. The north-eastern end of Rous River Way, within Lot 2 DP 534521, is to be dedicated as public road prior to the issue of the Stage 4 Subdivision Certificate.

[PSCNS01]

110. A formal assessment of the cost of the upgraded embellishment to Rous River Way Park is to be submitted to Council and agreed to by all parties with the developer providing the agreed amount as a financial contribution to Council prior to the issue of a subdivision certificate.

[PSCNS02]

111. 60 days prior to lodgement of Application for Subdivision Certificate, an accurate plan of the subdivision is to be submitted to Council indicating all public land to be dedicated to Council (including Drainage Reserves, Sewer Pump Stations, Parks, Sports Fields, Conservation Areas and other lands as defined and excluding Roads, etc). The function of all such public land is to be indicated to allow classification of the land parcel by Council as either Operational or Community Land, as detailed in the *Local Government Act 1993*.
[PSCNS03]
112. Environmental restoration works on the Public Conservation Reserve (Rous River Buffer - Lot 604) shall be completed to a level specified in the approved ERP prior to the issue of the subdivision certificate for Stage 6 and shall be maintained at all times to the satisfaction of the General Manager or delegate.
[PSCNS04]
113. Access to the Public Conservation Reserve (Rous River Buffer - Lot 604) must be provided for maintenance purposes prior to the issue of the subdivision certificate for Stage 6.
[PSCNS05]
114. Prior to the release of a Subdivision Certificate for each corresponding stage of the project, Public Reserves shall be dedicated to Council and suitably embellished at no cost to Council in accordance with the approved detailed landscape plans.
[PSCNS06]
115. The developer is to undertake care and maintenance operations on all streetscapes and public reserves for a minimum of 12 months after the Subdivision is registered with the Land Titles Office. This is the establishment period for new plantings. Such maintenance will include all soft landscaping, particularly mowing and weed control. Any power and water consumption costs during this period must also be met by the developer.
[PSCNS07]
116. Prior to issue of a Subdivision Certificate, Work as Executed Plans (WAX) must be submitted for all landscaped casual and active open space. These must show all underground services, irrigation systems and the location of concrete paths, structures, other park infrastructure and garden bed outlines.

The plans are to be certified by a registered surveyor or consulting engineer.

Two categories of WAX plans are to be provided:

- a. The original approved plan with any variation to this indicated.
- b. Plan showing only the actual as constructed information.

The plans are to be submitted in the following formats:

- a. 2 paper copies of the same scale and format as the approved plan.
- b. A PDF version on CD or an approved medium.

An electronic copy in DWG or DXF format on CD or an approved medium.

[PSCNS08]

GENERAL TERMS OF APPROVAL for work requiring a controlled activity approval under s91 of the Water Management Act 2000

1. **These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA13/0175 and provided by Council.**

Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.

2. **Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.**

3. **The consent holder must prepare or commission the preparation of:**

- (i) **Vegetation Management Plan**
- (ii) **Works Schedule**
- (iii) **Erosion and Sediment Control Plan**
- (iv) **Soil and Water Management Plan**

4. **All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The plans must be prepared in accordance with NSW Office of Water guidelines located at www.water.nsw.gov.au/Water_Licensing/Approvals/default.aspx**

- (i) **Vegetation Management Plans**
- (ii) **Riparian Corridors**
- (iii) **Outlet Structures**

5. **The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.**

6. **The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.**

7. **The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.**

8. **The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.**

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

REPORT:

Applicant: Barnby Developments Pty Ltd
Owner: Barnby Developments Pty Ltd
Location: Lot 2 DP 534521 No. 210 Murwillumbah Street, Murwillumbah; Lot 332 DP 1158142 Silkpod Avenue, Murwillumbah
Zoning: 2(c) Urban Expansion; 2(a) Low Density Residential; 5(a) Special Uses (TLEP2000)
Cost: \$5,000,000

Background:

The Subject Site

The subject site includes one large parcel of land in private ownership (Lot 332) and as part of the amended design, adjoining Lot 2 DP 534521 which is in Council ownership and contains the Sewer Treatment Plant. The residential subdivision and drainage channel will be contained on Lot 332 DP 1158142 which has an area of approximately 9.948 hectares. The site has been partly filled. Minor road works will be located within a small portion of Lot 2 DP 534521 which has a total area of 18.97 hectares.



Figure 1: minor roadworks to reconstruct the existing road bulb on Lot 2 DP 534521

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

The Proposed Development

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

Amendment 4 (received 14 April 2014)

The final amendment is an 86 lot residential subdivision over four stages with (residential) lot areas ranging from 548.4m² (Lot 715) to 1367m² (Lot 515).

- Stage 4 contains Lots 401 to 423 (23 lots);
- Stage 5 contains Lots 501 to 515 (15 lots);
- Stage 6 contains Lots 601 to 627 (27 lots); and
- Stage 7 contains Lots 701 to 721 (21 lots).

It includes a total of 81 residential lots, two drainage reserves, one public reserve, one riparian buffer and one sewer pump station site along with:

- Dedication of drainage reserves (Lots 602 and 627);
- Dedication of public reserve (Lot 601);
- Dedication of riparian buffer/public reserve (Lot 604)
- Dedication of sewer pump station site (Lot 603);
- Construction and dedication of the proposed streets (inclusive of minor road works on Lot 2 DP 534521);
- Funding of embellishment of the existing public reserve at Lot 132 DP 1139107 (Rous River Way Park - TSC Community Land) with works to be undertaken by Council;
- Construction of stormwater drainage infrastructure including water quality infrastructure;
- Provision of an underground water supply, reticulated sewer, power and telephone including NBN compatible services.

The amended proposal incorporates a revised layout adjacent to Frangela Drive Reserve (Lots 601 and 602), renumbering of allotments and other consequential amendments.

Site Drainage

Drainage matters have now been satisfactorily addressed primarily due to the revised stormwater infrastructure proposal providing a piped outlet from the south west corner of the site on Lot 602 adjacent to Frangela Drive Reserve.

Lot 602 will be partially regraded to reverse the direction of flow for the western half of the lot. All open channels in Lot 602 will discharge to a new twin 1500mm diameter stormwater pipe that will convey flows through the subdivision and out to the open channel bordering the north-western site boundary.

Impact upon the Grey-headed Flying Fox colony

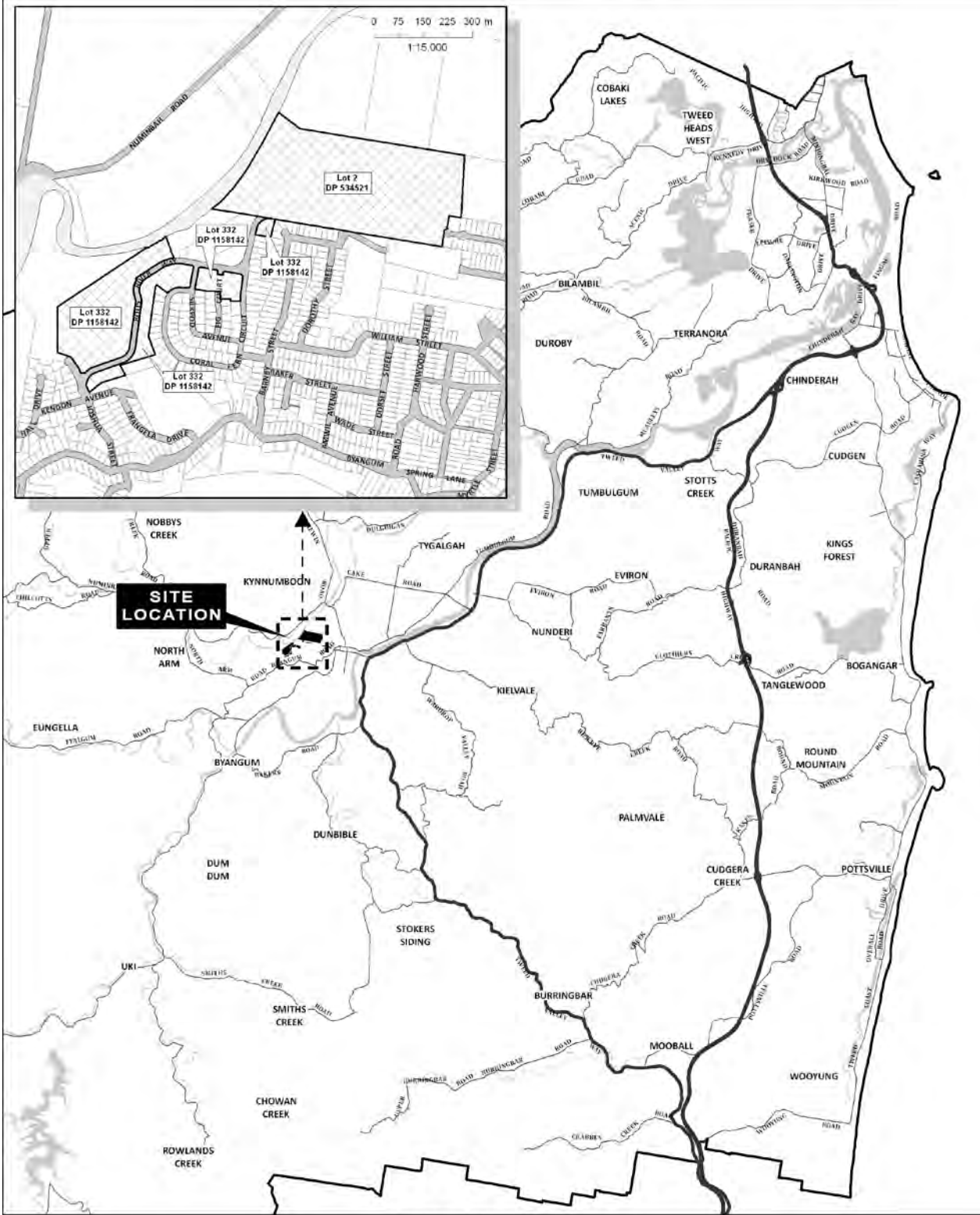
Following further habitat assessment and review of 12 month site specific Flying Fox occupation data, Council's Natural Resource Management Unit consider that the proposed 35m separation zone (via the dedication of public reserve Lot 601) is of an acceptable distance to avoid and minimise any future conflict between future residents and the Grey-headed Flying Fox colony.

Conveyance of stormwater generated from the external catchment area to a central point within Lot 602 removes the necessity to undertake works within the vegetated area of Frangela Drive Reserve. With earthworks no longer required beneath the canopy of existing vegetation, there are no further concerns with regard to impact upon Grey-headed Flying Fox habitat and the potential candidate Endangered Ecological Community (EEC).

Summary

Having regard to relevant statutory controls and general resolution of outstanding matters raised in the previous report, the proposed 86 lot residential subdivision in four stages comprising 81 residential lots with dedication of two lots as drainage reserves, one lot as public reserve, one lot as riparian buffer and one lot as sewer pump station site is now considered suitable for the subject site and therefore the proposed development is recommended for approval.

SITE DIAGRAM:

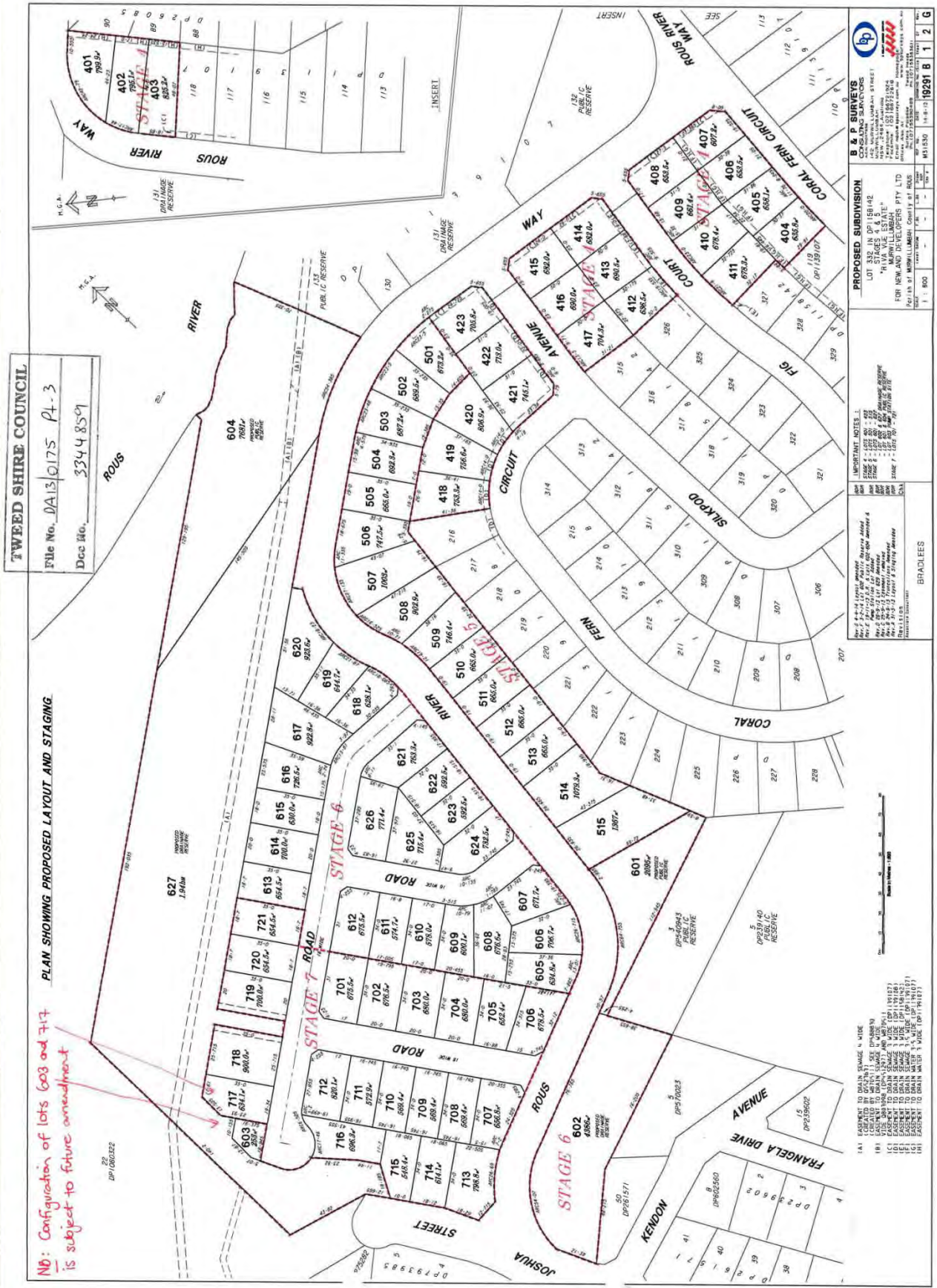


Locality Plan

Lot 2 DP 534521 No. 210 Murwillumbah Street, Murwillumbah;
 Lot 332 DP 1158142 Silkpod Avenue, Murwillumbah

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, the local council makes no representation or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including in direct or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reasons. This information is required for the general guidance and it is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any transactions a 'real before you buy' enquiry must be made by calling L310. The information contained on this document remains valid for 50 days only from the date of capture.</p>	<p>Cadastral: 23 June, 2013 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>		<p>Civic and Cultural Centre 2 Tarragoola Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>
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SUBDIVISION PLANS:



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

One of the aims of the plan is:

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

Amended provision of infrastructure and open space in association with the current subdivision plan has been reconfigured. The amended design is more aligned with the original (and satisfactory) master plan presented during the rezoning process. Design solutions now cater for the retention and protection of a key habitat for a threatened species located in Frangela Drive Reserve.

As such, the proposed development meets the objectives of Clause 4.

Clause 5 - Ecologically Sustainable Development

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

The amended proposal generally mitigates potentially serious impacts upon the environmental features upon and adjacent to the site, inclusive of the Rous River and the colony of Grey-headed flying fox within Frangela Drive Reserve, a threatened species community.

The proposed development meets the objectives of Clause 5.

Clause 8 - Consent Considerations

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

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

The amended proposal is consistent with the relevant 2(a) and 2(c) zone objectives. Any cumulative impact of residential development serviced by the proposed infrastructure has been resolved and is no longer of concern.

As such, the proposed development meets the provisions of Clause 8.

Clause 11 - Zone Objectives

Subdivision (and associated earthworks) within the 2(a) and 2(c) zones is permissible with consent with a minimum allotment size of 450m². The location of future dwellings is permissible with consent on a minimum lot size of 450m².

Associated minor road works to be undertaken by the applicant are permissible with consent in the 5(a) Special Uses (Sewerage Treatment) zone.

Clause 15 - Essential Services

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

Clause 16 - Height of Building

There are no buildings proposed.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

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

A site specific Management Plan is required for Stages 4 to 7 to ensure the adequate management of any Acid Sulfate Soils encountered and protection of the environment. Council's Environmental Health Unit has been able to condition provision of a Management Plan prior to the issue of a construction certificate.

Other Specific Clauses

Clause 19 – Subdivision (General)

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

Clause 31: Development Adjoining Waterbodies

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

The objectives of this clause include:

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

The amended proposal, subject to the application of conditions generally precludes a negative impact upon the Rous River, the waterbody located adjacent to proposed Lot 604.

As such, the proposed development meets the objectives of Clause 31.

Clause 34 – Flooding

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

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

Clause 39 – Remediation of Contaminated Land

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

A Preliminary Contamination Assessment has been submitted.

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

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

Clause 54 – Tree Preservation Order

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

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

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Wetlands or Fishery Habitats

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

Amended provision of drainage management with preservation of native vegetation surrounding the fishery habitat (subject to consent conditions) within this area is not likely to significantly impact upon the quality of the existing habitat.

As such, the proposed development meets the objectives of Clause 15.

Clause 43: Residential development

The proposal now generally meets the objectives of Clause 43 given that the amendment achieves required separation distances between residential development and the Grey-headed Flying Fox camp.

Clause 81: Development adjacent to the ocean or a waterway

Proposed Lot 604 is adjacent to Rous River and is a proposed public reserve.

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

SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

A Rural Land Assessment Report has been submitted.

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

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

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

Whilst the Environmental Health Unit has considered the report acceptable with the outcomes of the report to be incorporated into any consent issued, Council's Natural Resource Management Unit requested these details in advance of determination and has included consideration of these matters in a general assessment which is discussed elsewhere in this report.

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

The Tweed Local Environmental Plan 2014 has been in force since 4 April 2014. As this development application was lodged prior to that date, assessment is to be finalised in accordance with the TLEP 2000 with high regard for the current LEP.

TLEP 2000 and TLEP 2014 zoning for the subject site is as follows:

TLEP 2000 Zone	Min. Lot Size	TLEP 2014 Zone	Min. Lot Size
2(a)	450m ²	R2	450m ²
2(c)	450m ²	R2	450m ²
5(a) Special Uses	N/A	SP2 Infrastructure	N/A

None of the proposed allotments have an area less than 450m² which is consistent with the TLEP 2014 zoning. Roadworks (excavation) are permissible within the SP2 Infrastructure zoning as they are ancillary to the provision of infrastructure which is the objective of the zone.

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

Tweed Development Control Plan

A3 - Development of Flood Liable Land

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

A5 - Subdivision Manual

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

The application generally complies with the provisions of the DCP with regard to general lot layout. Adequate infrastructure can now be provided to satisfy sewer and drainage requirements.

A13-Socio-Economic Impact Assessment

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

A15 – Waste Minimisation and Management

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

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

Clause 92(a) Government Coastal Policy

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

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not located on the coastal foreshore and is not affected by coastal hazards.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Surrounding Land Uses/Development

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

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

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

Contamination

A Preliminary Contamination Assessment has been submitted.

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

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

Odour Issues (proximity to Sewage Treatment Plant)

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

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

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

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

The nearest proposed allotment is approximately 80m to the western effluent storage pond, 190m to the extended aeration area, 270m to the sludge drying

area and 265m to the sludge lagoons. There are also a further 22 allotments within the 400m buffer guideline.

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

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

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

Road Traffic Noise

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

Construction Noise

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

No construction detail was submitted with the application and construction noise onsite has also not been addressed. It is considered that the importation of 35,000 cubic metres may significantly impact the amenity of surrounding residents and residents along haul routes. As such, a construction management plan will be required prior to the issue of a construction certificate for bulk earthworks.

Stormwater/Drainage

History – grounds for refusal

Three main issues with regard to drainage issues on proposed Lot 602 (identified as Lot 604 on the previous subdivision plan) had remained unresolved during the assessment of this development application which led to a refusal recommendation to the January Council meeting:

1. Unsatisfactory resolution of drainage issues on Lot 602.
2. Inability to accept dedication of Lot 602 with unacceptable drainage improvements.
3. Inability to accept subdivision plan until drainage concerns for Lot 602 are adequately addressed.

Rectification of drainage issues downstream of Frangela Drive Reserve has remained outstanding from the original development of the 'Riva Vue' estate. Drainage concerns had been consistently raised with the applicant from the Planning Proposal stage.

Assessment Summary

The revised stormwater infrastructure proposal provides a piped outlet from the 'problem' area in the south west corner of Lot 602 adjacent to Frangela Drive Reserve.

The area will be partially regraded to reverse the direction of flow for the western half of the lot. All open channels in Lot 602 will discharge to a new twin 1500mm diameter stormwater pipe that will convey flows through the subdivision and out to the open channel bordering the north western site boundary.

Amended submission

Conditions of development consent have been recommended to ensure that critical information and amendments to unacceptable designs are supplied at the relevant stage.

The stormwater drainage system is proposed to extend 230m from the southern side of the site near Frangela Drive Reserve to the open channel on the northern side of the site. The twin 1500mm diameter pipes will be approximately 4m deep with no provision or capability for a relief overland flowpath. As such, a Q100 year capacity necessary.

The size and depth of the pipes impacts upon nearby proposed construction works due to the extensive zone of influence affected and width of easements required.

Only runoff generated on the site is required to be treated prior to discharge from the site. The flows in the twin 1500mm diameter pipes are from external catchments and do not require treatment, just conveyance through the site.

Bio-retention basin design

Bio-filtration is proposed as the primary treatment method for stormwater discharging from the site. Gross pollutant traps would need to be installed as a pre-treatment requirement. Conditions have been applied to address provision of bio-retention basin design, construction, handover and maintenance plans.

Maintenance access to the bio-filtration basin has been an on-going issue of concern but now appears to be satisfactorily resolved by the creation of an 8m wide 'path' with a 4m wide concrete driveway between Lots 718 and 719.

Sewer

A Sewer Pump Station is now proposed on Lot 603 which has an area of 253m². Accessibility has not been addressed and some gravity sewer lines do not meet specification requirements. Conditions have been applied to ensure the sewer design meets Council's design standards.

Buffer setback requirements for a dwelling on adjacent Lot 717 will also be required as a condition of consent.

Public Open Space

A resolution of public open space issues has been proposed by Council and accepted by the developer. It involves:

- upgraded embellishment to the existing Rous River Way Park (in lieu of providing embellishment to Frangela Drive Reserve); and
- demonstration that pedestrian and cycle links will encourage future residents of Stages 4 – 7 to utilise Rous River Way Park.

The applicant has proposed to contribute financially to a Council upgrade of Rous River Way Park (Council owned Community Land). A formal assessment of the cost of the upgraded embellishment will need to be agreed to by all parties with

the developer providing the agreed amount as a financial contribution to Council subject to a condition of development consent.

The applicant's cycleway design on the eastern side of Rous River Way is not supported. An alternative cycleway provision within the footpath area of Rous River Way, continuing from its current termination opposite proposed Lot 502, will be a condition of consent.

A concrete footpath is required for the frontage of Lots 713 – 715 in Joshua Street. Footpaths will be provided along all other streets but on one side only.

Conditions have been recommended regarding the future management of the reserves.

Flora and Fauna

The submission of further information and amended plans has been reviewed by Council's Natural Resource Management Unit. In short, it is generally considered that previous concerns and inadequacies of the application have been satisfactorily addressed. Conditions of development consent have been prepared and are recommended in order to mitigate and ameliorate any potential ecological impact of the development.

History - grounds for refusal

Two main ecological issues remained unresolved during the assessment of this development application which led to a refusal recommendation to the January Council meeting:

1. Separation distance between the Grey-headed Flying Fox colony and the nearest proposed residential lot.
2. Works within Frangela Drive Reserve to improve drainage.

Council assessment resulted in uncertainty that the proposed development could proceed without unacceptable negative ecological impact on the identified Grey-headed Flying Fox colony occupying Frangela Drive Reserve immediately adjacent to the subject site. Components of the application could not be supported that may have impacted on Grey-headed Flying Fox and modified associated habitat of this threatened species.

Assessment Summary

A 35 metre separation zone has been provided from the Grey-headed Flying Fox camp to the nearest proposed residential lot being Lot 515. The separation zone is described on the amended subdivision plans as Lot 601 'Proposed Public Reserve' of approximately 2095m² to be transferred to Council as part of Stage 6 of the development.

Following further habitat assessment and review of 12 month site specific Flying Fox occupation data, Council is of the opinion that the 35 metre separation zone is of an acceptable distance to avoid/minimise any future conflict between future residents and the Grey-headed Flying Fox colony.

Whilst the Draft National Recovery Plan for the Grey-headed Flying Fox (2009) recommends the establishment of a 300m separation zone between any development and 'Essential Habitat' on greenfield sites, Council officers do not consider the area of habitat to meet the 'Essential Habitat' criteria due to the small patch size and low numbers of animals observed intermittently occupying

the camp over the last 12 months (average numbers have been recorded at between 100-200 individuals).

As such the revised subdivision layout is accepted with the proposal to dedicate the separation zone to Council as a Public Reserve. It was generally agreed that in order to provide certainty and for the long term management intent of this zone to be maintained, the area shall be managed as 'community land'.

The stormwater layout has been significantly modified. The existing culvert beneath Rous River Way near the intersection with Joshua Street is to be blanked off, made redundant and another culvert installed further to the east along Rous River Way. Stormwater generated from the external catchment area directed from Joshua Street and Frangela Drive Reserve shall be conveyed to a central point within Lot 602 in order to improve conveyance performance and avoid the necessity to undertake works within the vegetated area of Frangela Drive Reserve.

By avoiding earthworks beneath the canopy of existing vegetation within Frangela Drive Reserve there are no further concerns in relation to impact on Grey-headed Flying Fox habitat and the potential candidate Endangered Ecological Community.

Appropriate conditions of development consent have been recommended in order to realise the dedication of Lot 601 as a Public Reserve and to ensure all works associated with stormwater conveyance remain outside Lot 3 DP 540943 (Frangela Drive Reserve) through the preparation of a vegetation management plan.

Other Outstanding Issues Previously Raised

Accurate survey of remnant vegetation to be offset

The applicant undertook further survey of the remaining vegetation community described as 'Regrowth of Pink Bloodwood (*Corymbia intermedia*) and Tallowwood (*Eucalyptus microcorys*)'. Based on this survey the figure of 0.3 hectares (necessary to calculate the extent of an offset area as contemplated as part of the initial planning proposal) is accepted.

In order to satisfy offset requirements Council would accept the following rehabilitation effort within the areas described below as an adequate compensatory measure:

- A 50 metre wide riparian buffer zone contiguous with previous restoration effort associated with Stages 1-3 of the Riva Vue development on Lot 133 DP 1139107, adjacent the Rous River that has been transferred to Council as a Public Reserve.

Rehabilitation of this riparian zone would allow for a contiguous corridor to be established to link with further riparian restoration work associated with the subject application to the west strengthening the linkage and buffering the waterway.

- Infill plantings within the eastern section of the riparian zone on Lot 133 DP 1139107 where previous rehabilitation effort has been unsuccessful and natural regeneration stalled due to unfavourable site conditions and inappropriate plant selection. It is noted that the developer's maintenance phase has been accepted as being

completed for this section. However Council believes that to achieve site capture, additional infill planting would be beneficial.

Previous restoration works undertaken by the developer covered an area of approximately 8500m². By carrying out infill planting and undertaking weed control, a proportional area of approximately 10% of the existing buffer would be expected to be the subject of any offsetting works. This, with adjoining restoration works identified above would meet a target of 0.3ha being a 1:1 offset ratio.

- Infill planting may include winter and spring preferred forage/roost trees for the Grey-headed Flying Fox to encourage utilisation of the buffer zone as opposed to Frangela Drive Reserve.

Recommendation

The area to be identified to compensate for the loss of 0.3 hectares of vegetation community (as detailed above) is to be conditioned as part of the approval. The applicant shall be required to incorporate offset works into a site based Habitat Restoration Plan to integrate with other riparian zone restoration works expected to be undertaken to the west.

Layout and staging plan

The staging plans have been modified to capture the Rous River riparian buffer within Stage 6. The buffer is described as a discreet lot being Lot 604 (7681m² 'Proposed Public Reserve') differentiating the area to that of the adjacent drainage reserve (Lot 627).

The open drainage channel is to traverse a significant proportion of Lot 604. Following discussions with Council's Engineering Unit, it was agreed that the open channel be excised from Lot 604 to be amalgamated into Lot 627 and managed as a drainage reserve as Operational Land.

As a result of the reconfiguration of Lots 604 and 627, the remaining balance of Lot 604 would be managed for environmental purposes as Community Land either side of the drainage channel. Maintenance access (restoration work) would be provided to the western riverfront Public Reserve lot across the open drainage channel. The design of any crossing would be detailed at the construction certificate stage on civil engineering drawings.

Recommendations

A condition is to be included in the development consent specifying that the drainage channel shall be amalgamated with Lot 627 with the balance of Lot 604 (as currently shown on the plan of subdivision) transferred to Council to be used for environmental purposes.

To adequately address rehabilitation requirements of the Rous River riparian buffer consistent with the provisions of DCP-A5 Subdivision Manual (Section A5.4.7) conditions are to be imposed for the submission and approval of a Habitat Restoration Plan prior to issue of a construction certificate.

Design of constructed drainage channel

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

Issues with the revised plans include:

- Lack of cross sectional detail of the open drainage channel. Plans do not appear to show the detailed design of the channel. Council's preference is that alternative 'natural' materials (rip rap) be used along the section where the drainage channel is aligned adjacent to the Rous River buffer to enable establishment of sedges and improve habitat value during low flow conditions.
- The interface between the constructed channel and the existing channel to the north of the site does not appear to have been practically considered. Earthworks required to construct the open channel transition into the existing flow path without modification to the bed or banks. Given the characteristics of the existing channel this is not expected to be achievable. It is noted that a copse of riparian vegetation associated with the existing channel would likely be impacted where earthworks were required to achieve adequate conveyance of flows.
- It is unclear whether future revegetation of the bed and banks of the constructed channel has been factored into stormwater modelling to ensure revegetation effort would not be restricted in order to satisfactorily convey flows. It is noted that the Statement of Landscape Intent indicates that the drainage channel will be turfed.
- Downstream scour protection/armouring at the confluence point with the Rous River channel is absent from the plans. The necessity for bed/bank protection at this location needs to be further investigated at the construction certificate stage.

Recommendation

Conditions relating to the re-design and retention of existing vegetation are recommended to be imposed given general acceptance by Council's stormwater engineers. It is anticipated that a Controlled Activity Approval issued by the NSW Office of Water will be required to facilitate construction of the open channel.

Statement of Landscape Intent amendments

The applicant submitted a revised Statement of Landscape Intent. The plan fails to adequately address landscape treatment of the proposed open drainage channel and restoration of the Rous River buffer. The reference made to the buffer zone indicating that riparian plantings were to be as per an associated report was not supported by any such planting schedule. A number of the plant species that were recommended for revegetation are inappropriate.

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

Recommendation

Given the inadequacy of information supplied, reference to the Statement of Landscape Intent has been omitted in the relevant set of recommended landscape conditions. Rather, treatment of open space and environmental buffers will be addressed as part of the Habitat Restoration Plan with treatment/management requirements detailed within a related set of conditions.

(c) Suitability of the site for the development

The site is now considered suitable for the development. The design has been amended to increase the quality of infrastructure and remove the significant impact upon threatened species, populations or ecological communities, in particular the Grey-headed Flying Fox colony.

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

Public Authority Submissions Comment

The previously amended application was referred to the NSW Office of Water (NOW) on 3 January 2014 as the proposed drainage channel works into the Rous River require a Controlled Activity Approval (CAA) under the *Water Management Act 2000*. The current amended application does not modify the design of proposed drainage channel works.

NOW responded on 15 January 2014 stating that no changes were to be made to the General Terms of Approval (GTA's) supplied on 15 May 2013. The current amended application does not modify the design of proposed drainage channel works and GTA's remain as previously applied as confirmed by NOW on 17 June 2014.

GTA's have been incorporated into development consent conditions should one be issued. A CAA must be obtained from NOW by the applicant prior to the issue of a construction certificate.

Public Submissions Comment

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

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

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

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

As such, the matter was resolved satisfactorily. However, the objector was contacted upon submission of an amended proposal and invited to make further comment. The applicant was satisfied that no works were to be included on Lot 22 DP 1158142 and raised general queries regarding localised flooding that were dealt with satisfactorily by Council's stormwater engineers.

(e) Public interest

Given that the amended proposal satisfactorily resolves issues raised in the previous report with regard to quality of infrastructure and impact upon sensitive ecological communities, it is now considered in the public interest for this application to be approved.

OPTIONS:

1. Approve this application in accordance with the officer's recommendation.
2. Refuse the application with reasons.

Council officers recommend Option 1.

CONCLUSION:

Having regard to relevant statutory controls and general resolution of outstanding matters raised in the previous report, the proposed 86 lot residential subdivision in four stages comprising 81 residential lots with dedication of two lots as drainage reserves, one lot as public reserve, one lot as riparian buffer and one lot as sewer pump station site is now considered suitable for the subject site and therefore the proposed development is recommended for approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Council Meeting Thursday, 23 January 2014 (previous report with refusal recommendation) (ECM 3385878)

14 [PR-PC] Development Application DA10/0020.05 for an Amendment to Development Consent DA10/0020 for the Establishment of a Brothel at Lot 2 SP 84405 No. 2/36 Enterprise Avenue, Tweed Heads South

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA10/0020 Pt4



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 is in receipt of an application to modify the consent for DA10/0020 for the establishment of a brothel which was approved by the NSW Land and Environment Court on 22 November 2010. It is noted that prior to this Council, at its meeting of 18 May 2010, resolved to refuse the application.

Following the Court determination, a Section 96 application was approved by Council under delegated authority, after an initial 12 month trial with no objections, the following modified condition:

"43A. The hours of operation of the brothel being restricted to 6.00pm to 6.00am seven (7) days per week, with no public services provided between 6.00am and 6.00pm. The brothel premises is not to be used for occupied by sex workers, employees, cleaners etc prior to 5pm or after 7am."

The modification currently before Council proposes to remove the time limit to the hours of operation in order to allow 24 hours per day, seven days per week operation of the brothel. The applicant has advised that the proposed modification is necessary in order to fulfil the demand for services provided by the business and is consistent with the industry practice and the other brothels operating within Tweed Shire.

Following Council officer assessment of the proposal, as outlined in this report, it is recommended that a one year trial operation period be provided for the requested 24 hours per day, 7 days per week, consistent with the original Court approval, to ascertain any impacts arising from the extended hours of operation and generally monitor the performance of the brothel. In this manner the proposal would revert to the 6pm to 6am hours of operation at the end of the trial period unless a further application is submitted for consideration to Council.

The application as approved by the Court limited the hours of operation of the brothel premises to between 6.00pm to 6.00am seven days a week for a one year trial period. It is noted that the Court also advised the following (on the condition of consent) with respect to extending the hours of operation beyond the trial period:

"A further application may be lodged to continue the hours of the use outlined above before the end of the trial period. Council's consideration of the continuance of the operating hours will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, including the Plan of Management, any substantial complaints received and any views expressed by the Police."

Subsequent to the Court approval, on 18 December 2013 Tweed Shire Council approved a Section 96 modification application under officer delegation to remove the one year trial period from the consent in order to allow the continued use of the brothel between the hours of 6.00pm and 6.00am.

The proposed modification was placed on public exhibition for a period of 14 days. During this time a total of four submissions were received whilst Council also received generic feedback from a member of the public which also referenced this application. The application has been referred to the Planning Committee for determination given the Council's and the community's interest in the original application.

RECOMMENDATION:

That Development Application DA10/0020.05 for an amendment to Development Consent DA10/0020 for the establishment of a brothel at Lot 2 SP 84405 No. 2/36 Enterprise Avenue, Tweed Heads South be approved and the consent be amended as follows:

- 1. Condition No. 43A is to be DELETED and REPLACED with Condition No. 43B which reads as follows:**

43B. The hours of operation of the brothel premises are 24 hours per day, seven days per week for a one year trial period commencing on the date of this modified consent.

A further application may be lodged to continue the hours of the use outlined above before the end of the trial period. Council's consideration of the continuance of the operating hours will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, including the Plan of Management, any substantial complaints received and any views expressed by the Police.

At the end of the one year trial period, unless otherwise amended as outlined above, the hours of operation of the brothel are to revert to being restricted to 6.00pm to 6.00am seven days per week, with no public services provided between 6.00am to 6.00pm. The brothel premises is not be used or occupied by sex workers, employees, cleaners etc. prior to 5:00pm or after 7:00am.

REPORT:

Applicant: Jim Glazebrook & Associates Pty Ltd
Owner: Mr Michael J Huxham & Mrs Beverley A Huxham
Location: Lot 2 SP 84405 No. 2/36 Enterprise Avenue, Tweed Heads South
Zoning: 4(a) Industrial (TLEP2000)
Cost: \$200,000

Background:

This application is to modify the consent for DA10/0020 which relates to the establishment of a brothel which was approved by the Land and Environment Court of New South Wales on 22 November 2010. Previously, at the full Council Meeting of 18 May 2010, Council had determined the application by way of refusal, against the officer recommendation.

The subject site has an area of 2008m², with frontage to Enterprise Avenue, Tweed Heads South. The site incorporates a three unit factory development and associated car parking.

Specifically, the development is located in Unit 2 on this site and covers two levels, with a gross floor area of 432m². The development as approved includes the following:

- Lower floor: Foyer; reception; waiting area; office; staff room; laundry; Executive room; and two work rooms.
- Mezzanine floor: Four work rooms.

The proposal incorporates 15 car parking spaces on site which are shared with two other businesses.

The application as originally submitted proposed to operate 24 hours per day, however this was amended during the Court proceedings by the applicant and the eventual Court approval limited the hours of operation to between 6pm and 6am, for a period of one year. The hours of operation condition (No.43) approved by the Court stated the following:

43. *The hours of operation of the brothel premises are from 6.00 pm to 6.00 am seven (7) days a week for a one (1) year trial period commencing on the operation of this consent.*

The brothel premises is not to be used or occupied by sex workers, employees, cleaners etc prior to 5 pm or after 7 am.

A further application may be lodged to continue the hours of the use outlined above before the end of the trial period. Council's consideration of the continuance of the operating hours will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, including the Plan of Management, any substantial complaints received and any views expressed by the Police.

The one year period outlined above expired and the proponent submitted a Section 96 modification application to remove the one year period. This was considered by Council officers in light of the stipulations of the above condition as well as the statutory assessment requirements and the modification was approved on 18 December 2013 with the following condition 43A replacing the above condition:

- 43A. *The hours of operation of the brothel being restricted to 6.00 pm to 6.00 am seven (7) days per week, with no public services provided between 6.00 am to 6.00 pm. The brothel premises is not be used or occupied by sex workers, employees, cleaners etc. prior to 5 pm or after 7 am.*

Proposed Amendment

Council is now in receipt of an application to further modify the hours of operation of the proposal *to permit unrestricted business hours (i.e. over 24 hours per day) and to eliminate the restriction on access to the premises for cleaning, maintenance, administration etc.*

The applicants report outlines that *'the proposed modification is necessary in order to fulfil the demand for services provided by the business and is consistent with usual sex industry practice including the other four approved brothels operating within Tweed Shire.'*

While the submitted application does not outline revised wording in relation to hours of operation it is noted that in subsequent correspondence between the applicants planning consultant and Council officers, the complete deletion of condition of condition 43A is proposed.

Assessment of Proposed Amendment

The subject application was reviewed by relevant Units of Council. No objections were raised with respect to the modification application at this meeting. The application has also been forwarded to NSW Police for comment with respect to the proposed modification. The Tweed/Byron Local Area Command have provided advice with respect to this application, including the information reproduced below:

"Our view has always been that we do not object to brothels provided appropriate legal standards have been met. We have not had any indications that the premises at 36 Enterprise Avenue have breached any such laws and we would not object to its 24 hour operation.

There have been no reported noise issues during its late operations and this would not be likely to be an issue during the daylight hours.

Police have conducted a number of business inspections on this brothel and no other adverse observation has been reported.

As such police will not be lodging any objection, if council feels it is sensible to have a trial period of new operating hours before implementing them in full police would support any comparable and prudent measure.

For the record this response with discussed in full with Detective Inspector Cullen Tweed/Byron."

A statutory assessment of the proposed modification is outlined in detail elsewhere in this report with is being considered that a 24 hour operation of the premises on the site would be generally acceptable. It is however recommended that a one year trial operation period be provided, consistent with the original Court approval, to ascertain any impacts arising from the extended hours of operation. In this manner the proposal would revert to the 6pm to 6am hours of operation at the end of the trial period unless a further application is submitted for consideration to Council. As such it is recommended that condition 43A be replaced with condition 43B as follows:

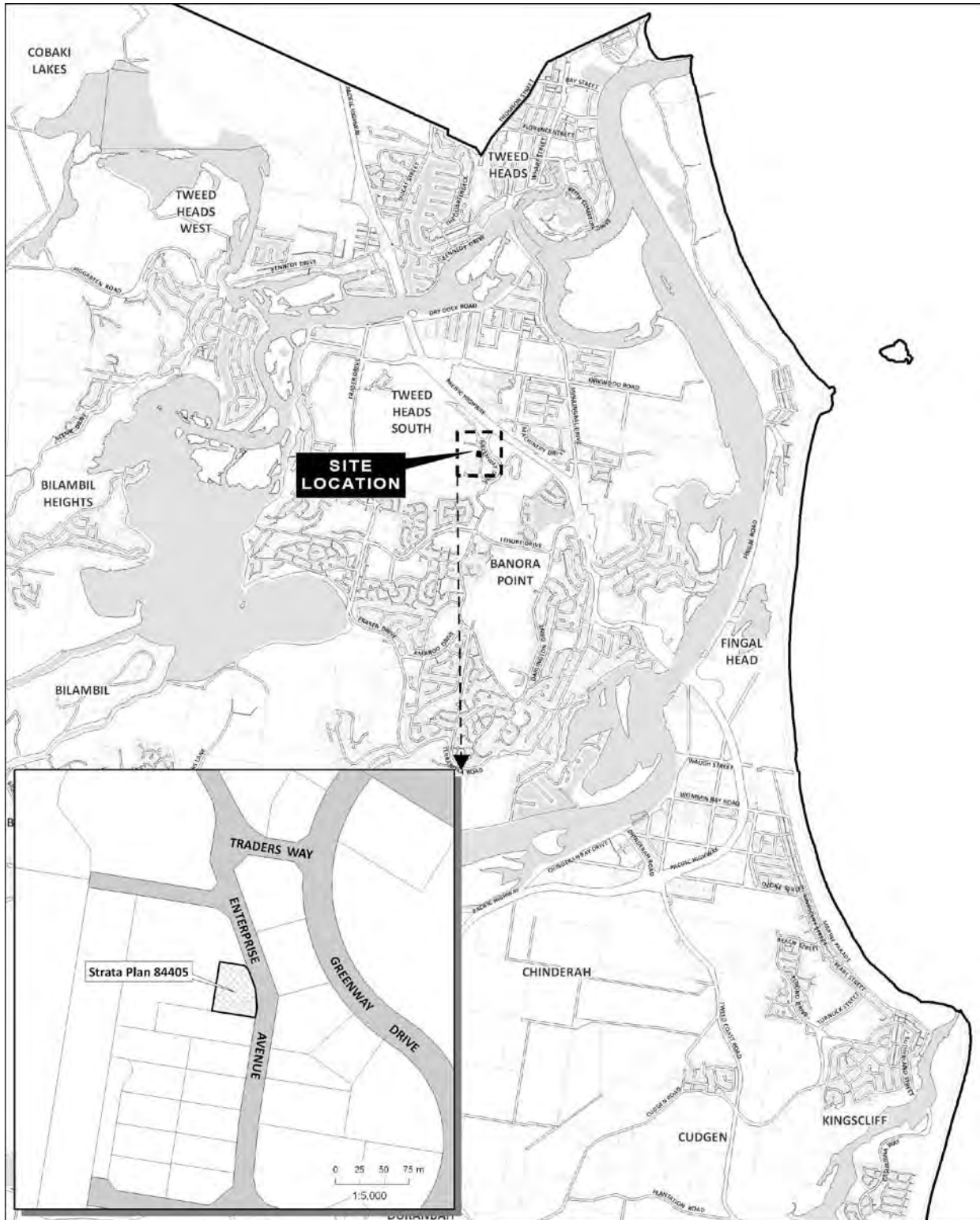
43B. The hours of operation of the brothel premises are 24 hours per day, seven days per week for a one year trial period commencing on the date of this modified consent.

A further application may be lodged to continue the hours of the use outlined above before the end of the trial period. Council's consideration of the continuance of the operating hours will be based on, among other things, the performance of the operator in relation to the compliance with development

consent conditions, including the Plan of Management, any substantial complaints received and any views expressed by the Police.

At the end of the one year trial period, unless otherwise amended as outlined above, the hours of operation of the brothel are to revert to being restricted to 6.00 pm to 6.00 am seven (7) days per week, with no public services provided between 6.00 am to 6.00 pm. The brothel premises is not be used or occupied by sex workers, employees, cleaners etc. prior to 5:00 pm or after 7:00 am.

SITE DIAGRAM:



Locality Plan

Lot 2 SP 84405
No. 2/36 Enterprise Avenue, Tweed Heads South

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 it is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation or "dig before you dig" enquiry must be made by calling 8100. The information contained on this document remains valid for 30 days only from the date of supply.

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2/1/2014
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Map Produced: Universal Database Mapper
Source: Data of Australia 1:50,000
Map: Geot of Australia, Zone 56

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The proposed amendment is not considered to contravene the provisions of Clause 4.

Clause 5 - Ecologically Sustainable Development

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

The proposed amendment is not considered to impact upon the ESD principles of this development. It is considered that the proposal will therefore be in accordance with Clause 5 of the LEP.

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.*

Under the original application on the site, the proposed development was assessed by Council officers as meeting the objectives of the zone, being in accordance with the other aims and objectives of the LEP and was not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

At the full Council meeting on 18 May 2013, the elected Council refused the application, partly on the basis that the proposal would not be in accordance with (c) above. This decision was not upheld when the application was determined at the Land and Environment Court.

The proposed modification is not considered to contravene the provisions of this clause as the proposed development is considered to meet one of the primary objectives of the zone and the secondary zone (see below). Furthermore, it is considered that the proposal generally complies with the aims and objectives of the relevant clauses of the TLEP and the proposed modification is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

Clause 11 - Zone objectives

The subject site is zoned 4(a) Industrial under the provisions of the LEP. The objectives of this zone are:

Primary objectives

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

Secondary objective

- *to allow non-industrial development which either provides a direct service to industrial activities and their work force, or which, due to its type, nature or scale, is inappropriate to be located in another zone.*

The proposed development is defined as a 'brothel' under the provisions of the LEP, which is permissible with consent and is considered to be consistent with the second primary objective and the secondary zone objective as the proposal facilitates economic activity and employment as well as being a non-industrial development which is not considered appropriate in another zone. The proposed modification is not considered to contravene this clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This Clause requires the consideration of the NSW Coastal Policy, Coastline Management Manual and the North Coast Design Guidelines for proposals on coastal lands; and also contains provisions relating to public access to the foreshore.

The proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy and the Coastline Management Manual given that the Section 96 application relates to hours of operation rather than any encroachment of development near any foreshore or beach area. Accordingly, the proposal is considered to comply with this clause of the REP.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. This Section 96 application is not considered to contravene any of the matters for consideration as it relates solely to modification of a condition of consent relating to hours of operation.

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

The original development application was assessed by Council Officers against the provisions of the Draft Tweed LEP 2010 under the original assessment of this application. This assessment noted that the subject site is zoned IN1 – General Industrial. The proposed development would be defined as a "Sex Services premises". A sex services premises is permissible with consent within the IN1 General Industrial zone.

