



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr G Bagnall

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

# Agenda

## **Planning Committee Meeting Thursday 4 December 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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## Items for Consideration of Council:

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## 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 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
- 

### CODE OF MEETING PRACTICE:

#### **Section 2.8 Outstanding Resolutions**

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

### PLANNING COMMITTEE - 1 MAY 2014

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

P 48

Cr W Polglase  
Cr P Youngblutt

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

**Current Status:** A Councillors Workshop has been held on 22 May 2014. John Fraser, Project Manager at BP, confirmed on 22 September that the additional studies requested are close to being finalised for submitting, and BP's Lawyers are working toward negotiation on the Cost Agreement relating to the planning proposal. Additional information was received by Council on 2 October 2014. Council officers are currently reviewing this information, and are aiming to submit a report back to the Planning Committee meeting early in 2015.

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## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

SUBMITTED BY: Development Assessment

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## Caring for the Environment

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

A report was submitted on this matter to 6 November 2014 Planning Committee Meeting and included the following 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. Receives and notes the progress of the owner's response to Council's most recent Clean-Up Notice; and***
  - 2. The Council decision of 7 August 2014 to take Class 5 proceedings in the NSW Land and Environment Court against the site owner be discontinued."***

Council resolved at that meeting the following:

***"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. This item be deferred to 4 December 2014 Planning Committee meeting with an update on compliance activity on the site."***

This report provides additional information that the officers have compiled since the last meeting.

In respect of the recommendation that Council discontinue Class 5 proceedings in the Land and Environment Court against the site owner, the officers were requested by the Councillors to provide a response to a series of questions posed in a legal opinion received from Council's solicitors. The officers' response to these questions is provided in a confidential attachment to this report. On the basis of this additional information, it is recommended that Council determines whether or not to proceed with the Class 5 proceedings against the owners.

In respect of the site owners' response to the Clean-Up Notice issued by Council, there have been a number of delays in completing the required works created by a range of factors, including periods of wet weather, as well as the owners' failure at various stages to commit sufficient resources and expertise, and to meet agreed timelines for completing the works. Council officers are continuing to work with the owners to satisfactorily adhere to the Notice.

Council officers have also been pro-active in seeking the assistance of relevant State Government agencies, such as the Office of Environment and Heritage, Crown Lands, the Environment Protection Authority and the Office of Water in responding to further complaints received from members of the public regarding the adequacy of the recently completed remediation works on the Crown Reserve which runs through the subject property, and sedimentation erosion controls on other parts, in response to another incident of sediment run-off from the site into the adjoining Hopping Dicks Creek. These impacts are the subject of a further investigation to be carried out by Crown Lands and the Soil Conservation Service.

On a broader level, the recent compliance issues generated by works on the subject site and an adjoining property, No. 239 Zara Road, Chillingham, have highlighted the need for a more coordinated approach among multiple State agencies and Council to complaints from the public for unauthorised works in rural and outlying areas. In this regard, Council's General Manager has written to the Regional Manager of the North-East Region, NSW Office of Environment and Heritage requesting that he coordinate a meeting to discuss these issues with the relevant parties.

**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. Receives and notes the progress of the owner's response to Council's most recent Clean-Up Notice; and**
  - 2. Determines whether or not to continue with Class 5 proceedings in the NSW Land and Environment Court against the site owner.**

**REPORT:**

Previous Council Resolutions

At its meeting of 7 August 2014 Planning Committee Meeting, Council resolved the following:

- "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."**

A further report was submitted on this matter to 6 November 2014 Planning Committee Meeting and included the following 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. Receives and notes the progress of the owner's response to Council's most recent Clean-Up Notice; and**
  - 2. The Council decision of 7 August 2014 to take Class 5 proceedings in the NSW Land and Environment Court against the site owner be discontinued."**

Council resolved at that meeting the following:

***"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. This item be deferred to 4 December 2014 Planning Committee meeting with an update on compliance activity on the site."**

#### Further Update

In respect of the recommendation that Council discontinue Class 5 proceedings in the Land and Environment Court against the site owner, the officers were requested by the Councillors to provide a response to a series of questions posed in a legal opinion received from Council's solicitors. The officers' response to these questions is provided in a confidential attachment to this report. On the basis of this additional information, it is recommended that Council determines whether or not to proceed with the Class 5 proceedings against the owners.

In respect of the site owners' response to the Clean-Up Notice issued by Council, there have been a number of delays in completing the required works created by a range of factors, including periods of wet weather, as well as the owners' failure at various stages to commit sufficient resources and expertise, and to meet agreed timelines for completing the works. Council officers are continuing to work with the owners to satisfactorily adhere to the Notice.

When clean-up works are completed final certification of the works will be required by NSW Soil Conservation Services.

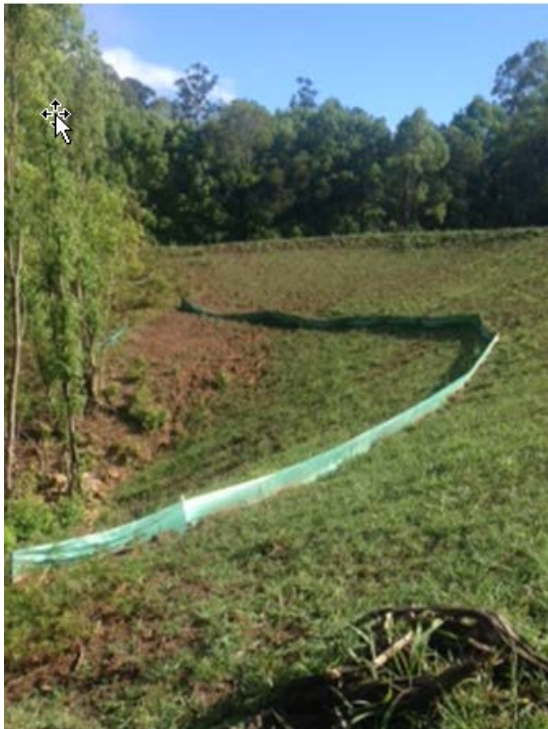
Council officers have also been pro-active in seeking the assistance of relevant State Government agencies, such as the Office of Environment and Heritage, Crown Lands, the Environment Protection Authority and the Office of Water in responding to further complaints received from members of the public regarding the adequacy of the recently completed remediation works on the Crown Reserve which runs through the subject property, and sedimentation erosion controls on other parts, in response to another incident of sediment run-off from the site into the adjoining Hopping Dicks Creek. These impacts are the subject of a further investigation to be carried out by Crown Lands and the Soil Conservation Service.

A summary of recent site inspections is summarised below.

- Site inspection undertaken with the Office of Water on 7 November 2014 to ensure adequate protective measure were being utilised during clean-up activities as part of the Clean-Up Notice. The Office of Water advised that they considered the protective measure being utilised to be satisfactory. The inspection also revealed that sediment and erosion control located on Lots 127 DP755724 and the Crown Road reserve were not being maintained in a satisfactory condition. The site owners were requested to undertake maintenance works to ensure their

ongoing effectiveness. Subsequent to the request to maintain existing control this work had been completed by the site owner.

- Site Inspection undertaken on 20 November 2014 by Council Officers in response to the rain event on the evening of 19 November 2014. Approximately 32mm of rain was received during the rain event. The inspection revealed that there were no visual evidence of sediments having been deposited within Hopping Dicks Creek as a result of the rain event. The existing sediment and erosion controls were observed to be maintained in a good condition. No new sediments were observed to be deposited with areas previously cleaned as part of the Clean-Up Notice. Photos provided below.

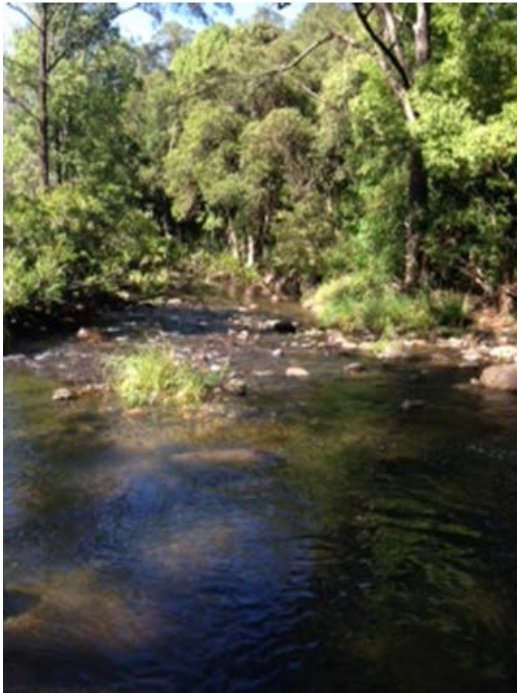


**Photograph 1 - Existing sediment and erosion controls maintained. Build up of sediments from previous rain event have been removed. Significant grass cover has established on previously exposed batters.**





**Photograph 2 - Hopping Dicks Creek upstream. No visual sediments**



**Photograph 3 - Hopping Dicks Creek downstream. No visual sediments**



**Photograph 4 - Areas previously cleaned on Lot 127 showed no new deposition of sediments**



**Photograph 5 - Areas previously cleaned on adjacent property showed no new deposition of sediment**

On a broader level, the recent compliance issues generated by works on the subject site and an adjoining property, No. 239 Zara Road, Chillingham, have highlighted the need for a more coordinated approach among multiple State agencies and Council to complaints from the public for unauthorised works in rural and outlying areas. In this regard, Council's General Manager has written to the Regional Manager of the North-East Region, NSW Office of Environment and Heritage requesting that he coordinate a meeting to discuss these issues with the relevant parties.

**OPTIONS:**

Option 1

That Council resolves to continue with Class 5 proceedings in the NSW Land and Environment Court against the site owner.

Option 2

That Council resolves to discontinue with Class 5 proceedings in the NSW Land and Environment Court against the site owner.

