



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr B Longland

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

# Agenda

## **Planning Committee Meeting Thursday 7 August 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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27            **[NOR-PC] Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah**            482

28            **[NOM-PC] Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah**            484

## SCHEDULE OF OUTSTANDING RESOLUTIONS

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

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## 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

- 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

27

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 Rural Fire Service (RFS) for comment. Council is awaiting this comment from the RFS. Council staff have also met with the applicant about the preparation of a Voluntary Planning Agreement. Once this further assessment is completed, the matter will be reported back to the Planning Committee.

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#### PLANNING COMMITTEE - 1 MAY 2014

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

P 48

Cr W Polglase  
Cr P Youngblutt

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

**Current Status:** A Councillors Workshop has been held on 22 May 2014. The officers are still awaiting further technical information from the applicant. A meeting has been scheduled with the applicant for 5 August 2014, where it is expected that additional information will be submitted. Once this information is received the matter will be further assessed and reported back to a future Planning Committee meeting.

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## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA14/0059 Pt1



### Civic Leadership

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

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

#### SUMMARY OF REPORT:

##### Updated information

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use - residential and tourist accommodation on the above site.

Of particular relevance to this assessment is legal advice received by Council on behalf of the applicant's agent with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice received. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

22. *This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.*

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

##### Previous Report

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

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

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

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

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

It is noted that the draft Tweed Local Environmental Plan (LEP) 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. Under the draft Tweed LEP 2012, the entire site is zoned R2 Low Density Residential where tourist and visitor accommodation would not be permissible. In addition, the proposal is not considered to be consistent with the objectives of the R2 Low Density Residential zone under this plan.

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

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

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

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

**RECOMMENDATION:**

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

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

## REPORT:

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

## Background:

### Proposed Development

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

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

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

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

### Site

The site is regular and rectangular shaped with a 12m frontage to Collins Lane and rear access to community land that provides a buffer to the coastal reserve. The site has a total land area of 746m<sup>2</sup> and is generally flat and landscaped to the rear of the existing dwelling. The existing dwelling was approved under DA04/0269 (see below) and consists of a part single, part two storey dwelling with three bedrooms, open kitchen/dining/living area, outdoor deck (orientated east), rumpus room and bathroom/toilet laundry facilities. There is a double garage and sufficient parking on the driveway for two additional vehicles, located at the Collins Lane frontage.

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

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

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

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

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

#### History

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

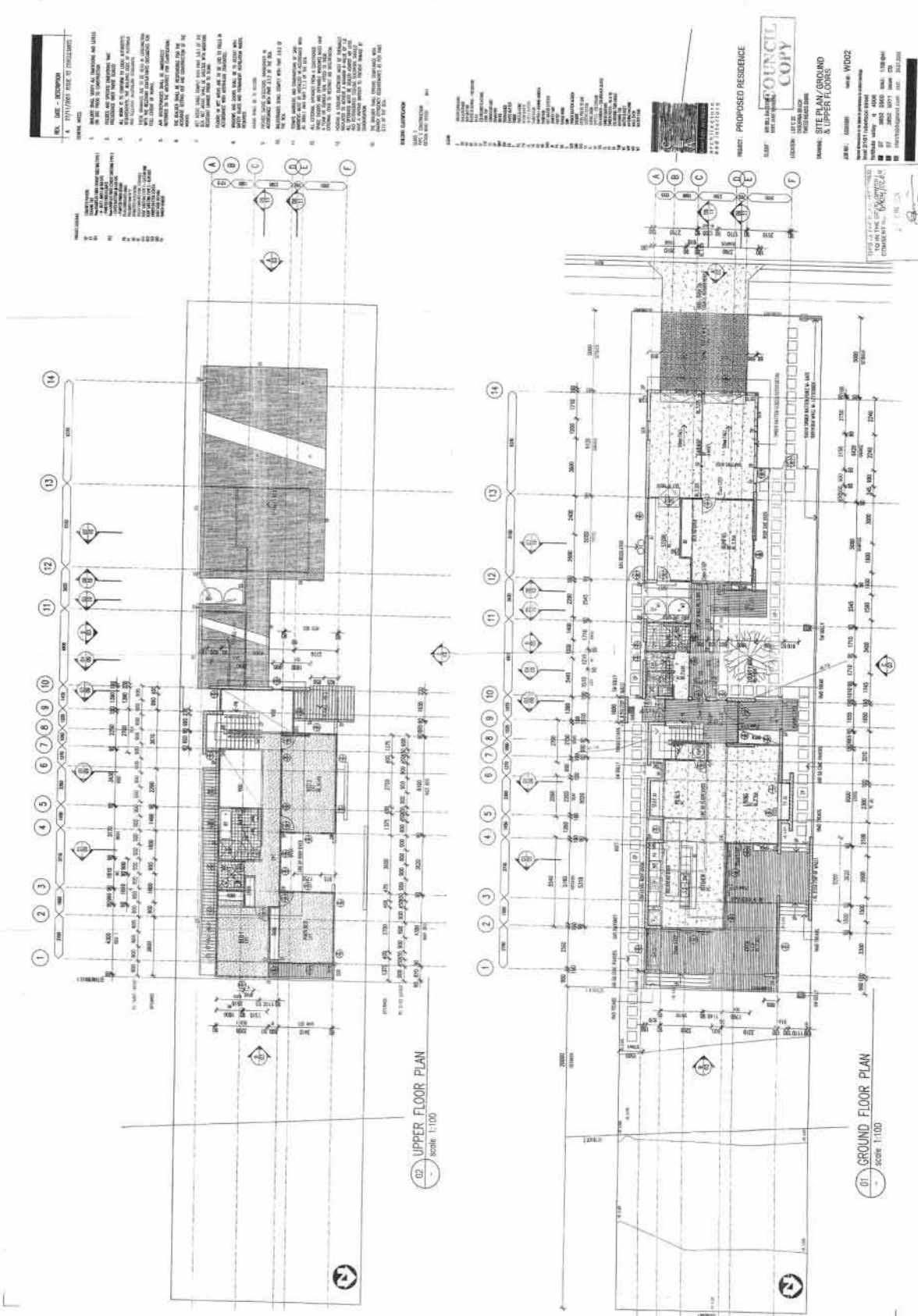
**SITE DIAGRAM:**



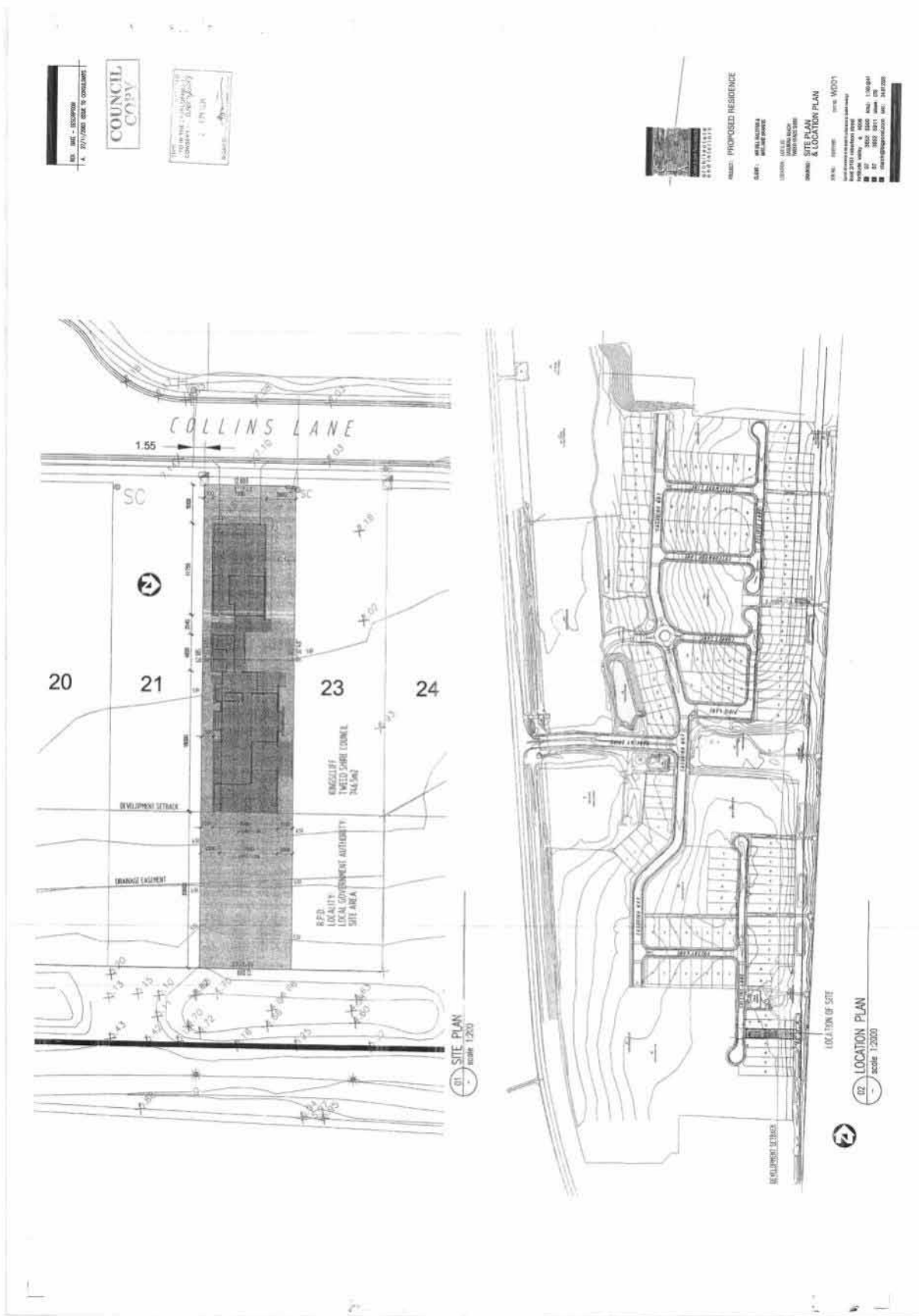
**Locality Plan**  
 Lot 22 DP 1030322  
 No.38 Collins Lane, Casuarina

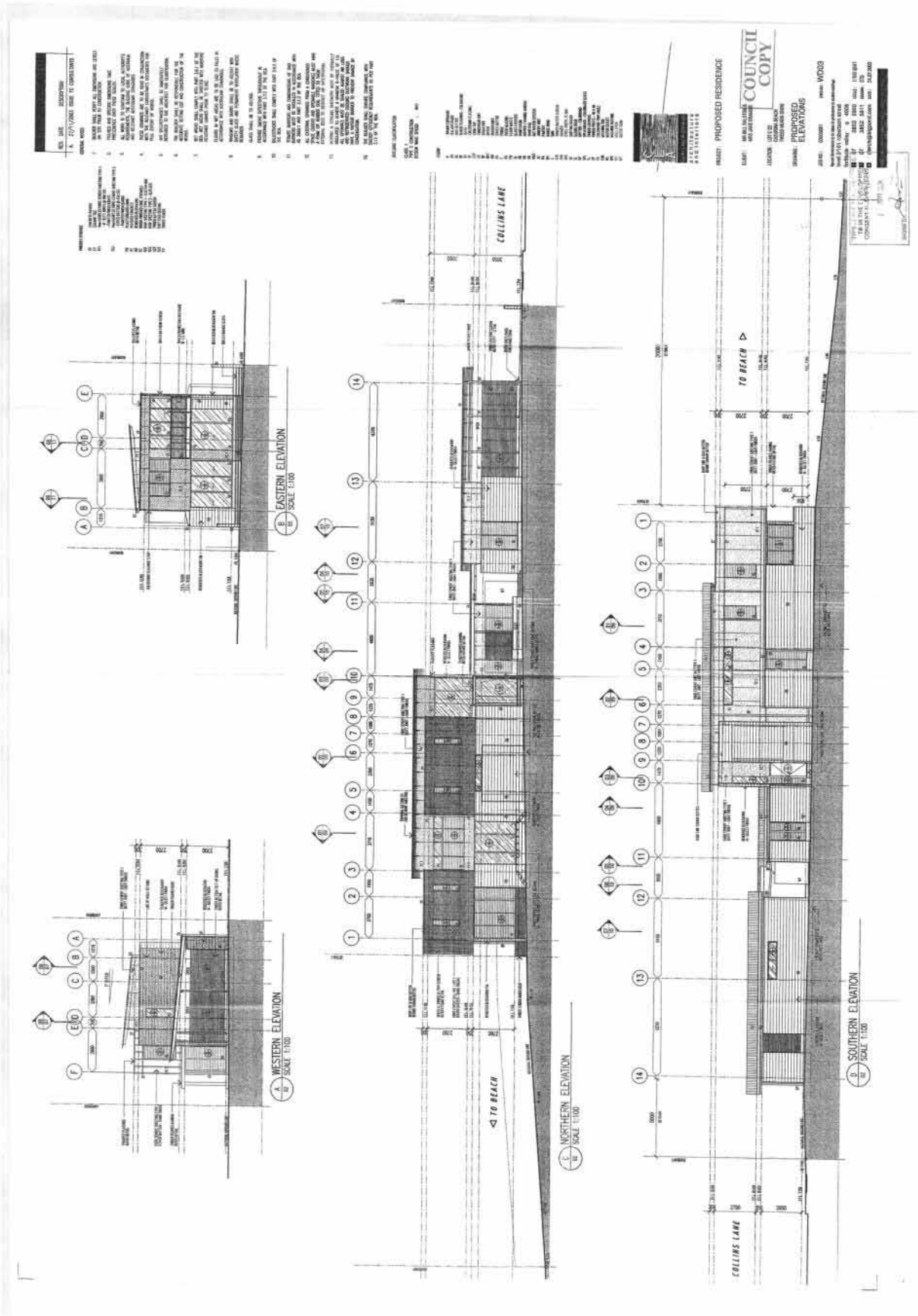
<p>Disclaimer: While every care is taken to ensure the accuracy of this data, the user shall remain liable for any consequences or liabilities arising from its use. The user shall be responsible for any consequences or liabilities arising from its use. The user shall be responsible for any consequences or liabilities arising from its use.</p>	<p>Scale: 1:50,000                  Date: 10/08/2014                  Land and Property Information (LPI) &amp; Tweed Shire Council                  Boundaries shown should be considered approximate only.</p>	<p>1:50,000 @ A4 Portrait                  COPY ONLY - NOT CERTIFIED                  GDA                  This is a technical drawing and should not be used for any other purpose.</p>	<p>Civic and Cultural Centre                  3 Tweedgate Road                  Murwillumbah NSW 2484                  PO Box 918                  Murwillumbah NSW 2484                  T (02) 9570 2400 / 1300 283 672                  F (02) 9570 2429                  W www.tweedshire.nsw.gov.au                  E planning@tweedshire.nsw.gov.au</p>
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DEVELOPMENT/ELEVATION PLANS:









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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

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

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

**Clause 5 - Ecologically Sustainable Development**

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

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

**Clause 8 - Consent Considerations**

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

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

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

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

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

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

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

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

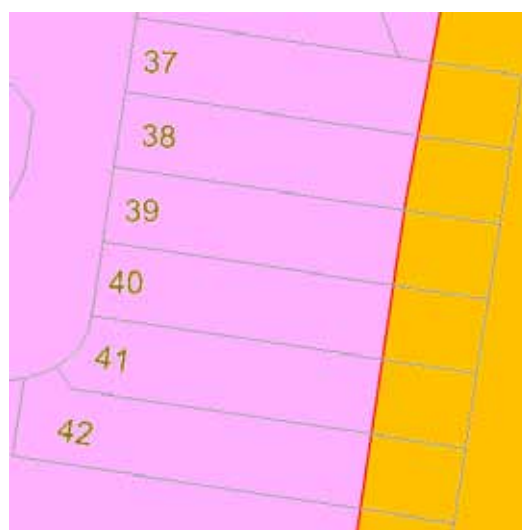
'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

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

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

#### Clause 11 - Zone Objectives

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



**Figure 1: Split Zoning of the Site**

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

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

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

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

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

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

#### Clause 15 - Essential Services

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

#### Clause 16 - Height of Building

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

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

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

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

#### Clause 35 - Acid Sulfate Soils

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

#### Clause 39A – Bushfire Protection

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

#### Clause 54 – Tree preservation order

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

## **State Environmental Planning Policies**

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

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

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

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

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

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

#### **Clause 33: Coastal hazard areas**

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

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

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

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

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

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

**Part 1 Preliminary**

1.2 Aims of Plan

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

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

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

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

#### 1.4 Definitions

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

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

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

But does not include:

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

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

#### 1.8A Savings provision relating to development applications

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

With respect to this it is noted that the subject application was lodged with Council on 30 January 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014 and as such this clause is applicable to this development application. Notwithstanding this, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.



## **Part 2 Permitted or prohibited development**

### 2.1 Land use zones

The proposed development area is zoned as R2 Low Density Residential under the provisions of this plan.

### 2.3 Zone objectives and Land Use Table

The objectives of the R2 Low density residential zone are:

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

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

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

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

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

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

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

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

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

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

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

## **Part 5 Miscellaneous provisions**

### **5.5 Development within the coastal zone**

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

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

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

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

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

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

The proposed development will not result in any overshadowing or loss of views from a public place to the coastal foreshore.

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

The proposed development is not considered to compromise the scenic qualities of the coast as it represents a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (e) *how biodiversity and ecosystems, including:*
  - (i) *native coastal vegetation and existing wildlife corridors, and*

- (ii) rock platforms, and*
- (iii) water quality of coastal waterbodies, and*
- (iv) native fauna and native flora, and their habitats, can be conserved, and*

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

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

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

This clause goes on to further state:

- (3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
  - (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

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

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

The proposed development does not require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

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

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

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

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

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

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

Tweed Development Control Plan

Section A1 - Residential and Tourist Development Code

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

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

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

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

Section A2-Site Access and Parking Code

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

Section A11-Public Notification of Development Proposals

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

Section B5-Casuarina Beach

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

Section B9-Tweed Coast Strategy

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

Section B25-Coastal Hazards

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

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

Clause 92(a) Government Coastal Policy

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

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

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

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

Tweed Shire Coastline Management Plan 2005

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

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

**Tweed Coast Estuaries Management Plan 2004**

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

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

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

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

**Context and Setting**

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

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

**Surrounding Landuses/Development**

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

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

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

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

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

Council Officer Assessment

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

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

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

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

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

Referral to NSW Rural Fire Service

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

**(e) Public interest**

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

**OPTIONS:**

That Council:

1. Refuses the application; or
2. Approves the development application with the following recommended conditions of consent.

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and the submitted plans as follows:
  - Site Plan & Location Plan (WD01), prepared by Colin Loel Architects and dated 27 November 2003;
  - Site Plan/Ground & Upper Floors (WD02), prepared by Colin Loel Architects and dated 27 November 2003;

- Proposed Elevations (WD03), prepared by Colin Loel Architects and dated 27 November 2003,

except where varied by the conditions of this consent.

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).  
[GEN0065]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
4. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.
5. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and six children.
6. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.
7. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.
8. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.
9. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.
10. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.
11. All landscaping is to comply with the S88B instrument pertaining to the site.
12. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.

[GENNS01]



## USE

13. 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]
14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.  
[USE0175]
15. 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]
16. 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]
17. The premises shall be maintained in a clean and tidy manner.  
[USE0965]
18. Any public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012. *Note: A public swimming pool includes a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests.*  
[USE0985]
19. Four off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking associated with the tourist accommodation use of the site.
20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.
21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing

in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

[USENS01]

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

1. The proposed change of use, from residential to dual use - residential and tourist accommodation, has been assessed against information referred to the NSW RFS by Tweed Shire Council dated 7/2/14.

The referred plans that this BFSA has been assessed against are identified as follows:

- Site Plan as provided with the Council suite of referred information dated 7/2/14, and
- Bushfire Safety Authority Report, dated January 2014 and prepared by "Planit Consulting".

The above referenced material is amended by the following listed conditions.

2. At the commencement of the proposed new use (dual use - residential and tourist accommodation) 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'.
3. An emergency and evacuation plan addressing section 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 issue of an occupation certificate.
4. The existing building is 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.
5. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Council officers recommend Option 1.

**CONCLUSION:**

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

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

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

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA14/0120 Pt1**

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## **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

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### **SUMMARY OF REPORT:**

#### **Updated information**

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use - residential and tourist accommodation on the above site.

Of particular relevance to this assessment is legal advice received by Council on behalf of the applicant's agent with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice received. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

#### **Previous Report**

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

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

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There were three objections to the development application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **RECOMMENDATION:**

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

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

**REPORT:**

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

**Background:**

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

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

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

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

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

The site is a slightly irregular shaped allotment at the end of a cul-de-sac in Cactus Court. The site has 15m street frontage to Cactus Court. The total area is 713m<sup>2</sup>.

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

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



***Subject dwelling – 12 Cactus Court***



***Proximity to neighbouring dwelling – 10 Cactus Court***



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





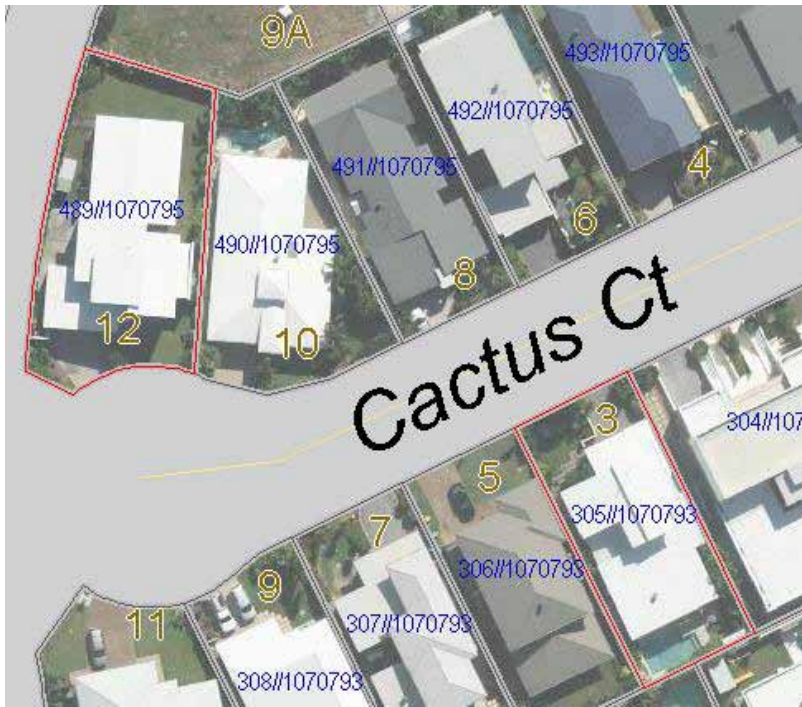
***Close up of corner of garage at 9A Ulladulla Court, showing proximity to 12 Cactus Court deck and entertaining area. The pool is to the left of the structure.***

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



**Current application – 12 Cactus Court (DA14/0120)**

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



**Concurrent application – 3 Cactus Court (DA14/0206)**

**\*both sites highlighted in red**

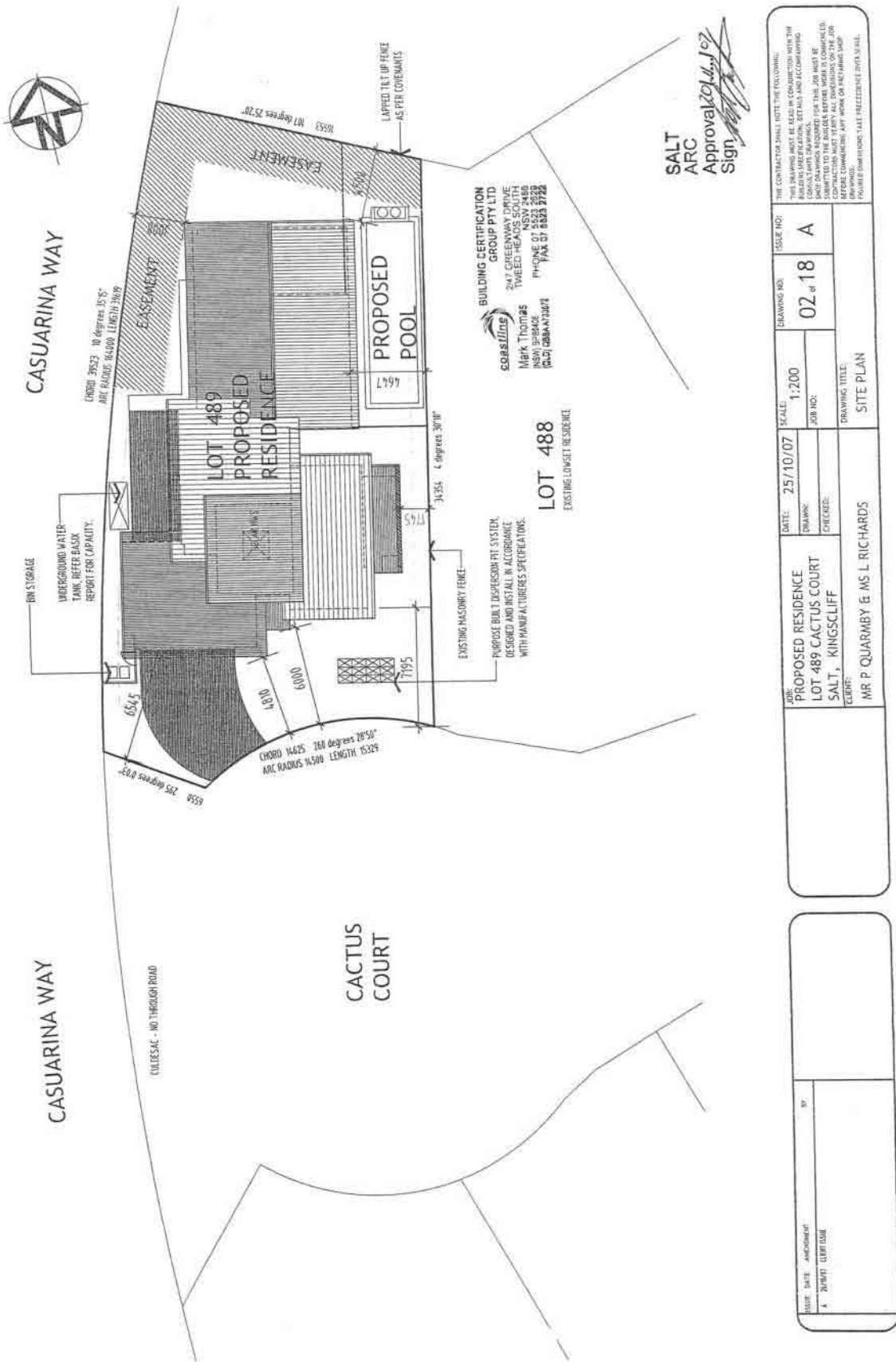
Of note, an historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the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

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

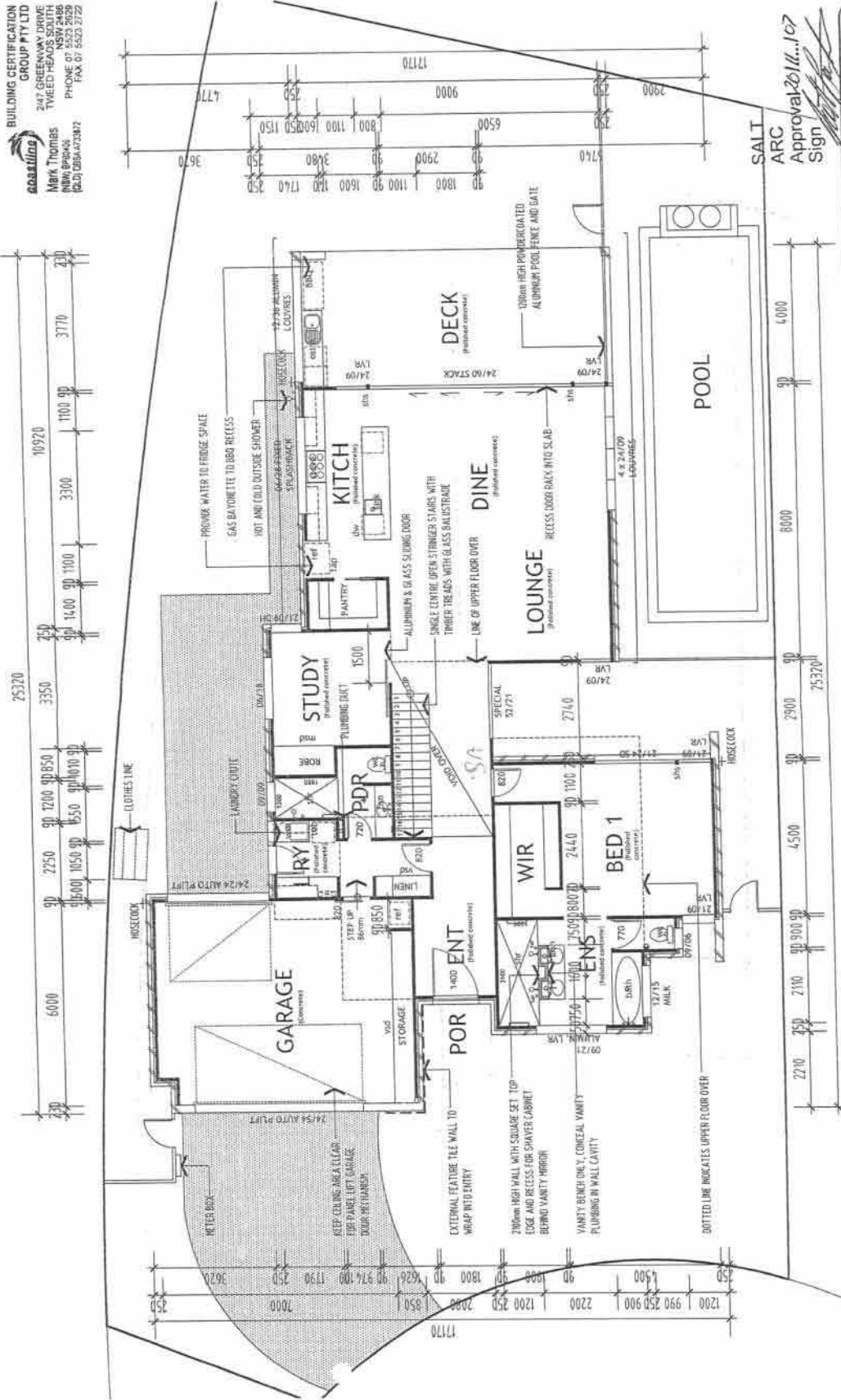
With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though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



DEVELOPMENT/ELEVATION PLANS:



**BUILDING CERTIFICATION GROUP PTY LTD**  
 247 GREENWAY DRIVE  
 TWYED HEADS NSW 2488  
 PH: 07 552 2828  
 (24) 056472872 FAX: 07 552 2722

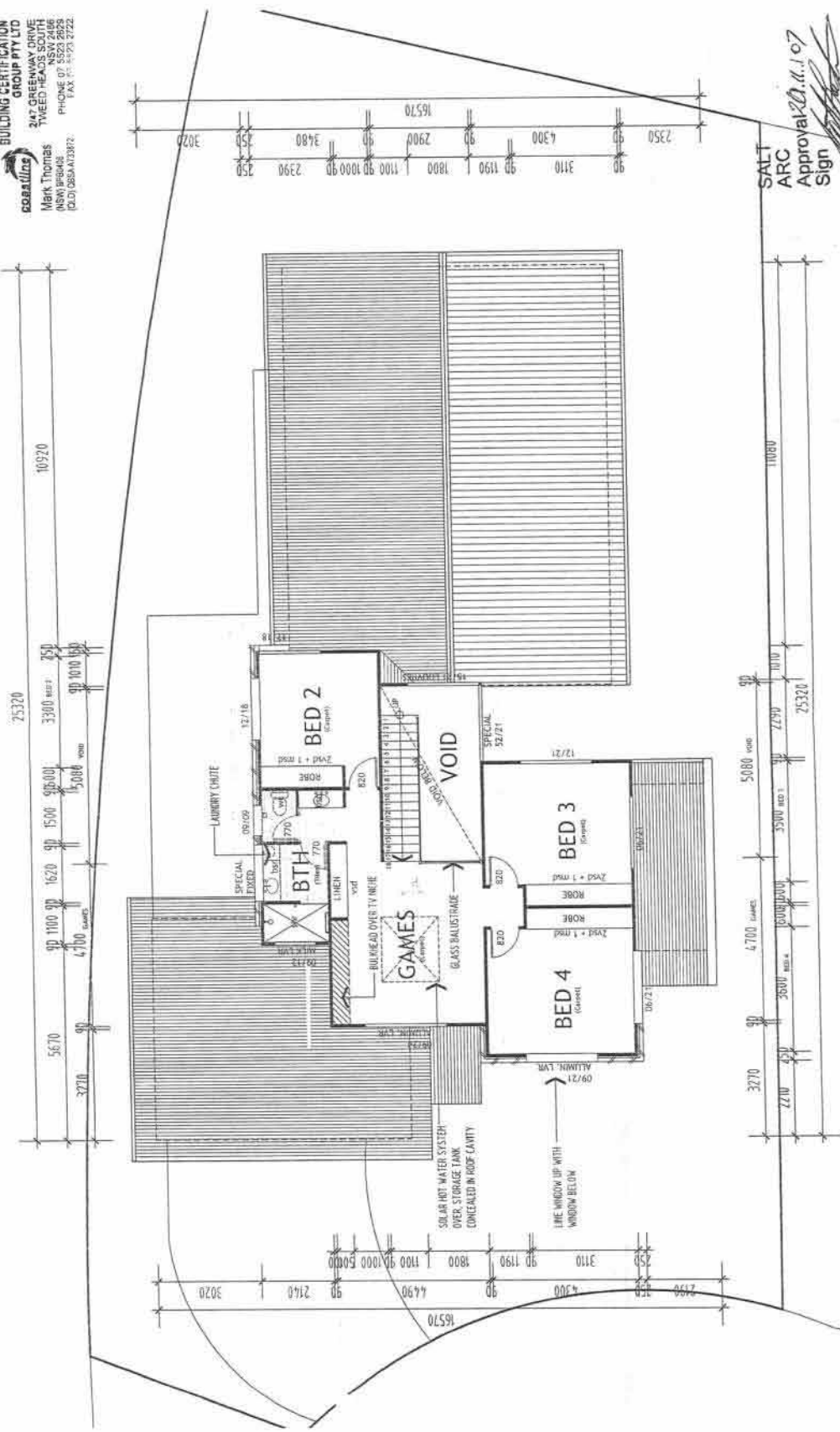


DATE: 25/10/07	SCALE: 1:100	ISSUE NO: A
JOB: PROPOSED RESIDENCE LOT 489 CACTUS COURT SALT, KINGSCLIFF	DRAWN: [Signature]	FRAMING NO: 03 18
CHECKED: [Signature]	CLIENT: MR P QUARMBY & MS L RICHARDS	DRAWING TITLE: LOWER FLOOR PLAN
BY: [Signature]		

THE CONTRACTOR SHALL NOTE THE FOLLOWING:  
 THIS DRAWING MUST BE READ IN CONJUNCTION WITH THE  
 RELEVANT SPECIFICATIONS, DETAILS AND ACCOMPANYING  
 DOCUMENTATION. ANY WORK NOT SHOWN ON THIS  
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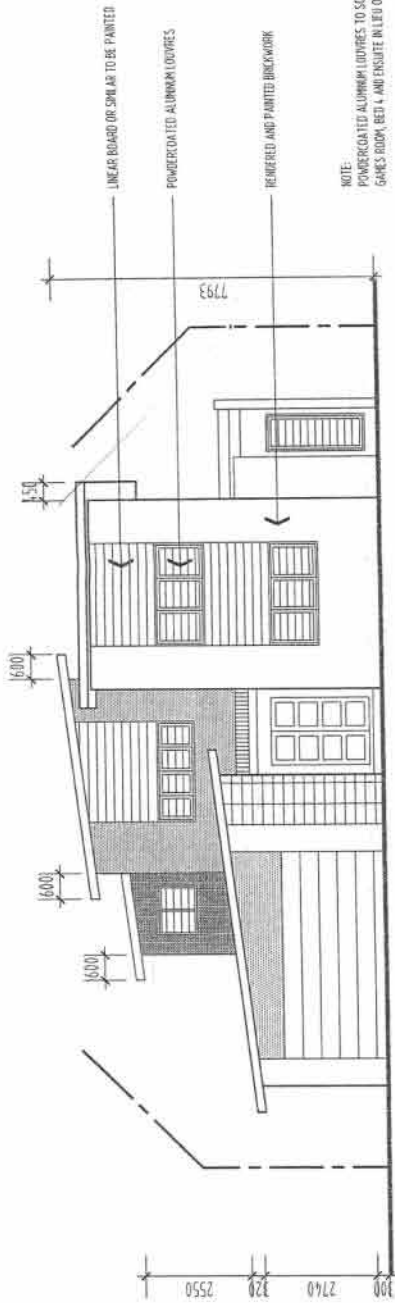
Approval 20/11/107  
 Sign [Signature]

**BUILDING CERTIFICATION GROUP PTY LTD**  
 247 GREENWAY DRIVE  
 TWEED HEADS NSW 2486  
 MARK THOMAS  
 (NEW BRANCH) PHONE 07 5523 2628  
 (OLD) 0854 3382 FAX 07 5523 2722



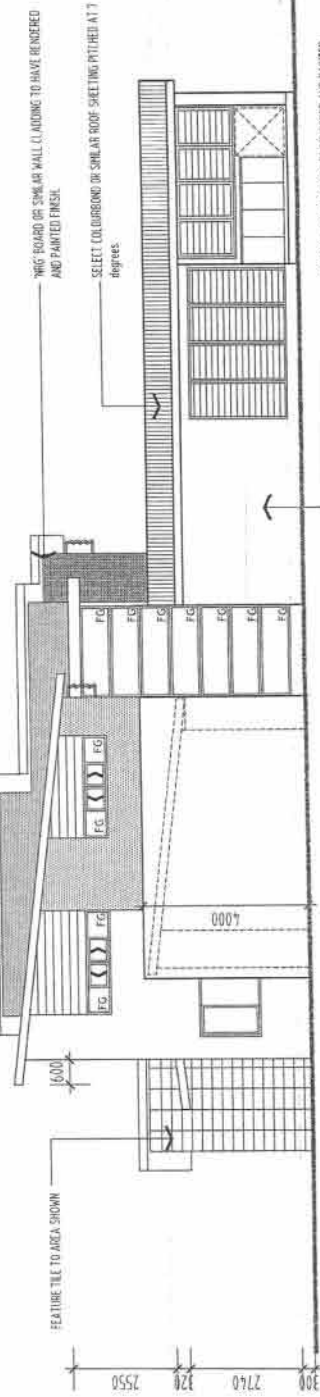
SALT  
 ARC  
 Approval 20.11.107  
 Sign

ISSUE DATE: AMENDMENT 8 30/07/13 CLEAR ISM		BY:			
JOB: PROPOSED RESIDENCE LOT 489 CACTUS COURT SALT, KINGSCLIFF		DATE: 25/10/07		DRAWING NO.: 04 of 18	
CLIENT: MR P. QUARMBY & MS L. RICHARDS		DRAWN: CHECKED:		SCALE: 1:100	
THE CONTRACTOR SHALL NOTE THE FOLLOWING: THE DRAWING MUST BE READ IN CONJUNCTION WITH THE BUILDERS SPECIFICATION, DETAILS AND ACCOMPANYING CONDITIONS OF CONTRACT. ALL WORK MUST BE SUBMITTED TO THE BUILDER BEFORE WORK IS COMMENCED. THE BUILDER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND ANY WORK OF PREPARING JOBS DRAWINGS. FIGURES DIMENSIONS TAKE PRECEDENCE OVER SCALE.		ISSUE NO.: A		DRAWING TITLE: UPPER FLOOR PLAN	



SOUTH-CACTUS CRT ELEVATION

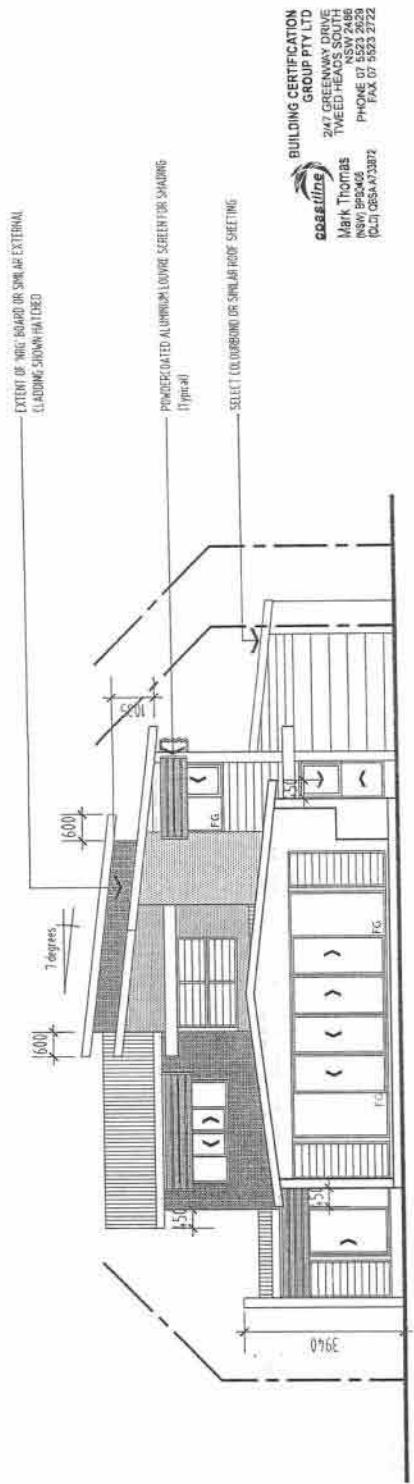
**ecostyl**  
 BUILDING CERTIFICATION GROUP PTY LTD  
 2/47 GREENWAY DRIVE  
 THREE HEADS SOUTH  
 NSW 2488  
 PHONE 07 5533 2722  
 FAX 07 5533 2722  
 Mark Thomas  
 (NSW) BPSAC  
 (QLD) QBPAWAAP



EAST ELEVATION

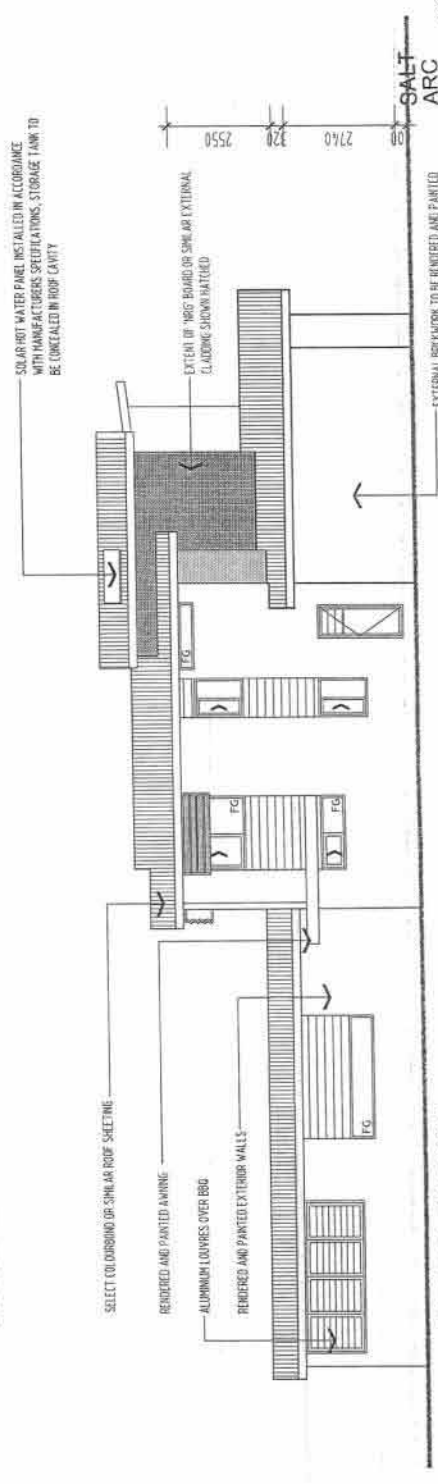
SALT  
 ARC  
 Approval 21.1.107  
 Sign *[Signature]*

JOB: PROPOSED RESIDENCE: LOT 489 CACTUS COURT SALT, KINGSCLIFF CLIENT: MR P QUARMBY & MS L RICHARDS	DATE: 25/10/07	SCALE: 1:100	ISSUE NO: A	THE CONTRACTOR SHALL NOTE THE FOLLOWING: THIS DRAWING MUST BE READ IN CONJUNCTION WITH THE BUILDING SPECIFICATION, DETAILS AND ACCESSORIES. ALL SHOWN DRAWINGS REQUIRED FOR THIS JOB MUST BE SUBMITTED TO THE BUILDER BEFORE WORK IS COMMENCED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND ANY OTHER RELEVANT AUTHORITIES. DIMENSIONS ARE PRECEDENCE OVER SCALE.
	DRAWN: CHECKED:	JOB NO:	08 of 18	
DRAWING TITLE: SOUTH & EAST ELEVATIONS				



**Building Certification**  
**GROUP PTY LTD**  
 2/47 GREENWAY DRIVE  
 TWEED HEADS NSW 2486  
 (NSW) 892409 PHONE 07 5523 2829  
 (QLD) 0854473382 FAX 07 5523 2722

NORTH ELEVATION



WEST ELEVATION

SALT  
 ARC  
 Approval 24/11/14  
 Sign

THE CONTRACTOR SHALL NOTE THE FOLLOWING: THIS DRAWING MUST BE READ IN CONJUNCTION WITH THE ARCHITECT'S SPECIFICATIONS AND ALL RELEVANT REGULATORY REQUIREMENTS. THE CONTRACTOR MUST VERIFY ALL DIMENSIONS ON THE JOB BEFORE COMMENCING ANY WORK OR REPAIRING WORK. POINTED DIMENSIONS TAKE PRECEDENCE OVER SCALE.		
ISSUE NO: 1 DATE: 25/10/07 DRAWN: [blank] CHECKED: [blank]	DRAWING NO: 09 of 18 SCALE: 1:100 JOB NO: [blank]	ISSUE NO: A
PROJECT TITLE: PROPOSED RESIDENCE LOT 489 CACTUS COURT SALT, KINGSCLIFF CLIENT: MR P QUARMBY & MS L RICHARDS		
DRAWING TITLE: NORTH & WEST ELEVATIONS		



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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

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

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

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

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

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

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

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

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

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

#### Clause 11 - Zone Objectives

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

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

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

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

#### Clause 15 - Essential Services

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

#### Clause 16 - Height of Building

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

#### Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

#### Clause 35 - Acid Sulfate Soils

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

#### Other Specific Clauses

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

### **State Environmental Planning Policies**

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

##### Clause 32B: Coastal Lands

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

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

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

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

Tweed Local Environmental Plan 2014 (draft LEP 2012)

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

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

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

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

But does not include:

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

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

**4 Prohibited**

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

Objectives of the R2 zone include the following:

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

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

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

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

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

A2-Site Access and Parking Code

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

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

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

#### A3-Development of Flood Liable Land

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

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

#### A4-Advertising Signs Code

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

#### A11-Public Notification of Development Proposals

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

#### B9-Tweed Coast Strategy

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

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

#### Clause 92(a) Government Coastal Policy

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

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

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

The proposal does not impact upon coastal zone management plans.

#### Tweed Shire Coastline Management Plan 2005

The proposal does not impact upon coastline management strategies.

**Tweed Coast Estuaries Management Plan 2004**

The proposal does not impact upon estuaries management strategies.

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

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

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

Amenity

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

Context and Setting

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

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

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

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

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

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

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

Matters raised	Council response
Use of the dwelling by tourists creates a security issue as there is no guarantee on the type or state of the persons who will be staying in the house. I should be able to feel secure in my own home.	Council officers agree that there may be amenity impacts were the application to be approved. Mitigation of such impacts could occur via conditions of consent. However the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
There is enough tourist accommodation in the area without creating more in a residential court.	Council officers agree that the proposed tourist use is incompatible with surrounding residential land uses.
Tourism facilities should be concentrated in a particular area and not be allowed to develop piecemeal. This would be in the public interest.	Council officers agree that the proposed tourist use is incompatible with surrounding residential land uses.
Residents purchased in a residential area because of the quietness normally associated with such zoning and did not envisage tourists who understandably are likely to be exuberant. This would create a security and safety issue for me and my grandchildren who come and go frequently.	Council officers agree that there may be amenity impacts were the application to be approved. Mitigation of such impacts could occur via conditions of consent. However the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
The existing business operating at 12 Cactus Court creates traffic and parking problems.	As above. During inspection of the site, there were vehicles parked in the driveway but not outside the boundary of the site. The issue of a possible unlawful business will be referred to Council's Compliance Officer.
Anecdotal evidence suggests that the proposed management measures do not work (for existing residential properties which are tourist let)	Council officers agree that there may be amenity impacts were the application to be approved, regardless of the existence of a management agreement. Mitigation of such impacts could occur via conditions of consent. However the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
Providing a phone number to TSC does not assist neighbours (in houses or units) at 2am when the tourists decide to use the pool etc, nor does it provide a written record.	This is not actually proposed by the application. The conditions proposed by the applicant state that 'a 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies'. If approved, this would be applied as a condition of consent. However the application is recommended for refusal for other reasons.
People living near the holiday letting properties (houses and units) have been lied to (the use is allowable) and bullied into believing that the dual use is a right of the owners.	This is not a matter of consideration for the application. The application has lawfully been submitted and a merit assessment of the application has been undertaken in accordance with the relevant planning legislation.
The sites are already achieving the aims of the TLEP 2000 by providing residential	The 2(f) zoning permits tourist development with consent. This is not relevant to the subject

Matters raised	Council response
accommodation in accordance with the zoning.	application.
Councillors have recently allowed holiday letting in residential houses (Collins Lane) and allowed the dual use of a tourist complex (Casuarina Beach). As they are now commercial operations, they should be rated as commercial. We request that Council changes the rating of dual use properties to commercial.	Matters concerning property rating are not relevant to assessment of the subject application.

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

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

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

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

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

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



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

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

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

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

*The management measures proposed are as follows:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Neighbour Submission dated 2/04/2014**

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

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

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

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

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

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

**Neighbour Submission dated 23/03/2014**

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

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

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

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

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

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

**Planning Comment**

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

**(e) Public interest**

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

**OPTIONS:**

1. Refuse the application; or
2. Approve the development application with the following recommended conditions of consent.

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and plans as listed in the table below, except where varied by the conditions of this consent.

<b>Title</b>	<b>Drawing Number</b>	<b>Dated</b>
Site Plan	02 of 18	26/10/2007
Lower Floor Plan	03 of 18	26/10/2007
Upper Floor Plan	04 of 18	26/10/2007
South and East Elevations	08 of 18	26/10/2007
North and West Elevations	09 of 18	26/10/2007

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).  
[GEN0065]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
4. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and six children.
5. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.

6. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.
7. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.
8. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.
9. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.
10. All landscaping is to comply with the S88B instrument pertaining to the site.
11. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
12. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.

[GENNS01]

## USE

13. 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.
14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.
15. 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]

[USE0175]

[USE0225]

16. 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]
17. The premises shall be maintained in a clean and tidy manner.  
[USE0965]
18. Any public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012. *Note: A public swimming pool includes a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests.*  
[USE0985]
19. Four off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking associated with the tourist accommodation use of the site.
20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.
21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.
22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.  
[USENS01]

Council officers recommend Option 1.

#### **CONCLUSION:**

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

#### **COUNCIL IMPLICATIONS:**

##### **a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

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

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**4 [PR-PC] Development Application DA14/0131 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 98 DP 1066504 No. 18 Malibu Street, Kingscliff**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA14/0131 Pt1**

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## **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

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### **SUMMARY OF REPORT:**

#### **Updated information**

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use - residential and tourist accommodation on the above site.

Of particular relevance to this assessment is legal advice received by Council on behalf of the applicant's agent with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice received. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

#### **Previous Report**

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

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

There were seven objections to the proposal (please note that one person submitted two objections).

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

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

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

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

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

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

The application was submitted to Council on 28 February 2014. LEP 2014 (previously Draft Tweed LEP 2012) came into force on 4 April 2014. Although LEP 2014 contains a savings provision for development applications made before commencement of the plan, the application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*.

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

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

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

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

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

**RECOMMENDATION:**

**That Development Application DA14/0131 for a dual use of existing dwelling - tourist accommodation and residential at Lot 98 DP 1066504 No. 18 Malibu Street, Kingscliff be refused for the following reasons:**

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

**REPORT:**

**Applicant:** Mrs NE McPherson  
**Owner:** Mr Scott M McPherson & Mrs Nicole E McPherson  
**Location:** Lot 98 DP 1066504 No. 18 Malibu Street, Kingscliff  
**Zoning:** 2(f) Tourism (TLEP2000)  
**Cost:** Not Applicable

**Background:**

Proposed Development

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

The application was submitted on 28 February 2014. LEP 2014 came into force on 4 April 2014.

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

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

The applicant's Statement of Environmental Effects (SEE) advises that:

*'To address any issues associated with the short term letting of the dwelling, the following conditions are suggested for inclusion as part of the approval:*

- The use of the dwelling for tourist accommodation is restricted to the following:*
  - The dwelling is to let to a maximum of one (1) tourist group comprising a maximum of ten (10) persons at any one time which may consist of up to four (4) adults and six (6) children.*
  - A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.*
  - No more than four (4) vehicles can be at the site at any one time with all car parking to be located within the property boundary of the subject site.*
  - An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*
  - A Plan of Management is to incorporate and convey a clear understanding of the terms of conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.*

- *Tenants agree to not make excessive noise as part of the letting agreement.*
- *A 24 hour contract (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.*
- *Tenants agree to a management policy (to be submitted for Council approval prior to commencement of use).*

### Site

The site is regular and rectangular shaped with a frontage of approximately 17m to Malibu Street, Kingscliff. The site is located near the end of North Point Avenue and Malibu Street. The allotment comprises a land area of 621m<sup>2</sup> and currently comprises an existing two storey dwelling as shown in the image below:



**Extract of Council's GIS aerial imagery - 18 Malibu Street**

The existing dwelling was approved under DA05/0657 and consists of: two bedrooms, open plan bar/rumpus retreat and double garage, two small decks with access onto the garden and one deck at the front of the property on the ground floor and four bedrooms, kitchen, living room, cinema room and bathrooms on the second floor. The second floor also comprises a large deck that faces onto Malibu Street. A subsequent modification (DA05/0657.06) approved a swimming pool in the front setback, a fence height variation and the addition of a deck on the upper level.

The dwelling comprises a side setback of approximately 1.7m to the east and 3.4m to the west (side boundaries); approximately 5m to the south (rear boundary) and 6m to the north (front boundary).

The site has previously been cleared of native vegetation and currently comprises landscaping typical of a newly established residential property.

A Section 88B Instrument applies to the subject property that states that '*No main dwelling may be used for any purpose other than a single private dwelling*'.

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



**Concurrent applications at Nos. 1 North Point Avenue (DA14/0160), 17 Malibu Street (DA14/0161) and 18 North Point Avenue (DA14/0183) (highlighted in red)**

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

History

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

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

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

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

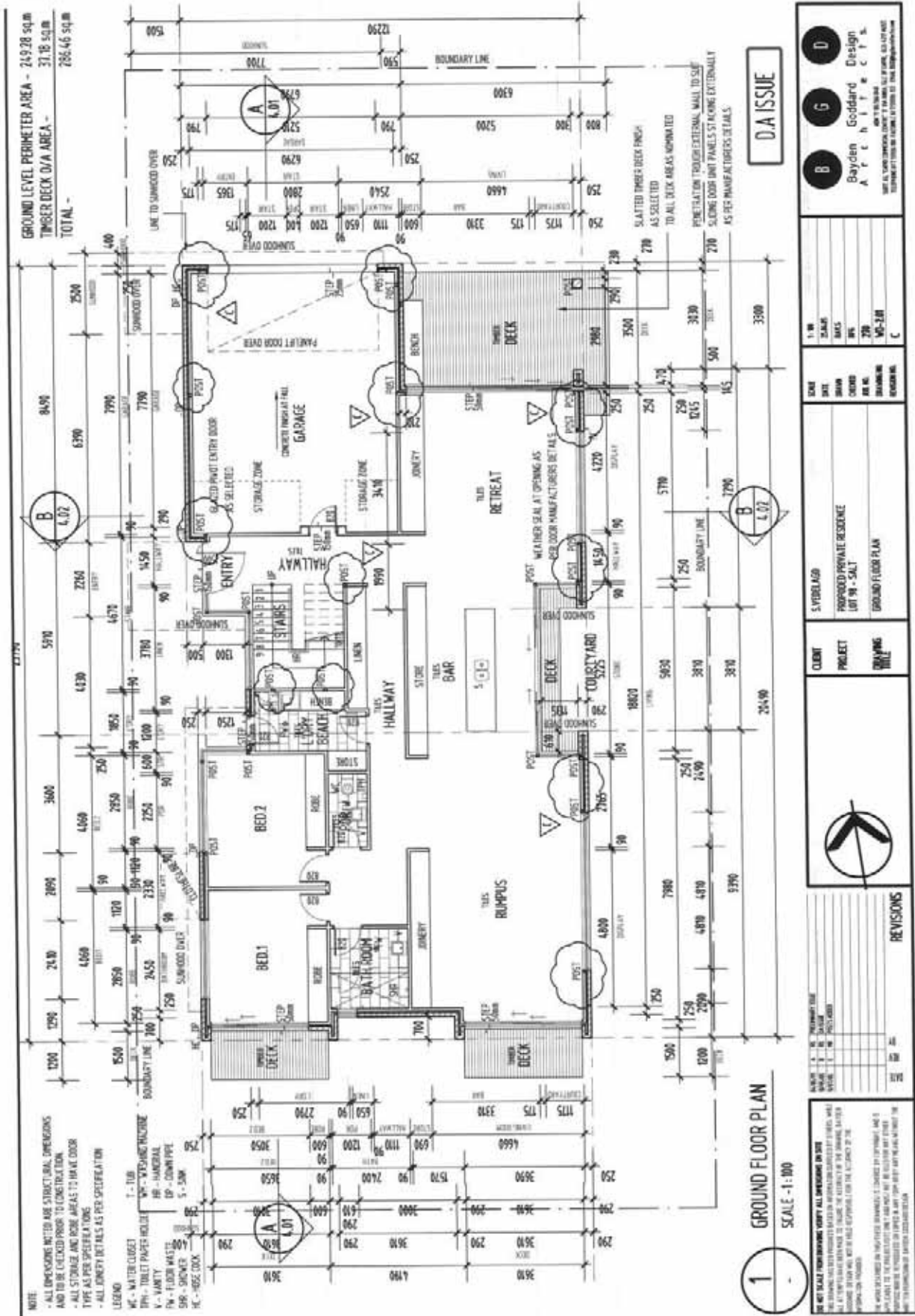
**SITE DIAGRAM:**



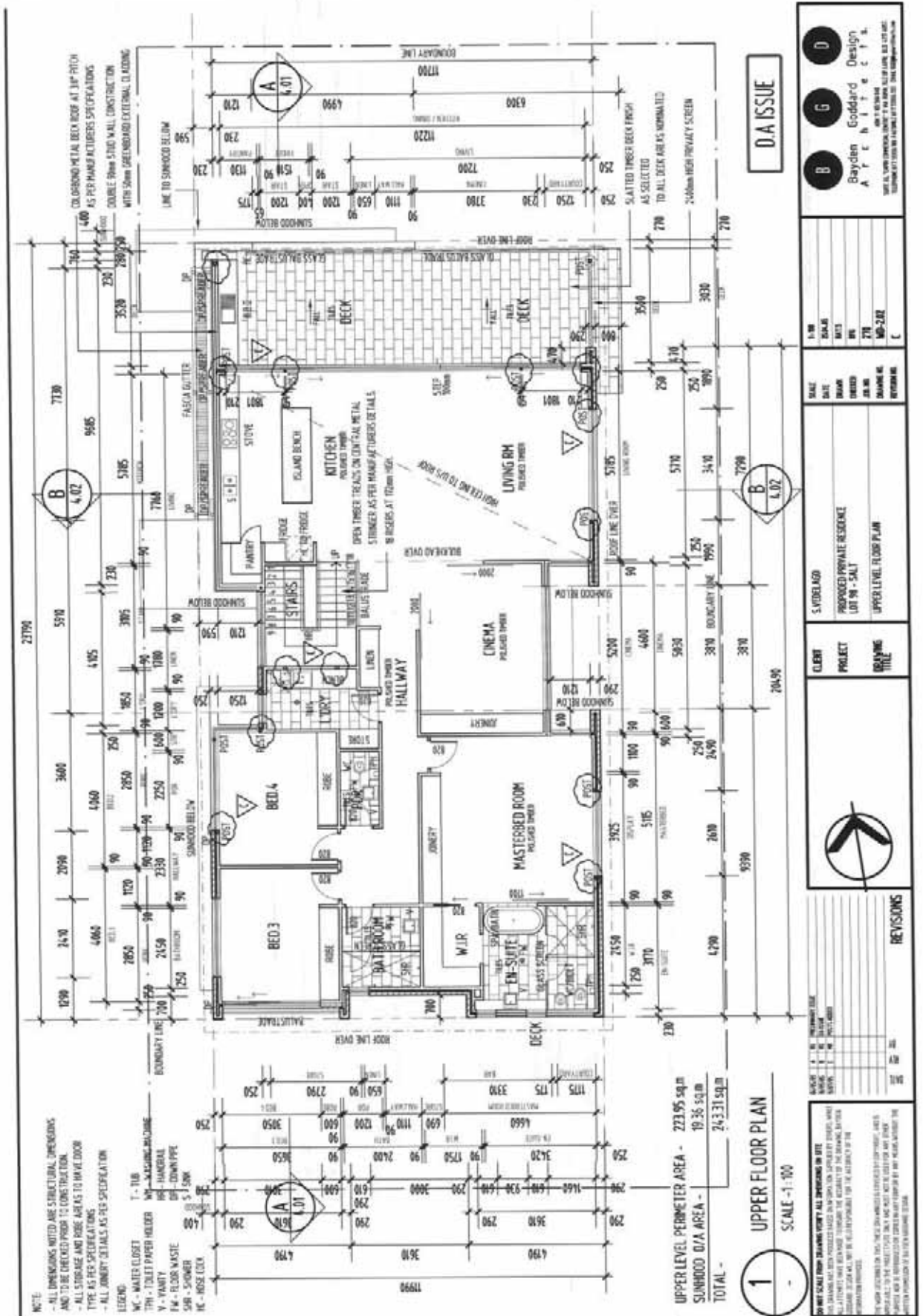
**Locality Plan**  
 Lot 98 DP 1066504  
 No.18 Malibu Street, Kingscliff

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- NOTE:**
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  - ALL STORAGE AND DOOR AREAS TO HAVE DOOR TYPE AS PER SPECIFICATIONS.
  - ALL JOINTY DETAILS AS PER SPECIFICATION.
- LEGEND:**
- T - TUB
  - WC - WALKER CLOSET
  - TRN - TRAITOR HOLDING
  - V - VENTILATION
  - F4 - FLOOR WASTE
  - S8 - SINK
  - HC - HOUSE LOCK
  - W/C - WALKER CLOSET
  - HA - HANDBASE
  - DN - DOWNPIPE
  - S - SINK

UPPER LEVEL PERIMETER AREA - 223.95 sq.m  
 SUNROOM OVA AREA - 19.36 sq.m  
**TOTAL - 243.31 sq.m**

**1 UPPER FLOOR PLAN**  
 SCALE - 1:100

**DO NOT SCALE FROM DRAWING EXCEPT ALL DIMENSIONS ON SITE.**  
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 DATE: 10/08/13

REVISIONS

NO.	DATE	DESCRIPTION
1	10/08/13	ISSUE FOR PERMIT



CLIENT PROJECT DRAWING TITLE

CLIENT	PROPOSED PRIVATE RESIDENCE
PROJECT	LOT 98 - SALT
DRAWING TITLE	UPPER LEVEL FLOOR PLAN

DATE

DATE	DESIGNED	CHECKED	DATE	DRAWN BY	REVISIONS

SCALE

SCALE	DATE	DESIGNED	CHECKED	DATE	DRAWN BY	REVISIONS

**D.A ISSUE**

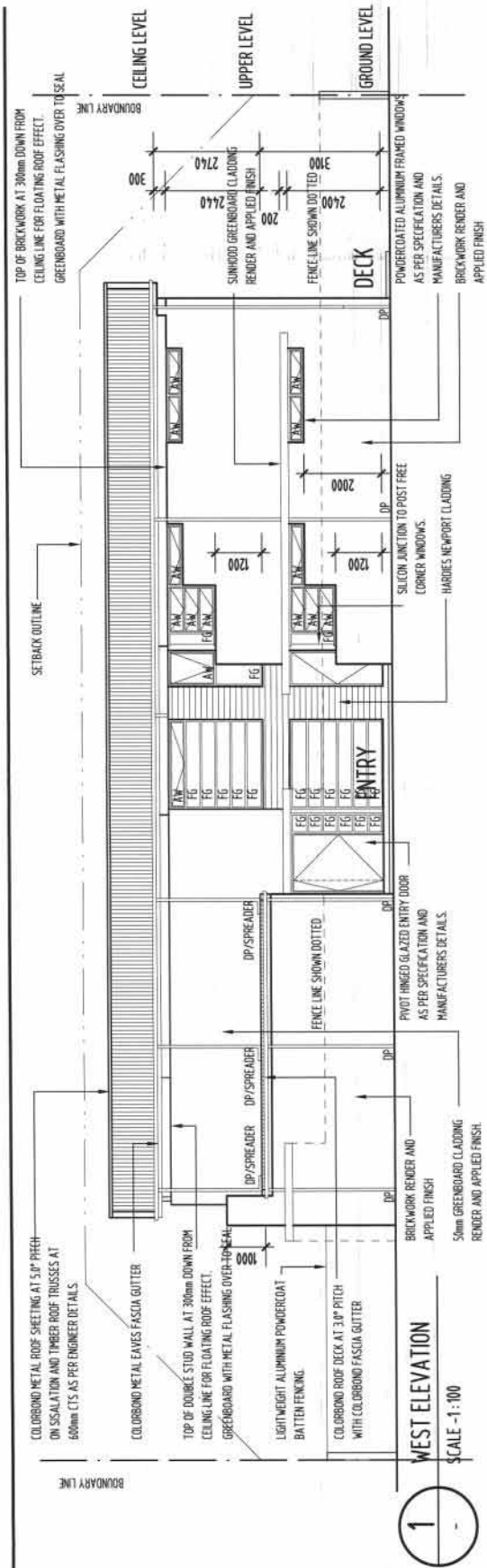
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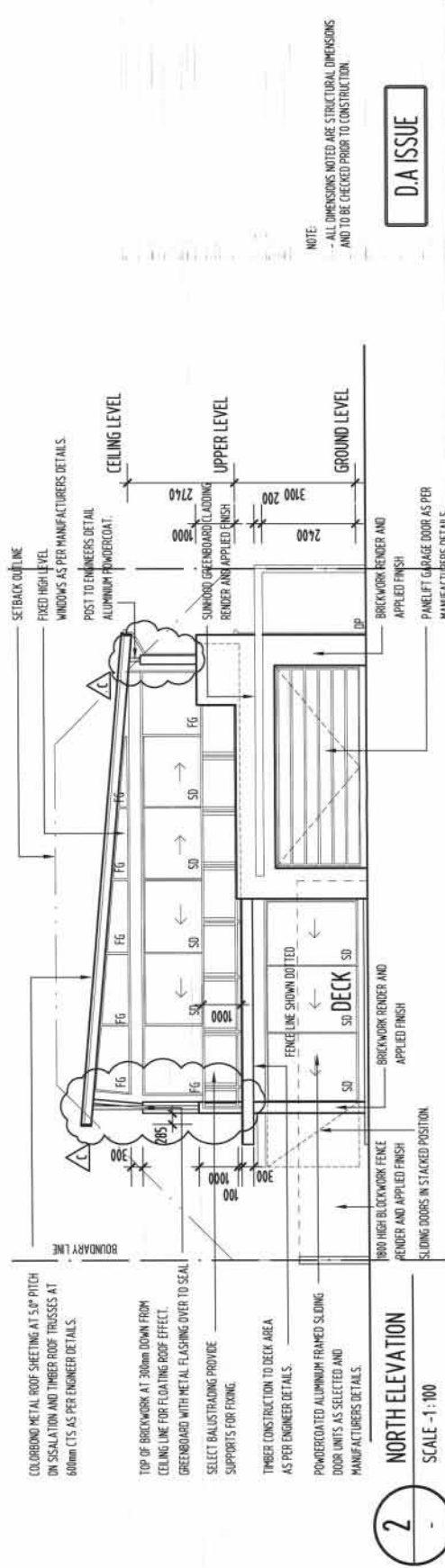
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**Bayden Goddard Design**  
 Architects

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 TEL: 08 8313 2313  
 EMAIL: bayden@goddarddesign.com.au



**1 WEST ELEVATION**  
SCALE - 1:100



**2 NORTH ELEVATION**  
SCALE - 1:100

NOTE:  
- ALL DIMENSIONS NOTED ARE STRUCTURAL DIMENSIONS AND TO BE CHECKED PRIOR TO CONSTRUCTION.

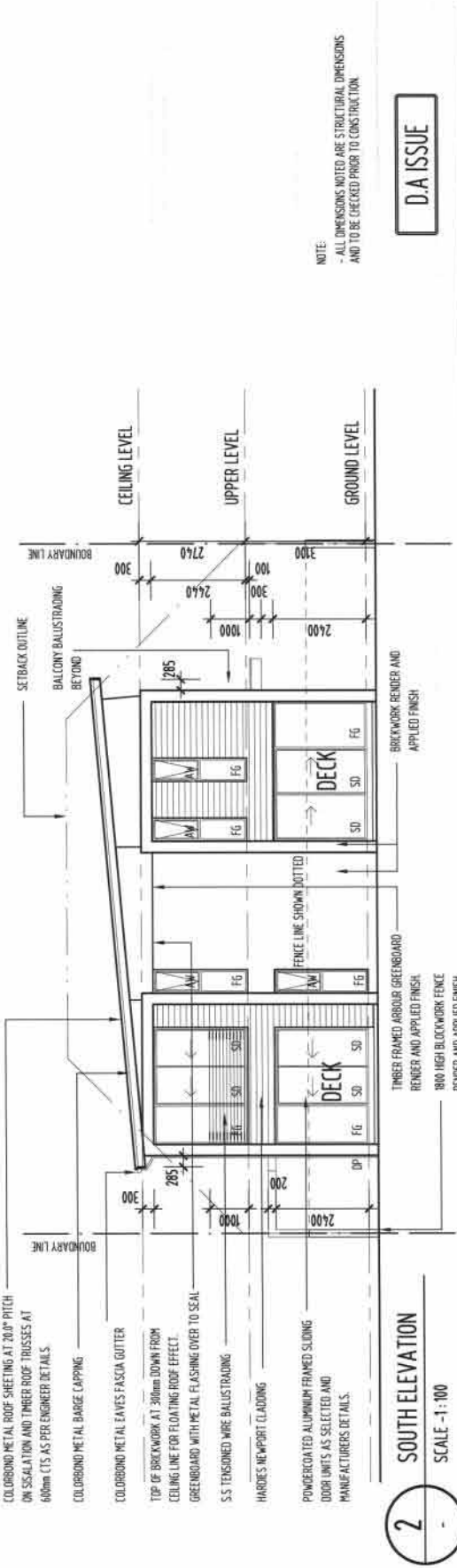
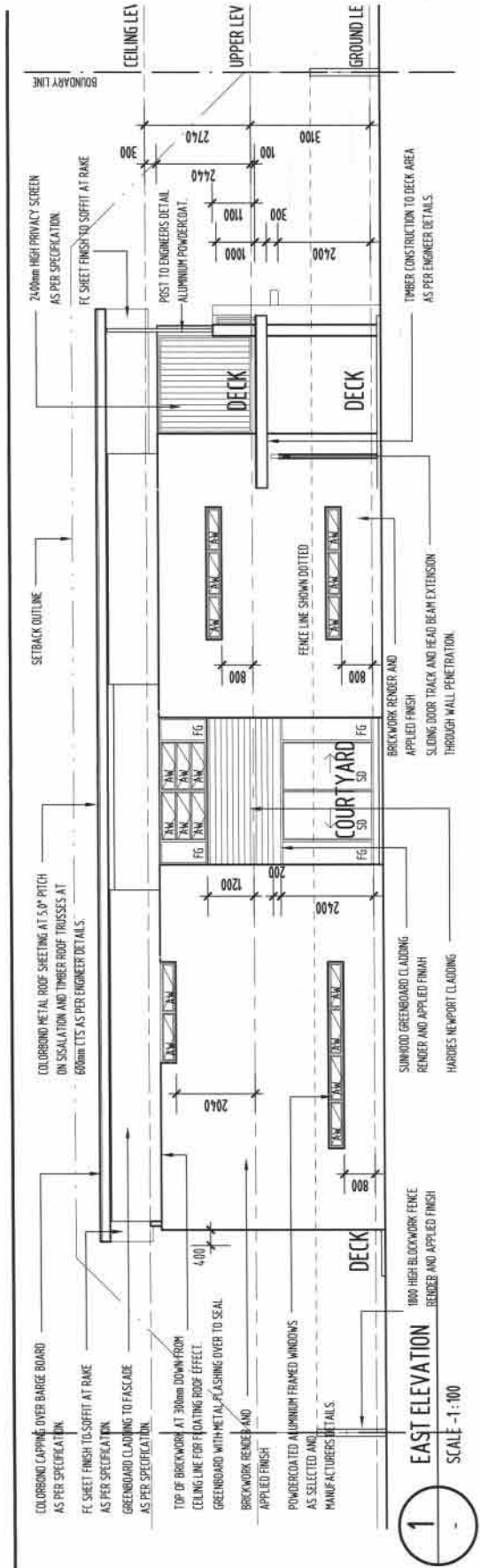
**D.A ISSUE**

**B** Bayden  
**G** Goddard  
**D** Design  
A r c h i t e c t s.  
111-113 MARLBOROUGH STREET, SYDNEY NSW 1513  
PHONE: 61 61 2 955 1234 FAX: 61 2 955 1234

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REVISION NO.	C

**S. VEDELAGO**  
PROPOSED PRIVATE RESIDENCE  
LOT 98 - SALT  
NORTH AND WEST ELEVATIONS

NO.	DATE	REVISIONS



**D.A ISSUE**

<p><b>DO NOT SCALE FROM DRAWING UNLESS ALL DIMENSIONS ARE SET OUT</b></p> <p>ALL DIMENSIONS HAVE BEEN CHECKED FOR ACCURACY. THE DRAWING DESIGNER'S DESIGN SHALL BE HELD RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED.</p> <p>THE WORK DESCRIBED AND INCORPORATED HEREIN IS COVERED BY COPYRIGHT. ANY UNAUTHORIZED REPRODUCTION OR USE OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF THE DESIGNER IS PROHIBITED.</p>		<p>DATE: _____</p> <p>BY: _____</p> <p>FOR: _____</p>	<p><b>REVISIONS</b></p> <table border="1"> <tr><th>NO.</th><th>DESCRIPTION</th></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </table>	NO.	DESCRIPTION							<p><b>CLIENT</b> PROPOSED PRIVATE RESIDENCE LOT 98 - SALT</p> <p><b>PROJECT</b> SOUTH AND EAST ELEVATIONS</p>	<p><b>S. VICELOD</b></p> <p>DATE: _____</p> <p>SCALE: _____</p> <p>BY: _____</p> <p>CHECKED: _____</p> <p>DATE: _____</p> <p>SCALE: _____</p> <p>BY: _____</p> <p>CHECKED: _____</p>	<p><b>1:100</b></p> <p>SCALE: _____</p> <p>DATE: _____</p> <p>BY: _____</p> <p>CHECKED: _____</p>
NO.	DESCRIPTION													

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**D G D**

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

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

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

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

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

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

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

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

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

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

#### Clause 11 - Zone Objectives

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

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

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

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

#### Clause 15 - Essential Services

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

#### Clause 16 - Height of Building

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

#### Clause 35 - Acid Sulfate Soils

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

#### Clause 53 - Development of specific sites

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

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

TLEP 20000. The proposal does not rely upon Clause 53(2) of the TLEP 2000 for permissibility'.

Clause 53B Height Restrictions - Coast Road, South Kingscliff

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

Clause 54 – Tree preservation order

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

**State Environmental Planning Policies**

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

Clause 32B: Coastal Lands

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

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

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

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

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

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

**1.4 Definitions**

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

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

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

But does not include:

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

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

**4 Prohibited**

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

**1.8A Savings provision relating to development applications**

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

With respect to this it is noted that the subject application was lodged with Council on 29 February 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. As such this clause is applicable to this development application.

Notwithstanding, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*.

## **Part 2 Permitted or prohibited development**

### **2.1 Land use zones**

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

### **2.3 Zone objectives and Land Use Table**

The objectives of the R2 Low density residential zone are:

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

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

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

*The proposed development does not offend or compromise the objectives of the draft R2 zone and therefore should be supported as it is allowable with consent under the current TLEP 2000."*

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

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

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

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

## **Part 5 Miscellaneous provisions**

### **5.5 Development within the coastal zone**

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



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

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

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

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

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

The proposed development will not result in any overshadowing or loss of views from a public place to the coastal foreshore.

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

The proposed development is not considered to compromise the scenic qualities of the coast as it represents a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

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

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

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

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

This clause goes on to further state:

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

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

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

The proposed development does not require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

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

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

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

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

There are no other provisions in LEP 2014 that are specifically relevant to the proposal.

In accordance with the advice provided above, the application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and LEP 2014, and also because the proposal is considered not to meet the objectives of the R2 zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling was approved on 2 September 2005 under DA05/0657. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2005 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however there are minimal setbacks provided to the east (side boundary) and landscaped areas at the front (north) of the property, particularly considering the approval of a swimming pool in the front setback. The SEE advises that landscaping features have been implemented to increase privacy and that these elements will be retained.

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

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1. However, it is noted that the existing dwelling is located in close proximity to the boundaries of the site and, being two storeys with an upper level deck, may have the capacity to impact on surrounding residential amenity in terms of noise and disturbance.

Section A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces (two spaces with a double garage and two within the driveway).

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

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with DCP A11. The proposal was placed on public exhibition for 14 days from 19 March 2014 to 2 April 2014.

Seven submissions (please note that one person made two submissions) were received during this time which is detailed elsewhere in this report.

Section B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is

not considered that the proposed dual use of the existing dwelling for tourist accommodation contradicts the objectives of the Government Coastal Policy.

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

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

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

**Tweed Shire Coastline Management Plan 2005**

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

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

**Tweed Coast Estuaries Management Plan 2004**

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

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

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

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

Context and Setting

The subject site is located within an area dominated by dwellings lawfully utilised for long-term residential purposes and large scale tourist resort developments. It

is intended that the large scale resorts provide tourist accommodation and flexible use options in the future, as distinct from single dwellings.

Whilst the proposal does not comprise any physical alterations to the existing dwelling, it is considered that the use of the dwelling for tourist accommodation purposes may have the potential to affect surrounding residential amenity by reason of noise and disturbance and may detract from the character of the dwelling and the surrounding area.

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

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000.

The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

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

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. Seven submissions were received, the issues raised are detailed in the following table. Please note that the applicant was given opportunity to respond to the submissions received. The applicant's response is also detailed within the following table:

Issues raised in submissions	Response from applicant (summarised)
<p>Noise and disturbance:</p> <ul style="list-style-type: none"> <li>• The property is already advertising on the internet offering holiday accommodation;</li> <li>• Families currently frequenting holiday lets in the area on a weekly basis;</li> <li>• Often have parties (weddings, birthdays, schoolies), BBQs, stay up late, play loud music;</li> <li>• Holidaymakers drinking on front balcony disturbing sleep;</li> <li>• Numerous reports of antisocial behaviour have been logged with the police. This is detrimental to the amenity of existing residents;</li> <li>• Over past 8 years the area has been quiet and family oriented with the majority of housing being for long-term accommodation however since holiday rentals have commenced increased noise, and disturbance have commenced;</li> <li>• People on holiday forget that people live in the area;</li> </ul>	<ul style="list-style-type: none"> <li>• Property is in close proximity to the beach and therefore disruption would be minimal;</li> <li>• Are not in the middle of the street and therefore do not impact on many homes;</li> <li>• Two properties in close proximity are 'understanding' of rental needs;</li> <li>• We will not be operating by 'stealth'. We bought the property six months ago and have since sought consent;</li> <li>• Area is located in a high tourism locality;</li> <li>• As per definition of LEP 2000, the location is not exclusively residential;</li> <li>• The entertainment area to the house is to the front / street and therefore most conversation is diffused by street noise;</li> <li>• Noise could be generated by a</li> </ul>

Issues raised in submissions	Response from applicant (summarised)
<ul style="list-style-type: none"> <li>· Dual use does not specify what mix of holiday or tourist accommodation so it could in fact be 100% holiday rental use (as has been experienced in the area);</li> <li>· Antisocial behaviour and loud noise in association with pool;</li> <li>· Barking dogs often left on their own in unfamiliar environment.</li> </ul>	<ul style="list-style-type: none"> <li>· family living at the property;</li> <li>· House would be pet free and non-smoking.</li> </ul>
<p>Parking:</p> <ul style="list-style-type: none"> <li>· Often a number of vehicles, boats and so on. Particularly during holiday season it is difficult to get parking outside of other properties;</li> <li>· Cars have been parked on either side of the street preventing rubbish collection;</li> <li>· Cars have been parked on the footpath.</li> </ul>	<ul style="list-style-type: none"> <li>· There is sufficient space for parking off of the street;</li> <li>· Neighbours almost always park their cars on the street.</li> </ul>
<p>Rubbish:</p> <ul style="list-style-type: none"> <li>· Garbage bins are inadequate, particularly during the holiday season. Rubbish often piled up on footpath with residents left to clear it up;</li> <li>· Odour issues with bins being left out at the start of the week for collection on Fridays.</li> </ul>	<ul style="list-style-type: none"> <li>· Unaware of bins being left out until bin night;</li> <li>· Bins have been upgraded to largest possible</li> </ul>
<p>Security:</p> <ul style="list-style-type: none"> <li>· There has been an increase in the number of break-ins and whilst holiday makers may not be directly to blame the problem escalates every holiday period. Influx of holiday makers creates problems with neighbourhood watch;</li> <li>· No site manager to report issues to.</li> </ul>	<ul style="list-style-type: none"> <li>· There would be a management company whom people could report complaints to.</li> </ul>
<p>Insurance and risk of injury:</p> <ul style="list-style-type: none"> <li>· High movement of people in and out of properties could end in serious injury or death as a result of poor maintenance of property and the pool;</li> <li>· Questions in respect of personal liability and whether such measures are in place or supervised.</li> </ul>	
<p>Difficulties in enforcing conditions:</p> <ul style="list-style-type: none"> <li>· Difficult to enforce the number of people staying in the house (usually rented out to 3 families with up to 12 persons);</li> </ul>	<ul style="list-style-type: none"> <li>· We will have one management company (Corporate Bodies) who reside two streets from the house;</li> </ul>

Issues raised in submissions	Response from applicant (summarised)
<ul style="list-style-type: none"> <li>• Difficulty in maintaining a visitor log book as multiple agents manage the property (Stayz and so on);</li> <li>• Insufficient space to accommodate parking associated with holiday let and holidaymakers park on the street or on verge;</li> <li>• Difficult to enforce noise management and would need an onsite manager to adequately police otherwise calls directed to the police who are already stretched;</li> <li>• Who will answer a phone complaint at 12am? This will lead to an increase in the number of complaints directed to Council and the police;</li> <li>• If application as approved would there be any opportunity to revoke the consent if the conditions were not complied with?</li> <li>• Needs to be tighter controls on such uses such as at Byron Shire.</li> </ul>	<ul style="list-style-type: none"> <li>• They are on call 24/7;</li> <li>• There will therefore be a 'go to person' for issues;</li> <li>• No groups will be allowed to stay and number of guests will be restricted to 10;</li> <li>• Tenant behaviour guidelines will be provided and a Rental Agreement must be signed with Corporate Bodies (must agree to terms - behaviour, noise, rubbish, car parking and so on);</li> <li>• Do not have 4-5 families holidaying in this property.</li> </ul>
<p>Character of area:</p> <ul style="list-style-type: none"> <li>• The area was sold as a residential area where people reside and that the resorts (Manta, Peppers, Bale) were for holiday makers. A number of residents in locality have relocated due to noise and inconvenience;</li> <li>• Unnecessary and inappropriate that council sees fit to approve private residences as tourist accommodation;</li> <li>• Keep holiday makers in the resorts;</li> <li>• Resorts have alleged that they are struggling and therefore is there a need for dual use?</li> <li>• Holiday rental business for the owners has a gross annual turnover of over \$100,000 a year however no regulation to how the users must behave;</li> <li>• The original town planning for the vision of Salt did not include this type of development;</li> <li>• Area not suitable for 'party houses';</li> <li>• The Department of Planning has decided to rezone the area for residential accommodation only and therefore tourist accommodation should not be approved;</li> </ul>	<ul style="list-style-type: none"> <li>• Dual use accommodation was permitted under the former Tweed LEP 2000;</li> <li>• A savings provision is contained within Tweed LEP 2014 and therefore the proposal can be approved by Council;</li> <li>• A number of submissions received do not appear to be in respect to our specific property and therefore assume that most residents are comfortable with our application;</li> <li>• Two immediate neighbours (being 17 Malibu St and 7 Northpoint Avenue have expressed 'understanding' for holiday letting);</li> <li>• More than 75 homes offering casual holiday letting in Kingscliff area (as per Stayz) and over 273 properties advertising for casual holiday letting. The coast is a major holiday destination and brings revenue to the local area and economy.</li> </ul>

Issues raised in submissions	Response from applicant (summarised)
· Concerns about the number of development applications received for tourist accommodation in the locality	

Planning Comment

It is noted that issues such as increased noise and disturbance resulting from the use of the dwelling for short term tourist accommodation may have a significant detrimental impact on the amenity of surrounding residents. Whilst it is acknowledged that a family living permanently in the dwelling may also have the ability to make noise, it is considered that those on holiday may have an increased propensity to make noise on a louder and more frequent basis, particularly if the property was to be used for parties or the like.

It is noted that should the application be approved a number of conditions may be applied to ensure that the tourist accommodation is operated in accordance with an approved Management Plan (in respect of number of occupants, tenant behaviour and onsite parking). However, it is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

**(e) Public interest**

The proposed development would be permissible with consent under the provisions of the former LEP 2000. However, approval of the application does raise questions in respect to the suitability of the proposed tourist accommodation located predominantly within a residential area.

However the draft LEP 2012 and gazetted LEP 2014 prohibits the development and it is considered that the proposal would not be in accordance with the objectives of the R2 zone. As such, the proposed development is not considered to be in the public interest.

**OPTIONS:**

That Council:

1. Refuses the application; or
2. Approve the development application with the following recommended conditions of consent.

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:
  - WD-1.01 revision C - Site Plan;
  - WD-2.01 revision C - Ground Floor Plan;
  - WD-2.02 revision C - Upper Level Floor Plan;
  - WD-2.03 revision C - Roof Plan;
  - WD-3.01 revision C - North and West Elevations;



- WD-3.02 revision C - South and East Elevations;
- WD-3.03 revision C - Street Elevations;
- WD-4.01 revision B - Sections.

prepared by Bayden Goddard Design Architect and dated 25.4.05, except where varied by the conditions of this consent.