The Draft Tweed LEP 2010 was superseded by the Draft Tweed LEP 2012 which itself was subsequently gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014.

The IN1 General Industrial zoning has been maintained on the site as well as the permissibility of a "Sex Services Premises" within this zone. The proposed modification is not considered to contravene the provisions of any relevant draft environmental planning instruments.

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

Tweed Development Control Plan

Section A2-Site Access and Parking Code

At present the subject site provides 15 car parking spaces in accordance with the parking layout established through the Court approval for the brothel on-site. As the current approval for the brothel relates to operating between the hours of 6pm and 6am it is considered that cross utilisation of these car spaces have been allowed given the factory uses would be expected to be between 6am and 6pm.

However as the application now proposes to operate 24 hours per day it is considered necessary to calculate car parking requirements for all uses on the site concurrently.

This is outlined in the table below;

<i>Use</i>	<i>Parking Rate</i>	<i>Spaces Required</i>
<i>Unit 1 – Industrial Factory (300m²)*</i>	<i>1 space / 120m²</i>	<i>2.5 (3)</i>
<i>Unit 2 – Sex services premises (432m²)</i>	<i>1 space / 50m²</i>	<i>8.64 (9)</i>
<i>Unit 3 – Industrial Factory – (400m²)*</i>	<i>1 space / 120m²</i>	<i>3.33 (4)</i>
<i>Total Spaces Required</i>		<i>14.47 (16)</i>
<i>Total Spaces Provided</i>		<i>15</i>

* This car parking rate applies to Light, General and Heavy Industry uses under DCP Section A2.

The table above indicates that the proposed development complies with the required parking provisions of DCP A2. It is considered cumulatively the required parking spaces for all development uses on the site can be accommodated within the 15 spaces provided. The proposal is considered to be acceptable having regard to the provisions of this policy.

Section A8-Brothels Policy

Tweed Shire Council adopted the above DCP policy at Council Meeting on 19 April 2011, with the DCP effective from 4 May 2011. The original application, presented to Council for determination in 2010 was assessed under the provisions of a Brothels Policy.

The aims of the section are as follows:

- To enable the development of a brothel in the local government area of Tweed Shire Council; and,
- To ensure that a development for a brothel does not adversely or unnecessarily impact on any resident community; and,
- To ensure that the existing and future character and amenity of the locality is not significantly impacted by any aspect of or associated with a brothel; and,

- To ensure that a brothel is located away from other land-uses that would, or visitors to that land-use would, likely be adversely impacted by a brothel; and,
- To limit the exposure of the Tweed community to a brothel; and,
- To limit the cumulative impact of brothels in any single locality or localities; and,
- To ensure the safety and security of employees and visitors to a brothel.
- To promote a safe and healthy environment for sex workers, other employees, clients and visitors.

The submitted application is not considered to contravene any of the above aims, which has been located on land zoned 4(a) industrial, where such a use is permissible, away from a residential area. It is noted that the application now lodged with Council relates to a modification of a condition of consent of a previously approved brothel which has been assessed as having generally operated in an appropriate manner.

Part B- Initial Limits on Development Consents

This DCP outlines that *'Development consents granted to brothel applications may be initially limited to a period of twelve (12) months. At the completion of this period, Council will re-evaluate the proposal in terms of any complaints received regarding the approval operations, and compliance with any conditions of development consent.'*

The Court Approval for this brothel was limited to a one year operation period, which was subsequently amended to allow operation between the hours of 6pm and 6am in perpetuity.

The application currently before Council proposes to allow the brothel to operate 24 hours a day, seven days per week in perpetuity. In this regard it is considered appropriate to limit any extension to hours of operation to a period of 12 months as outlined above in order to monitor the operation of and any impacts associated with the extended hours of operation.

Part C- Granting Consent

This DCP outlines that the Council may grant consent to a brothel only if it is satisfied that the development is consistent with the aims of this section, and the following:

- i. There is no likelihood of there being a significant or adverse impact on the operation of other land-use in the locality; and,*

The brothel has operated from this site previously and based on comments from Tweed/ Byron Local Area Command (NSW Police) it is considered that there has not been a significant or adverse impact on other land uses in the locality which would warrant refusal of this application.

- ii. There is unlikely to be any adverse impact on any adjoining, neighbouring or nearby residential community; and,*

It is considered unlikely that there would be any adverse impact on any adjoining, neighbouring or nearby residential community. Whilst the nearest residential area to the site is located approximately 350m from the brothel, however the

closest any residential area is to the brothel by public road is in excess of 500m. This spatial separation is considered to ensure that it is unlikely that there would be any adverse impacts on surrounding residential properties.

iii. The development as proposed will not have an adverse or significant impact on the existing and future character of the area; and,

The subject application relates to a previously approved brothel which is currently operational on this site. In this regard, it is considered that the modification would not impact on the existing or future character of the area.

iv. If doing so, is not contrary to the public interest.

The submitted application is not considered to be contrary to the public interest, given that the brothel has been previously approved by the Land and Environment Court, and has been assessed as having operated in a generally appropriate manner subsequent to the approval.

Part D- Planning Controls

This part of the DCP outlines that there are specific planning controls with mandatory requirements with respect to streetscape and character, building setback, building design and layout, car parking, signage, location, operational safety and security, disability access, hours of operation, health and waste.

Of relevance to this application is the control relating to Hours of Operation (11.0) which states that '*A brothels' hours of operation is 6pm to 6am, with no public services provided between 6am to 6pm.*'

The objective for this control states that the reason for this control is '*To ensure the operation of a brothel is compatible with adjoining and neighbouring land-uses.*'

It is noted that the proposed modification relates to extending the hours of operation to 24 hour per day, seven days per week which contravenes the above control. Part B (4.0) of this DCP outlines details with respect to varying planning controls and states the following:

Planning controls (PCs) have been provided to assist in the attainment of the aims of this section with the purpose of ensuring that the public interest is protected from inappropriate development.

Development control plans are not statutory however; the PCs are nonetheless binding in effect where a variation to one or more does not satisfactorily demonstrate the attainment of the aims of this section. Tweed Council does not take lightly to the variation of PCs developed to protect the public interest.

A variation to any PC in this section will be considered on its merit, and must be made in a statement that clearly identifies the PC being varied, the reason for the variation, and how the aims of this section will be attained notwithstanding the variation.

A variation to any PC under this section requires the approval of Tweed Council.

The following information has been provided by the applicant with respect to the objective of control 11.0:

- *The premises is part of a complex containing three (3) units in a U-shaped configuration. Unit 2 is the middle unit and the subject of this application. Units 1 & 3 are occupied by South Tweed Fencing, Timber & Aluminium (Unit 1) and Tweed Powder Coating (Unit 3). Those uses have not in any way been adversely impacted by the operations of the brothel to date and no issue of conflict or incompatibility is likely to arise as a consequence of this proposal. Each of those businesses has provided written expressions of support for the proposal (see attached). The business would continue to be operated in a discreet, low-key fashion;*
- *It is understood that the business has operated to date in a satisfactory manner and has not been the subject of any verified complaints;*
- *The current restriction on daytime operation is discriminatory in that other approved brothels within the Tweed Shire operate with unrestricted hours. More generally there is a legitimate client demand and expectation for daytime operating hours; and*
- *In this case the restriction of hours does not serve any necessary planning purpose and moreover it is a commercially unreasonable constraint on the business.*

Council Officer Comment:

In respect of the above it is considered that to adequately assess the appropriateness of the proposed variation, consideration must be given to: the Tweed Local Environmental Plan 2000 - zone objectives; and the Land and Environment Court Judgement - Mavrik Pty Ltd v Tweed Shire Council.

In terms of the 4(a) Industrial zone primary objectives (*to facilitate economic activity and employment generation*), the proposed development is anticipated to provide a number of employment positions and is likely to contribute to the economic diversity of the Shire. However, to achieve a level of viability and sustainability the operating environment must, as with any other business activity, be tailored to the proposed development. In this regard the variation sought in respect of the hours of operation is not considered contrary to the primary objective of the zone for the following reasons:

- extending operating times will have no effect on the land-use zoning in facilitating further economic activity;
- extending the operating times will assist in securing the sustainability and viability of the business, which in turn secures employment positions; and
- extending the operating times of the proposed development is not likely to have an impact on the employment generation capability of other businesses in the locality or on the land-use zoning.

Council has determined, via the adoption of prohibitive exclusion in other zones as provided by TLEP 2000, that brothels are only suited to the 4(a) Industrial zoned lands.

In light of the above, it is concluded that the variation being sought to the operating hours of the proposed development is not contrary to the stated objectives of the Tweed LEP 2000. In this regard it must be noted that

unnecessarily restricting the operating hours would act as a further prohibition to the development and which may undermine the zoning objectives.

There has previously been consideration, under a different application, in the NSW Land and Environment Court of hours of operation which is considered relevant to this proposal. In the matter of Mavrik Pty Ltd v Tweed Shire Council the NSW Land and Environment Court provided the following with regard to limiting the hours of operation from 6pm to 6am:

“The limiting of operating hours to preclude those times when a significant portion of business is likely to occur may have a detrimental impact on the economic viability of the business. By comparison the viability of the brothel in terms of operating hours is not dissimilar to many fast food outlets, service stations and restaurants, which are generally permitted to operate beyond the stated hours of operation and within the same 4(a) Industrial zone. Whilst these land uses activities may not attract the same intensity of moral objection they do nonetheless provide similar impacts to that likely to occur as a result of the proposal.

Therefore I consider the proposed 24-hour operation of the brothel is satisfactory and consistent with the zone objectives”.

It is considered that the proposed location of the premise is relatively discreet and is not largely exposed to the general public. Based on the information held in previous Council’s records, there exists no significant evidence to suggest that unruly or detrimental activities will occur as a result of extending operating hours to include ordinary business hours.

Having considered the applicant’s justification for the proposed variation and having considered the merits of the case it is concluded that the hours of operation provided in the DCP are both unnecessary and unreasonable in this instance. In this regard it is proposed that the hours of operation be extended to include the hours between 6.00am and 6.00pm for a period of 12 months.

The proposed modification is considered to be generally in accordance with this DCP and the proposed modification is supported subject to the imposition of a 12 month limitation period.

Section A13-Socio-Economic Impact Assessment

DCP Section A13 identifies a brothel as a land use which requires a Socio-Economic Impact Assessment. In this regard it is noted that the subject application relates to a modification of an existing Court approved brothel rather than the establishment of a new brothel. A socio-impact assessment was prepared for the proposed brothel under the original application which concluded that there was justification for the proposed development on social and economic grounds.

It is not considered that a Socio-Economic Impact Assessment is required for the proposed modification given that it relates to an existing brothel which was approved by the Land and Environment Court for which the social/economic impacts were previously assessed as being acceptable. Proposal is considered to be acceptable having regard to this policy.

Section B3-Banora Point West- Tweed Heads South

The subject site is located with Precinct 4 – Commerce & Trade / Industrial. The DCP provides guidelines for new development, but has no specific requirements

for the use of those buildings. The DCP requires development to be in accordance with Council's car parking (DCP Section A2) and signage (DCP Section A4) provisions. The DCP also requires Council to be satisfied that the proposed development does not result in noise impact. Council's Environmental Health Unit has previously raised no concerns with regard to noise impact. The proposal is considered to be consistent with the provisions of DCP B3.

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

Clause 92(a) Government Coastal Policy

The subject site is located within the Coastal Zone and as such the provisions of the Coastal Policy apply to the site. The subject modification application relates solely to an amendment of hours of operation on the site and does not include physical development works. The proposed development is consistent with the objectives of the Coastal Policy.

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

It is considered that the proposed modification does not impact upon any of the coastal zone management plans applicable within Tweed Shire given the site spatial separation from areas covered by these plans and the fact that this application solely relates to the modification of a condition of consent and does not propose any physical works.

(c) Suitability of the site for the development

The subject site has been determined as being suitable for a brothel use under the Court approval for the original application. The application has been previously assessed against the planning principles outlined in the Land & Environment Court of New South Wales for the location of brothels, the proposed brothel is considered to be suitable for the subject site. As this application relates to a modification of hours of operation only it is not considered that the proposal would impact of the suitability of the site for the proposed development, being located on appropriately zoned land.

Assessment under Section 96AA of the Environmental Planning and Assessment Act

This Section of the Environmental Planning and Assessment Act states that a consent authority may, modify a consent granted by the Court if the below criteria are satisfied (in *italics*):

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

The proposed modification is essentially the same development as originally approved, with the proposed amendment not considered likely to result in any significant changes to the originally approved development as it relates solely to a condition of consent regarding hours of operation.

- (b) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

The proposed modification was notified to surrounding properties and persons who have previously made submissions on the original application for a period of 14 days from 2 April 2014 to 16 April 2014. This is considered to satisfy the provisions requiring the S96 application to be exhibited in accordance with the DCP Section A11 provisions and the members of the public who have previously made submissions.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The proposed modification was placed on public exhibition for a period of 14 days as outlined above. During this time a total of four submissions were received whilst Council also received generic feedback from a member of the public which also referenced this application. The details of these comments and Council officer assessment of same is outlined below:

Submission Received	Council Officer Assessment
<p><u>Submission No. 1: Received from a member of the public with an address in Terranora</u></p> <p>I am appealing against a proposed modification of hours of operation of a brothel at 2/36 Enterprise Ave Tweed Heads South.</p> <p>The location of the brothel is close to party hire, auto repair, electrical retail outlet, window covering businesses and others where children may be accompanying their parents on daily outings such as collecting the family car after repairs. To have brothels operating in our society is bad enough; in the midst of normal workplaces is worse; where women and children can be exposed to this deviate lifestyle is abhorrent. And the Epic skateway is just down the road!</p> <p>It is a fait accompli that brothels are accompanied by the rise in organised crime, drugs and violence. Why should we be encouraging further abuse of prostitutes, who may be forced to work longer hours against their will. The abuse of prostitutes by their controllers, often through drug dependency, is documented.</p>	<p>The proposal is considered to be consistent with requirements for the location of brothels, in that areas where youth may gather do not have direct line of sight to the proposal. Whilst it is acknowledged that some youths may walk past the site on their way to surrounding land uses, the access to the premises is considered to be discreet with minimal signage. In any event it is noted that the brothel has been approved at this location and this application solely relates to hours of operation.</p> <p>The subject application was referred to NSW Police who have advised that <i>“Our view has always been that we do not object to brothels provided appropriate legal standards have been met. We have not had any indications that the premises at 36 Enterprise Avenue have breached any such laws and we would not object to its 24 hour operation.</i></p> <p>The proposal does not warrant refusal based on the issues raised in this submission.</p>

Submission Received	Council Officer Assessment
Please disallow the application.	
<p><u>Submission No. 2: Received from a member of the public with an address in Kingscliff</u></p> <p>I wish to record my objection to a 24 hour licence being granted for the following reasons:</p> <ul style="list-style-type: none"> • The designated site/area is not restricted to complete industrial area. <p>Within close proximity (300 metre) radius, there are at least 4 centres which cater for women, children and young persons. These businesses are:</p> <ul style="list-style-type: none"> • Tweed College of Martial Arts • Kids Biz - open 7 days 9am - 5pm • Tweed Dance Academy • Erik's Skating <p>The above listed premises encourage women/young people/children to patronage the premises to engage in activities.</p> <p>My objection to the granting of a 24/7 licence is for the following reasons:</p> <ul style="list-style-type: none"> • The premises are a licensed brothel (6.00pm to 6.00am) • The current hours of operation are outside of the nearby businesses. • The clientele being sought are obviously male. • The clientele being sought may have been drinking alcohol, or taking illegal drugs, which could affect the safety/wellbeing of any woman/young person or child in the area between 6.00am and 6.00pm. <p>I realise these type of premises offer a service, although I believe the possible threat to women/young person's & children far outweighs the granting of a 24 hour a day per week licence.</p>	<p>As outlined above, the proposal is considered to be consistent with requirements for the location of brothels, in that areas where youth may gather do not have direct line of sight to the proposal. Whilst it is acknowledged that some youths may walk past the site on their way to surrounding land uses, the access to the premises is considered to be discreet with minimal signage. In any event it is noted that the brothel has been approved at this location and this application solely relates to hours of operation.</p> <p>The relevant Environmental Planning Instrument (Tweed LEP 2000) permits brothels in Industrial zones. No other zoning can be considered for this type of development. The proposal is considered to be consistent with requirements for the location of brothels.</p> <p>The proposal does not warrant refusal based on the issues raised in this submission.</p>

Submission Received	Council Officer Assessment
<p><u>Submission No. 3: Received from a member of the public with an address in South Murwillumbah</u></p> <p>The DA should stay as is. With the skatepark, therefore children and teens about already there, the brothel should be elsewhere. 'What about the children'</p>	<p>As outlined above, the proposal is considered to be consistent with requirements for the location of brothels, in that areas where youth may gather do not have direct line of sight to the proposal. Whilst it is acknowledged that some youths may walk past the site on their way to surrounding land uses, the access to the premises is considered to be discreet with minimal signage. In any event it is noted that the brothel has been approved at this location and this application solely relates to hours of operation.</p> <p>The proposal does not warrant refusal based on the issues raised in this submission.</p>
<p><u>Submission No. 4: Received on behalf of Teddy Bears Educational Child Care Centre, located at 27 Corporation Circuit, Tweed Heads South.</u></p> <p>I am writing to you in regard to a brothel currently trading under the name of Julianna's and is located at Enterprise Avenue Tweed Heads South. The owners of this brothel have applied to vary their trading hours to be able to operate during the day. This is not an appropriate business to be operating during the day. It is too close to our childcare centre and it is also too close to a number of other schools and places where children frequent, including one children activity business in the same street.</p> <p>This change of trading hours was brought to my attention by one of the parents whose children attend our kindergarten. She voiced her concern due to the fact her husband was parked in enterprise drive with her two children in the car, when a young lady scantily dressed girl approached him with a business card and suggested he visit the brothel. This is all in front of his two children who were sitting in the car.</p> <p>I can speak for all of the parents who</p>	<p>As outlined above, the proposal is considered to be consistent with requirements for the location of brothels, in that areas where youth may gather do not have direct line of sight to the proposal. Whilst it is acknowledged that some youths may walk past the site on their way to surrounding land uses, the access to the premises is considered to be discreet with minimal signage. In any event it is noted that the brothel has been approved at this location and this application solely relates to hours of operation.</p> <p>The proposal does not warrant refusal based on the issues raised in this submission.</p>

Submission Received	Council Officer Assessment
<p>attend this child care centre and say that none of them want this business to operate during the day, and we hear by wish to lodge our adamant objection to this application: amendment development Consent for the a brothel known of Juliannas situated at Enterprise Avenue South Tweed Heads.</p>	
<p><u>Feedback: Received from a member of the public through Councils website (address not provided)</u></p> <p>Just a comment in DA10/0020.05 I find it amusing that you advise that this approval is to be "determined". The initial resident advice was only a legal requirement as the plumbing was already set in place for the establishment when the residents were consulted and council would have had to approve that. So why bother asking the public when things are already a forgone conclusion? To entertain us? Or to make us think you take our concerns on board... ! But... The staff on the front desk of the Tweed office are great and should be acknowledged. Sorry I had to write through here... But your complaints section has a server error!</p>	<p>It is not precisely clear as to what this feedback is referring to with respect to these comments as the notification letter only mentions 'determined' in relation to giving consideration to the public interest when allowing access to submissions raised.</p> <p>This Section 96 application relates only to the hours of operation of the brothel and does not require additional plumbing works to be undertaken.</p> <p>Any submission received is assessed as required by the Environmental Planning and Assessment Act.</p> <p>The proposal does not warrant refusal based on the issues raised in these comments.</p>

Having regard to the comments received through the public exhibition process, it is not considered that refusal of this Section 96 application is warranted based on the issues raised in these submissions.

Conclusion

The Section 96AA application has been assessed having regard to the matters for consideration under Section 79C and Section 96AA of the Environmental Planning and Assessment Act, 1979. The proposed amendment is recommended for approval as detailed below.

(e) Public interest

The proposed modification to Development Consent DA10/0020 is considered to be acceptable in terms of public interest. The amended condition of consent will give the applicant an opportunity to demonstrate that they are capable of running the brothel at the extended hours for a period of one year, whilst the public will have an opportunity to log any complaints with respect to the extended operating hours, should they occur.

Recommendation

The request to vary Condition 43A as outlined by the applicant is not supported as proposed as it is considered necessary to monitor any potential impacts arising from a 24 hour per

day, seven days per week operation of a brothel premises for a one year trial period to ascertain the appropriateness of these extended hours of operation. Therefore the following alternative amendment to Notice No. DA10/0020 is recommended:

Condition No. 43A is to be DELETED and REPLACED with Condition No. 43B which reads as follows:

43B. The hours of operation of the brothel premises are 24 hours per day, seven days per week for a one year trial period commencing on the date of this modified consent.

A further application may be lodged to continue the hours of the use outlined above before the end of the trial period. Council's consideration of the continuance of the operating hours will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, including the Plan of Management, any substantial complaints received and any views expressed by the Police.

At the end of the one year trial period, unless otherwise amended as outlined above, the hours of operation of the brothel are to revert to being restricted to 6.00pm to 6.00am seven days per week, with no public services provided between 6.00am to 6.00pm. The brothel premises is not be used or occupied by sex workers, employees, cleaners etc. prior to 5:00 pm or after 7:00 am.

OPTIONS:

1. Approve the amendment of the development consent as outlined above; or
2. Refuse the application for stated reasons; or
3. Approve the amendment of the development consent as requested by the applicant through the deletion of Condition 43A.

Council officers recommend Option 1.

CONCLUSION:

It is considered that the development is compatible with the existing industrial development and local environment. The assessment has had regard for the issues raised by the public submissions, as well as advice from NSW Police. As a result, the proposed modification to the trading hours of the brothel is considered to be acceptable, subject to the changes recommended by Council staff, including the provision of a one year time limit as outlined in this assessment report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

If the applicant is dissatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court. Council would incur legal fees in defending any such appeal.

c. Legal:

If the applicant is dissatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court. Council would incur legal fees in defending any such appeal.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

15 [PR-PC] Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0673 Pt1



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 originally received a development application for the construction of eight open storage sheds (76 bays) in November 2013. The proposed storage sheds were originally for the purposes of dry storage of boats and other plant and equipment including vehicles, trailers, caravans and the like. However, the subject application has since been formally amended and now seeks approval for the construction of eight open storage sheds for the purpose of boat storage only (69 bays). The part of the site where the development is proposed comprises primarily of gravel hardstand which will be retained for the proposed structures. The storage sheds will be constructed with steel columns and Colourbond roofing. No external enclosing walls are proposed.

Proposed hours of operation are between 6am and 9pm, seven days a week. Hours of operation would be enforced by staff combined with an electronic control at the entry and exit gates only operable during nominated hours. The proposed boat storage units would be managed and operated by existing service station staff, supplemented by up to two additional staff when required to meet periods of peak demand.

Pursuant to the Tweed Local Environmental Plan (LEP) 2000, the subject land is zoned 3(d) Waterfront Enterprise, the objective of which is to 'encourage development related to waterfront and marine activities, recreation or tourism'. The proposed development would have been defined as 'boating facility' or 'storage sheds'. A 'boating facility' would have been a permissible within the 3(d) zone however, 'storage units' are in fact a prohibited form of development. With this regard, the applicant advised that the site has been utilised for the purposes of a service station and for general storage purposes (including trucks, semi-trailers, plant, equipment, containers and the like) and that, on this basis, the site has existing use rights for the purposes of general storage.

However, a search of Council's historic aerial imagery (circa 1962 to present day) does not indicate the presence of any storage shed structures or the land being used for storage purposes. Council records also indicate that the only approvals on the subject site relate to the service station and the erection of a storage shed/warehouse that was refused in 1989.

On this basis, it is considered that the site does not have established existing use rights for the purposes of storage units.

The applicant subsequently requested to formally amend the application to delete reference to general storage, such that the amended application is only for the purposes of dry storage of boats. The applicant advises that the dry storage of boats, defined as a 'boating facility' within the former Tweed LEP 2000, was a permissible form of development within the 3(d) Waterfront Enterprise zone.

During the assessment of this application, the Draft Tweed LEP 2012 was formally gazetted on 4 April 2014 as the Tweed LEP 2014. Under the Tweed LEP 2014, the entire site is zoned B4 Mixed Use. The proposed storage sheds are defined as both 'storage premises' and a 'marina', both prohibited forms of development in the B4 zone. Whilst the savings provision in Clause 1.8A of the Tweed LEP 2014 is acknowledged, the applicant was advised that Council must give weight to the Draft LEP as it was certain and imminent and in this regard permissibility and objectives of the zone must be taken into consideration.

Although the Tweed LEP 2014 contains a savings provision for development applications made before commencement of this plan, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to Section 79C (1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*. There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted.

On this basis the permissibility and objectives of the B4 zone must be taken into consideration and are critical to the determination of this application.

The application did not require notification under the provisions of Section A11 of the Tweed Development Control Plan (DCP). Please note that the development is not classed as Designated Development, as detailed further within this report.

Following an assessment of the proposed development against the relevant heads of consideration, in particular with reference to the savings provision in Clause 1.8A of the Tweed LEP 2014 and provided conditions are applied to the development consent, the application is recommended for approval.

RECOMMENDATION:

That Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans titled:**
 - **'Proposed Storage Sheds', Ref G2853, Sheet 1 of 3;**
 - **'Proposed Storage Sheds - Elevations', Ref G2853, Sheet 2 of 3; and**
 - **'Ecological Setback/Buffer Zone', Ref G2853, Sheet 1 of 3**

prepared by Gavin Duffie Contract Draftsman and dated 7 November 2013 (Revised 12 March 2014), except where varied by the conditions of this consent.

[GEN0005]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.
[GEN0135]
4. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.
[GEN0190]
5. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.
[GEN0265]
6. The owner is to ensure that the proposed buildings are constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.
[GEN0300]
7. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
8. Water and electricity services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
9. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.
10. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
11. The proposed development shall be constructed entirely of non-combustible materials.
12. Landscaping of the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.
[GENNS01]

13. The plans hereby approve do not include the car parking area in association with DA13/0221. [GENNS02]
14. The storage sheds are to be used for the purposes of the storage of boats only.
15. The development shall not include boat washing facilities or the like without the approval of the General Manager or delegate officer. [GENNS03]
16. The approved development shall not result in any clearing of native vegetation without prior approval from Council's General Manager or delegate.
17. The applicant shall establish and appropriately maintain in perpetuity the 'Ecological Setback/Buffer Zone' for conservation purposes as shown on the marked up plan being *Sheet 1 of 3 Ref. G2853 Proposed Storage Sheds Chinderah Bay Road Chinderah dated 12 March 2014 prepared by Gavin Duffie in Amended Plan of Management Land Zoned 7(a) Proposed Open Storage Sheds Chinderah Bay Road Chinderah dated March 2014 prepared by Darryl Anderson Consulting*. The following activities are not permitted within the 'Ecological Setback/Buffer Zone' unless otherwise approved by Council's General Manager or delegate.
- a. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this approval;
 - b. Erection of any fixtures or improvements, including buildings or structures;
 - c. Construction of any trails or paths;
 - d. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area.
18. No vegetation shall be disturbed during construction of any future fence-line on the common boundary between the subject site and Lot 19 in DP833570 within the nominated Ecological Setback/Buffer Zone without prior approval by Council's General Manager or delegate. [GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

19. 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]
20. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan of landscaping shall include details of proposed planting within the southwest corner of the site and within the verge and will include species of varying
-

heights (trees, shrubs, groundcovers) to provide visual interest and assist in the screening of the development. Landscaping shall be carried out in accordance with the approved details and shall thereafter be retained as such.

[PCC0585]

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

- (a) All building materials used below Council's design flood level must not be susceptible to water damage;
- (b) 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.
- (c) A certificate of structural adequacy with regard to stability of the structures as a result of flooding has been submitted to Council by a suitably qualified structural / civil engineer.

[PCC0705]

22. Fencing detail is to be provided detailing a form that will either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of floodwater or debris.

[PCC0725]

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

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

24. 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]

25. 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]

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

[PCC1195]

27. Prior to the issue of a construction certificate, the applicant is to submit to Council a detailed Flood Management Plan (FMP). This FMP is to include details of how the site and storage units (including storage goods) will be managed in the event of a flood. The FMP will also include details of how potential customers are to be advised that the site is flood prone and that the storage area is susceptible to flooding.

[PCCNS01]

28. Prior to the issue of a construction certificate the applicant is to submit to Council details (including scaled plans and elevations) of all proposed fencing, gates and integrated landscaping for approval.

[PCCNS01]

29. A landscaping plan shall be submitted and approved by Council's General Manager or delegate prior to the issue of a construction certificate for the nominated Ecological Setback/Buffer Zone. The landscaping plan shall detail the following:

- a. Planting of appropriate local native species at an average density of one (1) plant per square metre;

- b. Environmental weed control works;
- c. Installation of bollards along the length of the western outermost boundary of the Ecological Setback/Buffer Zone. Bollards shall be shown spaced at 1.5metre centres of approximately 150mm diameter, of durable timber or galvanised steel to extend 0.6m above natural ground level;
- d. Ensure plantings comply with the principles of Appendix 5 of *Planning for Bush Fire Protection 2006*;
- e. Indicate an establishment period of six (6) months.

[PCCNS02]

30. Prior to the issue of a construction certificate the applicant is to submit details (including a scaled plan, materials and wording) of proposed advertising signage for approval. The signage is not to be internally or externally illuminated.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

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. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

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

[PCW0665]

35. 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]

36. Temporary tree protection fencing shall be erected prior to commencement of any works along the western outermost boundary of the nominated Ecological Setback/Buffer Zone. Access within the tree protection zone shall be restricted (except where required to remove material/debris pursuant to conditions of this consent) and clear signage shall be attached to the tree protection fence indicating that vegetation is to be retained and protected. Temporary tree

protection fencing shall meet the specifications detailed in the *Australian Standard AS 4970-2009 Protection of trees on development sites*.

[PCWNS01]

DURING CONSTRUCTION

37. 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]

38. 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]

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

[DUR0245]

40. 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]

41. 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]

42. 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]

43. 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]

44. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and

Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

- 45. 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]

- 46. 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]

- 47. 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]

- 48. 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]

- 49. 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]

- 50. 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]

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

[DUR1945]

- 52. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.**

[DUR2185]

53. Any debris, and/or building materials shall be removed from the nominated Ecological Setback/Buffer Zone prior to landscape works commencing.
54. Tree protection fencing shall be erected and kept in a sound and functional condition for the duration of the construction period unless otherwise approved by Council's General Manager or delegate.
55. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

56. 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).
57. 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).

[POC0205]

[POC0355]

58. Section 94 Contributions

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

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

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

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

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

(a) **Tweed Road Contribution Plan:**
13.8 Trips @ \$1176 per Trips **\$9,737**
(\$1,137 base rate + \$39 indexation)
(\$6,492 subtracted from total for commercial job creating developments)
S94 Plan No. 4
Sector6_4

(b) **Extensions to Council Administration Offices**
& Technical Support Facilities
0.20499 ET @ \$1860.31 per ET **\$381.34**
(\$1,759.90 base rate + \$100.41 indexation)
S94 Plan No. 18

[POC0395]

59. **The 3m wide aisle located between the southern boundary of the site and open storage sheds numbered 34 to 51 is to be clearly signed 'one way traffic only' prior to issue of the Occupation Certificate.**

[POCNS01]

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

[POCNS01]

USE

61. **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]

62. **All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.**

[USE0175]

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

* **6am to 9pm - Seven days per week.**

[USE0185]

64. **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]

65. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

66. Boats shall not be stored on cradles or dry stacked within the storage facility.

[USENS01]

REPORT:

Applicant: Kiwi Black Properties Pty Ltd T/A BP Chinderah
Owner: Kiwi Black Properties Pty Ltd
Location: Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah
Zoning: 3(d) Waterfront Enterprise (TLEP2000)
Cost: \$90,000

Background:

The Subject Site:

The subject site comprises six lots described as Lots 9-12 in DP 830655 and Lots 9 and 10 in DP 24164, Chinderah Bay Drive, Chinderah and encompasses a combined area of approximately 10,385m². The site has an extensive frontage (approximately 120m) to Chinderah Bay Drive and backs onto the Pacific Highway (no access) and contains a BP Service Station, detached office building, storage buildings, storage containers and other stored plant and equipment, including semi-trailers and other vehicles.



Extract Council's GIS aerial imagery showing location of subject land

The north-east of the site adjoins the Pacific Highway; however no access to the site is available directly from the Pacific Highway. To the west of the site is Chinderah Bay Drive and further to the west is the Tweed River, whilst to the south are freehold lots, one of which comprises an indoor sports centre.

The site is relatively flat and whilst vegetation is largely absent across the site, the edge of a connected remnant tract of vegetation associated with State Environmental Planning Policy (SEPP) 14 Wetland adjoins the property. This vegetation extends within the south-eastern corner of the site and numerous trees considered as part of the contiguous remnant of vegetation that runs adjacent to the Pacific Highway remain along the north-eastern boundary. The part of the site to which the development is proposed comprises primarily of gravel hardstand which will be retained for the proposed structures. The site is serviced by reticulated water and sewer.

History

The applicant considers that the site has existing use rights for the purposes of general storage and in accordance with Section 107 of the *Environmental Planning and Assessment Act 1979* (EP and A Act) and Clauses 41, 42 and 43 of the *Environmental Planning and Assessment Regulation 2000* (EP and A Regulation), Council may approve the development, as originally proposed, as it does not involve any change of use, only the establishment of open sheds to provide weather protection to the stored boats, plant and equipment.

The applicant advised that the existing service station was established on the site prior to 1964 and the site has been used since that date as a service station and for general storage purposes including trucks and semi-trailers, plant, equipment, containers and the like. A Statutory Declaration has been provided to Council that advises that in the early 1960s there were three storage sheds on the side of the service station building and a series of sheds on the north and southern ingress/egress, as well as three storage sheds at the rear of the service station. The individual also advises that since the time they could remember, trucks and trailer units have been stored on the service station site.

Council records have not revealed any development approvals for storage units or the like on the subject land and no evidence has been brought to Council's attention to indicate that all of the subject lots to which the application relates have the benefit of existing use rights. A search of Council's historic aerial imagery does not appear to indicate any storage shed structures or the land being used for storage purposes as such, as shown below:



Historic aerial photograph - 1962



Historic aerial photograph - 1987

Of relevance, the following development applications have been received in respect to the subject land:

DA/BA Reference No	LEP	Zoning	Outcome/Comment
DA08/0992 - minor alterations & signage in association with service station	Tweed LEP 2000	3(d) Waterfront Enterprise	Approved

DA/BA Reference No	LEP	Zoning	Outcome/Comment
0168/2001DA - alterations and additions & small restaurant	Tweed LEP 2000	3(d) Waterfront Enterprise	Approved. It is noted that within a DAP Meeting (dated 9 April 1999) a service station, being located on 1(a) land (prior to the Tweed LEP 2000 coming into force) was a non-conforming land use with existing use rights. No references were made to storage buildings.
0856/95B - building application for service station and K98/0862 (additions to existing service station)	Tweed LEP 1987	1(a) Rural	Approved
89/71 - erection of a storage shed to be used to unload containers containing antique furniture	Tweed LEP 1987	1(a) Rural	Refused - considered would have set a precedent for the erection of similar structures within the locality. It was noted within the application details that the site comprised a service station and a number of 'market stalls' located along Chinderah Bay Drive for the sale of fish and vegetables. The historic aerial imagery (1987) as shown above appears to reflect this land use.

On this basis it is considered that the site does not have established existing use rights for storage purposes.

The proposed development

The proposed development originally comprised eight storage sheds comprising 76 storage bays to be constructed in eight stages. The proposed storage sheds would be constructed with steel columns and Colourbond roofing. No external enclosing walls are proposed. The proposal does not comprise boat wash facilities or the like.

Proposed hours of operation are between 6am and 9pm seven days a week. Hours of operation shall be controlled by staff and gates restricting access outside the nominated hours of operation. The proposed boat storage units would be managed and operated by existing staff of the service station, supplemented by up to two additional staff when required to meet periods of peak demand.

The application references a car parking area on Lots 10, 11 and 12 in DP 830655 in association with a separate development application DA13/0221 for boating activities on the Tweed River. This application was refused on 25 November 2013 and a Class 1 Appeal has subsequently been withdrawn.

A request for further information was sent to the applicant on 30 January 2014 requesting clarification in respect to: existing use rights for the purposes of a storage premises; car parking in association with DA13/0221 that had been refused by Council; bush fire protection and the provision of adequate defendable space located around buildings; ecological values (and location of protected vegetation); access and egress and any potential impact on local amenity (hours of operation).

A response to the further information request was received on 13 March 2014, the matters of which are detailed further within this report.

In response, the total number of storage bays has been reduced to 69 bays (eight sheds). The shed structures that were originally located up to the northern boundary of the site have been relocated to within the central portion of the site. The applicant has not nominated any staging of the proposal in its amended form.

Of key importance in the determination of this application is that existing use rights for the purposes of storage has not been demonstrated. On this basis the applicant has requested to formally amend the proposal to delete any reference to general storage purposes. The

applicant now seeks the construction of storage sheds for the purposes of dry boat storage only.

It is noted that a 'boating facility' would have been a permissible form of development in the 3(d) zone, under the provisions of the former Tweed LEP 2000. However, under the Tweed LEP 2014 the zoning is B4 Mixed Use. A 'marina' and 'storage premises' are both prohibited forms of development in the B4 zone.

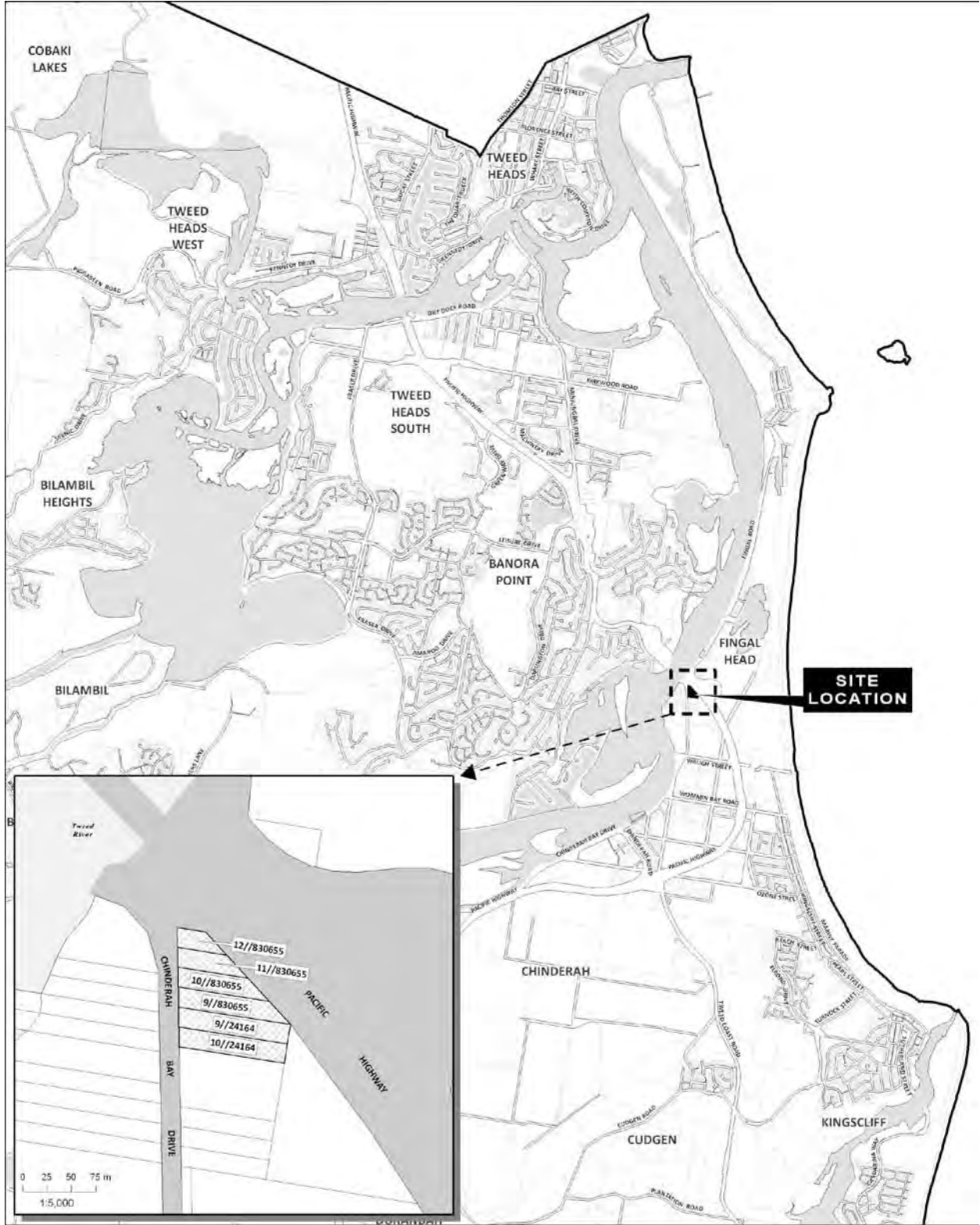
The application has been referred to the NSW RFS who have recommended that a number of conditions are applied to the development consent.

The proposed development is not classified as Designated Development as detailed within this report.

The application has been reviewed by the relevant Units within Council who have assessed the proposed development in its amended form and also recommended conditions that will be applied to the development consent.

Having regard to the provisions of the former Tweed LEP 2000 and Tweed LEP 2014, it is considered that the proposed development is consistent with the objectives of the 3(d) and B4 zone respectively. On this basis the application is recommended for approval subject to a number of conditions of consent.

SITE DIAGRAM:



Locality Plan

Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah;
 Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah

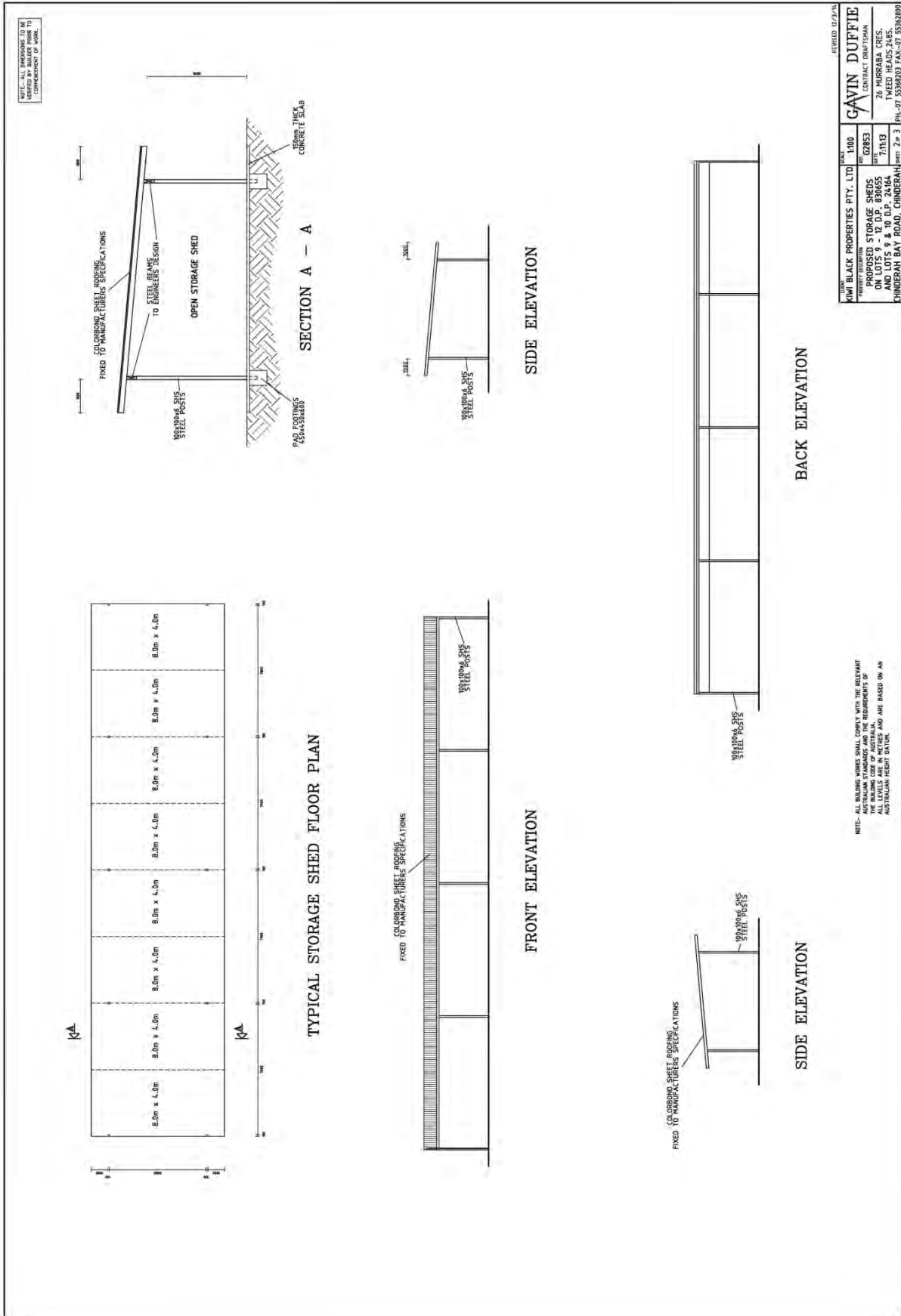
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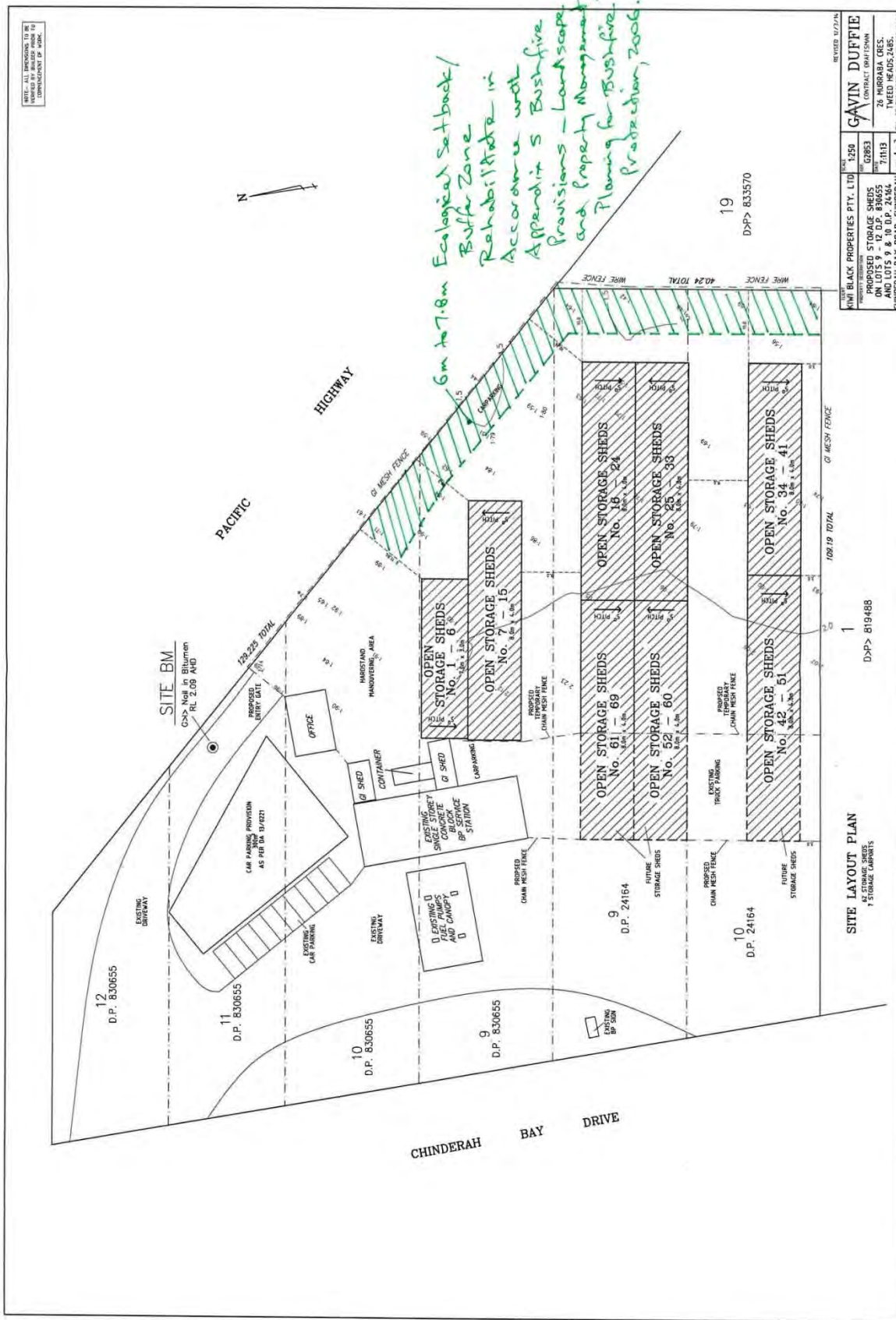
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 Boundaries shown should be considered approximate only.