Council's determination of these Options is sought.

**CONCLUSION:**

Council officers have been pro-active in the monitoring and liaison with the site owner and various government agencies in seeking to complete remediation works required under a Clean-Up Notice, and to maintain sediment erosion control measures across the site. Council's determination is now sought as to whether or not to continue with Class 5 proceedings in the NSW Land and Environment Court against the site owner.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Further costs will be incurred for any legal proceedings.

**c. Legal:**

In respect of the previous recommendation that Council discontinue Class 5 proceedings in the Land and Environment Court against the site owner, the officers were requested by the Councillors to provide a response to a series of questions posed in a legal opinion received from Council's solicitors. The officers' response to these questions is provided in a confidential attachment to this report. On the basis of this additional information, it is recommended that Council determines whether or not to proceed with the Class 5 proceedings against the owners.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Confidential Attachment a copy of the officers' response to series of questions contained within the legal advice provided by Marsdens solicitors dated 16 October 2014 (ECM 3523087)

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**3 [PR-PC] Alleged Unauthorised Works at Lot 301 DP 1053375 and Lot 2 DP 1190805 No. 239 Zara Road, Chillingham**

**SUBMITTED BY: Building and Environmental Health**

Valid



## 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:

On the basis of a complaint received from an adjoining owner regarding alleged logging, unauthorised works and alleged pollution incidents from the subject site, Council officers have conducted a series of investigations. A site inspection undertaken on 14 November 2014 revealed the works primarily involved vegetation removal and earth movement, on part Lot 301 DP 1053375 and Lot 2 DP 1190805 (the subject site), as part of a road construction. The subject site has an approved Private Forestry Agreement (PFA) issued by the NSW Environmental Protection Authority (EPA). The inspection focused on the north-east corner of the site, fronting Zara Road, for which the EPA has advised does not form part of the PFA area.

Consultation with multiple NSW State Government Agencies has been undertaken as a variety of aspects and legislative triggers were identified during the investigation. A summary of the individual aspect under investigation are summarised below.

**Land Clearing Activity** - There have been recent works undertaken to clear approximately 100m x 10m of vegetation within the subject site for an internal access road. The EPA has advised that the works do not fall within the PFA. The EPA further advised that the NSW Office of Environment and Heritage (OEH) is the Appropriate Regulatory Authority (ARA) for land clearing activities outside of a PFA under the Native Vegetation Act 2003. The OEH was notified of the incident on 17 November 2014. A response from OEH was received on 19 November 2014 and is detailed below.

*"Taking into account the scale of the clearing and that much of it could be claimed as a "routine agricultural management activity" (RAMA) under the Native Vegetation Act (for the purpose of constructing an internal access track) we do not propose to undertake further investigations at this time."*

The land clearing activity also presents a potential for water pollution and the site owner was requested to install appropriate sediment and erosion controls. The site owner remains cooperative and the works to install sediment and erosion controls have commenced. Council officers propose to undertake further inspections to ensure works are completed in appropriate timeframes.

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The land clearing activity does not require development consent under the Environmental Planning and Assessment Act 1979 as the activity has been undertaken as a RAMA under the Native Vegetation Act 2003.

**General Property Maintenance** - The site inspection undertaken on 14 November 2014 revealed that there is a land management issue relating to the adjacent water course that flows towards Jackson Creek. The land appears to have been heavily grazed in areas and erosion channels have formed. The land owner was requested to install sediment and erosion controls to ensure the potential for water pollution is minimised. The site owner remains cooperative and the works to install sediment and erosion controls have commenced. Council officers propose to undertake further inspections to ensure works are completed in appropriate timeframes.

The land owner is currently working with the NSW Office of Water (OW) to address issues relating to an old road culvert in the adjacent water course. The road was washed away during the 2012 floods and the OW required rectification works to be undertaken. Council officers contacted OW and they confirmed on 19 November 2014 that they will continue carriage of the issue.

**Alleged Logging** - The subject site has an approved PFA granted by the EPA. The EPA is the ARA relating to this matter. The EPA was advised of alleged logging concerns on 10 November 2014 and subsequently undertook a compliance inspection on 12 November 2014. The EPA has advised they will provide Council Officers with a written summary of their investigation when available.

The purpose of this report is to inform and update Council on the compliance actions taken by Council officers to date.

## **RECOMMENDATION:**

**That:**

- 1. Council receives and notes this report on the alleged unauthorised works on the site and the rectification actions being taken by the site owner at Lot 301 DP 1053375 and Lot 2 DP1190805 No. 239 Zara Road, Chillingham; and**
- 2. A further updated report on the progress of these be submitted to 5 February 2015 Planning Committee Meeting.**

## **REPORT:**

### **Description of the Subject Site**

The subject site comprises two allotments, known as Lot 301 DP1053375 and Lot 2 DP1190805. The site is accessed from Zara Road.

The site is predominantly rural in its use and character, with a combination of large stands of vegetation, and cleared areas currently used for cattle grazing and other agricultural activities. The topography varies from more gently undulating, to steeper, hill forms, with various frontages to a water course that flows to Jacksons Creek.

The site is generally surrounded by rural holdings, rural residential and agricultural uses.

### **Zoning of the Site**

Tweed Local Environmental Plan 2014 was recently gazetted and took effect on 4 April 2014. Under the plan, part of the former 1(a) Rural zoned land under Tweed Local Environmental Plan (TLEP) 2000 has been rezoned to RU2 Rural Landscape.



**SITE DIAGRAM:**



**Locality Plan**

Lot 301 DP 1053375 and Lot 2 DP 1190805  
No. 239 Zara Road, Chillingham

<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 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 1300. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p>Cadastral: 23 November, 2014 © Land and Property Information (LPI) &amp; Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km 1:100,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Horizontal Datum: Geoid Datum of Australia 1994 Grid: Map Grid of Australia, Zone 55</p> <p>GDA</p>	<p><b>Civic and Cultural Centre</b> 3 Turbulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T   (02) 6670 2400   1300 282 872 F   (02) 6670 2429 W   www.tweed.nsw.gov.au E   planning@tweed.nsw.gov.au</p>	 <p><b>TWEED</b> SHIRE COUNCIL</p>
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## Summary of Complaints and Council Response

On the basis of a complaint received from an adjoining owner regarding alleged logging, unauthorised works and alleged pollution incidents from the subject site, Council officers have conducted a series of investigations. A site inspection undertaken on 14 November 2014 revealed the works primarily involved vegetation removal and earth movement, on part Lot 301 DP 1053375 and Lot 2 DP 1190805 (the subject site), as part of an internal access road construction. The subject site has an approved PFA issued by the NSW EPA. The inspection focused on the north-east corner of the site, fronting Zara Road, for which the EPA has advised does not form part of the PFA area.

Consultation with multiple NSW State Government Agencies has been undertaken as a variety of aspects and legislative triggers were identified during the investigation. A summary of the individual aspect under investigation are summarised below.

**Land Clearing** - There have been recent works undertaken to clear approximately 100m x 10m of vegetation within Lot 301 DP 1053375 for an internal access road (Photo 1).



Photo 1 - Approximately 100m of regrowth vegetation has been cleared.

The EPA has advised that the works do not fall within the PFA. The EPA further advised that the OEH is the ARA for land clearing activities outside of a PFA under the Native Vegetation Act 2003. The OEH was notified of the incident on 17 November 2014. A response from OEH was received on 19 November 2014 and is detailed below.

*"Taking into account the scale of the clearing and that much of it could be claimed as a "routine agricultural management activity" (RAMA) under the Native Vegetation Act (for the purpose of constructing an internal access track) we do not propose to undertake further investigations at this time."*

The land clearing activity also presents a potential for water pollution and the site owner was requested to install appropriate sediment and erosion controls. The site owner remains cooperative and the works to install sediment and erosion controls have commenced. Council officers propose to undertake further inspections to ensure works are completed in appropriate timeframes.

The land clearing activity does not require development consent under the Environmental Planning and Assessment Act 1979 as the activity has been undertaken as RAMA under the Native Vegetation Act 2003.



**General Property Maintenance** - The site inspection undertaken on 14 November 2014 revealed that there is a land management issue relating to the adjacent water course that flows towards Jackson Creek. The land appears to have been heavily grazed in areas and erosion channels have formed (Photo 2). The land owner was requested to install sediment and erosion controls to ensure the potential for water pollution is minimised. The site owner remains cooperative and the works to install sediment and erosion controls have commenced. Council officers propose to undertake further inspections to ensure works are completed in appropriate timeframes.



Photo 2 - Drainage line adjacent to water course that improved sediment and erosion control practices were identified to be established.

The land owner is currently working with OW to address issues relating to an old road culvert in the adjacent water course. The road was washed away during the 2012 floods and OW required rectification works to be undertaken. Council officers have contacted OW and they confirmed on 19 November 2014 that they will continue carriage of the issue.

**Alleged Logging** - The subject site has an approved PFA granted by the EPA. The EPA is the ARA relating to this matter. The EPA was advised of alleged logging concerns on Monday 10 November 2014 and subsequently undertook a compliance inspection on 12 November 2014. The EPA has advised they will provide Council officers with a written summary of their investigation when available.

In terms of the recent works the site owner has been cooperative with Council and various government agencies and has commenced works to mitigate any potential water pollution. No enforcement action is recommended at this stage whilst the site owner continues to cooperate with the relevant compliance authorities. In the event that cooperation is no

longer forthcoming from the site owner, the following enforcement actions are available to Council.

- **Prevention Notice** issued under the Protection of the Environment Operations Act 1997 requiring the site owner to undertake preventative measures to ensure activities are carried out in an environmentally satisfactory manner. The Administration Fee for this Notice is \$492; or
- **Penalty Infringement Notice** issued under the Protection of the Environment Operations Act 1997 where an incident or set of circumstances is likely to result in water pollution. The current individual penalty is \$4000 (recently increased by the State Government).

