



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 5 June 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 [SOR-PC] Schedule of Outstanding Resolutions - Planning Committee



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making processes
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CODE OF MEETING PRACTICE:

Section 2.8 Outstanding Resolutions

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

COUNCIL MEETING - 23 JANUARY 2014

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

Cr G Bagnall
Cr M Armstrong

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

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

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

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Cr K Milne
Cr M Armstrong

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

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

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

PLANNING COMMITTEE - 6 FEBRUARY 2014

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

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Cr M Armstrong
Cr K Milne

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

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

PLANNING COMMITTEE - 6 MARCH 2014

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

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Cr K Milne
Cr M Armstrong

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

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

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

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

COUNCIL MEETING - 20 MARCH 2014

REPORTS FROM DIRECTOR PLANNING AND REGULATION

- 10 [PR-CM] Development Application DA10/0801.02 for an Amendment to Development Consent DA10/0801 for the Cobaki Estate Subdivision of Precinct 6 Comprised of 442 Residential Lots (Including 1 Residual Lot) and Lots for Drainage, Open Space and Urban Infrastructure (JRPP) at Lot 1 DP 570076, Lots 54, Part Lot 199 & Lot 200 DP 755740 Piggabeen Road, Cobaki Lakes; Lot 1 DP 562222, Lot 1 DP 570077, Lot 1 DP 823679, Lot 2 DP 566529, Lots 46, 55, Part 199, 201, 202, 205, 206, 209, 228, 305 DP 755740 Sandy Lane, Cobaki Lakes**

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**Cr M Armstrong
Cr W Polglase**

RESOLVED that this item be deferred to the Planning Committee meeting scheduled for Thursday 1 May 2014, to enable:

1. The proponent's consultant to have an opportunity to respond to the Council's memo of 18 March 2014
2. Council to provide a series of questions relating to the preparation of the proponent's consultant's report; and

3. Council to negotiate with the proponent to determine if an arbitrator could be appointed to resolve the outcome of the openings, with costs to be shared equally between the parties.

Current Status: A meeting between Council's and the proponent's experts have occurred where points of agreement and disagreement were identified. A further detailed 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: Following the receipt of any further technical information from the applicant, the Council officers will undertake further assessment and the matter will be reported 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 matter will be reported back to a future Planning Committee meeting.

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

2 [PR-PC] Development Application DA13/0307 for Alterations and Additions to Existing Footpath Trading/Dining Area at Marine Parade, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0307 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 subject site is located at Marine Parade, Kingscliff. The site is identified as Road 3340 and is adjoining the commercial premises at No. 78-80 Marine Parade, Kingscliff, known as 'Paradiso'. This building contains retail shops, commercial premises and refreshment rooms on the ground floor and tourist accommodation on upper floors. The existing road reserve adjoining features covered footpath dining areas granted development consent in 2002.

The proposed development seeks consent for alterations and additions involving the extension of the existing dining area within the road reserve. The existing outdoor dining area will be improved and extended with the installation of a concrete slab at grade toward the associated shops. It is also proposed to construct skillion roof over the expanded dining areas. The application proposes the installation of landscaping within raised concrete planter boxes within the dining area footprint. Accessible ramps will also be provided.

The construction of the concrete slab and raised planter boxes as proposed will result in a minimum 2m wide public footpath between the existing shops and proposed extended footpath dining area. The Council officers have raised concerns with the nominated footpath width and have requested a minimum width of 2.5m to be provided. Justification for the provision of a 2.5m minimum footpath width is outlined below.

The applicant maintains a 2m wide access is satisfactory despite negotiations with Council outlining site specific reasons for the provision of a 2.5m wide minimum clearway.

The applicant was advised that a positive determination of the proposal under delegated authority would be issued, subject to amended plans demonstrating the provision of a 2.5m minimum width footpath. Alternatively, the applicant was advised that a report would be presented to Council recommending approval only subject to the provision of a minimum 2.5m width footpath.

Council's Footpath Trading Policy (FTP) requires the provision of a minimum 2m wide footpath in association with footpath dining to the satisfaction of Council. While the proposal is consistent with the Policy in this regard, it is argued within this report that 2m is insufficient due to site specific circumstances.

These circumstances are specifically the high volume of pedestrian traffic through this site due to intersecting sections of footpath, the adjoining vehicle intersection being a high volume area for pedestrian crossing and the site being a corner location within the Kingscliff central business district.

The construction of a raised concrete deck and planter boxes that will protrude into the existing footpath will decrease the width of the existing footpath clearway and provide a 'choke point' onsite and potential trip hazard for footpath users. It is considered that this reduced width will create an unacceptable level of congestion. It is also considered that the 2m width will escalate the potential risk to users of the footway due to wait staff for multiple tenancies traversing this area.

The objectives of the FTP will be compromised as they are intended to maintain a *safe, unrestricted and convenient pedestrian movement*. Another objective is to *provide for the safety and amenity of footpath trading patrons*. The 2m wide minimum will not facilitate these objectives for foot traffic, wheelchairs, prams or wait staff.

Council has required other users in the vicinity to provide a 2.5m wide footpath, despite the provisions of the policy. The Choux Box Cafe is a specific example of this increased width requirement.

The current consent DA02/1769, which the existing outdoor dining area operates within, included a condition requiring the provision of a minimum footpath width of 2.5m. Compliance with this minimum has been an issue onsite due to concertina doors protruding into the footpath space over the building line in addition to the placement of statues and large pots within the footway. The concertina doors will continue to protrude into the footpath over the existing building line. It is considered that the 2.5m width clearway cannot include the area obstructed by these doors.

The proposed development as submitted has been amended as a result of various concerns with the original development application. It is recognised that the modifications have satisfied many of the original concerns. However, the minimum unobstructed footpath width remains a point of contention.

The proposal through design and construction can comply with all relevant provisions including the Tweed Local Environmental Plan 2000, Tweed Shire Council Development Control Plan 2008 and the FTP.

The development application was notified and advertised for a period of 14 days, with three letters of objection being received. It is considered that the modifications to the original development application have addressed these concerns.

This report will provide sufficient justification for the imposition of a 2.5m wide clear access footpath within the subject site, contrary to the application's proposed 2m wide footpath. It is considered that the proposal should only be granted development consent subject to the amendment of the proposal to demonstrate a 2.5m minimum wide for all footpaths within the road reserve the subject of this application.

RECOMMENDATION:

That Development Application DA13/0307 for alterations and additions to existing footpath trading/dining area at Marine Parade, Kingscliff be approved subject to the following conditions:

DEFERRED COMMENCEMENT

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.

1. The applicant shall provide amended plans demonstrating the provision of a minimum 2.5m wide footpath clear of all obstructions over the entire site.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos WD03 Version f, WD07 Version f , prepared by iform building designs and dated May 2013 except where varied by the conditions and any approved plans as required by Schedule A.
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. No advertising is permitted on the awning/walls/partitions of the proposed dining area. [GEN0205]
5. The proposal is to comply at all times with Tweed Shire Councils adopted Footpath Dining Policy except where varied by this approval. [GEN0225]

6. The display of goods are not permitted without the written approval of the General Manager or delegate.

[GENNS01]

7. Maintenance of the outdoor dining structures will be the responsibility of the applicant, or his successor in title, in accordance with Section 142 Roads Act 1993.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

[PCC0275]

9. 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]

10. Design plans submitted with the Construction Certificate application shall include the following amendments:

- a) All access pathways shall be designed in accordance with the Australian Standard 1428.1 - 2009 Design for Access and Mobility;
- b) All level changes must be eliminated between the access pathways and the outdoor dining areas for each tenancy;
- c) Undercover footpath areas must be lit to AS1158 from dusk to dawn;
- d) The southern access pathway shall be extended along the kerb line to meet the Marine Parade footpath;
- e) All designated footpath and access pathway areas must remain free from obstruction at all times;
- f) Footpath levels are to be provided along the interface with the raised dining blisters, to demonstrate no water ponding within the footpath area. Where

ponding may occur, additional footpath drainage must be provided, discharging to the Council system;

- g) Detail maintenance access to all public stormwater drainage services within the dining blisters.

PRIOR TO COMMENCEMENT OF WORK

11. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

13. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on

any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

14. 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]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

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

[DUR0375]

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

[DUR0395]

20. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

21. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

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

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

[DUR1005]

23. 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]

24. 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]

25. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

26. All stormwater from roofed and paved areas are to be connected directly into road drainage pits where available, kerb and gutter drainage canal or inter allotment drainage line where provided.

All drainage systems shall comply with AS 3500.

[DUR2305]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

27. 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]

28. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.

[POC0805]

29. A structural engineers' certificate is to be submitted for the existing structures within the road reserve approved under DA02/1769 with any application for an occupation certificate under this consent.

[POCNS01]

USE

30. 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]

31. Footpath dining activities shall not be carried out unless a Footpath Dining License Agreement has been approved by the General Manager or his delegate. Footpath dining activities shall be restricted to the approved footpath dining area and carried out in accordance with Councils adopted Footpath Dining Policy.

[USE1105]

32. A minimum 2.5 metre wide clear unobstructed pedestrian pathway shall be maintained on the footpath.

33. The approved structures located within the road reserve are to be kept in good order and repair at all times.

[USENS01]

REPORT:

Applicant: Mr M Morgan
Owner: Tweed Shire Council
Location: Marine Parade, Kingscliff
Zoning: Unzoned under Tweed Local Environmental Plan 2000
Cost: \$30,000

Subject Site

The proposed development site is the Marine Parade Road Reserve, within the Kingscliff central business district. This individual parcel of land extends from the Marine Parade junction with Turnock Street in the north-west to Cudgen Creek in the south-east, a total distance of approximately 850m.

The road reserve has been developed with public road with verge car-parking at this section. The road is two-laned between the junction of Seaview Street and Cudgen Creek, while a recent re-development has been undertaken between Seaview Street and Turnock Street to develop a one way road system.

The specific development location for this application is adjacent to the Paradiso building and has been previously developed for footpath dining.

The outdoor dining area currently services a mix of commercial premises namely;

Shop 1 - On Kliff design concepts

Shop 2 - Red Hot Thai

Shop 3 - 7 Eleven Convenience Store

Shop 4 - Gelato

Shop 5 - Taj Hut Indian Restaurant

Red Hot Thai holds a current Footpath Dining Approval for use of part of the subject area and the Gelato bar currently has an application pending.

The road reserve services large volumes of pedestrian traffic along the western side of Marine Parade but also pedestrian traffic crossing Marine Parade to access public reserves, Kingscliff beach and public carparking. The footpath onsite contains a junction of two footpaths linking the western side of Marine Parade with a crossing over Marine Parade to the eastern side of the same roadway.

Background:

The subject development site displays the following development history pertinent to this application:

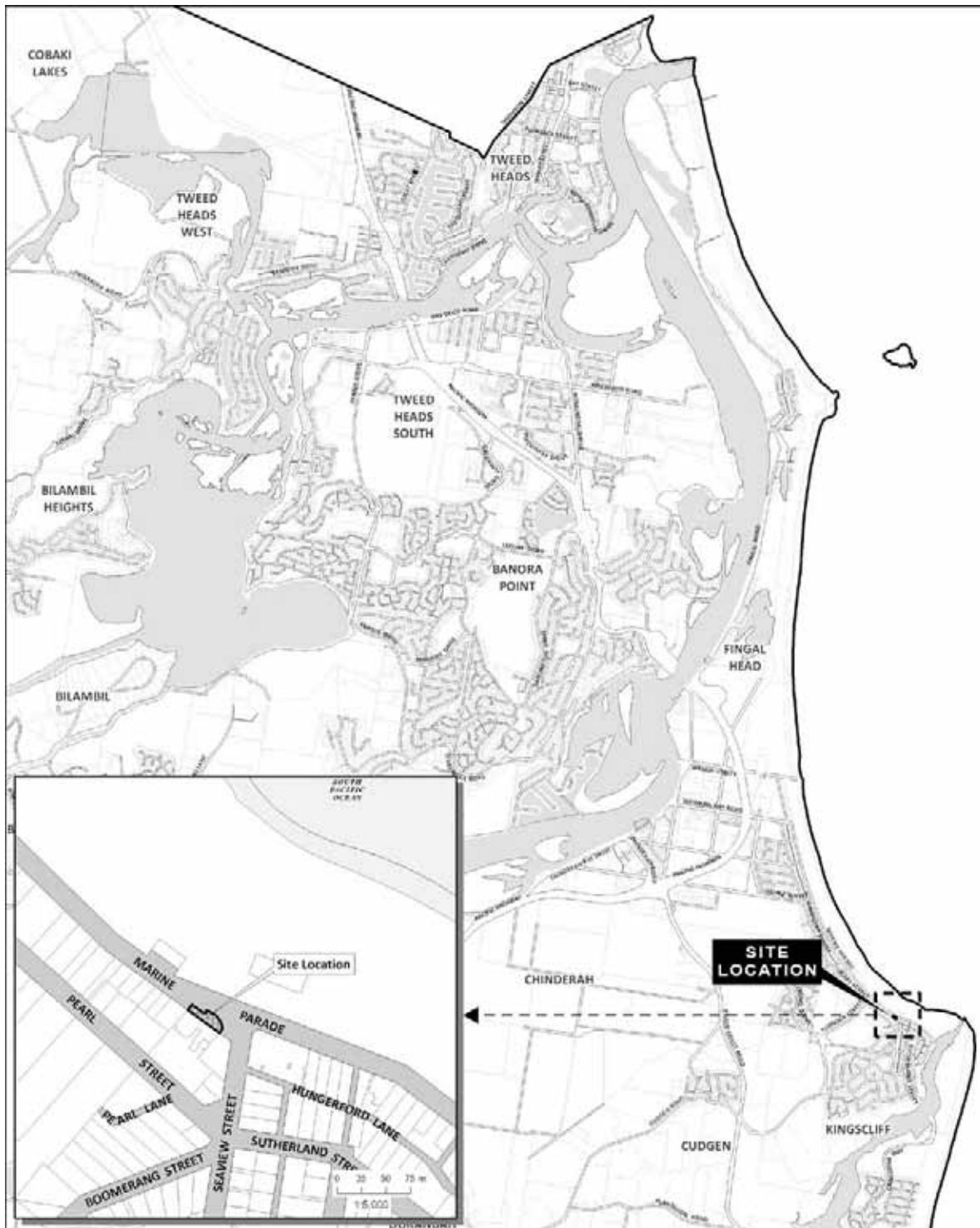
DA02/1769- Road Realignment & Outdoor Eating Area. Approved 14 February 2003.

This application granted consent for the erection of the outdoor eating area at the location of the current proposal. This application was conditioned to require a minimum footpath width of 2.5m to be maintained at all times. While the approved plans lacked some accuracy in regards to the location of concertina doors, it is considered that a footpath width of 2.5m was possible between the open doors of the subject commercial premises and the support posts of the outdoor dining roof structure erected in conjunction with this development consent.

The current application was lodged in June 2013. The application has been amended in response to Council's concerns. These amendments are as follows:

- Removal of Stage 2 of the project being the construction of a 'deck blister' over two 'at grade' carparking spaces resulting in no loss of carparking as a result of the development.
- Removal of the proposed batten screens on the footpath between the existing roof over and the shop fronts.
- Inclusion of a 1200mm wide accessibility ramp between the proposed dining areas and on street carparking
- Amending the decking from timber to concrete slab. The concrete slab will be enclosed to avoid the build-up of material and harbouring of vermin.
- A removable grate will be installed above the existing gutter to provide access to the existing drain.

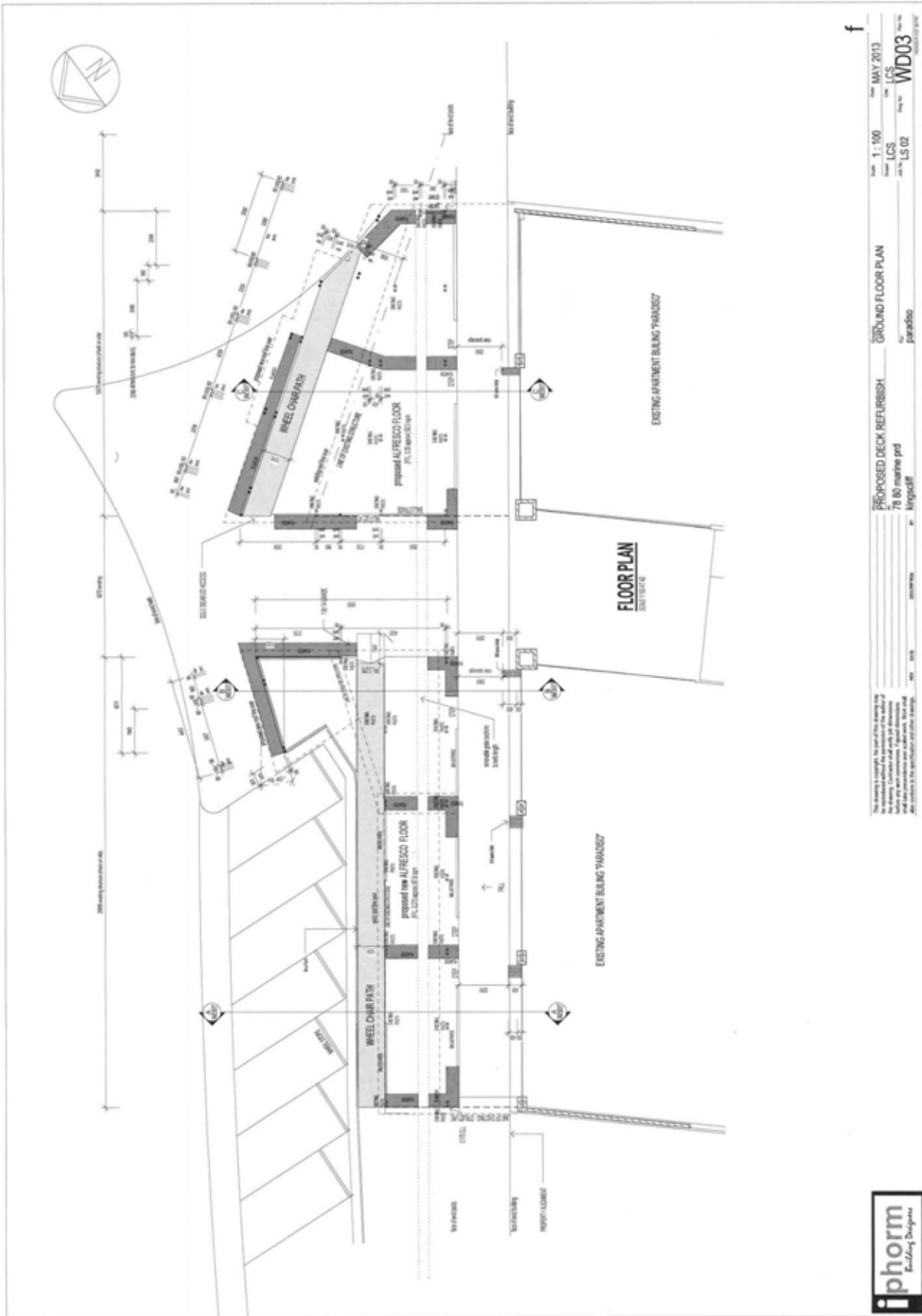
SITE DIAGRAM:

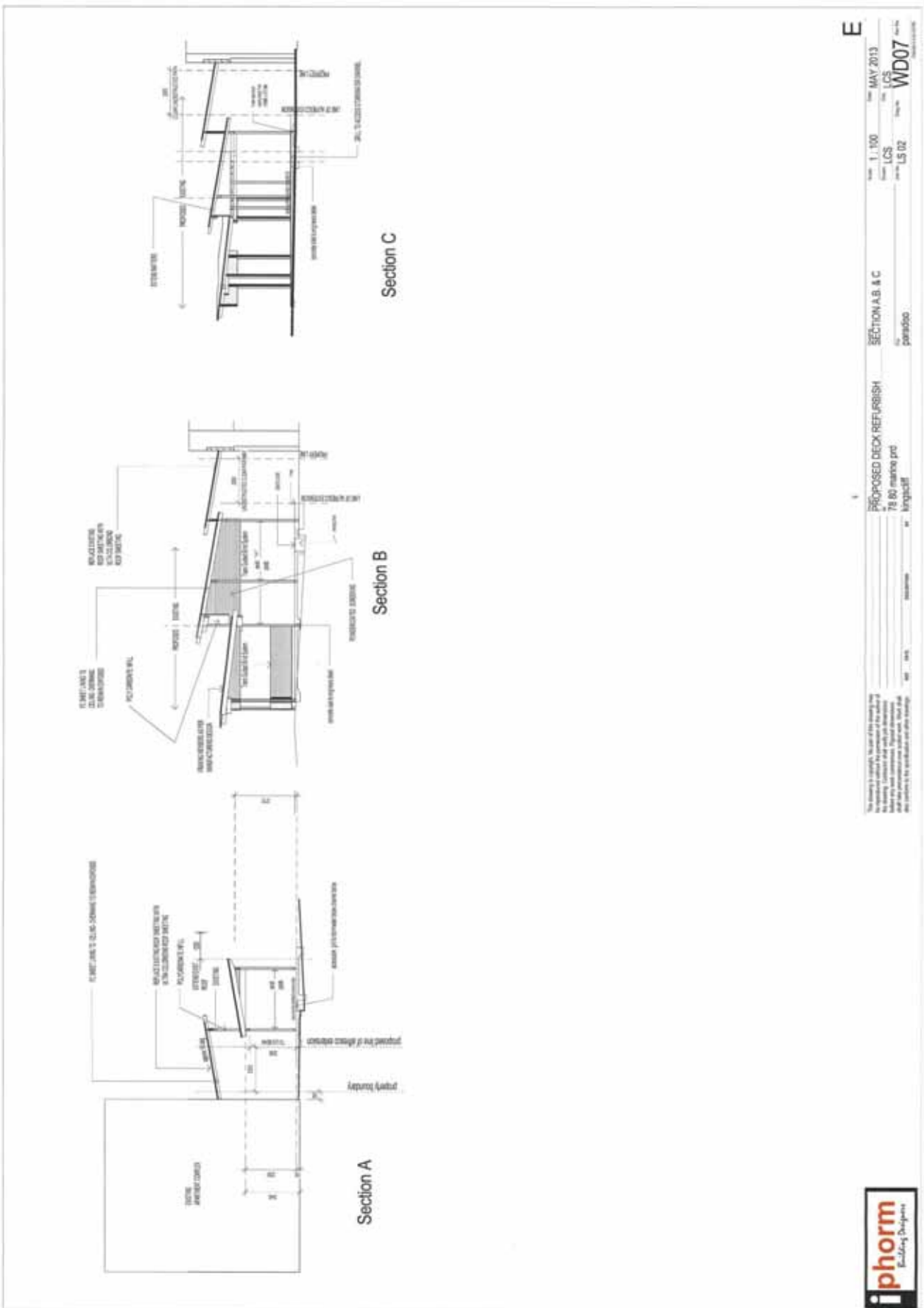


Locality Plan
Manne Parade, Kingscliff

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy or reliability of the data, nor does it accept any liability for any errors, omissions or delays in publication, or for any loss or damage, including indirect or consequential damage, and costs which may be incurred as a result of this data, including in any case and for any reason, the information is required for the general purposes and to be used for navigation and other purposes. It should not be used for navigation purposes and for any other purpose. A "find before you dig" enquiry must be made by calling 811. The information contained in this document should not be used for any other purpose.</p>	<p>Copyright © 2014 Land and Property Information (LPI) Boundaries shown should be considered approximate only</p>	<p>0 25 50 75 m 1:50,000 @ A4 Portrait 00P 00P - 00P 100000</p>	<p>City and Council Centre 5 Tweedgate Road Kingscliff NSW 2484 P 02 6570 2429 F 02 6570 2429 E planning@tweedshire.nsw.gov.au</p>	<p>TWEED SHIRE COUNCIL</p>
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DEVELOPMENT/ELEVATION PLANS:





The drawings are prepared for the proposed deck refurbishment and are not to be used for any other purpose without the written consent of the architect. The architect is not responsible for any errors or omissions in the drawings or for any consequences arising from their use.

PROPOSED DECK REFURBISH SECTION A, B, & C
 78, 80 marina pnt
 Kingscliff
 NSW 2480
 Date: 15/02/13
 Scale: 1:100
 Drawn: LCS
 Checked: LCS
 Date: MAY 2013
 Project: WD07

E

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, subject to amendments to the proposed footpath width, as is not considered likely to result in a reduction of existing amenity for nearby commercial properties and public land 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 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

- (1) 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 proposed development is located on unzoned land. As such, the proposal is assessed under the provisions of Clause 13 in this regard.

Other aims and objectives of this plan relevant to this application are detailed elsewhere in this report.

The proposed development is adjacent to approved refreshments rooms. These refreshments rooms and associated outdoor dining is consistent with the objectives of the commercial zone of Kingscliff. Therefore, the outdoor dining

area will not have an unacceptable cumulative impact on the community, locality or catchment.

Clause 11 - Zone Objectives

Not applicable. The subject proposal is located on unzoned land.

Clause 13 - Development of uncoloured land on the zone map

This Clause aims to ensure that the development of unzoned land is compatible with surrounding development and zones.

The proposal relates to the development of an outdoor eating area on uncoloured land on the zone map (Road Reserve) and as such, consideration of the Clause is necessary. The objectives of the clause are:

- *To enable the control of development on unzoned land.*
- *To ensure that development of unzoned land is compatible with surrounding development and zones.*
- *To ensure that development of certain waters takes account of environmental impacts and other users of the waters.*

This clause goes on to further state that *'A person must not carry out development (other than development for the purpose of an outdoor eating area on a footpath within a road reserve or development listed in Schedule 5) on unzoned land except with consent.'*

The subject application relates to the construction of an outdoor eating area to facilitate footpath trading for adjoining refreshment rooms. The footpath trading component is not exempted from development consent. As such, it is considered appropriate that a development application be lodged in order to obtain consent.

In deciding whether to grant consent to development on unzoned land, Council must consider whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.

The adjoining land parcel is zoned 3(b) – General Business in which this development would be permissible with consent and the surrounding land has been developed for a range of commercial purposes including cafés and restaurants (Refreshment rooms).

The site is the subject of an existing development consent for outdoor dining (DA02/1769). This consent has been enacted and the area is currently utilised for outdoor dining, albeit over a smaller land area.

Therefore, it has previously been established that this proposal is compatible with the development permissible in the adjoining zone and it is not considered that the proposal will impact adversely upon the character or amenity of the area or impact on the future use of the land. It is considered that the proposal is consistent with Clause 13.

Clause 15 - Essential Services

The subject land is serviced by Council's water mains and sewer system. The proposed development will not require connection to services. The proposed development is considered to be acceptable in this regard and does not contravene the provisions of this clause.

Clause 16 - Height of Building

The subject development area is located within a three storey height limit area as outlined by the LEP. The proposed development has a maximum height of approximately 5.4m which would be classified as a single/two storey structure for the purpose of this clause.

This is considered acceptable in this location and the proposal does not contravene the provisions of this Clause.

Clause 17 - Social Impact Assessment

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

In this regard Council has prepared DCP A13- Socio-Economic Impact Assessment which outlines development thresholds which would necessitate a Social Impact Assessment to be prepared and submitted with a development application. The proposed development does not trigger any of these requirements and as such it is considered that a Social Impact Assessment is not required in this instance.

Clause 35 - Acid Sulfate Soils

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

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

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

This clause is considered to be satisfied.

Clause 36 - Coastal erosion outside zone 7 (f)

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

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

- (i) *the likelihood of the proposed development adversely affecting the behaviour or being adversely affected by the behaviour of the sea, or of water in an arm of the sea or any other body of water, and*

The proposed development is considered unlikely to adversely affect the behaviour or be adversely affected by the behaviour of the sea. Development works are to be carried out on an existing structure.

- (ii) *the likelihood of the proposed development adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or floodplain of the sea, any arm of the sea or any other body of water, and*

As outlined above, the subject development application relates to works to be carried out within an existing road reserve containing approved structures and

modifications. In this regard the proposed works are considered to have a minimal impact with respect to the foreshore area outlined above.

(iii) the likelihood of the proposed development adversely affecting the landscape or scenic quality of the locality, and

The proposed development is considered unlikely to adversely affect the landscape or scenic quality of the locality.

(iv) the potential impacts of climate change including sea level rise.

Development works the subject of this application relate to alterations and additions to an existing outdoor dining area and associated structures. In this regard, the proposal is not considered to result in notable potential impacts with respect to climate change and sea level rise.

The subject application is considered to be consistent with the above provisions and the proposed development is supported with respect to Clause 36. The subject site is partially affected by coastal hazards as outlined within Figure 1. The implications of this coastal hazard location are discussed with a latter section of this report (TDCP B25).

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan)

Clause 32B: Coastal Lands

The NSW Coastal Policy applies to this site. 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

Before granting consent to development on land affected or likely to be affected by coastal processes, the council shall:

(a) take into account the Coastline Management Manual,

The proposal is separated from the foreshore. The proposal is generally in accordance with the provisions of this document.

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

No disturbance to foreshore areas will be required in conjunction with this development.

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

The proposal will not impact upon any access to Kingscliff beach due to spatial separation.

Clause 47 Principles for Commercial and Industrial Development

This Clause relates to development control principles for industrial development only. The subject proposal is not industrial development therefore the development control principles of this clause do not apply.

Clause 81: Development adjacent to the ocean or a waterway

If a subject site is within 100m of the ocean or any substantial waterway, Clause 81 of NCREP requires Council to be satisfied that:

- (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
- (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
- (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*

The subject site does not have direct access to the foreshore area of Kingscliff beach. The setback distance of the proposed development from the ocean (approximately 80m) suggests that the visual amenity will not be adversely impacted due to proposed heights and materials.

Appropriate conditions have been also applied to mitigate any impact upon the waterway in terms of stormwater drainage.

The Tweed Shire Coastline Management Plan applies to the subject site. Actions for this section of the coastline include works relating to coastal erosion. The subject site is outside the location of these proposed works and will not conflict with any proposals contained within this 2005 document.

As a result, the application is considered to be consistent with the provisions of Clause 81.

SEPP No 71 – Coastal Protection

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

Matters for Consideration

- (a) *The aims of this Policy set out in Clause 2:*

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

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

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

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

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

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

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

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

The proposal is not considered to result in any detrimental impact on the coastal foreshore as outlined above.

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

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

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

The proposal is not considered to impact negatively animals or their habitats. The subject development site is currently developed for outdoor dining.

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

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

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

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

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

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

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

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

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

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

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

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

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items, being within an urban environment containing existing structures.

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

Not applicable to the subject application.

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

- (i) *the cumulative impacts of the proposed development on the environment; and*

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

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

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

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

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

Tweed Local Environment Plan (TLEP) 2014 commenced on the 4 April 2014. The new TLEP 2014 has applied a B4 Mixed Use zone to the subject road reserve and adjoining commercial premises. Commercial premises, refreshment rooms and associated outdoor dining are permissible with consent in this zone. The proposal is consistent with the objectives of the zone being a suitable development in an accessible location to maximise public transport and to encourage walking and cycling.

Despite consistency with the TLEP 2014, in accordance with savings provision 1.8A of the TLEP 2014, the development application was made before the commencement of this Plan, in relation to land to which this Plan applies. Therefore, the application must be assessed as if this Plan had not commenced. Accordingly, the application is being assessed in accordance with the provisions of TLEP 2000.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The provisions of this Code require the assessment of the internal dining area to determine carparking demand for this type of commercial development. The proposed alterations and additions to the existing outdoor dining area will not increase the internal dining area. Accordingly, the proposal will not require the provision of any additional carparking onsite.

While the original proposal included the removal of two existing carparking spaces to facilitate additional outdoor dining areas, this stage of the project has been deleted. The proposal as amended does not require the removal of any carparking to accommodate the proposed additions.

The proposal will make alterations to existing pedestrian access points and access from kerbside parking. While the proposed development is generally considered acceptable in this regard, some changes to the proposed layout will be required prior to any construction certificate being issued. These changes will be discussed in more detail within the report section titled 'Footpath Trading Policy'.

A4-Advertising Signs Code

The proposal does not include the provision of any signage within the outdoor dining area.

A11-Public Notification of Development Proposals

The proposal was publicly notified to adjoining owners for a period of 14 days from 5 July 2013 to Friday 19 July 2013. During this period, three submissions were received from adjoining owners and the Kingscliff Ratepayers and Progress Association. These submissions will be reviewed in a latter section of this report.

A13-Socio-Economic Impact Assessment

The proposed development is not a land use that requires a Socio-Economic Impact Assessment under the provisions of DCP A13.

B4 West Kingscliff

The site is located within the West Kingscliff urban area identified by this Plan. The overall objective for the development of the area as identified by this plan is to create *'a safe, pleasant and efficient urban environment in a practical and financially effective manner.'*

Specifically, Section B4.3.1 Traffic and Transport provides that the transport network objective is to *'establish a road and pedestrian network which meets safety objectives and high environmental standards, and which seeks to separate through traffic from local traffic and pedestrians from vehicles.'*

Specifically, the plan states that *"Footpaths/cycleway shall generally be 2 metres in width and wider as appropriate at corners and pathway intersections."* The application has provided a 2m wide footpath within the confines of the portion of road reserve the subject of this application. It is considered that due to various site specific circumstances, a 2m footpath width is not sufficient upon this site.

The site features the intersection of two pedestrian walkways. The site enjoys high pedestrian volumes and will have staff for multiple tenancies traversing the footpath. The construction of a raised outdoor dining area also featuring planter boxes protruding into the existing footpath clearway will result in a reduced footpath width and potential trip hazard for footpath users in a high traffic area. The site also contains an intersection of two footpaths, further increasing the volume of traffic in this location as a result of merging footpath users, including wheelchairs and prams.

These matters will be discussed in more detail under the Footpath Trading Policy section of this report. However, the combination of these issues provides sufficient evidence that a 2m wide footpath will cause undue congestion and a

'choke point' at the site. This is not consistent with the objectives of this Section of the TDCP 2008. Accordingly, it is considered that it is reasonable to request an amendment of the plans to provide a minimum 2.5m footpath width for the subject portion of the road reserve.

B9-Tweed Coast Strategy

The development is located upon an existing road reserve blister within the commercial business district of Kingscliff. The proposal is not contrary to the objectives and provisions of this plan.

B25 Coastal Hazards

The site is traversed by the 2014 Coastal Hazard Line, Best Estimated 2100 Hazard. Development applications submitted for development on land seaward of the 2100 hazard line may require the submission of a Coastal Risk Management Report. The subject site is partially affected by this line however it is considered that the preparation and submission of this documentation is not required in this instance for the following reasons:

- Council can instigate the removal of the structure at any time as it is located on Council land.
- The nature and scale of the structure is such that it is easily removable or sacrificial and not habitable. The proposal is ancillary to an existing commercial building and will not increase coastal risks for properties in the vicinity of the site.



Figure 1 - 2014 Best Estimated 2100 Hazard Line

It is considered that this merit assessment is sufficient to justify the erection of this structure within the Best Estimated 2100 Coastal Hazard Line.

(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 93 Fire Safety Considerations

This clause has been suitably satisfied.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The application has been assessed in accordance with the provisions of TDCP B25 and has been found satisfactory in regard to coastal hazards.

Coastal Management Plan for the Tweed Coast Estuaries

Not applicable.

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

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

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

Context and Setting

The alterations and additions involve the expansion and improvement of the existing covered outdoor dining areas located upon the subject site. It is proposed to construct a consistent grade concrete floor from the kerb over the entire outdoor area for the comfort of patrons with raised planter boxes defining the areas for customers and footpath users. The planters will also define areas available for each tenancy. The existing roof structure will also be expanded toward Marine Parade, increasing the area available for outdoor dining at the respective tenancy. Track mounted blinds will also be incorporated into the roof structure. These blinds will be located on all facades facing the street and on street car parking and along all returns back to the Marine Parade footpath. The blinds will not be located on the internal facades between the dining area and Paradiso. The blind material will be clear.

The structure will also include the provision of a wheelchair/pram ramp on the outer edge of the dining area, between the structure and the road pavement. The track blinds will be located on the street side of these ramps.

It is proposed to use timber framing and replace the existing roof sheeting with colourbond. The concrete deck will be enclosed to ensure the underside of this area is unable to trap food scraps and harbour vermin. Any consent granted will be conditioned to ensure that the material used is consistent or complimentary to the existing Paradiso building.

The proposal is not considered inconsistent with other outdoor dining areas in Kingscliff in terms of design and context.

Access, Transport and Traffic

Footpath Trading Policy

Tweed Shire Council Footpath Trading Policy was originally adopted in 2004 and most recently reviewed in June 2013. The objectives of this policy are:

- *To ensure safe, unrestricted and convenient pedestrian movement.*

- *To provide for the safety and amenity of footpath trading patrons.*
- *To maintain or improve existing streetscape elements and maintain or promote local amenity.*

A key design and trading requirement for footpath dining to meet the objectives of this policy is *a 2 metre wide thoroughfare must be maintained at all times on a footpath to the satisfaction of Council. The thoroughfare must be between all goods, including goods placed on footpaths by adjacent businesses.*

It is recognised that this proposal does meet this minimum width stated within the design requirements. It is considered however, that this minimum width is not sufficient in this instance and any approval granted without the provision of the 2.5m minimum width will result in a development that is inconsistent with an objective of the policy, namely *'to ensure safe, unrestricted and convenient pedestrian movement.'*

It is considered that a 2m wide footpath within the subject site will not be sufficient to cater for the high volumes of foot traffic experienced in the locality. The site includes a junction of two footpaths and is a primary access point for pedestrians crossing Marine Parade.

The multiple tenancies occupying the site will have wait staff traversing the footway causing conflict with pedestrians. Those utilising the footpath with wheelchairs and prams will find it difficult to negotiate the area in peak times due to this minimum width.

Consideration should be given to the impact on the footpath clearway as a result of the structure that is proposed if the 2m wide footpath is permitted. The raised concrete slab and planter boxes will encroach from the existing support structures for the roof into the footpath area. This will reduce the footpath width in this location and create a 'choke point' along the Marine Parade footpath. It is considered that the raised deck will create an undesirable trip hazard and will not meet the objectives of the policy through the provision a safe, unrestricted and convenient pedestrian movement.

The reduction of the dining area to provide for a 2.5m wide clear footway can be achieved by restricting the dining area to within the line of the existing posts supporting the roof structure over the outdoor dining area. No objection is raised to the removal or reduction of the raised planter boxes to provide more usable footprints within the dining area.

It should be noted that Council has required other users in the vicinity to provide a 2.5m wide footpath, despite the provisions of the policy. The Choux Box Cafe is a specific example of this increased width requirement.

It is concluded that the objectives of the Footpath Trading Policy will be compromised as they are intended to maintain a *safe, unrestricted and convenient pedestrian movement*. Another objective is to *provide for the safety and amenity of footpath trading patrons*. The 2m wide minimum will not facilitate these objectives for foot traffic, wheelchairs, prams or wait staff.

Council has required the provision of a 2.5m wide footpath at other footpath dining sites to meet the objectives of the policy.

It should also be noted that the Footpath Trading Policy states that as the site is Council land, *'Council retains the right not to grant an approval where there are safety or amenity issues that may negatively impact on the wider community even*

if this policy is fully complied with'. Ultimately, Council is responsible for the wellbeing and safety of all users of the Marine Parade footpath. Evidence gathered by Council in conjunction with the implementation and regulation of this policy since its inception has provided sufficient information to conclude that a 2m wide footpath is not always sufficient, despite the provisions of this policy. It is considered that the circumstance of the case warrant a 2.5m wide footpath, clear of any structures in this instance.

Other Matters relating to the Footpath Trading Policy (FTP)

An assessment of the proposal against this policy is summarised in the below table.

General Requirements	
A. A 2 metre wide thoroughfare must be maintained at all times on a footpath to the satisfaction of Council. The thoroughfare must be between all goods, including goods placed on footpaths by adjacent businesses.	2m proposed, not considered satisfactory. See above
B. The responsibility for creating a 2 metre wide thoroughfare is shared equally between adjacent traders (refer also requirement I this section).	This matter is discussed above.
C. Where possible the thoroughfare shall be established along the building line.	Complies- The footpath clearway will be measured from the end of the protruding concertina doors, not the building line- It is the recommendation of this report that a minimum 2.5m footpath is maintained, not including the concertina doors intrusions
D. Where possible the goods shall only be placed on either the kerbside of a footpath or the building side of a footpath, not both.	Complies- All activity will be confined to within the kerbside of the footpath. Consent condition.
E. Where there is kerbside parking; no item is to be placed closer than 600 mm to the kerb edge so as to allow safe pedestrian access and vehicle parking. Chairs should not be placed with their back to the kerb unless the approval holder provides a suitable pedestrian safety barrier. Such barrier is to be to the satisfaction of Council.	Complies- Barriers not required. 1200mm width provided for accessibility ramp
F. Council street furniture, street trees and street bins, telephone booths, telephone/power poles and other Council or public infrastructure are to be considered when establishing a thoroughfare.	Complies- The proposal has been designed to complement Council's Marine Parade streetscape works.
G. A 2 metre clear radius must be maintained around the joining of a kerb and a pedestrian crossing or pedestrian access ramps.	Complies- The proposed footpath trading and dining area is not in close proximity to the nearby pedestrian crossing.
H. No object is to be placed within 3 metres of an intersection where pedestrians are able to cross.	Complies- The proposed footpath trading and dining area is not in close proximity to the nearby pedestrian crossing.
I. To avoid an unbroken line of obstacles on the footpath, and so as to allow a person to safely step onto the footpath from the road, a space of 1000mm must be left every 5 metres or where a shop	Complies – The existing and proposed area is considered a blister arrangement.

General Requirements	
	frontage line ends. This is particularly important where there are two premises side by side that have tables and chairs and enclosures or goods on display. Road blisters are excluded as they extend onto the roadway and stopping a vehicle for passenger disembarking is illegal.
J.	Public utilities and infrastructure, such as water hydrants and stop valves, must be able to be easily accessed at all times. The placement of heavy or fixed items, such as planter boxes, over utilities or infrastructure is not permitted. The occupier of the footpath must grant vehicular access through the footpath trading area when requested by authorities for use, maintenance, repair and replacement of any public utilities or infrastructure.
K.	Where an outdoor eating area abuts a traffic travel lane, then the approval holder must provide a suitable pedestrian safety barrier. The barrier is to meet the requirements contained in the definitions.
L.	A minimum clearance of 600mm must be maintained on either side of an entrance to a building or shop.
M.	An approval holder must collect any litter or refuse or any material resulting from their trading and dispose appropriately. No hosing, sweeping or disposing to the gutter is permitted.
N.	To facilitate footpath cleaning nothing is to be fixed to the footpath and all goods must be removed from and stored off the footpath at close of trade and stored on private property unless approval is granted by Council.
O.	is to be no amplified music played on the footpath unless approval is granted by Council.
P.	A business can only trade within the footpath area directly in front of its premises and up 600mm from the kerb line (Council may permit trading in front of neighbouring premises in certain circumstances, refer to the 'Neighbouring Footpath' section of this policy).
Q.	Traders are not permitted to approach or canvas pedestrians. Food business may promote dining from their storefront after 6 p.m. to patrons displaying interest.
R.	Where a loading zone or handicap parking exists adjacent to a footpath, a 2 metre minimum clear footpath area must extend from the kerb.
S.	Where a driveway crosses a footpath, a 2 metre clear footpath area shall be maintained on either side of the crossing.

General Requirements	
Requirements - Insurance Provisions	
All footpath trading must be covered by public liability insurance of at least \$10 million - this insurance must be extended to indemnify Tweed Shire Council against any liability arising from trading activities on the footpath.	The proposal can comply with the necessary insurance provisions - Consent will be conditioned.
A copy of the insurance policy shall be submitted with an application for approval, and include a currency certificate indicating that the insurance premium has been paid and is in an appropriate form.	
The holder of a footpath trading approval must maintain the insurance policy whilst trading on a footpath and ensure that Council is provided with updated currency certificates as the policy is renewed.	
Specific Requirements - Blisters	
The proposal is located within an existing road blister within Road Reserve 3340. A Section 138 Approval under the Roads Act 1993 will be a condition of any consent granted.	
Specific Requirements - Permanent Structures	
The requirements of this policy in regards to the roof and concrete slab have been addressed in a separate section of this report. (Submissions from objectors.)The proposal can comply with these requirements and any consent granted will be conditioned accordingly.	
Specific Requirements -Footpath Dining	
A. The measurement of the 2 metre thoroughfare shall allow for the dining area to be in use e.g. chairs out from the tables.	See discussion about footpath width above. Applicant has proposed 2m minimum. The report recommends a 2.5m wide minimum width.
B. Use of the footpath should provide attractive surroundings in which people may enjoy food and refreshments.	Complies - The location of the footpath dining area shall provide attractive surroundings for patrons.
C. Footpath dining facilities should contribute to an improvement of the streetscape.	Complies- The proposal will not detract from the streetscape
D. Surrounding properties and businesses should not be adversely affected by the installation.	Complies - Subject to the provision of a 2.5m wide footpath, patrons gaining access to other retail shops will not be disadvantaged.
E. Toilet facilities are to be provided to patrons in accordance with the Building Code of Australia.	Complies - Toilet facilities are available.
F. The concurrence of the NSW Roads and Traffic Authority will be required before approval is given for footpath trading on classified roads. A "classified road" is defined as a main road, state highway, controlled access road, secondary road, tourist road, tollway or state road.	Not applicable - Marine Parade is not a classified road.
G. The provisions of the Food Standards Code must be complied with. So as to prevent contamination, condiments should be single use and utensils should not be preset on tables.	Can comply - Condition of consent.
Specific Requirements Dining Tables, Chairs and Ancillary Items	
The SEE accompanying this application has provided that the proposal will comply with the provisions of the policy in regard to the installation and use of tables, chairs and ancillary items. Ancillary items include the proposed planter boxes. Any consent granted will be conditioned to ensure the compliance with these provisions.	

Stormwater Drainage

The raised concrete dining area will be constructed to allow drainage into an existing stormwater gutter. Access will be maintained to this gutter with the insertion of a removable grate over the existing gutter to maintain a level surface. This will be a condition of any consent granted.

Landscaping

Landscaping will be provided within the planter boxes proposed for the dining area. These boxes will be raised over the floor level and will provide screening and delineation between the footpath and different tenancies.

Accessibility

The proposal was amended during the assessment process to meet Council requirements in regards to minimum setbacks from the kerb and accessibility provisions pursuant to the Disability Discrimination Act (DDA) 1992 and Australian Standard 1428.1 - 2009, Design for Access and Mobility. These amendments entailed a redesign of the dining area including the provision of accessibility ramps on the eastern, or road side, of the subject road reserve.

The revised plan was considered compliant with the Australian Standard by Council's Building Unit. The applicant also provided an assessment by a qualified accessibility consultant, confirming the proposed development was compliant with the DDA.

Having regard to the design limitations of the site due to existing structures, drainage requirements and minimum footpath widths, accessibility to the outdoor dining area is deemed satisfactory.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The Marine Parade central business district does feature several outdoor dining areas. The subject site is considered suitable and complimentary to the adjoining landuses and development. However, having regard to the prevalence of outdoor dining, Council must ensure that pedestrian movements are not compromised due to inadequate footpath widths.

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

The proposal was publicly notified to adjoining owners for a period of 14 days from 5 July 2013 to Friday 19 July 2013. During this period, three submissions were received from adjoining owners and the Kingscliff Ratepayers and Progress Association.

A summary of the submissions is provided as follows:

Objection	Response
<p>No objection to the project was raised by any submission subject Council addressing the following issues:</p> <ul style="list-style-type: none"> a. The removal of 2 carparking spaces to facilitate an outdoor dining area for the exclusive use of a single property is contrary to Council's 2002 commitment not to remove any more carparking in Marine Parade as a result of outdoor dining areas. The removal of 2 spaces following a substantial financial investment into the creation of the one way street adjoining the subject site seems illogical. b. The underside of the wooden deck for the outdoor dining area being accessible for cleaning. c. The relocation of the wheelchair access ramps completely within the boundary of the under roof area for the outdoor dining. This ramp should not intrude into the entryway of the Paradiso Resort or existing footpath areas to remove any potential trip hazards. 	<p>The submissions referring to the location of the access ramp and the removal of the 2 carparking spaces have been resolved by way of an amendment to the original proposal. As outlined elsewhere in this report, Stage 2 of the development involving the removal of 2 carparking spaces has been deleted from the project. No parking spaces will be lost as a result of the proposal.</p> <p>The deck of the proposed outdoor area will be constructed of concrete. This deck will be enclosed to prevent any food being trapped and will exclude access of vermin.</p> <p>The location of the wheelchair ramp has also been amended. The revised location of the ramp will remove any trip hazards from the footpath and this ramp will be contained within the dining area, clear of the footpath.</p> <p>Therefore, these objections are considered satisfied.</p>
<p>Several matters have been raised in a submission from the Paradiso Body Corporate of Strata Plan 69244 regarding ownership and maintenance of the proposed structure. This is the Strata Plan that contains the tenancies that will benefit from the proposed outdoor dining area. This Strata Plan does however also include other tenancies that will not benefit from this outdoor dining area. As the applicant is a member of the Body Corporate rather than the entire entity and this applicant is not a tenant, questions have been raised regarding the ongoing financial implications of the outdoor dining area for the Body Corporate. These questions are:</p> <p>Does the applicant require permission from the Body Corporate of the Paradiso for carrying out these works?</p> <p>Who is responsible for maintenance of the structure? Does Tweed Shire Council own the structure or does the applicant own the structure? If there is a lease arrangement, who is the lease with and what is the period of the lease? Does Tweed Shire Council have the ability to reclaim or demolish the structure or is there a lease over the area to be built upon?</p>	<p>The owner's consent of the Body Corporate is not required for the subject application as all works will be contained within the Road Reserve being Council land. Council has provided owners consent for the proposed development.</p> <p>If any development consent is issued for the subject proposal, the following conditions will be applied in accordance with the Footpath Trading Policy adopted by Council:</p> <ol style="list-style-type: none"> 1. A footpath trading approval must be obtained prior to the commencement of use. 2. The business operator must hold a current footpath trading approval whilst footpath trading is occurring. 3. Upon the termination of a footpath trading approval, the structure and footpath trading area must be left clean and in good and substantial repair, order and condition in all respects, and if so required by the Council be removed and the footpath area restored to its original condition. 4. Upon vacation of the business associated with this consent, the structure and footpath trading area must be left clean and in good and substantial repair, order and condition in all respects, and if so required by the Council be removed and the footpath area

Objection	Response
	<p>restored to its original condition. Anything not removed shall become the property of the Council, who may keep or remove it, and charge the business operator the cost of making good and disposal.</p> <p>As the tenants have not applied for this proposed outdoor dining area, the applicant will be subject to a \$5000 bond to ensure the structure is maintained as required. This will ensure Council is not financially burdened by the structure should it fall into disrepair or requires removal. This will be a condition of any consent granted.</p> <p>Any consent granted will impose a condition that requires respective tenancies to have a FTA prior to use. A FTA is issued for a 2 year period with a further 2 year option available to the holder.</p>

It is considered that all matters raised within the submissions received during the notification period have been satisfactorily addressed. These matters are not considered fatal to the proposal, subject to appropriate conditions being applied to any consent granted.

(e) Public interest

Although the proposed development has required amendments to satisfy Council and further amendments are recommended for support of the proposal, it is considered that the proposed development does not compromise the public interest. The proposal, with proposed amendments, is generally considered to reflect the provisions of all applicable development control plans and intended development for the locality, subject to compliance with conditions of consent.

OPTIONS:

That Council:

1. Approves the application, as proposed, resulting in a 2m wide footpath width onsite, subject to the recommended conditions of consent; or
2. Issues a deferred commencement consent requiring an amended plan demonstrating a 2.5m minimum width clearway for all footpaths within the subject site. This deferred commencement consent will be subject to the recommended conditions of consent; or
3. Refuses the application, providing reasons.

Council officers recommend Option 2.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. Given the existing approvals over the site for an existing outdoor dining area, the proposed development will not result in adverse cumulative impacts, subject to amended plans and compliance with

conditions of consent. It is therefore considered the site suitable for the development and warrants approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

All permanent structures erected in conjunction with the proposal will be maintained by those tenants that hold a current Footpath Trading Approval.

c. Legal:

The applicant has the option to appeal the matter in the NSW Land and Environment Court, if dissatisfied with Council's resolution.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0745 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Updated Information

Council at its Planning Committee meeting of 1 May 2014 recommended as follows:

"RECOMMENDED that Development Application DA13/0745 for Alterations to the Existing Kingscliff North Holiday Park including Reconfiguration of Sites, Demolition Work and Associated Earthworks as well as Consent for the Overall Use of the Site as a Caravan Park at Part Lot 2 DP 1122062 No. 131 Marine Parade, Kingscliff be deferred for advice from the Aboriginal Advisory Committee and that a report be brought back to a future Planning Committee meeting."

The application was referred to the Aboriginal Advisory Committee at its meeting of 2 May 2014 where the application was discussed. The minutes are reproduced below:

"GB3. DA for Kingscliff North Holiday Park Development Application

At the Council meeting on 1 May 2014, Council referred a DA for the upgrade of Kingscliff North Holiday Park to the AAC. The DA seeks to reduce the number of sites from 57 to 49. All work planned is within the footprint of the existing park.

Rob advised that the 1962 aerial map shows sand all the way to the road. Fill was later added to the area. Rob confirmed that the area was sandmined up to the road from the Holiday Park to the Kingscliff Bowls Club.

Jackie advised of the middens at Cudgen Leagues Club and that stone axes, artefacts and human remains had been found in the sand hills. Discussion that the discovery of artefacts in an area that has been sandmined makes it difficult to know if they are in situ as sandmining clears everything.

Council is requesting comment from the AAC as to whether, other than the artefacts, there are any other issues of significance on the site that it would like to provide comment on.

Moved: Desrae Rotumah

Seconded: Victor Slockee

RESOLVED that Tweed Byron Local Aboriginal Land Council be on site to monitor ground disturbance initially and over the course of the project at the Kingscliff North Holiday Park."

As a result of the recommendation by the Aboriginal Advisory Committee an additional condition has been added which reads as follows:

"10.1A representative of the Tweed Byron Local Aboriginal Land Council shall be present on site to monitor ground disturbance initially and over the course of the project."