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 GDA
 Map of Australia 1994
 Map of Australia, Zone 56

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 T | (02) 6670 2400 | 1300 292 873
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REVISED 07/14	NO. 1250	GAVIN DUFFIE
NO. 02863	NO. 02863	CONTRACTOR: BATHSWAN
NO. 11113	NO. 830655	24 MURRABA CRES.
NO. 11113	NO. 24164	TWEED HEADS 2485.
NO. 11113	NO. 819488	CHINDERAH BAY ROAD, CHINDERAH
NO. 11113	NO. 24164	PH: 07 5538602 FAX: 07 5538900

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

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

It is generally considered that the proposal would be consistent with this clause, with the development retaining the Shire's unique natural and developed character.

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 minor and will not conflict with principles of ESD.

The site has been predominantly cleared of vegetation with the area pertaining to the development comprising a hard stand area. The proposal would therefore be unlikely to result in any significant impact on the ecological or environmental factors of the site or locality. It is considered that the proposal would be consistent with this clause.

Clause 8 - Consent Considerations

Clause 8 states that the consent authority may grant consent to development only if:

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

The proposed development as amended (for the purposes of boat storage only) is considered to be consistent with the primary zone objectives. Other aims and objectives of this plan are considered within the body of this report and it is considered that the proposed development would not have such an unacceptable cumulative impact on the community or the surrounding area to warrant refusal.

Clause 11 - Zone Objectives

The lots subject to this application are located in the 3(d) Waterfront Enterprise zone within the Tweed LEP 2000. The objectives of the 3(d) zone are as follows:

Primary objective:

- *To encourage development in association with waterfront and marine activities, recreation or tourism.*

Secondary objectives:

- *To allow for residential development in association with waterfront, tourist or recreational uses.*
- *To allow for other development that is compatible with the primary function of the zone.*

The applicant has formally amended to delete all reference to 'storage units' for general storage purposes. The application seeks storage units for the purposes of the storage of boats only. Under the provisions of the Tweed LEP 2000, the proposal is characterised as a 'boating facility' which is defined as follows:

Land used for the purposes of recreational boating activities, and includes a marina, boat launching ramp, boat repair and servicing facility, wharf, jetty and any means of dry storage for boats.

Development for the purposes of a 'boating facility' is permissible with consent in the 3(d) zone and, in general, it is considered that such a facility would be consistent with the objectives of the zone, in the provision of storage for boats in association with marine activities and recreation.

Of relevance to the subject application, DA13/0221 (pontoon boat and watersports boat operation on the Tweed River from Fingal Boat Ramp with passenger pick up/set down from beach at Old Barney's Pt Bridge Jetty) was refused on 25 November 2013. The applicant has clarified that they wish to retain the proposed parking area in association with DA13/0221 however, it is noted that the submitted Class 1 Appeal in association with this application has subsequently been withdrawn. Should this application be approved, a condition will be applied to the development consent to ensure that the car parking area in association with DA13/0221 is not subject to this application.

Clause 15 - Essential Services

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

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

Clause 16 - Height of Building

Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. This clause of the TLEP 2000 provides a three-storey height restriction over the subject site.

The development proposes the construction of single storey storage sheds (with a maximum height of 3.2m). The proposal would be consistent with the clause.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP 2000 requires a social impact assessment for certain development types likely to have a significant social impact in the locality. It is considered unlikely that the proposal would have a significant impact on the residential amenity of surrounding properties provided the proposal is carried out in accordance with the conditions of the consent.

Clause 22 – Development near Designated Roads

The site fronts Chinderah Bay Drive which is identified as a Designated Road. Access to the site is via an existing driveway located on an adjoining allotment, Lot 1 DP 819488 to the south, which provides access and egress into the subject land and also to the existing service station located opposite the proposed development.

A right of carriageway has been created over this driveway to provide legal egress and access to the subject development and the existing service station. No driveway works are required as part of the proposed development as the access is existing.

No traffic report or comment in relation to traffic has been provided by the applicant. It is expected that traffic will increase as a result of the proposed development. The service station currently has minimal traffic accessing the site. Chinderah Bay Drive is designed as a collector road which is considered able to accommodate any additional traffic created by the proposed development.

It is considered that the proposed development would be unlikely to impact on the function of the Designated Road, nor will it result in a traffic hazard or materially reduce the capacity or efficiency of the road.

Clause 25 - Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The objective of this clause is to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the area of the Tweed. The clause advises that, unless it is exempt development, a person must not clear vegetation from, drain, excavate or fill land within Zone 7(a) except with development consent.

Subsection (3) of the clause states that consent must not be granted unless the consent authority has taken into consideration:

- a) *The likely effects of the development on the flora and fauna found in the wetland or littoral rainforest, and*
- b) *The potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and*
- c) *A plan of management showing how any adverse effects arising from the development can be mitigated, and*
- d) *The likely effects of the development on the water table, and*
- e) *The effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.*

The adjoining land (Lot 17 DP 833570) to the east of the site is zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforests) that also supports SEPP 14 Coastal Wetland, as detailed further within this report.

Vegetation is largely absent across the majority of the site with the exception of several landscape shrubs (*Callistemon viminalis*, *Pheonic sp.*). However the edge of a connected remnant tract of vegetation associated with the SEPP 14 wetland (yet outside of the gazetted boundary) extends within the south-eastern corner of the site. Numerous trees that are considered remnant vegetation

remain further to the north along the north-eastern boundary, albeit within the Pacific Highway road corridor.

A management plan has been submitted with the application details, the objectives of which are to avoid disturbance of wetland vegetation on the adjoining lot and to avoid changes to the existing hydrological regime. The proposed performance measures are to: erect and maintain a person proof fence on the common boundary between the subject land and Lot 19; ensure that roof water is not discharged to the wetland; install appropriate signs on the fencing to ensure no vegetation disturbance occurs; and that all contractors in construction are to be suitably inducted.

It was considered that not all impacts associated with the development on the adjacent 7(a) zoned land have been contemplated (such as removal of vegetation to accommodate proposed open storage shed 17-26 that was originally located up to the boundary of the site). As such it was considered that the proposed avoidance/mitigation measures were not sufficient to manage negative impacts and the applicant was requested to provide the following detail:

- a) Modify the plan to reflect modifications to the layout described above that improves the long term management of the adjoining 7(a) zone and associated ecological values;
- b) Indicate that the 'Ecological Setback/Buffer Zone' is for ecological purposes only;
- c) Include an intent plan for remediation of the 'Ecological Setback/Buffer Zone' to include recommendations for installation of appropriate fencing and signage, removal of debris and building materials.

The applicant has amended the layout plan to provide for a 6m - 7.8m setback between the existing vegetation and the proposed storage sheds. The applicant has agreed to providing within the setback described above a 6m - 7.8m Ecological Setback/Buffer Zone to be taken from the rear (eastern) boundary. By establishing an Ecological Buffer/Setback Zone, it is considered that direct impact/disturbance to significant vegetation occurring onsite would be avoided and that potential indirect impacts on the adjoining wetland within Lot 19 would be adequately mitigated.

Whilst the amended plan and proposed management measures are generally supported, there do appear to be some inaccuracies regarding the site values (i.e. occurrence of vegetation on the lot). On this basis management measures will alternatively be stipulated as conditions of consent to ensure that no adverse impact to the adjacent 7(a) zone and associated vegetation occurs, as detailed further within this report.

Clause 34 - Flooding

The objectives of this Clause are to minimise future potential flood damage by ensuring that only appropriate development occurs on flood liable land and to minimise the effects of flooding on the community.

The subject land is flood prone and has a design flood level of RL 2.5m AHD - RL 3m AHD. The site is not proposed to be filled. The proposed open sheds will allow flood waters to generally flow freely through the site.

The proposed development raises no significant implications in respect of flooding however, as detailed further within this report, it is considered necessary

to apply a number of conditions to ensure that structures are adequate in times of flood; that a suitable Flood Management Plan is submitted to Council for approval and that fencing and electricity supply is in accordance with Council requirements.

Clause 35 - Acid Sulfate Soils (ASS)

The land has been identified as having Class 2 and Class 3 ASS. Any excavation works below ground level in a Class 2 area, and any excavation greater than 1m in a Class 3 ASS area may present an environmental risk. The area proposed to be developed is primarily a Class 3 ASS area with only three of the proposed sheds located in a Class 2 ASS area.

The application advises that only 7.5m³ of gravel/soil will be excavated for construction of the concrete footings and excavation will be 0.6m in depth. It is proposed that acid sulphate soils will be managed in accordance with Council's ASS Management Plan for Minor Works. Given the limited excavation required it is considered that no further consideration of ASS is required. A condition will be applied to the consent with this regard.

Clause 39 – Contaminated Land

The application provides limited information in respect of contaminated land. A service station operates on the site that is identified as a potentially contaminating activity.

In respect of land contamination the following points are noted:

- The nearest storage shed, and therefore excavation, is greater than 15m from the refuelling area;
- The application also advises that the portion of the site to which the development is proposed is comprised of gravel hardstand, that will be retained. The applicant advises that approximately 7.5m³ of gravel/soil will be excavated for the construction of the concrete footings and excavated gravel would be spread over the hardstand area with no material being moved off site;
- Groundwater is unlikely to be encountered during shallow excavation works;
- A change of use is not proposed.

Whilst it is acknowledged that a potentially contaminating activity is currently occurring on the site, it is considered that the likelihood of disturbing contaminated materials associated with the service station is very low. Minor excavations are not considered to present a risk to the environment (including groundwater) or public health and no further information in respect to contaminated land is required.

Clause 39A – Bushfire Protection

The development application has been referred to the NSW Rural Fire Service (RFS) as the submitted details provided limited information in respect of bushfire, advising that the proposal relies on construction materials to provide an acceptable solution to meet risk management obligations.

Concerns were raised in respect of bushfire provision particularly as proposed storage bays numbered 1-8 and 17-26 were originally located on the boundary of the subject property. The NSW RFS advised that they were not in a position to

properly assess the application and that further information was required to establish whether the proposal provided an adequate defensible space located around the proposed buildings; whether appropriate separation between a hazard and buildings were provided and whether the development complied with the objectives of 'Planning for Bushfire Protection 2006'.

The applicants have provided an amended Bushfire Threat Assessment Report that has been submitted to the NSW RFS for consideration. The submitted plans have also been amended so that a defensible space has been provided around each building. Subsequently the NSW RFS have recommended that a number of conditions are applied to any development consent in respect to asset protection zone provision; water and utilities; access; evacuation and management measures; design and construction and landscaping.

Clause 47 - Advertising Signs

Details of any proposed advertising signs have not been received.

Clause 54 - Tree Preservation Order (TPO)

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

The submitted application has since been amended to ensure that the proposed structures do not impact on the broad stand of contiguous vegetation located on the boundary of the subject site. The development will be unlikely to impact on matters relating to the TPO 2011.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15 - Wetlands or Fishery Habitats

Clause 15 - Wetlands or Fishery Habitats states the following:

"The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:

- (a) the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,*
- (b) the need to conserve the existing amateur and commercial fisheries,*
- (c) any loss of habitat which will or is likely to be caused by the carrying out of the development,*
- (d) whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*
- (e) whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*
- (f) the proximity of aquatic reserves dedicated under the Fisheries Management Act 1994 and the effect the development will have on these reserves,*

- (g) *whether the watercourse is an area of protected land as defined in section 21AB of the Soil Conservation Act 1938 and any measures to prevent soil erosion, and*
- (h) *the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and*
- (i) *the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment."*

The proposal does not adjoin the Tweed River and, as detailed above, appropriate conditions will be applied to any development consent to ensure that the proposal does not impact on the adjacent 7(a) land to the east of the site.

Conditions will be applied to ensure that appropriate erosion and sediment control is provided in accordance with Council's Stormwater Quality specification.

It is considered that the proposal does not raise any significant implications in respect to Clause 15.

Clause 32B - Coastal Lands

Clause 32B - Coastal Lands states the following:

- "(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 site is designated as coastal land and is subject to the provisions of the *NSW Coastal Policy, 1997*. The proposal is not located on the coastal foreshore or on waterfront open space as such, will not impede access or create overshadowing of beaches or adjacent open space.

Whilst relatively utilitarian in design and appearance, the proposed storage shed structures are minor in scale and setback 30m from the road, reducing the visual impact of the development from Chinderah Bay Drive. There are also a number of

other similar industrial style buildings located in close proximity to the site as well as similar open storage structures located to the south.

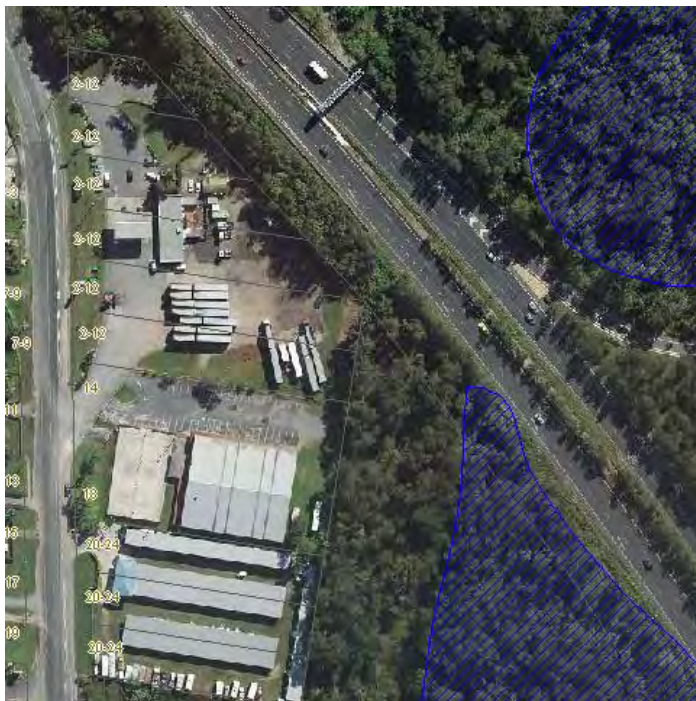
The proposal is not inconsistent with the intentions of the *NSW Coastal Policy 1997*, the *Coastline Management Manual*, or the *North Coast: Design Guidelines*.

Clause 47 Principles for Commercial and Industrial Development

The proposal occurs within the 3(d) Waterfront Enterprise zone. All relevant services are available to the site with the subject site being adequately located within the existing local and regional road networks. The proposal is therefore considered to comply with the objectives of Clause 47 of the NCREP.

SEPP No. 14 - Coastal Wetlands

An area of land approximately 50m to the east of the site is mapped as SEPP 14 Wetland. The eastern portion of the subject lots is nominated as SEPP 14 wetland buffer as shown below:



Extract of Council's GIS illustrating SEPP 14 Wetland (dark blue)

The Statement of Environmental Effects (SEE) advises that the development is located at least 50m clear of the mapped wetland and having regard to its nature and scale, will not impact on the existing hydrology of the wetland or its biophysical values. The SEE advises that mitigation measures will be implemented to manage stormwater quality during the construction phase and runoff from hardstand areas, including the rooves of the open storage sheds.

The adjoining lot to the east (being Lot 19 DP 833570) supports SEPP 14 Coastal Wetland. The gazetted mapping captures only a section of a broader contiguous remnant unit of Swamp She-oak Closed Forest to Woodland (Tweed Vegetation Management Strategy Code 601) that is recognised as a candidate Endangered Ecological Community (EEC), being *Swamp oak floodplain forest of the NSW North Coast, Sydney Basin and South East Corner bioregions*. The vegetation associated with this community appears from site inspection and aerial imagery to narrowly extend onto the subject site within the south-eastern corner. Further

to the north, along the eastern boundary, numerous stems of *Casuarina glauca* remain within the Pacific Highway road corridor.

The applicant has been requested to provide an Ecological Setback/Buffer Zone to the EEC and amend the Management Plan for 7(a) zoned land that supports SEPP 14 Coastal Wetland to reflect the intent and establishment of the Ecological Setback/Buffer Zone. It is considered that the proposed development would therefore be unlikely to cause direct impact or disturbance to significant vegetation occurring on the site and that potential impacts to the adjoining wetland can be adequately mitigated.

Conditions will be applied to the consent to ensure that no vegetation is to be disturbed during construction on any future fence-line on the common boundary between the subject site and Lot 19 without prior approval. Temporary tree fencing shall be erected prior to commencement of works along the westernmost boundary of the site and access to these areas is to be restricted during construction; and a landscaping plan shall be submitted to Council prior to the issue of a construction certificate for the nominated Ecological Setback/Buffer Zone. Furthermore, a condition will be applied to ensure that appropriate erosion and sediment control and stormwater quality treatment is in place in accordance with Council's *Development Design Specification D7 - Stormwater Quality*.

SEPP No. 26 - Littoral Rainforests

The aim of this Policy is to provide a mechanism for the consideration of applications for development that is likely to damage or destroy littoral rainforest areas with a view to the preservation of those areas in their natural state.

As detailed within this report the site is substantially devoid of vegetation, however, the site adjoins a designated zone 7(a) Environmental Protection (Wetlands and Littoral Rainforest) zone. It is considered unlikely that the proposal will impact on vegetation within the adjoining lot however a number of conditions will be applied to the consent to ensure that suitable management measures are in place.

It is considered that the proposal is consistent with the intentions of this clause.

SEPP No. 44 - Koala Habitat Protection

The eastern portion of the site is classified as Secondary (A) Koala Habitat within the Koala Habitat Mapping 2010, as shown in the following snapshot:



Extract of Council's GIS aerial imagery showing eastern portion of the site nominated as Secondary (A) Koala habitat

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas and ensure a permanent free-living population over their present range and reverse the current trend of population decline.

However, due to the restrictive extent of area of vegetation on the site and lack of scheduled Koala habitat trees, this site is not considered to support potential/core Koala habitat.

SEPP No. 55 - Remediation of Land

SEPP 55 states that a detailed investigation is only necessary when a preliminary investigation indicates that the land is contaminated or that it is, or was, formally used for an activity listed in Table 1 and a land use change is proposed that has the potential to increase the risk of exposure to land contamination.

Council's Environmental Health Unit has advised that a potentially contaminating activity is currently occurring on the site however it is considered unlikely that the proposal will result in disturbing materials associated with the service station. No further information is required in respect of land contamination.

SEPP 64 - Advertising and Signage

Details of proposed signage have not been received. The display of signage in association with a boat storage facility would be a permissible form of development. Should the application be approved details of signage will be requested prior to the release of the Construction Certificate. Such signage should be in keeping with the existing amenity and visual character of the area; is not to compromise views and will not impact on surrounding residential amenity.

SEPP No 71 – Coastal Protection

The provisions of SEPP 71 apply as the site is located within the coastal zone. Having regard to the matters contained within the SEPP, the following comments are made:

- The site is landward of the identified coastal erosion zones and will not be affected by coastal erosion processes;

- The proposed development will not overshadow foreshore open space;
- The proposed development will not affect public access to the beach or foreshore areas;
- The proposed development will not impact upon marine habitats;
- The proposed development will not impact upon threatened species of flora or fauna as listed under the Threatened Species Conservation Act 1995;
- The site is serviced with water, sewer, and stormwater infrastructure.

It is considered the proposed development is consistent with the provisions of the SEPP including but not limited to Clause 8.

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

As detailed within this report, the site is located within the B4 Mixed Use zone within the Tweed LEP 2014. This Plan was formally gazetted on 4 April 2014. The objectives of the B4 Mixed Use zone are as follows:

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

The proposed development would be defined as a 'Marina' within the Tweed LEP 2014 as follows:

marina means a permanent boat storage facility (whether located wholly on land, wholly on a waterway or partly on land and partly on a waterway), and includes any of the following associated facilities:

- any facility for the construction, repair, maintenance, storage, sale or hire of boats,*
- any facility for providing fuelling, sewage pump-out or other services for boats,*
- any facility for launching or landing boats, such as slipways or hoists,*
- any car parking or commercial, tourist or recreational or club facility that is ancillary to the boat storage facility,*
- any berthing or mooring facilities.*

A marina is a prohibited form of development in the B4 Mixed Use zone, as is a service station.

The applicant advises that the Tweed LEP 2014 'contains a savings provision at Clause 1.8A which provides that if a Development Application has been made before the commencement of the Draft Plan and the application has not been finally determined before the Plan commences, the application must be determined as if the Plan had been exhibited but had not commenced'.

Although the Tweed LEP 2014 contains a savings provision for development applications made before commencement of this plan, the subject application must have regard to the provisions of this document as a proposed instrument

pursuant to Section 79C (1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*.

There are various legal precedents created under the NSW Land and Environment Court that require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted.

On this basis the permissibility and objectives of the B4 zone must be taken into consideration and are critical to the determination of this application.

The applicant has provided a limited justification with regard to the permissibility of the proposal against Tweed LEP 2014, stating in the original SEE that the proposal relied on existing use rights for the purposes of general storage. However, as previously detailed, it is considered that existing use rights for general storage purposes have not been adequately demonstrated for the land parcels the subject of this application. On this basis the applicant requested to formally amend the proposal to delete all reference to storage units for general purposes and now seeks boat storage only.

Of key importance in the determination of this application is that two development applications have been received by Council for similar land uses within the vicinity of the site (both located in the B4 Mixed Use Zone), being DA13/0383 for the redevelopment of 'Jenners Corner' incorporating a boat showroom, boating facility, cafes and caretakers residence and DA13/0502 that also seeks a boat storage facility and caretakers residence in Chinderah.

Councillors resolved to approve DA13/0502 at the Council Meeting of 5 June 2014 however DA13/0383 is yet to be determined. It is noted that both applications have been recommended for approval as it was considered that the proposed developments are appropriate and accord with the objectives of the B4 zone.

In respect to the subject application, it is noted that the locality comprises a wide range of varying uses with a service station, indoor sports centre, storage units, transport depots, caravan parks and residential development being in close proximity to the subject site. It is also noted that the site is located in close proximity to the Tweed River and various boat ramps within the locality. On this basis it is considered that the proposal would provide a compatible land use, in accordance with the first primary objective of the zone.

It is also considered that the proposal will provide for 'other development' in an accessible location, being in close proximity from the Pacific Highway. Further, given the variety of land uses in the locality (such as caravan parks, service station, storage units, fitness centres and residential development), it is considered that the area currently provides for the integration of suitable business and residential uses. Therefore, it is considered that the proposal is broadly consistent with the second primary objective of the zone. Approval of the application is therefore recommended based on the consistency on the proposed development and with the objectives of the zone.

The proposed development does not raise any significant implications in respect to the provisions of the Tweed LEP 2014 that have not been considered elsewhere within this report, such as the preservation of trees and vegetation (Clause 5.9) and bushfire hazard reduction (Clause 5.11).

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

Tweed Development Control Plan

A2-Site Access and Parking Code

DCP A2 provides for the consideration of on-site access and vehicle and bicycle parking, along with the provision for deliveries (loading/unloading) as relevant, to ensure that sufficient facilities are provided and the road network is not compromised, whilst ensuring consistency with ESD principles. In respect to 'outdoor storage units' the DCP A2 requires:

- 10 per cent of the site for parking and access lanes but not included in staff parking;
- Minimum one space for an articulated vehicle (minimum 19m in length);
- No figures are included specifically for customer or staff parking.

DCP A2 also references 'mini storage units' that specify the following requirements for parking:

- Staff Parking – 0.5 per staff, minimum 2;
- Customer Car Parking – Parking to be provided adjacent to each unit, aisle widths to be sufficient to accommodate parking plus through traffic;
- Delivery, Service Vehicle Parking – 1 per 200 square metres heavy rigid vehicle.

It is noted that the applicant has addressed car parking in relation to 'mini storage unit' car parking requirements under DCP A2, providing the following statement:

'Aisle widths proposed are 9m which is sufficient to accommodate car parking adjacent to each unit and allow through traffic. In summary, there is adequate site area available for compliance with car parking requirements'.

The aisle width between the proposed sheds is shown as 9m although shed numbers 35 to 51 are located 3m from the southern boundary, which is considered acceptable for one-way traffic only. The 9m wide aisle width is considered adequate for a parked car and the passing of two vehicles. A large hardstand manoeuvring area is shown north of shed numbers 1 to 15, which is considered adequate for manoeuvring for a heavy rigid or articulated vehicle.

The majority of the site subject to the proposed development is concrete with some areas of gravel. The areas which have been designated as car parking or hardstand manoeuvring areas are generally hard stand areas with a concrete surface. A condition of consent will be applied to ensure that the 3m wide aisle is designated as one-way only.

A3-Development of Flood Liable Land

The site is flood prone with a design flood level of RL 2.5m AHD - RL 3m AHD. The applicant advises that no filling of the site is proposed as the site has levels ranging from RL 1.5m AHD to approximately RL 2.6m AHD and currently drains toward Chinderah Bay Drive.

DCP A3 states that where on flood liable land, no work may be commenced until a certificate of structural adequacy with regard to stability as a result of flooding has been submitted by a qualified structural/civil engineer. A condition will be applied with this regard.

The development comprises the construction of open storage sheds only and therefore would be unlikely to present and significant implications in respect to flooding, with flood waters being able to move freely through the site. Conditions will be applied to the consent to ensure that a suitable Flood Management Plan (FMP) is submitted to Council for approval prior to the issue of a Construction Certificate. The FMP is to include details of how the site and storage will be managed in the event of a flood and to ensure that a process is in place to inform customers that the storage area is susceptible to flooding.

A4-Advertising Signs Code

As detailed in this report, details of signage have not been received and further detail will be requested via a condition of consent.

A11-Public Notification of Development Proposals

The application did not require notification in accordance with DCP A11. Therefore, no submissions have been received.

A13-Socio-Economic Impact Assessment

Section A13.5.1 of DCP A13 illustrates the types of proposals which require the preparation of a Social Impact Assessment (SIA). The proposal does not exceed the threshold trigger for the preparation of a SIA, therefore a SIA is not required.

A16 - Preservation of Trees and Vegetation

The subject site is covered by DCP A16. However, as detailed within this report, as the site is largely devoid of significant vegetation it is considered that the proposal does not raise any matters of concern with this regard. Suitable conditions will be applied to ensure that the proposal does not impact on the adjacent land that comprises significant and environmentally sensitive vegetation.

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

Clause 92(a) Government Coastal Policy

The site is covered by the Government Coast Policy (The NSW Coastal Policy 1997). It is considered that the proposal would be consistent with the provisions of the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

The application does not propose any demolition works.

Clause 93 Fire Safety Considerations

Council's Building Unit have advised that the application satisfies the relevant requirements and appropriate conditions have been recommended to ensure all works comply with this regard.

Clause 94 Buildings to be upgraded

This clause is not applicable as there are no existing buildings on the site that will require to be upgraded.

Schedule 3 (Designated Development)

Part 1, 23 - Marinas or other related land and water shoreline facilities reads as follows:

- (1) *Marinas or other related land or water shoreline facilities that moor, park or store vessels (excluding rowing boats, dinghies or other small*

craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hardstand areas:

- (a) that have an intended capacity of 15 or more vessels having a length of 20 metres or more, or*
 - (b) that have an intended capacity of 30 or more vessels of any length and:
 - i. are located in non-tidal waters, or within 100 metres of a wetland or aquatic reserve, or*
 - ii. require the construction of a groyne or annual maintenance dredging, or*
 - iii. the ratio of car park spaces to vessels is less than 0.5:1, or**
 - (c) that have an intended capacity of 80 or more vessels of any size.*
- (2) Facilities that repair or maintain vessels out of the water (including slipways, hoists or other facilities) that have an intended capacity of:*
- (a) one or more vessels having a length of 25 metres or more, or*
 - (b) 5 or more vessels of any length at any one time.*

The applicant has advised the following with this regard:

'The proposed development is properly characterised, for the purposes of permissibility, as development for the purposes of a boating facility. That definition is included in TLEP2000. The boating facility component involved in this case is dry storage for boats.

Schedule 3 in relation to marinas only applies if the application is in respect of land or water shoreline facilities that moor, park or store vessels that are related to a marina. Clearly, the proposed development is not related to a marina and therefore the clause does not apply. In addition, the proposal does not involve storage of vessels within "dry storage stacks" or on "cradles on hardstand areas". The storage will be in carport type structures requiring boats to be stored on trailers so that they can be readily towed by motor vehicles. Even if the application were caught by the first part of this Clause, it is not caught by the second part.'

In relation to subclause (1) the applicant further advises the following:

- a) Boats of more than 20m in length will not be stored;*
- b) Potentially more than 30 boats could be stored however this is not relevant as the proposed development is not caught by subclause 1 as discussed above;
 - i. the site is not located in non-tidal waters but is within 100m of a SEPP No. 14 wetland however this is irrelevant as the proposed development is not caught by subclause 1 as discussed above regarding the type of boat storage proposed;*
 - ii. The proposal will not require the construction of groynes or maintenance dredging;**

- iii. The ratio of car park spaces to vessels is not less than 0.5:1 (parking spaces are provided informally adjacent to each of the storage bays);
- c) The intended capacity is not more than 80 vessels (69 storage bays in total).

In respect to subclause (2) the applicant advises that the facility does not include the repair or maintenance of vessels out of the water and therefore parts (a) and (b) are not applicable.

The applicant's justification in respect to Schedule 3 of the Regulation is considered to be acceptable and on this basis the proposed development is not classified as Designated Development.

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

Tweed Shire Coastline Management Plan 2005

Not applicable to the development proposal.

Tweed Coast Estuaries Management Plan 2004

Not applicable to the development proposal.

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

Not applicable to the development proposal.

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

Context and Setting

The site and surrounding land is zoned 3(d) Waterfront Enterprise with a mixture of land uses within close proximity to the site including a service station, indoor sports centre, storage units and residential development. Within the Chinderah locality there are a variety of land uses including caravan parks, cafes, a bottle shop and pub and commercial boat hire.

It is acknowledged that the proposed storage sheds would be of a simple, utilitarian design constructed of Colourbond sheet roofing. However, the proposed structures would be relatively low profile (being a maximum of 3.2m in height) and would be open on all sides. The proposed sheds would also be setback by approximately 30m from the road.

Given the nature of built development within the vicinity of the site and the presence of the BP service station and other industrial style buildings, it is considered that the proposal would neither detract nor harm the visual amenity or character of the area. This is particularly prevalent given the location of the proposed development currently comprises hardstand areas used informally for truck parking.

Flora and Fauna

Matters relating to flora and fauna have been considered within this report. However, to summarise whilst vegetation is largely absent across the majority of the site, it is considered that the edge of a connected remnant tract of vegetation (considered representative of a candidate Endangered Ecological Community

(EEC), SEPP 14 coastal wetland and Secondary Koala habitat) extends within the eastern boundary of the site, as shown below:



Extract of Council's GIS aerial imagery indicating vegetation overhanging and present within the eastern boundary of the site

The applicant was requested to demonstrate that the removal of vegetation may be avoided and that the potential EEC is afforded adequate protection in the longer term. Clarification was also required to ensure that the ecological values of the adjoining 7(a) Environmental Protection (Wetlands and Littoral Rainforest) land are not to be negatively affected during the construction and operational phase of the proposed development.

The applicant has amended the proposed layout plan to provide for a setback between existing vegetation and the proposed storage sheds. Furthermore, the applicant has agreed to provide, within this setback, a 6-7.8m Ecological Setback/Buffer Zone to be taken from the rear (eastern) property boundary.

The establishment of an Ecological Setback/Buffer Zone will avoid any direct impact or disturbance to significant vegetation occurring onsite and that any indirect impacts on the adjoining wetland within Lot 19 would be adequately mitigated.

Conditions will be applied to the consent to ensure that no vegetation is to be disturbed during construction on any future fence-line on the common boundary between the subject site and Lot 19 without prior approval. Temporary tree fencing shall be erected prior to commencement of works along the westernmost boundary of the site and access to these areas is to be restricted during construction; and a landscaping plan shall be submitted to Council prior to the issue of a construction certificate for the nominated Ecological Setback/Buffer Zone.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The submitted application provided limited information in respect to potential impacts on amenity associated with the use of the storage sheds. It is acknowledged that semi-trailers and other vehicles currently park at the site, however, the use of the 69 storage bays is considered to be an intensification of the use of the site, which may adversely impact on local amenity.

There are a number of dwellings within the vicinity of the subject site; the nearest affected dwelling being approximately 70m from the south western storage shed.

It is considered that the potential use of the storage sheds late at night and during the early hours of the morning may result in sleep disturbance. On this basis, the applicant was requested to nominate appropriate hours of operation.

In response, the applicant has advised that proposed operating hours are from 6am to 9pm seven days a week. Considering the existing uses on the site including a 24 hour service station, the proposal is not anticipated to impact on surrounding land uses. Standard conditions in respect to hours of operation are to be applied.

The proposed work has the potential to cause noise and dust impacts at adjacent premises during construction. It is considered that such potential impacts may be managed via appropriate conditions.

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

The application did not require notification. Comments and conditions have been received from the NSW RFS that will be included as conditions of the consent.

(e) Public interest

The nature and scale of the proposal is relatively minor and given the nature of development in the area it is considered that the proposal would not be out of character with the surrounding area. It is considered that the approval of the application would not raise any implications in respect to the public interest.

OPTIONS:

Councillors may resolve to:

1. Approve the application with recommended conditions of consent in accordance with the recommendation of approval; or
2. Refuse the application and provide reasons for refusal.

Council officers recommend Option 1.

CONCLUSION:

The proposed development, as amended, would have been permissible in the 3(d) Waterfront Enterprise zone under the provisions of the Tweed LEP 2000. The proposal is also considered to be consistent with relevant environmental planning instruments and Council policy requirements. Whilst the proposed development is no longer permissible under the provisions of the Tweed LEP 2014, it is considered that the proposal would not be inconsistent with the objectives of the B4 Mixed Use zone.

The proposed development is considered to be appropriate for the subject site, being located in close proximity to an existing service station and other similar industrial style buildings and open storage sheds. It is also considered that the proposal would be unlikely to impact on surrounding residential amenity.

As such it is considered that the proposed development is acceptable, provided the development is carried out in accordance with the recommended conditions of consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0267 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This application was previously reported to Council's Planning Committee Meeting held Thursday 6 February 2014 and at that meeting the following was recommended:

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

Following this meeting the applicant provided amended plans on 29 April 2014 providing additional information. This has been assessed below.

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, this application is reported to Council.

The SEPP No. 1 variation relates to Clause 16 of the Tweed Local Environmental Plan 2000 (TLEP 2000) which prescribes a two-storey height limit for the site. The degree of horizontal variation is 78% which is the entire third storey. The proposal complies with the building height provisions of the recently gazetted Tweed Local Environmental Plan 2014.

The application requires concurrence pursuant to SEPP No. 1. However, Council has an instrument of assumed concurrence for this purpose and it was therefore not necessary to refer the application to the Department of Planning and Infrastructure (DP&I) for concurrence purposes.

The proposal was required to be placed on public exhibition. Three objections were received during the exhibition period. Matters raised within the submissions have been addressed by the applicant and considered in the assessment of the proposal.

It is considered that the applicant has satisfactorily addressed the concerns that prompted the deferral of this Development application through amended plans, and the application is now suitable for approval, subject to conditions.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- B. Development Application DA13/0267 for the demolition of existing building and construction of 3 storey multi-dwelling housing development incorporating 7 units plus basement parking at Lot 27 DP 21680 No. 42 Sutherland Street Kingscliff be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:-**
 - 01 - Basement/Carpark Plan dated 8/4/2014;**
 - 02 - Ground Floor Plan dated 8/4/2014;**
 - 03 - First Floor Plan dated 8/4/2014;**
 - 04 - Second Floor Plan dated 8/4/2014;**
 - 05 - Roof Plan dated 8/4/2014;**
 - 06 - Elevations dated 8/4/2014;**
 - 07 - Elevations dated 8/4/2014;**
 - 08 - Sections dated 8/4/2014;**

prepared by KAS Studio, except where varied by the conditions of this consent.

[GEN0005]
- 2. 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]
- 3. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.**

[GEN0265]
- 4. Waste management on the site shall be carried out in accordance with the approved Waste Management Plan prepared by Darryl Anderson Consulting Pty Ltd, project no: SFE12/77- November 2013.**

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

[PCC0485]

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 undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

(a) Vehicular access

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

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

[PCC0895]

7. Any sheet piling that utilises ground anchors that extend under public roads or land must not be used unless the applicant or owner enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

The use of temporary or permanent ground anchors under the adjoining residential properties is not permitted.

[PCC0955]

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

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

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

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

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

Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC1145]

10. 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]

11. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the S68 stormwater application.

[PCC1165]

12. **Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.**

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.

[PCC1185]

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

[PCC1195]

14. **Egress from the basement carpark is to be altered to comply with Part D of the Building Code of Australia.**

[PCCNS01]

15. **The design of the ramp into the basement carpark is to comply with AS2890.1 - Part 1 off street car parking, including grade transitions to avoid bottoming or scraping of vehicles. A compliant ramp in accordance with AS2890.1 is to be detailed in the application for a Construction Certificate.**

[PCCNS02]

16. **Prior to the issue of a Construction Certificate, an amended plan demonstrating that a minimum driveway head height of 2200mm is achieved, shall be submitted for approval by the Principal Certifying Authority.**

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

17. **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]

18. **The erection of a building in accordance with a development consent must not be commenced until:**

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

- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

20. 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]

21. 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]

22. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

23. 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]

24. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings / sites, infrastructure, roads and driveways are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to Council prior to commencement of ANY works on the site.

[PCW0775]

25. 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]

26. 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]

27. A piling management plan is to be provided prior to commencement of works to address the proposed construction/excavation/piling requirements for the proposed development. The plan is to address the following:

- a) Detail on the proposed piling method for the excavated basement carpark.
- b) The piling method is to address the impact of piling on adjoining and surrounding properties.
- c) Dilapidation reports for the surrounding properties prior to piling works.
- d) Predicted noise levels and mitigation measures to address both noise and vibration issues.
- e) Length of time for piling activities.
- f) Appointment of a community liaison officer to manage complaints from adjoining residents. Contact details of the community liaison officer are to be clearly provided on signage in a prominent position on the site safety fence.

DURING CONSTRUCTION

28. 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]

29. 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]

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

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

[DUR0645]

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

[DUR0815]

33. 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]

34. 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]

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

[DUR1795]

36. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to any use or occupation of the buildings.

[DUR1875]

37. 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]

38. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.2 - 2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.**
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.**
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.**
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.**
- (e) Once your pool or spa is complete please register it at www.swimmingpoolregister.nsw.gov.au.**

[DUR2075]

39. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

40. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

41. 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]

42. **Plumbing**

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.

- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

43. 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]

44. 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]

45. **Section 94 Contributions**

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

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

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

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

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

(a) Tweed Road Contribution Plan: 7.8 Trips @ \$1176 per Trips (\$1,137 base rate + \$39 indexation) S94 Plan No. 4 Sector6_4	\$9,173
(b) Open Space (Casual): 2.0848 ET @ \$543 per ET (\$502 base rate + \$41 indexation) S94 Plan No. 5	\$1,132
(c) Open Space (Structured): 2.0848 ET @ \$622 per ET (\$575 base rate + \$47 indexation) S94 Plan No. 5	\$1,297
(d) Shirewide Library Facilities: 2.0848 ET @ \$838 per ET (\$792 base rate + \$46 indexation) S94 Plan No. 11	\$1,747
(e) Bus Shelters: 2.0848 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	\$133
(f) Eviron Cemetery: 2.0848 ET @ \$123 per ET (\$101 base rate + \$22 indexation) S94 Plan No. 13	\$256
(g) Community Facilities (Tweed Coast - North) 2.0848 ET @ \$1389 per ET (\$1,305.60 base rate + \$83.40 indexation) S94 Plan No. 15	\$2,896
(h) Extensions to Council Administration Offices & Technical Support Facilities 2.0848 ET @ \$1860.31 per ET (\$1,759.90 base rate + \$100.41 indexation) S94 Plan No. 18	\$3,878.37
(i) Cycleways: 2.0848 ET @ \$473 per ET (\$447 base rate + \$26 indexation) S94 Plan No. 22	\$986

- (j) **Regional Open Space (Casual)**
2.0848 ET @ \$1091 per ET **\$2,275**
(\$1,031 base rate + \$60 indexation)
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
2.0848 ET @ \$3830 per ET **\$7,985**
(\$3,619 base rate + \$211 indexation)
S94 Plan No. 26

[POC0395/PSC0175]

46. 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 DSP5:	2 ET @ \$12575 per ET	\$25,150
Sewer Kingscliff:	2.5 ET @ \$6042 per ET	\$15,105

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/PSC0165]

47. **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.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the

current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

[POC0715]

48. Upon completion of all works on the site and prior to the issue of an Occupation (including interim)/Subdivision Certificate, a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and provide to Council the written acceptance of the adjoining/adjacent owners confirming agreement that no damages have occurred/repairs carried out are acceptable.

[POC0825]

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

[POC0985]

50. All car parking spaces are to be nominated as small parking spaces as required by Australian Standard AS2890.1 - Off street car parking, prior to

the issue of an occupation certificate (including interim occupation certificate).

[POCNS01]

USE

- 51. Swimming pool pumps, 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]

REPORT:

Applicant: Sfeir & Associates Investments Pty Ltd
Owner: Sfeir & Associates Investments Pty Ltd
Location: Lot 27 DP 21680 No. 42 Sutherland Street, Kingscliff
Zoning: 2(b) Medium Density Residential (TLEP2000)
Cost: \$1,350,000

Background:

Council is in receipt of a development application for the demolition of an existing building and construction of a three storey multi-dwelling housing development incorporating seven units plus basement parking on a parcel of land zoned 2(b) Medium Density Residential.

History

The history which pertains to the site is as follows:

- Building Application number 59-52 - Flats approved 1959 (prior to IDO 1964)
- Permit number 2871 - Extensions to existing flats approved 21/08/1972
- K98/0619 - application to change shop to residential flat approved 19/01/1999

The existing structure is proposed to be demolished.

Amendment

This report went to Council's Planning Committee Meeting held Thursday 6 February 2014 and at that meeting the following was recommended:

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

Following this meeting the applicant submitted amended plans on 29 April 2014 providing additional information. The amendments were as follows:

- The car park was amended to allow for an extended ramp length and to provide the required number of car parking spaces as per Tweed DCP 2008, Section A2;
- The basement floor level has been raised and an adjustment to the floor slab of Unit 5 has been made to accommodate the revised driveway ramp grade;
- The ground floor level apartments have been setback 4.67m from the Hungerford Lane frontage;
- An amendment has been made to the area adjacent to the driveway in order to provide clear sight triangles for vehicles exiting the basement to ensure pedestrian safety;
- The building at the first floor level has been setback a further 800mm. Apartments 3, 4 and 5 have been reconfigured slightly to allow for the increased building setback; and
- Unit 3 has been changed from a two bedroom to one bedroom unit.

Councillor Concerns

A number of issues were raised prior to the report going to the February Planning Committee Meeting. The matters were referred to the applicant for response. The following was received:

Driveway Gradient

"It was raised to me that the steep slope of the basement driveway could be dangerous especially for pedestrians as the drivers may not be able to see over the cars bonnet's as they exit and there are no footpaths in this lane."

and

"Is the gradient of this driveway slope in accordance with relevant policies including in these types of lane situations?"

and

"The issue that has been raised with me is to do with safety and vision. It has been suggested that the very steep driveway will mean that the vision for a driver coming from the driveway will not be easily able to see oncoming traffic."

Applicant's Response

"The driveway has been reviewed by the Project Architect and the grades amended as shown on the attached plan. The Project Architect has advised that the driveway gradient complies with the Australian Standard. This amendment, together with spays provided adjacent to the driveway, will provide drivers exiting the basement with a clear view of pedestrians or other traffic."

Stormwater to Basement

"It was also suggested that storm water infiltration /flooding of the basement could be a serious problem. Has this been adequately addressed?"

Applicant's Response

The basement is located above the invert of the kerb and channel located within Hungerford Lane. The basement is to be provided with a normal sump and pump arrangement to facilitate the removal of water from the basement. This is not considered to be an issue. Refer to the Stormwater Management Plan for additional information.

Excavation/Basalt Rock

"The ability to achieve the levels of cut required for this car park excavation was also queried due to basalt advised to be occurring at around 2m deep in this Sutherland St area. Has this issue been investigated? If basalt occurred at the similar 2m levels at this site it was advised blasting would need to occur which could compromise neighbouring residences."

Applicant's Response

The Geotechnical Investigation Report which accompanies the Development Application indicates that highly/extremely weathered basalt occurs at approximately 5.5m depth below the existing surface levels.

This is not a constraint as the basement is predominantly above this material and the weathered basalt has "extremely low" to "very low" strength and may be removed using conventional excavation methods.

Hungerford Lane Elevation

"The Hungerford Lane elevation is apparently deliberately drawn with an eye height of zero metres - to conceal the actual presentation of the building facade to street pedestrians as 4 storeys (including the conspicuous 6m wide garage frontage). This effect can be viewed at 34 Sutherland St - supposedly 2 storeys, but presenting to the lane as three."

Applicant's Response

The Hungerford lane elevation is correct. The elevation clearly shows the three levels above ground level and indicates the extent of the basement (below ground level) in broken lines. This is normal practice for Architectural Plans.

Building Frontage Setback

"The dwg. representation of the building frontage setback at 3m is also misleading as regards sight lines affected by visual setback which is in reality only 1.5m including sight screens, Is this approved as a desirable precedent for the street?"

Applicant's Response

"The building has a frontage setback to Sutherland Street of 4m (to wall), replacing the present building which has a zero setback and awing extending into the road reserve.

The proposed building provides a greater setback to the rear lane at ground level and first floor level of 7.745m and 7.085m respectively where the narrow width of the laneway will benefit from the additional setback. The rear setback is reduced at the second floor level to 4.67m where it is at a height of over 6m above the laneway pavement. A feature beam is located with a 2.42m setback."

Light and Ventilation

"Light & air (esp. after similar adjacent development proceeds) will be very poor in Units 2 to 5 - particularly kitchens - which receive no natural light."

Applicant's Response

"Proposal complies with the requirement of Tweed DCP 2008, Section A 1 and Building Code of Australia requirements for light and ventilation."

Vents and Air Conditioning

"External vents, fans & motors: Expect all units will eventually install aircon split system units - perhaps one on each level - a total of 14 future systems - all likely on the northern side. There should be provision in each unit now for visual and noise screening for these devices.

The carpark is legally required to have permanent ducted ventilation for safety purposes. Where is the exhaust stack for this? Are there also exhaust stacks for venting unit wet areas and kitchen flues? If so where? Is there a lift over-run? If so, where?"

Applicant's Response

The Project Architect has provided the following comment:

"Refer to Basix Report Pg9/15 - ALL heating & cooling to be centralised throughout - meaning no split system units. Permanent ducted ventilation is quantified on size of basement car park, depth & application/context - if stack is required, it can be located in a position outside in common area. Exhaust stack s(grills) for kitchen rangehood & wet areas - this is a minor decision that can be reviewed at the CC stage. A Hydraulic Lift can be used - which will minimise the shaft size, pit depth and over-run required."

Eaves to South

"Absence of eaves over windows & doors on the southern elevation? This is the predominant wind and rain direction in Kingscliff."

Applicant's Response

The Project Architect has provided the following comment:

"There is no requirement for eaves for this facade however we believe the curtain wall system, will provide a more than sufficient barrier against elements such as wind and rain."

Location of Retaining Wall

"I cannot understand the elevations which show sidesteps down the western side with no boundary retaining walls for the depressed side footpath."