The land clearing activity does not require development consent under the Environmental Planning and Assessment Act 1979 as the activity has been undertaken as a RAMA under the Native Vegetation Act 2003. Therefore a Penalty Infringement Notice or Class 4 and 5 proceedings under the Environmental Planning and Assessment Act 1979 are not available.

#### **OPTIONS:**

##### Option 1

1. Council receives and notes this report on the alleged unauthorised works on the site and the rectification actions being taken by the site owner at Lot 301 DP 1053375 and Lot 2 DP1190805 No. 239 Zara Road, Chillingham; and
2. A further updated report on the progress of these be submitted to 5 February 2015 Planning Committee Meeting.

##### Option 2

Council determines an alternative compliance and enforcement action.

#### **CONCLUSION:**

To date the site owner has been cooperative with Council and relevant government agencies and has commenced works to mitigate any potential water pollution. No enforcement action is recommended whilst cooperation is still forthcoming.

A further updated report will be submitted to the next Planning Committee Meeting.

#### **COUNCIL IMPLICATIONS:**

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

Corporate Policy Not Applicable

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

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

**c. Legal:**

Compliance action may be required to be undertaken in the Land and Environment Court in respect to Pollution of Water under the POEO Act 1987.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**4 [PR-PC] Illegal Earthworks - 137 Adcocks Road, Stokers Siding**

**SUBMITTED BY: Development Assessment and Compliance**

Valid



## **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:**

Council has received a number of complaints regarding extensive earthworks being undertaken to facilitate the establishment of the motocross track on land situated at No. 137 Adcocks Road, Stokers Siding.

The owner's son was interviewed on 24 April 2014 regarding the works and he advised that he was building the motocross track for his own use. When advised that he required Council approval, he stated a friend in the earthmoving industry informed him that given he was not importing soil to the site he did not require Council approval.

Correspondence was forwarded to the owner's son advising the earthworks and proposed land use (given its scale) are unlawful. To date the owner's son has not lodged an application for the earthworks works and the use or ceased the use and reinstated the site to its natural form. Furthermore, there is substantial concern in the surrounding community regarding the works undertaken, the potential expansion in the scale and size of the use and the owners no compliance with Council's requirements.

Given that the owner's son has not complied with Council's requirements, it is recommended that legal action be initiated to rectify the unlawful earth works and land use.

### **RECOMMENDATION:**

**That:**

- 1. ATTACHMENTS 1-5 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because they contain:-  
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Council, in respect of the unlawful earthworks and land use at Lot 3 DP584908 No. 137 Adcocks Road, Stokers Siding endorses the following:**

- 1. Engages its solicitors to enforce compliance by reinstating the site to its natural form and restoring the lawful use.**

## REPORT:

Council has received a number of complaints regarding extensive earthworks being undertaken to facilitate the establishment of the motocross track on land situated at No. 137 Adcocks Road, Stokers Siding.

The complaints were investigated on 24 April 2014, the site inspection revealed that extensive earthworks had been undertaken (See Confidential Attachment 1). At the time of the site inspection, the owner's son was present and when questioned he stated that he was building the motocross track for his own use. When advised that he required Council approval, he stated a friend in the earthmoving industry advised him that given he was not importing soil to the site he didn't require Council approval.

A search of Council's records revealed that there was no approval for the earthworks. Given the scale of the works and the owner's son intent to construct a motocross track, it was considered that such also triggers the requirement for a land use approval. In accordance with the Tweed Local Environmental Plan 2014 the site is included in the RU2 Rural Landscape Zone and *Recreation facilities is Permitted with consent.*

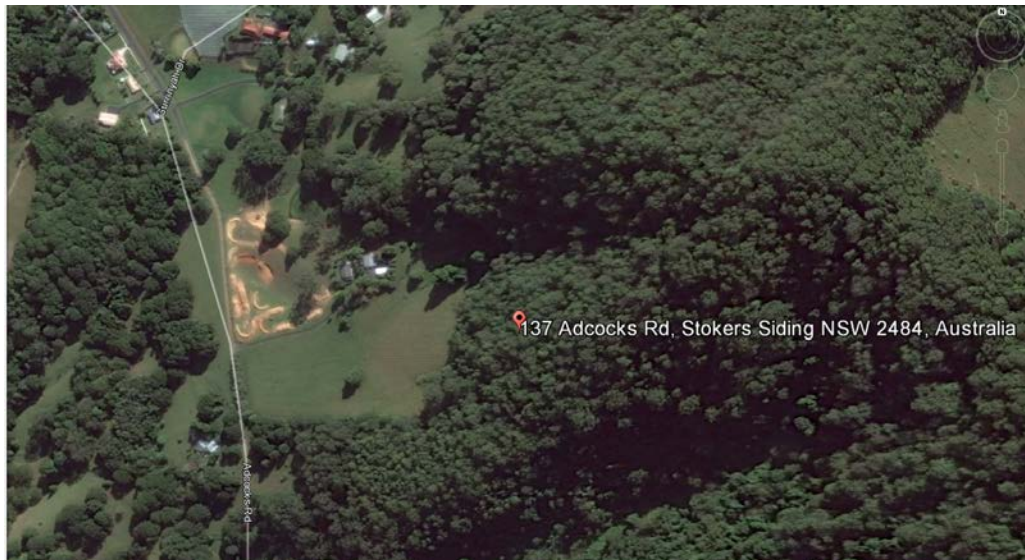
Correspondence was forwarded to the owner's son on 29 April 2014 (See Confidential Attachment 2) and 25 July 2014 (See Confidential Attachment 3) regarding the unlawful earthworks and land use. An email response from the owner's son was received on 29 August 2014 stating the following:

*"Thankyou for your letter dated 29 April 2014 and 25 July 2014. As you are aware the subject land is zoned RU2 Rural landscape zone. The land is used for agricultural purposes being cattle rearing, dwelling house, infrastructure and internal access roads.*

*I have still not had time to seek legal advice but this should answer your questions."*

Further correspondence was issued on 9 September 2014 (See Confidential Attachment 4) advising the owner's son that his email response received on 29 August 2014 did not satisfactorily address the matters raised in Council's correspondence of 29 April 2014 & 25 July 2014. Accordingly, he was directed to reinstate the site to its original form prior to the unlawful earthworks being undertaken.

Below is an image from Google earth - Imagery Date 14/6/2014 which clearly indicates the extent of works undertaken by the owner's son.



To ensure the matter was promptly addressed, he was also requested to confirm in writing by 8 September 2014 that he would be undertaking the works and the timeframe for the works to be completed. To date Council has not received a written response.

During a telephone conversation with the owner's son on 11 September 2014 he advised that he had no intention of lodging an application for the unlawful earthworks works and land use or to reinstate the site to its natural form.

Ongoing calls have been received from local residents in the area regarding this matter. Their concerns relate to the works undertaken to date, the potential expansion in the scale and size of this activity and the owners no compliance with Council's requirements.

An inspection of the site on 10 November 2014 revealed the site has not been reinstated to its natural form (See Confidential Attachment 5).

#### **OPTIONS:**

That Council:

1. Supports the recommended engagement of solicitors to enforce compliance by reinstating the site to its natural form and to restore the unlawful use.
2. Not support the recommended engagement of solicitors to enforce compliance by reinstating the site to its natural state.

The officers recommend Option 1

#### **CONCLUSION:**

Council has received a number of complaints regarding illegal earthworks being undertaken at 137 Adcocks Road, Stokers Siding. To date the owner's son has not sought the required approvals or reinstated the site to its natural form. Furthermore, there is substantial concern in the surrounding community regarding the works undertaken, the potential expansion in the scale and size of the use and the owners no compliance with Council's requirements.



It is recommended that legal action be initiated to rectify the unlawful earthworks and land use.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Legal costs to carryout enforcement action

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Confidential Attachment Site inspection 24 April 2014 (ECM 3519674)

*(Confidential)* Attachment 2. Confidential Attachment Correspondence to Mr & Mrs Larsen dated 29 April 2014 (ECM 3519675)

*(Confidential)* Attachment 3. Confidential Attachment Correspondence to Mr H Larsen dated 25 July 2014 (ECM 3519676)

*(Confidential)* Attachment 4. Confidential Attachment Correspondence to Mr J Larsen dated 9 September 2014 (ECM 3519677)

*(Confidential)* Attachment 5. Confidential Attachment Site inspection 10 November 2014 (ECM 3519678)

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**5 [PR-PC] Development Application DA13/0446 for Four Tourist Cabins at Lot 2 DP 628210 Tyalgum Road, Eungella**

**SUBMITTED BY: Development Assessment and Compliance**

**FILE REFERENCE: DA13/0446 Pt1**

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

Council is in receipt of a development application for a tourist accommodation development comprising four tourist cabins (each 10m x 4m). The cabins were purchased from the Tweed Shire Council and are currently located on the allotment for storage purposes but are not connected to any services.

The development was originally lodged over two lots being Lot 2 in DP 535854 and Lot 2 in DP 628210. However an amendment to the application has resulted in all four cabins now being located on Lot 2 in DP 628210. This site is located on the southern side of Tyalgum Road and is 52.85ha in size. The site currently accommodates a house, a shed, grazing area and vegetation. The cabins are proposed to be located in the south western corner of the site. Access to the cabins is proposed off the existing driveway access utilised by the house.

The proposed cabins are permissible with consent and satisfy all the applicable planning provisions which apply to tourist development. The application is being reported to Council as the applicant has undertaken vegetation clearing and earthworks on the site in preparation of accommodating the proposed cabins without first obtaining development consent. Council has received objections to this application having regard to the fact that works have already started on site. This report details the nature of the works undertaken and Council's statutory ability to resolve these matters.