Original Report

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

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

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

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

RECOMMENDATION:

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

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:

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

all prepared by Tweed Shire Council Design Unit, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

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

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

[GEN0155]

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

[GEN0290]

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

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

[GENNS01]

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

- 8. This consent does not amend or modify the current Sec 68 Approval issued under the provisions of the Local Government Act 1993. A further approval of the General Manager or delegate shall be required to be obtained and shall include but not be limited to the provisions of Part 3 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, noting the site is within a coastal erosion zone.**

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

[GENNS02]

- 10. The number of approved sites in the park is limited to 34 short term and 15 camp sites.**

[GENNS03]

- 10.1 A representative of the Tweed Byron Local Aboriginal Land Council shall be present on site to monitor ground disturbance initially and over the course of the project.**

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0585]

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

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

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

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

[PCC1145]

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

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

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

[PCC1195]

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

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

[PCC1325]

PRIOR TO COMMENCEMENT OF WORK

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

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

- (a) the person having the benefit of the development consent has:

- (i) appointed a principal certifying authority for the building work, and
(ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

- (b) the principal certifying authority has, no later than 2 days before the building work commences:

- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
(ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

- (c) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
(ii) notified the principal certifying authority of any such appointment, and
(iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

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

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

[PCW0245]

19. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

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

[PCW0665]

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

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

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

[PCW0985]

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

[PCW1065]

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

[PCWNS01]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

- 26. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:**

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

27. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the development application) [DUR0375]
28. Building materials used in development works on site are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0395]
29. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0405]
30. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011. [DUR0415]
31. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos. [DUR0645]

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

Please note timber retaining walls are not permitted. [DUR0835]

33. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
 - Dust during filling operations and also from construction vehicles.
 - Material removed from the site by wind.
- [DUR1005]

34. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia. [DUR1705]

35. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

36. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

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

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

[DUR2485]

38. Plumbing

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

[DUR2495]

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

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

42. During excavation and removal of the sand mounds the sand material shall be monitored for naturally occurring radioactive material. Should levels exceed the Investigation Trigger Level Criteria of $0.35\mu\text{Sv hr}^{-1}$ excavations shall cease immediately. Works are not permitted to recommence until adequate subsurface site investigations are completed and a Remediation Action Plan, to the satisfaction of the General Manager or delegate, has been submitted where required.
43. Following the completion of any excavation works greater than 300mm in depth below the existing surface levels including the removal of the sand mounds, and once all services have been installed, a final site validation survey shall be completed and reported to the satisfaction of the General Manager or delegate to demonstrate compliance with an Action Level criteria of $0.7\mu\text{Sv hr}^{-1}$ or less at 1m above finished ground level.
44. No excavated soil obtained at greater than 300mm in depth, shall be disposed of off the site or relocated within the site where the radiation level of that material is above $0.7\mu\text{Sv hr}^{-1}$. Radiation levels of any materials proposed to be removed from the site shall be monitored and recorded by an appropriately qualified person. Record of the monitoring shall be maintained on site and made available to authorised officers of Tweed Shire Council on request.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

45. A satisfactory final inspection, where applicable, is to be carried out by Council prior to occupation or use commencing.
46. Prior to the occupation or use of any structure, where applicable, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC0255]

[POC1045]

USE

47. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.
48. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0125]

[USE0225]

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

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

Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

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

Water and Utilities

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

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

Access

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

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

Evacuation and Emergency Management

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

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

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

7. The existing cabins on proposed site ST22 and ST23 are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.
8. New construction of cabins on proposed sites ST20 and ST21 shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
9. New construction of the Manager's Residence and cabins on proposed sites ST16 to ST19 (inclusive) shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
10. Roofing of new structures shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.

Landscaping

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

REPORT:

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

Background:

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

The Park currently supports 57 sites as follows:

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

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

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

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

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

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

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

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

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

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

Site

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

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

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

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

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

History

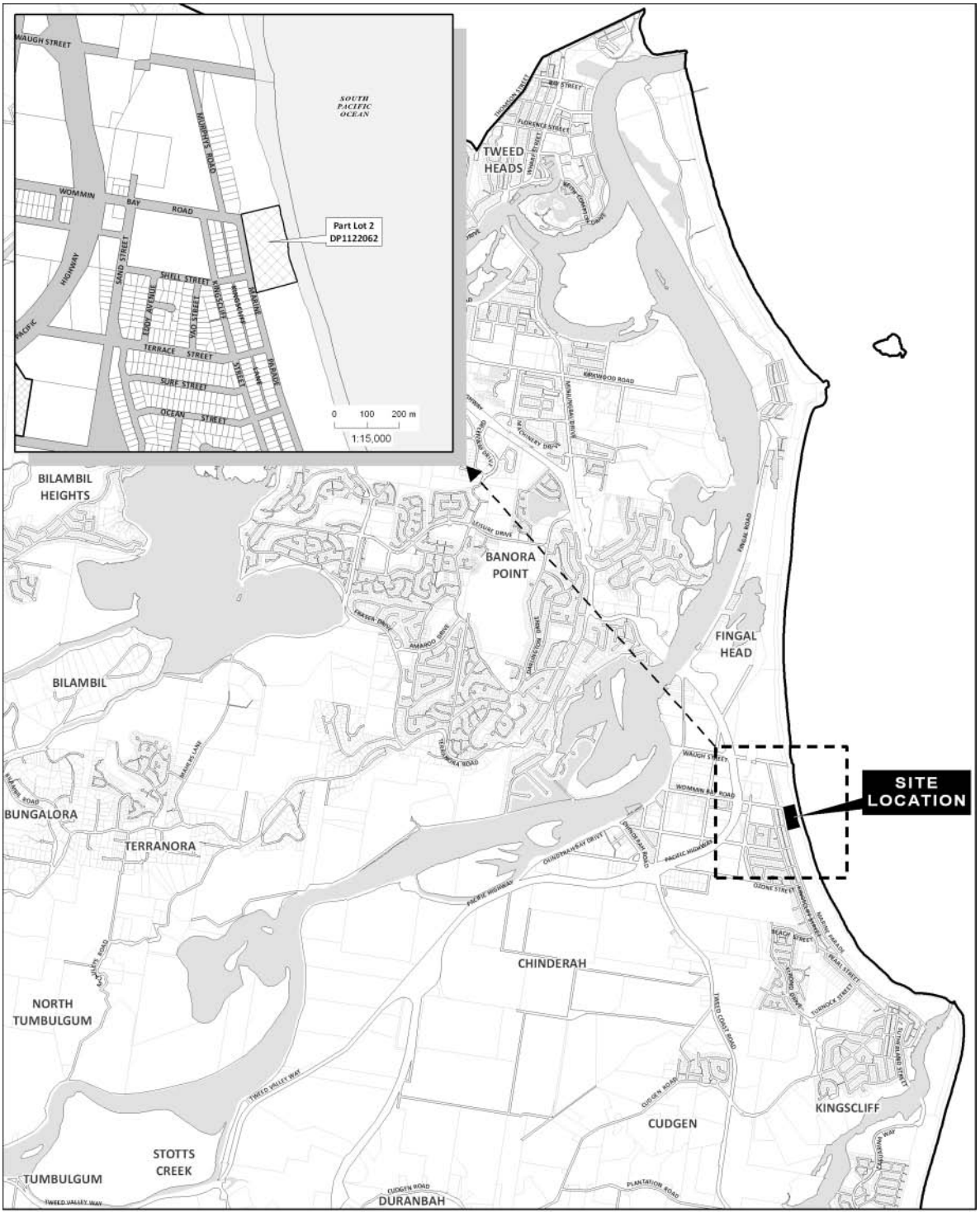
The subject land parcel demonstrates an extensive development history due to its size, consisting of the public reserve bordering the beach for the extent of urban zoned land in Kingscliff. The majority of these applications relate to parkland upgrades and more recently, foreshore protection works to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

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

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

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

SITE DIAGRAM:

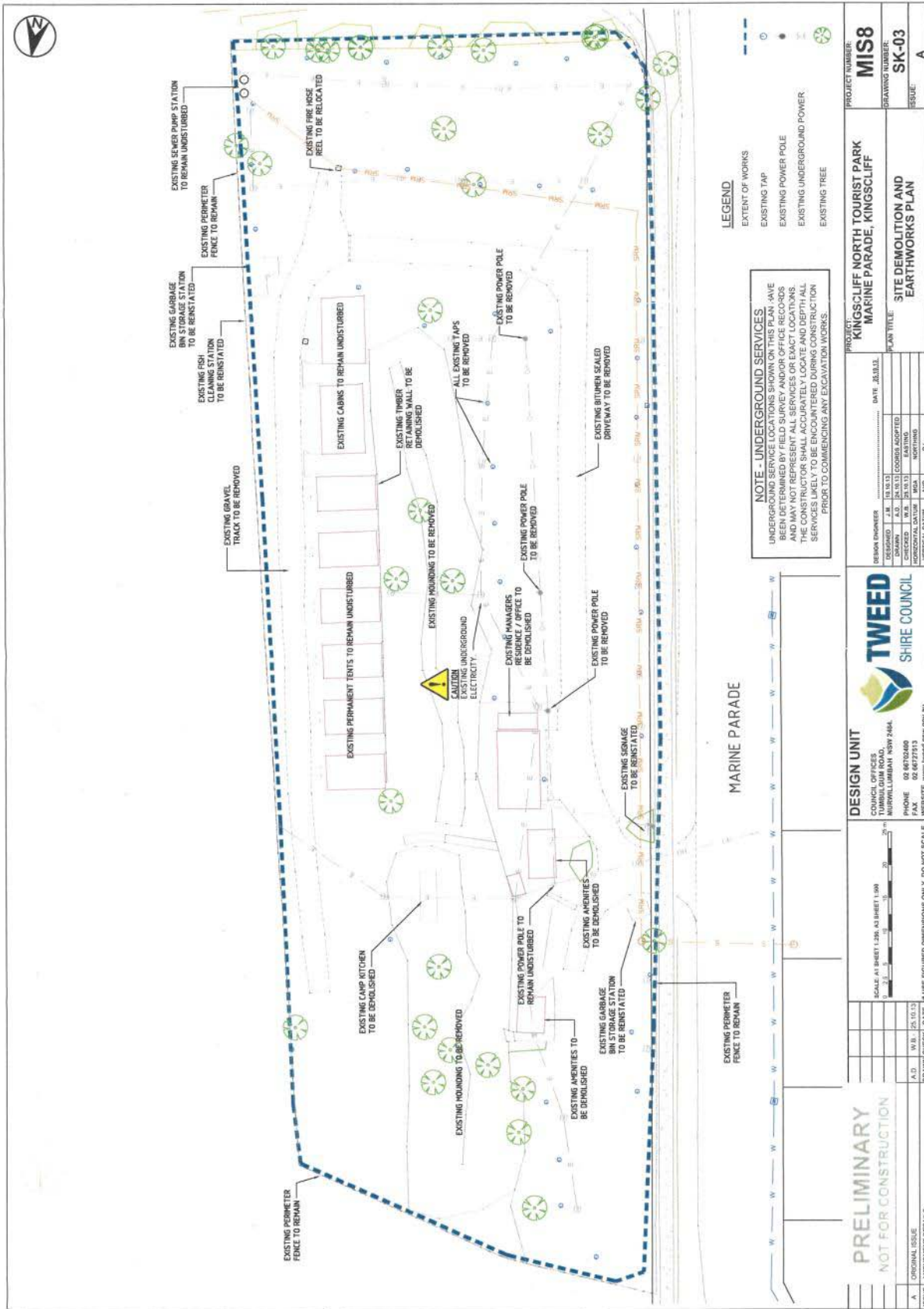


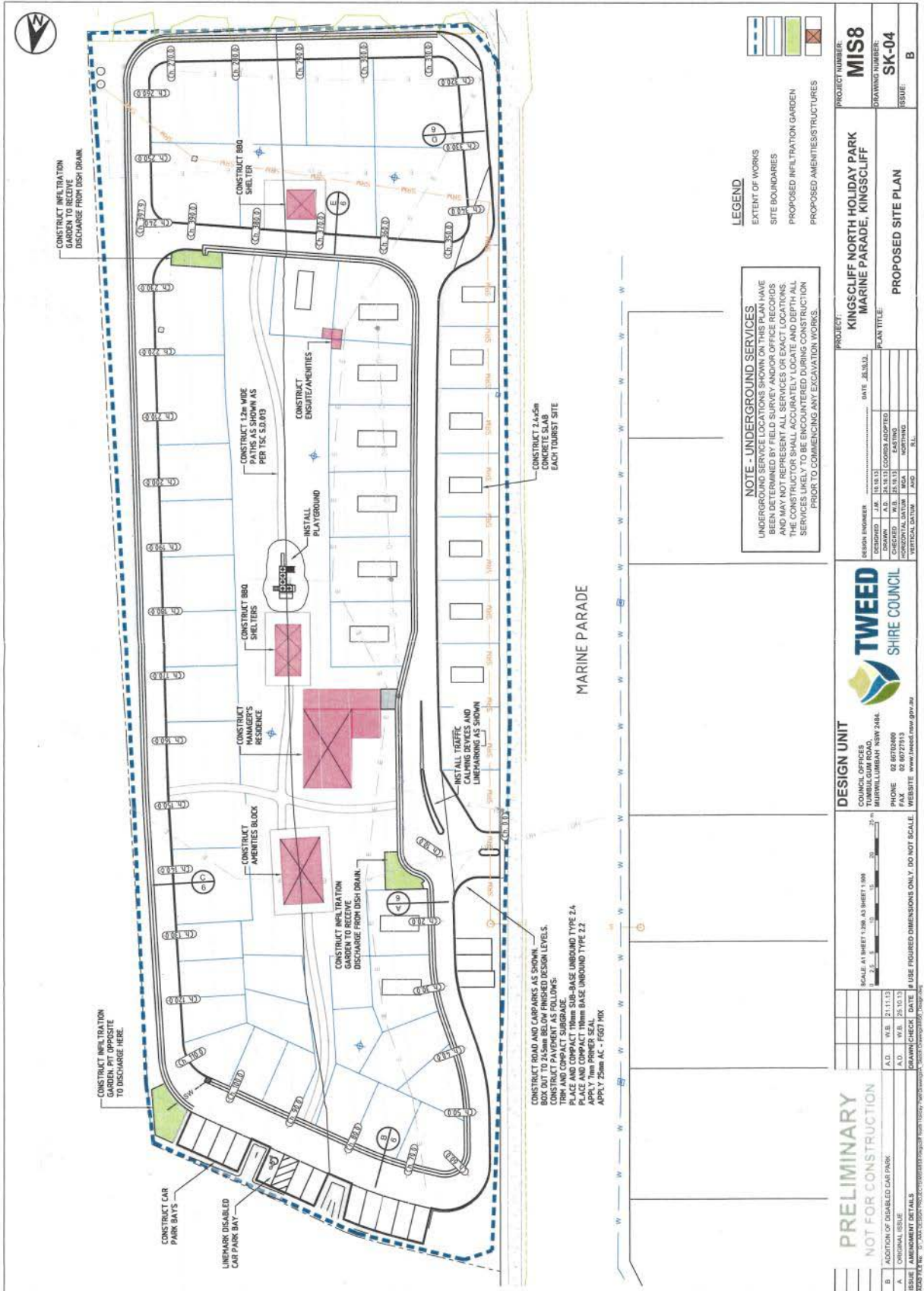
Locality Plan
 Part Lot 2 DP 1122062
 Marine Parade, Kingscliff

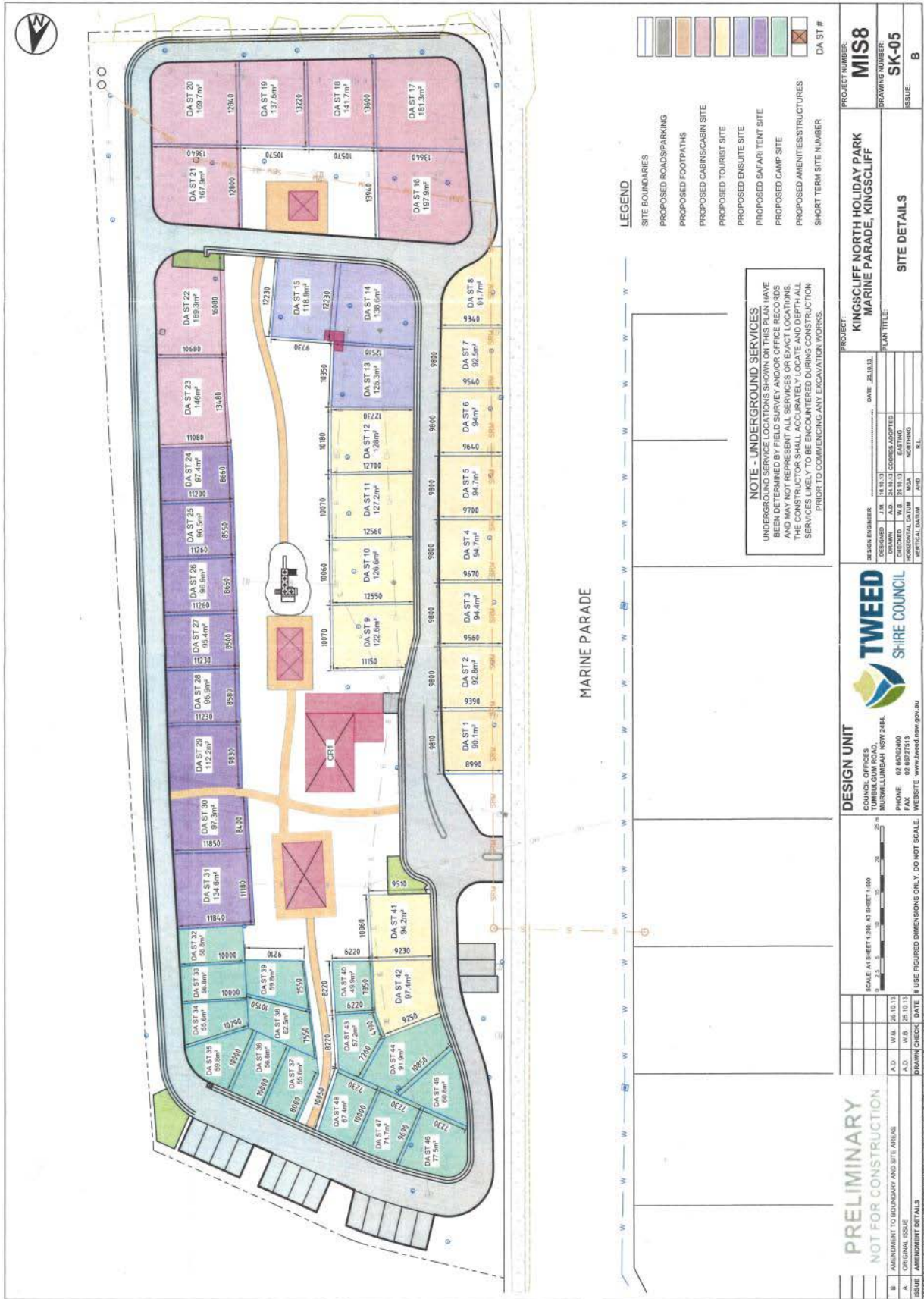
<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before you dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p><small>Cadastral 14/04/2014 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p>0 0.5 1 Km 1:50,000 @ A4 Portrait <small>© GDA 2011 COPY ONLY - NOT CERTIFIED</small></p> <p><small>Map Projection: Universal Transverse Mercator Horizontal Datum: Geoidetic Datum of Australia 1984 (48). Map Grid of Australia, Zone 56</small></p>	<p><small>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 616 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</small></p>
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DEVELOPMENT/ELEVATION PLANS:









- LEGEND**
- SITE BOUNDARIES
 - PROPOSED ROADS/PARKING
 - PROPOSED FOOTPATHS
 - PROPOSED CABINS/CABIN SITE
 - PROPOSED TOURIST SITE
 - PROPOSED ENSUITE SITE
 - PROPOSED SAFARI TENT SITE
 - PROPOSED CAMP SITE
 - PROPOSED AMENITIES/STRUCTURES
 - SHORT TERM SITE NUMBER
 - DA ST #

NOTE - UNDERGROUND SERVICES
 UNDERGROUND SERVICE LOCATIONS SHOWN ON THIS PLAN HAVE BEEN DETERMINED BY FIELD SURVEY AND/OR OFFICE RECORDS AND MAY NOT REPRESENT ALL SERVICES OR EXACT LOCATIONS. SERVICES ARE SHOWN AS APPROXIMATE LOCATIONS. UNDERGROUND SERVICES ARE LIKELY TO BE ENCOUNTERED DURING CONSTRUCTION PRIOR TO COMMENCING ANY EXCAVATION WORKS.

PRELIMINARY		DESIGN UNIT		PROJECT	
NOT FOR CONSTRUCTION		COUNCIL OFFICES TUMBULOGH ROAD, MURRUMBidgee NSW 2464		KINGSCLIFF NORTH HOLIDAY PARK MARINE PARADE, KINGSCLIFF	
A.O. N.B. 25.10.13		SCALE: A1 SHEET 1/28, A3 SHEET 1/50		PROJECT NUMBER: MIS8	
A.O. N.B. 25.10.13		PHONE 02 66720400		DRAWING NUMBER: SK-05	
ISSUE AMENDMENT DETAILS		WEBSITE www.tweedshire.nsw.gov.au		ISSUE: B	
DRAWING CHECK DATE		DATE		DRAWING NUMBER	
DRAWING CHECK DATE		DATE		ISSUE	

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

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

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

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Clause 11 - Zone Objectives

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

The primary objective of the zone is:

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

The secondary objective of the zone is:

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

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

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

Clause 15 - Essential Services

The primary objectives of this Clause are:

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

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

Clause 16 - Height of Building

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

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

Clause 17 - Social Impact Assessment

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

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

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

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

Clause 22 – Designated Roads

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

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

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

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

Clause 34 - Flooding

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

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

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

Clause 35 - Acid Sulfate Soils

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

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

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

This clause is considered to be satisfied.

Clause 36 - Coastal erosion outside zone 7 (f)

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

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

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

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

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

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

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

Clause 39 – Remediation of contaminated land

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

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

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

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

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

Condition accordingly."

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

Clause 39A – Bushfire protection

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

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

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

Clause 54 – Tree Preservation Order

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

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

- *Grey Gum E. Propinqua.*

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



Figure 1: Species to be removed

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

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

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

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

- (a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies.

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

The proposal is consistent with Clause 32B as it is not considered to impede public foreshore access to the beach or result in significant overshadowing of adjacent open space, given it does not provide for any alterations to existing foreshore access and does not include the development of any buildings. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

Clause 33: Coastal hazard areas

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

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

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

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

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

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

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

Clause 75: Tourism development

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

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

Clause 81: Development adjacent to the ocean or a waterway

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

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

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

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

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

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

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

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

SEPP No. 21 - Caravan Parks

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

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

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

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

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

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

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

10 Matters to be considered by Councils

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEPP No. 55 - Remediation of Land

The aim of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. The subject application has been reviewed by Council's Environmental Health Unit with respect to land contamination, with the following comments provided in this regard (Note these comments have been partially reproduced under Tweed LEP 2000, clause 39 assessment elsewhere in this report).

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

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

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

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

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

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

Condition accordingly."

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

SEPP No 71 – Coastal Protection

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

Clause 8 – Matters for consideration

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

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

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

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

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

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

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

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

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

The proposal is not considered to result in any detrimental impact on the coastal foreshore as outlined above. In this regard the application results in a reconfiguration of sites within this caravan park, the demolition of a number of existing structures and the removal of the central mound which currently runs along the centre of the site. The development does not in itself provide for the location of any cabin structures on the site which would result in the overshadowing of coastal foreshore or a loss of views from a public place as identified above. As detailed elsewhere in this report, this is permissible without consent under the provisions of SEPP 21- Caravan Parks. In relation to a loss of views, it is considered that views from adjacent public land to the south would not be compromised as a result of this application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Not applicable to the subject application.

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

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

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

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

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

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

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

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

Part 1 Preliminary

1.2 Aims of Plan

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

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

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

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

1.4 Definitions

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

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

This is permitted with consent in the RE1 zone.

1.8A Savings provision relating to development applications

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

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

Part 2 Permitted or prohibited development

2.1 Land use zones

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

2.3 Zone objectives and Land Use Table

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

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

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

2.7 Demolition requires development consent

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

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

Part 5 Miscellaneous provisions

5.5 *Development within the coastal zone*

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

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

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

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

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

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

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

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

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

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

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

(e) how biodiversity and ecosystems, including:

(i) native coastal vegetation and existing wildlife corridors, and

(ii) rock platforms, and

(iii) water quality of coastal waterbodies, and

(iv) native fauna and native flora, and their habitats, can be conserved, and

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

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

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

This clause goes on to further state:

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

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

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

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

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

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

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

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

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

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

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

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

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

Tweed Development Control Plan

Section DCP A2– Site Access and Parking Code

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

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

- (1) *A caravan park or camping ground must contain no fewer visitor parking spaces than the following:*

- (a) *one visitor parking space for each 10 (and any remaining fraction of 10) long-term sites in the caravan park or camping ground,*
 - (b) *one visitor parking space for each 20 (and any remaining fraction of 20) short-term sites in the caravan park or camping ground,*
 - (c) *one visitor parking space for each 40 (and any remaining fraction of 40) camp sites in the caravan park or camping ground.*
- (2) *The minimum number of visitor parking spaces to be provided is 4.*
- (3) *Each parking space is to have, at minimum, dimensions of:*
- (a) *5.4 metres by 2.5 metres, in the case of angle parking, and*
 - (b) *6.1 metres by 2.5 metres, in any other case.*
- (4) *Visitor parking spaces must be clearly identified as such.*

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

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

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

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

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

Section DCP A3 – Development of Flood Liable Land

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

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

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

Section DCP A11 – Public Notification of Development Proposals

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

Section A13-Socio-Economic Impact Assessment

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

Section DCP B9 – Tweed Coast Strategy

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

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

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

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

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

public access to all foreshore areas where access is desirable and environmentally sustainable.

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

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

Section B25-Coastal Hazards

The aims of this DCP are:

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

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

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

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

In addition, Council at the 20 February 2014 meeting adopted the Tweed Shire Coastal Hazards Assessment 2013 which provides for amended and updated coastal hazard zones. Although DCP B25 is yet to be amended to incorporate these updated hazard lines, Council has adopted them for the purposes of planning and management of coastal hazards.

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

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

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



DCPB25 Coastal Hazards 2014

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

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

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

Tweed Shire Coastline Management Plan 2005

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

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

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

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

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

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

Whilst a number of public submissions raise concerns regarding the future development of the caravan park (as outlined elsewhere in this report), it is considered that the subject application remains in accordance with the established caravan park setting at this location. The proposal is assessed as being acceptable in this regard.

Access, Transport and Traffic

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

Flora and Fauna

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

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

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

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

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

(c) Suitability of the site for the development

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

Surrounding Landuses/Development

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

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

Availability of Utilities and Services

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

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

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

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

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

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

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

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

Issue Raised	Assessment
<p data-bbox="240 264 809 367"><u>Loss of Beach Views through the Pedestrian Beach Access on the Southern Side of the Site</u></p> <p data-bbox="240 389 809 712">* The list of trees to be planted will alter our seaward view which was the basis on which we purchased this unit for our personal use and became a Tweed Shire Council ratepayer. I accept the landscaping plan provided that no tree is of a type that exceeds 5m in height.</p> <p data-bbox="240 734 809 1133">* I purchased my unit approx 6 years ago and one of the deciding reasons was that I had a view down the pedestrian walkway through the trees to the beach. The planning shows trees to be located right up to the boundary. Depending on their type this will totally block my view of the beach through the pedestrian access and is unacceptable.</p>	<p data-bbox="831 264 1110 295"><u>Applicant response</u></p> <p data-bbox="831 318 1406 788"><i>Plantings are proposed adjacent to the southern boundary of the site as shown on the Landscaping Plans at Annexure H of the Statement of Environmental Effects. The proposed plantings will comprise species in keeping with other foreshore species already at maturity throughout the foreshore area including Banksia Integrifolia, Pandanus sp and Cupaniopsis anacardioidies. The trees are intended to define the Park/public reserve boundary and provide a screen to soften visual impacts.</i></p> <p data-bbox="831 810 1406 1169">The applicant has also provided a number of photographs with respect to this component of the submissions. It is generally advised that it is either unlikely that the proposed landscape plantings will result in a loss of beach views from a given location or that currently beach views are obscured by existing vegetation, moveable dwellings or dunal vegetation.</p> <p data-bbox="831 1191 1406 1438"><i>It is intended that with the revised Park layout general landscaping and contemporary buildings, the overall appearance will be substantially improved, particularly as a result of the significant reduction in the density of the development from 57 to 49.</i></p> <p data-bbox="831 1460 1406 1787"><i>In summary, as indicated in the above photographs, the redevelopment proposal will result in substantial improvements to the streetscape and the visual amenity from the existing residential buildings on the western side of Marine Parade, whilst not substantially reducing any existing beach views from street level.</i></p> <p data-bbox="831 1809 1222 1841"><u>Council officer assessment</u></p> <p data-bbox="831 1863 1406 2065">The subject development is not considered to result in an unacceptable amenity impact on these units by virtue of providing landscaping works to a caravan park. As outlined elsewhere in this report, the location of moveable</p>

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

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

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

Public Authority Submissions

NSW Rural Fire Service

The subject application was integrated under the Rural Fires Act 1997, being a tourist development application. As such the application was referred to New

South Wales Rural Fire Service. General Terms of Approval for the proposal have been provided by the Rural Fire Service. These will be included as conditions of consent in the event of approval of the application.

(e) Public interest

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

OPTIONS:

That Council:

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

Council officers recommend Option 1.

CONCLUSION:

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

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 4 [PR-PC] Development Application DA13/0502 for a Staged Development - Boundary Adjustment, Boat Storage Facility and One Dwelling as a Caretakers Residence and One Dwelling with a Commercial Premise Component at Lots 22-23 DP 1130032 Nos. 7-9 Chinderah Bay Drive, Chinderah

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0502 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:

Updated Information

The subject application was referred to Council's Planning Committee meeting on Thursday, 6 March 2014. Council recommended that the application 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. Treatment of stormwater and waste water, including but not limited to, engine flushing, boat cleaning, maintenance, refuelling etc.
8. Potential implications from the Chinderah Marina Land and Environment Court case.

These matters were addressed at the Councillors workshop held on 15 April 2014. The following information was presented to the Councillors workshop.

1. The increase in numbers of boats expected on the river in peak demand times.

It is impossible to accurately determine how the operation of the facility would increase (assumed) numbers of vessels on the river during times of peak demand.

Factors which confound the ability to translate an increase in the boat storage capacity at Chinderah with peak boat usage include:

- *The number of vessels which actually use the facility, (ie. Does it achieve 100% capacity?)*
- *The decision to use vessels, both when and where, is made by their owners in response to a large range of factors.*
- *Some of the boats to be stored at Chinderah will be used elsewhere.*
- *Some of the boats to be stored at Chinderah would belong to people who use the Tweed River already.*

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.

It is impossible to accurately determine where the vessels will be used. Again, some assumptions can be made.

- *Some boats will head off shore.*
- *Some will be used in the Lower estuary and Terranora Creek.*
- *Some will be used in the mid to upper estuary.*
- *In the case of the mid-upper estuary, existing levels of vessel use are estimated to potentially exceed the environmental carrying capacity of the river at periods of peak demand (Tweed River Estuary Recreational Facilities Study, 2008).*
- *In the lower estuary, there is an ability for more vessels to use the river before calculated safety and environmental sustainability thresholds are exceeded.*
- *Given that it has no statutory capacity to regulate vessel use, Council cannot ensure that boats will not congregate in areas where environmental carrying capacity is potentially exceeded.*

3. Potential legal liability for Council if boating collisions occur, if safe carrying capacity has been exceeded.

- *Approving of a boat storage facility by Council as determining authority does not imply a liability on Council should boating accidents occur.*
- *Liability for boat collisions would rest with the parties found to have breached regulations and laws as they apply to boating.*
- *An analogy is Council's liability for a motor vehicle accident occurring where Council has approved a new car sales yard, car park or similar.*

4. Potential environmental impacts from increased boating activity, including but not limited to riverbank erosion, seagrass, marine life and birdlife.

- *Riverbank erosion is exacerbated by some kinds of boating activity at some locations in the river. If eroded and vulnerable sections of river bank are exposed to greater amounts of wake energy, the risk of their eroding further is increased.*
 - *There is existing evidence of seagrass in the river being damaged by vessel use. This is related to the specific practice of operating vessels in shallow water over seagrass.*
 - Use of vessels within close proximity of roosts can affect shorebirds, including both resident and migratory species.
 - Vessel use can impact on large marine fauna such as dolphins and turtles, specifically if strikes occur. Increased use of vessels may also disturb these species in less direct ways, for example through noise.
 - The actual impacts and degree of significance of these cannot be predicted and would depend on the actual operation of vessels.
5. Impacts on Council's infrastructure, including but not limited to boat ramps and parking, and any costs associated to Council.
- *Chinderah ramp has limited capacity as it is single lane, shallow at low tide and has little space for trailer parking.*
 - *It could be assumed that there would be an increased demand from the boating public for improvements to be made to this boat ramp, however there is little scope for expansion or significant improvements*
 - *Fingal boat ramp is the next closest and possible the preferred boat ramp, particularly for offshore.*
 - *The most common maintenance of boat ramps is water blasting to remove algae and reduce slip hazard- it is not anticipated that increased demand should result in increased maintenance costs*
6. Noise impacts on the amenity of the area.
- *An acoustic assessment has been prepared for the development and has been submitted with the DA. This report addresses the significance of any noise arising from operation of the facility.*
 - *Noise associated with vessel use is regulated by NSW Maritime. There is a 75dB(A) limit imposed on vessel engine noise in some parts of the upper estuary.*
 - *The potential for noise impacts on the amenity of the area is unable to be predicted.*
7. Treatment of stormwater and waste water, including but not limited to, engine flushing, boat cleaning, maintenance, refuelling etc.
- *A Stormwater Management Plan was lodged with the proposal which satisfies councils requirements. In addition a number of conditions have been imposed under the proposed consent - refer Conditions 5, 11, 13,17,18,19,20,42, 43,75,76,100,103.*
 - *In addition there are 15 NSW Office of Water conditions which are stormwater management related.*
 - *There are a number of consent conditions proposed that address trade waste.*

8. Potential implications from the Chinderah Marina Land and Environment Court case.
- *The Chinderah Marina was a designated development determined by the Minister for Planning on 6 April 2006.*
 - *The appeal was a merit appeal not a judicial review. The Court made adverse findings in relation to social and economic impacts, visual and seagrass issues.*
 - *The two applications before Council are required to be assessed on their merits in accordance with Section 79c of the Environmental planning and Assessment Act.*
 - *The sites are different and the proposals are different to the Chinderah Marina.*
 - *There weren't any legal planning principles set out by the Court to assess other applications against.*

Designated development

The applicant was requested to provide comment in relation to the provisions Clause 23 Marinas or other related land and water shoreline facilities of Schedule 3 Designated Development of the Environmental Planning and Assessment Regulations 2000.

The applicant provided the following:

"With respect to the provisions of Clause 23 of the regs (as it relates to Marinas or other related facilities), that neither of the proposals incorporate either dry storage racks and or cradles and as such the clause is not relevant and nor therefore, would the need to provide car parking at a ratio of 0.5:1. The primary distinction being that neither dry storage racks or cradles are able to be utilised by vehicles with tow bars and as such car parking would be a significant necessity.

Whilst the distinction between what is proposed and storage racks is self-explanatory, it is pertinent to note that Cradles are typically only used where land based repairs are to be undertaken or where storage is envisaged as a long term arrangement. Cradle based storage facilities rely almost entirely upon cranes existing on site which are then used to pick up the vessel direct from the water and place the boat on the cradle – none of these facilities are proposed in this instance.

In this instance, each proposal relies entirely upon storage of vessels directly upon the trailer owned and provided by the owner of the vessel and in order to provide for direct access to the vessel at any given time.

I have provided (attached) some easily accessible information to assist.



Figure 1 - Boat Cradles



Figure 2 - Storage Racks

The information was reviewed by Council officers, with Council officers in agreement that the proposal is not designated development in accordance with the EP&A Regulations 2000.

Original Report

This application proposes a boundary adjustment between two allotments, the construction of one dwelling on each allotment and the construction of boat storage sheds on one of the allotments. The dwelling located on proposed Lot 22 is a caretakers residence for the boat storage facility. The dwelling located on proposed Lot 23 contains an office located on the ground floor of the dwelling.

The site is currently zoned 3(d) Waterfront Enterprise and the development would be defined as a 'Boundary Adjustment' 'Boating Facility', and 'Dwelling House' under the current Tweed Local Environmental Plan 2000. Whilst the proposed Boating Facility is permissible under the 3(d) zone, it is prohibited under the proposed B4 Mixed Use zone of the Draft Tweed Local Environmental Plan 2012. Despite the prohibition under the draft LEP, the proposal is considered to be consistent with the objectives of the B4 Mixed Use zone under the draft plan.

The proposed dwelling houses are prohibited under the current Tweed Local Environmental Plan 2000, as a dwelling house is not consistent with the primary objectives of the zone which is a requirement under clause 8(1)(a). The proposed dwelling houses are also prohibited under the Draft Tweed Local Environmental Plan 2012. The applicant proposes to construct a commercial premise (office for boat brokerage) on the ground floor of the proposed dwelling on proposed Lot 23, this creates 'shop top housing' which is permissible under the Draft Tweed Local Environmental Plan 2012, and consistent with the primary objectives of the current Tweed Local Environmental Plan 2000. The proposed dwelling on proposed Lot 22 is a caretaker's residence for the proposed boat storage facility, which is consistent with the primary objectives of the current Tweed Local Environmental Plan 2000 and considered ancillary with boat storage facility.

Various decisions in the NSW Land and Environment Court have considered draft LEP's, which have required consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

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

Taking into consideration the proposals consistency with the objectives of the B4 zone, which states:

- *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 application is recommended for approval.

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

It should be noted that approval of the application would result in Existing Use Rights being relied upon once the Draft LEP 2012 is gazetted.

RECOMMENDATION:

That Development Application DA13/0502 for a staged development - boundary adjustment, boat storage facility and one dwelling as a caretakers residence and one dwelling with a commercial premise component at Lots 22-23 DP 1130032 Nos. 7-9 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 Plan Nos Proposed Site Plan REV 07 prepared by Planit and dated 11/13, Plan Nos 13-049 Lot 22 sheet 3 of 6, 4 of 6, 5 of 6, 6 of 6 prepared by Bush & Beach Homes and dated 12/06/13, Plan Nos 13-049 Lot 23 sheet 3 of 7, 4 of 7, 5 of 7, 6 of 6, 7 of 7 prepared by Bush & Beach Homes and dated 12/06/13, Plan Nos FDHS-RG sheet 1 of 6, 2 of 6, 3 of 6, 6 of 6 prepared by Faidinkum Sheds and dated 29/07/2013 as amended in Red, Plan Nos FDHS-RG sheet 1 of 6, 2 of 6, 3 of 6, 6 of 6 prepared by Faidinkum Sheds and dated 18/06/2013 as amended in Red, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0125]

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

[GEN0135]

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

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

[GEN0155]

5. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[GEN0190]

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

[GEN0265]

7. Waste management on the site shall be carried out in accordance with the approved Waste Management Plan.

[GENNS01]

8. The adult occupants of the caretakers dwelling are to be employees of the approved boating storage facility under this consent.

[GENNS02]

9. The development is to be undertaken in three stages. The stages are as follows:

Stage 1 - General Site works, construction of dwelling on proposed Lot 22 and construction of 21 Bay Storage Shed

Stage 2 - Undertake boundary adjustment and construction of 17 Bay Storage Shed

Stage 3 - Construction of dwelling and commercial premise on proposed Lot 23

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

Two parking spaces are to be provided per dwelling.

Four parking spaces are to be provided for the commercial premise on Proposed Lot 23.

Two parking spaces are to be provided for the boat stage facility on Proposed Lot 22.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCC0065]

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

[PCC0285]

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

[PCC0465]

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

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

[PCC0485]

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

[PCC0585]

15. 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 minimising the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.

[PCC0675]

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

- (a) Design flood level of RL 2.9m AHD.
- (b) The minimum habitable floor level for the building is RL 3.4m AHD.
- (c) All building materials used below Council's design flood level must not be susceptible to water damage.
- (d) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to

withstand continuous submergence in water and provide appropriate earth leakage devices.

- (e) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

17. Construction Certificate design detail shall confirm the area below Council's design flood level is not totally enclosed for the dwelling on proposed Lot 22. The enclosure of laundry, stairway entry and double garage space is permitted provided the area of enclosure does not exceed 50m² and does not exceed 50% of the site coverage. It is to be noted that the commercial premise on proposed Lot 23 is exempt from the 50m² provision and that the commercial premise covers less than 50% of the site.

[PCC0715]

18. 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]

19. 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]

20. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by Tweed shire Council PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

Council's Environmental Health Unit shall be notified 24 hrs prior to commencement of demolition works.

[PCC1065]

21. 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) Additional sediment fence return will be added along the rear half of the northern boundary of proposed Lot 23. Site survey indicates the land falls this way and runoff can potentially exit the site. [PCC1105]
22. Disposal of stormwater by means of infiltration devices shall be carried out in accordance with Section D7.9 of Tweed Shire Councils *Development Design and Construction Specification - Stormwater Quality*. [PCC1125]
23. Stormwater
- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
 - (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
 - (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
 - (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
 - (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
-

- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be designed to withstand loading from vehicles during construction and operation of the development.
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

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 civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

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. **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]

27. **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]

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

[PCC1265]

29. **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]

30. **Certification from a suitably qualified person that the construction design achieves the requirements of the Environmental Noise Impact Report (crgref:13104a Report) prepared by CRG Acoustical Consultants dated 8 August 2013 and addendum dated 26 November 2013.**

31. **All works shall be carried out in accordance with Council's Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan (MP) shall be submitted. Should proposed works exceed the scope of the MP a site specific investigation and management plan shall be prepared and submitted to the satisfaction of the General Manager or delegate.**

32. **The wash bay shall be designed to ensure the adequate collection, treatment, where required, and removal of liquid trade waste to the satisfaction of the General Manager or delegate.**

[PCCNS01]

33. Prior to the issuing of a Construction Certificate a construction waste management plan is to be provided to Council. The Waste management plan 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

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

34. 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]

35. 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]

36. 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]

37. 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]

38. 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]

39. 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]

40. 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]

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

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

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

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]

44. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

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]

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

[DUR0245]

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

[DUR0375]

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

[DUR0395]

48. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

49. 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]

50. 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]

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

[DUR0815]

52. 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]

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

[DUR0905]

54. 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]

55. 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]

56. 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]

57. 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]

58. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
59. 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]
60. 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]
61. 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]
62. 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]
63. 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]
64. 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]
65. 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]

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

[DUR2645]

- 67. 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]

- 68. Any structures that are to be constructed over or within the zone of influence of Council's sewer main are to comply with Tweed Shire Council's "Sewers - Building in Proximity" policy.**

[DUR2705]

- 69. All works shall be carried out in accordance with the approved Acid Sulfate Soil Management Plan.**

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 70. 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]

- 71. 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]

- 72. 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]

- 73. 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.

Stage 1

- | | |
|---|----------|
| (a) Tweed Road Contribution Plan:
4 Trips @ \$1176 per Trips
(\$1,137 base rate + \$39 indexation)
S94 Plan No. 4
Sector6_4 | \$4,704 |
| (b) Extensions to Council Administration Offices
& Technical Support Facilities
0.309641 ET @ \$1860.31 per ET
(\$1,759.90 base rate + \$100.41 indexation)
S94 Plan No. 18 | \$576.03 |

Stage 2

- | | |
|--|----------|
| (a) Extensions to Council Administration Offices
& Technical Support Facilities
0.22519 ET @ \$1860.31 per ET
(\$1,759.90 base rate + \$100.41 indexation)
S94 Plan No. 18 | \$418.92 |
|--|----------|

Stage 3

- | | |
|---|----------|
| (a) Tweed Road Contribution Plan:
5.9904 Trips @ \$1176 per Trips
(\$1,137 base rate + \$39 indexation)
S94 Plan No. 4
Sector6_4 | \$7,045 |
| (b) Extensions to Council Administration Offices
& Technical Support Facilities
0.20499 ET @ \$1860.31 per ET
(\$1,759.90 base rate + \$100.41 indexation) | \$381.34 |

S94 Plan No. 18

[POC0395/PSC0175]

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

[POC0435]

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

[POC0475]

76. 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:

Stage 1

Water DSP4:	0.1667 ET @ \$12575 per ET	\$2,096.30
Sewer Kingscliff:	0.219 ET @ \$6042 per ET	\$1,323.20

Stage 3

Water DSP4:	1.2496 ET @ \$12575 per ET	\$15,713.70
Sewer Kingscliff:	1.3744 ET @ \$6042 per ET	\$8,304.10

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

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

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

[POC0675/PSC0165]

77. 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]

78. **Hours of operation of the Boat Storage business are restricted to the following hours:**
- * **7am to 6pm - Mondays to Sundays** [USE0185]
79. **All deliveries to the premises are to occur only within the hours of 8am to 6pm Monday to Saturdays, unless otherwise approved by Councils General Manager or his delegate. Urgent or medical related deliveries exempted.** [USE0195]
80. **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]
81. **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]
82. **The servicing of waste facilities shall be limited to between the hours of 0800hrs to 1800hrs Monday to Saturday.** [USE0285]
83. **The development shall be carried out in accordance with the provisions of the Environmental Noise Impact Report (crgref:13104a) prepared by CRG Acoustical Consultants and dated 8 August 2013 and addendum dated 26 November 2013.** [USE0305]
84. **The use being restricted to the areas designated on the approved plan.** [USE0415]
85. **No items or goods are to be stored or displayed outside the confines of the premises.** [USE0445]
86. **All loading/unloading to take place within the boundary of the subject property.** [USE0525]
87. **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]
88. **A maximum of four customers per day is permitted with a maximum of seven customers per week permitted.**

89. A maximum of four engines shall be flushed within any one day of operation. Engines shall operate at idle only and only for a maximum period of 2 mins.

90. A The maintenance of boats and equipment is not permitted.

91. All liquid trade waste collection, treatment and drainage systems shall be adequately maintained at all times.

[USENS01]

92. Noise Treatment:

- Hours of operation be limited to the daytime period between 7am and 6pm, 7 days per week.
- The wash bay should be enclosed with solid walls along the northern, western and eastern perimeters of the bay and a solid roof over the bay as detailed in Sketch 1 in Appendix A of this report. Walls should be constructed to achieve a minimum surface mass of 11 kg/m² (i.e. 9mm FC sheeting or masonry).
- The roof of the wash bay enclosure should have an absorptive ceiling lining with a minimum Noise Reduction Coefficient (NRC) rating of 0.8 (i.e. a minimum 50mm thick, 22kg/m² fibreglass batts) as detailed in Sketch 1 in Appendix A of this report. Ceiling absorption batts may have a perforated foil facing having an open space area of no less than 12 % (this will protect the batts from damage).
- There should be no gaps or holes between the connection with the wash bay enclosure and the adjacent storage shed (i.e. no gaps or holes at the connecting walls or roofing).
- There should be no gaps or holes between the roof and the walls, between the ground and the walls and along the walls themselves (with the exception of the proposed roller door entries) at wash bay enclosure and the two boat storage sheds.
- The recycling (bottle) bins storage area should be located to the east of the proposed onsite sheds (i.e. between the sheds and the Chinderah Bay Drive road corridor) to maximum the separation distance between the offsite and future residential dwellings as detailed in Sketch 1 in Appendix A of this report.
- No boat repairs or maintenance be undertaken onsite.
- No high pressure water hoses are to be used onsite or at the wash bay.
- Engine flushing is to occur for a maximum period of 2 minutes (within any 15 minute period).
- Engines are to run at idle during engine flushing (i.e. no revving of engine).
- Staff should minimise metal impacts when hitching/unhitching trailers.
- Driveway hardstand areas be finished with surface coatings which prevent tyre squeal (an uncoated surface is acceptable).
- Drainage grating over trafficable areas be well secured to prevent rattling.

[USENS02]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

- 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. 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) 3m wide easement is to be registered over the existing sewer main.

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

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

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

- 95. 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]

96. 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]

97. 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]

98. 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.

[PSC1185]

REPORT:

Applicant: E Norris
Owner: Mr Edward T Norris & Ms Pamela J Norris
Location: Lot 23 DP 1130032 No. 7 Chinderah Bay Drive, Chinderah; Lot 22 DP 1130032 No. 9 Chinderah Bay Drive, Chinderah
Zoning: Part 3(d) Waterfront Enterprise, Part 6(a) Open Space, Part Unzoned land
Cost: \$832,000

Background:

The site is commonly identified as Nos. 7 and 9 Chinderah Bay Drive, Chinderah. The site has frontage to Chinderah Bay Drive and directly adjoins the Tweed River. The site is generally regular in shape and provides a total area of 5090m². To the north and south each site adjoins a dwelling house, to the east across Chinderah Bay Drive the site adjoins a BP service station, Chinderah indoor sports centre, boat storage facility and storage units. To the west is the Tweed River.

The proposal includes three distinct elements including boundary adjustment, boat storage facility and two dwelling houses. The following summary is provided for each element.

Boundary Adjustment

The proposal will see a boundary adjustment undertaken between the two allotments. The boundary adjustment will transfer land (695.9m²) from Lot 23 DP1130032 to Lot 22 DP1130032. This will allow the development of Lot 22 for the proposed boat storage yard.

The boundary adjustment will see Lot 23 have a proposed area of 1772.1m² and 10.26m frontage to Chinderah Bay Drive and Lot 22 with a proposed area of 3317.9m² and 30.57m frontage to Chinderah Bay Drive.

The proposed boundary adjustment is permissible with consent within the Tweed LEP 2000 (3b zone).

The proposed boundary adjustment is permissible with consent within the Draft Tweed LEP 2012 (B4 zone).

Boat Storage Facility

The Boat Storage Yard will be located on Proposed Lot 22. The boat storage yard provides a total of 38 storage bays. The bays are located within two shed structures, the southern shed will contain 22 storage bays and the northern shed will contain 16 storage bays. The sheds measure 72.6m x 9m and 52.8m x 9m respectively. Both sheds are 4.375m high.

The Boat Storage Yard is proposed to be staffed by a single person (the proposed staff member is the applicant for the subject application). It is proposed that the applicant/staff member will live on the site within the dwelling house on Proposed Lot 22 in a caretaker's capacity. In addition to the boat storage bays, the site provides two car parking spaces to accommodate enquires, the site also includes a 9m x 9m storage shed for storage of general items relating to the business. The proposed hours of operation are 7am to 6pm Monday to Sunday.

The site will include a boat wash facility. The wash facility will provide for the hand (bucket and brush) washing of boats and the flush through of boat motors. The applicant acknowledges that strict requirements will be placed on how these areas are to be used, particularly with regards to the flushing of motors and this only being done at engine idle. A Noise Impact Assessment has been submitted with the application.

The proposed boat storage facility (defined as a boating facility) is permissible with consent within the Tweed LEP 2000 (3b zone).

The proposed boat storage facility (defined as a Marina) is prohibited within the Draft Tweed LEP 2012 (B4 zone).

Two Dwelling Houses

The application proposes the construction of a dwelling house on both proposed Lot 22 and Lot 23. The dwelling house on Proposed Lot 22 will be utilised as a 'caretakers dwelling' for the boat storage facility. The dwelling house on proposed Lot 23 will be utilised as a 'dwelling' and 'commercial premise' (62.4m²) for boat brokerage business.

The proposed dwelling houses are permissible with consent within the Tweed LEP 2000 as the dwellings are associated with the boat storage facility and boat brokering business (being waterfront and marine activities) and therefore consistent with the primary objectives of the zone which is a requirement under clause 8(1)(a) of the Tweed LEP2000 (3b zone).

The proposed dwelling houses (defined as a residential accommodation – dwelling house) are prohibited within the Draft Tweed LEP 2012 (B4 zone).

Car Parking and Access

A total of ten car parking spaces are provided as part of the proposal. This figure excludes the 38 boat storage bays. The two dwelling houses each have two undercover parking spaces. Two spaces are assigned to the boat storage facility on proposed Lot 22 and four spaces are assigned to the commercial premise on proposed Lot 23. Access will be provided to the site via Chinderah Bay Drive.

Signage

The proposal includes a single business identification wall sign. The wall sign will be attached to the east elevation (fronting Chinderah Bay Drive) of the 22 Bay (southern) storage shed. The sign will be 6m² in area and will not be illuminated.

Landscaping

The proposal includes landscaping to the Chinderah Bay Drive frontage and generally throughout the site. Landscaping is to be predominately native in accordance with Council requirements. The site adjoins land identified as CPA land (accreted land) and the bank of the Tweed River. The proposal will not impact upon the existing bank and no works are proposed to the existing bank or CPA land.

Fencing

The proposed fencing is for the front and return of the site consisting of 1.8m aluminium slat fencing with gate. The proposed front fence is proposed along the front property boundary and will return to the wall of the sheds being approximately 4.8m to the wall of the shed on the southern boundary and the 6.08m to the wall of the shed on the northern boundary. Fencing is not proposed at the rear of the site (Tweed River) and CPA Lands.

Demolition

The proposal will see the removal of an existing shed upon the site.

Staging

The proposal will be undertaken in three stages. The stages will be as follows:

Stage 1 – General Site works, construction of dwelling on Proposed Lot 22 and construction of 22 Bay Storage Shed

Stage 2 – Undertake boundary adjustment and construction of 16 Bay Storage Shed

Stage 3 – Construction of dwelling and 62.4m² commercial premise on Proposed Lot 23

SITE DIAGRAM:

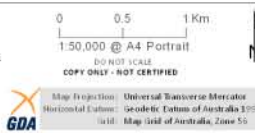


Locality Plan

Lots 22-23 DP 1130032
No. 7-9 Chinderah Bay Drive, Chinderah

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs (which may be incurred as a result of data being inaccurate in any way, and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre 18/02/2014
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Boundaries shown should be considered approximate only.