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).  
[GEN0065]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
4. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and six children.
5. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.
6. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.
7. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.
8. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.
9. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.
10. All landscaping is to comply with the S88B instrument pertaining to the site.
11. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
12. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.

[GENNS01]

USE

13. 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]
14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.  
[USE0175]
15. 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]
16. 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]
17. The premises shall be maintained in a clean and tidy manner.  
[USE0965]
18. The public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012.  
[USE0985]
19. Four off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking associated with the tourist accommodation use of the site.
20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.
21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

[USENS01]

The Council officers recommend Option 1.

**CONCLUSION:**

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

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

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

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA14/0132 Pt1**

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## **Civic Leadership**

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

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

### **SUMMARY OF REPORT:**

#### **Updated information**

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use - residential and tourist accommodation on the above site.

Of particular relevance to this assessment is legal advice received by Council on behalf of the applicant's agent with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice received. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

- 22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

#### **Previous Report**

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

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

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There was one objection to the development application.

The existing dwelling was approved on 24 March 2014 for single dwelling purposes only (DA14/0095). The dwelling is a two storey structure and features a pool on the northern boundary. The dwelling is located upon a 787.6m<sup>2</sup>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **RECOMMENDATION:**

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

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

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

**REPORT:**

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

**Background:**

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

History

The existing dwelling was approved on 24 March 2014 for single dwelling purposes only. The dwelling is a two storey structure and features a pool on the northern boundary. The dwelling is located upon a 787.6m<sup>2</sup>.

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

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

The Subject Site

The site is regular and rectangular shaped with a 12.6m frontage to Eclipse Lane. The site has a total land area of 787.6m<sup>2</sup>. The site is generally flat and features grassed landscape. On-site parking is within a double garage accessed off Eclipse Lane. The site could accommodate visitor parking in front of the double garage on the driveway.



*Figure 1 - Aerial Photo of 30 Eclipse Lane - Casuarina*



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

#### The Proposed Development

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

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

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

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

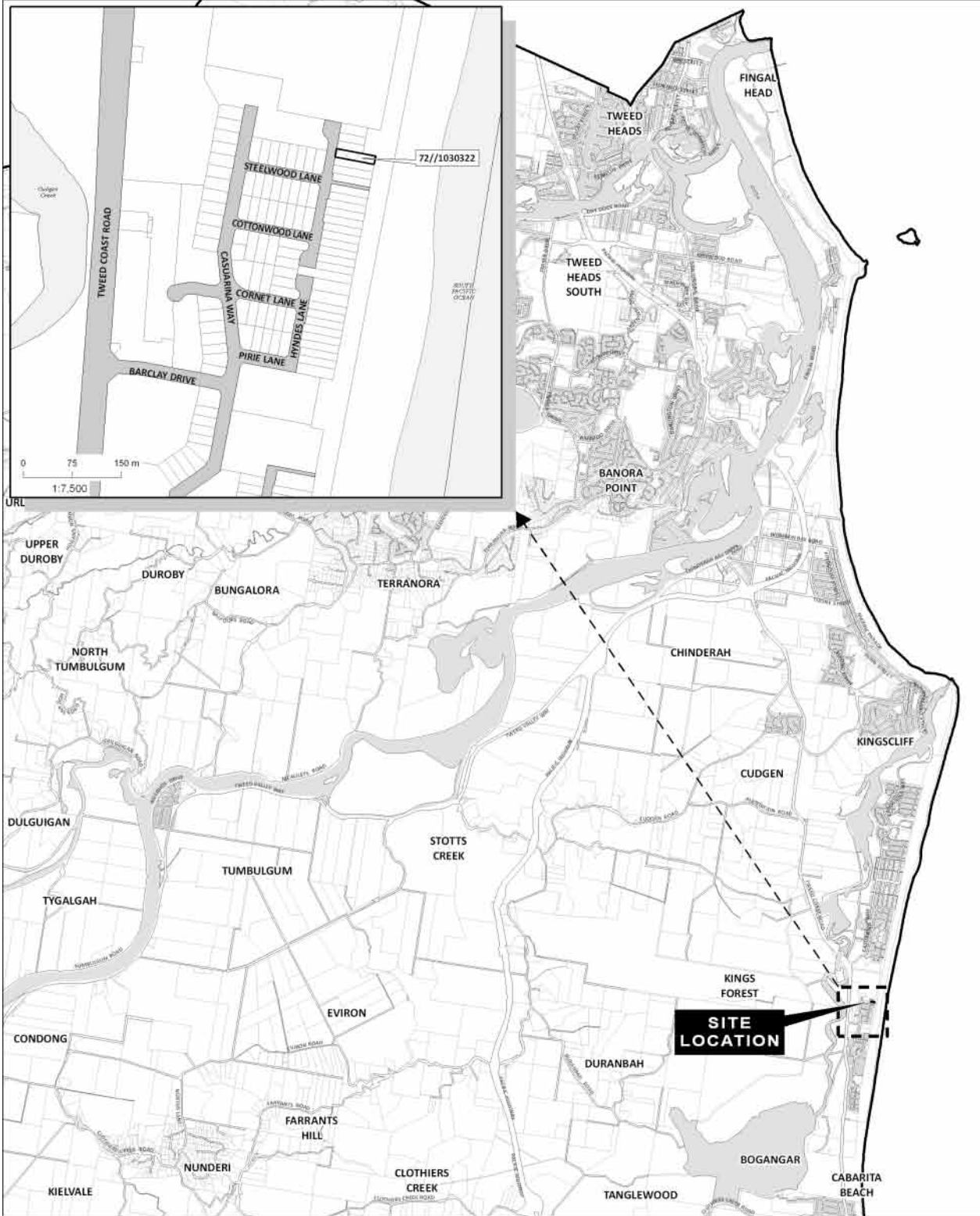
The applicant has proposed that a plan of management be submitted to Council for approval (upon condition) which will regulate use of the property, consistent with development consent conditions and existing S88B restrictions on the use of the land.

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

#### Summary

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

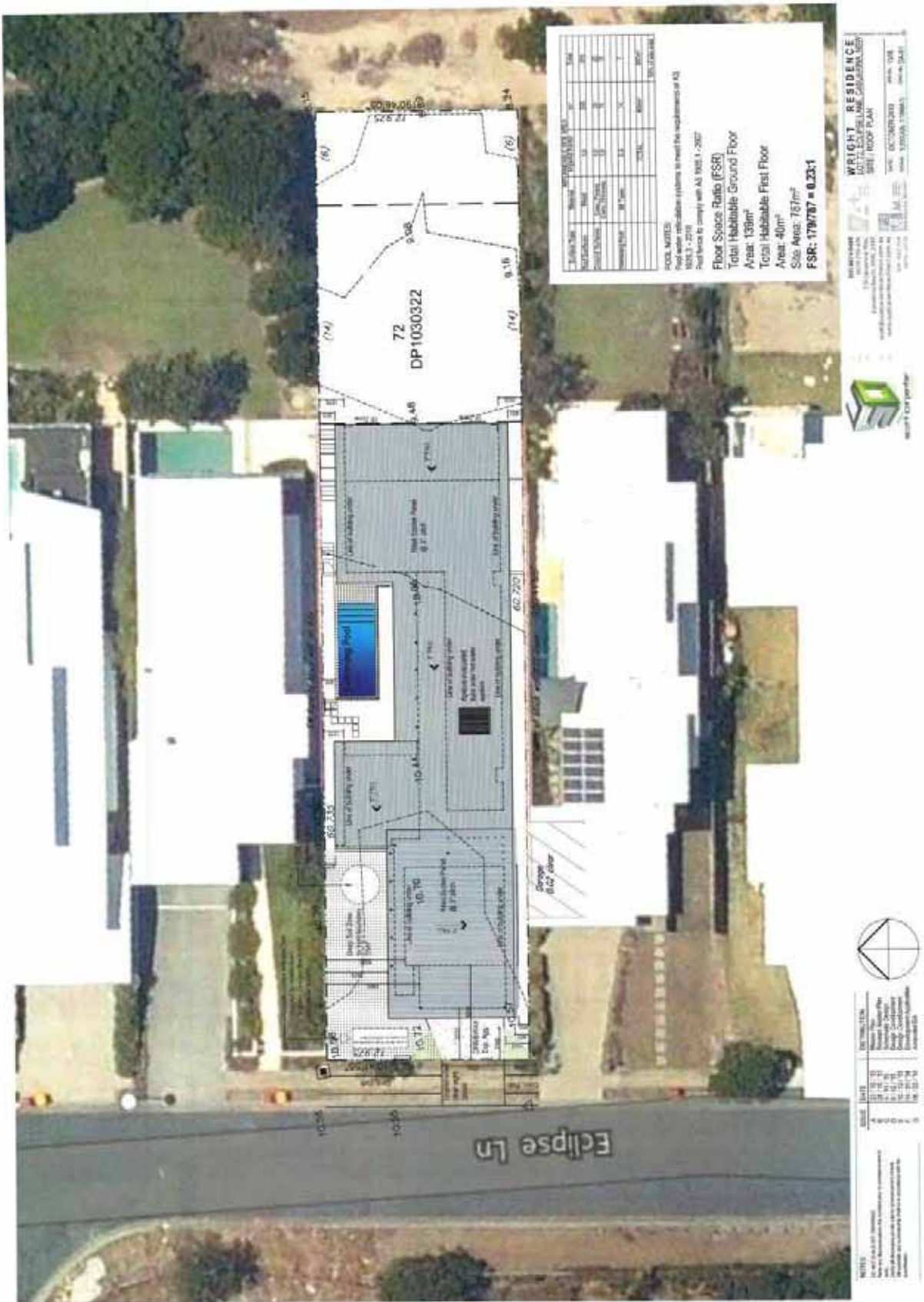
**SITE DIAGRAM:**

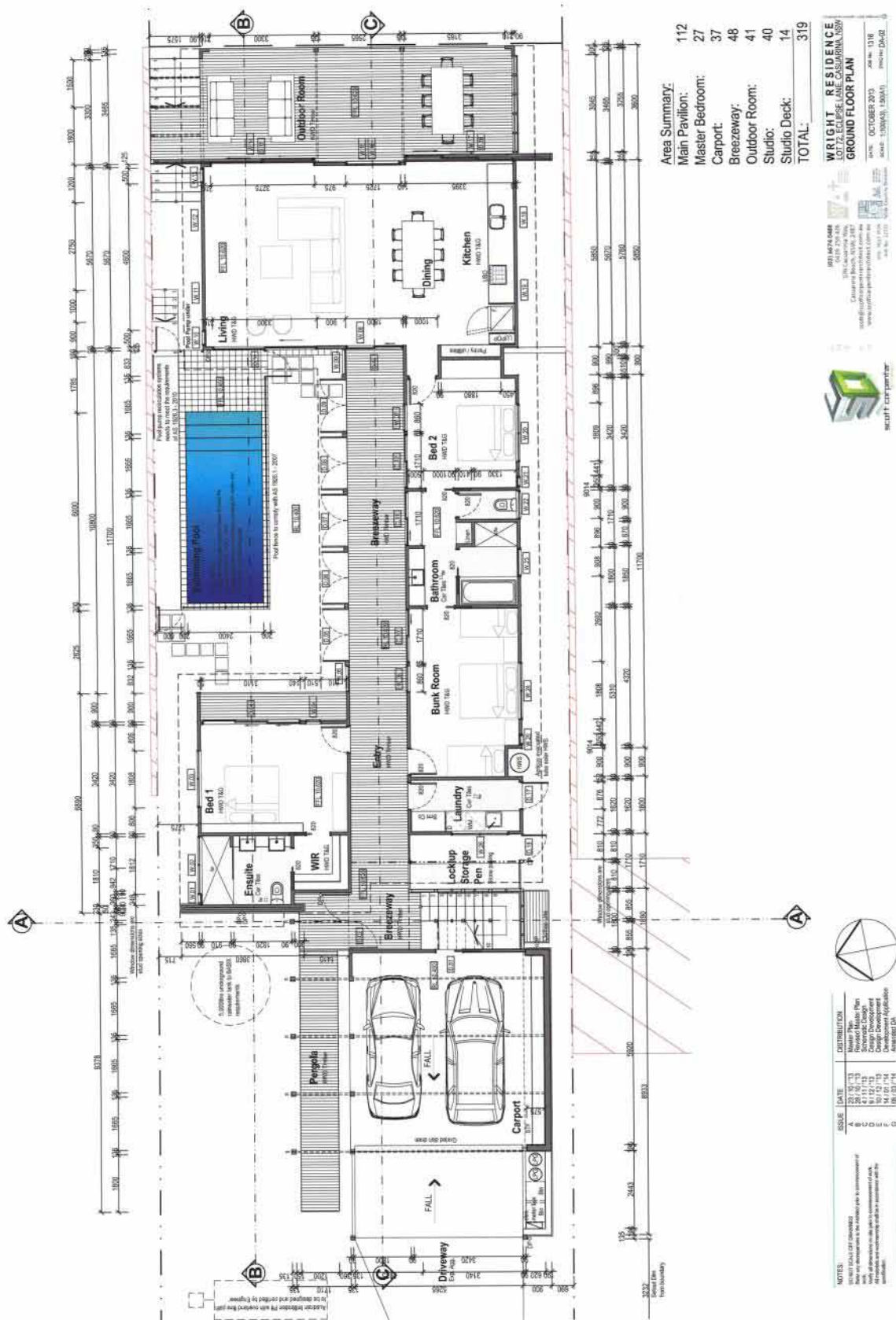


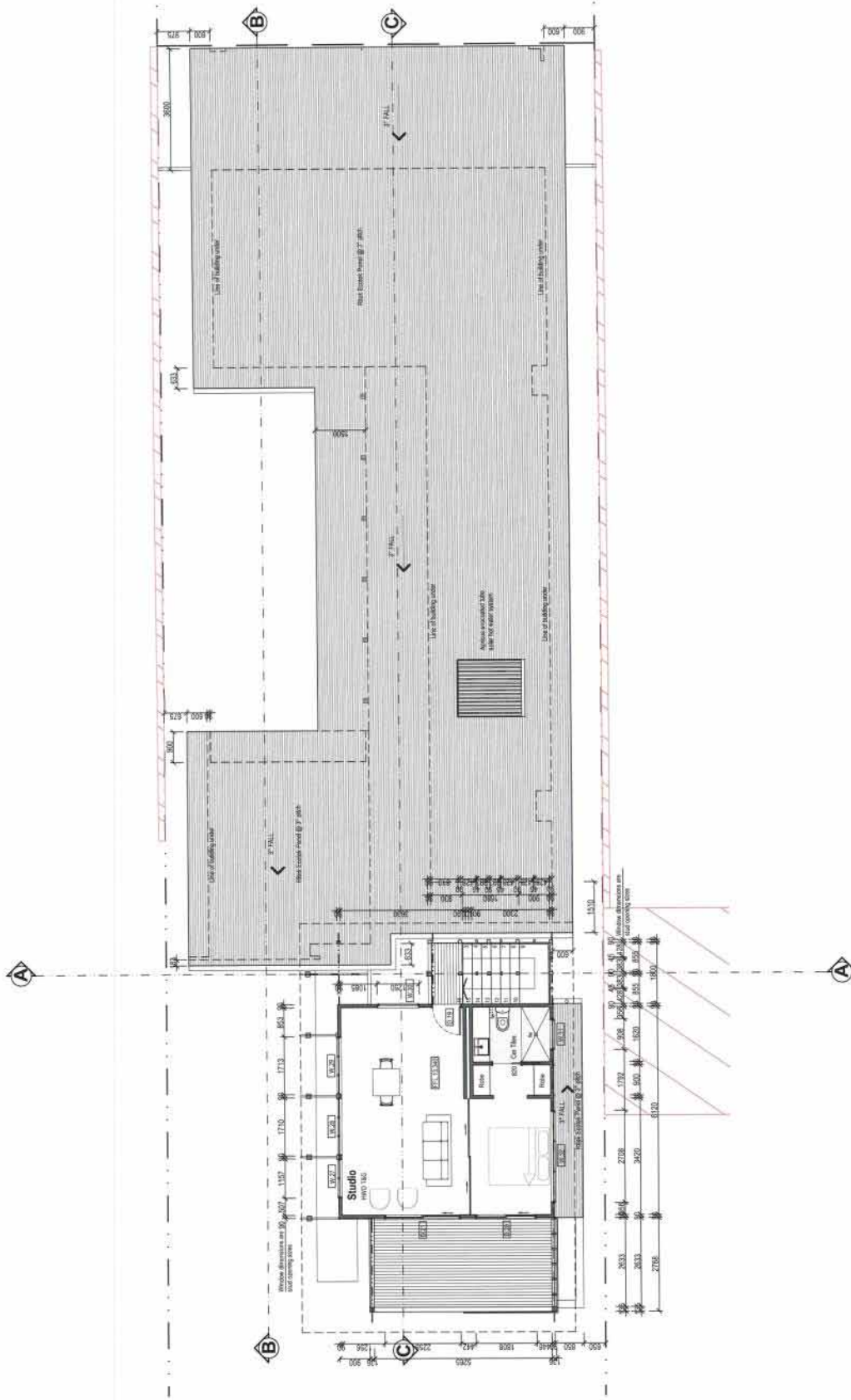
**Locality Plan**  
 Lot 72 DP 1030322  
 No.30 Eclipse Lane, Casuarina

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dig before you dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p>Call date: 10/06/2014                  © Land and Property Information (LPI) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p> <p>Scale: 1:75,000 @ A4 Portrait                  DO NOT SCALE                  COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator                  Grid: GDA                  Datum: Datum of Australia 1954                  Contour: Map 586 of Australia, Zone 55</p>	<p><b>Civic and Cultural Centre</b>                  3 Tumbulgum Road                  Murwillumbah NSW 2484</p> <p>PO Box 816                  Murwillumbah NSW 2484</p> <p>T (02) 6670 2400   1300 292 872                  F (02) 6670 2429                  W www.tweed.nsw.gov.au                  E   planning@tweed.nsw.gov.au</p> <p><b>TWEED SHIRE COUNCIL</b></p>
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DEVELOPMENT/ELEVATION PLANS:







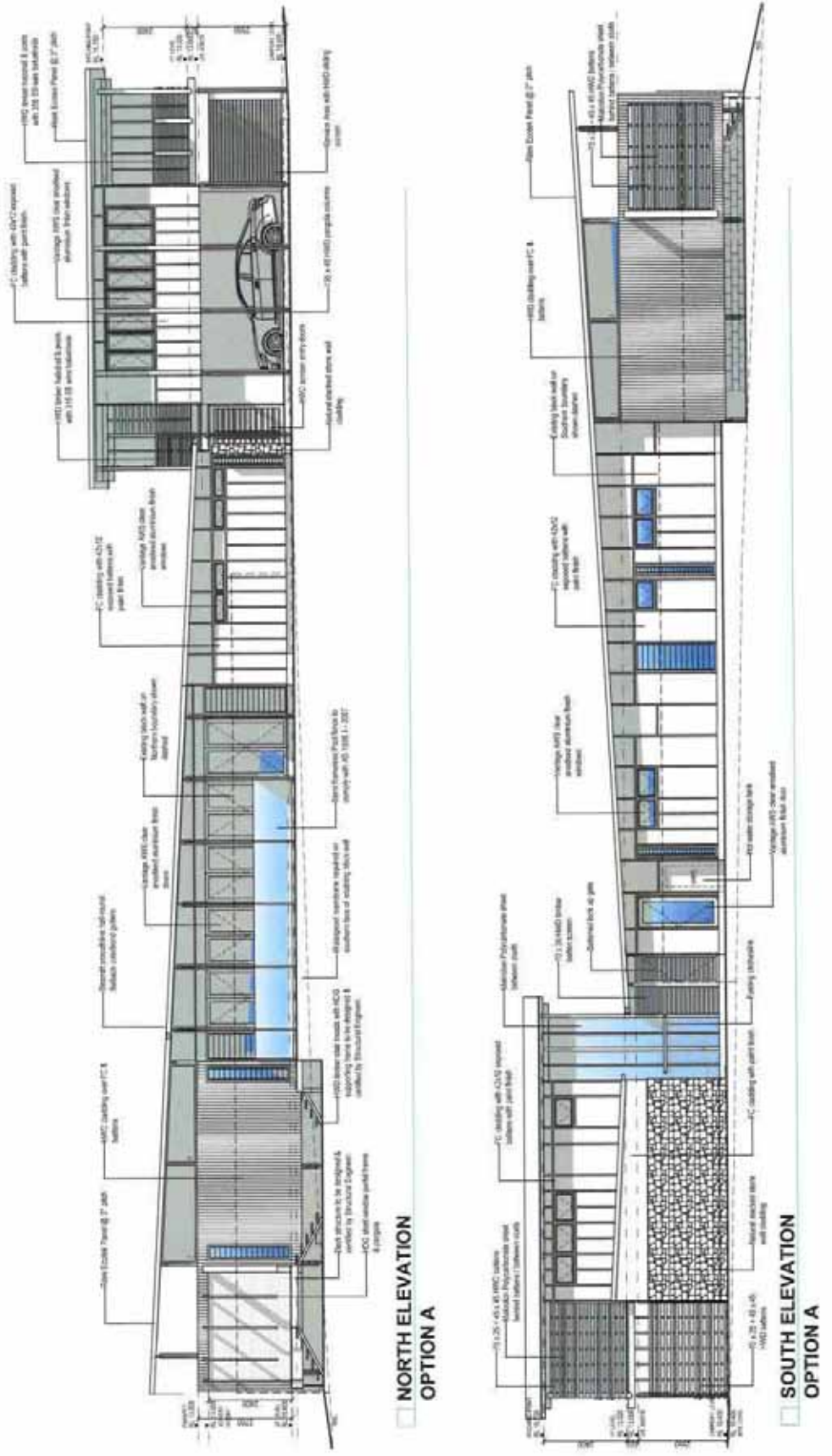
**WRIGHT RESIDENCE**  
 LOT 72, ECHSELANE CASUARINA NSW  
**GROUND FLOOR PLAN**

ISSUED BY: **SCOTT LEE PARTNER**  
 3700 Casuarina Mills  
 Casuarina NSW 1570, 2487  
 www.scottlee.com.au  
 02 4971 1111  
 02 4971 1111 (local calls)  
 DATE: OCTOBER 2013  
 JOB NO: 1318  
 SCALE: 1:100 (A1), 1:50 (A2)  
 SHEET NO: DM-03



REVISION	DATE	DISTRIBUTION
1	2013/10/13	Approved Building Plan
2	2013/10/13	Design Development
3	2013/10/13	Design Development
4	2013/10/13	Approved DA

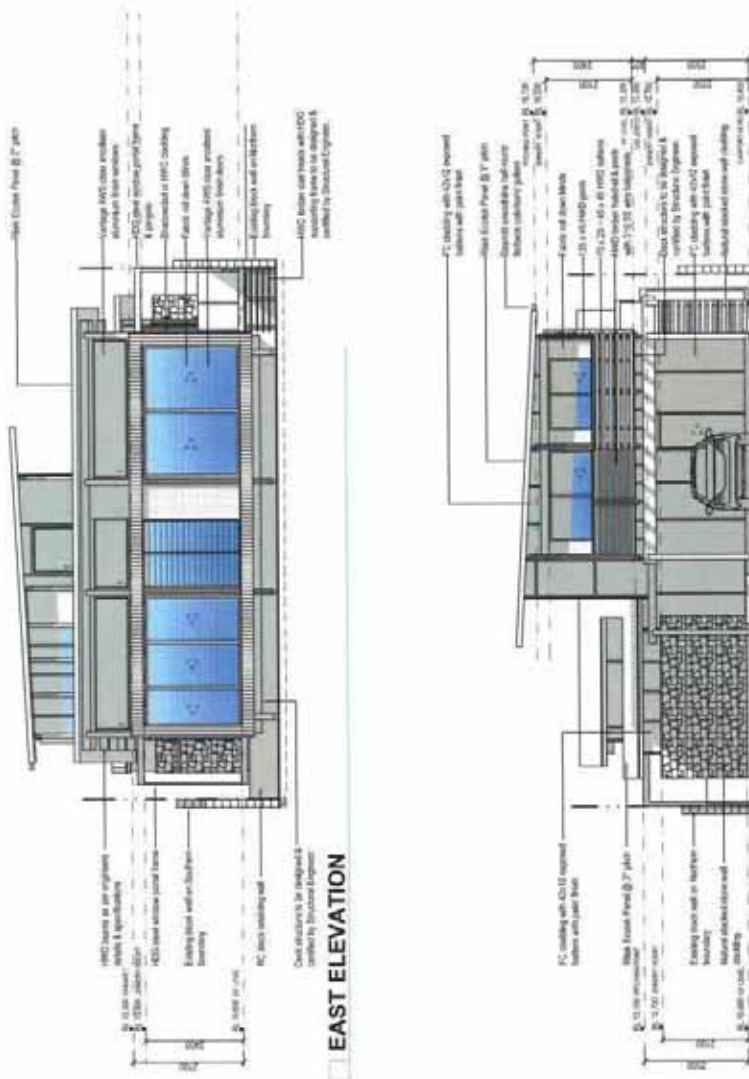
**NOTES:**  
 1. All dimensions are in millimetres unless otherwise stated.  
 2. All dimensions are to the face of the work unless otherwise stated.  
 3. All dimensions are to the face of the work unless otherwise stated.  
 4. All dimensions are to the face of the work unless otherwise stated.



**WRIGHT RESIDENCE**  
 COLLEEN KAVANAGH ARCHITECTS  
 NORTH SOUTH ELEVATIONS



NO.	DATE	DESCRIPTION
001	15/06/14	Issue for Tender
002	22/07/14	Issue for Tender
003	12/08/14	Issue for Tender
004	12/08/14	Issue for Tender
005	12/08/14	Issue for Tender
006	12/08/14	Issue for Tender
007	12/08/14	Issue for Tender
008	12/08/14	Issue for Tender



**EAST ELEVATION**

**WEST ELEVATION**  
**OPTION A**

**WRIGHT RESIDENCE**  
LOT 12, COBLENCE CASCADIA, WSDA  
EAST WEST ELEVATIONS

Architect: Wright Architecture  
1815 24th Street, Seattle, WA 98149  
Phone: (206) 835-1234  
www.wrightarch.com

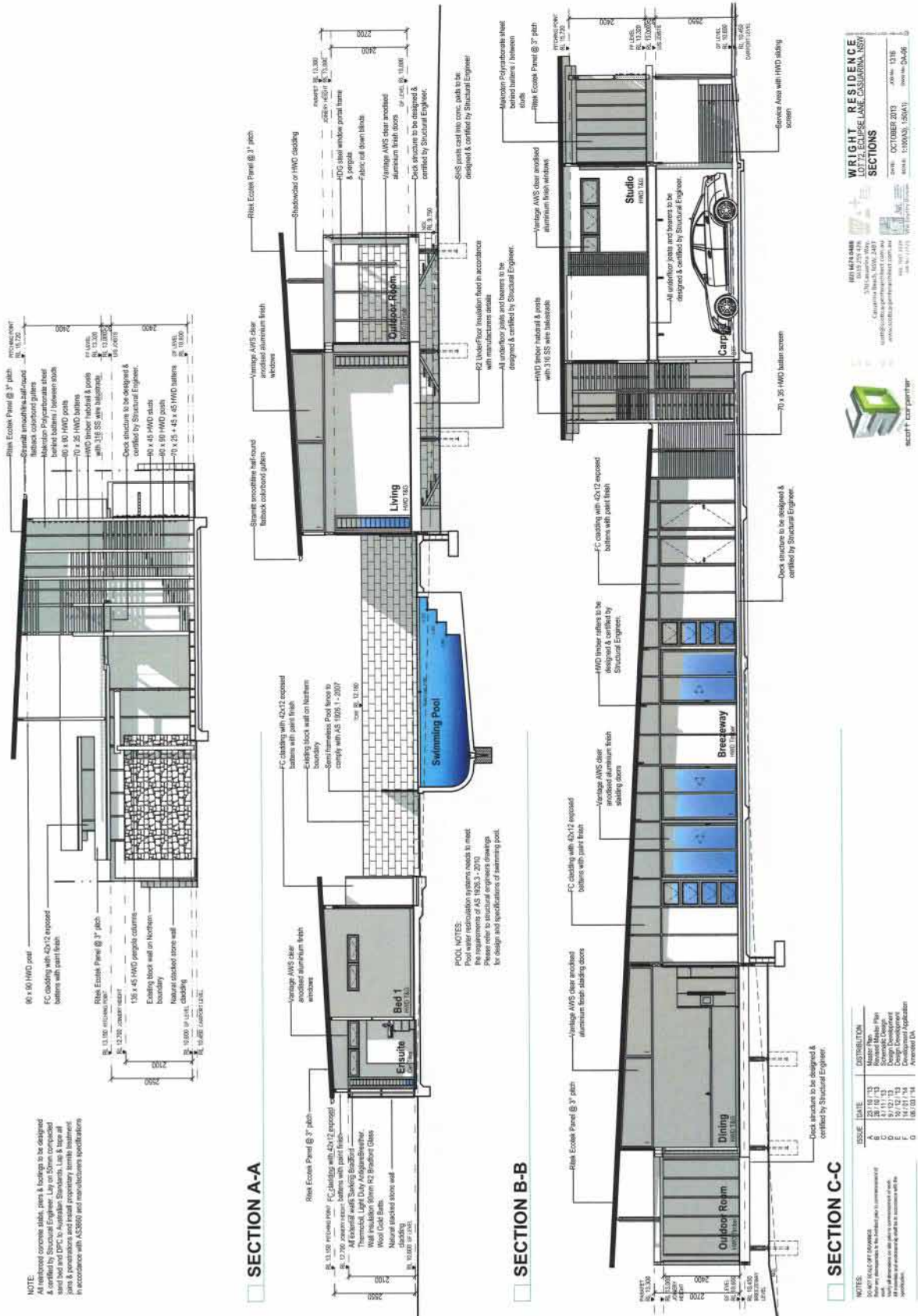
Date: 03/28/2013  
Scale: 1/8" = 1'-0"



**NOTES:**

1. See notes on site plan.
2. See notes on floor plan.
3. See notes on section.
4. See notes on elevation.
5. See notes on detail.

NO.	DATE	DESCRIPTION
1	03/28/13	Initial Design
2	04/15/13	Revised Design
3	05/02/13	Final Design
4	07/17/13	Design Development
5	08/01/13	Final Design
6	08/01/13	Final Design





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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

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

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

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

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

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

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

Clause 11 - Zone Objectives

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



**Figure 2: Split Zoning of the Site**

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

Clause 15 - Essential Services

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

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

Clause 35 - Acid Sulfate Soils

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

Clause 39A – Bushfire Protection

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

Clause 54 – Tree Preservation Order

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

## **State Environmental Planning Policies**

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

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

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

#### **Clause 33: Coastal hazard areas**

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

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

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

#### **Clause 75: Tourism development**

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

#### **SEPP No 71 – Coastal Protection**

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

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

It is noted that the draft Tweed Local Environmental Plan 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. As such, the Draft Tweed Local Environmental Plan is considered to be “certain and imminent” in terms of previous legal precedent and as such has determining weight.

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

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

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

(e) serviced apartments,

But does not include:

(f) camping grounds, or

(g) caravan parks, or

(h) eco-tourist facilities.

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

**4 Prohibited**

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

Objectives of the R2 zone include the following:

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

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

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

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

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

Tweed Development Control Plan

Section A1 - Residential and Tourist Development Code

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

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

Section A2-Site Access and Parking Code

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

Section A11-Public Notification of Development Proposals

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

Section B5-Casuarina Beach

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

Section B9-Tweed Coast Strategy

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

Section B25-Coastal Hazards

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

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

Clause 92(a) Government Coastal Policy

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

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

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

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

**Tweed Shire Coastline Management Plan 2005**

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

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

**Coastline Management Plan for the Tweed Coast Estuaries**

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

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

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

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

Context and Setting

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

Amenity

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

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

Surrounding Land Uses / Development

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

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

**Public Notification**

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

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

Applicant's Justification

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

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

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

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

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

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

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

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

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

*The management measures proposed are as follows:*

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



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

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

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

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

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

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

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

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

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

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

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

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

Assessment

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

**Public Authority Referral**

Referral to NSW Rural Fire Service

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

Response

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

**(e) Public interest**

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

**OPTIONS:**

1. Refuse the application; or
2. Approve the development application with the following recommended conditions of consent.

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:
  - DA-01 - Site/Roof Plan;
  - DA-02 - Ground Floor Plan;
  - DA-03 - Ground Floor Plan;
  - DA-04a - North South Elevations;
  - DA-05a - East West Elevations; and
  - DA-06 - Sections.

prepared by Scott Carpenter Architect and dated October 2013, except where varied by the conditions of this consent.

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).  
[GEN0065]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
4. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and six children.
5. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.
6. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.
7. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.
8. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.
9. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.
10. All landscaping is to comply with the S88B instrument pertaining to the site.
11. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
12. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.  
[GENNS01]

## USE

13. 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]
  14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised.
-

Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

15. 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]

16. 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]

17. The premises shall be maintained in a clean and tidy manner.

[USE0965]

18. The public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012.

[USE0985]

19. Four off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking associated with the tourist accommodation use of the site.

20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.

21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

[USENS01]

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

1. At the commencement of the development 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'.
2. An emergency and evacuation plan addressing section 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.
3. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

The Council officers recommend Option 1.

**CONCLUSION:**

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

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

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

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA14/0154 Pt1**

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## **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

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### **SUMMARY OF REPORT:**

#### **Updated Information**

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use - residential and tourist accommodation on the above site.

Of particular relevance to this assessment is legal advice received by Council on behalf of the applicant's agent with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice received. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

22. *This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.*

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

#### **Previous Report**

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

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The existing dwelling was approved on 6 February 2012 for residential purposes only. The dwelling is a two storey structure and features a pool in the north eastern corner. The dwelling is located upon a 451m<sup>2</sup> lot and is accessed via a shared driveway that services four dwellings in total.

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

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

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

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

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

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

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

**RECOMMENDATION:**

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

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



## REPORT:

**Applicant:** Mr RJ Stevenson  
**Owner:** Mr Robert J Stevenson & Mrs Jan M Stevenson  
**Location:** Lot 18 DP 1162599 No. 330 Casuarina Way, Kingscliff  
**Zoning:** R2 - Low Density Residential  
**Cost:** Not applicable

### Background:

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

### History

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

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

### Proposed Development

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

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

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

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

The Subject Site

The site is regular square shaped with a 21.6m frontage to Casuarina Way and accessed via a shared driveway that services a total of four single dwellings. The site has a total land area of 451.05m<sup>2</sup>. The site is generally flat and features low landscaping on the street frontage to the rear of the dwelling. On-site parking is within a double garage accessed via the shared driveway. The site does not feature any visitor parking.



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

**SITE DIAGRAM:**

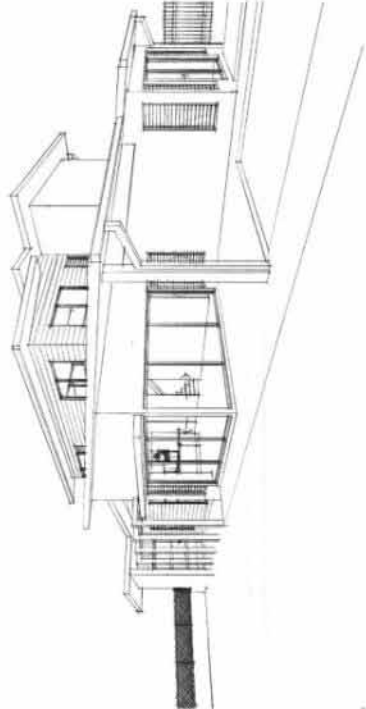
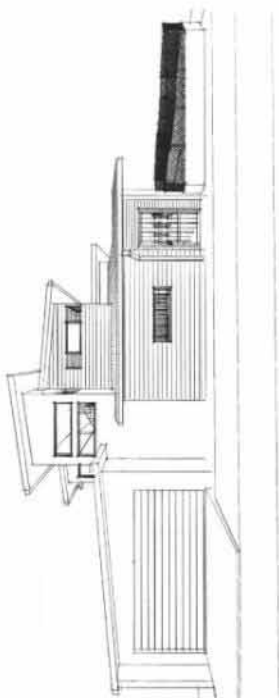
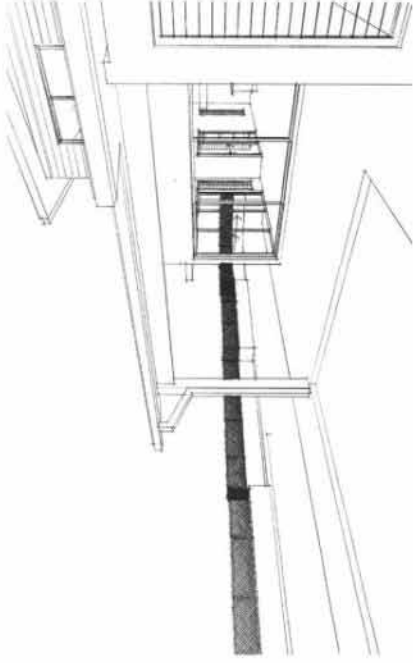
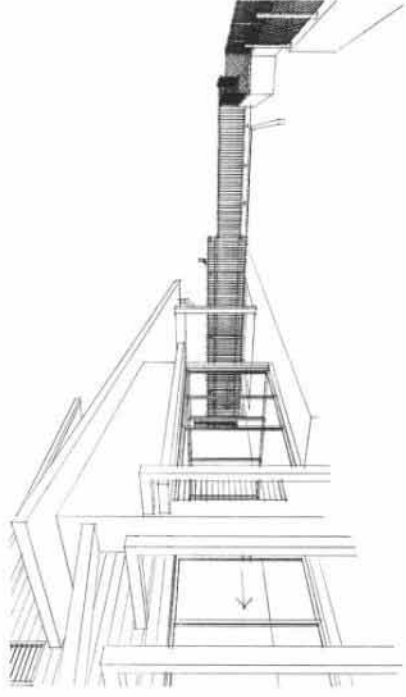


**Locality Plan**  
 Lot 18 DP 1162599  
 No.330 Casuarina Way, Kingscliff

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DEVELOPMENT/ELEVATION PLANS:

 <p><b>STUART OSMAN</b> BUILDING DESIGNS</p> <p>Phone: 011 761 261 027 Fax: 011 761 261 033 PO Box 28463, Bungee House, DC, DC 4220 Address: 2717 N. 11th St, Arlington, VA 22201 BVA License No: 1120687 Email: stuart@stuartosman.com</p>	 <p><b>Master Builders</b> MEMBER OF HIA</p>	 <p>QUALIFIED MEMBER OF HIA</p>	 <p><b>INDUSIEED</b> Sustainable Building Design</p>	<p>THIS DRAWING IS THE PROPERTY OF STUART OSMAN BUILDING DESIGNS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR ALTERATION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF STUART OSMAN BUILDING DESIGNS IS STRICTLY PROHIBITED.</p>						
				<p><b>BUILDER:</b></p>	<p><b>CLIENT:</b> ALINE PROJECTS</p>	<p><b>PROJECT:</b> PROPOSED RESIDENCE LOT 18 CASUARINA WAY KINGSCLIFF</p>	<p><b>DRAWN BY:</b> RH</p>	<p><b>CHECKED BY:</b> SO</p>	<p><b>DESIGN:</b> CUSTOM</p>	<p><b>DATE:</b> A 12/08/2011</p>



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NOTES:  
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\* REFER TO ELEVATIONS FOR DETAILS

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**BUILDER**

**CLIENT** ALINE PROJECTS

**PROJECT** PROPOSED RESIDENCE LOT 18 CASARINA WAY KINGSCLIFF

**DRAWN BY** RH **CHECKED BY** SO

**DESIGN** CUSTOM

**DATE** A 12/08/2011

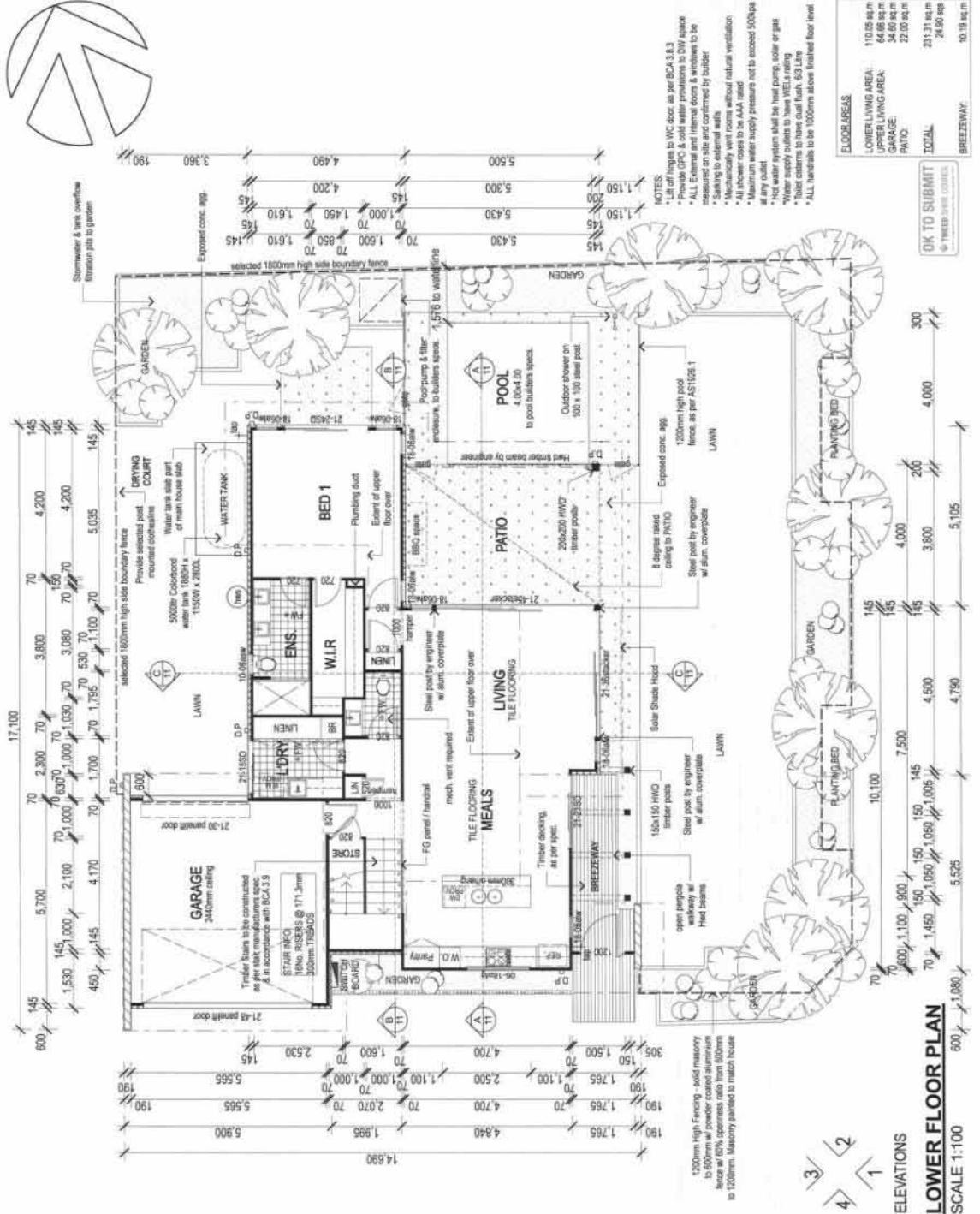
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**AMENITIES** E200011 CH0101  
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E200011 CH0101  
E200011 CH0101  
E200011 CH0101

**SHEET NUMBER** 5 of 18

**JOB NUMBER** 4359

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CLIENT: **ALINE PROJECTS**

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

DRAWN BY: RH CHECKED BY: SO

DESIGN: CUSTOM

DATE: A 12/08/2011

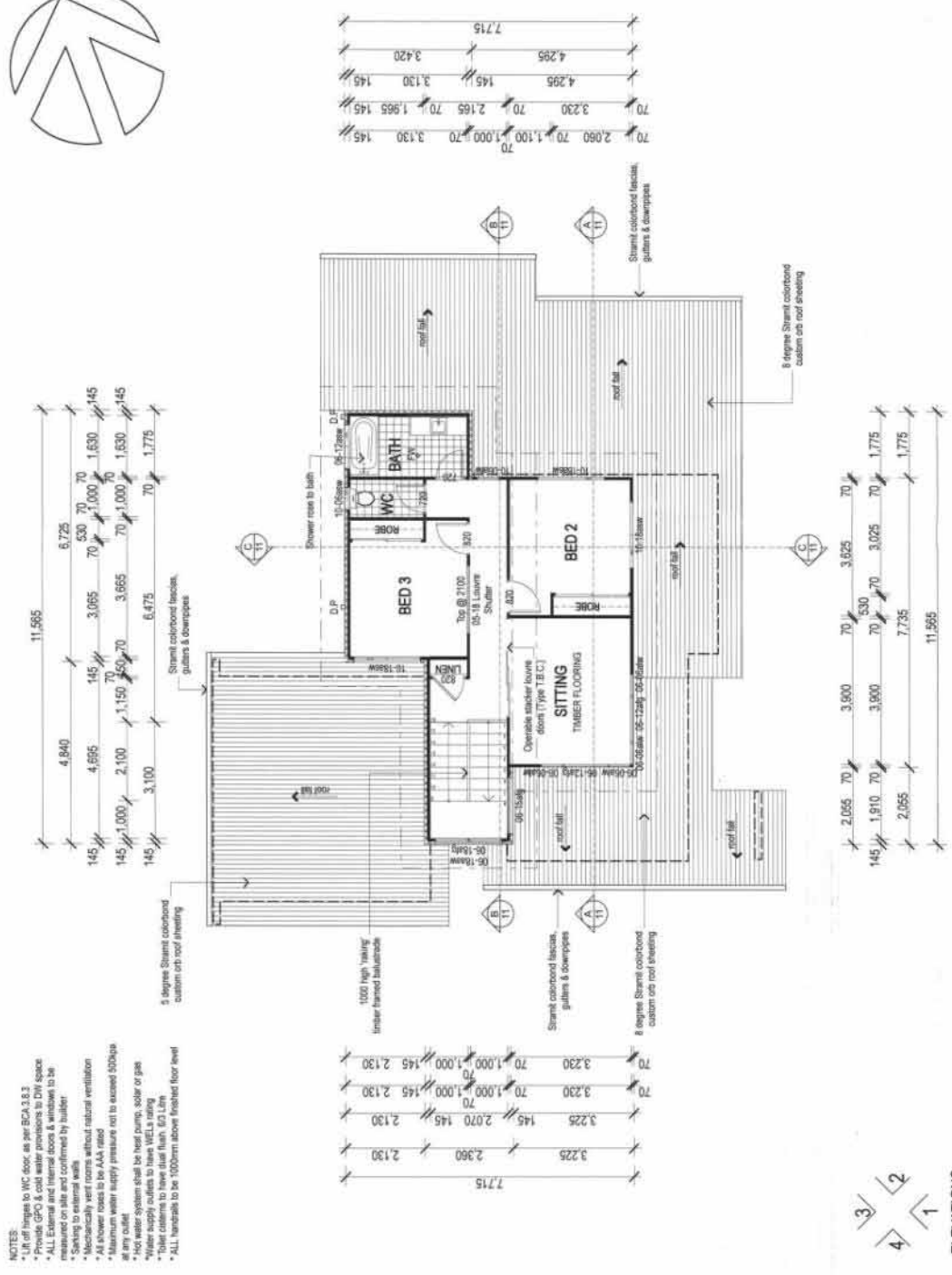
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SHEET NUMBER: 6 of 18

JOB NUMBER: **4359**

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- NOTES:**
- \* Lift off traps to WC door, see BCA 3.8.3
  - \* Provide GPO & cold water provisions to DWI space
  - \* ALL External and Internal doors & windows to be measured on site and confirmed by builder
  - \* Spacing to external walls
  - \* All windows to be fully ventilated without retard ventilation
  - \* All windows to be AAK rated
  - \* Maximum water supply pressure not to exceed 300kpa at any outlet
  - \* Hot water system shall be heat pump, solar or gas
  - \* Water supply outlets to have WELS rating
  - \* Toilet cisterns to have dual flush, 6.5 Litre
  - \* ALL windows to be 1000mm above finished floor level

**OK TO SUBMIT**

TIMBER ENGINEERING

**UPPER FLOOR PLAN**

SCALE 1:100



ELEVATIONS



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REGISTERED WIND ENGINEER

REGISTERED WIND ENGINEER

CLIENT

**ALINE PROJECTS**

PROJECT

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

DRAWN BY: RH

CHECKED BY: SO

DESIGN: CUSTOM

DATE: A 12/08/2011

SCALE: 1:100 @ A3

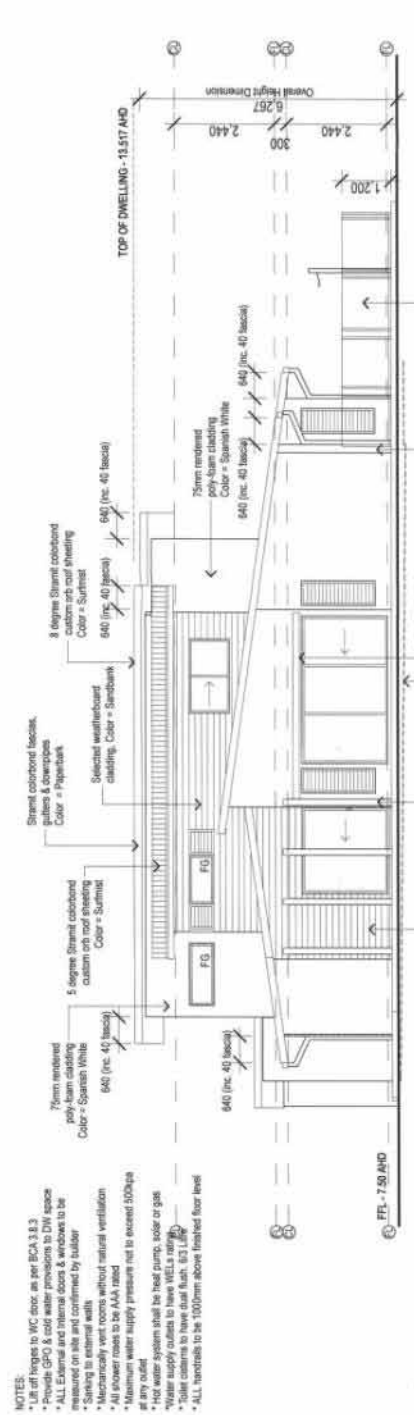
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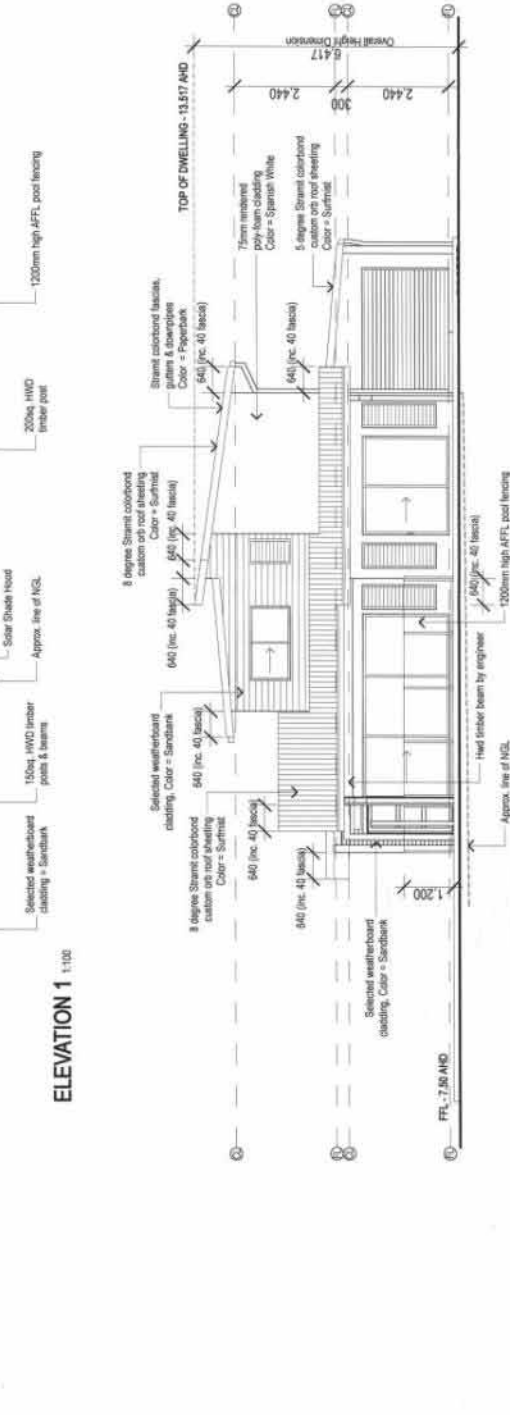
SHEET NUMBER 8 of 18

JOB NUMBER **4359**

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- NOTES**
- All fittings to MC door as per PCA 3.1.3
  - Provide GPO & cold water provision to DWI space
  - ALL External and internal doors & windows to be measured on site and confirmed by builder
  - Spiking to external walls
  - Mechanically vent rooms, without natural ventilation
  - All power roses to be ADA rated
  - Hot water system shall be head pump, solar or gas
  - Water supply outlets to have WELS rating
  - Toilet cisterns to have dual flush, 6.3 L flush
  - ALL handrails to be 1000mm above finished floor level



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REGISTERED ARCHITECT




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**ALINE PROJECTS**

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

DRAWN BY: SO  
CHECKED BY: SO  
DESIGN: CUSTOM

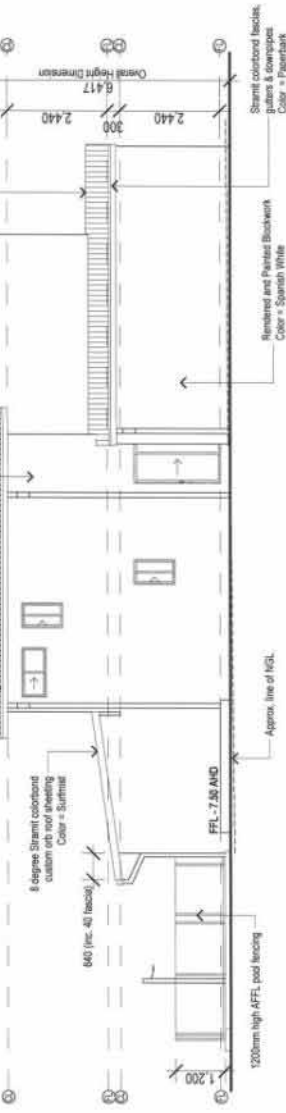
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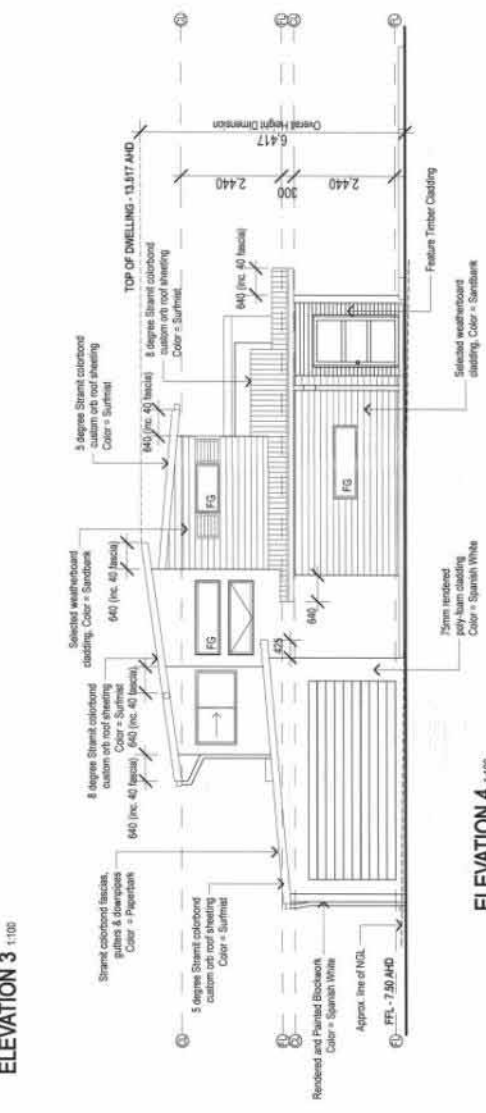
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NO. 4: 15/08/11  
NO. 5: 15/08/11  
NO. 6: 15/08/11

SHEET NUMBER: 9 of 19  
JOB NUMBER: 4359

- NOTES:**
- \* Lift off hinges to WC door, as per BCA 3.8.3
  - \* Provide GPO & cold water provisions to DW space
  - \* ALL External and internal doors & windows to be measured on site and confirmed by builder
  - \* Working to external walls
  - \* All shower doors to be AAA rated
  - \* All shower water supply pressure not to exceed 100kpa at any outlet
  - \* Hot water system shall be heat pump, solar or gas
  - \* Water supply outlets to have WELLS rating
  - \* Toilet cisterns to have dual flush, 6/3 litre
  - \* ALL handrails to be 1000mm above finished floor level



**ELEVATION 3** 1:100



**ELEVATION 4** 1:100

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THREE-DIMENSIONAL

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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

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

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

**Clause 5 - Ecologically Sustainable Development**

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

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

**Clause 8 - Consent Considerations**

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

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

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

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

### Clause 11 - Zone Objectives

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



**Figure 2 - Zoning of Site**

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

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

### Clause 15 - Essential Services

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

### Clause 16 - Height of Building

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

### Clause 35 - Acid Sulfate Soils

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

### Other Specific Clauses

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

## **State Environmental Planning Policies**

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

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

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

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

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

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

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

#### **Clause 75: Tourism development**

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

#### **SEPP No 71 – Coastal Protection**

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

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

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

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

The subject application is assessed against the provisions of the Tweed Local Environmental Plan 2014 below:

**Part 1 Preliminary**

**1.2 Aims of Plan**

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

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

- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

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

#### 1.4 Definitions

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

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

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

But does not include:

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

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

#### **4 Prohibited**

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

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

### 2.3 Zone objectives and Land Use Table

The objectives of the R2 Low density residential zone are:

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

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

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

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

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

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

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

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

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

## **Part 5 Miscellaneous provisions**

### 5.5 Development within the coastal zone

This clause of the Tweed LEP 2014 states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following:

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

*(ii) identifying opportunities for new public access, and*

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

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

*(i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*

*(ii) the location, and*

*(iii) the bulk, scale, size and overall built form design of any building or work involved, and*

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

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

*(i) any significant overshadowing of the coastal foreshore, and*

*(ii) any loss of views from a public place to the coastal foreshore,*

The proposed development will not result in any overshadowing or loss of views from a public place to the coastal foreshore.

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

The proposed development is not considered to compromise the scenic qualities of the coast as it represents a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

*(e) how biodiversity and ecosystems, including:*

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

*(ii) rock platforms, and*

*(iii) water quality of coastal waterbodies, and*

*(iv) native fauna and native flora, and their habitats,*

*can be conserved, and*

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

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

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the nature of the development,

and proposed conditions of consent which are considered to mitigate potential amenity impacts.

This clause goes on to further state:

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

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

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

The proposed development does not require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

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

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

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

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

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

#### 1.8A Savings provision relating to development applications

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

With respect to this it is noted that the subject application was lodged with Council on 14 March 2014, before the Tweed Local Environmental Plan 2014



was gazetted on 4 April 2014 and as such this clause is applicable to this development application. Notwithstanding this, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the Environmental Planning and Assessment Act.

Legal Advice from Applicant

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

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

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

A2-Site Access and Parking Code

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

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

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

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

A4-Advertising Signs Code

No signage detail was provided for the subject proposal.

A11-Public Notification of Development Proposals

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

A13-Socio-Economic Impact Assessment (SIA)

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

B5-Casuarina Beach

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

B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

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

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

The proposal does not impact upon coastal zone management plans.

**Tweed Shire Coastline Management Plan 2005**

The proposal does not impact upon coastline management strategies.

**Tweed Coast Estuaries Management Plan 2004**

The proposal does not impact upon estuaries management strategies.

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

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

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

Amenity

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

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

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

Context and Setting

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

Access, Transport and Traffic

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

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

Surrounding Landuses/Development

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

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

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

Issues raised include the following:

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

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

- There are currently over 30 000 properties listed for short-term accommodation Australia wide, 532 in the Tweed Shire alone. Rather than conduct the use through online booking, the proponent has taken reasonable steps to seek Council consent for the proposed use. This will give the owner a, Tweed Council and the adjoining owner's surety in regard to operating within the bounds of any consent granted.
- The objectives of the 2(e) zone is to integrate both residential and tourist uses. The proposal is permissible in the zone.
- Management measures proposed and imposed as conditions of approval ensure inappropriate use can be dealt with.
- The 2(e) zoning is not strictly for residential purposes.
- The rating of the property has no bearing on the Section 79C Assessment.

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

### Assessment

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

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

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

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

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

### **(e) Public interest**

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

**OPTIONS:**

1. Refuse the application; or
2. Approve the development application with the following recommended conditions of consent.

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and the submitted plans as follows:
  - Lower Floor Plan, prepared by Stuart Osman Building Job No. 4359, Sheet 5 and dated 12/08/2011;
  - Upper Floor Plan prepared by Stuart Osman Building Job No. 4359, Sheet 6 and dated 12/08/2011;
  - Contour and Detail Survey, prepared by Alan Sullivan and Associates Pty Ltd, Job No. 11.3199 and dated 9/09/2011;

except where varied by the conditions of this consent.

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).

[GEN0065]

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

[GEN0115]

4. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and four children.

5. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.

6. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.

7. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.

8. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. This Plan of Management shall be consistent with the draft plan of management provided to Council by the applicant dated 5th June 2014. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of

short term tourist accommodation and subsequent to any future amendments being made to the document.

9. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.
10. All landscaping is to comply with the S88B instrument pertaining to the site.
11. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
12. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.

[GENNS01]

## USE

13. 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]
14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.  
[USE0175]
15. 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]
16. 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]
17. The premises shall be maintained in a clean and tidy manner.  
[USE0965]
18. Any public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW

Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012. *Note: A public swimming pool includes a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests.*

[USE0985]

19. Two off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking or driveway parking associated with the tourist accommodation use of the site.
20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.
21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.
22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

[USENS01]

Council officers recommend Option 1.

## **CONCLUSION:**

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

## **COUNCIL IMPLICATIONS:**

### **a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable

### **c. Legal:**

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

### **d. Communication/Engagement:**

Not Applicable.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA14/0160 Pt1**

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## **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

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### **SUMMARY OF REPORT:**

#### **Updated Information**

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use of existing dwelling - tourist accommodation and residential on the above site.

It is noted that Council is currently in receipt of a number of similar dual tourist accommodation and residential use applications. Of particular relevance to this assessment is legal advice recently received by Council with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice which Council has received on this matter. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

22. *This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.*

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

#### **Previous Report**

Council has received a development application that seeks to allow the use of an existing dwelling for tourist accommodation purposes. The application proposes flexibility in

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maintaining long-term residential use and legalisation of ongoing use of an existing five bedroom single dwelling for the purpose of short-term tourist accommodation.

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

There were four objections to the proposal.

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

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

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

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

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

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

The application was submitted to Council on 18 March 2014. LEP 2014 (previously Draft Tweed LEP 2012) came into force on 4 April 2014. Although LEP 2014 contains a savings provision for development applications made before commencement of the plan, the application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*.

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

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

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

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

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

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

**RECOMMENDATION:**

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

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

**REPORT:**

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

**Background:**

Proposed Development

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

The application was submitted on 18 March 2014. LEP 2014 came into force on 4 April 2014. Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

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

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

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

Site

The site occupies a corner allotment with a frontage of approximately 30m to Shipstern Street and 17m to North Point Avenue. The site has a land area of 665m<sup>2</sup> and is regular in shape.



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

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

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

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

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

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

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

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

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

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

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



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

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

### History

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

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

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

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

**SITE DIAGRAM:**



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

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

Cadastral 11/06/2014  
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 Boundaries shown should be considered approximate only.

0 1 2 Km  
 1:75,000 @ A4 Portrait  
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**GDA** Map Information: Universal Transverse Mercator  
 Horizontal Datum: Geoid 96, Datum of Australia 1984  
 Unit: Map Grid of Australia, Zone 56

**Civic and Cultural Centre**  
 3 Tumbulgum Road  
 Murwillumbah NSW 2454

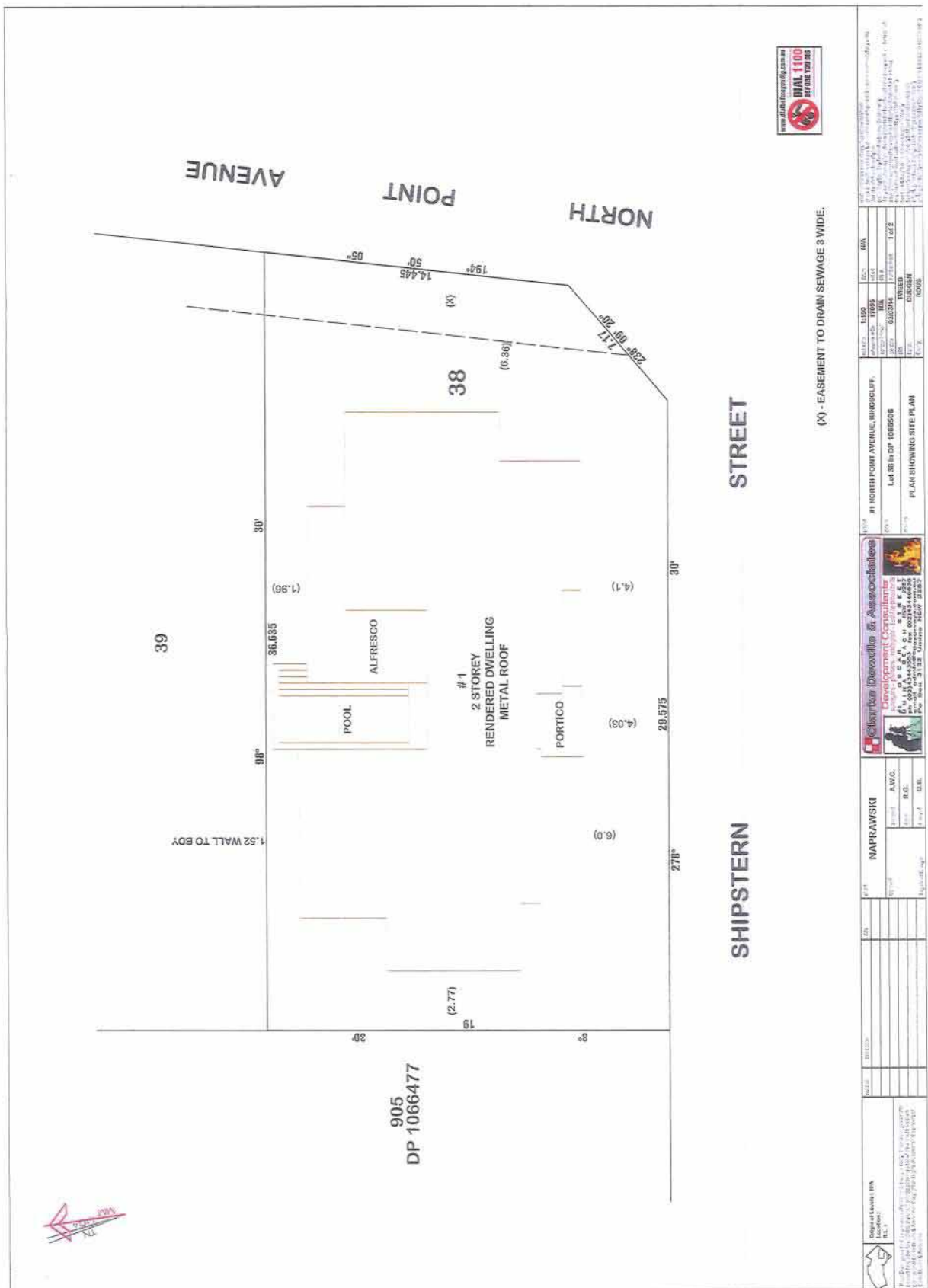
PO Box 816  
 Murwillumbah NSW 2454

**TWEED SHIRE COUNCIL**

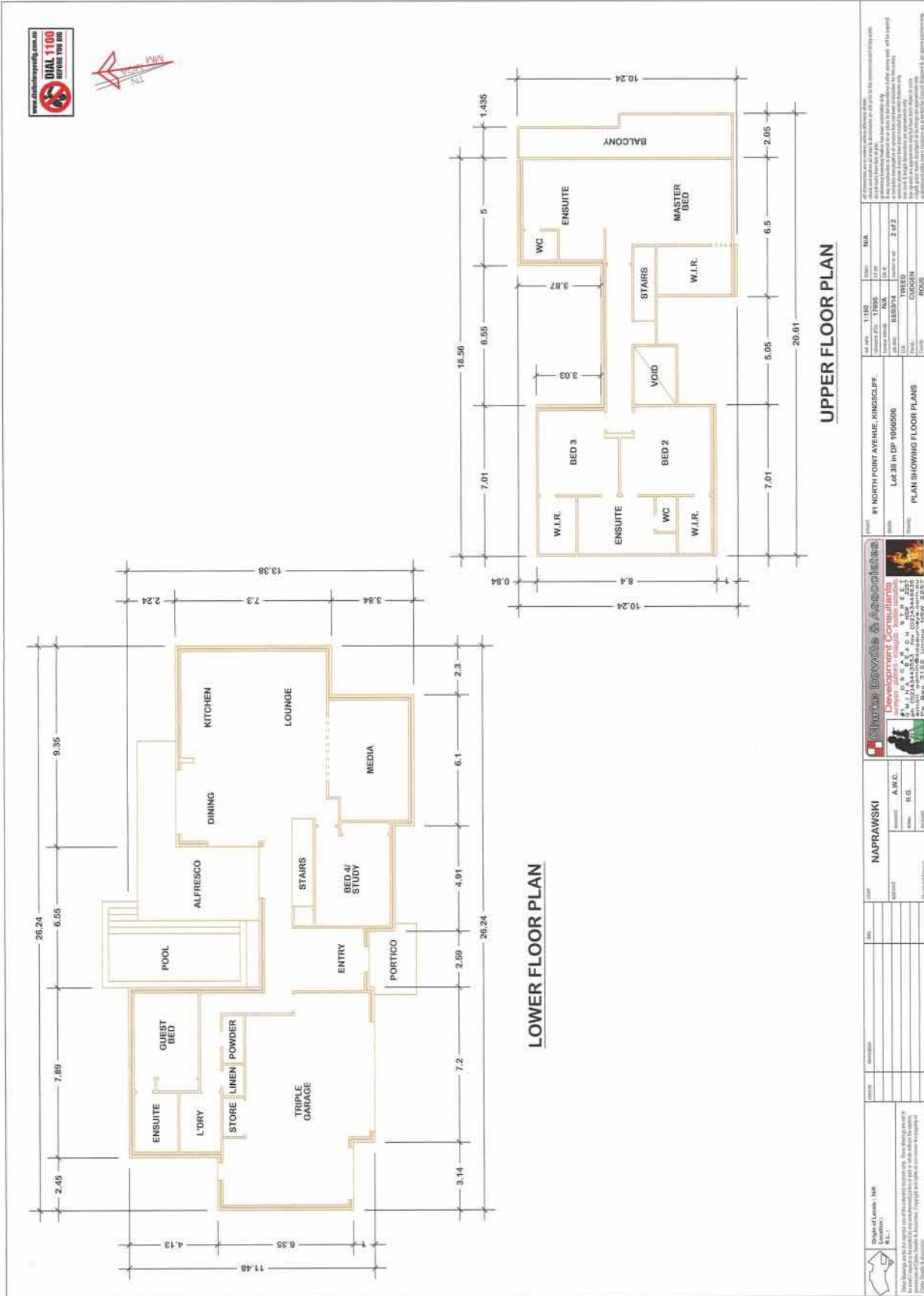
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DEVELOPMENT/ELEVATION PLANS:



(X) - EASEMENT TO DRAIN SEWAGE 3 WIDE.



		#1 NORTH POINT AVENUE, KINGSCLEIF. L4.38 in DP 1066586 PLAN SHOWING FLOOR PLANS	
Original Level: NA N.L. Note: Being an original level, the proposed construction will be shown on the plan. The proposed construction will be shown on the plan. The proposed construction will be shown on the plan.	Date: 11/10/13 Author: N.A. Checked: N.A. Drawn: N.A. Title: L4.38 in DP 1066586 Project: CUD2581 Rev: R001	Date: 11/10/13 Author: N.A. Checked: N.A. Drawn: N.A. Title: L4.38 in DP 1066586 Project: CUD2581 Rev: R001	Date: 11/10/13 Author: N.A. Checked: N.A. Drawn: N.A. Title: L4.38 in DP 1066586 Project: CUD2581 Rev: R001

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

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

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

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

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

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

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

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

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

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

#### Clause 11 - Zone Objectives

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

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

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

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

#### Clause 15 - Essential Services

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

#### Clause 16 - Height of Building

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

#### Clause 35 - Acid Sulfate Soils

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

#### Clause 39A – Bushfire Protection

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

Clause 53 - Development of specific sites

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

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

Clause 53B Height Restrictions - Coast Road, South Kingscliff

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

Clause 54 – Tree preservation order

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

**State Environmental Planning Policies**

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

Clause 32B: Coastal Lands

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

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

Clause 43: Residential development

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

Clause 75: Tourism development

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

SEPP No 71 – Coastal Protection

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

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

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

**Part 1 Preliminary**

**1.4 Definitions**

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

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

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

*But does not include:*

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

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

**4 Prohibited**

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

**1.8A Savings provision relating to development applications**

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

With respect to this it is noted that the subject application was lodged with Council on 29 February 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. As such this clause is applicable to this development application.

Notwithstanding, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*.

## **Part 2 Permitted or prohibited development**

### **2.1 Land use zones**

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

### **2.3 Zone objectives and Land Use Table**

The objectives of the R2 Low density residential zone are:

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

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

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

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

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

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

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

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

## **Part 5 Miscellaneous provisions**

### **5.5 Development within the coastal zone**

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

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

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

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

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

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

The proposed development will not result in any overshadowing or loss of views from a public place to the coastal foreshore.

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

The proposed development is not considered to compromise the scenic qualities of the coast as it represents a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (e) *how biodiversity and ecosystems, including:*
  - (i) *native coastal vegetation and existing wildlife corridors, and*
  - (ii) *rock platforms, and*
  - (iii) *water quality of coastal waterbodies, and*



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

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

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

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

This clause goes on to further state:

- (3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

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

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

The proposed development does not require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

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

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

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

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

There are no other provisions in LEP 2014 that are specifically relevant to the proposal.

In accordance with the advice provided above, the application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and LEP 2014, and also because the proposal is considered not to meet the objectives of the R2 zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling was approved on 20 July 2006 under DA06/0290. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2005 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however, there are minimal setbacks provided, particularly to the northern boundary.

No physical alterations are proposed to the existing building. Car parking is provided on the site for four vehicles, as detailed below. No additional waste arrangements are considered to be required. The applicant advises that the existing dwelling provides an appropriate area for private open space and outdoor recreation and is in walking distance to the beach.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1. However, it is noted that the existing dwelling is located in close proximity to the boundaries of the site, particularly on the northern elevation taking into consideration the location of the pool up to 500mm to the boundary. The dwelling is also two storeys with an upper level deck. It is therefore considered that the scale of the dwelling and proximity to the site boundaries may have the capacity to impact on surrounding residential amenity in terms of noise and disturbance.

A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces (two/three spaces within a triple garage and two within the driveway).

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

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with DCP A11. The proposal was placed on public exhibition for 14 days from 14 April 2014 to 1 May 2014.

Four submissions were received during this time which is detailed elsewhere in this report.

Section B9-Tweed Coast Strategy

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

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

Clause 92(a) Government Coastal Policy

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

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

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

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

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

**Tweed Shire Coastline Management Plan 2005**

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

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

**Tweed Coast Estuaries Management Plan 2004**

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

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

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

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

Context and Setting

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

Whilst the proposal does not comprise any physical alterations to the existing dwelling, it is considered that the use of the dwelling for tourist accommodation purposes may have the potential to affect surrounding residential amenity by reason of noise and disturbance and may detract from the character of the dwelling and the surrounding area.

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

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000.

The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

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

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. Four submissions were received, the issues raised are detailed below. The applicant was given opportunity to respond to the matters raised in the submissions however has not provided a response to Council to date.

Contravention of Draft LEP 2012:

- The proposal would contravene objectives of R2 zone;
- The use of the dwelling for short term tourist accommodation purposes would ruin the residential amenity forever;
- There will be no protection of the existing amenity and character of the area.

Noise and disturbance:

- Property is allegedly already being let for holiday purposes and has allegedly been causing noise/amenity impacts;
- Families are currently frequenting holiday lets in the area on a weekly basis;
- Often have parties (weddings, birthdays, schoolies), BBQs, stay up late, play loud music;
- Holidaymakers have disregard for surrounding residents;
- Allegedly up to 16 persons have been staying at the premises.

### Parking

- Often a number of vehicles parked outside of property. Vehicles are often towing boats, caravans and the like that are left outside of property and used as additional accommodation;
- Parking is often on the street which is dangerous given the property is located on a blind corner.

### Rubbish

- Over holiday seasons the garbage bins are inadequate to cope with the level of rubbish and recycling material which is often just left on the footpath;
- It is left to the residents to clear the area up.

### Security

- Increased break-ins over holiday season to homes and cars as supported by reports made to police station;
- The number of different people staying in the area makes surveillance difficult and it is difficult to carry out Neighbourhood Watch.

### Insurance and Risk of Injury

- High movement of people in and out of properties could end in serious injury or death as a result of poor maintenance of property and the pool;
- Questions in respect of personal liability and whether such measures are in place or supervised.

### Character of area

- The area was sold as a residential area where people reside and that the resorts (Manta, Peppers, Bale) were for holiday makers. A number of residents in locality have relocated due to noise and inconvenience;
- Unnecessary and inappropriate that council sees fit to approve private residences as tourist accommodation;
- Keep holiday makers in the resorts;
- If all properties were approved for tourist accommodation it could potentially see 10 persons or more in each dwelling and would result in a higher density within the area;
- Used as a party venue - there are plenty of commercial venues that have been established for parties;
- Plenty of affordable tourist accommodation on the coast and at Peppers and Mantra just one street away;
- Concerns about the number of development applications received for tourist accommodation in the locality (proposed holiday accommodation at 13 Shipstern Street, 1 North Point Avenue and 18 Malibu Street).

### Enforcement of conditions

- Concerns that the property will not be managed in accordance with the proposed management plan and conditions;

- Concerns about who is going to enforce the conditions of consent should the application be approved;
- The property is already being used for tourism purposes and based on situation to date it is alleged that holidaymakers do what they like, when they like.

#### Planning Comment

It is noted that issues such as increased noise and disturbance resulting from the use of the dwelling for short term tourist accommodation may have a significant detrimental impact on the amenity of surrounding residents. Whilst it is acknowledged that a family living permanently in the dwelling may also have the ability to make noise, it is considered that those on holiday may have an increased propensity to make noise on a louder and more frequent basis, particularly if the property was to be used for parties or the like.

It is noted that should the application be approved a number of conditions may be applied to ensure that the tourist accommodation is operated in accordance with an approved Management Plan (in respect of number of occupants, tenant behaviour and onsite parking). However, it is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

#### **(e) Public interest**

The proposed development would be permissible with consent under the provisions of the former LEP 2000. However, approval of the application does raise questions in respect to the suitability of the proposed tourist accommodation located predominantly within a residential area.

However the draft LEP 2012 and gazetted LEP 2014 prohibits the development and it is considered that the proposal would not be in accordance with the objectives of the R2 zone. As such, the proposed development is not considered to be in the public interest.

#### **OPTIONS:**

That Council:

1. Refuse the application; or
2. Approve the development application with the following recommended conditions of consent.

#### **GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and the submitted plans as follows:
  - Plan showing Site Plan (sheet 1 of 2), prepared by Clarke Dowdle & Associates and dated 3 March 2014;
  - Plan showing Floor Plan (sheet 2 of 2), prepared by Clarke Dowdle & Associates and dated 3 March 2014,

except where varied by the conditions of this consent.

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).  
[GEN0065]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
4. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.
5. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and six children.
6. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.
7. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.
8. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.
9. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.
10. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.
11. All landscaping is to comply with the S88B instrument pertaining to the site.
12. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.  
[GENNS01]

## USE

13. 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]

14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.  
[USE0175]
15. 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]
16. 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]
17. The premises shall be maintained in a clean and tidy manner.  
[USE0965]
18. Any public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012. *Note: A public swimming pool includes a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests.*  
[USE0985]
19. Four off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking associated with the tourist accommodation use of the site.
20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.
21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.
22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist



accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

[USENS01]

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

1. 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'.
2. Arrangements for emergency and evacuation arte to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
3. The existing building is 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.

Council officers recommend Option 1.

**CONCLUSION:**

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

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

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

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**8 [PR-PC] Development Application DA14/0161 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 115 DP 1066504 No. 17 Malibu Street, Kingscliff**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA14/0161 Pt1**

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## **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

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### **SUMMARY OF REPORT:**

#### **Updated information**

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use - residential and tourist accommodation on the above site.

Of particular relevance to this assessment is legal advice received by Council on behalf of the applicant's agent with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice received. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

#### **Previous Report**

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

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

One submission was received for the proposal.

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

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

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

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

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

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

The application was submitted to Council on 18 March 2014. LEP 2014 (previously Draft Tweed LEP 2012) came into force on 4 April 2014. Although LEP 2014 contains a savings provision for development applications made before commencement of the plan, the application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*.

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

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

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

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

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

**RECOMMENDATION:**

**That Development Application DA14/0161 for dual use of existing dwelling - tourist accommodation and residential at Lot 115 DP 1066504 No. 17 Malibu Street, Kingscliff be refused for the following reasons:**

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

**REPORT:**

**Applicant:** Mr T Naprawski  
**Owner:** Mr Tony Naprawski & Mrs Michelle L Naprawski  
**Location:** Lot 115 DP 1066504 No. 17 Malibu Street, Kingscliff  
**Zoning:** 2(f) Tourism (TLEP2000)  
**Cost:** Not Applicable

**Background:**

Proposed Development

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

The application was submitted on 18 March 2014. LEP 2014 came into force on 4 April 2014. Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

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

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

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

Site

The site is located in an established residential environment and has a frontage of approximately 17m to Malibu Street. The site has a land area of 625m<sup>2</sup> and is regular in shape.



**Extract of Council's GIS aerial imagery - Lot 115 DP 1066504, No. 17 Malibu Street**

The site comprises a two storey three/four bedroom dwelling. The ground floor comprises a double garage, open plan living/kitchen/dining area, bathroom and media/guest room. A patio and swimming pool is located at the rear of the property. The upper floor comprises two bedrooms with ensuite bathrooms.

The existing dwelling and swimming pool was approved under DA05/0835 on 14 September 2005. The dwelling comprises a setback of approximately 1m on the eastern and 3m to the western (side) boundaries. A rear setback of approximately 6m is provided at 8m to the front.

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

A Section 88B Instrument applies to the subject property that states that '*No main dwelling may be used for any purpose other than a single private dwelling*'.

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



**Concurrent applications at Nos. 1 North Point Avenue (DA14/0160), 18 (DA14/0160) Malibu Street and 18 North Point Avenue (DA14/0183) (highlighted in red)**

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

### History

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

Following the approval of this application an additional development application DA13/0463 for the dual use of No. 3 Collins Lane, Casuarina was approved on 21 November 2013 under delegated authority, as directed as appropriate by Councillors at that time.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas of Salt is an anomaly contrary to the original master planning for Salt.