The subject site is located within the 1(a) zoned land under the Tweed Local Environmental Plan 2000. It should be noted that this application was submitted prior to Tweed LEP 2014 coming into force and prior to Council's Development Control Plan A16 - Preservation of Trees coming into force. Furthermore the vegetation clearing and earthworks were also undertaken prior to the Tweed LEP 2014 coming in to force. Therefore the DA itself and the vegetation clearing works and earthworks must be assessed principally having regard to the Tweed LEP 2000 and the Native Vegetation Act 2003 where applicable.

Council's Natural Resource Management Unit has reviewed the application and the vegetation clearing and earthworks. It appears that approximately 2000m<sup>2</sup> of vegetation has

been cleared in total. This vegetation is a possible Lowland Rainforest Endangered Ecological Community. The applicant's bushfire report seems to confirm that the vegetation category is rainforest.

Vegetation clearing for agricultural purposes on 1(a) Rural land where no Tree Preservation Order exists is permissible without consent subject to compliance with the Native Vegetation Act 2003 and the Threatened Species Conservation Act 1995. However, it appears that the vegetation has been removed solely to accommodate the proposed cabins and the necessary bushfire asset protection zones and not for any routine agricultural purposes.

Therefore the vegetation clearing works and earthworks which have occurred on this site prior to this Development Application being determined are considered unlawful.

Council staff recommend to rectify these unauthorised works that any approval given for the proposed cabins is conditioned to incorporate comprehensive rehabilitation (replacement ratio of 3:1) as recommended by Council's Natural Resource Management Unit.

Council Officers also recommend issuing the applicant with a Penalty Infringement Notice for the unauthorised vegetation removal and earthworks.

In addition, Council Officer's recommend that the applicant be required to pay all applicable developer contributions (\$41,490) prior to issue of a construction certificate rather than the normal occupation certificate given works were unlawfully commenced.

On these grounds the application is recommended for conditional approval in a deferred commencement manner to ensure Council receives a Rehabilitation Plan within three months on any consent being issued and failure to submit the Rehabilitation Plan will result in the tourist approval lapsing. If the applicant does not proceed with the development it is proposed by Recommendation B to liaise with the NSW Office of Environment & Heritage to pursue a rehabilitation plan outside of the Council and DA process for illegal clearing of possible Lowland Rainforest Endangered Ecological Community.

Please note that in addition to Recommendation A which proposes to approve the application with conditions, there are two additional Recommendations to cover the scenarios for compliance action. If the consent is acted upon, Recommendation B ensures a PIN is issued as discussed above. If the consent is not acted upon, Recommendation C allows Council to pursue the unauthorised works through the legal system. The reason for this approach is that if Council issues a PIN now, no further prosecution/rehabilitation can occur as a PIN prevents further legal action.

## **RECOMMENDATION:**

**That:**

- A. Development Application DA13/0446 for four tourist cabins at Lot 2 DP 628210 Tyalgum Road, Eungella be approved subject to the following conditions:**

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 3 months of the date of notification.**

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

**SCHEDULE "A"**

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

- A. A Habitat Restoration Plan (HRP) shall be prepared for the 'Rehabilitation Area' shown on Habitat Restoration Areas Plan- DA13/0446 Lot 2 DP535854 & Lot 2 DP628210 and lodged with Council for approval. The HRP shall be prepared generally in accordance with the Tweed Shire Council's Draft Habitat Restoration Plan Guideline by a person qualified in Bushland Regeneration or Ecological Restoration and with knowledge and experience in local vegetation communities. The HRP shall include:
- a) an appraisal of the present condition of the restoration area;
  - b) a plan overlaying an aerial photograph of the site which divides the area into zones for assisted natural regeneration and zones for revegetation, including connections between existing vegetation where appropriate;
  - c) a management strategy for each of the zones, including the approach, methods and techniques to be used for successful habitat restoration;
  - d) any soil improvement requirements and re-profiling;
  - e) a schedule of local native plant species to be used for planting;
  - f) a program of works to be undertaken to remove invasive weed species;
  - g) details of fauna friendly fencing, management measures to restrict domestic and/or livestock from the rehabilitation area;
  - h) a schedule of timing of proposed works specifically stating that rehabilitation will commence prior to issue of a Construction Certificate;
  - i) a schedule of performance indicators necessary to achieve site capture;
  - j) a maintenance, monitoring and reporting schedule with developer commitment for a period not less than five years; and
  - k) an adaptive management statement detailing how potential problems arising may be overcome and requirement for approval of the General Manager or delegate for such changes.

## **SCHEDULE B**

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

### **GENERAL**

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

- **No. 20260 Sheet 1 of 1 Location Plan dated 22 July 2014 prepared by B&P Surveys;**
- **Plan No. 2 of 3 dated 12/11/2014**
- **Plan No. 3 of 3 dated 12/11/2014**

**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. All trees identified on the Dwg. No. 20260 Sheet 1 of 1 Location Plan dated 22 July 2014 prepared by B&P Surveys shall be retained and protected for the life of development.**

[GENNS02]

**4. The area described as 'Rehabilitation Area' shall be afforded long term protection and managed as a natural area. The following activities shall not be permitted in the 'Rehabilitation Area' for the life of the development:**

- a) **Clearing, lopping or removal of any native plants, whether existing at the date of this approval, naturally recruited or planted pursuant to conditions of this consent.**
- 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 rehabilitation area;**
- e) **Keeping or permitting the entry of domestic animals, livestock or any other animals that are not indigenous to the rehabilitation area.**
- f) **Performance of any other acts which may have detrimental impact on the values of the rehabilitation area**

[GENNS03]

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**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

5. Restoration works in accordance with the approved Habitat Restoration Plan (HRP) shall be commenced prior to issue of a Construction Certificate. The restoration works shall be undertaken within the following areas of the site as shown on the marked up plan titled Habitat Restoration Areas Plan-DA13/0446 Lot 2 DP535854 & Lot 2 DP628210 dated 23 October 2014 prepared by TSC (See Attachment 1):

- a) Rehabilitation Area 'A' - Approximately 3000m<sup>2</sup> (Within Lot 2 DP628210)
- b) Rehabilitation Area 'B' - Approximately 3000m<sup>2</sup> (Within Lot 2 DP535854)

These areas are to be collectively known as the 'Rehabilitation Area' for the purposes of this consent.

[PCCNS01]

6. **Section 94 Contributions**

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

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

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

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

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

- (a) Tweed Road Contribution Plan:  
7.2 Trips @ \$2344 per Trips \$16,877  
(\$2,239 base rate + \$105 indexation)  
S94 Plan No. 4  
Sector12b\_4
- (b) Shirewide Library Facilities:  
5.2 ET @ \$847 per ET \$4,404  
(\$792 base rate + \$55 indexation)  
S94 Plan No. 11

- (c) **Eviron Cemetery:**  
5.2 ET @ \$124 per ET \$645  
(\$101 base rate + \$23 indexation)  
S94 Plan No. 13
- (d) **Community Facilities (Tweed Coast - North)**  
5.2 ET @ \$1404 per ET \$7,301  
(\$1,305.60 base rate + \$98.40 indexation)  
S94 Plan No. 15
- (e) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
5.2 ET @ \$1880.38 per ET \$9,777.98  
(\$1,759.90 base rate + \$120.48 indexation)  
S94 Plan No. 18
- (f) **Cycleways:**  
5.2 ET @ \$478 per ET \$2,486  
(\$447 base rate + \$31 indexation)  
S94 Plan No. 22

[POC0395/PSC0175]

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

**Any approval to install an on-site sewage treatment and disposal system shall comply with the recommended on-site sewage treatment and disposal method as detailed in the Revised On-site Sewage Management Assessment Report (reference HMC 2014.029) prepared by HMC Pty Ltd and dated April 2014 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.**

[PCC1285]

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

8. **An application to 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**

9. **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]

- 10. 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]

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

- (a) external drainage prior to backfilling.**
- (b) completion of work and prior to occupation of the building.**

[DUR2485]

**12. 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]

- 13. 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]

- 14. 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]

15. **An On-site Sewage Management System shall be installed in accordance with an Approval to Install an On-site Sewage Management System under Section 68 of the Local Government Act 1993.**

[DUR2775]

16. **The tourist's cabins are to be provided with smoke alarms in accordance with Part 3.7.2 of the Building Code of Australia.**

[DURNS01]

17. **Each tourist cabin is to be provided with Laundry Facilities in accordance with Part 3.8.3 of the Building Code of Australia.**

[DURNS02]

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

18. **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]

19. **Prior to occupation of the tourist Cabins a certificate is to be provided from a structural engineer confirming the cabins are structural adequate and suitable for occupation.**

[POC0805]

20. **Prior to occupation or commencement of use a drinking water quality management plan or drinking water quality assurance program prepared in accordance with the Private Water Supply Guidelines, NSW Health 2008 and the Public Health Regulation 2012 shall be prepared and maintained on site. All activities shall comply with the adopted assurance program and the program shall be made available to Council's Authorised Officer upon request.**

[POC0950]

21. **Prior to occupation the applicant or business operator is to be registered in Council's Private Water Supply Register and pay the appropriate fee under Council's schedule of fees and charges.**

[POC0955]

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

[POC1035]

23. **Prior to the occupation of any building and prior to the issue of any occupation certificate approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.**

[POC1040]

24. **Primary revegetation/restoration works within the 'Rehabilitation Area' must be completed in accordance with the approved Habitat Restoration Plan (HRP) to the satisfaction of Council's General Manager or delegate prior to the issue of an occupation certificate. The maintenance of the**



**'Rehabilitation Area' thereafter shall be undertaken in accordance with approved HRP.**

[POCNS01]

- 25. Prior to occupation of the tourist cabins a Building Certificate is to be obtained from Council for the retention of the building works carried out to the cabins without council approval or inspection (works included the footings and steel stumps to place the cabins on site). A certificate from structural Engineers confirming the structural adequacy of the cabins is to accompany the application.**

[POCNS02]

## **USE**

- 26. The occupancy of the development is restricted to short-term tourist accommodation only. For the purposes of this development, short-term accommodation means temporary accommodation for holiday or tourist purposes which for any one person is restricted to a period of accommodation not exceeding 42 consecutive days with an interval of at least 14 days between occupancies and not exceeding a total of 90 days in any 12 month period.**

[USE0015]

- 27. A register is to be kept by the owner or proprietors to record sufficient details of the occupancies to confirm compliance with short-term tourist accommodation restrictions of this consent. The register shall be made available at any time for inspection by an authorised officer of Council.**

[USE0035]

- 28. 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]

- 29. 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]

- 30. Subdivision of the development, including strata subdivision, is not permitted.**

[USE1255]

- 31. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device. Minimum storage tank capacity shall be 20,000 litres for the first bedroom, then an additional 15,000 litres per bedroom thereafter and shall be in addition to any water volume requirements stipulated by the NSW Rural Fire Services. Installation, water collection, and maintenance of rainwater tanks used for drinking purposes must comply with NSW Health requirements.**

[USE1470]

32. In the event that untreated or untested water is supplied for tourist type accommodation a warning sign shall be displayed at all fixtures. Such signs shall state the source of raw water and method of treatment, if any.