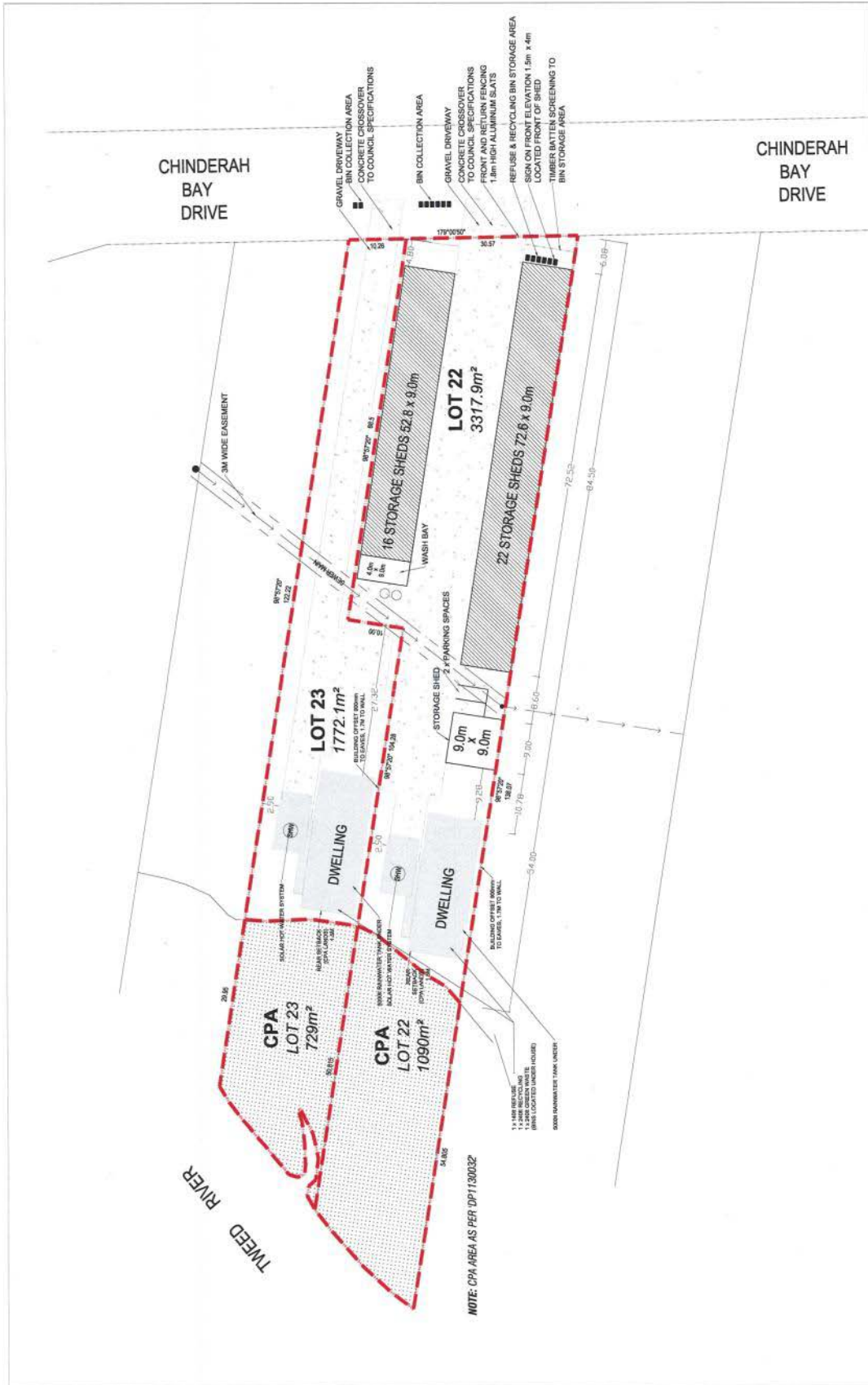


Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au



Filepath: Z:\GIS\PROJECTS\2014\DP1130032\TWEED\LOCALITY PLAN\Map_1130032\DP1130032_12419.mxd Author: [Redacted] - Planning Information Unit Date Printed: 12 February, 2014

DEVELOPMENT/ELEVATION PLANS:



CHINDERAH BAY DRIVE, CHINDERAH
LOT 23 & 22 PROPOSED SITE PLAN

SCALE: 1:500 @ A3
DRAWN: ZP
DATE: 11/13
REC: GP

NORTH

PLANIT CONSULTING

Level: 2242 (Grid) Chinderah Bay
Project No: 10-0031-100
170 St. St. Marys Road - QLD 2281 - www.planitconsulting.com.au

LEGEND

- SMOKE ALARM
- OBSCURE GLASS
- POSSIBLE POSITION FOR DOWN PIPE (TO BE ON SITE BY BUILDER)
- MECHANICAL VENTILATION
- CEILING FAN AS PER ENERGY EFFICIENCY REQUIREMENTS (1200mm min blade size)
- WINDOWS/SLIDING DOORS ARE LABELED AS FOLLOWS: FIRST 2 DIGITS DENOTE WIDTH IN CMs SECOND 2 DIGITS DENOTE LETTERS DENOTE TYPE OF WINDOW: AW - AWWING LV - LOUVRE SL - SLIDING WINDOW SD - SLIDING DOOR ST - STACKING DOOR

NOTE:
UNLESS OTHERWISE SPECIFIED:
- ALL INTERNAL DOORS AND ROBE DOORS TO JOINERY HEIGHT DOORS WITH GRIPS
- VR - VINYL FINISHED ROBE DOOR
- MR - MIRRORED ROBE DOOR
F.F.L. - FINISHED FLOOR LEVEL
F.O.S. - FINISHED OFF SET (FOR SHEET FLOORING)
F.G.L. - FINISHED GROUND LEVEL

FLOOR AREA	HOUSE	DECKS	TOTAL
	192.30 m ²	63.56 m ²	255.86 m ²

SEPARATE DRAWINGS CONCERNING THESE PLANS ARE APPROVED AS A REPRESENTATION OF WHAT IS TO BE BUILT. ITEMS NOT INCLUDED IN THESE PLANS & ATTACHED SPECIFICATIONS ARE DEEMED NOT TO BE INCLUDED IN CONTRACT.

DATE: 1/20/13
DRAWN BY: CCL
SIGNED: [Signature]
DWG NO: 13-049
SCALE: 1:100
SITE: A3
SHEET: 3
OF: 6
Client: Phil Proke Pty Ltd
BAYVIEW BUILDING
ACN: 103 321 841

SEE SAFETY NOTES FOR WPHS REQUIREMENTS FOR THIS BUILDING

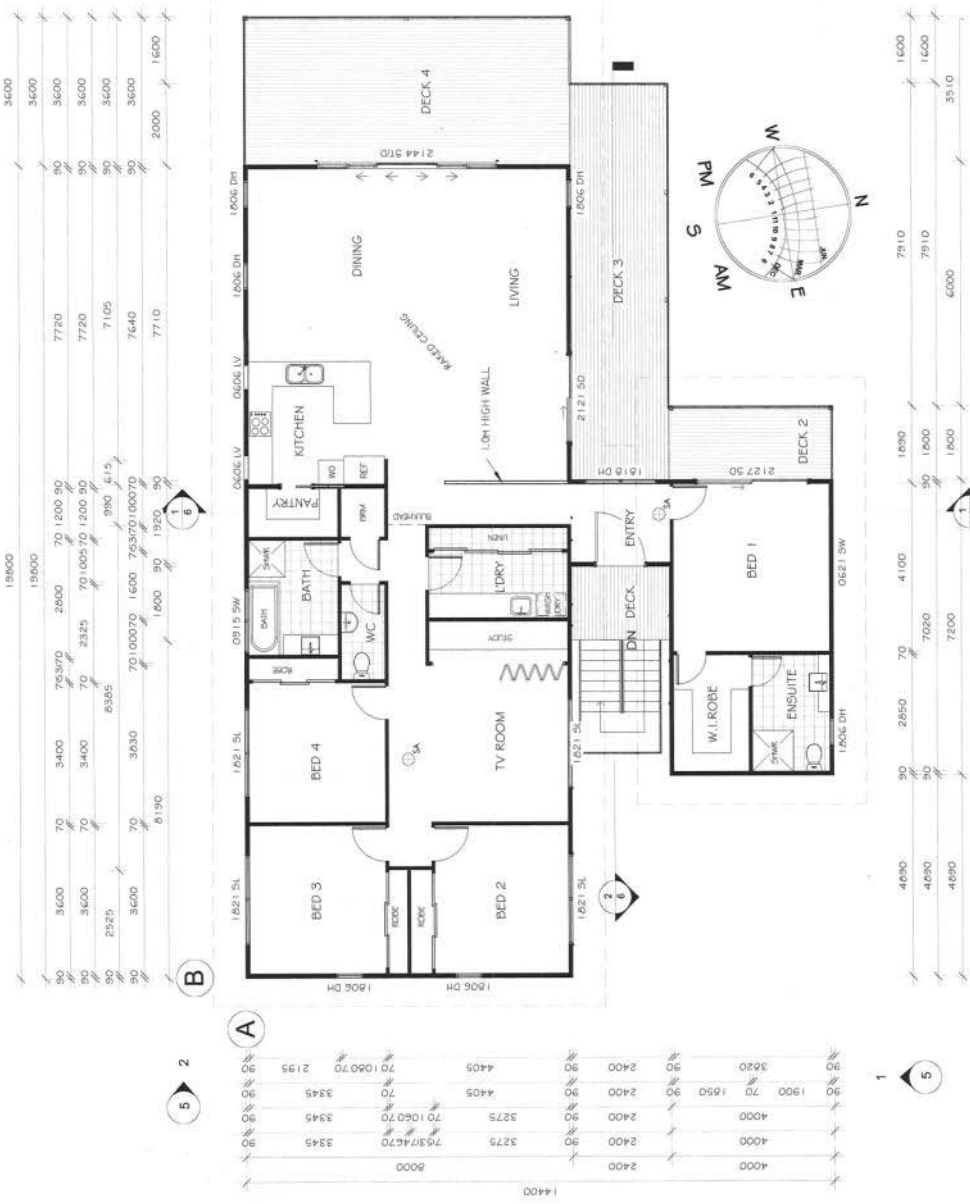


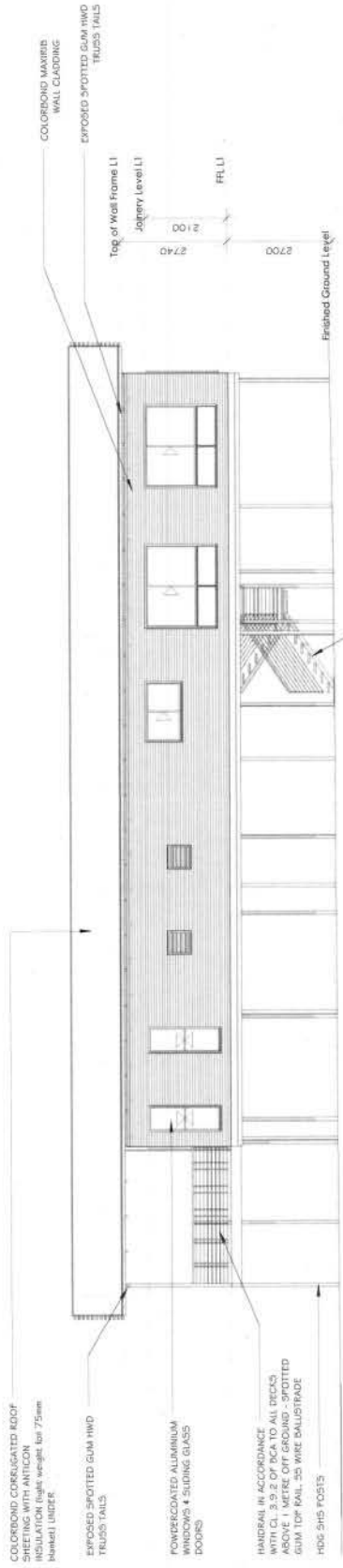
PROPOSED DWELLING: LOT 22 (9) CHINDERAH BAY DRIVE, CHINDERAH NSW 2487
TITLE: FLOOR PLAN
JOB #

CLIENT: Bush & Beach Homes NORRIS
Sustainable. Affordable. Energy Efficient.
ACN: 104 487 232

1:100

FLOOR PLAN





South Elevation

1 : 100

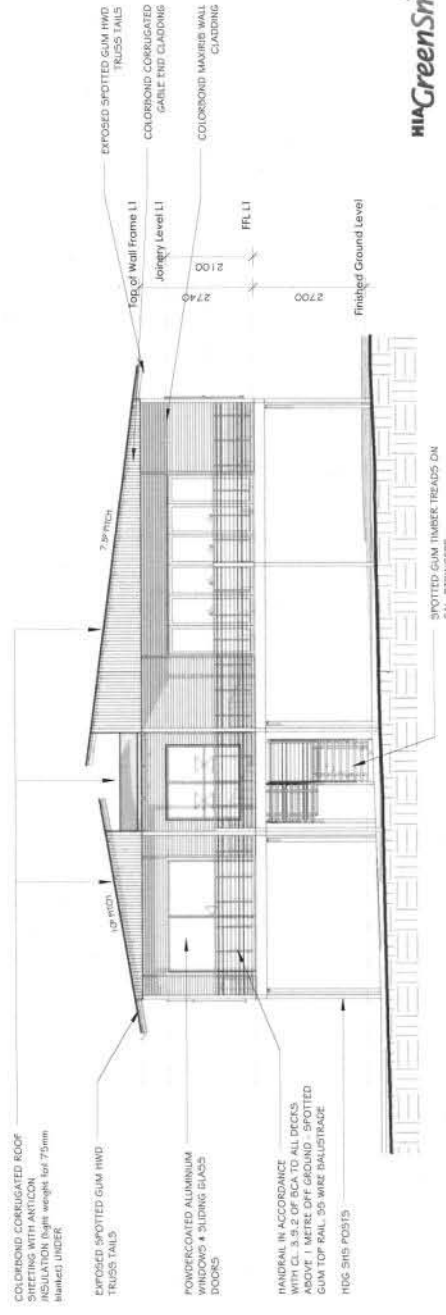
Thermal Notes:
 Roof: 75mm Anticon Blanket
 Ceiling (Flat): R4.0
 Ceiling (Raked): None
 Floor: R4.0 gap to floor
 Walls: Foil + R1.5
Colour:
 Walls: Medium Solar Absorbance
 Roof: Dark Solar Absorbance
 Windows: Aluminium Frame with clear low-e glass, U value = 4.70, SHGC = 0.63

RENDERING: THE MANUFACTURERS OF THESE PLANS ARE NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED AS A REPRESENTATION OF WHAT IS TO BE BUILT. ITEMS NOT INCLUDED IN THESE PLANS & ATTACHED SPECIFICATIONS ARE DEEMED NOT TO BE INCLUDED IN CONTRACT.

Signoff:

Date:

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West Elevation

1 : 100

SEE SAFETY NOTES FOR WPS REQUIREMENTS FOR THIS BUILDING

DWG No: 13-048
 SCALE: 1:100
 SHEET: 4 OF 6

DATE: 1/20/13
 DRAWN BY: CCL
 CHECKED BY: CHM
 CHM Prods Pty Ltd
 BSA Lic No: 1154653
 ACN: 103 307 846

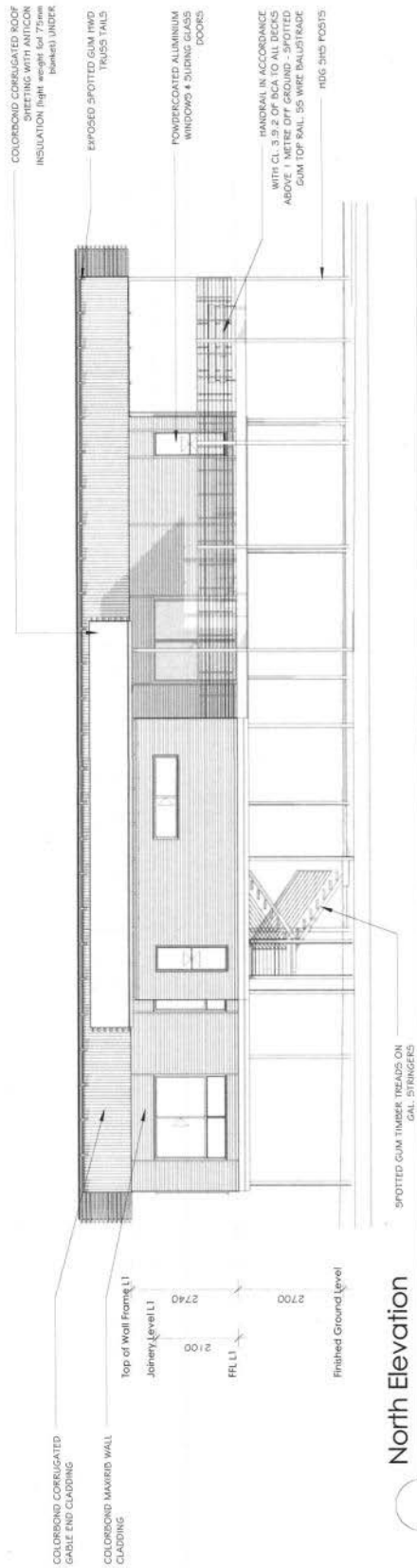
PROPOSED DWELLING
 LOT 22 (9) CHINDERAH BAY
 DRIVE, CHINDERAH NSW
 2487

CLIENT:
 NORRIS

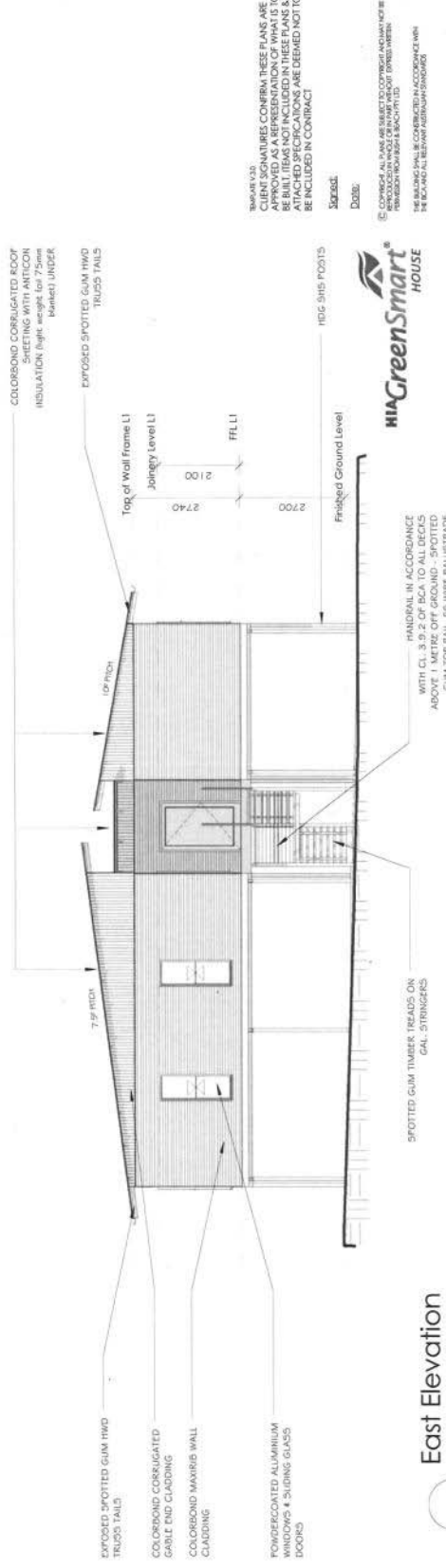


Bush Beach Homes
 Sustainable Australian Living
 130 134 88 333

TITLE:
 ELEVATIONS 1 & 2
 JOB #



North Elevation
1 : 100



East Elevation
1 : 100

TEMPERATURE VARIATION
CLIENT SIGNATURE, CONFIRM THESE PLANS ARE APPROVED AS REPRESENTED AND TO BE CONSTRUCTED IN ACCORDANCE WITH THE ATTACHED SPECIFICATIONS ARE DEEMED NOT TO BE INCLUDED IN CONTRACT

Signature: _____
Date: _____

© COPYRIGHT ALL RIGHTS RESERVED BY BUSH HOMES AUSTRALIA PTY LTD # 1534953
BUSH HOMES AUSTRALIA PTY LTD
THE BUILDING SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE TECHNICAL REQUIREMENTS SHOWN



SEE SAFETY NOTES FOR WPIS REQUIREMENTS FOR THIS BUILDING

DWG No: 13-049
SCALE: 1:100
SHEET: A3
5 OF 6

DATE: 12/06/13
DRAWN BY: CCL
CHECKED BY: PVL
REVISIONS: 13-049-03
ACK: 103.321.848

PROPOSED DWELLING
LOT 22 (9) CHINDERAH BAY
DRIVE, CHINDERAH NSW
2487

CLIENT:
BUSH HOMES
NORRIS
Sustainable Australian Living
130 314 889 022

TITLE:
ELEVATIONS 3 & 4

REV: A
DETAIL: FIRST ISSUE - DEVELOPMENT APPROVAL

JOB #

- LEGEND**
- SMOKE ALARM
 - OBSCURE GLASS
 - POSSIBLE POSITION FOR DOWN PIPE TO BE ON SITE BY BUILDER
 - MECHANICAL VENTILATION
 - CEILING FAN AS PER ENERGY EFFICIENCY REQUIREMENTS (1200mm min blade size)
 - WINDOWS/SLIDING DOORS ARE LABELED AS FOLLOWS
 - HEIGHT IN CMS
 - WIDTH IN CMS
 - LETTERS DENOTE TYPE OF WINDOW
 - DH - DOUBLE HUNG
 - LV - LOUVRE
 - SL - SLIDING WINDOW
 - SD - SLIDING DOOR
 - ST - STACKING DOOR

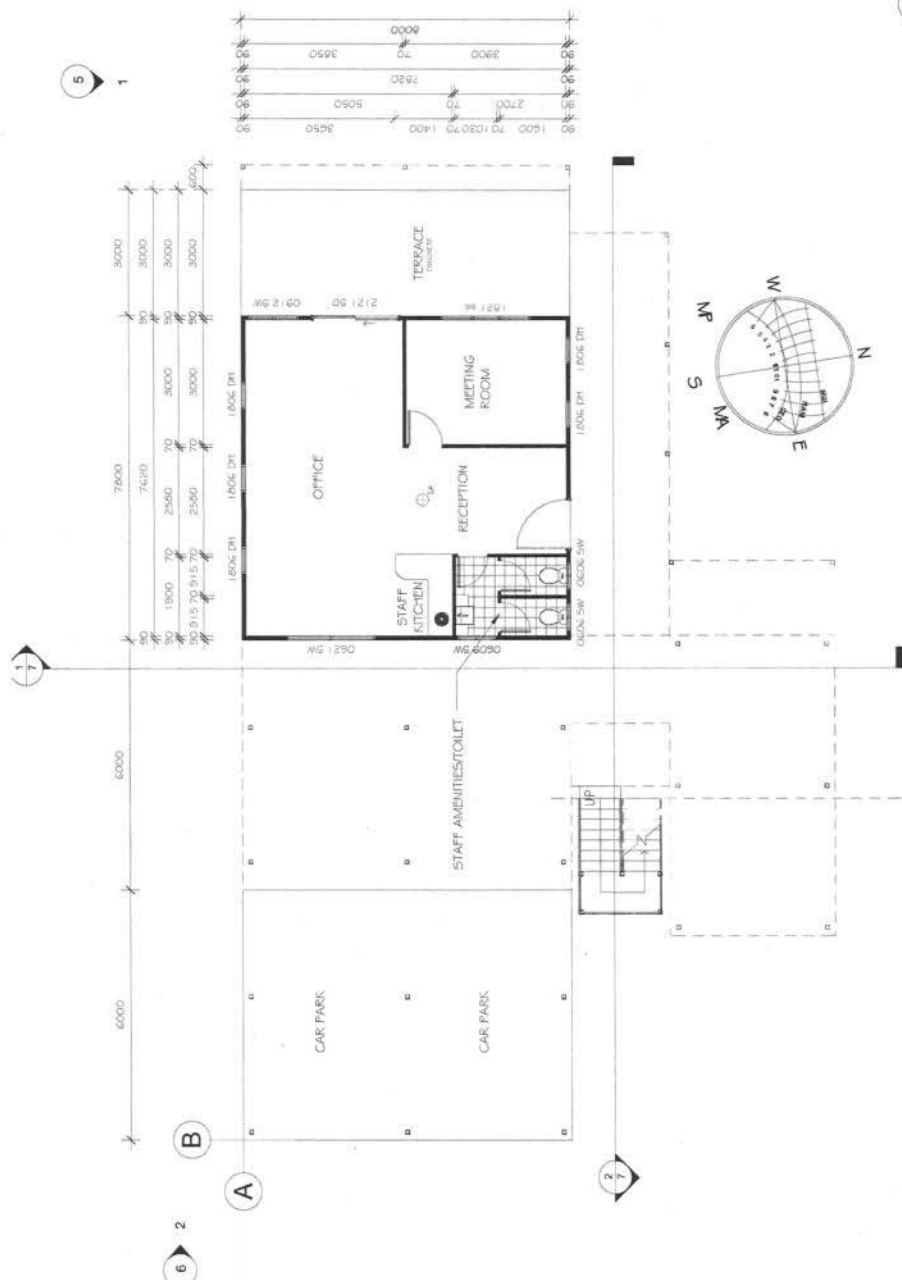
NOTE:
UNLESS OTHERWISE SPECIFIED:
-ALL INTERNAL DOORS AND ROBE DOORS TO JOINERY HEIGHT.
SR - SMART ROBE DOOR WITH GRIPS
MR - MIRROR ROBE DOOR
F.F.L. - FINISHED FLOOR LEVEL
TOP OF CONCRETE OR SHEET FLOORING
F.G.L. - FINISHED GROUND LEVEL

AREA SCHEDULE

GROUND FLOOR OFFICE	62.40 m ²
GROUND FLOOR TERRACE	2.90 m ²
UPPER LEVEL DECKS	69.30 m ²
UPPER LEVEL ENTRY DECK	4.32 m ²
UPPER LEVEL MAIN FLOOR	102.30 m ²
Grand total	342.26 m ²

IMPACT STATEMENT:
CLIENT SIGNATORIES CONFIRM THESE PLANS ARE APPROVED AS A REPRESENTATION OF WHAT IS TO BE CONSTRUCTED. ANY CHANGES TO THE ATTACHED SPECIFICATIONS ARE DEEMED NOT TO BE INCLUDED IN CONTRACT.

DATE: 1/20/13
DATE: 08/03/14



GROUND FLOOR PLAN

1:100

SEE SAFETY NOTES FOR WP16 REQUIREMENTS FOR THIS BUILDING

DATE: 1/20/13
08/03/14

DRAWN BY: CCL
SIGNED: [Signature]
CCL Trade Pty Ltd
NSA Lic No: 1134553
ACN: 103 321 848

DWG No: 1304B
SCALE: 1:100
SHEET A3
3 OF 7

REV: A
C

DETAILS: FIRST ISSUE
GROUND FLOOR
FURTHER REVISION

TITLE: GROUND FLOOR PLAN
JOB #: 91200

PROPOSED: Boat Brokerage
Lot 23 CHINDERAH BAY DRIVE, CHINDERAH NSW 2487

CLIENT: NORRIS

Bush & Beach Homes
Sustainable Australian Living
ESTABLISHED 2002

LEGEND

- SMOKE ALARM
- OBSCURE GLASS
- POSSIBLE POSITION FOR DOWN PIPE TO BE ON SITE BY BUILDER
- MECHANICAL VENTILATION
- CEILING FAN AS PER ENERGY EFFICIENCY REQUIREMENTS (1200mm min blade size)
- WINDOW/SLIDING DOORS ARE LABELED AS FOLLOWS: HEIGHT IN DIGITS DENOTE WIDTH IN OMS LETTERS DENOTE TYPE OF WINDOW: DOUBLE HUNG DW - AWNING LW - LOUVRE SL - SLIDING WINDOW SD - SLIDING DOOR ST - STACKING DOOR

NOTE:
UNLESS OTHERWISE SPECIFIED:
- ALL INTERNAL DOORS AND ROBE DOORS TO JOINERY HEIGHT.
- BR - SWIFT ROBE DOORS WITH GRIPS
- MR - SWIFT FINISHED ROBE DOOR
- MR - MIRROR ROBE DOOR
FF.L - FINISHED FLOOR LEVEL (PER CONCRETE SHEET FLOORING)
F.G.L - FINISHED GROUND LEVEL

AREA SCHEDULE

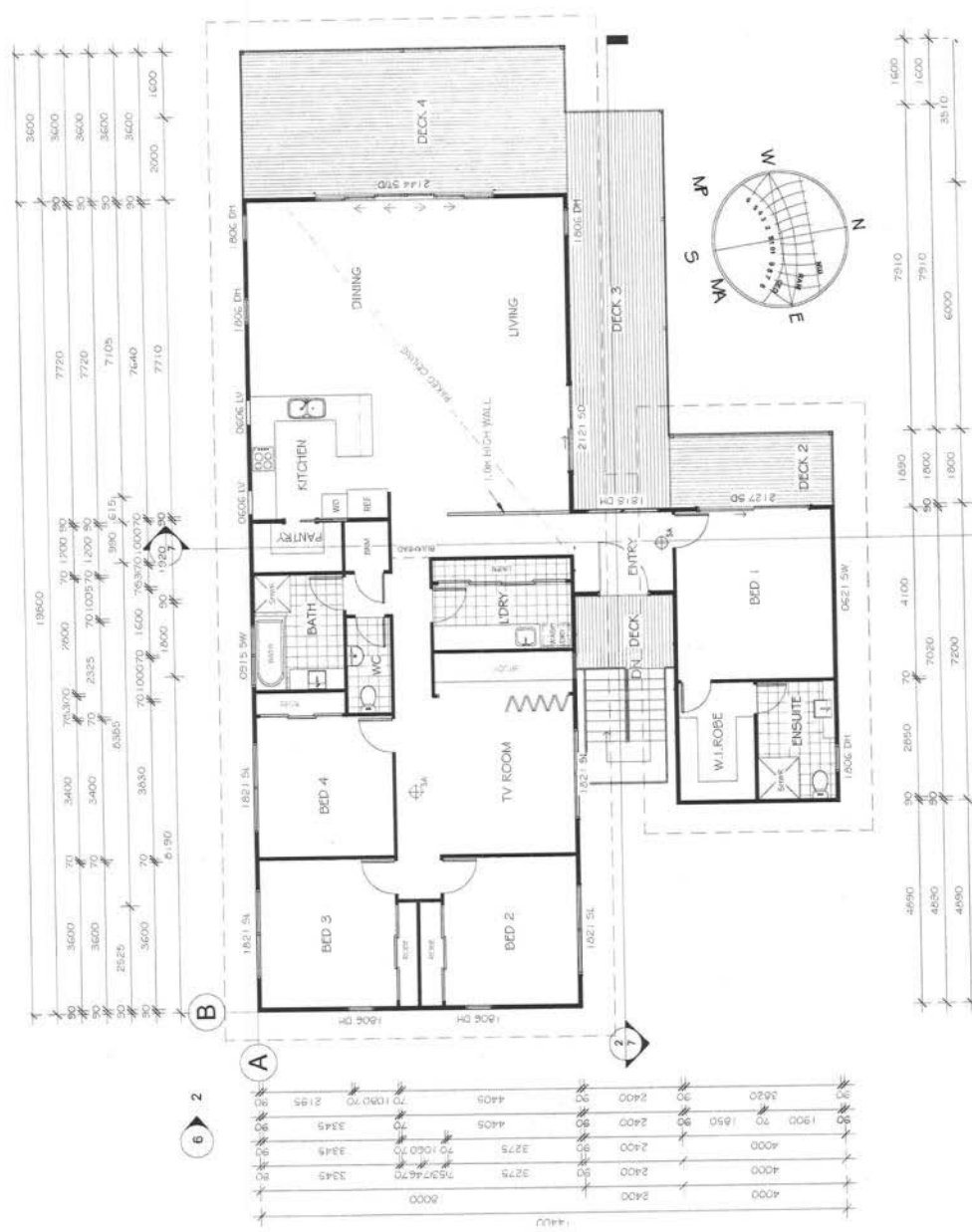
GROUND FLOOR OFFICE	62.40 m ²
GROUND FLOOR TERRACE	24.00 m ²
UPPER LEVEL DECKS	59.24 m ²
UPPER LEVEL ENTRY DECK	4.32 m ²
UPPER LEVEL MAIN FLOOR	192.30 m ²
Grand total	342.26 m²

PREPARED BY: CLIENT'S ARCHITECTS. CONSULT THESE PLANS AND CLIENT'S ARCHITECTS FOR INFORMATION OF WHAT IS TO BE BUILT. ITEMS NOT INCLUDED IN THESE PLANS & ATTACHED SPECIFICATIONS ARE DEEMED NOT TO BE INCLUDED IN CONTRACT.

DATE: 12/06/13
SCALE: 1:100
SHEET: A3
NO. OF SHEETS: 4 OF 7

SEE SAFETY NOTES FOR WPK REQUIREMENTS FOR THIS BUILDING

DATE: 12/06/13
SCALE: 1:100
SHEET: A3
NO. OF SHEETS: 4 OF 7



UPPER FLOOR PLAN

1:100

PROPOSED Boat Brokerage
Lot 23 CHINDERAH BAY DRIVE, CHINDERAH NSW 2487

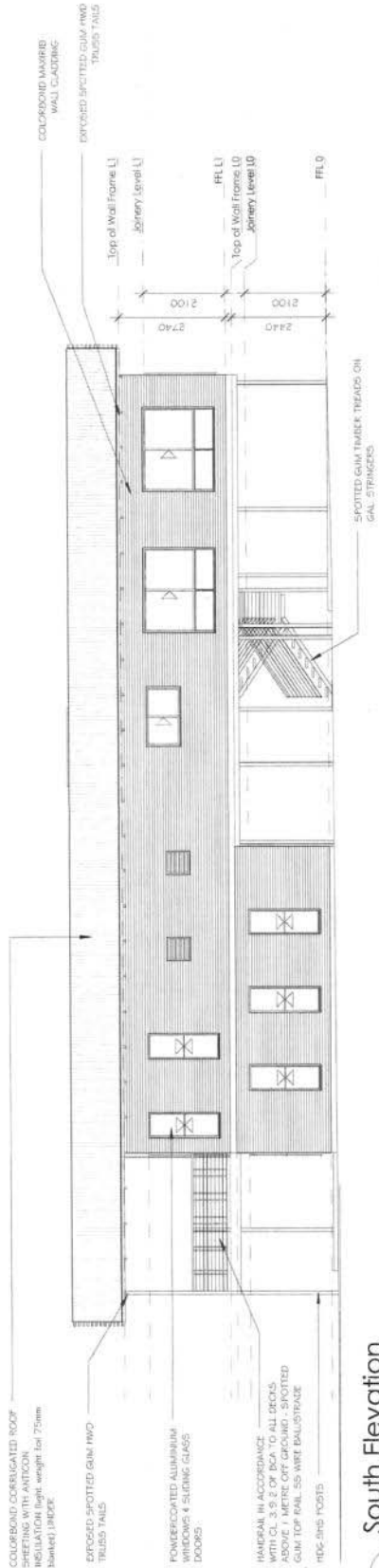
CLIENT: NORRIS
NO. 100000000



REVISIONS:
A
B
C

TITLE: UPPER FLOOR PLAN
JOB #: 91200

DETAILS: FIRST ISSUE
FOR THE REVISIONS



South Elevation

1 : 100



West Elevation

1 : 100

ISSUANCE: CLIENTS SHOULD CONFIRM THESE PLANS ARE ACCORDING TO THE CURRENT BUILDING REGULATIONS. ALL DIMENSIONS SHOWN ON THESE PLANS ARE TO FACE UNLESS OTHERWISE SPECIFIED. ATTACHED SPECIFICATIONS ARE DEEMED NOT TO BE INCLUDED IN CONTRACT.

Source:

Date:



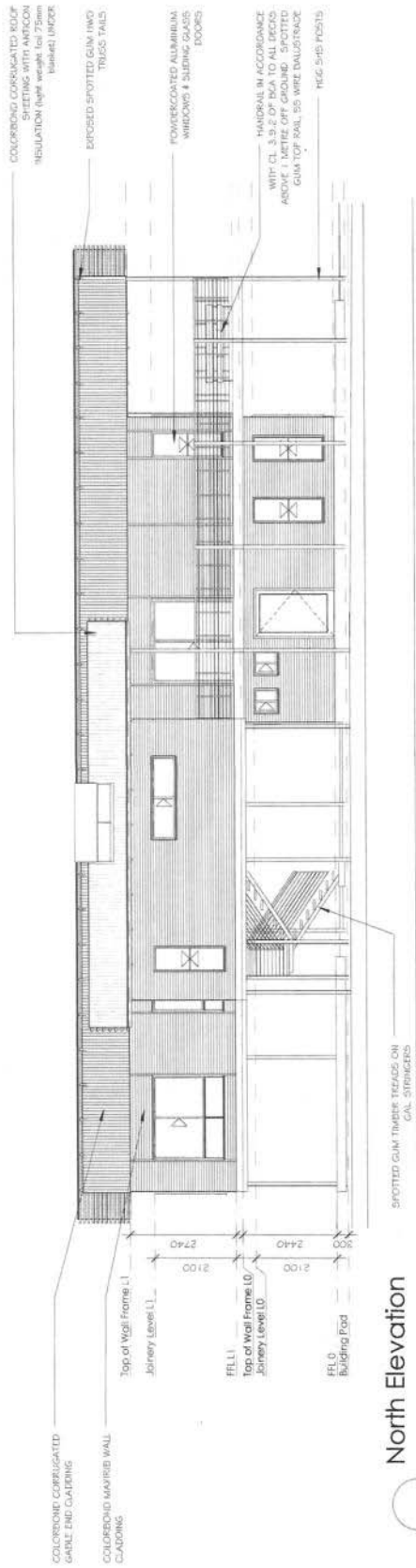
SEE SAFETY NOTES FOR WPMS REQUIREMENTS FOR THE BUILDING

DATE:	13/08/13	DWG No.:	13/08
DESIGNER:	CSG/1/14	SCALE:	1:100
DATE:	08/01/14	SIZE:	A3
PROJECT:	CHINDERAH BAY	SHEET:	5
CLIENT:	NORRIS	OF:	7

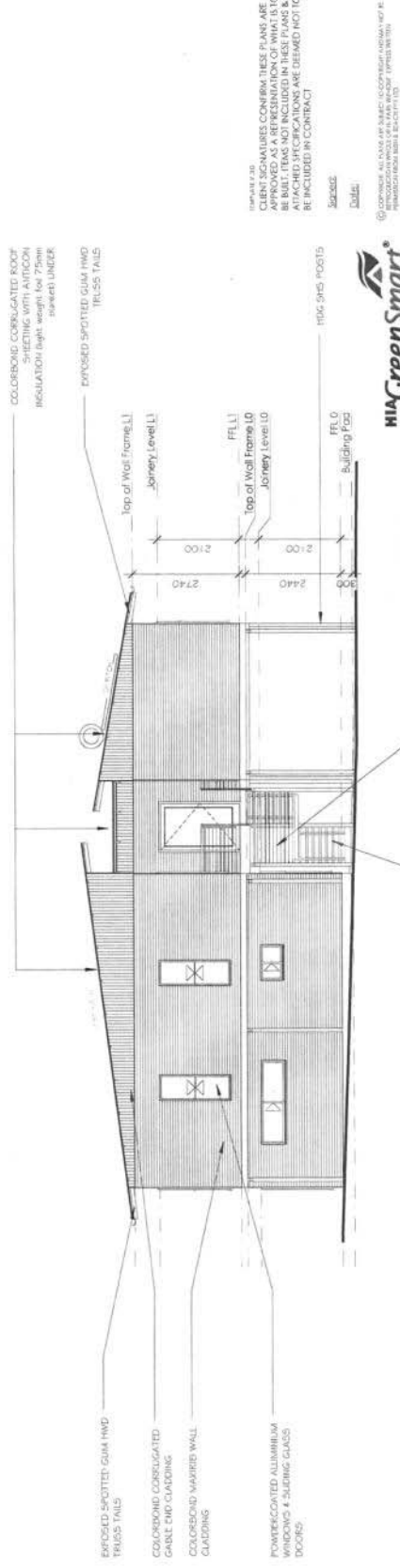
REV:	DETAILS	DATE:	13/08/13
A	FIRST ISSUE	DESIGNER:	CSG/1/14
B	FOR PERMIT	DATE:	08/01/14
C	FURTHER REVISION	PROJECT:	CHINDERAH BAY

PROPOSED:	Boat Brokerage	TITLE:	ELEVATIONS 1 & 2
LOT:	Lot 23	CLIENT:	NORRIS
ADDRESS:	CHINDERAH BAY DRIVE, CHINDERAH NSW 2487	JOB #:	91200

Bush & Beach Homes
 Sustainable Australian Living
 14/11/2013



North Elevation
1 : 100



East Elevation
1 : 100

DATE: 15/05/14
 CLIENT: NORRIS
 PROJECT: CHINDERAH BAY DRIVE, CHINDERAH NSW 2487
 DRAWN BY: CCL
 SIGNED: [Signature]
 CHECKED BY: JAS
 BOA LIC NO: 1134953
 ACN: 103 321 848

DATE: 15/05/14
 CLIENT: NORRIS
 PROJECT: CHINDERAH BAY DRIVE, CHINDERAH NSW 2487
 DRAWN BY: CCL
 SIGNED: [Signature]
 CHECKED BY: JAS
 BOA LIC NO: 1134953
 ACN: 103 321 848



SEE SAFETY NOTES FOR WPHS REQUIREMENTS FOR THIS BUILDING
 DATE: 15/05/14
 DRAWN BY: CCL
 SIGNED: [Signature]
 CHECKED BY: JAS
 BOA LIC NO: 1134953
 ACN: 103 321 848

REV: DETAILS
 A FIRST ISSUE - DEVELOPMENT APPROVAL
 B SECOND FLOOR
 C FURTHER REVISION

TITLE: PROPOSED Boat Brokerage
 Lot 23 CHINDERAH BAY DRIVE, CHINDERAH NSW 2487
 JOB # 91200

CLIENT: BUSH & BEACH HOMES NORRIS
 Sustainable Australian Living
 150-152
 150-152

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1 SIDEWALL EXTERIOR ELEVATION
SCALE: 1:250
52.8 METERS

2 SIDEWALL EXTERIOR ELEVATION
SCALE: 1:250
52.8 METERS

3 ENDWALL EXTERIOR ELEVATION
SCALE: 1:250
6.000 METERS

4 ENDWALL EXTERIOR ELEVATION
SCALE: 1:250
6.000 METERS

BUILDING COLLAGE

WALL	CONCRETE
ROOF	STEEL
ROOF LINING	INSULATION
ROOF CLADDING	STEEL
WALL LINING	INSULATION
WALL CLADDING	STEEL
WALL FINISHING	PAINT
WALL FASTENING	STEEL
WALL JOINTS	INSULATION

Mr Timothy Roy Messer BE MIE(Aust) RPEQ
Registered Professional Engineer 2559880
Signature: *T. Messer*
Date: 18/6/2013
Registered on the NPFR in the areas of practice of Civil & Structural National Professional Engineers Register

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SHED SAFE

fairdinkum SHEDS

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02 6624 5111
EDDIE NORRIS
7 CHINDERAH BAY DRIVE
CHINDERAH NSW

STEEL BUILDING BY FOR AT

DRAWN	FDHS-RG	CHECK 1	RG
CHECKED	TM	CHECK 2	RP
DATE	18/6/2013		
JOB NO.	BATG14424		
SHEET	6 OF 6		

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1 SIDEWALL EXTERIOR ELEVATION
SCALE 1:100

2 SIDEWALL EXTERIOR ELEVATION
SCALE 1:100

3 ENDWALL EXTERIOR ELEVATION
SCALE 1:100

4 ENDWALL EXTERIOR ELEVATION
SCALE 1:100

5 SIDEWALL EXTERIOR ELEVATION
SCALE 1:200

6 ENDWALL EXTERIOR ELEVATION
SCALE 1:200

BUILDING COLOURS	
ROOF	MONOCAD
WALLS	MONOCAD
SKYLIGHT	MONOCAD
DOOR	MONOCAD
WINDUW	MONOCAD
TRUSS	MONOCAD
CEILING	MONOCAD
FLOORING	MONOCAD
EXTERIOR FINISHING	MONOCAD

STEEL BUILDING BY
B & T GARAGES AND SHEDS
02 6624 5111
EDDIE NORRIS
7 CHINDERAH BAY DRIVE
CHINDERAH NSW

FOR AT

DRAWN FDHS-RG	CHECK 1 RG
CHECKED TM	CHECK 2 RP

DATE
29/7/2013

JOB NO.
BATG14423

SHEET
6
OF
6

Mr Timothy Roy Messer BE MIE(Aust) RPECO
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Date: 29/7/2013

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No. 152280
No. 152280
No. 152280

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SHED SAFE

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the plan, with the development retaining Tweed Shire's unique natural and built environments and economic and social fabric.

Clause 5 - Ecologically Sustainable Development

The proposed development is consistent with the four principles of ecological sustainable development by:

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

Clause 8 - Consent Considerations

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

Clause 11 - Zone Objectives

The subject land is zoned 3(d) Waterfront Enterprise pursuant to the provisions of the TLEP 2000. The uses of, 'Boundary Adjustment', 'Boating Facility', and 'Dwelling House' are permissible subject to consent within the zone. The objectives of the 3(d) Waterfront Enterprise zone are:

Primary objective

- *to encourage development related to 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 proposed development is considered consistent with the objectives of the zone, by encouraging waterfront, marine, recreation and tourism activities being the commercial boat brokerage business and boat storage facility and associated residential development. The boat brokerage business and boat storage facility are directly related to waterfront and marine activities and consistent with the primary objectives of the zone.

It is important to note that the land identified as "CPA" is land that is partly unzoned and zoned 6(a) Open Space. This land does not form part of this application and is not proposed to be used by the development.

Clause 15 - Essential Services

The site is provided with all urban services. The proposal is compliant with Clause 15 of the TLEP 2000.

Clause 16 - Height of Building

The site is located in a three storey area. The proposal includes two dwellings that have a maximum height of two storeys and two storage sheds that are single storey in height. The proposal is compliant with Clause 16 of the TLEP 2000.

Clause 17 - Social Impact Assessment

The objectives of clause 17 are to ensure proper consideration of development that may have a significant social or economical impact. The proposed development is considered not to create significant social or economic impact.

Clause 19 – General

The provisions of clause 19 apply to this development. This clause states:

(1) *Objective*

- *to provide a comprehensive system of planning controls for the subdivision of land in the Tweed local government area.*

(1A) *Despite Part 2 but subject to this Part, a person must not subdivide land without consent.*

(2) *Subdivision under the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986 may be carried out without consent if the land is within Zone 2 (a), 2 (b), 2 (c), 2 (d), 2 (e), 2 (f), 3 (a), 3 (b), 3 (c), 3 (d), 3 (e), 4 (a), 5 (a), 6 (a) or 6 (b).*

(3) *A person may, with consent, carry out a minor boundary adjustment, notwithstanding that the new lots may not comply with any relevant development standards applicable to the zone in which the land is situated.*

(4) *Consent is not required for a subdivision effected for the purposes of widening a public road, creating an allotment for use by a public utility undertaking, or as a public reserve or the like, notwithstanding that an allotment created by the subdivision may not comply with the minimum lot size applicable to the zone in which the land is situated.*

The proposal is considered to comply with the provisions of this clause as development consent is sought for the boundary adjustment as required under Clause 19 subclause 1A.

Clause 22 – Development near Designated Roads

The site fronts Chinderah Bay Drive which is identified as a Designated Road. The proposed development is considered not to impact upon the function of the road nor will it result in a traffic hazard or materially reduce the capacity or efficiency of the road.

Clause 23 – Control of Access

Consent is sought for two new access points to Chinderah Bay Drive to service the developments in accordance with the provisions of this clause. Council's Traffic Engineer did not object to the two proposed accesses subject to recommended conditions.

Clause 31 – Development Adjoining Waterbodies

The site adjoins the Tweed River with the proposal considered not to impact upon the adjoining Tweed River. Sufficient foreshore open space is available within the locality. Council has recently completed an upgrade and expansion of park facilities along this section of Tweed River. The proposal has no impact on these foreshore open space areas. The proposal will not adversely impact on the existing visual amenity and will not be affected by biting midge.

Clause 34 – Flooding

The site is flood prone with a design flood level of RL 2.9m AHD, a minimum habitable floor level of RL 3.4m AHD and a PMF level of RL 7.3m AHD. The Westernmost fringes of the site are in the modelled high flow areas. Council's Planning and Infrastructure Engineer, has advised that the proposal is considered acceptable in terms of flooding. The proposal is considered compliant with the requirements of the Clause 34 of the TLEP 2000.

Clause 35 - Acid Sulfate Soils

The subject property is identified as containing Class 1 and Class 2 Acid Sulfate Soils. Council's Environmental Health Officer advised that the proposal is considered acceptable in terms of Acid Sulfate Soils, subject to recommended conditions relating to Acid Sulfate Soils. The proposal is compliant with the requirements of Clause 35 of the TLEP 2000.

Clause 39 – Soil Contamination

A Preliminary Site Investigation Report has been submitted with the application which identified minor contamination of groundwater however concludes the site is suitable for the proposed use and no further investigation or remediation is warranted. Council's Environmental Health Officer advised that the proposal is considered acceptable in terms of Soil Contamination. The proposal complies with Clause 39.

Clause 39A – Bushfire Protection

A small portion of the northeast part of the site is mapped as bushfire prone land vegetation buffer 30m and 100m. A Bushfire Report has been prepared and included with the application. The application was referred to the NSW Rural Fire Service in accordance with section 91 of the Environmental Planning and Assessment Act 1979. The NSW Rural Fire Service did not object to the proposal and issued a bush fire safety authority without any specific conditions. The proposal is considered compliant with Clause 39A.

Clause 47 – Advertising Signs

The proposal includes one wall sign will be attached to the east elevation of the 22 Bay Storage Shed. The sign will be 1.5m x 4m (6m²) in area. The signs are not illuminated and do not lead to visual clutter through the proliferation of signs. The proposal is considered compliant with Clause 47.

Clause 54 – Tree Protection Order

The site is mapped as subject to the Tree Protection Order 2011 – Koala Habitat Study. The proposal does not require the removal of trees. The proposal complies with Clause 54.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

The provisions of the NCREP apply to the proposal.

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 is considered not to impact upon the adjoining Tweed River. Water quality will be maintained as detailed within the submitted Stormwater Management Plan, which is considered acceptable by Council’s Planning and Infrastructure Engineer. The proposal complies with 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 located within the area, which the NSW Coastal Policy 1997 applies. 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. The proposal does not negate *the NSW Coastal Policy 1997*, the *Coastline Management Manual*, and the *North Coast: Design Guidelines*.

Clause 43: Residential development

The proposed density is considered to be a reasonable response to the land use character of the area and is not considered to result in the creation of any adverse physical impacts upon the locality. The existing roads widths are not excessive for the function of the proposal and a detailed sedimentation and erosion control plan will be enforced in relation to the construction.

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.

Clause 81: Development adjacent to the ocean or a waterway

- (1) The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
 - (a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*

- (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
 - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*
- (2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

Sufficient foreshore open space is available within the locality. Council has recently completed an upgrade and expansion of park facilities along this section of the Tweed River. The proposal has no impact on these foreshore open space areas. The proposal will not adversely impact on the existing visual amenity. The proposed structures are single storey sheds and two storey dwelling houses. The proposal complies with Clause 81.

SEPP No. 64 – Advertising and Signage

The proposal includes a single wall sign to be attached to the east elevation of the 22 Bay Storage Shed. The sign will be 6m² in area and the sign will not be illuminated.

With regards to Clause 10 of the SEPP, the 3(d) Waterfront Enterprise zone is considered a *‘mixed residential and business or similar zone’*. In this regard commercial uses including boat storage facilities are permissible within the 3(d) zone. As such the display of advertisements is not prohibited on the site.

The proposed signage is considered compatible with the existing amenity and visual character of the area, with the sign providing clear business identification in a suitable location.

Schedule 1 Assessment criteria

Matters for consideration	Criteria	Response
<p>1 Character of the area</p>	<ul style="list-style-type: none"> - Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? - Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<p>The proposed signage is 6m² in size and is contained on the building structure setback approximately 6m from the front property boundary which will not block, obstruct or detract from the principal view of aspect from any adjoining residential properties or impact the desired character of the area.</p> <p>Chinderah Bay Drive consists of mix of land uses and advertising signage. The proposed signage is considered minor in size and scale and consistent with the character of the area.</p>
<p>2 Special areas</p>	<ul style="list-style-type: none"> - Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? 	<p>The proposed signage is considered minor in size and scale which is contained on the building structure setback approximately 6m from the front property boundary. The proposed signage will not impact on special areas, such as the adjoining waterway as the sign will not be visible from the</p>

Matters for consideration	Criteria	Response
		waterway.
<p>3 Views and vistas</p>	<ul style="list-style-type: none"> - Does the proposal obscure or compromise important views? - Does the proposal dominate the skyline and reduce the quality of vistas? - Does the proposal respect the viewing rights of other advertisers? 	<p>The proposed signage is considered minor in size and scale which is contained on the building structure setback approximately 6m from the front property boundary. The proposed signage will not impact on views and vistas.</p>
<p>4 Streetscape, setting or landscape</p>	<ul style="list-style-type: none"> - Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? - Does the proposal contribute to the visual interest of the streetscape, setting or landscape? - Does the proposal reduce clutter by rationalising and simplifying existing advertising? - Does the proposal screen unsightliness? - Does the proposal protrude above buildings, structures or tree canopies in the area or locality? - Does the proposal require ongoing vegetation management? 	<p>The proposed signage will not impact on the streetscape or landscape, in terms of visual clutter and does not protrude above buildings.</p>
<p>5 Site and building</p>	<ul style="list-style-type: none"> - Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? - Does the proposal respect important features of the site or building, or both? - Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<p>The proposed signage is 6m² in size which is contained on the building structure setback approximately 6m from the front property boundary. The sign is consistent in terms of scale in relation to the building and does not impact on important features of the site or building.</p>

Matters for consideration	Criteria	Response
6 Associated devices and logos with advertisements and advertising structures	- Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Not Applicable.
7 Illumination	- Would illumination result in unacceptable glare? - Would illumination affect safety for pedestrians, vehicles or aircraft? - Would illumination detract from the amenity of any residence or other form of accommodation? - Can the intensity of the illumination be adjusted, if necessary? - Is the illumination subject to a curfew?	Illumination is not proposed.
8 Safety	- Would the proposal reduce the safety for any public road? - Would the proposal reduce the safety for pedestrians or bicyclists? - Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No sign inhibits the passage of vehicles or pedestrians as they are contained wholly on private property, on the wall of the building.