**SITE DIAGRAM:**

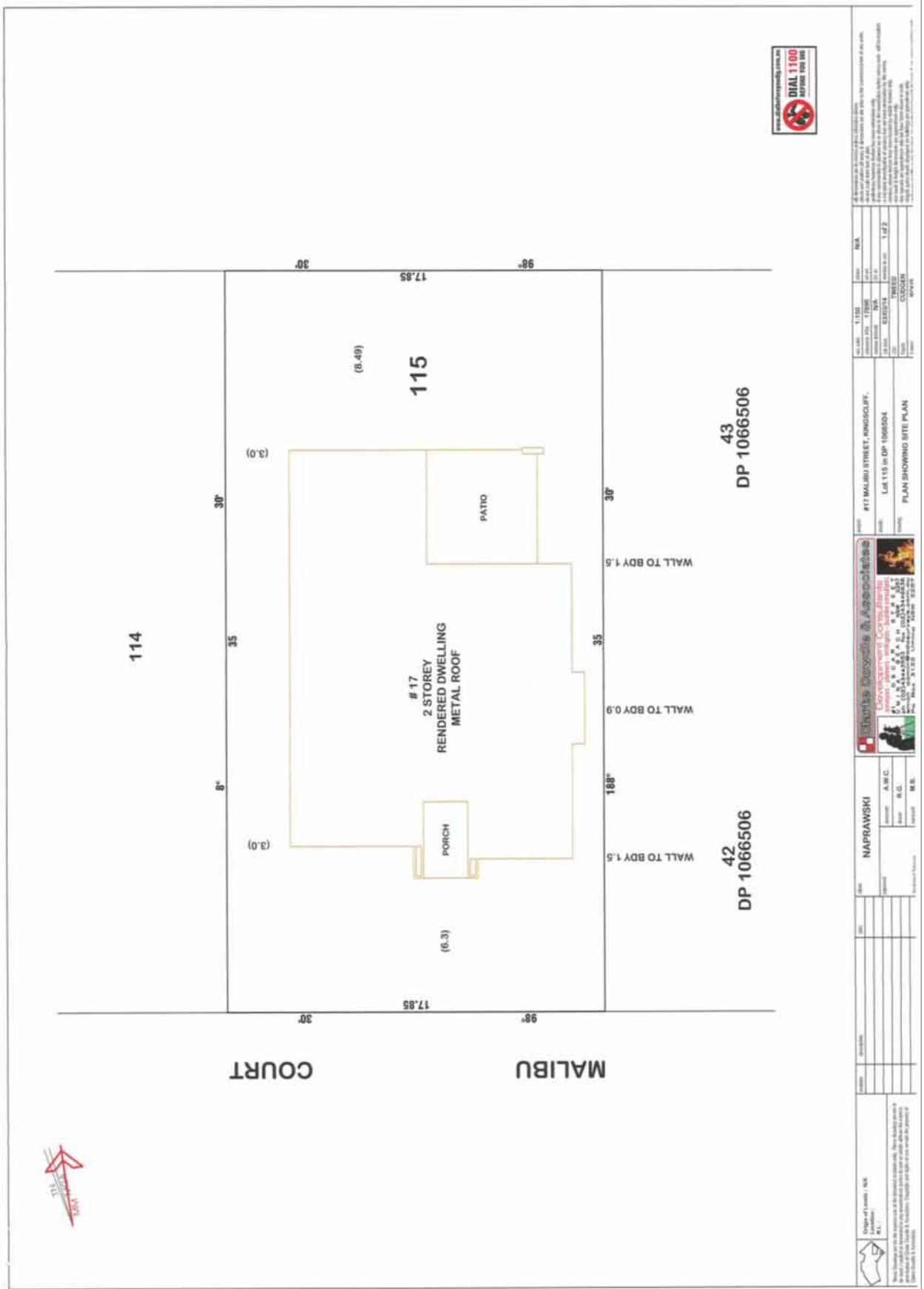


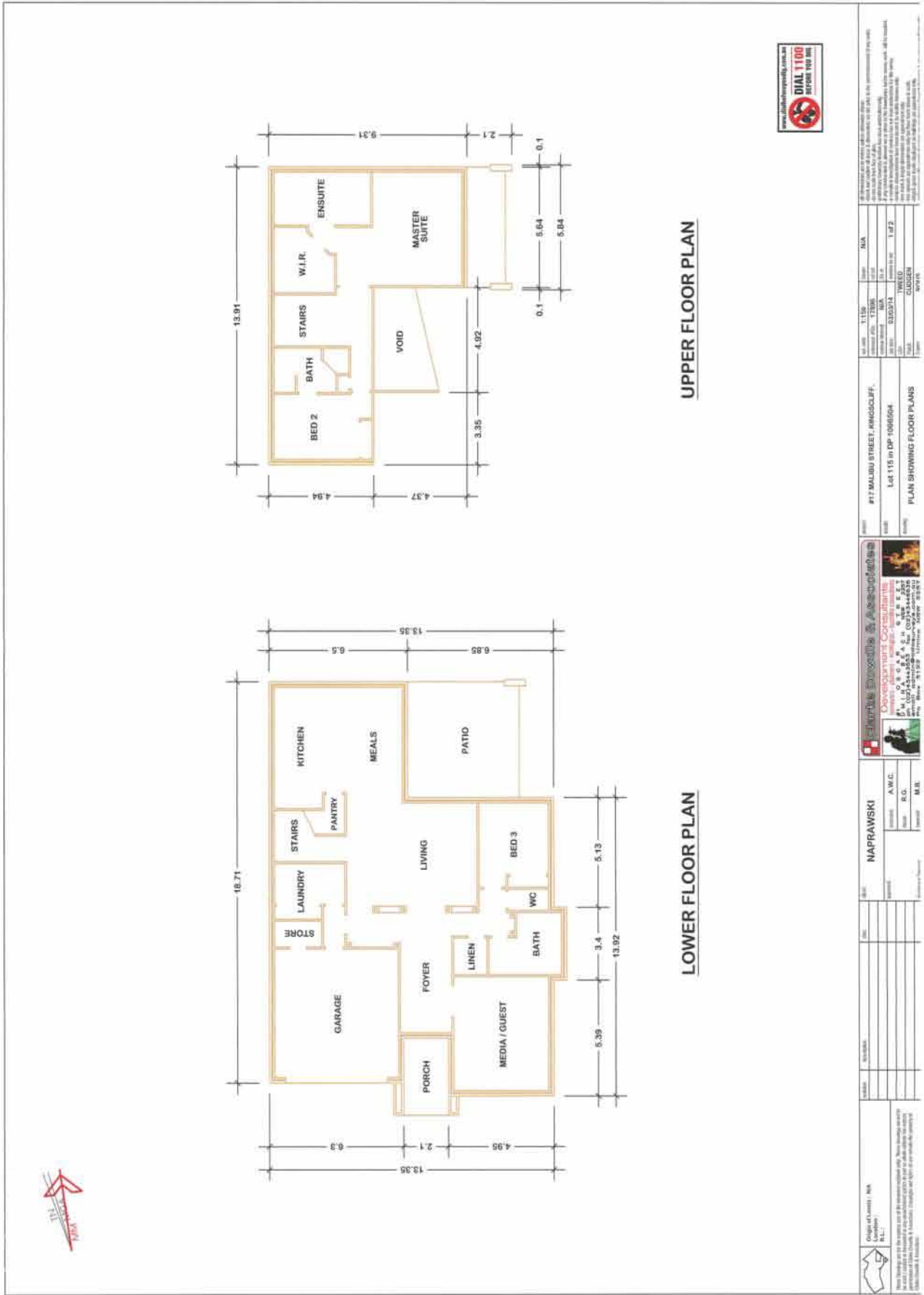
**Locality Plan**  
 Lot 115 DP 1066504  
 No.17 Malibu Street, Kingscliff

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#17 MALBU STREET, MASCOT, NSW  
 Lot 115 in DP 1066504

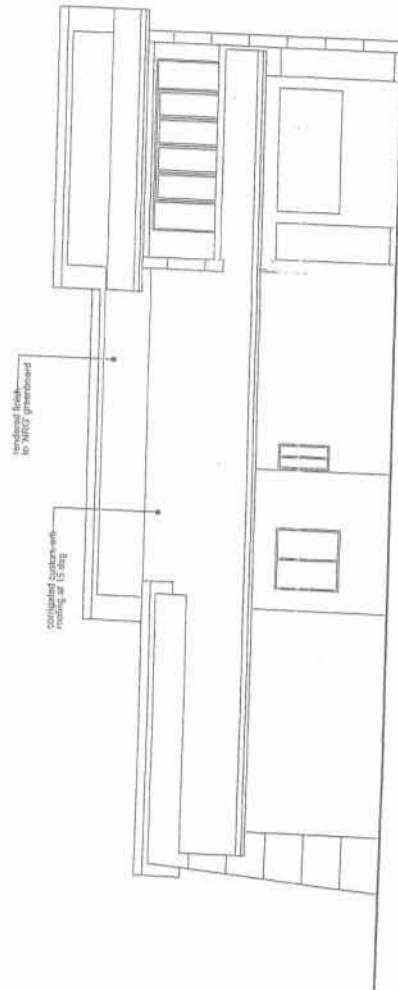
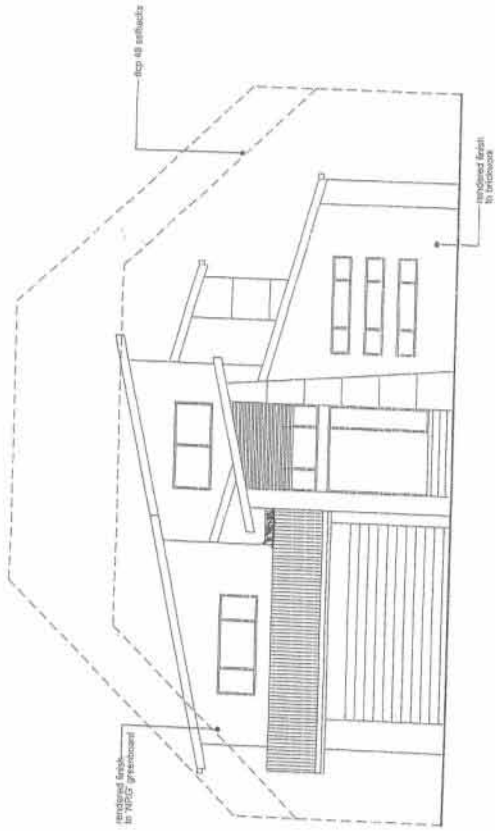


Author	NAPRAWSKI
Checked	A.W.C.
Drawn	R.G.
Printed	M.S.

PLAN SHOWING FLOOR PLANS

<b>qsp</b>	
in 07 5338681 fm 17 3552681 fax 1833 43 4317 po box 9911 melb 3171 tss 1846992	
client	N. Convery
project	proposed residence lot 115 maibui circuit "sail" kingscliff
date	24/06/05
issue	ba-issue
amendments	none
date	20/06/05
comment	re: lot 48 setbacks & remove front fence
scale	1:100 ON A3
drawn by	DC
job no.	05/035
sheet no.	05

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 TWEED HEADS SOUTH  
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**Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed development is consistent with the aims of the Plan, with the proposed dual use not considered to compromise natural character, economic vitality, ecological integrity or cultural fabric.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally consistent with the four principles of ecologically sustainable development. The application does not result in any physical works on the site, but rather a change of use to the existing dwelling with no unacceptable environmental impacts anticipated.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The site is located in the 2(f) Tourism zone, the primary objective of which is to:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the proposed dual use of the existing dwelling (tourist accommodation) could be seen to be consistent with the objectives of the zone, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

#### Clause 11 - Zone Objectives

The subject site is located within the 2(f) Tourism zone which has the following zone objectives:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the development could be seen to achieve consistency with these objectives, as outlined above, the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

#### Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services provided through the dwelling development, previously approved by Council.

#### Clause 16 - Height of Building

The proposal does not contravene the imposed three storey height restriction on the subject site as there is no change to the existing structure on site.

#### Clause 35 - Acid Sulfate Soils

Class 4 Acid Sulfate Soils are present on the site. There are no works proposed as part of this application. As such, no further consideration is required and this clause is satisfied.

#### Clause 53 - Development of specific sites

Clause 53(2) of the LEP 2000 is the mechanism by which additional purposes may be permitted on certain land, as listed in Schedule 3 of the Plan.

The proposed change of use is not a development for the purpose of a dwelling house, hotel, motel or tourist resort. The proposal seeks flexible use of an existing dwelling for both permanent residential accommodation and tourist accommodation. The use of 'tourist accommodation' is permissible with development consent as listed within the table to 2(f) under Clause 11 of the

TLEP 20000. The proposal does not rely upon Clause 53(2) of the TLEP 2000 for permissibility.

Clause 53B Height Restrictions - Coast Road, South Kingscliff

The existing dwelling is one to which Clause 53B applies and which prescribes a two storey height limit. The application does not raise any implications in respect to this clause.

Clause 54 – Tree preservation order

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The proposal does not require or propose any removal of vegetation, given its nature as a change of use to an existing structure. As such, this clause is satisfied.

**State Environmental Planning Policies**

**SEPP (North Coast Regional Environmental Plan) 1988**

Clause 32B: Coastal Lands

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the *NSW Coastal Policy 1997*, the *Coastline Management Manual* or the *North Coast: Design Guidelines*.

Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing.

Clause 43: Residential development

The application does not contradict the objectives of Clause 43. On-site density has been maximised without adversely affecting the environmental features of the land.

Clause 75: Tourism development

The plan generally refers to the location of large scale resort developments within prime tourism development area such as Kingscliff and Tweed Heads. The proposal does not meet the definition for small scale or low key tourism development as defined by the regional plan.

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The proposal will not restrict public access to the foreshore or result in any additional overshadowing of foreshore area as the application relates to an extension of permissible uses on the site with no physical development proposed. It is considered that the proposal satisfies the matters for consideration under SEPP 71.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

It is noted that the Draft Tweed LEP 2012 was gazetted (as amended) on 4 April 2014 as the Tweed LEP 2014. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

## 1.4 Definitions

The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation*:

**tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

'Tourist and visitor accommodation' is a prohibited use in the R2 zone by its inclusion in Item 4 as below:

### 4 Prohibited

Agriculture; Airstrip; Air transport facilities; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Camping grounds; Caravan parks; Cemetery; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematorium; Depots; Eco-tourist facilities; Entertainment facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home occupation (sex services); Hostels; Industries; Industrial retail outlets; Industrial training facilities; Information and education facilities; Marinas; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Public administration building; Recreation facilities(major); Registered clubs; Research stations; Residential flat buildings; Restricted premises; Rural industries; Rural worker's dwellings; Service stations; ~~Sex services premises~~; Shop top housing; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Wharf or boating facilities; Wholesale supplies

### 1.8A Savings provision relating to development applications

This clause states that if a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

With respect to this it is noted that the subject application was lodged with Council on 29 February 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. As such this clause is applicable to this development application.

Notwithstanding, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*.

## **Part 2 Permitted or prohibited development**

### **2.1 Land use zones**

The subject site is located in the R2 Low Density Residential zone.

### **2.3 Zone objectives and Land Use Table**

The objectives of the R2 Low density residential zone are:

- To provide for the housing needs of the community within a low density residential environment; and
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

*"Notwithstanding that 'tourist accommodation' has not been included in the proposed R2 zone; the ability to use the dwelling for both permanent residences as well as for short term holiday letting will not detract from the surrounding low density character of the residential area.*

*The dwelling house would maintain the physical appearance of the low residential development and with the implementations of appropriate conditions, the dual use of the dwelling (tourist accommodation) would not impose amenity impacts to the low density residential locality."*

Whilst the applicants' justification above is noted, it is considered that the subject application would not comply with the zone objectives.

The proposed development constitutes the use of the dwelling for tourist and visitor accommodation which is not considered to be consistent with the above objectives as it does not provide for the housing needs of the community or enable a land use which provides facilities or services to meet the day to day needs of residents.

Draft zoning for the locality was informed by the LEP Practice note PN 09-006 *Providing for tourism in Standard Instrument local environmental plans*, circulated by the Department of Planning on 2 December 2009. These practice guidelines stipulate that tourist and visitor accommodation is not recommended in the R2 Low Density Residential zone.

Given that the proposed development is prohibited in the R2 zone and not considered to be in accordance with the objectives of the zone, it is considered that the application should be refused on this basis.

## **Part 5 Miscellaneous provisions**

### **5.5 Development within the coastal zone**

This clause states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following:

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*



- (i) *maintaining existing public access and, where possible, improving that access, and*
- (ii) *identifying opportunities for new public access, and*

The subject is not considered to either offer opportunities with respect to provision of a new public access or impact upon any existing public access at the coastal foreshore.

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
  - (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
  - (ii) *the location, and*
  - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed development does not result in any development work as it relates solely to a change of use of an existing dwelling to dual use. As such the proposal is considered to be generally acceptable having regard to the above provisions.

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
  - (i) *any significant overshadowing of the coastal foreshore, and*
  - (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development will not result in any overshadowing or loss of views from a public place to the coastal foreshore.

- (d) *how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*

The proposed development is not considered to compromise the scenic qualities of the coast as it represents a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (e) *how biodiversity and ecosystems, including:*
  - (i) *native coastal vegetation and existing wildlife corridors, and*
  - (ii) *rock platforms, and*
  - (iii) *water quality of coastal waterbodies, and*
  - (iv) *native fauna and native flora, and their habitats, can be conserved, and*

It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard as the application relates to a change of use of an existing building only.

- (f) *the cumulative impacts of the proposed development and other development on the coastal catchment.*

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

This clause goes on to further state:

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

As outlined elsewhere in this report, the proposal will not impede or diminish the right of access of the public either to or along the public foreshore.

- (b) *if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The proposed development does not require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

- (c) *the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

As outlined elsewhere in this report, the subject application relates only to a change of use of an existing structure with no development work proposed. The existing dwelling is Council approved and thus stormwater provisions would have been implemented through the original development work on the site. The proposal is considered not to contravene the above controls and satisfies the above clause.

- (d) *the proposed development will not:*
- (i) *be significantly affected by coastal hazards, or*
- (ii) *have a significant impact on coastal hazards, or*
- (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature which does not involve any development works.

There are no other provisions in LEP 2014 that are specifically relevant to the proposal.

In accordance with the advice provided above, the application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and LEP 2014, and also because the proposal is considered not to meet the objectives of the R2 zone.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling was approved under DA05/0835 on 14 September 2005. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2005 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however there are minimal setbacks are provided, particularly to the east (side boundary).

No physical alterations are proposed to the existing building. Car parking is provided on the site for four vehicles, as detailed below. No additional waste arrangements are considered to be required. The applicant advises that the existing dwelling provides an appropriate area for private open space and outdoor recreation and is in walking distance to the beach.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1. However, it is noted that the existing two storey dwelling is located in close proximity to the boundaries of the site, particularly on the eastern elevation. The site also comprises a pool within the rear setback that is located in close proximity to the rear boundary. It is considered that the scale of the dwelling and proximity to the site boundaries may have the capacity to adversely impact on surrounding residential amenity in terms of noise and disturbance.

A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces (two spaces with a double garage and two within the driveway).

A variation has been requested to delete the requirement for staff and delivery vehicle parking as outlined under this DCP as the nature of the proposal does not require it. It is considered that the existing on-site parking arrangements are sufficient for an extended family group.

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with DCP A11. The proposal was placed on public exhibition for 14 days from 14 April 2014 to 1 May 2014.

One submission was received during this time which is detailed elsewhere in this report.

Section B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is

not considered that the proposed dual use of the existing dwelling for tourist accommodation contradicts the objectives of the Government Coastal Policy.

This proposal does not require demolition or a change of BCA classification and no development works are proposed. As such, Clause 92(b) (Applications for demolition), Clause 93 (Fire Safety Considerations) and Clause 94 (Buildings to be upgraded) of the Regulations do not apply.

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit and it is advised that as there is no change in BCA Building Class further comments are not required with this regard.

**(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal is generally consistent with the objectives of the Management Plan.

**Tweed Coast Estuaries Management Plan 2004**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not applicable to the application.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The subject site is not located within the Cobaki or Terranorra Broadwater (within the Tweed Estuary), with this Plan therefore not applicable to the proposed development.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Context and Setting

The subject site is located within an area dominated by dwellings lawfully utilised for long-term residential purposes and large scale tourist resort developments. It

is intended that the large scale resorts provide tourist accommodation and flexible use options in the future, as distinct from single dwellings.

Whilst the proposal does not comprise any physical alterations to the existing dwelling, it is considered that the use of the dwelling for tourist accommodation purposes may have the potential to affect surrounding residential amenity by reason of noise and disturbance and may detract from the character of the dwelling and the surrounding area.

**(c) Suitability of the site for the development**

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000.

The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

**(d) Any submissions made in accordance with the Act or Regulations**

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. One submission was received. The applicant was given opportunity to respond to the matters raised in the submissions however has not provided a response to Council to date. The matters raised within this submission are detailed below:

- Of the 16 homes in the street, 12 are owner occupied, 2 are long term rentals and until now 2 have been holiday homes used solely by the owners;
- A community spirit has existed in the locality;
- Earlier in the year it is alleged that No. 18 Malibu Street commenced holiday renting their home and since then there has been noise, disturbance and anti-social behaviour in the locality;
- Bins have been left out through the week (associated smells);
- Parking problems in the street with holidaymakers cars being parked on either side preventing the garbage truck from collecting rubbish;
- Behaviour is disrespectful;
- Tourism accommodation should be restricted to properties where onsite management is provided;
- As area is being rezoned for residential accommodation, this should not be allowed;
- Concerns about the number of applications for this use that have been lodged with Council;
- First hand problems with conditions not being enforced.

Planning Comment

Issues such as increased noise and disturbance resulting from the use of the dwelling for short term tourist accommodation may have a significant detrimental

impact on the amenity of surrounding residents. It is noted that should the application be approved a number of conditions may be applied to ensure that the tourist accommodation is operated in accordance with an approved Management Plan (in respect of number of occupants, tenant behaviour and onsite parking). However, it is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

**(e) Public interest**

The proposed development would be permissible with consent under the provisions of the former LEP 2000. However, approval of the application does raise questions in respect to the suitability of the proposed tourist accommodation located predominantly within a residential area.

However the draft LEP 2012 and gazetted LEP 2014 prohibits the development and it is considered that the proposal would not be in accordance with the objectives of the R2 zone. As such, the proposed development is not considered to be in the public interest.

**OPTIONS:**

That Council:

1. Refuses the application; or
2. Approve the development application with the following recommended conditions of consent.

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and plans as listed in the table below, except where varied by the conditions of this consent.

<b>Drawing</b>	<b>Prepared by</b>	<b>Dated</b>
Site Plan	Clarke Dowdle and Associates	03/03/14
Lower Floor Plan/Upper Floor Plan	Clarke Dowdle and Associates	03/03/14
Elevations	QSP	30/08

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).

[GEN0065]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

4. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.

5. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and six children.
6. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.
7. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.
8. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.
9. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.
10. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.
11. All landscaping is to comply with the S88B instrument pertaining to the site.
12. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.

[GENNS01]

## USE

13. 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]
14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.  
[USE0175]
15. 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]

16. 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]

17. The premises shall be maintained in a clean and tidy manner.

[USE0965]

18. Any public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012. *Note: A public swimming pool includes a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests.*

[USE0985]

19. Four off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking associated with the tourist accommodation use of the site.

20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.

21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

[USENS01]

Council officers recommend Option 1.

## **CONCLUSION:**

The proposal is prohibited within the R2 Low Density Residential zone and does not comply with the R2 Low Density Residential zone objectives within the draft LEP 2012. Given the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed application be refused development consent.



**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant may appeal Council's determination in the NSW Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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9 [PR-PC] Development Application DA14/0199 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 77 DP 1066472 No. 3 Cathedral Court, Kingscliff

**SUBMITTED BY:** Development Assessment

**FILE REFERENCE:** DA14/0199 Pt1

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## 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

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### SUMMARY OF REPORT:

#### Updated information

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use - residential and tourist accommodation on the above site.

Of particular relevance to this assessment is legal advice received by Council on behalf of the applicant's agent with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice received. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

#### Previous Report

Council has received a development application that seeks to allow the use of an existing dwelling for tourist accommodation purposes. The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing five bedroom single dwelling for the purpose of short-term tourist accommodation.

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This application has been called up for Council's determination by Councillors Longland and Bagnall.

One submission was received for the proposal.

The proposed development does not require any physical alterations to the existing dwelling house.

Legal advice has been provided to Council regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed Local Environmental Plan (LEP) 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite.

Importantly, the individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. It is considered that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard. The applicant has proposed a number of measures to address any issues associated with the short term letting of the dwelling, as detailed further within this report.

The site is zoned 2(f) Tourism and the development is defined as 'tourist accommodation' under the current Tweed Local Environmental Plan 2000 with the proposal permissible with consent in the 2(f) zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council on 2 April 2014. LEP 2014 (previously Draft Tweed LEP 2012) came into force on 4 April 2014. Although LEP 2014 contains a savings provision for development applications made before commencement of the plan, the application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*.

There are various legal precedents created through the NSW Land and Environment Court, which require consent authorities to give greater weight to draft environmental planning instruments which are 'certain and imminent'. It is considered that this weighting has greater relevance once a draft LEP has been gazetted as the draft LEP can be assessed as being certain and imminent, given that it was subsequently gazetted.

On this basis it is considered that the Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and the proposal should therefore be refused.

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

Additionally, it is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a lot which has residential dwellings in close proximity to the side and rear boundaries.

The development application has been referred to Council to determine given the current legal status which does not preclude Council from granting consent to the Development Application.

**RECOMMENDATION:**

**That Development Application DA14/0199 for dual use of existing dwelling - tourist accommodation and residential at Lot 77 DP 1066472 No. 3 Cathedral Court, Kingscliff be refused for the following reasons:**

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – the provisions of any Draft Environmental Planning Instruments in that the development is prohibited within the R2 Low Density Residential zone.**
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – the provisions of any Draft Environmental Planning Instruments in that the development is inconsistent with the objectives of the R2 Low Density Residential zone.**
- 3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - *the public interest* in that the development is not considered to be in the public interest.**

**REPORT:**

**Applicant:** T Allen  
**Owner:** Mrs Turiee H Allen  
**Location:** Lot 77 DP 1066472 No. 3 Cathedral Court, Kingscliff  
**Zoning:** 2(f) Tourism (TLEP2000)  
**Cost:** Not Applicable

**Background:**

Proposed Development

The development application seeks the dual use of an existing dwelling for residential and tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes (tourist accommodation). The proposed development does not require any physical alterations to the existing dwelling house.

The application was submitted on 2 April 2014. LEP 2014 came into force on 4 April 2014.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone.

The applicant's Statement of Environmental Effects (SEE) advises that:

*'To address any issues associated with the short term letting of the dwelling, the following conditions are suggested for inclusion as part of the approval:*

- The use of the dwelling for tourist accommodation is restricted to the following:*
  - The dwelling is to let to a maximum of one (1) tourist group comprising a maximum of ten (10) persons at any one time which may consist of up to four (4) adults and six (6) children.*
  - A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.*
  - No more than four (4) vehicles can be at the site at any one time with all car parking to be located within the property boundary of the subject site.*
  - An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*
  - A Plan of Management is to incorporate and convey a clear understanding of the terms of conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.*
  - Tenants agree to not make excessive noise as part of the letting agreement.*

- *A 24 hour contract (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.*
- *Tenants agree to a management policy (to be submitted for Council approval prior to commencement of use).*

### Site

The site is regular and rectangular in shape with a frontage of approximately 22m to Cathedral Court, Kingscliff. The allotment comprises a land area of 787m<sup>2</sup> and is located near the end of Cathedral Court and North Point Avenue.



### ***Extract of Council's GIS aerial imagery - Lot 77 DP 1066472, No. 3 Cathedral Court***

The site comprises a two storey three bedroom dwelling house. On the ground floor is a large open plan gales room, double garage and external patio oriented toward the front of the house. The first floor comprises the living/kitchen/dining area and verandah that is also oriented to the front toward Cathedral Court. The first floor also comprises three bedrooms and bathrooms. There is a deck located on the third floor with views out to the ocean.

The existing dwelling was approved under DA05/0189 on 2 May 2005. The dwelling comprises a setback of approximately 3m on the eastern and 5m on the western boundary (side). A rear setback of approximately 5m is provided and a front setback of approximately 6m. The driveway is located on the western boundary and runs down toward the centre of the site with the garage located at the rear of the property.

The site has previously been cleared of native vegetation and currently comprises landscaping typical of a newly established residential property.

A Section 88B Instrument applies to the subject property that states that '*No main dwelling may be used for any purpose other than a single private dwelling*'.

### History

Of note, a historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane,

Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Draft LEP 2012. At the Meeting of 17 October 2013, Councillors resolved to approve the application, contrary to Council Officer's recommendation, and the application was brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at that meeting.

Following the approval of this application an additional development application DA13/0463 for the dual use of No. 3 Collins Lane, Casuarina was approved on 21 November 2013 under delegated authority, as directed as appropriate by Councillors at that time.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas of Salt is an anomaly contrary to the original master planning for Salt.

**SITE DIAGRAM:**

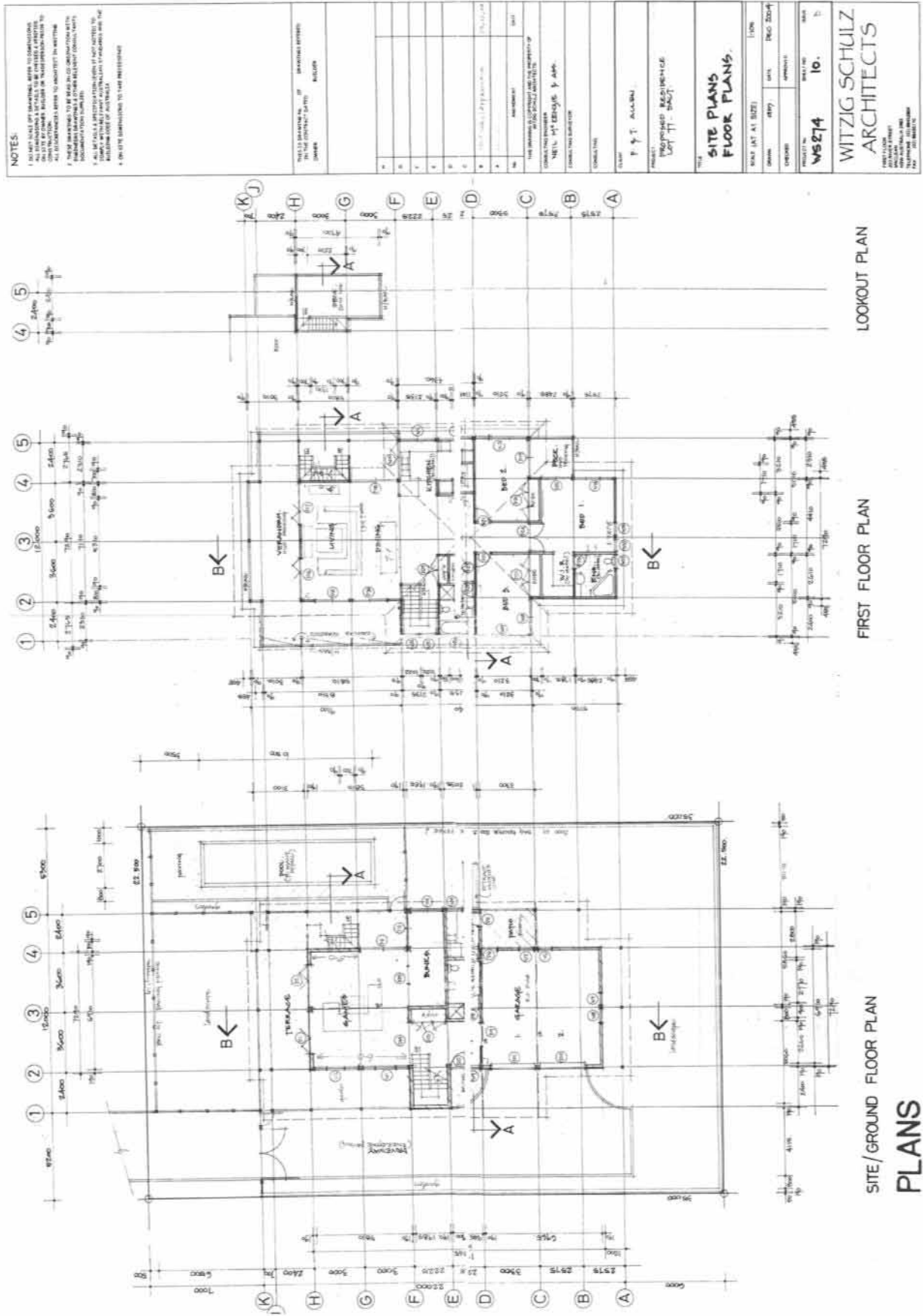


**Locality Plan**  
 Lot 77 DP 1066472  
 No.3 Cathedral Court, Kingscliff

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DEVELOPMENT/ELEVATION PLANS:





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**Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed development is consistent with the aims of the Plan, with the proposed dual use not considered to compromise natural character, economic vitality, ecological integrity or cultural fabric.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally consistent with the four principles of ecologically sustainable development. The application does not result in any physical works on the site, but rather a change of use to the existing dwelling with no unacceptable environmental impacts anticipated.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The site is located in the 2(f) Tourism zone, the primary objective of which is to:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the proposed dual use of the existing dwelling (tourist accommodation) could be seen to be consistent with the objectives of the zone, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

#### Clause 11 - Zone Objectives

The subject site is located within the 2(f) Tourism zone which has the following zone objectives:

- *Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Whilst the development could be seen to achieve consistency with these objectives, as outlined above, the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

#### Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services provided through the dwelling development, previously approved by Council.

#### Clause 16 - Height of Building

The proposal does not contravene the imposed three storey height restriction on the subject site as there is no change to the existing structure on site.

#### Clause 35 - Acid Sulfate Soils

Class 4 Acid Sulfate Soils are present on the site. There are no works proposed as part of this application. As such, no further consideration is required and this clause is satisfied.

#### Clause 39A – Bushfire Protection

The site is bushfire prone. As such, the application was referred to the NSW Rural Fire Service as integrated development for assessment as Tourist Accommodation is a special fire protection purpose. A bush fire safety authority under section 100B of the Rural Fires Act 1997 was received from the service on 12 May 2014 inclusive of conditions regarding Asset Protection Zones, Evacuation and Emergency Management, Design and Construction and Landscaping which would be attached to any consent. Having regard to this, the proposal is considered to be acceptable with respect to bushfire protection.

Clause 53 - Development of specific sites

Clause 53(2) of the LEP 2000 is the mechanism by which additional purposes may be permitted on certain land, as listed in Schedule 3 of the Plan. The applicant advises that *'the proposed change of use is not a development for the purpose of a dwelling house, hotel, motel or tourist resort. The proposal seeks flexible use of an existing dwelling for both permanent residential accommodation and tourist accommodation. The use of 'tourist accommodation' is permissible with development consent as listed within the table to 2(f) under Clause 11 of the TLEP 20000. The proposal does not rely upon Clause 53(2) of the TLEP 2000 for permissibility.'*

Clause 53B Height Restrictions - Coast Road, South Kingscliff

The existing dwelling is one to which Clause 53B applies and which prescribes a two storey height limit. The application does not raise any implications in respect to this clause.

Clause 54 – Tree preservation order

The 1990 and 2011 TPO (Koala Habitat) apply to the site. The proposal does not require or propose any removal of vegetation, given its nature as a change of use to an existing structure. As such, this clause is satisfied.

**State Environmental Planning Policies**

**SEPP (North Coast Regional Environmental Plan) 1988**

Clause 32B: Coastal Lands

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the *NSW Coastal Policy 1997*, the *Coastline Management Manual* or the *North Coast: Design Guidelines*.

Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing.

Clause 43: Residential development

The application does not contradict the objectives of Clause 43. On-site density has been maximised without adversely affecting the environmental features of the land.

Clause 75: Tourism development

The plan generally refers to the location of large scale resort developments within prime tourism development area such as Kingscliff and Tweed Heads. The proposal does not meet the definition for small scale or low key tourism development as defined by the regional plan.

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The proposal will not restrict public access to the foreshore or result in any additional overshadowing of foreshore area as the application relates to an extension of permissible uses on the site with no physical development proposed. It is considered that the proposal satisfies the matters for consideration under SEPP 71.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

It is noted that the Draft Tweed LEP 2012 was gazetted (as amended) on 4 April 2014 as the Tweed LEP 2014. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

**1.4 Definitions**

The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation*:

**tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

'Tourist and visitor accommodation' is a prohibited use in the R2 zone by its inclusion in Item 4 as below:

**4 Prohibited**

Agriculture; Airstrip; Air transport facilities; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Camping grounds; Caravan parks; Cemetery; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematorium; Depots; Eco-tourist facilities; Entertainment facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home occupation (sex services); Hostels; Industries; Industrial retail outlets; Industrial training facilities; Information and education facilities; Marinas; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Public administration building; Recreation facilities(major); Registered clubs; Research stations; Residential flat buildings; Restricted premises; Rural industries; Rural worker's dwellings; Service stations; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Wharf or boating facilities; Wholesale supplies

**1.8A Savings provision relating to development applications**

This clause states that if a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

With respect to this it is noted that the subject application was lodged with Council on 29 February 2014, before the Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. As such this clause is applicable to this development application.

Notwithstanding, the subject application must have regard to the provisions of this document as a proposed instrument pursuant to s79C (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*.

## **Part 2 Permitted or prohibited development**

### **2.1 Land use zones**

The subject site is located in the R2 Low Density Residential zone.

### **2.3 Zone objectives and Land Use Table**

The objectives of the R2 Low density residential zone are:

- To provide for the housing needs of the community within a low density residential environment; and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

*'The proposed development is compliant to the objectives of Zone R2 – Low Density Residential. The dwelling is currently used for low density purposes. It is noted that tourist accommodation is prohibited under the DLEP 2012. However, ability to use the dwelling for both permanent residency as well as for short term holiday letting will not detract from the surrounding low density character of Cathedral Court and the surrounding area. The dwelling will still present as low density development and will be restricted in capacity as per recommended conditions.*

*The proposed development does not offend or compromise the objectives of the draft R2 zone and therefore should be supported as it is allowable with consent under the current TLEP 2000'.*

Whilst the applicants' justification above is noted, it is considered that the subject application would not comply with the zone objectives.

The proposed development constitutes the use of the dwelling for tourist and visitor accommodation which is not considered to be consistent with the above objectives as it does not provide for the housing needs of the community or enable a land use which provides facilities or services to meet the day to day needs of residents.

Draft zoning for the locality was informed by the LEP Practice note PN 09-006 *Providing for tourism in Standard Instrument local environmental plans*, circulated by the Department of Planning on 2 December 2009. These practice guidelines stipulate that tourist and visitor accommodation is not recommended in the R2 Low Density Residential zone.

Given that the proposed development is prohibited in the R2 zone and not considered to be in accordance with the objectives of the zone, it is considered that the application should be refused on this basis.

## **Part 5 Miscellaneous provisions**

### **5.5 Development within the coastal zone**

This clause states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following:

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
  - (i) *maintaining existing public access and, where possible, improving that access, and*
  - (ii) *identifying opportunities for new public access, and*

The subject is not considered to either offer opportunities with respect to provision of a new public access or impact upon any existing public access at the coastal foreshore.

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
  - (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
  - (ii) *the location, and*
  - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed development does not result in any development work as it relates solely to a change of use of an existing dwelling to dual use. As such the proposal is considered to be generally acceptable having regard to the above provisions.

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
  - (i) *any significant overshadowing of the coastal foreshore, and*
  - (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development will not result in any overshadowing or loss of views from a public place to the coastal foreshore.

- (d) *how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*

The proposed development is not considered to compromise the scenic qualities of the coast as it represents a change of use to an existing property. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature, scale and distance from the coast and coastal headlands.

- (e) *how biodiversity and ecosystems, including:*
  - (i) *native coastal vegetation and existing wildlife corridors, and*
  - (ii) *rock platforms, and*
  - (iii) *water quality of coastal waterbodies, and*



- (iv) native fauna and native flora, and their habitats,  
can be conserved, and*

It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard as the application relates to a change of use of an existing building only.

- (f) the cumulative impacts of the proposed development and other development on the coastal catchment.*

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the nature of the development, and proposed conditions of consent which are considered to mitigate potential amenity impacts.

This clause goes on to further state:

- (3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

As outlined elsewhere in this report, the proposal will not impede or diminish the right of access of the public either to or along the public foreshore.

- (b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The proposed development does not require additional effluent provisions due to its nature as a change of use to an existing dwelling only.

- (c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

As outlined elsewhere in this report, the subject application relates only to a change of use of an existing structure with no development work proposed. The existing dwelling is Council approved and thus stormwater provisions would have been implemented through the original development work on the site. The proposal is considered not to contravene the above controls and satisfies the above clause.

- (d) the proposed development will not:*
- (i) be significantly affected by coastal hazards, or*
- (ii) have a significant impact on coastal hazards, or*
- (iii) increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature which does not involve any development works.

There are no other provisions in LEP 2014 that are specifically relevant to the proposal.

In accordance with the advice provided above, the application is recommended for refusal as the proposal is prohibited under the draft LEP 2012 and LEP 2014, and also because the proposal is considered not to meet the objectives of the R2 zone.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The existing dwelling was approved under DA05/0189 on 2 May 2005. The current DCP A1 came into force on 21 May 2013.

This application seeks the dual use of an existing dwelling house for the purposes of tourism accommodation (short-term). The existing dwelling house was approved in 2005 prior to the current DCP Section A1 being in place. It is considered that the majority of the controls within A1 are complied with however it is noted that the property comprises a large verandah on the first floor and deck on the second floor (with a GFA of approximately 15m<sup>2</sup>).

No physical alterations are proposed to the existing building. Car parking is provided on the site for four vehicles, as detailed below. No additional waste arrangements are considered to be required. The applicant advises that the existing landscaping features have been implemented to increase privacy and that these will be retained.

It is considered that there are no significant implications that would result from the proposed development in relation to Section A1. However, it is noted that the existing two storey dwelling is located in relatively close proximity to the boundaries of the site. The dwelling is also two storeys with an upper level deck. It is therefore considered that the scale and layout of the dwelling, and proximity to the site boundaries, may have the capacity to impact on surrounding residential amenity in terms of noise and disturbance.

A2-Site Access and Parking Code

The existing dwelling provides for a total of four on-site car parking spaces (two spaces within a double garage and two within the driveway).

A variation has been requested to delete the requirement for staff and delivery vehicle parking as outlined under this DCP as the nature of the proposal does not require it. It is considered that the existing on-site parking arrangements are sufficient for an extended family group.

Section A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with DCP A11. The proposal was placed on public exhibition for 14 days from 16 April 2014 to 5 May 2014.

One submission was received during this time, the matters raised are detailed further in this report.

Section B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is not considered that the proposed dual use of the existing dwelling for tourist accommodation contradicts the objectives of the Government Coastal Policy.

This proposal does not require demolition or a change of BCA classification and no development works are proposed. As such, Clause 92(b) (Applications for demolition), Clause 93 (Fire Safety Considerations) and Clause 94 (Buildings to be upgraded) of the Regulations do not apply.

Clause 92(b) Applications for demolition

The application does not propose any demolition.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been reviewed by Councils Building Unit and it is advised that as there is no change in BCA Building Class further comments are not required with this regard.

**(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand given its nature being a change of use of an existing structure. It is considered that the proposal is generally consistent with the objectives of the Management Plan.

**Tweed Coast Estuaries Management Plan 2004**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not applicable to the application.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The subject site is not located within the Cobaki or Terranorra Broadwater (within the Tweed Estuary), with this Plan therefore not applicable to the proposed development.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Context and Setting

The subject site is located within an area dominated by dwellings lawfully utilised for long-term residential purposes and large scale tourist resort developments. It is intended that the large scale resorts provide tourist accommodation and flexible use options in the future, as distinct from single dwellings.

Whilst the proposal does not comprise any physical alterations to the existing dwelling, it is considered that the use of the dwelling for tourist accommodation purposes may have the potential to affect surrounding residential amenity by reason of noise and disturbance and may detract from the character of the dwelling and the surrounding area.

**(c) Suitability of the site for the development**

Surrounding Landuses/Development

Surrounding development constitutes low density residential development however it is noted that tourism accommodation is currently permissible within the Tweed LEP 2000.

The development does not propose any alterations to the existing building. However, having regard to the proposed development being prohibited under the future planning controls on the site it is not considered that the site is suitable for the proposed development.

**(d) Any submissions made in accordance with the Act or Regulations**

The proposal was placed on public exhibition for 14 days in accordance with DCP Section A11. One submission was received from the Kingscliff Ratepayers and Progress Association. The applicant was given opportunity to respond to the matters raised in the submissions however has not provided a response to Council to date. The matters raised within this submission, and the applicant's response to the matters raised, are detailed within the table below:

<b>Issues raised in submissions</b>	<b>Response from applicant (summarised)</b>
<ul style="list-style-type: none"> <li>· Concerns about residential properties (at 6 Cathedral Court and 18 Malibu Street) are already advertising on the internet offering holiday accommodation;</li> <li>· Such property owners should be reminded by Council that they do not have approval for such a use</li> </ul>	<ul style="list-style-type: none"> <li>· Not relevant to the application;</li> <li>· The applicant seeks approval for the dual use of the property.</li> </ul>
<ul style="list-style-type: none"> <li>· The community worked hard to separate residential and tourism uses;</li> <li>· Developers at that time illustrated that tourist resorts were needed on the Tweed Coast;</li> </ul>	<ul style="list-style-type: none"> <li>· This statement is incorrect especially as it relates to Salt, Seaside City and Casuarina. The establishment of the 2(f) zoning was as a direct result of seeking to integrate both residential and tourist uses and to create a vibrant mix of</li> </ul>

Issues raised in submissions	Response from applicant (summarised)
<ul style="list-style-type: none"> <li>· Many tourist property owners have complained about lack of occupancy as tourists using unapproved sites instead;</li> </ul>	<p>uses.</p> <ul style="list-style-type: none"> <li>· The proposal is permissible under LEP 2000 and Council have previously approved such developments.</li> </ul>
<ul style="list-style-type: none"> <li>· Proponents of dual use have offered ways that tourists could be controlled/supervised however evidence suggests that this does not work;</li> <li>· Concerns with the enforcement of conditions (i.e. who will answer a phone complaint in early hours of morning);</li> </ul>	<ul style="list-style-type: none"> <li>· Detailed management measures are suggested, not just providing a phone number to Council;</li> <li>· These measures are consistent with those previously considered appropriate by Council by approving DA13/0247 and DA13/0463;</li> <li>· Applicant details range of management measures proposed as detailed previously in this report.</li> </ul>
<ul style="list-style-type: none"> <li>· Properties that have been approved for dual use purposes should be rated as a commercial operation.</li> <li>· Do not believe that to prove a 'dominant use' should be the responsibility of Council.</li> </ul>	<ul style="list-style-type: none"> <li>· This has no relevance to the application and how the properties are rated is not a matter for consideration.</li> </ul>

Planning Comment

It is noted that should the application be approved a number of conditions may be applied to ensure that the tourist accommodation is operated in accordance with an approved Management Plan (in respect of number of occupants, tenant behaviour and onsite parking).

However, it is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

**(e) Public interest**

The proposed development would be permissible with consent under the provisions of the former LEP 2000. However, approval of the application does raise questions in respect to the suitability of the proposed tourist accommodation located predominantly within a residential area.

However the draft LEP 2012 and gazetted LEP 2014 prohibits the development and it is considered that the proposal would not be in accordance with the objectives of the R2 zone. As such, the proposed development is not considered to be in the public interest.

**OPTIONS:**

That Council:

1. Refuses the application; or
2. Approve the development application with the following recommended conditions of consent.

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:

- WS274 Sheet 10 Issue B - Floor Plans dated Dec 2004; and
- WS274 Sheet 06 - Elevations dated 22/11/04.

prepared by Witzig Schulz Architects, except where varied by the conditions of this consent.

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).

[GEN0065]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

4. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and six children.

5. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.

6. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.

7. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.

8. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.

9. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.

10. All landscaping is to comply with the S88B instrument pertaining to the site.
11. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
12. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.

[GENNS01]

## USE

13. 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.
14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.
15. 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.
16. 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.
17. The premises shall be maintained in a clean and tidy manner.
18. The public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012.

[USE0125]

[USE0175]

[USE0225]

[USE0245]

[USE0965]

[USE0985]

19. Four off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking associated with the tourist accommodation use of the site.
20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.
21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.
22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

[USENS01]

#### **GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997**

1. 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'.
2. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
3. The existing building on proposed Lot 77 is 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.

Council officers recommend Option 1.

#### **CONCLUSION:**

The proposal is prohibited within the R2 Low Density Residential zone and does not comply with the R2 Low Density Residential zone objectives within the draft LEP 2012. Given the legal information received by Council with respect to this matter, as documented in this report, it is considered appropriate that the proposed application be refused development consent.



**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant may appeal Council's determination in the NSW Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**10 [PR-PC] Development Application DA14/0206 for Dual Use of Existing Dwelling - Tourist Accommodation and Residential at Lot 305 DP 1070793 No. 3 Cactus Court, Kingscliff**

**SUBMITTED BY:** Development Assessment

**FILE REFERENCE:** DA14/0206 Pt1

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## **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

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### **SUMMARY OF REPORT:**

#### **Updated information**

At the Planning Committee Meeting held on Thursday 3 July 2014, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. As such the below report has been prepared to enable appropriate conditions of consent be applied to any approval for a dual use - residential and tourist accommodation on the above site.

Of particular relevance to this assessment is legal advice received by Council on behalf of the applicant's agent with respect to tourist accommodation uses. This has been provided on the basis that *'it is intended that the use of the properties as holiday lettings will occur for more than six months of the year.'* Following on from this, it is considered appropriate to apply a condition of consent which requires that these properties be utilised for short term tourist accommodation for a minimum of six months of the year, consistent with the legal advice received. As such, please be advised that recommended condition of consent No. 22 has been applied which states the following in this regard:

22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year.

The remaining conditions of consent are identified as Option 2 in the "Options" section of this report.

#### **Previous Report**

Council has received a development application that seeks the dual use of an existing dwelling for tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes.

This application has been called up for Council determination by Councillors Longland and Bagnall.

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There was one objection to the development application.

A concurrent application for the same use has been submitted for 12 Cactus Court under DA14/0120. This application is being concurrently reported to Council.

The proposed development does not require any physical alterations to the existing dwelling house.

The applicant has provided legal advice regarding the characterisation of the proposal as a single use and the permissibility of the tourist accommodation under the new Tweed LEP 2014. This legal advice considers that the proposal could be characterised as a single use, namely, *mixed use development* being 'a building or place comprising 2 or more different land uses.' This definition is not in dispute; however, mixed use is not a landuse definition but is intended as a combined definition for multiple landuses onsite. Importantly, these individual landuses must be permissible in the R2 Low Density Residential zone of the Tweed LEP 2014. Council is of the view that the tourist component of the development is best defined within the new Tweed LEP 2014 as *tourist and visitor accommodation*. This use is prohibited in the R2 zone.

This legal advice also bases the opinion provided on the premises being holiday let for more than six months of the year. The applicant has not provided any details within the application on how the proposed development would be managed in this regard.

The applicant advises that to address any issues associated with the short term letting of the dwelling, the following conditions are proposed:

- *The dwelling is to be let to a maximum of one tourist group comprising a maximum of 10 persons up to four adults and six children at any one time.*
- *A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July for inspection purposes.*
- *No more than four vehicles can be at the site at any one time with all parking to be within the property boundary.*
- *An additional general waste bin and recycling bin are to be provided and emptied weekly for general waste and fortnightly for recycled waste.*
- *Tenants agree to not make excessive noise as part of the letting agreement.*
- *A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.*
- *Tenants agree to abide by a management policy (to be submitted to Council for approval prior to commencement of use).*

The application proposes flexibility in maintaining long-term residential use and legalisation of ongoing use of an existing three bedroom single dwelling for the purpose of short-term tourist accommodation.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone. Additionally, the proposed development is fundamentally inconsistent with the R2 zone objectives.

The application was submitted to Council 28 February 2014. Tweed Local Environmental Plan 2014 (previously Draft Tweed Local Environmental Plan 2012) came into force on 4 April 2014.

When the application was submitted, LEP 2012 was in draft form however had been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

On that basis, it is the officer's view that the Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and as a prohibited use, should therefore be refused.

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

Additionally, it is further considered that the amenity of the locality will be adversely impacted by the use of this dwelling for holiday accommodation. The dwelling is situated on a lot which has residential dwellings immediately adjacent to the east, south and west and in close proximity elsewhere.

The development application has been referred to Council to determine given the current legal status which does not preclude Council from granting consent to the Development Application.

#### **RECOMMENDATION:**

**That Development Application DA14/0206 for dual use of existing dwelling - tourist accommodation and residential at Lot 305 DP 1070793 No. 3 Cactus Court, Kingscliff be refused for the following reasons:**

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – the provisions of any Draft Environmental Planning Instruments in that the development is prohibited within the R2 Low Density Residential zone.**
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – the provisions of any Draft Environmental Planning Instruments in that the development is inconsistent with the objectives of the R2 Low Density Residential zone.**
- 3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - *the public interest* in that the development is not considered to be in the public interest.**

**REPORT:**

**Applicant:** Edwina Leslie Humphries

**Owner:** Edwina Leslie Humphries

**Location:** Lot 305 DP 1070793 No. 3 Cactus Court, Kingscliff

**Zoning:** 2(f) Tourism (LEP 2000), R2 Low Density Residential (Draft LEP 2012 and current LEP 2014)

**Cost:** Not applicable

**Background:**

The application seeks consent for the dual use of an existing dwelling for tourist accommodation purposes. This would allow for the dwelling to be used for both permanent residency as well as short term holiday letting purposes.

The application was submitted 3 April 2014. Tweed Local Environmental Plan 2014 came into force on 4 April 2014.

Under LEP 2000, the site is zoned 2(f) Tourism. The proposal is defined as 'Tourist Accommodation' which is permissible in the zone.

Under LEP 2014, the site is zoned R2 Low Density Residential. The proposal is defined as 'Tourist and Visitor Accommodation' which is prohibited in the zone.

It should be noted that the zoning of the wider Salt development under LEP 2000 was 2(f) Tourism which prohibited dwelling houses. However, LEP 2000 was amended to include a special provision to permit dwelling houses to coexist with tourism development. It is considered that the permissibility of tourism accommodation in the residential areas at Salt is an anomaly contrary to the original master planning for Salt.

The site is a regular shaped allotment in Cactus Court (mid way down the street). The site has 15m street frontage to Cactus Court. The total area is 525m<sup>2</sup>.

The site contains a two storey dwelling with swimming pool, approved by DA05/0584 (dwelling) and CDC07/0037 (swimming pool).

There are neighbours to the east, south and west. Each neighbouring allotment contains a single dwelling house.



**Subject dwelling - 3 Cactus Court**



***Proximity to dwelling at 1 Cactus Court***



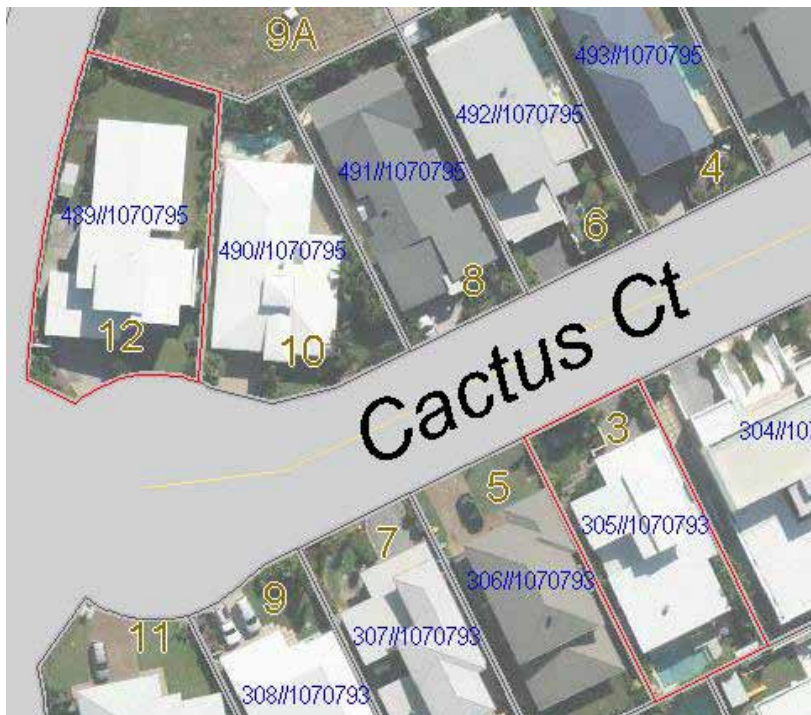
***Proximity to dwelling at 5 Cactus Court***

The subject dwelling is two storeys (3 bedrooms) with a large open plan kitchen and dining area located toward the rear. There is an internal courtyard facing the western boundary (off the living room) in close proximity to this boundary. The swimming pool is located in the rear yard close to the boundary and in proximity to the swimming pool on the adjoining Lot to the rear. The upper floor contains 2 bedrooms and a centrally located 'kids retreat'. The location of the dwelling in relation to surrounding development is shown below.



**Current application – 3 Cactus Court (DA14/0206)**

It is also worthy of note that another application for the same use has been submitted for 12 Cactus Court (see below figure). This application is being concurrently reported to Council.



**Concurrent application – 12 Cactus Court (DA14/0120)**

***\*both sites highlighted in red***

Of note, an historical application (DA13/0247) for the dual use of an existing dwelling for tourism accommodation purposes has been determined by Council at No. 39 Collins Lane, Casuarina. This application was reported to Council as tourism accommodation is a prohibited form of development within the Draft LEP 2012.

At the Meeting of 17 October 2013 Councillors resolved to approve the application, against officer's recommendation, with the application brought back to the Council Meeting of 21 November 2013 with conditions of consent and approved at this meeting.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding

the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.



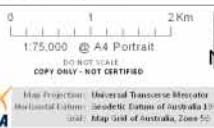
**SITE DIAGRAM:**



**Locality Plan**  
 Lot 305 DP1070793  
 No.3 Cactus Court, Kingscliff

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Cadastre 15/07/2014  
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 W | www.tweed.nsw.gov.au  
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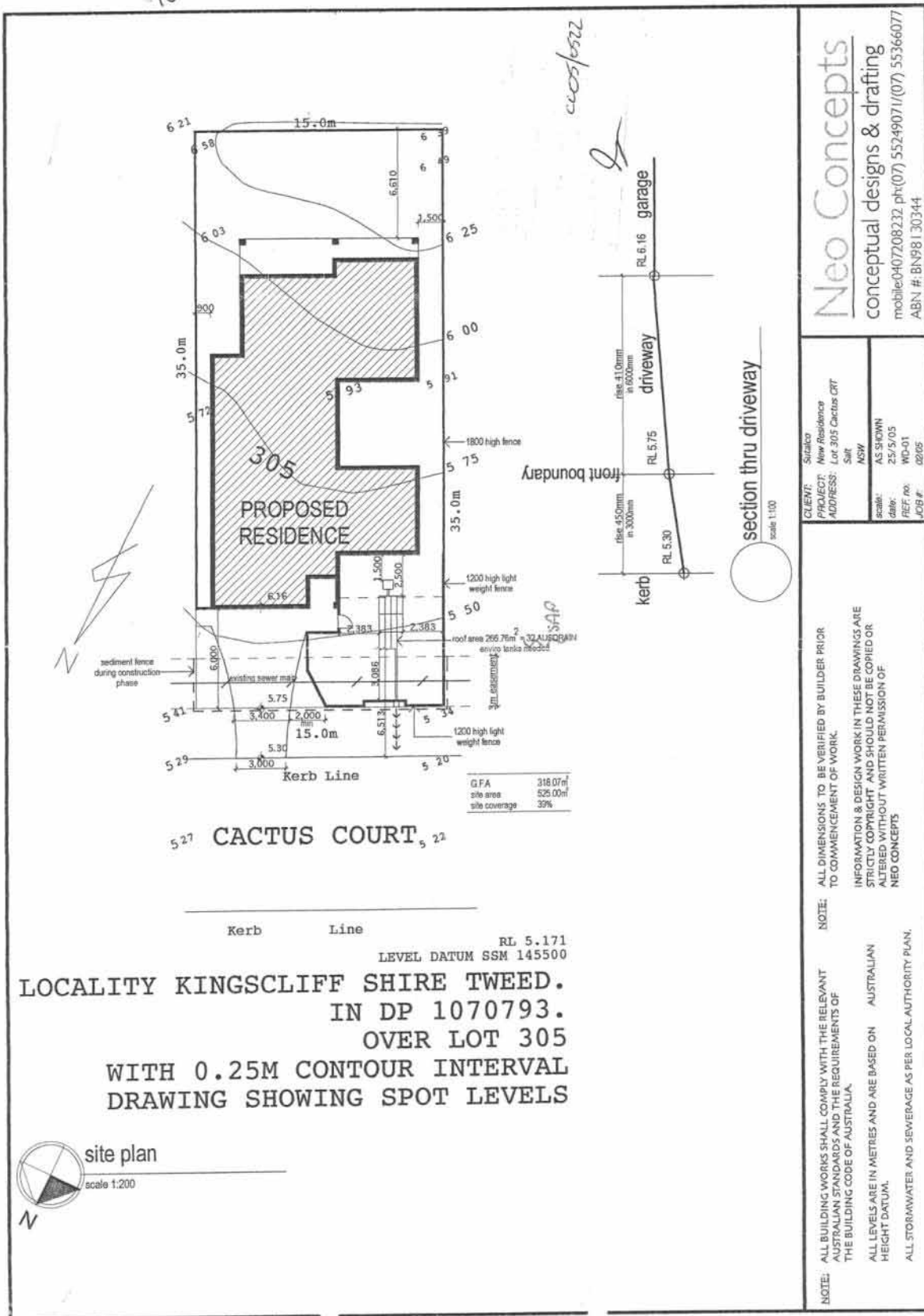


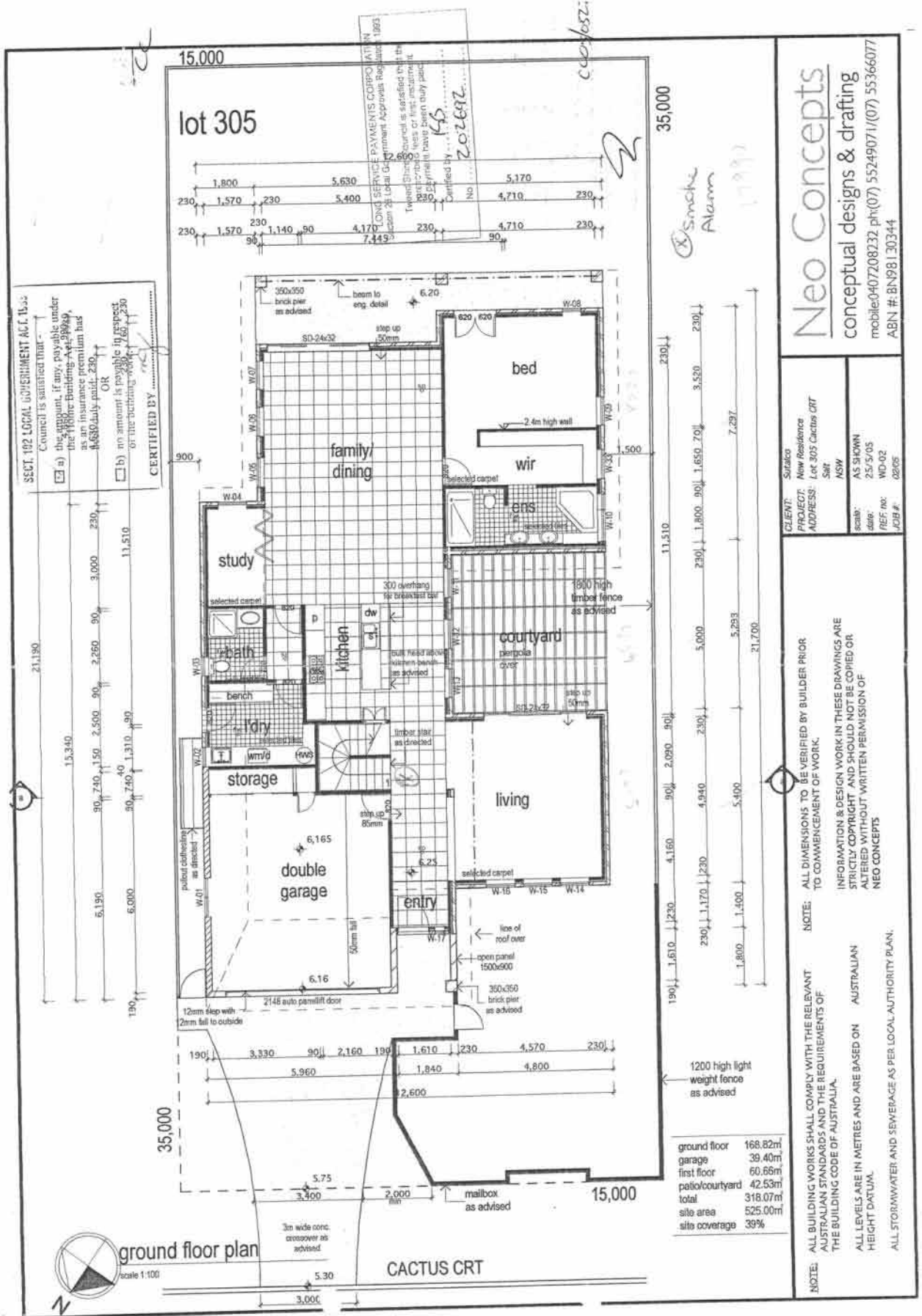
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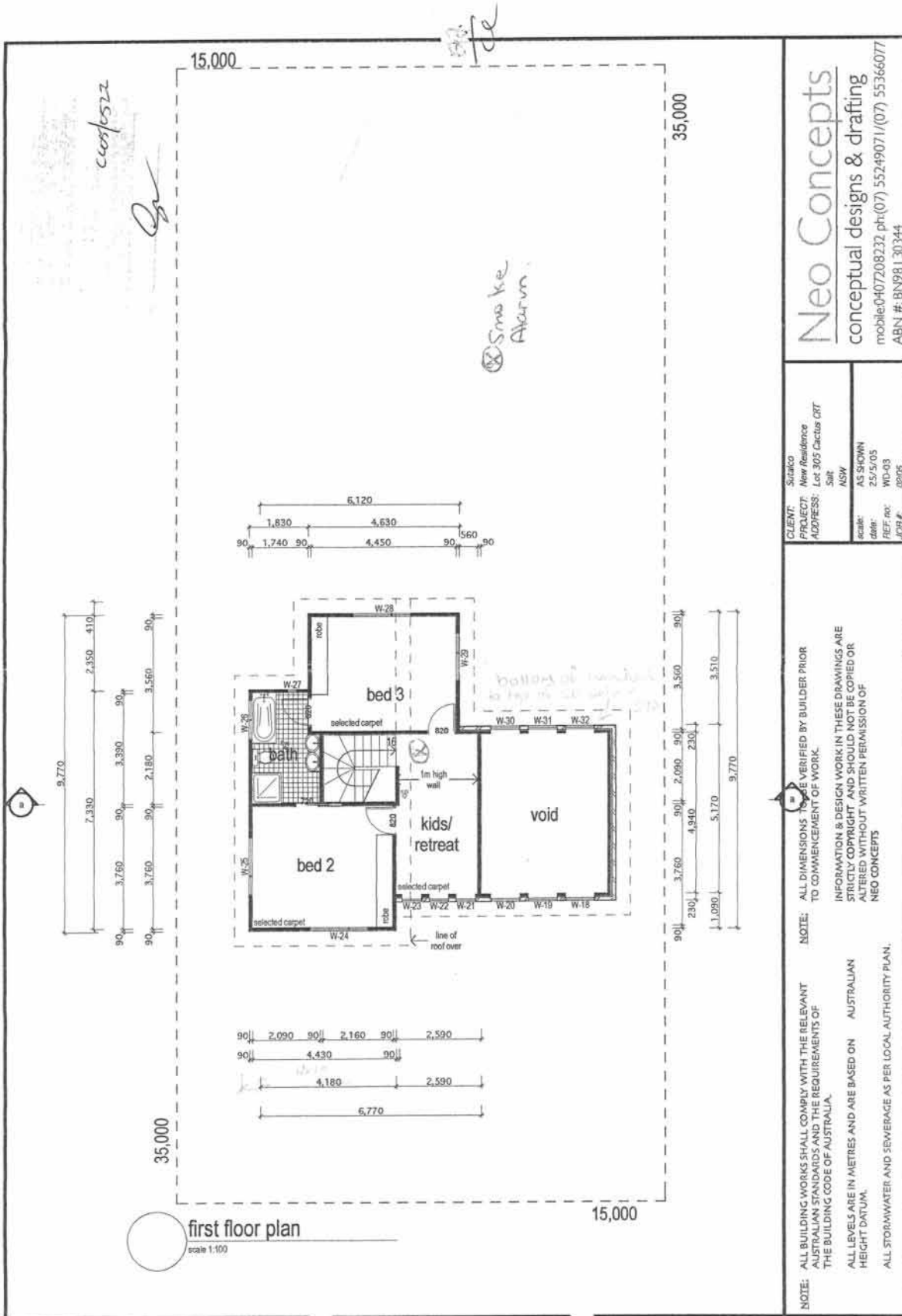
Author: J.Dick-Solis - Planning Information Unit

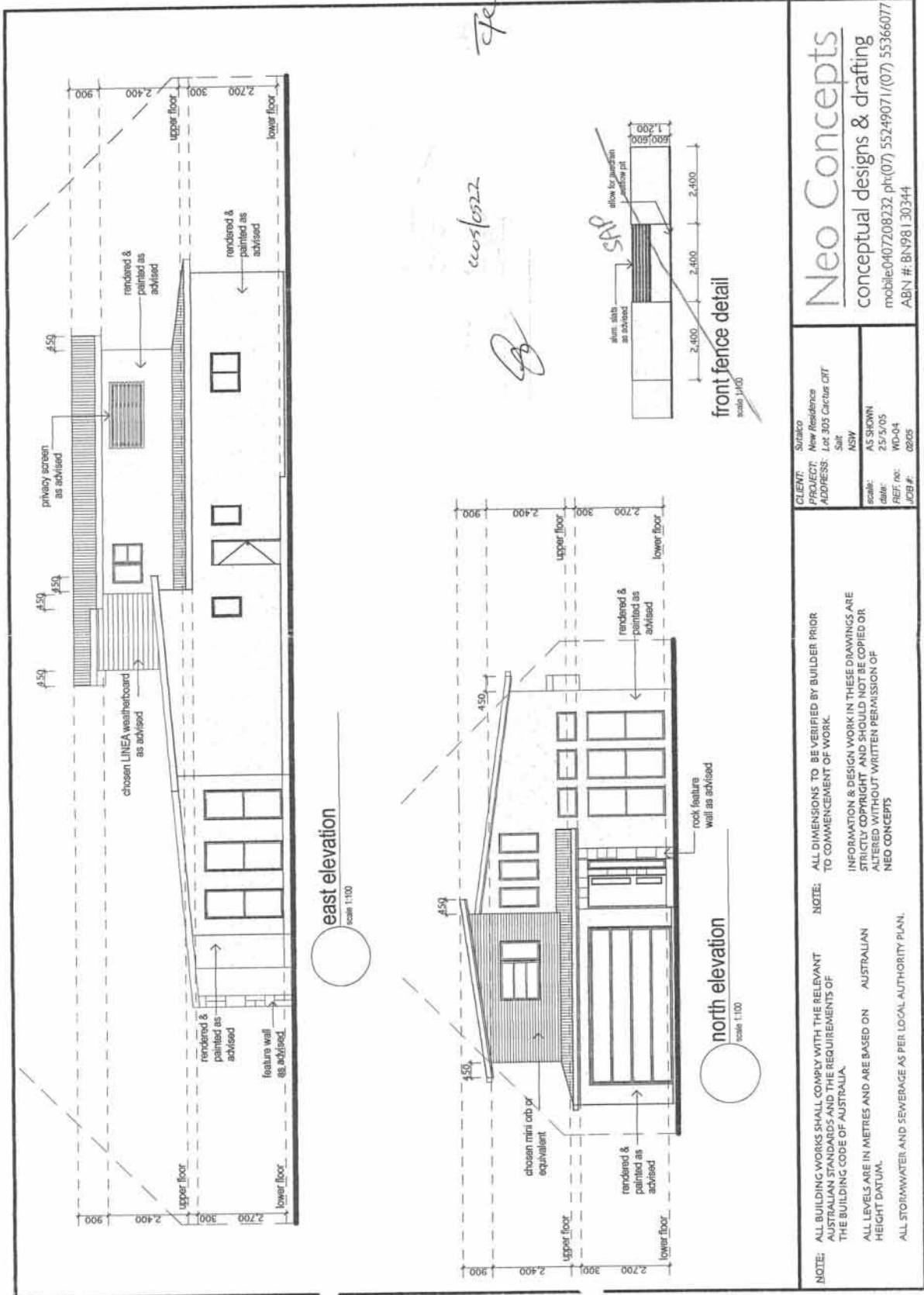
Date Plotted: 15 July 2014

DEVELOPMENT/ELEVATION PLANS:









**west elevation**  
scale 1:100

**south elevation**  
scale 1:100

cc05/0572

CP

<p><b>CLIENT:</b> Suralco  <b>PROJECT:</b> New Residence  <b>ADDRESS:</b> Lot 305 Carabus CRT                  Salt NSW</p>	<p><b>scale:</b> AS SHOWN  <b>date:</b> 23/5/05  <b>REF no:</b> WD-05  <b>JOB #:</b> 02905</p>
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**Neo Concepts**  
conceptual designs & drafting  
mobile 0407208232, ph: (07) 55249071 / (07) 55366077  
ABN #: BN981 30344

**NOTE:** ALL BUILDING WORKS SHALL COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS AND THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA.

ALL LEVELS ARE IN METRES AND ARE BASED ON AUSTRALIAN HEIGHT DATUM.

ALL STORMWATER AND SEWERAGE AS PER LOCAL AUTHORITY PLAN.

**NOTE:** ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORK.

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**Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed change of use is considered consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The development raises no specific concerns or implications in respect of ecologically sustainable development.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 2(f) Tourist, the primary objective of which is to:

- Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Whilst the development (as 'tourist accommodation') could be seen to be consistent with the above objectives, what has not been demonstrated by the applicant is how the proposed development is consistent with the definitions of both 'dwelling' and 'tourist accommodation' at the same time.

For example, 'dwelling' is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.

'Tourist accommodation' is defined as 'a building **principally used** for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule'.

Proposing a 'dual use' of the above uses is ambiguous as they would appear to be fundamentally opposed uses. 'Dual' use does not imply that the building is **principally used** as tourist accommodation and no time frame (or other method) has been proposed by the applicant in order to satisfy this conundrum, particularly considering the fact that the building is an approved dwelling.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality.

#### Clause 11 - Zone Objectives

The site is zoned 2(f) Tourism which has the following zone objectives:

- Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Whilst the development could be seen to achieve consistency with these objectives, as outlined above the development is not considered to be consistent with either the 'dwelling' or 'tourist accommodation' definition under the LEP.

The development is recommended for refusal based on non compliance with the objectives of the draft R2 Low Density Residential zone (Draft LEP 2012) which is now in force (LEP 2014).

#### Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services available.

#### Clause 16 - Height of Building

The proposal does not contravene the imposed three storey height restriction on the subject site as there is no change to the two storey height of the existing dwelling.

#### Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

#### Clause 35 - Acid Sulfate Soils

Class 4 Acid Sulfate Soils are present on the site. There are no works proposed. As such, no further consideration is required and this clause is satisfied.

#### Other Specific Clauses

The site is not bushfire prone and there is no tree preservation order located over the site. There are no other relevant LEP clauses.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.



Clause 43: Residential development

The application does not contradict the objectives of Clause 43. On-site density has been maximised without adversely affecting the environmental features of the land.

Clause 75: Tourism development

The plan generally refers to the location of large scale resort developments within prime tourism development area such as Kingscliff and Tweed Heads. The proposal does not meet the definition for small scale or low key tourism development as defined by the regional plan.

SEPP No 71 – Coastal Protection

The proposal will not restrict public access to the foreshore and is not considered to impact adversely on any of the matters for consideration under SEPP 71.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

Tweed Local Environmental Plan 2014 (draft LEP 2012)

It is noted that the draft Tweed Local Environmental Plan 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

The subject site is zoned R2: Low Density Residential. The proposed dual use of the existing dwelling (tourist accommodation) is defined as *Tourist and Visitor Accommodation*:

**tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

But does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

which is a prohibited use in the draft zone by its inclusion in Item 4 as below:

#### 4 Prohibited

Agriculture; Airstrip; Air transport facilities; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Camping grounds; Caravan parks; Cemetery; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematorium; Depots; Eco-tourist facilities; Entertainment facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home occupation (sex services); Hostels; Industries; Industrial retail outlets; Industrial training facilities; Information and education facilities; Marinas; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Public administration building; Recreation facilities(major); Registered clubs; Research stations; Residential flat buildings; Restricted premises; Rural industries; Rural worker's dwellings; Service stations; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Wharf or boating facilities; Wholesale supplies

Objectives of the R2 zone include the following:

- To provide for the housing needs of the community within a low density residential environment; and
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.

The proposal to utilise the dwelling for the purposes of tourist and visitor accommodation is not consistent with the objectives of the R2 Low Density Residential zone. The proposed use does not satisfy housing needs of the community, nor does it provide facilities or services to meet the day to day needs of residents.

Draft zoning for the locality was informed by the LEP Practice note PN 09-006 *Providing for tourism in Standard Instrument local environmental plans*, circulated by the Department of Planning on 2 December 2009. These practice guidelines stipulate that tourist and visitor accommodation is not recommended in the R2 Low Density Residential zone.

The proposed use does not satisfy the objectives of the R2 Low Density Residential zone. Further detailed consideration against LEP 2014 is not considered necessary at this time given that consistency with the zone objectives cannot be demonstrated.

#### (a) (iii) Development Control Plan (DCP)

##### Tweed Development Control Plan

##### A1-Residential and Tourist Development Code

The existing dwelling and swimming pool on the allotment are both subject to development consent (issued by Council's Building Unit). The assessment report for the dwelling notes building line and fencing height variations which were ultimately considered acceptable as the application was approved. There is no need for further assessment of the existing dwelling under current DCP A1, particularly considering that no modifications to the building are proposed.

A2-Site Access and Parking Code

The dwelling contains a double garage and driveway parking would be available for two vehicles (maximum). All up, it is considered that parking could possibly be provided for four cars maximum. The applicant proposes a limitation on parking in that 'not more than four vehicles can be at the site at any one time with all car parking to be located within the property boundary of the subject site'. It is also requested that the 'staff' and 'HRV' requirements pertaining to tourist accommodation under the DCP be waived as these are not required.

It is considered that the existing on-site parking arrangements are sufficient for users of such a facility.

A3-Development of Flood Liable Land

The site is not flood prone.

A4-Advertising Signs Code

The application does not propose any signage. It is envisaged that the facility (if approved) would be advertised on line.

A11-Public Notification of Development Proposals

The application was placed on public exhibition (advertising) for 14 days from 7 May 2014 to 21 May 2014. During this time, one submission (objection) to the development were received which are addressed further in this report.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principles. This application does not contradict the objectives of this plan.

**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is not considered that the proposed dual use of the existing dwelling for tourist accommodation contradicts the objectives of the Government Coastal Policy.

This proposal does not require demolition or a change of BCA classification and no works are proposed. As such, Clause 92(b) (Applications for demolition), Clause 93 (Fire Safety Considerations) and Clause 94 (Buildings to be upgraded) of the Regulations do not apply.

**(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

The proposal does not impact upon coastal zone management plans.

**Tweed Shire Coastline Management Plan 2005**

The proposal does not impact upon coastline management strategies.

**Tweed Coast Estuaries Management Plan 2004**

The proposal does not impact upon estuaries management strategies.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The proposal does not impact upon coastal zone management strategies for Cobaki and Terranora Broadwater.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Amenity

Adjacent properties may be impacted by the constant nature of short-term visitors. The applicant has proposed the use of a plan of management to monitor and regulate amenity impacts that may arise from the development inclusive of those raised in submissions below. Notwithstanding, given the proximity of the development to residential dwellings, the issues raised in submissions pertaining to noise, traffic, safety and security (as addressed below) are considered warranted.

Context and Setting

The proposed development is located within an area dominated by large dwellings lawfully utilised for long-term residential purposes and large scale resort developments within the prime tourism development area of Kingscliff. It is intended that the large scale resorts provide tourist accommodation and flexible use options into the future, not single dwellings.

The proposed use of the dwelling as tourist accommodation is not consistent with the surrounding residential context.

**(c) Suitability of the site for the development**

The site is not considered to be suitable for the proposed development as the current zoning under LEP 2014 (imminent and certain at the time of lodgement of the application) prohibits the proposed use.

**(d) Any submissions made in accordance with the Act or Regulations**

The application was placed on public exhibition (advertising) for 14 days from 7 May 2014 to 21 May 2014. During this time, one submission (objection) to the development was received. The matters raised are addressed below:

Matters raised	Council response
<p>Allowing a change of use of this property is completely unwarranted as Salt Village is already very well serviced with tourist accommodation. Allowing it to sneak into residential areas will erode the unique Salt lifestyle.</p>	<p>Council officers agree that the proposed tourist use is incompatible with surrounding residential land uses.</p>
<p>Increased traffic will be undesirable. There is the potential for the street to be cluttered with vehicles. There is not adequate off street parking to accommodate the proposed use.</p>	<p>It is acknowledged by Council staff that use of the dwelling as tourist accommodation could result in increased traffic. If approved, conditions would be applied requiring all parking to be within the property boundary (though it is noted that this may be difficult to enforce). However, the development as a whole is</p>

Matters raised	Council response
	considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
Increased noise from people and vehicles will be undesirable.	It is acknowledged by Council staff that use of the dwelling as tourist accommodation could result in increased noise from patrons inclusive of their vehicles. If approved, conditions would be applied requiring all parking to be within the property boundary (though it is noted that this may be difficult to enforce). However, the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
There will be an increased security risk for other residents in the street with strangers en masse staying in the dwelling.	Council officers agree that there may be amenity impacts were the application to be approved. Mitigation of such impacts could occur via conditions of consent. However the development as a whole is considered incompatible with surrounding residential development and is recommended for refusal for other reasons.
There is the potential for a negative impact on the value and desirability for purchase of other homes in the street. The street is presently a 'family friendly' street which is a selling factor. Allowing more vehicles and people would remove this benefit.	Property values are not a consideration for assessment under the NSW Planning legislation.
As No. 12 Cactus Court has also lodged an application for tourist use, the impacts of the development would be twofold.	Council officers agree that the impact of two dwellings being let as tourist accommodation would compound amenity impacts for existing residents. The development is recommended for refusal for other reasons.

It is considered that the proposed development would create unreasonable conflict within the existing residential area. The objectives of LEP 2014 in relation to the R2 zone are clear and the development should be refused on that basis.

**(e) Public interest**

Whilst the proposed development complied with the zoning controls under Tweed Local Environmental Plan 2000 at the time of lodgement of the application, at that

point it was certain and imminent that the Draft LEP 2012 would prohibit the development. After LEP 2014 was gazetted on 4 April 2014, it is abundantly clear that the proposed development is prohibited. As such, the development is not considered to be in the public interest.

**OPTIONS:**

1. Refuse the application; or
2. Approve the development application with the following recommended conditions of consent.

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and plans as listed in the table below, except where varied by the conditions of this consent.

<b>Title</b>	<b>Prepared by</b>	<b>Dated</b>
Pool Plan/Site Plan	Harcourt Consulting Engineers	February 2007
Site Plan	Neo Concepts	March 2005
Ground Floor Plan	Neo Concepts	February 2005
First Floor Plan	Neo Concepts	February 2005
Elevation Plan (north and east)	Neo Concepts	February 2005
Elevation Plan (south and west)	Neo Concepts	February 2005

[GEN0005]

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).  
[GEN0065]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
4. Use of the existing dwelling for short term tourist accommodation purposes shall be restricted to one single booking at any time which may consist of a maximum of four adults and six children.
5. The keeping of dogs, cats or other animals at the premises by tourist accommodation groups is strictly prohibited.
6. A visitor log book shall be maintained as a record of the tourist accommodation use specifying names of visitors with dates and duration of stay. This log book is to be presented to Council no later than 31 July of each year for inspection purposes.
7. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site.

8. A Plan of Management is to incorporate and convey a clear understanding of the terms and conditions of short term tourist accommodation use consistent with the conditions of this development consent and existing S88B restrictions on the use of the land. A copy of the Plan of Management shall be submitted to Council for approval by the General Manager or delegate prior to first use of the dwelling for the purposes of short term tourist accommodation and subsequent to any future amendments being made to the document.
9. The keeping of dogs, cats or other animals on the property for residential purposes is to be in accordance with any relevant Section 88B Instrument requirements.
10. All landscaping is to comply with the S88B instrument pertaining to the site.
11. A 24 hour contact (name and contact details) shall be made available to Council and to residences within a 100m radius of the subject site prior to the first use of the dwelling for the purposes of short term tourist accommodation to address issues that may arise as a result of tourist accommodation tenancies.
12. Any room utilised for sleeping accommodation shall comply with the NSW Public Health Regulations 2012.

[GENNS01]

## USE

13. 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.
14. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.
15. 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.
16. 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.

[USE0125]

[USE0175]

[USE0225]

[USE0245]

17. The premises shall be maintained in a clean and tidy manner. [USE0965]
  
18. Any public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012. *Note: A public swimming pool includes a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests.* [USE0985]
  
19. Four off street car parking spaces shall be provided to cater for the tourist accommodation use, including parking for the disabled where applicable. The subject development is to result in no off site vehicular parking associated with the tourist accommodation use of the site.
  
20. A current hard copy of the Council approved Plan of Management (Tenancy Agreement Management Policy) shall be kept at the premises at all times and be made available to tourist accommodation groups at the time of booking or upon request.
  
21. Prior to the use of the premises for tourist accommodation purposes the proprietor shall provide appropriate notification to Tweed Shire Council in writing in accordance with the Public Health Regulation 2012 and pay the appropriate notification fee as per Council's current adopted Fees and Charges.
  
22. This development consent authorises a change of use of the existing structure on site from 100% residential use to a dual use for either short term tourist accommodation or residential use. Please note that the dwelling must be utilised for short term tourist accommodation for a minimum of six months of the year. [USENS01]

Council officers recommend Option 1.

**CONCLUSION:**

The development is prohibited by and inconsistent with the Draft LEP 2012 in force at the time the application was lodged, and LEP 2014 which is now in force, specifically the objectives of the R2 Low Density Residential zone. It is therefore recommended that the development be refused.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant may appeal Council's determination in the NSW Land and Environment Court.



**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**11 [PR-PC] Development Application DA14/0288 for a Detached Dual Occupancy at Lot 50 DP 1186189 No. 305 Casuarina Way, Kingscliff**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA14/0288 Pt1**

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## **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

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### **SUMMARY OF REPORT:**

This application proposes a detached dual occupancy development. Both dwellings are two storeys in height each dwelling having access via separate streets. Dwelling 1 fronts Sailfish Way and has access from that street. Dwelling 2 fronts Casuarina Way and has access from that street.

The site is commonly known as No. 305 Casuarina Way Kingscliff. The site has dual frontage to both Sailfish Way and Casuarina Way. The site is generally regular in shape and provides a total area of 704.42m<sup>2</sup>. The site is surrounded by R2 Low Density Residential zoned land.

This development application has been referred to Council to determine as the application proposes a variation greater than 10% to the Floor Space Ratio (FSR) stated within Tweed Local Environmental Plan 2014. The stated FSR for the site is 0.5 with the proposed FSR for the development being 0.5797. The proposed variation has been assessed within the body of this report and the variation is considered acceptable in this instance.

### **RECOMMENDATION:**

**That Development Application DA14/0288 for a detached dual occupancy at Lot 50 DP 1186189 No. 305 Casuarina Way, 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 sheet 1, 3, 4, 5, 6, 7, 8 and 9, prepared by Parameter Design and dated 28 April 2014, Plan No. 13-045 sheet 1 of 1 issue C titled Landscaping Concept dated November 2013, except where varied by the conditions of this consent.**

[GEN0005]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

3. A Construction Certificate approval is to be obtained for all proposed pre-cast concrete panel fencing of any height and masonry fencing in excess of 1.2 metres in height, prior to any construction of the fence being commenced.

Site specific design details or approved generic details prepared by a practicing structural engineer are required to be submitted and approved as part of the Construction Certificate application.

Such structural engineers design details are to confirm that the fence proposal has been designed to take account of all site issues including the site's soil and load bearing characteristics, wind and other applied loadings, long term durability of all components particularly in relation to corrosion and compliance with Tweed Shire Council's policies for "Sewers - Building in Proximity" and provision of appropriate pedestrian sight clearances to footpaths in accordance with Australian Standard AS2890 "Parking Facilities".

[GEN0145]

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. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

6. No object (fence or landscaping etc) is permitted within the 2 metre by 2 metre 'sight line triangle' adjacent to the hereby approved driveways, in accordance with Council's Driveway Access to Property Specification.

[GENNS01]

7. Fences and walls are to comply with the provisions of Council's Development Control Plan B11 - Seaside City.

[GENNS02]

8. Cut and fill are to comply with the provisions of Council's Development Control Plan A1 - Residential and Tourist Development Code.

[GENNS03]

9. Landscaping species are to comprise no less than 80% native species.

[GENNS04]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

10. 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]

11. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

12. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.

- (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]

13. A construction certificate application for works that involve any of the following:

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for subdivision works, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

14. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

15. For developments containing less than four attached or detached dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

16. 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]

## **PRIOR TO COMMENCEMENT OF WORK**

17. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works. [PCW0005]
18. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans. [PCW0015]
19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

- 24. Prior to commencement of building works a stormwater drainage plan is to be submitted to and approved by the Principal Certifying Authority.

[PCW0955]

- 25. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

- 26. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

- 27. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

## DURING CONSTRUCTION

- 28. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved construction certificate, drawings and specifications.

[DUR0005]

- 29. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]



30. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

**Monday to Saturday from 7.00am to 6.00pm**

**No work to be carried out on Sundays or Public Holidays**

**The proponent is responsible to instruct and control subcontractors regarding hours of work.**

[DUR0205]

31. All 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]

32. 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]

33. 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]

34. 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]

35. Excavation

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

36. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

37. 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]

**38. 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]

**39. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works, when required. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.**

[DUR1075]

**40. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.**

[DUR1945]

**41. 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]

**42. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.**

[DUR2185]

**43. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.**

[DUR2245]

**44. 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]

**45. 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]

46. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

47. 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]

48. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:

- \* 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

49. 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]

50. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
  - (i) the method of protection; and
  - (ii) the date of installation of the system; and
  - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
  - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

51. Application is to be made to Tweed Shire Council for a street address number. The number is to be prominently displayed prior to the occupation of the building.