[USE1475]

33. Each tourist cabin is to have a maximum occupancy of two people. The bunk beds are to be removed as per the requirements of the Revised On-site Sewage Management Assessment Report (reference HMC 2014.029).

[USENS01]

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

1. The proposed development: rural tourist facility, including four tourist cabins, has been assessed against information referred to the NSW RFS by Tweed Shire Council dated 19/9/12.

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

- The undated and untitled “part site plan” attached to the suite of information referred to the RFS from Tweed Shire Council and dated 23/5/14,
- Figures 1 and 2 of the Amended Bushfire Threat Assessment Report prepared by “Bushfire Certifiers” and dated 7/2/14,
- Amended Bushfire Threat Assessment Report prepared by “Bushfire Certifiers” and dated 7/2/14.

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

2. At the commencement of building works, and then in perpetuity, the property around the four proposed Cabins shall be managed as follows, and 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':

- East for a distance of 30 metres as an inner protection area,
- North, South and West for a distance of 25 metres as an inner protection area,
- North-west for a distance of 40 metres as an inner protection area,
- South-west for a distance of 40 metres as an inner protection area.

(Note: in forested areas a portion of the APZ may be maintained as an outer protection area as specified in Table A2.7 of 'Planning for Bush Fire Protection 2006'.)

3. In recognition that no reticulated water supply is available to the development, a total of 10,000 litres fire fighting water supply shall be provided to each cabin for fire fighting purposes. The fire fighting water supply shall be installed and maintained in the following manner:
- a) Fire fighting water supply tank(s) shall be located not less than 5 metres and not more than 20 metres from the approved structure.
  - b) A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply.
  - c) New above ground fire fighting water supply storage's are to be manufactured using non combustible material (concrete, metal, etc). Where existing fire fighting water supply storage's are constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials, they shall be shielded from the impact of radiant heat and direct flame contact.
  - d) Non combustible materials (concrete, metal, etc) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.
  - e) A 65mm metal Storz outlet with a gate or ball valve shall be fitted to any fire fighting water supply tank(s) and accessible for a fire fighting truck. The Storz outlet fitting shall not be located facing the hazard or the approved structure.
  - f) The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.
  - g) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.
  - h) Any below ground fire fighting water supply tank(s) constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials shall be shielded from the impact of radiant heat and direct flame contact.
  - i) Any fire fighting water supply tank(s) located below ground shall be clearly delineated to prevent vehicles being driven over the tank.
  - j) All water supplies for fire fighting purposes shall be clearly signposted as a fire fighting water supply.
  - k) Below ground fire fighting water supply tank(s) shall have an access hole measuring a minimum 200mm x 200mm to allow fire fighting trucks to access water direct from the tank.
  - l) Fire fighting water supply tank(s) and associated fittings, located within 60 metres of a bushfire hazard and on the hazard side of an approved building, shall be provided with radiant heat shielding to

protect the tank from bush fire impacts and maintain safe access to the water supply for fire fighters.

- m) A Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
- i. Markers must be fixed in a suitable location so as to be highly visible; and
  - ii. Markers should be positioned adjacent to the most appropriate access for the water supply.

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

4. New electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.
5. Internal roads shall comply with section 4.1.3 Access (2) Property Access Road of 'Planning for Bush Fire Protection 2006', with the following exception:
  - In lieu of either a looped road around a dwelling or a turning circle with a minimum radius of 12m, a reversing bay may be used that is 6m in width and 8m deep.
6. The existing access road, located on Lot 2 DP 535854, which provides an alternative connection from the proposed development (located on Lot 2 DP 628210) to the public road system (Hidden Valley Road) that is relied upon by the proposed development, shall be covered by an easement to ensure its ongoing legal status allowing it to be used in perpetuity.

In accordance with section 88B of the 'Conveyancing Act 1919' a restriction to the land use shall be placed upon lot 2 DP 535854, benefiting Lot 2 DP 628210, requiring the provision of this easement prior to an Occupation Certificate being issued by the Certifying Authority for the cabins to be used.

7. Arrangements for emergency and evacuation are to comply with the following requirements of section 4.2.7 of 'Planning for Bush Fire Protection 2006':
  - An Emergency/Evacuation Plan is to be prepared in accordance with the NSW Rural Fire Service Guidelines for the Preparation of Emergency/Evacuation Plan and comply with Australian Standard AS 37452010 'Planning for Emergencies in Facilities'.
  - Detailed plans of all Emergency Assembly Areas including "on site" and "off site" arrangements as stated in Australian Standard AS 37452010 'Planning for Emergencies in Facilities' are clearly displayed

in each cabin, and an annual (as a minimum) trial emergency evacuation is conducted.

- The emergency evacuation plan is to be submitted to the consent authority for approval prior to the occupation certificate being issued. A copy of the approved plan shall also be provided to the Local Bush Fire Management Committee prior to occupation of the site.
8. New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
- B. If the Development Application is commenced in accordance with the consent (Schedule B) a Penalty Infringement Notice for unauthorised works be issued.
- C. Should Development Application DA13/0446 for four tourist cabins at Lot 2 DP 628210 Tyalgum Road, Eungella not proceed Council is to seek legal advice in regards to commencing legal action for the unauthorised works.



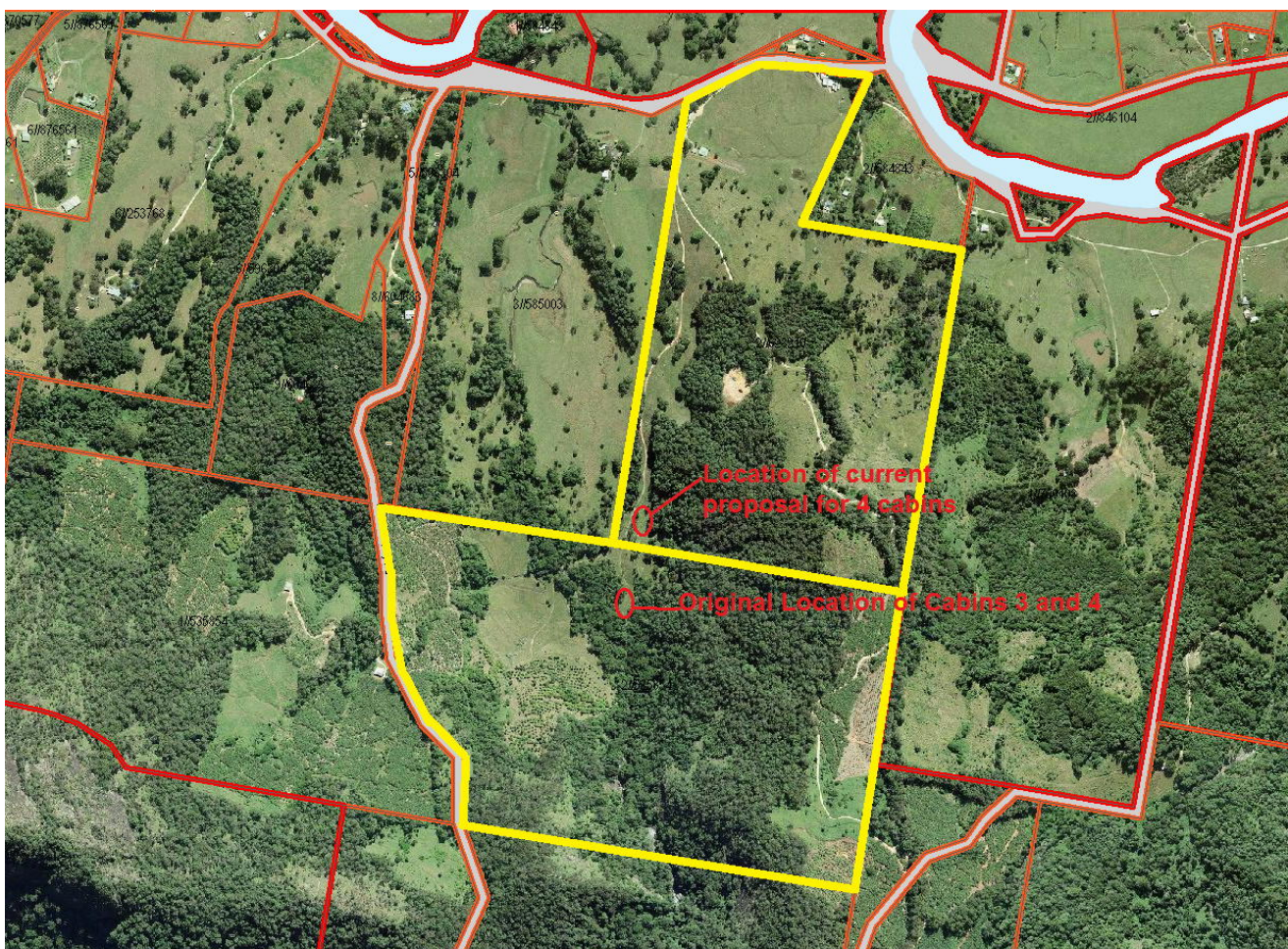
**REPORT:**

**Applicant:** Mr WA Everest and Mrs R Everest  
**Owner:** Mr William A Everest & Mrs Roseane Everest  
**Location:** Lot 2 DP 628210 Tyalgum Road, Eungella  
**Zoning:** 1(a) Rural  
**Cost:** \$92,000

**Background:**

Site Details

The development was originally lodged over two lots being Lot 2 in DP 535854 (with access off Hidden Valley Road) and Lot 2 in DP 628210 (with access off Tyalgum Road) as two cabins were proposed to be placed on each of the two lots. However an amendment to the application has resulted in all four cabins now being located on Lot 2 in DP 628210. This site is located on the southern side of Tyalgum Road and is 52.85ha in size. The site ranges from relatively flat land on the northern portion of the site to undulating hills on the southern portion of the site. Currently, the northern portion of the land is utilised for grazing purposes whilst the southern portion is a mixture of grazing land and heavily vegetated areas. The proposed cabin site is located within the south western corner of the allotment.