Applicant's Response

"Refer to amended plans. Retaining wall along south boundary noted on Ground Floor Plan and Elevation Drawings. The height of retaining on the southern boundary is transitioned by the landscape planter beds to be located between the path and boundary."

Safety Fencing

"There seems a need for safety fencing omitted above the planting pit on the Sutherland street frontage."

Applicant's Response

"This is a Building Code of Australia issue that will be reviewed and if necessary addressed at the CC stage. Note that fencing is exempt development. This is not a significant issue."

Stormwater

"I don't think there has been much thought given to the detained & pumped stormwater & seepage discharge from the roof and from the basement carpark onto Hungerford Lane totally via street kerb outlets. The nearest gully pit is 100m away on substandard 0.2% grade gutters. The forced discharge for the entire site through multiple small diameter outlets will probably cross the crown to the other side of the street causing regular nuisance flooding. There may also be street discharge of filter backwash water from the lap pools."

Applicant's Response

"A rainwater tank is located in the basement to harvest stormwater. As per Council's normal requirement swimming pool backwash is discharged to sewer not stormwater. Please refer to stormwater Management Plan for information relating to stormwater."

Pedestrian Access

"Visitor & Pedestrian access. Residents of Units 1 to 6 gain access from the basement carpark by taking a lift to level 1 exiting to an uncovered external footpath and re-entering the building at ground level. There is no disabled access to the living areas of Units 2 to 6. This is very poor amenity."

Applicant's Response

The Project Architect has provided the following comment:

"We are positive that there is adequate disabled access via lift from basement car park to entry door of all Units 1-7 - for all residents & visitors. Access within the dwelling itself to another storey within the dwelling, would be at the discretion of the occupier."

Vehicular Access and Shared Zone

"If Council continues to approve medium density development access to Hungerford Lane without requiring any footpaths on this primary pedestrian corridor, it needs to think about making the lane a shared zone as vehicle/pedestrian conflict is increasing because of this practice."

Applicant's Response

"It is desirable to provide vehicular access from the laneway rather than a Sutherland Street. Hungerford Lane is a Council controlled road. Any decision to make it a shared zone is a matter for Council."

Bin Collection

"Garbage access - there is no arrangement for footpath bin (16 total) placement on collection days. Will all residents have to drag their 2 bins up the steep ramp?"

Applicant's Response

"The bin storage area is located in an enclosure adjacent to the Hungerford Lane frontage. Bins will be placed along the Hungerford Lane frontage for collection. Each bin is less than 600mm wide (worst case 14 bins out = 8.4m required). The kerbside frontage of the site is over 17m less 6m driveway = 11m available. Both bins collected only once a fortnight and even then it would be unlikely that all bins would be out. Every other week, only one bin would be placed out, which would require only 4m of frontage. The frontage is adequate to service the kerbside collection of bins."

Underpinning Adjoining Sites

"Underpinning of the adjoining properties should be a mandatory condition before commencement, given the very deep sand and boulder foundations that must be excavated almost to the boundary. Even so, it is hard to contemplate how adjoining property differential settlement might be controlled."

Applicant's Response

"The stability of adjoining properties during construction will depend on the construction and retention methods selected. This will be done in consultation with the Project Geotechnical Engineer. A condition requiring underpinning would be premature and unreasonable."

Access Comment

"The demonstrated deviances from AS2890 vindicate our original KRAPA submission on access safety and my own comments to Crs Milne & Armstrong. In regard to compliance, I think achieving a 20m internal romp length requires removal of most of the lower storeys of Apartments 5 & 6 plus 6 carparks (7, 8, 9, 15, 16, & J 7) which could be replaced with perhaps 2(?) only.

i.e. the defects cannot be simply solved with a new condition on the consent.

There are also other areas of AS2890 non-compliance wrt (sic) exit visibility etc which would probably be resolved by ramp compliance."

Applicant's Response

Refer to amended Application Plans. The Project Architect has provided the following comments in relation to the amended Application Plans.

"Amended drawings attached showing changes as follows..."

- *Basement FFL raised to 19.99RL to accommodate driveway grade.*

- *Feature facade projection to Ground Floor removed to accommodate head clearance above driveway."*

Gradients of Driveways

The driveway ramp has been designed in accordance with AS 2890.1 The B99 car template has also been used to ensure there is adequate ground clearance at grade changes.

As the Standard states... 'the minimum grade of 0 driveway ramp is not to exceed 1:4 with top & bottom change in grade to 1:8 for 0 length of 2.0m'

The design also ensures the minimum head clearance of 2.2m is achieved to the upper floor and door opening.

The use of pedestrian visibility splays have also been incorporated to the frontage to allow for better visibility leading out to the street."

The applicant's responses have been taken into consideration. It is considered that the amended plans have improved the functionality of the development. The gradient of the driveway now complies with the Australian Standards and conditions have been included within the recommendations to ensure compliance with the Australian Standards.

There have been alterations made to the units internally to ensure there is adequate car parking and improved liveability in each unit.

In regards to the Geotechnical issues raised by Councillors the report submitted with the original application advises that the basement is predominantly above this material and the weathered basalt has "extremely low" to "very low" strength and may be removed using conventional excavation methods. Conditions have been included within the recommendations in regards to a dilapidated report to be submitted in relation to the adjoining neighbours.

It is therefore considered that based on the above justification provided by the applicant it is considered appropriate to accept the amendments and recommend the application for approval.

The Subject Site

The property is of regular shape with a primary street frontage to Sutherland Street of 17.099m and a depth of 40.234m providing a total area of 688m². The site has a secondary frontage to Hungerford Lane.

The site slopes gently from Sutherland Street to Hungerford Lane and has an existing multi dwelling building of single and two storeys in height. Vehicular access to the site is obtained via Sutherland Street. Council's records do not indicate the site is affected by any title restrictions.

The site is situated within an established medium density residential area characterised by tiered single and multi-dwelling houses on steep sites that take advantage of ocean views. Two-storey multi-dwellings adjoin the site at 40 and 44 Sutherland Street with vehicular access from both Sutherland Street and Hungerford Lane.

The built character of the area is typical of an area under transition with a mix of old and new architectural styles and building construction. The site is currently within a two storey height limit however the draft Local Environmental Plan 2012 allows a maximum building height of 9m which the proposed development will comply with.

The Proposed Development

The proposed development comprises demolition of the existing structure on the site and the erection of a new three storey, multi dwelling housing development comprising a total of seven residential units with basement car parking for 13 vehicles.

LEVEL	DESCRIPTION	BEDROOMS
Basement	14 Car Spaces	-
Ground and Level 1	Landscape	-
	Unit 1	2
	Unit 2	2
	Unit 3	1
	Unit 4	2
	Unit 5	2
Level 2	Unit 6	3
	Unit 7	3
TOTALS	7 Units 13 Car Spaces	15 Bedrooms

Pedestrian access to the units is available from both street frontages along a path extending along the southern side of the building. Deep soil landscaping is provided at both street frontages.

Three-Storey Component of Proposal

The following is the original assessment but it is considered that the amended plans present no further issues in relation to the SEPP 1 as outlined below.

The meaning of 'storey' is defined in Schedule 1 of the TLEP 2000 as follows:

- storey* means:
- (a) the space between two floors, or
 - (b) the space between a floor and any ceiling or roof immediately above it, or
 - (c) foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between the finished ground level and the top of the floor immediately above them exceeds 1.5 metres in height.
- A storey which exceeds 4.5 metres for residential buildings is counted as two storeys.
- A storey which exceeds 5 metres for commercial buildings is counted as two storeys.
- For the purpose of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.

Accordingly, the starting point of the three-storey component of this proposal is clarified by determining the floor area extending to the rear of the ground level that exceeds 1.5m in height excluding access paths to basement areas. It is therefore considered that the proposed third storey is the subject of the SEPP No. 1 Objection.

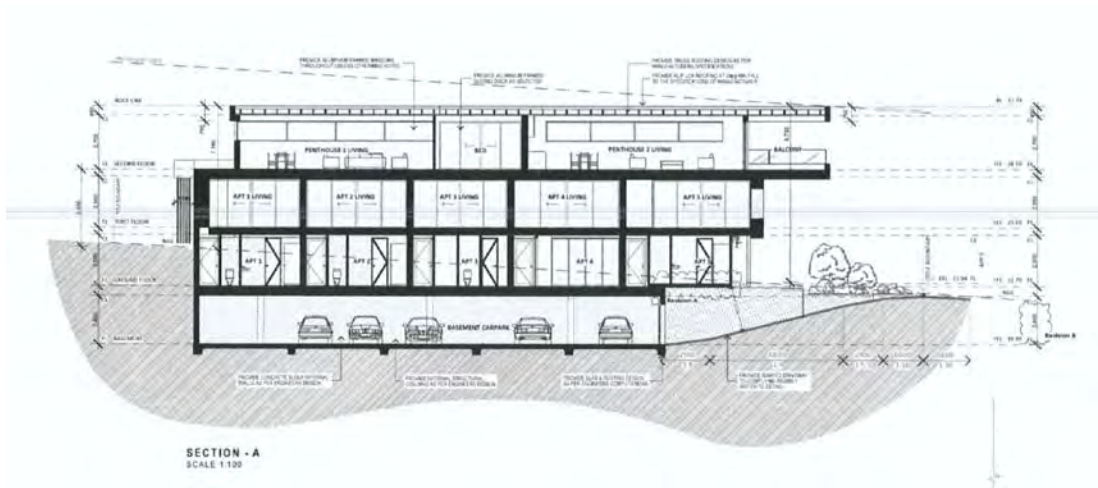


Figure 1: Section (southern elevation)

The visual impact of the three-storey component of the development is demonstrated in Figure 2 and 3 below. The third storey is approximately 26m long and the entire dwelling is 33.1m in length. This is therefore a non compliance area of approximately 78%. A SEPP No. 1 objection has been received and is outlined later in this report.



Figure 2 - Western Elevation

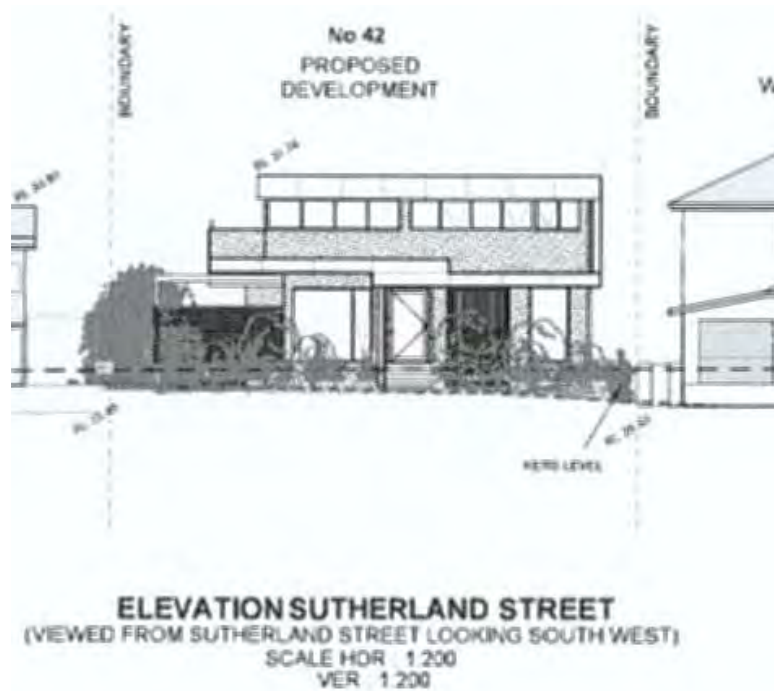


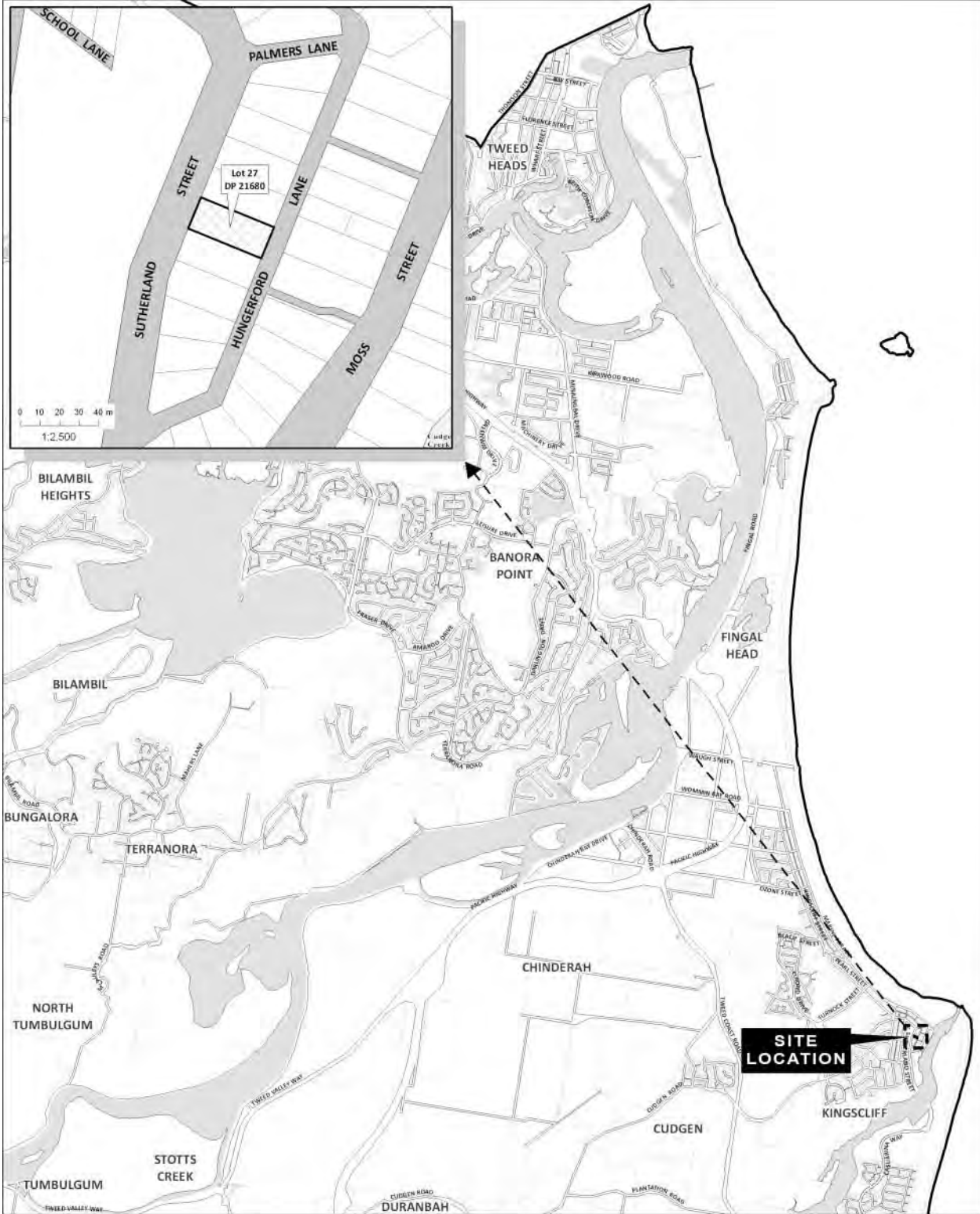
Figure 3 - Eastern Elevation

Summary


The proposal represents an increase in density on the site in line with the provision of the Medium Density zoning. The inclusion of an additional storey creates a portion that is identified as three-storey. However, at no point does the building exceed the proposed 9m building height limit for the site as outlined in the Tweed LEP 2014.

Visual impact of the proposal has been minimised through sensitive design and the continuing residential use does not conflict with adjoining land uses. Due to the recently gazetted Tweed Local Environmental Plan 2014 identifying the site as having a 9m height limit and the proposed development not exceeding this it is considered that the variation is acceptable in this instance. As such, the proposal is recommended for approval, subject to conditions.

SITE DIAGRAM:

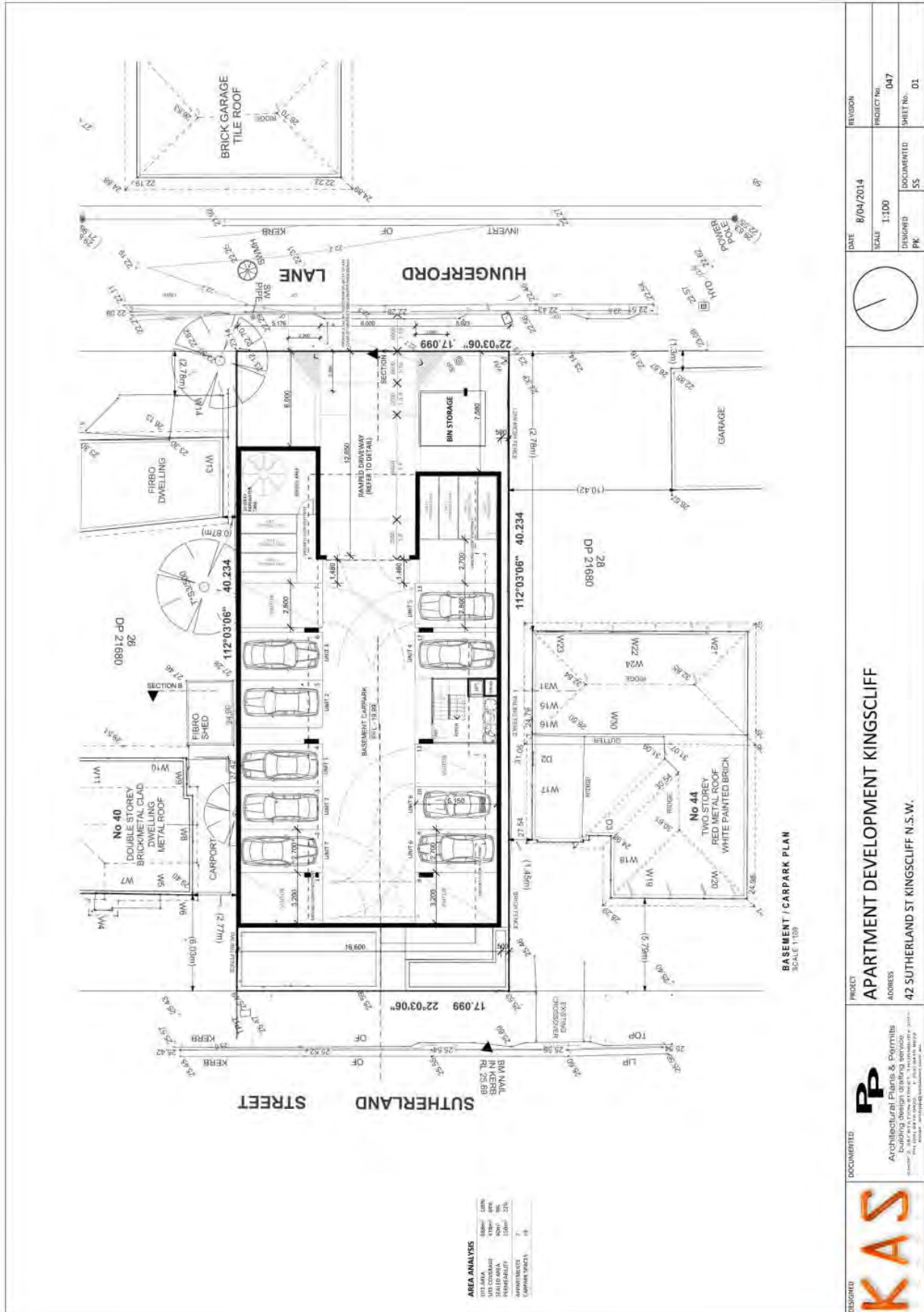


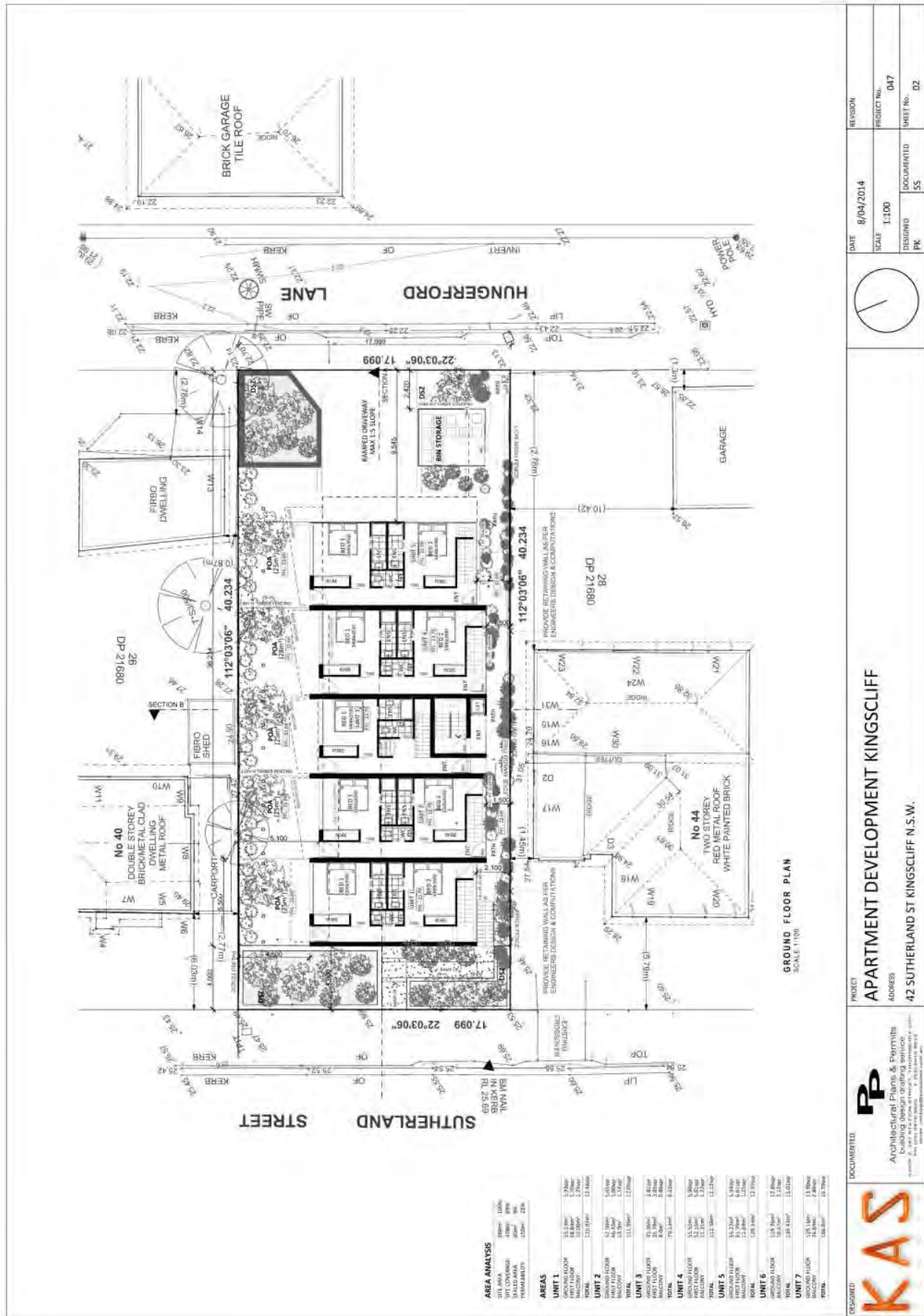
Locality Plan
 Lot 27 DP 21680
 No. 42 Sutherland Street, Kingscliff

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DEVELOPMENT/ELEVATION PLANS:

Amended Plans received by Council on 29 April 2014:





GROUND FLOOR PLAN
SCALE 1:100

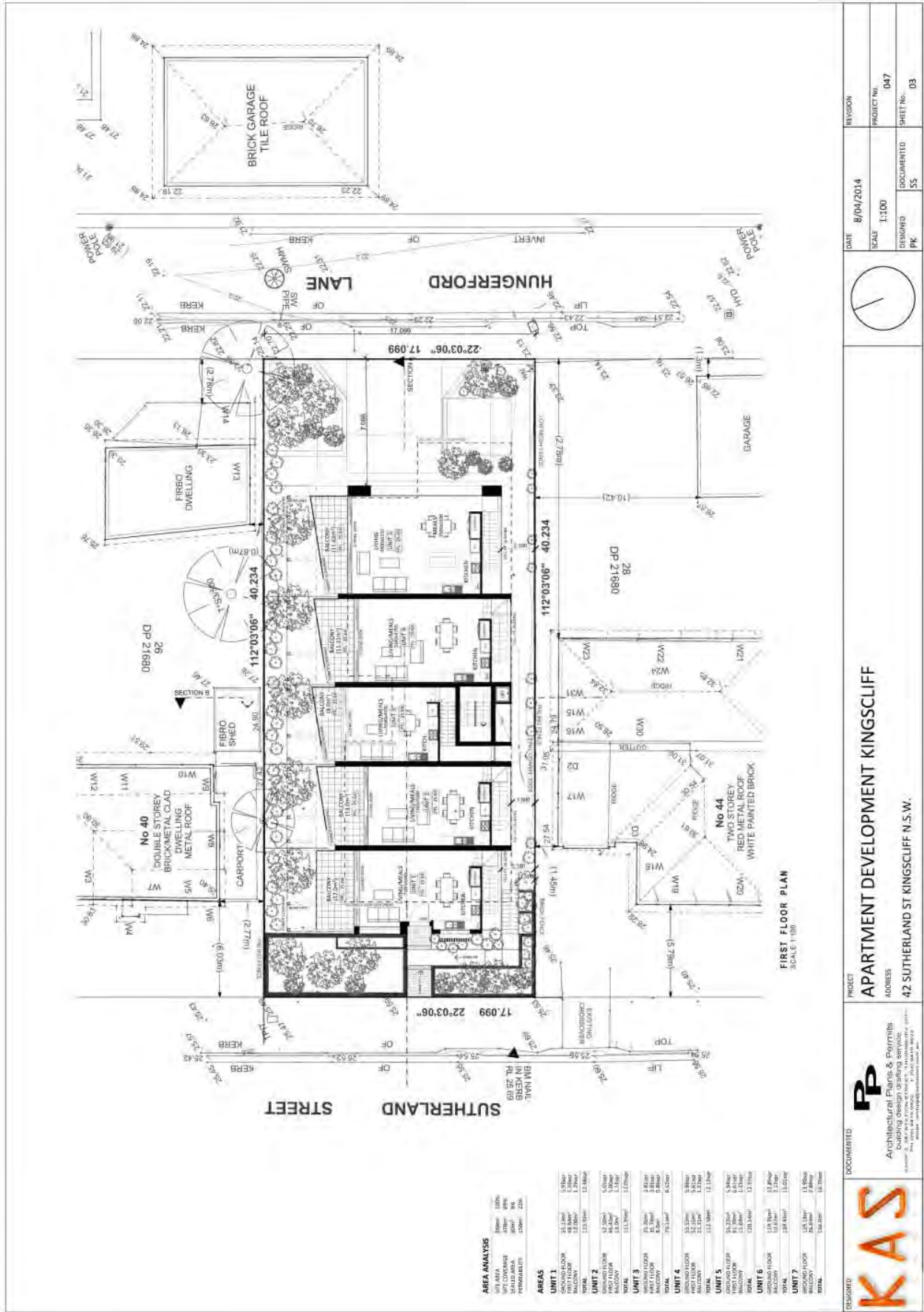
AREA ANALYSIS	
UNIT	AREA (sqm)
UNIT 1	15.20m ²
UNIT 2	15.20m ²
UNIT 3	15.20m ²
UNIT 4	15.20m ²
UNIT 5	15.20m ²
UNIT 6	15.20m ²
UNIT 7	15.20m ²
TOTAL	106.40m ²

DESIGNED BY **KAS**

DOCUMENTED BY **PP**
Architectural Plans & Permits
building design services

PROJECT: APARTMENT DEVELOPMENT KINGSCLIFF
ADDRESS: 42 SUTHERLAND ST KINGSCLIFF N.S.W.

DATE: 8/04/2014
SCALE: 1:100
DESIGNED BY: PK
DOCUMENTED BY: SS
REVISION: PROJECT No. D47, SHEET No. 02



AREA ANALYSIS

UNIT	GROUND FLOOR	FIRST FLOOR	TOTAL
UNIT 1	55.20m ²	5.92m ²	61.12m ²
UNIT 2	122.51m ²	12.48m ²	134.99m ²
UNIT 3	111.50m ²	11.70m ²	123.20m ²
UNIT 4	111.50m ²	11.70m ²	123.20m ²
UNIT 5	111.50m ²	11.70m ²	123.20m ²
UNIT 6	111.50m ²	11.70m ²	123.20m ²
UNIT 7	111.50m ²	11.70m ²	123.20m ²
TOTAL	634.71m ²	65.20m ²	700.00m ²

KAS

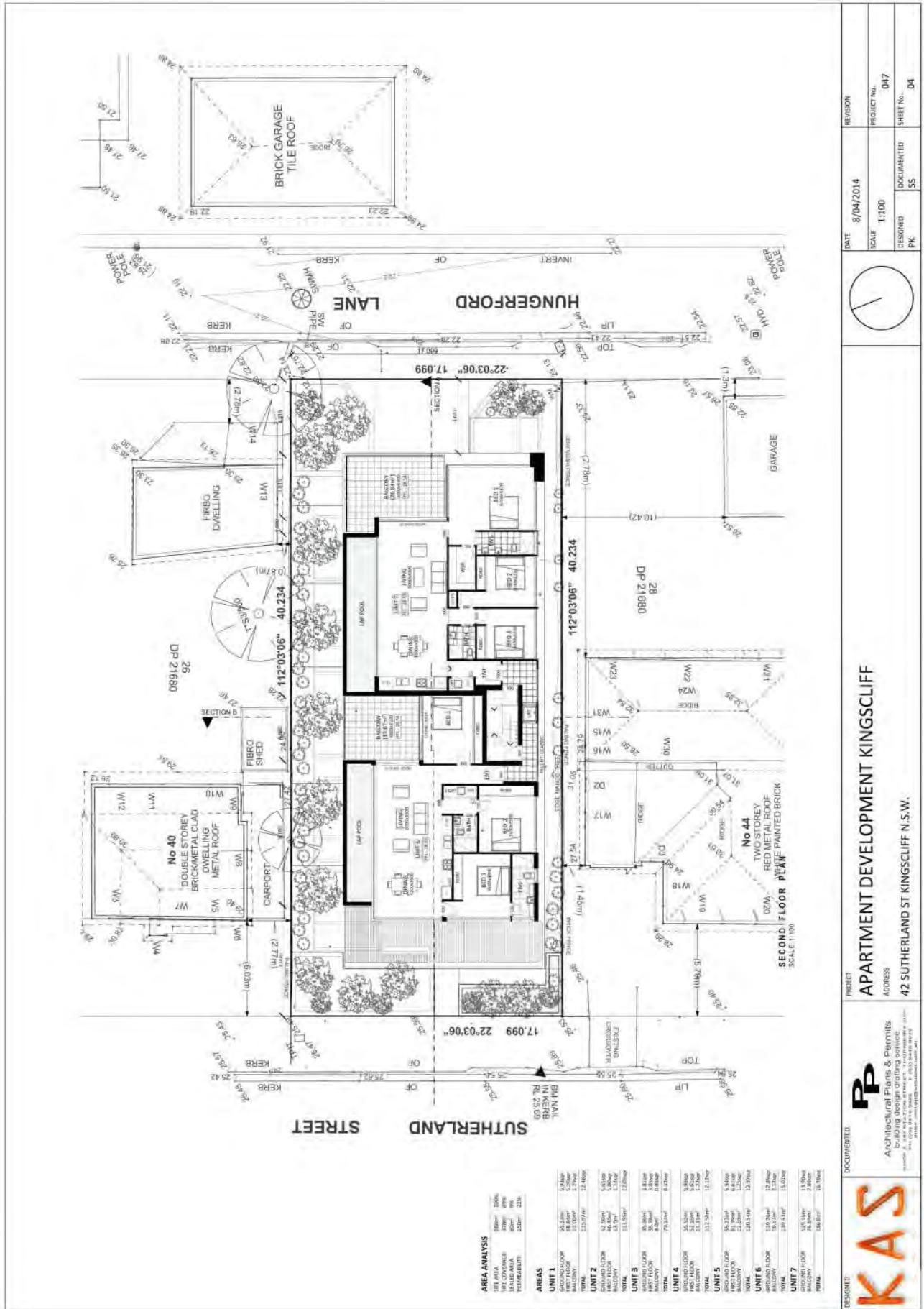
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PP

Architectural Plans & Permits
 Building design drafting services
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 Phone: 08 1300 822 822 Fax: 08 1300 822 823

PROJECT: **APARTMENT DEVELOPMENT KINGSCLIFF**
 ADDRESS: **42 SUTHERLAND ST KINGSCLIFF N.S.W.**

DATE: 8/04/2014
 SCALE: 1:100
 DESIGNED BY: D47
 DOCUMENTED BY: S5
 SHEET NO.: 03



AREA ANALYSIS

UNIT	GROUND FLOOR	FIRST FLOOR	TOTAL
UNIT 1	53.12m ²	5.30m ²	58.42m ²
UNIT 2	53.89m ²	5.29m ²	59.18m ²
UNIT 3	53.89m ²	5.29m ²	59.18m ²
UNIT 4	53.89m ²	5.29m ²	59.18m ²
UNIT 5	53.89m ²	5.29m ²	59.18m ²
UNIT 6	53.89m ²	5.29m ²	59.18m ²
UNIT 7	53.89m ²	5.29m ²	59.18m ²
UNIT 8	53.89m ²	5.29m ²	59.18m ²
UNIT 9	53.89m ²	5.29m ²	59.18m ²
UNIT 10	53.89m ²	5.29m ²	59.18m ²
UNIT 11	53.89m ²	5.29m ²	59.18m ²
UNIT 12	53.89m ²	5.29m ²	59.18m ²
UNIT 13	53.89m ²	5.29m ²	59.18m ²
UNIT 14	53.89m ²	5.29m ²	59.18m ²
UNIT 15	53.89m ²	5.29m ²	59.18m ²
UNIT 16	53.89m ²	5.29m ²	59.18m ²
UNIT 17	53.89m ²	5.29m ²	59.18m ²
UNIT 18	53.89m ²	5.29m ²	59.18m ²
UNIT 19	53.89m ²	5.29m ²	59.18m ²
UNIT 20	53.89m ²	5.29m ²	59.18m ²

DESIGNED BY
KAS

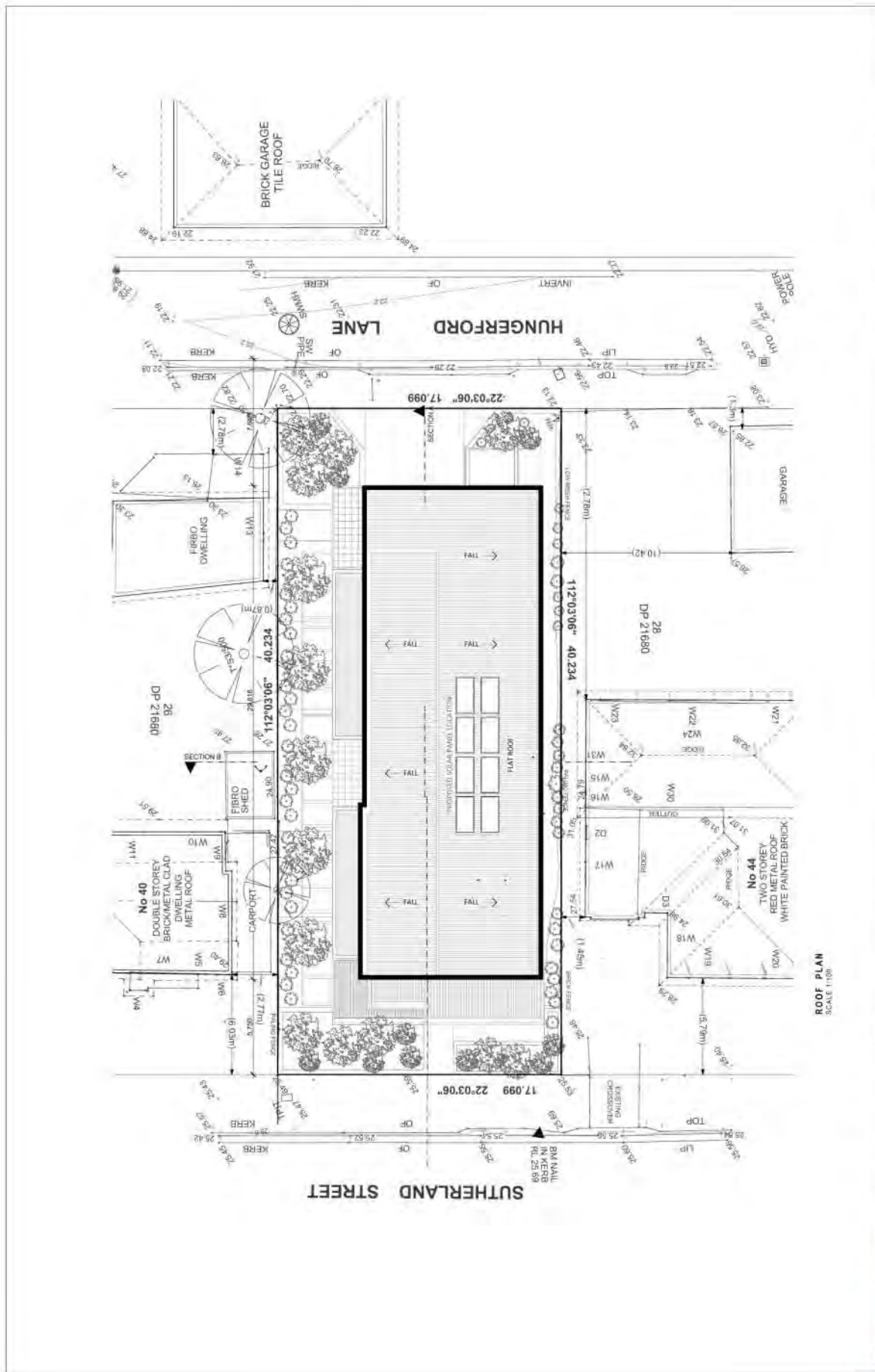
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PROJECT
APARTMENT DEVELOPMENT KINGSCLIFF
ADDRESS
42 SUTHERLAND ST KINGSCLIFF N.S.W.

DATE 8/04/2014
SCALE 1:300
DESIGNED BY PK
DESIGNED BY SS
PROJECT No. 0417
SHEET No. 04

REVISION

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ROOF PLAN
SCALE 1:100

DATE	8/04/2014	REVISION	
SCALE	1:100	PROJECT No.	047
DESIGNED	PK	DOCUMENTED	SS
		SHEET No.	05



PROJECT
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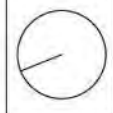
KAS

EAST ELEVATION
SCALE 1:100

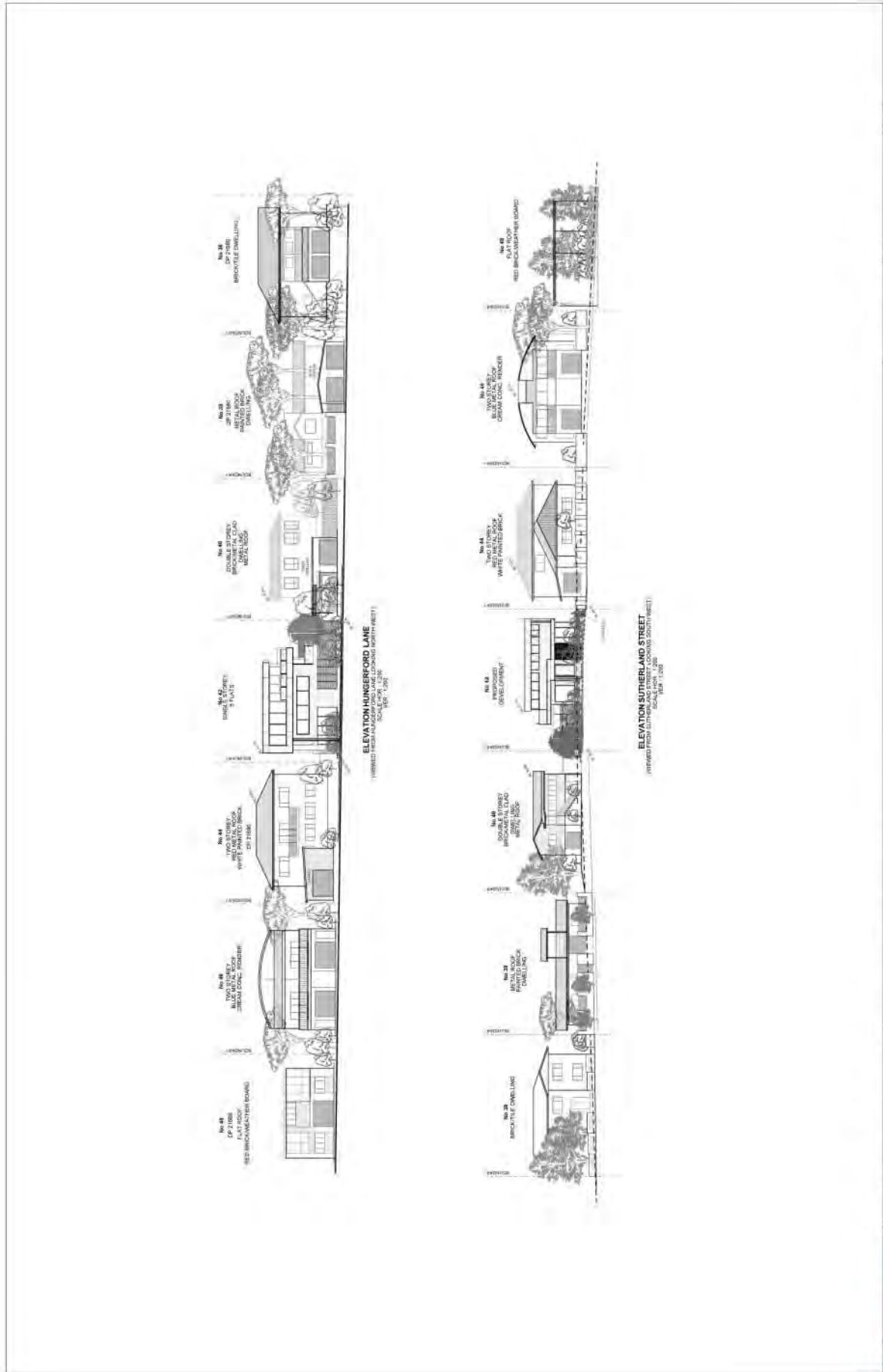
NORTH ELEVATION
SCALE 1:100

WEST ELEVATION
SCALE 1:100

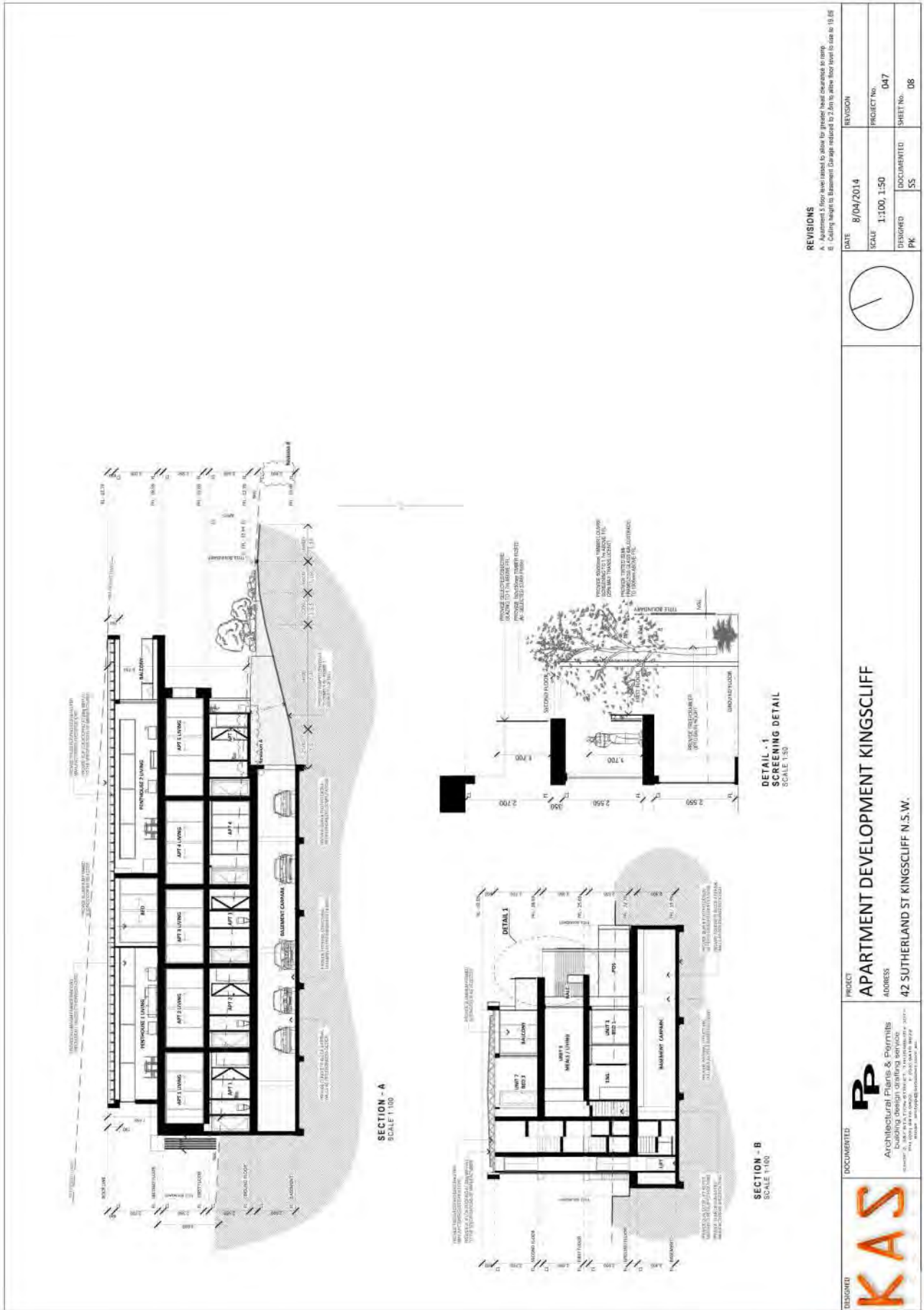
SOUTH ELEVATION
SCALE 1:100



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		ADDRESS 42 SUTHERLAND ST KINGSCLIFF N.S.W.	SCALE 1:100	PROJECT No. 0417
			DESIGNED PK	DOCUMENTED SS
				SHEET No. 06



	DESIGNED: KAS	DOCUMENTED:  Architectural Plans & Permits Building design and planning services. 100-105, Park Road, Wetherby, Leeds LS23 7BQ, UK Tel: +44 (0)113 234 4000 Fax: +44 (0)113 234 4001 Email: info@pp.co.uk	PROJECT: APARTMENT DEVELOPMENT KINGSCLIFF ADDRESS: 42 SUTHERLAND ST KINGSCLIFF N.S.W.	DATE: 8/04/2014 SCALE: 1:200 DESIGNED: [blank] PK: 55	REVISION: PROJECT No: 047 DOCUMENT ID: [blank] SHEET No: 07
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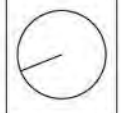
REVISIONS

A. Apartment 5 floor level raised to allow for greater head clearance to ramp.
 B. Ceiling height to Basement Carage reduced to 2.4m to allow floor level to use as RS BS

DATE	REVISION
8/04/2014	

SCALE	1:100, 1:50
DESIGNED	DOCUMENTED
PK	55

PROJECT No.	047
SHEET No.	08



PROJECT
APARTMENT DEVELOPMENT KINGSCLIFF
ADDRESS
42 SUTHERLAND ST KINGSCLIFF N.S.W.