[POC0245]

52. 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]

**53. Section 94 Contributions**

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction 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, except in the case of any S94 Plan No 28 contributions, which must be paid within 30 days of commencement of the erection of a dwelling house, units or commercial development.

**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:<br>1.3 Trips @ \$1199 per Trips<br>(\$1,145 base rate + \$54 indexation)<br>S94 Plan No. 4<br>Sector7_4    | \$1,559 |
| (b) Shirewide Library Facilities:<br>0.875 ET @ \$847 per ET<br>(\$792 base rate + \$55 indexation)<br>S94 Plan No. 11                       | \$741   |
| (c) Bus Shelters:<br>0.875 ET @ \$64 per ET<br>(\$60 base rate + \$4 indexation)<br>S94 Plan No. 12  | \$56    |
| (d) Eviron Cemetery:<br>0.875 ET @ \$124 per ET<br>(\$101 base rate + \$23 indexation)<br>S94 Plan No. 13                                    | \$109   |
| (e) Community Facilities (Tweed Coast - North)<br>0.875 ET @ \$1404 per ET<br>(\$1,305.60 base rate + \$98.40 indexation)<br>S94 Plan No. 15 | \$1,229 |

<p>(f) <b>Extensions to Council Administration Offices &amp; Technical Support Facilities</b>                  0.875 ET @ \$1880.38 per ET                  (\$1,759.90 base rate + \$120.48 indexation)                  S94 Plan No. 18</p>	<p><b>\$1,645.33</b></p>
<p>(g) <b>Regional Open Space (Casual)</b>                  0.875 ET @ \$1103 per ET                  (\$1,031 base rate + \$72 indexation)                  S94 Plan No. 26</p>	<p><b>\$965</b></p>
<p>(h) <b>Regional Open Space (Structured):</b>                  0.875 ET @ \$3872 per ET                  (\$3,619 base rate + \$253 indexation)                  S94 Plan No. 26</p>	<p><b>\$3,388</b></p>
<p>(i) <b>Seaside City Structured Open Space:</b>                  0.875 ET @ \$4268 per ET                  (\$3,585 base rate + \$683 indexation)                  S94 Plan No. 28</p>	<p><b>\$3,734.50</b></p>

[POC0395/PSC0175]

54. 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]

55. 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.

As this lot has not previously been connected to Council's Water Supply and Sewerage Schemes, the following capital contributions in addition to and physical works required to connect the development are required under Section 306 of the Water Management Act and must be paid within 30 days of commencement of the erection of a dwelling house, units or commercial development.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP6:	1 ET @ \$12907 per ET	\$12,907
South Kingscliff Water Levy:	1 ET @ 307 per ET	\$307
Sewer Kingscliff:	1 ET @ \$6201 per ET	\$6,201

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

**Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.**

[POC0675/PSC0165]

- 56. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.**

[POC1045]

## **USE**

- 57. 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]

- 58. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.**

[USE0175]

- 59. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.**

[USE0435]

- 60. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.**

[USE0735]

**REPORT:**

**Applicant:** Parameter Designs  
**Owner:** Mr Stewart JD Layt  
**Location:** Lot 50 DP 1186189 No. 305 Casuarina Way, Kingscliff  
**Zoning:** R2 Low Density Residential  
**Cost:** \$680,000

**Background:**

The site is commonly known as No. 305 Casuarina Way Kingscliff. The site has dual frontage to both Sailfish Way and Casuarina Way. The site is generally regular in shape and provides a total area of 704.42m<sup>2</sup>. The site is surrounded by R2 Low Density Residential zoned land. The site was created via a residential subdivision (DA12/0393) being for the subdivision of 33 lots into 53 lots, within the Seaside City Estate.

The proposal seeks development consent for a detached dual occupancy. Both dwellings are two storeys in height with each dwelling having access via separate streets. Dwelling 1 fronts Sailfish Way and has access from that street. Dwelling 2 fronts Casuarina Way and has access from that street. Dwelling 1 proposes a front setback variation to the garage and a side setback variation to the upper level stairwell. Dwelling 2 proposes a side setback variation for the upper level stairwell. Dwelling 1 contains four bedrooms with a floor area of 231.75m<sup>2</sup>. Dwelling 2 contains three bedrooms with a floor area of 176.64m<sup>2</sup>.

The application was notified development Council received one submission objecting to the proposal.

**SITE DIAGRAM:**



**Locality Plan**

Lot 50 DP1186189  
No.305 Casuarina Way, Kingscliff

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Dig before You Dig' enquiry must be made by calling 1100. The information contained in this document remains valid for 30 days only from the date of supply.

Cadastral 23/07/2014  
© Land and Property Information (LPI) & Tweed Shire Council.  
Boundaries shown should be considered approximate only.

0 0.5 1 Km  
1:55,000 @ A4 Portrait  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED



Map Projection: Universal Transverse Mercator  
Geoidetic Datum: Geoidetic Datum of Australia 1954  
SRID: Map of Australia, Zone 56

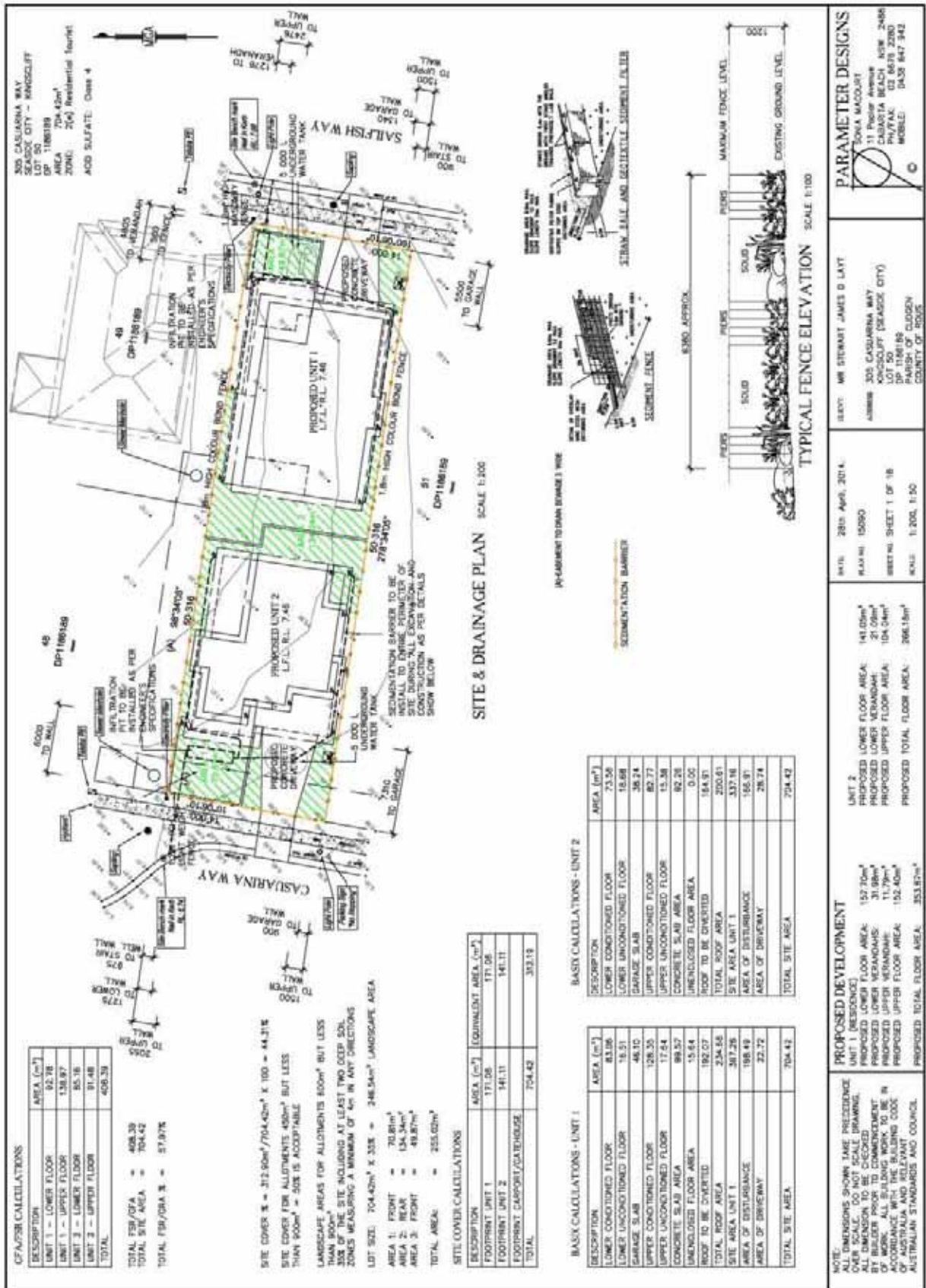
Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484

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

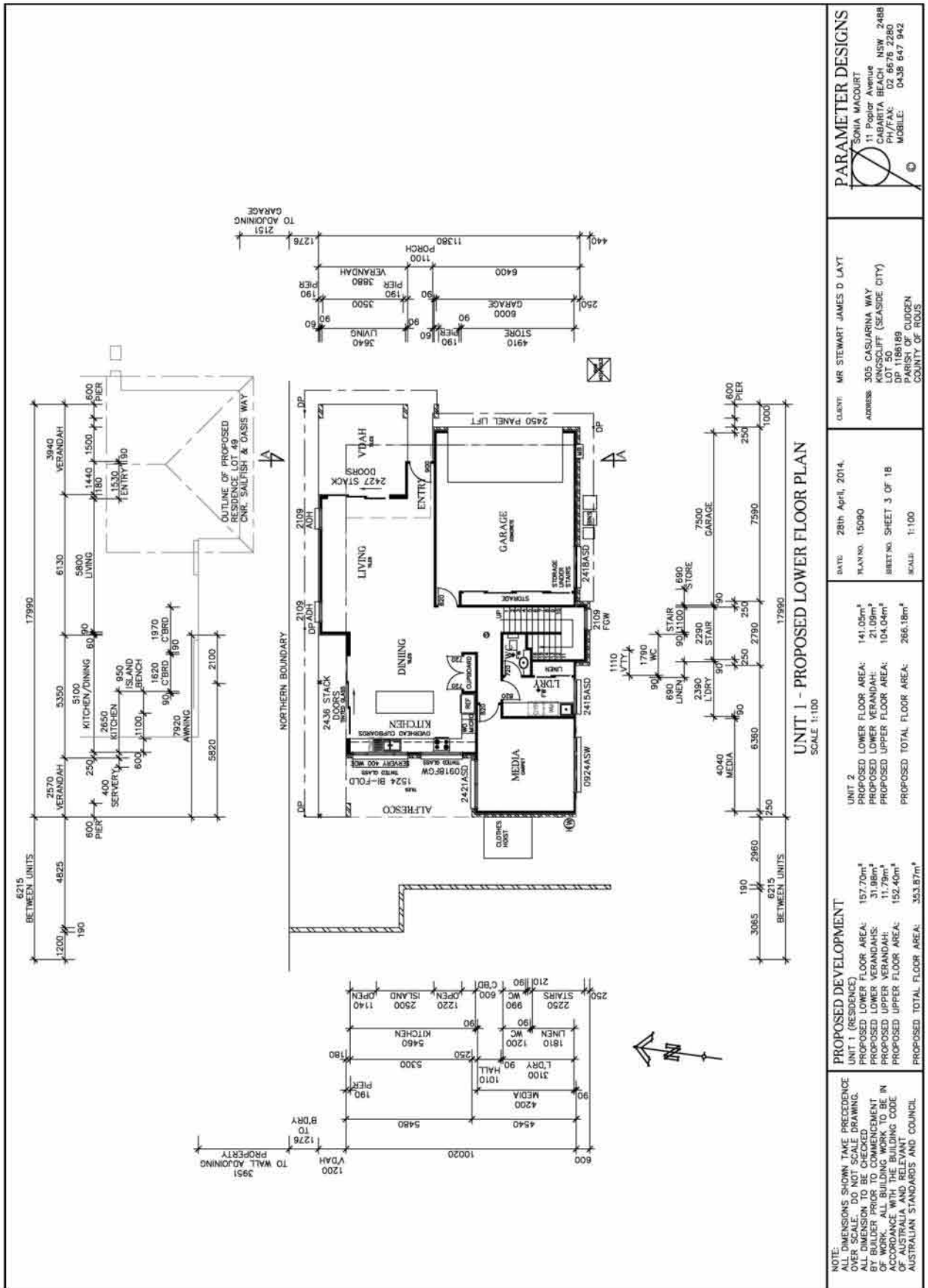


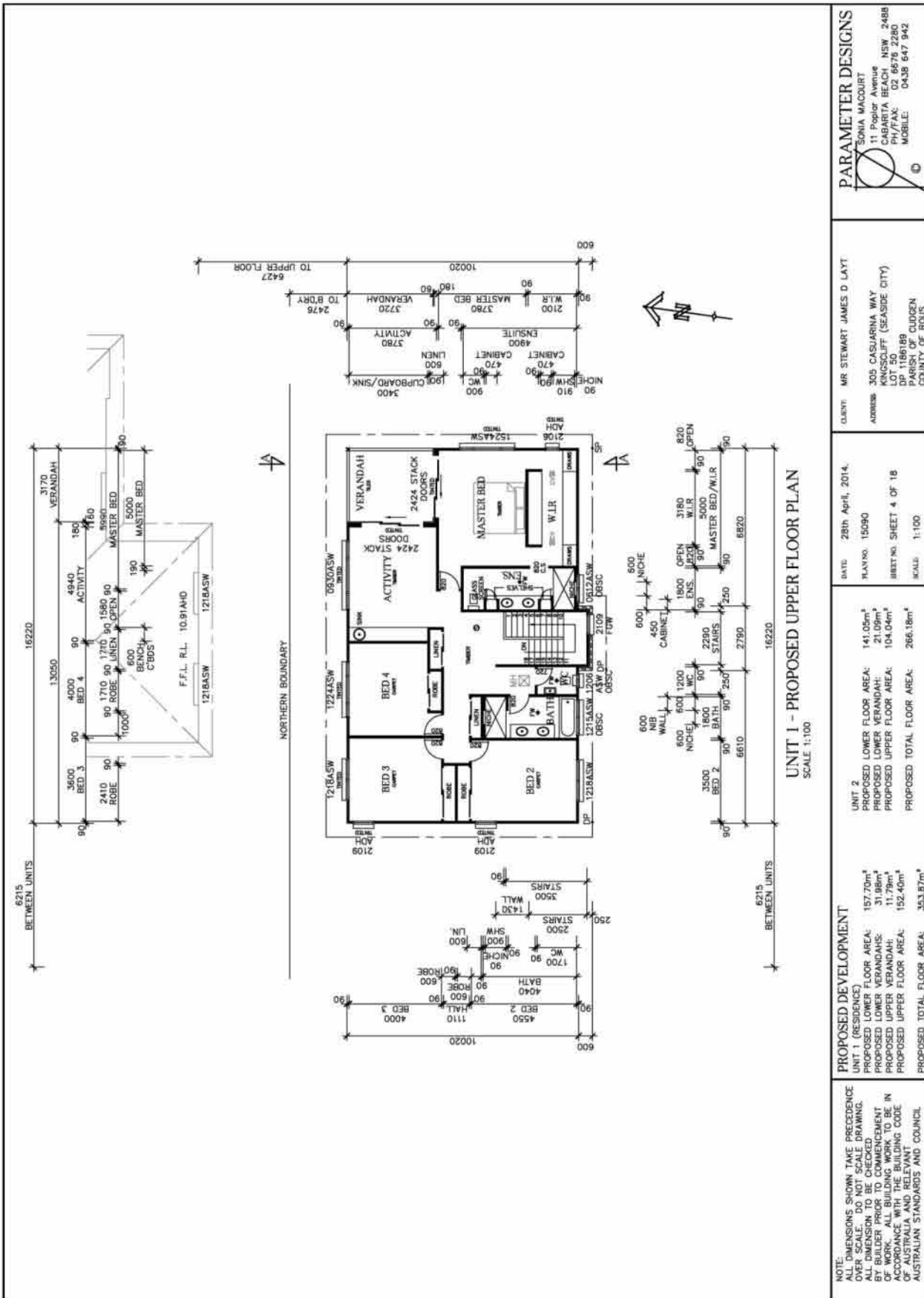


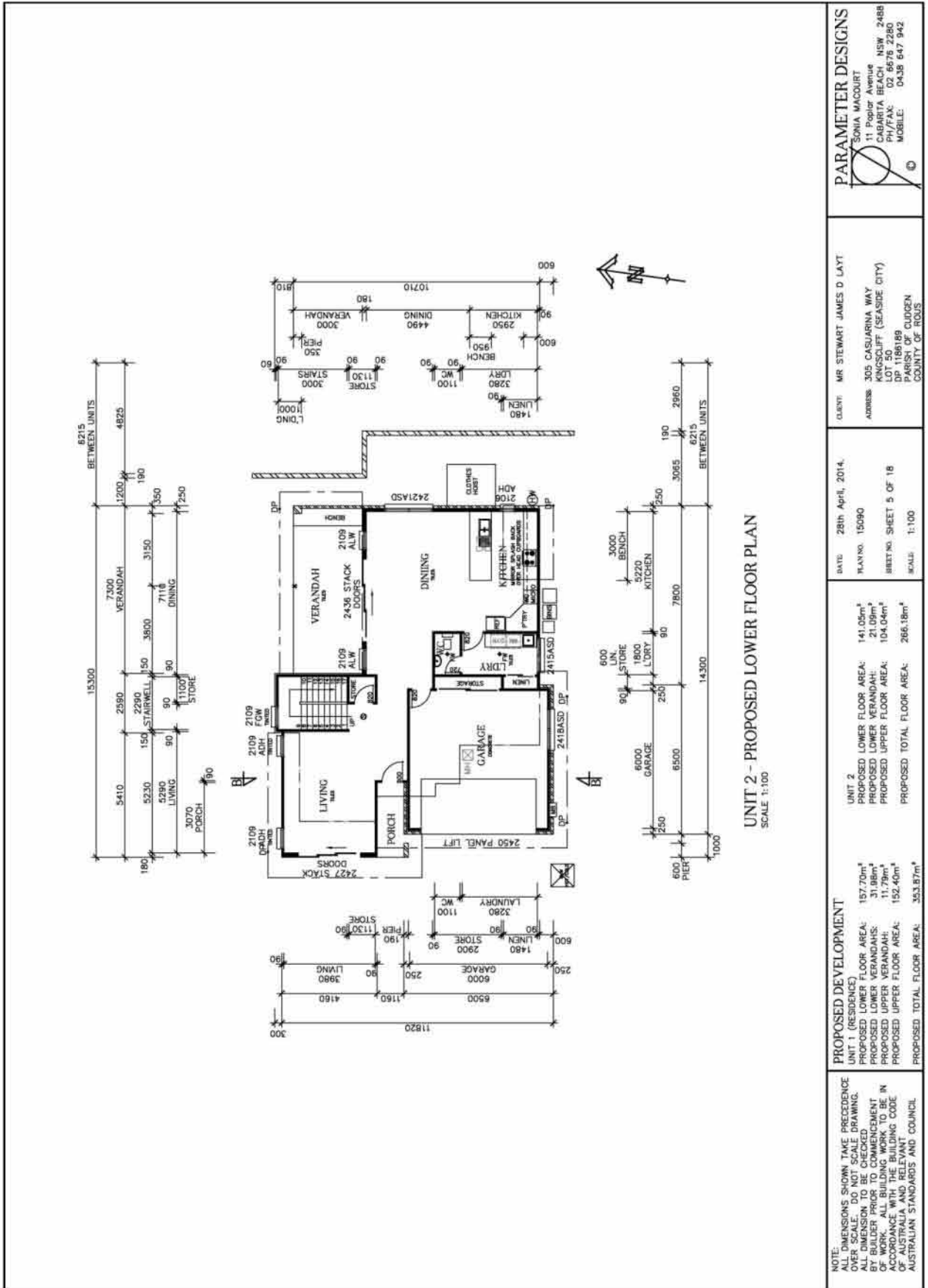
DEVELOPMENT/ELEVATION PLANS:











UNIT 2 - PROPOSED LOWER FLOOR PLAN  
SCALE 1:100

**PARAMETER DESIGNS**  
SONIA MACCOURT  
11 POOTH AVENUE  
KINGSCLIFF BEACH NSW 2488  
PH/FAX: 02 6676 2280  
MOBILE: 0438 647 942

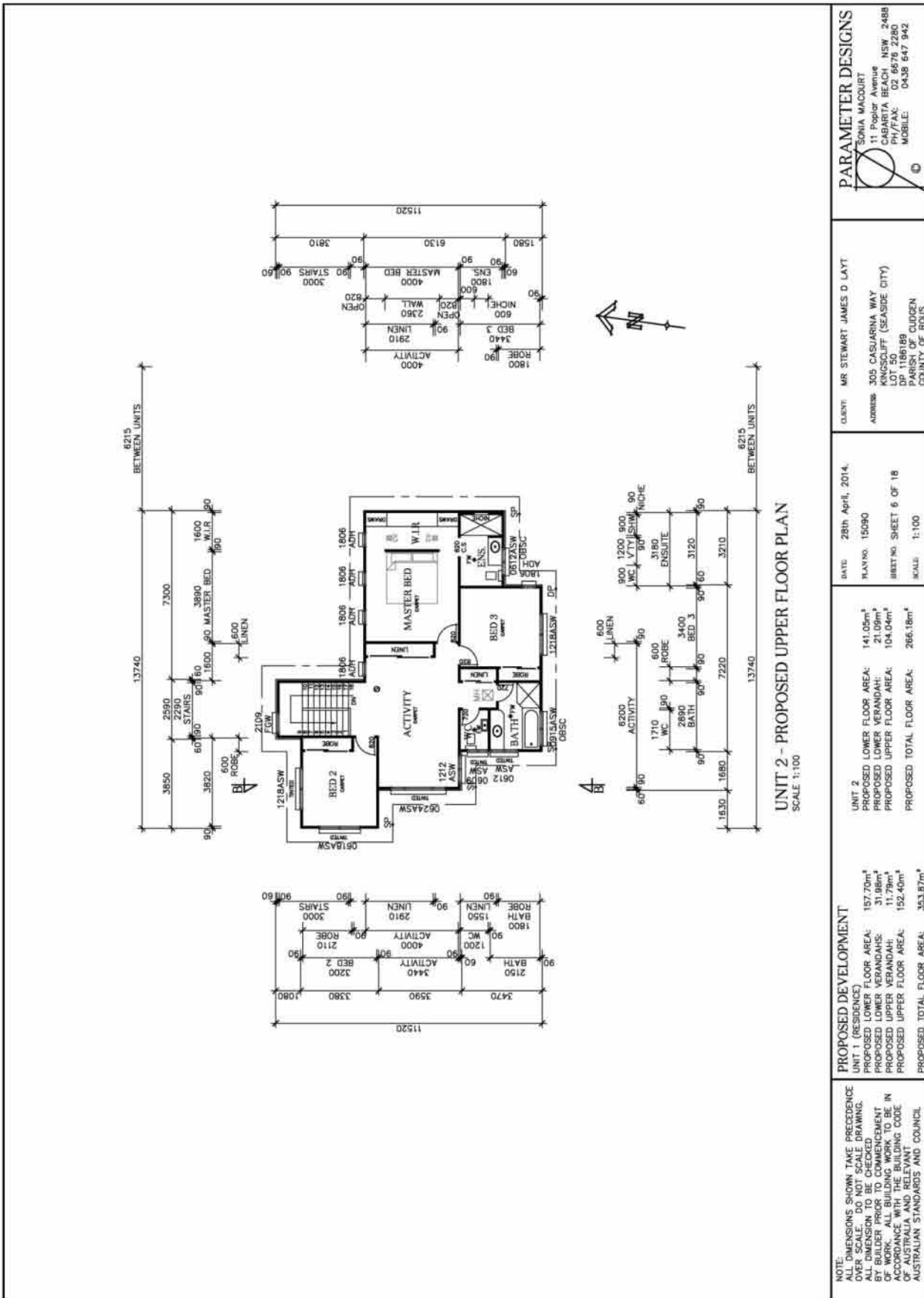
CLIENT: MR STEWART JAMES D LAYT  
ADDRESS: 305 CASUARINA WAY  
KINGSCLIFF (SEASIDE CITY)  
LOT 50  
DP 1188189  
PARISH OF CUDDEN  
COUNTY OF ROUS

DATE: 28th April, 2014.  
PLAN NO. 15090  
SHEET NO. SHEET 5 OF 18  
SCALE: 1:100

**UNIT 2**  
PROPOSED LOWER FLOOR AREA: 141.08m<sup>2</sup>  
PROPOSED LOWER VERANDAH: 21.08m<sup>2</sup>  
PROPOSED UPPER FLOOR AREA: 104.04m<sup>2</sup>  
PROPOSED TOTAL FLOOR AREA: 266.18m<sup>2</sup>

**PROPOSED DEVELOPMENT**  
UNIT 1 (RESIDENCE)  
PROPOSED LOWER FLOOR AREA: 157.70m<sup>2</sup>  
PROPOSED LOWER VERANDAH: 31.98m<sup>2</sup>  
PROPOSED UPPER FLOOR AREA: 11.79m<sup>2</sup>  
PROPOSED UPPER FLOOR AREA: 152.40m<sup>2</sup>  
PROPOSED TOTAL FLOOR AREA: 353.87m<sup>2</sup>

NOTE:  
ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING.  
ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK.  
ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL



**PARAMETER DESIGNS**  
SONIA MACCOURT  
11 Poplar Avenue  
CABARITA BEACH NSW 2488  
PH/FAX: 02 6676 2280  
MOBILE: 0438 647 942

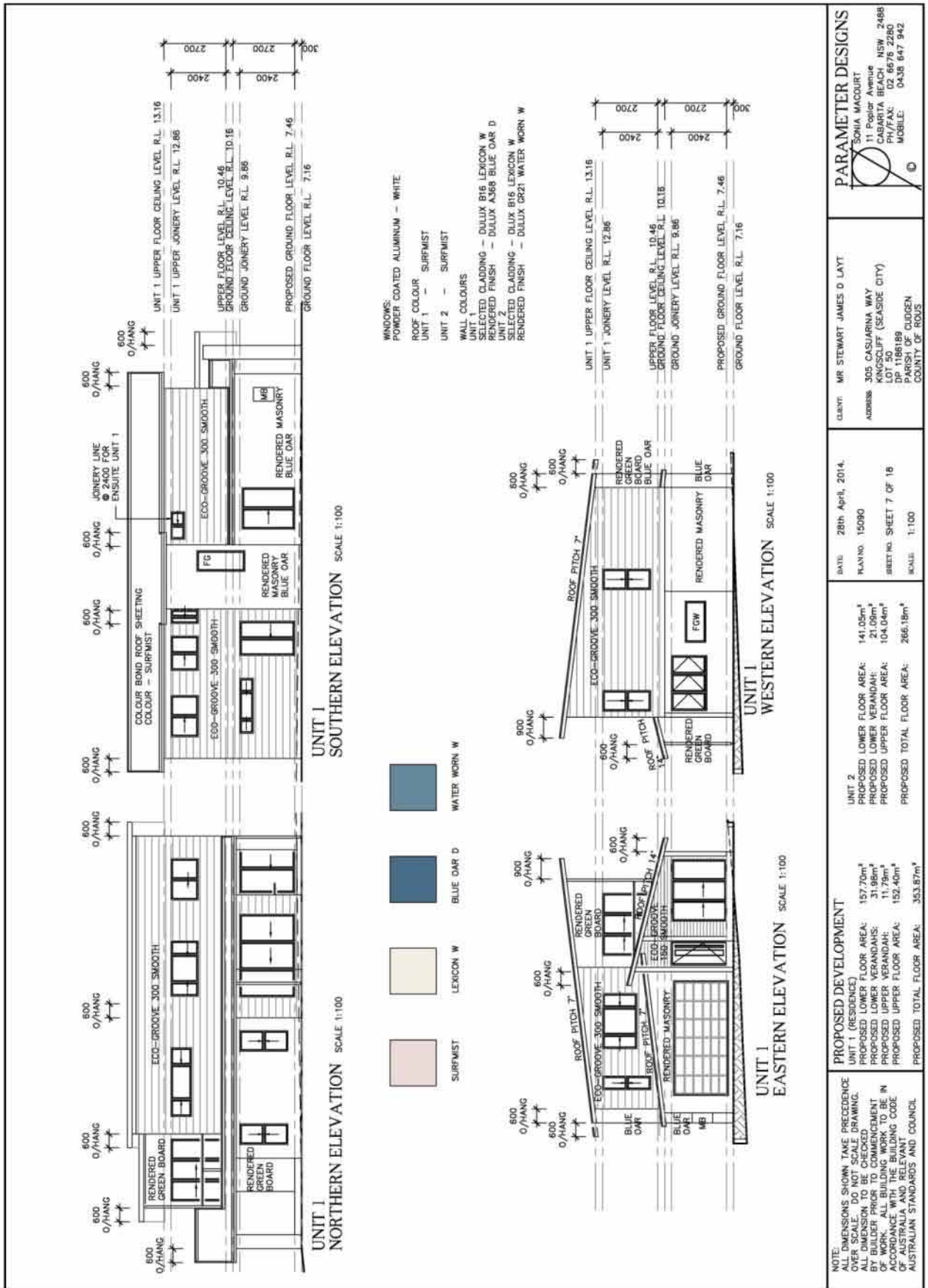
CLIENT: MR STEWART JAMES D LAYT  
ADDRESS: 305 CASUARINA WAY  
KINGSCLIFF (SEASIDE CITY)  
LOT 50  
DP 1186189 CUDGEN  
COUNTY OF ROUS

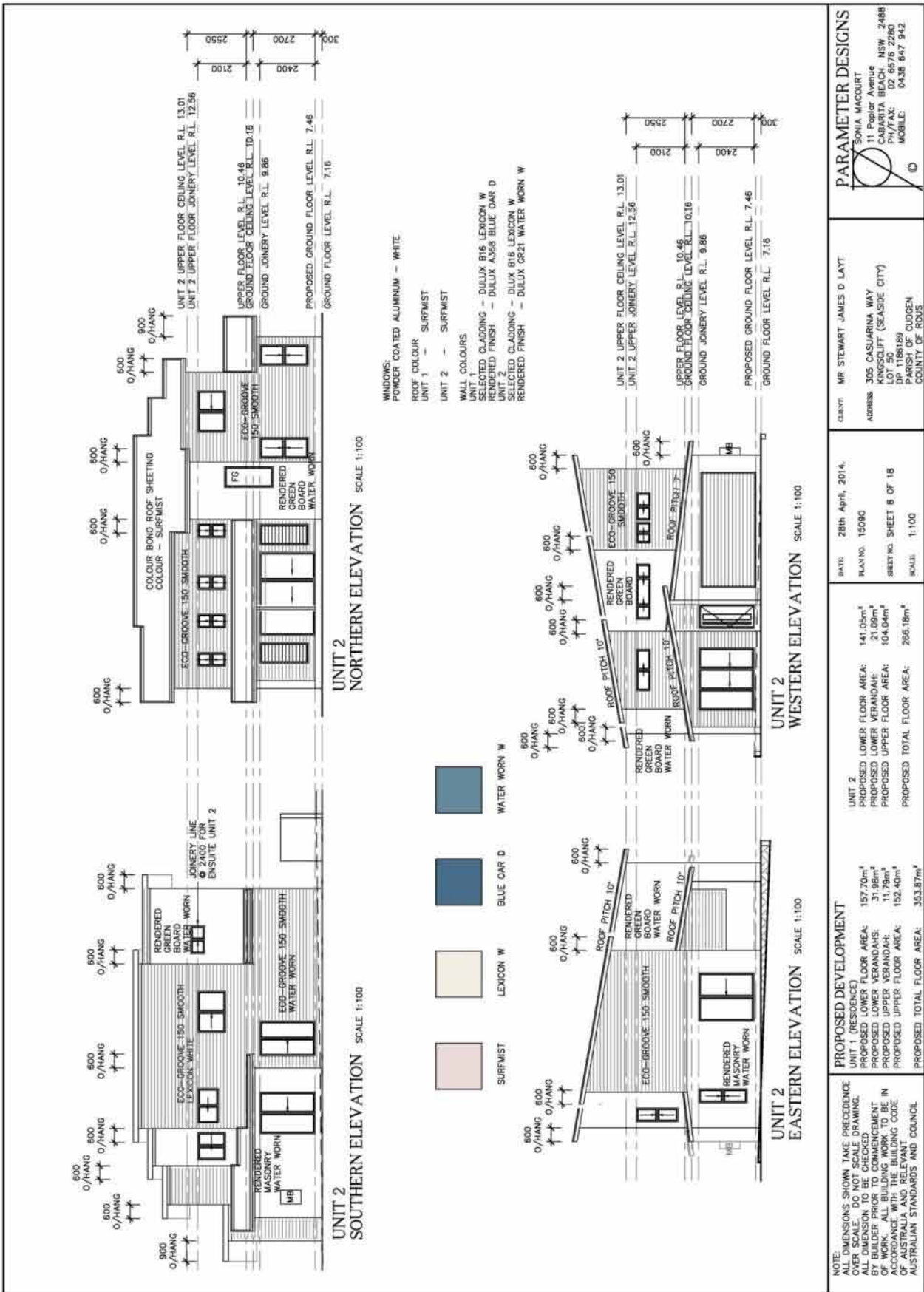
DATE: 28th April, 2014.  
PLAN NO. 15090  
SHEET NO. SHEET 6 OF 18  
SCALE: 1:100

UNIT 2  
PROPOSED LOWER FLOOR AREA: 141.08m<sup>2</sup>  
PROPOSED LOWER VERANDAH AREA: 21.09m<sup>2</sup>  
PROPOSED UPPER FLOOR AREA: 104.04m<sup>2</sup>  
PROPOSED TOTAL FLOOR AREA: 266.18m<sup>2</sup>

**PROPOSED DEVELOPMENT**  
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PROPOSED UPPER FLOOR AREA: 152.40m<sup>2</sup>  
PROPOSED TOTAL FLOOR AREA: 353.87m<sup>2</sup>

NOTE:  
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ALL DIMENSION TO BE CHECKED PRIOR TO CONSTRUCTION.  
OF BOLDER AND BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL





**PARAMETER DESIGNS**  
SONIA MACCOURT  
11 Poplar Avenue  
CABARITA BEACH NSW 2488  
PH/FAX: 02 6676 2280  
MOBILE: 04-38 647 942

**CLIENT:** MR STEWART JAMES D LAYT  
**ADDRESS:** 305 CASUARINA WAY  
KINGSCLIFF (SEASIDE CITY)  
LOT 50  
DP 1186189  
LINDEN  
COUNTY OF BOONS

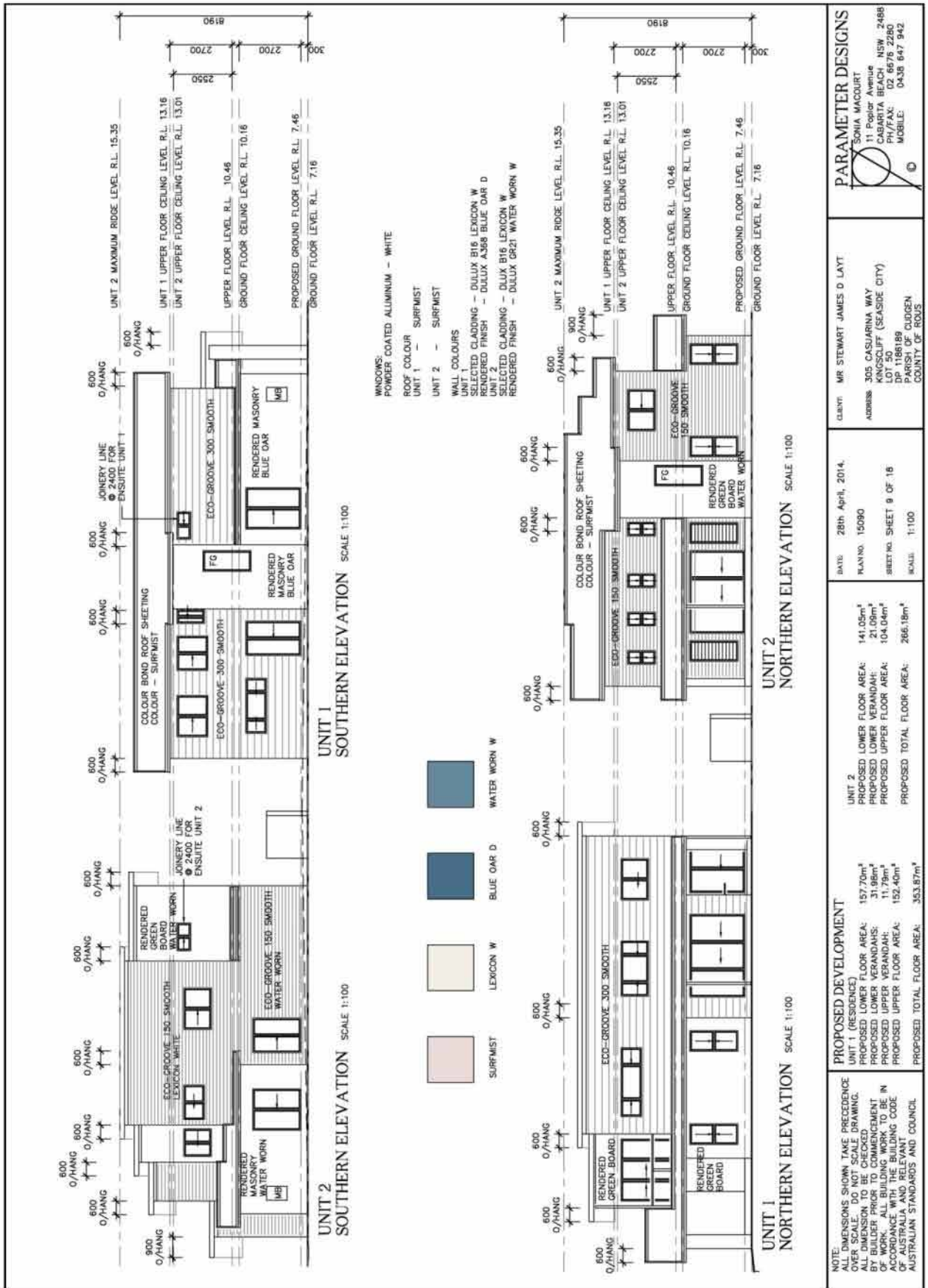
**DATE:** 28th April, 2014.  
**PLAN NO:** 15090  
**SHEET NO:** SHEET 5 OF 18  
**SCALE:** 1:100

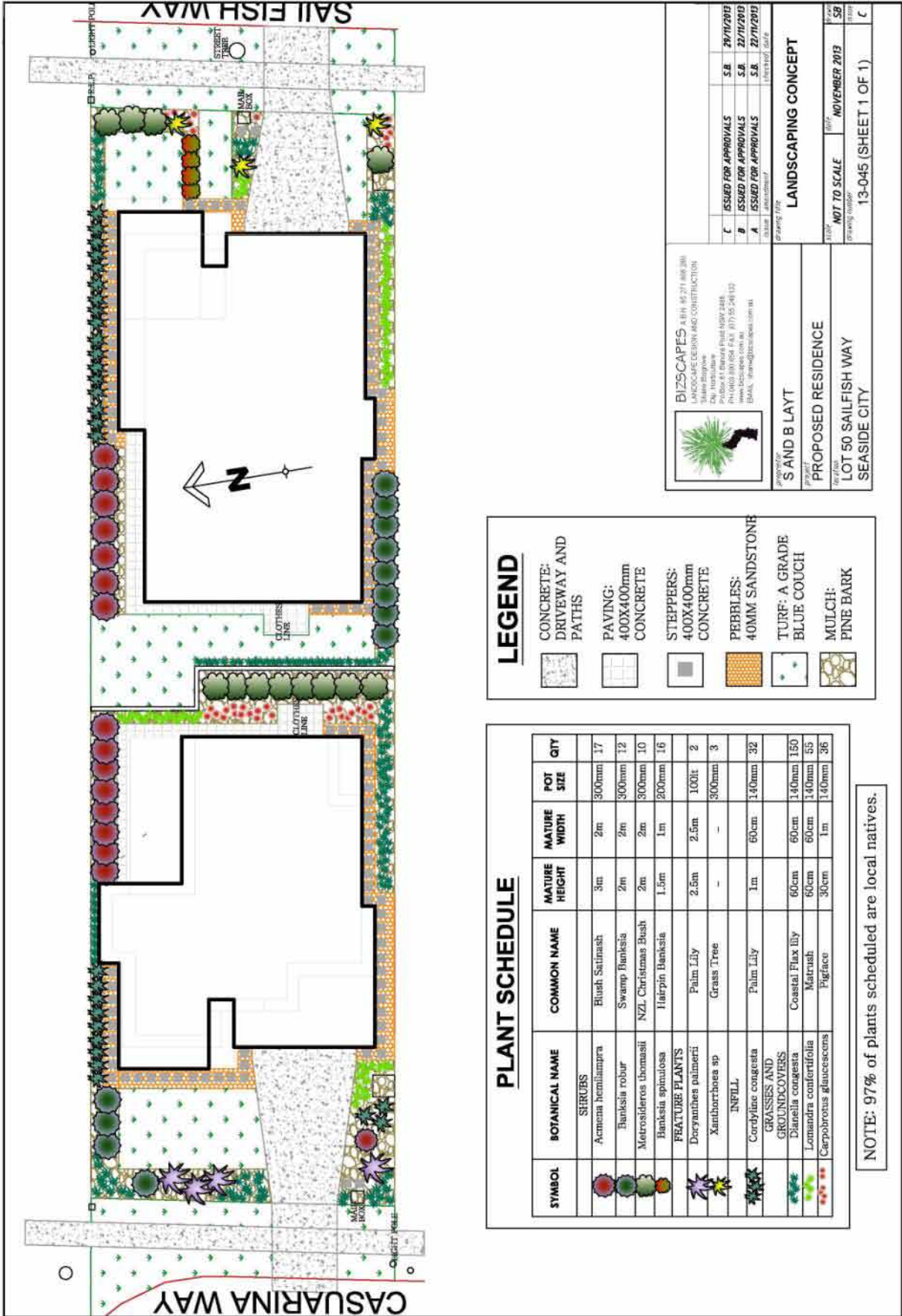
**UNIT 2**  
PROPOSED LOWER FLOOR AREA: 141.05m<sup>2</sup>  
PROPOSED LOWER VERANDAH: 21.00m<sup>2</sup>  
PROPOSED UPPER FLOOR AREA: 104.06m<sup>2</sup>  
PROPOSED TOTAL FLOOR AREA: 266.19m<sup>2</sup>

**PROPOSED DEVELOPMENT**  
UNIT 1 (RESIDENCE)  
PROPOSED LOWER FLOOR AREA: 157.70m<sup>2</sup>  
PROPOSED LOWER VERANDAH: 31.98m<sup>2</sup>  
PROPOSED UPPER FLOOR AREA: 117.79m<sup>2</sup>  
PROPOSED TOTAL FLOOR AREA: 353.87m<sup>2</sup>

**NOTE:**  
ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING.  
ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF BUILDING. DIMENSIONS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL.







**BIZSCAPES** 4/BN 95 271 809 280  
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 3/100 Singapore  
 11/0402 809 954 FAX: 0173 55 240 137  
 www.bizscapes.com.au  
 EMAIL: info@bizscapes.com.au

**ISSUED FOR APPROVALS** S.B. 29/11/2013  
**ISSUED FOR APPROVALS** S.B. 22/11/2013  
**ISSUED FOR APPROVALS** S.B. 22/11/2013

**LANDSCAPE CONCEPT**

**S AND B LAYT**

**PROPOSED RESIDENCE**  
 LOT 50 SAILFISH WAY  
 SEASIDE CITY

**NOT TO SCALE** DATE: NOVEMBER 2013  
 DRAWING NUMBER: 13-045 (SHEET 1 OF 1)

**LEGEND**

- CONCRETE: DRIVEWAY AND PATHS
- PAVING: 400X400mm CONCRETE
- STEPPERS: 400X400mm CONCRETE
- PEBBLES: 40MM SANDSTONE
- TURF: A GRADE BLUE COUCH
- MULCH: PINE BARK

**PLANT SCHEDULE**

SYMBOL	BOTANICAL NAME	COMMON NAME	MATURE HEIGHT	MATURE WIDTH	POT SIZE	QTY
	SHRUBS					
	Arcenna hemilampira	Blush Satinash	3m	2m	300mm	17
	Banksia robur	Swamp Banksia	2m	2m	300mm	12
	Metrosideros thomsonii	NZL Christmas Bush	2m	2m	300mm	10
	Banksia spinulosa	Hairpin Banksia	1.5m	1m	200mm	16
	FEATURE PLANTS					
	Doryanthes palmerii	Palm Lily	2.5m	2.5m	100lit	2
	Xanthorrhoea sp	Grass Tree	-	-	300mm	3
	INFILL					
	Cordylone congesta	Palm Lily	1m	60cm	140mm	32
	GRASSES AND GROUNDCOVERS					
	Dianella congesta	Coastal Flax lily	60cm	60cm	140mm	150
	Lomandra confertifolia	Matrush	60cm	60cm	140mm	55
	Carpobrotus glaucescens	Pigface	30cm	1m	140mm	36

NOTE: 97% of plants scheduled are local natives.

**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 1.2 - Aims of the Plan**

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.

The proposed development is for the construction of a detached dual occupancy on an existing approved residential allotment, within residential zoned land. The proposed development is considered consistent with the aims of the plan.

**Clause 2.3 - Zone objectives and Land use table**

The subject site is zoned R2 Low Density Residential.

The objectives of the R2 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.*

The proposed development is for the construction of a detached dual occupancy on an existing approved residential allotment. The proposal would provide housing needs for the community and retain a low density residential environment. The proposal is considered to meet the objectives of the zone.

**Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)**

The proposal is not for subdivision.

**Clause 4.3 - Height of Buildings**

The site is identified as having a building height of 9m. The proposed building heights for both dwellings are less than 9m (8.190m maximum proposed).

**Clause 4.4 - Floor Space Ratio**

According to the maps contained within the Tweed Local Environmental Plan, the site is subjected to a Floor Space Ratio of a maximum of 0.5:1. The Definition of "floor space ratio" is "the ratio of the gross floor area of all buildings within the site to the site area".

The proposed development will have a floor space ratio of 0.5797:1 which exceeds the requirements of the Tweed LEP 2014. A variation is sought to this control, utilising the provisions of Clause 4.6 of the Tweed LEP 2014.

**Clause 4.6 - Exceptions to development standards**

In accordance with clause 4.6(3) the applicant has provided a written request in relation to the proposed variation.

The applicant provided the following comments:

*“OBJECTION UNDER CLAUSE 4.6 OF TWEED LEP 2014*

*A variation is sought to the requirements of Clause 4.4 of the Tweed Local Environmental Plan 2014 which relates to Floor Space Ratios. The site is subjected to a Floor Space Ratio of a maximum of 0.5:1, and a Floor Space Ratio of 0.5797:1 is proposed.*

*The objectives of the Development Standard are:*

- (a) to define the allowable development density of a site and for particular classes of development,*
- (b) to enable an alignment of building scale with the size of a site,*
- (c) to provide flexibility for high quality and innovative building design,*
- (d) to limit the impact of new development on the existing and planned natural and built environment,*
- (e) to encourage increased building height and site amalgamation at key locations in Tweed.*

*In accordance with Clause 4.6 (3) It is submitted that the requirement for a maximum Floor Space Ratio of 0.5:1 is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the contravention of the development standard for the following reasons:*

- A review of Council's Floor Space Ratio Maps indicates that the Seaside City Estate (within which the subject site is located) is the only area within the Tweed Shire Council municipality which is subjected to a Floor Space Ratio of only 0.5:1. (see map extract on following page)*
- Other residential areas, including the adjacent Salt and Casuarina Estates have a permitted Floor Space Ratio of 0.8:1. The vast majority of residential areas, including the Kingscliff township, and major residential areas such as Banora Point, area all permitted to have a FSR of 0.8:1.*
- The Seaside City estate is consistent in character to the adjacent Salt and Casuarina Residential Estates. There is no perceived difference in character or architectural styles which would warrant the imposition of a lesser FSR for Seaside City. It is believed that the FSR requirement may have been based on the DCP control for the Estate, rather than on factual environmental requirements or reasoning.*
- The adjacent Salt and Casuarina Estates are characterised by large residential dwellings, which occupy a high proportion of the site, with a high Floor Space Ratio. The proposal will not be out of character with the surrounding pattern of development.*
- The subject site is identified in the Development Control Plan for Seaside City as being suitable for the erection of a Dual Occupancy, as it has an area of over 700m<sup>2</sup>. This would indicate that a higher density (and therefore FSR) is anticipated for this site.*
- The Developer of the Seaside City estate has issued Covenant approval for the proposed development, and therefore the dual*

*occupancy is considered to be appropriate and consistent with the type of development desired by the developer.*

- *The site is a level, cleared allotment of land with dimensions and size which make it ideal for the erection of a Dual Occupancy Development. There are no constraints on the site which would warrant a lesser FSR than general residential areas throughout the shire. In fact, the site is more conducive to residential development than many parts of Kingscliff and Banora Point, which are all permitted to have a FSR of 0.8:1.*
- *The development, as proposed, complies with Council's requirements relating to site coverage and the provision of Deep Soil Zones (landscaping). The further imposition of the FSR requirement is unnecessary and unreasonable.*
- *The development will exceed the FSR by only 0.0797. The proposed FSR of 0.5797 is still a 'low' FSR.*
- *There would be no public benefit from the strict enforcement of the Floor Space Ratio requirements. No Town Planning benefits would be achieved. The variation to the development standard would not raise any matters of significance for State or regional environmental planning.*

*Based on the above information, it can be seen that the low FSR for the site of 0.5:1 is unreasonable and unnecessary and that there are sufficient Planning grounds to justify contravention of the standard. For the above reasons, Council's support of the proposed variation is requested."*

The proposed variation is considered acceptable in this instance as the proposal complies with the site area, landscaping and deep soil zone provisions. The proposed development does not appear as an over development of the site, with the development being of an appropriate scale and size in relation to the site and surrounding similar developments. The proposed variation is considered minor and not to impact on the natural or built environments.

#### **Clause 5.5 - Development within the Coastal Zone**

The proposal is located within the Coastal Zone (1km landward of the coastal waters of the State), however, the site is surrounded by developed residential land and separated from the coastal foreshore and therefore it is considered that there will be no impact upon the Coastal Zone in terms of; existing access to the coastal foreshore, overshadowing, stormwater, effluent, coastal hazards.

#### **Clause 7.1 - Acid Sulfate Soils**

Class 4 Acid Sulfate Soils are present on the subject site. An appropriate condition is recommended.

#### **Clause 7.2 - Earthworks**

Minor earth works are required for the connection of services for the dwellings. Subject to clause 7.2(2)(a) the earth works are exempt development.

#### **Clause 7.6 - Stormwater Management**

Relevant conditions in relation to stormwater management are recommended.

### **Clause 7.10 - Essential Services**

All services are currently available to the subject site. No additional services are required.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

#### **SEPP 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**

There is not any Draft EPI relevant to the proposed development.

#### **(a) (iii) Development Control Plan (DCP)**

##### **Tweed Development Control Plan**

##### **Section A1 Residential and Tourist Code**

A detailed assessment of Section A1 is appended to the file. It is generally considered that the proposed development complies with the general intent of DCP A1 in the provision of adequate site coverage, deep soil zones, external living areas, passive solar gain, and cross ventilation.

A detailed assessment of Section DCP B11 - Seaside City is provided below, B11 is the overarching document in respect of planning controls on the subject site.

##### **Section A2-Site Access and Parking Code**

The site comprises dual frontage from Casuarina Way and Sailfish Way. Section A2 of the DCP requires dual occupancy development to provide two parking spaces per dwelling with an additional parking space on the driveway. Both dwellings comprise double garages with sufficient parking for an additional vehicle on each driveway (which additionally meets the 5.5m standing area within the property boundary as prescribed by DCP B11).

The development is considered to be consistent with section A2.

## Section A11 – Public Notification of Development Proposals

The subject application was notified to surrounding properties from 16 June 2014 - 30 June 2014. One submission objecting to the proposal was received. The details of this submission are addressed later within this report.

## Section A15 – Waste Minimisation & Management

Council's DCP Section A15 requires the submission of a Waste Management Plan or a Demolition Work Plan in certain circumstances. It is noted, however, that Dual Occupancy Developments are exempt from requiring the lodgement of a Waste Management Plan, and the application does not involve demolition works.

As such, the provisions of DCP Section A15 are not applicable to the subject application.

## Section B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast.

The proposal is consistent with Section B9 and does not contravene the intended urban structure, centres hierarchy or design principles relating to the Tweed Coast or specific provisions relating to riparian buffers to Cudgen Creek and the mean high water mark, as the site is not located within these buffers.

## Section B11 Seaside City

It should be noted that where B11 is silent on a development control then DCP A1 is to be used as a guide. Where there is an inconsistency between B11 and A1 the site specific B11 will prevail, the following table lists the control and a comment against that control.

### Structure Plan

The document also provides a desired future character and structure of the locality and nominates the subject site as 'Coastal Housing' within the Structure Plan for Seaside City. The site is also nominated as suitable for a dual occupancy development as the site is greater than the minimum of 700m<sup>2</sup> in area and has dual street frontage.

Design Controls (DC)	Compliance
BUILDING STYLE & DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE	
Building Design - Roof	
Roofs should be clad in one of the following materials; <ul style="list-style-type: none"> <li>· matt finished profiled metal deck (e.g. copper, zinc or 'colourbond') or;</li> <li>· roof tiles of low profile tiles in natural colours.</li> </ul>	<b>Complies</b> – The proposed dwellings incorporates colourbond Metal Roof Sheeting.
All gutter and downpipe treatments must complement the dwelling;	<b>Complies</b> – Guttering and downpipes are in keeping with the materials and colour scheme of the dwelling.
Roof forms will be evaluated on their architectural merits;	<b>Complies</b> – The roof designs have been chosen as they represent a modern architectural design treatment and will be in keeping with Tweed Shire Council's envisaged

Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
	Seaside City neighborhood character.
A minimum eave overhang of 600mm is required;	<b>Complies</b> – Eaves are 600mm or greater.
It is preferred if soffits are left exposed or if sealed finished on the rake;	<b>Noted</b>
Curved and undulating parapets will not be approved;	<b>Complies</b> – No undulating parapets are proposed.
It is desirable that roof penetrations must match the roof including antennas and satellite dishes.	<b>Noted</b> – During construction the installation of antennas and satellite dishes will be chosen to integrate with the overall colour scheme and built form of the dwellings.
<b>Building Design - Walls</b>	
<p>The external walls of a building should be finished with a mix of the following indicative materials:</p> <ul style="list-style-type: none"> <li>· masonry finished in a rendered or bagged, and painted texture finish;</li> <li>· Fibre-cement wall sheeting;</li> <li>· Matt finish corrugated colourbond (or similar) metal cladding</li> <li>· Timber shingles; or</li> <li>· Timber boards or plywood with a painted, stained or untreated finish. i.e. weathex or texture 2000.</li> </ul>	<b>Complies</b> – The design incorporates a mixture of materials, rendered brick work, cladding and linea board.
Plain or painted brickwork is allowable for a maximum of 10% of wall surfaces.	<b>Complies</b> – No plain or painted brick work is proposed.
100% solid wall construction is not encouraged and a high level of building wall detailing is required.	<b>Complies</b> – The design incorporates a number of different materials, finishes and levels to create an interesting building design. No blank and featureless walls are proposed.
<b>Landscaping</b>	
Landscaping is an important feature of Tweed coastal development and quality architecture can be enhanced by landscaping and maintaining gardens to reflect a coastal image.	Landscaping conditions are recommended if the application were to be approved.
A landscaping plan is required for all development including single detached housing.	Landscaping conditions are recommended if the application were to be approved.
Planting throughout Seaside City will be primarily native species.	Landscaping conditions are recommended if the application were to be approved.
Coastal soil and climatic conditions dictate that native plants will provide the most appropriate material in this environment. Plant material including trees with the potential to become environmental weeds must not be planted on a lot.	Landscaping conditions are recommended if the application were to be approved.
The planting of such local native tree species as She-Oaks ( <i>Allocasuarina</i> ), Lilly Pilly,	Landscaping conditions are recommended if the



Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
(syzygium), Banksia, Cabbage Palms, (livistona australis), Pandanus and Acronychia will help to integrate the community into the surrounding natural environment.	application were to be approved.
<b>Verandahs</b>	
All verandahs are to integrate well through materials and design with the general design of the dwelling.	<b>Complies</b> – All verandahs and outdoor living areas have been designed to be incorporated into the overall dwelling design.
<b>Garages</b>	
<p>Garage doors and carports are to be as visually unobtrusive as possible.</p> <p>They are to be recessed under the upper storey, setback from the substantial frontage of the building, or located at the rear, side or in the basement of the dwellings.</p>	<p><b>Variation proposed</b> – The garage door for dwelling 2 is setback 1m behind the building façade, is not visually obtrusive, which compiles.</p> <p>Garage doors are required to be setback 1 metre behind the building façade. The proposed garage door for dwelling 1 is located in front of the ground level and level 1 building façades. Therefore does not comply.</p> <p>This is because the ground level façade is setback 8.745m and the level 1 facade is setback 6m, which both comply.</p> <p>A front setback of 5.5m to the garage is proposed which compiles, as a 5.5m standing area is provided within the property boundary.</p> <p>The proposed variation to the required garage door set-back to be one metre behind the building façade is acceptable as Dwelling 1 proposes a 4.805m front setback to the ground level verandah (which is less than 50% of the width of the building which compiles) being a special design element. The veranda element is forward of the garage providing a design element that assists in providing a visually unobtrusive garage.</p> <p>The applicant provided the following comments:</p> <ul style="list-style-type: none"> <li>- <i>The minor encroachment of the garage into the 6.0m setback is compensated for by the remainder of the front wall being setback approximately 8.7m from the front boundary.</i></li> <li>- <i>The upper floor front wall complies with the setback requirements.</i></li> <li>- <i>The garage is appropriately sited as it allows a vehicle to park on the driveway without obstructing the footpath area.</i></li> <li>- <i>Moving the dwelling backward on the site would reduce the extent of the central Deep Soil Zone, and would result in additional impervious area on the site from the additional driveway length.</i></li> <li>- <i>The dwelling approved on the adjacent site (Lot 49) has an approved front setback</i></li> </ul>

Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
	<p><i>of 4.5m to Sailfish Way. The setback of Dwelling 1 will be consistent with the setback approved on the adjacent site.”</i></p> <p>The proposed variation is considered acceptable due to; the garage setback complying, the ground level façade being setback 8.7m complying and the level 1 facade is setback 6m which compiles, proposed 4.805m front setback to the ground level verandah, significant vegetation proposed within the front property boundary, the neighbouring property to the north having a 4.5m front setback. The proposed variation is considered minor and not likely to significantly impact on the desired spatial framing of the street.</p>
Basement parking can be a way of providing vehicle storage with low visual impact.	<b>N/A</b> – No basement car parking is proposed.
The minimum set-back for a garage door is to be one metre greater than the main façade of the building.	<b>Variation proposed</b> – refer to comments above.
A garage is not to extend beyond any other part of the house proper towards the street.	<b>Complies</b> – The garage doors are setback 1m behind the building façade for dwelling 2 and setback 1m behind the ground level verandah of level 1.
Garage doors and carports are to comply with the relevant provisions of Section A1 – Tourist and Residential Development Code.	<p><b>Complies</b> – the proposal compiles with the <i>garage, driveway and car parking</i> provisions contained within section A1.</p> <p>The proposed garages address the street, and are accessed via individual driveways from each street. Sightlines are achieved.</p>
<b>Driveways – Private Property</b>	
Generally only one driveway and crossover will be permitted for each lot and should not be wider than 4 metres at the street boundary of a Lot. With amalgamation of properties there may be a need to vary this requirement.	<b>Complies</b> – The proposal seeks two driveways one per street frontage. A single crossover is provided to each road being Casuarina Way slip lane and Sailfish Way. The driveways do not exceed 4m in width at the property boundary.
There should be at least 0.75 metres of screen planting or turf between the driveway and the Side Boundary. No plants or other obstructions including fences are to be placed in the ‘sight triangle’ adjacent driveways (see TSC Access to Property specification).	<b>Complies</b> – A 0.75m landscaping strip is provided between the driveway and boundary. No landscaping is provided in the sight triangles.
<p>The finishes for driveways area (excluding the road reserve) include:</p> <ul style="list-style-type: none"> <li>· Semi-pervious or porous surfaces;</li> <li>· Masonry/clay pavers;</li> <li>· Exposed aggregate concrete finish; or</li> <li>· Concrete or coloured concrete with inserts.</li> </ul>	<b>Complies</b> – The driveway area is to be constructed using exposed aggregate concrete finishing.

Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
<b>Road Reserves</b>	
Must comply with TSC Access to Property specification.	<b>Complies</b> – The road reserve that lines the property’s frontages will not be impacted upon nor will any design element inhibit Councils maintenance of this area.
<b>Outdoor Structures</b>	
Outdoor structures including pergolas, gazebos and storage sheds will be allowed if the structure is constructed in materials to complement the dwelling. Solid masonry will not be encouraged.	<b>N/A</b> – No outdoor structures are proposed.
Open-side pergolas may only be built to the boundary if they are not greater than 5 metres in length and do not obstruct a neighbour’s view.	<b>N/A</b> – No outdoor structures are proposed.
<b>Ancillary Structures</b>	
Solar hot water systems, antennas, air conditioners and any other ancillary structures must be designed to be an integral part of the dwelling and hidden from public view.	<b>Complies</b> – The hot water system, rainwater tank and garbage area have all been appropriately screened from street view.
<b>Roof Water Treatment</b>	
It is preferred for dwellings to store rainwater within tanks for the purpose of re-use for household applications or irrigation of landscaping.	<b>Complies</b> – The proposed dwellings incorporate rainwater tanks.
If a dwelling does not treat rainwater via rainwater tanks then rainwater must be infiltrated into the ground via infiltration pits, infiltration channels or similar.	<b>Complies</b> – The dwellings will be serviced via infiltration pits.
<b>Addressing the Street</b>	
All street frontages in residential areas are to be addressed by adjoining development. Design of buildings with dual frontages should be sympathetic to both streetscapes. Fronting of the street ensures that there is casual surveillance of the street, a connection with the community and increases the quality of the streetscape by reducing the possibility of a continuous frontage of garages or high fences.	<b>Complies</b> – The proposed dwellings adequately addresses all frontages.
As direct access is restricted on the through road of Casuarina Way, a one-way services lane divided from the through lanes by islands with several points of integration with adjacent lanes needs to be provided in front of the eastern blocks.	<b>Noted.</b>
<b>Building Height</b>	
The graduation of density towards the mixed-use Village Centre as proposed by this plan is to ensure the greatest population is within an easy walking distance the Village. To reinforce the feeling entering the centre of Seaside City,	<b>Noted</b> – The proposal is in keeping with this scheme and complies with the building height.

Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
the height of buildings graduates towards the centre in combination with the density changes, with the maximum density and height in the Village Centre itself.	
The exception to this is the lower density and heights on the ocean front lots.	<b>Noted</b>
<b>Building Siting</b>	
All the dwellings must be positioned and orientated to maximize the benefits of the natural elements. The westerly and south/westerly aspects should be limited to the siting of garages, laundries, storerooms and other service areas. Living, eating and sleeping spaces should be orientated predominantly to the north or northeast	<b>Complies</b> – The dwelling design has incorporated the prevalent sea breezes, solar access and outdoor space to allow for the maximum benefit of the natural elements. The dwellings and living areas are orientated to the north.
<b>Privacy</b>	
Private areas should not front on to streets or public areas.	<b>Complies</b> – Private areas are suitably screened through the combined use of appropriate landscaping and fencing.
Private back yards are to include an area for deep planting as describes in the Deep Soil Zone section below. These areas are to be provided as continuous vegetated private areas to centre of blocks.	<b>Complies</b> – Deep Soil Zones are provided.
All road frontages should be addressed by the buildings along it.	<b>Complies</b> – The proposal addresses all streets.
Direct overlooking between buildings is to be minimised by building layout, location and design of windows and balconies, screening devices etc.	<b>Complies</b> – The proposed dwellings has been designed to minimise direct overlooking and to maintain privacy between the residents.
<p>In dwellings where any floor above ground has windows of habitable rooms or balconies on the western or southern side with an outlook at an angle closer than 45 degrees to a habitable window or balcony of an adjacent dwelling, may be considered if the window or balcony is to be suitably screened. Possible screening solutions include:</p> <ul style="list-style-type: none"> <li>• fixed obscure glazing in any part of the window below 1500mm above floor level; or</li> <li>• sill heights greater than 1.5m above floor level; or</li> <li>• fixed external screens to windows or balconies.</li> </ul> <p>Approved materials include:</p> <ul style="list-style-type: none"> <li>• Timber battens;</li> <li>• Timber lattice;</li> <li>• Louvred shutter;</li> </ul>	<b>Complies</b> – All windows are screened where required.

Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
<ul style="list-style-type: none"> <li>• Sail fabric; or</li> <li>• Mesh</li> </ul>	
<b>Building Site Coverage</b>	
The maximum building site coverage includes all garages, carports, verandas and covered pergolas.	<b>Noted</b> – The site coverage calculations for the site have included these elements.
<b>Deep Soil Zones</b>	
Deep soil zones are areas of a site that have no impervious materials above or below ground. They allow for substantial deep rooting of vegetation such as trees and natural infiltration. Deep soil zones improve the visual amenity of an area especially in denser areas by allowing mature trees to grow to the front and rear of allotments.	<b>Noted.</b>
The deep soil zones in Seaside City are to comply with the relevant provisions of Section A1 – Tourist and Residential development code.	<b>Complies</b> – The standard states 35% of the site is to be landscaped including at least two deep soil zones measuring a minimum of 4m in any direction. The application proposes three distinct areas of landscaping being located at the front of both dwellings and at the rear of both dwellings. All three areas exceed the required 4m x 4m and exceed the required 35% or 246.54m <sup>2</sup> of landscape area required (255.02m <sup>2</sup> proposed).
<b>Setbacks</b>	
<p>A choice of setback options is available, where reduced front and rear setbacks will be considered, but only where additional north-side setbacks are provided. Option 3 has been chosen. The following table outlines the setbacks options that will be permitted across the site.</p> <p>Notes</p> <p>Special design elements such as verandas, balconies, sun structures, entrances and the like, constructed of open design and occupying no greater than 50% of the width of the main building façade, may be setback a minimum of 2m from the front street boundary.</p>	<p>The development has been designed in accordance with option 1 being;</p> <p>Front = 6m</p> <p>Side = 900mm single and 1500 for two storey</p> <p>6m = rear</p> <p>Note: elements such as verandas etc occupying no greater than 50% of the width of the main building façade may be setback 3m from the front boundary.</p> <p>Dwelling 1 proposes a 4.805m front setback to the proposed verandah which is less than 50% of the width of the building which compiles. A front setback of 5.5m to the garage is proposed which compiles, as a 5.5m standing area is provided within the property boundary. The proposed setback to the remainder of the dwelling is 8.745m. The level 1 facade is setback 6m which compiles. The proposed rear setback is 6m.</p> <p>Dwelling 1 proposes a northern side setback of 2.476m upper wall which compiles, however the southern side setback ranges from 1.5m to the upper level wall to 1.340m to the ground level wall, 0.900m setback for the stairwell wall which is two storeys in height. The ground level is</p>

Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
	<p>compliant however; the upper level is not, which should be setback 1.5m.</p> <p>The applicant provided the following comments in regards to the proposed variation:</p> <ul style="list-style-type: none"> <li>· <i>“The stairwells are of a short length only 2.29m;</i></li> <li>· <i>The stairwells would not impact on the development on any of the adjoining sites;</i></li> <li>· <i>The stairwells will not contain any opening windows. Fixed windows will provide light.”</i></li> </ul> <p>The proposed variation is considered acceptable due to the above and as the variation relates the upper level only and in addition the plans identify the stair windows as being tinted.</p> <p>The proposed variation is considered minor and not likely to significantly impact on the amenity or privacy of the adjoining property or occupants of the proposed dwelling.</p> <p>Dwelling 2 proposes a 6m front setback to the proposed building wall. A setback of 7.310m to the garage is proposed which compiles, a 5.5m standing area is provided within the property boundary. The proposed rear setback is 6m.</p> <p>Dwelling 2 proposes a southern side setback of 1.5m which compiles, however the northern side setback ranges from 2.055m to the upper level wall to 1.275m to the ground level wall, 0.975m setback for the stairwell wall which is two storeys in height. The ground level is compliant however the upper level is not, which should be setback 1.5m.</p> <p>The applicant provided the following comments in regards to the proposed variation.</p> <ul style="list-style-type: none"> <li>· <i>“The stairwells are of a short length only 2.29m;</i></li> <li>· <i>The stairwells would not impact on the development on any of the adjoining sites;</i></li> <li>· <i>The stairwells will not contain any opening windows. Fixed windows will provide light.”</i></li> </ul> <p>The proposed variation is considered acceptable due to the above and as the variation relates the upper level only and in addition the plans identify the stair windows as being tinted.</p> <p>The proposed variation is considered minor and not likely to significantly impact on the amenity</p>

Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
	or privacy of the adjoining property or occupants of the proposed dwelling.
For beachfront lots, the rear boundary line is the boundary between the 2(e), 7(l) and 7(f) zones.	<b>N/A.</b>
<b>Garage Setback</b>	
A standing area 5.5m long for the parking of a vehicle is to be provided within the property in front of all garages	<b>Complies</b> – The proposal provides for 5.5m setback for both dwellings.
Coastal Multi Dwelling Precinct  Alternative front and rear setbacks will be considered where a new mid-block laneway or similar vehicle access is provided	<b>Noted.</b>
<b>Fencing</b>	
Fencing plays an integral role in the final streetscape. It is because of this that a large emphasis is placed on the design, size and treatment of fences. The ideal form of street front boundary demarcation is landscaping or low transparent fences finished in materials and colours complementary to the finishes of the dwelling.	<p><b>Noted.</b></p> <p>The application states that the proposed fencing is exempt development and therefore does not form part of this application. The application also states that the proposed fencing would comply with B11 being 1.2m high and 75% solid construction. The plans provide basic detail on fencing which is not enough to determine compliance with B11.</p> <p>It is not clear if the side fencing is existing or proposed under this application or is exempt, however, the noted 1.8m high Colourbond fencing although complies with the height Colourbond is not a material listed within B11 (desired spatial framing of the street). Also the rear fence separating both proposed dwellings is not detailed.</p> <p>Conditions relating to fencing complying with B11 are recommended if this application were to be approved.</p>
A lot may have street front boundary fencing to a maximum height of 1.2 metres. This fencing is to be a maximum of 75% solid construction and built from either timber, brushwood or masonry. Metal railings will be permitted. This fencing is to be softened through the use of landscaping.	<b>Noted – refer to comments above.</b>
Side Boundary Fencing is to be a maximum height of 1.2 metres from the Street Front Boundary line to the Building Line of the dwelling and 1.8 metres for the remaining length of the Lot. The fencing is to be constructed of timber, brushwood or masonry.	<b>Noted – refer to comments above.</b>
Rear Boundary Fencing is to be a maximum height of 1.8 metres and constructed of timber, brushwood or masonry.	<b>Noted – refer to comments above.</b>

Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
Fencing to a Secondary Street Boundary on a Corner Lot must not be greater than 1.2 metres high. The fencing is to be a maximum of 75% solid construction and be built from timber, brushwood or masonry. The colour must complement the dwelling.	<b>Noted – refer to comments above.</b>
No fence is permitted within the 2m x 2m 'sight line triangle' adjacent to driveways) see TSC Access Property Policy).	<b>Noted – refer to comments above.</b>
<b>Fencing in Environmental Areas</b>	
All fencing east of the 7(f) and 2(e) zone boundary shall be a maximum height of not more than 1.2 metres.	<b>N/A.</b>
The fencing of the boundaries of the private open space/beach maintenance areas identified on the Development Plan shall be compatible with fencing protection of the dunal areas, based upon Queensland and NSW State Agency Guidelines and indicatively a maximum of 1.2m in height with wooden posts and horizontal structural components with wide high quality wire mesh.	<b>N/A.</b>
<b>Building Controls Accommodation Areas – Coastal Multi Dwellings</b>	
<b>Design</b>	
<u>Lot Amalgamation</u> <ul style="list-style-type: none"> <li>Amalgamation of lots is encouraged where it will provide improved urban design solutions, particularly where it will allow contemporary building types that address the street frontage or address mid lot landscape areas, minimise the number of private driveways and allow for garages at the rear of the buildings.</li> </ul>	<b>Noted, not required.</b>
Private Open Space <ul style="list-style-type: none"> <li>Courtyard building types are encouraged, to provide private, usable mid-lot open space for occupants</li> </ul>	<b>Complies –</b> Each dwelling has a usable open space for the occupants orientated towards the north for solar access.
Building Depth <ul style="list-style-type: none"> <li>The maximum internal depth of a building should be 18m from glass line to glass line, to ensure adequate amenity for building occupants in terms of sun access and natural ventilation</li> <li>Freestanding buildings may have greater depth than 18m only if they still achieve satisfactory daylight and natural ventilation.</li> </ul>	<b>Complies –</b> The dwellings do not exceed 18m in any direction.



Design Controls (DC)	Compliance
<b>BUILDING STYLE &amp; DESIGN FOR AREAS OUTSIDE OF VILLAGE CENTRE</b>	
<b>Height</b>	
<u>9m max</u> Maximum height of 9m to the ridgeline Maximum height of 7m to the ceiling	<b>Complies</b> – The dwellings comply with the 9m max height requirements for the precinct (approximate proposed height of 7.5m).
<b>Density</b>	
<u>Building Site Coverage</u> The maximum building site coverage is to be 50% of the site area.	<b>Complies</b> – The site cover does not exceed 50% (44.31% proposed).
The FSR prescribed for the site is 0.5:1.	The proposal provides a FSR of 0.5797:1, therefore a variation is required.  The proposed variation is considered acceptable in this instance as the proposal complies with the site area, landscaping and deep soil zone provisions. The proposed development does not appear as an over development of the site, with the development being of a appropriate scale and size in relation o the site and surrounding similar developments. The proposed variation is considered minor and not to impact on the natural or built environments.
<u>Minimum Density</u> N/A	N/A
Dual Occupancy	Minimum lot size of 700m <sup>2</sup> ; dual frontage allotments. The proposal complies as the site is 704.42 with dual frontage.
<b>Open Areas</b>	
Landscaped Area 30%	<b>Complies</b> – The required landscaping in accordance with B11 is 30%. The development has been assessed holistically with 36.2% of the site landscaped, therefore compliant. Individual allotments have been assessed in terms of amenity. The proposed landscaping for each individual lot is considered acceptable and the development overall compliant.  Landscaping area is proposed as follows: Unit 1 front 49.87m <sup>2</sup> Unit 2 front 70.81m <sup>2</sup> Combined rear 134.34m <sup>2</sup>

**(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

Not applicable as the development does not propose any demolition.

Clause 93 Fire Safety Considerations

Not Applicable.

Clause 94 Buildings to be upgraded

Not Applicable.

- (a) (v) **Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

**Tweed Shire Coastline Management Plan 2005**

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is approximately 450m from the coastal foreshore and is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the clause.

**Tweed Coast Estuaries Management Plan 2004**

Not applicable to the development proposal.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

Not applicable to the development proposal.

- (b) **The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Context and Setting

The development proposes a detached dual occupancy development, consistent with surrounding development. It is considered that the proposal would be consistent with the desired character of built development in the locality sought under DCP B11 and the general intent of housing design under DCP A1 in general.

Council's Building Unit considered the application and had no objection to the proposal subject to conditions being included on any consent issued.

- (c) **Suitability of the site for the development**

Surrounding Landuses/Development

An application for a two storey dwelling has been lodged on the southern property (Lot 51 DP1186189) and a two storey dwelling has been approved on the allotment to the north (Lot 49 DP1186189). It is noted that Council has determined dual occupancy developments within the vicinity of the subject site (DA13/0704 detached dual occupancy - 361 Casuarina Way, Kingscliff, DA13/0628 Development Application - detached dual occupancy 363 Casuarina Way, Kingscliff, DA13/0725 Development Application - detached dual occupancy - staged development 369 Casuarina Way, Kingscliff).

The proposed development is generally consistent with the design criteria as set out in DCP A1 and B11 and therefore it is considered that the proposed

development will be unlikely to impact significantly on the residential amenity of future occupants and neighbouring properties.

The site is considered suitable for the proposed development.

**(d) Any submissions made in accordance with the Act or Regulations**

<b>Public Submissions Comment</b>	
<b>Summary of Submissions</b>	<b>Response</b>
The site is for low density residential not multi dwelling.	The proposed detached dual occupancy is permissible within the zone, complies with Section B11 which permits dual occupancy developments on sites that exceed 700m <sup>2</sup> and that have dual frontage. The subject site complies with both requirements.
The proposal is greater than 50% of the max building coverage.	The proposed site coverage is 44.31% which complies with the required 50%.
The proposed development would increase noise pollution, vehicle pollution, traffic, reduce amenity.	The proposed development would create an expected and acceptable level of; noise vehicle/traffic and amenity associated with a residential development of this nature.
<b>Public Authority Submissions Comment</b>	
<b>Summary of Submissions</b>	<b>Response</b>
Public authority submissions were not required.	

**(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. Approves the application in accordance with the recommendation of approval; or
2. Refuses the application and provide reasons for refusal.

The Council officers recommend Option 1.

**CONCLUSION:**

The proposed is permissible with consent under Tweed LEP 2014, 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:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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- 12 [PR-PC] Development Application DA13/0383 for 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

**SUBMITTED BY:** Development Assessment

**FILE REFERENCE:** DA13/0383 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

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### SUMMARY OF REPORT:

#### Updated Information

The subject application was originally reported to Council's Planning Committee meeting on Thursday, 6 March 2014. At this meeting Council resolved 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. 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.

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 possibly 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. 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.
- Due to the lack of previous ecological survey and assessment including the absence of an assessment of significance under the Threatened Species Conservation Act for both listed species and endangered ecological communities, NRM recommend further investigation/assessment be undertaken to determine the dimensions of an appropriate/acceptable setback to the southern riparian corridor. This is considered warranted in order to protect existing values and maintain corridor functionality. Furthermore, measures to protect potential candidate EEC vegetation occurring within*

*the Walsh Street Road corridor should be considered, and once determined, imposed as conditions of approval (from report dated 15 April 2014).*

The applicant provided a Flora and Fauna Assessment dated 15 May 2014 that contained a revised layout plan in relation to the to NRM recommendations above. The Flora and Fauna Assessment concluded that the site did not contain significant vegetation. The following comments are from the applicants Flora and Fauna Assessment:

*"The site is dominated by exotic grassland of little ecological value and which is regularly mowed. Slash pines, *Pinus elliotii*, to approximately 20m in height occur along the eastern boundary, cocos palms, *Syagrus romanzoffianum*, along the south-western boundary and scattered landscape species around the existing buildings (Fig. 2). Vegetation of higher ecological significance is located along the banks of Kingscliff Creek. Four mangrove species were recorded (Appendix 1), together with swamp she-oak, *Casuarina glauca*, broad-leaved paperbark, *Melaleuca quinquenervia*, and rainforest pioneers. Tweed Hire Council (2014) describes this vegetation along Kingscliff Creek as being ".....narrow in width, but well connected to important upstream riparian and floodplain communities further to the east."*

*The more significant vegetation along Kingscliff Creek described by Tweed Shire Council (2014) does not occur on the site and will be amply enhanced and buffered by this proposal."*

Council's NRM Unit assessed the applicant's Flora and Fauna Assessment revised layout plan (79 storage bays, buffer approximately 17 from top of bank) dated 15 May 2014 and provided the following comments (6 June 2014).

*"Whilst NRM are willing to accept the proposed layout and support rehabilitation of the proposed riparian buffer zone and Kingscliff Creek corridor, additional management measures are considered appropriate to mitigate long term impact on the function and integrity of local ecological values. These measures shall include:*

- Imposing a restriction as to user 88B instrument over the riparian buffer zone to ensure long term protection;*
- Installing appropriate lighting (should it be required) deflecting and reducing spill across the buffer zone;*
- Ensuring that security fencing is of a design that is considered fauna friendly;*
- Specify the meters and bounds of the Kingscliff Creek restoration area being 2750m<sup>2</sup>".*

The applicant submitted an amended plan on 26 June 2014 which shows a 17m buffer from the property boundary (was previously 17m from top of bank) and 94 storage bays.

Council's NRM Unit assessed the amended plan and provided the following comments.

*"Following review of the latest submitted plans being Dwg. Jennerscnr\_Concept Rev.01 dated June 2014 prepared by Planit Consulting NRM raise the following concerns:*

- The acceptance of the previous plan (Dwg. No 334-DA07 Issue B dated 07 May 2014 prepared by Greg Everding Architect) was based on a 17m average buffer width taken from the top of high bank as shown on the detailed survey plans and not the property boundary. The current plans show a general maximum riparian buffer of 17m (extending beyond in selected locations however not considered significant) taken from the property boundary. Under the proposed layout 200m<sup>2</sup> of riparian buffer area*



*previously shown has been replaced with boat storage/access, encroachment is particularly evident within the south-eastern corner of the site.*

- As indicated in the previous memorandum acceptance of an average 17m was buffer was only to occur where a 2750m<sup>2</sup> adjacent area of Kingscliff Creek riverine corridor were to be rehabilitated. It is understood that this memo and draft conditions were forwarded to the applicant indicating this requirement yet has clearly not been shown on the plan.*
- Again, there has been no justification on how buffer widths have been determined or consideration of the impact of the use on riverine function and integrity.*

*From contemporary assessment of the proposal NRM would typically be unwilling to accept the modification and reduction in buffer area. However, given that NRM has only recently become involved in assessment of the proposal with limited opportunity to liaise with the Office of Water and the applicant to achieve an appropriate/acceptable buffer width NRM reluctantly offer support of the proposal only where the applicant:*

- Undertake additional restoration effort within the Kingscliff Creek riverine corridor of 2923m<sup>2</sup> (additional 173m<sup>2</sup> to that calculated previously to compensate for the loss of buffer reserve as shown on the current plans) area extent. Note this is generally consistent with recommendations made in the Flora and Fauna Assessment dated 06 May 2014 prepared by Peter Parker submitted with the application material that stated - 'It is also recommended that weed control on the adjoining Kingscliff Creek land parcel be undertaken with council consent' (pp. 14). See attached marked up plan provided by Council showing the area of Kingscliff Creek to be the subject of rehabilitation effort in accordance with an approved HP&RP.*
  - The buffer zone is rehabilitated to the satisfaction of Council and maintained for a period of three years and protected by way of a section 88B instrument.*
8. 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.*
9. 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 (amended to reflect the amended plan for 94 storage bays)

This application proposes the construction of a boat showroom (756m<sup>2</sup>) and sales office (33.1m<sup>2</sup>), boat storage yard (94 covered bays) and office building (120m<sup>2</sup>), two tenancies for café/restaurant use (renovation of existing shop and café) and caretakers dwelling (renovation of the existing dwelling).

The site is currently zoned 3(d) Waterfront Enterprise and the development would be defined as a 'Boat Showroom', 'Boating Facility', 'Refreshment Room' 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, the proposal is considered to be consistent with the objectives of the B4 Mixed Use zone under the draft plan.

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 draft LEP prohibiting the development 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 and the development proceeds.

**RECOMMENDATION:**

That Development Application DA13/0383 for 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 approved subject to the following conditions:

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No. Kingscliff Creek Habitat Restoration Area drawn by Tweed Shire Council dated 17/07/2014 Plan No. JENNERSCNR\_CONCEPT REV.01 Regeneration/landscape planning area 17m wide prepared by Planit consulting and dated 06/14, Plan No. 334-DA06 prepared by Greg Everding Architect and dated 04.11.13, Plan No. 334-DA01 prepared by Greg Everding Architect and dated 25.07.13, Plan No. 334-DA03 prepared by Greg Everding Architect and dated 15.08.13, Plan No. WD 2/413 prepared by PFK Building Design and dated 24/04/13 except where varied by the conditions of this consent.  
[GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.  
[GEN0135]
4. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.  
  
Should adjustments be required to the sewer manhole, then application shall be made to Council's Engineering Division for approval of such works.  
[GEN0155]
5. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.  
[GEN0265]
6. The 'Regeneration/Landscape Planting Area (17m Wide)' as shown on *Dwg. Jennerscnr\_Concept Rev.01 dated June 2014 prepared by Planit Consulting* shall be the subject of an ecological restoration program undertaken in accordance with an approved Habitat Protection and Restoration Plan. The area shall be managed as a natural area for conservation purposes.  
[GENNS01]

7. The approved development shall not result in any clearing of native vegetation within the 'Regeneration/Landscape Planting Area (17m Wide)' as shown on the approved layout plans without prior approval from Council's General Manager or delegate.  
[GENNS01]
8. Any fencing of the 'Regeneration/Landscape Planting Area (17m Wide)' as shown on the approved layout plans shall be fauna friendly and security lighting designed and maintained to minimise lighting spill to the Kingscliff Creek riparian buffer.  
[GENNS01]
9. The approved works within the Habitat Protection and Restoration Plan is to be implemented and completed in accordance with the approved Habitat Protection and Restoration Plan.  
[GENNS01]
10. Waste management on the site shall be carried out in accordance with the approved Waste Management Plan.  
[GENNS03]
11. The occupants of the caretakers dwelling must only be employees of any of the approved uses under this consent.  
[GENNS04]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

12. The developer shall provide 36 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.  
  
Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.  
[PCC0065]
13. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for **SUBDIVISION WORKS OR BUILDING WORKS** shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.  
[PCC0285]
14. 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]

15. 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]

16. 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]

17. 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 filing on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.

[PCC0675]

18. 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 3.2m AHD.
- (b) All building materials used below Council's design flood level must not be susceptible to water damage.
- (c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (d) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

19. 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]

20. 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 (dwelling house and boating facility)

- (b) Minor road pavement widening of Walsh Street to facilitate vehicular access to the site, to accord with the depicted access arrangement as shown on 'Proposed Site Plan' no. 334-DA07 by Greg Everding Architect dated 04.11.13.

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
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

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) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

22. 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]

23. 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]

24. 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]

25. In accordance with Section 68 of the Local Government Act, application shall be made to Council for any proposed sewerage drainage system. Detail shall include hydraulic drawings, pipe sizes, details of materials and discharge temperatures.