The proposal is considered compliant with the relevant clauses of SEPP 64.

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 suitable 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

Draft LEP 2012

The site is proposed to be zoned B4 - Mixed Use with the proposal being defined as 'Marina', and 'Residential accommodation' under the DTLEP 2012. The use of 'Marina' and 'Residential accommodation' is prohibited in the B4 Mixed Use Zone.

The Draft LEP 2012 defines a 'Marina' as:

“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:

- (a) any facility for the construction, repair, maintenance, storage, sale or hire of boats,*
- (b) any facility for providing fuelling, sewage pump-out or other services for boats,*
- (c) any facility for launching or landing boats, such as slipways or hoists,*
- (d) any car parking or commercial, tourist or recreational or club facility that is ancillary to the boat storage facility,*
- (e) any berthing or mooring facilities.”*

The Draft LEP 2012 defines a 'Residential accommodation' as:

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,*
- (b) boarding houses,*
- (c) dual occupancies,*
- (d) dwelling houses,*
- (e) group homes,*
- (f) hostels,*
- (g) multi dwelling housing,*
- (h) residential flat buildings,*
- (i) rural workers' dwellings,*
- (j) secondary dwellings,*
- (k) semi-detached dwellings,*
- (l) seniors housing,*
- (m) shop top housing,*

but does not include tourist and visitor accommodation or caravan parks.

The objectives of the B4 zone are:

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

“1 Objectives of zone

- *To provide a mixture of compatible land uses.*

Chinderah includes a wide range of varying uses and despite the technical change in the definition the proposed recreational boat storage component remains a compatible land use in the locality. It is unclear what has prompted the zoning change in the preparation of the DTLEP 2012 as the B4 Mixed Use Zone does not appear to be an ‘equivalent zone’ to that of 3(d) Waterfront Enterprise.

The proposal is ideally located adjacent to existing water front and recreation facilities within the locality and will complement what has been Councils long term vision for this area of Chinderah. Further as a measure of comfort the capital investment of boat storage component is relatively low and as such would not be an impediment to future development of the site for alternative uses. Removal of the storage space covers and building can be undertaken easily.

- *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 subject site is located on a well serviced public transport route and the establishment of the boat storage component will not impact upon this objective. The locality currently provides for the integration of suitable business and residential uses. The construction of boat storage facility and dwelling houses upon the site complies with this objective.



DTLEP 2012 Zoning

Further to the above it is noted Clause 1.8A of the DTLEP 2012 provides that developments which are lodged prior to commencement of the plan and which may not be determined before its adoption is to be determined as though the plan had been exhibited but not made.

The proposed uses are permitted under the Tweed Local Environmental Plan 2000 and the sites location is such that it does not compromise the objectives of the B4 zone. The proposal is appropriate given the sites location. Council can and should issue consent for the development.”

It is considered that the approval of the proposed development is appropriate in this instance. Despite the prohibition, the development is considered to accord with the objectives of the B4 zone which are as follows:

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

Approval is recommended based on consistency between the proposed development and the objectives of the zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposal includes two dwelling houses one on each allotment. Each dwelling is considered to be consistent with the provisions of Section A1 applying to residential development. However the following variations are proposed and considered acceptable in the specific instance.

Control

C1. The minimum setback from the street and rear boundary for a dwelling is to comply with Table 3 - Front and Rear Setbacks in DCP A1 - Part A (page 38).

Comment

The minimum required rear setback for both dwellings is 15m. Both dwellings are proposed to be setback 1.5m from the rear property boundary. An assessment against each objective is provided below.

Objectives

01 To establish the desired spatial framing of the street, define the street edge and enable transition between public and private space.

The proposed rear setback variation has no impact upon the spatial framing of the street or definition of the street edge. In terms of the transition between public and private space the adjoining lands to the rear are CPA lands as shown on DP1130032 and are not public land. The rear setback variation does not prevent a transition between public and private space. The proposal complies with this objective.

02 To provide flexibility for steeply sloping and corner allotments to best address streetscape, solar orientation and location for outdoor amenity areas and access points.

This objective does not relate to the site. The site is flat and not a corner allotment. The proposal does not impact upon this objective.

03 To provide appropriate separation between dwellings for sunlight access, ventilation, visual and acoustic privacy and access to the rear of the allotment.

There are no dwellings adjoining the rear of the site. The site fronts CPA land and the river, no dwelling houses will be built in this area. The proposed rear setback variation does not impact the adequate provision of sunlight access and visual and acoustic privacy for any adjoining buildings. Rear access to the site is maintained via the dwellings design with the houses being elevated and not enclosed under. The proposal complies with this objective.

04 To minimise overlooking and overshadowing to the site and of adjoining allotments.

There are no dwellings adjoining the rear of the site. The site fronts CPA land and the river, no dwelling houses will be built in this area. The proposed rear setback variation does not increase overlooking or overshadowing, further the provision of a compliant rear setback would place the proposed dwellings closer to existing dwellings on the adjoining allotments. The proposal complies with this objective.

05 To facilitate a landscape setting for residential buildings and retention of the rear yard landscaping zone.

The proposed design provides significant areas of landscaping onsite including between the rear of the proposed dwellings and the old mean high water mark. The proposal complies with this objective.

06 *To maintain views and vistas along canal frontages.*

This objective does not relate to the site. The site does not front a canal. The proposal does not impact upon this objective.

The proposed variation is considered acceptable in this instance.

A2-Site Access and Parking Code

Car Parking

A total of six car parking spaces are provided as part of the proposal. This figure excludes the boat storage bays and delivery bay. The following table breaks down the car parking required and provided. The proposal provides car parking in accordance with Section A2.

Parking Table				
Use	Parking Rates	Units	Spaces required	Proposed
Dwelling House	1 space per dwelling plus provision for driveway parking of another vehicle	2 dwellings	4	4
Boat Storage	No Specific Rate nominated	-	-	2
Total Required			4	4
Total Proposed				6

With regards to car parking required for the boat storage facility component, Section A2 does not include a specific parking rate. In this regard the facility is setup such that customers will collect and return their boats before and after use. The site is not designed or equipped to allow customers to stay onsite for extended periods. However, to ensure the odd occasion where a customer stays onsite for an extended period two dedicated parking spaces are provided. The proposed car parking is considered adequate to service parking demand.

Service Vehicle & Loading/Unloading

No specific service vehicle is specified for the proposed uses. All boats will be towed to and from the site by private vehicles or the operator’s own vehicle (car), no service vehicle access will be required.

The proposal is compliant with the requirements of Section A2.

A3-Development of Flood Liable Land

The site is flood prone with a design flood level of RL 2.9m AHD, a minimum habitable floor level of RL 3.4m AHD and a PMF level of RL 7.3m AHD. The Westernmost fringes of the site are in the modelled high flow areas. Enclosure below design flood level will be restricted to a maximum of 50m² for the residential component of the two dwellings (not applicable to the boat storage facility and the commercial premise (office)). The dwellings are two storeys in height, with the ground floor proposed to be open (not enclosed) for the dwelling on proposed Lot 22, therefore complying. The dwelling on proposed Lot 23 proposes a commercial premise (office) of 62.4m² on the ground floor. This is permitted as the commercial premise is less than 50% of the site. The development proposes filling of the site to be 2.2m AHD with the habitable floor level of the dwellings to be at 4.5m AHD.

Council's Planning and Infrastructure Engineer advised that the proposal is consistent with Council's flooding policy and that the proposal is acceptable in terms of flooding.

The proposal is compliant with the requirements of Section A3.

A4-Advertising Signs Code

The proposal includes a single business identification wall sign. The wall sign will be attached to the east elevation (fronting Chinderah Bay Drive) of the 22 Bay (southern) storage shed. The sign will be 6m² in area and will not be illuminated.

The proposed signage is considered consistent with the code.

A5-Subdivision Manual

Council's Development Engineer advised that the proposal is consistent with Council's subdivision policy.

A11-Public Notification of Development Proposals

The application was advertised for a period of 30 days from Wednesday 25 October 2013 to Monday 28 October 2013. During the advertised period Council received one submission objecting to the proposal, which is addressed later within this report.

A13-Socio-Economic Impact Assessment

Section A13.5.1 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 Social Impact Assessment (SIA), therefore a SIA is not required.

A15-Waste Minimisation and Management

The proposal is to be serviced via two x 140lt wheelie bins and four x 240lt wheelie bins for refuse, four x 240lt wheelie bins for recycling and two x 240lt wheelie bins for green waste. The bins are located as shown on the site plan. Onsite waste management will be undertaken by staff. The bins will be serviced onsite by Solo Waste with adequate access available. The proposal is considered compliant with Section A15. The application was assessed by Council's Waste Management Unit. No objections were raised subject to recommended conditions.

(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

Demolition of an existing shed is proposed as part of this application. Appropriate conditions have been recommended to ensure all building works are to comply with Clause 92(b).

Clause 93 Fire Safety Considerations

Council's Building Services Unit advised that the proposal satisfies the requirements of Clause 93. Appropriate conditions have been recommended to ensure all building works are to comply with Clause 93.

Clause 94 Buildings to be upgraded

Council's Building Services Unit advised that the proposal satisfies the requirements of Clause 94. Appropriate conditions have been recommended to ensure all building works are to comply with Clause 94.

- (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**

The proposed development is considered not to create significant impacts on the natural and built environments or significant social or economical impacts on the locality.

Context and Setting

The site and surrounding land is zoned 3(d) Waterfront Enterprise, with a mixture of land uses within the locality. The site is surrounded by residential dwellings to the immediate north and south. Commercial developments such as a caravan park, restaurant and café and bottle shop are located further to the north and south. A petrol station, commercial boat hire, sports centre, storage facility for marine craft, self storage facility is located to the east.

Stormwater

The applicant proposes to pipe roof water from the dwellings to infiltration pits with overflows to the Tweed River. The boat storage facility has pervious paving and is also piped to an infiltration pit with overflows to the existing swale in Chinderah Bay Drive road reserve. No onsite detention is proposed, however, the infiltration pits will provide some informal detention. Council's Planning and Infrastructure Engineer reviewed the Engineering Report, no objections were raised. Conditions relating to stormwater are recommended if the application were to be approved. The proposal is acceptable in terms of stormwater drainage.

Erosion and Sediment Control

The proposed erosion and sediment control plan is acceptable provided the sediment fence at the rear of the lots has an additional return along the Northern boundary of Proposed Lot 23. Site survey indicates the land slopes this way somewhat and runoff is likely to flow off the site. Council's Development Engineer reviewed the application, no objections were raised. Conditions relating to erosion and sediment control are recommended if the application were to be approved.

Noise/Amenity

An Environmental Noise Impact Report has been submitted with the application which recommended the following acoustic treatments:

- *Hours of operation be limited to the daytime period between 7am and 6pm, 7 days per week.*
- *The wash bay should be enclosed with solid walls along the northern, western and eastern perimeters of the bay and a solid roof over the bay as detailed in Sketch 1 in Appendix A of this report. Walls should be constructed to achieve a minimum surface mass of 11 kg/m² (i.e. 9mm FC sheeting or masonry).*
- *The roof of the wash bay enclosure should have an absorptive ceiling lining with a minimum Noise Reduction Coefficient (NRC) rating of 0.8 (i.e. a minimum 50mm thick, 22kg/m² fibreglass batts) as detailed in Sketch 1 in Appendix A of this report. Ceiling absorption batts may have a perforated foil facing having an open space area of no less than 12 % (this will protect the batts from damage).*
- *There should be no gaps or holes between the connection with the wash bay enclosure and the adjacent storage shed (i.e. no gaps or holes at the connecting walls or rooves).*
- *There should be no gaps or holes between the roof and the walls, between the ground and the walls and along the walls themselves (with the exception of the proposed roller door entries) at wash bay enclosure and the two boat storage sheds.*
- *The recycling (bottle) bins storage area should be located to the east of the proposed onsite sheds (i.e. between the sheds and the Chinderah Bay Drive road corridor) to maximum the separation distance between the offsite and future residential dwellings as detailed in Sketch 1 in Appendix A of this report.*
- *No boat repairs or maintenance be undertaken onsite.*
- *No high pressure water hoses are to be used onsite or at the wash bay.*
- *Engine flushing is to occur for a maximum period of 2 minutes (within any 15 minute period).*
- *Engines are to run at idle during engine flushing (i.e. no revving of engine).*
- *Staff should minimise metal impacts when hitching/unhitching trailers.*
- *Driveway hardstand areas be finished with surface coatings which prevent tyre squeal (an uncoated surface is acceptable).*
- *Drainage grating over trafficable areas be well secured to prevent rattling.*

It is important to note that refuse recycling bin storage area has been relocated to the eastern side of the storage sheds adjacent to Chinderah Bay Drive and the wash bay is located adjacent to the northern storage bay and constructed of sound reduction material. The maximum number of engines to be flushed per day is four. Engines shall operate at idle only and only for a maximum period of 2 mins.

Council's Environmental Health Officer has assessed the Environmental Noise Impact Report, and recommended appropriate conditions of consent.

Lighting

Conditions relating to lighting are recommended if the application were to be approved.

Demolition

The Preliminary Site Investigation Report has been submitted with the application that states the existing the garage/storage shed is constructed of materials which includes bonded asbestos and advises. The report recommends:

"The material is to be managed in accordance with Workcover NSW requirements and the approved Waste Management plan. The volumes need to be assessed and if >10m2 a licensed contractor would be required to remove this material during the demolition."

Council's Environmental Officer has assessed the Preliminary Site Investigation Report, and recommended appropriate conditions of consent to ensure the adequate handling and removal of asbestos material.

Liquid Trade Waste

The application states the boats will be washed by hand with bucket and brush and flushing of motors will also be undertaken within the area. No maintenance of boats is proposed on the site. Conditions to ensure discharge of wastewater to sewerage is required and no maintenance of equipment is permitted are recommended if the application were to be approved.

Landscaping

A landscape concept plan was submitted with the application that is considered generally acceptable, however, further landscape detail is required particularly in relation to the streetscape in front of the boat storage sheds adjacent to Chinderah Bay Drive. A condition relating to further landscaping detail is recommended if the application were to be approved.

Section 64 and Section 94 contributions

The development has been assessed in accordance with Council Section 64 and Section 94 contributions plans. Council's Water Unit provided advice regarding charges to water and sewer. There are additional charges to contribution plan number 18 due to the additional storage sheds and commercial office. Council's Traffic Engineer provided advice regarding trips to be levied.

(c) Suitability of the site for the development

The site is considered suitable for the proposed development.

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

Public Submissions Comment

During the advertised period Council received one submission objecting to the proposal. The table below list the issues and comment in relating to the issue.

Issue	Comment
3 metre easement located between Lot 21 and Lot 22.	The easement is located on the objectors property Lot 21 and does not affect the proposal.
Noise from vehicles and boats	Council's Environmental Health Officer has assessed the

Issue	Comment
impacting on amenity.	Environmental Noise Impact Report, and recommended appropriate conditions of consent.
Flooding.	Council's Planning and Infrastructure Engineer advised that the proposal is consistent with Council's flooding policy and that the proposal is acceptable in terms of flooding.

The applicant provided the following response to the subject submission.

"The objection is obviously from a joint owner of 11 Chinderah Bay Drive, Chinderah.

The owners of 11 Chinderah Bay Drive have not lived on the property for approximately 5 years and the property has been for sale during this time. The Owners have obviously sought a sale price that the market did not support and it is considered that the current objection to DA13/0502 is more financially motivated than for concerns of amenity. Their property is currently leased to a tenant that has several trucks and items of earth moving equipment stored on site (see photo 1 & photo 2 below) and this does not support the claim of "residential" priority use for the area. The Owners of 11 Chinderah Bay Drive have in fact always promoted their property as being suitable for Development, including "Boating Facilities" whilst for sale over the last 5-7 years.



Photo 1



Photo 2

I make the following specific comments

Easement

- *The proposed development does not impinge on the mentioned easement. The 1952 Subdivision Plan shows a “proposed drainage easement, 12 foot wide”, on the complainant’s property lot 21, not lot 22 the property subject to DA13/0502, however this easement was not required or registered, (see attachment A for surveyor’s letter).*

Noise and privacy

- *Detail provided with DA13/0502 provides the “considered” level of usage based on significant research and this is maintained to be accurate.*
- *The plans submitted with DA13/0502 clearly show the position of the wash bay, which is not adjacent to the boundary of 11 Chinderah Bay Drive, and the noise levels have been assessed and are considered in DA13/0502. The statement “This will impact our privacy immensely” seems to be an emotive based comment without basis. The wash bay is approximately 30 meters from the “back veranda” which is screened by mature growth palm trees, located on the complainant’s property. It is the owners of 11 Chinderah Bay Drive that will decide whether they will keep these trees in-situ. The existing palms provide a screen along the whole of the northern side of the complainant’s house, (see photo 3 below).*



Photo 3

- *The complainant's bed rooms location is not considered relevant given the type of development proposed and the obvious hours of operation, however there are no bedrooms on the northern boundary of the residence at 11 Chinderah Bay Drive that face out over the proposed development, rather a main bathroom, stair well, study, built in robes and ensuite.*
- *The business viability of the proposed development discussed by the complainant is irrelevant and is not dependent on the number of people visiting the premises on a daily basis. Storage fees will be paid regardless of the clients usage.*

Floodwaters

- *The development is in a majority of Low Flow flood area, and the impact of this has been considered within DA13/0502. The 2 photos shown lodged with the complainant's submission were in fact taken at a time when their property was minimally affected by flood water, (see photo 4 below). One of the photos submitted by the complainant is not of 11 Chinderah Bay Drive at all. The complainant's property has been filled and is elevated above the development site.*



Residential references

- *The complainant's reference that they do not consider this as an appropriate development for this site is facetious. Refer attachment B for a copy of the complainant's advertisement of 2007 when the property at 11 Chinderah Bay Drive was offered for sale. The advertisement clearly promotes their property as being suitable for Development including reference to Boating Facilities, which are allowable under the current LEP zoning. The current complainant was in fact an owner at the time of that advertisement."*

The applicant's response to the submission is considered valid, with recommended conditions of consent considered suitable to mitigate potential impacts.

Public Authority Submissions Comment

The application was referred to the Department of Primary Industries Office of Water for works requiring a controlled activity approval under the Water Management Act 2000. The Office of Water advised that the proposal is exempt and therefore a controlled activity approval is not required.

The application was referred to the NSW Rural Fire Service in accordance with section 91 of the Environmental Planning and Assessment Act 1979. The NSW Rural Fire Service did not object to the proposal and issued a bush fire safety authority without any specific conditions.

(e) Public interest

It is considered that the approval of the application would not raise any implications in relation to the public interest.

OPTIONS:

1. Approve the application with conditions of approval in accordance with the recommendation of approval; or
2. Refuse the application and provide reasons for refusal.

The Council officers recommend Option 1.

CONCLUSION:

The proposed is permissible with consent under Tweed LEP 2000, consistent with relevant environmental planning instruments, and Council policy requirements. The proposal is considered suitable and appropriate for the subject site, and considered not to create a significant adverse impact on the natural or built environments or have detrimental social or economical impact on the locality.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0577 Pt3



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Updated Information

At its meeting of 1 May 2014 Council resolved the following in respect of this matter:

"RECOMMENDED that Development Application DA13/0577 for a 88 lot subdivision - stages 15 to 18 Seabreeze Estate at Lot 1147 DP 1115395 Seabreeze Boulevard, Pottsville be deferred for a workshop."

A Councillor Workshop was held on 7 May 2014.

Since the development application was originally reported to Council at the Council Meeting of 1 May 2014, Council officers have received further clarification in respect to the following matters:

Agricultural Buffer

In respect to the proximity of agricultural land to the potential future school site, the Department of Education and Communities have advised the following:

"The buffer to the north of the potential school site at Seabreeze has been considered and is compliant with the Department of Education & Communities 'Advisory note for Developers and Consent Authorities for Master Planning New Education Facilities Sites'. These advisory notes (please see attached document) set out the minimum expectations for planning education facilities. Item 'Land Use' notes that school sites are not to be located within or immediately adjacent to development with potential undesirable impacts or risks such as: inter - alia, intensive agriculture.

NSW DPI guidelines 'Preparing a development application for intensive agriculture in NSW' define intensive agriculture as including industries such as poultry, piggeries, cattle and sheep feedlots, restricted dairies, rabbits, horticulture, viticulture, hydroponics, greenhouses and glasshouses. It is understood that the adjacent land is not used for any of these purposes.

We have schools in the Tweed that neighbour similar agricultural land, Cudgen PS, Kingscliff Tafe, Murwillumbah East PS, and Wollumbin PS to name a couple."

On this basis it is considered that the agricultural buffer does not pose any significant constraint to the development of the potential school site.

Aboriginal Heritage

The Aboriginal Advisory Committee (AAC) considered the subject development application at their meeting of 2 May 2014. Whilst the Draft Minutes of that meeting are yet to be ratified as true and correct by the AAC or adopted by Council, it has been advised that:

"as the Seabreeze Estate was approved before 2010, there was not a requirement for it to be referred to the AAC. Cyril Scott of TBLALC (Tweed Byron Local Aboriginal Land Council) did carry out an inspection during the original Cultural Heritage Assessment. No further action was recommended."

Cultural heritage studies have been undertaken on the subject site as part of the rezoning process and for the original development application and the AAC have raised no significant issues in respect to matters of cultural heritage. Condition No. 54 recommends that should, during construction, any cultural relics or artefacts are identified that works are to cease immediately and the appropriate authority notified. It is considered that the proposed development does not raise any significant issues in respect of cultural heritage.

Bond for White Fig Tree

Should Councillors consider it appropriate to request a performance bond for the value of the White Fig Tree, it is recommended that the following conditions are applied to the consent:

12.1 The mature *Ficus virens* spp. *lanceolata* (White Fig) as identified in the *Tree Assessment and Management Plan Seabreeze Estate Pottsville dated 04 February 2014 prepared by Boyds Bay Environmental Services* and situated within Lot 1803 shall be retained and protected.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

42.1 Performance Bond - Tree Preservation

The applicant must give security to Council in the form of a performance bond to the amount of \$127, 500.00 to ensure the mature *Ficus virens* spp. *lanceolata* (White Fig) as identified in the *Tree Assessment and Management Plan Seabreeze Estate Pottsville dated 04 February 2014 prepared by Boyds Bay Environmental Services* and situated within Lot 1803 is retained, protected and not damaged during construction. The performance bond shall be lodged prior to issue of the first of any Construction Certificate for Stage 15 to Stage 18 and held by Council for a period of time until:

- (a) Issue of the final subdivision certificate of Stages 15 to Stage 18 the subject of this consent; and
- (b) Council is satisfied that the conditions relating to tree protection (Condition 12.A above and Condition 89) and arboricultural treatment (Condition 88 and Condition 119) have been complied with.

The previous report has been re-submitted to Council for determination. Please note the advice provided by the Department of Education and Communities are attached.

Original Report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION:

That Development Application DA13/0577 for a 88 lot subdivision - stages 15 to 18 Seabreeze Estate at Lot 1147 DP 1115395; Seabreeze Boulevard, Pottsville be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:

- **17850 B Revision E (Proposed Subdivision - Stages 15, 16 & 18);**
- **17683 B Revision C (Stage 17)**

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

[GEN0005]

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

[GEN0045]

3. **The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.**
[GEN0125]
4. **Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**
[GEN0135]
5. **The applicant shall arrange for a site inspection to be carried out with Council's Environmental Health Officer and key representatives involved in the dewatering activity including consultants and personnel responsible under any Dewatering Management Plan approved by Council's General Manager or his delegate. Such site inspection shall be arranged and carried out prior to the commencement of any offsite dewatering activity occurring.**
[GEN0180]
6. **The approved subdivision/development shall not result in any clearing of native vegetation without prior approval where required from the relevant authority.**
[GENNS01]
7. **The development must meet the Council Sewer - Works in Proximity Policy, regarding construction on or near the existing sewer. This includes landscaping and fencing near sewers and manholes.**
8. **The sewer layout plan submitted in this application (received via email from DAC on Friday 21 March, Plans SK4055 to SK4057) is considered to be preliminary and is subject to change to meet Council sewer design requirements.**
9. **The small unmarked area of land adjacent to the western side of Lot 1601, fronting Lennox Circuit, is to be incorporated as part of Lot 1601.**
10. **No roadworks are required in Tom Merchant Drive for the frontage of Lot 1702. The applicant is however advised that road frontage works will be necessary in conjunction with any future development proposal over that lot, and will be imposed accordingly at that time.**

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

This lot is to be dedicated to Council as Drainage Reserve in conjunction with the first Stage being released.
12. **The relocated overland flowpath depicted on plan 'Amended Overland Flow Sketch' dated 2.9.2013 is not to be implemented as part of this development consent.**
[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

[PCC0125]

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

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

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

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

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

commissioning of the device, at the completion of the Defects Liability Period ("Off Maintenance").

[PCC0165]

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

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

[PCC0235]

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

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

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

[PCC0275]

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

[PCC0285]

18. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.

- (d) **Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.**

[PCC0455]

19. **Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, Tweed Shire Council Development Control Plan Part A1 and Councils Development Design and Construction Specifications.**

Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

[PCC0475]

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

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

[PCC0485]

21. **Design detail shall be provided to address the flood compatibility of the proposed subdivision including the following specific matters:**

- (a) **Design flood levels to be adopted for each subdivision Stage are:**

STAGE 15 = RL 3.1m AHD

STAGE 16 = RL 3.2m AHD

STAGE 17 = RL 2.8m AHD

STAGE 18 = RL 3.1m AHD

- (b) **All residential allotments shall be filled to a minimum of the design flood level.**

- (c) **All residential allotments shall be provided with a high level flood evacuation route in accordance with Development Control Plan Section A3 - Development of Flood Liable Land.**

- (d) **Where batters exceeding 0.6m in height are required along road frontages to achieve the required fill level, typical driveway designs shall be provided with the construction certificate to ensure complaint vehicular access in accordance with the Driveway Access to Property - Design Specification.**

[PCC0705]

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

[PCC0865]

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

URBAN ROADS and INFRASTRUCTURE

- (a) Construction of roads and all necessary stormwater, sewer, water, telecommunications and electrical infrastructure for each Stage, generally as nominated in the plans by Bradlees submitted to Council on 21.3.2014.

OTHER

- (b) Review and amend the finished surface levels for areas within and separating Stages 15 and 16 in order to eliminate or reduce the extent of proposed retaining walls. This will need to be addressed as part of the construction certificate submissions for those Stages.
- (c) All retaining walls are to be wholly contained within private lots.
- (d) The retaining wall shown within the western portion of Lot 1802 is not approved by this consent. Similarly, the proposed retaining walls bordering the existing Drainage Reserve and SPS site are unnecessary, unless required to facilitate road construction, provisioning of necessary public infrastructure, or smooth merging with future ground levels for Lot 1607.
- (e) The proposed road from Stage 15 that intersects with Lennox Circuit appears to have inappropriate sight distance for the posted 50km/h speed limit on these roads.

Should a 40km/h safe speed limit be required for satisfactory implementation, then appropriate traffic calming devices would be required, in accordance with AS1742.13 - Local Area Traffic Management. Full details are to be provided with the construction certificate application for Stage 15.

- (f) The sewer provisioning proposal is considered as being conceptual only. There are numerous bends and changes of angle (in the sewer lines) depicted without a sewer manhole, which must be rectified. Full design detail is to be submitted with construction certificate applications for all Stages.
- (g) All new roads are to be provided with a concrete footpath.

- (h) Provision of pedestrian/cycleway connectivity between existing infrastructure and Lot 1803 (proposed Public Reserve) is to be addressed with any approval being issued for works to be undertaken on this lot.

[PCC0875]

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

[PCC0935]

25. Prior to the issue of a Construction Certificate for subdivision works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations*

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

[PCC0985]

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

- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
- (i) Shake down area along the haul route immediately before the intersection with the road reserve.
- [PCC1105]
27. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
- [PCC1155]
28. Where water is to be drawn from Councils reticulated system, the proponent shall:
- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
 - Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
 - Payment of relevant fees in accordance with Councils adopted fees and charges.
- [PCC1205]
29. The sewer layout plans provided within DA13/0577 do not meet the TSC Subdivision Design Standards for Sewer - D12 and prior to construction certificate, new plans meeting D12 must be provided.
30. Sewer plans provided within DA13/0577 are considered indicative only and updated plans meeting D12 must be provided.
31. Internal falls through manholes must be provided as per WSA02-2002.
32. Self cleansing flows though sewer reticulation must meet TSC Subdivision Design Standards for Sewer - D12.
33. Where proposed gravity sewer will not connect into existing stub, a new sewer connection may be required.
34. Locations of maintenance structures must meet D12.08.1 (d).

35. The construction certificate application shall include engineering calculations that confirm that the stormwater drainage system in Lennox Circuit has sufficient capacity to accept additional stormwater flows from Road 1, in accordance with the requirements of Development Design Specification D5 - Stormwater Drainage Design, or provide an alternate stormwater design.
36. The landforming plans for Stage 17 shall include the provision of trafficable maintenance paths within proposed drainage reserve allotment 1748 and 1749, to the satisfaction of the Director Engineering.
- [PCCNS01]
37. A detailed landscape plan prepared by a qualified landscape architect must be submitted for all Public Reserves and roads to be dedicated to Council, including but not limited to areas of casual open space, structured open space, cycleways, pedestrian walkways and streetscapes prior to the issue of a Construction Certificate. Such a plan must be approved by the Manager, Recreation Services, Tweed Shire Council and include embellishments such as listed in Councils Subdivision Manual (Section A5 of the Tweed Development Control Plan) and Development Design Specification (D14) and related Standard Drawings and include grassing, landscaping, seating, park activation areas, playground equipment and shade cover. The plans must provide slope information, indicate all underground services and indicate any implications or constraints at or beyond the boundary that will affect ongoing management of the public land.
38. Any playgrounds included in landscape plans must comply with the guidelines established in the 'Playground Audit for Tweed Shire Council' (July 2009). Appendix 3 of this establishes a procedure for assessing nearby hazards and mitigation measures. New subdivisions designed after development of these guidelines must ensure no playground facility has a Facility Risk Rating exceeding 13 as defined in Table 3A7 of that document.
39. The plants listed in landscape plans are to include no noxious or environmental weed species, and utilise wherever practical species native to the local area. Such species are described in Tweed Shire Council's Native Species Planting Guide.
- [PCCNS02]
40. A site specific acid sulfate soil management plan shall be prepared in accordance with the *NSW Acid Sulfate Soil Manual*, ASSMAC 1998 to the satisfaction of the General Manager or delegate. The plan shall include but not be limited to site investigations, treatment and validation measures and reporting.
- [PCCNS02]
41. The applicant must submit to Council for approval by Council's General Manager or his delegate prior to the issue of a construction certificate a detailed landscape plan for Lot 1803 'Proposed Public Reserve' as shown on the approved subdivision layout plan. The detailed landscape plan must:
- a. Be prepared by a qualified landscape architect or similar landscape design professional;

- b. Be in general accordance with the *Amended Statement of Landscape Intent Seabreeze Residential Estate Stages 15-18 Issue C dated 13 March 2014 prepared by Boyds Bay Planning*;
- c. Reflect the approved layout (including any amendments to that layout required by these conditions) and the conditions of this consent;
- d. Comply with *Tweed Shire Council Development Design Specification D14 Landscaping Public Space Version 1.3*;
- e. Contain no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species; and
- f. Be consistent with arboricultural management recommendations detailed in the approved tree management plan for the *Ficus virens var. sublaceolata* (White Fig) or any future management recommendations current at the time of detailed landscape plan preparation that has been approved by Council's General Manager or delegate.

[PCCNS03]

42. An amended Dewatering Management Plan shall be prepared and submitted to Council's General Manager or his delegate for consideration and approval which details the following:

- a) A site plan drawn to scale which indicates the extent of the excavation area and estimated zone of influence of the dewatering activity relative to any adjoining buildings together with an assessment of any impacts likely to occur to any adjoining buildings as a result of the dewatering activities;
- b) The location to be indicated on the site plan of the area that will be utilised for the positioning of any treatment tank or sedimentation pond on the site including any reserve area to be used for such purpose in the event of the need for additional treatment facilities to be incorporated on the site;
- c) Details of the proposed method of mechanical aeration to be used in the event that it is necessary to aerate the groundwater to achieve an acceptable Dissolved Oxygen level prior to the offsite discharge of groundwater and where this will be incorporated on the site;
- d) The provision of written advice from the operator of any on site groundwater treatment system stating that the system to be used will be able to treat the groundwater to the required treatment level prior to discharge.

Please note - particular attention is to be given to achieving the required detention times prior to discharge of the groundwater. Advice that the system is simply capable of achieving the necessary treatment will not be acceptable.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

43. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the

site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

44. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

(a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or

(b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.

(c) WorkCover Regulations 2000

[PCW0025]

45. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

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

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

[PCW0375]

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

[PCW0745]

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

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

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

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

- (i) has appointed a principal certifying authority,

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

C4: Accredited Certifier - Stormwater management facilities construction compliance

C6: Accredited Certifier - Subdivision road and drainage construction compliance

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

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

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

[PCW0815]

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

[PCW0835]

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

[PCW0985]

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

[PCW1065]

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

[PCW1135]

DURING CONSTRUCTION

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

[DUR0005]

54. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.

[DUR0025]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

56. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

57. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

58. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

59. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

[DUR0675]

60. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.

[DUR0745]

61. During filling operations:

- **No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**
- **All fill and cut batters shall be contained wholly within the subject land.**

and upon completion,

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

[DUR0755]

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

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

[DUR0795]

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

[DUR0815]

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

[DUR0985]

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

[DUR0995]

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

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

[DUR1005]

67. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

68. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

69. All works shall be carried out in accordance with the Approved Acid Sulfate Soils Management Plan.

[DUR1065]

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

[DUR1795]

71. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

72. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
 - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.
- [DUR1825]
73. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]
74. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, cycleways - formwork/reinforcement
- (h) Final Practical Inspection - on maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

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

Stormwater Quality Control Devices (other than proprietary devices)

For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media

- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

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

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

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

[DUR1895]

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

[DUR1955]

76. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

77. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

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

[DUR2285]

79. Drainage Reserve

- (a) The proposed drainage reserves are to be dedicated to Council at no cost.
- (b) An accurate plan of the proposed drainage reserves shall be submitted to Council 60 days prior to lodgment of the relevant Application for Subdivision Certificate (form 13) to allow the land to be classified.

[DUR2295]

80. Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.

[DUR2315]

81. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

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

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

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

[DUR2375]

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

[DUR2575]

84. Dust and Erosion Management

(a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed areas are to be topsoiled and seeded immediately to protect them from water and wind erosion.

(b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.

(c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

[DUR2825]

85. 60 days prior to lodgment of Application for Subdivision Certificate, an accurate plan of the subdivision is to be submitted to Council indicating all public land to be dedicated to Council (including Drainage Reserves, Sewer Pump Stations, Parks, Sports Fields, Conservation Areas and other lands as defined and excluding Roads, etc). The function of all such public land is to be indicated to allow classification of the land parcel by Council as either Operational or Community Land, as detailed in the Local Government Act 1993.

86. No earthmoving equipment shall operate within Lot 1803 'Proposed Public Reserve' (as shown on the approved subdivision layout plan) for the purpose of retaining wall construction or any other civil works unless otherwise approved by Council's General Manager or delegate.
87. Landscaping of the site shall be carried out in accordance with the submitted / approved landscaping plans.
88. The applicant must complete all remedial tree management works on the *Ficus virens var. sublancoolata* (White Fig) situated within Lot 1803 'Proposed Public Reserve' (as shown on the approved subdivision layout) in accordance with Section 3 titled 'Observations and Works Requirements' of the approved tree management plan being *Tree Assessment and Management Plan Seabreeze Estate Pottsville dated 04 February 2014 prepared by Boyds Bay Environmental Services* during the first of any stage of the development approved by way of this consent. A project arborist who holds a minimum Australian Qualification Framework (AQF) Level 5 Diploma of Horticulture (Arboriculture) qualification must be engaged to undertake arboricultural work stipulated in the approved tree management plan.
89. All works adjacent to or within thirty (30) metres of the *Ficus virens var. sublancoolata* (White Fig) situated within Lot 1803 'Proposed Public Reserve' (as shown on the approved subdivision layout) onsite must be undertaken in accordance with the approved tree management plan being *Tree Assessment and Management Plan Seabreeze Estate Pottsville dated 04 February 2014 prepared by Boyds Bay Environmental Services* to ensure the is retained and protected. A project arborist who holds a minimum Australian Qualification Framework (AQF) Level 5 Diploma of Horticulture (Arboriculture) qualification must be engaged to undertake arboricultural work stipulated in the approved tree management plan. The applicant must comply with any directions given by the project arborist in respect to tree management measures to be employed onsite during construction to minimise/avoid any adverse impacts.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

90. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.
91. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Councils contributions sheet and Certificate of Compliance signed by an authorised officer of Council.

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

Stage 15

Water DSP6:	23 ET @ \$12575 per ET	\$289,225
Sewer Hastings Point:	23 ET @ \$6042 per ET	\$138,966

Stage 16

Water DSP6:	14 ET @ \$12575 per ET	\$176,050
Sewer Hastings Point:	14 ET @ \$6042 per ET	\$84,588

Stage 17

Water DSP6:	45 ET @ \$12575 per ET	\$565,875
Sewer Hastings Point:	45 ET @ \$6042 per ET	\$271,890

Stage 18

Water DSP6:	1 ET @ \$12575 per ET	\$12,575
Sewer Hastings Point:	1 ET @ \$6042 per ET	\$6,042

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

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

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

[PSC0165]

92. Section 94 Contributions

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

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

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

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current

version/edition of the relevant Section 94 Plan current at the time of the payment.

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

Stage 15

(a) Tweed Road Contribution Plan: 149.5 Trips @ \$1330 per Trips (\$1,284 base rate + \$46 indexation) S94 Plan No. 4 Sector8_4	\$198,835
(b) Shirewide Library Facilities: 23 ET @ \$838 per ET (\$792 base rate + \$46 indexation) S94 Plan No. 11	\$19,274
(c) Bus Shelters: 23 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	\$1,472
(d) Eviron Cemetery: 23 ET @ \$123 per ET (\$101 base rate + \$22 indexation) S94 Plan No. 13	\$2,829
(e) Community Facilities (Tweed Coast - North) 23 ET @ \$1389 per ET (\$1,305.60 base rate + \$83.40 indexation) S94 Plan No. 15	\$31,947
(f) Extensions to Council Administration Offices & Technical Support Facilities 23 ET @ \$1860.31 per ET (\$1,759.90 base rate + \$100.41 indexation) S94 Plan No. 18	\$42,787.13
(g) Cycleways: 23 ET @ \$473 per ET (\$447 base rate + \$26 indexation) S94 Plan No. 22	\$10,879
(h) Regional Open Space (Casual) 23 ET @ \$1091 per ET (\$1,031 base rate + \$60 indexation) S94 Plan No. 26	\$25,093

- (i) **Regional Open Space (Structured):**
 23 ET @ \$3830 per ET \$88,090
 (\$3,619 base rate + \$211 indexation)
 S94 Plan No. 26

Stage 16

- (a) **Tweed Road Contribution Plan:**
 91 Trips @ \$1330 per Trips \$121,030
 (\$1,284 base rate + \$46 indexation)
 S94 Plan No. 4
 Sector8_4
- (b) **Shirewide Library Facilities:**
 14 ET @ \$838 per ET \$11,732
 (\$792 base rate + \$46 indexation)
 S94 Plan No. 11
- (c) **Bus Shelters:**
 14 ET @ \$64 per ET \$896
 (\$60 base rate + \$4 indexation)
 S94 Plan No. 12
- (d) **Eviron Cemetery:**
 14 ET @ \$123 per ET \$1,722
 (\$101 base rate + \$22 indexation)
 S94 Plan No. 13
- (e) **Community Facilities (Tweed Coast - North)**
 14 ET @ \$1389 per ET \$19,446
 (\$1,305.60 base rate + \$83.40 indexation)
 S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
 & Technical Support Facilities**
 14 ET @ \$1860.31 per ET \$26,044.34
 (\$1,759.90 base rate + \$100.41 indexation)
 S94 Plan No. 18
- (g) **Cycleways:**
 14 ET @ \$473 per ET \$6,622
 (\$447 base rate + \$26 indexation)
 S94 Plan No. 22
- (h) **Regional Open Space (Casual)**
 14 ET @ \$1091 per ET \$15,274
 (\$1,031 base rate + \$60 indexation)
 S94 Plan No. 26

- (i) **Regional Open Space (Structured):**
14 ET @ \$3830 per ET \$53,620
(\$3,619 base rate + \$211 indexation)
S94 Plan No. 26

Stage 17

- (a) **Tweed Road Contribution Plan:**
292.5 Trips @ \$1330 per Trips \$389,025
(\$1,284 base rate + \$46 indexation)
S94 Plan No. 4
Sector8_4
- (b) **Shirewide Library Facilities:**
45 ET @ \$838 per ET \$37,710
(\$792 base rate + \$46 indexation)
S94 Plan No. 11
- (c) **Bus Shelters:**
45 ET @ \$64 per ET \$2,880
(\$60 base rate + \$4 indexation)
S94 Plan No. 12
- (d) **Eviron Cemetery:**
45 ET @ \$123 per ET \$5,535
(\$101 base rate + \$22 indexation)
S94 Plan No. 13
- (e) **Community Facilities (Tweed Coast - North)**
45 ET @ \$1389 per ET \$62,505
(\$1,305.60 base rate + \$83.40 indexation)
S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
& Technical Support Facilities**
45 ET @ \$1860.31 per ET \$83,713.95
(\$1,759.90 base rate + \$100.41 indexation)
S94 Plan No. 18
- (g) **Cycleways:**
45 ET @ \$473 per ET \$21,285
(\$447 base rate + \$26 indexation)
S94 Plan No. 22
- (h) **Regional Open Space (Casual)**
45 ET @ \$1091 per ET \$49,095
(\$1,031 base rate + \$60 indexation)
S94 Plan No. 26

- (i) **Regional Open Space (Structured):**
 45 ET @ \$3830 per ET \$172,350
 (\$3,619 base rate + \$211 indexation)
 S94 Plan No. 26

Stage 18

- (a) **Tweed Road Contribution Plan:**
 6.5 Trips @ \$1330 per Trips \$8,645
 (\$1,284 base rate + \$46 indexation)
 S94 Plan No. 4
 Sector8_4
- (b) **Shirewide Library Facilities:**
 1 ET @ \$838 per ET \$838
 (\$792 base rate + \$46 indexation)
 S94 Plan No. 11
- (c) **Bus Shelters:**
 1 ET @ \$64 per ET \$64
 (\$60 base rate + \$4 indexation)
 S94 Plan No. 12
- (d) **Eviron Cemetery:**
 1 ET @ \$123 per ET \$123
 (\$101 base rate + \$22 indexation)
 S94 Plan No. 13
- (e) **Community Facilities (Tweed Coast - North)**
 1 ET @ \$1389 per ET \$1,389
 (\$1,305.60 base rate + \$83.40 indexation)
 S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
 & Technical Support Facilities**
 1 ET @ \$1860.31 per ET \$1,860.31
 (\$1,759.90 base rate + \$100.41 indexation)
 S94 Plan No. 18
- (g) **Cycleways:**
 1 ET @ \$473 per ET \$473
 (\$447 base rate + \$26 indexation)
 S94 Plan No. 22
- (h) **Regional Open Space (Casual)**
 1 ET @ \$1091 per ET \$1,091
 (\$1,031 base rate + \$60 indexation)
 S94 Plan No. 26

- (i) **Regional Open Space (Structured):**
1 ET @ \$3830 per ET **\$3,830**
(\$3,619 base rate + \$211 indexation)
S94 Plan No. 26

[PSC0175]

93. Section 94 Contributions

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

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

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

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

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

[PSC0185]

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

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

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

[PSC0215]

95. Prior to the issue of a Subdivision Certificate, a performance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

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

[PSC0725]

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

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

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

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

[PSC0735]

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

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

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

Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

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

[PSC0785]

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

[PSC0825]

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

[PSC0830]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property;
- (b) Identify all allotments to be created as dual occupancies;
- (c) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity;
- (d) Extinguishment of superfluous Right Of Carriageways that were previously created to provide temporary turning areas for refuse vehicles and the general public (relevant to interface areas between adjoining Stages), but are now no longer required;

- (e) A designated visitor parking space is to be created within Lot 1718 due to its narrow street frontage, and is to be implemented in conjunction with construction of a dwelling on the site. An appropriate Restriction on Title is to be created over Lot 1718 accordingly;
- (f) Easements and Restrictions as required for all retaining walls - both new and existing;
- (g) Creation of a Drainage Easement and associated Restriction on Title over Lot 1607, to cater for a relief overland stormwater flowpath.

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

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

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

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

[PSC0845]

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

[PSC0855]

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

The following information must accompany an application:

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

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

[PSC0885]

105. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:

- (a) Compliance Certificate - Roads**
- (b) Compliance Certificate - Water Reticulation**
- (c) Compliance Certificate - Sewerage Reticulation**
- (d) Compliance Certificate - Drainage**

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.**
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".**

[PSC0915]

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

[PSC0925]

107. A formal asset handover of all water quality control devices is to be implemented at the completion of the maintenance period ("Off Maintenance"), whereby all relevant stakeholders will inspect the device and be issued with a current operational manual for the device.

[PSC1025]

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

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

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

[PSC1065]

109. Prior to the release of the subdivision certificates for Stage 15 (or the first Stage being released) and Stage 17, the proponent shall:

- (a) Include on the Plan of Subdivision provision for dedication of the drainage reserves at no cost to Council.**
- (b) Submit an accurate plan of the proposed drainage reserves to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.**

[PSC1075]

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

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

[PSC1115]

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

[PSC1165]

112. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and**
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.**

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

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

[PSC1185]

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

[PSC1205]

114. Prior to dedication of the proposed drainage reserves (Lot 1748 and Lot 1749), the developer shall undertake maintenance on the overland flow paths to reinstate them to their original design capacity.

[PSCNS01]

115. The Plan of Subdivision accompanying the Subdivision Certificate for Stages 17 and 18 shall include dedication of the relevant public reserves at no cost to Council. Prior to dedication, the public reserves shall be embellished in accordance with the approved detailed landscape plans, at no cost to Council.

The exception to this is playground equipment and softfall. Council will undertake the installation when 20% or more of the relevant stage's allotments are occupied. The developer must provide the appropriate level area for the play equipment with a minimum fall of 1:100, and a bank guarantee or cash contribution equivalent to the value of such items.

[PSCNS02]

116. The developer is to undertake care and maintenance operations on all streetscapes, casual open space and structured open space for a minimum of 12 months after the Subdivision is registered with the Land and Property Management Authority (Land Titles Office). This is the establishment period for new plantings. Such maintenance will include all soft landscaping, particularly mowing and weed control. Any power and water consumption costs during this period must also be met by the developer.

117. A bond to ensure acceptable plant establishment and landscaping performance at time of handover to Council shall be lodged by the Developer prior to the issue of any Subdivision Certificate. The bond shall be held by Council for a minimum period of 12 months from the date of issue of the Subdivision Certificate (or longer if required by the approved Landscaping Plan) and may be utilised by Council during this period to undertake essential plant establishment or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

118. Prior to issue of a Subdivision Certificate, Work as Executed Plans (WAX) must be submitted for all landscaped casual and active open space. These must show all underground services, irrigation systems and the location of concrete paths, structures, other park infrastructure and garden bed outlines.

The plans are to be certified by a registered surveyor or consulting engineer.

Two categories of WAX plans are to be provided:

- a) The original approved plan with any variation to this indicated.
- b) Plan showing only the actual as constructed information,

The plans are to be submitted in the following formats:

- a) 2 paper copies of the same scale and format as the approved plan.
- b) A PDF version on CD or an approved medium.
- c) An electronic copy in DWG or DXF format on CD or an approved medium.

[PSCNS03]

119. A certification report is to be provided to Council prior to the issue of the first of any subdivision certificate from the project arborist confirming that all remedial tree management works on the *Ficus virens var. sublanceolata* (White Fig) have been successfully completed and provide an evaluation of the health of the tree and if necessary, include recommendations for any further arboricultural works to improve the health and long term viability of the tree.
120. All approved landscaping requirements must be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate.
121. The following restrictions apply to dog and cat ownership and control on all residential lots:
- a. Owners of dogs within the development shall have their yards fenced so as to securely contain a maximum of one (1) dog per allotment and the ownership of cats within the development shall be restricted to one de-sexed cat per allotment and such cats shall be restrained within the house or a secure night cage between the hours of 6.00pm and 6.00am.
 - b. No dog shall be registered without the construction of a dog-proof compound which must be approved by Council and the relevant fee paid by the applicant.
 - c. No owner can retrieve a dog that has been impounded unless they can demonstrate to Council they have a secure compound.

These ownership and control requirements shall be reinforced by a Restrictions as to User under Section 88B of the *Conveyancing Act, 1919-1964*.

[PSCNS04]

GENERAL TERMS OF APPROVAL UNDER THE WATER ACT 1912

1. Before commencing any works or using any existing works for the purpose of dewatering an approval under Part V of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
2. An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.

3. When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.
4. All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
5. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
6. The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
7. All vegetation clearing must be authorized under the Native Vegetation Conservation Act 1997, if applicable.
8. The approval to be granted may specify any precautions considered necessary to prevent pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
9. A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
10. The water extracted under the approval to be granted shall be used for the purpose of dewatering and for no other purpose. A proposed change in purpose will require a replacement license to be issued.
11. Works for construction of a bore must be completed within such period as specified by the Department.
12. Within two months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.
13. The Department has the right to vary the volumetric allocation of the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
14. The licensee must allow authorized officers of the Department, and it's authorized agents reasonable access to the licensed works with vehicles and equipment at any time for the purposes of:
 - 1) Inspecting the said work
 - 2) Taking samples of any water or material in the work and testing the samples

15. The licensee shall within 2 weeks of being notified install to the satisfaction of the Department in respect of location, type and construction an appliance(s) to measure the quantity of water extracted from the works. The appliance(s) to consist of either a measuring weir or weirs with automatic recorder, or meter or meter(s) of measurement as may be approved by the Department. The appliance(s) shall be maintained in good working order and condition. A record of all water extracted from the works shall be kept and supplied to the Department upon request. The licensee when requested must supply a test certificate as to the accuracy of the appliance(s) furnished either by the manufacturer or by some person duly qualified.
16. The authorised work shall not be used for discharge of polluted water into a river or lake otherwise than in accordance with the conditions of a licence granted under the protection of the Environment Operations Act 1997. A copy of the licence to discharge is to be provided to the Department.
17. The maximum term of this licence shall be twelve (12) months.
18. The authorised work shall not be used for the discharge of water unless the ph of the water is between 6.5 and 8.6, or the water has been treated to bring the ph to a level between 6.5 and 8.5 prior to discharge, or the water is discharged through the council's sewerage treatment system.
19. The licensee shall test the ph of any water extracted from the work prior to the commencement of discharge and at least twice daily thereafter and record the date, time and result of each test in the site log. A copy of the records of the ph testing is to be returned with the form 'AG'.
20. The work shall be managed in accordance with the constraints set out in an Acid Sulfate Soil Management Plan and Dewatering Management Plan approved by the Department.
21. The retention or holding pond must be lined with an impermeable material (such as clay or geotextile) to prevent seepage, leakage or infiltration of treated water.

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

1. The development proposal is to comply with the subdivision layout identified on the drawings prepared by B & P Surveys, numbered M31385 (17850B - Revision E) and M31385 (17683 - Revision C) dated 29 January 2014.
2. At the issue of subdivision certificate and in perpetuity the entire area of each newly created lot shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

3. **Prior to issue of a subdivision certificate, a fire management plan is to be prepared for the drainage reserves (asset protection zones) that addresses the following requirements:**
 - a) **Contact person/department and details; and**
 - b) **Schedule and description of works for the construction of asset protection zones and their continued maintenance.**
4. **Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.**
5. **Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006', except that a perimeter road is not required.**
6. **Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.**
7. **General advice - consent authority to note**

Any future development application lodged for a 'special fire protection purpose' development within this subdivision will be subject to requirements as set out in 'Planning for Bush Fire Protection 2006'.

The development application originally proposed an 89 lot subdivision however as a result of consultation within the development assessment process the application has since been amended. The development application now proposes an 88 lot subdivision, primarily on account of the deletion of proposed retail development lot (Lot 1701), and comprises the following key elements:

Stage 15: 24 lots;

Stage 16: 14 detached dwelling lots;

Stage 17: 44 lots, 1 child care centre (Lot 1702), 2 drainage reserves (Lots 1748 and 1749) and 1 park (Lot 1701);

Stage 18: 1 public reserve (Lot 1803) and 1 lot (Lot 1802) for a possible future school site. If the lot is not developed as a school, a separate development application will be lodged for the 65 lot subdivision layout over Stage 18 (generally as indicated by the broken lines on the application plans).

The proposed subdivision is summarised in the following table:

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

Minor landform changes are proposed for road construction and lot shaping as well as the provision of all underground infrastructure including water, sewer, power and telephone services. Proposed Lot 1748 would comprise an existing open drainage channel and is to be dedicated as a drainage reserve. No works are proposed in Lot 1748, with the exception of possible connection of the proposed stormwater drainage within Stage 17 (the northern part of Lot 1748 is zoned 7(l) Environmental Protection). The applicant advised that Lot 1748 would be dedicated subject to Council paying compensation, at market value, for the land on the basis that the drain is only required to address flooding issues arising from Council's inadequate flood modelling.

Following consideration of the proposed subdivision a further information request was sent to the applicant (dated 11 December 2013) to provide clarification in respect to a number of concerns, as detailed further within this report. A response to the further information request was received on 21 March 2014. Amendments have been proposed to the lot layout and lot configuration and additional details provided in respect to flooding, stormwater and drainage, landscaping and park embellishment.

The application was advertised for a period of 30 days from Wednesday 23 October 2013 to Friday 22 November 2013. One submission has been received that raised issues in relation to the proposed Town Centre Site B. As detailed further within this report, the original Town Centre Site A (on the corner of Seabreeze Boulevard and Watego Drive will remain as the nominated Town Centre site for the Seabreeze Estate. On this basis it is considered that the issues raised within the submission in respect to the proposed subdivision have been satisfactorily addressed.