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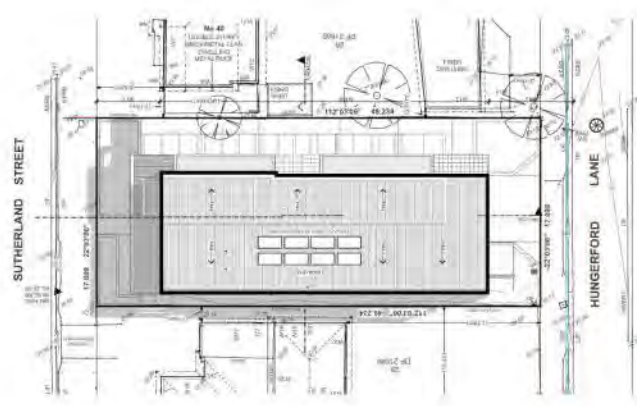
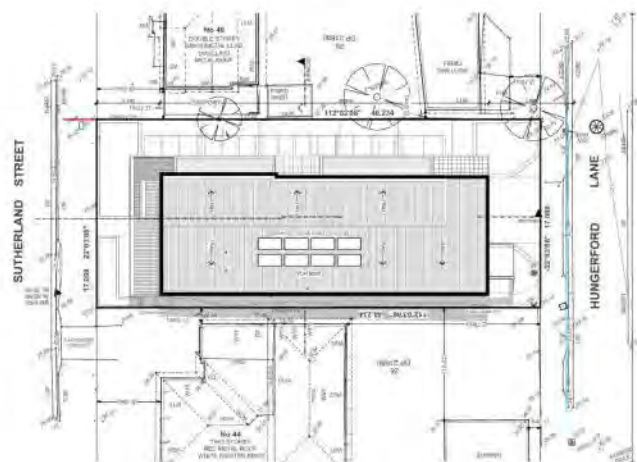
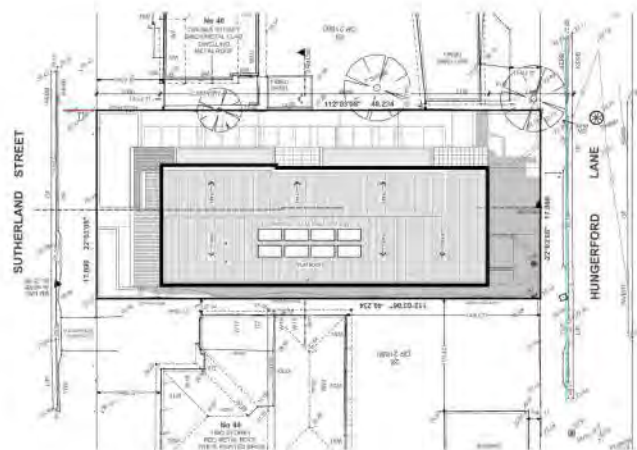
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		ADDRESS 42 SUTHERLAND ST KINGSCLIFF N.S.W.	SCALE 1:200	PROJECT No. 047
			DESIGNED PK	DOCUMENTED PK
			PK	SHEET No. 09

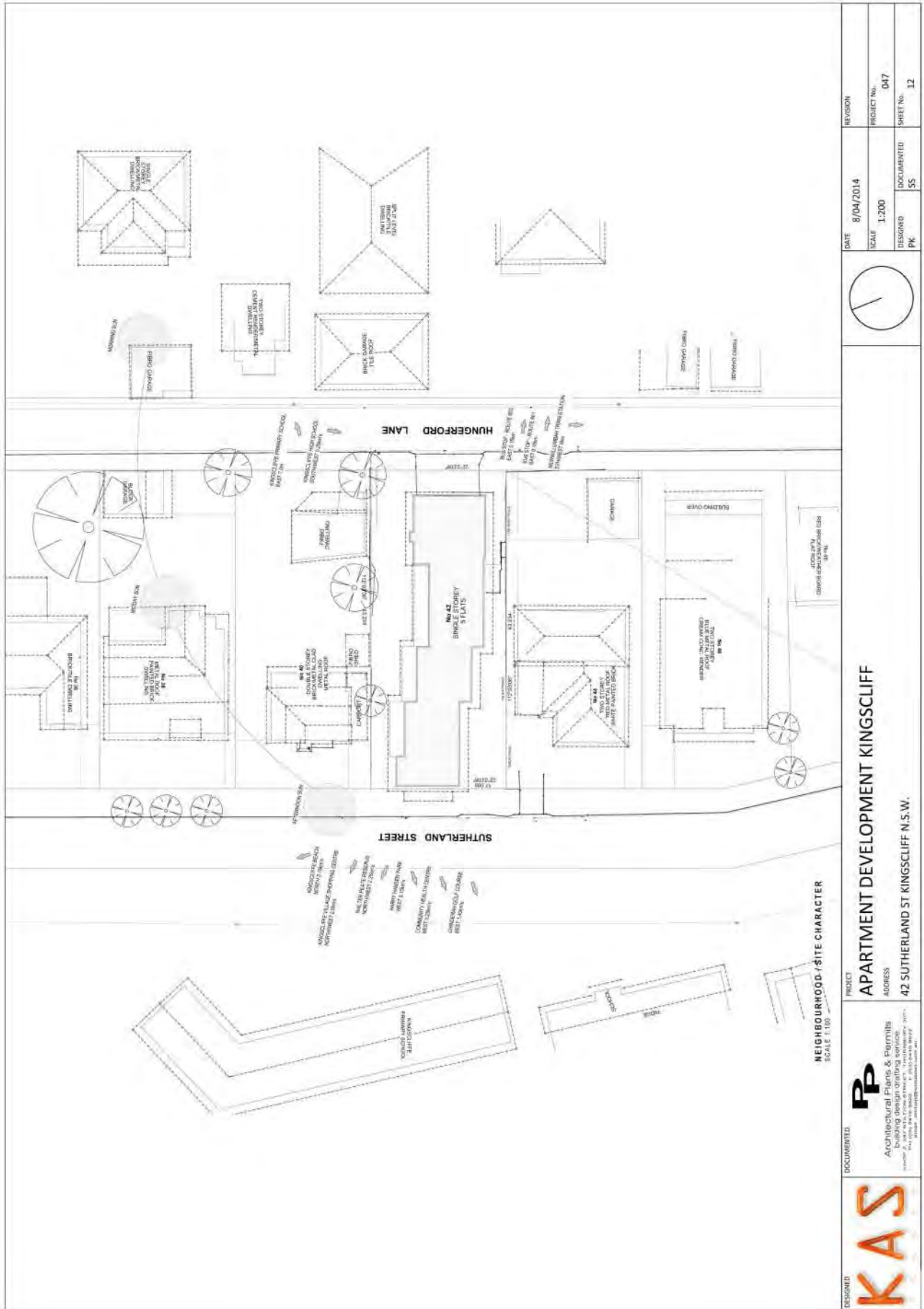


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		ADDRESS 42 SUTHERLAND ST KINGSCLIFF N.S.W.		PROJECT No. 0417
		DATE 8/04/2014		DOCUMENTED
		SCALE 1:200		PK 55
		DESIGNED		SHEET No. 10



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		ADDRESS 42 SUTHERLAND ST KINGSCLIFF N.S.W.		
		DATE 8/04/2014	SCALE 1:200	PROJECT No. 047
		DESIGNED PK	DOCUMENTED SS	SHEET No. 11





DATE	8/04/2014	REVISION	
SCALE	1:200	PROJECT No.	047
DESIGNED	PK	DOCUMENTED	SS
		SHEET No.	12

PROJECT
APARTMENT DEVELOPMENT KINGSCLIFF
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42 SUTHERLAND ST KINGSCLIFF N.S.W.

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 Architectural Plans & Permits
 Planning consent & building approval
 111/101A Sturt Street, Kingscliff NSW 2486
 Tel: 08 1300 828888 Fax: 08 1300 828889
 www.kingscliffplanning.com.au

NEIGHBOURHOOD SITE CHARACTER
 SCALE 1:100

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

NB: This assessment provides an updated report against the relevant Section 79C matters.

(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.

Council’s Strategic Plan 2004 – 2024 references effective control of new development and redevelopment as a key element of the Plan, with development controls being implemented ‘fairly and rigorously’ in order to minimise adverse impacts of development. The Plan notes that developers will be...‘*expected to adhere to planning controls as part of their contribution towards achieving more sustainable development*’.

The subject proposal results in a multi-dwelling development consisting of seven units to form part of Kingscliff. The proposal is consistent with the vision for the Shire.

Clause 5 - Ecologically Sustainable Development

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

The proposal is consistent with the aims and the ecological sustainable development principles outlined within the plan.

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 2(b) Medium Density Residential, the primary objective of which is to provide for and encourage development for the purpose of medium density housing that achieves good urban design outcomes.

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

The proposal will not create an unacceptable cumulative impact given the residential nature of the proposal and locality.

Clause 11 - Zone Objectives

The subject site is located within the 2(b) Medium Density Residential zone. The primary objective of that zone and consistency of the proposal with that objective has been outlined above.

Secondary objectives allow for non-residential development that supports the residential use of the locality and tourist accommodation that is compatible with the character of the surrounding locality. The under-utilisation of land for residential purposes is discouraged.

It is submitted that the proposal is a form of residential development within an established residential area that is suitable in scale, form and purpose. The density of the site is in line with zoning objectives and the multi-dwelling development is not considered to have an adverse effect on the character and amenity of the area.

Clause 15 - Essential Services

Clause 15 of the TLEP requires the provision of essential services to be available to the site prior to any consent being granted. The subject land has all essential services available.

The subject site is serviced with water, sewer, stormwater, power and telecommunications infrastructure. Accordingly, the proposal complies with the provisions of this clause.

Clause 16 - Height of Building

Clause 16 of the TLEP provides a two-storey height limitation over the site. The proposed development incorporates part two storey and part three storeys, thereby not complying with height requirements.

Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. The subject site is affected by a two storey limitation. In accordance with the definition of a storey as per the TLEP 2000, the proposal represents a partial two and partial three storey development.

The applicant seeks consent to vary the development standard by way of a SEPP No. 1 objection, discussed later in this report.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The criteria for a socio-economic assessment to be provided is 50 units for multi dwelling housing. Therefore, the applicant has not provided an assessment in this regard.

Clause 35 - Acid Sulfate Soils

The site is located within Class 5 Acid Sulfate Soils (ASS) which is considered to be low risk. While substantial excavation associated with basement parking is proposed, adverse impacts associated with acid sulfate soils are not anticipated as the property is above 20 m AHD (GIS).

Clause 39 – Remediation of Contaminated Land

The applicant has provided an underslab contamination report with the proposal. Council's Environmental Health Officer has reviewed the report and has provided conditions of approval in regards to the contaminated land that the applicant will need to implement upon approval.

Clause 54 – Tree Preservation Order

Clause 54 of the TLEP 2000 provides for the protection of vegetation for reasons of amenity or ecology by way of a Tree Preservation Order. The subject site is covered by the 2011 Tree Preservation Order (TPO) (Koala Habitat Study Area) which impacts upon the removal of Koala feed tree species. Removal of such vegetation on the site must be approved by way of development consent.

Existing landscaping on site comprises of native and exotic species but does not include Koala feed trees. The proposal does not include the removal of significant vegetation.

No further issues have been identified and this Clause is deemed to be satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32(b): Development Control – Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 33: Coastal hazard areas

Clause 33 refers to development on coastal lands and requires the consent authority to take into account provisions of the Coastline Management Manual, whilst also requiring that disturbed foreshore areas be rehabilitated and that access points across foredune areas be confined to specific points. The proposal has no direct implications or relevance in this regard.

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.

As a multi-dwelling development, the proposed density is considered to be a reasonable response to the land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. Further, a sedimentation and erosion control plan will be enforced in relation to the construction.

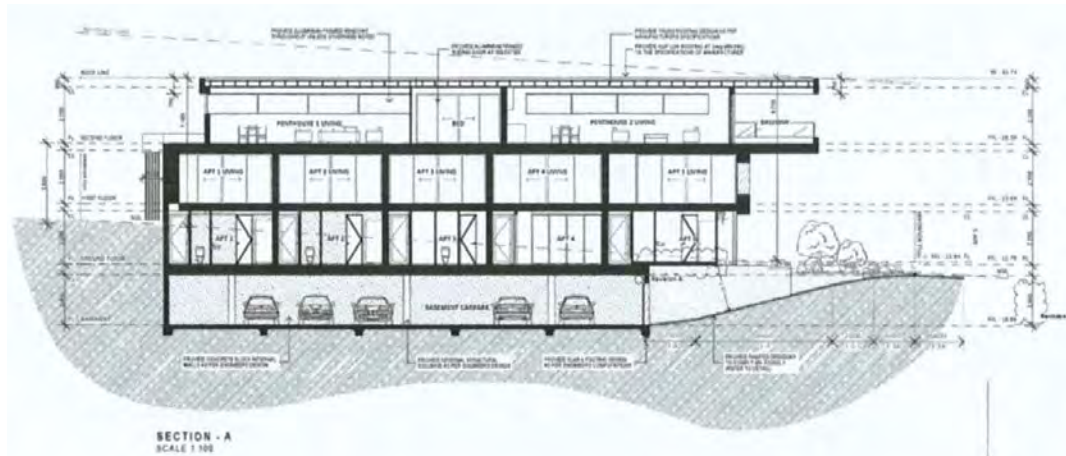
The proposal is considered to be consistent with the relevant provision of Clause 43 of NCREP 1988.

SEPP No. 1 - Development Standards

This following SEPP No. 1 objection has been updated with the amended plans submitted 29 April 2014.

SEPP No. 1 enables Council to assume the Director's concurrence to a variation to a development standard where it is considered that strict adherence is both unnecessary and or unreasonable in the circumstances of the case.

The area of non-compliance is shown diagrammatically below.



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.

The applicant has raised the following arguments in support of the variation sought:

- *“The locality is characterised by a variety of building types, heights and designs, all of which have been influenced by the extreme topography of the area.*
- *The proposed three-storey element has no impact on view sharing and is compliant with Council's physical height limits under Tweed Development Control Plan (DCP) 2008.*
- *The maximum height of the proposed building is fully compliant with the building height controls of Tweed DCP 2008, Section A1 and exhibited Draft Tweed LEP 2012 as they apply to this site.*
- *The proposal steps up the slope and adopts urban design principles such as are promoted within Section 1 of the Tweed DCP 2008.*
- *There are a significant number of existing buildings within the locality that incorporate a three-storey form and a physical height exceeding 9m. As such the proposal will not be inconsistent with the current character of the area.”*

The applicant concludes that strict compliance with the development standard under Clause 16 is considered unreasonable and unnecessary in this instance.

As discussed previously the applicant has submitted a SEPP No. 1 to vary the number of storeys permitted on the site. The applicant's justification is shown below:

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

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

The Chief Judge suggests that a consent authority must be satisfied of three matters before a SEPP 1 Objection can be upheld:

- (1) That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
- (2) That the granting of consent is consistent with the aims of SEPP 1.*
- (3) That Clause 8 matters (in SEPP 1) are satisfied ie:*
 - Whether non-compliance raises matters of State or Regional planning significance.*
 - The public benefit of maintaining the planning controls.*

Each of these key matters is addressed in turn, as follows:

- 1. That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The Chief Judge advised that the requirement to demonstrate that an objection is well founded and that the approval of the objection may be consistent with the aims of the policy could be satisfied in any one of the following ways:

- (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- (ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- (iii) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- (iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- (v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

We submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objective of Clause 16 of Tweed LEP is in the following terms:

“Objective

To ensure that the height and scale of the development is appropriate to its location, surrounding development and the environmental characteristics of the land.”

The proposed development is located in Sutherland Street, Kingscliff and is subject to a two (2) storey height limit pursuant to Clause 16 of Tweed Local Environmental Plan (LEP) 2000.

The proposed development proposes three storeys (see **Figure 1**), however due to the slope of the site and the level of basement car parking being accessed off the secondary frontage, the building provides an overall height that is consistent with the adjoining two storey buildings (see **Figures 2 and 3**).

The site is also located within a 2(b) Medium Density Residential zone, where the objectives of that zone seek to provide for and encourage development for the purpose of medium density housing.

Under Tweed DCP 2008 the relevant height control for development intended for this site provides for a 9m overall height limit.

Under exhibited Draft Tweed LEP 2012 the site remains in the Medium Density zone (R3 Zone) and the statutory height limit is to be 9m.

On this basis we submit that the development is of a height and scale that is appropriate to its location and is entirely consistent with the intended character of the area as described by Draft Tweed LEP 2012.

Therefore the proposed development achieves the objectives of the standard contained in Clause 16 of Tweed LEP 2000.

2. That the granting of consent is consistent with the aims of SEPP 1.

The aims and objectives of the Policy (SEPP 1) are as follows:

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

Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 is in the following terms:

“(a) to encourage:

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

Compliance with the development standard would preclude the development of this site for the purpose of a multi dwelling housing building as encouraged by the 2(b) Medium Density zoning of the land and the objectives of this zone under Tweed LEP 2000.

The proposal has been designed to respect the scale of the surrounding buildings. In this regard the proposed building presents as only two storeys to Sutherland Street and is similar in height to those buildings.

The proposed maximum building height also fully complies with the 9m maximum height limit contained in Tweed DCP 2008, Section A1 as it relates to residential flat buildings and the draft 9m height limit as proposed in Draft Tweed LEP 2012 as it applies to this site. Draft Tweed LEP 2012 has been exhibited and we understand, will be referred back to the Department of Planning and Infrastructure for finalisation in the near future.

In this case, strict compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

3. That clause 8 matters (in SEPP 1) are satisfied ie.

- **Whether non-compliance raises matters of State or regional planning significance.**
- **The public benefit of maintaining the planning controls.**

In considering whether the proposal creates any matters of State or Regional planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.

- *The development standard relates to a local building height control.*
- *The proposed building height variation is similar in height to the existing surrounding buildings at the Sutherland Street frontage.*
- *The proposal is fully compliant with the proposed draft height limit for the site (which effectively represents the intended future character of the area).*
- *The proposed height fully complies with exhibited Draft Tweed LEP 2012.*

We conclude that the proposed development does not raise any matters of State or Regional planning significance and there is considered to be no public benefit in strictly maintaining the standard in this instance."

The proposed development is consistent with the scale of existing developments. When viewed from Sutherland Street and Hungerford Lane the surrounding properties appear as two to three storey developments, the proposal appears as a two storey development from the Sutherland Street elevation and three storeys from the Hungerford Lane elevation.

The proposed three storey element of the development will not significantly affect any adjoining property having regard to privacy, view sharing or overshadowing.

Having regard for the applicants SEPP 1 justification and the Courts assessment criteria, the proposed SEPP 1 is considered reasonable in the circumstances. Therefore it is recommended that the SEPP1 objection be supported and

concurrence to the variation to the number of storeys be assumed in this instance.

SEPP No. 55 - Remediation of Land

Clause 7 of this Policy provides that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

The Contaminated Land Planning Guidelines (Department of Urban Affairs and Planning, Environment Protection Authority, 1998) provide information relating to preliminary contamination investigations. In addition, Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development.

The applicant has provided a preliminary contamination assessment in accordance with SEPP No. 55. It is highly unlikely that the site would pose a risk of contamination. The proposal is considered to be consistent with the relevant provisions of both Clause 39 of TLEP 2000 and SEPP No.55.

SEPP No. 65 - Design Quality of Residential Flat Development

The applicant has not provided an updated report on SEPP No. 65 however an assessment has been undertaken in relation to the amended plans received by Council on 29 April 2014.

Clause 30 of SEPP No. 65 requires the consent authority to consider each of the ten design quality principles when determining a development application for a residential flat building.

The applicant has provided a comprehensive assessment of the proposal against the relevant design quality. A summary of the applicant's assessment is provided below.

Principle 1: Context

“Good design responds and contributes to its context. Context can be defined as the key natural and built forms in the area.”

The site is a regular square shape. It is located on the northeast corner of Sutherland Street and Hungerford lane, Kingscliff. Sutherland Street is to the West of the site and Hungerford lane is on the East. Sutherland Street is a main street and Hungerford lane is a quiet local road with little traffic. In the proposal, the main entrance is positioned off Hungerford lane.

The site is situated in zone 2b Medium Density Residential Zone. This zone generally permits residential buildings up to two storeys with a total height of 12m. There is no heritage building overlay & aboriginal cultural heritage overlay over this site. The road reserves are not zone under the current Tweed LEP 2000. Existing developments surrounding this locality is a mixture of one and two storey single dwelling houses. The site and many of the surrounding properties have been re-designed to follow the prevailing contemporary multi unit housing characteristics and also incorporating natural vegetation and landscaping to blend into the environment.

The total area of the site is 688m sq and the existing development has a 4.0m setback from Hungerford Lane and a 400mm setback from Sutherland Street.

The site falls approximately 2.74 metres over a distance of 40.234m going from northwest to southeast. Existing development on the site has created minimal valuable trees and most trees belong to the adjoining property boundaries.

Principle 2: Scale

“Good design provides an appropriate scale in terms of the building bulk and height that suits the scale of the street and the surrounding buildings”

The proposed development has a 7.085m setback from Hungerford Lane and a 6.0m setback from Sutherland Street which create an opportunity for a good vegetation surrounding area for the proposed development and the neighbourhood.

The proposed building is described on the architectural drawings and on the 3D images associated with the developments purposed. The building is generally setback 4.67m and 7.085m from the west and east street frontages respectively and setback a minimum of 1.5m and 4.5m from the southern and northern boundaries respectively. The development is a three story building contains 7 apartments/unit developments (1 x 1 bedroom, 4 x 2 bedrooms and 2 x 3 bedrooms). Each of which has private open space or balconies. There are 13 car parking spaces including 4 visitor spaces located at basement level under the building.

Viewed from Hungerford Lane the site is uniform and can be perceived as a single dwelling development which is comparable to the character of the neighbourhood streetscape.

The height of the proposed building is keeping in with the vision intended for residential buildings in this area. The articulation and architectural treatment of the third storey, specifically the further setback of its facades, reduces the scale and bulk of the building to suit the site's height requirements. The proposed building setbacks, orientation and street frontages ensure that the design does not greatly impact the scale set in the surrounding areas. The proposed context scale is sympathetic with the desired future characteristics of the area.

Principle 3: Built Form

“Good design achieves an appropriate built form for the site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.”

The proposed eastern & western facade provides a modern contemporary building with large windows on the ground floor, generous balconies and recessed windows on the top floors. A variation in materials emphasise the changes in building form which further articulates the building and facade compared to the surrounding area.

Designed by a landscape architect, both elevations benefit from the proposed trees and vegetation which assist in demonstrating strong and positive characteristic to the site.

Principle 4: Density

“Good design has a density appropriate for the site and its context, in terms of floor space yields (or number of units or residents).”

The proposal consists of 7 apartments being 1 x 1 bedroom, 4 x 2 bedrooms, 2 x 3 bedrooms. The building provides various forms of accommodation and suits the current market's demands.

Principle 5: Resource Energy and Water

“Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.”

The proposal intends to:

- *Recycle excavation, building waste and resident waste materials;*
- *Use suspended floor concrete for floors for maximum thermal mass and insulation;*
- *provide sun shading for exposed glazing; and*
- *Used plantation timber and biodegradable finishing materials and products.*

The proposal report outcomes include:

- *Most apartments enjoy cross ventilation and have reasonable solar access to living areas and private open spaces;*
- *All apartments will achieve a NATHERS rating of at least 4.5; and*
- *Stormwater to be reused for irrigation, car washing and toilet flushing.*

Principle 6: Landscape

“Good design recognises that together landscape and buildings operate in an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.”

The landscape design of the proposal is described on the landscape plan by Plummer & Smith landscape architect

- *Pleasing vegetation to both street frontages;*
- *Privacy of ground floor open spaces;*
- *Supplementation of sun control louvers to the North and West and tree species that are deciduous allowing solar access in the colder months;*
- *Softening of views of the proposed building in a manner characteristic of the locality; and*
- *Use of local plants/trees that are known to the local characteristic.*

Principle 7: Amenity

“Good design provides amenity through the physical, spatial and environmental quality of the development.”

The proposed building contains a variety of apartment sizes and orientations with attached balconies or private opens space areas. Access to the building and common spaces have been designed to satisfy the requirement of wheelchair users and at the same time provide appropriate dimensions and shapes for achieving a high degree of amenity.

Apartment views are generally oriented to the North and East for solar access.

Balconies and outdoor spaces have been design with louvers and trees to ensure privacy as well as providing good natural cross lighting and ventilation to each space.

Principle 8: Safety and Security

“Good design optimises safety and security, both internal to the development and for the public domain.”

Each dwelling has its own independent entry.

Visitors will enter each dwelling via the respective independent entrance and lift function for unit 6 & 7.

All building entrances, pathways and driveways will have automatic night lighting. The basement and stairwells will have timer control or on-demand/movement triggered lighting as the case requires. This will optimise safety, security and energy efficiency in those areas.

There is a clear definition between public and each private open space through the use of landscape and fencing.

Principle 9: Social Dimensions

“Good design responds to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities”

The size and style of the proposed apartments should appeal to the local market and will increase the local housing stock in the area thus fulfilling a useful social function.

There is a demand for smaller, more compact apartments in Kingscliff and the proposal meets that demand whilst providing a useful mix of apartment sizes and configurations that should suit a wide range of persons.

Principle 10: Aesthetics

“Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.”

The quality design of the proposed building is likely to appeal to potential buyers, with its modern contemporary style which also incorporates a moderate degree of external building detail that will complement existing surrounding buildings.

The building elements, materials and colours to be used are consistent with those generally found in the locality. The colours proposed will also blend in with those found in the surrounding natural environment. The colours and materials serve to define and break up the forms of the design creating an interesting building of a more intimate scale. The 3D images illustrates the proposed schedule of finishes and demonstrates that the texture of the materials to be used.

In summary, the proposed development is considered to be consistent with the principles of SEPP 65. The proposal responds to context, scale, built form and the desired density of its neighbourhood. The proposal considers energy efficiency, landscape, amenity, safety and social context and is considered to have good design quality.

It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design. The modern appearance of the building is in keeping with the evolving character of the area.

SEPP No 71 – Coastal Protection

The subject site is identified within the coastal zone therefore clause 8 of the Policy applies. The 16 matters for consideration for land within the coastal zone relate to maintaining and protecting existing access to the foreshore and have little bearing on this application. One of the 16 matters requires Council to consider the compatibility of the development with the existing surroundings and the suitability of the site. As previously discussed the application is considered to be suitable for the site having regard to adequate density of dwellings proposed for the site in relation to those existing in the locality.

No loss of sea views would result from the proposal as the site is some distance from the coast. The development would not be visible from the beach.

The development will not result in a loss of natural landscape as the site is cleared of vegetation. The site has not been identified as comprising important habitat, or as a wildlife corridor.

Stormwater treatment and sediment and erosion control measures would be implemented in accordance with the reports included with the application.

The proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No.71 - Coastal Protection. It is therefore considered that the proposed development complies with matters for consideration in clause 8 of this SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates were submitted demonstrating that the proposal meets the required targets.

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

The shire-wide Draft Tweed Shire Local Environmental Plan 2014 was gazetted on 4 April 2014 and as such applies to the subject site.

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

The draft zone for the subject site is R3: Medium Density Residential. The proposed multi-dwelling development is a 'child' form of 'Residential' development (multi dwelling housing) which is permissible in the relevant zone under Item 3.

There is a proposed 9m height limit on development in this proposed zone. The maximum height proposed is 9m and therefore complies with the maximum building height of the Tweed LEP 2014.

There is no minimum lot size, but a desired Floor Space Ratio of 2:1. The application proposes a Floor Space Ratio of 1.2:1 which complies with the control. It is therefore considered that the proposed development complies with the controls of Tweed LEP 2014.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant has not provided an amended DCP Section A1 assessment however Council officers have updated the assessment in relation to the amended plans received 29 April 2014.

The development application was submitted to Council with minor variations to Section A1 of the DCP. The applicant provided an assessment on the following:

1. Section A1 Chapter 1 – Building Types: Residential Flat Building: Control a.
2. Section A1 Design Control 2 – Site Configuration: Impermeable Site Area: Control g.
3. Section A1 Design Control 2 – Site Configuration: Above Ground External Living Spaces, Balconies and Terraces: Control a.
4. Section A1 Design Control 2 – Site Configuration: Topography, Cut and Fill: Control f, g and h.
5. Section A1 Design Control 3 - Setbacks: Front Setback (Building Lines): Control f.
6. Section A1 Design Control 3 - Setbacks: Side Setbacks: Control d and g.
7. Section A1 Design Control 3 - Setbacks: Rear Setbacks: Control a.
8. Section A1 Design Control 4 - Car Parking and Access: Basement Parking: Control d.
9. Section A1 Design Control 5 - Building Footprint and Attics, Orientation and Separation: Building Orientation: Control d.
10. Section A1 Design Control 6 - Height: Ceiling Height: Control a.
11. Section A1 Design Control 7 - Building Amenity: Sunlight Access: Control e.
12. Section A1 Design Control 8 - Internal Building Configuration: Internal Circulation: Control b and c.

The applicant's justification and an assessment against these variations for each of these is shown below:

1. Section A1 Chapter 1 – Building Types: Residential Flat Building: Control a.
 - a. *The main pedestrian entry to the building is to be provided, facing the street, accessible directly from the street and clearly visible from the street.*

The applicant has provided the following justification:

“It is not possible to provide a single foyer at the Sutherland Street frontage and provide a building layout that achieves desirable solar design principles.”

It is considered that the proposed development has incorporated desirable solar design through the orientation of the dwellings to the north. Due to this

orientation is it not appropriate to provide a single foyer at the Sutherland Street frontage. As such it is considered that the applicants request for a variation is supported in this instance.

2. Section A1 Design Control 2 – Site Configuration: Impermeable Site Area: Control g.

- g. *The maximum areas for impervious surfaces are:*
- *70% of the allotment - On lot sizes less than 500m².*
 - *65% of the allotment - On lot sizes between 500m² and 750m² inclusive.*
 - *60% of the allotment - On lot sizes greater than 750m².*

The applicant has provided the following justification:

“Proposal provides 78%.

The proposed impervious area of the proposal is slightly higher than the stated policy control. Notwithstanding this rainwater is to be detained in the rainwater tank in the basement and appropriate setbacks and landscaped private open space is provided.”

The design of the proposed multi-dwelling unit has taken into account the deep soil zones, setbacks and private open space. There is additionally a rainwater tank to retain water located within the basement of the proposal. It is considered that these design measures will minimise the impact of the additional impervious area and as such the variation should be accepted in this instance.

3. Section A1 Design Control 2 – Site Configuration: Above Ground External Living Spaces, Balconies and Terraces: Control a.

- a. *Above ground external living areas are to have a minimum depth of 2.5m and a minimum area of 10sq.m.*

The applicant has provided the following justification:

“Some balconies have dimensions less than 2.5m. However all units have an area of private open space with minimum dimensions of greater than 2.5m and 10m².”

The deck does not satisfy Control a. as its depth is less than 2.5m. The variation is however supported as there is enough space for a table and chairs and it would be undesirable for the deck to extend any further towards the adjacent boundary.

4. Section A1 Design Control 2 – Site Configuration: Topography, Cut and Fill: Control f, g and h.

- f. *The maximum level of cut is 1m and fill is 1m except for areas under control j.*
- g. *Retaining walls maximum 1.2m.*
- h. *Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.*

The applicant has provided the following justification:

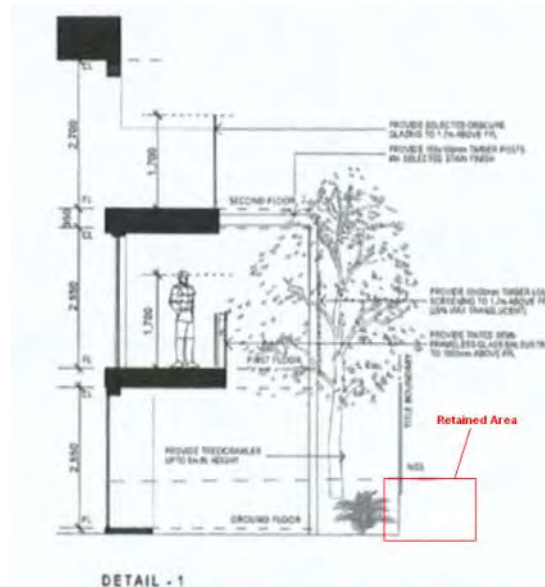
“The proposed cut (up to approximately 5.8m) is associated with the basement car park. The finished height of retaining walls is up to 2.68m on

the southern side of the ground level private open space of Unit 1. Tiering the wall at that location would compromise the amenity of Unit 1 by removing convenient access to the courtyard. Other interfaces of the excavation are tiered and appropriately landscaped with planter boxes to address the change in levels (up to 1.2m) and provide an attractive appearance. Variations are applicable to enable the construction of basement car parking and to provide flat yard space for each unit.

Retaining walls of up to 2.68m in height (finished floor levels) are proposed however generally the changes in level are in the order of 1.2m. Appropriate landscaping is proposed to address visual impact. Variations are also applicable to enable the provision of flat yard space for each unit.

The cut is to be adequately retained at the boundary. Detail of construction is to accompany the Construction Certificate application. Variations are also applicable to enable the provision of flat yard space for each unit.”

The proposed retaining walls appear to be greater than 1.2m in height with excavations exceeding 1m. This is due to a basement level being utilised for car parking. These excavations are approximately 5.8m, will not be visible and are located wholly within the building footprint. It is considered that the finished floor level will be compatible with adjoining neighbours with retaining walls and landscaping being utilised to maintain an acceptable finished floor level. As such, the variation in relation to excavation is considered acceptable.



The ground floor of the northern facing units will have planter boxes and retaining walls of up to 2.2m on the northern boundary. As these are the northern facing private open space areas it is considered that there will be adequate sunlight that will reach these areas and suitable screening is proposed to ensure privacy between the subject site and northern neighbour.

There are retaining walls of greater than 1.2m in height. These retaining walls have been incorporated to avoid compromising the amenity of the private open space for Unit 1. Through the design of the basement and the units, the landscaping will screen the majority of the retaining walls. Dense landscaping has been proposed around the site to soften the impact of the proposed retaining walls and earthworks. Additionally, the retaining walls have been modified into landscaping planter boxes to increasingly soften the impact of retaining walls in

relation to neighbouring developments. It is considered that the impact in relation to the cut and fill variations will be kept to a minimum with the implementation of landscaping and screening and is therefore supported in this instance.

5. Section A1 Design Control 3 - Setbacks: Front Setback (Building Lines): Control f.

- f. *In established areas Residential Flat Buildings are to be setback from the street boundary by 6m with a variance of up to plus or minus 1m (ie. between 5m to 7m).*

The applicant has provided the following justification:

"The proposed development will provide an increased setback of 4.67m to the primary frontage. The proposal will replace the existing building located with a zero setback from the front boundary. The dwellings either side of the site are setback approximately 6m, accordingly the average existing street setback is 3m (considering the existing building on the site). In this instance the proposed 6m setback to the street frontage together with the proposed landscaping at the street frontage is considered to be an improvement to the existing situation."

The current building has a zero setback from the Sutherland Street frontage. The proposed development was amended to provide a setback 4.67m from the road frontage. Additionally, the average setback on Sutherland Street is currently 3m. It is therefore considered that the 4.67m setback is an improvement on the current situation. It is therefore considered that the variation is acceptable in this instance."

6. Section A1 Design Control 3 - Setbacks: Side Setbacks: Control d and g.

- d. *Shop top Residential Flat Buildings and Residential Flat buildings with the primary windows of living rooms facing the side boundaries are to be setback a minimum of 6m and meet the distances as set out in the Separation Controls.*
- g. *Basement garages are to be set back a minimum of 1.5m from the side boundaries but preferably in line with the building above.*

The applicant has provided the following justification:

"The primary windows facing the side boundary are setback 5m to 6m from the side boundary. Appropriate screening is also provided to the side boundaries.

The basement walls are to be built in proximity to the side boundaries in order to provide adequate car parking. This reflects the relative constraint presented by the site dimensions. Notwithstanding the setback variation, since the basement is located entirely below ground, it will not create visual amenity impacts upon the streetscape or adjoining properties. The construction of the basement is to be undertaken so as to adequately protect and support the adjoining properties."

The primary windows facing the side boundaries are setback 5 to 6m which is under the 6m control. The windows will be suitably screened to ensure privacy is maintained. The screening consists of a horizontal timber screen along the northern facing side of the units and planting of Bangalow Palms on the northern boundary. The Bangalow Palms have been utilised to soften the architecture visually by breaking up facades and mitigating the volume in an area where there

is not enough space for a canopy tree. The planter boxes on the northern boundary are utilised on top of the basement car parking which have been designed to accommodate vegetation with shallow root systems which will not impact upon the integrity of the basement and any drainage. It is considered that the applicants request for a variation is acceptable in this instance.

The basement walls are to be built up to the side boundaries. Conditions of consent requiring a pre and post construction dilapidation report for the neighbouring dwellings has been placed within the recommendations. It is considered that the basement has been engineered to minimise the impact on adjoining neighbours. It is considered that the proposed basement is required to be this wide to provide for vehicle movement and adequate car parking spaces. It is considered that the applicants request for a variation be accepted in this instance.

7. Section A1 Design Control 3 - Setbacks: Rear Setbacks: Control a.

- a. *The minimum rear boundary setback is 8m or the deep soil zone whichever is the greater. The minimum building separation distances must be met.*

The applicant has provided the following justification:

“A rear boundary setback of 7.085m (to wall) is proposed. A feature beam structure is proposed in the secondary frontage area with a setback of approximately 3m.”

An architectural feature of the proposal is located within 4.67m of the rear boundary however the majority of the setback is over 7m in distance from the Hungerford Lane boundary. It is considered that this feature beam will not significantly impact upon the surrounding neighbours and is acceptable in this instance.

8. Section A1 Design Control 4 - Car Parking and Access: Basement Parking: Control d.

- d. *The walls of basement carparks are best located in line with the buildings footprint. Basement carparking is not to extend outside the external line of terraces, balconies and porches.*

The applicant has provided the following justification:

“It is considered that provision of adequate on site car parking would be beneficial to the amenity of the surrounding area. The basement walls are below the ground level and will not impose any unreasonable impacts on the streetscape appearance or the neighbouring properties.”

The car parking is located within the front setback however as there will be no visual impact due to the car parking being located within a basement. The applicant has proposed a development which has adequate car parking provided within the basement it is considered the applicants request for a variation should be accepted in this instance.

9. Section A1 Design Control 5 - Building Footprint and Attics, Orientation and Separation: Building Orientation: Control d.

- d. *Where possible orient the primary windows of living rooms to the front or the rear of lots.*

The applicant has provided the following justification:

“The living areas are orientated to access the northern aspect.”

Due to the orientation of the site it is not possible to have living rooms oriented towards the front and rear of the site. The living rooms are oriented towards the north to utilise passive solar access. It is considered that the variation is acceptable in this instance.

10. Section A1 Design Control 6 - Height: Ceiling Height: Control a.

- a. *Provide minimum ceiling heights of 2.7m min. finished floor level to finished ceiling level for habitable rooms. For habitable rooms with a raking ceiling at least 30% of the ceiling is to be at 2.7m high.*

The applicant has provided the following justification:

“The proposed minimum ceiling height of 2.55m complies with the BCA.”

The proposed development complies with the Building Code of Australia’s ceiling height of 2.4m minimum.

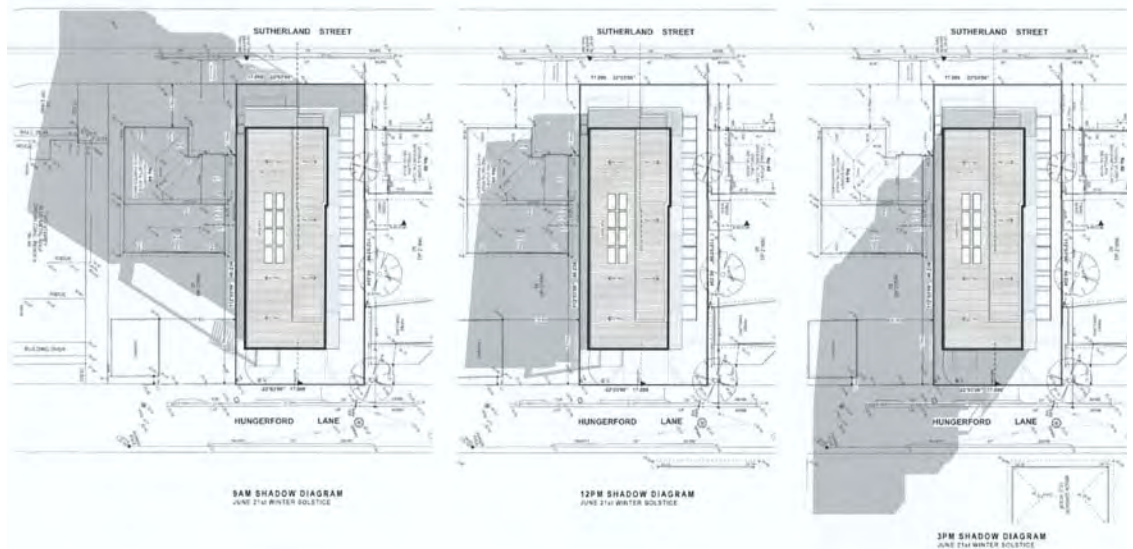
11. Section A1 Design Control 7 - Building Amenity: Sunlight Access: Control e.

- e. *For neighbouring properties ensure:*
 - *sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and*
 - *windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.*

The applicant has provided the following justification:

“Due to orientation of the lots, the rear yard of the adjoining property to the south may receive sunlight to less than 50% of the principal private open space during the stated times midwinter. However the proposed building provides a compliant setback to the southern boundary and complies with the 9m building height limit contained in the Draft Tweed LEP 2012. Accordingly the proposed shadow impacts are not unreasonable in the context of the planning controls that apply to the site.

The adjoining building to the south comprises has a similar roof height to the proposed building and is located with 3m separation from the proposed building. It is likely that windows of that dwelling would receive adequate solar access.”



It is noted that even with complying setbacks and a height that complies with the Draft LEP of 9m, the property to the south may receive sunlight of less than 50% of the private open space for 2 hours during times in midwinter.

It should be noted that the existing multi-dwelling unit has a roof level of 29.81m AHD and is setback 3m from the Hungerford Lane boundary and the proposed will have a finished roof level at approximately 31.7m AHD with an increased setback to 7m. It is considered that the increased setback will improve upon the existing overshadowing situation to the private open space on the neighbouring dwelling to the south due to the increase setback. As such it is considered that the shadow impacts are not unreasonable and are an improvement on the existing situation. It is therefore considered that the variation is acceptable in this instance.

12. Section A1 Design Control 8 - Internal Building Configuration: Internal Circulation: c.

- c. *providing generous corridor widths (preferred min. 2.5m) and ceiling heights (preferred min. 2.7m), particularly in lobbies, outside lifts and apartment entry doors.*

The applicant has provided the following justification:

“The access path has a dimension of 1.5m which is considered adequate.”

It is considered that the 1.5m path is adequate to cater for internal circulation and should be accepted in this instance.

The applicants proposed variations have been assessed and it is considered that they are relatively minor in nature and as such have been supported in this instance.

A2-Site Access and Parking Code

The car parking rates specified by Tweed Development Control Plan 2008, Section A2 indicate that two spaces are required to be provided per three bedroom (or larger) unit, 1.5 spaces per two bedroom unit and 1 space per one bedroom unit. In addition, one visitor car space is to be provided per 4 units.

Since the proposal comprises 1 x 1 bedroom, 4 x 2 bedroom units and 2 x 3 bedroom units, a total of 13 car parking spaces (including 2 visitor spaces) are required.

The Application Plans indicate that the proposed development provides a total of 13 car parking spaces.

Accordingly, the proposal complies with Council's numerical requirements for car parking.

A11-Public Notification of Development Proposals

The original development proposal was advertised in accordance with this section. The proposal was placed on exhibition for 14 days finishing on 10 July 2013. Three submissions were received as a result of this process and are discussed in detail later in this report. It was determined that it was not necessary to advertise the amended plans.

A15-Waste Minimisation and Management

The proposed development was assessed by Council's Waste Management Unit who has provided the following:

"Following relocation of the bin storage area, it is considered that the waste and recycling for the proposed development can be managed appropriately."

It is therefore considered that the proposed development is consistent with the controls outlined within DCP Section A15.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

Clause 92(b) Applications for demolition

The proposal includes demolition in order to facilitate the proposed. A Demolition Works Plan is to be provided by the applicant in accordance with a recommended condition of consent.

Clause 94 Buildings to be upgraded

Clause 94 is considered satisfied as the proposed alterations and additions generally comply with the Building Code of Australia.

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

The subject site is not located within an area that is affected by this management plan.

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by this management plan.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by this management 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 this management plan.

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

There are no further likely impacts in addition to those previously discussed.

The proposal is consistent with surrounding residential character. The suitability of the site has been demonstrated throughout the assessment of the proposal including the assessment of minimal environmental impact and general consistency with environmental planning instruments and the DCP.

The proposed development does not generate any additional Section 94 or Section 64 contribution charges.

(c) Suitability of the site for the development

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan with minimal environmental impact. The proposal is consistent with the residential character of the locality.

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

Public:

The original proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 26 June to Wednesday 10 July 2013. During this time, three submissions were received.

The submissions raised issues pertaining to the height of the building, amount of cut and fill, setbacks, overshadowing and traffic/pedestrian management in relation to the school on the western side of Sutherland Street. These matters are addressed below.

Issue	Assessment
Building Height	<p>The proposal is compliant with Council's 9m maximum height and 8.5m wall plate height. The number of storeys proposed is three within a two storey height limit however the recently gazetted LEP 2014 does not have maximum storeys rather maximum height in metres. It should be noted that a two storey development which complies with the building height can be built to the same height as that proposed. The future character of the area will largely be dictated by both the continued development of medium density forms and will be determined by the 9m maximum building height.</p> <p>The proposed building is centrally located along the north east/south west axis.</p>

Issue	Assessment
	<p>Three-storey elements are a regular feature along Kingscliff Hill. The proposal provides a high quality architectural design and provides compliance with the physical height limits.</p> <p>It is therefore considered that this submission does not warrant refusal in this instance.</p>
<p>Traffic Management Around Kingscliff Public School</p>	<p>The proposal provides compliant onsite car parking sufficient to cater for the demand generated by the proposal. The proposed vehicular access to the development site is via Hungerford Lane which will not create conflict with the school area. The proposal also removes an existing vehicular crossover at the site frontage, increasing on street parking.</p> <p>As such, traffic arrangements are considered satisfactory.</p>
<p>Topography, Cut and Fill</p>	<p>The proposal included the construction of a basement car park.</p> <p>The change in grade across the site has been utilised to minimise impacts on adjoining property, however it is necessary to retain the changes in level in order to achieve access to the property and amenity to future residents by providing useable private open space areas. It is considered that the minor variations in respect to cut and fill will not significantly impact the surrounding neighbours and it is considered that refusal in this instance is not warranted.</p>
<p>Setbacks</p>	<p>Front Setback - The proposed development will increase the zero setback of the existing building.</p> <p>Basement Setback - The limited width of the site is a constraint to the design of the basement car parking area. In this instance it is necessary to provide a basement wall to a side boundary in order to physically accommodate the parking of vehicles.</p> <p>Rear Setback - The rear setback of 4.67m to a rear lane is considered to be appropriate. It is consistent with other structures fronting that road.</p> <p>It is considered that the development is consistent with the surrounding residential developments and is an improvement on the current situation. Refusal of the</p>

Issue	Assessment
	application is not warranted in this instance.
Overshadowing	Shadow Diagrams of the summer and winter solstice and well as the equinox are included in the amended Application Plans. It should be noted that the existing multi-dwelling unit has a roof level of 29.81m AHD and is setback 3m from the Hungerford Lane boundary and the proposed will have a finished roof level at approximately 31.7m AHD with an increased setback to 7m. It is considered that the increased setback will improve upon the existing overshadowing situation to the private open space on the neighbouring dwelling to the south due to the increase setback. It is therefore considered that refusal of the application is not warranted in this instance.
View Sharing	The proposed development is consistent with the height and side setbacks of other development in the locality. The proposal does not comprise unreasonable impacts on views.
Internal Circulation	The lobby to the penthouse units services only two units and is adequately sized. Strict compliance with the non-statutory control is not warranted in this instance as a reasonable alternate solution has been provided.
Ceiling Height	The proposed ceiling heights comply with the Building Code of Australia by having a minimum of 2.4m. This submission does not warrant refusal.

It is considered that issues raised within the three submissions have been resolved satisfactorily.

(e) Public interest

The proposed development, generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan, is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general.