**Figure 1 - Subject Site**

The site currently has an approved dwelling (1231/92B) which is located along the western boundary and an approved packing/storage shed (K98/0618) which is located on the

northern boundary. The proposed cabins will gain access off Tyalgum Road from the existing dwelling access point. This will not change as a result of this application.

### Proposed

The amended application involves the placement of four tourist cabins in the south western corner of Lot 2 DP 628210 which will be serviced by rain water tanks and on-site effluent disposal. The cabins are approximately 10m x 4m in size and consist of a single bedroom, living area, verandah, bathroom, WC, kitchen and laundry.

The cabins are to be located approximately 60 metres from the western boundary and 20 metres from the southern boundary and are located on an excavated building pad (one pad for all four cabins) which have already been created without prior approval. The excavated pad has sufficient area to accommodate the four tourist cabins and eight car parking spaces.

The cabin sites will be accessed from the existing driveway which is located on Tyalgum Road. The access currently extends to the proposed site which is approximately 900m from the Tyalgum Road frontage.

### History

It was brought to Council's attention that tree clearing works and earthworks were being undertaken on the subject site in early 2013. In addition the four cabins were placed at the subject site at this time. Council's Compliance Officer's investigated the compliant and advised the applicant that a Development Application would be required.

Consequently the subject application was lodged in August 2013. During the original assessment, an onsite inspection was requested with the applicant and Council Officers which was undertaken on 24 October 2013.

The following photos were taken on 24 October 2013 which shows a cut area for a building pad with tree clearing which had been undertaken. The owner advised that *"the trees were camphor laurel and that the cut was for the tourist cabins and that if they were not approved then the owner would be using the cabins for farm sheds which may be exempt from approval"*. The cabins were located on the site but have not been connected to any essential services.



**Photo 1 - excavated pad towards existing vegetation (looking east)**





**Photo 2 - excavated pad (looking south west)**



**Photo 3 - looking from building pad to west**

Council's Natural Resource Management Officer advised the applicant that the cabins should be located on the one site due to ecological and bushfire issues. An information request was subsequently sent to the applicant on 29 October 2014 requiring further detail in relation to the location of the proposal, environmental issues, bushfire issues, onsite sewer issues and contaminated land issues.

On 21 March 2014 it was brought to Council's attention that additional clearing and earthworks were being undertaken at the site again. This objection was forwarded to Council's Development Compliance Officer's for review. The objection included photos of the subject area as shown below.



**Photo 4 - looking east towards subject site**





**Photo 5 - vegetation removed**



**Photo 6 - towards cut building pad**



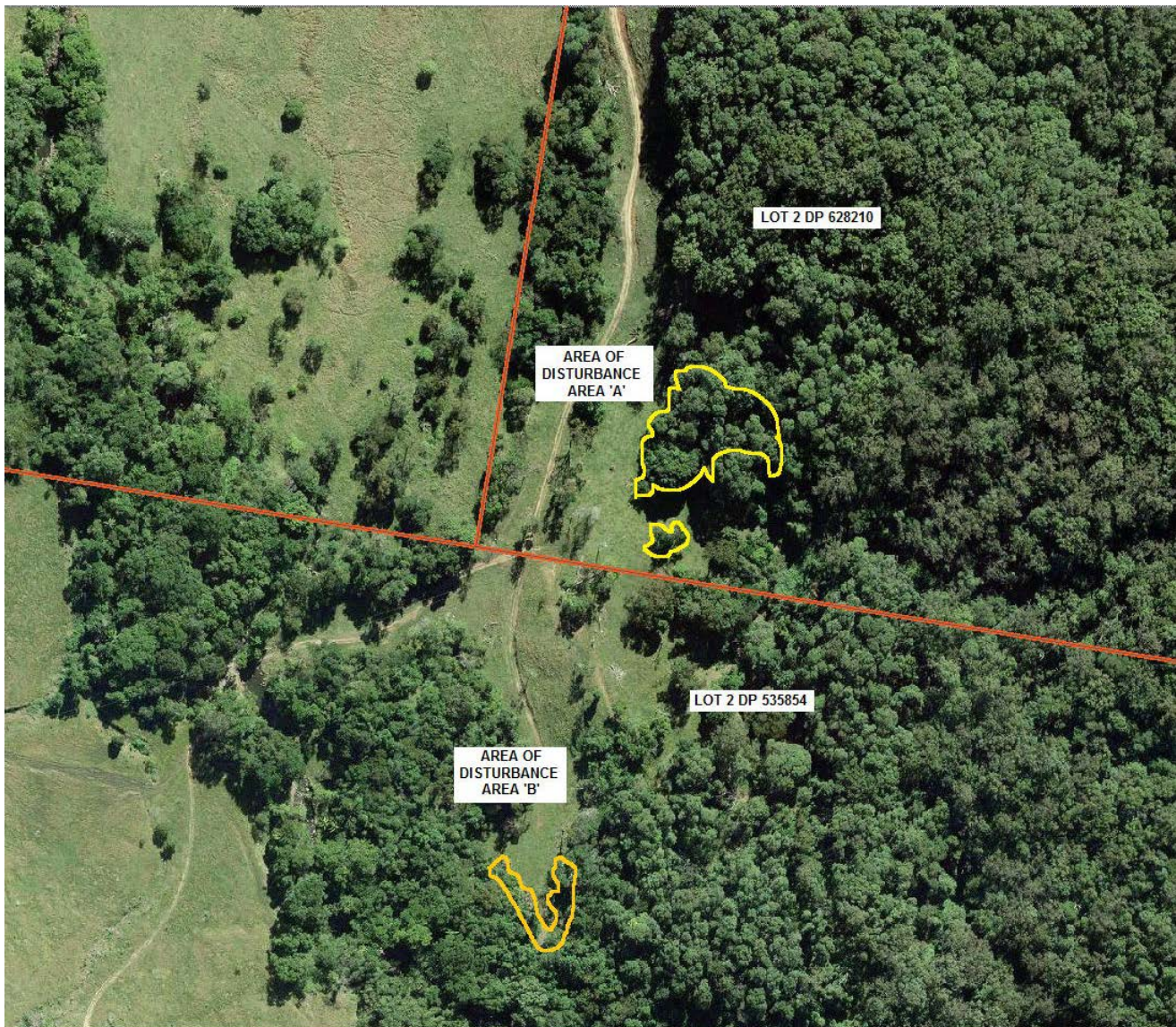
**Photo 7 - looking east towards vegetation**





**Photo 8 - looking east towards vegetation**

The works shown in all these photos are shown on Figure 2 as the area of disturbance 'A'.



**Figure 2 - Site 'A' and Site 'B' with areas of Disturbance**



On 7 November 2014 an additional objection was received unsatisfied with the amount of time taken to resolve the above compliance matters. In addition the objection raised new concerns that sheds were being placed and fitted out for residential occupation without consent on Lot 1 and Lot 2 in DP 535854 (land adjoining the subject site to the south and south west). As these sheds are on a different land parcel to that of the proposed cabins this matter is being addressed as a separate compliance matter.

### Compliance Assessment

Based on the above information the issues can be summarised as follows:

- Approximately 2000m<sup>2</sup> of possible Lowland Rainforest Endangered Ecological Community has been cleared from Lot 2 in DP 535854 and Lot 2 in DP 628210.
- Earthworks have been undertaken to create a building pad (approximately 10m x 45m to total 450m<sup>2</sup>) to accommodate the proposed cabins.

Council Officers believe that the works were undertaken to accommodate the proposed development and were not done for any agricultural purpose.

It was determined that the works were undertaken prior to Tweed Local Environmental Plan 2014 and Development Control Plan Section A16 - Preservation of Trees coming into force.