As the proposed subdivision will result in the creation of more than 25 lots it would require a Master Plan under Clause 18 of the State Environmental Planning Policy (SEPP) No 71 - Coastal Protection. Planning & Infrastructure have provided the following in respect to the request for a Master Plan waiver:

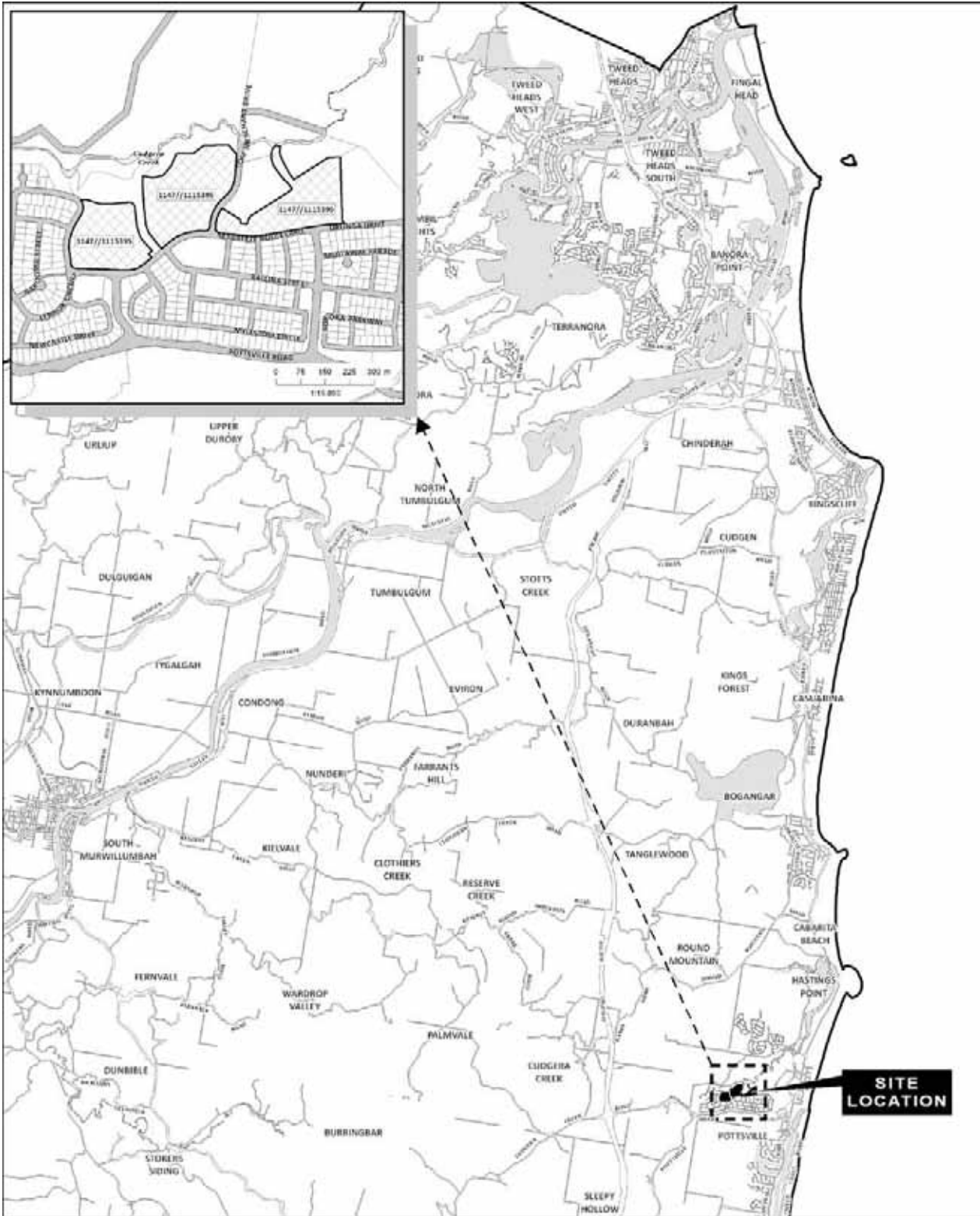
'The existing and draft planning controls applying to the land contain extensive requirements for subdivision and residential development. It is considered that these provisions are adequate to ensure the principles of SEPP 71 are not compromised. A Master Plan is not necessary in this instance.

Pursuant to clause 18(2) of SEPP 71, the need for a Master Plan has been waived'.

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

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

SITE DIAGRAM:



Locality Plan

Lot 1147 DP 1115395
Seabreeze Boulevard, Pottsville

Disclaimer: This study was undertaken to the best of the knowledge of the data. Tweed Shire Council makes no representation or warranty as to the accuracy or reliability of the data. Council is not responsible for any errors or omissions, or for any consequences arising from the use of the information contained in this study. Council is not responsible for any loss or damage, or for any consequences arising from the use of the information contained in this study. Council is not responsible for any loss or damage, or for any consequences arising from the use of the information contained in this study.

Cadastral: 24 April 2014
© Land and Property Management Authority (LPMA) & Tweed Shire Council
Boundaries shown should be considered approximate only.



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E



OVERALL SITE ANALYSIS PLAN:



OVERALL SITE ANALYSIS

NOTES:
 1. THIS PLAN IS A PRELIMINARY PLAN AND SHOULD NOT BE USED FOR CONSTRUCTION OR AS A BASIS FOR ANY OTHER DECISIONS.
 2. THE PLAN IS SUBJECT TO THE APPROVAL OF THE LOCAL COUNCIL.
 3. THE PLAN IS SUBJECT TO THE APPROVAL OF THE DISTRICT COUNCIL.

GENERAL NOTES:
 1. THE PLAN IS SUBJECT TO THE APPROVAL OF THE LOCAL COUNCIL.
 2. THE PLAN IS SUBJECT TO THE APPROVAL OF THE DISTRICT COUNCIL.

PROJECT INFORMATION:
 PROJECT NAME: OVERALL SITE ANALYSIS
 CLIENT: NIKLAND DEVELOPERS PTY LTD
 DATE: 11/06/14

APPROVALS:
 LOCAL COUNCIL: [Signature]
 DISTRICT COUNCIL: [Signature]

CONTACT INFORMATION:
 NIKLAND DEVELOPERS PTY LTD
 11/06/14

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced [and] to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

In general it is considered that the proposed subdivision would accord with the aims of the Tweed Local Environmental Plan (TLEP) 2000. The application has been referred to the relevant units in Council who have considered relevant details relating to flooding, land forming, and ecological impacts. It is considered that the proposal would be consistent with the nature and scale of low density residential development in the locality.

Clause 5 - Ecologically Sustainable Development

The intent of this clause is to provide for development which is compatible with principles of ecological sustainable development (ESD) including the precautionary principle, inter-generational equity, ecological and environmental factors.

It is considered that the proposal would be consistent with the objectives of the zone, as detailed further within this report. It is also considered that, given the site does not comprise any protected or endangered vegetation communities, that the proposal would be unlikely to result in irreversible environmental damage and would accord with the principles of ecological sustainable development, provided the development is carried out in accordance with the recommended conditions of consent.

Clause 8 - Consent Considerations

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

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

The land to which this application relates is zoned part 2(a) Low Density Residential and part 7(l) Environmental Protection (Habitat) under the provisions of LEP 2000. As detailed with Clause 11 it is considered that the proposed subdivision is generally consistent with the objectives of the 2(a) and 7(l) zones. The proposal is also consistent with the other aims and objectives of this Plan

and would be unlikely to have an unacceptable cumulative impact on the community, locality or on Tweed as a whole.

Clause 11 - Zone Objectives

The primary objectives of the 2(a) Low Density Residential zone are as follows:

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

Secondary objectives include:

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

The development for the purposes of a subdivision is permissible, with consent, in the 2(a) zone. The proposal is consistent with the primary objective of the zone, in the provision of a low density residential environment with a predominantly detached housing character and amenity.

The proposed residential lots comply with the minimum lot size of 450m².

Development for the purpose of a childcare centre is permissible with consent in the 2(a) zone and a separate Development Application will be lodged at a future point for this use.

The primary objectives of the 7(l) Environmental Protection (Habitat) zone are:

- *To protect areas or features which have been identified as being of particular habitat significance.*
- *To preserve the diversity of habitats for flora and fauna.*
- *To protect and enhance land that acts as a wildlife corridor.*

Secondary objectives include:

- *To protect areas of scenic value;*
- *To allow for other development that is compatible with the primary function of the zone.*

Dwelling houses are permissible with consent in the 7(l) zone provided they are on an allotment of at least 40 hectares or on an allotment referred to in Clause 57.

The area of 7(l) zoned land is limited to approximately 720m² at the northern end of proposed Lot 1748, that is proposed to be dedicated to Council as a drainage reserve as it contains an existing constructed open channel. The portion of land zoned 7(l) will therefore not include any residential development components.

The SEE advises that dedication of proposed Lot 1478 is authorised by Clause 20(3) of the LEP 2000 and also by Clause 111 of SEPP (Infrastructure) 2007, as detailed further within this report.

Clause 15 - Essential Services

An Engineering Services Report has been provided that indicates all necessary urban services are available to the site. Council's reticulated water and sewer

infrastructure is available to the area with electricity and telecommunication services provided via Country Energy and Telstra.

It is noted that in respect to sewer provision the proposal is considered as conceptual only. There are multiple bends and changes of angles shown on proposed sewer plans (without manholes) that will require considerable attention prior to the final design.

It is noted that there is no requirement for a sewer pump station with the current proposal, although any future residential development of Lot 1802 (potential future school site) may require a Lift Station.

Suitable conditions will be applied to the consent in respect to the connection of sites to essential services.

Clause 17 - Social Impact Assessment

The threshold trigger for the preparation of a Social Impact Assessment (SIA) report for a subdivision (under the guidelines of Section A13 of the Tweed DCP) is 50 lots. The proposed subdivision comprises 88 lots and accordingly a SIA has been prepared. The SIA considers that the proposal would be consistent with the objectives of the zone and is generally consistent with the density controls and design guidelines pursuant to Section A5 - Subdivision Manual, Section B 15 - Seabreeze Estate and Section B21 - Pottsville.

It is considered that the proposal is generally consistent with the provisions of the relevant statutory controls and guidelines and would be in keeping with the general character and scale of built development within the Pottsville locality.

The proposal would be unlikely to create any adverse social or economic impacts and will result in the completion of the Seabreeze Estate.

Clause 19 - Subdivision

The proposed subdivision is permissible with consent in the 2(a) Low Density Residential Zone. The proposed residential lots comply with the minimum lot size per dwelling house of 450m².

Clause 20 - Subdivision in Zones 1(a), 1(b), 7(a), 7(e) and 7(l)

Clause 20(2) advises that consent may only be granted to the subdivision of land in the 7(l) zone if the area of each allotment created is at least 40 hectares. Clause 20(3) advises however that despite subclause (2), consent may be granted to the subdivision of land where an allotment created is less than 40 hectares if the allotment will be used for a purpose other than for an agricultural or residential purpose.

The drainage channel within the proposed reserve is existing. Therefore that part of Lot 1748 zoned 7(l), that is to be dedicated as a drainage reserve, is therefore authorised by Clause 20(3) as it will not be utilised for residential or agricultural purposes.

Clause 31 - Development Adjoining Waterbodies

This clause applies to land that adjoins the mean high-water mark of a waterbody. This clause seeks to ensure that the scenic quality, water quality, aquatic ecosystems and biodiversity values are not impacted by development as well as to ensure that adequate public access to waterways are provided.

The development site comprises proposed Lot 1748 that adjoins Cudgera Creek and therefore this clause applies. The proposed development however does not propose any works within Lot 1748 (that will be dedicated to Council as a drainage reserve). Therefore it is considered that the proposal is consistent with this clause.

Appropriate revegetation of the creek foreshore and setback criteria have been considered within previous approvals. No additional public access points to the creek are proposed at this stage and whilst there may be potential to consider improved creek access at a future point, Council Officers consider that any such access at this stage would be likely to have an adverse effect on bushland restoration plantings adjacent to the levee.

The application has been referred to the NSW Office of Water who have provided General Terms of Approval (GTAs) for works requiring a controlled activity approval that will be applied to any development consent.

It is considered that the proposed subdivision is generally consistent with this Clause.

Clause 34 - Flooding

The objectives of this Clause are to minimise future potential flood damage by ensuring that only appropriate development occurs on flood liable land and to minimise the effects of flooding on the community.

The SEE advised that the 'site is located above the design flood level with the existing site levels being generally higher than RL 3.0m AHD, with the exception of the proposed public reserve Lot 1803 which will require minor filling for embellishment and drainage. Minor reshaping will be required to ensure that all lots are drained to the proposed streets'.

It is acknowledged that the land has previously been filled so only requires relatively low scale regrading and provision of infrastructure with site levels generally varying between RL 3.5m - 4.5m AHD, with some lower sections at RL 2.5m AHD. The application advises that the design flood level (based on the current day 100 year ARI flood) varies from RL 2.7m - RL 3.1m AHD across the site. The majority of the site is well elevated above this level, with the exception of the western portion of Stage 16, where the subdivision adjoins Lennox Circuit.

The original application details did not provide any flood affectation mapping, however based on engineering design plans submitted with the Annexure 5 Engineering Services Report (ESR), it appears that lots 1061, 1602, 1603, 1611, 1612, 1613 and 1614 would be partially inundated in such an event. As detailed further within the assessment of Section A3 of the DCP, the design flood levels for 'greenfield' subdivisions be based on climate change affected 100 year ARI. This would increase the design flood level in Stage 16 to RL 3.6m AHD, which increases the potential flood affectation to all lots in this stage. The applicant was requested to provide commentary in respect to this matter or request a variation from this greenfield filling requirement and submit an amended fill design.

An Amended Engineering Services Report (March 2014, Revision 9) has been submitted to Council that provides further detail in respect to flood immunity and the provision of high level evacuation routes. It is generally considered that the proposed development is satisfactory from a flooding perspective however as detailed further within this report a number of conditions will be applied to any Development Consent to ensure that the proposed subdivision is consistent with the requirements of DCP A3.

An Amended Engineering Services Report (March 2014, Revision 9) has been submitted to Council for consideration that have provided level details as requested and has provided further detail in respect to the construction of batters along many of the external road frontages to accommodate increased fill levels due to flood immunity requirements.

Flood immunity

In relation to flood immunity of Stage 16 allotments (to ensure they are above the design flood level (DFL)), climate change affected design flood levels vary across the site, with RL 3.6m AHD being the worst case in Stage 16, off Lennox Circuit. The amended plans have changes all lot levels throughout Stages 15-18 to meet the minimum RL 3.6m AHD.

It is considered that whilst this conservative approach is acceptable from a flooding perspective, it appears unnecessary across the whole development and has other impacts on access and urban design in areas where the fill level could be reduced significantly to than now proposed (e.g. climate change affected DFL in Stage 17 is only RL 2.8m AHD). It appears that the consultant engineer has not reviewed Council's flood maps in detail with this regard.

As detailed within Section A3 of this report, clarification has been provided from Council's flood modelling consultants that RL 3.6m AHD is the acceptable design flood level in Stage 16, due to the irregular flood gradient that presents in the mapping in this location. It has therefore been recommended that the lower design flood level in this region should be adopted, based on predicted levels in the adjacent wetland and overland flow paths.

This scenario should have benefits for the extent of fill required for flood immunity under DCP A3. The following DFL for each subdivision stage are as follows:

Stage 15 = RL 3.1m AHD

Stage 16 = RL 3.2m AHD

Stage 17 = RL 2.8m AHD

Stage 18 = RL 3.1m AHD

A condition will be applied to any Development Consent to ensure that all residential allotments are filled to a minimum of the DFL.

High level evacuation route

The applicant was requested to provide level details of adjoining public roads to determine whether the high level evacuation route requirements as set out in DCP A3 are met or whether upgrades to existing road infrastructure are required.

The submitted Amended Engineering Services Report generally advises that there are no changes to road carriageway or verge levels in the revised plans. Level changes have been taken up by additional filling of the residential lots. The report has provided limited information in respect of proposed evacuation routes and the area of concern remains Stage 16, where road levels are well below the required climate change affected DFL.

It is acknowledged that the existing road network may be deficient in some areas with respect to levels however this needs to be adequately addressed and alternate measures put in place (such as pedestrian accesses) due to potential impacts on public safety and emergency response. A condition will be applied to

any Development Consent to ensure that all residential allotments are to be provided with a high level flood evacuation route in accordance with DCP A3.

Clause 35 - Acid Sulfate Soils

Under the provisions of Clause 34 the applicant has agreed that Acid Sulfate Soil (ASS) is present and has therefore submitted an ASS Management Plan. The Plan advises that the site was previously filled under development consent K99/1837 from material sourced from other stages of the Seabreeze Estate development and that excavations for site works will mostly be within fill material however some areas where ASS is identified will require excavation.

The Plan's management approach states a Phase 1 ASS Investigation would be undertaken prior to the commencement of bulk earthworks in accordance with relevant guidelines and provisions. The consent authority must therefore consider the adequacy of the Management Plan in accordance with the relevant guidelines and the likelihood of the proposed development resulting in the oxidation of ASS and discharge of acid water from the area of the proposed works.

It is considered the Management Plan has as yet to be prepared in consideration of site specific investigations. As complete mixing and validation is not proposed this may lead to the oxidation of ASS and therefore the discharge of acid water potentially into low lying floodplain adjoining Cudgera Creek. However it is considered that sufficient investigations have been carried out to determine that the proposed site works can be appropriately managed. Conditions of consent will be applied to any development consent to ensure that a site specific management plan is prepared detailing investigations, treatment and validation in accordance with the ASS Management Advisory Committee (ASSMAC) Guidelines.

Clause 39 - Remediation of Contaminated Lands

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

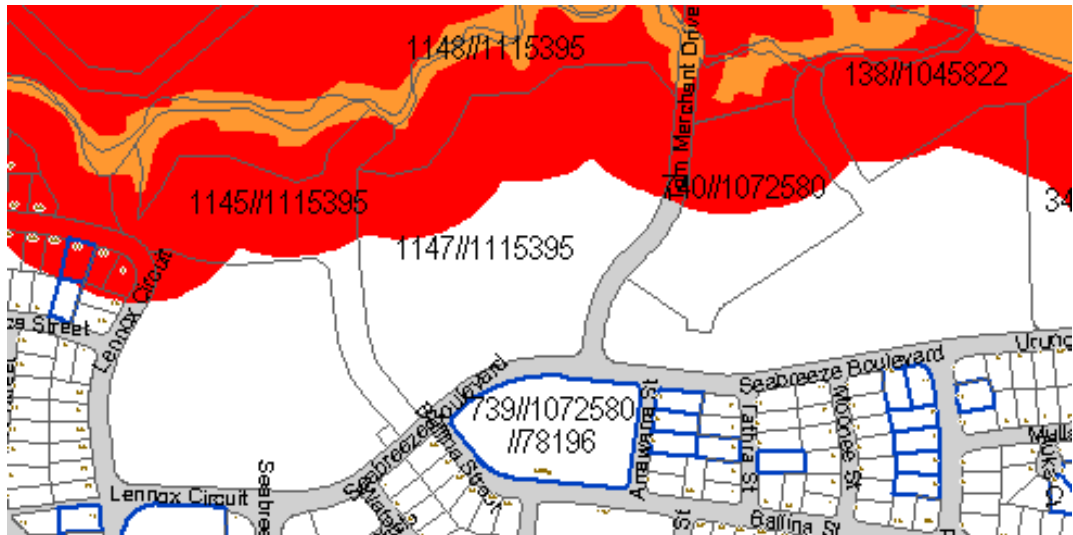
The application includes an Acid Sulfate Soil Management Plan (prepared by Gilbert & Sutherland, Dated August 2013) that provides a detailed assessment of the site based on extensive prior investigation and concludes that no indications, evidence or record of contamination has been observed. The Plan concludes that the subdivision area '*would be free from contamination*'.

Prior investigations and current statements provided have been prepared by a suitably qualified and experienced person however no consideration of land contamination since the 1999 approval for fill has been provided. On this basis further information was required to address any potential contamination considerations since the filling of land was undertaken under the original approval of development consent K99/1837.

The applicant has advised that since the filling work was completed the site has been grassed and regularly mowed and has not been used for any purpose since filling was completed and is therefore suitable for the proposed development and therefore no further clarification is required in respect of land contamination.

Clause 39A - Bushfire Prone Land

The northern portion of the subject land is bushfire prone as shown in the following extract of Council's GIS imagery:



A Bushfire Threat Assessment Report has been provided that states: *'The report has established the performance criteria of Planning for Bushfire Protection 2006 can be achieved having regard to asset protection zones, construction standards, water supply, gas and electrical services and landscaping'.*

The proposed development was referred to the NSW Rural Fire Service (RFS) in accordance with Section 91 of the EP & A Act 1979 as integrated development. The RFS have advised that insufficient information had been received to properly assess the application and the following points (as summarised) were required to enable further assessment:

1. No details provided regarding the proposed Special Fire Protection Purpose (SFPP) development (school);
2. Clarification of ownership (current and proposed) of the existing and proposed water quality treatment ponds and drainage reserves adjoining Lot 1147 DP 1115395;
3. Dimensions of the width of the proposed drainage reserve to the north of proposed Lot 1802;
4. Confirmation of Council's agreement to the ongoing management of the existing water quality treatment ponds with a copy of any Management Plan applying to the land;
5. The Bushfire Threat Assessment Report recommends that a perimeter road is not required and the report is to be amended to include consideration of the relevant performance criteria within *'Planning for Bushfire Protection 2006'* with respect to this recommendation.

In response the applicant has provided the following response to the points detailed above:

1. It is confirmed that the application is for a subdivision only. Any future school site on proposed Lot 1802 will be subject to a separate Development Application;
2. The existing drainage reserves are owned by Council and the proposed drainage reserves will also be dedicated to and owned by Tweed Shire Council;
3. The plan at Annexure 4 clearly shows the dimensions and widths of the proposed drainage reserve to the north of proposed Lot 1802;

4. Officers of Council have advised that '*Council maintains the drainage reserve and there is not a specific Management Plan. Council's Bushland Officer, John Turnbull foresees no issues in using the drainage reserve as an asset protection zone, and the existing maintenance regime (i.e. slashing) should adequately address RFS requirements for fuel reduction*';
5. An amended Bushfire Threat Assessment Report prepared by Bushfire Certifiers Pty Ltd, dated 3 March 2014 has been submitted that advises it is noted that a perimeter road is the 'preferred' option however other options are acceptable depending on merit. The report states that: '*the purpose of a perimeter road is to provide a control line from which to conduct hazard reduction or back burning options. Given that primary hazard is remnant vegetation along a creek line and some grassland with managed areas between the housing and the hazard it is unlikely that control lines for hazard reduction will be needed*'.

On 9 April 2014 the NSW RFS provided their General Terms of Approval (GTAs) to ensure adequate provision of inner protection areas; to ensure the drainage reserves to the north of Stages 16, 17 and 18 are managed as an asset protection zone; to ensure that a fire management plan is prepared for the drainage reserves and matters relating to infrastructure provision (water and utilities and access) and landscaping are in accordance with the RFS document '*Planning for Bush Fire Protection 2006*'.

Clause 52 - Zone Map Overlay Provisions

The objective of this clause is to apply special provisions relating principally to environmental protection within particular areas shown on the zone map. The subject land is shown crosshatched on the zone map and therefore Clause 52 applies.

Clause 52 continues to advise that consent must not be granted for development unless the consent authority has considered detailed plans of the development in respect to the adequacy of proposed measures in a soil and water management plan (for the purpose of maintaining and improving the quality of water entering Cudgera Creek); measures to control sediment erosion and disturbance from the development site as well as whether the proposed measures in a flora and fauna management plan for habitat enhancement and management along the eastern boundary of the land adjacent to Cudgera Creek are satisfactory.

With this respect the applicants have submitted an ASS Management Plan, Stormwater Management Plan and Stormwater Quality Treatment Plan. These reports advise that suitable measures will be in place to ensure that the development does not impact on matters relating to water quality.

A report from JWA Ecological Consultants dated 27 September 2013 has been prepared advising that the proposed development will have no implications in respect to Koala Habitat (as the site comprises no Koala feed trees or habitat having been previously cleared of vegetation). The report also advises that the proposal will be unlikely to impact on matters relating to the *Environmental Protection and Biodiversity Conservation* (EPBC) Act 1999. The report states that a number of listed threatened flora and fauna species are present within the wider locality however it is not considered likely that the proposed development will have any significant impact on a species listed as Threatened in the *Commonwealth Endangered Species Protection Act* (1992).

It is considered that the proposal is generally in accordance with Clause 52.

Clause 53E - Specific Provisions for Seabreeze Estate - Stage 2

The objectives of this clause are:

- (a) To allow for future urban development and the conservation of ecological and riparian corridors and areas of visual significance on land to which this clause applies,
- (b) To ensure that development on land to which this clause applies occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.

On 3 December 2013 Council adopted the current version (1.3) of DCP B15 - Seabreeze Estate, Pottsville. This document sets a comprehensive and integrated set of objectives, criteria and measures to cover the essential aspects of residential and non-residential development. The adopted DCP has addressed each of the matters as set out in subsection (6) of the Clause, such as an overall staging plan; overall transport movement hierarchy; overall landscaping strategy and measures to accommodate appropriate neighbourhood commercial and retail uses. As detailed within this report, it is considered that the proposed subdivision is generally in accordance with the provisions of this document.

The clause also advises that development consent must not be granted until the consent authority is satisfied that adequate arrangements have been made to make the supply of water and electricity, the disposal and management of sewage and suitable road access available when required.

It is considered that adequate provision would be available to the proposed subdivision for essential services. Reticulated water supply and sufficient sewer capacity is available. The existing road network comprising Pottsville and Mooball Road, Seabreeze Boulevard and the proposed internal streets are considered suitable for the proposed subdivision. Electricity supply is available within the street network adjacent to the development site.

Clause 54 - Tree Preservation Order (TPO)

The subject land is covered by the TPO 2011 (Koala Habitat) with a small portion of the south of the site covered by the TPO 1990 and therefore this clause applies. The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

The site has been previously cleared of vegetation with the only remaining tree being the single White Fig (*Ficuns virens var. sublancoolata*). Appropriate measures will be made to reinstate the health of this tree to ensure its longevity. It is considered that the proposal is unlikely to raise any implications in respect of Council's TPO on the subject land.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

A Land Use Conflict/Agricultural Land Use review has been carried out by Gilbert & Sutherland, dated 17 June 2013. The review included the consideration of the NSW Living and Working in Rural Areas Handbook prepared by NSW DPI and Northern Rivers CMA.

The review included details of a risk based assessment approach however the assessment has not adequately considered the impacts from the application of pesticides from aircraft, noise nuisance generated from farm activities and times of activities, dust generation from internal farm roads, smoke and ash and the strong northerly winds that are experienced along coastal areas.

The proposed separation distance of a minimum of approximately 80m does not comply with the recommended distance of 300m within the NSW Living and Working in Rural Areas Handbook, which is a guiding document based on best practice.

The Tweed Shire DCP A5 Subdivision Manual recommends a buffer of 150m including a biological buffer of 30m however allows a reduction to 80m where the application of chemicals be not from aircraft activities. It is therefore considered that as the application of chemicals may be from aircraft either now or in the future any consent provided to create proposed lots 1821 to 1831 may encroach on the activities of the northern adjoining rural activities due to the provisions of the NSW Pesticide Act and likely spray drift impacts particularly in adverse local weather conditions thereby exposing future residential occupiers to a potential public health risk.

The relaxation of the buffer distance beyond that of the Tweed Shire DCP A5 Subdivision Manual is not supported and therefore further clarification was requested from the applicant with this regard.

The applicant has advised that: *'the layout shown over Lot 1802 is conceptual only and has been included to provide an indication of the likely layout and future yields in the event that the school does not proceed' and it is 'emphasised that Lots 1821 to 1831... do not form part of this Development Application. Therefore Council's concerns in relation to this matter are not relevant. Agricultural buffer requirements in relation to any future school on Lot 1802 will need to be addressed in the design of the school and subsequent Development Application'.*

Whilst the site has been identified as a potential school site with a conceptual lot layout for residential lots, the proposed subdivision does not approve Lot 1802 as either a school site or for residential allotments. The future use of Lot 1802 will be subject to a future development application and merit assessment.

It is therefore considered that land use conflicts identified within Stage 18 may be addressed within any future development applications on the subject site.

Clause 15: Wetlands or Fishery Habitats

Clause 15 states that the council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered a number of matters such as: the need to maintain or improve the quality or quantity of flows of water to a wetland or habitat; and loss of habitat that is likely to be caused by the development; whether the development would result in pollution to the wetland; the need to ensure that native vegetation surrounding the wetland is conserved and so on.

The application has been referred to the NSW Office of Water (NOW) as the proposal incorporates the possible need for dewatering. NOW have advised that any take of water as a result of minor temporary dewatering activities that is estimated to be less than 3 megalitres per year (3ML/yr) will generally not require a license or approval. NOW advise that it is the applicant's responsibility to assess and monitor water take and impacts and to advise NOW if they exceed these conditions, at which time a license must be obtained.

General Terms of Approval (GTAs) will be applied to any Development Consent to ensure that a license is obtained for any dewatering in excess of 3ML/yr.

It is generally considered that the proposed subdivision would be unlikely to impact on matters relating to the drainage catchment or to Cudgen Creek. Conditions will be applied to the consent to ensure that suitable sediment and erosion controls are in place and the proposal is considered unlikely to result in any clearance of vegetation along the riparian buffer to the creek.

It is considered that the proposal is consistent with this Clause.

Clause 32B: Coastal Lands

The subject land is designated coastal land and therefore this clause applies. The clause requires the consideration of the NSW Coastal Policy 1997 that seeks to: protect, rehabilitate and improve the natural environment; protect and enhance aesthetic qualities and cultural heritage; and to provide for ecologically sustainable human development in the coastal zone.

The subject site is located approximately 1.5km from the coastal foreshore and will therefore not restrict public access to the coastal foreshore. As detailed within this report, the site has been previously cleared of vegetation and has been significantly disturbed over the years. It is therefore considered that the proposal would be unlikely to impact on matters relating to cultural heritage or ecological values of the locality.

It is generally considered that the proposed subdivision would provide a residential environment similar to that of the existing Seabreeze Estate, being low density residential allotments. It is therefore considered that the proposal would be consistent with the nature of built development in the locality.

Clause 43: Residential development

Clause 43 states that Council shall not grant consent to development for residential purposes unless:

- (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
- (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
- (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
- (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
- (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

In general it is considered that the proposed development has optimised the residential yield from the subject land. The zoning of the subject site is that of low density residential with a minimum site area of 450m² per lot. The proposed subdivision will retain a low density character consistent with surrounding built development in the locality.

The amended Subdivision Plans have improved the overall connectivity of the site and in general will allow for pedestrian thoroughfare within the subdivision.

Conditions will be applied to the Development Consent to ensure that suitable sediment and erosion controls are in place throughout the construction phase.

SEPP No. 14 - Coastal Wetlands

An area mapped as SEPP 14 wetland is located approximately 200m to the north and approximately 500m to the south of the subject site. The development site is buffered by wetlands and drainage reserve with Cudgera Creek being located to the north of the site and sports fields to the north and east. To the south the site is buffered from the wetland by the existing Seabreeze Estate and Pottsville Road. The proposed subdivision is therefore not considered to raise any implications in respect of SEPP 14.

SEPP (Infrastructure) 2007

This policy aims, amongst other things, to provide greater flexibility in the location of infrastructure and service facilities. The subject site incorporates a small portion (720m²) of land zoned 7(l) Environmental Protection within the current LEP 2000 and E2 Environmental Conservation within the Draft LEP 2012. This portion of environmentally sensitive zone land is located at the northern end of proposed Lot 1748, and is proposed to be dedicated to Council as a drainage reserve as it contains an existing constructed open channel.

The portion of land zoned 7(l) will therefore not include any residential development components. The SEE advises that dedication of proposed Lot 1478 is authorised by Clause 20(3) of the LEP 2000 and also by Clause 111 of SEPP (Infrastructure) 2007. Clause 111 states that development (such as construction works, routine maintenance or environmental management works) for the purpose of stormwater management systems may be carried out by or on behalf of a public authority without consent on any land.

On this basis development for the purpose of stormwater drainage works may be undertaken without development consent under the provisions of this SEPP.

SEPP No. 55 - Remediation of Land

The aim of SEPP 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

The application includes an Acid Sulfate Soil Management Plan (prepared by Gilbert & Sutherland, Dated August 2013) that provides a detailed assessment of the site based on extensive prior investigation and concludes that no indications, evidence or record of contamination has been observed. The Plan concludes that the subdivision area '*would be free from contamination*'.

Prior investigations and current statements provided have been prepared by a suitably qualified and experienced person however no consideration of land contamination since the 1999 approval for fill has been provided. On this basis further information was required to address any potential contamination

considerations since the filling of land was undertaken under the original approval of development consent K99/1837.

The applicant has advised that since the filling work was completed the site has been grassed and regularly mowed and has not been used for any purpose since filling was completed and is therefore suitable for the proposed development.

On this basis no further consideration is required in respect to contaminated land.

SEPP No 71 – Coastal Protection

This Policy aims to, amongst other things, protect and manage the natural, cultural, recreational and economic attributes of the NSW coast; protect and improve existing public access to and along the coast; to protect and preserve Aboriginal cultural heritage; to ensure visual amenity of the coast is protected; to protect beach environments and beach amenity as well as coastal vegetation and the marine environment; to manage the coastal zone in accordance with the principles of ecologically sustainable development; to ensure the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area; and encourages a strategic approach to coastal management.

The site is located within a 'sensitive coastal location' due to the location being within 100m of the mapped high water mark of Cudgera Creek. As the subdivision of land is located within a residential zone a Master Plan or waiver is required by Clause 18(1) of the SEPP.

Planning & Infrastructure have provided the following in respect to the request for a Master Plan waiver:

'The existing and draft planning controls applying to the land contain extensive requirements for subdivision and residential development. It is considered that these provisions are adequate to ensure the principles of SEPP 71 are not compromised. A Master Plan is not necessary in this instance.

Pursuant to clause 18(2) of SEPP 71, the need for a Master Plan has been waived'.

The proposed development will not alter the existing public access arrangements to the coastal foreshore or along Cudgera Creek. Given the sensitive nature of vegetation along Cudgera Creek riparian buffer and the nature of the levee bank in this location it is considered that providing an additional pedestrian access to the creek would not be favourable at this time, to ensure the longevity and protection of sensitive native vegetation.

It is considered that the proposed subdivision is generally consistent with the relevant provisions of the former LEP 2000 and LEP 2014 as well as the aims and objectives of DCP B15 - Seabreeze Estate. The proposed development would be unlikely to have any adverse impact on the amenity of the coastal foreshore in respect of overshadowing or loss of views as the site is located approximately 1.5km from the coastal foreshore.

The site has been previously cleared of substantial vegetation and has been highly disturbed. It is therefore considered that the proposal would be unlikely to impact on Threatened Species, wildlife corridors or habitats. Further, the site does not comprise any marine vegetation. Conditions will be applied to any Development Consent in relation to sediment and erosion controls to ensure no

impact to water quality. As the site has been previously cleared and filled it is unlikely that the proposal would impact on matters relating to the conservation and preservation of items of heritage or archaeological significance however a condition shall be applied to ensure that should any relics be found that work is to cease immediately and appropriate authorities advised.

It is generally considered that the proposal is in accordance with the provisions of the SEPP.

SEPP (State and Regional Development) 2011

The SEPP nominates a range of developments for which the Minister is the consent authority or determination is made by joint regional planning panels depending on the class of development and certain developments on specified sites.

Clause 8 of the SEPP identifies State Significant Development as being development as specified in Schedule 1 or 2. The subject site or proposed development is not listed within either Schedule 1 or 2 of the SEPP.

Clause 20 identifies Regional Development as development described in Schedule 4A of the *Environmental Planning and Assessment Act (EPA Act) 1979*. The proposed subdivision has a capital investment value (CIV) of less than \$20 million (\$4,683,802.00); Council is not the applicant or the owner of the land; the development is not being carried out by Council; the proposal is not a Crown development; does not propose telecommunication facilities or the like; is not designated development and does not involve subdivision into more than 100 lots. Therefore the proposal is not deemed to be Regional Development.

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

The Draft Tweed LEP 2014 was formally gazetted on 4 April 2014. Prior to the gazettal of this document the provisions within the Draft LEP were of considerable weight given the document was considered to be certain and imminent at the time the development application was lodged. As detailed whilst the Tweed Local Environmental Plan (LEP) 2014 was formally gazetted on 4 April 2014, the development application has been considered under the provisions of the Tweed LEP 2000 as the application was lodged on 20 November 2013.

The relevant provisions of the Tweed LEP 2014 are as follows:

1.2 Aims of Plan

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

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

cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,

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

The subject land is zoned R2 Low Density Residential and E2 Environmental Conservation. The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible at this location.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is primarily zoned as R2 Low Density Residential with a small portion of Lot 1748 being zoned as E2 Environmental Conservation.

2.3 Zone objectives and Land Use Table

The LEP 2014 zones the development area as R2 Low Density Residential. The objectives of this zone are:

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

In general it is considered that the proposed subdivision would be consistent with the objectives of the R2 zone as the proposed allotments accord with the minimum allotment size and the proposal would not conflict with land uses within the zone. It is considered that the proposal would be in keeping with surrounding built development in the Seabreeze Estate.

A small portion of the site is also zoned E2 Environmental Conservation. The objectives of the E2 zone are as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values;*
- *To identify lands set aside primarily for conservation or environmental amenity,*
- *To protect, manage and restore environmentally sensitive areas including lands subject to coastal erosion.*
- *To prevent development that would adversely affect or be adversely affected by coastal processes.*

In respect of the E2 zone, the applicant advises that Clause 111 of the SEPP (Infrastructure) 2007 prevails over the LEP and provides that development for the purpose of stormwater drainage works may be undertaken without development consent.

It is considered that the proposed development would be unlikely to raise any matters in respect of the E2 zone.

2.6 Subdivision - consent requirements

This clause states that land to which this Plan applies may be subdivided, but only with development consent.

The application seeks an 88 lot subdivision.

4.1 Minimum subdivision lot size

The objectives of this clause are:

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

The minimum lot size remains as per the requirements of LEP 2000 at 450m² per lot in the R2 zone. The proposed subdivision complies with the minimum lot size requirements in the R2 Zone. The minimum lot size requirement in the E2 zone is 40 hectares. The area of E2 zoned land is limited to approximately 720m² at the northern end of proposed Lot 1748, that is proposed to be dedicated to Council as a drainage reserve as it contains an existing constructed open channel.

The portion of land zoned E2 will not include any residential development components.

The SEE advises that dedication of proposed Lot 1478 is authorised by Clause 111 of SEPP (Infrastructure) 2007. The exception to this development standard is also addressed below:

4.2 Exceptions to development standards

This clause seeks to provide flexibility in applying certain development standards to a particular development. Subdivision 6 states that development consent must not be granted in the E2 zone if:

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

The proposed subdivision will not result in 2 or more lots of less than the minimum area.

5.3 Development near zone boundaries

This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance between land zoned R2 and RU2 Rural Landscape is 50m. The northern boundary of the proposed subdivision would be approximately 70m (with Cudgen Creek as a buffer) between the R2 land and the RU2 land to the north.

5.5 Development within the coastal zone

The objectives of this clause are as follows:

- (a) *to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,*
- (b) *to implement the principles in the NSW Coastal Policy, and in particular to:*
 - (i) *protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and*
 - (ii) *protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and*
 - (iii) *provide opportunities for pedestrian public access to and along the coastal foreshore, and*
 - (iv) *recognise and accommodate coastal processes and climate change, and*
 - (v) *protect amenity and scenic quality, and*
 - (vi) *protect and preserve rock platforms, beach environments and beach amenity, and*
 - (vii) *protect and preserve native coastal vegetation, and*
 - (viii) *protect and preserve the marine environment, and*
 - (ix) *ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
 - (x) *ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and*
 - (xi) *protect Aboriginal cultural places, values and customs, and*
 - (xii) *protect and preserve items of heritage, archaeological or historical significance.*

As previously detailed within this report it is considered that the proposed subdivision would be generally in keeping with the character, nature and scale of existing low density residential development in the locality. The subject land has

been significantly altered as a result of the previous development approval K99/1837 (Stages 1 to 14 Seabreeze) that has largely shaped the nature of this remaining portion of the residential subdivision. Therefore the proposed subdivision is unlikely to impact on matters relating to ecology or habitat values. The proposed lots will meet the desired pattern of residential development, being consistent with this Plan as well as the aims and objectives of relevant DCPs specific to the locality.

The proposed development would be unlikely to result in significant landforming or earthworks to accommodate the proposal. The proposal seeks to retain the White Fig tree (*Ficus virens var. sublancaolata*) on proposed Lot 1803 (Fig Tree Park) and conditions will be applied to any Development Consent to ensure the health of this tree is remarkably improved from its current state. This tree contributes significantly to the visual amenity and ecological value of the area and it is anticipated that it will remain an important feature within the Seabreeze Estate.

Future development proposals will need to consider whether proposed built development is responsive to the site and contributes to the character of this coastal location. This is particularly important in the consideration of future development proposed Lot 1702 (that occupies a prominent location on the corner of Tom Merchant Drive and Seabreeze Boulevard). This site is a landmark location and the use of the corner site should be of a higher order than a single dwelling house and should represent a positive opportunity for the Seabreeze Estate.

Clause 5.9 Preservation of trees or vegetation

This clause seeks to preserve trees or vegetation and to protect the amenity of the area including biodiversity values. As detailed within this report the subject site has been significantly disturbed over the years and does not comprise any remnants of native vegetation or significant habitat for flora or fauna. Conditions will be applied to ensure that the existing White Fig Tree is suitably protected and its health enhanced.

5.10 Heritage conservation

The objectives are to conserve the environmental heritage of the Tweed as well as to conserve Archaeological objects and Aboriginal places of heritage significance. As detailed the subject land forms part of the broader Seabreeze Estate subdivision and has been earmarked for residential development for a number of years, subject to development consent K99/1837. A condition will be applied to any Development Consent in respect to the preservation of items of significance.

6.2 Public utility infrastructure

This clause seeks to ensure that development consent is not granted until the Council is satisfied that any public utility infrastructure is available. As detailed in this report it is considered that all necessary infrastructure will be able to be made available to the proposed development.

6.3 Development control plan

This clause requests that development on land in an urban release area occurs in a logical and cost-effective manner in accordance with any staging plan and only after a DCP has been prepared for the land. The proposed subdivision is generally consistent with DCP B15 - Seabreeze Estate that has been prepared

for the subject land and it is considered that the proposed subdivision will allow for the timely and efficient release of the land.

In general the proposal provides for major circulation routes and connections to achieve safe movements for private vehicles, public transport and pedestrians. An overall landscaping strategy has been provided and further clarification will be requested via the issue of a Construction Certificate.

7.1 Acid sulfate soils

As detailed within this report it is considered unlikely that the proposal will raise any concerns in respect of ASS.

7.6 Flood planning

The objective of this clause is:

- (a) *To minimise the flood risk to life and property associated with the use of land;*
- (b) *To allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change;*
- (c) *To avoid significant adverse impacts on flood behaviour and the environment.*

As detailed within this report it is considered that matters in respect of flooding may be satisfactorily addressed without the requirement for large scale filling or retaining walls over the subject site. A number of conditions will be applied to the consent to amend the finished surface levels for Stages 15 and 16 in order to reduce the extent of proposed retaining walls whilst ensuring that the proposed lots are appropriately located above applicable flood levels.

7.8 Terrestrial biodiversity

This clause requires the consent authority to consider, amongst other things, whether the development is likely to have any adverse impact on the condition, ecological value and significance of the fauna or flora on the land or any potential to fragment or disturb the biodiversity structure or function of the land.

Matters relating to the ecological and habitat values of the subject land are considered within this report. It is generally considered that the proposed subdivision does not raise any particular concerns in respect of ecological values. A number of conditions will be applied to any Development Consent to ensure that the site is suitably landscaped; no native vegetation is cleared without prior approval; no earthworks to occur within proposed Lot 1803 (Fig Tree Park) without prior approval and in respect of dog and cat restrictions.

7.11 Earthworks and drainage

The objective of this clause is to ensure that development involving earthworks or drainage has regard for environmental and social values. It is generally considered that the proposal would be unlikely to raise any significant implications in respect of earthworks and drainage. Additional information has been provided in respect to flooding, stormwater management and drainage on the subject land and it is considered that any outstanding matters with this regard may be dealt with via conditions of consent.

7.14 Stormwater management

The objective of this clause is to minimise the impacts of urban stormwater on land. As detailed in this report it is generally considered that matters relating to stormwater management and retention on the subject land is acceptable.

It is considered that the proposal would be generally consistent with the provisions of the Tweed LEP 2014.

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

Tweed Development Control Plan

A1 - Residential and Tourist Development Code

A detailed assessment of the proposed house and dual occupancy sites under the specifications of Section A1 as indicative dwelling sites have not been provided.

The original proposed subdivision plan (Aerial Photography Overlay Drawing No 19396 B) proposed a number of lots, within Stage 15 in particular, that would have been constrained in configuration, being located at the head of a cul-de-sac. It was considered that such sites may have presented difficulties in achieving adequate compliance with DCP A1 as well as sufficient on-street parking (9m kerb frontage per allotment in a cul-de-sac), particularly for dual occupancy developments.

The applicant has since reconfigured Stage 15 of the proposed subdivision, deleting the cul-de-sac arrangement. Lots 1714 and 1715 are the only potential dual occupancy sites in a cul-de-sac arrangement and are 933m² and 1108m² in area to accommodate a compliant dual occupancy development and adequate on-site car parking provision. Please note that any future development applications would need to demonstrate the suitability of the site for potential dual occupancy development against the provisions of DCP A1.

The remaining lots are of regular shape and would generally be capable of compliance with A1 in relation to: the provision of deep soil zones and useable outdoor open space; access and vehicle parking; suitable setback distances and separation distances between dwellings.

A2 - Site Access and Parking Code

All proposed roads are considered satisfactory in relation to widths, vertical and horizontal alignments. There is a minor concern in respect to the new road as proposed in Stage 15, as detailed further within this report.

It is considered that the proposed lots (being a minimum of 450m² in area) would be capable of compliance with the requirements of DCP A2 in respect to site access and parking.

Any future development applications will need to provide consideration of site access and parking requirements, particularly with respect to any future school site.

A3 - Development of Flood Liable Land

The provisions of A3 apply to the site and require that in relation to development for the purpose of residential subdivision, all land other than road and reserves must be filled to the design flood level. The land has been previously filled and so only requires relatively low site regrading and provision of infrastructure. Site levels generally vary between RL 3.5m - 4.5m AHD, with some lower sections at RL 2.5m AHD.

The application advises that the design flood level (based on the current day 100 year ARI flood) varies from RL 2.7m - RL 3.1m AHD across the site. It is acknowledged that the majority of the site is well elevated above this level, with the exception of the western portion of Stage 16, where the subdivision adjoins Lennox Circuit. Limited information was provided in respect to flood affectation mapping and based on the engineering design plans (submitted with the Annexure 5 Engineering Services Report) it appears that lots 1061, 1602, 1603, 1611, 1612, 1613 and 1614 would be partially inundated in such an event.

DCP A3 requires that design flood levels for 'greenfield' subdivisions (defined in A3 as subdivisions exceeding 5 hectares, including residual lots, so applicable to this application) be based on a climate change affected 100 year ARI. This increases the design flood level in Stage 16 to RL 3.6m AHD, which increases the potential flood affectation to all lots in this stage.

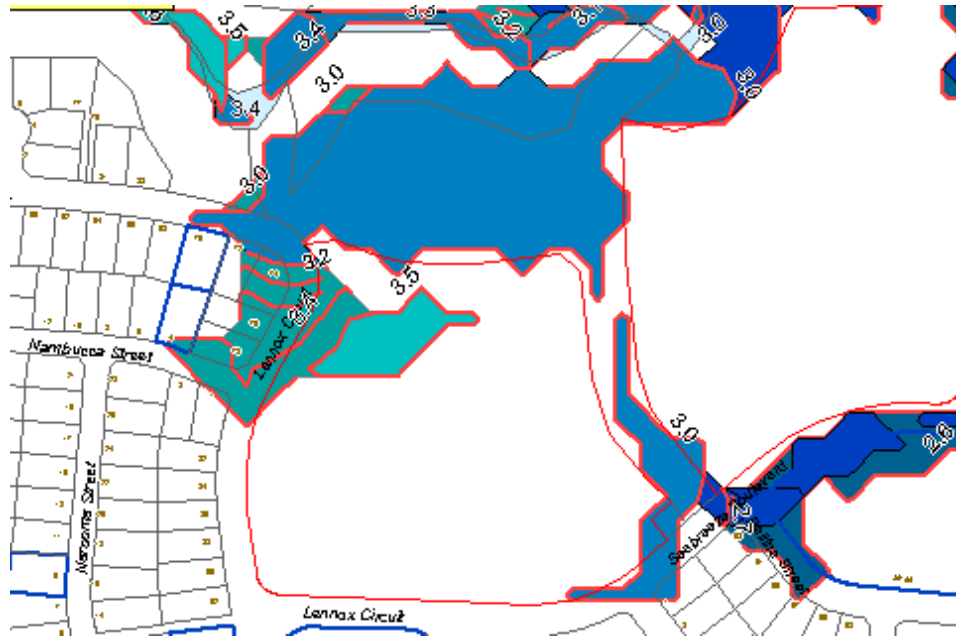
No information was originally provided in respect of this matter nor any variation from this 'greenfield' filling requirement requested. On this basis, the applicant was required to submit an amended fill design as it was considered that this may have some implications for road design, access and possibly lot layout.

An Amended Engineering Services Report (March 2014, Revision 9) has been submitted to Council for consideration. This report provides level details as requested and further detail in respect to the construction of batters along many of the external road frontages, to accommodate increased fill levels due to flood immunity requirements.

Flood immunity

Climate change affected design flood levels (DFL) vary across the site, with RL 3.6m AHD being the worst case in Stage 16, off Lennox Circuit. The amended plans have changed all lot levels throughout Stages 15-18 to meet the minimum RL 3.6m AHD. It is considered that whilst this conservative approach is acceptable from a flooding perspective, it appears unnecessary across the whole development and may have other impacts on access and urban design in areas where the fill level could be reduced significantly to than now proposed (e.g. climate change affected DFL in Stage 17 is only RL 2.8m AHD). It appears that the consultant engineer has not reviewed Council's flood maps in detail with this regard.

Confirmation has been requested from Council's flood modelling consultants that RL 3.6m AHD is the acceptable design flood level in Stage 16, due to the irregular flood gradient that presents in the mapping in this location, as shown in the following snapshot of Council's GIS flood mapping:



Extract of Council's GIS showing Climate Change flood levels within portion of proposed Stage 16 adjacent to Lennox Circuit (shown as light green)

It appears that there is an irregular gradient shown on Council's mapping that affects flood levels on Stages 15 to 16 adjacent to Lennox Circuit. Council's flood modelling consultants have confirmed that this is a modelling 'artefact' that does not represent the likely flood behaviour in such an event. It has therefore been recommended that the lower design flood level in this region should be adopted, based on predicted levels in the adjacent wetland and overland flow paths.

This scenario should have benefits for the extent of fill required for flood immunity under DCP A3. The following DFL for each subdivision stage are as follows:

Stage 15 = RL 3.1m AHD

Stage 16 = RL 3.2m AHD

Stage 17 = RL 2.8m AHD

Stage 18 = RL 3.1m AHD

A condition will be applied to any Development Consent to ensure that all residential allotments are filled to a minimum of the DFL.

High level evacuation route

DCP A3 requires that the subdivision provides high level flood evacuation routes to land above PMF for all residential lots. The application does not directly demonstrate compliance with this requirement, instead stating in the ESR that:

'given that the existing Seabreez Boulevard and Lennox Circuit were constructed prior to the requirements for Probable Maximum Flood (PMF) access requirements... all new internal roads will be designed to Q100 level control ... except where the new roads connect with existing road levels'.

On review of the submitted engineering plans, it appears that all internal roads comply with the exception of the western end of Road 1 in Stage 16 being below the 100 year ARI level. However the applicant was requested to provide a level detail of the adjoining road network to demonstrate rising road access to flood free land, in compliance with A3, and to provide level details of adjoining public

roads to determine whether the high level evacuation route requirements as set out in DCP A3 are met or whether upgrades to existing road infrastructure are required.

The submitted Amended Engineering Services Report generally advises that there are no changes to road carriageway or verge levels in the revised plans. Level changes have been taken up by additional filling of the residential lots. The report has provided limited information in respect of proposed evacuation routes and the area of concern remains Stage 16, where road levels are well below the required climate change affected DFL.

It is acknowledged that the existing road network may be deficient in some areas with respect to levels however this needs to be adequately addressed and alternate measures put in place (such as pedestrian accesses) due to potential impacts on public safety and emergency response. A condition will be applied to any Development Consent to ensure that all residential allotments are to be provided with a high level flood evacuation route in accordance with DCP A3.

Conclusion

The proposed allotment fill levels throughout all stages of the development have been significantly increased with associated batter construction on many road frontages. It is considered that this approach is not necessary over most of the site and so can be reduced on review of Council's climate change design flood mapping. This will rectify many of the concerns regarding access and urban design associated with the amended plans.

The outstanding matters may be suitably conditioned to ensure all residential lots are filled to a minimum of the applicable climate change affected DFL; to ensure that all residential lots are provided with a high level flood evacuation route; and to ensure adequate driveway designs to ensure compliant vehicular access (where batters exceeding 0.6m in height are required along road frontages).

A5 - Subdivision Manual

This DCP provides guidelines and development standards for the development of subdivisions. The overarching objectives are to ensure that new development should have a sense of identity; mixed uses to encourage vitality; a linked series of streets and parks; pedestrian priority and an acknowledgement of ecological interaction. Sections of the DCP of particular relevance to the application are detailed below.

A5.2.3 - NSW Coastal Policy & SEPP 71

For the subdivision of land within the coastal zone the NSW Minister of Planning becomes the consent authority, as required by SEPP 71. As previously detailed Planning & Infrastructure have advised that a Master Plan waiver is considered appropriate in this instance, given the subject land is covered by an adopted site specific DCP.