OPTIONS:

That:

1. State Environmental Planning Policy No. 1 objection to Clause 16 of the Tweed Local Environmental Plan 2000 regarding building height be supported and the concurrence

of the Director-General of the Department of Planning and Infrastructure be assumed and the application be supported as per the recommendations; or

2. Refuse the development application with reasons.

Council officer's recommend Option 1.

CONCLUSION:

The proposed development is generally 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 that 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:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 17 [PR-PC] Development Application DA13/0692 for a Two Lot Subdivision, Demolition of Existing Structures, Construction of Bulky Goods Retail (Masters) & Associated Infrastructure, Car Parking, Access & Landscaping as a Staged Development Pursuant to Clauses 83B & 83C of the EP&A Act at Part Lot 10 DP 1084319 Parkes Drive, Tweed Heads West

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0692 Pt4



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:

This application is being reported to Council as the development cost is greater than 10 million dollars, and therefore exceeds the officers' delegated authority.

In addition, Council approval is being sought for the staged deferral of certain essential infrastructure provision until after the issue of the subdivision of the site into two new land parcels. Such infrastructure provision would ordinarily be required before the issue of the subdivision approval. The officers' have recommended support of a variation to Council policy in this instance, as a means of supporting the proponents' substantial investment into the Tweed Shire economy.

Clause 1.8A of the Tweed Local Environmental Plan (TLEP) 2014 contains a savings provision for development applications made before commencement of this plan as gazetted on 4 April 2014. As such, assessment of this development application, lodged on 29 November 2013 must have regard to the provisions of the TLEP 2014 as a proposed instrument pursuant to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

The applicant has requested that the development application be treated as staged in accordance with Clause 83B of the *EP&A Act*. Application documentation sets out detailed proposals for the first and second stages of development with concept proposals for later stages of development which require subsequent development applications.

In summary, the application proposes to subdivide the Boyds Bay Garden World site, currently 5.148 hectares in area, into two lots (Stage 1). The proposed larger, subdivided parcel of 3.534 hectares is intended for the location of a Masters Hardware store and associated infrastructure (Stage 2). The smaller parcel of 1.59 hectares will be subject to future development as outlined in concept plans with future use being subject to a subsequent development application.

Clause 53G of the Tweed Local Environmental Plan 2000 (TLEP 2000) requires the preparation of a Development Control Plan (DCP) for the land prior to development being

carried out on that land. Clause 83C of the *EP&A Act 1979* allows that obligation to be satisfied by the making and approval of a staged development application in respect of that land.

However, as of 4 June 2014, Tweed Development Control Plan included Section A17 – Business Development, Enterprise Corridor and Business Park Zones. Section A17 provides a planning framework for development within the B5, B6 and B7 zones. The TLEP 2014 zones the subject site as B7 Business Park. In this respect, Clause 53G of the TLEP 2000 has been satisfied.

The development application is identified as integrated development as the proposal includes filling of an existing dam on site which intersects the water table. As such, a referral to the NSW Office of Water (NOW) has been undertaken.

The scale of the development proposal with regard to traffic generation has triggered a referral to Roads and Maritime Services (RMS) under Schedule 3 of the State Environmental Planning Policy (Infrastructure) 2007.

The site is affected by aircraft constraints in relation to heights of structures within the airport's airspace, lighting and reflective surfaces, emissions, aircraft noise and public safety. The application was referred to the consultants for Gold Coast Airport Pty Ltd (GCAPL) for comment.

Final advice and/or recommended conditions of development consent have been supplied by these agencies.

Legal advice has been supplied by the applicant with regard to the bonding of essential infrastructure beyond the issue of a subdivision certificate for Stage 1. This is contrary to standard Council policy and represents an element of financial risk for the organisation. Council has also sought its own legal advice which suggests that such bonding of infrastructure is possible dependent upon a binding agreement being put in place between Council and the developer which is included with the draft conditions of this report. The agreement will require the bonding of certain works, the payment to Council by the proponent for certain works, and the placement of a restrictive covenant on Lot 2.

Satisfactory resolution of outstanding land contamination matters and compliance with State Environmental Planning Policy (SEPP) 55 - Remediation of Land as highlighted by Council's Environmental Health Unit have also been the subject of legal advice from both parties. Council's legal advice suggests that further investigation of on-site land contamination by the applicant is not warranted prior to determination of the development application.

The application was placed on exhibition from Wednesday 11 December 2013 to Monday 13 January 2014. A total of 28 submissions were received during the exhibition period. One late submission was received on 24 January 2014 which has also been considered within this assessment.

The application is recommended for approval subject to the imposition of conditions and implementation of frameworks to cater for adequate provision of essential services, further investigation of land contamination and appropriate remediation of the site already suitably identified as contaminated.

RECOMMENDATION:

That:

- A. Development Application DA13/0692 for a two lot subdivision, demolition of existing structures, construction of bulky goods retail (Masters) and associated infrastructure, car parking, access and landscaping as a staged development pursuant to Clauses 83B and 83C of the Environmental Planning and Assessment Act 1979 at Part Lot 10 DP 1084319 Parkes 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, subsequent supporting documentation and:**

- Plan No. DA-02 Job No. 2967 (Stage 1 Site Plan) prepared by Leffler Simes Architects and dated September 2013**
- Plan No. DA-03 Job No. 2967 (Stage 2 Site Plan) prepared by Leffler Simes Architects and dated September 2013**
- Plan No. DA-07 Job No. 2967 (Floor Plan) prepared by Leffler Simes Architects and dated September 2013**
- Plan No. DA-08 Job No. 2967 (Roof Plan) prepared by Leffler Simes Architects and dated September 2013**
- Plan No. DA-09 Job No. 2967 (Elevations) prepared by Leffler Simes Architects and dated September 2013**
- Plan No. DA-10 Job No. 2967 (Elevations) prepared by Leffler Simes Architects and dated September 2013**
- Plan No. DA-11 Job No. 2967 (Sections) prepared by Leffler Simes Architects and dated September 2013**

except where varied by the conditions of this consent.

- 2. The proposed future Stage 3 component of the development must be the subject of a separate development consent and does not form part of this consent.** [GEN0005]

Any reference to a Stage 4 is indicative only and does not form part of this application.

[GEN0035]

- 3. All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.**

[GEN0075]

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

[GEN0115]

- 5. The development is to be carried out in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design and Construction Specifications.**

[GEN0125]

6. 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]

7. A Construction Certificate approval is to be obtained for all proposed pre-cast concrete panel fencing of any height and masonry fencing in excess of 1.2 metres in height, prior to any construction of the fence being commenced.

Site specific design details or approved generic details prepared by a practicing structural engineer are required to be submitted and approved as part of the Construction Certificate application for Stage 2.

Such structural engineers design details are to confirm that the fence proposal has been designed to take account of all site issues including the site's soil and load bearing characteristics, wind and other applied loadings, long term durability of all components particularly in relation to corrosion and compliance with Tweed Shire Council's policies for "Sewers - Building in Proximity" and provision of appropriate pedestrian sight clearances to footpaths in accordance with Australian Standard AS2890 "Parking Facilities".

[GEN0145]

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

[GEN0180]

9. Council advises that the land is subject to inundation in a 1 in 100 year event with a Design Flood Level of 2.6m AHD. Development of the site is subject to the provisions of Council's Consolidated DCP Section A3 *Development of Flood Liable Land*.

[GEN0195]

10. Structures proposed/identified within/over the easements on the land are not approved and are to be located external to the easement.

[GEN0255]

11. 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]

12. The development shall be undertaken in the following Stages.

Stage 1

- Creation of proposed Lots 1 & 2, including the construction and upgrading of associated civil infrastructure (as required by this consent).
- Registration of applicable easements to facilitate the short and long term integrated customer and service vehicle movements through the site and to legalise service requirements.

Stage 2

- Development of the Masters Home Improvement Store and associated Bulk Earthworks, internal infrastructure, car parking, access, landscaping and signage upon proposed Lot 1.

[GENNS01]

13. Stormwater management shall be generally provided in accordance with the Plan Titled “Stormwater & Earthworks Layout Plan”, Drawing No. FIG 03, Revision A, prepared by Wood & Grieve Ltd, dated 26 November 2013, except where varied by the conditions of this consent.

[GENNS02]

14. Sewer reticulation (Stage 2)

- The sewer pump unit and rising mains for the development will be owned, maintained and operated by the property owner.
- The design of sewer pumping station shall comply with the Water Services Association (WSA) standards WSA02-2002-2.3 or WSA07-2007 for Pressure Sewerage.
- Pumps should be designed to pump a minimum of less than every 8 hours to reduce septicity in the pump well and rising mains.
- Pump system shall be sized for industrial/ commercial and not domestic requirements.
- At least 24 hours emergency storage capacity shall be provided within the system, or hours of storage equivalent to the operating hours of the commercial property per day.

[GENNS03]

15. Customer vehicles may enter the site via Parkes Drive or Wollemi Place, but must exit the site via Parkes Drive only.

Service vehicles must enter the development via Parkes Drive, but must exit the site via Wollemi Place only and not between the hours of 7.00am to 9.00am Monday to Saturday.

[GENNS04]

16. The height of any buildings or structures on the subject land shall not exceed the Obstacle Limitation Surface for Gold Coast Airport. The height of the building includes any above-roof elements such as signs, parapets, aerials, architectural features and the like.

[GENNS05]

17. 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).

[GENNS06]
18. Intensity of any external illumination located in Zone B of the Lighting Zone Map shall not exceed the mandatory maximum level of 50 candella at 3° above the horizontal.

[GENNS07]
19. Intensity of any external illumination located in Zone A of the Lighting Zone Map shall not exceed the mandatory maximum level of 0 candella at 3° above the horizontal.

[GENNS08]
20. All fill material shall be from an approved source and free from any contamination.

[GENNS09]
21. The roof water/tank water supply shall not be utilised for potable purposes. Any tap stand or similar fixture which provides water sourced from the onsite water tank shall be provided with signs that indicate the water is not suitable for drinking purposes.

[GENNS10]
22. Air conditioning or sealed mechanical ventilation shall be provided to the office and training / staff room within the retail centre.

[GENNS11]
23. Prior to the commencement of any bulk earthworks or placement of services in the vicinity of the on-site detention ponds and identified existing asbestos and dieldrin contamination, site remediation and validation shall have been completed to the satisfaction of the General Manager or his delegate.

[GENNS12]
24. A restriction on the use of proposed Lot 2 pursuant to section 88E of the Conveyancing Act 1919 must be registered on the title to proposed Lot 2 at the same time that it is created in the following terms:

 - No development that would involve a change of use on any of the land may be carried out unless the prior written approval of Tweed Shire Council is first obtained and in seeking such approval a Stage - 2 Detailed Investigation report, as referred to in the contaminated land planning guidelines (being the guidelines under section 145C of the Environmental Planning and Assessment Act 1979) is supplied to the Council for consideration.

[GENNS13]
25. Existing vegetation along the southern boundary is to be retained and enhanced to maintain local habitat connectivity.

[GENNS14]

26. The approved signage does not include moving graphics or signage elements that flash, flicker or are animated in any way.

[GENNS15]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

27. An application is to be made to Council to disconnect the existing building from Council's sewerage system, prior to any demolition work commencing.

[PCC0045]

28. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate for Stage 2.

[PCC0055]

29. Stage 2 of the development shall provide 411 car parking spaces including a minimum of 8 car parking spaces for the disabled (unless agreed otherwise by Council) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and maneuvering 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 for Stage 2.

[PCC0065]

30. Prior to the issue of a Construction Certificate for each stage of the development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved by the Principle Certifying Authority. The CEMP shall be consistent with the *Guideline for the Preparation of Environmental Management Plans* (DIPNR 2004). 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.

[PCC0125]

31. Prior to the issue of the Subdivision Certificate for Stage 1, 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 public infrastructure works associated with Stage 1, as set out in Council's fees and charges at the time of payment.

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

The bond will be refunded, if not expended, when the Subdivision Certificate for Stage 1 is issued.

[PCC0275]

32. 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 (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

33. Where earthworks result in the creation of batters and/or cuttings greater than 1m high and/or slopes within allotments 17° (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan endorsed by Council. This Plan shall accompany the applicable Construction Certificate application.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

34. Any Construction Certificate application associated with proposed retaining walls in excess of 1.2m in height shall include a certificate of adequacy of design, signed by a practising Structural Engineer in accordance with AS 4678 and Council's Development Design and Construction Specifications. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall, confirm that any proposed piers or foundations are located outside the zone of influence of any sewer main (as applicable) and be supported by Geotechnical assessment of the founding material.

Please note timber retaining walls are not permitted.

[PCC0475]

35. The site shall be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system for each stage of the development. The development must at no time result in additional ponding or runoff occurring onto neighbouring properties.

A plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a Construction Certificate for Stage 2. Catch drains shall be provided on the top side of all retaining walls in accordance with Council's Development Design Specification D6 - Site Regrading.

All earthworks and retaining walls shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with the applicable Construction Certificate application for Council approval.

[PCC0485]

36. 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 for Stage 2. The landscaping plan shall incorporate Gold Coast Airport Pty Ltd preferred species list to discourage and avoid bat and bird attraction.

[PCC0585]

37. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[PCC0735]

38. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (RMS) publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Stage 1 of the development. Safe public access shall be provided at all times.

[PCC0865]

39. Prior to the issue of a Construction Certificate for Stage 2, 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, including (but not limited to) the construction of a new access off Parkes Drive and adjustment (as required) to the existing access of Wollemi Place, in accordance with Section A2 - "*Site Access and Parking Code*" of Council's Tweed Development Control Plan and Council's "*Driveway Access to Property - Part 1*" Design Specification June 2004.

Applications shall include engineering plans and specifications undertaken in accordance with Council's Development Design and Construction Specifications, including (as applicable):

- Road works/furnishings

- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic Control Plan.

[PCC0895]

40. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for any retaining walls/footings/structures etc taking into consideration the zone of influence on any sewer mains or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a Construction Certificate for Stage 2.

[PCC0935]

41. 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]

42. Prior to the issue of a Construction Certificate for Stage 1 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 (as applicable to Stage 1), unless approved otherwise by Council:

- Earthworks
- Roadworks/furnishings

(c) Parkes Drive shall be upgraded from Sugarwood Drive to the western property boundary of the subject site to provide a 13m seal with barrier kerb and gutter, associated drainage and street lighting, compliant with Council's Industrial Access Road profile.

(d) Construction of a 2.5m wide concrete footpath along the entire frontage of the site to Parkes Drive.

- Stormwater drainage
- Water supply works

(e) Provision of a 150mm dia reticulation main from Kennedy Drive via Rose Street (on an alignment endorsed by Council) to service the proposed new lots, providing required peak demand and fire fighting flows.

- (f) Pipes and fittings shall be of ductile iron, cement lined.
- (g) The main must be located in compliance with the clearance requirements of WSA 03 - 2003 2.3 - Water Supply Code of Australia - Water Services Association of Australia, Table 4.1 - Clearances Between Water Mains And Other Underground Services.
- (h) Demonstrates that the required 150mm diameter water main servicing proposed Lot 2 can physically be located within the road reserve, most notably near the intersection of Parkes Drive and Sugarwood Drive.
 - Sewerage works
- (i) Provision of a reticulation system, providing individual service connections extending at least 1.0m inside each lot boundary.
- (j) Proposed Lot 2 shall be serviced via a sleeved sewer rising main located entirely within Lot 1. The associated Boundary Kit shall be located 1.0m inside Lot 1, unless agreed otherwise with Council.
- (k) The main must be located in compliance with the clearance requirements of WSA 02 - 2002 2.3 - Sewerage Code of Australia - Water Services Association of Australia, Table 4.2 - Clearances Between Sewers And Other Underground Services.
 - Landscaping works
 - Sedimentation and erosion management plans
 - Location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), as well as details and locations of any significant, proposed electrical servicing infrastructure - such as transformers and substations
- (l) Including submission of electrical reticulation plans for any proposed infrastructure, clearly identifying the location of streetlights (on the opposite side to new water mains where achievable), underground cables and all other electrical infrastructure including transformers and substations.

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

[PCC0985]

- 43. The Construction Certificate Application for Stage 2 shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (a) 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*.

- (b) The stormwater and site works shall incorporate Water Sensitive Urban Design Principles and where practical, integrated water cycle management, as proposed by "Water By Design", an initiative for best practice by the South East Queensland Healthy Waterways Partnership.
- (c) A shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks being undertaken.
- (d) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be located within the development property boundary and sized according to Council's Development Design Specification D7 - *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of the Construction Certificate.
- (e) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.
- (f) Only GPT's endorsed by Council are acceptable.

[PCC1105]

44. A Construction Certificate application for Subdivision or Building 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 that 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]

45. 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".

A detailed Erosion and Sediment Control Plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality* shall be submitted with each Construction Certificate Application.

[PCC1155]

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

[PCC1225]

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

[PCC1235]

48. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate for Stage 2 to discharge to Councils sewerage system.

[PCC1255]

49. Prior to the issue of a Construction Certificate for Stage 2, pursuant to Section 68 of the Local Government Act, 1993 any approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval.

[PCC1265]

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

[PCC1275]

51. Prior to the issue of a Construction Certificate for Stage 2 the applicant is required to lodge an application to install/operate an onsite sewerage management system (private ejection pump station) under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

Any application to install/operate an onsite sewerage management system (private ejection pump station) under Section 68 of the Local Government Act 1993 shall be accompanied by three copies of detailed hydraulic design report certified by a qualified hydraulic engineer and shall address the following criteria:

- (a) System type and specifications including pump-well volume, pump specifications and rising main size, length and location.

- (b) Details of operation and maintenance.**
- (c) The sewer pump is to be constructed in a flood proof well with electrical equipment located above RL 2.6m AHD.**

Any approval to install an on-site sewerage treatment system (private ejection pump station) shall comply with the hydraulic design specifications as certified by a qualified Hydraulic Engineer including all recommendations of that report and any addendum to the report to the satisfaction of Councils General Manager or his delegate.

[PCC1295]

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

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

[PCC1325]

- 53. Prior to issue of the relevant construction certificate an acid sulphate soil management plan shall be submitted to the satisfaction of the General Manager or his delegate. All work shall comply with the approved management plan.**

[PCCNS01]

- 54. Prior to the issue of a construction certificate plans drawn to a scale of 1:50 detailing the following with regards to the cafe shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fitout and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:**

- a. Floor plan**
- b. Layout of kitchen showing all equipment**
- c. All internal finish details including floors, wall, ceiling and lighting**
- d. Hydraulic design in particular method of disposal of trade waste**
- e. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required.**

[PCCNS02]

- 55. Prior to the issue of a Construction Certificate, a Construction Waste Management Plan (WMP) shall be submitted to Council for assessment and approval. The WMP is to include:**

- i. The type of waste generated during construction.**
- ii. The method and location of waste storage on site.**
- iii. How any recyclable materials will be managed.**
- iv. The location of the disposal facility for residual waste.**

[PCCNS03]

56. Prior to the issue of a Construction Certificate for Stage 2, consent from Roads and Maritime Services (RMS) is required for the installation of traffic signals at the intersection of Parkes Drive and Sugarwood Drive. [PCCNS04]
57. Prior to the issue of a Construction Certificate for Stage 2, the Proponent must enter into a Works Authorisation Deed (WAD) with Roads and Maritime Services (RMS) for all road works associated with installation of the traffic signals at the intersection of Parkes Drive and Sugarwood Drive. The design of the signals to be installed will be part of the WAD process. [PCCNS05]
58. Notwithstanding any other condition of this consent, prior to the issue of the construction certificate for Stage 1 or prior to the issue of the subdivision certificate for Stage 1 if works are deferred, a plan is to be submitted to Council for the approval by the General Manager or delegate demonstrating that the 150mm water main servicing proposed Lot 2, fronting proposed Lot 1 can be located within the Sugarwood Drive and Parkes Drive road reserves and written advice from the Roads and Maritime Services (RMS) is to be submitted to Council indicating their approval for the location of the 150mm water main within Sugarwood Drive. [PCCNS06]

PRIOR TO COMMENCEMENT OF WORK

59. 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]
60. Prior to the commencement of works in any stage, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
 - (c) WorkCover Regulations 2000. [PCW0025]
61. An application is to be made to Council to disconnect the existing building from Council's sewerage system, prior to any demolition work commencing. [PCW0045]

62. 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]

63. 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]

64. 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]

65. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

66. Any imported fill material must be from an approved source. Prior to commencement of filling operations details of the source of any imported fill, must be submitted to and endorsed by 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 Occupation Certificate for Stage 2, if the required amount of fill exceeds 500m³.

[PCW0375]

67. Subdivision work for Stage 1 in accordance with a development consent must not be commenced until:
- (a) a Construction Certificate for the Stage 1 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 SWAC 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 for Stage 1 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 Subdivision 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]

- 68. 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 for the Stage 1 Subdivision works.**

[PCW0835]

- 69. 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]

70. A Dewatering Management Plan shall be prepared and submitted to Council's General Manager or his delegate for consideration and approval which details the following:
- * A site plan drawn to scale which indicates the extent of the excavation area and estimated zone of influence of the dewatering activity relative to any adjoining buildings together with an assessment of any impacts likely to occur to any adjoining buildings as a result of the dewatering activities.
 - * The location to be indicated on the site plan of the area that will be utilised for the positioning of any treatment tank or sedimentation pond on the site including any reserve area to be used for such purpose in the event of the need for additional treatment facilities to be incorporated on the site.
 - * Details of the proposed method of mechanical aeration to be used in the event that it is necessary to aerate the groundwater to achieve an acceptable Dissolved Oxygen level prior to the offsite discharge of groundwater and where this will be incorporated on the site.
 - * The provision of written advice from the operator of any on site groundwater treatment system stating that the system to be used will be able to treat the groundwater to the required treatment level prior to discharge. Note. Particular attention is to be given to achieving the required detention times prior to discharge of the groundwater. Advice that the system is simply capable of achieving the necessary treatment will not be acceptable.
 - * Addresses any potential contaminants as identified in the site contaminated land reports, quality of water within the on-site detention ponds and demonstrates suitability of discharge to the receiving waters.
 - * All work shall comply with the approved plan.
- [PCW1015]
71. 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]
72. Conditions of development consent do not guarantee Roads and Maritime Services (RMS) consent to the specific road works, for which it is responsible. The Developer must obtain authorisation from Roads and Maritime Services (RMS) in writing prior to the commencement of any road works for traffic signals at the intersection of Parkes Drive and Sugarwood Drive, including traffic management and temporary or permanent road works associated with the proposed development.

Authorisation to commence construction will only be granted when Roads and Maritime Services (RMS) is satisfied that all requirements under the

Works Authorisation Deed (WAD) have been met by the Developer, including but not limited to, the applicable Roads and Maritime Services fees and charges, an unconditional bank guarantee for the full value of the works, detailed design documentation, environmental assessment and a road occupancy license.

Roads and Maritime Services (RMS) will issue a letter to the Developer advising of this authorisation.

[PCWNS01]

73. Prior to commencement of any building work (bulk earthwork or erection of structures) under Stage 2 further investigation of potential contamination of water and sediments within the on-site detention pond on Lot 1 shall be completed to the satisfaction of the General Manager or his delegate, and reported to Council.

[PCWNS02]

74. A remediation action plan (RAP) to the satisfaction of the General Manager or his delegate shall be submitted to Council prior to the commencement of any building work (bulk earthwork or erection of structures) under Stage 2. The RAP shall address potential contaminants including asbestos, water quality and sediments within the on-site detention ponds and soils treated with Dieldrin.

[PCWNS03]

75. Prior to the commencement of any building work (bulk earthwork or erection of structures) under Stage 2 a contaminated land validation from a suitably qualified person shall be provided to Council to the satisfaction of the General Manager or delegate which confirms the site (proposed Lot 1) has been remediated and is suitable for the proposed use. The statement shall include details of remediation works undertaken.

[PCWNS04]

DURING CONSTRUCTION

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

[DUR0005]

77. 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]

78. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
 $L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period - the duration.
 $L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
- [DUR0215]
79. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.
- [DUR0225]
80. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Councils General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Councils General Manager or his delegate prior to installation and shall include a water sampling outlet.
- [DUR0235]
81. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.
- [DUR0245]
82. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.
- [DUR0255]
83. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact Assessment, CRG Acoustical, 19 November 2013 (CRGREF:13183a report).
- [DUR0275]
84. The development shall meet the building construction requirements of Australian Standard AS 2021 (*Acoustics - Aircraft Noise Intrusion - Building Siting and Construction*).
- [DUR0285]
85. If window systems to be used are not openable or are required to remain closed in order to satisfy the requirements of the *Environmental Noise Impact Assessment, CRG Acoustical, 19 November 2013 (CRGREF:13183a report)*, 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]

86. 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]

87. 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]

88. 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.

Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR0405]

89. 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]

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

[DUR0445]

91. 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]

92. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

[DUR0675]

93. Any undertaken 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 and is suitable for the intended development shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

95. 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]

96. 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 for Stage 1 works and prior to the issue of / an Occupation Certificate for Stage 2 of the development.

[DUR0995]

97. All work associated with this approval is to be carried out so as not to adversely 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]

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

[DUR1045]

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

[DUR1575]

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

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

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

[DUR1635]

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

[DUR1685]

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

[DUR1705]

103. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.

[DUR1725]

104. A 2.5m wide concrete footpath is to be constructed on a compacted base along the entire frontage of the site to Parkes Drive in accordance with Council's Development Design and Construction Specifications and Standard Drawing SD013.

24 hours notice is to be given to Council's Engineering Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

105. 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]

106. 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]

107. During the road construction for Stage 1, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
 - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.
- [DUR1825]
108. Pram ramps are to be constructed at road intersections in accordance with Council's Standard Drawing No. SD 014 within all kerb types including roll top kerb.
- [DUR1855]
109. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.
- [DUR1885]
110. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections for the Stage 1 works in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks/"boxing"
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, cycleways - formwork/reinforcement
- (h) Final Practical Inspection - On Maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

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

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 Stage 1 Subdivision works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate' for Stage 1 of the development.

[DUR1895]

111. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.

[DUR1925]

112. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains, unless approved otherwise by Council.

[DUR1945]

113. 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 Certificate for Stage 2.

[DUR1955]

114. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

115. Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.

[DUR2315]

116. Any installed stormwater gully lintels intended to be dedicated as public infrastructure shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

117. 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 associated maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

- 118. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act, including receipt of a “satisfactory inspection report” 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]

- 119. 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]

120. 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]

- 121. 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]

- 122. 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]

123. 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]

124. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

[DUR2685]

125. Unless accepted otherwise by Council, no portion of any structure may be erected within any easement for public infrastructure over the subject site (or within 1.5m of the public infrastructure) unless it is designed and sited outside of the zone of influence of any public infrastructure, complies with Council's "Sewers - Work in Proximity" policy and is approved by Council.

[DURNS01]

126. Any aisle length associate with the Stage 2 car park in excess of 100m in length shall include vehicle speed bumps generally in accordance with AS2890.1 : 2004 - Parking Facilities - Off Street Car Parking.

[DURNS02]

127. A sleeved sewer rising main within the property boundary of Lot 1 will be required to service Lot 2, including the creation of an easement over the private sewer main.

[DURNS03]

128. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011.

[DURNS04]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

129. 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]

130. 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]

131. 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]

132. 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 Stage 2 building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:
436.6148 Trips @ \$844 per Trips \$368,503
(\$815 base rate + \$29 indexation)
S94 Plan No. 4
Sector1_4

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 5.1.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:

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

where:

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

and:

Prod.	projected demand for extractive material to be hauled to the site over life of project in tonnes
Dist.	average haulage distance of product on Shire roads (trip one way)
\$Unit	the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)
Admin.	Administration component - 5% - see Section 6.5

(b) Extensions to Council Administration Offices & Technical Support Facilities

6.5174 ET @ \$1860.31 per ET \$12,124.38
(\$1,759.90 base rate + \$100.41 indexation)
S94 Plan No. 18

[POC0395]

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

[POC0475]

134. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

135. 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 for Stage 2 of the development have been made with the Tweed Shire Council.

136. Prior to the occupation of the Stage 2 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:	23.6959 ET @ \$12575 per ET	\$297,975.90
Sewer Tweed Heads:	35.33016 ET @ \$6042 per ET	\$213,464.90

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]

136. 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]

137. Prior to the issue of an occupation certificate written validation shall be provided to the principal certifying authority from a suitably qualified person certifying that the building elements installed in the office, staff/training rooms and retail centre satisfy the minimum 'acoustic treatments' (Rw value) identified in the recommendations of the report - *Environmental Noise Impact Assessment, CRG Acoustical, 19 November 2013 (CRGREF:13183a report)*.

[POCNS01]

138. Prior to the issue of an occupation certificate written validation shall be provided to the principal certifying authority from a suitably qualified person which certifies that the development complies with the recommendations under table 6.0 of the *Environmental Noise Impact Assessment, CRG Acoustical, 19 November 2013 (CRGREF:13183a report) - acoustic barrier, road surface coatings, mechanical plant, rooftop plant and attenuators*.

[POCNS02]

139. Prior to issue of an Occupation Certificate for the Masters development of proposed Lot 1, documentary evidence shall be provided to Council to confirm registration with Land & Property Information - NSW Government of the Deposited Plan associated with the Subdivision Certificate of Stage 1 of the development.

[POCNS03]

140. Prior to issue of an Occupation Certificate for Stage 2, certification shall be submitted to the Principle Certifying Authority from a suitably qualified geotechnical/structural engineer, certifying that any constructed retaining structures in excess of 1.2m on the site have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

[POCNS04]

141. Prior to the issue of an Occupation Certificate (interim or final) for Stage 2, all civil/subdivision works associated with Stage 1 must have been completed to practical completion, as determined applicable by the Principle Certifying Authority.

[POCNS05]

142. Prior to the issue of an Occupation Certificate (interim or final) for Stage 2 or commencement of the approved use, the Proponent shall complete all road works under the agreed Works Authorisation Deed (WAD) to practical completion, as determined by Roads and Maritime Services (RMS). All

works shall be undertaken at full cost to the Proponent, to the satisfaction of the Roads and Maritime Services (RMS).

[POCNS06]

143. Prior to the issue of an Occupation Certificate (interim or final) for Stage 2, appropriate signage shall be erected internally to advise customers that vehicles cannot exit the development via Wollemi Place.

[POCNS07]

144. Prior to the issue of an Occupation Certificate for Stage 2, 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 specifications and requirements of Planning for Bush Fire Protection 2006 in accordance with Section 79BA of the Environmental Planning and Assessment Act 1979.

[POCNS08]

USE

145. 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]

146. 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]

147. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

148. Hours of operation of the business are restricted to 6.00am to 10.00pm 7 days.

[USE0185]

149. All deliveries to the premises and waste collection are to occur only within the hours of 7.00am to 6.00pm.

[USE0195]

150. 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]
151. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.
[USE0245]
152. Any vehicles that remain on site for periods in excess of two minutes are required to switch off their engines.
[USE0255]
153. The use being restricted to the floor area designated on the approved plan.
[USE0415]
154. All loading/unloading to take place within the boundary of the subject property.
[USE0525]
155. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.
[USE0835]
156. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owners expense.
[USE1455]
157. The development shall be constructed and operated in accordance with the Recommended Acoustic Treatments identified under table 6.0 of the *Environmental Noise Impact Assessment, CRG Acoustical, 19 November 2013 (CRGREF:13183a report)*. In particular the time restriction over hours of operation, trolley collection, waste collection, deliveries and use of the southern service road prior to 7am and after 6pm shall be strictly observed.
[USENS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

158. Prior to issue of a Subdivision Certificate for Stage 1 of the development, all works/actions/inspections etc required by other conditions or approved Management Plans or the like applicable to Stage 1 shall be completed in accordance with those conditions or plans.
[PSC0005]

- 159. Prior to the issue of a Subdivision Certificate for Stage 1 of the development, a Defect Liability Bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the public infrastructure works associated with Stage 1 (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]

- 160. Prior to the issue of a Subdivision Certificate for Stage 1, a Performance Bond equal to 25% of the contract value of the footpath construction works associated with Stage 1 shall be lodged for a period of 3 years.**

[PSC0225]

- 161. For landscaping associated with Stage 1 a A bond to ensure acceptable Plant Establishment and Landscaping Performance at time of handover to Council shall be lodged by the Developer prior to the issue of the Subdivision Certificate for Stage 1.**

The bond shall be held by Council for a period of 12 months from the date of issue of the Subdivision Certificate and may be utilised by Council during this period to undertake essential plant establishment or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

The amount of the bond shall be 20% of the estimated cost of the landscaping for Stage 1 or \$3000, whichever is the greater.

[PSC0235]

- 162. Prior to the issue of a Subdivision Certificate for Stage 1 of the development, a certificate of compliance shall be submitted to Council by the Developers Subdivision Works Accredited Certifier (SWAC) or equivalent, verifying that any placed fill for Stage 1 has been compacted in accordance with the requirements of AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments" and is suitable for its intended purposes.**

The submission shall include copies of all undertaken test results.

[PSC0395]

- 163. All approved landscaping requirements for Stage 1 must be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate for Stage 1. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate.**

[PSC0485]

- 164. Any damage to property (including pavement damage) associated with the Stage 1 works is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate for Stage 1.**

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]

- 165. Prior to the issue of a Subdivision Certificate for Stage 1, Work as Executed Plans for the civil works constructed as part of Stage 1 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]

- 166. A Subdivision Certificate for Stage 1 of the development will not be issued by the General Manager until such time as all conditions of this Development Consent applicable to Stage 1 have been complied with.**

[PSC0825]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.**
- (b) Easements to facilitate the short and long term integrated customer and service vehicle movements through the site.**
- (c) Restriction on Use on both Lot 1 and 2 that only service vehicles can exit the site via Wollemi Place and not between the hours of 7.00am to 9.00am.**
- (d) Positive Covenant over Lot 1 for the installation and operational maintenance of private sewer rising main servicing Lot 2.**
- (e) Restrictive covenant on Lot 2 to the effect that no building, engineering or construction work may be carried out on the Lot until such time as the subdivision works set out in the relevant conditions of Development Consent DA13/0692 have been completed to Council's General Manager or his delegate's satisfaction.**

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]

168. Prior to the issue of a Subdivision Certificate for Stage 1 of the development, submission of an appropriate plan indicating the street/road address number to both proposed lots shall be made to Council's Property Officer for approval. 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]

169. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) covering works associated with Stage 1 of the development and submitted to Council with the application for Subdivision Certificate for Stage 1.

[PSC0855]

170. Prior to registration of the plan of subdivision for Stage 1 of the development, 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]

171. Prior to the application for a Subdivision Certificate for Stage 1 of the development, a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following works associated with that stage:

- (a) Compliance Certificate - Roads**
- (b) Compliance Certificate - Water Reticulation**
- (c) Compliance Certificate - Sewerage Reticulation**
- (d) Compliance Certificate - Drainage**

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.**
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".**

[PSC0915]

172. The six months Defects Liability Period for the subdivision works associated with Stage 1 commences upon the registration of the Plan of Subdivision for Stage 1.

[PSC0925]

173. Prior to the issue of a Subdivision Certificate and also prior to the end of Defects Liability Period for Stage 1 of the development, a CCTV inspection of any stormwater pipes and gravity sewerage systems installed in that stage and intended to be dedicated to Council (including joints and junctions) will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

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

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

[PSC1065]

174. Prior to issuing a Subdivision Certificate for Stage 1 of the development, reticulated water supply and outfall sewerage reticulation (including service 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.

Fire Hydrants spacing, sizing and pressures shall comply with Council's DCP - Section A5 - Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005.

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]

- 175. Prior to issuing a Subdivision Certificate for Stage 1 of the development, the Applicant shall submit to Council written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of all allotments has been completed.**

[PSC1165]

176. Electricity

- (a) Prior to issuing a Subdivision Certificate for Stage 1 of the development, the Applicant shall submit to Council written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity has been provided adjacent to the front boundary of each allotment; and**
- (b) The reticulation includes the provision of fully installed electric street lights along the development's frontage to Parkes Drive to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.**

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

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

[PSC1185]

- 177. A Subdivision Certificate must not be issued for Stage 1 of the development unless:**

- a) The subdivision work specified in the schedule below has been completed, or**
- b) A written agreement has been reached and entered into between the Applicant for the Subdivision Certificate and the Council:**
- i. As to the payment by the Proponent to the Council of the cost of carrying out the subdivision work specified in the schedule below that is to be completed by the Council and as to when the said work will be completed by the Council, and**

- ii. As to the security to be given by the Proponent to the Council with respect to the subdivision work specified in the schedule below that is to be completed by the Proponent and as to when the said work will be completed by the Proponent.

SCHEDULE OF SUBDIVISION WORK to be carried out by the Proponent

(a) Water Supply

- Construction of 150mm Ductile Iron Cement Lined water main from Banksia Drive Rose Street to service all lots created including provision of tapings for services and reconnect 50m water main and existing services if necessary.

(b) Sewer Reticulation

- Construction of private sewer rising main from lot 2 to manhole at north-west corner of Banksia and Rose Street intersection within a new easement or Positive Covenant (as applicable) dedicated to Lot 2 within Lot 1 and not within the existing Council easement.
- Works associated with any additional sewerage requirements for provision of sewer at Lot 1.

- (c) Upgrade of Parkes Drive, including associated drainage, street lighting and the construction of a 2.5m wide concrete footpath along the entire frontage of the site to Parkes Drive.**

SCHEDULE OF SUBDIVISION WORK to be carried out by the Council (paid for by the Proponent)

(d) Water Supply

- Construction of 150mm Ductile Iron Cement Lined water main in Rose Street from Kennedy Drive to northern boundary of Banksia Street near Wollemi Place including connection to appropriate mains in Kennedy Drive.

[PSCNS01]

178. The written agreement between the Council and the Proponent for the Stage 1 Subdivision Certificate shall incorporate provisions relating to:

- (a) The timing of payment to the Council for the work to be carried out by the Council. Council require payment to be made upon execution of the agreement and before the Subdivision Certificate is issued.
- (b) The timing for completion of the relevant subdivision work that is to be carried out by the Council.
- (c) The timing for completion of the relevant subdivision work that is to be carried out by the Applicant
- (d) The enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer. The bond shall be provided upon

execution of the agreement and before the issue of the Subdivision Certificate.

- (e) The breaches of the agreement that would entitle the Council to realise and use the funds from the security.
- (f) The resolution of disputes under the agreement.
- (g) Ensuring that the obligations under the agreement are passed on to any new owner of the land so that the agreement remains binding on and enforceable against, the owner of the land from time to time.
- (h) The imposition of a restrictive covenant on proposed Lot 2 to the effect that no building, engineering or construction work may be carried out on the Lot until such time as the subdivision works set out in the relevant condition of the development consent have been completed.

[PSCNS02]

179. Should the Proponent defer Stage 1 (prior to issue of subdivision certificate) Civil works to Stage 2 (prior to issue of occupation certificate), all applicable Stage 1 conditions shall apply to Stage 2. The applicant will thus be required to obtain a Construction Certificate for these works and pay applicable compliance bonds together with Long Service Levy. In that case, Council shall acknowledge that the required works are applicable to Stage 2.

[PSCNS03]

180. Notwithstanding any other condition of this consent, prior to the issue of the construction certificate for Stage 1 or prior to the issue of the subdivision certificate for Stage 1 if works are deferred, a plan is to be submitted to Council for the approval by the General Manager or delegate demonstrating that the 150mm water main servicing proposed Lot 2, fronting proposed Lot 1 can be located within the Sugarwood Drive and Parkes Drive road reserves and written advice from the Roads and Maritime Services (RMS) is to be submitted to Council indicating their approval for the location of the 150mm water main within Sugarwood Drive.

GENERAL TERMS OF APPROVAL UNDER SECTION 116 OF THE WATER ACT 1912 (Licence to commence sinking a bore to enlarge, deepen or alter a bore)

1. Before commencing any works or using any existing works for the purpose of dewatering an approval under Part V of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
2. An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
3. When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject o this consent to be surrendered or let lapse.

4. All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
5. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
6. The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
7. All vegetation clearing must be authorized under the Native Vegetation Conservation Act 1997, if applicable.
8. The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
9. A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
10. The water extracted under the approval to be granted shall be used for the purpose of dewatering and for no other purpose. A proposed change in purpose will require a replacement license to be issued.
11. Works for the purpose of a bore must be completed within such period as specified by the Department.
12. Within two months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.
13. The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
14. The licensee must allow authorised officers of the Department, and its authorised agents reasonable access to the licensed works with vehicles and equipment at any time for the purposes of:
 1. Inspecting the said work; and
 2. Taking samples of any water or material in the work and testing the samples.
15. The licensee shall within 2 weeks of being notified install to the satisfaction of the Department in respect of location, type and construction an appliance(s) to measure the quantity of water extracted from the works. The appliance(s) to consist of either a measuring weir or weirs with automatic recorder, or meter or meter(s) of measurement as may be approved by the

Department. The appliance(s) shall be maintained in good working order and condition. A record of all water extracted from the works shall be kept and supplied to the Department upon request. The licensee when requested must supply a test certificate as to the accuracy of the appliance(s) furnished either by the manufacturer or by some person duly qualified.

16. The authorised work shall not be used for the discharge of polluted water into a river or lake otherwise than in accordance with the conditions of a licence granted under the Protection of the Environment Operations Act 1997. A copy of the licence to discharge is to be provided to the Department.
 17. The maximum term of this licence shall be twelve (12) months.
 18. The volume of groundwater extracted from the work authorised by this licence shall not exceed 5 megalitres for the term of the licence.
 19. The authorised work shall not be used for the discharge of water unless the ph of the water is between 6.5 and 8.5, or the water has been treated to bring the ph to a level between 6.5 and 8.5 prior to discharge, or the water is discharged through the Council's sewerage treatment system.
 20. The licensee shall test the ph of any water extracted from the work prior to the commencement of discharge and at least twice daily thereafter and record the date, time and result of each test in the site log. A copy of the records of the ph testing is to be returned with the form 'AG'.
 21. The work shall be managed in accordance with the constraints set out in a Dewatering Management Plan approved by the Department.
 22. The retention or holding pond must be lined with an impermeable material (such as clay or geotextile) to prevent seepage, leakage or infiltration of treated water.
- B. Council executes and affixes the Common Seal of Council to the binding Deed of Agreement covering the deferral of Stage 1 subdivision works as required by Draft Condition No. 177.

REPORT:

Applicant: Newton Denny Chapelle
Owner: Nosworthy & Associates Pty Ltd
Location: Part Lot 10 DP 1084319 Parkes Drive, Tweed Heads West
Zoning: 3(c) Commerce and Trade Zone (TLEP 2000)
Cost: \$13,350,000

Background:

Site Constraints (summary)

- TSC sewerage treatment plant adjoining to west (Lot 1 DP 1011625)
- Land contamination/remediation of site
- Proximity of Pacific Motorway/Parkes Drive interchange and the need for traffic signalisation on Parkes Drive
- Need for location of essential infrastructure within RMS land on Rose Street (Lot 11 DP 1084319) adjoining the site to the east
- Bushfire prone – affected only as buffer to Category 1 vegetation on north-west tip only
- Residential development – proximity to southern boundary of site
- Airport – proximity to southern runway approach, aircraft noise
- Groundwater – close to ground surface
- Flooding – low-lying northern portion of site
- Restriction of site access

Subject Land

The site currently contains Boyds Bay Garden World which is primarily a wholesale and retail nursery supplies business. The previous and historic use of the site was as a drive-in theatre.

It is intended that the existing nursery supplies business will close but will in the future supply Masters with plants for its own nursery. Lot 2 is to be retained by the current owners of the land for future development options.

A cluster of single storey buildings is located at the south western portion of the site. The site is bounded by Sugarwood Drive, Parkes Drive and Wollemi Place.

The natural land form was heavily modified to accommodate the former drive-in theatre and much of this contouring remains in place. The site has been subject to partial historical filling with site levels varying between 1.6m to 3.6m AHD. Groundwater is recorded at 0.5m depth in the northern corner.

Existing site levels range from:

- RL 1.55m – 1.60m AHD (northern portion of the site) - lowest;
- RL 3.0m - 3.60m AHD (south-western portion of the site) - in the vicinity of the existing garden display buildings; and
- RL 2.60m - 3.0m AHD (south-eastern portion of the site) - the rear of the site has been built-up between 1.5m and 2.0m from the natural ground level.

Existing Title Restrictions

Notations on DP 1084319 advise that “access will be restricted across the boundary marked A-B-C-D”. This boundary represents the frontage of the site adjoining Sugarwood Drive (formerly Rose Street) and Parkes Drive effectively restricting access off Parkes Drive to the north-western corner (20m max) which is consistent with what is proposed.

An easement to drain sewage (A) is located in the south-west portion of the site. The precise location of the line of pipes relating to this easement is unknown. All of the area nominated as (C) on the DP has the right to drain via (A). It is advised that this arrangement was created via the previous DP 849367 and was necessary given the configuration of allotments at that time. With the current lot configuration, the easement is somewhat obsolete as it serves the purpose of enabling one part of Lot 10 (namely C) to drain via another part of Lot 10 (being the area nominated as (A)).

A further easement to drain sewage (B) 5.03 wide is located along the southern most property boundary which contains the existing public infrastructure.

The Proposal

The proposal comprises two stages only:

Stage 1

Demolition and subdivision of the subject parcel into two lots:

- Lot 1 – 35,347.6m²
- Lot 2 – 15,907.4m²

Stage 1 works include the removal of vegetation and demolition of existing structures on proposed Lot 1. Easements are to be established over both parcels to facilitate the short and long term integrated customer and service vehicle movements through the site.

Stage 2

Development of Masters Home Improvement Store as a single building, divided into three key operational areas:

1. General sales area of home improvement goods (hardware, building materials, paint, flooring etc.)
2. Garden area including a customer café and outdoor seating.
3. Trade sales area (loading of goods from all areas of the store).

The building will be articulated on the northern elevation. Internal access between operational areas will be available at several points within the building. The building design has been developed to take into account future development of Lot 2.

The proposed Masters Home Improvement Store will have a total floor area of 13,638m². This incorporates a General Retail Area (7,477m²), a Trade Centre (2354m²), a Garden Centre (2109m²), and a Receiving Area (848m²).

Associated bulk earthworks, infrastructure, car parking, access, landscaping and signage are proposed to accompany construction of the building upon proposed Lot 1.

Hours of operation are proposed from 6am to 10pm seven days a week. Business identification signage is also proposed with a total area of 457.24m². Given the scale of the development and the generous road frontage dimensions, this is considered acceptable.

A landscape concept plan has been submitted. Amendments to this concept are needed and a landscape plan will be required to be submitted prior to the issue of a construction certificate for Stage 2 for further assessment.

Stage 2 may include associated construction of deferred infrastructure upgrades associated with Stage 1 of the development if the applicant adopts Option 2 as outlined by Council in recommended conditions (refer to section *Proposed Deferral of Stage 1 Civil Works* below for further detail).