[PCC1225]

26. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

27. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[PCC1255]

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. Prior to the construction certificate being issued, three copies of plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be provided to Council's Environmental Health Officers for assessment and approval:
- a. Floor plan
  - b. Layout of premises showing all equipment
  - c. All internal finish details including floors, wall, ceiling and lighting
  - d. Hydraulic design in particular method of disposal of trade waste
  - e. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required
  - f. Servery areas including counters etc.
31. Prior to the issuing of a construction certificate, a Dewatering Management Plan is to be prepared and submitted to Council. The Dewatering Management Plan is to be prepared by a suitably qualified consultant, and is to be to the satisfaction of the General Manager or his delegate. [PCCNS01]
32. A Construction Certificate will not be issued over any part of the site requiring a controlled activity approval until a copy of the approval has been provided to Council.
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]
34. The proposed site works are required to avoid the existing Drainage Easement that encumbers Lot A DP 373769 and Lot 3 DP 415533.
35. The proposed "gravel" surface for the boat storage facility will only be acceptable if it is an all-weather, high bearing capacity porous surface - as per TSC DCP A2. Verification of a surface that complies with this requirement will need to be provided by a qualified engineer, otherwise all internal access and parking areas will need to be bitumen sealed. [PCCNS03]
36. Sewer Easements - A three meter easement over the existing and/ or new sewerage infrastructure is required. References to permit the proposed carport structure should be included in the easement document.

37. **Building in proximity sewer - Sewer depth and actual location must be confirmed on site and recorded on construction plans prior to construction.**
38. **Building in proximity water and/ or sewer - A suitably qualified engineer shall design the walls and/or footing depths based on the geotechnical conditions on site and the plans must be submitted to Council to demonstrate the Council Sewers - Works in Proximity Policy has been adhered to.**
39. **Works are to be undertaken to terminate the sewer prior to storage bays 7 to 13 and a new manhole will be required at the new endpoint.** [PCCNS04]
40. **The applicant must submit a detailed landscape plan to be approved by Council's General Manager or delegate prior to the issue of a Construction Certificate or prior to commencement of any works onsite whichever occurs first. The detailed landscape plan shall demonstrate that the proportion of total plant numbers meets a minimum 80% local native plant composition and that noxious or environmental weed species have not been proposed.** [PCCNS05]
41. **A Habitat Protection and Restoration Plan ('HP&RP') is required to be prepared generally in accordance with Council's *Draft Guideline for the Preparation and Implementation of Habitat Restoration Plans* (2010) by a person suitably qualified in Bushland Regeneration or Ecological Restoration and with knowledge and experience in local vegetation communities (e.g. wetlands, rainforest, riparian areas) to address the following areas:**
- a. **The entire 'Regeneration/Landscape Planting Area (17m Wide)' as shown on the approved layout plans; and**
  - b. **A '2923m<sup>2</sup> section of the Kingscliff Creek riverine corridor' as shown on the marked up plan attached to the consent immediately opposite and to the west of the site generally consistent with recommendations made in the submitted *Flora and Fauna Assessment for Proposed Boat Showroom, Boat Storage, Cafe and Caretakers Residence Jenner's Corner Chinderah dated 15 May 2014 prepared by Peter Parker Environmental Consultants P/L.***

**The HP&RP shall be submitted and approved by Council's General Manager or delegate prior to issuing the construction certificate or prior to any works commencing onsite whichever occurs first and shall include the following:**

- a. **An appraisal of the present condition of remnant vegetation;**
  - b. **Plan overlaying an aerial photograph of the site which divides the area into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate;**
  - c. **Management strategy for each of the zones, including the approach, methods and techniques to be used for ecological restoration;**
  - d. **Schedule of local native plant species to be used for planting;**
  - e. **Details of fauna friendly 'Regeneration/Landscape Planting Area (17m Wide)' fencing at the interface with the development;**
  - f. **Specific requirements for revegetation within the alignment of the existing drainage easement to avoid conflict with any infrastructure services;**
-

- g. Program of works to be undertaken to remove invasive weed species;**
  - h. Schedule of timing of proposed works;**
  - i. Establishment, monitoring and reporting schedule with developer commitment for a period of not less than three (3) years in order to achieve site capture;**
  - j. Acknowledgement that the 'Regeneration/Landscape Planting Area (17m Wide)' shall be protected under a Section 88B instrument (*Conveyancing Act 1919*) to be managed as a conservation area. Details shall be provided of general long term maintenance responsibilities necessary to achieve conservation outcomes within this area;**
  - k. An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of the General Manager or delegate for such changes; and**
  - l. Incorporate detail of habitat protection measures (i.e. tree protection fencing) to be installed during the construction phase of the development.**
- [PCCNS05]
- 42. The applicant shall amend the stormwater layout as shown on Dwg. No. SK2, Issue A, Stormwater Management Plan prepared by Cozens Regan Williams Prove Engineers (in Stormwater Management Plan dated June 2013 prepared by Cozens Regan Williams Prove Engineers) to achieve a design that relies on one discharge outlet only to Kingscliff Creek (post treatment). The outlet shall be positioned in a location that minimises disturbance to existing vegetation and the bed and bank of Kingscliff Creek.**
- [PCCNS05]
- 43. The applicant shall provide evidence of commencement of habitat restoration works in accordance with the approved Habitat Protection and Restoration Plan to Council prior to the issue of the first of any occupation certificate.**
- [PCCNS05]

#### **PRIOR TO COMMENCEMENT OF WORK**

- 44. 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]
- 45. 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]
46. 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]
47. 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]
48. 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]

49. 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]

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. 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]

51. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

52. 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**

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. 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]

**55. 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]

**56. 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]

**57. 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]

**58. 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]

**59. 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]

**60. 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]

**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.**
- **All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.**

**and upon completion,**

- **all topsoil to be respread and the site to be grassed and landscaped including battered areas.**

[DUR0755]

**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. Any cut or fill on the property is to be battered at a ratio not greater than 1:2 (v:h) within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.**

**Please note timber retaining walls are not permitted.**

[DUR0835]

**65. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**

[DUR0985]

**66. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.**

[DUR0995]

67. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution.
- Dust during filling operations and also from construction vehicles.
- Material removed from the site by wind.

[DUR1005]

68. All works shall be carried out in accordance with the Acid Sulfate Soils Investigation and Management Plan prepared by HMC Environmental Consulting, dated October 2013 and numbered HMC2013.048 ASS.

[DUR1065]

69. The Proposed development where necessary shall be constructed with flood compatible materials, details of the materials area to be submitted for approval with the Construction Certificate application.

[DUR1375]

70. Subject to the requirements of the local electricity authority, all electrical wiring, power outlets, switches, etc, should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level shall be provided with earth leakage devices.

[DUR1415]

71. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material eg. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 meters.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

72. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

73. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.

[DUR1515]



74. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. [DUR1685]
75. 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]
76. 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]
77. 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]
78. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR1905]
79. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection. [DUR1925]
80. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
81. 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]
82. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site. [DUR2185]

- 83. 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]

- 84. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.**

[DUR2445]

- 85. 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]

- 86. 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]

- 87. 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]

- 88. 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]

- 89. 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]

90. The Storage shelter structures are to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the sewer main.

[DUR2645]

91. 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]

92. Any local exhaust system is to be constructed and installed in accordance with the certified plans.

93. Premises to be fitted out in accordance with the Council approved fit-out plans.

94. During construction, all dewatering activities are to be carried out in accordance with the Council approved Dewatering Management Plan, including recommendations of the Dewatering Management Plan.

[DURNS01]

95. 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.

[DURNS02]

96. Landscaping shall be carried out in accordance with the approved landscaping plans.

[DURNS02]

97. All habitat restoration works and habitat protection measures shall be carried out in accordance with the approved Habitat Protection and Restoration Plan.

[DURNS02]

98. Appropriate tree protection fencing shall be installed generally in accordance with *Australian Standard AS4970-2009 Protection of trees on development sites* prior to commencement of any works on site and remain for the duration of the construction period. Tree protection fencing shall be installed at the following locations on site:

- a. Along the length of the landward edge of the 'Regeneration/Landscape Planting Area (17m Wide)' as shown on the approved layout plans at the interface with the development footprint;

- b. Along the eastern boundary of the subject site at the interface with the Walsh Street road reserve.

[DURNS02]

99. The following activities are not permitted within the 'Regeneration/Landscape Planting Area (17m Wide)' as shown on the approved layout plans as described in this consent:

- a. Storage and mixing of materials;
- b. Vehicle parking;
- c. Liquid disposal;
- d. Machinery repairs and /or refuelling;
- e. Construction of site office or shed;
- f. Combustion of any material;
- g. Stockpiling of soil, rubble or debris;
- h. Any filling or excavation including trenching, topsoil skimming and/or surface excavation, unless otherwise approved by Council's General Manager or delegate; and
- i. Unauthorised application of pesticides, herbicides or chemicals.

[DURNS02]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

100. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

101. 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]

102. 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]

103. 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]

#### **104. Section 94 Contributions**

**Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.**

**Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions**

must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

These charges include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgun Road, Murwillumbah and Brett Street, Tweed Heads.

(a) Tweed Road Contribution Plan:  
19.08 Trips @ \$1189 per Trips \$22,686  
(\$1,137 base rate + \$52 indexation)  
S94 Plan No. 4  
Sector6\_4

[POC0395/PSC0175]

105. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for the building.

[POC0475]

106. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

107. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au) or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

108. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

109. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

### Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:

$$\text{\$Con TRCP - Heavy} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con TRCP - Heavy}$  heavy haulage contribution

and:

**Prod.** projected demand for extractive material to be hauled to the site over life of project in tonnes

**Dist.** average haulage distance of product on Shire roads (trip one way)

**\\$Unit** the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.6

[POC0715]

110. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

111. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

112. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate.

Option: Lot C DP 373769 is not actively included in this proposal and can be excluded or separately consolidated with Lot 1 DP 382677.

[POC0855]

113. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

114. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

115. Certification to be provided that any local exhaust system was constructed and installed in accordance with the certified plans and in accordance with AS1668.2.

[POCNS01]

116. The stormwater management plan includes a pipe system to drain Lot A DP 374685 (No.124 Chinderah Bay Drive), which will need to be covered by an appropriate easement, to benefit that lot. This easement can be created in conjunction with the required consolidation of the site.

[POCNS02]

117. All approved landscaping requirements (other than the approved works within the Habitat Protection and Restoration Plan) must be completed to the satisfaction of the General Manager or his delegate prior to the issue of an occupation certificate. Landscaping must be maintained at all times to the satisfaction of Council's General Manager or delegate.

[POCNS03]

118. The following restrictions as to user under Section 88B of the *Conveyancing Act 1919* are to be placed on the title of the subject site to Council’s satisfaction:

- a. Restriction as to user regarding 'Regeneration/Landscape Planting Area (17m Wide)' as shown on the approved layout plans - this area must be subject to an approved ecological restoration program (undertaken in accordance with an approved habitat protection and restoration plan) and managed as a natural area for conservation purposes in perpetuity.
- b. Restriction as to user regarding 'Regeneration/Landscape Planting Area (17m Wide)' as shown on the approved layout plans. The following activities are not permitted within this area:
  - i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this consent;
  - ii. Erection of any fixtures or improvements, including buildings or structures;
  - iii. Construction of any trails or paths;
  - iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area;
  - v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the riparian buffer zone;

- vi. Any filling or excavation including trenching, topsoil skimming and/or surface excavation, unless otherwise approved by Council's General Manager or delegate within the existing drainage easement; and
- vii. Performance of any other acts which may have detrimental impact on the values of the riparian buffer zone. The area must be managed in accordance with the approved habitat protection and restoration plan for the life of the development and the use of the premises.

[POCNS03]

119. A cash bond or bank guarantee shall be lodged as security to ensure that the approved Habitat Protection and Restoration Plan ('HP&RP') is implemented and completed within the area described as '2923m<sup>2</sup> section of the Kingscliff Creek riverine corridor'. The cash bond or bank guarantee must be lodged with Council prior to the release of the occupation certificate unless all ecological restoration works have been completed in accordance with the approved HP&RP to the satisfaction of Council's General Manager or delegate. The amount of such bond will be based on the cost of environmental repair, enhancement and maintenance works to be undertaken over a period of minimum three (3) years in accordance with the approved HP&RP. In this regard, two (2) written quotes from suitably experienced and qualified bush regenerators (to the satisfaction of Council's General Manager or delegate) must be submitted to Council which detail the cost of all works associated with the HP&RP. The amount of the bond will be equivalent to 130% of the estimated cost of works.

[POCNS03]

120. The bond or bank guarantee will be released three (3) years, after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that the HRP has been satisfactorily completed unless otherwise approved by Council's General Manager or delegate.

[POCNS03]

121. Monitoring of the effectiveness of environmental repair, enhancement and maintenance works must be undertaken by an independent and suitably qualified and experienced bush regenerator at yearly intervals following initiation of the Habitat Protection and Restoration Plan (HP&RP) works. Reports of this monitoring must provide the basis for the person issuing certification for the bond or bank guarantee and must be annually submitted to Council as evidence. Any supplementary or approved adaptive management works deemed necessary by the independent bush regenerator during the life of the HP&RP must be undertaken once the need is identified.

[POCNS03]

122. 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]

123. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.



[USE0175]

**124. Hours of operation are limited to the following:**

- **Boat Showroom 7am to 6pm Monday to Sunday,**
- **Boating Facility 7am to 6pm Monday to Sunday,**
- **Café/Restaurant and café 7am to 10pm Monday to Sunday and 7am to 8pm Sunday,**
- **All waste collection, deliveries and pickups relating to the businesses are to occur between 7am and 6pm.**

[USE0185]

**125. 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]

**126. 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]

**127. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.**

[USE0255]

**128. The development shall be carried out in accordance with the provisions of the acoustic assessment report prepared by CRG Acoustical Consultants and dated 23 October 2013 and addendum dated 28 November 2013, except where as varied by this consent.**

[USE0305]

**129. The use being restricted to the areas designated on the approved plan.**

[USE0415]

**130. No items or goods are to be stored or displayed outside the confines of the premises.**

[USE0445]

**131. All loading/unloading to take place within the boundary of the subject property.**

[USE0525]

**132. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.**

[USE0835]

**133. Deliveries and waste collection activities shall be limited to 8:00 am to 5:00 pm, Monday to Friday.**

[USE0501]

**GENERAL TERMS OF APPROVAL UNDER SECTION 91 OF THE WATER MANAGEMENT ACT 2000**

<b>Number</b>	<b>Condition</b>
<b>Plans, standards and guidelines</b>	
1	These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA13/0383 and provided by Council. Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.
2	Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.
3	The consent holder must prepare or commission the preparation of: (i) Vegetation Management Plan (ii) Erosion and Sediment Control Plan
4	All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The plans must be prepared in accordance with the NSW Office of Water's guidelines located at <a href="http://www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx">www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx</a> (i) Vegetation Management Plans (ii) Riparian Corridors (iii) Outlet structures
5	The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.
<b>Rehabilitation and maintenance</b>	
6	The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.
7	The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.
<b>Reporting requirements</b>	
8	The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.
<b>Security deposits</b>	
9	N/A
<b>Access-ways</b>	
10	N/A
11	N/A

<b>Bridge, causeway, culverts, and crossing</b>	
12	N/A
13	N/A
<b>Disposal</b>	
14	The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
<b>Drainage and Stormwater</b>	
15	The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.
16	The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.
<b>Erosion control</b>	
17	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.
<b>Excavation</b>	
18	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
19	N/A
<b>Maintaining river</b>	
20	The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any controlled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the NSW Office of Water.
21	N/A
<b>River bed and bank protection</b>	
22	N/A
23	The consent holder must establish a riparian corridor along the drainage channel at the rear of the site in accordance with a plan approved by the NSW Office of Water.
<b>Plans, standards and guidelines</b>	
24	N/A
25	N/A
26	N/A
27	N/A
<b>END OF CONDITIONS</b>	

**REPORT:**

**Applicant:** MacKay Ellis Group  
**Owner:** MacKay Ellis Group Pty Ltd  
**Location:** 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  
**Zoning:** 3(d) Waterfront Enterprise  
**Cost:** \$500,000

**Background:**

The site is commonly identified as Jenner's Corner, Chinderah which is located at Nos. 120, 122 and 126-130 Chinderah Bay Drive, Chinderah. The site has frontage to Chinderah Bay Drive, Wommin Bay Road and the Walsh Street Road Reserve (road not currently formed). The site is irregular in shape and provides a total area of 8935.5m<sup>2</sup>. The site contains an existing café takeaway shop and existing dwelling house.

The proposal includes four distinct land uses including: Boat Showroom; Boat Storage Facility; café/restaurant and café; and Caretakers Residence. The following summary is provided for each element.

Boat Showroom

The Boat Showroom is located on the western most corner of the site fronting Chinderah Bay Drive. The Boat Showroom is an at-grade display with a demountable sales office building. The total area associated with the Boat Showroom is approximately 756m<sup>2</sup>, this area is to be covered to shelter boats against adverse weather conditions. The proposed demountable sales office provides a total area of 33.1m<sup>2</sup> of GFA and is single storey with maximum height of 4.6m.

Vehicle access to the Boat Showroom will be provided internally through the site from the Walsh Street access point. Five dedicated car parking spaces are provided directly adjacent to the Boat Sales office.

The proposed boat showroom is permissible with consent within the Tweed LEP 2000 (3b zone).

The proposed boat showroom (defined as a Marina) is prohibited within the Draft Tweed LEP 2012 (B4 zone).

Boat storage yard and storage shed and office

The Boat Storage Yard is located on the south and south western portion of the site. The boat storage yard (as amended) provides a total of 94 storage bays. Each storage bay is 3m wide by 6m deep to accommodate small 'trailer-able' boats. Each storage space is covered by a fixed shelter structure which is single storey with a maximum height of 3.8m. The shelter structures provide a site cover of approximately 2090m<sup>2</sup>.

The Boat Storage Yard also proposes an Office/Shed building which provides a total of 120m<sup>2</sup> of GFA and provides for customer reception area, office space for administration duties, kitchen and amenities for staff and small items secure storage space. The Office/Shed building is single storey with a maximum height of 5.0m.

Vehicle access to the Boat Storage Yard will be provided internally through the site from the Walsh Street access point. Six dedicated car parking spaces are provided directly adjacent

to the Office/Shed building, these parking bays are to be sheltered for acoustic purposes, in accordance with the recommendations of the submitted acoustic report.

The proposed boat storage yard and storage shed and office (defined as a boating facility) is permissible with consent within the Tweed LEP 2000 (3b zone).

The proposed boat storage yard and storage shed and office (defined as a Marina) is prohibited within the Draft Tweed LEP 2012 (B4 zone).

#### Café/restaurant and cafe

The proposed two tenancies for café/restaurant and cafe are to be located within the existing building on the corner of Wommin Bay Road and Chinderah Bay Drive. As noted the site previously provided a cafe and shop servicing the Old Pacific Highway prior to the Chinderah Bypass being constructed. The proposal will see this existing building renovated and the café/restaurant and cafe use instated. The existing building footprint and height is to be retained as part of the proposal. The café/restaurant and cafe building provides the following areas and proposed staff numbers:

- Café/restaurant 67m<sup>2</sup> of dining area and 4 staff.
- Cafe 42m<sup>2</sup> of dining area and 2 staff.

The proposed café/restaurant (defined as a refreshment room) is permissible with consent within the Tweed LEP 2000 (3b zone).

The proposed café/restaurant (defined as a retail premise - food and drink premise - restaurant/café) is permissible with consent within the Draft Tweed LEP 2012 (B4 zone).

#### Caretaker's Dwelling

The proposed caretakers dwelling will be located within the existing house on the site. The existing building will be renovated.

The proposed caretaker's dwelling (defined as a dwelling house) is permissible within the Tweed LEP 2000 as the dwelling house is associated with the café/restaurant which encourages recreation and tourism therefore is consistent with the primary objectives of the zone being a requirement under clause 8(1)(a) of the Tweed LEP2000 (3b zone).

The proposed caretakers dwelling (defined as a residential accommodation – dwelling house) is prohibited within the Draft Tweed LEP 2012 (B4 zone).

It is important to note that the dwelling is existing with the application for renovation of the existing dwelling.

**SITE DIAGRAM:**



**Locality Plan**

Lot C DP 373769, Lot 1 DP 382677 No. 122 Chinderah Bay Drive; Lots 1-3 DP 415533 No. 126-130 Chinderah Bay Drive;  
 Lot 1 DP 119054, Lot 1 DP 341470, Lot A DP 373769 No. 120 Chinderah Bay Drive, Chinderah



<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Tid before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 18/02/2014                  © Land and Property Information (LPI) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 Km                  1:50,000 @ A4 Portrait                  NOT TO SCALE                  COPY ONLY - NOT CERTIFIED</p> <p> Map Projection: Universal Transverse Mercator                  Horizontal Datum: Geoid66, Edition of Australia 2004                  Grid: Map Grid of Australia, Zone 56</p>	<p><b> Civic and Cultural Centre</b>                  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   planningref@tweed.nsw.gov.au</p>	
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**DEVELOPMENT/ELEVATION PLANS:**

**Latest Amended Plans**

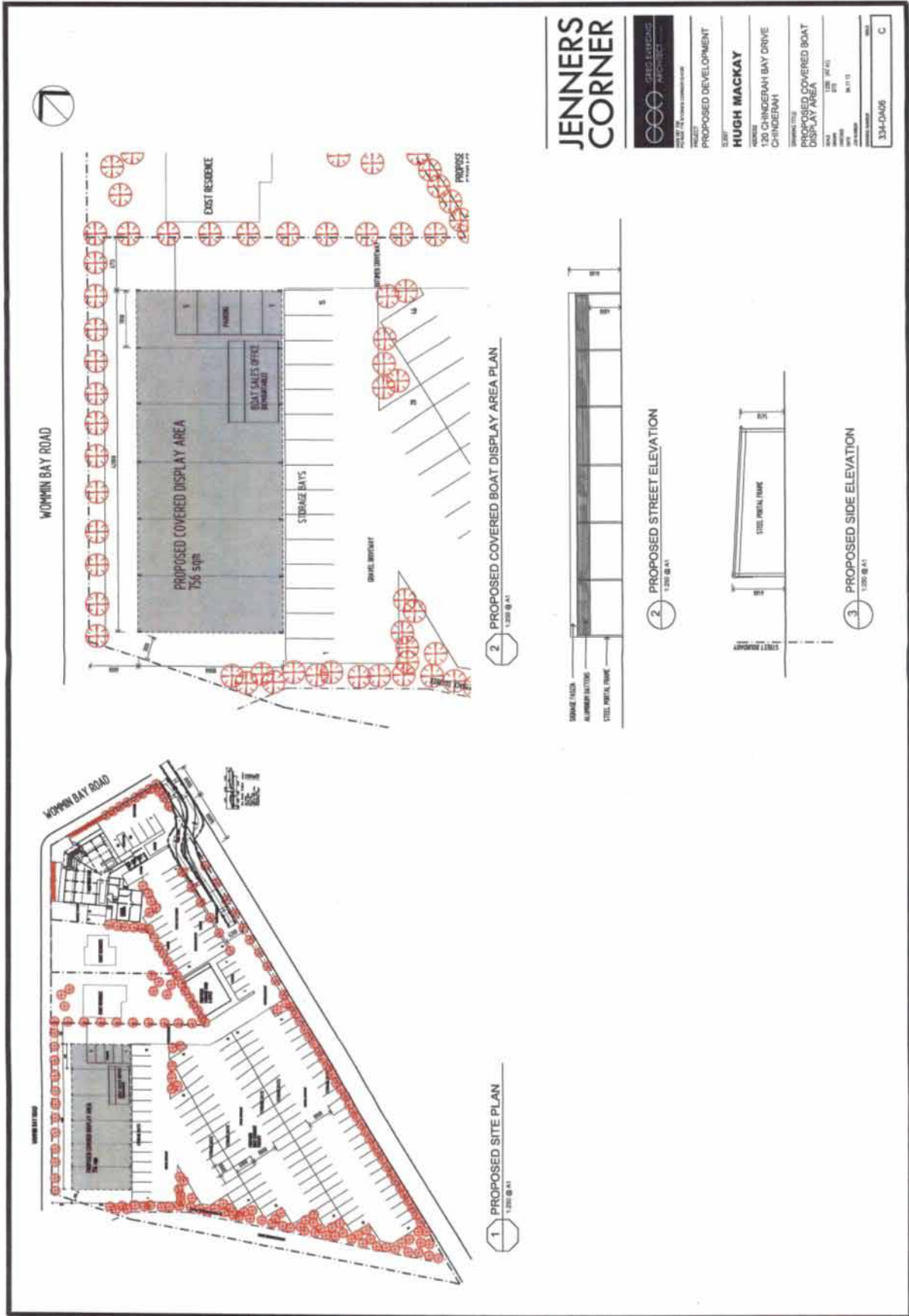


**2923m2 area subject to HPRP within the Kingscliff Creek**

 <p><b>TWEED</b> SHIRE COUNCIL</p> <p>City and Cultural Centre PO Box 816 Murrumbidgee NSW 2584</p> <p>Telephone (02) 6671 2420 Facsimile (02) 6671 2420 Email <a href="mailto:info@tweedshire.gov.au">info@tweedshire.gov.au</a> Website <a href="http://www.tweedshire.gov.au">www.tweedshire.gov.au</a></p>	<p>Issue Date: 17/7/2014</p> <p>Scale: 1:1100</p>	 <p><b>2932m2 Subject to Approved HP&amp;RP</b></p> <p><small>Disclaimer While every care is taken to ensure the accuracy of the 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 and negligence for all expenses, losses, damages including indirect or consequential damage) and cost 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 any survey or construction purpose 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.</small></p>
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# JENNERS CORNER



PROJECT: PROPOSED DEVELOPMENT

CLIENT: HUGH MACKAY

ADDRESS: 120 CHINDERAH BAY DRIVE CHINDERAH

DATE: 12/08/14

SCALE: 1:200 @ A1

PROJECT NO: 334-0A08

DATE: 08/11/13

BY: [Signature]

CHECKED BY: [Signature]

DATE: 08/11/13

PROJECT NO: 334-0A08

SCALE: 1:200 @ A1

DATE: 08/11/13

BY: [Signature]

CHECKED BY: [Signature]

DATE: 08/11/13

PROJECT NO: 334-0A08

SCALE: 1:200 @ A1

DATE: 08/11/13

BY: [Signature]

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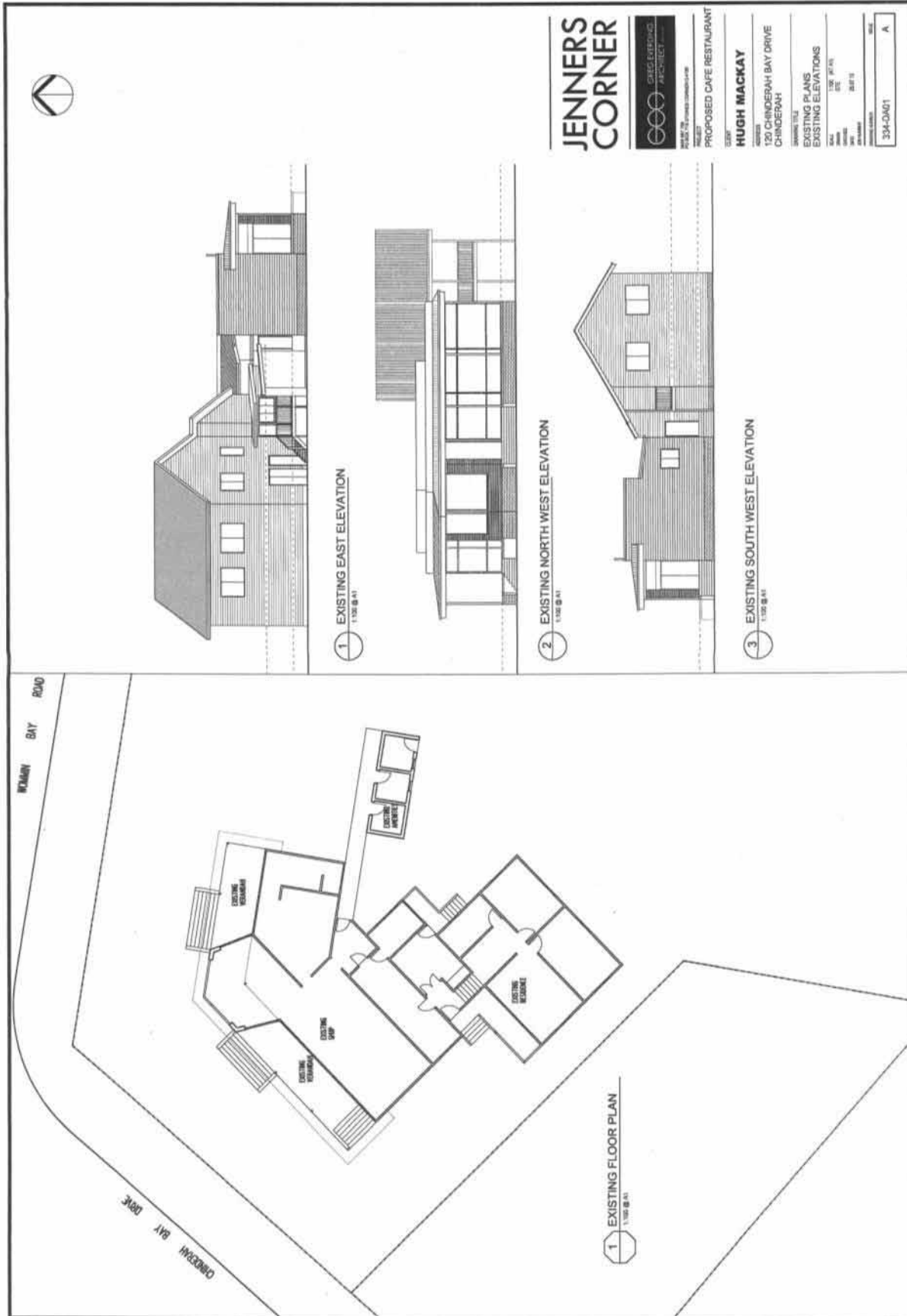
DATE: 08/11/13

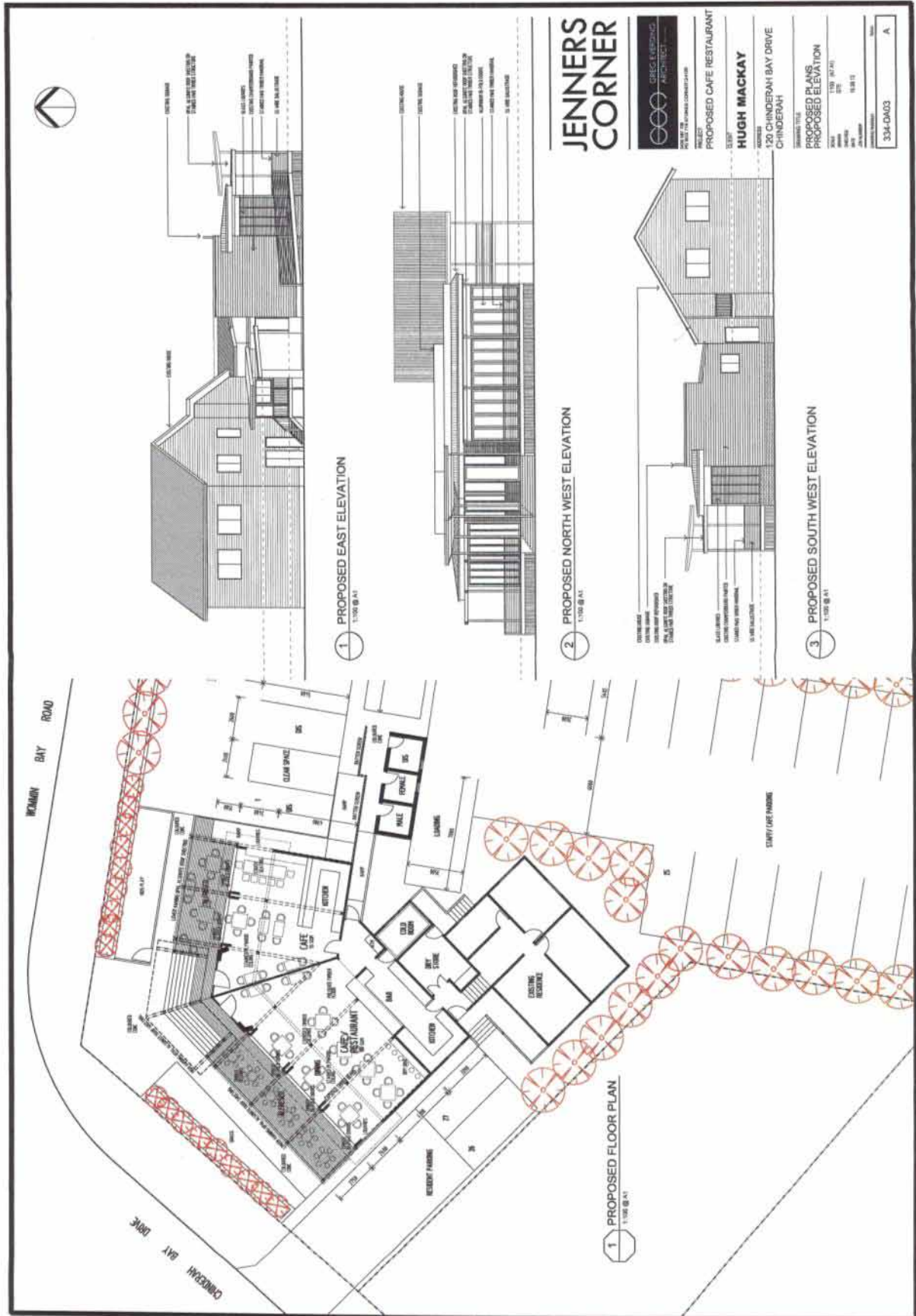
PROJECT NO: 334-0A08

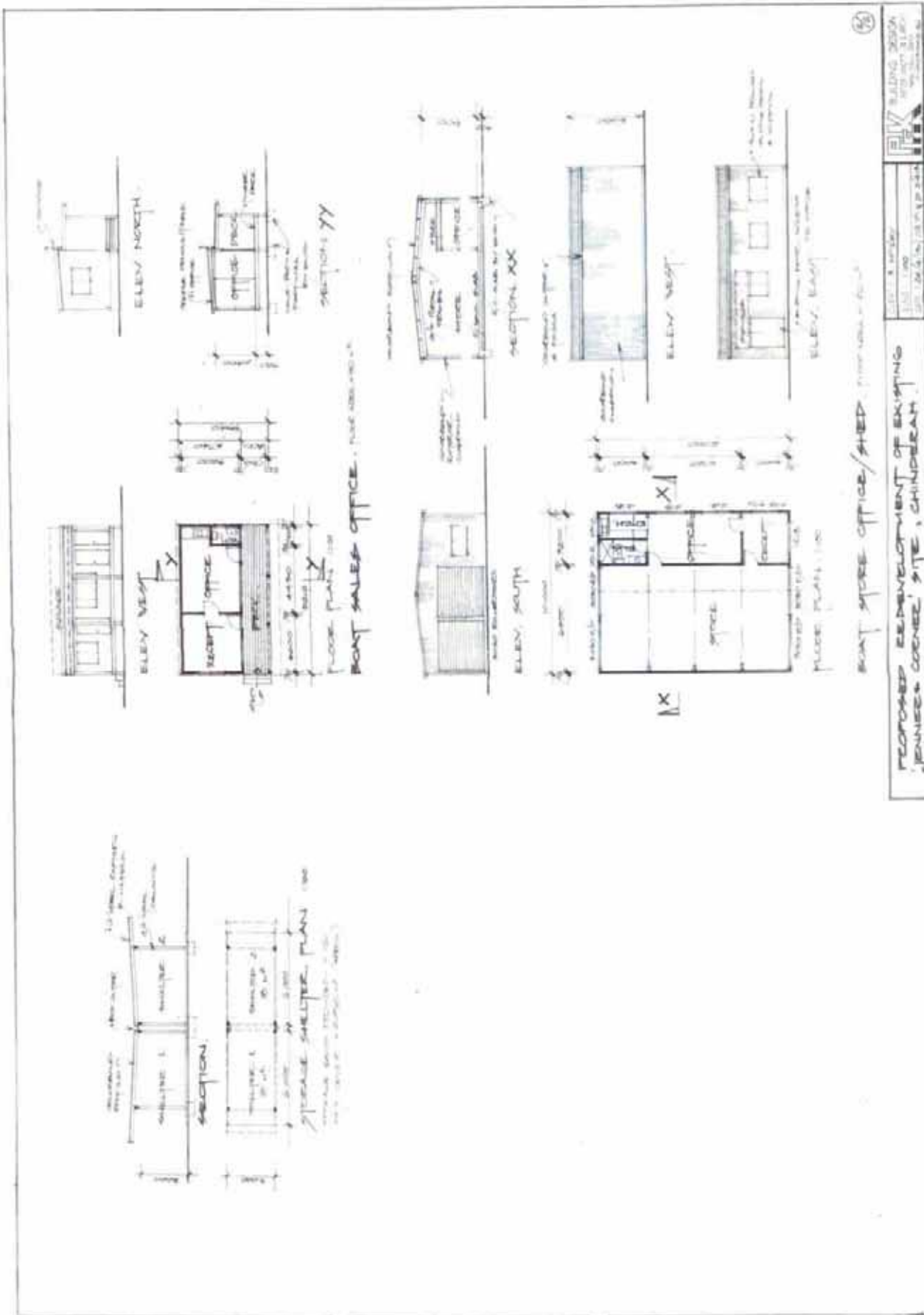
SCALE: 1:200 @ A1

DATE: 08/11/13

BY: [Signature]







**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 considered consistent with the aims of the plan.

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 objectives of the zone. 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 'Boat Showroom', 'Boating Facility', 'Refreshment Room' and 'dwelling house' are permissible subject to consent within the zone. The objectives of the 3(d) Waterfront Enterprise zone are:

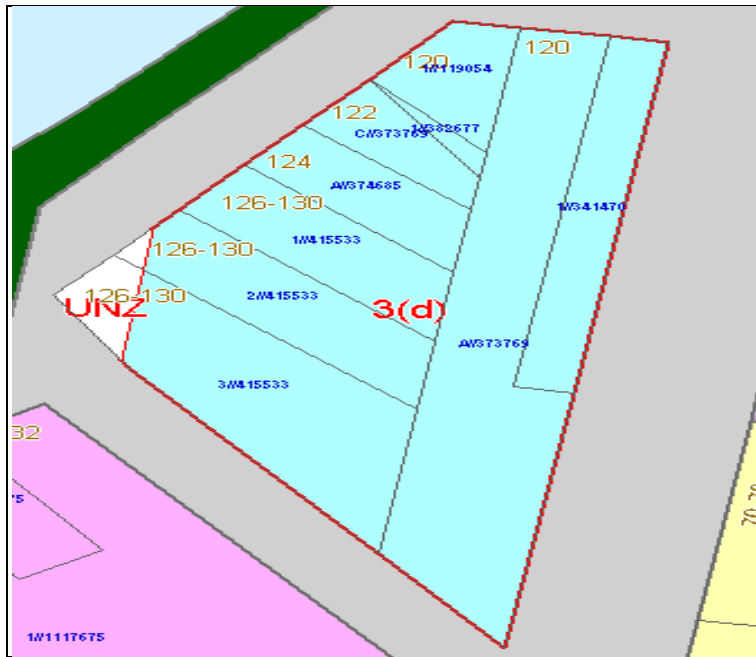
- *to encourage development related to waterfront and marine activities, recreation or tourism.*
- *to allow for residential development in association with waterfront, tourist or recreational uses.*
- *to allow for other development that is compatible with the primary function of the zone.*

The proposed development is considered consistent with the objectives of the zone. The proposed uses relate to waterfront, marine, recreation and tourism activities. The development compliments the established recreation and marine activities within the locality.

The dwelling house is associated with the café/restaurant which encourages recreation and tourism therefore is consistent with the primary objectives of the zone being a requirement under clause 8(1)(a) of the Tweed LEP2000 (3b zone). It is important to note that the dwelling is existing with the application for renovation of the existing dwelling.

Clause 13 – Development of uncoloured land on the zone map

A small portion of the site is unzoned land under the TLEP 2000, refer to the figure below titled TLEP 2000 Zoning.



TLEP 2000 Zoning map

As required by Clause 13 development of un-zoned land is to be undertaken with consideration of the uses permissible in the adjoining zones. The use on the part of the site which is un-zoned does not differ from that proposed for the 3(d) Waterfront Enterprise zoned land and is therefore consistent with the requirements of Clause 13.

#### 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 within a three storey area. The proposal includes an existing building with a maximum height of two storeys and 7.1m; all new structures are single storey in height. The proposal is considered to comply 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 any negative social or economic impact.

#### Clause 22 – Development near Designated Roads

The site fronts Chinderah Bay Drive and Wommin Bay Road. Both are identified as Designated Roads.

Council's Traffic Engineer provided the following comment:

*"Access to the development is proposed via Walsh Street; however the access driveway is located immediately onto Wommin Bay Road.*

*It is recommended that the plans be modified to relocate the driveway access at least 10m south from the boundary of Wommin Bay Road reserve.*

*Turning templates are required to be submitted showing the largest proposed vehicle entering Walsh Street from Wommin Bay Road (west bound). The*

*turning template would need to provide for a vehicle with a boat trailer on Walsh Street waiting to enter Wommin Bay Road.*

*Any proposed widening or modifications for Walsh Street are to be identified."*

Plans have been submitted by the applicant detailing amended access and turning templates. The amended plans are considered acceptable and appropriate conditions are recommended. It is considered that the proposed development will not impact upon the function of either road nor will it result in a traffic hazard or materially reduce the capacity or efficiency of the roads. A section 138 is required for works relating to both the proposed driveway access for the dwelling and the access for the boating facility, this has been recommended as a condition.

#### Clause 23 – Control of Access

Consent is sought for a new access point to Chinderah Bay Drive to service the Caretakers Dwelling and a new access to Walsh Street 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 bank of a naturalised drainage channel with direct connection to the Tweed River. The proposal is considered not to impact upon the adjoining Tweed River or the drainage channel along the southern boundary. The proposal will see a landscape buffer established, weed management and tree planting undertaken to the naturalised drain.

Sufficient foreshore open space is available within the locality with the subject site separate from the foreshore by Chinderah Bay Drive. The proposed structures are a combination of existing buildings to be renovated and low key single storey sheds and demountable structures. The proposal will not create an adverse impact on the existing visual amenity and will not be affected by biting midge.

#### Clause 34 – Flooding

The site is identified as being subject to a defined flood level of RL 3.2m AHD; Minimum Habitable Floor Level of RL 3.7m AHD and a PMF level of RL 7.7m AHD. The proposal was assessed by Council's Flooding Engineer with the proposal considered compliant with the requirements of the clause subject to recommended conditions.

#### Clause 35 - Acid Sulfate Soils

The subject property is identified as containing Class 3 Acid Sulfate Soils. An acid sulfate soils management plan has been prepared and assessed by Council's Environmental Health Unit. Conditions relating to the acid sulfate soils management plan are recommended if the application were to be approved. The proposal is compliant with the requirements of the Clause.

#### Clause 39 – Soil Contamination

It is considered the proposal is consistent with the provisions of this clause and SEPP 55 Remediation of Contaminated Land. Council's Environmental Health Unit did not object to the proposal in regards to soil contamination. The proposal complies with the Clause.

Clause 39A – Bushfire Protection

The site is mapped as bushfire prone land vegetation buffer 30m and 100m. A Bushfire Report has been prepared and included with the application that concludes the proposal is consistent with Planning for Bushfire Protection 2006. The proposal is considered not likely to have a significant adverse effect on the implementation of any strategies for bushfire control, significant threat to the lives of residents, visitors or emergency services personnel. The proposal is considered compliant with the Clause.

Clause 47 – Advertising Signs

The proposal includes four signs. A sign is located on each of the cafe/refreshment room building, boat sales office building, boat store office/shed building and covered boat displayed. The proposed signage is integrated into the overall architectural style of the proposal. The signs are not illuminated and do not lead to visual clutter through the proliferation of signs. The proposal is compliant with Clause 47 of the TLEP 2000.

Clause 54 – Tree Protection Order

The site is mapped as subject to the Tree Protection Order 2011. The proposal does not require the removal of trees. The proposal is considered to comply with the Clause.

**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 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 will not 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 of the development.

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. The site is separated from the foreshore by Chinderah Bay Drive. 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 create an adverse impact on the existing visual amenity, through the renovation of the existing commercial premise and exiting dwelling and the development of the vacant land. The proposal complies with Clause 81.

SEPP No. 64 – Advertising and Signage

The proposal includes four signs. A sign is located on each of the cafe/refreshment room building, boat sales office building, boat store office/shed building and covered boat display area. The signs are consistent with that allowed for the frontage length and width under the policy. The proposed signage is integrated into the overall architectural style of the proposal, none of the signs to be are to 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 are permissible in the 3(d) zone including refreshment rooms, boat storage facilities and boat sales yards. 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**

<b>Matters for consideration</b>	<b>Criteria</b>	<b>Response</b>
<p><b>1. Character of the area</b></p>	<ul style="list-style-type: none"> <li>- Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</li> <li>- Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</li> </ul>	<p>The proposed signage is contained on the building structures setback 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><b>2. Special areas</b></p>	<ul style="list-style-type: none"> <li>- 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?</li> </ul>	<p>The proposed signage is considered minor in size and scale which is contained on the building structure setback from the front property boundary. The proposed signage will not impact on special areas.</p>
<p><b>3. Views and vistas</b></p>	<ul style="list-style-type: none"> <li>- Does the proposal obscure or compromise important views?</li> <li>- Does the proposal dominate the skyline and reduce the quality of vistas?</li> <li>- Does the proposal respect the viewing rights of other advertisers?</li> </ul>	<p>The proposed signage is considered minor in size and scale which is contained on the building structure setback from the front property boundary. The proposed signage will not impact on views and vistas.</p>

<b>Matters for consideration</b>	<b>Criteria</b>	<b>Response</b>
<p><b>4. Streetscape, setting or landscape</b></p>	<ul style="list-style-type: none"> <li>- Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</li> <li>- Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</li> <li>- Does the proposal reduce clutter by rationalising and simplifying existing advertising?</li> <li>- Does the proposal screen unsightliness?</li> <li>- Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</li> <li>- Does the proposal require ongoing vegetation management?</li> </ul>	<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><b>5. Site and building</b></p>	<ul style="list-style-type: none"> <li>- 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?</li> <li>- Does the proposal respect important features of the site or building, or both?</li> <li>- Does the proposal show innovation and imagination in its relationship to the site or building, or both?</li> </ul>	<p>The proposed signage is contained on the building structures setback from the front property boundary. The signage is consistent in terms of scale in relation to the building and does not impact on important features of the site or building.</p>
<p><b>6. Associated devices and logos with advertisements and advertising structures</b></p>	<ul style="list-style-type: none"> <li>- 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?</li> </ul>	<p>Not Applicable.</p>

Matters for consideration	Criteria	Response
<b>7. Illumination</b>	<ul style="list-style-type: none"> <li>- Would illumination result in unacceptable glare?</li> <li>- Would illumination affect safety for pedestrians, vehicles or aircraft?</li> <li>- Would illumination detract from the amenity of any residence or other form of accommodation?</li> <li>- Can the intensity of the illumination be adjusted, if necessary?</li> <li>- Is the illumination subject to a curfew?</li> </ul>	Illumination is not proposed.
<b>8. Safety</b>	<ul style="list-style-type: none"> <li>- Would the proposal reduce the safety for any public road?</li> <li>- Would the proposal reduce the safety for pedestrians or bicyclists?</li> <li>- Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</li> </ul>	No sign inhibits the passage of vehicles or pedestrians as they are contained wholly on private property, on the wall of the buildings and structures.

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', 'Restaurant or Cafe', and 'Dwelling House' under the DTLEP 2012. The use of 'Marina' 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 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.*



Figure 10 – DTLEP 2012 Zoning Extract. Source: TSC GIS.

*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.”*

A recent article published in a Planning Institute of Australia (PIA) NSW Newsletter (June 2013) from Gadens Lawyers noted the following with respect to the determining weight of a draft LEP:

*“Question: I would like to understand why a Draft LEP is highly relevant to the assessment of a DA when the draft LEP is ‘certain and imminent’, and what exactly that means?*

*The starting point is that s.79C of the Act expressly requires a consent authority, when assessing any development application, to take into consideration the provisions of any draft planning instrument (for example, an LEP or SEPP) that “is or has been the subject of public consultation” and that has been notified.*

*However taking something into account is one thing – the remaining question is how much weight or emphasis to place on that EPI's provisions when it is only a draft document, and may well be quite inconsistent with a current and in-force LEP.*

*In that regard, the Courts have developed a body of caselaw to the effect that a Draft LEP will be given greater weight when it is "certain and imminent". Funnily enough, this phrase does not appear anywhere in the Act or Regulations, nor in any savings or transitional provisions that we are aware of, and although it is bandied about by judges, commissioners, lawyers, and government authorities, you'd have to search hard to find its source of origin. It actually dates back to a 1980 Judgment (Balgownie Pty Ltd v Shoalhaven City Council (1980), which well and truly predates s.79C of the Act. In that matter, the Court had some limited regard to a draft proposal to rezone the site, but only because it was said to be "the latest and best informed expert opinion" relating to the site.*

*It is therefore surprising that this has morphed into a general principle that any draft LEP that is 'certain or imminent' should be given considerable weight in the s.79C balancing act (in fact, the courts have used confusing terminology here too, referring variously to "significant weight", or "some weight", or "considerable weight" or "due force" or "determining weight" – see the discussion of this in Blackmore Design Group v North Sydney (2000)).*

*Nevertheless, what is clear is that the weight to be attributed to a draft environmental planning instrument will be greater if there is a greater certainty that it will be adopted (Terrace Tower Holdings Pty Ltd v Sutherland Shire Council (2003).) Where the LEP has been exhibited and sent by the council to the Minister for approval and gazettal, it will often be given great weight, even more than the existing and in force LEP.*

*But is that approach fair and correct? The answer is probably not. It can be very hard to predict when an LEP is 'certain' and 'imminent', because this depends on the future decision of the Minister and his staff at the Department. For example, our team at Gadens was involved in an appeal in the Warringah local government area in 2011 where the Court ruled that a change to the zoning of the site was certain and imminent and should be given 'determinative weight', and refused the DA. About a month later, the Minister made the LEP but carved out the site as a 'deferred' matter (its zoning did not change). The Court and Council's assessment that the proposed rezoning was 'certain and imminent' had been dead wrong. But such a task is inherently uncertain because it relies on predictions as to a decision of the Minister that has not yet been made.*

*Notwithstanding 'certainty and imminence', a consent authority may of course grant consent to a development application which does not comply with the draft instrument. As the Court said in the Blackmore Design Group v North Sydney Council matter:*

*"In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith [or "antipathetic" thereto]."*

*In light of the above advice, it is considered that the approval of the proposed development is the appropriate course of action. The draft LEP has been exhibited and sent by Council to the Minister for approval and gazettal. Approval*



of the development would result in creating Existing Use Rights for the development if the development proceeded.

It is considered that, the development does 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 the reuse of the existing Dwelling House upon the site for the purposes of a caretaker's dwelling. The existing dwelling house is to be internally and externally renovated. No extension or change is made to the footprint of the dwelling proposed. The provisions of Section A1 are not considered to be applicable in this instance as the proposal does not alter the existing dwelling footprint.

A2-Site Access and Parking Code

Car Parking

A total of 36 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. The proposal provides car parking in accordance with Section A2.

<b>Parking Table</b>					
<b>Use</b>	<b>Parking Rates</b>	<b>Units</b>	<b>Spaces required</b>	<b>20% ESD Reduction</b>	<b>Total Proposed</b>
Dwelling House	1 space per dwelling plus provision for driveway parking of another vehicle	1 dwelling	2	2	2
Boat Showroom	Staff - 1/10 displayed boats, min 5 spaces Customer -	1 staff 50 boats	1 5	0.8 4	5
Café	Staff - 1/10 displayed boats, min 5 spaces Customer -	2 staff 42m <sup>2</sup> GFA	2 6	1.6 4.8	24 to service both tenancies

<b>Parking Table</b>					
<b>Use</b>	<b>Parking Rates</b>	<b>Units</b>	<b>Spaces required</b>	<b>20% ESD Reduction</b>	<b>Total Proposed</b>
	1/7m <sup>2</sup> dining area				
Café/Restaurant	Staff - 1/staff at peak operating time Customer - 1/7m <sup>2</sup> dining area	4 staff 67m <sup>2</sup> dining area	<b>4</b> <b>9.57</b>	<b>3.2</b> <b>7.65</b>	<b>24 to service both tenancies</b>
Storage shed/office And boat storage bays	No Specific Rate nominated	2 staff (envisaged)	<b>2</b>	<b>2</b>	<b>5</b>
Total Required			<b>29.57</b>	<b>24.05</b>	
Total Provided			<b>36</b>	<b>36</b>	<b>36</b>

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 stay onsite for an extended period six dedicated parking spaces are provided outside the Storage Shed and Office building. The proposed car parks are considered adequate to service parking demand.

Service Vehicle & Loading/Unloading

<b>Parking Table</b>				
<b>Use</b>	<b>Service Vehicle and Rate</b>	<b>Units</b>	<b>Vehicle Required</b>	
Dwelling House	-	-	-	
Boat Showroom	1/20 boats, min 1 truck park HRV	50 boats	<b>2.5 HRV</b>	
Café	1 HRV	-	<b>1 HRV</b>	
Café/Refreshment Room	1 HRV	-	<b>1 HRV</b>	
Boat Storage	No Specific Vehicle Nominated	-	-	

The service vehicle requirements as per Section A2 is summarised above. The site has been design to accommodate SRV (Small Rigid Vehicle) with the site

providing two SRV loading bays. The proposal allows the service vehicles to enter and exit in a forward direction.

Council's Traffic Engineer assessed the proposal, with no objection raised.

The proposal is compliant with the requirements of Section A2 of the TDCP 2008.

#### A3-Development of Flood Liable Land

This site is mapped as flood prone land. The site is identified as being subject to a defined flood level of RL 3.2m AHD; Minimum Habitable Floor Level of RL 3.7m AHD and a PMF level of RL 7.7m AHD. The proposal consists of an existing dwelling which is two storeys in height. The ground floor level consists of a study and entry hall only, with the remainder of the dwelling located in the upper floor at 3.89m AHD. Dwelling houses are exempt from providing PMF refuge, evacuation routes and Flood Response Assessment Plan.

Council's Planning and Infrastructure Engineer advised that the proposal is consistent with Council's flooding policy subject to recommended conditions 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 four signs which are in accordance with the maximum number of signs per business. A sign is located on each of the cafe/refreshment room building, boat sales office building, boat store office/shed building and covered boat display area. The signs are consistent with that allowed for the frontage length and width of the site. None of the signs to be are to be illuminated. The proposed signage is integrated into the overall architectural style of the buildings and structures. The proposed signage is considered consistent with the code.

#### A11-Public Notification of Development Proposals

The application was advertised for a period of thirty days from Wednesday 31 July 2013 to Friday 30 August 2013. During the advertised period Council received one submission supporting 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, two x 240lt wheelie bins and one x 3m<sup>3</sup> bulk bin for refuse; three x 240lt wheelie bins and two x 360lt wheelie bins for recycling; one x 240lt wheelie bin for green waste. The bins are located as shown on the plan within the Preliminary Waste Management Plan.

Onsite waste management will be undertaken by staff. The bins will be serviced onsite by Solo Waste with adequate access available. 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

No demolition is proposed as part of this application.

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, 6(a) Open Space, 2(a) Low Density Residential and 1(a) Rural. There is a mixture of land uses within the locality. The site is surrounded by mostly residential dwellings; however the site contains an existing commercial premise which has previously been used as a café and shop and more recently used as a real-estate office.

Stormwater Quality

Council's Planning and Infrastructure Engineer reviewed the submitted Stormwater Management Plan dated June 2013 and advised that the proposal is acceptable in terms of stormwater quality subject to recommended conditions. The Stormwater Management Plan dated June 2013, states that the need for mitigation of the peak stormwater discharge is not required. Therefore the provision of onsite detention is not required. The provision of an Oil and Grit

Separator for the hardstand areas is recommended. The development proposes approximately 2671m<sup>2</sup> of porous gravel pavement (the display area and area between the storage bays) and 1550m<sup>2</sup> of bitumen hardstand.

#### Local Drainage

Council's Planning and Infrastructure Engineer reviewed the application and advised that "*subject to further design details, the concept proposal in respect to filling and grading is generally in accordance with the Tweed DCP Section A3 - Development of Flood Liable Land. Local drainage impacts on the adjacent properties fronting Chinderah Bay Drive shall be mitigated during these works.*"

The following condition was recommended.

*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. Specific details shall be provided to demonstrate that the adjoining properties are not impacted from a local drainage perspective.*

#### Noise/Amenity

An Environmental Noise Impact Report has been submitted with the application which recommended acoustic treatments and hours of operation. The proposed acoustic treatment consists of an acoustic fence to be located on the rear boundary of the existing residence No. 122 and acoustic carport structure located over the carparking spaces located at the rear of residence No. 122. Additional acoustic treatment is recommended for the café/restaurant on the south western elevation of the building. Hours of operation are limited to the following: Boat Showroom 7am to 6pm Monday to Sunday, Boating Facility 7am to 6pm Monday to Sunday, Café/Restaurant and café 7am to 10pm Monday to Sunday and 7am to 8pm Sunday.

Council's Environmental Health Officer has assessed the Environmental Noise Impact Report, no objection was raised subject to recommended conditions of consent which includes the recommendation of the Environmental Noise Impact Report.

#### Dewatering

Council's Environmental Health Officer has assessed the proposal in regards to potential environmental impacts. Council's Environmental Health Officer concluded that a dewatering management plan is to be prepared and approved prior to the issuing of a construction certificate. Appropriate conditions are recommended.

#### Lighting

Conditions relating to lighting 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 sales display and carparking area adjacent to the café. 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 that there is no charge to water and sewer due to existing credits. There is no charge to Contribution plan number 18 due to existing credits. Council's Traffic Engineer advised that due to existing credits and discounts a total of 21.6 trips are 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 which supported the proposal subject to appropriate landscaping. A condition relating to landscaping is recommended if the application were to be approved.

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 provided General Terms of Approval, which are recommended as conditions of consent if the application were to be approved.

**(e) Public interest**

It is considered that 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.

The Council officers recommend Option 1.

**CONCLUSION:**

The proposal is permissible with consent under the 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.

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- 13 [PR-PC] Development Application DA13/0654 for a Two Lot Subdivision, Remove Existing Dwelling and Construct Two Single Dwellings - Staged Development at Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740 No. 40 Queen Street, Fingal Head

**SUBMITTED BY:** Development Assessment

**FILE REFERENCE:** DA13/0654 Pt2



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
- 

### SUMMARY OF REPORT:

This matter was referred as Item 8 to the Planning Committee meeting of 1 May 2014.

Council resolved the following in respect of this matter:

*"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."*

This addendum report now aims to summarise activity relating to the application since the abovementioned resolution, thus providing an update to the previous recommendation in order for it to be reconsidered by Council.

### ADDITIONAL ACTIVITY:

On 15 May 2014, the applicant submitted further amended development plans, an ecological assessment and additional correspondence addressing Asset Protection Zone (APZ) requirements and on-site vegetation removal.

A referral response dated 10 June 2014 was received from Department of Trade and Investment – Crown Lands on 24 June 2014.

An on-site meeting was held on 2 July 2014 to provide the applicant and the proponent with the opportunity to discuss and expand upon the latest submission with relevant Council staff.

The submitted information has been reviewed and is not considered to mitigate aspects of the proposal that render it unsuitable for the location.

As such, the officers' original recommendation for refusal has been reiterated through this updated report.



**RECOMMENDATION:**

**That:**

**A. Development Application DA13/0654 for a two lot subdivision, remove existing dwelling and construct two single dwellings - staged development at Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740 No. 40 Queen Street, Fingal Head be refused for the following reasons:**

- 1. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(ii), the orderly and economic use and development of the land.**

**It is Council's view that the proposal has the ability to impact negatively upon the subject site and adjacent land; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.**

- 2. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(vi), the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.**

**It is Council's view that the proposal has the ability to impact upon the protection and conservation of native animals and plants; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.**

- 3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.**

**It is Council's view that the proposed development is inconsistent with the aims of:**

**State Environmental Planning Policies:**

- SEPP 71: Coastal Protection**
- NCREP: Clauses 32B and 43**

**It is Council's view that the proposed development does not satisfy the provisions contained within:**

**The Tweed LEP 2000:**

- Clause 4: Aims of this plan**
- Clause 5: Ecologically sustainable development**
- Clause 8(1): Consent Considerations**
- Clause 11: The Zones**

- **Clause 39A: Bushfire Protection**

**The Draft Tweed LEP 2012:**

- **Clause 1.2: Aims of Plan**
- **Clause 2.3: Zone Objective and Land Use Table**
- **Clause 5.5: Development within the Coastal Zone**

**Development Control Plan 2008:**

- **Section A1 Part A: Dwelling Houses, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development**
- **Section A5: Subdivision Manual**

**Tweed Shire Coastline Management Plan 2005:**

**NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast.**

4. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.

It is Council's view that in order to facilitate development and comply with bushfire and planning regulations, the development is likely to result in a significant and unacceptable impact on a candidate Endangered Ecological Community, threatened species and their habitat.

5. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.

It is Council's view that it is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the aims of the plan, unacceptable cumulative impact and ecologically sustainable development.

**B. The following action be taken:**

1. Report an additional *Archidendron hendersonii* record to the Office of Environment and Heritage to be recorded on the Bionet - Atlas of NSW Wildlife database.
  2. Continue liaison with the Office of Environment and Heritage to investigate modification to the candidate Endangered Ecological Community on the site and alleged non-compliance with conditions of Section 91 Certificates issued by the Office of Environment and Heritage.
  3. Investigate use of the existing dwelling on the site for the purpose of tourist accommodation given the prohibition of such land use in the R2 Low Density Residential zone and absence of relevant development consent for such use in the 2(a) Low Density Residential zone prior to 4 April 2014.
-

**REPORT:**

**Applicant:** Mr R Nankivell

**Owner:** Mr Robert L Nankivell

**Location:** Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740 No. 40 Queen Street, Fingal Head

**Zoning:** 2(a) Low Density Residential, 6(a) Open Space and 6(b) Recreation

**Cost:** \$1,080,000

**Amended Plans**

Formal amendment to development plans includes the following:

- Recessing of the north east corner of the proposed dwelling on Lot 2 by approximately 2m to increase setback to vegetation associated with the Endangered Ecological Community (EEC); and
- Deletion of the swimming pool and pool decking of the proposed dwelling on Lot 1 to increase setback to vegetation associated with the EEC.

The amendment can be illustrated by comparing the following consecutive site plans:

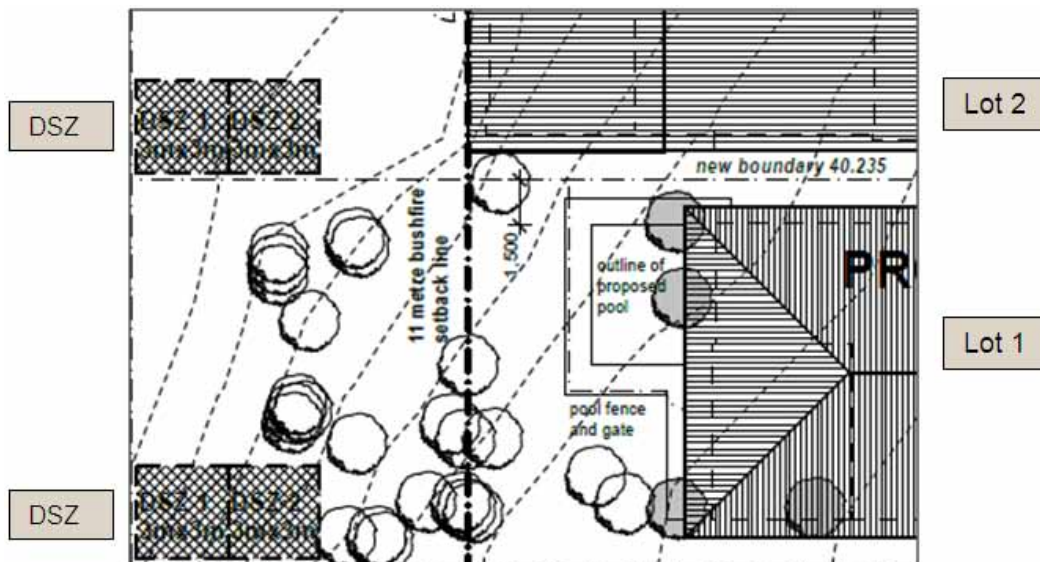


Figure 1: excerpt from Site Plan WD 0.03 Revision C dated 11 March 2014

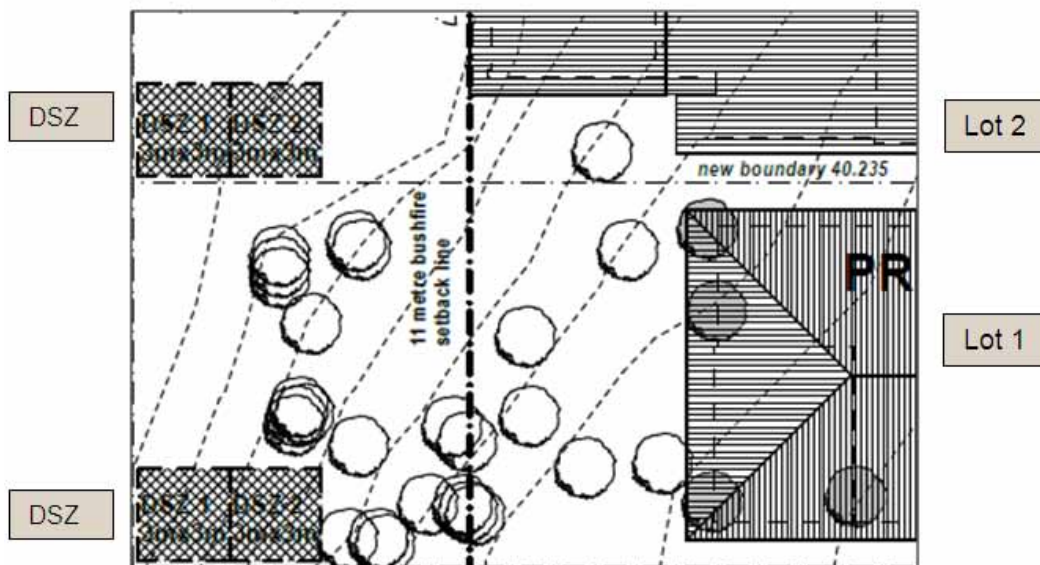


Figure 2: excerpt from amended Site Plan WD 0.03 Revision D dated 23 April 2014

Review of the amended plans has not resulted in modification to the previous planning assessment as contained within the original report (refer attached), which was based on amended plans received on 21 March 2014. A number of inconsistencies with, and variations to objectives and controls for residential development contained within Development Control Plan A1 Part A are discussed.

It should be noted that the location of two Deep Soil Zones within the Asset Protection Zones associated with each dwelling is not suitable and not in accordance with bushfire recommendations. Deep Soil Zones are to be suitable for the growth of mature vegetation. Locating Deep Soil Zones to the rear boundary increases bushfire risk which is contrary to the intent of the proposal.

### **Ecological Matters**

The ecological assessment and additional correspondence addressing Asset Protection Zone (APZ) requirements and on-site vegetation removal have been reviewed by Council's Natural Resource Management Unit.

The following assessment should be read in conjunction with the assessment contained within the original report (refer attached). Reference is made to the following documents:

1. Previous ecological assessment report at Appendix F of the SEE "Review of Existing Vegetation" prepared by Planit Consulting and dated October 2013;
2. Arborist report at Appendix G of the SEE "Tree Report" prepared by Northern Tree Care and dated 30 October 2013; and
3. Recently submitted ecological assessment at Appendix F of information provided on 15 May 2014 "Flora and Fauna Assessment for Subdivision, House Demolition and Dwelling Construction, 40 Queen Street, Fingal" prepared by Peter Parker Environmental Consultants Pty Ltd and dated 6 May 2014.

### Ecological Values of Site

Consistent with Council's assessment and the previous ecological assessment report, the recently submitted ecological assessment (F&FA) acknowledges that the vegetation onsite is representative of an Endangered Ecological Community (EEC) – *Littoral Rainforest in the NSW North Coast Sydney Basin and South East Corner Bioregions*.

The F&FA notes the occurrence of the listed flora species *Cryptocarya foetida* (1 stem) and *Archidendron hendersonii* (1 stem) on the subject site and identifies additional single individual stems of both species situated within the adjoining Crown Reserve (Lot 7011 DP1065741) proximate to the site (20m and 50m respectively). Both of the additional stems were identified and species were confirmed by Council officers.

An additional *Archidendron hendersonii* stem was identified onsite by Council officers during an inspection conducted on the 19 March 2014. This specimen was not recorded in the F&FA nor was it identified in previous ecological survey reports conducted on behalf of the applicant.

At a later inspection on 2 July 2014 (site meeting with applicant), all evidence of the additional *Archidendron hendersonii* had been removed. Similarly, a *Macadamia tetraphylla* specimen had been identified onsite (as discussed in the original report) and appears to have been removed. There is no evidence following review of the Office of Environment and Heritage (OEH) Public Register, and confirmation from OEH that approval for the removal of these two listed specimens had been authorised under the *Threatened Species Conservation Act*.

The definition of an ecological community includes an assemblage of species. Any ecological assessment should include interactions of fauna species with flora species as habitat. However, fauna species were not addressed in the F&FA.

The report states: 'the site is located in a residential area and the littoral rainforest is of too small in area to sustain significant fauna habitat' and 'Council has not previously raised an issue in respect to fauna and impact on fauna is negligible'.

These statements are not supported.

### Impact Assessment

The environmental consultant performed an assessment of significance on the Littoral Rainforest EEC and *Archidendron hendersonii*. Results are discussed below. For the purpose of the assessment the report adopted a 1km study area.

The F&FA notes that *Cryptocarya foetida* is a common species in littoral rainforest remnants of the NSW Far North Coast. In consideration of the species 'common' occurrence, the onsite specimen's small size, immature age, restricted capacity for the tree to 'revegetate naturally' and current growing conditions being a 'regularly maintained understorey for residential amenity' the report concluded that the specimen was not viable for assessment under a 7-part test of significance.

### *Description of Likely Direct Impacts*

Four trees will be required to be removed along the western edge of the littoral rainforest community to accommodate the proposed dwelling on Lot 1. These trees correspond to the revised layout plan below:

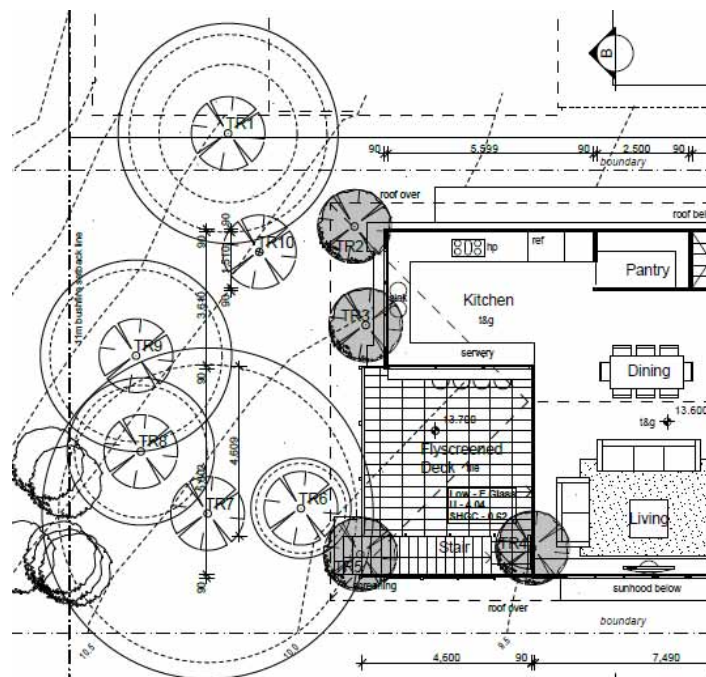


Figure 3: excerpt from First Floor Plan WD11.02 Revision E dated 23 April 2014

- Tree 2 - *Syzygium oleosum*
- Tree 3 - *Arytera divaricata*
- Tree 4 - *Diospyros fasciculosa*
- Tree 5 - *Notelaea longifolia var. glabra*

To facilitate the proposal, a further two trees will require pruning:

- Tree 1 - *Archidendron hendersonii*
- *Cupaniopsis anacardioides* – not described: assumed to be the tree referred to in the earlier Tree Report, identified as Tree 25 and shown as Tree 7 on the revised layout plan above.

7 Part Test Assessment – Section 5A of the EP&A Act

- Section 5A(2)(a) – *Archidendron hendersonii* (white lace flower) only
  - (a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.

The amendment in association with Dwelling 2 (recessing of north east corner) intends to retain Tree 1 by avoiding encroachment of footings within the tree's structural root zone (1.85m based on girth of 250mm).

Footing encroachment within the outer tree protection zone (TPZ) has been shown on the plans. This would not be expected to exceed 10% of the total tree protection zone (3.0m) whilst additional area contiguous with the TPZ to the east is available to compensate for the encroachment consistent with the AS 4970-2009.

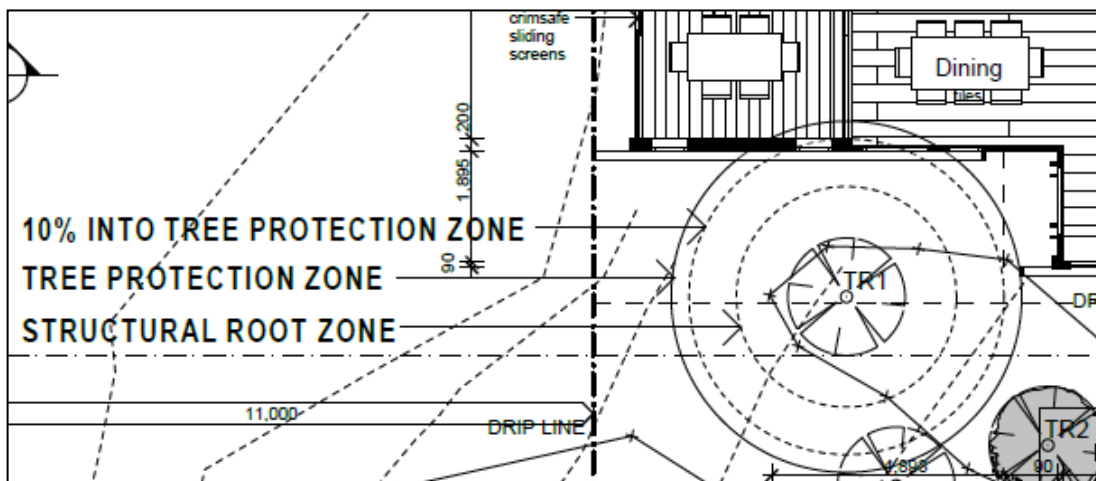


Figure 4: excerpt from Ground Floor Plan WD21.02 Revision F dated 23 April 2014

The roofline has also been modified to allow for canopy separation.

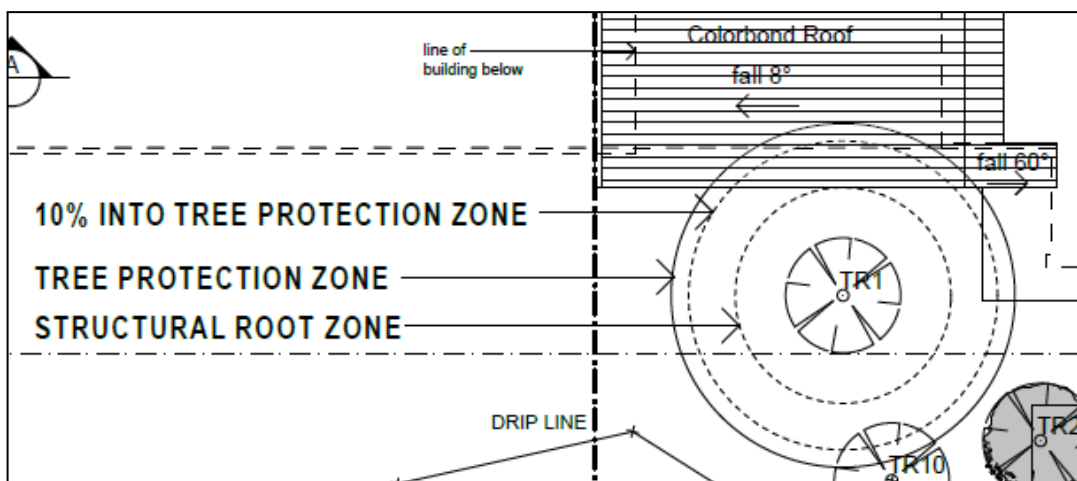


Figure 5: excerpt from Roof Plan WD21.04 Revision C dated 23 April 2014

It is noted that the canopy line of the tree is not shown on the plan to accurately determine canopy separation distance from the proposed roof structure/s.

The F&FA proposes pruning of the tree which results in the loss of a primary limb extending laterally and to the south.



Plate 6: White lace-flower limb to be pruned

Figure 6: Plate 6 from Ecological Assessment dated 6 May 2014

Based on the amended plans it is unlikely that the proposed development would have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction. However, whilst the design has been modified to allow for adequate separation distance, specific arboricultural management measures to be implemented during the construction phase have not been provided.

Furthermore the requirement for regular understorey maintenance (for bushfire management purposes) does not appear to have been considered in evaluating the viability of the local population where the ability of seedling recruitment is likely to be impeded and natural dispersal vectors (avifauna, ground dwelling and arboreal mammals) are likely to be discouraged due to the degree of habitat modification.

As indicated in the Scientific Determination '*Although Archidendron hendersonii flowers and fruits well, it is often represented by only single trees per stand, and seedlings are rare*' which highlights the importance of maintaining and improving habitat conditions to encourage seedling recruitment.

The F&FA notes that the national and State listed *Cryptocarya foetida* is a common species in littoral rainforest remnants of the NSW Far North Coast. As mentioned previously in this report, the F&FA concluded that the specimen was not viable for assessment under a 7-part test of significance in consideration of the species 'common' occurrence, the onsite specimen's small size, immature age, restricted capacity for the tree to '*revegetate naturally*' and current growing conditions being a '*regularly maintained understorey for residential amenity*'.



Figure 7: *Cryptocarya foetida* 2012



Figure 8: *Cryptocarya foetida* 2014

Whilst the OEH Species Profile suggests that '*seedlings can be fairly numerous*' it is indicated that '*few mature trees are known*'. The failure to evaluate the significance of the specimen (on site) based on the apparent abundance of seedlings is not considered to be reasonably justifiable.

The long term viability of the local population may be dependent on ensuring that all seedlings are retained and protected after identifying the location, number and condition of any mature fruit bearing specimens, the abundance of juvenile seedlings within the nominated 'study area' (adopted in the study as 1km) and the effect of the development on recruitment and dispersal.



- Section 5A(2)(c)(i-ii)
  - (c) in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:
    - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
    - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.

The F&FA determined that removal of the four nominated trees was insignificant for the purposes of the assessment of significance due to the fact that the species to be removed were commonly found species comprising an EEC in this locality. Therefore the F&FA concluded there would be no significant impact.

Council does not agree that this component of the assessment has been satisfactorily addressed and notes as follows:

- § There has been no evaluation of the local extent of the EEC.
- § The report adopts a study area of 1km however it is not made clear the extent of EEC habitat within this study area.
- § With regard to part (ii) of the assessment, there has been no consideration of the long term impact on the composition of the EEC (preventing succession/native recruitment) as a result of imposing bushfire hazard management requirements to protect the proposed dwellings.
- § The composition of an ecological community should be taken as the assemblage of both flora *and* fauna species.
- § The F&FA has clearly disregarded fauna interactions even where a 1km study area has been nominated.

- Section 5A(d)(i)
  - (d) in relation to the habitat of a threatened species, population or ecological community:
    - (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and

The F&FA proposes to offset loss of habitat within the area currently occupied by the existing dwelling encroachment into the adjoining Crown Reserve (a 46.76m<sup>2</sup> built form footprint) stating that there would be negligible impact on threatened species habitat.

Ecological restoration of the nominated area would ordinarily occur as a condition of any development consent to rectify the encroachment.

Crown Lands provided a referral response dated 10 June 2014 indicating the following:

*"It is imperative that the existing encroachment is removed and the affected Crown land restored in conjunction with any development approval".*

Crown Lands stipulated that the proponent may not:

- § remove any vegetation from the adjoining Crown land;
  - § stockpile materials, equipment or machinery on the adjoining Crown land;
  - § direct stormwater discharges onto the adjoining Crown land;
-

- § use the adjoining Crown land as an asset protection zone; or
- § restrict public use and access of the adjoining Crown land.

Consequently, the proposed restoration/amelioration measures are not considered appropriate.

It is noted that an additional 204.69m<sup>2</sup> (10m x 25m) assisted revegetation area is proposed adjacent to the subject site within Lot 7011 DP1065741. There was no indication as to how the area was calculated. This area is considered unsuitable given that the area:

- § is currently offered a high level of protection (not under threat);
- § comprises an assemblage of species and structural elements representative of a remnant community; and therefore
- § is in relatively good condition (limited weed cover) and would be considered a low priority for any restoration activity.

Other options proposed in the supplementary planning response dated 13 May 2014 prepared by Planit Consulting include:

*Option 2*

Council is to identify a suitable compensatory habitat site.

Council is not obligated to identify potential offset sites. An offset proposal should only be considered where it can be clearly demonstrated that adverse impact is unavoidable. Based on the merits of the proposal this is not the case.

In a situation where Council is satisfied that compensation may be considered, any offset proposal (where accepted) should seek to protect an area that may be threatened (not a Council asset), improve an area that remains disturbed (yet with potential to be rehabilitated to achieve remnant status), be like for like and capture an area aptly commensurate (based on the integrity/value) with the unit/s of vegetation to be impacted.

*Option 3*

A monetary contribution.

As indicated above the impacts are considered to be avoidable and as such an offset package in the form of a monetary contribution is not acceptable. This alternative compensatory option is highly undesirable as it is resource intensive and a burden not considered the responsibility of Council.

- Section 5A(d)(ii)
  - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and

The F&FA considered that fragmentation of the EEC would be avoided as tree removal is proposed to only occur along the western edge.

An evaluation of what may constitute habitat and impact of the proposal on that habitat has not been addressed in the report. Rather, the impacts have been regarded as loss of existing 'trees'.

Habitat is defined under the *Threatened Species Conservation Act 1995* as follows:

***Habitat means an area or areas occupied, or periodically or occasionally occupied, by a species, population or ecological community and includes any biotic or abiotic component.***

As such, all elements of the EEC, including the naturally regenerating understorey, mid-storey, litter and debris is included in the definition of 'habitat'.

Whilst direct tree removal is anticipated to only occur along the western edge, maintenance of a 10m wide canopy exclusion zone at the eastern boundary has been recommended in the advisory letter from the bushfire consultant (dated 1 April 2014).

It is expected that canopy trees would require regular pruning. In addition, all natural recruitment/regeneration of native vegetation would be prevented in this zone, effectively fragmenting the area of littoral rainforest habitat.

It was noted during onsite inspection and review of aerial imagery that the existing canopy break predominantly occurs across Crown land (Lot 7011 DP1065741) which has been prevented in the past from expanding as a result of regular maintenance activity by the landholder of the subject site to clear around an existing clothes-line.

Given that this break occurs on Crown land it should be foreseen that with demolition of the existing dwelling and associated ancillary facilities (i.e. clothesline) that this canopy would reform and should not be relied on as a long term bushfire management measure.

- Section 5A(d)(iii)
  - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality,

The report states that *'the proposal is of little consequence to the long term survival of the species, population or ecological community in the locality due to habitat disturbed onsite'*.

No clear evaluation of the importance of the littoral rainforest habitat to be directly removed, modified (restricting canopy projection and natural recruitment) has been provided.

- Section 5A(f)
  - (f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,

The F&FA suggests that the NSW threatened species priority action statement addressing habitat loss or modification for urban development would be addressed by:

- demolition of the existing dwelling;
- subsequent revegetation of the footprint with littoral rainforest species;
- planting to the east of Dwelling 2 (with groundcover species only).

Council does not consider the abovementioned actions to be consistent with the priority action statement, particularly given that the requirement to rehabilitate this area would be required as an ordinary consequence of the development.

- Section 5A(g)
  - (g) whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

The F&FA lists the entire set of scheduled key threatening processes (KTP) yet identifies only one KTP that may be relevant being 'clearing of native vegetation'.

The F&FA states that the proposal does not meet the definition of vegetation clearing which is taken as *'destruction of a sufficient proportion of one or more strata (layers) within a stand or stands of native vegetation so as to result in the loss or long term modification of the*

*structure, composition and ecological function of a stand or stands*'. It was therefore concluded that the proposal is unlikely to increase any of the scheduled KTP's.

The term 'destruction' may include physical removal by cutting, under-scrubbing, bulldozing etc., or processes which leave a proportion of one or more strata on site in a dead or dying state: for example ringbarking, poisoning or herbicide spraying (except where specifically targeted at weed control) or modification of abiotic conditions.

Given that the proposal involves direct removal of littoral rainforest vegetation and long term management of the community for bushfire protection purposes, it is expected that KTP's are required to be considered and an appropriate response provided.

#### Review of Supplementary Planning Response prepared by Planit Consulting

##### *Point 2 - Potential overshadowing*

The applicant compares the shadow of the existing dwelling extending onto Crown Reserve with that of the proposed development. Given that the existing building extends onto Crown Reserve comparison is not considered appropriate.

Regardless of the growth habit, the condition of vegetation to the east of the existing dwelling under current conditions has not been evaluated in either the current F&FA or previous reports. The statement made indicating that the *vegetation 'was healthy and suffering no ill effects due to the existing level of the shadow cast'* cannot be supported.

Previous concerns with regard to overshadowing remain.

Of relevance, Crown Lands offered the following advice:

*"Crown Lands objects in principle to the cumulative impact of the proposed building form on reserve values due to the fact that such impact is exacerbated by the inconsistency with adjoining development and failure to mitigate such impacts on the adjoining reserve."*

##### *Point 12 - Tree Removal.*

The amended plans show the location of trees onsite and tree protection zones (TPZ's) of a number of select trees located west of the 11.0m rear setback line.

The structural root zone (SRZ) of the *Archidendron hendersonii* (Tree 1) has been depicted. Calculations and diagrammatic representation of the TPZ and SRZ associated with Tree 1 appear correct and arboricultural management has been previously discussed.

The *Cupaniopsis anacardioides* (Tree 7) has been identified. However, the calculated TPZ of 4.8m appears to be underestimated and not accurately represented on the plan.

Furthermore the extent of the canopy (drip line) has not been shown. The above ground canopy should be considered in order to determine the extent of pruning required and whether the pruning would result in significant loss (i.e. > 20%) of the canopy which may have a negative impact on the long term health and viability of the tree.

As indicated in Council's previous assessment, the *Tree Report* dated 30 October 2013 and prepared by Northern Tree Care indicates that *'because of the size, shape and lean of the tree it is not possible to construct a building within approximately 5m of the tree without causing significant damage to the tree and to comply with the bushfire requirements'*.

As such the report recommended the tree be removed. This does not appear to have been further considered in the subsequent F&FA. Nor was an amended *Tree Report* submitted re-evaluating the likely impact on the tree.

##### *Point 13 and 14 - Damage to the Endangered Ecological Community during construction and shortage of available public receiving site.*

---

Refer to assessment elsewhere in this report addressing Section 5A(f) of the *EP&A Act 1979*.

*Point 15 - Land Management Practices*

As documented in the original report and whilst it is not Council's responsibility to oversee and ensure conditions of OEH issued permits are complied with, it is clear that certain conditions have been contravened.