A5.4.4 - Physical Constraints

The applicant advises that Stages 15 to 18 are defined by the existing public reserves and street networks which are subject to Development Consent No. K99/1837. The site has been previously filled to the required levels as required under the previous consent K99/1837. However, subsequent alterations to the DFL necessitates minor filling to attain the ground levels currently required. Clarification was required in respect to the provision of high level flood evacuation

routes for all land, site regrading (clarification as to whether retaining walls are required to provide flood immunity), drainage reserves and stormwater management, particularly in respect to the proposed future school site (Lot 1802).

An Amended Engineering Services Report has been provided that provides clarification in respect to DFL and the provision of flood evacuation routes. As detailed within this report, the revised plans indicate that all lots will be raised by approximately 1m unnecessarily. The applicant advises that the subdivision layout over Lot 1802 (school site) is conceptual only and that it is unreasonable and unnecessary to provide further detail of the possible future residential lots on the western side of the drain as they do not form part of this application. Any future development application for the school or future residential lots will need to provide further information in respect to landforming and flooding.

In general it is considered that the proposal responds to the natural landform and drainage system in the layout of streets and open space. Conditions will be applied to any Development Consent in respect of lot levels and modified bulk earthworks.

A5.4.5 - Environmental Constraints

Contaminated Land

This section requires matters relating to contaminated land to be considered. In general it is considered that matters pertaining to land contamination have been adequately addressed.

Bushfire Risk

A bushfire threat assessment is required to accompany all proposals where development adjoins bushland or other sources of potential fire risk. The subject development application has been referred to the NSW RFS with this regard who have provided General Terms of Approval that will be applied to any Development Consent. It is generally considered that the proposed subdivision accords with the document '*Planning for Bushfire Protection*' 2006 in respect of subdivision design, road layout and the provision of adequate asset protection zones.

Threatened species, population or ecological communities and their habitats

Vegetation across the site is dominated by regularly slashed pasture / turf-grass, with one large *Ficus virens var. sublaceolata* (White Fig) remaining on the central parcel. In relation to threatened species or ecological communities a report has been prepared by JWA consultants advising that the proposed development is unlikely to impact on threatened species given the site has been substantially cleared of vegetation and has been significantly disturbed over a number of years. The site does not comprise any Koala habitat and it is considered unlikely that the proposed development would impact on matters related to this threatened species, given the site has been substantially cleared of vegetation and disturbed over the years.

The applicant was advised that the land to the north-east of the site (adjacent to Lots 1731 to 1737) was the area noted within the *Management Plan for Threatened Species, Habitats and Ecological Communities on Pottsville Seabreeze Estate* (associated with the broader development consent (K99/1837)) as potentially comprising Wallum Froglet (*Crinia tinnula*) habitat. The applicant advises that the value of the pond on Lot 138 DP 1045822 (adjacent to Lots 1731 and 1737) comprises an artificial stormwater basin and therefore its ability to

provide suitable frog habitat is limited because of the need for regular mowing and maintenance of the basin, including desilting. A revised Assessment of Significance (7 Part Test) has been provided with this regard that advises the site does not comprise Wallum Froglet habitat. As detailed further within this report it is considered that the proposal would be unlikely to impact on threatened species or their habitats.

Landscape Character

In respect of landscape visual character it is generally considered that the proposed subdivision would be consistent with existing neighbourhood and subdivision design within the Seabreeze Estate and the wider locality.

A5.4.6 - Landforming

The applicant advises that landforming of the site will be undertaken in accordance with the Engineering Services Report and that only minor landforming changes are required to achieve drainage to the lots. As detailed within this report, further clarification was required in respect to drainage and the provision of retaining walls. The applicant advises that 1:4 batters will be constructed along many of the external road frontages to accommodate increased fill levels due to flood immunity requirements. It is noted that batters of this size may not be necessary, as detailed within this report.

Numerous retaining walls are required at periphery areas of the site to retain the filling required to raise the lots to the required levels. In general, no engineering concerns are raised in respect of the periphery retaining walls however the 'internal; retaining walls within and separating Stages 15 and 16 are considered to be unnecessary and could be significantly reduced. Improved lot grading would also remove the requirement for such internal retaining walls.

Conditions will be applied to any Development Consent to amend the finished surface levels for Stages 15 and 16 in order to reduce the extent of proposed retaining walls. A condition will also be applied to ensure that all retaining walls are wholly contained within private lots.

A5.4.7 - Stormwater Runoff, Drainage, Waterways and Flooding

Drainage

Stormwater proposed to be discharged from Stage 15 and 16 is to be conveyed to the existing stormwater drainage network in Lennox Circuit adjacent to Stage 16. Stage 17 stormwater is proposed to discharge into the existing drainage reserves to the north. As such no additional stormwater treatment detention devices are proposed, rather the proposed lots will rely on the existing network.

The proposed Drainage Reserve adjoining the northern sides of Lots 1802 and 1803 have not been annexed to any particular Stage as such and have not been provided with a lot number. This lot is required to be dedicated as soon as possible and a condition will be applied to the consent to complete this as part of the first 'Stage' being released.

Proposed Lot 1748 - Drainage Reserve

Proposed Lot 1748 contains an existing open drainage channel that already accepts discharges from the minor and major subdivision drainage systems at the intersection of Seabreeze Boulevard and Urunga Street. This drain connects the street drainage system to the existing drainage reserves to the north, and is currently located within an easement for this purpose.

The applicant advises:

'Newland proposes to dedicate Lot 1748 subject to Council paying compensation, at market value, for the land on the basis that the drain is only required to address flooding issues from Council's inadequate flood modelling'.

This statement is factually incorrect and ignores the overall staging and masterplanning of Seabreeze Estate, where these trunk drainage systems were identified, designed and constructed. The applicant was advised that while historic issues with flooding in and around Seabreeze Estate are acknowledged and have been previously addressed, the drainage function of Lot 1748 is completely unrelated to these issues. On this basis it was advised that this parcel and Lot 1749 that provides a similar trunk drainage connection purpose, shall be dedicated to Council at no cost.

The applicant has advised that Council's comments in relation to Lot 1748 are noted but not necessarily agreed with however to avoid further delays and approval of the application the applicant has withdrawn its request for compensation in respect of dedication of Lot 1748 as a drainage reserve. Both lots will be dedicated to Council as drainage reserves as indicated on the amended Subdivision Plan.

Maintenance work will be required to the drainage areas prior to dedication so that the original design hydraulic capacity is achieved and remain accessible once houses are developed along the drainage reserve boundaries.

Stormwater drainage system - Lennox Circuit

The applicant was required to amend the stormwater drainage discharge point from Road 1 to align with the inlet zone of the existing wetland to the north. The Plan has been amended to connect to this catchment to the existing drainage in Lennox Circuit. It is considered that this is acceptable.

A condition will be applied to any Development Consent to ensure that the Construction Certificate application shall include engineering calculations that confirm that the stormwater drainage system in Lennox Circuit has sufficient capacity to accept the additional stormwater flows, in accordance with Development Design Specification D5 - Stormwater Drainage Design, or provide an acceptable stormwater design.

Stage 18 - Stormwater treatment regime

The applicant was requested to provide commentary on the proposed stormwater treatment regime should Stage 18 be utilised for residential subdivision instead of a school site and that discharge to the drainage reserve channel without treatment is not permitted.

The amended report emphasises that subdivision of Stage 18 is not subject to this application and this is acknowledged. Stormwater quality control, in accordance with D7, will need to be addressed in a future application, whether for a school site or a residential subdivision. It is noted that the proposed installation of a GPT to service residential subdivision of Stage 18 is not likely to be adequate however does not need to be pursued further at this stage.

Waterways and riparian vegetation

The subject land is in close proximity to Cudgera Creek. Matters relating to riparian buffer provision and revegetation of the creek bank have been previously

considered within the assessment of K99/1837 and subsequent modifications. The application does not propose any alterations to the access arrangements to this area.

The area of the lot designated as an E2 Environmental Conservation land use currently acts as a conveyance channel for stormwater generated from a sub-catchment of the existing Seabreeze Estate. It is noted that no works are proposed within the drainage line however the channel is to be dedicated to Council for management as a drainage reserve (Lot 1748 - Operational Land). This arrangement is reflective of that previously established to the west along Cudgera Creek where two other stormwater channels designated as operational land continue to the top bank of Cudgera Creek.

It is noted that no services including reticulated water, sewer or power will be required to traverse the Cudgera Creek riparian reserve. Further, it is not anticipated that the proposal would involve any works within the proposed drainage easement (Lot 1748) as the drainage line currently meets hydraulic performance requirements to service existing lots to the south. Similarly it is envisaged that there will be no requirement to upgrade the outlet that remains within the E2 zone immediately adjacent to Cudgera Creek.

Flood liable land

Matters relating to flooding have been addressed within Section A3 of this report and as detailed suitable conditions will be applied to any Development Consent to ensure that the proposal is satisfactory with this regard, subject to a number of conditions being applied to any Development Consent.

Erosion and sediment control

The applicant has provided an Erosion and Sediment Control Plan however matters relating to erosion and sediment control will need to be formally approved as part of the construction certificate submission for civil works.

Further information in relation to erosion and sediment control is requested as part of the NSW Office of Water requirements for works requiring a controlled activity approval.

Buffers

Section A5 states that there is a requirement to buffer areas between subdivisions and other specified landuses to minimise landuse conflicts.

A number of proposed lots within Stage 18 of the proposal do not comply with the minimum buffer requirement of 150m and have the potential to encroach upon the rural activities to the north and expose future residential occupiers to a potential public health risk. Whilst this site has been identified as a potential school site or potential 65 lot residential subdivision, this application does not approve such a land use. Further consideration of buffers to agricultural land uses would need to be considered during any future development application to Council.

The potential for noise nuisance and lighting impacts on residents of allotments within Stage 17 (adjoining the sports fields and associated clubhouse to the east) has been raised with the applicant. The clubhouse was approved under Development Consent No. DA03/1655 that does not nominate any hours of use. The facilities are currently utilised by local hockey and cricket clubs with competitions being held in daylight hours with training being undertaken until the

lights are required to be turned off at 9.00pm. The clubhouse does not provide for other uses such as private functions and comprises lighting to the northern portion of the field only.

Council's Recreational Services have advised that no increase or embellishment of the use of the clubhouse or sports field is anticipated in the planned future. The residential subdivision layout for the eastern side of Stage 17 adjoining the sports field has not attempted to address potential land use conflicts. It would have been preferable if the design could have attempted to utilise practical options of maximising separation distances through the incorporation of a road between the fields and allotments.

Whilst a perimeter road would not result in negating all impacts in association with the sports field and clubhouse, it would contribute to mitigation of impacts and therefore complaints received by adjoining land occupiers. Whilst the level of current use of the fields is a mitigating factor in the potential adverse impacts to the residential amenity for occupiers, residual concerns remain with this regard however it is considered that refusal of the application on these grounds is warranted.

A5.4.8 - Urban Structure

The objectives of this section, amongst other things, are to facilitate an environmentally sustainable approach to urban development by minimising car dependence, encourage containment of neighbourhoods and towns and provide a movement network that has a pattern of interconnected streets.

As detailed below, the original application proposed several dead end roads and cul-de-sacs with limited opportunity for walking or cycling. There was also minimal road frontage or public access to areas of open space. The application has been amended and now includes a road through Stage 15 and improved pedestrian connectivity, as detailed further within this report.

In general the proposal will avoid large scale changes to the natural landform or large scale earthworks (particularly given the bulk of works have been carried out under the original approval for the Seabreeze Estate). It is generally considered that the proposed development is consistent with this section.

A5.4.9 - Neighbourhood and Town Structure

The objectives of this section are to ensure new development provides for a highly interconnected neighbourhood with neighbourhood size and shape defined by an acceptable walking distance. It also seeks to ensure a highly interconnected and easily navigable street network with strong links between town and neighbourhood centres as well as a range of residential densities that increase toward the neighbourhood and town centres with at least 60% of dwellings within a 500m-850m radius from an existing or potential neighbourhood centre to be within a safe walking distance.

In respect to interconnectivity the applicant originally advised that *'The proposal provides a logical connection to the public road network [and...] Due to the urban infill nature of the site and the surrounding residential development there is no potential to improve the movement network surrounding the site'*.

In response it was considered that there was the potential to improve the connectivity of the proposed subdivision with the potential to delete the proposed cul-de-sac arrangement in Stage 15 and provide a perimeter road to improve pedestrian connectivity. A through road within Stage 15 has now been provided

as has a pedestrian link through to the public reserve within Stage 17. The applicant advises that a perimeter road is not achievable given the constrained nature of the site, particularly in respect to the proposed school site as it would diminish the 6 hectare land parcel. It is generally considered that the proposed street network and pedestrian links will result in an improved situation with this regard.

Whilst the proposed retail development lot (Lot 1701) has been deleted, the proposed subdivision does include reference to a potential future school site (Lot 1802) and child care centre (Lot 1702) (that will be subject to future development applications). The proposed Town Centre site is also located in close proximity (approximately 100m) from the subject site to encourage walking and reduce reliance on the private car.

Matters relating to the proposed density of the development are detailed further within the assessment of DCP B15 however it was considered that there was potential to increase densities within close proximity to the town centre. The applicant has advised that they have explored the potential to increase the number of smaller lot opportunities, particularly in the vicinity of the future neighbourhood centre (being Town Centre A on the corner of Seabreeze Boulevard and Watego Drive). The amended plans now provide seven lots within a range of 450m² to 500m² together with nine potential dual occupancy lots in excess of 900m² that yield a total of 20 per cent of the total. Further, 22 small lots (450m² to 600m²) in Stages 15 to 16 have been located in close proximity to the future neighbourhood centre.

It is generally considered that the proposed subdivision provides a range of lot sizes that will provide for a suitable mix of housing types, consistent with the character and scale of existing built development within the Seabreeze Estate and wider locality.

A5.4.10 - Movement Network

This section requires neighbourhoods to be highly interconnected with a logical street network. The proposed subdivision originally incorporated a number of dead end roads and cul-de-sacs with limited forms of pedestrian activity. One of the primary issues with the original Subdivision was the disconnected street pattern, with limited linkages to the surrounding road network or areas of open space and few opportunities for walking or cycling.

It was noted within the Development Assessment Panel (DAP) minutes of 10 April 2013 that Seabreeze Estate has avoided this type of road design which is not desirable from an urban design perspective. As the site is relatively flat and unconstrained and it was considered that the site may easily accommodate a more fluid road design that provides linkages with existing and future roads and opportunities for pedestrian connectivity.

The applicant was requested to improve the connectivity of the site. In particular it was considered that the cul-de-sac as proposed in Stage 15 was not justified and that a road connecting to Lennox Circuit would be preferable to facilitate a more fluid road design, provide linkages with existing and future roads and more opportunities for pedestrian connectivity.



Extract of original Site Plan showing cul-de-sac arrangement in Stage 15



Extract of amended Site Plan with amended lot configuration and road through to Lennox Circuit

Whilst a perimeter road has not been provided it is generally considered that the reconfiguration of lot layout and improved connectivity is an improvement to the original plan. The provision of a pedestrian access to the public reserve to the east of Stage 17 will also provide improved pedestrian linkages to areas of open space within the subdivision.

Cul-de-sac

In respect to cul-de-sacs, this section advises that cul-de-sacs can be occasionally used but not as the primary street type and the street network should have no more than 15 per cent of lots fronting cul-de-sacs. The original

Site Plan proposed 43 of 89 lots fronting a cul-de-sac (48 per cent) which was not considered to be justified. With the deletion of the Stage 15 cul-de-sac the number of lots that front onto a cul-de-sac has been reduced by 12. This equates to 31 lots fronting cul-de-sacs (approximately 34 per cent).

Whilst this equates to a significant proportion of lots being accessed via a cul-de-sac arrangement, it is considered that this is generally justified given the location of the drainage reserves, existing built development and the proposed future school site.

Road design

The applicant was advised that whilst the deletion of the cul-de-sac formation within Stage 15 was considered an improvement from a connectivity perspective that adequate sight distances would need to be achieved between intersections. In respect of the new road intersecting with Lennox Circuit there is a potential that the required sight distance may not be achievable. A condition will be applied to any Development Consent to ensure that any required traffic devices for this new road (for example, to ensure that a 40km/h speed limit is enforced if necessary) would need to be in accordance with AS1742.13 - Local Area Traffic Management.

In respect of street design the proposed subdivision was considered to be generally acceptable. The applicant was advised that the peculiar road widths for the two cul-de-sac heads in the easternmost section of Stage 17 would result in excessively wide footpath areas in the vicinity of Lots 1730, 1736 and 1739. The applicant has since amended the proposed plans and has reshaped the proposed road widths with this regard.

The submitted Traffic Impact Report (TIA) compiled by Bitzios Consulting discusses the impact of the development under two scenarios, one with the proposed High School and one with a 65 residential lots at Stage 18. It is considered that the TIA provides adequate information to justify that additional road upgrades are not required to the existing road network. Furthermore, in both scenarios it is considered that the TIA provides adequate information to justify that additional road upgrades are not required to the existing network.

The Degrees of Saturation and Levels of Service for all relevant intersections are also expected to be within acceptable levels. The applicant has been advised that any proposed High School location would require further analysis to determine suitable access locations and traffic facilities.

Streetscape

The applicant has submitted a Statement of Landscape Intent that seeks to create landscape entry statements for the proposed subdivision; provide compatible landscape design; provide screening and buffering for privacy and noise and provide a visually stimulating yet low maintenance landscape.

The Landscape Plan states that native trees and shrubs will be planted along streets, pathways and open space areas to provide shade and amenity to the development. Proposed species will provide a visual and ecological link to the adjacent riparian vegetation along Cudgera Creek. The Landscape Plan advises that streetscape native trees will be planted in accordance with TSC tree planting location specifications.

It is generally considered that the proposed landscape intent is satisfactory. Conditions will be applied to the consent to ensure that suitable native street

trees and vegetation are planted to improve the ecological value and streetscape amenity such as shade and visual interest.

Pedestrian path network

The DCP requires that a pedestrian path network must be provided principally using the street network but also utilising and linking open space corridors (dual use drainage corridors, parks and so on) and providing efficient and safe access from residences to points of attraction.

The original subdivision plans proposed limited road frontage or pedestrian access to areas of open space. The applicants advise that the subject land is relatively constrained, given the location of drainage reserves and existing built development thereby limiting the opportunity for a perimeter road. As detailed within this report the subdivision plans have been amended whereby the cul-de-sac in Stage 15 has been deleted and an additional pedestrian access point to the public reserve to the east of the site has been provided in Stage 17.

The applicant advises that *'the layout has been revised and in this regard we confirm that it is not appropriate to facilitate public pedestrian access to the drainage reserves abutting the site [...]. The existing and proposed street network provide appropriate connectivity to the existing and proposed casual open space areas, the existing sports fields and the future neighbourhood shops on the corner of Seabreeze Boulevard and Watego Drive'*.

It is considered that the proposal provides sufficient pedestrian connectivity to points of interest and community facilities (potential school, childcare site, open space areas and neighbourhood shops) in and surrounding the proposed subdivision. A condition will be applied to any Development Consent for further detail in respect of pedestrian walkways and cycleways prior to the issue of a Construction Certificate.

Footpath in streets

The submitted TIA states that the development will provide 1.2m wide footpaths and integrate the existing pedestrian and cycle paths with the Seabreeze Estate. However, the Stage 15 plan does not depict a concrete footpath accordingly and therefore an appropriate condition will be applied.

It is considered that there should be some form of path or cycleway connectivity between existing infrastructure and Koala Beach to proposed Lot 1803 (Fig Tree Park). An appropriate condition will be applied to the consent to ensure that further clarification in respect to pedestrian links and cycleways are provided to Council with this regard prior to the issue of a Construction Certificate.

A5.4.11 - Open Space Network

Open space should meet the needs of the local and district communities; create a linked open space network and support the legibility of an urban environment. It also seeks to ensure that the location, layout and design of development surrounding public open space minimises potential problems relating to personal security and surveillance and poor visual amenity in relation to the park and its boundaries.



Proposed Location Plan - Public Reserves - Seabreeze Estate Stages 1 and 2 (as referenced in the report above)

The application proposes two public reserve lots (Lots 1701 and 1803) and two drainage reserve lots (Lots 1748 and 1749) as part of Stage 15-18 which contribute to the parks and public reserves already provided within Stages 1-14.

Local and casual open space provision is established on Council's long-established standard of 1.13 hectares per thousand population. The applicant has provided a breakdown of open space provisions as required under DCP A5 and the most recent Section 94 Contribution Plan rates for open space (10 - Cobaki Lajes and 19 Casuarina). Please note that the applicant's calculations have been based on an occupancy rate of 2.4 persons per lot and have attributed errors in figures to rounding.

However, Contribution Plan 20 - Seabreeze Estate which is most relevant to the Estate provides an occupancy rate of 2.7 persons per lot and advises that 1.7ha per 1000 population for structured open space (sports field provision) and 1.13ha per 1000 population for passive open space.

The following table provides a breakdown of Council's estimation in respect of casual and structured open space provision within the Seabreeze Estate based on the open space provisions as set out within Contribution Plan No. 20:

Seabreeze Estate - Open Space Calculations			
Stage	Residential Lots	Casual Open Space Required (1.13ha / 1000 pop x 2.7 persons per lot)	Structured Open Space Required (1.7ha / 1000 pop x 2.7 persons per lot)
1 - 14	508	15499.08m ² (1.549908 ha)	23317.2m ² (2.3317 ha)
15 - 17	82	2501.82m ² (0.2501 ha)	3763.8m ² (0.3763 ha)
18	Nil	Nil	Nil
TOTAL	587	18000.9m² (1.8009 ha)	27081m² (2.7081 ha)
Available Open Space			
Available		5.57879 ha in total of which	3.66 ha

Seabreeze Estate - Open Space Calculations			
Open Space (as shown in Public Reserves Location Plan above)		greater than 2ha is usable:	(Lot 342 DP 1048762)
		Lot 1446 – 9998m ²	Total = 3.66 ha
		Lot 925 – 2230m ²	
		Lot 833 – 4353m ²	
		Lot 341 – 2615m ²	
		Lot 343 – 18070m ²	
		Lot 136 – 8277m ²	
		Lot 135 – 2926m ²	
		Lots 536 – 2822m ²	
		Lot 635 – 1663m ²	
		Lot 834 – 1664m ²	
		Lot 1445 – 3261m ²	
		Proposed Lot 1803 – 5794m ²	
	Total = 6.367 ha		

As demonstrated in the table above proposed casual and structural open space provision is considered satisfactory. Please note that Section 94 Plan No. 20 - Seabreeze Open Space Developer Contributions are not levied on this basis.

In respect to lot layout and access to open space areas, the subdivision originally proposed limited road frontage and pedestrian access to the proposed park network with a significant number of allotments backing directly onto the northern boundary. The provision of a perimeter road was a preferred option to enable development to front all streets and open areas, thereby increasing the amenity and value of the open space areas whilst improving opportunities for passive surveillance. The applicant has since advised that the drainage reserves located at the northern boundary of Stage 16, 18 and 17 are not designed for recreational uses as they contain stormwater management facilities, although they do provide 'green space' within an urban setting and therefore *'the provision of pedestrian access to these areas is neither appropriate or necessary'*.

An additional pedestrian pathway has been proposed that links Stage 17 to the sports fields to the east of the site from Uranga Drive. The applicant advises that given the sports fields have *'good passive surveillance from Uranga Drive, it is considered that a perimeter road would serve no useful purpose'*. An additional pedestrian pathway has also been proposed to Lot 1803 (Fig Tree Park) within Stage 18 of the development. It is noted however that this will be dependent on the development of the future school site.

It is considered unfortunate that a number of proposed dwellings are oriented away from the areas of drainage and public reserves as this would have provided an improved outcome in respect to best planning practice, improving visual amenity and surveillance. However, it is noted that the existing drainage reserves are not intended as formal open space areas. Pathways have been provided within Stage 17 to the sports fields and to the Fig Tree park in Stage 18 (should the school site not proceed). Whilst a perimeter road adjacent to these

areas of green spaces would have been preferable, the applicant's justification with this regard is considered satisfactory.

Landscaping

The applicant has submitted an *Amended Statement of Landscape Intent* (dated 13 March 2014 prepared by Boyds Bay Planning) that details the provision of landscaping within the proposed subdivision, within public open space (Fig Tree Park), road reserves and entry areas. The plan also details planting along the eastern boundary of Stage 17 (adjacent to the sports fields) in front of the proposed fencing to improve amenity and provide an additional buffer to the sports fields.

The plan indicates a goal of 70 per cent local natives and 30 per cent exotics to be achieved. This is not consistent with Council's general landscape policy of 80:20 (native:exotic) and shall be amended as part of the future detailed landscape plan. This is considered to be particularly important given the proximity of the Cudgera Creek riparian corridor.

Specific recommendations from the arborist report (in respect to landscape treatment and tree protection measures) have been incorporated into the report. Also, the report indicates that structures shall be excluded from the TPZ / canopy and that pathways traversing the TPZ shall be of porous product and will not involve any sub-grade preparation in order to avoid root disturbance.

Conditions will be applied to the consent to ensure that a detailed landscape plan must be submitted to Council prior to the issue of a Construction Certificate; that suitable plant species are utilised, incorporating native species (minimum 80 per cent) and is carried out in accordance with D14 - Landscaping Public Open Space.

Embellishment of open space

The applicant has provided further detail in respect to the embellishment of the Fig Tree Park such as the provision of park seating, play area with shade sail, concrete pedestrian paths, feature gardens adjacent to a BBQ and landscape buffer.

Conditions will be applied to any Development Consent in respect to the adequate timing (prior to Subdivision Certificate for Stage 18) and provision of the embellishment of open space in proposed Lot 1803. Appropriate conditions will also be applied in respect to the provision of any playgrounds comply with Council's guidelines as well as the provision of a bank guarantee or cash contribution to the value of such items.

A5.4.12 - Lot layout

This section requires lots to have appropriate area and dimensions to enable efficient siting and construction of dwellings, provision of private outdoor space, convenient parking as well as smaller lots and lots capable of supporting a higher density located close to town and neighbourhood centres.

It was advised that the proposed subdivision had the potential to increase the number of smaller lots in the vicinity of the neighbourhood centre, with larger lots on the outer fringes. It was also considered that the provision of narrower lot widths may facilitate an increase in density and allow for the provision of deep soil zones oriented to the rear, preferably to the north, of the allotment.

The proposed subdivision layout provides a minimum lot area of 450m² and it is considered that each lot is generally of regular shape and capable of comprising a building footprint with dimensions of 10m x 15m.

However, the original subdivision plan proposed lots of 900m² that were constrained in configuration, being located at the head of the cul-de-sac (being Lots 1505, 1508, 1714 and 1715). It was considered that such sites may present difficulties in achieving adequate compliance with DCP A1 as well as sufficient on-street parking (Council's Development Design Specification D1 - Road Design that requires a minimum of 9m kerb frontage per allotment in a cul-de-sac, unless alternative provision for parking is made).

The application details have since been amended so that Lots 1714 and 1715 are the only potential dual occupancy sites in a cul-de-sac arrangement. The applicant advises that the sites have a generous area (933m² and 1108m²) to facilitate flexible designs and accommodate compliant onsite parking and have provided a compliant kerb frontage sketch with this regard.

Lot 1718 however is a narrow-necked hatchet type shaped lot with a street frontage of only 6m and an area of 1160m², as shown in the extract of the proposed Site Plan below:



Extract of proposed Subdivision Plan showing constrained access Lot 1718

The street frontage for Lot 1718 does not allow for on-street visitor parking and the applicant has agreed to provide a designated off-street visitor parking space on the site. This would be implemented in conjunction with the construction of a dwelling on the site and will be enforced via creation of a Restriction on Title.

In respect to the small unmarked area of land adjacent to the western side of proposed Lot 1601, fronting Lennox Circuit, a condition will be applied to ensure that this lot is incorporated as part of Lot 1601.

The applicants have explored the potential to increase the number of small lot opportunities in the vicinity of the neighbourhood centre and considers that *'the range of lot sizes provides for a suitable mix of housing types and appropriate densities in the vicinity of the future town centre'*.

The proposed subdivision provides 22 small lots (i.e. 450m² to 600m²) in Stages 15 to 16, all of which are in close proximity to the neighbourhood centre. The

proposal originally comprised approximately 40 per cent of sites of more than 600m² but less than 900m² in area. This has since been amended to account for approximately 30 per cent of total lots. In general it is considered that the revised lot layout and increased housing density in closer proximity to the proposed town centre site is acceptable.

It is considered that the proposed housing densities are generally in accordance with the provisions of the low density residential zoning and the provisions of DCP A1.

Schools and land for community use

The proposal incorporates a proposed school site at Stage 18 (being Lot 1802), having a total area of 5.692 hectares. The school site is severed by an existing drainage reserve within which is constructed an open drainage channel. It is acknowledged that the potential school site is less than the 6 hectare minimum specified in the Department of Education and Communities Guidelines. The applicant advises that the NSW Department of Education and Communities has advised that, subject to the relocation of the open stormwater channel to the western boundary, the site broadly meets their requirements, particularly as it is adequate walking distance to the embellished sports fields, approximately 450m to the east of the site.

The suitability of proposed Lot 1802 as a future school site will be subject to a future development application and merit assessment.

Lot design and layout in bushfire prone areas

As detailed within this report the application has been referred to the NSW RFS for comment as the proposed subdivision is Integrated Development for bushfire purposes. It is considered that the subdivision design is capable of providing a building platform of a minimum of 10m x 15m that is capable of being protected from a bushfire hazard by an asset protection zone (APZ).

The NSW RFS have provided General Terms of Approval with this regard.

A5.4.13 - Infrastructure

All lots shall be fully serviced with sealed roads, kerb, gutter, water supply, sewerage, underground electricity and telecommunications.

It is noted that the Amended Engineering Services Report comprises a number of errors in respect of the proposed sewer design and therefore the submitted plans are considered to be preliminary and are subject to change to meet Council requirements prior to the issue of the Construction Certificate. Conditions will be applied to any Development Consent with this regard.

Please note that the residential subdivision as shown on Stage 18 is not approved as part of this application. Should the school site not proceed and a residential subdivision be proposed, the proposed layout of water and sewer design for Stage 18 will need to be addressed within any future development application.

The eastern portion of Lot 1147 is encumbered with the following easements:

- 2 x Easements for Drain Water Variable Width;
- 2 x Easements for Batter Variable Width.

Various easements (for sewer infrastructure and stormwater (relief overland flowpath)) are required to be created over various lots. Appropriate conditions have been included to address these requirements.

A7 - Child Care Centres

A child care centre would be permissible with consent in the 2(a) and R2 Low Density Residential zone and therefore this policy applies. This DCP advises that where located in residential zones Council shall strongly favour the location of child care centres adjacent to non-residential uses such as retail uses, schools, community facilities and the like.

The DCP states that the development of child care centres of 'infill' sites within low density residential areas unless: the lot has a minimum area of 800m², a 3m perimeter landscape buffer with adjacent properties and a minimum 1.8m high intervening fence; the applicant can demonstrate noise will not be detrimental to adjacent residents; car parking is provided in such locations that will minimise disturbance to adjacent neighbours; and the overall traffic impact to the immediate neighbourhood is not detrimental to the amenity.

It states that for new urban release areas there should be planned provision within a DCP for a particular release area to locate a child care centre immediately adjacent to retailing, commercial and community uses.

A11 - Public Notification of Development Proposals

The application was advertised for a period of 30 days from Wednesday 23 October 2013 to Friday 22 November 2013. One submission has been received that details the following matters:

- The proposed movement of the original 200m² shop site to a position on the corner of the connecting road between Sea Breeze and Koala Beach Estates;
- Agreement that only 1000m² would be used as a shop site with the remainder available for a child care centre as shops / commercial uses should be concentrated within the Pottsville town centre;
- Concerns in respect to the loss of the fig trees along the avenue on the approach to Seabreeze Estate and replacement with Tuckeroos and advised that the trees appear to be in good health and were not impacting the footpath or road reserve.

As detailed further within this report, the original Town Centre Site A (on the corner of Seabreeze Boulevard and Watego Drive will remain as the nominated Town Centre site for the Seabreeze Estate. On this basis it is considered that the issues raised within the submission in respect to the proposed subdivision have been satisfactorily addressed.

A13 - Socio-Economic Impact Assessment

The threshold trigger for the preparation of a Social Impact Assessment (SIA) report for a subdivision (under the guidelines of Section A13 of the Tweed DCP) is 50 lots. The proposed subdivision comprises 88 lots and accordingly a SIA has been prepared. The SIA considers that the proposal would be consistent with the objectives of the zone and is generally consistent with the density controls and design guidelines pursuant to Section A5 - Subdivision Manual, Section B 15 - Seabreeze Estate and Section B21 - Pottsville.

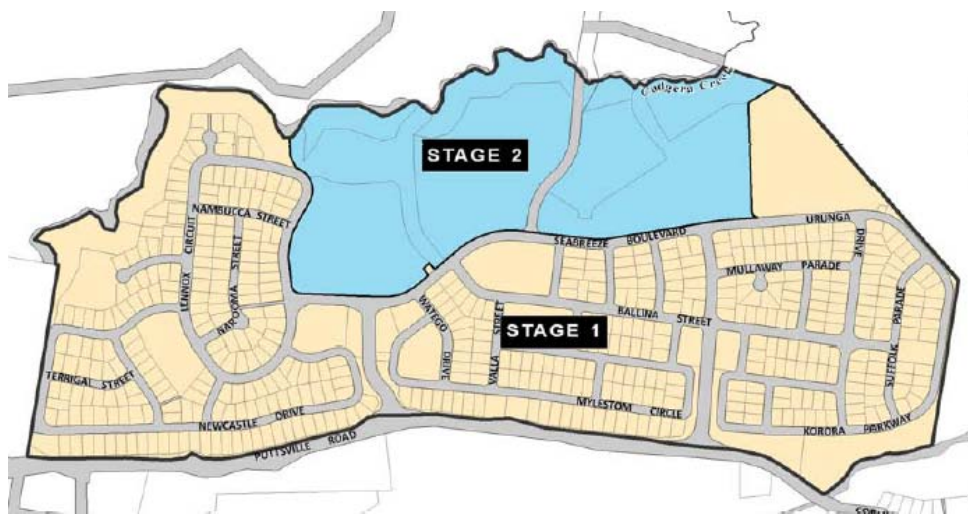
It is considered that the proposal is generally consistent with the provisions of the relevant statutory controls and guidelines and would be in keeping with the general character and scale of built development within the Pottsville locality. The proposal would be unlikely to create any adverse social or economic impacts and will result in the completion of the Seabreeze Estate.

A15 - Waste Minimisation and Management

A Waste Management Plan has been provided with the submitted details. It is considered that the proposal does not raise any specific concerns in respect to waste management.

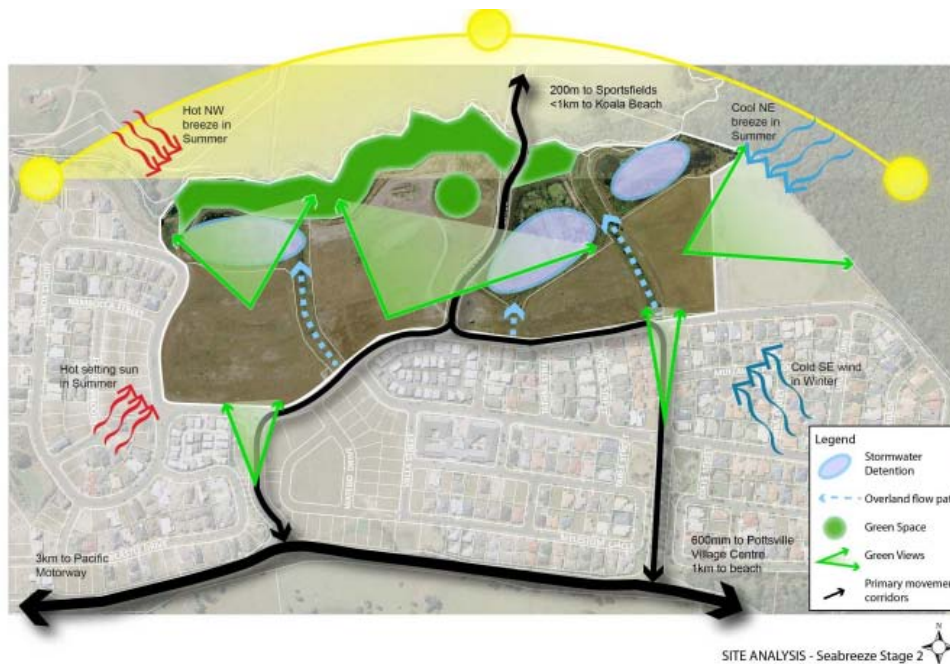
B15 - Seabreeze Estate, Pottsville

This DCP was adopted by Council on 21 November 2013 and sets a number of criteria to guide development within Stage 2 of the Seabreeze Estate, the location of which is shown in the following map:



Map 1A - Seabreeze Estate Stages 1 and 2

The DCP seeks to ensure that the site layout and building design take into consideration the existing characteristics, opportunities and constraints of the site; to consider the desired future character of the area and present opportunities to link open space and protect important features of the site and natural areas such as riparian vegetation and selected fig trees, as demonstrated in the Site Analysis as detailed below:



Map 2A - Site Analysis for Seabreeze Estate Stage 2

Map 2A demonstrates the location of stormwater detention basins and overland flow paths as well as the location of green space and 'green views' toward public reserves and the sports fields to the east.

A brief Site Analysis Plan has been provided that illustrates areas of public and drainage reserves, location of bushfire prone land, riparian rehabilitation areas and existing built development and roads within the Seabreeze Estate. The SEE advises that the site contains managed grasslands and the key constraint is the irregular shape of the land, the separation of the land by Tom Merchant Way and existing drainage reserves. Bush fire hazards and flooding are also constraints.

B15.2.3 - Habitat, Bushfire Management and Buffers

Habitat

A Species Impact Statement (SIS) has been prepared by JWA Consultants detailing that the proposed subdivision is unlikely to impact on habitat or threatened species. The site has been significantly disturbed over the years and comprises managed grasslands and drainage reserves. Ecological matters are considered in further detail within this report however in summary, it is generally considered that the proposal does not raise any significant concerns in respect to habitat values.

Conditions will be applied to the Development Consent in respect to ensure that no native vegetation is removed without prior approval; to ensure the protection of the White Fig Tree in proposed Lot 1803; in respect of landscaping (suitable native species) and in relation to the control of dog ownership.

Bushfire Management

The DCP advises that areas of the site at risk of exposure to bushfire hazard include land adjoining the Cudgera Creek riparian corridor and land adjacent to the closed forest areas and grasslands to the east and advises that the design of subdivisions should incorporate the provision of roads and buffer areas between housing lots and bushfire hazard.

The applicants have submitted a revised Bushfire Threat Assessment (dated 3 March 2014) that confirms Council will manage the drainage reserve and foresees no issues in respect of maintenance regimes (such as slashing).



Extract of Bushfire Threat Assessment report showing sediment ponds to the north of the proposed development to remain managed



Extract of Bushfire Threat Assessment report showing existing drainage channels to remain as managed land

The Report advises that adequate inner protection areas, services and access will be provided to the site. In respect to the perimeter road the Report advises that given that the primary hazard is remnant vegetation along a creek line and some grassland with managed areas between housing and the hazard, that it is unlikely that control lines for hazard reduction is needed.

Public roads will meet the criteria of the *Planning for Bushfire Development 2006* document (two-wheel drive, fall not exceeding 3 degrees, dead end roads no more than 200m in length).

It is noted that the proposed APZ associated with Stage 18 may extend within Lot 1148 (part of the Cudgera Creek riparian reserve), however this area of the reserve is currently maintained as a slashed paddock and has not been

previously required as part of Stages 1-14 to be rehabilitated. In the event that the school site proceeds the APZ is likely to extend between 5 to 20m within Lot 1148 along the length of the Stage 18 frontage. It is not considered that this raises any significant implications in respect to the Cudgera Creek riparian reserve.

Buffers to Adjoining Uses

The DCP advises that the cultivation and management of agricultural crops (such as cane) has the potential to impact on the surrounding residents and that allotments should not be located closer than 150m from an existing area of sugar cane production on land to the north and north-west unless an appropriate mitigating riparian rainforest buffer is established to mitigate any potential impact of the proposal.

Matters relating to buffers to agricultural land uses are detailed further within this report. In summary, a number of conceptual residential lots located on Stage 18 (school site) would not meet the required separation distances. The applicant has advised that these lots are for indicative purposes only should the school site not go ahead however are not relevant at this stage of the development. These matters will be subject to merit assessment within any future development application.

As detailed previously, the potential for noise nuisance and lighting impacts on residents of allotments within Stage 17 (adjoining the sports fields and associated clubhouse to the east) has been raised with the applicant. The clubhouse was approved under Development Consent No. DA03/1655 that does not nominate any hours of use. The residential subdivision layout for the eastern side of Stage 17 adjoining the sports field has not attempted to address potential land use conflicts. It would have been preferable if the design could have attempted to utilise practical options of maximising separation distances through the incorporation of a road between the fields and allotments.

Whilst a perimeter road would not result in negating all impacts in association with the sports field and clubhouse, it would contribute to mitigation of impacts and therefore complaints received by adjoining land occupiers. Whilst the level of current use of the fields is a mitigating factor in the potential adverse impacts to the residential amenity for occupiers, residual concerns remain with this regard.

Contamination

Matters relating to land contamination have been previously considered within this report. It is considered that the proposed subdivision raises no implications in respect of land contamination.

B15.2.4 - Traffic Management and Movement Network

A Traffic Impact Assessment Report (TIA) has been prepared that advises the following key points as summarised below:

- The internal road network has been designed generally in accordance with the requirements of DCP A5;
- Proposed roads are to 'Access Street' standards and connect to the existing neighbourhood connector of Seabreeze Boulevard;
- The proposed development will generate additional trips on the basis of the potential future school site and child care site however the

nature and proximity of these land uses will serve the surrounding residential estate and therefore attract a high proportion of walk-up, cycle and drive-by 'linked' trips;

- No planning or design has yet been undertaken for the potential future school site however it is noted that primary access for the site should be via Seabreeze Boulevard with a secondary access to Tom Merchant Drive; should include bus set-down facilities at an approximate rate of 1 space per 125 students; vehicle parking should be provided by taking into consideration Council's requirements as well as expected site specific daily demand; cycle storage provision; adequate pedestrian connections (primary pedestrian desire lines and limit conflicts with bus set-down areas and parking areas);
- Whilst no public transport is currently servicing Seabreeze, it is expected that the subdivision will incorporate a bus service in the future.

The application has been considered by Council's Development Traffic Advisory Group and Traffic Engineer. It is considered that the submitted TIA, that discusses the impact of both the high school and 65 lot residential subdivision scenarios in Stage 18, adequately justifies that additional road upgrades are not required to the existing road network.

The Degrees of Saturation and Levels of Service for all relevant intersections are expected to be within acceptable levels however any proposed future school would require further analysis to determine suitable access locations and traffic facilities.

B15.2.5 – Soil and Water Management

Detailed Stormwater Management Plans, Stormwater Quality Treatment Reviews, Wetland and Water Balance Report, Stormwater Quality Treatment Review and Dewatering Management Plans have been submitted to Council for review.

It is considered that the proposed subdivision would be unlikely to result in soil erosion, sedimentation and loss of water quality either during the construction phase or following implementation. Appropriate conditions will be applied to the Development Consent to ensure that satisfactory measures are in place to ensure adequate stormwater pollution control and run-off water quality measures are in place.

B15.2.6 - Flood Liable Land Development

Matters relating to the development of flood liable land have been considered in detailed within this report. It is considered that matters relating to flooding may be satisfactorily addressed via conditions of the consent.

B15.2.7 - Open Space Strategy

The objectives is to provide a safe and pleasant open space network which meets the diverse needs of future residents in terms of neighbourhood parks, play spaces, buffer regeneration areas and sportsfields and ensuring these spaces are appropriately located.



Map 6A - Open Space Strategy - Stage 2

Proposed Lot 1802 (Fig Tree Park) is located within the area specified for open space. To the east of the subject land is the existing sportsfield site. The remaining areas of green space are drainage reserves intended for stormwater retention purposes.

It is considered that the proposed overall open space provisions are adequate and in accordance with the desired character of the subdivision as detailed in DCP B15.

B15.2.8 - Services and Utilities Strategy

DCP B15 states that, as of 1 August 2012, land identified in Map 6.1 is restricted by the capacity of Council's wastewater treatment site to manage any increase in wastewater arising from new development. This is presently limited to a 200 ET maximum.



Map 6.1 - 'Greenfield Land'

Of the 200 ET available, a minimum of 63.5ET is allocated to the 'Potential Future School Site', and 7ET being allocated to the 'Town Centre' to the south of Seabreeze Avenue.

The submitted SEE originally provided limited information in respect of ET provision other than 'Densities are constrained by available sewer capacity'.

The applicant was required to demonstrate compliance with ETs allocated to the proposed subdivision and has provided the following summary of available ETs:

Lot	No. of ETs
Lot 1802 (potential school site)	63.5
Future town centre Stage 8	7
Lot 1702 (future child care centre)	18.5
0.1ET/person (approx 80 persons + residential approx 10ET)	
Residential lots - 82	82
Duplex lots - 9	9
Total	180

The applicant advises that it is noted 200ETs have been allocated in the event that the school site does not proceed and that on this basis the 20 'spare' ETs could be consumed on Lot 1702 and within Stage 18.

The proposed subdivision is generally consistent with the provisions of the DCP in respect to availability and provision of ETs in respect of water and sewer capacity.

B15.2.9 - Indicative layout for the Estate

The Structure Plan shows the indicative layout for development of the estate (Map 7 as shown below) and indicates the preferred location and siting of major elements of the estate (open space, principal roads, landscape features, neighbourhood shopping facilities and so on).



Map 7A - Structure Plan Stage 2 (please note following: red circle indicates location of Town Centre A; blue is potential school site; large green arrow in central portion entry statement, green arrows highlighting desire to encourage pedestrian movement alongside existing wetlands; yellow being prominent corner location; blue hatched line requiring address of adjoining open space)

The applicant advises that the proposed subdivision plan is generally in accordance with the Structure Plan for Stage 2, as summarised below:

School site

A school site in Stage 18 is proposed. Whilst the site is severed by an existing drainage channel it is considered that the site broadly meets the relevant requirements for a school site as governed by the NSW Department of Education and Communities. Site specific issues shall be considered within any future development application for a school.

Town Centre

The application originally proposed Town Centre B located on the corner of Tom Merchant Drive and Seabreeze Boulevard (proposed Lots 1701 and 1702). The applicant proposed to lodge a Modification Application in respect to Development Consent No K99/1837 to replace the Town Centre A site with conventional residential allotments and it was proposed as part of this application to pursue Town Centre B.

During a public workshop (21 October 2013 in respect to the proposed amendments to DCP B15), participants raised concerns that Town Centre B comprises a significantly larger area than that of Town Centre A, and that this may threaten the viability of the Pottsville Village Centre as well as impact on surrounding residential amenity. Concerns were also raised in respect to Town Centre B not being located as well as Town Centre A, that had been earmarked for over 12 years. It was relayed to Council Officers that Town Centre B should not be supported without certainty of the size and location of the proposed childcare centre and shop, which was beyond the level of information provided within the current application.

During the consideration of the Draft DCP B15 (at the Council Meeting of 21 November 2013), Councillors resolved to remove all references to Town Centre B. Therefore the applicant was requested to clarify their intention in respect to proposed Lots 1701 and 1702, noting that land uses such as a shop or childcare centre would be a permissible land use and that, given the landmark location of the site, development should be of a higher order than a single dwelling house and should represent a positive opportunity.

The applicant has removed all reference to Town Centre B within the subdivision plans in accordance with B15. Lot 1702 is intended for use as a future childcare centre and possibly integrated residential development that would be subject to a future development application.

Provide opportunities for pedestrian movements alongside the existing wetlands

The applicant advises that land has already been dedicated and rehabilitated in the public reserves adjacent to Cudgera Creek including:

- Lot 1129 DP 1118282 - 2.248 hectares;
- Lot 1148 DP 1115395 - 2.931 hectares;

- Lot 1328 DP 1118285 - 1.22 hectares.

In addition, the landowner has dedicated drainage reserves adjacent to the foreshore public reserves including

- Lot 1145 DP 115395 - north of Stage 16;
- Lot 740 DO 1072580 - north of Stage 17;
- Lot 138 DP 1045822 - north of Stage 17.

As part of the current application it is also proposed to dedicate an additional drainage reserve north of Stage 18 (proposed Lot 4, area 6275m²) as required by Council as being part of the strategy to address flooding issues at Seabreeze Estate. Also, Proposed Lot 1803 (Fig Tree Park) will be dedicated and embellished.

The applicant considered that to provide additional 'public reserves' for pedestrian movements alongside existing wetlands is unreasonable and unnecessary given the land already dedicated for this purpose.

However, it was considered that there further improvements could be made in the provision of pedestrian connectivity to reflect best planning practice and improve the amenity of these areas. The applicant was required to provide further consideration of the provision of a footpath along the levy wall (along the northern boundary of Stage 18 connecting to Tom Merchant Drive and the proposed Fig Tree Park). It was noted that, at the current time, this may not be supported due to restoration efforts being compromised in certain sections of the pathway however may be suitable at a later stage or compensated for elsewhere.

The applicant has confirmed that it is not appropriate *'to facilitate public pedestrian access to the drainage reserves abutting the site. The riparian rehabilitation buffer adjacent to Cudgera Creek together with the existing and proposed street network provides appropriate connectivity to existing and proposed casual open spaces areas, the existing sports fields and the future neighbourhood shops on the corner of Seabreeze Boulevard and Watego Drive'*.

Given the sensitive nature of the restoration area adjoining Cudgera Creek it is considered that a footpath in this location is not appropriate. In general it is considered that adequate opportunities for pedestrian linkages have been provided through the subdivision.

Interface with existing sports fields to east of site

A 1.8m high colourbond fence with planting has been proposed along the eastern boundary of the site in between the proposed residential lots in Stage 17 and the existing sports field site.

As detailed within this report it is considered that the potential for noise nuisance and lighting impacts on residents of allotments within Stage 17 (adjoining the sports fields and associated clubhouse to the east) remains of concern. The application has not attempted to address potential land use conflicts and it would have been preferable if the design could have attempted to utilise practical options of maximising separation distances through the incorporation of a road between the fields and allotments. Whilst a perimeter road would not result in negating all impacts in association with the sports field and clubhouse, it would contribute to mitigation of impacts and therefore complaints received by adjoining land occupiers.

Council's Recreational Services have advised that no increase or embellishment of the use of the clubhouse or sports field is anticipated in the planned future and whilst the level of current use of the fields is a mitigating factor in the potential adverse impacts to the residential amenity for occupiers, residual concerns remain with this regard. However, as detailed it is not considered that refusal of the application is warranted on this basis and any future application to expand or intensify the use of the sports fields or clubhouse would need to have consideration of any approved residential lots in close proximity to the site.

B15.3 - Environmental Design Elements

This section seeks to ensure that the future residential estate is of a high quality and liveability and environmentally compatible with its surroundings.

B15.3.2 - Site Analysis

As detailed above an overall site analysis has been provided. It is generally considered that the proposed subdivision takes consideration of the site constraints and opportunities.

B15.3.3 - Neighbourhood Design

Whilst the retail development component of this application has been deleted the development does provide for a potential future school site and childcare facility and would be located within walking distance to the Town Centre site. The design also focuses on retaining the existing Fig Tree. It is considered that the proposal will provide an identifiable neighbourhood character.

B15.3.4 - Densities and Types of Development

This section seeks to provide a range of housing types, including detached dwellings, medium density townhouses and small lot houses and to recognise the need for dual occupancy development and ensure the density of the development does not exceed 200ET.

It is generally considered that the development provides a range of lot sizes with a number of smaller lots being within 300m walking distance of the Town Centre. The DCP recommends average densities of 16 - 24 dwelling units per hectare including duplexes, attached and detached houses.

The applicant advises that densities are constrained by the available sewer capacity and the established amenity of the Seabreeze Estate which is predominantly detached dwelling houses on lots of 600m² to 900m². The development provides a predominantly detached housing layout (72 lots) although provision has been made for nine potential dual occupancy lots (i.e. greater than 900m² in area) with the potential for integrated housing development on proposed Lot 1702.

B15.3.5 - Lot Sizes and Orientation

As previously detailed a range of lot sizes are provided between 450m² to 1108m². Generally lots are oriented on a north / south axis subject to constraints imposed such as existing cadastral boundaries, street alignments, drainage reserves and existing drainage channels.

It is generally considered that the lot size and orientation are acceptable and future non-compliances in respect to DCP A1 and the provision of useable outdoor space with adequate solar gain is unlikely.

B15.3.6 - Building Siting and Design

It is considered that the size and shape of the allotments, as amended, will enable flexibility in the design and siting of future dwellings, particularly with regard to the proposed dual occupancy sites.

B15.3.7 - Noise and Amenity Impact

The applicant considers that the proposal is separated from Mooball Pottsville Road and appropriate buffer treatment is proposed between Stage 17 lots and the existing sports fields immediately to the east.

As detailed within this report, the impact of the sports field immediately to the east of proposed Stage 17 is of concern however refusal of the application on this basis is not considered to be warranted. The existing use of the sports field and clubhouse is such that no significant impacts to residential amenity are envisaged.

B15.3.8 - Open Space Provision

Matters relating to open space have been addressed within this report. As discussed, the issue of limited road frontage to existing open space has been raised with the applicant who has since advised that the drainage reserves are not intended as formal areas of open space. Subsequently the lot layout has largely remained unchanged in this respect. Given the adjoining open space comprises stormwater infrastructure as opposed to a conservation area it is considered that this is generally satisfactory although the opportunity to reflect best practice urban design outcomes to improve visual amenity and surveillance would have been preferable.

In summary the proposed subdivision provides adequate open space (Fig Tree Park and links to the existing sports fields) to meet the needs of existing and future occupants. Conditions shall be applied to any Development Consent to ensure appropriate embellishment of open space.

B15.3.9 - Streetscape and Landscape

As detailed in this report street tree planting will be undertaken with appropriate landscaping embellishment of public areas in accordance with the submitted Statement of Landscape Intent. Suitable conditions are to apply to any Development Consent with this regard.

B15.3.10 - Integrated Movement Network and Street Design

It is noted that street design is constrained by the location of existing streets, drainage reserves, open drainage channels and the need to provide a future school site. The applicant therefore considers that the proposal provides a reasonable balance in terms of integrated movement network and a commercially viable development.