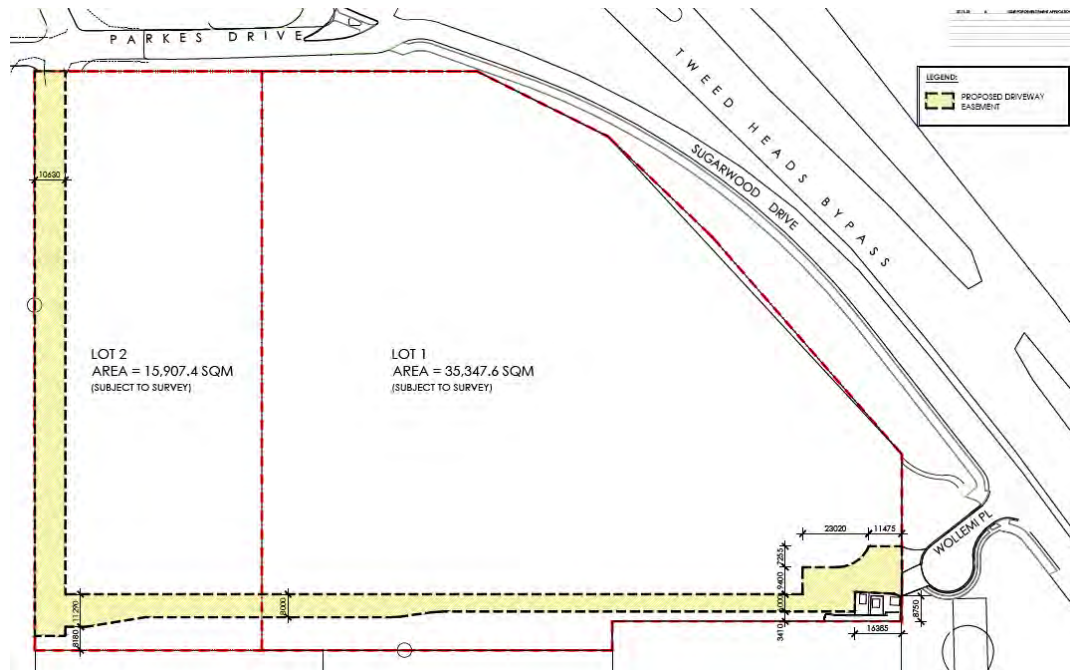


Figure 1: Stage 1 Subdivision Plan

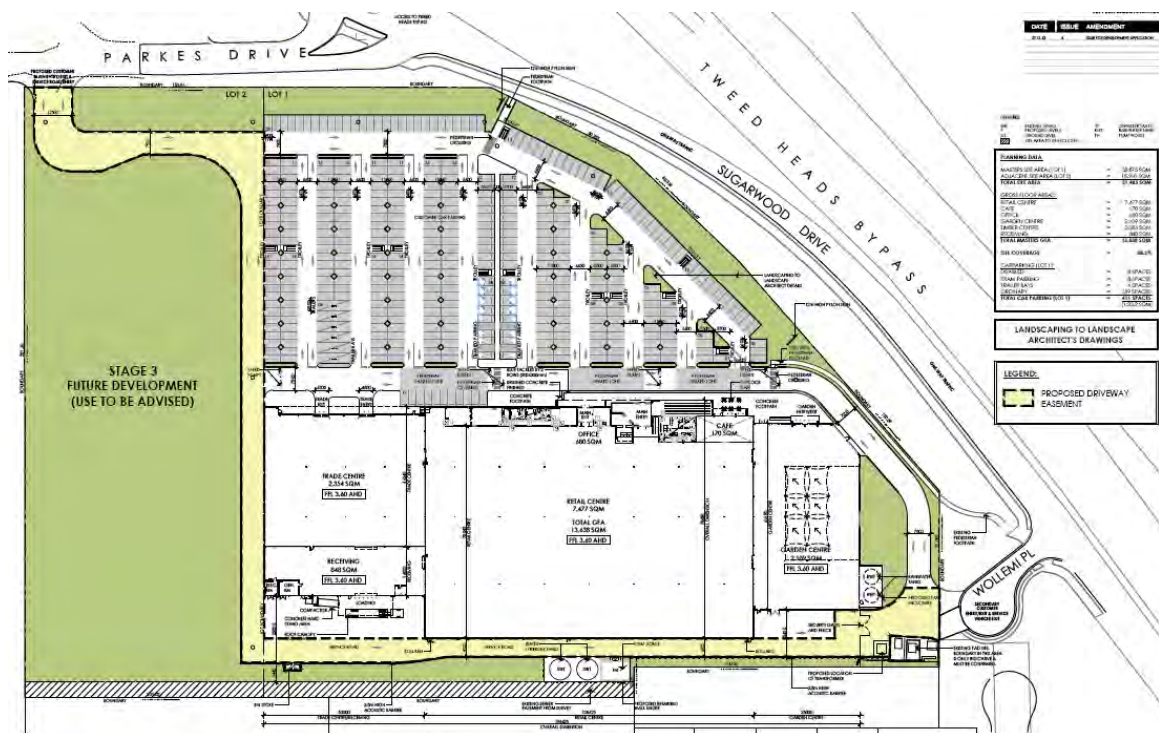


Figure 2: Stage 2 Construction Plan

Concept plans have been supplied for a future "Stage 3" development upon Lot 2 that indicate additional retail floor space, infrastructure, car parking, landscaping and service

access over proposed Lot 2 with provision of a gross floor area up to 4600m² and intention for an additional 211 car parks to be provided.

Development consent is sought only for Stages 1 and 2. Concept approval only is sought by the applicant for Stage 3. Stage 3 requires the lodgement of a separate and subsequent development application in the future that is consistent with the concept. Until that time, no ongoing use of proposed Lot 2 has been requested or approved.

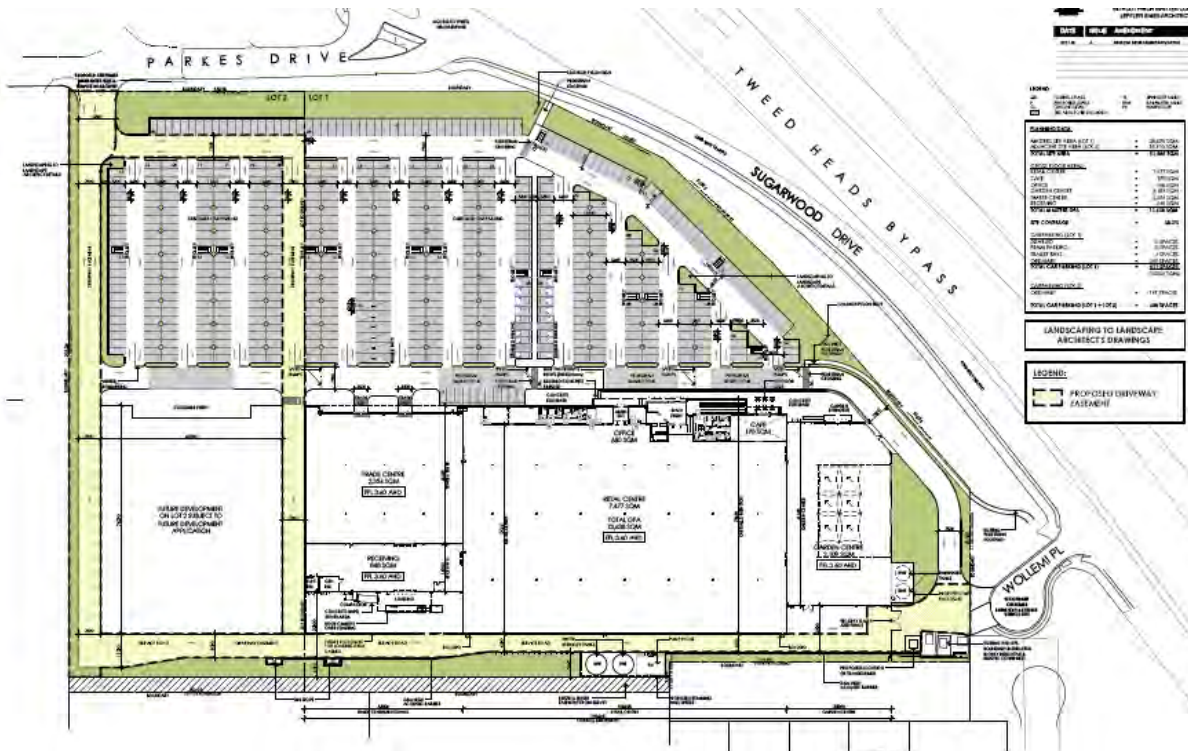


Figure 3: Concept Stage 3 Plan

An indicative future Stage 4 has also been submitted with application documentation. It illustrates potential future buildings on the northern part of the site (both Lot 1 and Lot 2). Stage 4 is not a concept plan. It does not form part of this application.

The proposal includes location of a water main within the road reserve (Sugarwood Drive) identified as Lot 11 DP 1084319 which is in the ownership of RMS and subject to Highway Property Management. The applicant will be required to obtain consent from RMS to undertake such works despite the associated easement being controlled by Council.

Legal Matters

Council received legal correspondence from the applicant on 2 June 2014 that discussed the following matters:

- Completion of civil works prior to issue of subdivision certificate, and
- Contamination.

Council was provided with five options intended to resolve Council's concerns regarding completion of civil works:

- a. Imposition of a condition of consent requiring completion of civil works prior to the issue of an occupation certificate.
- b. Registration of a restrictive covenant on the title of Lot 2 preventing the issue of a construction certificate for that lot until such time as the civil works have been completed.

- c. The entering into of a Planning Agreement to undertake the civil works prior to the issue of an occupation certificate for the Hardware store.
- d. Imposition of a condition requiring provision of a security Bond to Council for the full value of the civil works.
- e. The entering into of a Deed Poll committing to undertake the civil works.

Based upon development taking place on Lot 1 and the absence of a change of use proposed for Lot 2, it was put forth that the relevant clauses of SEPP 55 had been satisfied with regard to land contamination and there was no current requirement for the provision of a further site investigation report in respect of proposed Lot 2.

Senior management held discussions as to how the matter might be resolved by way of one or more of the options proposed in the applicant's legal correspondence. Council advised of its preference for provision of a Bond.

Council engaged its own legal advice to determine the matter and secure Council's interests with costs to be covered by the applicant. Subsequent to receipt of such legal advice, Council's preferred approach entails:

- Conditioning of the consent (to reflect the intent of Section 109J(2)(b) and (c) of the *Environmental Planning and Assessment Act 1979*);
- Entering into of an agreement;
- Requirement for a Bond; and
- Application of a restrictive covenant over Lot 2.

Details were put to the applicant's solicitor with regard to an agreement in the form of a Deed to incorporate provisions relating (but not limited) to the following:

- Timing of payment to Council for the work to be carried out by Council - in that regard Council would require payment to be made upon execution of the agreement and before the subdivision certificate is issued.
- The timing for completion of the relevant subdivision work that is to be carried out by Council.
- The timing for completion of the relevant subdivision work that is to be carried out by the Applicant.
- The enforcement of the agreement by a suitable means, such as the provision of a Bond or guarantee, in the event of a breach of the agreement by the developer - the Bond would need to be provided upon execution of the agreement and before the issue of the subdivision certificate.
- The breaches of the agreement that would entitle Council to realise and use the funds from the security.
- The resolution of disputes under the agreement.
- Ensuring that the obligations under the agreement are passed on to any new owner of the land so that the agreement remains binding on, and enforceable against, the owner of the land from time to time.
- The imposition of a restrictive covenant on proposed Lot 2 to the effect that no building, engineering or construction work may be carried out on the Lot until such time as the subdivision works set out in the relevant condition of the development consent have been completed.

Proposed Deferral of Stage 1 Civil Works

The subdivision component of this development proposal (Stage 1) triggers the requirement to upgrade “key infrastructure”/essential services (such as road access, water and sewer reticulation) as deemed applicable by RMS and Council’s DCP Section A5 - Subdivision Manual.

Council’s DCP A5 specifies that “Key infrastructure” that is “required to service the subdivision and lots therein *must be completed*” prior to the issuing of that Subdivision Certificate. This is specified to include roads and ancillary traffic facilities, drainage, sewerage, water, electricity and telecommunications supply.

“Non Essential” works, considered acceptable to bond are listed as such minor works as concrete footpaths and landscaping on road verges, acoustic fencing and other minor structures approved by the consent authority.

The Applicant has however requested that Council supports deferral of these “Key infrastructure” works to prior to the issuing of the Occupation Certificate for Stage 2 of the development.

This can be achieved but there is an element of risk for Council.

Historically, this is not a process that Council has undertaken. The relevant Development Control Plan does not allow for it but legal advice has been obtained that suggests a way forward. As mentioned previously in this report, possible options incorporate written agreements between Council and the Proponent, held Bonds and a restrictive covenant on proposed Lot 2 to the effect that no building, engineering or construction work may be carried out on the Lot until such time as the subdivision works set out in the relevant condition of the development consent have been completed.

As such, proposed conditions of consent have been prepared to provide the applicant with two options, as follows:

Option 1

- To provide “Key infrastructure” prior to the issue of the Subdivision Certificate for Stage 1 with works including:
 - Upgrading of Parkes Drive (including associated drainage) for the frontage of the subject site to provide a service road compliant with the provisions of Council’s DCP Section A5 – Subdivision Manual.
 - Provision of reticulated water supply and outfall sewerage reticulation to all lots within the subdivision.
 - Payment of relevant S64 Development contributions via application for a certificate of compliance under Sections 305, 306 and 307 of the Water Management Act 2000.

Option 2

- Deferral of the requirement to provide “Key infrastructure” until prior to the issue of any Occupation Certificate for Stage 2. This will be achieved via:
 - Payment of applicable Bonds and written agreements (including the imposition of a restrictive covenant on proposed Lot 2).
 - Payment of applicable S64 development contributions associated with the subdivision prior to the issuing of the Subdivision Certificate for Stage 1.

Appropriate conditions of consent provide the proponent the opportunity to either:

- Construct the required civil works prior to the Subdivision Certificate for Stage 1, or
- Activate a written agreement with Council for the required works, including payment of appropriate Bonds for said works, prior to the issue of the Subdivision Certificate for Stage 1, allowing said works to be deferred to prior to the issue of the Occupation Certificate for Stage 2.

A draft schedule of the works to be carried out *by the proponent* is as follows:

Water Supply

- Construction of 150mm Ductile Iron Cement Lined water main from Banksia Drive/Rose Street to service all lots created including provision of tapings for services and reconnect 50m water main and existing services if necessary.

Sewer Reticulation

- Construction of private sewer rising main from Lot 2 to manhole at north-west corner of Banksia and Rose Street intersection within a new easement or Positive Covenant (as applicable) dedicated to Lot 2 within Lot 1 and not within the existing Council easement.
- Works associated with any additional sewerage requirements for provision of sewer at Lot 1.

Upgrade of Parkes Drive

- Including associated drainage, street lighting and the construction of a 2.5m wide concrete footpath along the entire frontage of the site to Parkes Drive.

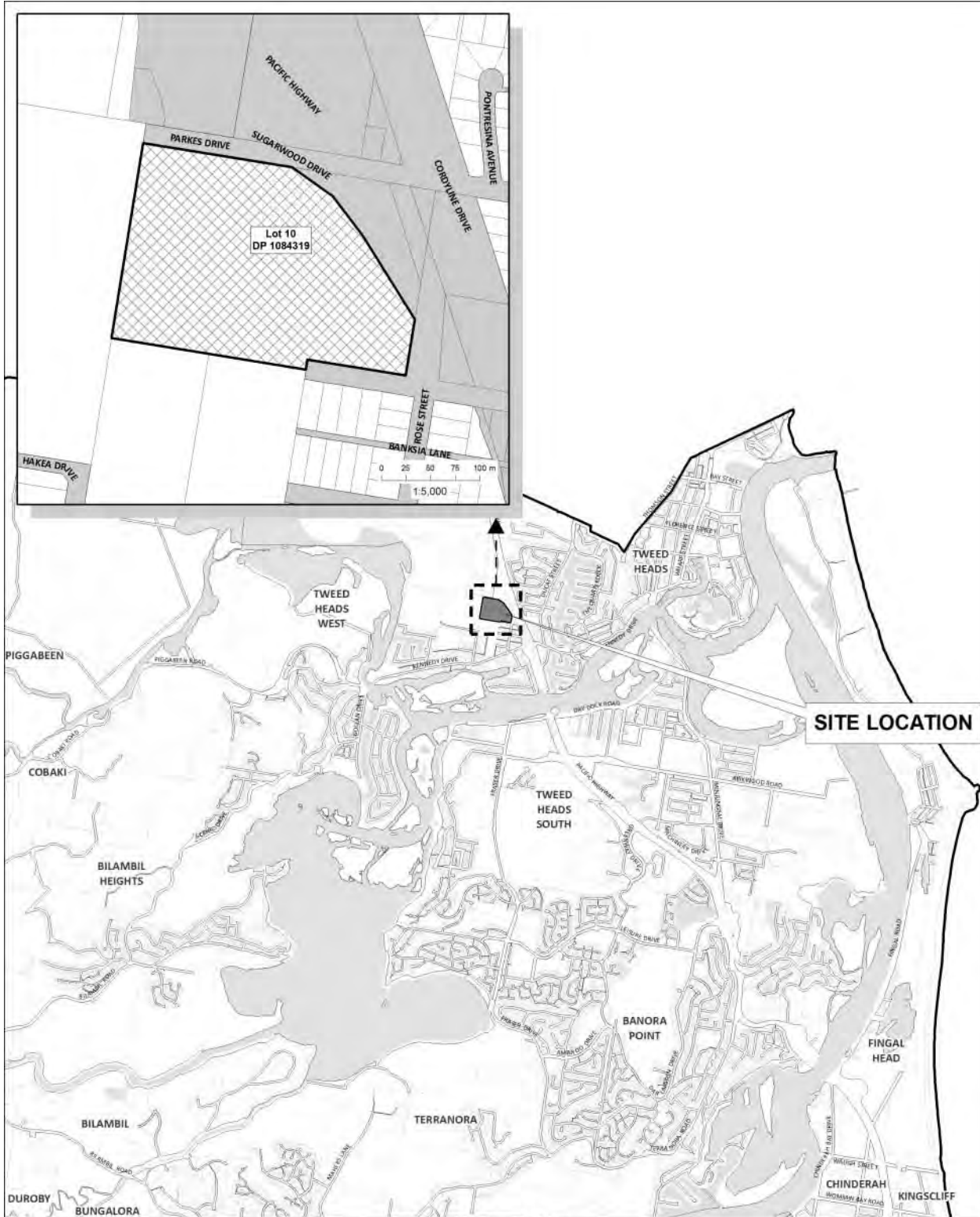
A draft schedule of the works to be carried out *by Council* is as follows:

Water Supply

- Construction of 150mm Ductile Iron Cement Lined water main in Rose Street from Kennedy Drive to northern boundary of Banksia Street near Wollemi Place including connection to appropriate mains in Kennedy Drive.

Work to be undertaken by Council is targeted for November 2014. A preliminary estimate for this work of \$274,146.37 has been supplied to the proponent (refer Attachment 1).

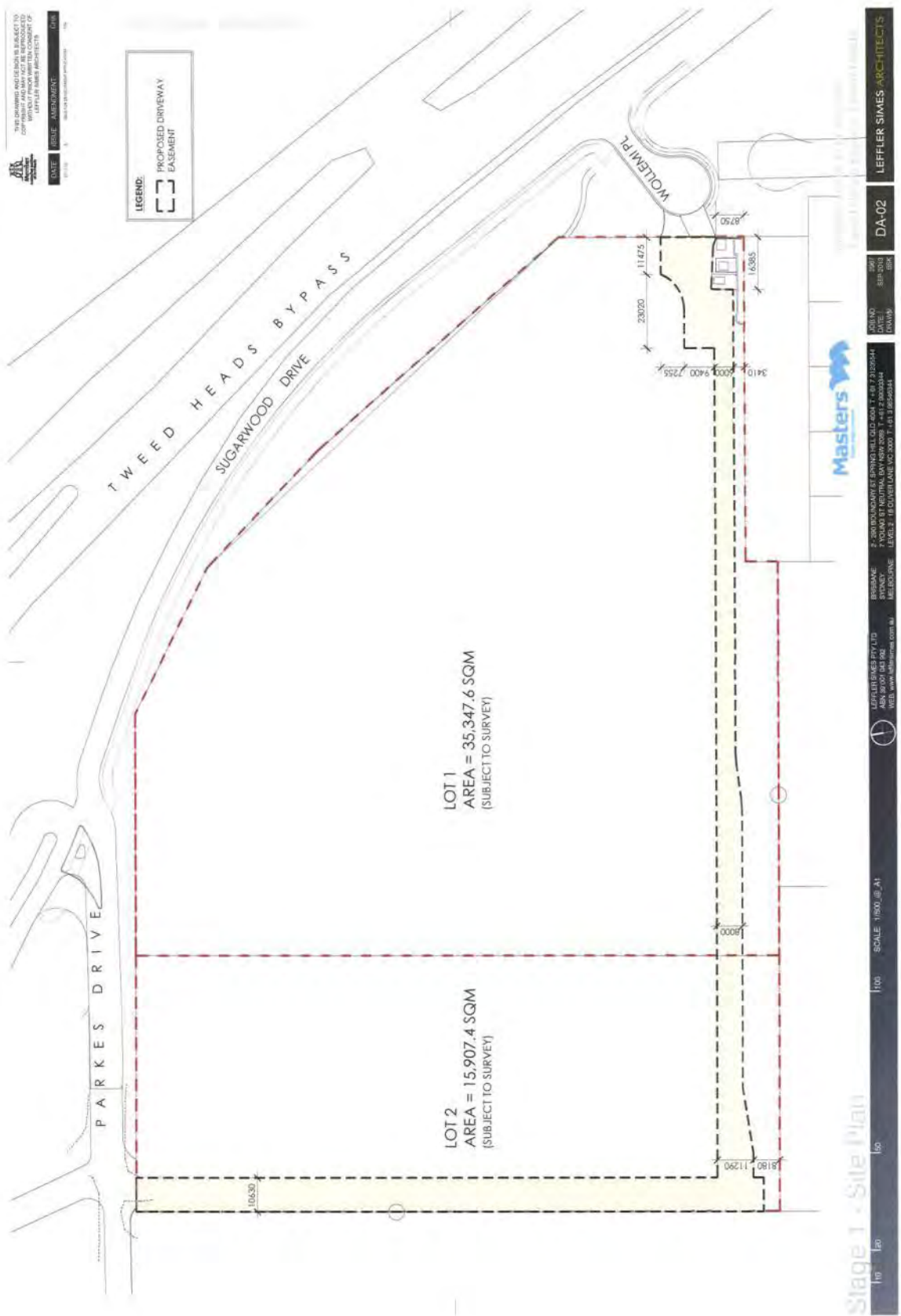
SITE DIAGRAM:



Locality Plan
 Part Lot 10 DP 1084319
 Parkes Drive, Tweed Heads West

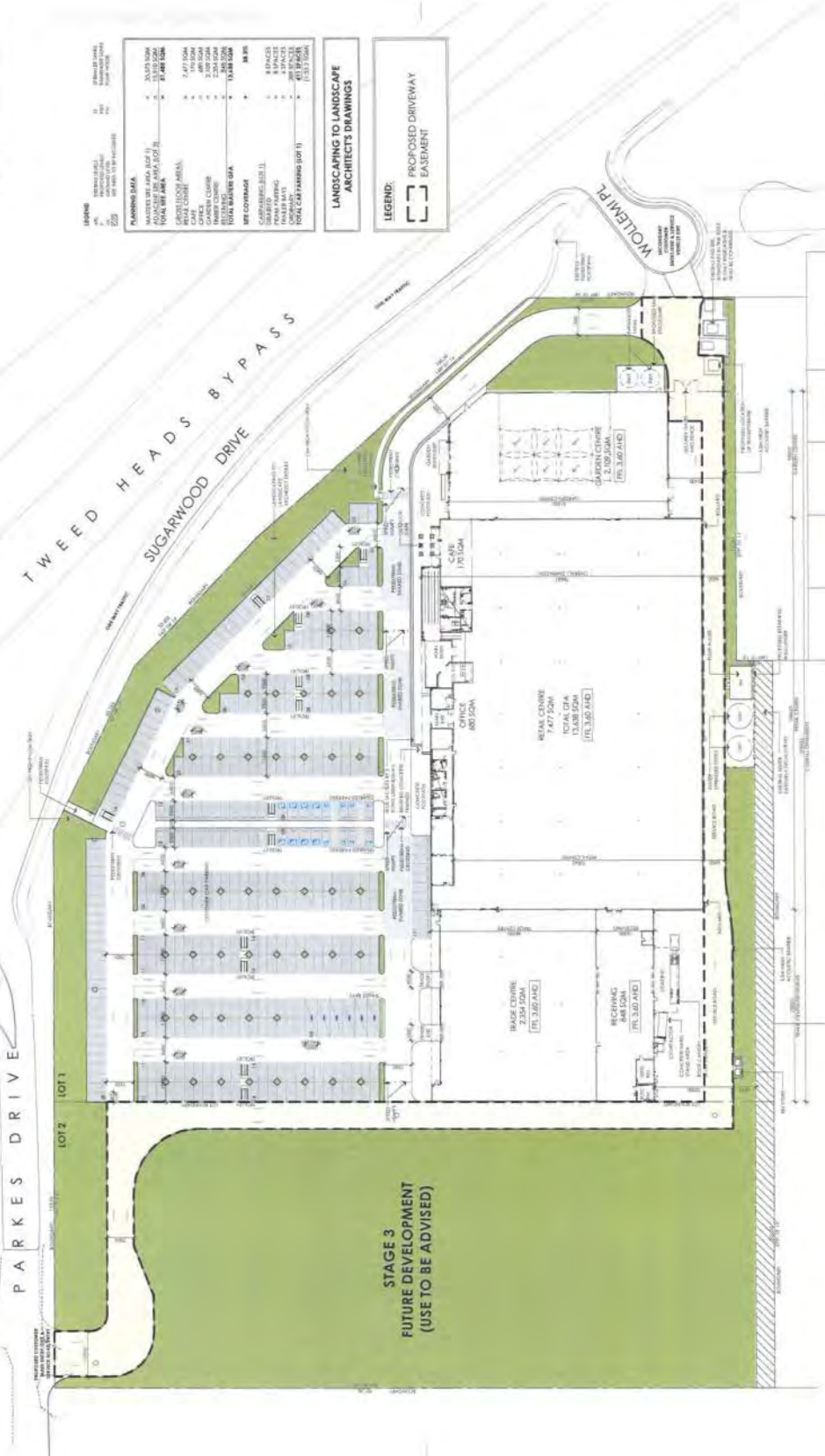
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DEVELOPMENT/ELEVATION PLANS:



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Stage 2 - Site Plan

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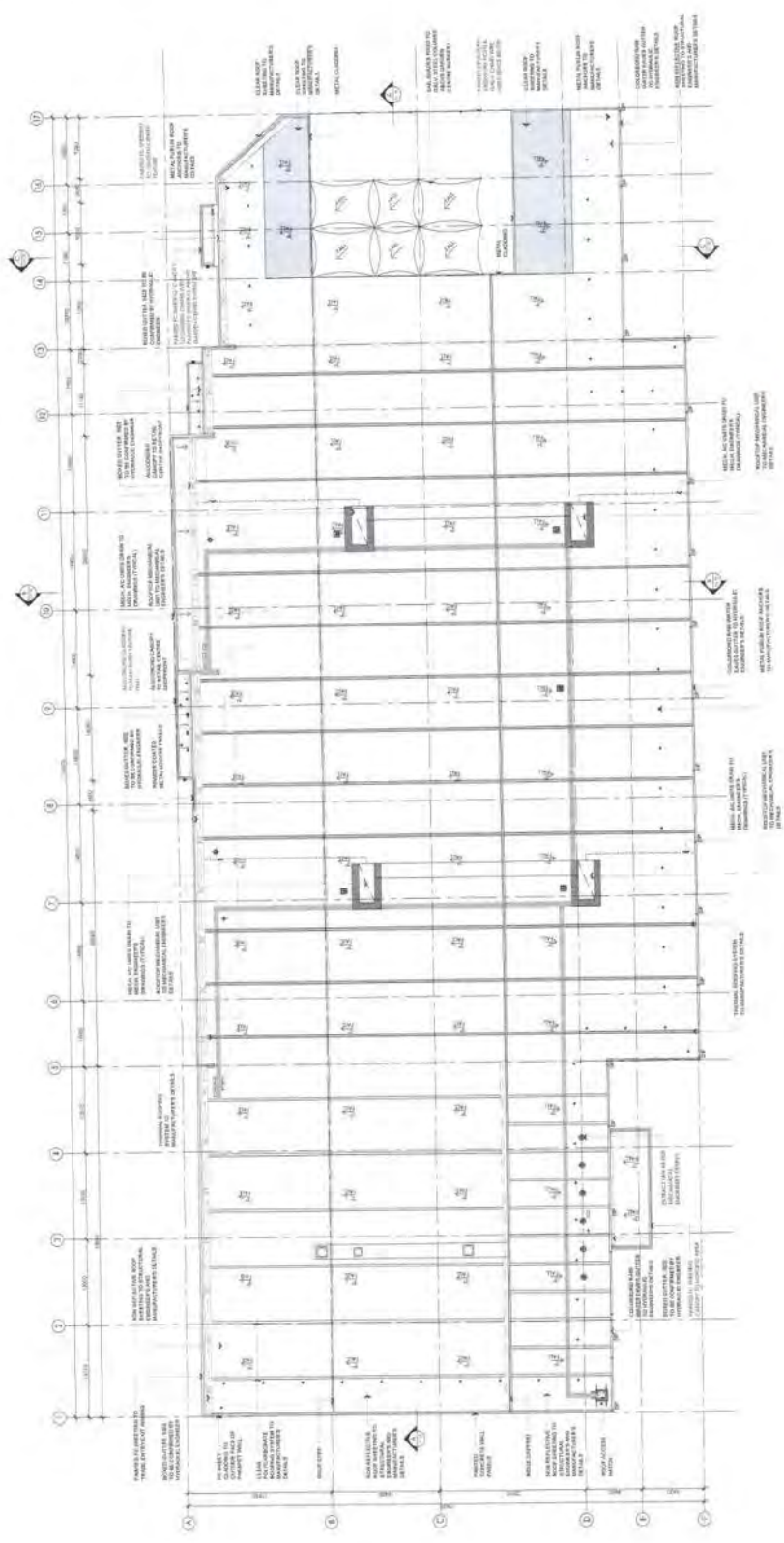
LOT 1
 LOT 2
 LOT 3

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Roof Plan
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SCALE: 1:200

1 NORTH ELEVATION
SCALE: 1:200

2 NORTH ELEVATION
SCALE: 1:200

3 WEST ELEVATION
SCALE: 1:200

PAINT COLOURS

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/B	WATTS SWAGES WHITE ET FN
/C	WATTS SOLVOR ELECTRIC BLUE USA
/D	WATTS VALPAR INDUSTRIAL REVOLUTION 403D
/E	WATTS BARI SPASH ESW
/F	WATTS C/B RICHMOND ALYN
/G	WATTS BARI SEA ASH
/H	WATTS CASTLE DRY / ASH
/I	DELUX POWDER COAT ETERNAT 3X VTE PEAR KINETIC RD 710R
/J	WATTS SOLVOR GRANITE 200A
/K	AUGCOBOND ULTRAMARINE BLUE 200
/L	AUGCOBOND WHITE (D)
/M	CELEBROND BIODOME LAIN FINISH
/N	CELEBROND WIRESPORT SATIN FINISH
/O	CELEBROND SURF MAT SATIN FINISH

IMAGE OF MODWOOD FENCE
SCALE: 1:25

KEY PLAN

16 10 100

Scale: 1:200

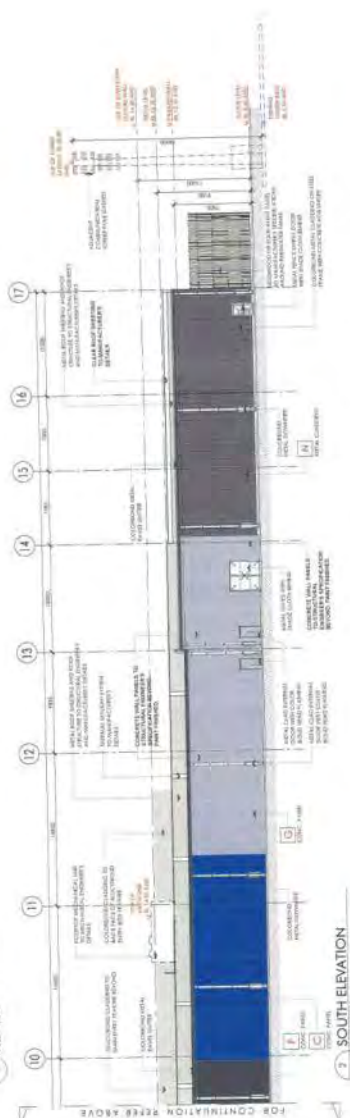
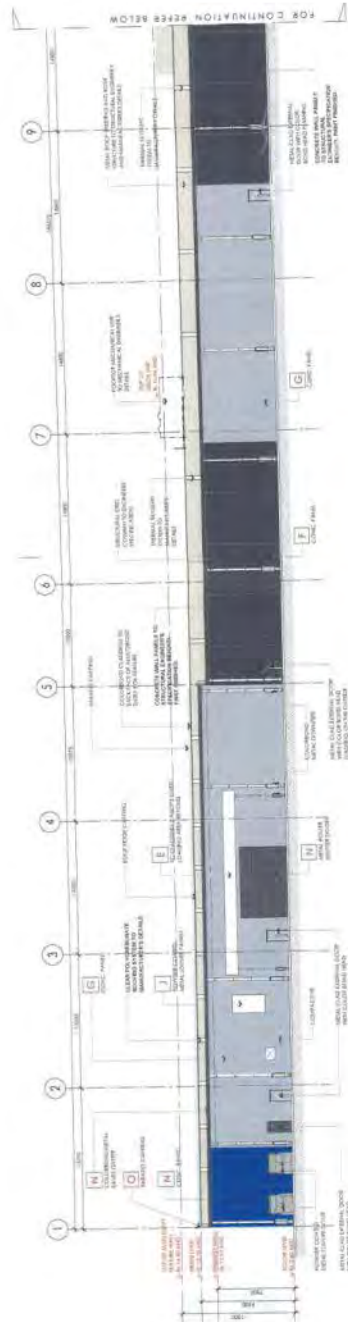
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/C	WATIL SOLVIR ELECTRIC BLUE 054
/D	WATIL VALSPAR RADIANTAL REVOLUTION 4000
/E	WATIL JONIFER ASH DIN
/F	WATIL CW RICHMOND AKW
/G	WATIL WARY SEAL A23W
/H	WATIL CASTLE GREY 425W
/I	DALUP FONDER COMEBERIT BLUBI BLAU ELECTRIC 001 116F
/K	WATIL SOLVIR GRAPHITE 27F
/L	AUCORDO 1313 MARINER BLUE 203
/M	AUCORDO WHITE 103
/N	COLORCHORD WOODSKE SKIN FINISH
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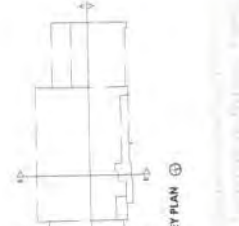
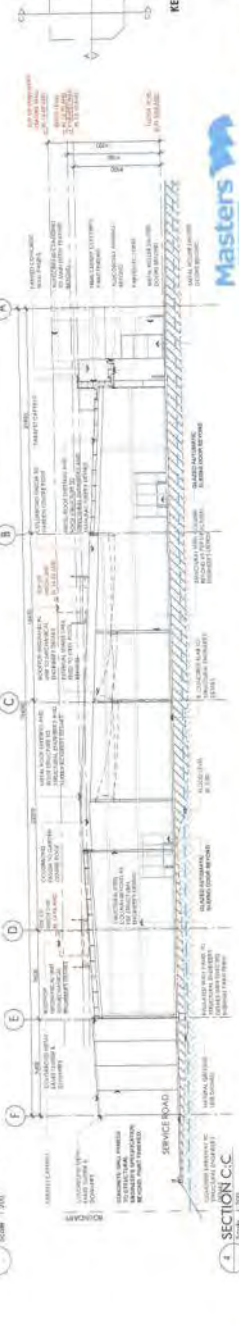
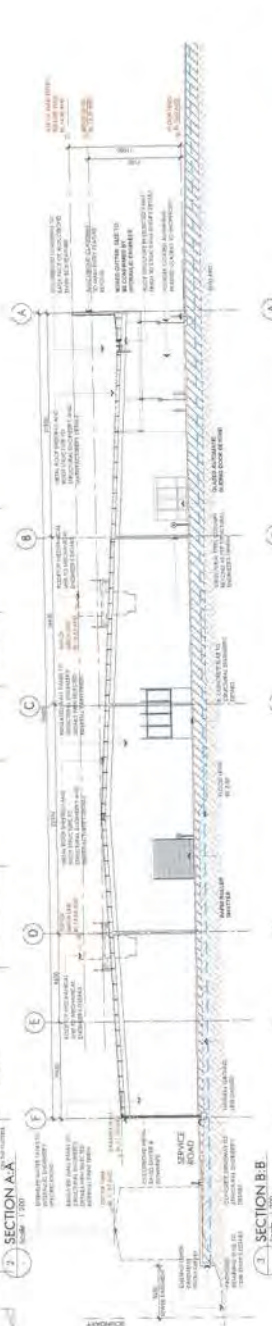
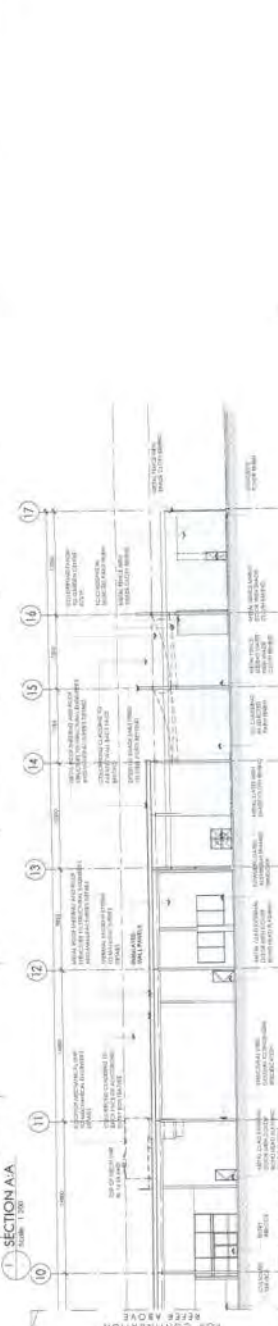
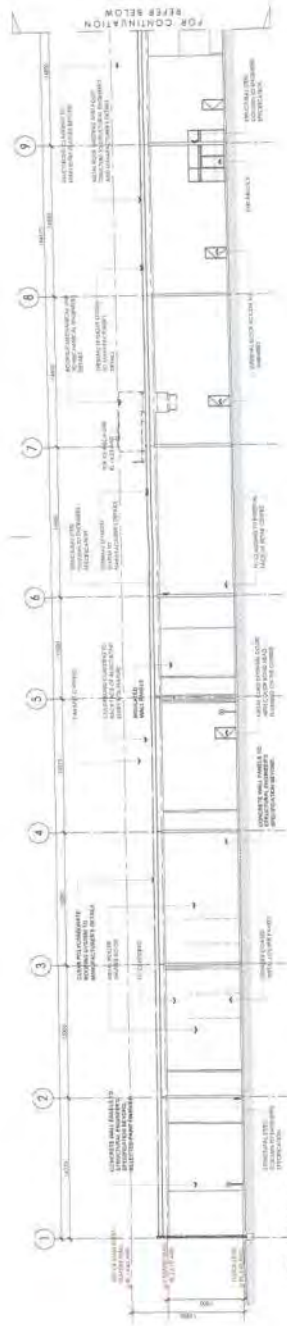
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Sections

1 10 20 40 60 80 100 120 140 160 180 200

SCALE: 1/200 (A1)

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DA-11
05/06/2014
DAWN

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 general aims of the Tweed Local Environment Plan 2000 are to safeguard the natural and developed character of Tweed Shire, whilst also providing for economic vitality, ecological integrity and cultural fabric in the area. The proposal is considered to be consistent with these aims.

Clause 5 - Ecologically Sustainable Development

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

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

Clause 8 - Consent Considerations

The proposed development is consistent with the primary objective of the zone by providing for a bulky goods retail activity that does not jeopardise the viability or function of the sub-regional or business centre.

Additionally the proposal is considered not to be in contravention of the secondary objectives of the zone which are 'to provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone' and 'to allow for other development that is compatible with the primary function of the zone.'

The proposal is not considered to contribute to an unacceptable cumulative impact on the community, locality or catchment. The proposal is of a use, scale and design in keeping with the size, capacity and constraints of the site. The development is not considered to have an unacceptable cumulative impact on the Tweed Heads locality or the community as a whole.

The other aims and objectives of this plan (Tweed LEP 2000) relevant to the development have been considered and addressed within the body of this report.

Clause 11 - Zone Objectives

The subject site is located within the 3(c) Commerce and Trade zone pursuant to the provisions of TLEP 2000.

The primary objective of the 3(c) zone is as follows:

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

Having regard to the submitted application, the proposal satisfies the primary objective of the zone by virtue of being a bulky goods retailing use. The size and scale of the development prohibits location of this development in smaller business centres. Location of the proposal at the current site is not considered to impact negatively on existing business centre functionality or viability.

Any further development of Lot 2 by way of a subsequent development application will need to satisfy the objectives of the B7 Business Park Zone and be generally consistent with concept plans (Stage 3) provided with application documentation.

Clause 15 - Essential Services

Connection to reticulated water and sewer is discussed elsewhere in this report.

Electricity services are currently provided to the area via Country Energy infrastructure. An existing transformer is located opposite the site on Parkes Drive. It is anticipated that a new transformer will be required in conjunction with the proposed development. This upgrade will be required for Stage 2.

For Stage 1, the standard letter from the service provider will be required to confirm that both lots are appropriately serviced in accordance with the standards of the supply authority.

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

For Stage 1, the standard letter from the service provider will be required to confirm that both lots are appropriately serviced in accordance with the standards of the supply authority.

Clause 16 - Height of Building

A three storey height limit applies to the site. Stage 2 construction comprises a single storey structure with an 8.5m building height to the parapet, 9.1m building height to ridge and 11m building height to the top of the main entry feature wall. This is consistent with this clause.

Clause 17 - Social Impact Assessment

The proposal represents generation of increased economic development within the Tweed Shire and broader community. No negative social impacts were identified during assessment of the proposal.

Clause 35 - Acid Sulfate Soils

The route of the access road to Lot 1 through proposed Lot 2 has been noted. Testing for acid sulphate soil (ASS) has not been conducted along this route despite the area being designated Class 2 on the ASS Planning Maps. Comment from the applicant was sought regarding construction of the access road and ASS management issues.

The applicant has recommended that an Acid Sulfate Soils Management Plan be developed to manage potential ASS in locations where natural soil or sand fill will be disturbed by development.

As such, a condition will be applied requiring submission of an ASSMP prior to issue of the relevant construction certificate.

Other Specific Clauses

Clause 19 – General Subdivision

Development consent is required for the subdivision of land. The subject application has been lodged for this purpose which satisfies this clause.

Clause 22 – Development Near Designated Roads

Vehicular access to the site has been the subject of detailed investigation by Council's Traffic Engineer and Roads and Maritime Services. Vehicular access, traffic generation, parking requirements and interface with existing traffic routes including the requirement for signalisation at the intersection of Parkes Drive and the Pacific Highway northbound service road connecting Kennedy Drive to the Gold Coast Highway. These matters are discussed elsewhere in this report. Subject to compliance with recommended conditions of development consent, the proposal satisfies Clause 22.

Clause 32 – Aircraft Noise

A satisfactory response was received from the developer's consultant demonstrating that indoor noise criterion will be achieved (ie. the proposed building will be able to achieve a 10 dB noise reduction) without the need to upgrade building shell treatments.

Gold Coast Airport Pty Ltd (GCAPL) separately raised issues related to the need for on-site noise monitoring and consideration of sound pressure levels from the Airbus A330 aircraft. Liaison between the developer and the GCAPL has subsequently resolved these issues.

Therefore, aircraft noise issues are deemed to have been satisfactorily addressed in accordance with this clause and relevant conditions of development consent have been recommended.

Clause 33 – Obstacles to Aircraft

Building height is compliant with restrictions specified for the site by Gold Coast Airport Pty Ltd (GCAPL) as discussed elsewhere in this report. Should any amendments be made to the proposal, further comment will be required from GCAPL in this regard.

Clause 34 - Flooding

Portions of the site (mainly the northern part) are affected by the 1 in 100 year flood event. As such, filling is proposed to achieve flood immunity for future development of the site. However, this is not mandatory under Council's DCP A3 provisions. Additionally, the whole of the subject site is expected to be inundated by the Probable Maximum Flood level.

As this development is not residential, Council policy does not require a freeboard above the Design Flood Level (being RL 2.6m AHD). However application documentation has noted that the developer requires a standard 600mm freeboard to the finished floor level of their warehouses in their standard Vendor's Works Brief.

As such, the Finished Floor Level (FFL) has been set at a minimum of RL 3.3m AHD. As such, the proposal is consistent with Clause 34.

Clause 39 – Remediation of Land

Refer assessment under SEPP 55.

Clause 39A – Bushfire Protection

A small portion of the site is mapped as being Bushfire Prone Land according to mapping held by Council. Accordingly, a consultant was engaged by the applicant to prepare an assessment of the likely risks to the development.

In summary, this assessment advises that the project is consistent with the provisions of Planning for Bushfire Protection 2006 subject to compliance with a number of measures associated with landscaping and servicing provisions.

Conditions to this effect have been applied.

Clause 47 – Advertising Signs

A number of wall mounted signs are proposed on the northern and eastern elevations of the development. Some of the wall signs will be internally illuminated. The proposed signage is compatible with the scale of the building on which it is to be placed and avoids impact upon sensitive residential uses to the south of the site. As such, the proposal is consistent with this clause.

Clause 53G – Specific Provisions for Boyds Bay Business Park

The objective of this clause include the following:

- to ensure that development on land in an employment land release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan including specific controls has been prepared for the land.
- to ensure that an acceptable mix of land uses occurs on the site.
- to ensure that relevant environmental issues are considered before consent is granted for development of the land.
- to ensure that issues relating to contaminated land are dealt with to a sufficient level to meet the requirements of SEPP 55 and Council.
- to ensure that issues relating to operation of the Gold Coast Airport are addressed in accordance with *Commonwealth Airports Act, Airports (Protection of Airspace) Regulations*, and other relevant State and Federal legislation.
- to ensure that issues relating to aircraft noise are dealt with to a sufficient level to meet the requirements of AS 2021 – 2000 Acoustics – Aircraft noise intrusion – Building siting and construction, and Council.
- to ensure that the management of urban stormwater is consistent with the Tweed Urban Stormwater Quality Management Plan adopted by Council.
- to ensure that concept planning and applications for development on the site address issues relating to the close proximity to the West Tweed Waste Water Treatment Plant.

Objectives relating to environmental issues, contaminated land, airport regulations, aircraft noise, stormwater management and proximity to the treatment plan are discussed elsewhere in this report.

It is considered that the proposed staged development includes an acceptable mix of land uses and that it generally complies with controls contained within DCP A17 which has been prepared for the land. An assessment of the proposal against these controls is located elsewhere in this report.

Clause 54 – Tree Preservation Order

Tree Preservation Orders 1990 and 2011 (Koala Habitat) apply over the whole site.

A small area of Swamp Sclerophyll Forest Endangered Ecological Community (EEC) occurs to the south east of the site on a property not part of the development application. The connecting landscape buffer is proposed to be retained along the southern boundary of the site and will be separated from the commercial use by a service road. The private sewer main to be constructed in this location is to be located on private land as per recommended conditions. As such, minimal disturbance should now occur to the existing landscape buffer with no impact to the EEC located adjacent to the site.

A small component of trees on the site are forest red gums, which are Koala food trees. Some koala activity has been noted to have occurred within the locality. Council's Koala Habitat Atlas notes secondary koala habitat within the south-eastern portion of the site. Vegetation in this location has been highly disturbed in the past and now represents the Wollemi Place access. The remaining secondary habitat area is located within the Banksia Street unformed road reserve which will not be impacted by this development.

Landscaping is to be provided to the site to soften the development area and compensate for the removal of other vegetation in the construction area that has a long disturbance history. A suite of conditions will be applied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause applies as the subject land is located within the NSW Coastal Policy. The proposal will not create any overshadowing of beaches or waterfront open space or impede public access to the foreshore area, nor does the proposal contradict the strategic aims and objectives of The New South Wales Coast Government Policy, The Coastline Management Manual or, The North Coast: Design Guidelines.

Clause 47 Principles for Commercial and Industrial Development

Location of a bulky goods retail premises in an existing commercial zone in Tweed Heads West is in accordance with the objectives of this clause in that it maintains the integrity of the main business area in this location, and provides for creation of an additional business on land which is zoned for such a purpose. It also strengthens the multi-functionality of regional commercial/light industrial uses by its general proximity to other such operations in the locality. All relevant services are available to the site and the site is located in proximity to existing local and regional road networks.

As such, the proposal is not inconsistent with the strategic aims and objectives contained generally within the North Coast Regional Environmental Plan 1988.

SEPP No. 44 – Koala Habitat Protection

The site is greater than one hectare in area and as such, this SEPP must be considered.