The issue of removal of listed stems, either previously recorded on site by the applicant's consultant (or acknowledged in OEH permit), or that identified by Council officers has been highlighted.

Concerns regarding continued degradation of the recognised EEC through activities such as brush cutting have been previously raised by Council and letters of concern forwarded to the OEH, Office of Environment and the applicant in respect to these activities.

Despite concerns being raised, this activity of understorey modification and simplification of the community (including the recent planting of exotic species on Crown Reserve around the existing clothesline) has continued, reaffirming the landholder's disregard for sound responsible land management practice.

The routine maintenance of this area has been acknowledged in the F&FA when discussing the status of the *Cryptocarya foetida* indicating that the specimen is not considered viable as it 'is located in a grassed area' and 'there is little likelihood that the site where this specimen occurs will revegetate naturally as this area is maintained for its residential amenity'.

*Point 16 - Asset Protection Zone*

In response to Council's concerns regarding the degree of modification of the littoral rainforest community to manage bushfire hazard as detailed in the previous *Bushfire Hazard Assessment Report* (8 November 2013), a letter was received dated 1 April 2014 and prepared by Bushfire Certifiers clarifying vegetation management requirements.

Clarification	Council Comment
No additional littoral rainforest trees are to be removed to create the APZ.	Noted.
Trees may over time require lopping to keep trees from overhanging proposed dwellings.	As previously indicated, the extent of pruning, particularly of the <i>Cupaniopsis anacardioides</i> (Tree 7) may have a negative impact on the health of the tree and as recommended in the Tree Report require removal.
There is a requirement to maintain canopy separation of approximately 10m between the canopy trees in the reserve and trees on the property.	As previously indicated, this existing separation appears to occur predominantly across the Crown Reserve and has been created as a direct result of the existing dwelling encroachment and associated clothesline facility. The maintenance of canopy separation would be considered an unacceptable outcome and is not supported.
Management of the understorey and ground-fuels consistent with the standards would be required, however no further removal other than those proposed (4 trees) would be	The ongoing management of this area in accordance with bushfire recommendations would significantly impact on the long term structural and floristic integrity of the littoral

Clarification	Council Comment
required.	rainforest community effectively arresting natural successional processes.
Additional tree and shrub plantings within this area of the property i.e. Littoral Rainforest will not be possible.	This requirement is inconsistent with plans depicting 'Deep Soil Zones' on proposed Lots 1 and 2 within the 11m reserve setback. These DSZ's generally indicate areas for planting of mature landscape species.

Table 1: assessment of Appendix G – APZ Maintenance Correspondence

### Ecological Assessment Summary

Following review of the revised layout plan, contemporary Flora and Fauna Assessment, supplementary planning response and bushfire management clarification letter, Council remain of the opinion that the proposal would have an unacceptable impact on the site's significant ecological values.

Direct impact to the candidate EEC to facilitate construction would still be expected to occur. The clarifying letter provided by Bushfire Certifiers still requires the long term management of the littoral rainforest community, further imposing a requirement for the maintenance of a 10m separation zone between the site and Crown Reserve to the east.

As such Council remain opposed to the proposed development in its current form primarily on ecological grounds.

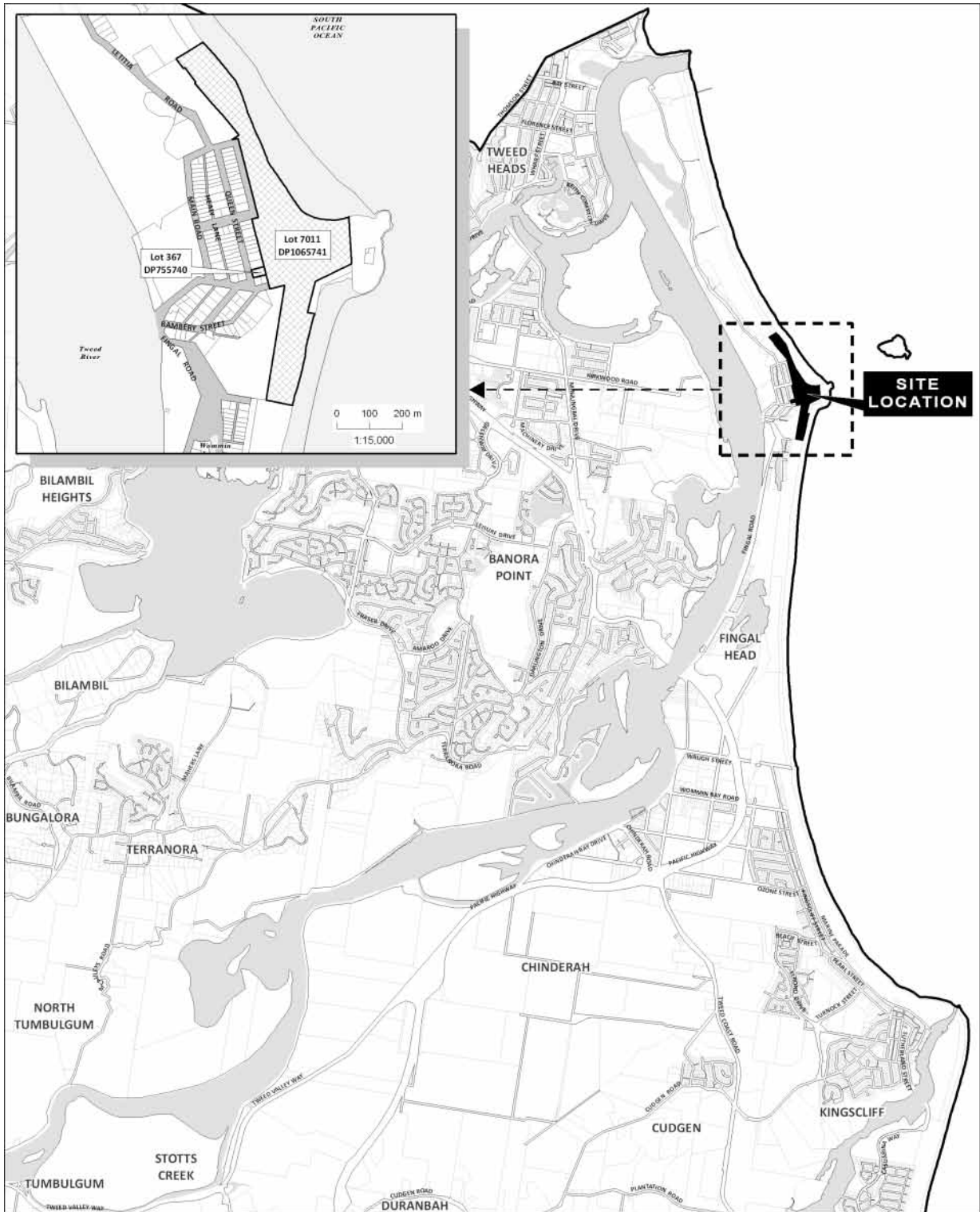
In order to facilitate development and comply with bushfire and planning regulations, the development is likely to result in a significant unacceptable impact on a candidate endangered ecological community, threatened species and their habitat.

It is noted that evidence of continued under-scrubbing activity within the EEC – Littoral Rainforest community and the planting of exotic species in the adjoining Crown Reserve was noted during a site inspection conducted on 2 July 2014.

Furthermore, the following actions are proposed to address current land management practices that appear to have had an adverse impact on the structural integrity of the Littoral Rainforest community and damage disturbance to listed species comprising part of the vegetation community:

- Report an additional *Archidendron hendersonii* record to OEH to be recorded on the Bionet - Atlas of NSW Wildlife database; and
- Continued liaison with OEH to investigate modification to the candidate EEC onsite and alleged non-compliance with conditions of s91 Certificates.

**SITE DIAGRAM:**



**Locality Plan**

Lot 367 DP 755740 No. 40 Queen Street, Fingal Head and  
 Lot 7011 DP 1065741 Marine Parade, Fingal Head

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Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geoidetic Datum of Australia 1984  
 Grid: Map Grid of Australia, Zone 58

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 F | (02) 6670 2429  
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 E | planningreforms@tweed.nsw.gov.au

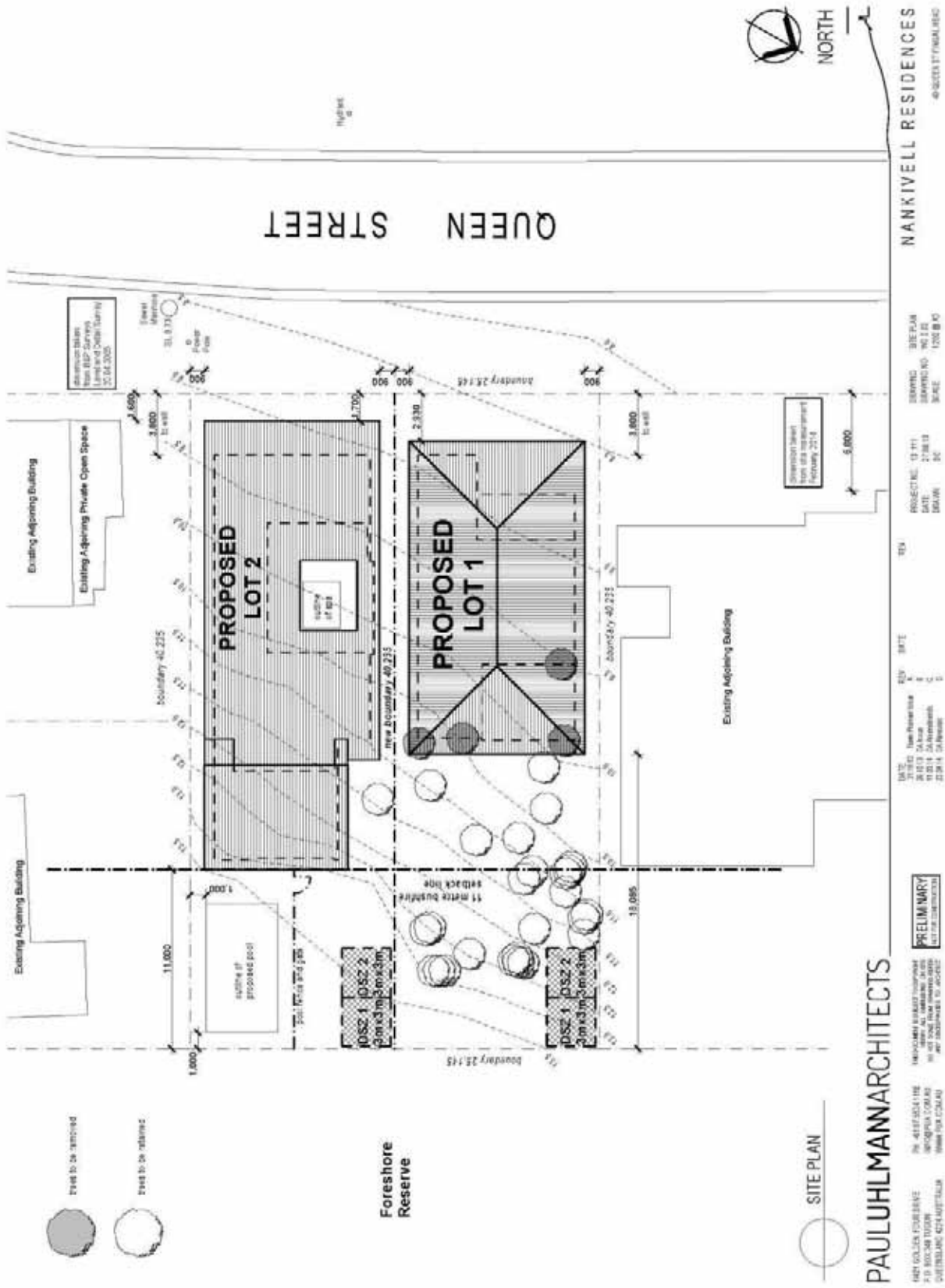


Figure 2 | LPI/PP1/STANDARD/TEMP/LPI/BACKMAP/11/04/2014 - 14/04/2014/01\_01.dwg

Author: @tdobson - Planning Enquiries 11/04

Chris Petherick, 14 April 2014

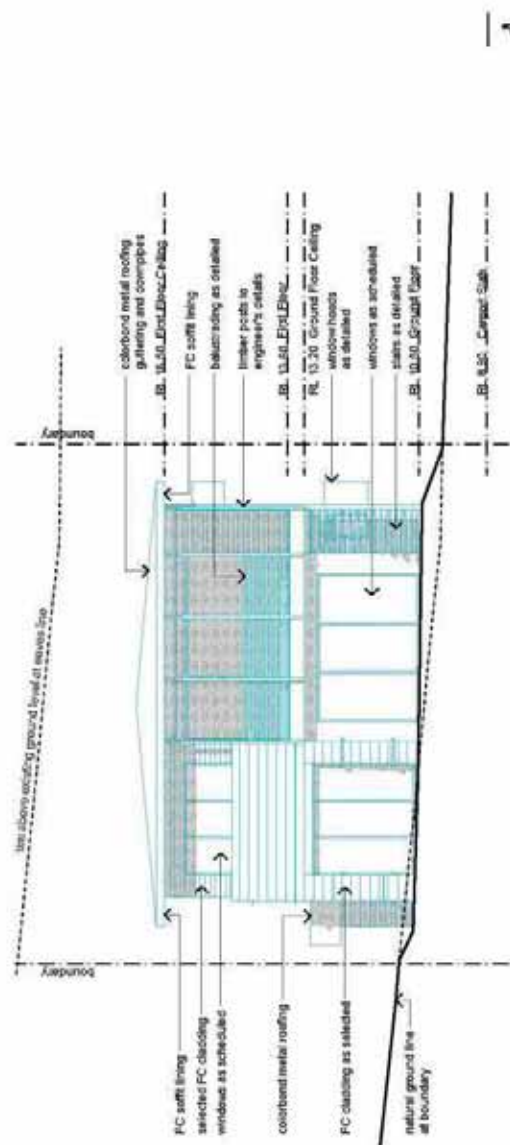
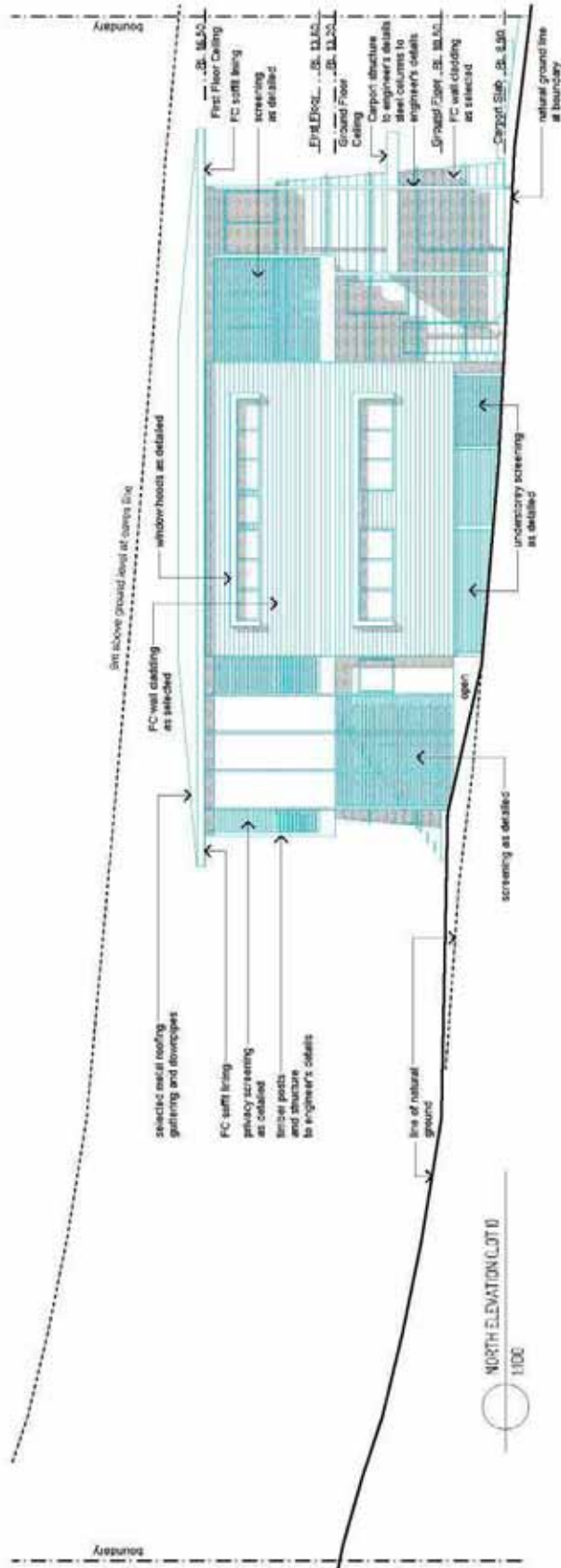
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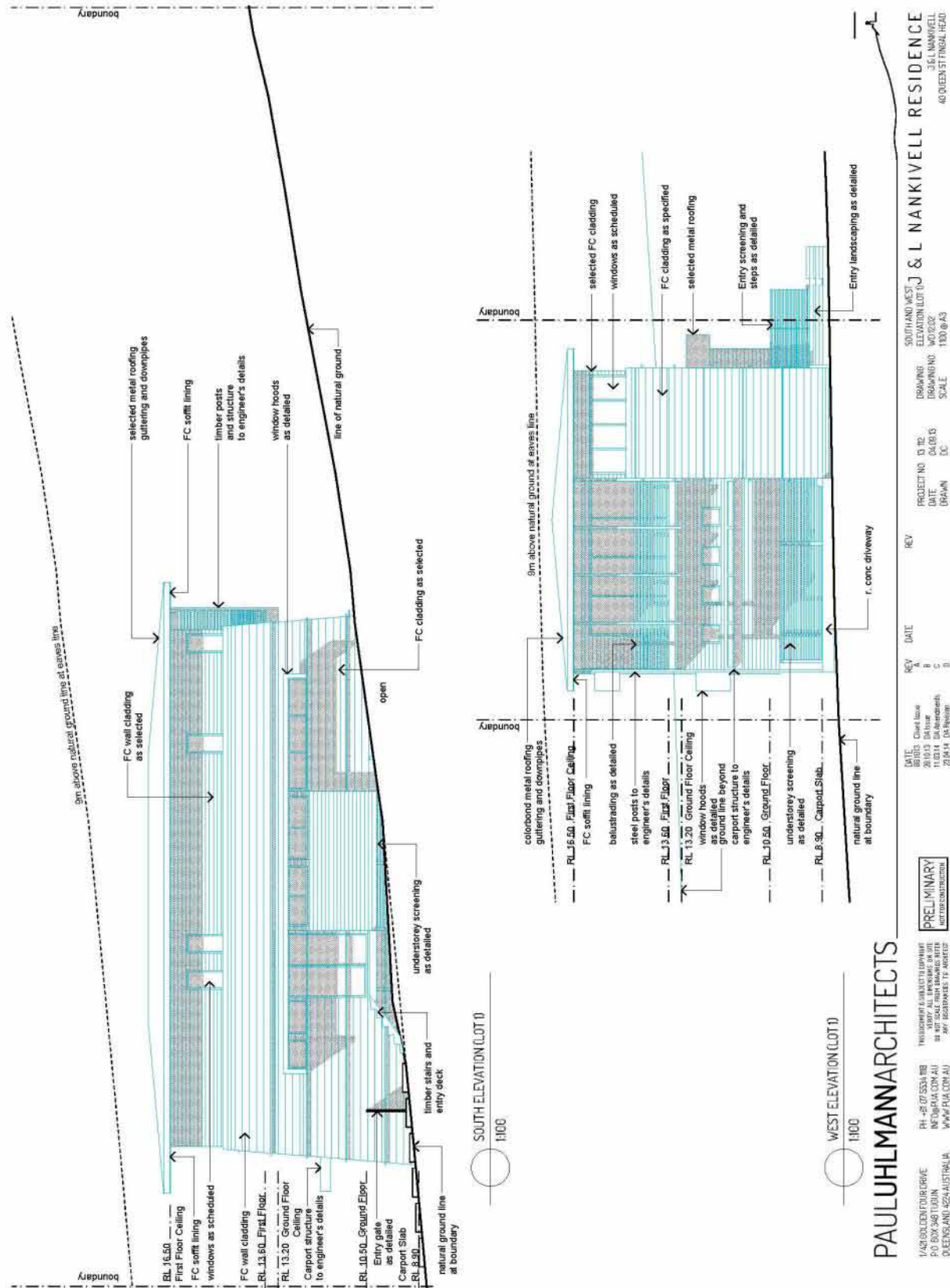


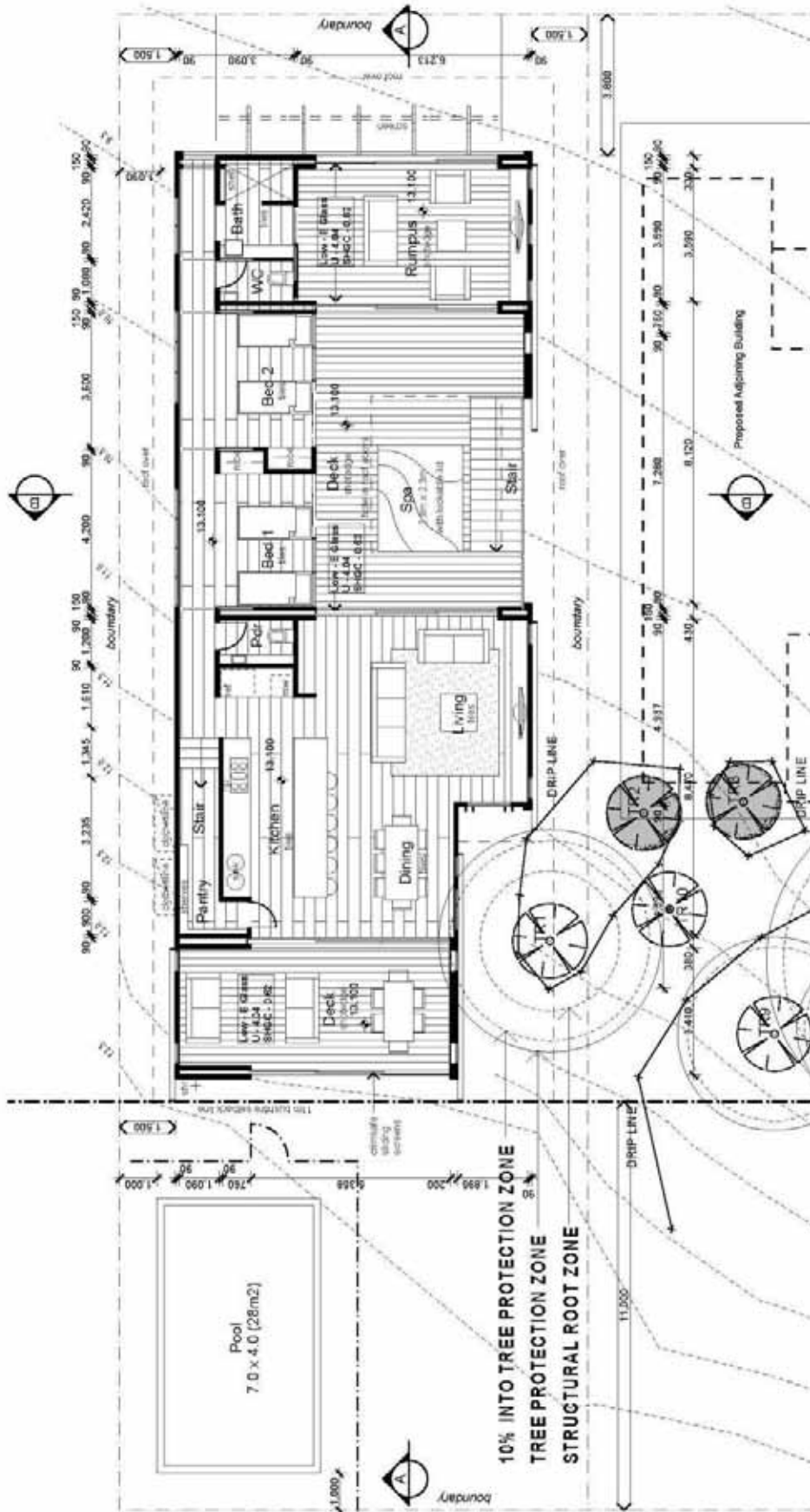






**PAULUHLMANN ARCHITECTS**  
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 PH: +61 8 9384 8888, FAX: +61 8 9384 8888, WWW.PAULUHLMANN.COM.AU, 171/171 MOUNTAIN VIEW DRIVE, GREENGLADE, WA 6103  
 PRELIMINARY  
 NORTH ELEVATION (CLT) D  
 EAST ELEVATION (CLT) D  
 SCALE: 1:100  
 PROJECT NO. 13 017  
 DATE: 04/01/14  
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 CHECKED BY: J. L. & L. NANKIVELL  
 PROJECT LOCATION: 13/171 MOUNTAIN VIEW DRIVE, GREENGLADE, WA 6103  
 DRAWING TITLE: NORTH ELEVATION (CLT) D  
 DRAWING SCALE: 1:100 (B4)  
 NORTH ELEVATION (CLT) D  
 EAST ELEVATION (CLT) D  
 J. L. & L. NANKIVELL RESIDENCE  
 13/171 MOUNTAIN VIEW DRIVE  
 GREENGLADE, WA 6103





**Thermal Construction Requirements**

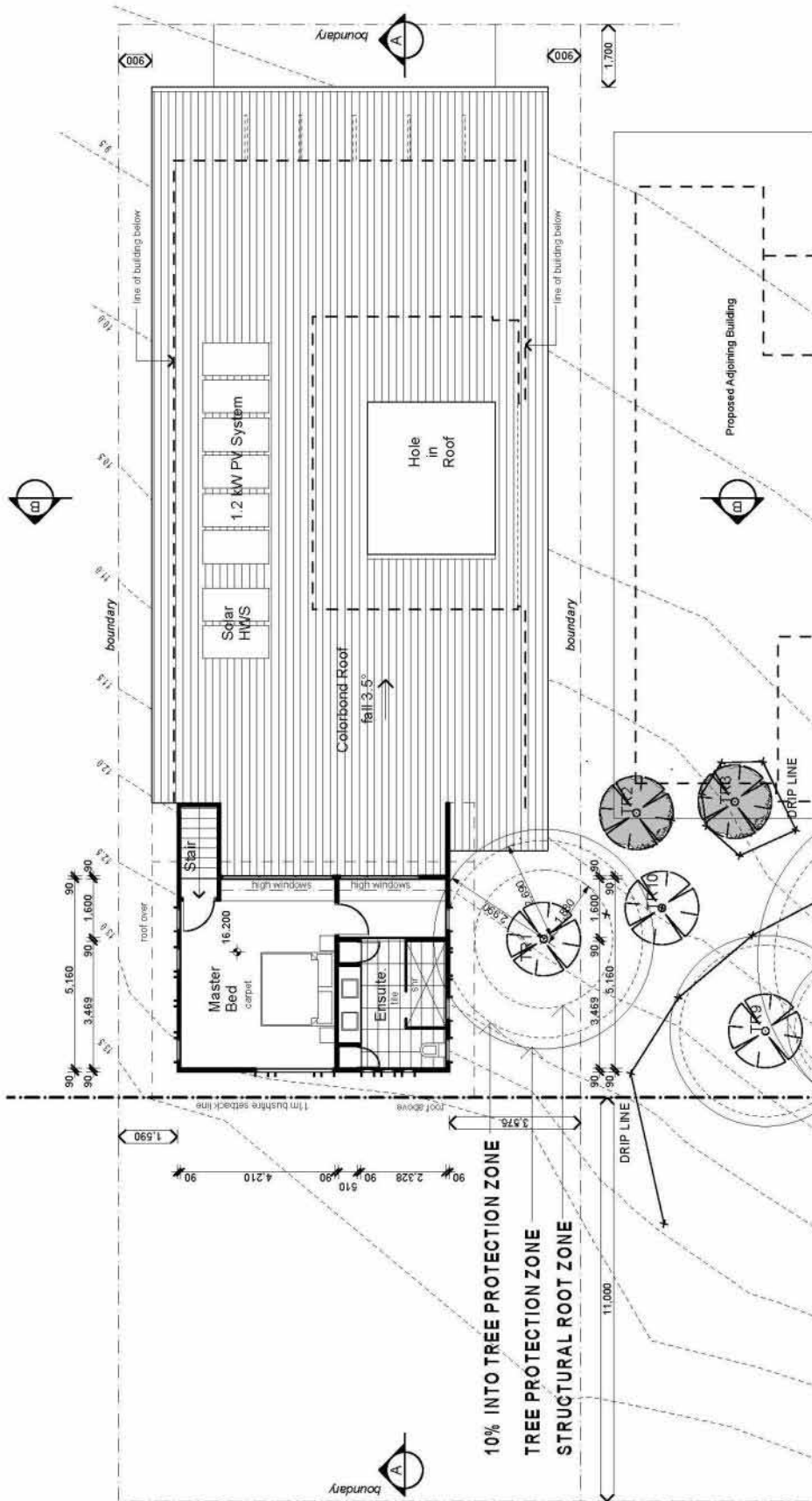
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- Wall Color - Medium Solar Absorbance
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**DATE** 28/03/14  
**REV** A  
**BY** J. M. M.  
**CHK** J. M. M.  
**DATE** 28/03/14  
**REV** B  
**BY** J. M. M.  
**CHK** J. M. M.  
**DATE** 28/03/14

GROUND FLOOR PLAN  
LOT 2

**PAULUHLMANARCHITECTS**  
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 WWW.PAULUHLMAN.COM.AU  
 PRELIMINARY  
 NOT TO BE USED FOR CONSTRUCTION  
 ANY AMENDMENTS TO BE MADE  
 IN WRITING

GROUND FLOOR PLAN  
LOT 2  
DRAWING NO. 20/0000-01  
DATE 28/03/14  
SCALE 1:100  
R NANKIVELL RESIDENCE  
R. NANKIVELL  
100 BARRILL  
40 GREEN ST TIGUM QLD



**Thermal Construction Requirements**  
 Ceiling Insulation - R3.0 Balts  
 Floor Insulation - R3.0 Balts  
 Wall Insulation - Foil + R1.5 Balts  
 Roof Insulation - R1.0 Anticon Blanket  
 Medium Solar Absorbance  
 Wall Colour - Medium Solar Absorbance  
 Windows - Single Clear Low - E Glass in Aluminium Frame - U Value 0.4 SHGC - 0.75  
 Windows set Marked - Single Clear Low - E Glass in Aluminium Frame - U Value 0.4 SHGC - 0.82

DATE	REV	DESCRIPTION
02/06/13	A	Client Issue
02/08/13	B	Client Issue
02/09/14	C	Client Issue
28/10/13	D	Client Issue
03/11/14	E	DA Resubmit
22/04/14	F	DA Resubmit

**Thermal Construction Requirements**  
 Ceiling Insulation - R3.0 Balts  
 Floor Insulation - R3.0 Balts  
 Wall Insulation - Foil + R1.5 Balts  
 Roof Insulation - R1.0 Anticon Blanket  
 Medium Solar Absorbance  
 Wall Colour - Medium Solar Absorbance  
 Windows - Single Clear Low - E Glass in Aluminium Frame - U Value 0.4 SHGC - 0.75  
 Windows set Marked - Single Clear Low - E Glass in Aluminium Frame - U Value 0.4 SHGC - 0.82

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 Windows set Marked - Single Clear Low - E Glass in Aluminium Frame - U Value 0.4 SHGC - 0.82

**R NANKIVELL RESIDENCE**  
 ROB NANKIVELL  
 48 QUEEN STREET, HEAD

**FIRST FLOOR PLAN**  
 LOT 2  
 DRAWING NO. 10.111  
 DATE 27.09.13  
 SCALE 1:100 @ 33

**PROJECT NO. 13.111**  
 DATE 27.09.13  
 DRAWN BY BC

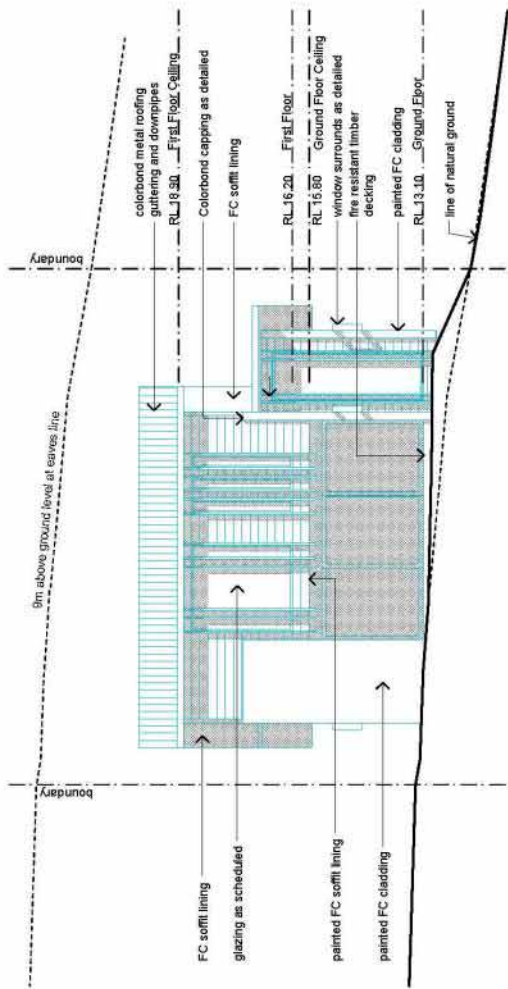
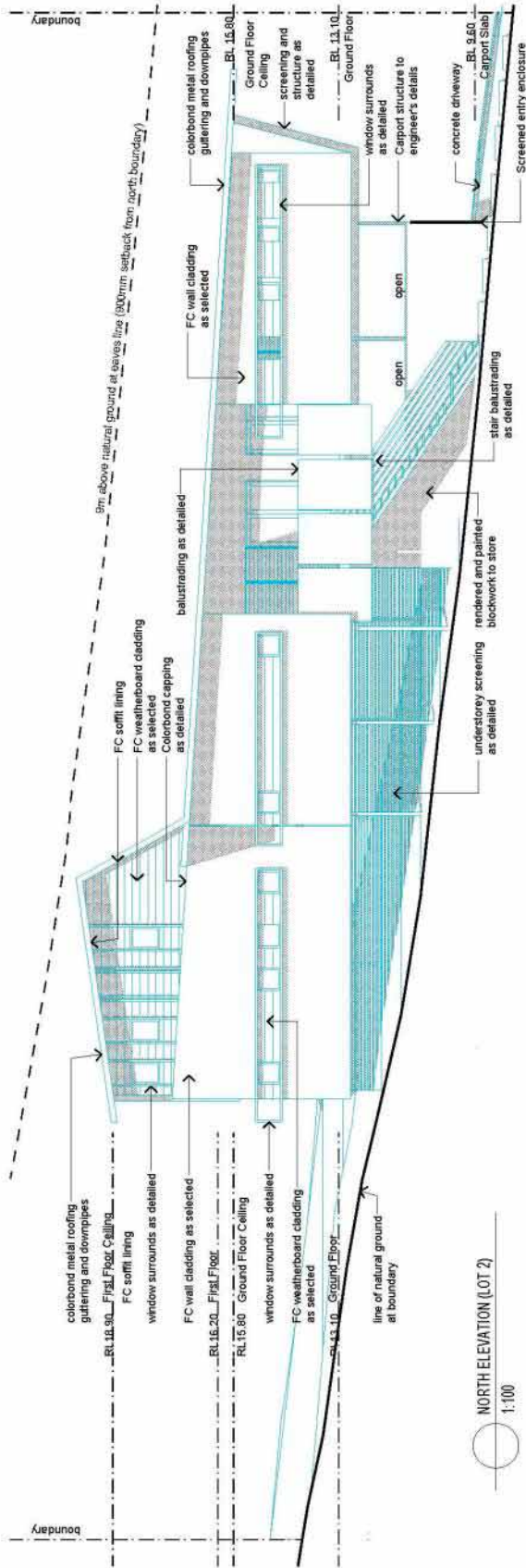
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 02/08/13  
 02/09/14  
 28/10/13

**REV**  
 A  
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 F

**PRELIMINARY**  
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DATE: 20/03/13 DA:David  
 11/03/14 DA:Andrew  
 23/04/14 DA:Rebecca

REV: A  
 B  
 C

DATE: 27/03/13  
 DRAWN: FC  
 PROJECT NO: 13 111  
 DATE: 27/03/13  
 DRAWN: FC

REV: A  
 B  
 C

DATE: 27/03/13  
 DRAWN: FC

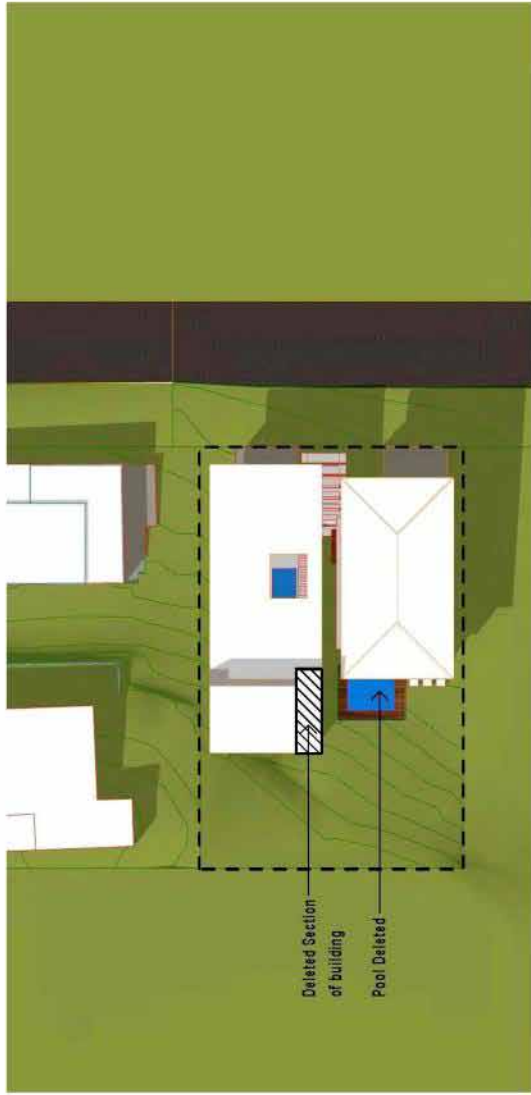
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**R NANKIVELL RESIDENCE**  
 48 RANKIVELL  
 48 QUEEN ST FINLAY HILL

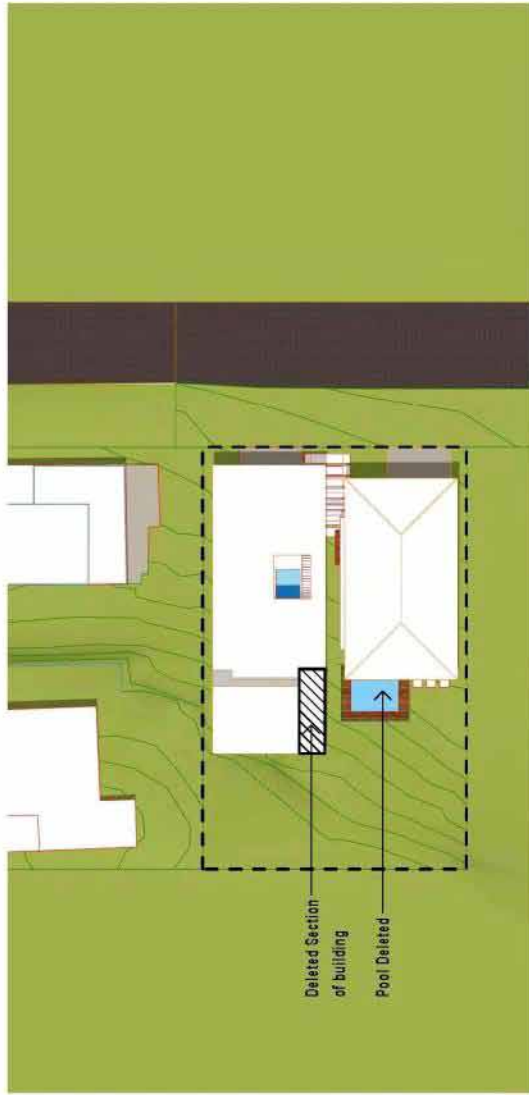
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9am December 22



12pm December 22



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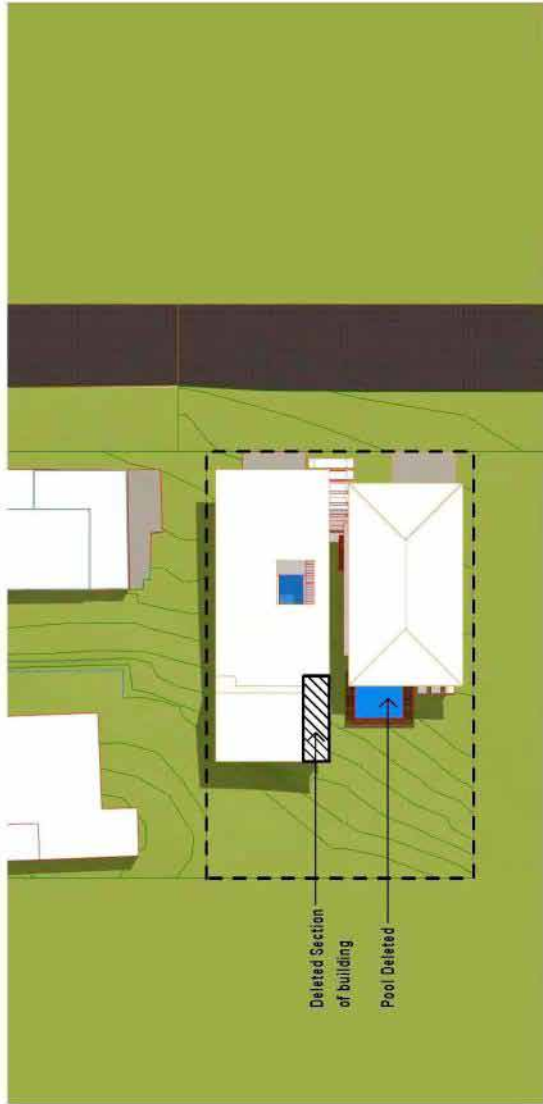
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20.12.13	A	11.03.14	B
11.03.14	B	14.04.14	C
23.04.14	C		

PROJECT NO. 13 111  
DATE: 27.08.13  
DRAWN: DC

DRAWING: SURFLOOR DIAGRAM 1  
DRAWING NO. PD 100.01  
SCALE: 1:40

NANKIVELL RESIDENCES  
40 QUEENSTOWN HEAD



3pm December 22



7:00pm December 22



NORTH

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DATE	REV	DATE	REV
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11/01/14	B	22/04/14	B
22/04/14	C	04/12/14	C

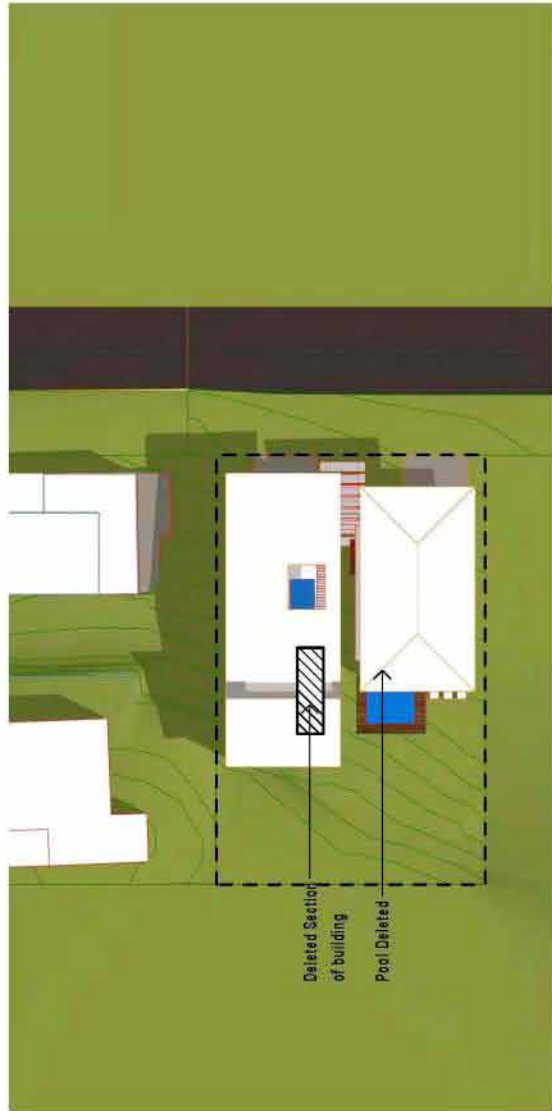
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DATE 27/08/13  
DRAWN DC

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DRAWING NO. W0 10/02  
SCALE 1:400

**NANKIVELL RESIDENCES**  
40 QUEEN STREET, TULLAH



9am June 21



12pm June 21

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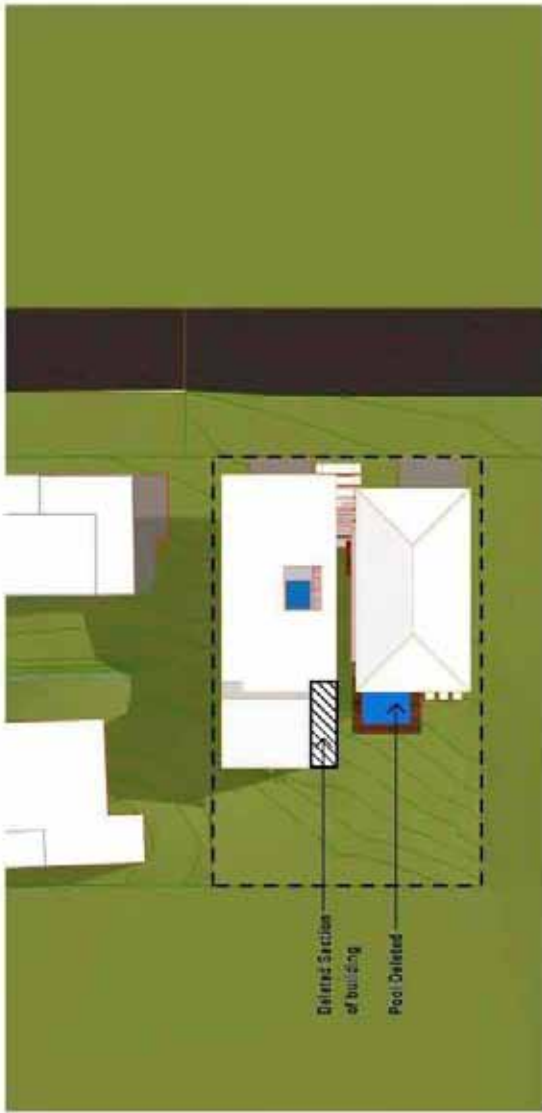
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REV	DATE	REV
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B		

PROJECT NO: 13-111  
 DATE: 27.08.13  
 DRAWN: DC

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**NANKIVELL RESIDENCES**  
 40 QUEEN STREET FINAL HEAD



3pm June 21

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14/03/2014 10:00 AM  
15/03/2014 10:00 AM  
22/03/2014 10:00 AM

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ARCHITECTURAL DRAWING

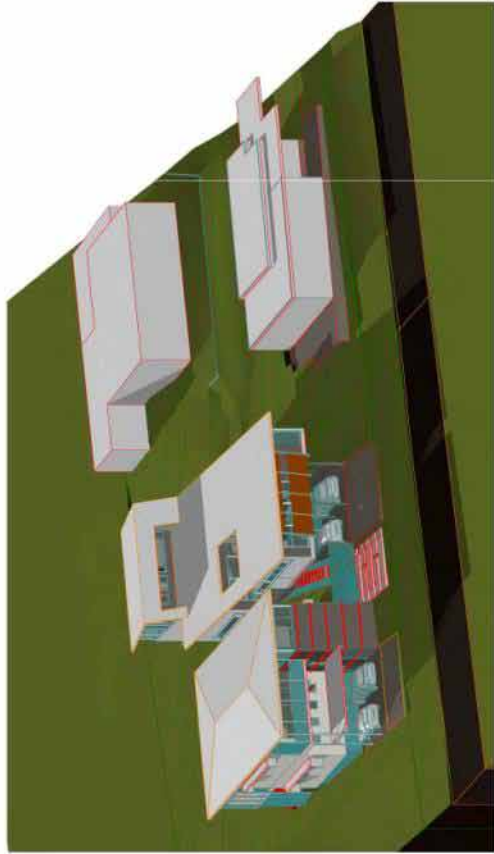
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PROJECT NO: 13-111  
DATE: 27/01/11  
DIMS: EC

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NANKIVELL RESIDENCES  
ARCHITECTURAL REC



9am June 21 3D



12pm June 21 3D

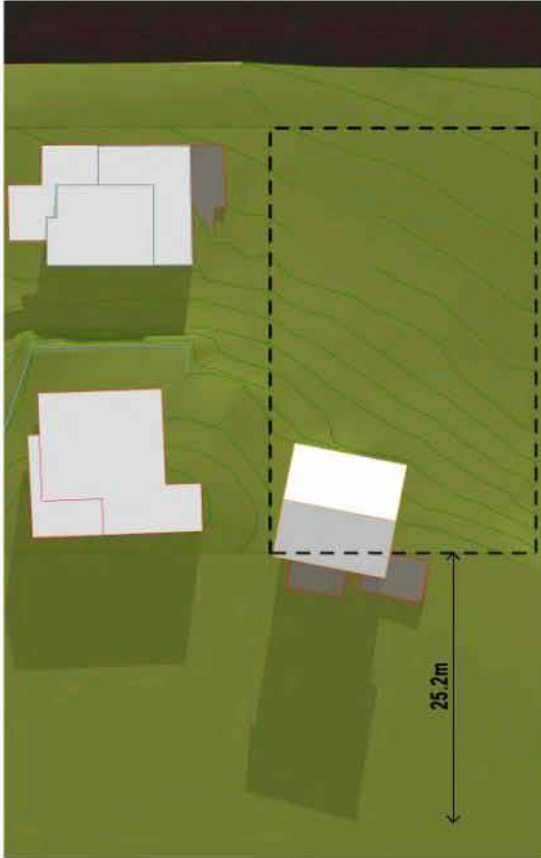
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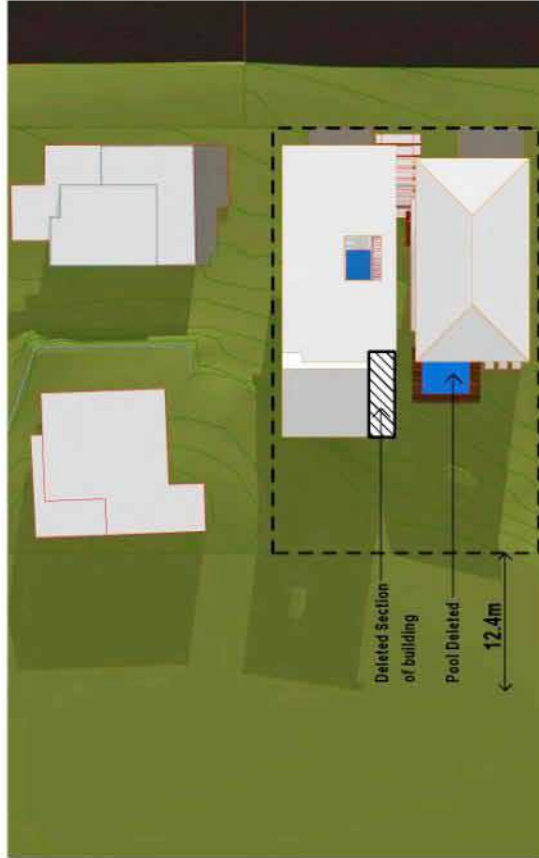
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NOT FOR CONSTRUCTION

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ROB MARKWELL  
40 QUEEN ST FINICAL HEAD



7:00pm December 22  
(EXISTING RESIDENCE)



7:00pm December 22  
(PROPOSED RESIDENCES)

**PAULUHLMANARCHITECTS**

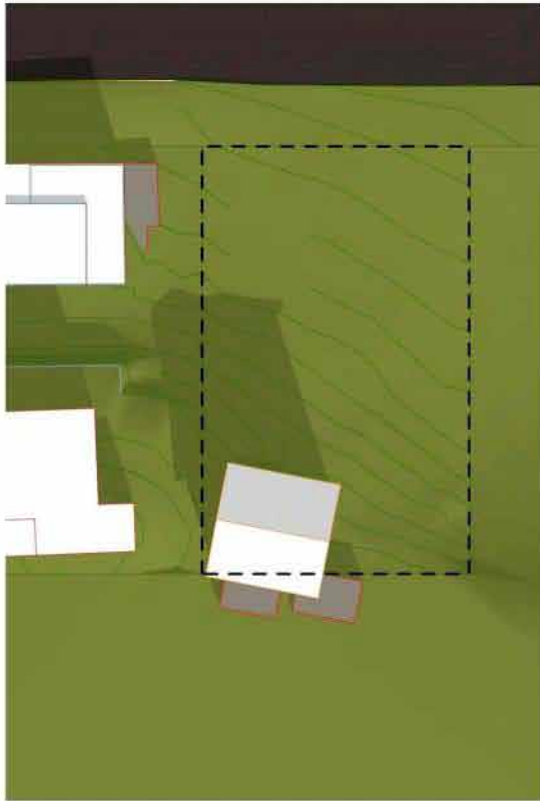
1/47 GOLDEN FORD DRIVE  
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PH: +61 (0)7 558 1111  
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NOT FOR CONSTRUCTION

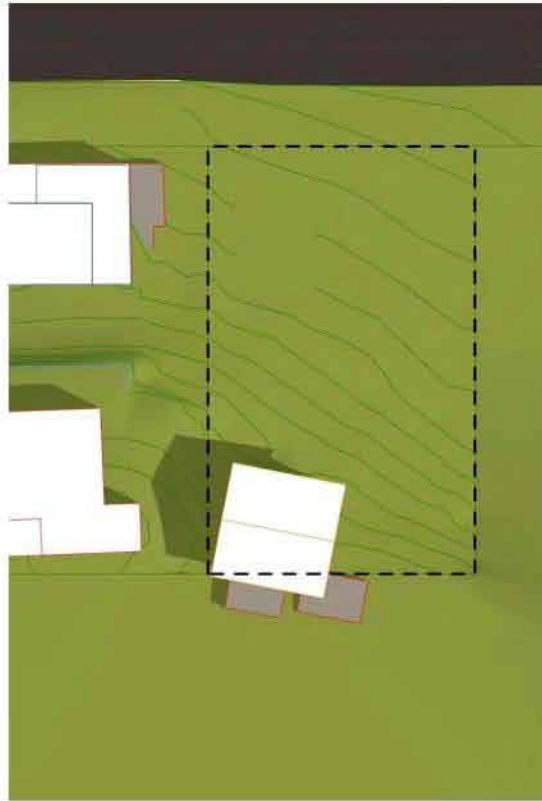
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11/07/14	CA Revise	13/11/13	A
28/04/14	CA Revise	27/08/13	B

PROJECT NO.	DATE	SCALE
13/111	27/08/13	1:400

R NANKIVELL RESIDENCE  
ROBIN NANKIVELL  
40 QUEEN ST TUGGIN HEAD



9am June 21  
(EXISTING RESIDENCE)



12pm June 21  
(EXISTING RESIDENCE)

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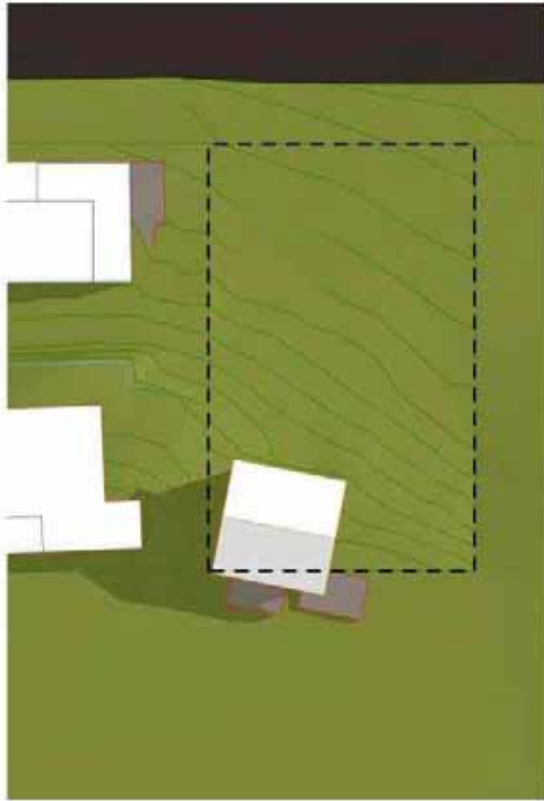
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2304-44 DA Revised

REV' N' DATE

PROJECT NO: 13-111  
DATE: 27.08.13  
DRAWN: DC

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DRAWING NO: 100107  
SCALE: 1:400

**R NANKIVELL RESIDENCE**  
FOR NANKIVELL  
40 GREEN ST TRINGAL FIELD



3pm June 21  
(EXISTING RESIDENCE)

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NEWCOMER RESIDENT TO LONDON  
JERRY AL. MERRILL IN THE  
ART ARCHITECTURE IN MONTRO

DATE: 30 November  
2014 ON REVISION

REV: DATE: 8

REF: 047

PROJECT NO.: 13 111  
DATE: 27/06/13  
DRAWN: DC

DRAWING: 04/00/03/04/08  
DRAWING NO.: 100108  
SCALE: 1:800

**R NANKIVELL RESIDENCE**  
FOR MERRILL  
@ GREEN ST FINCA, QLD





WESTERN PERSPECTIVE

NANKIVELL RESIDENCES  
48 GREENS PAVILION ROAD

DATE: 20.08.14  
DESIGNER: NANKIVELL ARCHITECTS  
DATE: 20.08.14  
REV: 1

PAULUHLMANARCHITECTS

PRELIMINARY  
NOT FOR CONSTRUCTION

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MELBOURNE VIC 3048  
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WWW.PAULUHLMAN.COM.AU  
TEL: 03 9518 5118  
FAX: 03 9518 5119  
P.O. BOX 587 COV  
QUEENSLAND 4054 AUSTRALIA

**OPTIONS:**

That Council:

1. Refuses the application for the reasons supplied; or
2. Grants in-principle support for the application and a report to be brought back to a future Council meeting with recommended conditions of consent for Council to determine.

The Council officers recommend Option 1.

**CONCLUSION:**

The issues considered in the assessment of this proposal are considered valid and contribute to the reasons for refusal. Approval of the proposed development could potentially set an unwarranted precedent for the location of residential development adjacent to fragile ecosystems, resulting in fragmentation and destruction of significant environmental assets.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Agenda Item 8 – Planning Committee meeting of 1 May 2014  
(ECM 3414903)

---

**14 [PR-PC] Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA14/0164 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:**

Consent is sought for the change of use of 41 tourist accommodation units within the Peppers Bale development to dual use for the purposes of tourist and permanent residential.

There are 28 two bedroom units and 13 three bedroom units. The site contains 79 basement car parking spaces.

The site is located within the tourist precinct of Salt at Kingscliff and was zoned 2(f) Tourism under the Tweed Local Environmental Plan which was in force when the application was submitted.

The 2(f) zone does permit residential development in the form of multi-dwelling housing which supports the main tourism function of the zone.

Draft LEP 2012 (now LEP 2014) rezones the subject site SP 3 – Tourist. This zone now prohibits any form of permanent ‘residential accommodation’.

When the application was submitted, LEP 2012 was in draft form however had been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are ‘certain and imminent’. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

On that basis, it is the officer’s view that the Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and as a prohibited use, should therefore be refused.

The development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the

proposed development cannot be seen to meet the objectives of the SP3 Tourist zone. It is therefore recommended that the development be refused.

The applicant contends that the application represents '*a logical development of the site with the members of the strata corporation currently unable to sustain business purely on tourist trade alone*'. *The change of use allows for the property and existing structures to be used for both tourist accommodation as well as permanent residency. As a result of the proposal, vital support will be lent to the subject and adjoining tourist accommodation and facilities. Flexible use will help invigorate the central Salt tourist precinct*'.

Were the application to be approved (which is not recommended and is contrary to SEPP 65 as discussed further in this report), a condition would need to be applied to ensure that the development is used as tourist accommodation for more than 6 months of the year, consistent with legal advice provided for the previous dual use (dwelling/tourist accommodation) applications.

#### **RECOMMENDATION:**

**That Development Application DA14/0164 for dual use of existing tourist accommodation - residential and tourist accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff be refused for the following reasons:**

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) – the provisions of any Environmental Planning Instruments in that the application has not considered SEPP 65 – The Design Quality of Residential Flat Development.**
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – the provisions of any Draft Environmental Planning Instruments in that the development is prohibited within the SP3 Tourist zone.**
- 3. 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 SP3 Tourist zone.**
- 4. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(iii) – the provisions of any Development Control Plan in that the development is inconsistent with the Development Control Plan Section A1 – Residential Development Code.**
- 5. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - *the public interest* in that the development is not considered to be in the public interest.**

**REPORT:**

**Applicant:** The Owners Strata Plan 76023  
**Owner:** Midpit Pty Ltd  
**Location:** Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff  
**Zoning:** 2(f) Tourism/SP3 Tourist  
**Cost:** Not applicable

**Background:**

The site contains part of the existing 'Peppers at Salt' development which was approved by the Department of Planning under DA 471-11-2003 on 3 May 2004.

The application relates to the block of units known as 'Peppers Bale' which is located on the eastern most part of the site (on its own strata allotment separate from the main Peppers resort) as per the below figure:



**Location of Peppers Bale**

There are 28 two bedroom units and 13 three bedroom units (41 residential units). There is also one small commercial lot as per the strata plan (i.e.: there are 42 units in total).



**Close up of Peppers Bale**

The application proposes the change of use of all residential units (41) to dual use tourist and permanent residential. The site contains 79 basement car parking spaces.

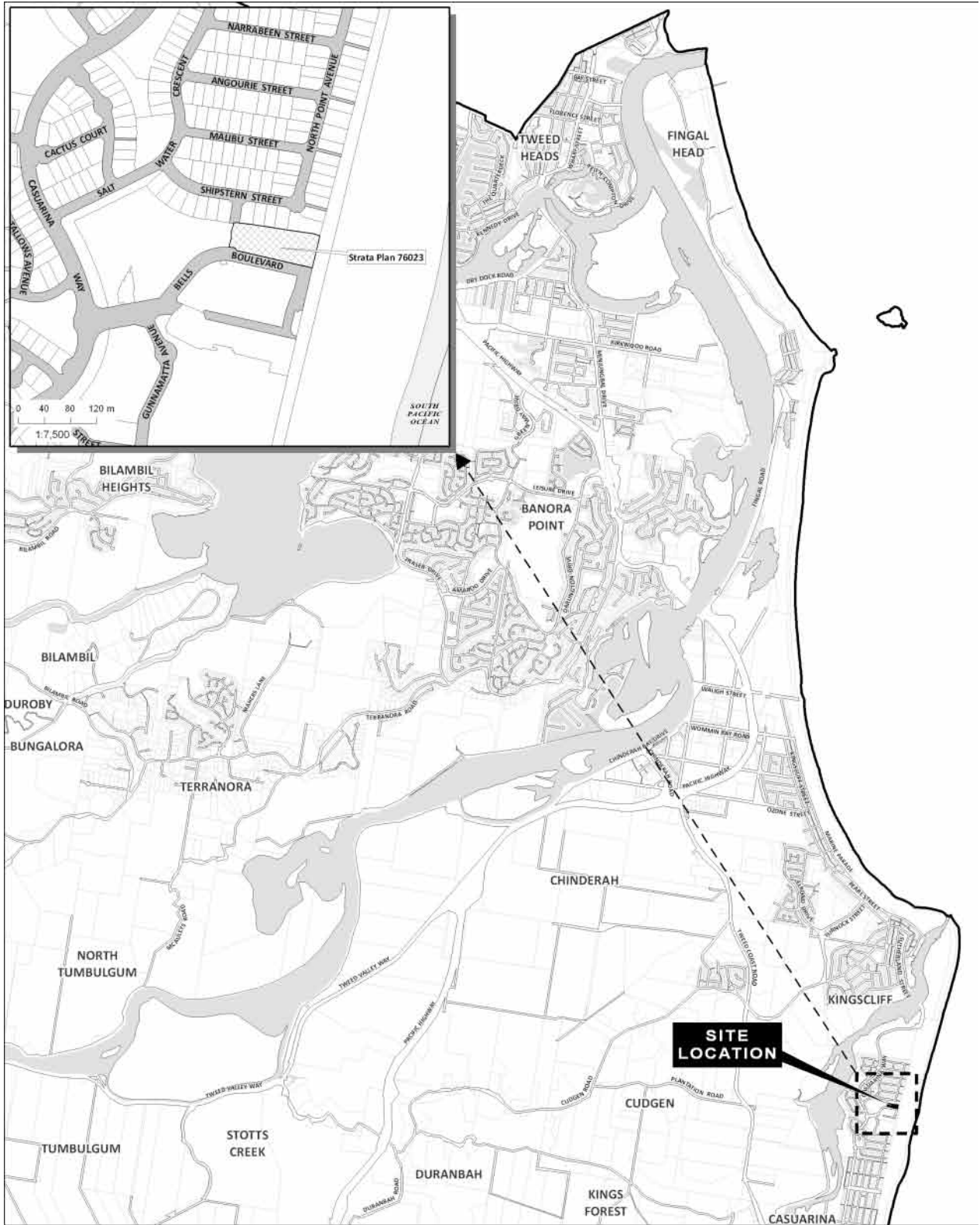
The site is located within the tourist precinct of Salt at Kingscliff and was zoned 2(f) Tourism under the Tweed Local Environmental Plan which was in force when the application was submitted.

The 2(f) zone does permit residential development in the form of multi-dwelling housing which supports the main tourism function of the zone.

Draft LEP 2012 (now LEP 2014) rezones the subject site SP 3 – Tourist. This zone now prohibits any form of permanent ‘residential accommodation’.

With regard to the subject application, the development is prohibited by and inconsistent with LEP 2014. Though LEP 2014 was in draft form at the time the application was submitted, its subsequent gazettal on 4 April 2014 has removed any uncertainty regarding the introduction of its provisions. Though the document contains savings provisions for applications lodged prior to its introduction, the proposed development cannot be seen to meet the objectives of the SP 3 Tourist zone. It is therefore recommended that the development be refused.

**SITE DIAGRAM:**



**Locality Plan**

Lots 1-41 SP 76023  
Nos.1-41/27-37 bells Boulevarde, Kingscliff

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Cadastre 23/07/2014  
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Boundaries shown should be considered approximate only.



Map Projection: Universal Transverse Mercator  
Geoidal Datum: Geoidetic Datum of Australia 1984  
Grid: Map Grid of Australia, Zone 58

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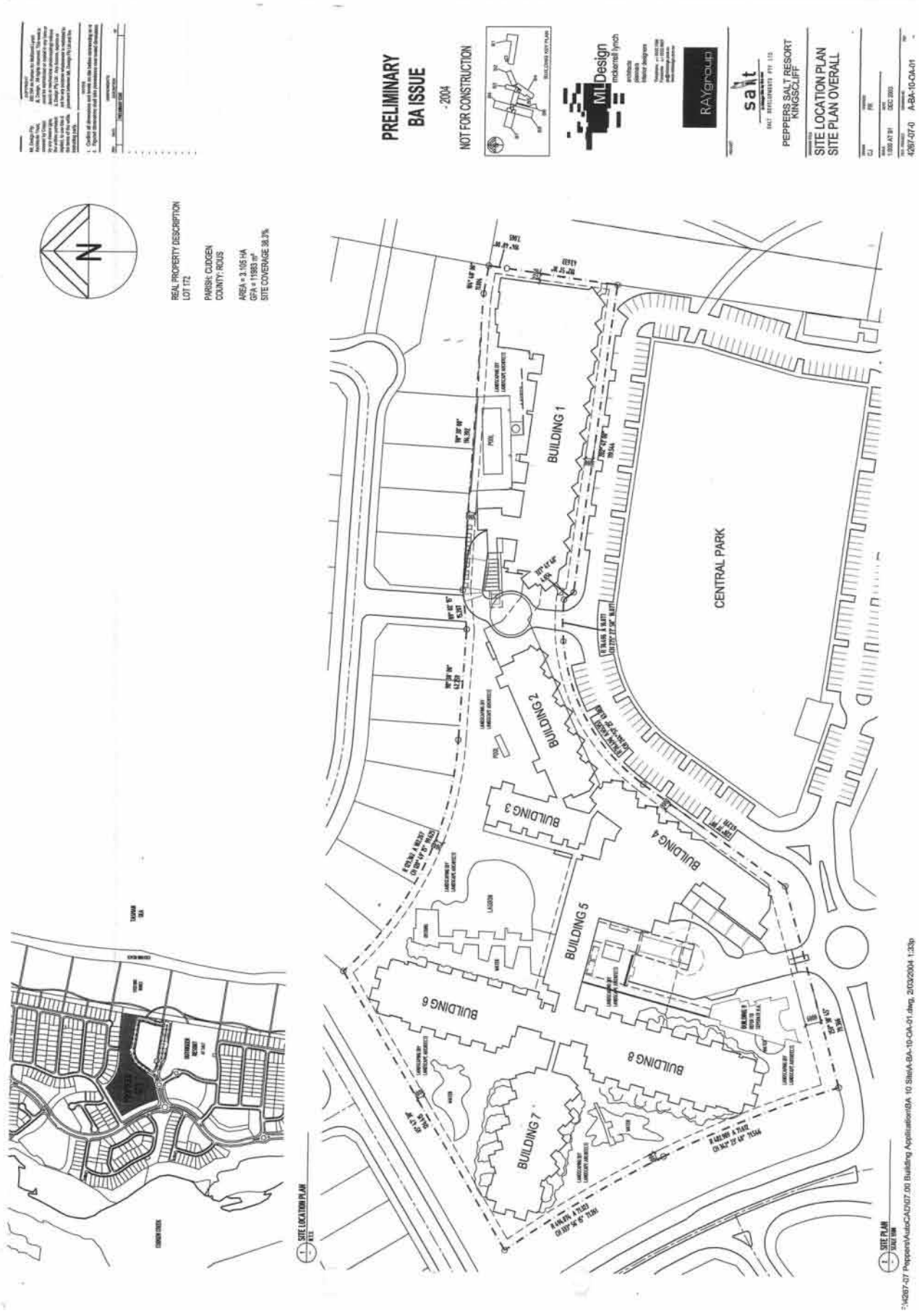


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Author: B.Burrows - Planning Information Unit

Date Printed: 23 July 2014

DEVELOPMENT/ELEVATION PLANS:





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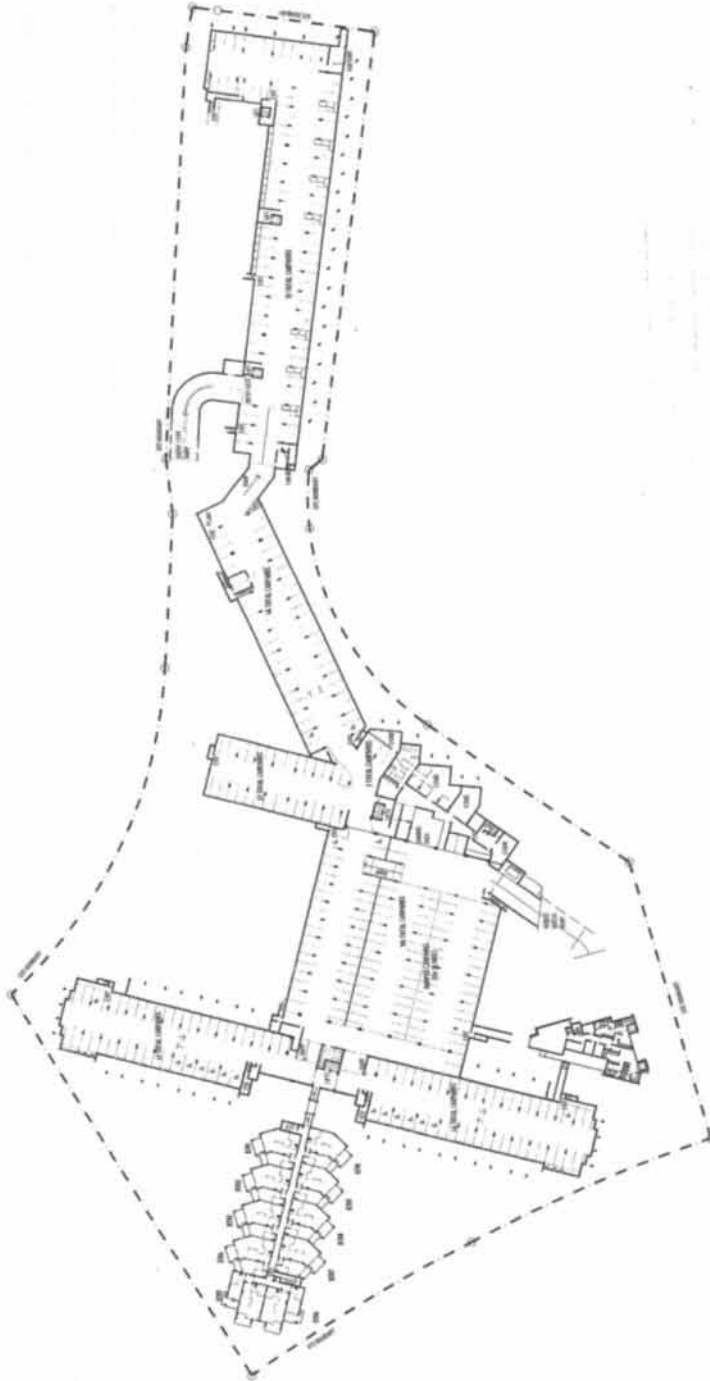
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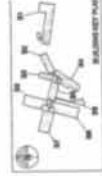
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**LOOKED FOR CONSTRUCTION**



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 architects  
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 Fax: +61 2 9231 1001  
 Email: info@ml-design.com.au

**RAYGROUP**

**salt**  
 PEPPERS SALT RESORT  
 KINGSCLIFF

**BASEMENT 1  
 OVERALL FLOOR PLAN**

DATE	11/08/2014
BY	ML
SCALE	1:100
PROJECT	PEPPERS SALT RESORT
CLIENT	RAYGROUP
DRAWING NO.	4357-07-0 - A-MC-2014-01-01

**Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed change of use is considered consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The development raises no specific concerns or implications in respect of ecologically sustainable development.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 2(f) Tourist, the primary objective of which is to:

- Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Both 'tourist accommodation' and 'multi dwelling housing' are permissible in the 2(f) zone however the applicant has not demonstrated that there is a wider benefit (wider than economic gain for individual lot owners) to the application in terms of the proposed residential use supporting the tourist function of the zone.

In relation to the other aims and objectives of LEP 2000, the development is considered generally consistent. However, it has not been demonstrated that the development would not have an unacceptable cumulative impact on the community or locality and in fact approval of the proposed development is considered to constitute an undesirable precedent (as discussed further in this report), whereby existing tourist facilities are eroded piecemeal through the Development Application process without any strategic review of the overall impact of such changes.

### Clause 11 - Zone Objectives

The site is zoned 2(f) Tourism which has the following zone objectives:

- Encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Whilst the development could be seen to achieve consistency with these objectives, as outlined above there has not been evidence supplied as to how 'dual use' would support the tourist function of the zone.

The development is recommended for refusal based on non compliance with the objectives of the SP3 Tourist zone (Draft LEP 2012) which is now in force (LEP 2014).

### Clause 15 - Essential Services

The subject site is located within an established area with all essential services available.

### Clause 16 - Height of Building

The proposal does not contravene the imposed three storey height restriction on the subject site as there is no change to the height of the existing building.

### Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

### Clause 35 - Acid Sulfate Soils

Class 4 Acid Sulfate Soils are present on the site. There are no works proposed. As such, no further consideration is required and this clause is satisfied.

### Clause 39A – Bushfire Protection

The site is bushfire prone and as the application constitutes dual tourist and permanent residential use, it was considered integrated development as prescribed by section 100B of the Rural Fires Act 1997.

The Rural Fire Service (RFS) reviewed the application and applied General Terms of Approval (GTA's).

The GTA's require that the public reserve to the east of the development (Council land) be maintained as an Inner Protection Area. It is not clear at the time of writing whether the reserve is managed in accordance with IPA requirements or whether it is reasonable to expect Council to maintain the reserve in such a fashion for the benefit of private development.

Notwithstanding, the development is recommended for refusal for other reasons.

### Other Specific Clauses

#### Clause 53 - Additional Permitted Uses

Clause 53 (2) is the mechanism by which additional uses are permitted within Salt that would otherwise be prohibited within the zone table. Clause 53(2) covers dwelling houses and hotel and motel accommodation. Flexibility under Clause 53

is not required for the proposed development as 'multi dwelling housing' is a permissible use in the 2(f) zone under LEP 2000.

### **State Environmental Planning Policies**

#### **SEPP 65 – Design Quality of Residential Flat Development**

Clause 4 of SEPP 65 provides that the Policy applies to the conversion of an existing building to a residential flat building.

#### **4 Application of Policy**

- (1) This Policy applies to development being:
  - (a) the erection of a new residential flat building, and
  - (b) the substantial redevelopment or the substantial refurbishment of an existing residential flat building, and
  - (c) the conversion of an existing building to a residential flat building.**

The proposed development represents a change of use building use from a tourist resort to dual use tourist and permanent residential. This clearly constitutes the conversion of an existing building to a residential flat building.

The applicant contends that the building is *already* a 'residential flat building' which is defined as follows under SEPP 65:

**residential flat building** means a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),

but does not include a Class 1a building or a Class 1b building under the *Building Code of Australia*.

However, review of the originally submitted application for the tourist resort (Council's reference DA03/1774), determined by the Department of Planning, Infrastructure and Natural Resources (DIPNR Reference DA 477-11-2003) indicates that the application was not lodged under SEPP 65 as SEPP 65 did not apply (and does not apply) to tourist accommodation/tourist resort development.

As such, the existing building is **not** a residential flat building; it is a tourist resort as per the DIPNR approval.

There has been no consideration of the development under SEPP 65 and the applicant is erroneous to claim that SEPP 65 consideration is not required.

SEPP 65 provides that development application that relates to residential flat development, and that is made on or after 1 December 2003, **must** be accompanied by a design verification from a qualified designer. The design verification must consider the design principles of the SEPP (which include amenity. Specific to amenity, the SEPP details that *optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility*. As demonstrated in the DCP A1 assessment, Council planning officers have concerns about the suitability of the development for permanent residential accommodation on this basis.

**Councillors are cautioned that approval of the application without further consideration of the application under SEPP 65 (inclusive of review of design verification by a qualified architect) by the applicant is contrary to the provisions of the SEPP.**

**SEPP (North Coast Regional Environmental Plan) 1988**

Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

As the building is existing, the change of use will not contribute to any additional overshadowing.

Clause 43: Residential development

The application does not contradict the objectives of Clause 43. On-site density has been maximised without adversely affecting the environmental features of the land.

Clause 75: Tourism development

The plan generally refers to the location of large scale resort developments within prime tourism development area such as Kingscliff and Tweed Heads. The site is clearly within a prime tourism area and it is considered that approval of a proposal to use approved tourist units for permanent residential use would undermine tourist use in the area.

SEPP No 71 – Coastal Protection

The proposal will not restrict public access to the foreshore and is not considered to impact adversely on any of the matters for consideration under SEPP 71.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

Tweed Local Environmental Plan 2014 (draft LEP 2012)

It is noted that the draft Tweed Local Environmental Plan 2012 was gazetted (as amended) on 4 April 2014 as the Tweed Local Environmental Plan 2014. As such, LEP 2014 (Draft LEP 2012 at the time the application was submitted) has determining weight.

The subject site is SP 3 Tourist. The proposed dual use of the existing building (tourist accommodation) is defined as *Residential Accommodation (residential flat building)*:

***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

**residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

**Note.** Residential flat buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

All forms of Residential Accommodation are prohibited in the SP3 zone (by way of being excluded from Item 3 Permitted with Consent in the zone table:

Zone SP3 Tourist

1 Objectives of zone

- To provide for a variety of tourist-oriented development and related uses

2 Permitted without consent

Environmental facilities; Environmental protection works

3 Permitted with consent

Biocids treatment facilities; Boat landing ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Charter and tourist boating facilities; Community facilities; Eco-tourist facilities; Electricity generating works; Entertainment facilities; Flood mitigation works; Food and drink premises; Function centres; Helipads; Heliports; Information and education facilities; Jetties; Marinas; Mooring posts; Moorings; Passenger transport facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Research stations; Resource recovery facilities; Retail premises; Roads; Sewage treatment plants; Signage; Tourist and visitor accommodation; Waste disposal facilities; Water recreation structures; Water recycling facilities; Water supply systems

4 Prohibited

Bakery goods premises; Cellar door premises; Garden centres; Hardware and building supplies; Landscaping material supplies; Plant nurseries; Roadside stalls; Retail supplies; Timber yards; Vehicle sales or hire premises; ~~any other development not specified in item 1 or 2~~

The objective of the SP3 zone is as above, *to provide for a variety of tourist oriented development and related uses.*

The applicant contends that 'residential accommodation' is a related use. Council planning staff do not support this position as all forms of residential accommodation are expressly prohibited in the zone.

The proposed use cannot satisfy the objectives of the SP 3 Tourist zone. Further detailed consideration against LEP 2014 is not considered necessary at this time given:

- The land use is prohibited; and
- Consistency with the zone objectives cannot be demonstrated.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The building is entirely existing and there are no physical changes proposed. Based on this, the applicant contends that most DCP A1 controls are not applicable, a position which is disputed by Council staff.

A detailed DCP A1 assessment has been undertaken and is provided on file. The following non compliances with the document are of note:

- **Building Types Control**

Front doors, windows and entry areas do not face the street. These features are oriented internally as the site is part of a wider tourist development.

- **Site Configuration Control (Deep Soil Zones)**

There are no deep soil zones provided. There is an area of approximately 9m x 9m to the east of the pool which is landscaped area (grass), this area does not contain any deep soil planting.

The applicant has noted that at the time of approval, there were no deep soil zone controls in place. No assessment has been provided against the current controls which clearly apply to the proposed development.

- **Site Configuration Control (Impermeable Site Area)**

The applicant has noted that at the time of approval, there were no ISA controls in place. No assessment has been provided against the current controls which clearly apply to the proposed development.

Calculations by Council staff indicate that there is approximately 1158m<sup>2</sup> of permeable area which leaves 78% of the site as impermeable area. For an allotment greater than 750m<sup>2</sup> (the subject site is approximately 5187m<sup>2</sup>), a maximum 60% impermeable area is prescribed. As such, the proposed development greatly exceeds the prescribed ISA.

- **Setbacks Control (Front Setbacks)**

There is a setback of approximately 4m to the public street. The setback is permitted to be 5-7m in existing areas. The proposal does not comply.

- **Setbacks Control (Side Setbacks)**

The development does not meet the 1.5m side setback (if frontage to the public street is considered the front elevation) to the public parkland adjacent to the beach.

- **Setbacks Control (Rear Setbacks)**

The 8m rear setback/rear deep soil zone is not provided. There is a rear setback of approximately 2.5m.

- **Building Footprint and Attics, Orientation and Separation Control (Building Orientation)**

The dwelling entries do not face the street. Access is provided internally, through the central reception area.

- **Building Footprint and Attics, Orientation and Separation Control (Building Footprint and Attics)**

The proposed units only really have daylight access to one side, being either the northern or eastern elevation. As such, there should not be rooms greater than 10m from a window. Each unit has habitable rooms which have no direct sunlight access and rooms which are more than 10m from a window. This does not comply.

- **Building Height Control**

The building is existing however it is approximately 14m high which does not comply with the control.

- **Building Amenity Control (Sunlight Access)**

Living spaces are oriented predominantly to the south (for most units) and to the east for those on the eastern elevation. For the majority of the units, this is not ideal. No information has been provided by the applicant to indicate that the private open space of the south facing units will receive sufficient sunlight access.

- **Building Amenity Control (Natural Ventilation)**

Each unit has at least one habitable room without operable windows (with no windows or natural light or ventilation at all). There are no operable windows to bathroom areas and no designated laundry spaces. There is little to no opportunity for cross ventilation. The units are open only to one elevation, thus cross ventilation is limited. Whilst this may be acceptable for short term tourist accommodation, it is not considered to present an appropriate level of amenity for permanent residents.

- **Internal Building Configuration Control (Dwelling Layout and Design)**

The units are appropriately designed with regard to most dwelling layout controls however the kitchen areas for most units are in excess of 10m from a window which does not comply.

- **Internal Building Configuration Control (Storage)**

There should be four to five cubic metres of storage provided per unit. The applicant has not addressed this requirement.

- **External Building Elements (Elevations Visible from the Public Domain)**

The front entry ways to the ground level units are not visible from the street and all access occurs internal to the site.

- **Building Performance (Energy Efficiency and Water Conservation)**

The applicant has not provided BASIX certification for the proposed change of use. BASIX is relevant as the proposal is for permanent residential accommodation.

- **Floor Space Ratio**

The FSR is approximately 1.81:1 which exceeds the maximum for residential flat buildings.

The applicant's assertion that the above controls are not applicable due to the existing nature of the building is not supported. The above non compliances indicate that the existing building is not suitable for long term permanent occupation.



A2-Site Access and Parking Code

The development contains 79 car parking spaces in the basement. The below table demonstrates that sufficient parking is provided if each unit were to be used as permanent residential at the one time.

<b>Parking Table</b>		
Required	28 units @ 1.5 per each 2 bedroom unit,	42 spaces
	13 units @ 2 per 3 bedroom unit,	26 spaces
	1 space per 4 units for visitor parking	10.25 spaces
	<b>Total Required</b>	<b>78.25 spaces</b>
	<b>Total Provided</b>	<b>79 spaces</b>
	<b>Result</b>	<b>+ 0.75 spaces</b>

It is considered that the existing on-site parking arrangements are sufficient for users of such a facility.

A4-Advertising Signs Code

There is no additional signage proposed. It is envisaged that units would continue to be sold or let privately were the application approved.

A11-Public Notification of Development Proposals

The application was placed on public exhibition (advertising) for 14 days from 26 March 2014 to 9 April 2014. During this time, two submissions (objections) to the development were received which are addressed further in this report.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principles. This application does not contradict the objectives of this plan.

**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. It is not considered that the proposed dual use of the existing development for tourist accommodation/permanent residential occupation contradicts the objectives of the Government Coastal Policy.

This proposal does not require demolition or a change of BCA classification and no works are proposed. As such, Clause 92(b) (Applications for demolition), Clause 93 (Fire Safety Considerations) and Clause 94 (Buildings to be upgraded) of the Regulations do not apply.

**(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

The proposal does not impact upon coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The proposal does not impact upon coastline management strategies.

**Tweed Coast Estuaries Management Plan 2004**

The proposal does not impact upon estuaries management strategies.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The proposal does not impact upon coastal zone management strategies for Cobaki and Terranora Broadwater.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

**Context and Setting**

Approval of the subject application is considered to set an undesirable precedent.