As detailed the applicant has submitted revised plans that have deleted components of the original application that were not considered favourable, such as the cul-de-sac arrangement in Stage 15 and resultant lot layout. It is considered that the revised plans provide an adequate movement network.

B15.3.11 - Pedestrian and Bicycle Network

Cycleways and walkways are to be provided within the internal streets to satisfy this element in accordance with the provisions of A5. A condition will be applied to any Development Consent to ensure that further detail in respect to pedestrian

walkways and cycleways are submitted to Council prior to the issue of a Construction Certificate.

B15.3.13 - Non-Residential Development

A future school site and child care centre are proposed that will be subject to a future development application and merit assessment. The subdivision is in close proximity to the Town Centre A and the Pottsville Town Centre that will provide a range of community facilities to meet the needs of future residents.

B15.3.13 - Hazard and Nuisance Mitigation

This section aims to recognise potential hazards such as bushfire, flooding, certain agricultural practices, ASS and so on do not cause a risk upon the amenity of residents or cause risk to persons, property or the environment. Matters relating to buffers to agricultural land uses, bushfire, flooding and ASS have been considered within this report.

DCPB21 - Pottsville Locality Based Development Code

This document seeks to set overarching objectives for future development within the Pottsville locality. Section 4.0 of the Code relates to the Seabreeze Estate and advises that the built form of the precinct is typical of suburban development in many parts of Australia and comprises a mixture of low and medium density housing, almost entirely in a detached built form.

It advises that the Seabreeze Estate was masterplanned from its inception and as such the precinct has maintained much of its planned intent and design. It is considered that the proposed subdivision is generally in keeping with surrounding built development within the Seabreeze Estate and within the wider Pottsville area. The subdivision will allow for low density residential development with neighbourhood facilities such as the potential future school site and childcare centre. Adequate open space has been provided that allows for the retention of the prominent Fig Tree with pedestrian footpaths provided to areas of open space.

Future development will be subject to development applications and will need to provide consideration of the desired built form and character of the area to ensure best practice site and building design.

The DCP advises that appropriate master planning is to be carried out for the subject lot to ensure matters relating to density, views, connection and interface with the public domain, open space, flood mitigation and so on are appropriately considered. A Master Plan was not required given the adoption of the DCP B15 site specific document however, as detailed within this report it is considered that the proposed subdivision is generally consistent with the desired pattern of residential development within the locality, being of a low density nature. The proposed subdivision is generally consistent with this DCP.

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

Clause 92(a) Government Coastal Policy

The subject site is nominated as Coastal Land and therefore this clause applies. The NSW Coastal Policy 1997 document sets overarching objectives in respect of retaining the aesthetic qualities of both the natural and built environments.

As detailed within this report the site is highly modified over the years and forms part of a broader residential subdivision earmarked for such development. As

such the subject development is unlikely to impact on matters relating to conservation values or cultural heritage or matters relating to coastal access or overshadowing.

Clause 92(b) Applications for demolition

Not applicable to the application as the proposal does not comprise any demolition.

Clause 93 Fire Safety Considerations

Not applicable as the proposal relates to a subdivision of land only.

Clause 94 Buildings to be upgraded

Not applicable as the proposal relates to a subdivision of land only.

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

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

Tweed Coast Estuaries Management Plan 2004

The subject land is located in close proximity to the Cudgera Creek however the proposal is unlikely to impact on matters relating to habitat or biodiversity values of the waterway given it does not propose any clearing of vegetation or earthworks in the immediate vicinity of the creek system. Conditions will be applied to the Development Consent in respect of sediment and erosion control.

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

Context and Setting

The proposed subdivision will provide a predominantly low density residential environment that consists primarily of detached dwellings. The proposal incorporates a potential future school site that will be subject to a future development application to assess likely impacts to surrounding residential amenity. The application proposes a public reserve (Fig Tree Park) and will retain the existing drainage reserves that will contribute to the areas of 'green space' and links to the riparian buffer along Cudgera Creek.

It is considered that the proposed subdivision will be in keeping with the context and setting of the existing built development within the Seabreeze Estate as well as the broader Pottsville locality.

Access, Transport and Traffic

As detailed within this report the proposed road network is satisfactory and will adequately cater for the scale and nature of the proposed subdivision. The TIA considers both scenarios of school site and 65 lot residential subdivision and does not raise any issues of major concern with regard to access, transport or traffic generation. It is noted that any future school application would need to demonstrate that suitable access locations and traffic facilities are provided.

It is considered that the road network is able to accommodate the proposed subdivision, subject to a number of conditions being applied to the consent.

Flora and Fauna

Clause 50 of the *EP & A Regulations 2000* requires the application to detail whether or not the site comprises critical habitat and whether or not the development is likely to have a significant effect on threatened species of communities.

Previous ecological assessment

The site has been highly disturbed by bulk earthworks pursuant to Development Consent No. K99/1837 and is surrounded by built development. The site itself is predominantly managed lands with low cut grass. Comprehensive evaluation of the sites ecological values has been previously undertaken as part of the Seabreeze Estate Stages 1 to 14 approval. With this regard a Species Impact Statement (SIS) was prepared by JWA Consulting and assessed by Council and NPWS as a concurrence agency. Based on the assessment concurrence conditions were imposed and the *Management Plan for Threatened Species, Their Habitats and Ecological Communities (TSMP) on Pottsville Seabreeze Estate* approved.

The SIS identified one Endangered Ecological Community (EEC) and listed five threatened flora species and seven threatened fauna species. Cudgera Creek was identified as the key area of habitat across the site given its riparian values and connectivity to Pottsville Environment Park and protected habitat within the Koala Beach Estate. The approved TSMP included the restoration of the Cudgera Creek riparian corridor, Brushbox / Hoop Pine Buffer Zone, Koala enhancement planting within Pottsville Environment Park, Fig Tree replacement and specific management actions for the conserved *Ficus sp.*, *Davidsonia jerseyana*, *Randia moorei*, *Syzygium hodgkinsoniae*, *Syzygium moorei*, Wollum Froglet, Koala and Black Flying Fox.

Current ecological values

Given the timeframe between the 2000 Survey and the current proposal the applicant has submitted a contemporary Assessment of Significance (7 Part Test) that has provided an assessment of vegetation communities on the site; determined the likelihood of threatened flora, fauna and Endangered Ecological Communities (EECs) as listed by the NSW *Threatened Species Conservation Act 1995*.

In summary, the site consists of low closed slashed grassland (mixed exotic species) of low conservation value, one White Fig (*Ficus virens var. Sublanceolata*). The recent survey did not record any listed species across the site however it is noted that the survey focussed on the development area only which is dominated by managed grassland. Given the marginal habitat values remaining across the area of the development footprint the assessment concluded that the Grey-headed Flying Fox was the only species considered 'possible' to use the habitat resources on site, primarily being the *Ficus* occurring within the proposed Park (Lot 1803). As such a determination that no significant impact on threatened species was anticipated and retention of the *Ficus* would mitigate any indirect impacts on the Grey-headed Flying Fox as a consequence of the development.

It is acknowledged that the development is restricted to a previously disturbed development footprint of limited habitat value that is buffered from Cudgera Creek riparian corridor by an existing rehabilitated conservation reserve dedicated to Council as community land (from the previous Stage 1 to 14 Seabreeze Estate). It

is considered that all management actions in the approved TSMP were implemented during the construction phase and restoration works completed and subsequently accepted by Council.

Given the previous dedication of the Cudgera Creek Reserve and the proposed development reliance on the existing stormwater network it is considered that of the management actions referred to in the approved TSMP (Stages 1-14), the remaining actions of relevance to this stage of the development would appear to only relate to the long term retention of the *Ficus* (White Fig).

Ficus virens var. *Sublanceolata* (White Fig)

The *Ficus* has been identified in a suite of strategic concept plans including the recent Stage 2 Structure Plan (DCP B15) and management recommendations made within the approved TSMP. During fruiting period the tree is likely to support a suite of species as a favoured food resource such as the Grey-headed Flying Fox (particularly given the close proximity of a nearby Flying Fox camp - Pottsville Environment Park) and range of rainforest frugivores.

Whilst the proposal involves retention of the tree, due to extensive modifications to natural ground levels and subsequent alteration to surface and subsurface hydrology around the trees root zone, the tree appears to show signs of decline/poor health. Considering the significance of the tree in terms of ecological and aesthetic value the applicant was requested to prepare and submit a Tree Assessment and Tree Management Plan ('TATMP') for the White Fig to ensure all efforts are made to improve the long term health and vigour of the tree.

The submitted TATMP (dated 4 February prepared by Boyds Bay Environmental Services) provides a comprehensive assessment of the health of the tree and, based on the results of the evaluation, proposes a suite of management measures to be implemented as soon as practicable (upon issue of a Construction Certificate) to improve growing conditions, vigour and longevity of the tree. An average 30m setback from the *Ficus* to the proposed development to the south has been provided, consistent with the TSMP provisions. Proposed management actions are as follows:

- the construction of a 3-4m shallow swale to divert ponding water from the root plate;
- removal of rubbish and debris beneath the canopy;
- removal of weeds;
- Installation of organic compost layer and coarse grade forest mulch;
- removal of epiphytes and deadwood;
- installation of tree protection fencing; and
- ensuring that no infrastructure extends within the trees 15m Tree Protection Zone (TPZ).

It is considered that the TATMP (pr future management recommendations) can be relied upon to direct future arboricultural remediation works. A condition will be applied to any Development Consent to ensure that the applicant completes all remedial tree management works on the *Ficus* prior to the release of the first Subdivision Certificate.

Wallum Froglet habitat

In addition to the management of the White Fig, the approved TSMP indicates an area that could potentially be utilised to establish Wallum Froglet habitat following stormwater basin construction situated in close proximity to proposed Lots 1731-1737 and opposite the *Ficus*. As such the applicant was requested to consider current habitat within this area of the site to determine the significance of the area and whether the Lot layout should be modified to ensure that an adequate buffer is provided.

Upon inspection of the site Council Officers consider that this area is not currently considered to offer habitat to the Wallum Froglet due to the area being largely elevated with steep banks into the basin that is currently devoid of any sedge species / appropriate dense vegetation cover. Habitat for the Wallum Froglet would be expected further to the east on the periphery of the site to the Pottsville Environment Park approximately 30metres from the proposed Lots. As such it is not considered that a detailed survey of the site is warranted. A revised Assessment of Significance has been prepared (JWA Consultants dated March 2014) in respect of lot layout and Wallum Froglet habitat that simply states that habitat does not exist in the location specified.

Control of cat and dog ownership

The applicant has been made aware of likely conditions to be imposed relating to dog and cat restriction. Conditions will be applied to any Development Consent with this regard.

Bushfire management

The long term management of the drainage reserves as an Asset Protection Zone (APZ) has been confirmed by Council Officers. It is intended that a Bushfire Management Plan be prepared by Council for the reserve network where a slashing regime will be maintained. As indicated in the submitted *Bushfire Assessment Report Subdivision Stages 15-18 Seabreeze Estate Rev C* (dated 3 March 2014), the area previously restored / vegetated along Cudgera Creek riparian reserve shall not be impacted through maintenance of the APZs.

It is noted that the APZ associated with Stage 18 (yet to be formally approved) may extend within Lot 1148, part of the Cudgera Creek riparian reserve. However, this area of the reserve is currently maintained as a slashed paddock and has not been previously been required as part of Stages 1-14 to be rehabilitated. In the event that the school proceeds, the APZ is likely to extend between 15-20m within Lot 1148, along the length of Stage 18 frontage.

The RFS have requested specifically that the drainage reserves to the north of Stages 16, 17 and 18 are to be managed as an asset protection zone. Council Officers have advised that there do not appear to be any significant implications for Council with this regard.

Conclusion

It is generally considered that the proposed subdivision does not raise any particular concerns in respect of ecological values. A number of conditions will be applied to any Development Consent to ensure that the site is suitably landscaped; no native vegetation is cleared without prior approval; no earthworks to occur within proposed Lot 1803 (Fig Tree Park) without prior approval and in respect of dog and cat restrictions.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject land is located within the Seabreeze Estate, a low density residential subdivision that comprises primarily detached dwellings. The nature and scale of the proposed subdivision would be consistent with surrounding built development. As detailed within this report, the potential future school and childcare centre would be subject to future development applications to assess the impact of such proposals on surrounding residential amenity in terms of traffic, noise and so on.

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

The application was advertised for a period of 30 days from Wednesday 23 October 2013 to Friday 22 November 2013. One submission has been received that raised the following issues:

- Concerns in respect to movement of original town centre site to proposed Town Centre B site;
- Retail uses should be located within central Pottsville or retention of Town Centre A (for mixed commercial uses);
- Concerns in respect to changes to the pond and fig tree avenue into the Estate (that are reportedly being cut down and replaced with Tuckeroos);
- Figs on the avenue into the Estate should be preserved as they are not causing damage to the roadway.

As detailed, references to proposed Town Centre B have been deleted and Town Centre Site A (on the corner of Seabreeze Boulevard and Watego Drive) will remain as the nominated Town Centre site for the Seabreeze Estate.

On this basis it is considered that the issues raised within the submission in respect to the proposed subdivision have been satisfactorily addressed. Matters relating to the retention of the fig trees on the entrance into the Estate and retention of drainage pond are separate matters.

(e) Public interest

In general, it is considered that the proposal would not impact to such an extent on matters relating to the public interest so as to warrant refusal of the application.

OPTIONS:

That Council:

1. Approves the development application and apply conditions of consent; or
2. Refuses the development application, and provides reasons for the refusal.

Council Officers recommend Option 1.

CONCLUSION:

The current application before Council seeks approval for an 88 lot subdivision for the final stages of the Seabreeze Estate, Pottsville. Further clarification was required in relation to a number of matters of key importance to the proposed application as detailed within this

report. It is considered that matters relating to flooding, stormwater retention, lot layout and density have been adequately addressed.

The site has been altered over the years and is currently relatively devoid of significant vegetation. Conditions will be applied in respect to the retention of the existing White Fig Tree to ensure its longevity and improved health, given the important ecological and aesthetic value that this tree provides within the locality. Further detail will also be required in respect of landscaping (streetscape and open space areas) as well as in respect of embellishment of open space.

In general the proposal will provide a low density residential subdivision consistent with surrounding built development with adequate provision of open space, road connectivity and pedestrian linkages.

Following an assessment of the additional information against the relevant heads of consideration, and provided a number of conditions are applied to any consent, the application is recommended for approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Amended Statement of Landscape Intent (ECM 3341285)

Attachment 2. Advice provided by the Department of Education and Communities (ECM 3363838)

- 6 [PR-PC] Review of Determination of Development Application DA13/0221 for the Operation of a Pontoon Boat Hire Operation on the Tweed River from Fingal Boat Ramp with Passenger Pick Up/Set Down from Beach at Old Barney's Point Bridge Jetty at Lot 403 DP 755740 Main Road, Fingal Head; Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah; Tweed River, Tweed Heads

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0221 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 request for a Section 82A Review of Determination (RoD) for the refusal of a development application for the purpose of a water sports boat and a barbeque pontoon boat operation on the Tweed River between Tweed Heads and Murwillumbah. The boat is to be launched from Fingal boat ramp with passenger pick up/set down from beach at old Barney's Point Bridge. Passenger car-parking is to be provided at the BP Chinderah nearby.

A RoD application can only be lodged and determined within six months of the original determination date (21 November 2013) unless a Class 1 Appeal has been lodged with the NSW Land and Environment Court within six months of the date of determination. Council received notice on 14 May 2014 that a Class 1 Appeal has been lodged with the Land and Environment Court. The provisions of the Environmental Planning and Assessment Act, 1979 require presentation of RoD's to Council for determination where the original application was determined at a Council meeting.

The development, as originally submitted, proposed that the water sports boat was to engage in tow water sport activities including skiing, wakeboarding, wake skate, ski chair, tube and kneeboard in the Tweed River reach located between the Cane Road Bridge and Stotts Island. The pontoon boat, containing a BBQ and toilet was to be available for 12 people in a self-drive arrangement, or 22 people if skippered.

This RoD has amended the original proposal by deleting all aspects of the activity relating to the water sports boat.

The development application, as amended, now seeks approval for the hire of a barbeque pontoon boat for up to 12 people in a self-drive arrangement, or 22 people if skippered.

The proposal is restricted to the hire of a single barbeque pontoon boat that will be launched at the Fingal Boat ramp. Pick up and set-down of passengers will occur at the sandy beach at the old Barneys Point bridge. These aspects of the proposal have not altered from the original proposal. More details regarding the operation and use of this boat are detailed within a latter section of the report.

The proposed development as originally proposed was considered to be generally deficient in terms of information submitted. However, assessment of the proposal against the applicable planning policies demonstrated that the proposal could not comply with these and as such refusal of the application was recommended.

Furthermore, the proposed development, as originally proposed, raised a number of environmental and social issues which were not adequately addressed. The original proposal was also refused as insufficient information was submitted to enable support of the application.

Council resolved to refuse the development application at its Council meeting of Thursday 21 November 2013 for the following reasons:

1. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(ii), the orderly and economic use and development of the land.

The proposal has the ability to impact negatively upon adjacent land; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

2. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(vi), the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.

The proposal has the ability to impact upon the protection and conservation of native animals and plants; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

3. Pursuant to Section 79C (1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.

The proposed development is inconsistent with the aims of:

State Environmental Planning Policies:

- SEPP 14: Coastal Wetlands
- SEPP 64: Advertising and Signage (Clauses 10 and 27)
- SEPP 71: Coastal Protection (Clause 8(a), (d), (g), (h), (k), (l), (n) and (p)(i))
- NCREP: Clauses 15, 32B, 75 and 76

The proposed development does not satisfy the provisions contained within:

The Tweed LEP 2000:

- Clause 4: Aims of this plan;
- Clause 5: Ecologically sustainable development;
- Clause 8(1): Consent Considerations;

- Clause 11: Zoning;
 - Clause 13: Development of uncoloured land on the zone map;
 - Clause 25: Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land;
 - Clause 29: Development adjacent to Zone 8(a) National Parks and Nature Reserves; and
 - Clause 31: Development adjoining waterbodies.
4. The proposal is inconsistent with the applicable management plans that highlight the need to protect ecology and reduce erosion within the vicinity of the Tweed River.
 5. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.

The use of unzoned land adjacent to environmental conservation areas of State significance for the purposes of water sports boat operation is considered unacceptable due to its possible impact on and loss of habitat, due to river erosion.

6. Pursuant to Section 79C (1) (b) of the Environmental Planning & Assessment Act 1979 (as amended) due to the likely impacts of the proposed development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

The proposed development would have an unacceptable impact with respect to amenity and noise impacts on surrounding residents and other passive recreational river users as well as having an unacceptable negative impact on cumulative river erosion in the operational area.

7. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.

It is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of unzoned land and the 1(b2) Agricultural Protection, 2(a) Low Density Residential, 3(d) Waterfront Enterprise, 4(a) Industrial, 5(a) Special Uses, 6(a) Open Space, 6(b) Recreation, 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(d) Environmental Protection (Scenic/Escarpment) and 8(a) National Parks and Nature Reserves zones.

8. 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 RE1 Public Recreation, W3 Working Waterways, W2 Recreational Waterways and SP2 Infrastructure zones.
9. 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 RE1 Public Recreation, W3 Working Waterways, W2 Recreational Waterways and SP2 Infrastructure zones.

A request for a Section 82A RoD was received by Council on 26 March 2014. This request detailed the proposed amendments to the activities proposed and provided the details regarding the use of the barbeque pontoon boat.

The proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 21 days from Wednesday 9 April 2014 to Monday 2 May 2014. During this time, 12 submissions were received including a petition containing 32 signatures. These submissions have been addressed within the report below. It is determined that the submissions have been satisfactorily addressed by this report.

The amended application was referred to the Tweed Byron Local Aboriginal Land Council (TBLALC). The Office of Environment and Heritage (OEH) was consulted with during the initial assessment process. These comments will be applied to the current review and amended application. The NSW Roads and Maritime Services were consulted for the original application, however provided no response. The amended proposal is considered consistent with the matters raised within the response from the OEH.

The TBLALC lodged a submission to the original proposal objecting to the proposed development. The TBLALC were given the opportunity to comment on the review of determination and amended proposal.

The TBLALC maintain that the proposal will adversely impact cultural, heritage and environmental features of the Tweed River and adjoining localities. These matters have been addressed within the report below.

It is considered that the primary issues of concern with the proposal as originally submitted relate to the water sports boat component of the application. These issues have now been addressed through the removal of the water sports boat from the commercial operation. The pontoon boat will have minimal impact on the amenity and environmental attributes of the Tweed River. It is considered that the pontoon boat can be operated within the Tweed River in such a manner that will not cause unacceptable outcomes for the amenity and environment of the locality. Restrictions will however, be placed on the use to ensure sensitive lands and fauna are protected during operations.

Conditional development consent of the application is recommended.

RECOMMENDATION:

That the Review of Determination of Development Application DA13/0221 for the Operation of a Pontoon Boat Hire Operation on the Tweed River from Fingal Boat Ramp with Passenger Pick Up/Set Down from Beach at Old Barney's Point Bridge Jetty at Lot 403 DP 755740 Main Road, Fingal Head; Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah; Tweed River, Tweed Heads be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects dated July 2012 and Review of Determination document dated March 2014, both prepared by Darryl Anderson and Associates, except where varied by the conditions.**
[GEN0005]
- 2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).**
[GEN0065]

3. The use is for the operation and hire of a single pontoon boat. The boat shall be launched and retrieved from the Fingal boat ramp. Passengers shall be picked up and setdown from the beach adjacent to Old Barneys Bridge. All parking for the operation shall be at the BP Chinderah Service Station, No 2-12 Chinderah Bay Drive. The boat may be used for a maximum of nine passengers at any one time, if self driven, or 22 passengers if skippered. No bookings or advertising for the business shall be conducted from public land.
- [GENNS01]
4. Any approvals required by the relevant Maritime Authority shall be obtained prior to use.

[GENNS02]

PRIOR TO COMMENCEMENT OF APPROVED USE

5. Prior to the approved use commencing the submission and approval of a Management Plan by the General Manager or delegate to cover all aspects of the development including:
- Property description and details of the boat launch location and pick up/set down site.
 - Hours of operation.
 - Patron behaviour.
 - Protocols regarding the use of the carpark adjoining old Barneys Bridge for the drop off and pick up of personal items and passengers prior to parking passenger vehicles adjacent to the BP Chinderah.
 - Advice regarding the location and use of the BP Chinderah Service Station.
 - Boat speed restrictions.
 - Maritime regulations for safe boating.
 - Parameters for travel upon the boat including areas that the boat is prohibited to enter including shallow areas of the estuary containing seagrass and Tony's Bar Roost in the Fingal reach locality.
 - Limits on the number of persons onboard.
 - Limitations regarding the use of the beach near Barneys Point Bridge.
 - Waste disposal including sewerage tank pump out and any waste generated while on board the vessel or at the carpark at the BP Service Station Chinderah.
- [POCNS01]
6. The applicant is to provide further details in regards to providing a suitable waste disposal service. This information is to be submitted to Council and approved by the General Manager or delegate. The approved waste service shall be in place prior to the use commencing.

[POCNS02]

7. A licence for use of the public foreshore reserve for the purposes specified will be required. A license for the use of the Fingal Head Boat Ramp, and any other public waterways infrastructure (pontoons, jetties or wharves) that may be used by the proposal will also be required. Such a license would include conditions for use of the vessel sewage holding tank pump out facility provided at Foyster's Jetty on Minjungbal Drive. License conditions will also relate to the time that the vessel can be moored at a public facility.

[POCNS03]

8. Section 94 Contributions

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

Prior to the commencement of approved use, all Section 94 Contributions must have been paid in full and the applicant 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:
8.8 Trips @ \$1176 per Trips \$6,209.40*
(\$1,137 base rate + \$39 indexation)
(\$4,139.60 subtracted from total for commercial job creating developments)
S94 Plan No. 4
Sector6_4

[POCNS04]

USE

9. 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.
10. Hours of operation of the business are restricted to the following hours: 8am to 4pm, 7 days per week.
11. The use shall be conducted in accordance with the Management Plan approved by Council at all times.

[USE0125]

[USE0185]

[USENS01]

12. **The vessel shall use the beach near the Barneys Point Bridge for pick up and drop off of passengers only. The vessel shall not be left at the beach unattended, nor should it be moored at the location for more than one hour.**
[USENS02]
13. **Sewage holding tank pump out is to be undertaken at Foysters' Jetty.**
[USENS03]
14. **There shall be no beaching of the vessel, or disembarkation of passengers from the vessel, to eliminate the potential for the vessel or passengers to disturb resident or migratory shorebirds using the Tony's Bar roost in the Fingal reach of the Tweed River.**
[USENS04]
15. **The pontoon boat shall not operate in shallow waters within the estuary containing seagrass. These areas shall be identified to the operators prior to departure.**
[USENS05]

REPORT:

Applicant: Tweed River Wake & Ski Pty Ltd
Owner: Tweed Shire Council
Location: Lot 403 DP 755740 Main Road, Fingal Head; Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah; Tweed River, Tweed Heads
Zoning: 6(a) Open Space and 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: Not Applicable

Background:

Council at its meeting of 21 November 2013, resolved to refuse this development application for the purpose of a water sports boat and a barbeque pontoon boat operation on the Tweed River between Tweed Heads and Murwillumbah.

The development, as originally submitted, proposed that the water sports boat was to engage in tow water sport activities including skiing, wakeboarding, wake skate, ski chair, tube and kneeboard in the Tweed River reach located between the Cane Road Bridge and Stotts Island. Outside of these areas the boat was to be operated without water ballast. This boat can seat up to 9 people. The pontoon boat was to be available for hire by the public for groups up to 12 people in a self-drive arrangement or 22 people if skippered.

Proposed Development

The as submitted RoD has amended the original proposal by deleting all aspects of the activity relating to the water sports boat. The development application, as amended, now seeks approval for the hire of a single barbeque pontoon boat. More details regarding the operation and use of the barbeques pontoon boat are detailed below.

Boat Storage - The pontoon boat is on a registered trailer and will be stored on private property.

Bookings - Bookings will be undertaken over the phone with no "shop front" premises being provided.

Hours of Operation - The use will be available to take place seven days per week between 8.00am and 4.00pm. Actual use will be subject to weather and seasonal demand.

Boat Launching - The boats will be launched at Fingal public boat ramp by the business operator identified as Lot 403 DP 755740 (Reserve I00I00B) Lighthouse Parade, Fingal.

Car Parking - Car parking of customer vehicles and staff vehicles (and boat trailer) is to be at the BP Chinderah at Lots 9 and 10 DP 24164 and Lots 9 to 12 DP 830655, Nos. 2 - 1 2 Chinderah Bay Drive, Chinderah. An area of approximately 300m² to the north of the kiosk has been allocated for the proposed use.

Passenger pick up and set down - Passengers will be picked up and set down at the sandy beach between Banora Point Bridge and the old Barney's Point Bridge (jetty). No exclusive use or permanent occupation of public land is proposed.

Rubbish - A commercial bin will be provided at the BP Chinderah parking site.

Boat Details - The pontoon boat is 8m in length, is constructed on two flat bottom pontoons and has a draft of 300mm. The boat has on on-board toilet, barbeque, and sun cover and is powered by a standard four stroke outboard engine.

The boat will be available for 12 people in a self-drive arrangement (governed to eight knots) or 22 people if professionally skippered by the business owner or his staff.

The pontoon boat is a low speed vessel and is similar to other barbeque boats and houseboats in use on the river. The boat does not generate any significant wake. No anchoring or ground disturbance will be permitted within seagrass or mangrove areas.

In the case of a self-drive hire of the pontoon boot, it will be governed to a maximum speed of 8 knots, in which case the operators do not require a licence. This is similar to the many houseboats and barbeque boots already in operation on the river. The applicant has advised that customers will be provided with instructions on the safe operation of the vessel.

The area of operation of the pontoon boat is to be the area of the Tweed River bound by Tweed Heads in the North, the confluence of Cobaki Creek and Terranora Inlet to the west, and to Murwillumbah to the south.

The proposal is defined as 'tourist facilities' under the Tweed Local Environmental Plan 2000 (LEP 2000). In order for this use to be permissible on unzoned land (the Tweed River), it must be compatible with surrounding development and zones. Due to the length of the Tweed River from Murwillumbah to Tweed Heads (a distance of approximately 30km) there are multiple adjoining zones including 1(a) Rural, 1(b2) Agricultural Protection, 2(a) Low Density Residential, 3(c) Commerce and Trade, 3(d) Waterfront Enterprise, 4(a) Industrial, 5(a) Special uses, 6(a) Open Space, 6(b) Recreation, 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(d) Environmental Protection (Scenic/Escarpment) and 8(a) National Parks and Nature Reserves. The proposal as amended is consistent with the provisions of many of zones.

The development, as proposed originally, raised a number of issues regarding river erosion, local amenity, impact upon the ecosystem and critical habitats, conflict with existing recreational river uses, proximity to residential development and suitability for the site given the environmental sensitivity of the area. The impact of the proposed development, as amended will be detailed elsewhere in this report. The amended proposal is now regarded as a low impact activity and will not have an adverse impact on the Tweed River or other recreational users.

Subject Site

The proposed development is to be undertaken over a number of different land parcels, summarised as follows:

Fingal Head Boat Ramp- Lot 403 DP 755740 Main Road, Fingal Head

It is proposed to launch the boat at the Fingal Heads Boat Ramp, which is situated in a recreational reserve with an area of 4.123 hectares. The eastern portion of the land is heavily vegetated and zoned 7(a) Environmental Protection. The remaining portion of the land (and perimeter - eastern and southern boundaries) is zoned 6(a) open space.



Figure 1: Aerial view of Fingal Head Boat Ramp site

Lots 9 and 10 DP 24164 and Lots 9-12 DP 830655 Nos. 2-12 Chinderah Bay Drive, Chinderah

These allotments are currently developed with a BP Chinderah service station. It is proposed to provide both customer and staff vehicles (and boat trailer) to a 300m² area to the north of this site.



Figure 2: Aerial view of BP Chinderah Car parking area

Pick up/set down point adjacent to Barney's Point Bridge, Chinderah

It is proposed to pick up and set down boat passengers at the sandy beach between Banora Point Bridge and the old Barney's Point Bridge (jetty).



Figure 3: Aerial view of Barney Point Bridge Pick up and Set-down point

Tweed River

The pontoon boat is to operate on the Tweed River between Murwillumbah and Tweed Heads. The Tweed River adjoins a multitude of various land zones, including environmentally sensitive land.

Assessment

The application was the subject of a comprehensive Section 79C report assessment. This report was presented to the 21 November 2013 Council meeting. The report recommended refusal and was supported. The nine reasons for refusal and an assessment of the amended proposal against these reasons is provided below:

- 1. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(ii), the orderly and economic use and development of the land.**

The proposal has the ability to impact negatively upon adjacent land; accordingly the proposal is not identified as satisfying the objects of the Environmental Planning & Assessment Act 1979.

The revised application was of the understanding that while *"the proposal has the ability to impact negatively upon adjacent lands"* this broad statement was directed of the operation of the water sports boat.

The amended proposal comprising of a pontoon boat only is considered to have a very low impact with minimal adverse amenity issues upon adjacent lands.

The amended proposal has addressed the issues behind this reason for refusal and represents an orderly and economic use of the Tweed River.

It is concluded that while the pontoon boat has some issues that require addressing within this report, the water sports boat did provide the conclusion that the development would negatively impact upon adjacent lands to such a degree the application could not be supported. It is considered that the pontoon boat will not result in these negative impacts in regards to the orderly and economic use of the land, therefore can be supported.

These negative impacts related to the following matters:

Amenity/Noise

The original development was considered to warrant particular assessment with respect to potential amenity and noise impacts. Council's Environmental Health Unit previously requested the applicant to provide a noise impact assessment however such was not submitted. Following the submission of the revised proposal removing all aspects related to the water sports boat, Council's Environmental Health Unit are no longer concerned with the noise impacts associated with the proposal. The boat will be powered by a outboard motor capable of a maximum of 8 knots. The noise generated by such a motor is common within the Tweed River by a variety of recreational users.

Similarly, the revised proposal being limited to the use of a pontoon boat within the river will have a negligible impact upon other users of the Tweed River, including low impact recreational and passive river uses such as fishing, walking, cycling, picnicking, sailing, paddling, snorkelling, bird-watching, rowing and kayaking.

Patrons hiring the pontoon boat will be subject to all the relevant boating laws as are all other recreational users of the river. These regulations include behaviour while using such a vessel.

The proposal will be subject to the preparation of a Management Plan to cover operating procedures and conditions of any consent granted. This management plan will be required to be prepared, submitted and approved prior to the operation commencing. The Management Plan will include (but may not be limited to) the following matters:

- Hours of Operation.
- Pick Up and Set-down procedures.
- Booking Procedures.
- Patron safety during pick up, set down and arrival at the nominated location.
- Patron behaviour.
- Restrictions in regard to hire area, sensitive lands and protected fauna.
- Number of persons permissible on board.
- Briefing of patrons in regards to Maritime regulations.
- Waste disposal.
- Amenities.

In this regard, the proposed amended development is now supported.

Riverbank Erosion

The subject application was referred to Council's Natural Resource Management (NRM) Unit for comment who originally advised that the proposed water sport activities were not supported as the use would add to the cumulative impact of wake waves on river bank erosion.

These wake waves were a result of the water sports boat not the pontoon boat. The removal of this component of the operation has addressed Council's concerns in this regard. The application is deemed satisfactory in this regard.

2. **Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(vi), the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.**

The proposal has the ability to impact upon the protection and conservation of native animals and plants; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

The revised application has advised that the amended proposal, comprising the hiring of a single pontoon boat, is a very low impact proposal and the potential impact upon the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats is minimal.

Council's Natural Resource Management Unit has provided comments for the amended proposal. These comments concur with the applicant's response in that generally these activities (the pontoon boat) will not have a detrimental impact on the environmental values of the river or enjoyment of the river by other river users.

Conditions of consent will be included within the recommendation to exclude the boat from travelling into areas that accommodate sensitive flora and fauna. This will ensure the protection of migratory shorebirds and seagrass occurrences within the river.

This reason for refusal is considered satisfied.

3. Pursuant to Section 79C (1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.

The proposed development is inconsistent with the aims of:

State Environmental Planning Policies:

- SEPP 14: Coastal Wetlands
- SEPP 64: Advertising and Signage (Clauses 10 and 27)
- SEPP 71: Coastal Protection (Clause 8(a), (d), (g), (h), (k), (l), (n) and (p)(i))
- NCREP: Clauses 15, 32B, 75 and 76

The proposed development does not satisfy the provisions contained within:

The Tweed LEP 2000:

- Clause 4: Aims of this plan
- Clause 5: Ecologically sustainable development
- Clause 8(1): Consent Considerations
- Clause 11: Zoning
- Clause 13: Development of uncoloured land on the zone map
- Clause 25: Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land
- Clause 29: Development adjacent to Zone 8(a) National Parks and Nature Reserves
- Clause 31: Development adjoining waterbodies

SEPP No. 14 - Coastal Wetlands

Having regard to the changes proposed to the original development, the proposal is now considered consistent with the aim of this SEPP in that it will preserve and protect coastal wetlands in the environmental and economic interests of the State, given the recognised minor impact arising from the proposed development, in particular on the Coastal Wetlands adjacent to Stotts Island. In this regard, the proposal is consistent with the provisions of this SEPP.

SEPP 64 - Advertising Signage

The applicant has stated that Clause 10 of SEPP 64 does not apply to business identifications signage. Therefore, this clause does not apply.

The application does not provide information regarding the incorporation of signage into the subject operation. A condition will be placed upon any consent granted to ensure compliance with the SEPP.

SEPP No 71 – Coastal Protection

A revised assessment of the proposal involves consideration of the matters for consideration at Clause 8 of this policy, as follows:

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

The subject revised application is considered to be in accordance with the aims of this policy, in particular with respect to aims a, d and g.

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

The subject application as revised will require access from areas of public foreshore along the Tweed River and Fingal Boat ramp. This access will be for pick up and set down of passengers and to launch or retrieve the pontoon boat. Public access will not be restricted due to the operation of the pontoon boat. However, existing points of access will be shared with a commercial operation.

Having regard to the use of a single pontoon boat over a large area of water way, it is considered that the public will not be significantly discriminated through the operation of this boat.

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

The amended application is not considered to generate opportunities to provide new public access along the coastal foreshore.

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

The proposed amended development is considered to represent a suitable activity at this location due to its relatively minor scale and passive attributes associated with such an activity.

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

The proposed development will not have an adverse impact on the coastal foreshore as outlined above with respect to loss of views or overshadowing.

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

The subject application is not considered to adversely impact upon the scenic qualities of the New South Wales coast.

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

The subject development as amended will not have the potential to impact on habitats due to the nature of the development and conditions of any consent granted to protect the sensitive lands through prohibition.

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

The subject application is not considered to impact significantly on measures to conserve fish and marine vegetation as outlined above.

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

The subject application is not considered to impact significantly on wildlife corridors as outlined above.

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

The subject application is not considered to result in any specific impacts with respect to coastal processes or hazards in this instance.

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

The application as originally proposed demonstrated potential for conflict between land and water based coastal activities. As a consequence a Noise Impact Statement was requested from the applicant, however was not received. The removal of the water sports boat negates the need for a Noise Impact Assessment due to the removal of the primary noise source, the water sports boat.

It is considered that the proposed development has adequately demonstrated measures to reduce impact between land and water-based activities by the removal of a potential source and as such the application is considered satisfactory in this regard, subject to conditions.

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

The original application was forwarded to NSW Government (Office of Environment & Heritage) and the Tweed Byron Local Aboriginal Land Council (TBLALC) through the referral process. Council received correspondence from NSW Government (Office of Environment & Heritage) outlining the following:

'Prior to determining the application, Council should also be satisfied that an appropriate level of Aboriginal cultural heritage assessment has been undertaken, and that the proposal is not likely to impact on areas of cultural significance to the Aboriginal community. Also, it is important that the views of Aboriginal community groups be sought in regard to the proposed development.'

In this regard, Council has received a submission from the TBLALC outlining concerns with the proposal and requesting that a full Cultural Heritage Assessment be undertaken.

The applicant previously provided information in response stating that the proposed use and associated impacts are identical to those of the numerous other similar boats on the river, and outlining that it would be impossible to distinguish the impacts of the proposed boats separately from other boating use. A full Cultural Heritage Assessment is not to be undertaken according to the applicant.

In this regard it was not considered possible to fully assess the impact of the proposal with respect to the criteria outlined above. As such, the original application was not supported in the absence of adequate supporting information to ensure the proposal won't impact on measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.

The revised application was forwarded to the TLBALC for review having regard to the original objection. Their response to the revised proposal is outlined below in (n).

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

The proposed development is not considered likely to have a negative impact with respect to the water quality of coastal waterbodies.

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

As outlined under l) above the original application was forwarded to NSW Government (Office of Environment & Heritage) and the Tweed Byron Local Aboriginal Land Council (TBLALC) through the referral process. Council received correspondence from NSW Government (Office of Environment & Heritage) outlining the following:

'Prior to determining the application, Council should also be satisfied that an appropriate level of Aboriginal cultural heritage assessment has been undertaken, and that the proposal is not likely to impact on areas of cultural significance to the Aboriginal community. Also, it is important that the views of Aboriginal community groups be sought in regard to the proposed development.'

In this regard, Council received a submission from the TBLALC outlining concerns with the proposal and requesting that a full Cultural Heritage Assessment be undertaken.

The applicant provided information in response stating that the proposed use and associated impacts are identical to those of the numerous other similar boats on the river, and outlining that it would be impossible to distinguish the impacts of the proposed boats separately from other boating use. A full Cultural Heritage Assessment is not to be undertaken according to the applicant.

A Cultural Heritage Assessment was not lodged with the Section 82A Review. However, the application has been significantly reduced in scale with the removal of the wake boat component of the proposal. The TBLALC was provided with the relevant documentation supporting the RoD and amendment details.

The TBLALC uphold the objection to the subject proposal. This objection is based on the TBLALC opinion that insufficient details of the amended proposal have been provided by the applicant. Specifically:

- Are Tweed River Wake and Ski Pty Ltd a BBQ boat hire business?

- Is there more than one pontoon boat?
- What other related activities will the pontoon be used for other than the BBQ boat hire.
- Please clarify "the boats" as it relates to this d/a, how many, what type etc?
- The hours of operation are a concern particularly given that it is not clearly defined as to how many boats/associated activities there will be.
- Lack of clarity regarding the proposed pontoon boat hire and associated activities operations.

In response to these matters, the following comments are made:

- Council will not prejudice an operation based upon a company name. Specifically, while the company may be called Wake and Ski Pty Ltd, this in no way implies that any consent granted permits the use of a wake or ski boat in association with the approved use.
- The application is for the hire of a single pontoon boat. The conditions of any consent granted will confirm this.
- The pontoon boat will not be authorised to be used for any other activities.
- The type of boat is stated within the application as a double flat bottom pontoon boat 8m in length with a draft of 300mm. The boat has an onboard toilet, BBQ and sun cover and is powered by a standard four stroke outboard engine. The speed of the boat will be limited to 8 knots to permit unlicensed persons to operate the boat. A photo of the boat has also been provided.



Figure 4 – The Pontoon Boat

- The hours of operation are stated within the SEE, specifically 8am to 4pm, 7 days a week. These hours will be restricted by a condition of consent.
- The activities associated with the boat hire are limited by any conditions of consent and further restricted by the relevant Maritime Authority. The scope of the hire business will be

included with the conditions of consent and re-iterated by the Management Plan that will control the ongoing use of the pontoon boat.

Accordingly, Council considers that these matters have been satisfactorily addressed and the ongoing use as approved will be subject to limitations as imposed by the conditions of consent, including a Management Plan covering all aspects of the operation. This management plan must be prepared and submitted by the applicant for Council approval prior to commencement.

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

Not applicable to the subject application.

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

- i. the cumulative impacts of the proposed development on the environment, and

The proposed development will not result in an unacceptable cumulative impact with respect to adverse impact on the waterway.

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

There is not considered to be specific measures applicable to this application with respect to water/energy usage.

The previous assessment of the proposal as originally proposed against Clause 8 highlighted that the proposal was not consistent with the aims of the policy as set out in Clause 2, specifically but not limited to, a), d), g), k), l), n) and p). The revised proposal is of significantly reduced scale and limited to the use of a low speed barbeque pontoon boat. The operation of a pontoon boat in the Tweed River is considered compatible with the environment and other passive recreational uses. Other operations similar to that proposed have been approved by Council and operate within the locality. The proposal is now considered suitable for and compatible with the surrounding area. It will not conflict with measures to conserve habitats and aboriginal heritage. The cumulative impact of the proposed development on the environment is considered sustainable and the proposal is supported with respect to this SEPP.

North Coast Regional Environmental Plan

Clause 15: Wetlands or Fishery Habitats

The amended application relates to the operation of a pontoon and water sports boat on the Tweed River and as such this clause applies to the subject development. This clause states that 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,*

The subject application, as amended, is not considered to impact to a significant degree on the quality or quantity of water flow in to Tweed River.

- (b) *the need to conserve the existing amateur and commercial fisheries,*

The proposed development as revised will not impact on existing amateur fishing practices due to the scale and nature of the operation.

- (c) *any loss of habitat which will or is likely to be caused by the carrying out of the development,*

The revised application has been forwarded to Councils Natural Resource Management Unit who has advised that the activities without the water sports boat component will not have a detrimental impact on the environmental values of the river or enjoyment of the river by other river users. Conditions of consent have been recommended to ensure the protection of migratory shorebirds and seagrass.

- (d) *whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*

The proposal is considered to be generally acceptable in this regard. While it is recognised that the pontoon boat will use a foreshore for access, this is considered relatively common in foreshore areas. Considering the proposal is for a single boat and the Tweed River does have significant useable foreshore areas, it is reasonable to conclude that the use would not inequitably obstruct or preclude use of these facilities by the public.

- (e) *whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*

The scale and nature of the operation being the operation of a single barbeques pontoon boat at a maximum speed of 8 knots that is compliant with all maritime restrictions is unlikely to result in pollution of the waterway.

- (f) *the proximity of aquatic reserves dedicated under the Fisheries Management Act 1994 and the effect the development will have on these reserves,*

The subject application is not considered to impact on any aquatic reserves as outlined above.

- (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*

Not applicable to the subject application.

- (h) *the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and*

As outlined under (c) above, the proposed development, as amended will not cause a loss in habitat due to the minimal draft and wake emanating from a pontoon boat that can only travel at a maximum of 8 knots. This is also considered to be relevant to this clause as wetlands are located within the area identified for water sports use, including adjacent to Stotts island and to the north

river bank at Tumbulgum. No objection is now raised to the development in this regard.

- (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.*

Not considered to be specifically applicable to the subject application.

As outlined above, the primary issue in relation to this clause pertaining to the original application was the possible impact on and loss of habitat, including native vegetation due to river erosion arising from wake waves associated with the water sports boat. Due to the removal of the water sports boat from the proposal, this concern has now been satisfactorily addressed.

Clause 32B: Coastal Lands

In regard to the four principles provided by this clause the proposed development in a revised form is now considered to be consistent with each. The nature and intensity of the proposed development will not threaten critical habitat and will not compromise the preservation of biological diversity due to negligible impact on river erosion.

The essential natural and cultural resources of the coastal zone will be preserved for the benefit and enjoyment of future generations.

Clause 75: Tourism development

Of particular relevance under this Clause is 75(1)(c) which states that Council must not grant consent to tourism development unless it is satisfied that *the development will not be detrimental to the scenery or other significant features of the natural environment.* Council is now satisfied that the nature and intensity of the revised proposal will not adversely impact upon features of the natural environment such as erosion to the river bank as originally concluded. As such, the proposal is considered to be consistent with this clause.

Clause 76: Natural tourism areas

The operational area proposed by the applicant is within a natural tourism area as defined under this clause. It adjoins nature reserves, Crown land, protected areas and is, in the opinion of Council, considered to be a natural area with qualities which make it a major attraction.

The policy advocates that any tourist development adjacent to a natural area must limit its proposed activities to those which will not threaten the value or integrity of the natural area and that activities which pose a threat should be excluded altogether.

In addition, the tourist development should be sufficiently separated from the natural area so that the noise it generates does not cause nuisance to users of the natural area or distress its native fauna. The scale of development must be limited so that it does not dominate the natural area or cause use of it to exceed its environmental capacity.

The proposed development is limited to the use of a barbeque pontoon boat with a limited speed of 8 knots and shallow draft causing minimal wake. Boat users will travel within the designated areas stopping as desired for passive recreational uses such as fishing, swimming or simply viewing the scenery. The pontoon boat will not have adverse impacts in regard to erosion from large wakes generated by

the boat or excessive noise. While patrons of the boat have the potential to cause disturbance from noise, this potential is no greater than for a private boat user. Patrons will also be subject to all maritime regulations in regards to safe boat usage. The proposal is considered consistent with this clause.

Clause 81: Development adjacent to the ocean or a waterway

Councils Natural Resource Management Unit who have provided advice on the application with respect to the Tweed River Estuary Bank Management Plan 1998. From this is noted that *'The above management plan provides advice on the mechanisms for river bank erosion, sites for priority stabilisation works, and design options for stabilisation. There is no advice or policy statement with respect to the operation of vessels which may cause wake wave erosion.'*

This was advice provided for the proposal as originally presented. The removal of the sports boat renders this advice somewhat unnecessary. However, as previously stated, it is considered that the proposal would not necessarily contravene the provisions of this clause and consequently refusal is not recommended in this regard.

Tweed Local Environmental Plan 2000

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

The subject amended development application is now considered to be in accordance with this Clause in that it is unlikely to compromise the unique natural character of the Tweed River. The proposal has demonstrated that it is compatible with the Shire's environmental and residential amenity qualities and as such is not considered to be in contravention of this Clause.

Clause 5 - Ecologically Sustainable Development

The subject proposal is considered consistent with the above criteria in that the proposed activities on the Tweed River will not threaten biological diversity and ecological integrity. Approval of the proposal without the water sports boat component is considered unlikely to have negative ramifications for ecologically sustainable development principles on the Shire's waterways and it is recommended that the application be supported in this regard.

Clause 8 - Consent Considerations

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

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

In this instance, the boat will be launched on land zoned 6(a) Open Space at Fingal Boat Ramp, passengers are to be picked up at Barneys Point Bridge which

is unzoned Road Reserve and passenger cars are to be parked on land zoned 3(d) at BP Chinderah.

The boating operations are to be undertaken on unzoned waterway between Tweed Heads and Murwillumbah. Development on unzoned land is detailed further under Clause 13 below.

The proposed development would be defined as 'Tourist Facilities' under the provisions of the TLEP 2000 which means:

'An establishment principally used for the recreation or enjoyment of tourists and may include an amusement park, boat shed, boating facility, cruise craft dock, tavern, marina, playground, refreshment room, shop, theme park, water sport facilities or the like or a club used in conjunction with any such activities.'

Under the TLEP 2000, tourist facilities are permitted with consent in the 6(a) Open Space and 3(d) Waterfront Enterprise zones.

The primary objectives of the abovementioned zones (and consistency of the proposal with the objectives) are as follows:

6(a) Open Space

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

The purpose of 6(a) zoned land is to 'satisfy the open space and recreational needs of local residents and visitors to the area of Tweed'. Development should only be encouraged to assist this recreational use and enjoyment.

The proposal represents a commercial use similar to others operating out of the Tweed River. The proposal being limited to a single pontoon boat can operate in conjunction with other recreational uses and the enjoyment of the land by local residents and visitors to the area solely for recreational purposes. In this regard the proposal is considered to be in accordance with the primary objective of the zone.

3(d) Waterfront Enterprise

- *To encourage development related to waterfront and marine activities, recreation or tourism.*

The purpose of 3(d) zoned land is to 'encourage development related to waterfront and marine activities, recreation or tourism.' In this regard the proposal is considered to encourage development for tourism purposes and therefore complies with the primary objective of the zone.

The Tweed River is recognised as having a unique value within the Northern Rivers Region. The development is considered to have an acceptable cumulative impact on the community, the locality and on the area of Tweed as a whole due to its reduced scale and nature of operations.

Clause 11 - Zone Objectives

Primary objectives of the relevant zones have been discussed under Clause 8 above in relation to the proposal.

Secondary objectives for the relevant zones include the following:

6(a) Open Space

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

The proposal is considered to be compatible with the recreational use of the land as it can be conducted alongside with other passive river uses.

3(d) Waterfront Enterprise

- *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.*

While subject application does not propose any residential development it has been concluded under Clause 8 that the proposal is considered to be compatible with the primary objective of the 3(d) zone.

Clause 13 – Development of uncoloured land on the zone map

The submitted application states that the proposed development is to operate on navigable parts of the Tweed River between Murwillumbah and Tweed Heads. The Tweed River is unzoned under the provisions of this TLEP and as such this clause applies to the development application. Furthermore, passenger pick-up and set-down is to be undertaken on unzoned Road Reserve at Barneys Point Bridge.

The objectives of Clause 13 are as follows:

- To enable the control of development on unzoned land.
- To ensure that development of unzoned land is compatible with surrounding development and zones.
- To ensure that development of certain waters takes account of environmental impacts and other users of the waters.

In deciding whether to grant consent to development on unzoned land, the consent authority must consider:

- a) whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.*

Due to the length of the Tweed River from Murwillumbah to Tweed Heads (a distance of approximately 30km) there are multiple adjoining zones and development characters in the vicinity of the development area as outlined below:

The original proposal was considered inconsistent with the objectives of the 1(b2) Agricultural Protection Zone, the 2(a) Low density residential zone, 4(a) Industrial, 5(a) Special Uses (Proposed Classified Road), 6(a) Open Space, 7(a) and 7(d) Environmental Protection and 8(a) National Parks and Recreation. While parts of the river adjoin other zonings, the original assessment provided that the proposal when inclusive of the water sports boat was consistent with the objectives of these respective zonings.

It should be noted that the proposed defined use 'tourist facility' may be granted development consent within unzoned land, regardless of its permissibility status within the adjoining zoning. Therefore, while some zonings may prohibit a tourist

facility within the subject zone, tourist facilities may be approved, subject to compatibility with the adjoining zone objectives within the unzoned Tweed River.

The applicant has stated that the elements of the amended use to be undertaken on zoned land (i.e. the launching, parking and pick up/set down activities have been designed to be conducted on land in such a manner to minimise environmental impacts and demands on public facilities.

1(b2) Agricultural Protection

The Tweed River adjoins vast tracts of land zoned 1(b2) between Chinderah and Murwillumbah. While a tourist facility development is prohibited in this zone as outlined elsewhere in this report, the Natural Resource Management Unit have advised that the amended proposal is compatible with the adjoining agriculture activities due to its reduced scale and as it is unlikely to create adverse environmental impacts relating to noise, pollution and wake generation. As such it is considered that the proposed use would not be in contravention of the objectives of the zone.

2(a) Low Density Residential

Low intensity commercial use of the river of this nature is unlikely to impact negatively on low density residential amenity and is consistent with the primary objective for this zone within which tourist facilities are prohibited.

With respect to the secondary objectives, while the amended proposal is not domestically based, it is not considered contrary to the local needs of the community. In this regard the proposal is considered to be compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity of the river.

4(a) Industrial

The Tweed River adjoins land zoned for industrial purposes at Condong Sugar Mill. The proposal is not in conflict with the intent of the zone objectives in regard to economic activity and employment generation. Therefore the commercial operation will not be prejudicial to the industrial uses within this locality

5(a) Special Uses (Proposed Classified Road)

The Tweed River adjoins land zoned 5(a) Special Uses (Proposed Classified Road) at Barneys Point Bridge. The proposed tourist facilities are prohibited in this zone, however, no use of the adjoining land is proposed in conjunction with this amended application. The nature and scale of the development is unlikely to have a detrimental impact upon the adjoining special use zone.

6(a) Open Space

6(a) Open Space objectives and development permissibility have been discussed under Clause 8 and Clause 11 above with it being determined that in this instance the subject proposal would be in accordance with the primary objective of the zone.

7(a) Environmental Protection (Wetlands and Littoral Rainforests)

While the original proposal was considered inconsistent with both primary objectives of this zone, the revised proposal being of a reduced scale without the water sports boat will not compromise protected areas or impact negatively upon wetland and/or littoral rainforest ecosystems.