The applicant provided an ecological assessment report noting that the primary koala habitat species Forest Red Gum comprised a very small component of trees in the upper and lower stratas of the tree component, and less than 15% of such trees. As such, there was no further requirement to consider SEPP 44 or to provide a Koala Plan of Management.

Council's Koala Habitat Atlas notes secondary koala habitat within the south-eastern portion of the site. Vegetation in this location has been highly disturbed in the past and now represents the Wollemi Place access. The remaining secondary habitat area is located within the Banksia Street unformed road reserve which will not be impacted by this development.

SEPP No. 55 - Remediation of Land

On 28 May 2014, the applicant was requested to provide a detailed investigation of proposed Lot 2 which included:

- *Additional soil sampling in accordance with the minimum number under Table A of the NSW EPA Contaminated Sites Sampling Design Guidelines 1995.*
- *Establish further site history from persons with suitable knowledge of specific site activities so that soil analysis can better target potential hot spots.*
- *Analysis of quality of water and sediments within the on-site retention pond.*
- *Analysis of groundwater, particularly if contamination of soil is detected above health investigation levels.*

Council received legal advice on 6 June 2014 which stated:

"Given that there is no change of use proposed for Lot 2 it would seem that it is not mandatory for the Council to require or consider a Stage 1 - Preliminary Investigation report in respect of that part of the Land."

and:

*"It seems to us that there is no statutory requirement for remediation to be carried out prior to the issue of a subdivision certificate in respect of land that is contaminated. Rather, clause 7(1)(c) of SEPP 55 states that if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, Council must be satisfied that the land will be remediated "before the land **is used** for that purpose".*

*In other words clause 7(1)(c) of SEPP 55 only requires the Council to be satisfied that Lot 1 would be remediated before the Lot **is used** for the purpose for which development is proposed to be carried out. Accordingly, a condition could be included in stage 2 of the development consent requiring a RAP and remediation of the site in accordance with the RAP and a validation report prior to the commencement of any building work on Lot 1 rather than requiring such remediation work to be carried out prior to issue of the subdivision certificate so as to ensure that the land is not used for the purpose of the development until the remediation works are properly carried out."*

Council's Environmental Health Unit raised additional concerns with regard to SEPP 55 requirements and a further email was forwarded on 11 June 2014 for clarification of the following:

- *whether SEPP 55 Clause 7(1)(a) has been satisfied by the level of existing site investigation on proposed Lot 2; and*
- *officers are accustomed to site remediation works and validation being completed prior to issue of a subdivision certificate (for both lots), however the most recent advice is noted regarding Clause 7(1)(C) requiring land to be remediated before the land is used for that purpose. Therefore if Council were to accept the level of investigation which has been undertaken for proposed Lot 2, issue a consent and apply conditions, officers would require further detailed investigation of Lot 2 in future before any new use were commenced (separate to the activities which are currently conducted on Lot 2). Would the following condition suffice in this regard?*

Prior to the commencement of any new activity on proposed Lot 2 (separate to the activities which are currently conducted on Lot 2) development consent shall be sought for that activity. Such an application shall be supported by a detailed site contamination investigation to the satisfaction of the General Manger or his delegate.

Subsequent advice stated:

*"Clause 7(1)(a) of State Environmental Planning Policy No 55 - Remediation of Land ("SEPP 55") requires a consent authority to consider whether the entirety of a parcel of land the subject of a development application is contaminated. The duty to "consider" whether the land is contaminated requires the Council to inform itself sufficiently to be able to consider whether the land is contaminated. Taking a matter into consideration requires sufficient information, an understanding of the matter and of the significance of the decision to be made, and a sufficient process of evaluation sufficient to warrant the description of the matter being considered. In *Weal v Bathurst City Council* [2000] NSWCA 88 Justice Giles said that for a matter to be taken into consideration by a Council:*

"It had to inform itself sufficiently to be able to take into consideration the matters of relevance to the determination of the development application...Taking relevant matters into consideration called for more than simply advertent to them. There had to be an understanding of the matters and the significance of the decision to be made about them, and a process of evaluation, sufficient to warrant the description of the matters being taken into consideration".

The Council cannot defer the duty to "consider" whether the land is contaminated. It must consider that matter prior to determining the development application. SEPP 55 does not prescribe what information is "sufficient" for the purpose of enabling the Council to "consider" whether the land is contaminated. In that regard the mandatory requirement in clause 7(2) of SEPP 55 for a "preliminary investigation" report to be provided does not apply to the land to be contained within proposed Lot 2 because the development does not involve a change of use of proposed lot 2.

I note in your email below you state that “..it is the opinion of the assessing officer that insufficient information had been submitted for Council to adequately consider whether the land is contaminated in accordance with Clause 7(1)(a) of SEPP 55”. If the officer needs further information to “consider” whether the land (including that part that is to be contained within proposed lot 2) is contaminated that information should be obtained now i.e. before the application is determined because the duty to consider whether the land is contaminated cannot be deferred until after the development application is determined by way of imposing a condition on the consent or otherwise.”

As such, the investigation into contamination only need extend over proposed Lot 1 and that part of proposed Lot 2 which is to be developed. The two existing contamination investigations have been reviewed and it was noted that Lot 1 has had 31 soil samples taken and groundwater analysed (considered to have been adequately covered). Two soil samples were also taken along the path of the access road through proposed Lot 2, as well as groundwater analysed in the northern most corner.

Therefore, having reviewed the legal interpretation and level of investigation which has occurred, sufficient information is deemed to have been submitted in order for Clause 7(1)(a) of the SEPP to be satisfied.

In relation to the second question posed above regarding an appropriate condition, the following advice was received:

“In my view the condition proposed in your email below would not be effective or appropriate because it would not be enforceable once lot 2 is created (as the subdivision would have already been carried out and it tends to suggest that the question of whether the land is contaminated (or at least that part of the land that is within proposed Lot 2) is being deferred. Council could consider imposing a condition in the following terms:

“A restriction on the use of proposed Lot 2 pursuant to section 88E of the Conveyancing Act 1919 must be registered on the title to proposed Lot 2 at the same time that it is created in the following terms:

“No development that would involve a change of use on any of the land may be carried out unless the prior written approval of Tweed Shire Council is first obtained and in seeking such approval a Stage 2 Detailed Investigation report, as referred to in the contaminated land planning guidelines (being the guidelines under section 145C of the Environmental Planning and Assessment Act 1979) is supplied to the Council for consideration.”

If the use of proposed Lot 2 is to be changed in the future it will require a development application (in which case Clause 7 of SEPP 55 will need to be addressed) unless it is exempt development. In that regard I note that clause 1.19(5) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 states that “complying development” specified for the Commercial and Industrial (New Buildings and Additions) Code, must not be carried out on “land that is significantly contaminated land within the meaning of the Contaminated Land Management Act 1997”.

On the basis of legal advice received, the application is considered to comply with SEPP 55 requirements and no objection to approval of the application is raised, subject to imposition of development consent conditions and activation of the above restriction on use of proposed Lot 2 pursuant to Section 88E of the *Conveyancing Act 1919*.

SEPP No. 64 – Advertising and Signage

As discussed previously in this report, proposed signage includes wall mounted signs on the northern and eastern elevations of the development. The development is located adjacent to major roads but due to topography, will not be visible from the Pacific Motorway.

SEPP 64 requires the following matters to be considered as assessment criteria for the proposal:

- character of the area
- special areas
- views and vistas
- streetscape, setting or landscape
- site and building
- associated devices and logos with advertisements and advertising structures
- illumination
- safety

In summary, the proposed signage:

- is compatible with the character of the area which is not considered to contain special landscape or scenic qualities.
- does not detract from the amenity or visual quality of any special areas.
- does not obscure or compromise important views or vistas.
- does not impact upon residential amenity as it is located on the northern and eastern elevations of the development.
- is considered visually appropriate for the streetscape in the context of the site and does not impede/impact upon the viewing rights of other advertisers.
- do not protrude above the overall built form and do not require ongoing vegetation management.
- includes business name, logos and other operational information.
- will not compromise public road safety.

Several wall signs will be internally illuminated:

- 'Masters' sign and logo (northern/eastern elevation)
- 'Garden' sign (northern elevation)
- 'Timber and Building' sign (northern elevation)

Other icons on the building will be lit by external spotlights illuminating the building frontage. Pylon signs will be internally illuminated.

Appropriate conditions of development consent have been recommended to regulate external/internal illumination on the site and manage any possible impacts of such signage.

SEPP No 71 – Coastal Protection

The proposal is not located on land identified as a sensitive coastal location under SEPP 71. In terms of Clause 8 - Matters for Consideration, the proposal is not considered to impact upon access to the foreshore or contradict or create a significant impact to any other items listed within Clause 8 of SEPP 71. The proposal is consistent with SEPP 71 and the existing character of the area.

SEPP (Infrastructure) 2007

This development proposal is of a scale that requires referral under Schedule 3 of this SEPP (Traffic generating development) to Roads and Maritime Services (RMS). Council is obliged to consult and consider RMS comments prior to determining the application. Final RMS advice was received on 11 June 2014.

RMS consent is required for the installation of traffic signals on any road. Prior to the installation of traffic signals at the intersection of Parkes Drive and the Pacific Highway northbound service road connecting Kennedy Drive to the Gold Coast Highway, the proponent is required to enter into a Works Authorisation Deed (WAD) with RMS prior to the issue of any construction certificate.

RMS shall exercise its powers under Section 87 of the *Roads Act 1993* (the Act) and the functions of the roads authority, to undertake road works in accordance with Sections 64 and 71 of the Act, for all works under the WAD.

All road works under the WAD shall be completed (to practical completion) at full cost to the developer prior to the issue of an occupation certificate (interim or final). Appropriate conditions have been recommended to reflect RMS requirements.

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

The Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014, after this application was lodged on the 29 November 2013. As such, final assessment and determination of the application is in accordance with the standard instrument in force at time of lodgement (TLEP 2000). However, regard for TLEP 2014 has been included in the assessment with no inconsistencies with controls.

TLEP 2014 zoning of the site is B7 – Business Park. The proposed use of the site as 'bulky goods retail' under the LEP 2000 is defined primarily under the TLEP 2014 as 'bulky goods premises'. A 'bulky goods premises' is permitted with consent at Item 3.

It is noted that retail premises are prohibited in this zone. As such, any future development applications for Lot 2 cannot include such a use.

It is considered that the development is consistent with the primary objectives of the zone as it relates to a commercial use that encourages employment opportunities maximising cross utilisation of urban infrastructure.

Clause 2.6: Subdivision Consent Requirements

This clause requires development consent to be obtained for the subdivision of land. A development application for such a purpose has been lodged.

Clause 2.7: Demolition Requires Development Consent

This clause requires development consent to be obtained for the demolition of existing structures. Such demolition is proposed on Lot 1 within Stage 1 of the proposal. Any demolition of structures on Lot 2 will be subject to future application.

Clause 4.1: Minimum Lot Size

There is no minimum lot size in the B7 zone.

Clause 4.3: Height of Buildings

Maximum building height for the subject land is 10m. The buildings proposed as part of Stage 2 have a building height of 9.1m to the ridge line and 11m to the top of the main entry feature wall. Clause 5.6 of this LEP allows architectural roof features to exceed the 10m limitation in certain circumstances.

Clause 4.4: Floor Space Ratio

There is no floor space ratio nominated for the subject site.

Clause 5.4: Development within the Coastal Zone

An assessment against the NSW Coastal Policy is found elsewhere within this report.

Clause 5.9: Preservation of Trees and Vegetation

An assessment against this clause is found in the DCP A16 section of this report.

Clauses 6.1 and 6.4: Urban Release Areas

The subject land is identified on the Urban Release Area map. The abovementioned clauses relate to the capacity of the State to levy state infrastructure charges in certain circumstances. Council will be putting an agreement in place with the proponent to ensure that such infrastructure is provided to the site as part of the development application. As such, no such charges are expected to be applied.

Clause 7.1: Acid Sulfate Soils

An assessment against this clause is found elsewhere in this report.

Clause 7.4: Airspace Operations

An assessment against this clause is found elsewhere in this report.

Clause 7.5: Development in Areas Subject to Aircraft Noise

An assessment against this clause is found elsewhere in this report.

Clauses 7.6 and 7.7: Flood Planning & Flood Plain Risk Management

An assessment against these clauses is found elsewhere in this report.

Clause 7.11: Earthworks and Drainage

An assessment against this clause is found elsewhere in this report.

It is considered that the development is consistent with controls contained within the TLEP 2014.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Car parking

Council's DCP A2 requires the following car parking rates for the proposed development:

2c - Access & Parking Generation - Commercial Premises Group

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (class)	Delivery/ Service Vehicle parking	Resident Parking	Staff parking	Customer car parking
C4	Bulky goods premises			1/4 staff (3)	1/1500 GFA HRV		0.25/100 GFA	1.4/100m ² GFA

This equates to a combined staff/customer rate of 1.65 spaces/100m² gross floor area (or 1 space / 60.6m²).

Based on a proposed gross floor area of 13,638m² and the above rate for Bulky Goods premises, Council's requirements for car parking are as follows:

- Lot 1 – 225 spaces

NB: proposed development on Lot 2 will be subject to a future development application. However, based on a proposed gross floor area of up to 4600m², the allocated 197 parking spaces on the concept plan (Bulky Goods Retail) exceed that required in accordance with DCP A2 (76).

As such, onsite parking provision is beyond that expected under Council's parking codes. Lot 1 requires 225 spaces but it is intended to provide 411 spaces. This includes the provision of eight spaces for people with disabilities.

The oversupply in this instance is a commercial decision. It is unlikely that alternate transport options will be utilised or promoted for the intended usage.

Service vehicles

The development is required to provide one heavy rigid vehicle (HRV) service space per 1500m² of gross floor area. This equates to nine HRV spaces being required.

Instead, the application proposes an isolated service perimeter road and "Receiving Area" capable of accommodating Articulated Vehicles (AVs). This appears adequate and more appropriate as advised by Council's Development Assessment Engineer.

Swept path manoeuvring demonstrates that sufficient area is available to accommodate the required delivery vehicles.

It is noted that servicing arrangements associated with future development on Lot 2 are intended to be detailed within a subsequent application. However, the concept plan indicates provision of an adequate rear service lane.

Bicycles

Adequate area has been provided within the receiving area of the building to accommodate bicycle parking in a secure location.

A3-Development of Flood Liable Land

Portions of the site (mainly the northern part) are affected by the 1 in 100 year flood event. As such, filling is proposed to achieve flood immunity for future development of the site. However, this is not mandatory under Council's DCP A3 provisions. Additionally, the whole of the subject site is expected to be inundated by the Probable Maximum Flood level.

As this development is not residential, Council policy does not require a freeboard above the Design Flood Level (being RL 2.6m AHD). However application documentation has noted that the developer requires a standard 600mm freeboard to the finished floor level of their warehouses in their standard Vendor's Works Brief.

As such, the Finished Floor Level (FFL) has been set at a minimum of RL 3.3m AHD. As such, the proposal is consistent with DCP A3.

A4-Advertising Signs Code

Refer to an assessment of proposed signage elsewhere in this report under Clause 47 of the TLEP 2000 and SEPP 64. The proposal is consistent with DCP A4 requirements.

A5-Subdivision Manual

Section A5.E.8 Sewerage Treatment Works recommends a 200m buffer as follows:

No development is permitted within 200 metres from any current or proposed primary and secondary process units of any sewerage treatment plant, except for uses of an open air nature (eg. car parking, storage) or those uses not requiring permanent or prolonged work station occupation.

Council's Water Unit has confirmed that the odour assessment provided with application documentation has been accepted (refer discussion elsewhere in this report) with a number of mitigation strategies in association with the development proposal.

The proposal is considered to generally comply with DCP A5. Refer to an assessment elsewhere in this report with regard to the provision of essential infrastructure.

A13-Socio-Economic Impact Assessment

Refer to an assessment of this matter elsewhere in this report under Clause 17 of the TLEP 2000. The proposal is consistent with DCP A13 requirements.

A15-Waste Management

There is adequate storage capacity and vehicular access provided for the proposed development to allow suitable management of waste and recycling in accordance with the submitted waste management plan.

The applicant has indicated that additional information will be provided for construction waste management at the construction certificate stage (Stage 2).

Waste management conditions have been recommended.

A16-Preservation of Trees

Refer to an assessment of this matter elsewhere in this report under Clause 54 of the TLEP 2000. The proposal is consistent with DCP A16 requirements.

A17-Business Development, Enterprise Corridor and Business Park Zones

At its meeting of 1 May 2014, Council resolved to amend the Tweed Development Control Plan to include Section A17 –Business Development, Enterprise Corridor and Business Park Zones. Section A17 provides a planning framework for development within the B5, B6 and B7 zones. The subject site is zoned B7 – Business Park under the TLEP 2014.

Public notification of the adoption of the Plan was made on Tuesday 27 May 2014 through Council's newsletter, the Tweed Link. The Plan formally took effect under the Environmental Planning and Assessment Act 1979 on 4 June 2014.

The aims of the DCP are generally to encourage economic growth, coordinate business and enterprise precincts that maximise employment opportunities, reduce the risk of under utilisation of land and achieve an attractive and sustainable built form suitable to the site.

An excerpt from Section 2.3 of the DCP is as follows:

The overriding 'business theme' or business niche of a newly proposed business park should be justified not only through a site analysis and land use planning process, but through sound economic planning and modelling demonstrating the 'best fit' of the proposal with the site's physical and economic context.

It is also important to match business park uses within the broader strategic context. For example, land available close to the Gold Coast Airport and Southern Cross University may be appropriate for aviation and education centred land uses which support these existing industry. Sites which are located closer to the national highway may more appropriately serve bulky goods, transport or logistics land uses. Other sites which adjoin residential settlements or that are topographically constrained may be more suited to smaller scale incubator business and live-work opportunities.

The site is within close proximity to the national highway and the proposed use for a Bulky Goods Premises is consistent with the above statement.

An excerpt from Section 8.1 of the DCP (Boyd Bay Business Park) is as follows:

In light of the land area, site constraints, location of the site to major traffic infrastructure and dislocation from other employment generating land uses, a typical business park scale or land use mix is not anticipated. In this regard, the site is suitable for a small mixed use business park, centred around an anchor use, such as bulky goods retail, hardware and building supplies or showroom uses.

The aims identified in Section 8.2 of the DCP are as follows:

A1. Support an integrated design approach that establishes a variety of complementary business park land uses which respond to site constraints with a quality urban and building design within a business park setting.

Application documentation provide an assessment of the proposal against Controls C1 to C9 of what was then the Draft Working Document, yet to be endorsed by Council as being suitable for public exhibition.

The applicant's assessment concludes that *the development plans proposed within this application are largely compatible with the "Indicative Site Configuration" provided at Figure 4.4 of the Working Draft DCP.*

Council review of the proposal against DCP A17 controls results in an outcome where the aims and objectives of development envisaged for the Boyds Bay Business Park are generally complied with.

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

Clause 92(a) Government Coastal Policy

The proposal does not contravene the Coastal Policy as it applies to the site.

Clause 92(b) Applications for demolition

Existing structures on site are proposed to be demolished. Council's Building Unit has included demolition of structures in an assessment of the proposal and recommended conditions of development consent have been applied.

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

Not applicable.

Tweed Shire Coastline Management Plan 2005

Not applicable.

Tweed Coast Estuaries Management Plan 2004

Not applicable.

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

Not applicable.

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

Amenity (Noise)

An Environmental Noise Impact Assessment has been submitted to identify and assess potential noise impacts. The most sensitive adjacent land uses are located to the south of the site, being the residential land and caravan park which have a relatively minimal setback to the boundary.

Whilst proposed hours of operation are 6am to 10pm, specific restricted operation hours are recommended for certain activities. Various activities are identified as having potential to cause amenity impacts, including vehicle movements, trolley collection, patron noise, deliveries, waste collection, mechanical plant, and waste compactors. The report generally conforms to the requirements of the NSW EPA Industrial Noise Policy.

Continuous noise monitoring was conducted for one week and background noise levels established under Part 3.3 of the Assessment. The measured background levels and Amenity Criterion under Table 2.1 of the Industrial Noise Policy were utilised to set noise limits for the proposed development:

- Daytime (7am to 6pm Mon-Sat; 8am to 6pm Sun): 54 dB(A) Leq;
- Evening (6pm to 10pm): 49 dB(A) Leq;

- Night (10pm to 7am): 43 dB(A) Leq; &
- Morning Shoulder (6am to 7am): 53 dB(A) Leq.

Whilst the report suggests a relatively high permissible level of 53 d(B)A during the 'morning shoulder' the time restriction recommended below for activities such as use of the delivery/service road area are noted. The report concludes that *'Based upon the adopted noise limit criterion, overall, the proposed development will generally be within acceptable levels of Council's requirements, subject to the acoustic treatments recommended'*.

The applicant's recommended acoustic treatments include:

- Construction of an acoustic barrier 3.5m in height along the southern service road as detailed in Sketch 1 of Appendix A. Barriers are to be constructed above the finished hardstand grade level of the service road/loading area and be free of gaps and holes. Typical materials include earth berms, tilt up panel concrete, 19mm lapped timber fence (40% overlap), 9mm FC sheet, masonry, or a combination of the above (a minimum surface mass of 11kg/m² is required).
- Hours of operation be limited to between 6am and 10pm.
- Trolley collection be limited to between 6am and 10pm.
- Deliveries be limited to between 7am and 6pm.
- Trucks prohibited from using the southern service road or arriving at the loading dock until after 7am.
- Waste collection be limited to the daytime period between 7am and 6pm.
- Deliveries staggered so that they do not occur at the same time.
- Carpark, loading dock, service road and driveway hardstand areas be finished with surface coatings which prevent tyre squeal.
- Drainage grating over trafficable areas be well secured to prevent rattling.
- Mechanical plant be designed and installed to comply with noise criterion presented in the report. As final plant selection has not been completed, additional acoustic assessment/s should be undertaken once plant selections are finalised.
- Dependent upon selected plant, packaged air conditioning, external rooftop units may require acoustic screens along the southern, eastern and western sides of the plant.
- Dependent upon selected plant, exhaust units may require silencers / attenuators.

Suitable conditions have been applied.

Amenity (Lighting/Dust)

General standard amenity conditions will also be applied with regard to lighting and dust.

Odour

The site is immediately east of the former Tweed Heads Sewer Treatment Plant.

The Odour Dispersion Study report provided as part of application documentation indicates that Lot 1 will receive less odour impact than Lot 2 with Stage 1 (subdivision) receiving minimal impact from the STP.

The report makes recommendations regarding visual screens along the boundary, building design/orientation, air conditioning and states that Masters have adopted these requirements in the design of the proposed store.

Future Stage 2 works (construction) may be impacted due to the reduced set back. Concept plans indicating future development on Lot 2 and possible tenancies along the Parkes Drive frontage of Lot 1 will need to be specifically considered in any subsequent development applications for new uses on both lots.

Council considers that it is the responsibility of the developer to mitigate against risks that follow from malfunction or maintenance type activities at the treatment plant (eg. cleaning sludge from various areas of the plant, inlet works overflows etc.) with the knowledge that these issues may occur from time to time and that the developer is building adjacent to an operational and existing use.

Earthworks

Proposed Lot 1 is intended to be filled to a minimum of RL 2.7m AHD. The building pad (over proposed Lot 1) is then proposed with a finished floor level of RL 3.6m AHD.

As recommended by the Geotechnical Investigation submitted with the SEE, Level 1 earthworks control will be enforced in accordance with the requirements outlined in AS.3798-2007 for the earthworks preparation and filling operations.

The car park area is proposed with a constant fall to the north with fill depths between 0.4m – 1.0m.

A retaining wall (founded below the zone of influence of the existing sewer rising main) is proposed just outside of the existing sewer easement on the southern boundary which preserves existing surface levels within the easement. It shall be conditioned that this retaining wall is designed and constructed in compliance with Council's Easement Policy (V1.1) and Sewers - Work in Proximity Policy (V1.2).

A total of three retaining walls are proposed for the development. It is noted that the proposed retaining wall along the sewer easement complies with Council's Design Specification D6 limits of 5.0m for Business and Industrial developments for side and rear boundary retaining walls.

Although the proposed retaining wall along the Banksia Street and Sugarwood Drive frontages slightly exceeds the 1.2m height limit (as specified in D6), the following should be noted:

- Banksia Street is not intended to be constructed.
- The Sugarwood Drive retaining wall is proposed at only 1.26m (max), and
- All retaining walls are proposed within private property.

As such, the proposed earthworks over the site are considered acceptable.

Stormwater

Onsite detention and/or downstream drainage augmentation will not be necessary for the development. The site is not subject to external catchments.

Parkes Drive and Sugarwood Drive currently rely upon kerb and gutter drainage and open swales to convey stormwater.

Runoff from contaminated areas in the operational phase must be discharged to sewer as trade waste and not to the public stormwater system. A separate Trade Waste Application and approval will be required prior to issue of a Construction Certificate.

Traffic Access

Traffic access is proposed to the development from Wollemi Place and Parkes Drive. The site is expected to have significant traffic generation and it is critical that potential impacts are not detrimental to the road network including the Gold Coast Highway and the Pacific Motorway on ramp.

Access to and from Wollemi Place is proposed to be restricted to left in/left-out movements (based on the one-way traffic flow on Sugarwood Drive), while all-movements are proposed via Parkes Drive. RMS have limited vehicular access from the site into Wollemi Place to service vehicles only. The consent will be conditioned accordingly.

Parkes Drive is proposed as the primary access point for customers. Service vehicles will also enter the site at Parkes Drive and exit via Wollemi Place. Wollemi Place provides a secondary point of access for customers (but not exit point as noted above).

The proposed access location serves both proposed Lots 1 & 2, necessitating the creation of easements to provide reciprocal access rights across the two lots.

Pedestrian Access

A north-south pedestrian access path is proposed to be provided through the centre of the site at or greater than 1.5m in width which complies with DCP A2.

An additional 1.2m footpath is proposed off Wollemi Place, running internally, and parallel to the southern customer access road.

Council's Traffic Engineer has confirmed that the pedestrian provisions are considered sufficient.

Traffic Generation

To determine the traffic generation of a development, the primary reference document is the RMS Guide to Traffic Generating Developments which has recently been updated (August 2013) for traffic generation at bulky goods retail stores and for major hardware and building supplies stores.

Following resubmission of traffic modelling, it has been possible to determine intersection treatments required to service the development. Management of conflict between light vehicles and service vehicles at the Wollemi Place access point has also been highlighted as an issue.

As such, traffic lights are to be installed at the Parkes Drive/Sugarwood Drive intersection and only service vehicles will be able to exit onto Wollemi Place.

Food Construction

The building includes a café. Detailed food fit-out plans have not been provided with the application. Standard conditions have been recommended requiring submission of this detail prior to issue of the relevant construction certificate.

Trade Waste

The application has been discussed with Council's Connections Officer. Standard conditions have been recommended with regard to trade waste licensing.

Water Usage

Application documentation indicates that a minimum of 20,000L of re-usable water tank storage capacity will be provided. A condition has been recommended restricting use of this water supply to non potable uses.

Dewatering

The applicant was requested to provide informed comment about the need to dewater the site for bulk earthworks, footings and placement of services which would require submission of a Dewatering Management Plan addressing both environmental protection and contamination considerations.

The applicant proposed to submit a Dewatering Management Plan prior to the issue of the relevant construction certificate.

Suitable conditions have been applied noting that the drain that flows to the Cobaki inlet is tidal. As such, the applicant will be required to demonstrate the suitability of water discharge to this drain.

(c) Suitability of the site for the development

Surrounding Land uses/Development

Surrounding land uses include the Pacific Motorway to the east, Pony Club to the north, Sewer Treatment Plant to the west and residential land/caravan park to the south. The most sensitive uses are located to the south of the site, which have a relatively minimal setback to the boundary.

Road Network

The site has frontages to Wollemi Place, Sugarwood Drive and Parkes Drive.

Parkes Drive

Parkes Drive is located to the north of the site. Currently, this road services the Tweed Heads West Waste Water Treatment Plant and the Tweed Heads Pony Club as well as a secondary access to the development site. This access is located adjacent to the western boundary of the land. Less than 200 vehicles per day currently utilise this road.

Parkes Drive is sealed for the first 75m (providing a 10.0m seal), which then becomes a formed, unsealed road for the 45m balance of Parkes Drive road frontage.

Sugarwood Drive

Sugarwood Drive is a limited access (RMS controlled) road forming an approach to the Pacific Motorway. Sugarwood Drive is one-way (heading south to north), two lane with sealed shoulders running in a curve along the east and north-east boundaries. There is a 3.0m cycleway and kerb and gutter along the

development's frontage. Restrictions on title prohibit vehicular access from this road to the subject site. It is calculated that this road carries in the order of 6,250 vehicles per day.

Wollemi Place

Wollemi Place is a small cul-de-sac off Sugarwood Drive which provides main customer access to the existing business premises on the land. Approximately 200 vehicles per day utilise this road.

Water

Council's reticulated potable water supply is available to the area. A new 150mm diameter water main will need to be constructed from the existing 300mm diameter main in Kennedy Drive to service the new allotments.

The following comment was provided from Council's Water Unit:

"Investigations have highlighted that to meet the expected commercial development requirements, the site will need to connect to the existing 300 diameter main in Kennedy drive. The reticulation pipes located nearby to the site cannot provide the demands necessary for commercial development requirements."

Council's Water Unit advised that the developer would not be granted access to the existing Council sewer easement (as proposed). The recommended route for the developer to construct the water main is along Rose Street to connect to Kennedy Drive.

A summary of water connection requirements is as follows:

- The recommended route for the developer is to construct the water main along Rose Street connecting to the reticulation main in Kennedy Drive.
- Council have road and service infrastructure upgrades planned in Kennedy Drive and Rose Street in November 2014 and February 2015 respectively.
- Council have offered to undertake the water main works from Kennedy Drive to the property boundary of Lot 1 (ie: Banksia Street) as part of their works and have provided an estimate to the developer for their consideration. Works from the property boundary to the water meter for Lot 2 shall be undertaken by the developer.
- Approval or concurrence from RMS that the 150 mm diameter water main fronting Lot 1 located within Sugarwood Drive to provide water for Lot 2 is required before Council can approve these works.

The consent has been conditioned accordingly to reflect these requirements.

Effluent Disposal

Based on topography, it is not possible to service the whole of the proposed development area via a gravity system. As a result, it is proposed to provide private pumping stations as part of the development of Lots 1 & 2.

In this regard:

- Lot 1 is proposed to gravity feed to the southeast corner, where a private pump station will discharge into the existing manhole (in Banksia Street) via the existing house drain pipe.
- Lot 2 will also discharge to this existing manhole via a private rising main. The private rising main for Lot 2 must be located entirely within Lot 1.

A summary of sewer connection requirements is as follows:

- A route for sewer outside of the Council easement is required. This is because Council intend to upgrade the existing sewer rising main within the Council easement and therefore the space is not available for further infrastructure.
- A sleeved sewer rising main within the property boundary will be required, including the creation of an easement over the private sewer main.
- The proposed 2.7m retaining wall adjacent to the Council sewer easement must meet sewer works in proximity policy and shall be designed to be freestanding should any trenching works be undertaken within the Council sewer easement.
- The sewer pump unit and rising mains for the development will be owned, maintained and operated by the property owner.

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

NSW Office of Water

An integrated development referral to the NSW Office of Water (NOW) has been undertaken with regard to dewatering works required on site for excavation.

General Terms of Approval (GTA's) have been returned from NOW requiring a license to be obtained under Part 5 of the Water Act 1912 should water take exceed 3ML/yr. The GTA's regulate dewatering operations on site should a license be required.

Roads and Maritime Services

Roads and Maritime Services (RMS) advised that Technical Direction (TDT) 2013 04a includes traffic generation rates to be used for assessment of the development application. Any departure from the TDT rates would need to be justified.

Gold Coast Airport Pty Ltd

The application was referred to the consultant for Gold Coast Airport Pty Ltd (GCAPL) for review and comment. As noted previously in this report, the site is affected by aircraft constraints in relation to heights of structures within the airport's airspace, lighting and reflective surfaces, emissions, aircraft noise and public safety.

Following is a summary of comment that was supplied with regard to building height, lighting and reflective roofing, aircraft noise and landscaping.

Building Height

The proposed building is currently compliant with height limits under the airport's Obstacle Limitation Surface (OLS). However, any modification of plans that increases building height with intrusion into the OLS constitutes a "controlled activity" under the Commonwealth Airports Act. No dispensation, however minor, will be approved for intrusion into the OLS.

A condition has been recommended requiring that the height of any buildings or structures on the subject land not exceed the Obstacle Limitation Surface for Gold Coast Airport, noting that the height of the building includes any above-roof elements such as signs, parapets, aerials, architectural features, etc.

The proponent must ensure at the final design stage that this requirement is met. Consultation with GCAPL is encouraged.

Lighting and Reflective Roofing

Proposed buildings are situated in Lighting Zone B for Gold Coast Airport. Mandatory restrictions are imposed in respect of levels of illumination and reflective surfaces.

Application documentation is not specific with regard to roofing materials. However, various colours of Colorbond are listed as components of the building generally. The application does indicate that non-reflective materials have been incorporated.

A standard condition of development consent is recommended to ensure roofing materials comply with GCAPL criteria.

Due to its position in Zone B, an additional condition of development consent has been recommended specifying that intensity of any external illumination not exceed the mandatory maximum level of 50 candella at 3° above the horizontal.

It is noted that the western section of the site (which is not the subject of the current application for construction) is within Zone A in the Lighting Zone Map, in which maximum lighting intensity is 0 candella. At the time of future development within Zone A, or in the event that any auxiliary lighting is proposed in that area in Stage 2, a condition of development consent must reflect that requirement.

Aircraft Noise

GCAPL acknowledged that Council would be reviewing aircraft noise as part of its overall assessment and has provided a review of the applicant's acoustic report to assist in this process.

GCAPL requested that conditions be imposed on any development approval to require achievement of particular indoor sound level outcomes, rather than merely compliance with recommendations of the acoustic report. It was also requested that post-construction certification to confirm achievement of these sound levels be supplied.

An assessment of aircraft noise is discussed elsewhere in this report.

Landscaping

The application describes a landscaping strategy which appears to include several native flowering species, and also refers to bio-infiltration swales. However, birds and bats pose a danger to aircraft operating in the airspace of the airport.

GCAPL has requested that a condition be imposed to require minimisation of heavily flowering and fruiting species, and to avoid bird and bat attraction by any water features or systems. GCAPL's preferred species list will be provided to the applicant.

Public Submissions

The application was placed on exhibition from Wednesday 11 December 2013 to Monday 13 January 2014. A total of 28 submissions were received during that period. One late submission was received on 24 January 2014.

Submissions in support of the proposal offered the following general comment:

- It is positive to allow another hardware/bulky goods type business within the Shire as this creates competition which benefits everyone.
- I think this is the time to kick start the Tweed Heads and West Tweed area along.
- The creation of jobs in construction and retail will be a substantial bonus for the region.
- This development will assist the Tweed community to retain a portion of the retail economy currently heading further north to shop.
- There may also be increased demand for plant supply from local wholesale nurseries.

Objections to the development raised the following issues:

- Noise impacts on adjoining residential properties.
- Drainage impacts on adjoining properties.
- Impacts on adjoining property values.
- Established trees on Banksia Street should remain.
- Insufficient landscaping plans for effective screening of the development from adjoining residential development to the south.
- Construction of a rising main should not prejudice future construction of Banksia Street.
- The water main extension from Kennedy Drive via Rose Street should have capacity to service future development potential for the area.
- The proposal is not consistent with the draft DCP (Business Park).
- Impact of vehicle movement noise.

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

- There is no objection to conditions reflecting required compliance with applicable Australian Standards relating to noise emission from the site.
- The acoustic wall located on the southern portion of the site combined with appropriate landscaping will provide a suitable level of screening to existing dwellings.

- Existing vegetation within the Banksia Street road reserve is not expected to be impacted by the proposal.

Many issues raised have been dealt with satisfactorily in Council's assessment and conditioned accordingly to ensure compliance.

The late submission raised the following issues:

- The DA in its current form is statutorily deficient and cannot be approved in its current form by virtue of uncertainty over the proposed intended use of Lot 2 (Stage 3). This is critical as the DA appears to seek 'concept approval' for use and building footprint on Stage 3.
- No assessment under Clause 8(2) of the TLEP 2000 has been provided by the applicant regarding any potential retail use on the site for Stage 3.
- The SEE uses the terms 'will' and 'may' interchangeably providing no guidance at all as to the intended future use, despite showing a defined footprint on Lot 2 on the plans.
- It was the clear intent of the planning proposal at the time (rezoning of Boyds Bay site to B7 – Business Park) that the proposed site would not incorporate retail focussed uses only as is potentially the case in this staged DA.
- The applicant needs to remove reference to future use of Stage 3 as shop or retail use in order for the DA to be approved.

The applicant has responded to the issues raised within the late submission as follows:

- Any development of Stage 3 will be subject to a future development application. The application needs to be generally in accordance with the concept plan presented in the Stage 3 Site Plan. The building footprint is approximately 4650m² (inclusive of future loading areas).
- The application will need to be in accordance with the zoning framework applicable at the time the application is lodged (TLEP 2014).
- The only retail premises permissible on the site that could form an application for Stage 3 are: bulky goods premises, food and drink premises, garden centres, hardware and building supplies, kiosks and neighbourhood shops.
- General retail activities such as 'shops' are not permitted within the zone.

The applicant wishes to clarify as follows:

"Any development of Stage 3 will comprise land uses permissible with development consent pursuant to the zoning framework in force at the time that the Stage 3 application is lodged. Whilst the precise mix of land uses to be accommodated within Stage 3 is currently unknown, given the presence of the Masters Home Improvement Store on the site, it is expected that this will predominantly comprise Bulky Goods Retailing. However, depending on market demand, other permissible land uses may also be

accommodated, including office premises. General retail activities such as 'shops' are not proposed as part of the Stage 3 development."

(e) Public interest

The proposed development, generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan, is considered to be in accordance with public interest, with no significant negative impacts anticipated for surrounding residential uses and the local community in general.

OPTIONS:

1. Approve the development application in accordance with the officer's recommendation.
2. Refuse the development application with reasons.

Council officers recommend Option 1.

CONCLUSION:

The proposal has been investigated and is considered to be suitable to the site; unlikely to cause any significant long term negative impacts to the surrounding built and natural environment and generally meets Council's applicable requirements subject to imposition of and compliance with recommended conditions of development consent.

The proposed two lot subdivision, demolition of existing structures, construction of bulky goods retail (Masters) and associated infrastructure, car parking, access and landscaping as a staged development pursuant to Clauses 83B and 83C of the EP&A Act is therefore considered to warrant approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. TSC Water Program Estimate Issue A 03.06.2014 (ECM 3392685)

18 [PR-PC] Class 1 Appeal - 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

FILE REFERENCE: DA13/0678 Pt1



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 has received a Class 1 Appeal against Council's refusal of the development application for a shed at Beatrice Court, Pottsville. The call over for the appeal was on 30 June 2014 and further directions will be sought following the resolution of this agenda item. The application was recommended for conditional approval however Council resolved to refuse the application 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."

RECOMMENDATION:

That Council's solicitors be engaged to negotiate consent orders or a Section 34 Agreement for 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.

REPORT:

Applicant: Mrs J Sladen
Owner: Mrs Janice Sladen & Mr Peter R Sladen
Location: Lot 2 SP 38780 No. 2/1 Beatrice Court, Pottsville
Zoning: 2(a) Low Density Residential (TLEP2000)
Cost: \$24,000

Background:

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

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

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

The applicant seeks the following Orders from the Court:

1. That the development application DA13/0678 for erection of an outbuilding with shower and toilet at Lot 2 SP 38789 No. 2/1 Beatrice Court, Pottsville be approved forthwith without hearing following the Court's consideration of the proposed development plans and the Tweed Shire Council Notice of determination by refusal of consent dated 5th May 2014 due to the refusal reasons being manifestly and demonstrably inadequate, incorrect, insufficient and in contradiction the Tweed DCP 2008 in so much as the proposed development Statement of Environmental Effects and plans:
 - i. Show that the deep soil zone and landscape area of 175 square metres (43% of site area) is significantly greater than the DCP requirement of 20% including two deep soil zones of 18 square metres each and

- ii. Clearly illustrate that the acoustic privacy is enhanced by the acoustic qualities of the development and in any case Australian building standards and the Building Code of Australia Part 3.8.6, Sound Insulation, do not require the design of class 10a non habitable buildings such as outbuildings to address acoustic amenity to surrounding dwellings and
 - iii. Fully demonstrate that the proposed development does not fail to
 - a) reinforce the future character and streetscape of the area as it has significantly less impact than the existing two level building opposite or
 - b) preserve the visual and privacy amenity of the adjoining property as the proposed outbuilding is screened from sight of the adjoining property by a large grove of trees and shrubs.
2. That the development application DA13/0678 for erection of an outbuilding with shower and toilet at Lot 2 SP 38789 No. 2/1 Beatrice Court, Pottsville be approved.

OPTIONS:

1. Engage Council's solicitors to negotiate consents orders or a Section 34 Agreement for DA13/0678.
2. Engage Council's solicitors and suitable consultants to defend the appeal.

Option 1 is recommended.

CONCLUSION:

It is recommended that Council work towards a negotiated outcome.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Council will incur expenses as a result of the appeal.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Council report and resolution presented to 1 May 2014
Planning Committee meeting for DA13/0678 (ECM 3385380)

19 [PR-PC] Swimming Pool Barrier Inspection Program Policy

SUBMITTED BY: Building and Environmental Health



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 Council's resolution of 20 March 2014 the Pool Barrier Inspection Program - New Draft Council Policy was placed on public exhibition for a 28 day period and invited public submissions for a period of 42 days. The exhibited Version 1.0 incorporated the minor variations resulting from the abovementioned resolution. The exhibition concluded on 20 May 2014 and no submissions or representations were received or made. Therefore this report is referred to Council in order for the Pool Barrier Inspection Program Policy Version 1.1 to be formally adopted as Council Policy.

RECOMMENDATION:

That Council adopts the Swimming Pool Barrier Inspection Program Policy Version 1.1.

REPORT:

Background

In reviewing the Swimming Pool Barrier Inspection Program requirements prescribed by Section 22B of the Swimming Pools Act 1992 No. 49, Council at its 20 March 2014 meeting resolved the following:

"that Council, in respect of the proposed options for a new Swimming Pool Barrier Inspection Program, required under the NSW Swimming Pools Act, endorses the following:

1. *Targeted Inspections – requiring inspections in the following circumstances:*
 - a) *Where the Pool Barrier is the subject of a complaint (Council is required to commence investigation within three (3) working days).*
 - b) *Where a request to inspect the pool barrier is made by the owner whether required for pool registration or prior to sale or lease of a premises (an inspection is required to be carried out within ten (10) working days of a written request).*
 - c) *Where an inspection by Council's accredited certifiers (other than that required by this clause) reveals an inadequately fenced pool at the subject premises or at a neighbouring premises.*
 - d) *Where the premises is subject to a Building Certificate application.*
 - e) *At least once every three years where a pool is situated on premises on which there is tourist and visitor accommodation or more than two dwellings, this includes caravan parks and the like.*
 - f) *Inspections referred to Council by private accredited certifiers who are unable to issue a compliance certificate for a pool they have inspected.*
 - g) *Council is informed that a swimming pool has been removed from the state register.*
 - h) *Council receives information that a pool barrier is non compliant.*
 - i) *Council is informed that a swimming pool exists on premises subject to a Development Application or a Complying Development Certificate application lodged with Council.*
 - j) *A property is targeted, based on available resources and level of risk. Council will compare its records with the public register held by the Office of Local Government to identify swimming pools which have not been registered. Council will then utilise its entry powers under the Swimming Pools Act and Local Government Act to randomly inspect those swimming pools and the surrounding child restraint barrier and take any necessary action to enforce compliance. Consequently any property with a swimming pool may be inspected at any time. If a particular suburb/village/area is targeted then it is assumed the unregistered pools will be inspected firstly.*
2. *The Draft Council Policy incorporating the requirements in (1) above, within the "Identification of pools to be inspected" section, be placed on public exhibition for a 28 day period and inviting public submissions for a period of 42 days; and*
3. *Following the exhibition period, a further report be submitted to Council seeking formal adoption of the new Draft Council Policy."*

The Draft Swimming Pool Barrier Inspection Program Policy was amended to include the minor adjustments resulting from resolution 1 above and Version 1.0 was placed on public exhibition. The recommended document for final Council adoption is now referred to as The Swimming Pool Barrier Inspection Program Policy Version 1.1.

Public Exhibition

In accordance with Council's resolution the Swimming Pool Barrier Inspection Program (Targeted inspections) - Council Policy incorporating the requirements in (1) above, was placed on public exhibition for a 28 day period and inviting public submissions for a period of 42 days. During this period information posters and a draft copy of the program were available at Council's offices at Tumbulgum Road Murwillumbah and at Brett Street Tweed Heads, on Council's website and were provided to the learn to swim centres and pool shops within the Tweed Shire. Also a notice "On exhibition: Swimming Pool Barrier Inspection Program" was placed in the Tweed Link on 8 April 2014.

The exhibition period concluded on 20 May 2014 and no submissions or representations were received or made.

During the exhibition period it is noted that Council received advice from the Office of Local Government that:

*"Provisions that require a property with a swimming to have a certificate of compliance before it can be sold or leased will now commence on **29 April 2015**. This means that pool owner will have more time to ensure swimming pool barrier compliance prior to the sale or lease of their property."*

The outcome of this advice does not have an impact on the proposed policy.

OPTIONS:

That Council adopts a new policy for swimming pool barrier inspection based on the following Options:

- i) Option 1 - adopts the publicly exhibited Swimming Pool Barrier Inspection Program Policy (the final document to be known as Version 1.1); or
- ii) Option 2 – does not adopt the publicly exhibited Swimming Pool Barrier Inspection Program Policy.

Council officers recommend Option 1.

CONCLUSION:

The public exhibition of a Swimming Pool Barrier Inspection Program Policy did not result in any public submissions, and is therefore considered suitable for final Council adoption.

COUNCIL IMPLICATIONS:

a. Policy:

Council endorsement is sought for Swimming Pool Barrier Inspection Program Policy Version 1.1

b. Budget/Long Term Financial Plan:

There is the potential for an annual increased budgeted income of \$30,000 to \$100,000 from Council carrying out its legislative responsibility in respect of the Swimming Pool Act and the Swimming Pool Barrier Inspection Program. To carry out this responsibility additional staff training and resources will be necessary. This includes electronic devices, possible overtime and need for additional staff or staff reallocation. Best estimate is that the income from the inspection charges will not cover the actual costs of providing the legislated service.

c. Legal:

The Swimming Pool Act 1992 No. 49 requires Council to develop and adopt a locally appropriate and affordable inspection program.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Swimming Pool Barrier Inspection Program Policy Version 1.1
(ECM 3389497)

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

SUBMITTED BY: Director



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

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 June 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.	DA14/0127
Description of Development:	two storey dwelling, in-ground swimming pool and spa
Property Address:	Lot 9 DP 1189943 No. 13 Dryandras Court, Casuarina
Date Granted:	12/6/2014
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)
Justification:	<p>The proposed development will result in a public reserve adjacent waterfront open space being overshadowed before 6.30pm midsummer, and requires a variation to development standard Clause 32B(4)(a) of the North Coast Regional Environmental Plan.</p> <p>An objection to the development standard has been lodged under SEPP 1. The objection maintains the development standard is unreasonable because:</p> <ul style="list-style-type: none">- <i>Existing buildings in Casuarina Beach result in overshadowing of the foreshore area prior to the relevant times both mid winter and mid summer.</i>- <i>Existing trees on the foreshore dunal areas result in significant overshadowing of the foreshore reserve and beach prior to the relevant times.</i>- <i>The immediate foreshore areas to be overshadowed are 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.</i>- <i>The shadows do not extend to the beach during winter.</i>
Extent:	The extent of the overshadowing of the adjacent public reserve is approximately 10m at 6.30pm midsummer.
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 and Land Use 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



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] Compliance Matters in Relation to Various Murwillumbah Properties

REASON FOR CONFIDENTIALITY:

This report has been made Confidential due to the 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: -

(e) information that would, if disclosed, prejudice the maintenance of law



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
 - 4.1 Protect the environment and natural beauty of the Tweed
 - 4.1.3 Manage and regulate the natural and built environments
-