The history of the wider Salt development is such that there were no controls for tourist development in order for sufficient yield to be created. The existing building is approved specifically for tourist accommodation on this basis.

It would not seem to follow logic to permit an existing tourist development (which was not required to meet any DCP controls) to be used for permanent residential accommodation in the absence of a wider strategic review of tourist accommodation in the area, particularly if that development does not meet current controls which apply to both tourist and residential development in order to ensure an appropriate level of amenity for visitors and/or residents.

The applicant's contention that current DCP A1 doesn't apply to the development as it is an existing building cannot be supported, firstly because the development clearly represents a change of use to a residential development and secondly because the existing development already circumvented detailed scrutiny under a DCP. Circumventing further assessment on the basis of the building being 'existing' (now that there is a detailed DCP in order to regulate such development) is a gross manipulation of the rationale behind the wider Salt development, and concessions given at that time in order to achieve sufficient yield for the town centre and wider Salt area to be viable.

As the only rationale for the development would appear to be private financial benefit, it is considered careless to approve this application without a wider assessment of the implications of such a decision, which would undoubtedly trigger a flush of similar applications for similar development along the Tweed Coast. It is important to note that the subject site is located in a dedicated Special Tourist zone under LEP 2014 which expressly prohibits residential development. This zoning is not afforded to other existing tourist developments in the area where residential development would remain permissible (under the various R zonings). Thus, approval of this application where a prohibition clearly applies could make any refusal of further applications problematic (in areas where the prohibition doesn't apply).

There is also the question of equity.

The conversion of existing tourist accommodation units to permanent residential accommodation (dual use or otherwise) should not occur in a piecemeal, DA by DA fashion. Rather, a detailed study of tourist accommodation (including a variety of stakeholders) across the coastal area should be undertaken in order to perceive the wider impact of such development. In this regard, the development is not considered to be in the public interest.

Amenity

It is anticipated that amenity conflicts may arise between permanent residents and holiday makers. The applicant has not proposed any mitigation measures or management plan in order to deal with potential conflict.

Owners consent issues/legal advice

After receipt of the application Council received correspondence from Hickey Lawyers requesting that Council reject the application on the basis that correct owners consent was not provided, specifically that the owner of Lot 42 did not consent to lodgement of the application.

Council sought independent legal advice in relation to the adequacy of owners consent. At the same time, the applicant submitted a request to have Lot 42 removed from the development application and provided owners consent from all other 41 lots. Based on the legal advice received, it is evident that sufficient owners consent has been provided for the application. Consent of the individual unit owners subject to the application (Lots 1-41) and consent of the body corporate is required. Both have been provided.

**(c) Suitability of the site for the development**

The site is not considered to be suitable for the proposed development as the current zoning under LEP 2014 (imminent and certain at the time of lodgement of the application) prohibits the proposed use.

**(d) Any submissions made in accordance with the Act or Regulations**

Two submissions raising various objections to the development were received. The matters raised in submissions are addressed below:

Matters raised by submission	Applicant's response
<p>The development description indicates that the development will continue to operate primarily as tourist accommodation and will continue to be promoted as part of the Peppers Resort. However, the proposal does not seek to limit the number of units which can be used for permanent residential accommodation, now does it specify any time limitations for permanent occupancy. In any event, any proposal to do so would be very difficult to enforce. As such, the proposal must be assessed as if all units could be permanently used for residential occupancy.</p>	<p>The applicant has not addressed this aspect of the submission.</p>
<p>Mantra has the management/letting rights to the two tourist developments at Salt (Peppers and Mantra). Each development has its own individual characteristics and mix of accommodation type and standard. Peppers Bale forms an essential part of this mix and is specifically marketed to tourists seeking luxury accommodation. It offers features that differ from other parts of the Peppers development, primarily due to its beachside location</p>	<p>Only 18 of the 41 units within Peppers Bale are within the Mantra Group leasing pool. All other units are either let by external third parties or held as units for private use. Further, and regardless of whether TSC approves the development application, subject to providing 3 month notice, the remaining 18 unit holders are within their rights as owners of the units to withdraw them from the leasing pool and remove any connection to Mantra Group whatsoever. We are informed by our clients that it is the costs vs returns that have prompted the majority of the 23 lot owners who are out of the letting pool to withdraw their unit in</p>

Matters raised by submission	Applicant's response
<p>and is therefore integral to Mantras business in the Salt locality. Mantra purchased the letting and management rights to Peppers Bale on the basis that the units were approved exclusively for tourist use. Commercial business decisions have been made by mantra in the knowledge that permanent residential accommodation of the units is prohibited.</p>	<p>the first place.</p>
<p>Allowing dual usage of these units would reduce the range, type and number of tourist accommodation units at Salt.</p>	<p>The applicant addresses this below.</p>
<p>The original development consent (DA 477-11-2003) approved a 'tourist resort'. The consent contains Condition G9 and follows:</p> <p><i>G9 – Tourist Use – The development shall be carried out in accordance with the definition of Tourist Resort contained in the Tweed Local Environmental Plan 2000.</i></p> <p>Consequently, the units may only be used for tourist accommodation, not permanent residential occupancy. The proposed change of use could theoretically enable all units to be permanently occupied for residential purposes.</p>	<p>The submission outlines that condition G9 of development consent DA 471-11-2003 establishes a 'prohibition' to the use of units approved by DA 471-11-2003 for permanent residential use. This is a selective description of the purposes of condition G9. A condition of approval cannot establish a land use prohibition; a prohibition can only be established by way of an Environmental Planning Instrument.</p> <p>As outlined within the submitted statement of environmental effects 'Multi Dwelling Housing' is a permissible land use within the 2(f) Tourist Zone under the provisions of the Tweed Local Environmental Plan (TLEP) 2000. As the proposed land use is permissible with consent a development application can be lodged with Council. Upon approval the units would have a separate development consent permitting the dual use of the units, Condition G9 of DA 471-11-2003 has no legal ability to restrict the lodgement of a development application nor does it have the legal ability to prevent use of the units for both tourist letting and permanent accommodation is accord with a development consent issued by Council.</p> <p>The application of condition G9 of DA 471-11-2003 has no impact upon the proposal.</p>
<p>The subject land and the central tourist area of Salt are zoned SP3 Tourist under the Tweed LEP 2014 (in draft form when the application was submitted). The remaining residential areas of Salt are zoned R1 General Residential and R2 Low Density Residential. Residential development in the SP3 Tourist zone is prohibited.</p>	<p>The submission correctly identifies the site as having been zoned SP3 Tourist under the Draft Tweed Local Environmental Plan (DTLEP) 2012. The DTLEP 2012 has since been gazetted and is now identified as the Tweed Local Environmental Plan (TLEP) 2014. The submission claims that the DTLEP 2012 establishes a 'rational land use strategy' for Salt and identifies that residential accommodation is prohibited in the SP3 Tourist. It however fails to discuss the key considerations relevant to the development application namely the saving provisions provided by Clause 1.8A of the TLEP 2014 and the proposals compliance with the SP3 zone objectives. Clause 1.8A of the TLEP 2014 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. It is noted the development application was receipted by Tweed Shire Council on the 19 March 2014 and as such the Clause 1.8A is applicable to the proposal. In</p>

Matters raised by submission	Applicant's response
	<p>applying Clause 1.8A of the TLEP 2014 the objectives of the zone must be considered.</p> <p>The objectives of the SP3 zone are identified as follows:</p> <p>1 Objectives of zone</p> <p>To provide for a variety of tourist-oriented development and related uses.</p> <p>The proposal falls within the definition of 'residential accommodation' under DTLEP 2012 and is prohibited in the subject zone. Despite this the proposal is considered to meet the objective of the zone in that the proposal maintains the tourist accommodation use and provides a 'related use' consistent with that found within Salt. The proposed flexible use is considered to be a 'related use' as envisaged within the objective. Allowing the use for permanent residential accommodation in conjunction with tourist accommodation will help sustain Peppers Bale during periods of tourist down tum, helping to support the facilities over the longer term.</p>
<p>The SEE seeks to justify the consistency of the proposal with the 2(f) zone objectives on the basis that the units would still be primarily used for tourist uses and only used for residential accommodation in times of tourist downturn. However there is no way to control this proposed by the applicant. On this basis, the application is not consistent with the zone objectives.</p>	<p>It is considered the proposal is clearly consistent with the objectives of the 2(f) Tourist Zone. The objectives are identified as follows, comment relative to attainment of the objectives is provided below:</p> <p><b>Primary objectives</b></p> <p><i>To encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.</i></p> <p>The proposed application to permit dual use of Peppers Bale for both permanent residential occupation and tourist letting will see Peppers Bale remain part of the existing integrated tourist development within Salt and will provide an additional use option that will over the longer term be supportive of the existing tourist development. Further, the proposal is at a scale which would never challenge tourist letting for supremacy within the area, at worst case if all units are let for permanent residential accommodation 305 tourist rooms/units will remain available directly adjoining and opposite the site. It is considered the proposal is compliant with the first primary objective.</p> <p><i>To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.</i></p> <p>It is considered that over the approximately 9 years of operation it has been demonstrated that for Peppers Bale to fulfil its economic and employment generating potential for the area, greater flexibility in the use permitted on the site is required. The purposes of this dual use application is to provide the base on which Peppers Bale can adjust and move with market</p>

Matters raised by submission	Applicant's response
	<p>conditions to ensure that during those periods of tourist down turn that the complex does not sit idle and contributes nothing to the support of the adjoining shops, restaurants and tavern. It is considered the proposal is consistent with the secondary primary objective.</p> <p><b>Secondary objective</b></p> <p><i>To permit high quality residential development as being integral and supportive of the primary intent of this zone (tourist orientated development) in terms of design and management structure and only at a scale which enhances the proposed tourist resort character.</i></p> <p>Peppers Bale is of the highest quality and is fully self contained apartments. As discussed above the proposal is aimed at ensuring Peppers Bale can be both integrate to the existing tourist development and support of the adjoining uses over a range of economic circumstances. Again, the proposal is at a scale which would never challenge tourist letting for supremacy within the area, at worst case scenario if all units are let for permanent residential accommodation 305 tourist rooms/units will remain available directly adjoining and opposite the site. It is considered the proposal is compliant with the secondary objective.</p>
<p>The applicant has not addressed Clause 53(b) of LEP 2000 in its entirety. If the development would result in the number of residential units exceeding the number of tourist units, the proposal would be prohibited.</p>	<p>The low density subdivision of the lands identified for medium density has amended the original ratio of dwellings and dwelling houses to tourist accommodation units. Even in the worst case scenario that all units within Peppers Bale are used for permanent letting, the number of dwellings and dwelling houses within Salt will not exceed the number of tourist accommodation units. The proposal is permissible with consent in the 2(f) Zone and is compliant with the requirements of Clause 53 and Schedule 3. The proposal is compliant with the relevant clauses of the TLEP 2000.</p>
<p>The Planning Assessment Report from the Department of Infrastructure, Planning and Natural Resources for the determination of the Peppers Resort Development indicates that the Salt Concept Master Plan identifies development lots based on site opportunities and constraints. Lots 171 and 172 are identified within the master plan as tourist resort lots and should be developed accordingly. These lots are the Peppers Resort lots. Retaining the central Salt tourist precinct exclusively as tourist accommodation was always intended for the Salt development. That is the intention of the primary zone objective and the Salt Concept Master Plan.</p>	<p>The submission asserts that all development within Salt should be in accord with the approved Salt Concept Master Plan. While it is acknowledged that during the initial phases of a development, adherence to an approved master plan is prudent, however once a development has established, tunnel vision adherence to a concept master plan can be counterproductive at best and destructive at worst. Assessment of applications on their merits in response to market forces and identified failings in the original master plan is good planning practice and ensures the best possible planning outcome. With regards to the approved Salt Concept Master Plan, development within Salt has continually been amended and adjusted. It is noted that the majority of the lands originally identified for 'medium density' development forms have been subdivided into low density residential housing. This is important to note as this directly relates to the submissions selective use of requiring compliance with the Salt Concept Master Plan and the applications compliance with Clause 53(3) of the TLEP 2000. The low density subdivision of</p>

Matters raised by submission	Applicant's response
	<p>the lands identified for medium density has amended the original ratio of dwellings and dwelling houses to tourist accommodation units. Even in the worst case scenario that all units within Peppers Bale are used for permanent letting, the number of dwellings and dwelling houses within Salt will not exceed the number of tourist accommodation units. We note this submission confirms this, stating 'We understand from our client that if the 41 units were approved for dual use and considered 'residential development' for the purpose of this clause, then the ratio of tourist and residential development would not be exceeded by this proposal' The proposal is permissible with consent in the 2(f) Zone and is compliant with the requirements of Clause 53 and Schedule 3. The proposal is compliant with the relevant clauses of the TLEP 2000.</p>
<p>Though the proposal does not involve any physical changes, there would be a change to the definition and consequently the proposal needs to be assessed as a new residential use. As such, the application should consider the following:</p> <ul style="list-style-type: none"> <li>• Clause 32(b) of the NCREP (overshadowing) with a SEPP 1 objection submitted.</li> <li>• SEPP 65 – Design Quality of Residential Flat Development</li> <li>• Tweed DCP Section A1 – Residential Development Code</li> <li>• DCP A2 – Site Access and Parking Code</li> </ul>	<p><u>SEPP North Coast Regional Environmental Plan</u></p> <p>The proposal is for a change of use 'and no building works are proposed. The existing extent of shadow cast by the building and as previously approved by DA 477-11-2003 will not be altered. However should Council require a SEPP 1 objection to the provisions of Clause 32B(4) of the NCREP it is asked that Council request one as part of an information request. As the proposal does not alter the shadow cast upon the foreshore it is considered the provisions of Clause 32B(4) will not present an impediment to the approval of the development application.</p> <p><u>SEPP 65 - Design Quality of Residential Flat Development</u></p> <p>The submission is incorrect in stating that the proposal constitutes 'the conversion of an existing building to a residential flat building' a form of development to which SEPP 65 would apply. As defined within SEPP 65 a residential flat building is:</p> <p><i>Residential flat building means a building that comprises or includes:</i></p> <p>(a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and</p> <p>(b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),</p> <p><i>but does not include a Class 1 a building or a Class 1 b building under the Building Code of Australia.</i></p> <p>Peppers Bale is already a residential flat building providing 3 or more storeys and 41 self contained dwellings. The provisions of SEPP 65 do not differentiate between tourist or permanent residential development, a residential flat building is determined based upon its building topology and dwellings being self contained. The proposed change of use does not trigger the provisions of SEPP 65 as it is already a residential flat building. The provision of a design</p>

Matters raised by submission	Applicant's response
	<p>verification statement is not required by the proposal.</p> <p><u>Tweed DCP Section A1- Residential &amp; Tourist Code.</u></p> <p>The application includes an assessment against Part C of Section A 1 of the Tweed Development Control Plan (TDCP) 2008. The submission raises no specific issues with the proposal compliance with Section A 1. It is considered the existing building and grounds approved as part of DA 477-11-2003 are of the highest design quality and exceeds best practice amenity and design controls for a residential flat building.</p> <p>Should Tweed Shire Council have any specific concerns or issues relating to Section A 1 of the TDCP 2008 it is requested that this be included in an information request</p> <p>to enable our client to respond and address this accordingly.</p> <p><u>Car Parking</u></p> <p>The submission raises a potential onsite car parking short fall and references the Planning Assessment Report for DA 471-11-2003. The submission purposely ignores the recalculation of the developments car parking requirements under Section A2 of the Tweed Development Control Plan. These calculations are outlined below; the proposal is compliant with the car parking requirements of Section A2 of the TDCP 2008.</p>
<p>The applicant has not addressed potential amenity impacts.</p>	<p>The submission makes a broad brush statement about amenity issues and management difficulties in an attempt to establish the perception of an operational issue. The assertion is unsubstantiated and raises no specific amenity issues on which our client can comment. The existing operations of Peppers and Peppers Bale are governed by a strict policy regulating guest behaviour. Unless all existing policies regarding guest behaviour are purposely ignored by Mantra Group in their ongoing operation, amenity impacts between guest and permanent residents will be unlikely to result. Council is referred to the Casuarina Beach Shack approval for dual use under development consent DA12/0346. This development has now been operating as a dual use development for some time and is operating successfully without issue. DA 12/0346 is the example that such developments can be successfully managed. It is considered that the submission is selectively using amenity issues without basis. Should Council have a specific concern regarding amenity it is requested that this be provided in writing within an information request to allow our client the opportunity to responds and address such concerns.</p>
<p>Appropriate owners consent was not provided. The lodgement of a SA for change the use of the entire strata scheme (even excluding Lot 42) still requires the consent of every owner of every lot included in the application.</p>	<p>This submission relates to the original advertising period undertaken for the proposal between the dates of Wednesday 26~ March 2014 and Wednesday 9-April 2014 and seeks to have the development application rejected in accord with Clause 51(l)(b) of the Environmental Planning and Assessment Regulation (EPAR) 2000. This submission is no longer</p>



Matters raised by submission	Applicant's response
	<p>relevant to the particulars of the development application and has been adequately addressed. Specifically, it is noted this submission references Lots 1-42 on SP76023. On Wednesday 2<sup>nd</sup> April 2014 the development application was formally amended in accord with Clause 55 of the Environmental Planning and Assessment Regulation (EPAR) 2000 to remove Lot 42 on SP76023 from the development. Further on Thursday 8<sup>th</sup> May 2014 the individual owner's consents for Lots 1-41 on SP76023 were submitted to Tweed Shire Council. As currently proposed development application DA14/0164 relates to Lots 1-41 on SP76023 and the Common Property of SP76023. Owners consent has now been provided to Tweed Shire Council for all land included within the development application.</p>
<p>Many years ago the (Kingscliff) community worked long and hard to separate residential use from tourist use. The developers used many consultant and reports to prove that tourist buildings were needed on the Tweed Coast to cater for the expected influx of tourists. Special concession, including financial were given to the developers of tourist buildings. The proponents of dual use have offered many ways that they believe tourists can be controlled/sup[revised]. Anecdotal evidence suggests that this has not and does not work. People have been lied to and bullied into believing that the dual use is a right of the owners. Councillors have recently allowed holiday letting in residential houses (Collins Lane_ and allowed the dual use of a tourist complex (Casuarina Beach). We believe that as they are now commercial operations, they should be rated as commercial.</p>	<p>This submission relates to the re-advertising period undertaken for the proposal between the dates of Wednesday 9<sup>th</sup> April 2014 and Monday 28<sup>th</sup> April 2014. This submission is a 'bulk' submission against a number of current development applications before Tweed Shire Council. DA14/0164 has been grouped by the Kingscliff Ratepayers and Progress Association with a number of development applications which seek to use existing detached dwelling houses for both permanent residential and tourist letting.</p> <p>The fact that DA14/0164 has been grouped with these other development applications demonstrates a clear misunderstanding of the particulars of DA14/0164 by the Kingscliff Ratepayers and Progress Association. In reviewing this submission the discussion within does not directly relate to the particulars of DA14/0164 and ultimately includes no planning grounds relevant to DA 14/0164. A summary of the issues raised within the submission is included below;</p> <ol style="list-style-type: none"> <li>1. The management measures proposed for the dual use of dwellings houses and an assertion of the failure of these measures;</li> <li>2. An assertion of 'lies' between owners of the dwelling houses proposed for dual usage and their neighbours:</li> <li>3. An assertion that the sites are residential and therefore already provide their 'best use and fulfil their economic and employment generating potential for the area' in accord with one of the 2(f) Tourism Zone objectives;</li> <li>4. That the rates for those properties already approved for dual use be levied as commercial properties: and</li> <li>5. That the determination of 'dominate use' for ratings purposes is between the owner and the tax department</li> </ol> <p>The above issues do not relate to the specifics of DA14/0164, are unsubstantiated assertions not based on planning merit and/or relate to how rates should be levied for such proposals. All these are issues which are not a matter for consideration as part of a</p>

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Matters raised by submission	Applicant's response
	development application.

Planning Comment

As outlined above, Council sought independent legal advice in relation to the adequacy of owners consent. At the same time, the applicant submitted a request to have Lot 42 removed from the development application and provided owners consent from all other 41 lots. Based on the legal advice received, it is evident that sufficient owners consent has been provided for the application. Consent of the individual unit owners subject to the application (Lots 1-41) and consent of the body corporate is required. Both have been provided.

Planning staff maintain that the application cannot be supported for reasons outlined above.

**(e) Public interest**

Whilst the proposed development complied with the zoning controls under Tweed Local Environmental Plan 2000 at the time of lodgement of the application, at that point it was certain and imminent that the Draft LEP 2012 would prohibit the development. After LEP 2014 was gazetted on 4 April 2014, it is abundantly clear that the proposed development is prohibited. As such, the development is not considered to be in the public interest.

**OPTIONS:**

1. Refuse the application; or
2. Grant in-principle support for the application and a report to be brought back to a further Council meeting with recommended conditions of consent for Council to determine. **Note that this option requires the preparation of considerable further detail by the applicant.**

Council officers recommend Option 1.

**CONCLUSION:**

The development is prohibited by and inconsistent with the Draft LEP 2012 in force at the time the application was lodged, and LEP 2014 which is now in force, specifically the objectives of the SP3 Tourist zone. It is therefore recommended that the development be refused.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Yes, legal advice has been received.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**15 [PR-PC] Class 1 Appeal - Development Application DA12/0527 for Internal Alterations and Additions Comprising of a New General Store, Extension of Entrance and Car Park Reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads West**

**SUBMITTED BY:** Development Assessment

**FILE REFERENCE:** DA12/0527 Pt4



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
- 

### **SUMMARY OF REPORT:**

The Class 1 appeal for the proposed supermarket at the Seagulls Club at West Tweed has been dismissed by the NSW Land and Environment Court in a judgment handed down on 16 July 2014. Council refused the development application and defended the appeal in the Court.

At its meeting on 16 May 2013, Council unanimously resolved to refuse Development Application DA12/0527 which sought approval for alterations and additions to the existing Seagulls Club to accommodate a full line supermarket. The supermarket was proposed to be operated by the Independent Grocers of Australia (IGA) franchise comprising a gross floor area of 1965m<sup>2</sup>.

The appeal was dismissed primarily on the basis that the proposed supermarket was not consistent with the objectives of the private recreation zones.

### **RECOMMENDATION:**

**That the report on Class 1 Appeal - Development Application DA12/0527 for Internal Alterations and Additions Comprising of a New General Store, Extension of Entrance and Car Park Reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads West be received and noted.**

## **REPORT:**

The Development Application sought approval for alterations and additions to the existing Seagulls Club to accommodate a full line supermarket. The supermarket was proposed to be operated by the Independent Grocers of Australia (IGA) franchise comprising a gross floor area of 1965m<sup>2</sup>.

The application would have involved a change of use of part of the existing club to accommodate the supermarket. The application proposed works to the north eastern facade to improve the access for the IGA and this would involve the creation of an additional 314m<sup>2</sup> of floor area to the existing building. The application also incorporated an amended car parking layout.

The subject site is zoned 6(b) Recreation in accordance with Tweed Local Environmental Plan 2000 (TLEP 2000). In accordance with the current TLEP 2000 shops (by definition) are prohibited in this zone.

The subject site is proposed to be zoned RE2 Private Recreation under Draft LEP 2012. In accordance with the Draft LEP 2012 shops (by definition) and neighbourhood shops (of less than 300m<sup>2</sup>) will be prohibited in this zone. Only kiosks, markets and food and drink premises will be permissible.

The applicant lodged the application as a "general store" by definition (TLEP 2000) and sought Council's approval for this as a permissible land use. The applicant submitted legal advice to support this view and such advice was discussed in the original report.

## **OPTIONS:**

1. Received and note this report.

## **CONCLUSION:**

Council has been successful in its defence of the refusal of the supermarket proposed at the Seagulls Club.

## **COUNCIL IMPLICATIONS:**

### **a. Policy:**

Corporate Policy Not Applicable

### **b. Budget/Long Term Financial Plan:**

Costs have been incurred as a result of the case. Costs are not awarded in Class 1 Appeals.

### **c. Legal:**

The applicant has a right of appeal but only if the appeal decision has breached the law.

### **d. Communication/Engagement:**

**Inform** - We will keep you informed.

## **UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Court Judgement (ECM 3414827)

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**16 [PR-PC] Development Application DA13/0591 for the Erection of Four Townhouses at Lots 25 and 26 Section 5 DP 4043 Nos. 36 and 38 Enid Street, Tweed Heads**

**SUBMITTED BY: Development Assessment**

**FILE REFERENCE: DA13/0591 Pt1**

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## **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

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### **SUMMARY OF REPORT:**

Council has received a Class 1 Appeal against Council's refusal of the development application for townhouse development at Enid Street, Tweed Heads. The matter is listed for a Telephone Directions Hearing which is to take place at 10am on Monday, 11 August 2014.

The application was recommended for refusal at Item 8 of the Planning Committee meeting of 3 April 2014. Council resolved to defer the matter for a workshop and to be reported back to a future meeting.

A workshop was held on 24 April 2014 and the matter was presented at Item 14 of the Planning Committee meeting of 1 May 2014. A Notice of Rescission was received following a resolution to grant in principle support and seek better design outcomes.

The matter was again presented at Item 10 of the Planning Committee of 5 June 2014. The Notice of Rescission was carried and Council resolved to refuse the application 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.*

#### **RECOMMENDATION:**

**That Council's solicitors be engaged to defend the appeal for Development Application DA13/0591 for the erection of four townhouses at Lots 25 and 26 Section 5 DP 4043 Nos. 36 and 38 Enid Street, Tweed Heads.**

**REPORT:**

**Applicant:** Mr L Cotterill and Mrs W Cotterill  
**Owner:** Mr Lance M Cotterill & Mrs Wendy Cotterill  
**Location:** Lots 25 and 26 Section 5 DP 4043 Nos. 36 and 38 Enid Street, Tweed Heads  
**Zoning:** R3 Medium Density Residential  
**Cost:** \$500,000

**Background:**

The proposal includes single storey development to the Enid Street frontage and two-storey development to the rear of the lots. A shared driveway is located in the middle of the development.

The land has an area of 1188.8m<sup>2</sup> and is zoned R3 Medium Density Residential under Tweed City Centre Local Environmental Plan 2012 (TCCLEP 2012). The proposal is permissible with consent. However, the density proposed is considered low and does not meet the objectives of the zone or the desired future character for the City Centre Support Precinct as outlined in Development Control Plan B2 (DCP B2).

The proposed development is considered an under utilisation of urban land which is zoned for medium density purposes. Expectations for the site are informed by a 34m building height limit and a floor space ratio of 3.25:1. A development with up to 10 storeys is anticipated for the subject site.

The applicant was advised prior to lodgement that the proposal was contrary to Council's vision for future development of Tweed Heads. It was strongly recommended that the proposal be redesigned to take advantage of the 34m building height limit and greater floor space ratio controls. The proposal as submitted results in cumulative variations to DCP A1 Part B that represents an unacceptable outcome for the site.

Variation of the TCCLEP 2012 and DCP B2 will set an undesirable precedent for development in this strategic area of the Shire and will undermine the strategic planning objectives set by the Planning Instruments.

The applicant seeks the following Orders from the Court:

1. That the appeal be upheld.
2. That Development Application DA13/0591 for the erection of townhouses at 36-38 Enid Street, Tweed Heads be approved.

**OPTIONS:**

1. Engage Council's solicitors to defend the appeal; or
2. Engage Council's solicitors to negotiate consents orders or a Section 34 Agreement for DA13/0591.

Council officers recommend Option 1.

**CONCLUSION:**

It is recommended that Council defends the appeal.



**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Council will incur expenses as a result of the appeal.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- |               |   |
|---------------|---|
| Attachment 1. | Council report presented to 3 April 2014 Planning Committee meeting for DA13/0591 (ECM 3421227)                                       |
| Attachment 2. | Council report presented to 1 May 2014 Planning Committee meeting for DA13/0591 (ECM 3421228)   |
| Attachment 3. | Notice of Rescission and Notice of Motion (Item 9) as presented to 5 June 2014 Planning Committee meeting for DA13/0591 (ECM 3421229) |
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17 [PR-PC] Development Application DA13/0594 for a Detached Dual Occupancy at Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0594 Pt1

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## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.2	Improve decision making by engaging stakeholders and taking into account community input
1.2.1	Council will be underpinned by good governance and transparency in its decision making process

---

### SUMMARY OF REPORT:

Council has received a Class 1 Appeal against Council's refusal of the development application for a detached dual occupancy development at Enid Street, Tweed Heads. The matter is listed for a Telephone Directions Hearing which is to take place at 11:10am on Monday, 11 August 2014.

The application was recommended for refusal at Item 7 of the Planning Committee meeting of 3 April 2014. Council resolved to defer the matter for a workshop and to be reported back to a future meeting.

A workshop was held on 24 April 2014 and the matter was presented at Item 13 of the Planning Committee meeting of 1 May 2014. A Notice of Rescission was received following a resolution to grant in principle support and seek better design outcomes.

The matter was again presented at Item 12 of the Planning Committee of 5 June 2014. The Notice of Rescission was carried and Council resolved to refuse the application 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.*

**RECOMMENDATION:**

**That Council's solicitors be engaged to defend the appeal for Development Application DA13/0594 for a detached dual occupancy at Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads.**

**REPORT:**

**Applicant:** C Paddison  
**Owner:** Astute Builders Pty Ltd  
**Location:** Lot 24 Section 5 DP 4043 No. 40 Enid Street, Tweed Heads  
**Zoning:** R3 Medium Density Residential  
**Cost:** \$250,000

**Background:**

The proposal includes single storey development to the Enid Street frontage and two-storey development to the rear of the lot with a shared driveway adjacent to the southern side boundary.

The land has an area of 594.4m<sup>2</sup> and is zoned R3 Medium Density Residential under Tweed City Centre Local Environmental Plan 2012 (TCCLEP 2012). The proposal is permissible with consent. However, the density proposed is considered low and does not meet the objectives of the zone or the desired future character for the City Centre Support Precinct as outlined in Development Control Plan B2 (DCP B2).

The proposed development is considered an under utilisation of urban land which is zoned for medium density purposes. Expectations for the site are informed by a 34m building height limit and a floor space ratio of 3.25:1. A development with up to 10 storeys is anticipated for the subject site.

The applicant was advised prior to lodgement that the proposal was contrary to Council's vision for future development of Tweed Heads. It was strongly recommended that the proposal be redesigned to take advantage of the 34m building height limit and greater floor space ratio controls. The proposal as submitted results in cumulative variations to DCP A1 Part A that represents an unacceptable outcome for the site.

Variation of the TCCLEP 2012 and DCP B2 will set an undesirable precedent for development in this strategic area of the Shire and will undermine the strategic planning objectives set by the Planning Instruments.

The applicant seeks the following Orders from the Court:

1. That the appeal be upheld.
2. That Development Application DA13/0594 for the erection of detached dual occupancy at 40 Enid Street, Tweed Heads be approved.

**OPTIONS:**

1. Engage Council's solicitors to defend the appeal; or
2. Engage Council's solicitors to negotiate consents orders or a Section 34 Agreement for DA13/0594.

Council officers recommend Option 1.

**CONCLUSION:**

It is recommended that Council defends the appeal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Council will incur expenses as a result of the appeal.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- Attachment 1. Council report presented to 3 April 2014 Planning Committee meeting for DA13/0594 (ECM 3421184)
- Attachment 2. Council report presented to 1 May 2014 Planning Committee meeting for DA13/0594 (ECM 3421185)
- Attachment 3. Notice of Rescission and Notice of Motion (Item 11/Item 12) as presented to 5 June 2014 Planning Committee meeting for DA13/0594 (ECM 3421186)
-

**18 [PR-PC] Cobaki Estate, Compliance Update**

**SUBMITTED BY: Development Assessment**

**FILE NUMBER: DA10/0853 Pt 23**



## **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 NSW Department of Planning and Environment (DPE) have served an Order on Leda Manorstead Pty Ltd to undertake staged corrective action to restore a balance of natural inundation and drainage of the salt marsh located at the southern end of the Cobaki site.

The action is required given the direct tidal inlet constructed to restore tidal flows to and from the salt marsh which were impacted as a result of the construction of an access track across the salt marsh has not permitted water to drain from the salt marsh and therefore resulted in ponding within the salt marsh. The ponding has created potential problems with the health of the salt marsh, mosquitoes and prevented access to existing electricity infrastructure.

The DPE have also advised Council that two Penalty Infringement Notices were issued to Leda Manorstead Pty Ltd in relation to unauthorised work relating to Precincts 9 and 11 of the Cobaki Estate.

### **RECOMMENDATION:**

**That the report on Cobaki Estate, Compliance Update be received and noted.**

## REPORT:

### Background

As part of the Cobaki Estate Major Project approval the salt marsh located on part of the site is required to be rehabilitated. During 2013 an unauthorised access track was constructed into the saltmarsh area. The DPE undertook compliance action which resulted in a direct tidal inlet from Cobaki Creek being constructed. The inlet channel permits water to enter the salt marsh on the rise and fall of the tide, however given the western salt marsh area is wide and flat not all of the water recedes to back to the creek via the channel. The ponding water has created potential health issues for the saltmarsh given the saltmarsh is not supposed to be permanently inundated. The standing water has also created mosquito habitat and impeded access by Essential Energy to electricity poles.

Leda Manorstead proposed an environmental engineering solution to correct the problem with a monitoring program to be carried out by consulting firm SMEC. The Order issued by DPE is based on this proposal. In summary the proposal is to construct a bund at the inlet channel entrance to reduce the volume of water entering the saltmarsh and giving the saltmarsh more time to drain. This will be monitored and if necessary an outlet system to increase flows will be constructed and/or a reduction of the bund.

These solutions are for the short term as the ultimate construction of the Cobaki Parkway will include permanent management of the saltmarsh tidal flows.

The terms of the Order are as follows:

#### 1. Stage 1

- *Implement the SMEC short term monitoring proposal dated 17 June 2014 "Attachment 1" including the establishment of a fixed water level monitoring network, photo monitoring and salinity measurements.*

#### **Period for compliance:**

- *Install measures and commence initial monitoring (prior to construction of earth bund) within 14 days from the date of this Order.*

#### 2. Stage 2

- *Construct an earth bund across the Cobaki inlet channel approximately 5m to 10m upstream of the Cobaki Creek bank at an RL of 0.3m to reduce the amount of water entering the saltmarsh during high tides.*
- *Assess if the saltmarsh drains effectively over a 4 week period (assumes a 4 week period with average tidal conditions and rainfall) using the SMEC monitoring proposal.*

#### **Period for compliance:**

- *Construct the earth bund within 14 days from the date of this Order*
- *Continue monitoring upon completion of the earth bund and provide all monitoring results to the Department at the end of the 4 week period following the completion of the earth bund.*

#### 3. Stage 3

- *If the saltmarsh is not draining sufficiently, provide a temporary tidal outlet system at the location of the new bund in the Cobaki inlet channel to assist with outflows on the lowtide (pipe size to be confirmed).*

- *If the tidal inundation is lower than desired, reduce the height of the bund to allow more water to enter the saltmarsh.*
- *Assess if the saltmarsh drains/fills effectively over a further 4 week period (assumes a 4 week period with average tidal conditions and rainfall) using the SMEC monitoring proposal.*

**Period for compliance:**

- *Install the tidal outlet system if required within 14 days of the end of the Stage 2 monitoring program.*
- *Continue monitoring upon completion of the tidal outlet system and provide all monitoring results to the Department at the end of the 4 week period following the installation of the tidal outlet system.*

**Reasons for Order**

- The configuration of the channel allows for inflows from Cobaki Creek into the western saltmarsh area on any tide level higher than the creek invert. However, due to the large, flat area of the saltmarsh, there is not enough head on the water to allow enough water to drain out of the saltmarsh during the low tide window. As such, a significant volume of water is effectively trapped in the western saltmarsh area due to this flow imbalance.*
- Both Leda and Tweed Shire Council have expressed concern that the permanent nature of this standing water may have an impact on the existing saltmarsh and other ecological communities.*
- Tweed Shire Council and Gold Coast City Council have both also reported an increase in mosquito numbers in the surrounding area. Health concerns in terms of an increased risk of Ross River Fever have been expressed by both authorities.*
- The inundation of the saltmarsh has also resulted in major access, maintenance and safety concerns for Essential Energy as the existing power line running through the saltmarsh is the major back up line for Tweed Heads. Currently, Essential Energy cannot access the power poles for maintenance purposes unless they are in a boat with a ladder. This presents unacceptable safety risks for Essential Energy employees.*
- On 18 June 2014, Leda wrote to the Department with a proposal for a flexible engineered solution to enable tidal flushing of the saltmarsh area. The proposal was accompanied by a monitoring plan prepared by SMEC to gauge the success or otherwise of the remediation measures proposed by Leda. The proposal allows for the installation of an earth bund across the tidal channel and the further installation of a tidal flap system should the bund fail to achieve the desired result.*

In relation to the Penalty Infringement Notices for Precincts 9 and 11 the DPI advised that the Notices were issued for the following:

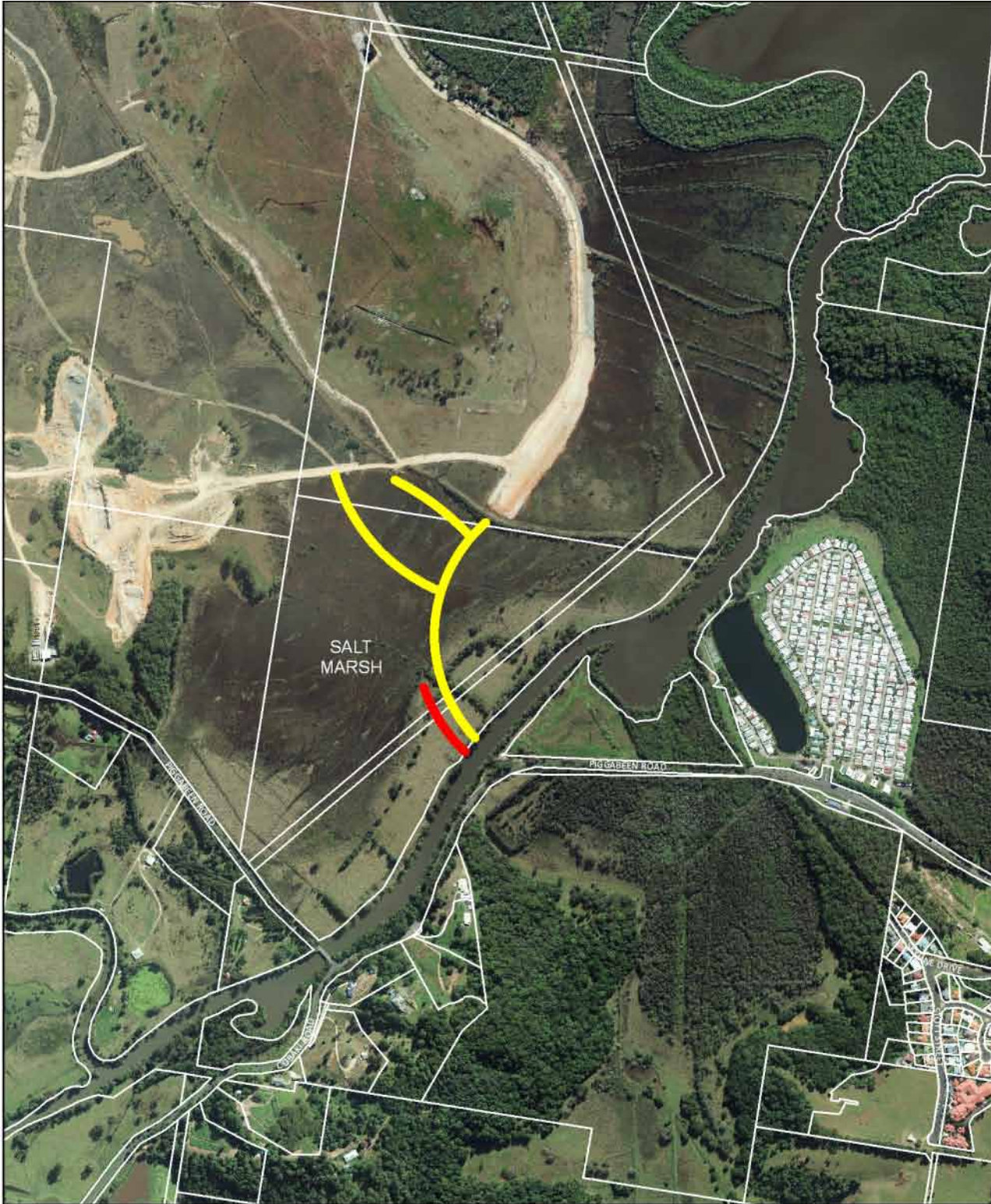
- *"Failure to obtain approval for use of Precincts 9 and 11 as bulk earthwork borrow areas before excavation and transportation of material from these precincts;*
- *Failure to obtain a Construction Certificate contrary to Condition 8, Schedule 2 of MP08\_0200 prior to excavation and transportation of material from Precincts 9 and 11."*



**PHOTOS PROVIDED BY ESSENTIAL ENERGY (TAKEN MID FEBRUARY 2014)**



**SITE DIAGRAM:**



SOURCE  
Aerial imagery was captured on  
6th to 9th May 2012 ©AAM Pty Ltd

**Aerial Photo - taken May 2012**

 **Approximate location of Access Tracks**

 **Approximate location of Inlet Drain**

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 issue.

Cadastre: 16 July, 2014  
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& Tweed Shire Council.  
Boundaries shown should be considered approximate only.



Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geocentric Datum of Australia 1984  
GHD: Map Grid of Australia, Zone 56

**Civic and Cultural Centre**  
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Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484  
T | (02) 6670 2400 | 1300 292 972  
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W | www.tweed.nsw.gov.au  
E | planningreform@tweed.nsw.gov.au



Date Printed: 16 Jun 2014

**OPTIONS:**

1. Receive and note this report.

**CONCLUSION:**

The Department of Planning and Infrastructure are the Regulatory Authority for this particular matter and have commenced action to rectify the issue.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**19 [PR-PC] Unauthorised Earthworks and Pollution Events at Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum**

**SUBMITTED BY: Development Assessment**



## **Caring for the Environment**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

4	Caring for the Environment
4.1	Protect the environment and natural beauty of the Tweed
4.1.3	Manage and regulate the natural and built environments

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### **SUMMARY OF REPORT:**

Previous reports on this matter were submitted to 5 June and 3 July 2014 Planning Committee Meetings. Council resolved the following at 3 July 2014 meeting:

*"B. Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:*

- 1. A teleconference be organised between the Councillors and Council's solicitors to discuss the options previously presented to Council, as outlined in a confidential attachment to a report to the June Planning Committee Meeting; and*
- 2. A further report be brought back to the Planning Committee following the teleconference to determine preferred actions."*

An initial teleconference was held between the Councillors and Council's solicitors on 3 July 2014, prior to the commencement of the Planning Committee Meeting.

Within that teleconference, Council's solicitors outlined the options for Council to consider in terms of further enforcement actions relating to various unauthorised works on the subject site, making reference to confidential written advice (also provided as a confidential attachment to this report) provided as part of the report to 5 June 2014 Planning Committee Meeting.

Council officers had earlier recommended that Council defer any further enforcement actions until the outcomes of a Crown Lands investigation had been completed. As reported to 3 July 2014 meeting, the Crown Lands investigation and enforcement action now appears to be complete through the license approved for the owner to carry out remediation works on the affected Crown Road Reserve of Lots 127 and 128 DP 755724. At the time of finalising this report, it was apparent that the owner had not commenced these required remediation works.

On the basis of the evidence presented to date in respect of alleged unauthorised works on the subject site, and the advice of Council's solicitors, it is recommended that Council endorse the following further enforcement actions:

1. Issues a Notice of Direction to take clean-up action under Section 91 of the Environment Operations Act 1997, to the owner of the site, to undertake remediation works on the adjoining property Lot 2 DP 815182 and adjoining parts of Hopping Dicks Creek; and
2. Instructs Council's solicitors to commence Class 5 proceedings in the NSW Land and Environment Court action in respect of the failure by the site owner to gain development consent for certain works on the Crown Road Reserve that runs through Lots 127 and 128 DP 755724 under the Environmental Planning and Assessment Act 1979.

**RECOMMENDATION:**

**That:**

- A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- B. Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:**
  - 1. Issues a Notice of Direction to take clean-up action under Section 91 of the Environment Operations Act 1997, to the owner of the site, to undertake remediation works on the adjoining property Lot 2 DP 815182 and adjoining parts of Hopping Dicks Creek; and**
  - 2. Instructs Council's solicitors to commence Class 5 proceedings in the NSW Land and Environment Court action in respect of the failure by the site owner to gain development consent for certain works on the Crown Road Reserve that runs through Lots 127 and 128 DP 755724 under the Environmental Planning and Assessment Act 1979.**

## REPORT:

### Background

Previous reports on this matter were submitted to 5 June and 3 July 2014 Planning Committee Meetings. Council resolved the following at 3 July 2014 meeting:

*"B. Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:*

- 1. A teleconference be organised between the Councillors and Council's solicitors to discuss the options previously presented to Council, as outlined in a confidential attachment to a report to the June Planning Committee Meeting; and*
- 2. A further report be brought back to the Planning Committee following the teleconference to determine preferred actions."*

An initial teleconference was held between the Councillors and Council's solicitors on 3 July 2014, prior to the commencement of the Planning Committee Meeting.

Within that teleconference, Council's solicitors outlined the options for Council to consider in terms of further enforcement actions relating to various unauthorised works on the subject site, making reference to confidential written advice (also provided as a confidential attachment to this report) provided as part of the report to 5 June 2014 Planning Committee Meeting.

Council officers had earlier recommended that Council to defer any further enforcement actions until the outcomes of a Crown Lands investigation had been completed. As reported to the 3 July meeting, the Crown Lands investigation and enforcement action now appears to be complete through the license approved for the owner to carry out remediation works on the affected Crown Road Reserve of Lots 127 and 128 DP 755724. At the time of finalising this report, it apparent that the owner had not commenced these required remediation works.

### Evaluation of Further Enforcement Actions

A substantial body of evidence has now been compiled on the unauthorised works carried out on the subject site through the following sources:

- Information supplied through complainants' submissions to Council;
- Multiple site inspections conducted by Council officers;
- Extensive commentary, both verbal and written, by the site owners and their representatives;
- The documented outcomes of the investigation carried out by NSW Trade and Investment, Crown Lands and the Soil Conservation Service;
- A report commissioned by Council from the external consulting firm, Hydrosphere Pty Ltd, "Hoppings Dick Creek Sedimentation", dated 19 May 2014; and
- Confidential legal advice prepared by Council's solicitors, Marsdens Law Group, dated 14 May 2014.

On the basis of the above information, it is recommended that Council support the following further enforcement actions:

## Further Remediation Works

Given the extent of pollution created by the sediment run-off of poorly managed works on the subject site, it is considered appropriate that Council issue a Notice of Direction to take clean-up action under Section 91 of the Protection of the Environment Operations Act 1997, to the owner of the site, to undertake remediation works on the adjoining property Lot 2 DP 815182 and adjoining parts of Hopping Dicks Creek.

The recommended works align to those identified in the Hydrosphere Pty Ltd report, including the following:

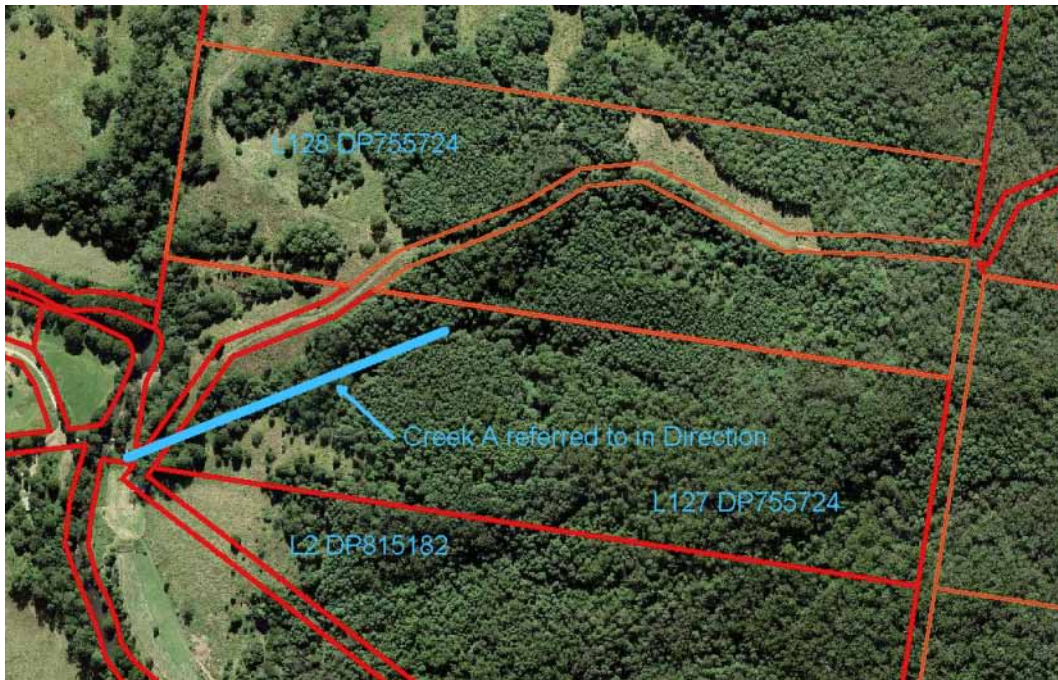
1. *Immediately: Engage a suitably experienced and qualified environmental consultant to prepare a Works Plan to undertake the works as detailed in this Direction to Take Clean Up Action, see point (2). The Works Plan Shall be submitted to Council for approval prior to the works commencing.*

*The plan shall provide but not be limited to details of the works schedule, removal methods and equipment, temporary sediment and erosion controls for temporary stockpiles of sediments and final disposal location of sediments.*

*Works shall be completed in accordance with other regulatory agency approval, where required, and with owners consent where access to adjacent properties is deemed necessary.*

2. *By a nominated time, undertake the following restoration works:*
  - a) *For riparian vegetation in Creek 'A', manually remove sediment from around native vegetation. Small hand tools are to be used in the vicinity of plants to carefully remove sediment piled against stems of trees and saplings, and larger hand tools (e.g. shovels) where careful exploration indicates that deep sediment can be removed without damage to plants. The aim should be to remove all but a layer of sediment sufficiently thin so that light rain will remove the remaining sediment. Leaf litter and debris should also be removed as a temporary measure until the plants recover. Use of bush regeneration techniques for weed management should be employed to further encourage recovery of native plants.*

*No mechanical removal of sediment is permitted.*
  - b) *Remove all sediment from the culvert located on Lot 2 DP 815182 to allow the free flow of waters through the culvert.*
  - c) *Engage a suitably qualified and experienced environmental consultant to supervise the works and provide certification that the works have been completed in accordance with this Direction and the approved Works Plan. The consultant shall be satisfied that sufficient sediment has been removed from Creek 'A' as to prevent stem rot and germination of new plants. Certification shall be provided within 2 weeks from the completion of works.*
  - d) *Undertake works in accordance with the approved Works Plan and seek approval from Tweed Shire Council where any variance is required.*



**Photograph 1 - Indicative location of Creek A**

## **Land and Environment Court Action - Development without Consent**

### Civil Enforcement

As highlighted in the previous advice from Council's solicitors, a key element of the unauthorised works undertaken on the subject site was the apparent failure of the site owner or their representatives to gain development consent under the Environmental Planning and Assessment Act 1979. Following an earlier site inspection by a Council officer on 14 March 2014, a Penalty Infringement Notice was issued to Mr John Fish, a representative of the owner, in respect of not gaining development consent of the filling of a house pad site on a lower portion of the subject site. Since that action, Council officers have conducted further inspections of the site, and have formed the opinion that the extent of road works and other earthwork activity have also been undertaken without development consent, and should therefore be the subject of further action.

One of the main options for further action is civil enforcement, for which the consent authority generally seeks works and any necessary further approvals to establish a legitimacy to the future use and development of a site, primarily through the issue of orders by either Council or the Land and Environment Court.

In this instance, it is considered that some of the required rectification of the unauthorised works has been achieved through the completion of satisfactory, shorter term sedimentation erosion measures by the site owner, as directed by a Council Clean-Up Notice, issued under the Protection of the Environment Operations Act 1997.

As recommended above, it is proposed that a further Clean-Up Notice be issued to the owner to seek to rectify the pollution damage created by the unauthorised works to the adjoining property Lot 2 DP 815182 and adjoining parts of Hopping Dicks Creek.

It is also recognised that other rectification works are expected along the Crown Road Reserve portion of the subject site, following the investigation and license approval granted to the owner.

On the basis of the above actions, it is considered that there would be little valuing in pursuing further civil enforcement actions.



### Criminal Prosecution

The other main option for further action is to commence criminal prosecution proceedings under Class 5 in the Land and Environment Court in respect of an apparent offence under Sections 76A and 125(1) of the Environmental Planning and Assessment Act 1979, for a failure by the owner and their representatives to gain development consent for a range of road works and earthworks on the subject site.

In their advice on Class 5 proceedings, the Council's solicitors have included the following for Council to consider:

*"Before prosecution proceedings are commenced, it is necessary for Council to gather sufficient admissible evidence to prove each element of the offence to the criminal standard. That is beyond reasonable doubt."*

Given the circumstances and documented information gathered to date, and the extent of works carried out without the necessary development consent, it is considered that it is appropriate for Council to pursue Class 5 proceedings in the Land and Environment Court.

### **OPTIONS:**

#### Option 1

That Council endorses the recommended actions:

1. Issues a Notice of Direction to take clean-up action under Section 91 of the Environment Operations Act 1997, to the owner of the site, to undertake remediation works on the adjoining property Lot 2 DP 815182 and adjoining parts of Hopping Dicks Creek; and
2. Instructs Council's solicitors to commence Class 5 proceedings in the NSW Land and Environment Court action in respect of the failure by the site owner to gain development consent for certain works on the Crown Road Reserve that runs through Lots 127 and 128 DP 755724 under the Environmental Planning and Assessment Act 1979.

#### Option 2

That Council determines an alternative action.

The officers recommend Option 1.

### **CONCLUSION:**

It is considered that the extent of unauthorised activity and subsequent pollution damage warrants further enforcement action by Council.

### **COUNCIL IMPLICATIONS:**

#### **a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Costs will be incurred if legal representatives are engaged to commence legal action against the owner. Costs are awarded in Class 5 proceedings.

**c. Legal:**

It is recommended that action be undertaken in the Land and Environment Court in respect to the unauthorised works on the Crown Road Reserve that runs through Lots 127 and 128 DP 755724.

Previous legal advice is provided within a confidential attachment.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. A copy of the legal advice provided by Marsdens solicitors dated 14 May 2014 (ECM 3420969)

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20 [PR-PC] Endorsement of Council Submission to the E-Zones Review Interim Report

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GTI/LEP/2014



## 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

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### SUMMARY OF REPORT:

This report has been prepared to seek endorsement of the submission prepared by Council officers in response to the public exhibition of the NSW State Government's E-Zone Review Interim Report (the Report).

The Report is expected to provide a set of criteria for the application of the environmental zones and overlay maps in local environmental plans for councils located within the Far North Coast Region. These criteria will then inform a Ministerial direction under section 117(2) of the *Environmental Planning and Assessment Act 1979*, anticipated to direct Councils to prepare a planning proposal to re-instate the environmental zones in the Tweed Local Environmental Plan 2014 (LEP 2014), consistent with the State criteria and directions.

The submission outlines Council adopted approach to the environmental protection and provides comments in response to the application of the environmental zones and overlay maps proposed in the Report. The draft submission has been sent to the NSW Planning & Environment on 5 June 2014 as an interim submission in order to meet the submission deadlines. This is to be followed by the formal submission, subject to the endorsement of Council.

### RECOMMENDATION:

**That Council endorses the submission to the E-Zones Review Interim Report sent to the NSW Planning & Infrastructure on 5 June 2014, as provided as an attachment to this report.**

## REPORT:

### 1. Background

On 20 September 2012, Brad Hazzard, the then Minister for Planning and Infrastructure announced the NSW Government would not support the use of an E2 or E3 environmental zone in council local environmental plans (LEPs) for the Far North Coast on land that is clearly rural. Instead, NSW Planning decided that areas proposed to be covered by these zones would be excised from the LEPs with a view to undertake an independent review of the application of the environmental zones on the Far North Coast (including Kyogle, Ballina, Byron, Lismore and Tweed LGAs). The review was then broadened to include the application of the environmental overlay maps, which were also excised from the LEP.

Consistent with the abovementioned position, the Tweed LEP 2014 was published on 4 April 2014 with the following components excised by the NSW Planning & Infrastructure:

- Use of the Zone E2 Environmental Conservation,
- Use of the Zone E3 Environmental Management,
- Overlay map and clause relating to Terrestrial Biodiversity,
- Overlay map and clause relating to Steep Land,
- Riparian Land clause.

For areas excised from the Land Zoning Map, the previous LEP (Tweed LEP 2000) continues to apply.

NSW Planning & Environment appointed Parsons Brinckerhoff as the consultants responsible for carrying out the independent review of the way environmental zones and overlays have been applied in the Far North Coast. The review commenced in late 2012 and resulted in the Interim Report placed on public exhibition by the NSW Planning & Environment from 15 May to 5 June 2014, for a total period of 21 days.

### 2. Council submission

The submission prepared by Council officers outlines and reiterates the approach adopted by Council to the application of environmental protection and provides comments in response to the application of the environmental zones and overlay maps proposed in the Report. The draft submission has been sent to the NSW Planning & Environment on 5 June 2014 as an interim submission, to be followed by the formal submission, subject to the endorsement of Council.

The submission also seeks an extension of the public exhibition period to allow more time for consultation and preparation of the submissions in response to the Interim Report and offers further assistance in preparation of the final recommendations to facilitate the process of finalising the Standard Instrument LEP.

### 3. Further actions

The final outcome of the E-Zone Review is anticipated to result in a Ministerial direction under section 117(2) of the *Environmental Planning and Assessment Act 1979*. This Direction will guide the criteria and application of the environmental zones and overlays and require their re-instatement via a separate planning proposal seeking amendments to the Tweed LEP 2014.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Whilst there is no policy implication the directions will result in amendment to the Tweed Local Environmental Plan 2014, consistent with the NSW Planning position.

**b. Budget/Long Term Financial Plan:**

Will require Council officers from Natural Resource Management and Planning Reforms Unit to prepare updated mapping layers and undertake the formal planning proposal process to amend the LEP within a stipulated timeframe.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Inform - will include the public exhibition, however community feedback will be limited to formal submissions in response to exhibited mapping within the framework.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Council Submission to NSW Planning & Environment (ECM 3412593)

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**21 [PR-PC] "Draft Regional Growth Planning Boundaries - NSW" - Department of Planning and Environment**

**SUBMITTED BY: Planning Reforms**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
- 

### **SUMMARY OF REPORT:**

This report has been prepared to raise awareness of the Department of Planning and Environment's proposal to expand the size of existing regional growth planning boundaries and to limit the number of regions to 10, as presented in their document entitled "Draft Regions for Growth Planning - NSW". In terms of the possible impacts for the Tweed Shire, it is proposed to create a new, consolidated administrative region for both the Far North Coast and Mid North Coast.

Council received notice on 12 June 2014 that the Department had undertaken a review of the recently released "Statewide Profile 2014 - NSW" and had used that information to identify what was considered the most appropriate 'groupings' of councils to form the basis of regions for Regional Growth Plans. All local councils have been invited to comment on the proposed regional growth planning boundaries by 25 July 2015.

There has been no specific and targeted consultation on the proposed regional growth boundaries. At a recent meeting in Coffs Harbour, unattended by many of the councils selected to be within the proposed "North Coast Region", including Tweed, the Department's demographer gave an overview of the State's population profile and advice received from attendees was that no meaningful rationale was provided for the regional grouping of councils. There is no targeted meeting planned for the Northern Rivers prior to the 25 July deadline.

It remains unclear how the Department will manage and use the information they will receive from councils from across the State and whether broader public consultation will be undertaken. It is noted that the information is publicly accessible from the Department's web-site; it fails to provide users with any information about the status of information or that the Department is currently 'consulting' with NSW councils'.

There also appears to be a lack of consistency with the regional grouping recommendations of the NSW Independent Local Government Review Panel, which were based on an extensive process of consultation and an evidence based approach.

The absence of a clear and legible rationale underpinning the proposed significant change to the growth boundary areas and the absence of any meaningful consultation warrants that a submission be made to the Department outlining the Council's grave concerns for the process as well as the proposal.

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**RECOMMENDATION:**

**That Council:**

- 1. Receives and notes the report titled "Draft Regional Growth Planning Boundaries - NSW" - Department of Planning and Environment;**
- 2. Endorses that the General Manager forwards a submission to the Department of Planning and Environment detailing the issues of concern with the proposed draft Regions for Growth Planning, as detailed within this Report; and**
- 3. Formally requests the Department of Planning and Environment to provide more specifics about the suitability of the North Coast Regions, as proposed, with particular reference detailing the Department's proposed administrative framework for establishing and maintaining collaborative, efficient and meaningful consultation and participation between the grouping of councils and their communities.**

## **REPORT:**

Council received notice on 12 June 2014 that the Department had undertaken a review of the recently released "Statewide Profile 2014 - NSW" (provided as Attachment 2) and had used that information to identify what was considered the most appropriate 'groupings' of councils to form the basis of regions for regional growth plans, contained in their publication "Draft Regions for Growth Planning - NSW" (2014) (provided as Attachment 1).

The prevailing 'regional growth plan' covering the Tweed LGA is the "Far North Coast Regional Strategy 2006-2031" (FNCRS), which also includes, Ballina, Byron Bay, Kyogle, Lismore, and Richmond Valley councils.

The FNCRS was due for review in 2011, and as foreshadowed in the "Northern Rivers Regional Action Plan" (NRRAP) endorsed by the then Minister for North Coast, Don Page MP, and was earmarked to be finalised by mid 2014 (page 149) however, little if any progress has been made.

The Department of Planning and Environment (DP&E) in anticipation of a review held an inception meeting with north coast councils on 14 May 2014. This provided a platform for the participating councils to discuss the key issues for the Region, and all councils took the opportunity to raise with the DP&E the very same concerns first raised in 2005, and later embodied within the NRRAP, that the FNCRS not only required a clear vision and target for housing growth but needed to be matched with other support strategies. A key issue for all councils was the need to integrate the identification and funding for the delivery of critical infrastructure.

Targeted action plans were also considered paramount by all councils for matters such as housing diversification, employment growth change and diversification, social welfare, and the need for clear support systems to manage and facilitate prevailing and widespread issues affecting housing affordability, social disadvantage, access and inclusion, as well as, strategies to address the divide created by aging infrastructure, stagnating rates of State infrastructure funding, and State caps on local government's ability to capture the cost associated with new development and growth.

Many of the elements raised by the councils and considered essential for an effective regional planning model were omitted from the final FNCRS. Whilst there were likely many factors contributing to the limited scope of the final FNCRS it seemed that two critical causes existed; the then apparent lack of coordination between State Government instrumentalities and Treasury, and insufficient resourcing of the Department's Regional Office.

The current State Government has restructured to better facilitate and coordinate the State's priority actions with their ability to budget for them. The new 'growth planning boundary' model being progressively rolled out by the current government is said to be inclusive of all relevant agencies and departments, and capable of delivering growth plans matched with infrastructure and funding plans. Whether or not the government is also committed to providing greater resourcing of its regional offices remains to be seen, but it nonetheless represents, for regional NSW in particular, a significant and welcome shift for regional strategic planning.

### **Draft Regions for Growth Planning - NSW**

The DP&E's publication "Draft Regions for Growth Planning - NSW" (DRGP), published June 2014, presents the 'proposed' "10 Regional Growth Plan regions across NSW" ("the Regions") (p5), which councils have been asked to comment on.



Fundamentally, the DRGP publication is little more than a 'fact sheet,' providing illustrative information on the boundary of each of the proposed regions combined with a snap shot of the current and projected population trend, general age characteristics and employment rate.

It is the DP&E's publication: "Statewide Profile 2014 - NSW", ("the Profile") which identifies the Government's decision to limit the number of growth planning regions to 10, and which provides a more detailed discussion of the issues and opportunities for the State, as viewed and interpreted from the technical ABS data by DP&E. The Profile is discussed in more detail below.

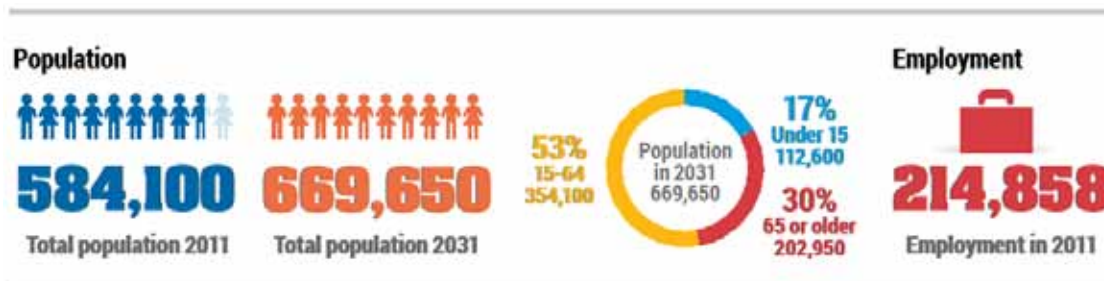
The proposed "North Coast" regional growth boundary is extracted from page 11 of the publication, as Figure 1 below, and which comprises 15 councils, representing an increase of 10 councils over the prevailing 5 councils which comprise the FNCRS growth boundary.

**Figure 1 - Extract from Draft Regions for Growth Planning NSW (2014) ("North Coast")**



**Local Government Areas**

Ballina, Bellingen, Byron, Clarence Valley, Coffs Harbour, Gloucester, Great Lakes, Greater Taree, Kempsey, Kyogle, Lismore, Nambucca, Port Macquarie-Hastings, Richmond Valley, Tweed.



It is important to note in advance of highlighting key statements made within the DRGP that the publication itself does not offer any insightful or meaningful discussion of how a better planning outcome, that embraces community aspirations and inclusionary consultation, will actually be delivered. The publication uses illustrations, such as those above, and passages from the Profile to highlight the various trends happening across NSW and challenges this may present.

What the DRGP purports to say is that the current proposal is a "fresh look at regions for growth planning" and will enable the government to "deliver new Regional Growth Plans in the most efficient way"; it is said that these new growth plans will deliver improvements over the current system by providing a complete coverage of the State (DRGP p4).

The observation open to be drawn from these claims and in context with what has occurred since 2005 is that the government has not delivered the comprehensive suite of regional growth plans across the State that it hoped to achieve. In part this was most likely the result of insufficient resourcing of the DP&E's various regional offices. Those plans that were delivered failed to provide a holistic strategic regional response; arguably they provided for a snapshot of the various work previously undertaken by the participant councils, rather than strategies capable of forging sustainable growth and economic activity.

Many factors would have contributed to the limited scope of the current FNCRS, but critically, in regard to the failure to provide strategies for shaping the growth of the region in a coordinated and managed way, was the government's then inability to bring its own departments to the table to work collaboratively. Consequently the previous process failed to address key issues within the region, in particular an infrastructure plan for key service industries such as health and education, and a priority infrastructure schedule that could have been used for the allocation of funding by Cabinet and Treasury, and informed the decisions of State Agencies.

What the NSW Government is now proposing is to increase the coverage area of the regional plans by significantly disturbing the current regional boundaries. This is seemingly going to occur without increasing the resourcing of its regional offices to cope with the substantially increased commitments that the new plans are said to deliver; "our regional teams will continue to work closely with the same councils they have always worked with" (DRGP p6). It is noteworthy that many of the mid-north coast councils apparently work through the Newcastle office of the Department, which further elevates the concern about the administrative arrangements.

On the face of what the DP&E have said in their publication, and which is open to be interpreted in such a way, is that despite the commentary about the similarity of groupings of councils and their commonalities, the aim of the DP&E is more than likely constructed on an intention to roll out fewer strategies, covering the whole of the State, without increasing its resource commitment. There is an obvious logic with such an approach, but one historically matched by inherent administrative limitations that will ultimately manifest through inadequate consultation, low rates of engagement, limited review of issues, and an inability to deliver what the region requires. This is most likely to be further compounded by the historically inadequate timeframes the State Government imposes for completion.

Drawing on the experiences gained from the development of the FNCRS, it is quite apparent that the large land area and distances between participating councils, combined with traditional consultation practices acted as a significant barrier. This self evidently placed a significant administrative burden on the regional office, manifesting in a consultation programme that was inadequate relative to the significance of the project. It resulted with many questions of the councils going unanswered and policy decisions without meaningful explanation.

The exhibition of the draft FNCRS in March 2006 attracted about 110 general public submissions (FNCRS p1) despite a regional population of 228,000 persons at that time.

Anecdotal evidence suggests therefore that even a smaller number of councils covering a significant land area can be administratively burdensome.

Further, there was concern with the reliance on information available at the time. This latter point is significant. The quality of data varied markedly depending on its source of origin and its age, and there were instances where the information needed to support strategic decisions simply did not exist, for example detailed commercial and retail economic studies. How this might be rationalised and calibrated over a much greater regional area is unclear.

What the FNCRS fundamentally achieved was a growth management plan based on work that the 5 councils had themselves undertaken over many years. It does nothing about strategically targeting the centralisation of employment areas at a regional scale, or for curtailing unsustainable settlement patterns within the region, and on the face of the current publications this is not likely to be any different. That point alone raises doubt about the benefits of significantly increasing the regional boundary.

On the information provided it is not possible to understand the synergies and commonalties that DP&E believe exist within the proposed grouping of councils forming the proposed North Coast regional growth boundary. It is likewise impossible to determine the rational basis for the proposed boundary on the information provided and councils should not feel obliged to fill that void by reading in to matters such things that clearly do not exist in the text.

As a method for communicating the importance and relevance of the proposed regions for growth planning the DRGP has not delivered anything tangible, and upon which any reasonable council could make a determination about their suitability for delivering regional planning in the interests of the community.

Local councils have expressed their desire to work more collaboratively with State government agencies and each other to deliver better regional planning outcomes. This is highlighted in the *Final Report of the NSW Independent Local Government Review Panel*, October 2013 ("the Final Report"), some key elements of which are provided later in this report.

At this juncture it is worth making a comment about what a 'region' is. A "region" exists and comprises, under NSW's three tiered structure of government, as the sum of their "parts"; where the "parts" are a collection of groupings of localities or communities each represented by a local government. Most, if not all, local government areas comprise many and varied communities and environments, amongst which many localised differences and issues exist. It is therefore important to be mindful of the composition of local government areas (LGA) when regional growth planning boundaries are spoken of only in terms of the grouping of councils'.

Acknowledging the underlying 'make-up' or composition of the LGAs will assist with elucidating the potential administrative barriers and challenges that an extraordinary large 'Region' may possess. It should also illuminate the potential difficulty of addressing community based issues, including place based identity, at a macro regional level. With that said the preparation of the 'evidence-based' Final Report, and corresponding regional boundaries it proposed, was premised on strengthening local government and consequently it targeted grouping of councils to achieve sustainable, deliverable, regions, on the following key considerations:

- . Ability to support the current and future needs of local communities.
- . Ability to deliver services and infrastructure efficiently effectively and in a timely manner.
- . The financial sustainability of each local government area.
- . Ability for local representation and decision making.

- . Ensure recommendations meet the different nature and needs of regional, rural and metropolitan communities.
- . Consult widely with the broader community and key stakeholders.

The Final Report's regional boundary areas, which are quite distinct to those now proposed in the DRGP, are provided in Figure 9 below.

As part of the 'consultation' the DRGP (page 6) posits 5 questions, some warrant a brief comment, and are provided in Figure 2 below.

**Figure 2 - Consultation Questions (DRGP p6)**

**Some questions you may like to think about:**

1. How well do you think your community fits within the proposed regional grouping?
2. Do you think we have the right number and division of regions?
3. Do these regions strike the right balance between the need for big picture planning for the region and the specific local needs of communities?
4. Do you think this new approach to Regional Growth Plans will encourage communities to become more involved in regional planning?
5. What opportunities or challenges do you think these new regional groupings may provide?

With regard to question 1, it was for the DP&E to explain why the particular groupings of councils were chosen, and which in part should have provided the insight as to a particular community's 'fit' within that grouping. The DP&E has provided no such explanation and in Tweed's case the 'fit' within the broader region, in particular with Gloucester, Kempsey and Bellingen (by way of example) is not so obvious. What councils are seemingly faced with is providing an explanation as to why they may not 'fit' with a proposed region opposed to the DP&E demonstrating that the proposed region is suitable or not least more appropriate than that which currently exists.

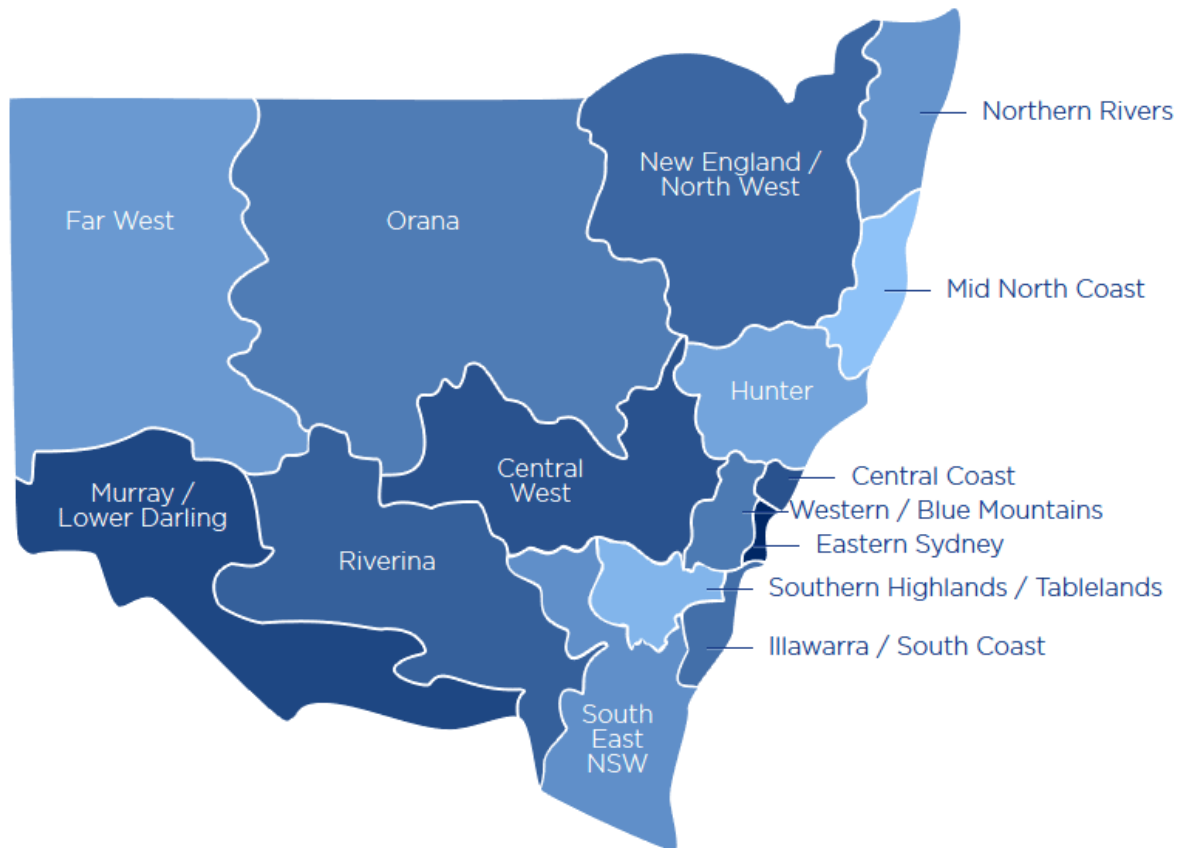
The DP&E must provide a clear and logical discussion regarding their assessment of the groupings, and highlight the key synergies, connections and similarities, that warrant the grouping. This must not be constrained to the demographic similarities, but make a real attempt to provide a regional 'issues' context, and canvas the opportunities believed to exist in a regional policy that covers a much larger region. A discussion of the potential disadvantages of that approach would also build integrity in to the process.

With regard to question 2, it seems quite apparent that the selection of the number of regions occurred before an analysis of the suitability of the regions themselves. If the latter had occurred first it is quite likely that the regional boundaries would have looked quite differently. It is inescapable that the configuration of groupings of councils has been fettered by taking the approach of capping the number of regions. This in turn, based upon what is said in the publications, is likely to be a reflection of current DP&E resources.

Designing and facilitating sustainable regions requires deliberate and carefully crafted strategic policy. It requires policies that will control the growth change in a given area to the benefit or detriment of that area with a corresponding benefit or detriment in another

corresponding area. That is, the projected population based on historical trends provides a degree of certainty about how many people will migrate to, or be borne in a particular area, and correspondingly how many will migrate elsewhere or die. Providing strategies for housing and employment in a given area based on that projection of population does not guarantee, particularly in regional areas, that the growth will be sustainable. Economic sustainability and prosperity is a key strategic aim of the new regional growth planning and stems directly from the government's 10 year State Plan; "NSW 2021". The regional boundaries under the NSW 2021 State Plan are illustrated in Figure 2A below:

**Figure 2A - NSW 2021 (State Plan) Source: NSW Government: <https://www.nsw.gov.au/regions>**



Whether the number of groupings is right or not depends largely on whether the government is prepared to commit to strategic decisions based on sustainable principles, that is, will there be strategic decision to curtail employment in one part of the region in favour of another and make corresponding decisions about housing supply to better ensure maximum return and efficiency of infrastructure provision? Is the government prepared to make strategic decisions concerning major retail infrastructure, university, hospital and other major services and high tech industry, to ensure that land supply, access and a representative and skilled workforce is available, at the right place and at the right time? Alternatively, is the government prepared to continue the prevailing trend in regional NSW by allowing population growth to occur as projected, unabated, and without deliberate intervention?

Answering question 2 will require a better understanding than presently exists of the government's real intentions in respect of the regional growth plan with regard to whether they will fulfil the role of a 'guiding' strategy or whether they will remain as a 'management tool,' in much the same way that the current regional strategies are. If the latter is the case, there is no apparent advantage to be gained by increasing the size of the growth boundaries.

This logic, premised on fundamentally catering to the population projection areas as predicted, that is, without change intervention, has also undelayed the rationale of other

significant publications such as the *Northern Rivers Regional Action Plan* (December 2012) and the *Final Report of the NSW Independent Local Government Review Panel* (October 2013), which propose radically different regional groupings to that now proposed by the DP&E.

Figures 2A and 2B below provide a snapshot of the total current and total project population for the proposed North Coast Regions, illustrating the percentage population per council.

Figure 2A - Derived by Planning Reform from DP&E Statistical Information

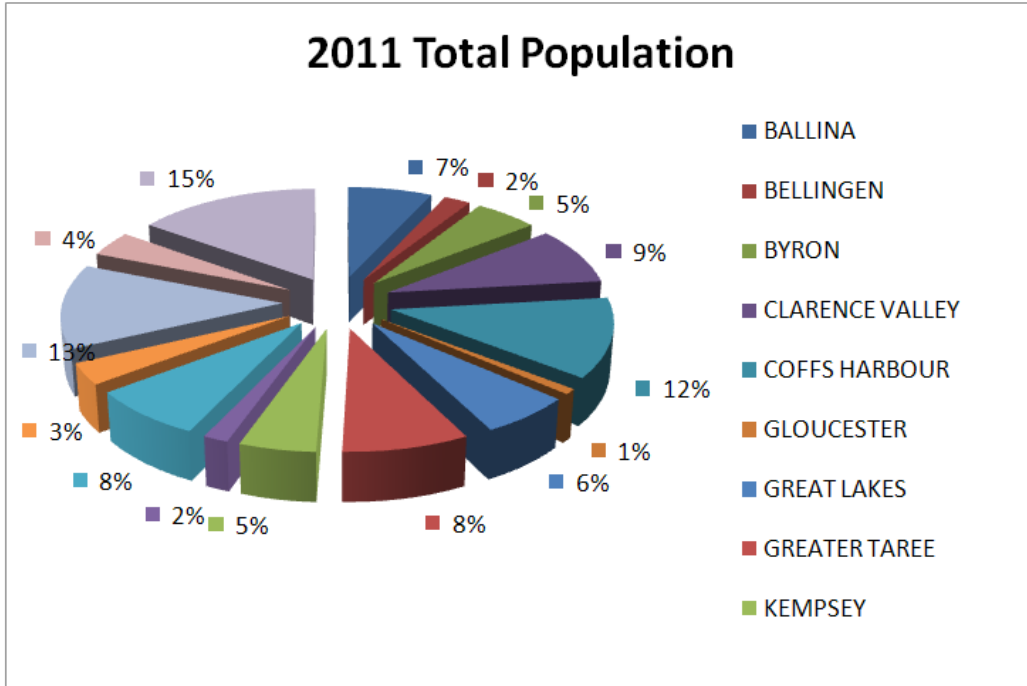
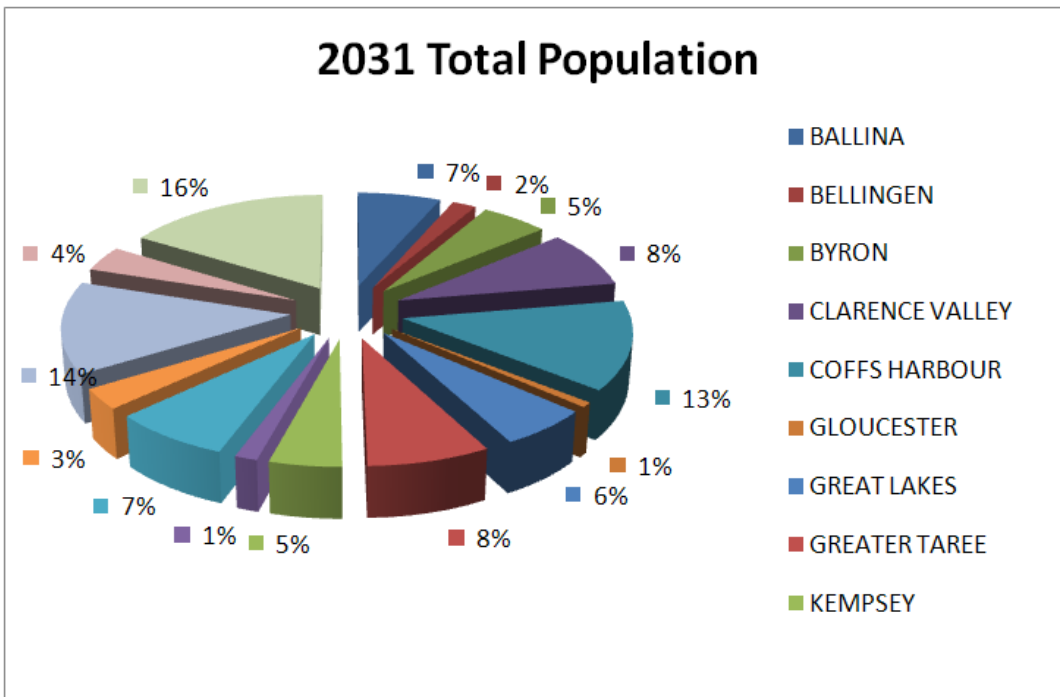
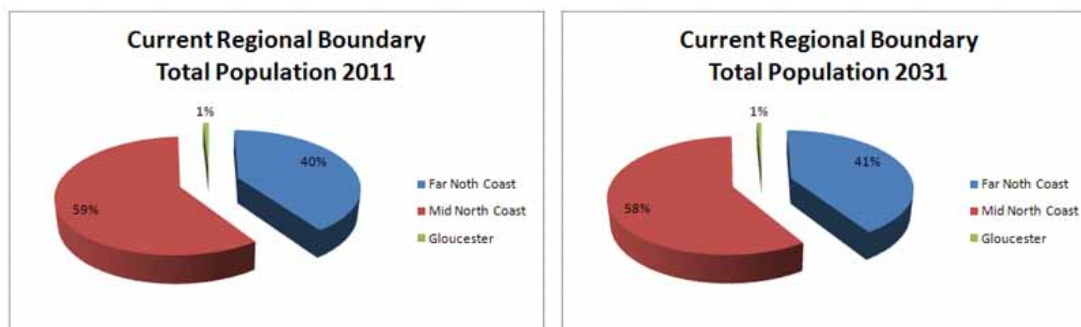


Figure 2B - Derived by Planning Reform from DP&E Statistical Information





The data portrayed in the diagrams above shows that without direct regional policy intervention population projection and characteristics will continue uninterrupted until 2031, and most likely beyond. Any significant changes to the employment and population patterns projected, based on the government's current trend of policy development, are unlikely to occur as a result of deliberate government policy or intervention outside of Metropolitan Sydney, but instead through non-government regulated market-driven forces and natural events.

Any debate concerning the redefinition of regional boundaries that purports to address the wide range of social, planning and infrastructure issues that exist must therefore present scenarios that would occur if a more sustainable and interventionist approach was taken to regional planning. This requires a proactive opposed to a reactive regional planning approach to address the issues facing existing, as well as the need for significant new infrastructure, employment nodes of regional scale and economy, and overall fiscally sound growth. Without a commitment to plan sustainably NSW regional councils should reasonably expect that regional level planning, save for some potential allocation of limited funding for critical infrastructure, will continue to provide limited uncoordinated guidance when direct intervention and regulation is required.

Any answer to question 2 must be preceded by a well informed discussion about the Government's policy aspirations for achieving sustainable regions and how that might reasonable achieved, and without which any answer on the information currently available would be baseless.

With respect to question 4 it is appropriate to look at how well and effective the government has been in recent years with its communication of large scale policy. It is also relevant to look at how well this current policy has been communicated with the broader community's representatives in councils.

It is arguable that the expansion of the regional boundaries will do little if anything to encourage public engagement in regional planning issues, and that it may actually incite greater disharmony within the expanded regions especially if resources allocation (tax dollars) becomes the central issue and potential or perceived funding is channelled from one part of the region to another, which might be several hundred kilometres away. In that respect, it is highly likely that local community's will struggle to comprehend the commonalities and similarities of the grouping of councils within the proposed regions, and are likely to be less accepting of the model if they belong to a community that rates at the lower end of the funding strategy.

It is widely accepted, as with most professional industries, that lay people cannot be expected to comprehend complex issues which the professionals themselves have taken many years to develop their skills and expertise. It is unrealistic to think that significant matters involving population trends, settlements, economic strategies, environmental conservation and the like, can be effectively consulted upon for a region of the size proposed with the aim of reaching a common community goal.

Question 4 should be preceded with a more reasoned discussion of the DP&E's own analysis and conclusions about whether communities are more likely to engage in regional planning under the scheme proposed. This should also be inclusive of a comparative analysis of the current regional planning approach to that now being proposed, as this would better enable an understanding of what is actually being presented as "different", and how those "differences" would lead to better engagement and ultimately the delivery of actions. This latter point being significant because community engagement in planning processes has long been associated and synonymous with the delivery of commitments and action.

With regard to question 5 it may be likely seen that one of the greatest areas of threat is to the allocation of State infrastructure funding. If funding is based on the rate of population growth then the proposed regional boundary might be seen as advantageous, particularly as the Tweed has the largest projected growth and has the highest population within its region.

The evidence suggests that the far north coast is growing at twice the rate of the mid north coast (both of which make a substantial component of the proposed North Coast regional growth boundary), and that within the far north coast Tweed is by far the largest and fastest growing. Theoretically it might be seen that Tweed would benefit from this model (from a funding perspective). However, there is no discussion as to how funding allocation will be distributed or, as discussed above, whether there will be strategies aimed at designing sustainable spatial population patterns of settlement, which would also influence resource allocations, and hence promote a different response to the question.