7(d) Environmental Protection (Scenic/Escarpment)

The proposal will protect and maintain areas of particular scenic value to the Tweed and is consistent with the primary objective in this regard. While, the proposal is a prohibited form of development in this zone the use of the Tweed River for tourist facility purposes on such a minor scale adjacent to this 7(d) land is considered compatible with adjoining zone.

8(a) National Parks and Nature Reserves

The use of the Tweed River adjacent to this zone for the amended tourist facility is compatible with development permissible in this adjoining zone despite tourist facilities being prohibited under this zone. It is considered that the proposed pontoon boat will not compromise the management of the National Park having regard to other similar uses being conducted with the Tweed River.

It is noted that the proposed area of operation (Tweed River) also adjoins land zoned under the Tweed City Centre LEP 2012. In this regard the unzoned land (Tweed River) adjoins land zoned RE1 Public Recreation, R3 Medium Density Residential and W2 Recreational Waterways under the provisions of this LEP. Under this LEP the proposed development would be defined as a 'business premises'. The original assessment identified that the subject proposal while compatible with the R3 Medium Residential area, and, was not considered compatible with the RE1 zone or the W2 Recreational Waterway zone. The amended proposal is considered to remove the potential adverse impacts that are contrary to the objectives of these zones.

Clause 25 – Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The uncoloured land upon which the proposal is to take place is located adjacent to land zoned 7(a).

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 Tweed.*

In relation to the proposal, the consent authority must take into account 'the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest'.

The proposal is now considered consistent with the objectives of this clause. It is considered to be in the environmental interests of the subject area to support the proposal as it has been demonstrated that it would not impact negatively and cumulatively on sensitive environmental areas of significance.

Clause 29 – Development adjacent to Zone 8(a) National Parks and Nature Reserves

The proposal extends to the river adjacent to Stotts Island and adjacent to Ukerebagh Nature Reserve.

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 revised proposal is consistent with the management and appropriate use of the reserve in accordance with the *National Parks and Wildlife Act 1974*. The proposed development due to its scale and nature will provide satisfactory protection for this area. Council's Natural Resource Management Unit has provided advice in support of this conclusion subject to restrictions upon the operation of the pontoon boat to protect sensitive lands and fauna.

Clause 31 – Development Adjoining Waterbodies

The proposal does not impact upon the provision of adequate public access to waterways given that the Fingal Head boat ramp is available to the public. The use of a public facility for the launching of a single boat being utilised for a commercial business is not deemed to be in contravention of this Clause as public access to the waterway will be maintained.

It is considered that with respect to this application the most relevant objective of this clause is:

- *to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.*

The applicant has advised that the proposal does not involve the erection of any structures, accordingly the scenic impact or setbacks of this clause are not applicable.

The reduced scale of the amended proposal is considered to be compatible with the relevant objective of the Clause. Council's Natural Resource Management Unit concurs with this. The proposal is considered to satisfy this objective.

4. The proposal is inconsistent with the applicable management plans that highlight the need to protect ecology and reduce erosion within the vicinity of the Tweed River.

The original proposal, as presented to Council in November 2013, was considered to contravene the Upper Tweed Estuary Management Plan and the NSW State Rivers and Estuary Policy (1993). The impacts of the proposed water sports boat were also measured against the findings of the Tweed River Bank Erosion Study. The inability of the proposal to operate in a manner compatible with the provisions of these studies determined that Council could not support the application.

The amended proposal, removing the water sports boat has significantly reduced the impact of the proposal in regards to wave wake energy and subsequent river bank erosion. The pontoon boat is not recognised as being a vessel that creates wave wake energy of such significance to cause erosion along river banks. Accordingly, it is concluded that the proposal will not contribute cumulatively to river bank erosion.

Similarly, while the Upper Tweed Estuary Management Plan acknowledges and recognises the need to accommodate recreational boating in the Upper Tweed Estuary, it highlights that protection of wetland vegetation and riparian corridors and addressing river bank erosion is a high priority.

As outlined above, the pontoon boat will not result in unacceptable wave wake energy. Therefore, the proposal is now consistent with this plan as it will not protect significant habitat within the Tweed River confines.

The provisions of the NSW State Rivers and Estuary Policy have a similar objective to both these Council documents. The primary objective of this document has been addressed with the removal of the component of the development that was deemed unacceptable within the Tweed River as a commercial enterprise. The approval of a single pontoon boat to operate with the Tweed River will not prejudice the long-term sustainability of the essential biophysical functions and maintain the beneficial use of these resources.

The provisions of these management plans are now considered to be satisfied.

5. **Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

The use of unzoned land adjacent to environmental conservation areas of State significance for the purposes of water sports boat operation is considered unacceptable due to its possible impact on and loss of habitat, due to river erosion.

The water sports boat is not longer an element of the subject development application. It is this component of the development that was considered unacceptable. This report has provided sufficient evidence that the proposal is now satisfactory as it will not contribute to river bank erosion or habitat damage. Conditions of consent can be imposed to ensure the boat does not operate in certain areas that contain sensitive flora and fauna. This conclusion is supported by Council's Natural Resource Management Unit.

6. **Pursuant to Section 79C (1) (b) of the Environmental Planning & Assessment Act 1979 (as amended) due to the likely impacts of the proposed development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.**

The proposed development would have an unacceptable impact with respect to amenity and noise impacts on surrounding residents and other passive recreational river users as well as having an unacceptable negative impact on cumulative river erosion in the operational area.

The applicant has responded to this reason for refusal with the removal of the component of the development that was considered to generate an unacceptable impact with respect to noise and amenity issues (i.e. the removal of the water sports boat from the application). Council's Environmental Health Unit and Natural Resource Management Unit both accept that the proposed operation is now acceptable in terms of amenity and noise matters. The pontoon boat is a very low impact operation and is not dissimilar to other pontoon hire boats operating in the locality. The proposal is now considered to satisfy this reason for refusal and is acceptable in this regard, subject to conditions.

7. **In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.**

It is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of unzoned land and the 1(b2) Agricultural Protection, 2(a) Low Density Residential, 3(d) Waterfront Enterprise, 4(a) Industrial, 5(a) Special Uses, 6(a) Open Space, 6(b) Recreation, 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(d) Environmental Protection (Scenic/Escarpment) and 8(a) National Parks and Nature Reserves zones.

The applicant has provided feedback regarding the amended proposal addressing this reason for refusal. *It is considered that the amended proposal is a low key operation with minimal environmental impacts that will increase the range of recreational activities available to residents and tourists. In this respect it is considered to create a positive contribution to the community and is entirely consistent with the anticipated use of the waterway. The proposal does not compromise the objectives or development standards of Tweed LEP 2000 in relation to land use zones adjoining the waterway.*

Public submissions received in relation to the original proposal indicated issues associated with the water sports boat such as bank erosion and noise. In this respect the amended proposal, comprising the pontoon boat, is considered to address these issues since it is a low speed vessel with flat bottom sponsons which are 1m wide and have a draft of 300mm. The engine is a standard 4 stroke outboard and the hours of operation are when other boats are in use and background noise levels are elevated. We submit that the amended proposal is in the public interest.

Any consent granted will be conditioned to restrict hours of operation and the amenity of the area. The operation will also be bound to any NSW Maritime regulations in relation to safe boating procedures and operators.

As previously outlined within this report, the proposal is now considered compatible with the relevant adjoining land uses and will not be adverse to the public interest. Any potential detrimental impacts to the Tweed River adjoining particular zones can be conditions of any consent granted.

8. **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 RE1 Public Recreation, W3 Working Waterways, W2 Recreational Waterways and SP2 Infrastructure zones.**

The application was lodged and determined prior to the implementation of the TLEP 2014. Clause 1.8A of this 2014 plan 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.

The original report presented to Council characterised the proposed use as a business premise under the draft LEP. Documentation provided by the applicant provides that the development may be more appropriately characterised as a "recreation facility (outdoor)" which is permissible with consent in the RE1 and W2 zones.

This definition is not supported by Council and the definition as originally defined is considered most compatible with the proposal. However, having regard to the amendments to the proposal and the savings provision applied to the subject site, for the purposes of the review this reason for refusal is considered suitably satisfied.

9. **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 RE1 Public Recreation, W3 Working Waterways, W2 Recreational Waterways and SP2 Infrastructure zones.**

It is considered that this reason for refusal is suitably satisfied having regard to the explanations provided for Reason No 8.

Public Notification

The proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 21 days from Wednesday 9 April 2014 to Monday 2 May 2014. During this time, 12 submissions were received including a petition containing 32 signatures.

Issues raised within the submissions are many and varied. A summary of the issues is provided below along with any response provided by the applicant following receipt of submission copies.

Summary of Submissions	Response from applicant
<ul style="list-style-type: none"> • The Tweed Rivers natural amenity, ecosystems and critical habitats should be preserved and protected from the proposed use. • The application should be a new DA rather than Section 82A Review as the development is not substantially the same development as originally proposed. • More information is required about the booking system. • While the application states the operation will be the hiring of a single boat, it is considered that the proposal will include the use of multiple boats. • There is concern that the pontoon will be used as floating platform for wakeboard activities. • Proposal would impact negatively on established business which are sustainable and low impact (eg surf/stand-up-paddle school) • Public land should not be used for the ingress/ egress for a pontoon boat due to OH & S and congestion concerns. • Tweed public have to pay for River upkeep/ maintenance and not the applicant. Tweed River should be protected and instead promote ecotourism rather than potentially damaging proposals. • There is inadequate car parking and virtually no 	<p>The amended proposal has successfully demonstrated that the amended use will no longer create unacceptable amenity issues in relation to noise. The wake resulting from the pontoon boat will not contribute to river bank erosion. These two matters were the primary reasons behind the original objections to the proposal.</p> <p>The Pontoon Boat is proposed to be used in areas including areas adjacent to Fingal but is considered of very low impact and no different to other similar pontoon boats operated by other commercial boat hire businesses in the area.</p> <p>The issues are summarised as follows:</p> <p><u>Other River Users</u></p> <p>Normal "distances off" and right of way to unpowered craft regulations apply. The river is large enough to cater for all different forms of watercraft and interests. It is an unreasonable position of any river user to expect exclusive use of the entire river. Similarly, the use of the Barneys Bridge beach for pick up and set down for a single boat is considered satisfactory. The timer taken to do so will not unfairly prejudice other river users and this site is not for the exclusive use of the commercial operation. The water way has a variety of areas available for access foreshore/</p> <p><u>Impacts of Flora and Fauna</u></p> <p>It is unlikely that the proposal would pose a significant effect on threatened species or their habitat.</p> <p>The application is seeking to provide a business that would enable visitors to the area to partake in a range of water based activities. The support of a viable tourism industry by providing a range of activities is considered to be in the public interest.</p> <p><u>Patrons Behaviour</u></p> <p>Council will not enforce matters relating to alcohol use, fishing licenses, and boat licenses. Boat speed will be controlled by Maritime Services.</p> <p>The booking system for the business appears straight forward and similar to other hire services.</p> <p>Patrons can use the toilet facilities on the boat and also the facilities at the BP Service Station adjoining the carpark.</p> <p><u>Chinderah Bay Drive</u></p> <p>Patrons are able to drop off passengers and any associated items to be used on the hire boat in the adjoining carpark adjacent. The driver would then only be</p>

Summary of Submissions	Response from applicant
<p>toilet/shower amenities provided at Barney's Point Bridge. Clients are therefore likely to use the nearest facilities at Tweed Ski Lodge Caravan Park which is private property.</p> <ul style="list-style-type: none"> • Approval of this DA will increase bank erosion and disrupt and endanger rowing and other low impact boating activities. • The proposal will adversely impact other recreational users. • Fingal Boat Ramp will not be able to cater for the increased parking demand. • The proposal will have an adverse impact upon the foreshore at Barneys Point. • A commercial pontoon business operating between 8am and 4pm 7 days a week would raise noise issues and destroy peaceful and quiet enjoyment of the area. Boat users will create unacceptable noise levels. • There are inadequate resources in place to monitor the activities of this type of business. The conditions of any approval granted will not be enforced by Council. • Chinderah Bay Drive experiences traffic levels that will place patrons crossing from the carparking to the beach for pick up set down at an unacceptable risk. • Passengers should be picked up and set down at Fingal Boat ramp. • While a submitter did not support the proposal, it was requested that any condition of consent take the following matters into consideration <ul style="list-style-type: none"> -The business being restricted to a single boat -That pick up from the old 	<p>required to negotiate Chinderah Bay Drive. This is considered satisfactory having regard to traffic volumes and patron numbers. The use of the Barney bridge for set down and pick up is preferable to using Fingal boat ramp due to existing parking demand.</p> <p><u>Commercial Use of Public Land</u></p> <p>The proposal will be subject to licensing fees that will contribute to the upkeep of the Fingal Boat ramp.</p> <p><u>Other Matters</u></p> <p>Conditions of consent to be inserted to address concerns;</p> <ul style="list-style-type: none"> • The application will permit a single boat only • Any consent granted will impose conditions as proposed by the applicant including pick up and set down locations, excluding the Fingal Boat ramp. • Sufficient waste disposal bins will be required as a condition of consent. • Restrictions in regard to operating hours. <p>These conditions will be integrated into a Management Plan for the operation of the business. This plan will be required and must be approved prior to commencement.</p> <p><u>Review Validity</u></p> <p>The applicant has provided a counter argument why the application should be considered as a review of the original determination. Both arguments are based on the interpretation of Land and Environment Court judgements.</p> <p>Council has given due consideration to this matter and considers that the development can be considered as a Section 82A review as certain key principles are satisfied namely;</p> <ul style="list-style-type: none"> • The proposal is still a "Tourist Facility" development comprising the use of watercraft on the Tweed River; • The amendments maintain the same launching retrieval, parking and pick up arrangements; • The impacts of the amended proposal are considered to be minor; • The intensity of the use is reduced by 1 boat but applies to the same "land". The proposed modifications will not alter the statutory or policy compliance of the proposal and maintain the same proposed use.

Summary of Submissions	Response from applicant
<p>jetty is by pontoon boat only</p> <ul style="list-style-type: none"> -That waste bins are provided -That the 8 knot speed limit is adhered to -Alcohol is not permitted on the pontoon boat -Noise is kept to a minimum -All drivers of the pontoon have a boat license -Any fishing on the boat will be in compliance with NSW Fishing provisions -The hours of operation are complied with <p>- A submitter has claimed that the proposal is should not be considered as substantially the same development for the purposes of the 82A review and a new DA should be submitted.</p>	

OPTIONS:

1. Approve the Review of Determination subject to the nominated conditions of consent; or
2. Reject the Review of Determination and proceed with defending the Class 1 Appeal in the Land and Environment Court.

Council officers recommend Option 1.

CONCLUSION:

Important operational and cumulative environmental issues were identified during the assessment of the original proposal that warranted its refusal. Further, management plans produced by Council and the Maritime Authority highlight the need to protect ecology and reduce erosion within the vicinity of the Tweed River. The amended proposal is now considered to be consistent with the management plans applicable to the Tweed River.

The proposal is now considered satisfactory in regard to its impact upon sensitive lands and fauna, the Tweed River, and the amenity of other recreational users of the river and locality.

Accordingly, assessment of the revised proposal against the relevant statutory legislation and internal comments from the Natural Resource Management Unit and Environmental Health Unit has resulted in a recommendation for the application to be approved.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant has lodged a Class 1 Appeal against the original refusal. This appeal will be negated if a positive determination is forthcoming.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

7 [PR-PC] Development Application D90/0436.08 for an Amendment to Development Consent D90/0436 for the Erection of a Tavern and Nine Shops at Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville

SUBMITTED BY: Development Assessment

FILE REFERENCE: PF3975/145 Pt8



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 a Section 96(1A) modification application to extend the trading hours of the Pottsville Tavern. The subject site has a complex planning history whereby a number of Section 96 modification applications have been considered by Council since the original approval of the Tavern in 1991. The hours of operation for the Tavern are 10.00am to 10.00pm seven days a week, which corresponds to the Hotel Liquor Licence.

Council has previously approved (under Section 96 application D90/0436.05) revised hours of operation for the Tavern for a 12 month trial period as follows:

Hours of operation for a maximum period of 12 months from the date of this amended consent:

Sunday to Thursday – 10.00am to 10.00pm

Friday and Saturday – 10.00am to 12.00 Midnight

Variation of the above hours are permitted for a maximum of six (6) times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council within the 12 month period.

Following the lapse of the 12 month period the hours of operation shall be restricted to 10.00am to 10.00pm.

Any further application for the variation of hours of operation outside of 10.00am to 10.00pm shall be prepared by a suitably qualified person and accompanied by a noise impact assessment in accordance with AS 1055 Acoustics – Description and measurement of environmental noise, the Noise Guide for Local Government June 2004 and any other relevant and accepted guideline.

The current Section 96 application seeks to amend the trading hours as follows:

Hours of operation are as follows:

- Sunday to Thursday – 10.00am to 10.00pm*
- Friday and Saturday – 10.00am to 12.00 Midnight*

Variation of the above hours are permitted for a maximum of six (6) times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council within the 12 month period.

Any further application for the variation of hours of operation outside of 10.00am to 10.00pm shall be prepared by a suitably qualified person and accompanied by a noise impact assessment in accordance with AS 1055 Acoustics – Description and measurement of environmental noise, the Noise Guide for Local Government June 2004 and any other relevant and accepted guideline.

Council has previously approved these hours of operation subject to appropriate 'Plan of Management' measures to mitigate impacts on the surrounding area for a 12 month trial period. It is understood that this trial period has not been carried out as the tavern operator has as yet to gain a variation to the liquor licence to trade beyond 10pm.

The applicant has proposed permanent ameliorative measures in order to allow these hours of operation on a permanent basis.

Council officers do not support the permanent extension of hours proposed by the applicant and on this basis the application is being recommended for refusal. However Council officers would be supportive of a 12 month reviewable condition, as previously recommended in the prior Section 96 modification (D90/0436.07). At the meeting of 21 November 2013, Councillors resolved to refuse the Section 96 application on the grounds of the likely impact on amenity; unsuitability of the proposal and not being in accordance with the public interest.

It is considered that the request to vary hours on a permanent basis is not supported as proposed. Insufficient evidence has been brought to Council's attention to demonstrate that the trial period has been conducted and therefore, as with previous considerations of modifications to the trading hours for the Tavern, the impact on the surrounding community cannot be adequately addressed. The management of potential noise impacts is strongly reliant on the Plan of Management and performance of the facility. There are also a number of strong objections put forwards during the notification period, as detailed further within this report.

It is therefore recommended that approval only be granted on the basis the implementation of a trial period in the form of a reviewable condition. However this was previously put forward to Council for D90/0436.07 and refused.

The proposal in its current format is therefore not supported and is recommended for refusal.

Should Councillors wish to allow the applicant further opportunity to amend their application, appropriate wording is included within the Options section of this report.

The proposal was advertised for a period of 14 days, during which time five submissions and one petition (219 signatories) of support for the proposal were received. The issues raised within the submissions are detailed further in this report.

RECOMMENDATION:

That Development Application D90/0436.08 for an amendment to Development Consent D90/0436 for the erection of a tavern and nine shops at Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville be refused for the following reasons:

- 1. The proposal would have a negative impact on the residential amenity of surrounding occupants; and**
- 2. The proposal would not be in accordance with the public interest as it presents unacceptable impacts on the social and residential amenity of the area.**

REPORT:

Applicant: Almoni Pty Ltd
Owner: Premium Custody Services Pty Ltd
Location: Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville
Zoning: 3(b) General Business - Tweed LEP 2000 and B2 Local Centre - Tweed LEP 2014
Cost: Not Applicable.

Background:

The subject site has a complex planning history. Consent was originally granted for the construction of a tavern and nine shops on 21 January 1991. The approved hours of operation for the tavern were restricted to 10.00am to 10.00pm.



Extract of Council's GIS aerial imagery showing location of Pottsville Tavern and surrounding residential development

The subject site, whilst located in the 3(b) General Business Zone under the provisions of the Tweed Local Environmental Plan (LEP) 2000, is in close proximity to a number of residential dwellings, as shown in the above extract of Council's aerial imagery. The land located to the north of the subject site is currently vacant. Of note, the approved DA04/0008 involved a mixed use commercial/residential development that the applicant advises has since lapsed and has been acquired by the owners of the Tavern.

Amended consents were issued by Council on 14 February 1991, 24 May 1991 and 25 January 1994, none of which modified the approved trading hours for the tavern. A Hotel Liquor Licence was issued in November 1999. The licence limits the tavern's trading hours to 10.00am - 10.00pm (as per the abovementioned approval), subject to conditions.

An application to modify the original consent (0090/2001S96) was lodged in July 2001. The proposed hours of operation were:

- Mon – Sat 8.00am to 11.00pm;
- Sunday 10.00am to 10.00pm; and
- Christmas Day/Good Friday 12 noon to 10.00pm.

The modification to extend the approved trading hours was considered to result in an increase in adverse impacts on the surrounding residents and was subsequently refused by Council on 19 December 2001.

A further Section 96 application was lodged (D90/0436.04) in December 2005. The proposed trading hours were:

- Monday to Thursday and Sunday - 10.00am to 10.00pm; and
- Friday, Saturday and Public Holidays - 10.00am to 12 midnight.

The proposed trading hours were for an initial 12 month time frame from the date of the approved amended consent. The modification to increase the trading hours was refused on 19 April 2007, as a result of potential for increased community disturbances by noise and activities of patrons leaving the premises.

The applicant then lodged a Class One Appeal with the Land and Environment Court in June 2007. Council resolved to engage solicitors to act on Council's behalf and defend the appeal. The applicant discontinued the appeal in July 2007.

A further Section 96 1(A) application (D90/0436.05) to extend the approved trading hours of the Tavern was received. The proposed hours of operation were as follows:

- Sunday to Thursday – 10.00am to 10.00pm
- Friday and Saturday – 10.00am to 12.00 Midnight

It was considered that the proposed hours would be acceptable, subject to a number of conditions being applied to the development consent, one of which being a reviewable condition as follows:

10A. Hours of operation for a maximum period of 12 months from the date of this amended consent:

Sunday to Thursday – 10.00am to 10.00pm

Friday and Saturday – 10.00am to 12.00 Midnight

Variation of the above hours are permitted for a maximum of six (6) times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council within the 12 month period.

Following the lapse of the 12 month period the hours of operation shall be restricted to 10.00am to 10.00pm.

Any further application for the variation of hours of operation outside of 10.00am to 10.00pm shall be prepared by a suitably qualified person and accompanied by a noise impact assessment in accordance with AS 1055 Acoustics – Description and measurement of environmental noise, the Noise Guide for Local Government June 2004 and any other relevant and accepted guideline.

An allowance of six variations to the approved extension of hours over the 12 month period (subject to written approval from Council) was provided in order to give the Tavern an opportunity to extend their trading hours on special events. This application was approved at a full Council Meeting on 18 May 2010.

A subsequent Section 96 application (D90/0436.06) was then submitted to Council in November 2011, requesting that the 12 month trial period be removed in order to allow the above hours of operation on a permanent basis. This was not supported as it was determined that the 12 month trial period had not been undertaken as approval from Casino, Liquor & Gaming Control was not obtained. This application was subsequently withdrawn.

On 26 March 2013 Council received a further Section 96 application (D90/0436.07) that proposed to remove the 12 month time period to allow the above hours to be undertaken on a more permanent basis, as required under Condition No. 10A. This application was reported to the Council Meeting of 17 October 2013 with a recommendation to amend Condition 10A of the consent as follows:

Hours of operation:

Sunday to Thursday – 10.00am to 10.00pm

Friday and Saturday – 10.00am to 10pm

Variation of the above hours are permitted for a maximum of six times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council.

Notwithstanding this condition, please see condition No 29 regarding the reviewable condition.

Condition No. 29 was also recommended as follows:

Reviewable Condition

This consent is subject to a reviewable condition under Section 80A of the Environmental Planning and Assessment Amendment Act. The reviewable condition relates to a condition that permits extended hours of operation. The purpose of this condition is to enable Council to monitor potential impacts associated with extended hours of operation at this site on the surrounding area and, if appropriate, to revert the development consent to its previously approved hours of operation.

Extended trading is permitted on Friday and Saturday until 12 Midnight subject to this condition being reviewed by Council after 12 months or upon receipt of a complaint that Council deems to be reasonable from the date the extended trading hours commence.

Council is to provide not less than 14 days written notice to the operator of the development that a review is to be carried out under this condition. Where requested by Council, the proponent is to submit a compliance audit against the operational conditions of the development consent, including the plan of management and noise audit report. Council may notify such other persons as it thinks fit of the review, and must take into account any submissions received within 14 days after notice is given.

Please note see Condition No 10B.

The application was deferred for a Council workshop and was reported back to the Council Meeting of 21 November 2013 with a recommendation of approval subject to a number of conditions being applied to the consent. Councillors resolved to refuse the application and the Section 96 application was refused on 21 November 2013 for the following reasons:

- (b) The likely negative impacts from the development on the amenity of neighbourhood environment due to existing and ongoing concerns about noise disturbance and anti social behaviour.*
- (c) The unsuitability of this proposal due to the close proximity of residential properties.*
- (e) The proposal is not in accordance with the public interest as it presents unacceptable impacts on the social amenity of the area and is not in accordance with the orderly economic development of the locality.*

PROPOSED DEVELOPMENT:

On 28 March 2014 Council received an application under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* proposing to modify the consent by removing the 12 month trial time period from the condition of consent No. 10A.

The applicant now seeks to amend Condition 10A as follows:

Hours of operation are as follows:

- *Sunday to Thursday – 10.00am to 10.00pm*
- *Friday and Saturday – 10.00am to 12.00 Midnight*

Variation of the above hours are permitted for a maximum of six (6) times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council within the 12 month period.

Any further application for the variation of hours of operation outside of 10.00am to 10.00pm shall be prepared by a suitably qualified person and accompanied by a noise impact assessment in accordance with AS 1055 Acoustics – Description and measurement of environmental noise, the Noise Guide for Local Government June 2004 and any other relevant and accepted guideline.

The application comprises a number of amelioration measures, including acoustic barriers adjacent to the Tavern and the maintenance of a Neighbourhood Complaints Register, to ensure that there will be no adverse impacts on surrounding residents. The proposal is also supported by an Environmental Noise Impact Report (CRG Acoustic Consultants dated 5 March 2014). It is noted that should Council be minded to approve the S96 application, a detailed plan would be required in respect of the proposed mitigation measures, as detailed within the Noise Report.

The application provides comment from the NSW Police Department in respect to the proposed modification to the hours of operation. The report also considers potential noise impacts on potential land uses on the vacant land located adjacent to the site (No. 5 Mountbatten Close) to demonstrate that the proposed extension to operating hours will not result in unachievable requirements for any future development upon this land, which may include a residential or tourist use component.

The application was advertised for a period of 14 days from Wednesday 23 April 2014 to Thursday 8 May 2014 (public holidays excepted). During this time, five submissions were received. The application was accompanied by a petition with 219 signatories in support of the proposed hours of operation.

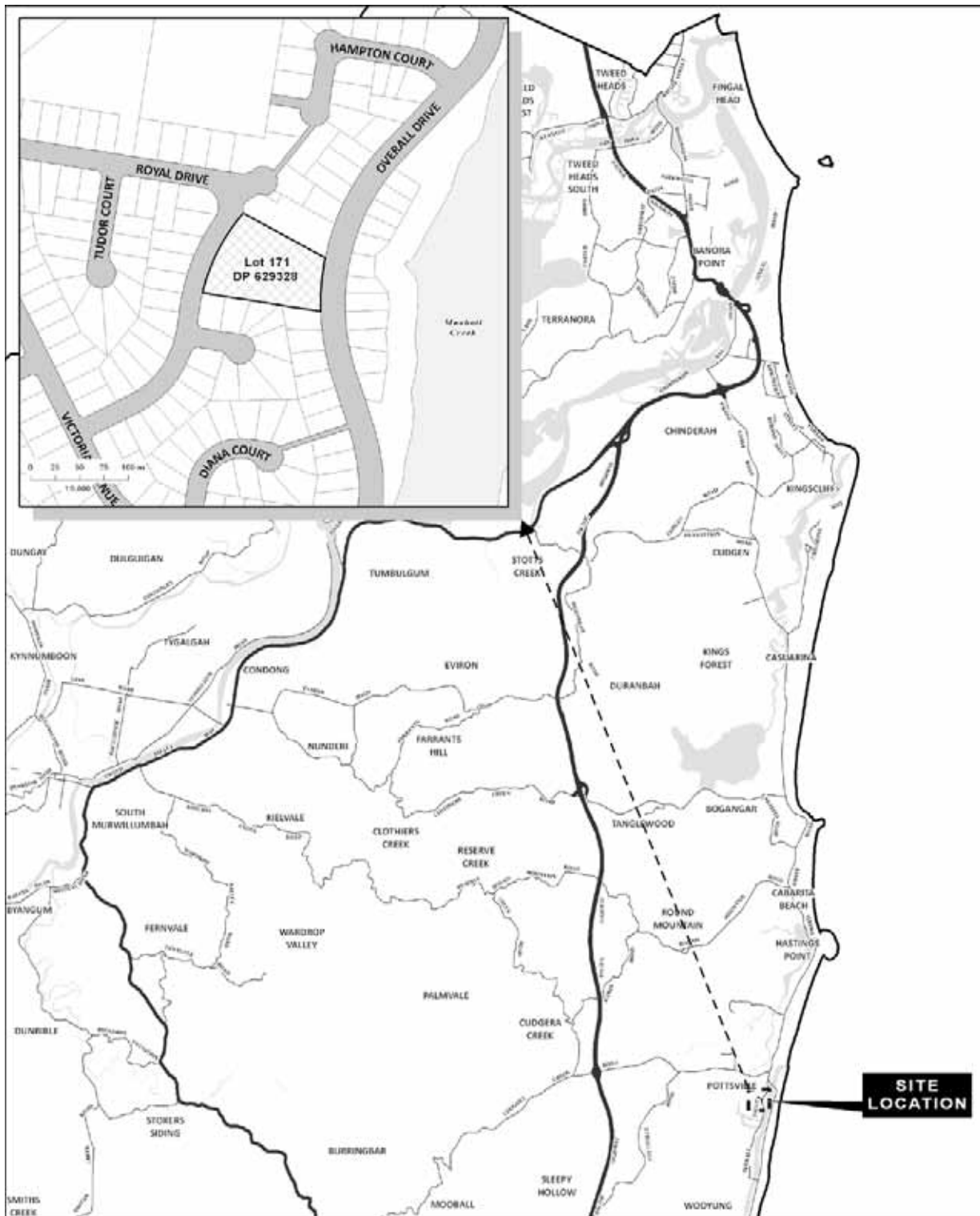
It is considered that the request to vary hours on a permanent basis is not supported as proposed. Insufficient evidence has been brought to Council's attention to demonstrate that the trial period has been conducted and therefore, as with previous considerations of modifications to the trading hours for the Tavern, the impact on the surrounding community cannot be adequately addressed. The management of potential noise impacts is strongly reliant on the Plan of Management and performance of the facility. There are also a number of strong objections put forward during the notification period, as detailed further within this report.

It is therefore recommended that approval only be granted on the basis the implementation of a trial period in the form of a reviewable condition. However this was previously put forward to Council for D90/0436.07 and refused.

The proposal in its current format is therefore not supported and is recommended for refusal.

Should Councillors wish to allow the applicant further opportunity to amend their application, appropriate wording is included within the Options section of this report.

SITE DIAGRAM:



Locality Plan

Lot 171 DP 629328
No. 24-40 Overall Drive, Pottsville

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Council does not accept any responsibility or guarantee expressed or implied, whether in relation to the accuracy, reliability, completeness or suitability for any particular purpose and disclaimer of responsibility and all liability including without limitation, liability in connection with all transactions, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any construction a 'field check' survey must be made by a surveyor. This information is based on the information received and is to date with the date of supply.</p>	<p>Lancaster, 25 September 2013 © Land and Property Management Authority (LPMA) & Tweed Shire Council Boundaries shown include but are not limited to approximate only</p>	 <p>1:115 000 @ A3 Portrait 80% of scale GDA 1984 - AGD 1971/68</p>	<p>Clack and Cullen at Centre 5 Tweed Heads Road Murrumbidgee NSW 2454 PO Box 816 Murrumbidgee NSW 2454 T (02) 6670 5400 1800 702 872 F (02) 6670 2425 E [mailto:planning@twec.nsw.gov.au]</p>	<p>TWEED SHIRE COUNCIL</p>
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Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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 in its current form is not considered to meet the provisions of Clause 4 as it would impact on the area's residential amenity qualities.

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 significantly impact upon ESD principles. It is considered that the proposal would generally 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.*

The proposed modification in its current form is considered to result in a development that would be inconsistent with the primary objective of the 3(b) zone, as detailed below.

Other relevant clauses of the TLEP have been considered elsewhere in this report.

It is considered that the proposed modification would be likely to have an unacceptable impact on the locality or the community as a whole.

Clause 11 - Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 3(b) General Business under the provisions of the Tweed LEP 2000. The primary objective of the zone is:

- *to provide business centres in which the community's shopping, business, welfare and social needs can be met; and*

- *to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.*

A tavern is defined as a Hotel, which is permissible with consent under the provisions of the Tweed LEP 2000.

The proposed hours of operation as currently presented to Council are not supported. The management of potential noise impacts are strongly reliant on the Plan of Management and performance of the facility. The only method of approving the extended hours of operation as proposed would be to implement a trial period in the form of a reviewable condition.

However, on the basis of the proposed application as it currently stands, it is considered that the proposal would not be compatible with the character or amenity of the surrounding residential area.

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

The Tweed LEP 2014 was formally gazetted on 4 April 2014. Please note that as the proposal was lodged prior to the formal gazettal of the Tweed LEP 2014 it has therefore has been lodged and assessed under the provisions of the former Tweed LEP 2000.

However, the subject site is located in the B2 Local Centre zone within the Tweed LEP 2014. The Tavern would be defined as a pub within the Tweed LEP 2014 which would be a permissible form of development in the B2 zone.

The objectives of the B2 Local Centre zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for tourism and residential opportunities that contribute to the vitality of the local centre.*

It is considered that the proposed modification to the trading hours would generally be consistent with the objectives of the B2 zone, in the provision of an entertainment/community use. However, as detailed within this report, it is acknowledged that a permanent extension to the trading hours will have the potential to impact significantly on the amenity of surrounding residents. On this basis the proposed Section 96 modification is recommended for refusal to ensure the amenity of adjoining residents is protected.

(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

Noise Impacts

Previous modifications to extend operating hours have not been supported on the basis of amenity. An amendment (within D90/0463.05) was previously supported on the basis of a 12 month trial period. However, in respect of whether the trial

period of extended trading hours has been commenced, Council's Environmental Health Unit has previously advised:

"During the 12 months trial period it would appear that the tavern did not operate extensively beyond the hours of 10pm therefore it is considered that a suitable assessment of any adverse impact on the surrounding residents cannot be made as to whether adequate management practices can be implemented successfully. No information to evidence the extended use has been submitted. Furthermore new owners and operators have now purchased the tavern".

It is Council's understanding that a liquor licence amendment has not been approved to support the extension of operating hours for the trial period.

The current Section 96 application has provided an amended Noise Report (CRG Acoustics, March 2014) that advises that the noise emanating from the subject Tavern has been assessed and is well below the applicable standards. The Report also includes a number of management tools to minimise noise emissions as follows:

- The "*Plan of Management*" be updated to include the requirements of this acoustic report (refer to the previous "*Plan of Management*" in Appendix B) and be maintained for the Tavern;
- Recommended 3.0m high acoustic barriers around the perimeters of the outdoor areas of the tavern as detailed in Sketch No. 1 of Appendix A of this report;
- The southern 1.8m high acoustic fence along the common boundary with the residential dwellings along Windsor Court should be upgraded (if required) and maintained as a 1.8m high acoustic barrier which is free of gaps and holes;
- The carpark gates along the western boundary (fronting Royal Drive) be closed at 10pm;
- No alcohol is to be consumed in the carpark area;
- Maintain a Neighbourhood Complaints Register. An example of the complaints register is provided in Appendix A of this report;
- Amplified music and live entertainment be allowed inside the building up to midnight provided external windows and doors are kept closed. A maximum level of 91 dB(A) measured at 3m from any speaker would allow for a solo or duo act under moderate amplification;
- A sound limiter device be installed for amplified music and live entertainment to the levels presented below. The levels are measured at 3m from any speaker. All musical equipment should be connected to the sound limiter device.

Amplified entertainment inside building with windows and doors closed	SPL Hz Octave Band Centre Frequencies dB(A)									
	31.5	63	125	250	500	1000	2000	4000	8000	AP
Predicted allowable noise source level until midnight (measured at 3m)	50	59	69	76	85	88	79	80	74	91

- Speakers for amplified music or live entertainment should be directed towards the north (i.e. towards the Bottle shop drive-through) away from the nearest dwellings to the south;
- The south-western and north-western car spaces should be designated staff spaces to minimise the number of car movement events from these spaces;
- Appropriate signage should be erected at the main entry/exit doors asking patrons to be considerate of surrounding neighbours;
- Staff of the tavern should be diligent in maintaining acceptable activities and noise levels at the outdoor areas of the tavern;
- Provide a security person in the carpark after 10pm to maintain acceptable activities in the carpark (i.e. noise boisterous activity or drinking or congregating of patrons);
- New mechanical equipment (if required) be designed and installed to comply with applicable noise criterion. If new mechanical plant is required it should be positioned as far from the nearest offsite dwellings as possible (i.e. the north-eastern corner of the building).

Comment

A revised Environmental Noise Impact Report prepared by CRG Acoustical Consultants dated 5 March 2014. The Report has applied an intrusiveness criteria for Daytime (7am-6pm), Evening (6pm-10pm), Shoulder (10pm to Midnight) and Night (10pm - 6am).

The Industrial Noise Policy generally refers to only three periods relating to day, evening and night however makes provision for a shoulder period on a case by case basis. In this instance a shoulder period is considered appropriate in the event that noise sources are managed in accordance with the proposed Plan of Management. The report also considers potential noise impacts on potential land uses on the vacant land located adjacent to the site (No. 5 Mountbatten Court). It is considered that it has been demonstrated that controls can be adequately provided for within any future development to mitigate against potential noise impacts.

The NSW *Planning for Entertainment Guidelines 2009* discusses the provisions for local authorities to attach reviewable conditions relating to hours of operation and maximum capacity to be imposed on development consents for venues including pubs. The *Environmental Planning and Assessment Amendment Act 1979* introduced new provisions for reviewable conditions within Section 80A, with the criteria specified with subsections (10B) to (10E).

The Guidelines state reviewable conditions should only be used by consent authorities in special circumstances including where there is sufficient uncertainty regarding the potential impacts. Noise impacts are difficult to determine due to

the nature of the activity and therefore it is considered that a reviewable condition is necessary and reasonable in this instance. As detailed within this report, this option has previously been reported to Councillors within the previous Section 96 application and was subsequently refused.

Ultimately, should the application be approved, the police will be the enforcement agency under the requirements of the Liquor Licensing Act and associated Licence for the premises. Correspondence from NSW Police as submitted with the current Section 96 application indicates that they have no objection to the increase in hours, subject to the application of appropriate conditions by Tweed Shire Council as follows:

- *The sale or supply of liquor is restricted for consumption on the premises only after 10pm;*
- *At least one uniformed security officer is to be employed from 10pm on those nights where the premises trades after 10pm until half an hour after closing or until the last patron has left the vicinity, whichever is the later. Security is to regularly patrol the car park and vicinity from 10pm until closing and to principally patrol those areas after closing. Their duties will include requesting patrons to leave the hotel and vicinity without noise or disturbance so neighbours and nearby residents are not disturbed;*
- *The Licensee is to provide a courtesy bus for patrons wishing to depart the licensed premises, on those evenings where the premises trades past 10pm until the last patron has left the premises. The courtesy bus shall have at least 12 seats, provide a shuttle service free of charge and shall transport patrons to the requested destination, being no more than with the suburb of Pottsville;*
- *Trading after 10pm is not to commence until the noise reduction measures are in place. Police have read the attached Noise Impact Assessment of Warrick Smith dated 22 December, 2009. Police attended the site and were of the opinion that the boundary fencing needed to be improved. Police submit that the recommendations of 8.1 Physical Barrier be implemented prior to final approval. Police suggest that the rear pedestrian gate be closed after 10pm or at least an overlap fence be placed on the inside of the perimeter fence in front of the gate to minimise noise.*

These requirements have previously been brought to Council's attention and have been previously included as conditions on the consent (Conditions No. 21 to 26).

The management of potential noise impacts is strongly reliant on the Plan of Management and performance of the facility. There are also a number of strong objections put forwards during the notification period, as detailed further within this report. It is recommended that approval only be granted upon the implementation of a trial period in the form of a reviewable condition. This option has previously been put forward within the Council Report associated with the previous S96 modification (D90/0436.07) that was subsequently refused by Council.

The proposal in its current format therefore is not supported and is recommended for refusal however, Councillors are directed to the option of allowing the applicant further opportunity to amend the application to address the concerns highlighted within this report.

CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Substantially the Same Development

The proposed modification is essentially the same development as originally approved, with the proposed amendments relating to the hours of operation. It is considered that the proposed modification would be unlikely to result in any significant changes to the originally approved development.

Likely Environmental Impact

It is considered that the proposed amendment to the hours of operation is likely impact upon the quality of residential amenity of the surrounding area, as noted in the Section 79C assessment above.

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

The application was an exhibition for 14 days. During this time, five written submissions were received and one petition with 219 signatories. The issues raised have been summarised below:

Issues raised	Council officer assessment
Objections based on noise (noise from noisy poky machines, patron behaviour and vehicles entering/exiting carpark) and residents having a right to peace.	Mitigation measures have been proposed in order to protect the amenity of the surrounding properties however it is considered that the permanent approval of the proposed hours of operation may have the potential to impact negatively on surrounding residential amenity.
Concerns that the previous trial period was never carried out.	Insufficient evidence has been brought to Council's attention to advise that the trial period has been carried out. The proposed modification in its current form is recommended for refusal on the grounds of the likely impact to surrounding residential amenity.
Anti-social behaviour (including drinking outside; littering, vandalism, cars/motorbikes with loud mufflers) and drink-driving are issues associated with the development at present will be exacerbated by additional hours of operation.	The issue of anti-social behaviour and drink driving is a matter for NSW Police. This is a social issue, rather than planning consideration under the provisions of the <i>Environmental Planning and Assessment Act</i> . The proposal does not warrant refusal on this basis although it is noted that an extension to operating hours may have the potential to exacerbate such issues.
Inappropriate in the locality given residential development in close proximity.	The subject site is appropriately zoned for the existing development on the subject site however the proximity of surrounding residential properties is noted. The proposed modification in its current form is recommended for refusal on the grounds of the likely impact to surrounding residential amenity.
Technical issues within the submitted noise report.	The application has been reviewed by Council's Environmental Health Unit who has considered the submitted Noise Impact Report and consider that it is relevant to industry standards. It is considered however that the management of potential noise

	impacts is strongly reliant on the performance of the facility and therefore the proposal in its current form is being recommended for refusal.
Lack of police presence in Pottsville.	The lack of Police numbers in the Pottsville locality is not a matter of consideration under the provisions of the Environmental Planning and Assessment Act. The proposal does not warrant refusal on this issue.
Incidents relating to operating beyond the approved operating hours.	The behaviour of patrons is a social issue which is not a planning consideration under the Environmental Planning and Assessment Act but rather an operational management/NSW Police issue.
The measures proposed in the Noise Report will not be complied with (such as employing security guards and closing the gate after 10pm).	It would be in the interest of the operators of the Tavern to ensure that the mitigation measures are effectively carried out in order to reduce any impacts on the amenity of neighbouring residents. Should the operators of the Tavern not appropriately implement and enforce the proposed mitigation measures, residents are directed to advise the operators of the Tavern, the police department or Tweed Shire Council with this regard. However the difficulty in relying on the Plan of Management is acknowledged and the proposed modification in its current form is recommended for refusal.
This is now the fifth attempt to alter the trading hours since the approval of the development in 1991 which is frustrating for local residents.	Residents frustrations in respect to the number of applications that have been lodged in respect to the trading hours is acknowledged however the applicant is entitled to submit a development application under the provisions of the <i>Environmental Planning & Assessment Act 1979</i> . Mitigation measures have been proposed in order to protect the amenity of the surrounding properties however Council officers acknowledge the difficulty is relying on the Plan of Management and performance of the facility. Therefore the S96 application has been recommended for refusal.
Concerns in respect to petition of support and whether signatories are local residents are truly aware of the issues raised.	The concerns in respect to the petition are acknowledged however the subject tavern does provide a community need and is permissible within the subject zone. Notwithstanding, the proximity of surrounding residential dwellings is acknowledged, as is the potential for impact to the residential amenity. On this basis the application is recommended for refusal.
Concerns that measures proposed (closing gates, not allowing consumption of alcohol in car park, security personnel) are not enforced.	These issues relate to management of the Tavern itself rather than material planning considerations. The difficulty of implementing such measures and enforcing that they are carried out from a compliance perspective is acknowledged.
When the original DA was approved and Liquor Licensing Court issued a licence, trading hours were determined in order to preserve the tranquillity of the area.	Liquor licences usually reflect the approved trading hours imposed on the development consent. An assessment of the trading hours has been undertaken with the potential impacts to residents taken into account. In this regard it is considered appropriate to refuse the proposed modification in its current form.

The proposed change in hours of operation is not minor and it is requested that Council reject this application in the interests of the community.

The proposed modification to the hours of operation may have the capacity to impact on surrounding residential amenity. On this basis the S96 application is recommended for refusal.

Council officer assessment

The application has been supported by an Acoustic Report that has applied intrusiveness criteria; considers potential noise impacts on potential land uses on the adjacent vacant land; and proposes a number of mitigation measures within a Plan of Management.

As detailed within this report, the management of potential noise impacts is strongly reliant on the Plan of Management and performance of the facility. It does not appear that the previously approved 12 month extension to the operating hours has ever been carried out and therefore there is uncertainty as to the potential impact of the proposed hours of operation on surrounding residential amenity. A number of strong objections have been received for this application, as well as previous applications to modify the consent.

On this basis, it is recommended that approval of the proposed extended hours of operation should only occur in the implementation of a trial period in the form of a reviewable condition. However, this was previously put forward to Council for D90/0436.07 and subsequently refused.

It is therefore considered that the proposal in its current form cannot be supported and refusal of the proposed S96 modification is recommended.

(e) Public interest

The proposed modification to Development Consent D90/0436 is considered to be unacceptable in terms of public interest as the proposed hours of operation may have the potential to impact negatively on surrounding residential amenity in terms of noise and disturbance.

OPTIONS:

That Council:

1. Refuses the amendment of the development consent for the reasons outlined above;
or
2. Defers this matter and requests the applicant to prepare an amended Section 96 modification and consider the option of a reviewable condition to safeguard the amenity of surrounding residents.

Council Officers recommend Option 1.

CONCLUSION:

The concerns raised by neighbouring residents in respect to the resultant noise and impact to residential amenity are acknowledged and given substantial weight within the determination of this application. However, it is also noted however that the Tavern is permissible within the zone in which it is located and does provide an important social gathering place for the community.

This assessment has had regard for the issues raised by the public submissions, the NSW Police Department and the submitted Environmental Noise Impact Report. The request to vary Condition 10A as proposed by the applicant is not supported as noise impacts are

difficult to predict. Given the location of the Tavern, in close proximity to residential properties, the permanent extension to the hours of operation may impact negatively on surrounding residential amenity in terms of noise and disturbance. As such, the proposal in its current form is recommended for refusal.

However, it is recommended that approval of the proposed extended hours of operation is only granted subject to the implementation of a trial period in the form of a reviewable condition. As this was previously put forward to Council for D90/0436.07 in November 2013 and refused, Council officers are seeking Councillors direction as to the course of action they may wish to take with regard to the current Section 96 application.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Council report and resolution of its meeting held 21 November 2013 (ECM 3367845)

8 [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 May 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.	DA14/0194
Description of Development:	two storey dwelling with attached triple garage, in-ground swimming pool and front fence
Property Address:	Lot 239 DP 1048494 No. 39 Beech Lane, Casuarina
Date Granted:	9/5/2014
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(e) Residential Tourist
Justification:	<p>The proposed dwelling seeks a variation under SEPP 1 to the development standard relating to overshadowing of beaches or waterfront open space, being Clause 32(B)(4) of the North Coast Regional Environmental Plan. This standard seeks for no development to cause overshadowing to the nominated areas before 3pm mid winter and 7pm midsummer.</p> <p>The Minister for Planning has granted exemption for Tweed Shire Council from the requirement for applications under SEPP 1 for a variation to NCREP Clause 32(b) be referred to the full elected Council. Furthermore, with the adoption of the TLEP 2014 (SI) on 4 April 2014, the provisions of the NRCEP have been repealed. Although this application was lodged prior to the adoption date, it is considered justified to waive the requirement for a SEPP 1 variation to this development standard.</p>
Extent:	The proposed dwelling seeks a variation under SEPP 1 to the development standard relating to overshadowing of beaches or waterfront open space, being Clause 32(B)(4) of the North Coast Regional Environmental Plan. This standard seeks for no development to cause overshadowing to the nominated areas before 3pm mid winter and 7pm 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.

ORDERS OF THE DAY



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*
-

9 [NOR-PC] Development Application DA13/0591 - Erection of Four Townhouses at Lots 25 and 26 Section 5 DP 4043 Nos. 36 and 38 Enid Street, Tweed Heads

NOTICE OF RESCISSION:

Councillor B Longland, G Bagnall and M Armstrong move at the next Ordinary Planning Committee meeting that Council resolution from the Planning Committee Meeting held on 1 May 2014, Minute No 254 Item No 14 being:

"... that Development Application DA13/0591 for the erection of four townhouses at Lots 25 and 26 Section 5 DP 4043 Nos. 36-38 Enid Street, Tweed Heads:

- a. grant in principle support; and*
- b. the Director Planning and Regulation seeks better outcomes on design including but not limited to concerns raised in the current Council report."*

be rescinded.

10 [NOM-PC] Development Application DA13/0591 - Erection of Four Townhouses at Lots 25 and 26 Section 5 DP 4043 Nos. 36 and 38 Enid Street, Tweed Heads

NOTICE OF MOTION:

Councillor B Longland moves that

That Development Application DA13/0591 for the erection of four townhouses at Lots 25 and 26 Section 5 DP 4043 Nos. 36-38 Enid Street, Tweed Heads be refused for the following reasons:

- 1. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.**

It is Council's view that the proposed development is inconsistent with the vision and objectives contained within:

The Tweed City Centre LEP 2012:

- Clause 1.2: Aims of this plan - – proposed density of the site is not consistent with the desired future character of the area**
 - Clause 2.3: Land Use Table - the proposal does not meet the requirements for medium density residential development within the context of the locality.**
 - Clause 4.3: Height of Buildings - the proposal does not maximise density on the site commensurate with the objectives of the clause.**
 - Clause 4.4: Floor Space Ratio - the proposal does not incorporate increased building height and site amalgamation at a key location in the area of Tweed City Centre.**
- 2. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

The proposal represents a significant variation to building height and floor space ratio for the locality as prescribed within the Tweed City Centre Local Environmental Plan 2012.

The proposal is inconsistent with the future desired character of the City Centre Support Precinct as defined within Development Control Plan B2 – Tweed Heads.

- 3. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.**

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed City Centre LEP 2012 specifically as it relates to residential development controls and density objectives of the R3 Medium Density Residential zone.

Councillor's Background Notes

Recommended Priority:

Nil.

Description of Project:

Nil.

Management Comments:

Delivery Program:



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 |
-

Budget/Long Term Financial Plan:

Not Applicable.

Legal Implications:

Dependent upon resolution of this item.

Policy Implications:

Code of Meeting Practice Version 2.4.

11 [NOR-PC] Development Application DA13/0594 for a Detached Dual Occupancy at Lot 24 Section 5 DP 4043 No 40 Enid Street, Tweed Heads

NOTICE OF RESCISSION:

Councillor G Bagnall, B Longland and M Armstrong move at the next Ordinary Planning Committee Meeting that Council resolution from the Planning Committee meeting held on Thursday 1 May 2014 at Minute No 254, Item No 13 being:

"... that Development Application DA13/0594 for a detached dual occupancy at Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads:

- a. grant in principle support; and*
- b. the Director Planning and Regulation seeks better outcomes on design including but not limited to concerns raised in the current Council report."*

be rescinded.

12 [NOM-PC] Development Application DA13/0594 for a Detached Dual Occupancy at Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads

NOTICE OF MOTION:

Councillor B Longland moves that Development Application DA13/0594 for a detached dual occupancy at Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads be refused for the following reasons:

- 1. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.**

It is Council's view that the proposed development is inconsistent with the vision and objectives contained within:

The Tweed City Centre LEP 2012:

- Clause 1.2: Aims of this plan - – proposed density of the site is not consistent with the desired future character of the area**
- Clause 2.3: Land Use Table - the proposal does not meet the requirements for medium density residential development within the context of the locality.**
- Clause 4.3: Height of Buildings - the proposal does not maximise density on the site commensurate with the objectives of the clause.**
- Clause 4.4: Floor Space Ratio - the proposal does not incorporate increased building height and site amalgamation at a key location in the area of Tweed City Centre.**

- 2. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

The proposal represents a significant variation to building height and floor space ratio for the locality as prescribed within the Tweed City Centre Local Environmental Plan 2012.

The proposal is inconsistent with the future desired character of the City Centre Support Precinct as defined within Development Control Plan B2 – Tweed Heads.

- 3. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.**

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed City Centre LEP 2012 specifically as it relates to residential development controls and density objectives of the R3 Medium Density Residential zone.

Councillor's Background Notes

Recommended Priority:

Nil.

Description of Project:

Nil.

Management Comments:

Delivery Program:



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 |
-

Budget/Long Term Financial Plan:

Not Applicable.

Legal Implications:

Dependent upon resolution of this item.

Policy Implications:

Code of Meeting Practice Version 2.4.

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C1 [PR-PC] Unauthorised Earthworks and Pollution Events at Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum

REASON FOR CONFIDENTIALITY:

This report has been made Confidential so as not to prejudice any future legal proceedings.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.



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
-
-

C2 [PR-PC] Development Application DA13/0397 for an Extension to Existing Car Park at Lot 2 DP 1059784 No. 16 Pearl Street, Kingscliff; Lot 100 DP 1071633 No. 24-26 Pearl Street, Kingscliff

REASON FOR CONFIDENTIALITY:

This report has been made Confidential so as not to prejudice any future legal proceedings.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.



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
-
-