Figure 3 - Extract, Population NSW June 2014, Issue 17

Planning Region <sup>a</sup>	Population	Numeric	Growth
	June 2013	Change 2012-13	Rate 2012-13(%)
Sydney Metropolitan	4,428,924	78,266	1.8
Lower Hunter	556,044	6,812	1.2
Illawarra	391,769	3,802	1.0
Central Coast	328,110	2,692	0.8
Far North Coast	239,985	2,221	0.9
Lower North Coast	196,056	1,329	0.7
Alpine and Capital	195,594	1,994	1.0
Mid North Coast	155,224	584	0.4
Namoi	113,233	1,029	0.9
Central West	109,655	924	0.8
Riverina	107,877	369	0.3
Murray	103,171	631	0.6
Mid West	91,282	1,158	1.3
Orana	81,294	464	0.6
New England	72,050	240	0.3
South Coast	70,547	201	0.3
Upper Hunter	64,136	442	0.7
Murrumbidgee	57,261	3	0.0
Far West	48,187	55	0.1

<sup>a</sup>Current Planning regions at June 2014

Equally, the administrative efficiency of the proposed growth boundary is very unclear. Anecdotal evidence suggests that a much larger regional area will be administratively much more difficult to facilitate and has the potential to disenfranchise the community or parts thereof.

In summary, the Draft Regions for Growth Planning - NSW" (2014) publication raises more questions about the suitability of the proposed regions than it does answers. It is necessary therefore to look at the key elements of the Statewide Profile 2014 - NSW, which provides the apparent evidence used by the DP&E to formulate the regional grouping of councils.



## Statewide Profile 2014 - NSW

The Statewide profile ("the Profile") describes the factors shaping growth and change in communities throughout NSW and provides a snapshot of the NSW's economy, natural environment and resources, infrastructure and communities. These are amongst the key themes within the Profile, and some of which have been further discussed below:

- Population
- The economy
- The natural environment
- Natural resources
- Infrastructure
- Communities

Whilst there may be different views on the matter, the natural environment and natural resources, in so far as current planning exists, are heavily regulated across all levels of government, and arguably do not need to form a significant component of the regional growth plans, unless there is a corresponding rationalisation of the prevailing legislation and greater legal status of the new Plans. Consequently those themes receive no further discussion in this report, but may be viewed in the publication on pages 23 to 36, as attached to this report.

The NSW Government is delivering a new planning system that places greater emphasis on strategic planning, with the aim of capturing the opportunities a growing population and economy can deliver through better infrastructure and services, and a resilient environment. As a means of capturing the 'opportunities' the "Statewide profile sets out 10 new regional growth planning boundaries," (in actual fact that is a product of a later review under the Draft Regions for Growth Planning - NSW" (2014), as stated on pages 4 & 5), as well as the "priorities" for the regional growth planning program, which are (p49):

### 1. Plan for population change

"Regional Growth Plans need to understand the opportunities and challenges associated with our growing and changing communities....." "The ageing population is a pressing issue for strategic planning and will influence the nature of communities.....and the infrastructure and services required".

### 2. Maximising economic growth

"must balance social, economic and environmental issues. Economic growth and change will top the priority issue..." "Regional Growth Plans will also identify locations for more jobs and economic activity..."

### 3. Promote environmental assets

"Regional Growth Plans will play an important role in setting priorities for the most valuable environmental assets.....and ensuring information on natural hazards is built into planning decisions..."

### 4. Building strong communities

"Regional Growth Plans will also address social issues by prioritising measures to increase the supply of more affordable housing and create economic opportunities in remote and disadvantaged areas.....also highlight how the design and location of parks, community spaces and housing will consider the needs of older people..."

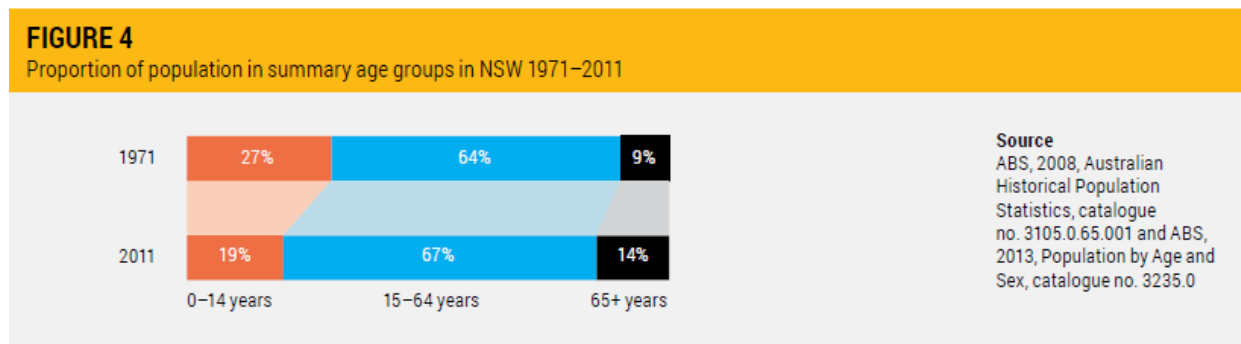
In effect, the Regional Growth Plans are designed to enable the goals of the NSW 2021 (State Plan) to be translated into policies, actions and investment decisions that benefit every region of the state.

*"Home to a diverse population of 7.4 million people, the state is poised for a new era of growth" (p4).*

By 2031 the population of NSW is predicted to increase by 1.8 million to 9.2 million. Between 2011-12 the NSW population grew by 87,000, and whilst growth has been largest in the metropolitan areas of Sydney, a trend that is set to continue, all regions within the State are set to change, some more than others.

The age profile of the NSW population has changed over the last 50 years and will continue to be a major factor driving population change in the future. Unlike the preceding 40 years less than 1 in 5 persons are under the age of 15 years and 1 in every 6 persons are aged 65 years or older, as depicted in Figure 4 below:

**Figure 4 - Population Statistics - Extract from Statewide Profile 2014**



In the year ending 30 June 2012, the population of metropolitan Sydney grew by 1.4% compared with 0.7% for regional NSW. There is also a consistent trend of younger people, including younger migrants, attracted by employment opportunity, as well as for education and lifestyle. There is also noticeable movement within NSW around retirement age, with people looking for quieter more natural environments, which many of the regional areas, especially the north-east coast, provide.

Changes in population size and age composition are important factors in planning for the right locations for new or redevelopment and the provision of infrastructure to support employment and sustainable growth. What is apparent is that the greater metropolitan region will continue to attract (without policy intervention) the majority of NSW's projected population and importantly the relatively younger population. Other larger urban centres, such as; Tweed Heads, Wollongong, Newcastle, Port Stephens and Port Macquarie, will also continue to attract the larger share of regional NSW's population.

There are many factors influencing the distribution and internal migration, these are complex, and heavily influenced by past regional settlement patterns, changing economic structures affecting industry such as agriculture and manufacturing, and also because of global market forces and international trade relations.

The Profile will require regional growth plans to take into account several key factors when planning for the future, these are detailed in Figure 5 below:

**Figure 5 - Taking Account of Population Pressures**

- examine the factors that influence population change in that region, such as overseas migration and out-migration of younger people
- develop options to influence population growth and change in a positive way, such as making places more attractive to live and work in
- address the nature and extent of population change, particularly the ageing population, and how this drives demand for housing, employment, infrastructure and services
- consider broader population trends in other regions in NSW and nationally, and recognise the different patterns of growth and migration within each region to support population increases in the areas where people want to live and which can sustainably support them.

*"Economic changes over two centuries have shaped the pattern of development across every region of NSW....."*

The NSW economy contributes about 32% of Australia's Gross Domestic Product (GDP) and is projected to grow by an annual average rate of 2.6% per annum to 2031, representing an increase from \$420 billion to \$731 billion. The top five exports are coal, travel and education services, non-ferrous metals, professional consulting services, and medicinal and pharmaceutical products.

The largest industry employers in NSW are health care and social assistance, retail trade and manufacturing. Each of these industries relies on an expanding population to support their growth, and consequently these industries, and the investment they attract, is more prevalent in the larger regional urban centres and metropolitan region.

The Profile acknowledges the global significance of NSW's agriculture in terms of food security and export markets (p19). While employment in agriculture saw a decline between 2006 and 2011, it is projected to remain an important economic driver for regional communities in NSW and will continue to be important as global demand for agricultural commodities increases. Food security is an issue that has been identified for consideration within regional planning.

The Profile continues with a discussion regarding manufacturing, the global demand for resources, rising energy costs and the digital economy. To support several of these issues the Government has prepared a series of industry action plans, and where relevant, they will need to be supported and implemented through the new regional growth plans.

Importantly the demographic changes occurring will have an impact on the economy, both positively and negatively. An ageing population will require health and aged care, adequate housing types and infrastructure. Whilst this may present economic costs to the State's productivity there are also new opportunities in areas such as healthcare.

The challenge for regional NSW is that it will have to match the demand for healthcare and social assistance jobs with an available workforce. When preparing the regional growth plans several key factors will need to be taken into account when planning for the future, these are detailed in Figure 6 below:

**Figure 6 - Taking Account of Economic Opportunities**

- recognise wider factors and structural changes that are driving economic growth and change—such as globalisation and the growth of the digital economy—as well as local factors, such as access to land and infrastructure. This is particularly important for the Illawarra region, where the economic structure is moving away from manufacturing
- build on the competitive advantages and strengths of each region, including the benefits from investment in infrastructure, education and training. For example, the Far North Coast is connected to economic opportunities in south-east Queensland, and the Alpine and Capital Region is connected to opportunities in Canberra
- support economic growth by creating more liveable centres that attract workers and business investment. For example, investing in urban renewal and transport infrastructure in Newcastle's Central Business District could encourage more people and businesses to move to the city
- set employment targets to address high unemployment and low participation rates in regional areas, particularly in North Coast, Illawarra, Far West and Western Sydney.

*"Investment logically flows to areas where populations are increasing and there is demand for roads, public transport, water and electricity, schools and medical facilities."*

Sound investment in infrastructure is vital for a healthy and productive economy. Infrastructure can also be used to encourage population growth as it allows people to find employment and improve their prosperity.

The NSW Government's planning reforms will fulfil the vision of NSW 2021 (State Plan) by delivering infrastructure in tandem with population growth and change. This also means aligning infrastructure spending with goals such as driving economic growth in regional areas (p39). ). It is worth reiterating at this point that the delivery of the NSW 2021 was also to be coordinated and implemented through the *Northern Rivers Regional Action Plan*, as mentioned above. Delivering sustainable outcomes to the regions and their communities needs to be founded on clear and strong principles; these are clearly articulated by the State Government, when they speak about strengthening local environments and communities:

*Individuals, families, businesses and communities know best what works for them - wherever they are. The NSW Government will trust and encourage this local energy, innovation and ownership and work to strengthen community relationships.*

*We will return as much decision making as possible to local communities, including more control on issues such as tackling graffiti; planning issues and the quality of the built and natural environment; conservation; safety and emergency preparation; volunteering; recreational and cultural activities.*

**Source: NSW Government: <http://www.2021.nsw.gov.au/environment-communities>**

It is noted that whilst infrastructure investment should ensure the greatest possible range of benefits for the community, there is a need to create a fairer, more transparent and efficient way to fund the infrastructure. The Government is proposing as part of its planning reforms to overhaul existing arrangements, and open up opportunities for competition and new rules.

The Government's "State Infrastructure Strategy" (SIS) highlights the need for quality infrastructure, and private sector involvement (public private partnerships), competition and innovation. The SIS focuses on a 'first things first' approach to prioritise projects and policies that maximise economic and social benefits for all of NSW. This includes maximising the use of existing assets wherever possible before investing in new projects.

The Profile will require regional growth plans to take into account several key factors when planning for the future, these are detailed in Figure 7 below:

**Figure 7 - Taking Account of Infrastructure Opportunities**

Planning for the future Infrastructure is fundamental to supporting growth, productivity and living standards. Infrastructure must be available when required, be delivered efficiently and be fit for purpose. Regional Growth Plans will:

- integrate land use and infrastructure planning decisions
- identify the location of existing or potential transformative infrastructure at a regional scale, including approved transport corridors and public priority infrastructure
- identify broad transport and essential utility corridors.

*"Most of the population of NSW lives in urban settlements."*

Outside of Sydney, the largest urban centres are Newcastle, the Central Coast and Wollongong, with each having more than 250,000 people. Maitland and Tweed Heads have populations between 50,000 and 100,000 people.

Importantly, and not well recognised within the Profile, is the Tweed's relationship with the Gold Coast, both in economic and community terms. This relationship or 'proximity' of shared borders is likely to be a significant contributor to the growth and prosperity of the Tweed, and it will continue to shape the Tweed's dominance within the northern rivers region, and as a significant NSW tourist destination for international visitors.

In general terms, the dominant housing type in the state is detached dwelling-houses at 60%, which accommodates about 76% percent of the population. Almost 90% of the total stock of higher density housing is located in major cities. Only, Sydney, Tweed and Wollongong have more than 25% of their total dwelling stock as units or semi-detached dwellings (multi-dwelling housing).

Housing affordability relates to the ability of people to pay for their housing needs, whether they are purchasing or renting. Affordability is linked to the level of supply, with the correlating notion that boosting supply will improve overall affordability. However the rate of change in affordability, although not acknowledged in the Profile, is widely accepted as linked to the net shortfall of supply to demand prior to the 'boost', consequently boosting supply will, at a given rate, have greater impact on affordability in some locations than it will in others. Likewise, were supply is well below demand and the affordability is disproportionate to the median income even a moderate boost in supply will have little impact on overall affordability.

The Profile acknowledges that NSW regional areas are among the least affordable in Australia, with high prices and low incomes leading to an affordability measure similar to Sydney. In response the Profile will require that new regional growth plans will play an important role in boosting housing supply and helping address housing affordability in NSW (p46).

The Profile will require regional growth plans to take into account several key factors when planning for the future, these are detailed in Figure 8 below:

**Figure 8 - Taking Account of Housing Needs and Social Disadvantage**

### Planning for the future

Each community has its specific needs, housing markets and identity. Regional Growth Plans will play a role in understanding and addressing these needs and connecting people in their local communities, region and across the state. Regional Growth Plans will:

address regional housing supply issues to improve housing affordability, including addressing affordable housing for people on very low, low and moderate incomes. Housing affordability is important in regional areas where seasonal, 'sea change' and 'tree change' migration, and 'boom' activities can price local people out of the housing market if there is inadequate supply

- plan for diverse housing options that can cater for different needs over time, including appropriate affordable housing and rental accommodation for key workers in construction, health, policing and community services.
- investigate population ageing and address housing, community service and public domain design needs. The ageing of the population will occur differently throughout NSW. Older people will make up a very large proportion of the population in some regions, such as Tweed Heads, Clarence Valley and Maitland and those areas surrounding Canberra and the ACT. Regional Growth Plans will investigate ways to maintain the working age population so that communities have sufficient workers to fill jobs
- address community building in different ways across NSW. In the major cities, the challenge is to build social connections and access to opportunities, for example, through planning for social infrastructure and improved transport connections. Outside of the major cities, social connectedness is often high and the challenge can be to provide or maintain basic services
- investigate ways to attract and retain essential services, particularly in remote communities
- investigate ways that land-use planning can address disadvantage and create opportunities for Aboriginal people to become involved in the planning process, particularly in areas with greater economic and social disadvantage
- promote health and wellbeing by planning for healthy built environments and promoting safe environments.

Earlier in this report mention was made of the *Final Report of the NSW Independent Local Government Review Panel*, October 2013. This was a significant body of work, undertaken by the Government's appointed experts, and was widely consulted with local government and the community.

The significant contribution of the government and of the responding councils, which led to various informed amendments, warrants highlighting in the context of the discussion concerning the DP&E's current proposal in regard to the significant expansion of regional growth planning boundaries.

### Revitalising Local Government

The following are selected edited extracts from Section 11 and 17 of the "*Revitalising Local Government*", the *Final Report of the NSW Independent Local Government Review Panel*, October 2013.

**Recommendation 35** *Establish Joint Organisations for each of the regions shown on Map 2 by means of individual proclamations negotiated under new provisions of the Local Government Act that replace those for County Councils (11.5)*

Map 2 is reproduced below, as Figure 9.

#### 11.4 Defining regions

As noted above, most NSW councils are already members of ROCs, which cover nearly all the State and have generally well-defined boundaries. However, in a number of places ROC boundaries differ from those of existing County Councils, and also from regional boundaries used or proposed by State agencies. **The Panel has therefore had wide-ranging discussions to determine whether consistent regional boundaries can be established as the basis for both the proposed Joint Organisations, and to facilitate stronger partnerships between councils and key State agencies, especially in strategic planning.** [emphasis added]

Maps 2 and 3 show proposed regional boundaries across the State and in metropolitan Sydney. The various factors taken into account are summarised in Box 29.

Proposed boundaries are aligned with, or nested within, those to **be used for delivery of the State Plan, for regional coordination amongst State agencies, and for preparation of Regional Growth Plans** by the Department of Planning and Infrastructure. Not every council will be happy with the proposed regions, but the Panel believes they represent a reasonable compromise that should satisfy the great majority. In the metropolitan region the boundaries shown are considered suitable for strategic planning purposes, but if Joint Organisations are to be established with a wider range of functions, then some sub-regions would need to be divided as they include a large number of councils [emphasis added].

#### Box 29: Factors in Defining Regions:

- **Manageable geographic area and suitable scale for strategic planning**
- Regional or sub-regional communities of interest reflected in current arrangements, including existing ROCs and County Councils
- **Alignment as far as possible with key State and federal agencies for strategic planning purposes**
- In the Sydney region, alignment with sub-regional boundaries proposed for the metropolitan strategy
- **Strong socio-economic links identified through the Panel's 'cluster-factor' analysis**
- Viability of a regional alliance of water utilities (at least 10,000 connections)\*
- **A regional centre with existing or potential strategic capacity to anchor the Joint Organisation and to assist smaller member councils where required** [emphasis added].

#### Box 31: Proposed Core Functions of Joint Organisations

- **Strategic regional and sub-regional planning**
- Inter-government relations and regional advocacy
- Information and technical exchanges between member councils
- Activities of existing County Councils
- Regional alliances of local government water utilities
- Road network planning and major projects (through Regional Roads Groups as discussed in section 7.4)
- Collaboration with State and federal agencies in infrastructure and service provision
- Strategic procurement (which could also include accessing state-wide contracts and arrangements)
- Other joint activities specified in the proclamation, such as major infrastructure projects, regional waste and environmental management (including weeds and floodplain management), regional economic development, regional library services and 'high level' corporate services or 'back office' functions
- Administrative and technical support for any 'Rural Councils' established within the JO's area (see section 12.1).

Figure 9 - Extract from Revitalising Local Government, map 2



### 11.8 Inter-government relations and strategic planning

One of the most important functions of JOs will be to provide a new platform for State-local cooperation.

The NSW government is moving to establish much more effective arrangements for strategic planning and regional coordination across its agencies, **notably through the Regional Action Plans prepared to 'localise' the State Plan**, the new Regional Growth Plans to be prepared by the Department of Planning and Infrastructure (DP&I), and perhaps most importantly, the regional coordination system managed by the Department of Premier and Cabinet (DPC).

These moves present a rare opportunity for local government to become a real partner in regional planning and development, **provided it is organised appropriately**, adopts a professional approach to inter-government relations, and is willing and able to commit significant resources to joint activities. By the same token, **the State government needs to embrace a partnership approach in its dealings with local government** (see section 17).

The Panel believes that a fresh approach to State-local cooperation at the regional level should be pursued on the following basis:

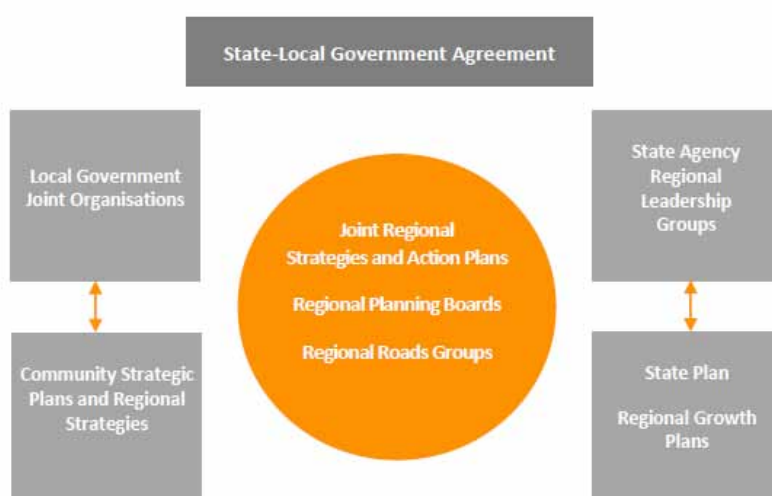
- State government recognition of JOs as partner organisations for the purposes of joint strategic planning and project coordination, including in particular updating and implementation of the NSW 2021 State Plan and Regional Action Plans, as well as preparation and implementation of DP&I's Regional Growth Plans
- Appointment of at least one representative of each JO to the relevant Regional Leadership Group of State agencies



- Appointment of local government representatives on (Sub) Regional Planning Boards through JOs rather than individual councils.

To facilitate local government input to regional plans and strategies, the Panel proposes an amendment to the Integrated Planning and Reporting guidelines to require councils to include a section on key regional strategies and proposed joint projects with other regional councils in both their Community Strategic Plans and 4-year Delivery Programs, and to prepare that content in consultation with other regional councils and State agencies through the JO. The JO would then consolidate relevant material for discussion with State agencies through the DPC Regional Leadership Group, with a view to its inclusion in State plans and strategies, and to identify joint State-local projects.

Figure 8: State-Local Collaboration at the Regional Level



### Recommendation 36

Identify one or more regional centres within each Joint Organisation and:

- Create a network of those centres to drive development across regional NSW (11.7)

### Recommendation 37

Develop close working partnerships between Joint Organisations and State agencies for strategic planning, infrastructure development and regional service delivery (11.8), and

- Add representatives of Joint Organisations to State agency Regional Leadership Groups (11.8)
- Give particular attention to cross-border issues and relationships in the operations of Joint Organisations and in future regional strategies (11.9)

### Recommendation 57

Introduce new arrangements for collaborative, whole-of-government strategic planning at a regional level (17.2)

#### 17.2 Collaborative strategic planning

There is evident support amongst State agencies for a closer working relationship with local government – but this depends on two factors:

- The willingness and capacity of councils to work more closely with each other and with the State on a regional basis.
- Local government becoming a 'real' partner that contributes substantial resources and expertise to joint programs and projects.

The Panel's proposal for new Joint Organisations is intended to create the right platform for effective State-local collaboration. An obvious starting point is to establish strategic planning partnerships with key State agencies. There are a number of opportunities for this:

- Inclusion of a regional component in councils' Community Strategic Plans, as proposed in section 11.8, in part to provide 'feedstock' for the strategic plans of State agencies, as well as key inputs to the State Plan.
- **Formulation of the next generation of regional strategies to deliver the State Plan – local council or Joint Organisation projects could be included alongside State initiatives to enhance integration and investment, as well as to maximise opportunities to achieve service delivery efficiencies.**
- In the future, high performing JOs could be a vehicle for regionalised State government services, on a negotiated funding basis.
- **Preparation by DP&I of Regional Growth Plans and sub-regional Delivery Plans, especially in the metropolitan area and coastal regions facing intense growth pressures and infrastructure needs – local government can contribute both planning expertise and resources for implementation.**
- Establishment of 'Regional Roads Groups' along the lines of those in Queensland, as discussed in section 7.4.
- Local Land Services – working through Joint Organisations local government can partner the new regional agencies for natural resource management.

For its part, local government could reasonably expect State agencies to become 'real' partners in the IPR process, contributing information, ideas and resources to the preparation and implementation of councils' Community Strategic Plans and Delivery Programs. This will involve action to change attitudes towards local government at all levels of State government – and a better understanding within local government of how to work effectively with State agencies.

### Summary of Findings

1. **Ageing population:** The population of NSW is project to grow upward of 2 million people by 2031 and much of the settlement is both predicted and is being planned to occur within the Sydney metropolitan area. From the statistical information it very evident the population is ageing and the younger sector of it gravitates more strongly to the larger urbanised areas. This means that regions like Tweed will be characterised by an ageing population; statistically Tweed is heading toward being the oldest population with 30% of the population being 65 or older by 2031; this has broad regional implications regarding servicing and potential infrastructure and housing requirements.
2. **Equitable distribution of State funds:** The proposed region is so large that the matter of an equitable distribution in State funds could be more an issue; previously the Tweed contributed 75% of the population growth in the current regional boundary area taken from the last census period. If the region is

enlarged this proportion may be diluted when taking into the other larger centres, such as Port Macquarie, along with any potential funding.

A further point that is not well addressed in DP&E's publication and which has the potential to erode the level of funding available across the region, is the sheer size of the land area. It might be appropriate to support an expanding growth precinct with new infrastructure however, the extent of work required in a regional area is often much more than a comparative area within a metropolitan area, that is, whole new roads or major upgrades are typically required where there is no current substantial infrastructure, waste water management systems typically need to be constructed or require significant augmentation and retrofit, telecommunications and electricity typically requires significant upgrading and new infrastructure. This may translate to or be perceived as a less efficient return for the expenditure, which in turn makes it more difficult for regional areas to compete with the Sydney Metropolitan areas for funding in the first place, and reduces the likelihood of an 'equitable' distribution within the regional areas.

3. **Consultation with local government:** The current publication focuses on the population and economic projections to support new regional boundaries. It does not address equally significant issues of how local government will be consulted, or how consensus will be reached given the extended number of councils that the DP&E will be required to draw consensus with.

As a minimum the publication should have provided information on the administrative arrangements detailing how "partnering" will occur. Noting that the publication does state that consultation will occur with local government, the document is only on 'display' for 6 weeks, is not supported by meaningful consultation program, and does allow a reasonable time to conclude how this new grouping or amalgamation of councils will be serviced and managed.

4. **Concentrated population versus more diffuse:** Within the 10 regions proposed, the North Coast Region has the third highest projected population growth behind Metropolitan Sydney and Hunter. While the North Coast Region is longitudinally separated, the majority of population growth in the Region will occur in Tweed Shire. It is important the DP&E provide its explanation as to how areas such as Tweed will benefit from further amalgamation of grouping of councils.
5. **Supporting high concentration growth areas:** The ability of Government to efficiently deliver services, facilities and infrastructure to support those areas recognised as major growth areas where populations are concentrated rather than dispersed, would put Tweed Shire high on the priority list, apart from other broader regional considerations. The question is, whether or not this would be guaranteed to be clearly articulated in the new regional growth plan.
6. **Council's ID population projections:** Council contracts ID Solutions to prepare and manage its LGA based population statistics. It takes a ground up approach to determining likely projections based on what is happening with land supply. This suggests that in 2031, Tweed Shire will have a population of 117,350. This represents an increase of 27,236 people on our 2013 population. While this represents about 32% of the total projected population growth for the North Coast Region, importantly, it is the equivalent of 42.4% and 41.9% of the growth projections for the Central Coast and Illawarra respectively for the same period.
7. **Resource allocation:** If equity in resource allocation were to be a goal that Council strived for, then it is reasonable to seek a pro-rata allocation of 42% of that to be allocated to the Central Coast or Illawarra regions, which are two of the major growth areas in the State.

8. **Geographic separation of Councils:** While geographically the North Coast Region councils are all linked to or close to the east coast, there are major differences in the nature of landuse within each of the LGAs; this difference, apart from the extremely low population, and low socio-economic base, of some of these Councils will make inter-council negotiations associated with resource allocation potentially very difficult, both with respect to developing equitable policy and logistically with convening meetings.
9. **Proximity to South East Queensland:** The proximity of Tweed Shire to the rapidly expanding Gold Coast has a major influence on both population and employment generating opportunities which need to be extensively explored. Were the State Government committed to providing equity in resource allocation to support employment and housing, then the Tweed as a destination should receive similar priority to the other major growth areas adjoining Metropolitan Sydney. Provision of infrastructure to support cross-border initiatives should be a priority for the North Coast Region.
10. **Supporting Infrastructure needs of the North Coast Region:** While the publication mentions briefly the need to support the infrastructure needs of the North Coast Region, there is no information provided as to exactly what these needs are, or where they are located. As with comments above, given the size of the projected population and its concentration, provision of infrastructure in the Tweed would represent an efficient way of delivering the priority actions detailed in the NSW 2021 State Plan.
11. **Why push Sydney at the expense of the regions:** The projected population of the Metropolitan Sydney Region is an additional 1.57 million people. Given the extremely low populations in other regions, it would appear reasonable to see greater support of regional centres, brought about by strategies that are actually designed to establish and manage spatial population growth.
12. **Ratio of jobs to population:** the ratio of jobs to population is very similar across regions, and as such, any argument for increased population, should be supported by increased job opportunities. Infrastructure is a major factor in encouraging a linkage between where people live and work. The high concentration of growth in the Tweed should support provision of employment generating infrastructure within the Shire and adjoining regions.
13. **General comments:** Because the document is at such a high level of generality, it is difficult to understand the rationale behind the location of the regional boundaries. Some appear to be based on a geographic basis while others on other considerations, such as proximity to Metropolitan Sydney, population concentration, socio-economic conditions, productivity, clustering of industry groups, and the like.
14. **Lack of consideration of how the document will link to future documents or outcomes:** reviewing such a paucity of information without ability to place the document or review comments in perspective has substantially limited and diminished any productive input.

#### OPTIONS:

1. This Report be received and noted and that the General Manager is to provide a submission to the Department of Planning and Environment based on the concerns detailed within the report.

2. Council notes the report and takes no further action.

Council officers recommend Option 1.

### **CONCLUSION:**

The State Government is committed to delivering economic prosperity to NSW and building liveable, sustainable, places, and is achieving this through the NSW 2021 - State Plan.

As part of the Government's overall review for delivering services and meeting the needs of business and community it has undertaken wide ranging reviews of many facets of government business. This has included the development of NSW 2021, several key Regional Action Plans, including the *Northern Rivers Regional Action Plan*, a review of many legislative instruments including: local government, native vegetation, Aboriginal cultural heritage, as well as the more widely publicised 'Planning Reforms Bill'. This has resulted with a significant body of 'expert' reports, draft bills, and amending statutes and rules.

Among the myriad reviews is a significant evidenced based assessment of grouping of councils evaluated as providing the basis for sustainable, manageable regional boundaries. Notably are the two significant State Government policy/review documents referred to in this report: the *Northern Rivers Regional Action Plan* (December 2012)(Based on the NSW 2021, 10 year State Plan) and the *Final Report of the NSW Independent Local Government Review Panel* (October 2013), which have far greater similarity in their findings than is evidenced in the Department of Planning and Environment's proposal to expand the size of existing regional growth planning boundaries, presented in their document entitled "Draft Regions for Growth Planning - NSW" June 2014.

This report has highlighted some of the key information presented in the Statewide Profile-NSW (2014), which has been said to provide the basis for the proposed regional growth planning boundaries, and has unequivocally highlighted that there is a clear and present lack of discussion that draws a rational line between the apparent evidence (profiling) and the analysis (issues and context) that would lead to the grouping of councils and consequent regional growth boundaries as proposed.

From review of the information made available it appears that councils are being asked to assess the suitability of the DP&E's proposal, but in the absence of an adequate level of detail. It is unreasonable of the Department to expect that councils must draw their own inferences and conclusions about the suitability of the proposed regional growth planning boundaries without a clear case in support of them being made.

Council Staff consider that the low level of information provided is not sufficient to make an informed assessment of the suitability of the proposed regional growth boundaries. Equally as important is the suitability of the administrative structure and arrangement for managing such a large region, both in terms of its geographical area and its diversity of communities and issues. Both aspects require more detail to be provided by the DP&E.

Lastly, the DP&E need to make clear the relationship of the work currently being undertaken on the regional growth planning boundaries and the NSW 2021 State Plan, the *Final Report of the NSW Independent Local Government Review Panel*, the *Northern Rivers Regional*

*Action Plan*, as well as, the progress of ongoing legislative reviews, such as, the Planning Bill.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Draft Regions for Growth Planning - NSW (2014) (ECM 3409399)

Attachment 2 Statewide Profile 2014 - NSW (ECM 3411768)

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**22 [PR-PC] LEP Amendment No. 8 - Correction of Mapping Anomaly in Tanglewood**

**SUBMITTED BY: Planning Reforms**

**FILE REFERENCE: GTI/LEP/2014 Pt1**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process

### **SUMMARY OF REPORT:**

This report seeks Council's resolution to prepare an amendment to the Tweed Local Environmental Plan 2014, by way of a planning proposal.

Council has been issued with a Summons (Judicial Review) filed on 4 July 2014, as second Respondent to the Minister for Planning, which is a Class 4 proceeding before the NSW Land and Environment Court, seeking a declaration that the RE2 Private Recreation zoning over Lot 2 DP 1084992 is invalid.

The RE2 zoning gazetted over Lot 2 DP 1084992 is an error. The purpose of the LEP amendment will be to restore the zoning from RE2 to the R5 Large Lot Residential that was exhibited in November 2012. This area of zoning of Lot 2 was unaffected by any later amendments resolved by Council, at its meeting of 31 May 2013.

NSW Planning & Environment staff have advised that a planning proposal is required and will be given a high priority.

### **RECOMMENDATION:**

**That Council endorses:**

- 1. A Planning Proposal to rezone part of Lot 2 DP 1084992 be prepared and submitted to the 'Gateway', as administered by the NSW Planning & Environment, for a determination;**
- 2. The Minister for Planning and Infrastructure or his Delegate be advised that Tweed Council is not seeking plan making delegations for this planning proposal;**
- 3. The Minister for Planning and Infrastructure or his Delegate be advised that public exhibition is not required in this instance; and**

4. **Where no public exhibition is conditioned by the Minister or their delegate, Council endorses the reclassification of Lot 2 DP 1084992, to the extent only shown in this report, without the need for any further report to Council.**



## **REPORT:**

### **1. Zoning Error**

During the post-exhibition review of the Tweed Local Environmental Plan 2014 (LEP), land in Tanglewood, part of Lot 2 DP 1084992, was incorrectly rezoned from R5 Large Lot Residential to the RE2 Private Recreation. This error occurred while the draft Land Zoning Map was undergoing significant amendments related with the application of environmental zones in coastal areas identified for koala habitats and ecological corridors.

The further mapping amendments occurred post public exhibition and in response to Council's resolution of 31 May 2013. The LEP was made by publication on the NSW Government's Legislation website on 4 April 2014.

### **2. Background**

The preparation of the Tweed LEP 2014 concluded on 4 April 2014, when the LEP was published on the NSW Government legislation website. The Tweed LEP 2014 replaced the previous plan, LEP 2000, with the exception of areas deferred due to review of environmental zones, undertaken by the NSW Planning & Environment.

The preparation of the Tweed LEP 2014 was largely based on the principle of best fit conversion, which included conversion of the Land Zoning Map of the Tweed LEP 2000 into the required standard instrument template zones and format, where practical.

The public exhibition, carried undertaken from November 2012 to January 2013 resulted with several requests from the community for further amendment to the environmental zones, particularly with respect to protecting areas of importance for koala habitat, which occurs largely on the coastal corridor and areas such as Tanglewood.

Council responded to the community's call for further environmental zoning and resolved at its meeting of 31 May 2013 to introduce environmental zoning that it had first publicly exhibited in 2010. The zoning error over Lot 2 occurred during the reintroduction of certain environmental zoning, which in itself is not the subject of challenge.

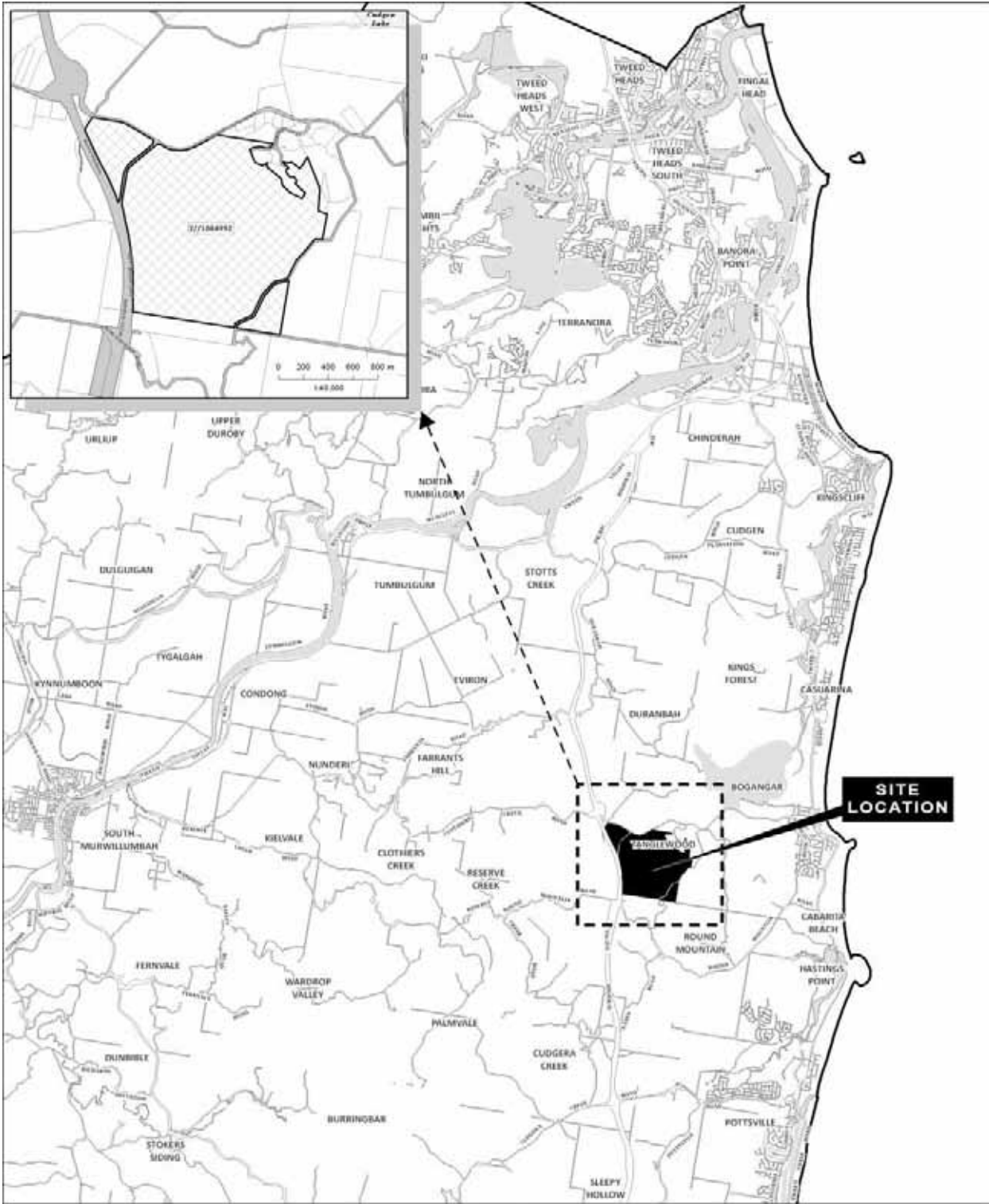
The Planning Proposal Version 1 - Gateway Determination is provided as Attachment 1 to this report.

### **3. Location of Lot 2 DP 1084992**

The subject site is a part of the property known as the Tanglewood Estate which includes the following allotments:

- Lots 154 and 156 DP 801121,
- Lots 530 and 533 DP 1003396,
- Lot 2 DP 1084992 (being subject to this planning proposal), and
- Lots 151 and 152 DP 630766.

FIGURE 1 - LOCATION OF LOT 2 DP 1084992



**Locality Plan**

Amendment No.8

Lot 2 DP1084992: No.1200 Clothiers Creek Road, Tanglewood

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FIGURE 2 - SUBJECT SITE OVERLAID WITH AERIAL PHOTOGRAPHY (2012)



SOURCE  
Aerial imagery was captured on  
6th to 9th May 2012 ©AAM Pty Ltd

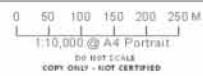
**Aerial Photo - taken May 2012**

Amendment No.8

Lot 2 DP1084992; No.1200 Clothiers Creek Road, Tanglewood

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Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geoidetic Datum of Australia 2004  
Grid: Map Grid of Australia, Zone 56

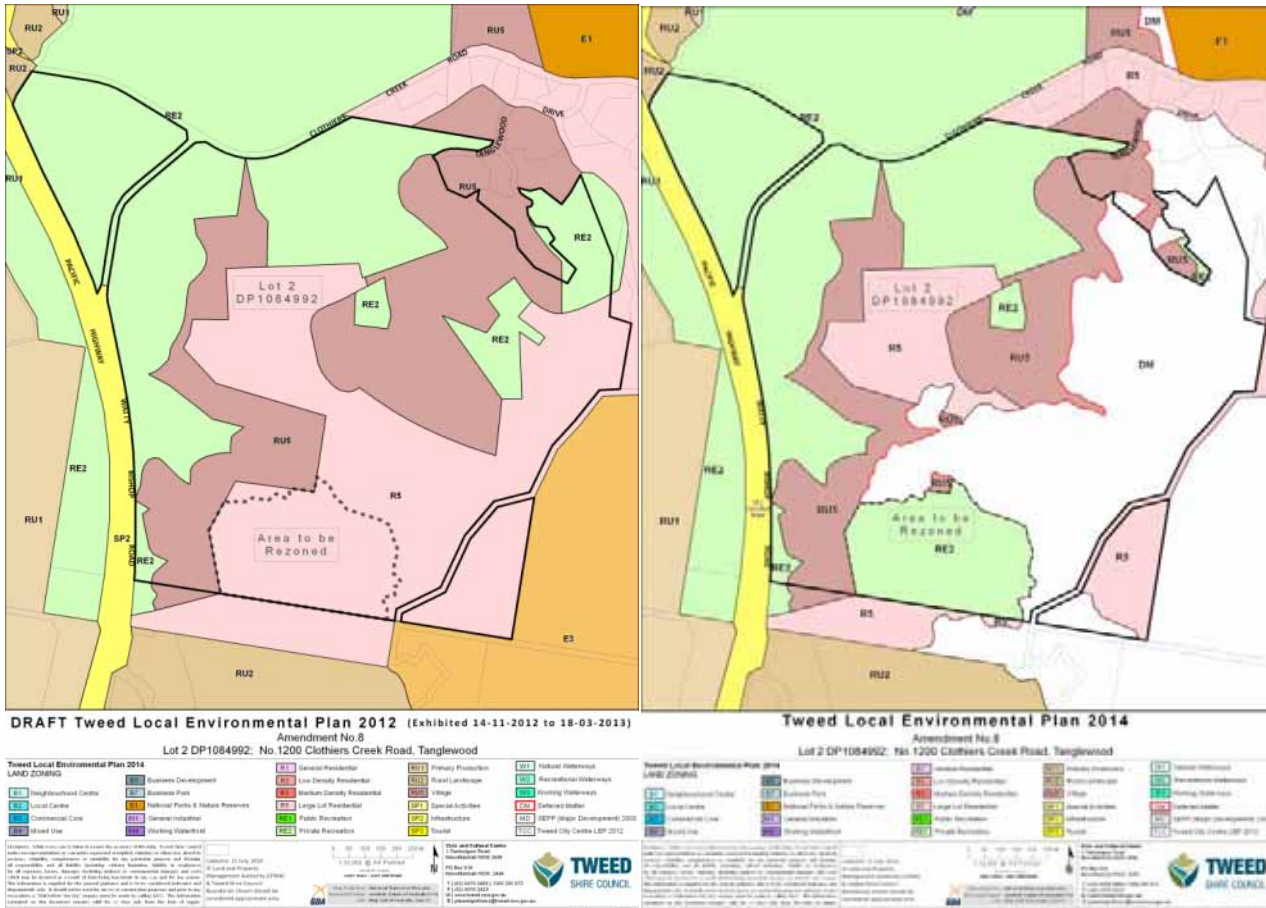
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**TWEED**  
SHIRE COUNCIL

**Figure 3 (below left): Draft Tweed LEP 2012 during public exhibition, with subject land marked up with dotted line and zoned as R5 Large Lot Residential**

**Figure 4 (below right): Tweed LEP 2014 as published on legislation website, with subject land incorrectly zoned RE2 Private Recreation. Areas labelled as DM represent extent of the intended environmental zones deferred from the LEP by NSW Planning & Environment**



#### 4. Judicial Proceeding

On 1 July 2014, Tweed Shire Council received information about the landowner's intention to file a Summons (Judicial Review) against the application of the RE2 zone over the subject site seeking a declaration that the RE2 zoning was invalid.

Council staff concurred with the landowner that the zoning was an error.

The parties to the proceedings have agreed to seek to have the proceedings stood over (deferral) for a period of 6 months, to allow the error to be rectified.

At the time of preparing this report Council's Solicitors were preparing affidavits for a directions hearing with the Court on Friday 18 July.

#### OPTIONS:

1. Council prepares a planning proposal to rectify the zoning error detailed within this report; or
2. Council provides alternate advice on how the matter should be proceeded with.

The officers recommend Option 1.

**CONCLUSION:**

This Report recommends the preparation of an LEP amendment to correct an obvious zoning error.

In light of the court proceedings, Council has had no option but to engage their Solicitor to assist in the process.

All parties agree that the matter should be expedited as quickly as possible and that this can only occur by way of planning proposal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

There are legal costs associated with the Court proceedings and the engagement of Council's legal services provider.

**c. Legal:**

Legal services have been obtained.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Planning Proposal PP14/0005 Gateway Determination V1 (ECM 3419163)

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**23 [PR-PC] PP11/0002 Pottsville Employment Land - Wastewater Allocation**

**SUBMITTED BY: Planning Reforms**

**FILE REFERENCE: PP11/0002 Pt6**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
  - 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 

### **SUMMARY OF REPORT:**

This report seeks the endorsement of Council for an increase in the allocation of wastewater disposal capacity from Lot 12 DP 1015369, No. 39 Kudgerie Avenue, Cudgera Creek to Council's conveyance infrastructure to the Hastings Point Waste Water Treatment Plant from 4.0 litres per second, to 5.0 litres per second.

Subsequent to Council's previous endorsement of a connection of the site to Council's waste water disposal system and an allocation of 4.0 litres per second, the proponent has reviewed their requirements to attract industrial development to the site, and requested an increase in allocation to 5.0 litres per second.

While the known absolute surplus capacity within the sewer system is limited to 7.0 litres per second, the likely potential benefits of the proposed industrial park to the Pottsville locality justify an increase in allocation, as requested.

### **RECOMMENDATION:**

**That the allocation of 4.0 litres per second of wastewater within Council's sewer conveyance infrastructure to the Hastings Point Waste Water Treatment Plant from Lot 12 DP 1015369 No. 39 Kudgerie Avenue, Cudgera Creek be increased to a maximum 5.0 litres per second.**

## REPORT:

Resolution of outstanding matters relating to the rezoning of Lot 12 DP 1015369 No. 39 Kudgerie Avenue, Cudgera Creek for industrial purposes are close to finalisation, prior to placing the planning proposal on public exhibition; however, the proponent has now requested an increase in the volume of wastewater that can be discharged from the development.

At its meeting of 21 November 2013 Council endorsed connection of the property to Council's sewer conveyance infrastructure to the Hastings Point Waste Water Treatment Plant, with an allocation of 4.0 litres per second of waste water to the system.

Since that time, the proponent has reviewed their requirements and believes that 4.0 litres per second will not provide for the full range of potential development types that may be attracted to the location, and has requested an increase in allocation to 5.0 litres per second.

Council's Water Unit have previously undertaken a review of the surplus capacity available in the sewer conveyance infrastructure to the Hastings Point Waste Water Treatment Plant and determined that there is a nominal maximum 7.0 litres per second only available at SPS 5028 Tweed Coast Road, North Pottsville pump station.

For reference and comparative purposes, for an industrial development, a flow rate of 5.0 litres per second under a pressure sewer system equates to a discharge rate of approximately 125 Equivalent Tenements (ETs). However, the actual rate, and the extent of extremes of discharge from an industrial development is ultimately determined by the type of development that may occur. For example, a 'wet' industry such as a fruit processing facilities, a brewery or a concrete batching plant, or a permitted commercial premise like that of a childcare centre, may discharge substantial volumes of wastewater whereas, a 'dry' light industry, such as a storage facility, or roof truss manufacturer, typically has a low discharge rate.

Once the 7.0 litres per second available at SPS 5028 is fully committed, no further development in the locality will be possible until a substantial upgrading of the conveyancing infrastructure to the Hastings Point Waste Water Treatment Plant is undertaken, or an alternative system is developed, which may include a new private facility.

Until such time as the extent and type of potential development within the west Pottsville locality is better understood, no conclusion can be made about the potential demand for the remaining 2.0 litres per second; therefore, good practice dictates that some capacity must be available to service the changing needs of currently zoned and developed land within the catchment area.

Now that the local sewer capacity is reaching its operating design limits and access to the system must be capped it is essential that any agreement to service the site is contained within a legally binding Planning Agreement. This will protect both the Council's and the landowner's interests. The Agreement, made under s 93F of the *Environmental Planning and Assessment Act 1979* (NSW) is to be registered on the Lands Title and will bind all successors in title. It is also proposed that should the development not proceed, or allocation not be fully utilised within a period of 10 years, that Council reserves the right to reallocate any surplus capacity should demand for its wastewater service arise elsewhere.

While 2.0 litres per second provides limited potential for further development in west Pottsville, the benefits of industrial development on this site, which the proponent has expressed a desire to see commence as soon as possible, is considered a benefit to the local community. It may act as a catalyst for further employment generating development in the locality and as such the requested allocation of 5.0 litres per second seen to be justified.

Council's endorsement for the proposed allocation is therefore recommended and sought.

**OPTIONS:**

1. Endorses an increase in wastewater allocation to 5.0 litres, as recommended; or
2. Refuses the request for an increase in allocation.

Council Officers recommend Option 1.

**CONCLUSION:**

The proponent has requested that Council supports an increase in allocation to its sewer conveyance infrastructure to the Hastings Point Waste Water Treatment Plant from 4.0 litres per second to 5.0 litres per second.

With limited surplus capacity in the system of just 7.0 litres per second, an allocation of 5.0 litres per second will consume a significant proportion of allocation for potential future development in the locality.

Notwithstanding this, the proponent has expressed a clear intention to see the development proceed as soon as possible.

The potential benefits of employment generating opportunities in the Pottsville locality, are consistent with the directions of Council's Urban and Employment Land Release Strategy 2009, and the Far North Coast Regional Strategy 2006, and have the potential to catalyse further development on adjoining and nearby land.

The request for an increase in capacity of discharge to Council's waste water reticulation system to 5.0 litres per second is supported and submitted for the endorsement of Council.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**24 [PR-PC] Draft Tweed Development Control Plan - Section A17 - Business, Enterprise and Industrial Zones**

**SUBMITTED BY: Planning Reforms Unit**

**FILE REFERENCE: GT1/DCP/A17 Pt1**

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## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- |       |  |
|-------|--|
| 1     | Civic Leadership   |
| 1.5   | Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land  |
| 1.5.2 | Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development |
- 

### **SUMMARY OF REPORT:**

This report updates Council on the public exhibition process of the draft Tweed Development Control Plan - Section A17 - Business, Enterprise and Industrial Zones (draft DCP).

Council resolved on 1 May 2014 to publicly exhibit the draft DCP, which occurred from 10 June to 11 July 2014. During the exhibition period no submissions were received.

This report concludes that subject to minor amendments, which are contained in the draft DCP attached to this report, the draft DCP is now suitable for adoption.

### **RECOMMENDATION:**

**That Council:**

- 1. Adopts the Tweed Development Control Plan, Section A17 – Business, Enterprise and Industrial Zones, as provided as Attachment 1 to this report;**
- 2. Endorses the public notice of the adoption of the Tweed Development Control Plan in accordance with Clause 21(2) of the Environmental Planning and Assessment Regulation 2000;**
- 3. Forwards a copy of the Development Control Plan Section A17 to the Director-General of the NSW Planning and Infrastructure in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000.**

## **REPORT:**

Council resolved on 1 May 2014 to publicly exhibit draft Section A17 of the Tweed Development Control Plan, titled Business, Enterprise and Industrial Zones (draft DCP). A copy of the previous Council report is provided as Attachment 2 of this report.

The draft DCP provides an expansion of the existing Section A17 area of application to include the IN1 General Industrial zone. The draft DCP was exhibited from 10 June to 11 July 2014 on Council's website and hard copies available at Council's Tweed Heads and Murwillumbah offices. During the exhibition period no submissions were received.

Through the public exhibition period, Council officers identified several housekeeping amendments required to the draft DCP, which have been incorporated into the draft DCP as provided as Attachment 1 to this report.

## **OPTIONS:**

That Council:

1. Approves the draft DCP as provided within Attachment 1 of this report, or
2. Defers the matter for a workshop.

Council officers recommend Option 1.

## **CONCLUSION:**

The revised draft DCP is provided as Attachment 1 to this report and is recommended for adoption. The adoption of the draft DCP will assist in guiding industrial development outside of the B5, B6 and B7 zones where the existing Section A17 current applies. Adoption of the draft DCP will contribute towards establishing a comprehensive planning framework for the IN1 General Industrial zone.

## **COUNCIL IMPLICATIONS:**

### **a. Policy:**

Corporate Policy Not Applicable

### **b. Budget/Long Term Financial Plan:**

Not applicable

### **c. Legal:**

Not Applicable.

### **d. Communication/Engagement:**

**Consult**-We will listen to you, consider your ideas and concerns and keep you informed.

## **UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Tweed Development Control Plan - Section A17 (ECM 3417449)

Attachment 2. Council report of Thursday 1 May 2014 (ECM 3417450)

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**25 [PR-PC] Combined Planning Proposal PP13/0003 and Development Application DA13/0469 for a Highway Service Centre, Chinderah**

**SUBMITTED BY: Planning Reform**

**FILE REFERENCE: PP13/0003 Pt1 and DA13/0469 Pt3**



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community

### **SUMMARY OF REPORT:**

Council received a combined Planning Proposal (PP13/0003) and Development Application (DA13/0469) in July 2013. At its meeting of 12 December 2013 Council resolved to publicly exhibit both aspects concurrently and this occurred between 23 April and 26 May 2014.

The proposed LEP amendment and development is for the purpose of a highway service centre on Lot 11 DP 1134229, Lot 1 DP 1165676 and Lot 1 DP 210674 located at Tweed Valley Way, Chinderah. This report is specific to the progression of the planning proposal, and the Development Application will be advanced and reported independently.

The Planning Proposal component seeks amendment to the Tweed Local Environmental Plan 2014 (LEP 2014) lot size map and inclusion of "highway service centre" within Schedule 1 – Additional Permitted Uses.

This report provides an overview of the public exhibition and an assessment of submissions received. It also seeks Council's approval to refer the Planning Proposal to NSW Planning & Environment for the draft LEP to be made.

### **RECOMMENDATION:**

**That:**

- 1. Council endorses the making of the Local Environmental Plan amendment to facilitate the Highway Service Station on Lot 11 DP 1134229, Lot 1 DP 1165676 and Lot 1 DP 210674, Tweed Valley Way, Chinderah, and the referral of Planning Proposal (PP13/0003) to the NSW Department of Planning and Environment to be made, and**
- 2. Prior to any referral being made to the NSW Department of Planning and Environment that the planning proposal be first updated to reflect the final traffic design layout submitted to Council's satisfaction and in support of the Development Application DA13/0469, as discussed in this report.**

## REPORT:

### Purpose of the report

To inform Council of the public exhibition of the Planning Proposal (the Proposal) and to seek a resolution of the Council to refer the Proposal to the Minister for NSW Planning & Environment to have the LEP amendment made.

### Background

In July 2013 Tweed Shire Council (TSC) received a joint application containing the request for a Planning Proposal and concurrent Development Application, for the site as depicted in Figures 1 and 2 below. The application was lodged with Council by Jim Glazebrook and Associates on behalf of landowners of the subject site, in July 2013.

The Proposal seeks a site-specific amendment to the LEP to include the land use definition of "Highway Service Centre" within Schedule 1 - Additional Permitted Uses of the Tweed LEP for the allotments subject to this Proposal. The Proposal also seeks amendment to the Lot Size Map to facilitate the required subdivision and boundary adjustments.

The definition of highway service centre is as follows:

*"highway service centre" means a building or place used to provide refreshments and vehicle services to highway users. It may include any one or more of the following:*

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) service stations and facilities for emergency vehicle towing and repairs,*
- (d) parking for vehicles,*
- (e) rest areas and public amenities.*

The planning proposal, once made through amendment to the Tweed LEP 2014, will allow for the development application to be properly assessed and finalised.

The Highway Service Centre Proposal and development application comprises of the following:

- Service centre single story building with a Gross Floor Area (GFA) of approximately 1270m<sup>2</sup>. The building also contains the service centre control centre and five other tenancies to provide food outlets and a dining area. Two of the food outlets are proposed to have drive through facilities;
- 97 public car spaces, 20 staff car spaces, 5 caravan/bus spaces and 25 truck parking spaces;
- Outdoor dining area and playground;
- Truckers lounge and public amenities;
- Landscaped area of 12,334m<sup>2</sup>;
- Two lane arterial roundabout at Tweed Valley Way to provide ingress and egress into and out of the service centre;
- Construction of an off ramp from the Pacific Highway to provide ingress to the proposed service centre for northbound traffic; and
- Filling of the site to RL3.5m AHD to enable the building and refuelling areas to be above Council's design flood level.

During the meeting of 12 December 2013, Council resolved as follows:

- "1. A Planning Proposal to facilitate a "Highway Service Centre" on Lot 11 DP 1134229, Lot 1 DP 1165676 and Lot 1 DP 210674 be prepared and submitted to the 'Gateway', as administered by the NSW Department of Planning and Infrastructure, for a determination.*
- 2. The Minister for Planning and Infrastructure or his Delegate be advised that Tweed Council is NOT seeking plan making delegations for this planning proposal.*
- 3. The Minister for Planning and Infrastructure or his Delegate be advised that the minimum exhibition period for joint exhibition of the Planning Proposal and Corresponding Development Application (DA13/0469) should be for a period not less than 28 days and should be concurrent.*
- 4. Upon receiving an affirmative Determination Notice from the NSW Department of Planning and Infrastructure any additional studies or work required in satisfaction of demonstrating the suitability of the proposed Highway Service Centre is to be completed.*
- 5. On satisfactory completion of the Planning Proposal it is to be publicly exhibited in accordance with the Determination Notice or where there is no such condition or the condition prescribes a period less than 28 days, for a period not less than 28 days.*
- 6. Following public exhibition of the Planning Proposal a report is to be submitted to Council at the earliest time detailing the content of submissions received and how those, if any, issues have been addressed."*

The Gateway Determination was granted on 23 February 2014 with a timeframe for completion set for twelve months from the week following the date of the Gateway Determination, being 30 February 2015.

The Planning Proposal, comprising the 'strategic' planning element, has been managed and assessed by the Planning Reform Unit, and the Development Application (DA) is being processed by the Development Assessment Unit, concurrently. This report deals with the planning proposal, as the strategic land use amendments to the LEP must be made prior to a determination of the DA.

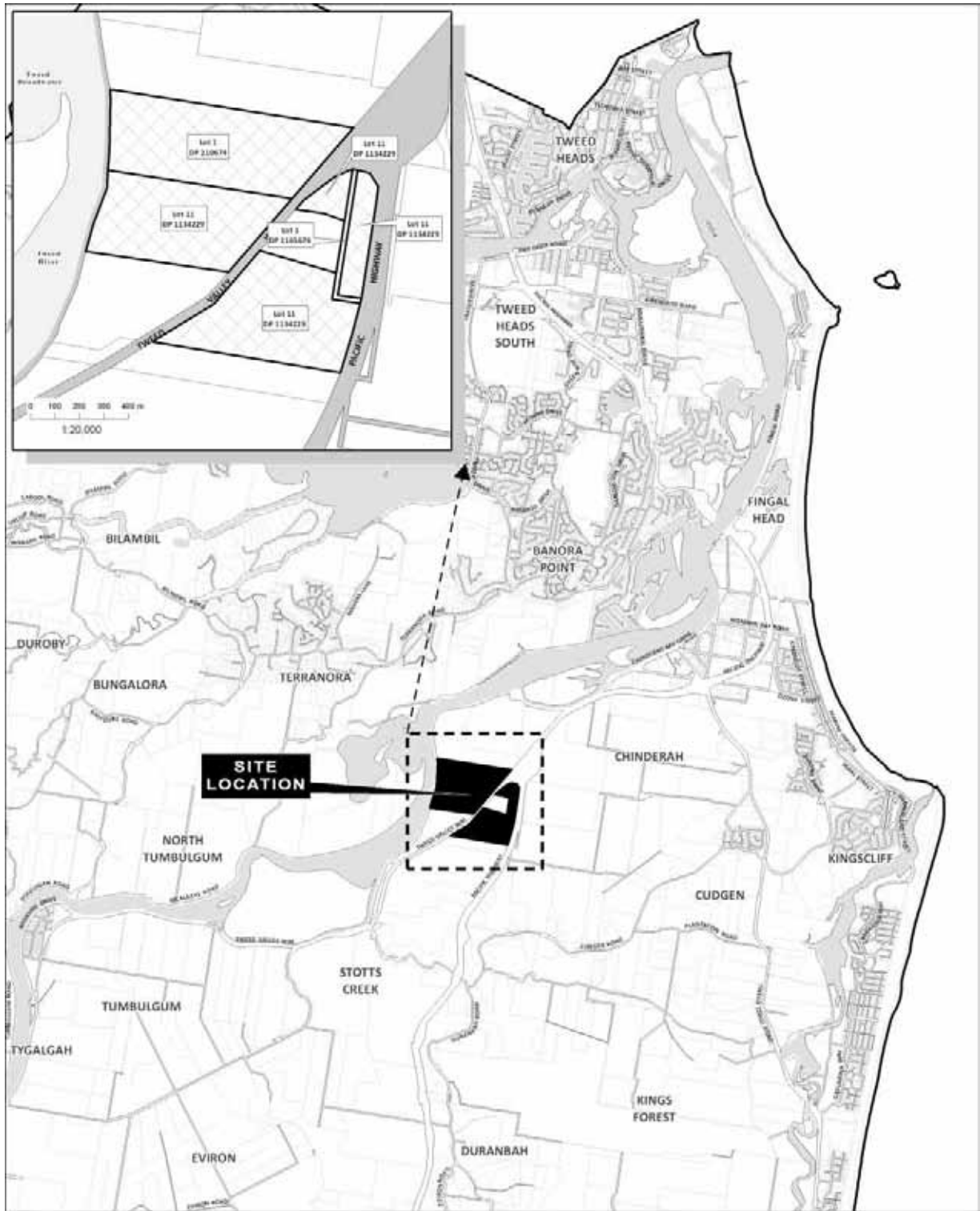
Internal assessment of the Proposal identified two matters of significance:

- In accordance with the Gateway Determination of 23 February 2014, Council requested a detailed, updated onsite wastewater management study to be prepared by the proponent prior to the public exhibition. This was provided by the proponent in March 2014 and placed on public exhibition concurrently with all other studies and reports prepared for the proposed development.
- Prior to public exhibition, Council officers requested certain amendments to be done to the proposed traffic network. Specifically, the traffic network was to include the following:
  - construction of a northbound lane on Tweed Valley Way bypassing the roundabout
  - designed to maintain at least 80km/h through speeds,
  - northbound traffic from the roundabout is required to merge with northbound traffic on Tweed Valley Way,

- the roundabout entry curvature to achieve a reduction in vehicle approach speeds is to be provided on the roundabout design,
- the current level of access to adjacent developments to the site is to be maintained,
- or improved as a result of the above road design.

The above amendments to the traffic network were subject to a meeting held on Friday, 18 July 2014. During this meeting it was agreed that the traffic network proposed under the Traffic Impact Assessment (being an attachment to the DA) would be redesigned to include all additional elements and considerations and that the updated Traffic Impact Assessment would be provided to Council prior to referral of the Proposal to NSW Planning & Environment.

FIGURE 1 - LOCALITY PLAN



**Locality Plan**

Lot 1 DP 210674; Lot 11 DP 1134229; Lot 1 DP 1165676;  
Pacific Highway & Tweed Valley Way, Chinderah

<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 of the data. Users should verify the accuracy, reliability, completeness or suitability for any particular purpose and liability of ownership 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 for any use and the use thereof. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for any use in connection with projects and plans to be undertaken. A 'Use before you buy' enquiry must be made by calling 07 6671 1000. This information is based on the information provided and the Council does not warrant the date of receipt.</p>	<p>Copyright © 11/11/2013 © Land and Property Information (LPI) &amp; Tweed Shire Council Boundaries shown should be considered approximate only.</p>	<p>1:55,000 A4 P01018 071 6671 1000 071 6671 1000</p>	<p>Civic and Cultural Centre 1 Tumbulgum Road Murrumbidgee NSW 2434 PO Box 516 Murrumbidgee NSW 2434 T   (07) 6670 5400   1300 292 872 F   (07) 6670 3429 W   www.tweed.nsw.gov.au E   planning@twc.nsw.gov.au</p>	<p><b>TWEED</b> SHIRE COUNCIL</p>
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## Consultation

Subject to the resolution of Council and the Ministerial Directions under the Gateway Determination the Proposal was publicly exhibited for a period of 33 days, concurrently with the Development Application. The information provided in support of the exhibition included:

1. Preliminary site contamination investigation
2. Agricultural assessment
3. Flora and fauna assessment
4. Cultural heritage due diligence assessment
5. Acid sulfate soil management plan
6. Engineering Impact Assessment Report
7. Letter from Minister For Roads to Geoff Provest MP dated 30/7/13
8. Bushfire risk management plan
9. Environmental noise assessment
10. Socio economic impact assessment
11. Visual impact assessment
12. (Revised) Onsite sewage management report
13. Traffic impact assessment
14. Planning proposal timetable

Copies of the studies and exhibition material are provided on CD under separate cover to this report.

The public exhibition was held between Wednesday 23 April 2014 and Monday 26 May 2014. The exhibition material was made available at the Tweed Heads and Murwillumbah Administration Offices and on Council's website. Direct notification of the public exhibition was sent out to adjoining landowners.

## Submissions

Seven submissions were received in response to the public exhibition. Four submissions were received from State agencies and three from the local community and business operators.

- Submission was received from the Cudgen Land Pty Ltd, summarised as follows:

*Submission summary:*

*The submission expresses support to the development as it will provide a good alternative for families and travellers to source fuel and food travelling either north or south of the highway.*

## Comment:

Noted.

- Submission was received from the operators of the adjacent Melaleuca Station Crematorium and Memorial Gardens.

*Submission summary:*

*The submission objects to the proposed development on the basis of visual impact that the development may have on the adjoining Melaleuca Crematorium and Memorial*

Gardens. The submission raises lack of appropriate detail of the Visual Impact Assessment and Landscape Plan in relation to ensuring that the visual impact of the development is adequately addressed.

The submission also raises objection to the earthworks (filling) proposed for the highway service centre site, recommended under the Engineering Impact Assessment Report prepared for the proposal. According to the submission, the level of proposed earthworks will negatively impact on the Melaleuca Crematorium and Memorial Gardens in the event of flood. An example is given from the 2013 flood event when the floodwater came within 5 cm from the level of the crematorium and reception centre. In this regard, the submission also raises concern about the culvert under the Pacific Highway and its ability to carry the floodwater in light of recent earthworks (fill) on the other side of the highway for the Australian Bay Lobster site. The submission calls for additional flood modelling to be undertaken for the highway service centre site.

Objection is also raised to the proposed traffic layout, particularly the level of consideration given to the visitors of the Melaleuca Crematorium and Memorial Gardens. The submission concludes that the development should be accommodated on an alternative site, with the Chinderah intersection suggested as an example.

**Comment:**

The subject site has been nominated for the development of a highway service centre in the recent *Pacific Highway Service Centres - Policy Revision*, prepared by NSW Transport Roads & Maritime Services. With that in mind, this site is nominated and supported by the State Government.

The visual and flooding impact of the proposed earthworks will be addressed through the development applications process, which is concurrent with the rezoning, however will be reported separately.

The planning proposal to facilitate the Highway Service Centre, at this location, is consistent with the State Government Policy and direction.

The proponent is required to provide an updated roundabout configuration design providing appropriate design of a northbound lane bypassing the roundabout, prepared consistently with the applicable Austroads and Roads and Maritime Services Guidelines and standards. Objection to the traffic layout raised in this submission will be considered at the development assessment stage, when the updated roundabout configuration design is received by Council.

- Submission from a local resident:

*Submission summary:*

*The submission objects to the proposed development on the basis of the increased noise, increase lighting in the area and visual impact on the rural landscape. The submission requests additional measures to mitigate those impacts, and lists few examples: appropriate road surfacing to minimise tyre noise and vibration, road signage so trucks and cars could begin slowing sometime before the centre to reduce braking and gear changes, sound barriers such as earth mounds to minimise noise and lighting direction and appropriate screening by trees to reduce the visual effects.*

**Comment:**

The Visual Impact Assessment prepared by JGA for the subject site makes the following observations:

- The site does not contain any distinctive or landmark visual elements which would be obliterated by its development,
- The service centre building and attendant car and truck canopies are all below 6.0 metres in height. The car canopy link is approximately 7.9m high to the top of the supporting steel columns. The total building area is 1270m<sup>2</sup>. The total site area covered by the building, canopies and paved driveways, car parking etc. is 2.66 ha. In the context of a site area of 3.9 hectares the apparent height, bulk and scale of the development is considered to be reasonable and visually consistent with its setting,
- The project design incorporates generous landscaped areas (approx. 12,344m<sup>2</sup>) which have been designed to achieve appropriate softening and integration of the development into the highway landscape.

The Acoustic Report, prepared by TTM Consulting Pty Ltd makes the following recommendations aiming to reduce the traffic noise:

- Surface finish of drive way/drive-thru for grade should be low-squeal i.e. no polished or painted concrete etc;
- No metal speed bumps. Speed bumps should be built into the finished surface of the car park;
- Any grates or other protective covers in the car parks and access driveways must be rigidly fixed in position to eliminate clanging, and be maintained.

The visual and noise impact of the proposed earthworks will be addressed through the development applications process, which is concurrent with the rezoning, however will be reported separately.

**State agencies submissions**

Submission was received from NSW Department of Primary Industries

*Submission summary:*

*This submission notes that the subject site is mapped as regionally significant farmland, however due to the small size, irregular shape and physical restrictions by two major roads and the crematorium, the use of land of agricultural production is restricted. The submission also requests a condition of development consent regulating management of stormwater and floodwater runoff to eliminate any off-site impact to surrounding farms.*

**Comment**

The fragmentation of the rural land forms part of the justification for the location of the Highway Service Centre. Additional conditions regarding storm and flood water runoff will be addressed through the development applications process, which is concurrent with the rezoning, however will be reported separately.

- Submission was received from NSW Transport, Roads & Maritime Services

*Submission summary:*

*The submission provides separate comments in relation to the planning proposal and to the development application. No concerns are raised in relation to the planning proposal component.*

### **Comment**

This submission is noted, notwithstanding, comments made in relation to the development application will be addressed through the development applications process, which is concurrent with the rezoning, however will be reported separately.

- Submission was received from NSW Rural Fire Service

*Submission summary:*

*The submission noted that the land subject to the planning proposal is mapped as bush fire prone land. The submission made a comment that the extent of bush fire hazard to the north and east of the development site is minimal. Further, the subject land is separated from the hazard by significant road infrastructure. No objections were made in relation to the planning proposal.*

### **Comment**

All matters related with the bushfire risk have been addressed and responded to in the Bushfire Risk Management Plan prepared by BushFireSafe for this development.

- Submission was received from NSW Department of Primary Industries - Office of Water

*Submission summary:*

*The submission contains the Office of Water's General Terms of Approval for works requiring a controlled activity approval under the Water Management Act 2000. This was provided in relation to the development assessment component of the proposal.*

*No comments were made in relation to the planning proposal.*

### **Comment**

General Terms of Approval will inform the development assessment process.

### **State Member submissions**

The State electorate is Tweed and the current Member of Parliament is Mr Geoff Provest, MP. No formal correspondence has been received from a State Member as part of the public consultation.

Following assessment of submissions, it is considered that no amendment to the proposal or the exhibited zoning of the site is required.

### **Council owned land**

The PP does not include any Council owned land.

### **Consistency with any regional strategy, instrument or direction**

The Proposal has been assessed against:

- the Far North Coast Regional Strategy (FNCRS), as provided in the attached Planning Proposal Version 3 – Final;
- the aims and actions of the FNCRS, as provided in the attached Planning Proposal Version 3 – Final;
- relevant State Environmental Planning Policies (SEPPs), as provided in Table 2 of the attached Planning Proposal Version 3 – Final; and

- the Ministerial s117 Directions as provided in Table 3 of the attached Planning Proposal Version 3 – Final;

The Proposal is seen to be broadly consistent with the above strategies, policies and directions. Where there is justified inconsistency, this is discussed within Planning Proposal, as required, and in all instances has been found to be a minor inconsistency or variation which does not pose a constraint to the rezoning for the intended purpose.

### **OPTIONS:**

That Council:

1. Proceeds with the Proposal in accordance with the recommendations of this report; or
2. Rejects the Proposal (noting that this will prevent an affirmative determination of the DA) and provide reasons for doing so, as these will be required to inform the NSW P&E and Joint Regional Planning Panel should an administrative appeal be sought.

Council staff recommends Option 1.

### **CONCLUSION:**

The Proponent has lodged a concurrent planning proposal request and development application for a Highway Service Centre to service north bound traffic on the Pacific Highway at Chinderah. The development is currently prohibited and requires an amendment to the Tweed LEP 2014 to facilitate the Proposal. The requested amendment includes the addition of “Highway Service Centre” for the nominated lots within Schedule 1 - Additional Permitted Uses of the LEP 2014 and includes amendment to the lot size map to facilitate the required subdivision and boundary adjustment.

The Highway Service Centre, Chinderah Planning Proposal Version 3 - Final, prepared by Mike Svikis as Council’s external consultant, is provided as Attachment 1 to this report.

In summary, there is an argument advanced that there is limited opportunity for locating a northbound service centre within the Tweed region and which is presently only serviced by the current southbound service centre, also at Chinderah. This site is identified by the State Government for location of a Highway Service Centre, and therefore, the Proposal is consistent with the State planning framework.

Assessment has indicated that whilst there are significant site engineering matters to be addressed and finalised the site appears capable of accommodating the service centre, without significant adverse impacts to the broader community. It is also noted that many Tweed residents and tourists alike rely on the Pacific Highway to travel routinely around the Tweed. The proposed service centre is likely to have a net community benefit in several ways and noticeably by providing convenience to Tweed commuters, the possibility of competitive fuel pricing, and access to other related conveniences stores.

In conclusion, the preliminary assessment has not identified any matters that might otherwise present as a prohibition to proceeding with a planning proposal and as such it is recommended that the Proposal be endorsed and submitted to the NSW P&E for making.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Community Engagement Strategy Version 1.1.

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult** - We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Highway Service Centre, Chinderah Planning Proposal Version 3 -  
Final (ECM 3420040)

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**26 [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 July 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.

<b>DA No.</b>	DA13/0267
<b>Description of Development:</b>	Demolition of existing building and construction of 3 storey multi-dwelling housing development incorporating 7 units plus basement parking
<b>Property Address:</b>	Lot 27 DP 21680 No. 42 Sutherland Street, Kingscliff
<b>Date Granted:</b>	7/7/2014
<b>Development Standard to be Varied:</b>	Number of storeys
<b>Zoning:</b>	2(b) Medium Density Residential
<b>Justification:</b>	The SEPP No. 1 variation relates to Clause 16 of the Tweed Local Environmental Plan 2000 (TLEP 2000) which prescribes a two-storey height limit for the site. The degree of horizontal variation is 78% which is the entire third storey. The proposal complies with the building height provisions of the Draft Local Environmental Plan 2012. The number of storeys proposed is 3 however it presents as 2 storeys from Sutherland Street and complies with the 9m building height.
<b>Extent:</b>	Three storey building in two storey height limit. The degree of horizontal variation is 78% which is the entire third storey.
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

<b>DA No.</b>	DA14/0063
<b>Description of Development:</b>	Northern retail expansion of Tweed City Shopping Centre including reconfiguration and expansion of retail space to the north and west of the centre resulting in an increase of gross floor area from 57,969m <sup>2</sup> to 78,628m <sup>2</sup> , demolition of existing car park, dwellings and to the existing shopping centre building, development of basement, at grade and multi-level parking, new signage, access amendments to the centre, new loading docks and upgrade to site infrastructure (JRPP)
<b>Property Address:</b>	Lot 22 DP 23659; Lot 5 DP 830973; Lot 21 DP 23659; Lot 20 DP 23659; Lot 19 DP 23659; No. 24 - 30 and Lot 13 DP 23659; Lot 12 DP 23659; Lot 11 DP 23659; Lot 2 DP 804871; Lot 8 DP 23659; No. 42 - 52 Kirkwood Road; Lot 4 DP 781506; Lot 5 DP 781506; Lot 6 DP 1119624; No. 34 38 and Lot 1 DP 781517; Lot 2 DP 781518; Lot 1 DP 524806; No. 58 - 62 Minjungbal Drive, Tweed Heads South
<b>Date Granted:</b>	24/6/2014
<b>Development Standard to be Varied:</b>	Clause 16 - Heights of Buildings
<b>Zoning:</b>	3(b) General Business
<b>Justification:</b>	Increasing height from 15m to 17m
<b>Extent:</b>	13% variation
<b>Authority:</b>	Tweed Shire Council under assumed concurrence



**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## ORDERS OF THE DAY

- 27 [NOR-PC] Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah

### NOTICE OF RESCISSION:

Councillor C Byrne, W Polglase and P Youngblutt move at the next Ordinary Planning Committee meeting that Council resolution from the Planning Committee Meeting held on 3 July 2014 at Minute No 385 Item No 15 being:

*"... that Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah be refused for the following reasons:*

- 1. Pursuant to Section 79C (1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is not considered to be compliant with Environmental Planning Instruments.*

*The proposed development does not satisfy the provisions contained within:*

*Environmental Planning & Assessment Act 1979 section 5(a) Objects of the Act:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) 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, and*
- (iv) ecologically sustainable development,*

*Tweed Shire Local Environment Plan 2000:*

- Clause 4: Aims of this plan*
- Clause 5: Ecologically sustainable development*
- Clause 8(1): Consent Considerations*

- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a)(ii) - the provisions of any Draft Environmental Planning Instruments in that boat storage is prohibited within the B4 Mixed Use Business zone.*
- 3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a)(ii) - the provisions of any Draft*

*Environmental Planning Instruments in that boat storage does not satisfy the objectives of the B4 Mixed Use Business zone, and the development precludes public transport by the nature of this use requiring private vehicles.*

4. *Pursuant to Section 79C (1)(b) of the Environmental Planning & Assessment Act 1979, the proposed development is not considered to be compliant due to impacts on the natural and built environments, and social and economic impacts in the locality, including the additional burden placed on associated public infrastructure required to service the development, and the potential for cumulative development of this nature to indirectly exacerbate riverbank erosion and impacts on marine ecology.*
5. *Pursuant to the section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is unsuitable for the development due to the impact of storage uses in the Chinderah village, in light of the industrial nature of boat storage, considering that storage units are prohibited in the 3(d) Waterfront Enterprise zone, and given that land with industrial zoning is located in close proximity.*
6. *Pursuant to the section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the development is not considered to be in the public interest.*

**be rescinded.**

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- 28 [NOM-PC] Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah

**NOTICE OF MOTION:**

Councillor C Byrne moves that Development Application DA13/0673 for the Erection of Eight Boat Storage Sheds (69 Bays) at Lots 9-10 DP 24164 Nos. 10-12 Chinderah Bay Drive, Chinderah; Lots 9-12 DP 830655 Nos. 2-8 Chinderah Bay Drive, Chinderah be approved subject to the following conditions:

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans titled:

- 'Proposed Storage Sheds', Ref G2853, Sheet 1 of 3;
- 'Proposed Storage Sheds - Elevations', Ref G2853, Sheet 2 of 3; and
- 'Ecological Setback/Buffer Zone', Ref G2853, Sheet 1 of 3

prepared by Gavin Duffie Contract Draftsman and dated 7 November 2013 (Revised 12 March 2014), except where varied by the conditions of this consent.

[GEN0005]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

4. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[GEN0190]

5. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

6. The owner is to ensure that the proposed buildings are constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

7. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
8. Water and electricity services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
9. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.
10. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
11. The proposed development shall be constructed entirely of non-combustible materials.
12. Landscaping of the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.  
[GENNS01]
13. The plans hereby approve do not include the car parking area in association with DA13/0221.  
[GENNS02]
14. The storage sheds are to be used for the purposes of the storage of boats only.
15. The development shall not include boat washing facilities or the like without the approval of the General Manager or delegate officer.  
[GENNS03]
16. The approved development shall not result in any clearing of native vegetation without prior approval from Council's General Manager or delegate.
17. The applicant shall establish and appropriately maintain in perpetuity the 'Ecological Setback/Buffer Zone' for conservation purposes as shown on the marked up plan being *Sheet 1 of 3 Ref. G2853 Proposed Storage Sheds Chinderah Bay Road Chinderah dated 12 March 2014 prepared by Gavin Duffie in Amended Plan of Management Land Zoned 7(a) Proposed Open Storage Sheds Chinderah Bay Road Chinderah dated March 2014 prepared by Darryl Anderson Consulting*. The following activities are not permitted within the 'Ecological Setback/Buffer Zone' unless otherwise approved by Council's General Manager or delegate.
  - a. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this approval;
  - b. Erection of any fixtures or improvements, including buildings or structures;
  - c. Construction of any trails or paths;
  - d. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area.
18. No vegetation shall be disturbed during construction of any future fence-line on the common boundary between the subject site and Lot 19 in DP833570 within

the nominated Ecological Setback/Buffer Zone without prior approval by Council's General Manager or delegate.

[GENNS04]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

19. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for **SUBDIVISION WORKS OR BUILDING WORKS** shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

20. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan of landscaping shall include details of proposed planting within the southwest corner of the site, buffering the visual impact of the structures and contents of the storage units from Chinderah Bay Drive and within the verge and will include species of varying heights (trees, shrubs, groundcovers) to provide visual interest and assist in the screening of the development. Landscaping shall be carried out in accordance with the approved details and shall thereafter be retained as such.

[PCC0585]

21. Design detail shall be provided to address the flood compatibility of the proposed structures including the following specific matters:

- (a) All building materials used below Council's design flood level must not be susceptible to water damage;
- (b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (c) A certificate of structural adequacy with regard to stability of the structures as a result of flooding has been submitted to Council by a suitably qualified structural / civil engineer.

[PCC0705]

22. Fencing detail is to be provided detailing a form that will either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of floodwater or debris.

[PCC0725]

23. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

24. A construction certificate application for works that involve any of the following:

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for subdivision works, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

25. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

26. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management

system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

27. Prior to the issue of a construction certificate, the applicant is to submit to Council a detailed Flood Management Plan (FMP). This FMP is to include details of how the site and storage units (including storage goods) will be managed in the event of a flood. The FMP will also include details of how potential customers are to be advised that the site is flood prone and that the storage area is susceptible to flooding.

[PCCNS01]

28. Prior to the issue of a construction certificate the applicant is to submit to Council details (including scaled plans and elevations) of all proposed fencing, gates and integrated landscaping for approval.

[PCCNS01]

29. A landscaping plan shall be submitted and approved by Council's General Manager or delegate prior to the issue of a construction certificate for the nominated Ecological Setback/Buffer Zone. The landscaping plan shall detail the following:

- a. Planting of appropriate local native species at an average density of one (1) plant per square metre;
- b. Environmental weed control works;
- c. Installation of bollards along the length of the western outermost boundary of the Ecological Setback/Buffer Zone. Bollards shall be shown spaced at 1.5metre centres of approximately 150mm diameter, of durable timber or galvanised steel to extend 0.6m above natural ground level;
- d. Ensure plantings comply with the principles of Appendix 5 of *Planning for Bush Fire Protection 2006*;
- e. Indicate an establishment period of six (6) months.

[PCCNS02]

30. Prior to the issue of a construction certificate the applicant is to submit details (including a scaled plan, materials and wording) of proposed advertising signage for approval. The signage is not to be internally or externally illuminated.

[PCCNS02]

#### **PRIOR TO COMMENCEMENT OF WORK**

31. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and



- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
32. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
33. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- [PCW0255]
34. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated

prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

35. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

36. Temporary tree protection fencing shall be erected prior to commencement of any works along the western outermost boundary of the nominated Ecological Setback/Buffer Zone. Access within the tree protection zone shall be restricted (except where required to remove material/debris pursuant to conditions of this consent) and clear signage shall be attached to the tree protection fence indicating that vegetation is to be retained and protected. Temporary tree protection fencing shall meet the specifications detailed in the *Australian Standard AS 4970-2009 Protection of trees on development sites*.

[PCWNS01]

## DURING CONSTRUCTION

37. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved construction certificate, drawings and specifications.

[DUR0005]

38. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

39. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

40. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made). [DUR0375]
41. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0395]
42. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0405]
43. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011. [DUR0415]
44. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.
- Please note timber retaining walls are not permitted. [DUR0835]
45. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate. [DUR0985]
46. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
  - Dust during filling operations and also from construction vehicles.
  - Material removed from the site by wind.
- [DUR1005]
47. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works. [DUR1075]
48. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

49. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

50. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

51. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

52. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

53. Any debris, and/or building materials shall be removed from the nominated Ecological Setback/Buffer Zone prior to landscape works commencing.

54. Tree protection fencing shall be erected and kept in a sound and functional condition for the duration of the construction period unless otherwise approved by Council's General Manager or delegate.

55. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[DURNS01]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

56. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

57. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

[POC0355]

**58. Section 94 Contributions**

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

These charges include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- |   |                        |
|---|------------------------|
| <p>(a) Tweed Road Contribution Plan:<br/>                 13.8 Trips @ \$1176 per Trips<br/>                 (\$1,137 base rate + \$39 indexation)<br/>                 (\$6,492 subtracted from total for commercial job creating developments)<br/>                 S94 Plan No. 4<br/>                 Sector6_4</p> | <p><b>\$9,737</b></p>  |
| <p>(b) Extensions to Council Administration Offices<br/>                 &amp; Technical Support Facilities<br/>                 0.20499 ET @ \$1860.31 per ET<br/>                 (\$1,759.90 base rate + \$100.41 indexation)<br/>                 S94 Plan No. 18</p>   | <p><b>\$381.34</b></p> |

[POC0395]

**59. The 3m wide aisle located between the southern boundary of the site and open storage sheds numbered 34 to 51 is to be clearly signed 'one way traffic only' prior to issue of the Occupation Certificate.**

[POCNS01]

**60. All landscaping work is to be completed and established in accordance with the approved plans prior to the issue of a final occupation certificate.**

[POCNS01]

**USE**

**61. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.**

[USE0125]

**62. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is**

minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

63. Hours of operation of the business are restricted to the following hours:

\* 6am to 9pm - Seven days per week.

[USE0185]

64. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

65. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

66. Boats shall not be stored on cradles or dry stacked within the storage facility.

[USE0251]

### 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.

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