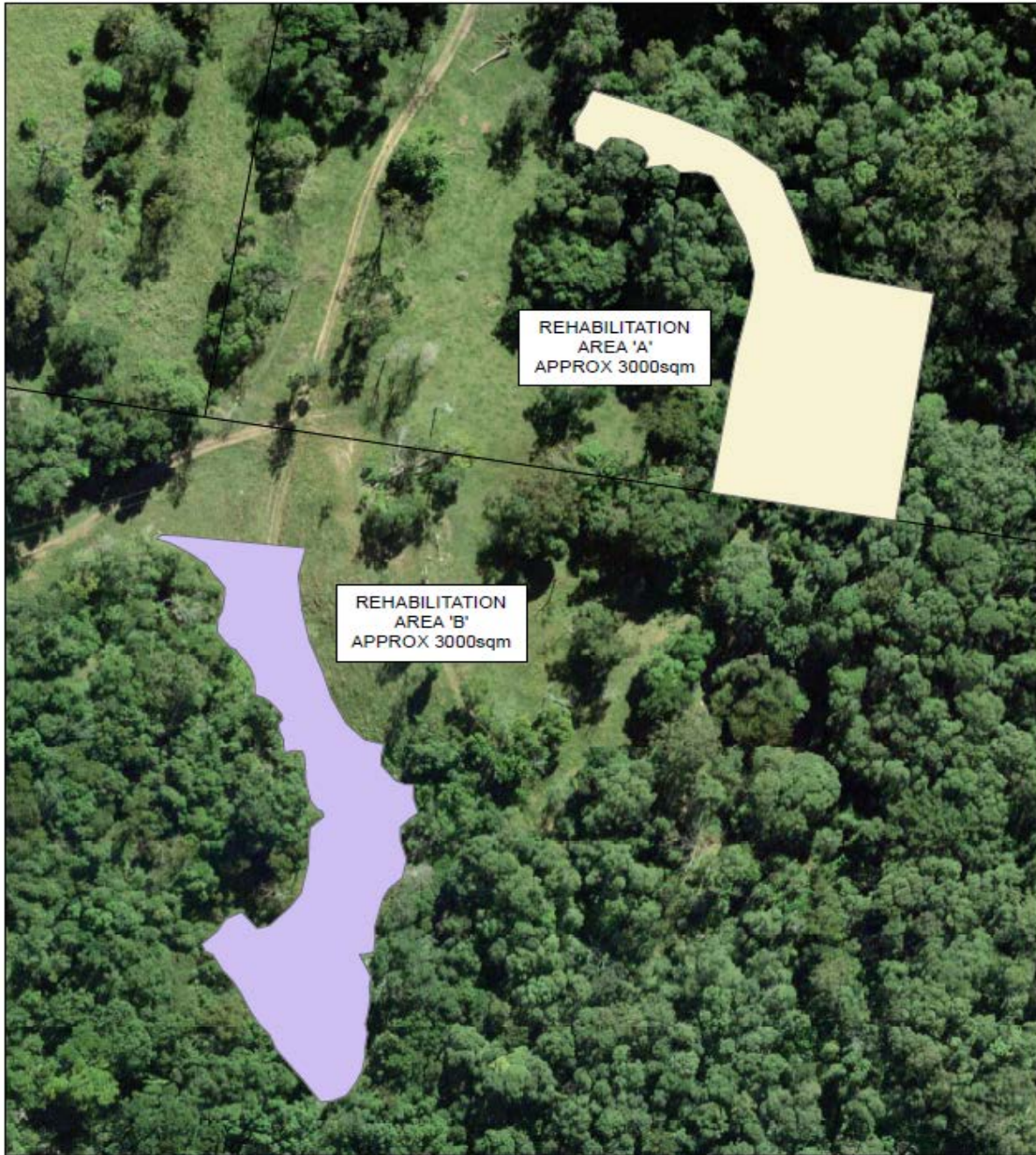
The subject site is located within the 1(a) zoned land under the Tweed Local Environmental Plan 2000.

Council staff recommend to rectify these unauthorised works that any approval given for the proposed cabins is conditioned to incorporate comprehensive rehabilitation as recommended by Council's Natural Resource Management Unit and as shown below.



Council Officers also recommend issuing the applicant with a Penalty Infringement Notice for the unauthorised vegetation removal and earthworks.

In addition Council Officers recommend that the applicant be required to pay all applicable developer contributions (\$41,490) prior to issue of a construction certificate rather than the normal occupation certificate given works were unlawfully commenced.

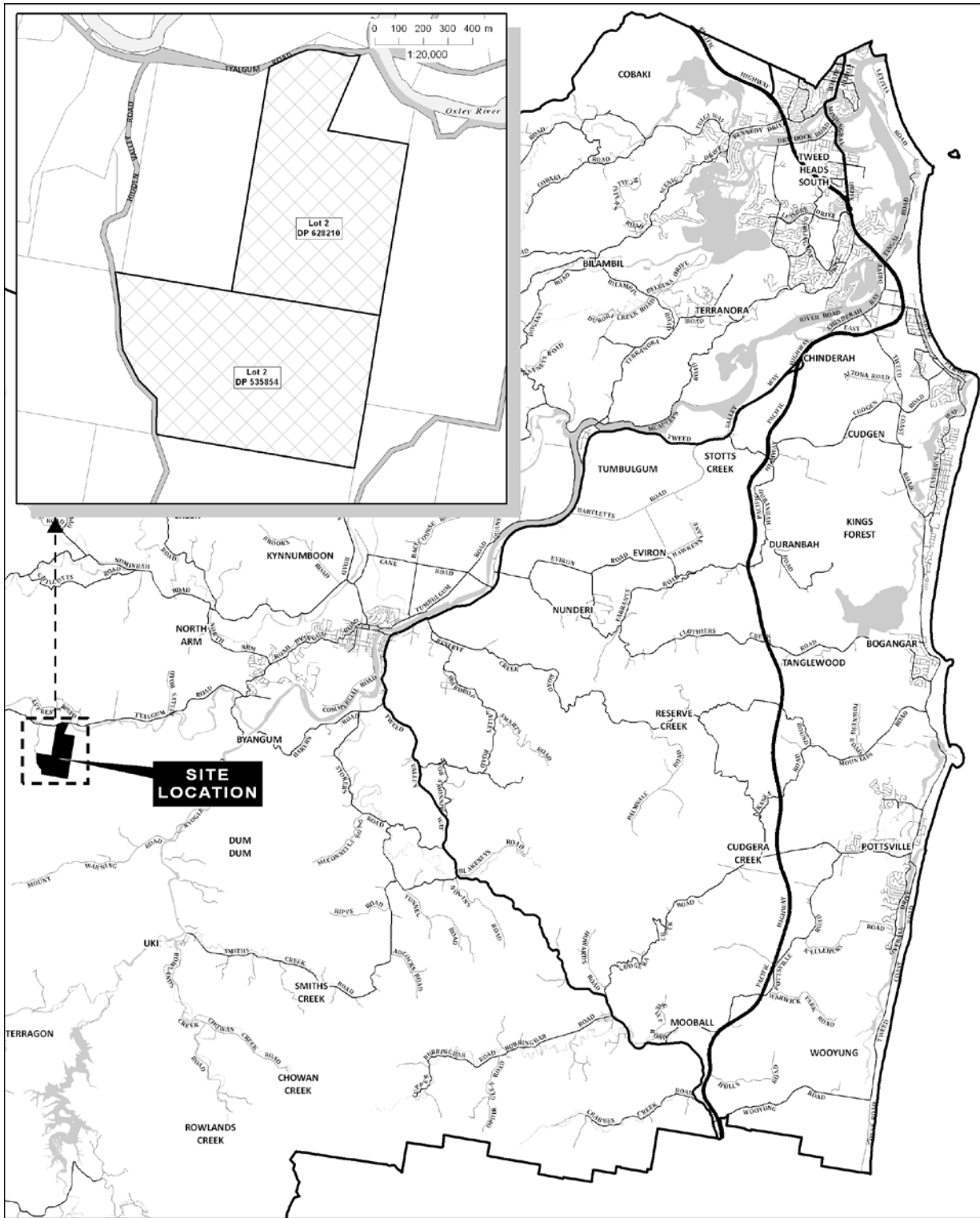
Should the Development Application DA13/0446 for four tourist cabins at Lot 2 DP 628210 Tyalgum Road, Eungella not proceed within 3 months as conditioned by the deferred commencement condition it is recommended that Council refer the vegetation removal to the NSW Office of Environment and Heritage to pursue a legal mechanism to instigate the rehabilitation works as required by this consent as a compliance matter.



**HABITAT RESTORATION AREAS PLAN - DA13/0446  
LOT 2 DP535854 & LOT 2 DP628210**

<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 general guidance and it is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you Dig" enquiry must be made by calling 1100. The information contained in this document remains valid for the 30 days only from the date of supply.</small></p>	<p><small>Cadastral: 23 October, 2014 © Land and Property Information (LPI) &amp; Tweed Shire Council Boundaries shown should be considered approximate only.</small></p> <p><small>Date Printed: 23 October, 2014</small></p> <p><small>Author:</small></p> <p><small>Filepath: J:\Biodiversity\Michael_Berkel\GIS\Gungahlin\RestorationAreasPlan_1.mxd</small></p>	<p><small>0 10 20 30 metres</small></p> <p><b>1:1,000,000</b></p> <p><small>comp:PS,207,SGV,Esri,arc</small></p> <p><small>Coordinate System MGA Zone 56 Datum - GDA 94</small></p> 	<p><small>Civic and Cultural Centre 3 Tunbulgun Road Murwillumbah NSW 2484</small></p> <p><small>PO Box 916 Murwillumbah NSW 2484</small></p>  <p><b>TWEED SHIRE COUNCIL</b></p> <p><small>T (02) 6670 3400   1300 260 873 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</small></p>
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**SITE DIAGRAM:**



**Locality Plan**

Lot 2 DP628210, No.719 Tyalgum Road, Eungella;  
 Lot 2 DP535854, No.116 Hidden Valley Road, Eungella

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 '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.

Cadastre: 19 November, 2014  
 © Land and Property Management Authority (LPM/A) & Tweed Shire Council.  
 Boundaries shown should be considered approximate only.



Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geoid66; Datum of Australia 1984  
 Grid: Map Grid of Australia, Zone 56

City 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 | planningreform@tweed.nsw.gov.au



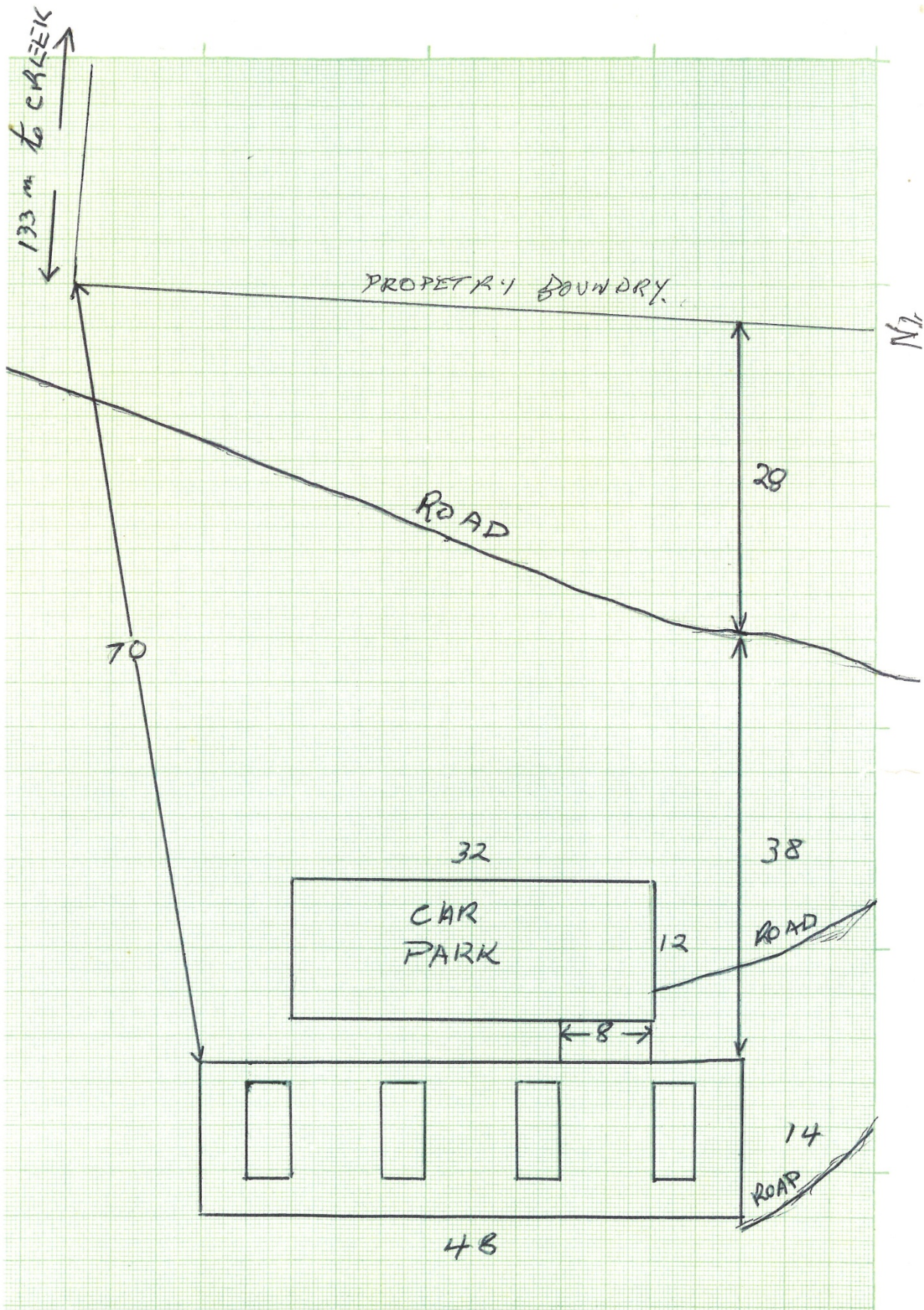
1:MapInfo: Z:\DEVELOPMENT\STANDARD TEMPLATE\EDWARDS\APS\118\Map - LocalityPlan5358\_414.mxd

Author: jbatbaker Planning Reform Unit

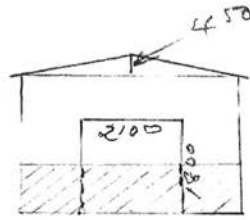
Date Printed: 19 November 2014



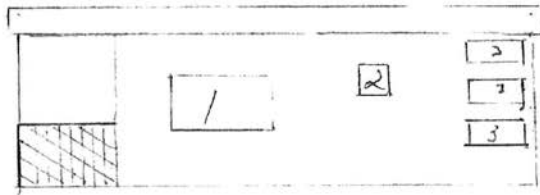
DEVELOPMENT/ELEVATION PLANS:



Factory Manufactured cabins, Scale 1-100

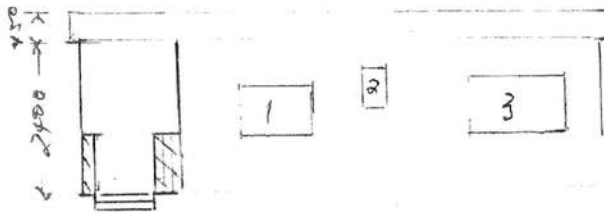


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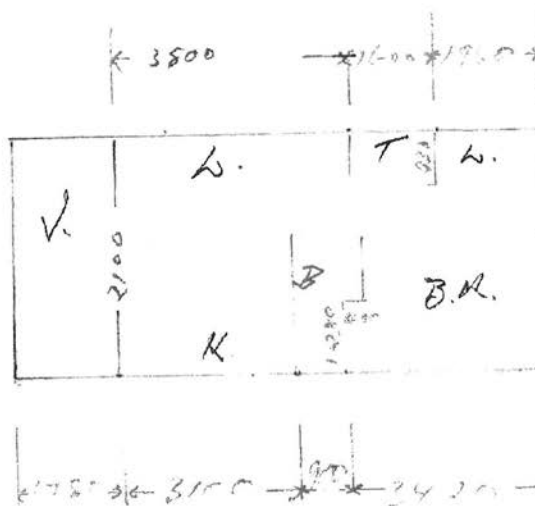


- ① 1200 x 1540
- ② 640 x 620
- ③ 440 x 1240

R.



- ① 1000 x 1200
- ② 850 x 400
- ③ 1200 x 1540



2 of 3 12/11/2014

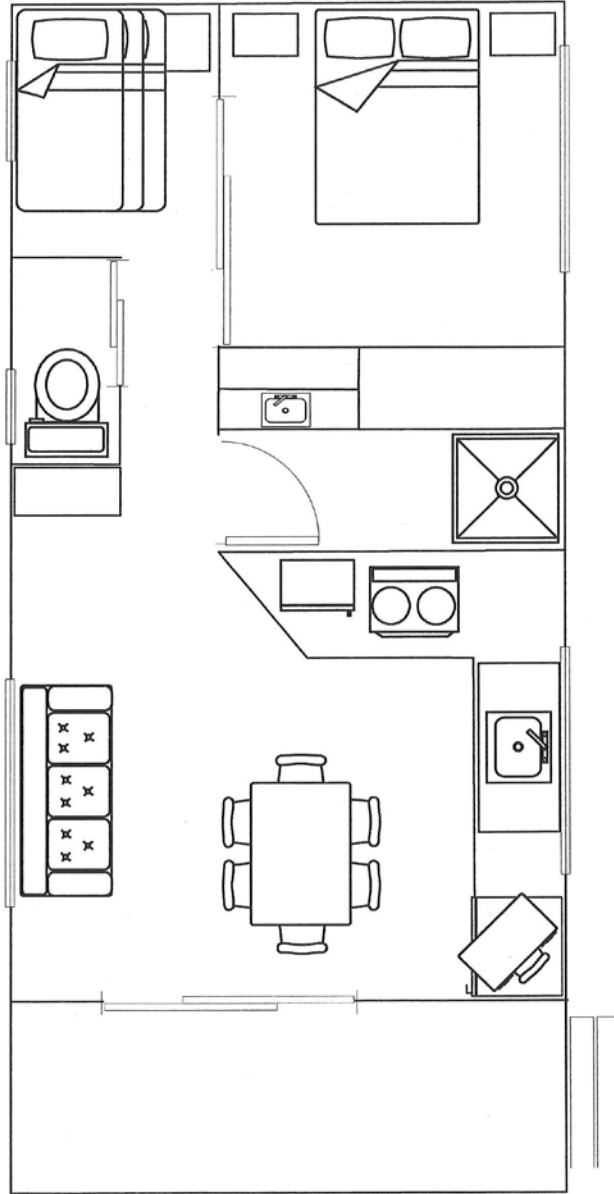






**PLAN A - PLAN OF EXISTING CABINS PROVIDED BY COUNCIL OFFICERS:**

**KINGSCLIFF BEACH HOLIDAY PARK  
OCEAN CABIN FLOOR PLAN**



**CABIN FEATURES:**

- \* CAN ACCOMMODATE UP TO 5 ADULTS
- \* BEDROOM 1 - DOUBLE BED
- \* BEDROOM 2 - TRIPLE BUNK
- \* LOUNGE - FLAT SCREEN LCD TV AND DVD SYSTEM
- \* AIR-CONDITIONING
- \* BATHROOM - SEPARATE SHOWER AND TOILET
- \* KITCHEN - FULLY-EQUIPPED WITH COOK-TOP, MICROWAVE OVEN, FULL-SIZED FRIDGE
- \* TEA AND COFFEE MAKING FACILITIES

LINEN HIRE AVAILABLE

n.b. Schematic not to scale

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

The subject development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of amenity for nearby properties or the shire as a whole. Conditions will be included within the recommendations to ensure restoration of vegetation is undertaken.

Clause 5 - Ecologically Sustainable Development

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

Broadly, the subject proposal is considered consistent with the above criteria, as the proposed tourist accommodation is not likely to have significant ramifications for ecologically sustainable development. As outlined above, conditions will be included within the recommendations to ensure restoration of vegetation is undertaken.

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 1 (a) Rural. The proposed site for the tourist accommodation is entirely within the 1(a) zoned portion of the land, the primary objectives of which are outlined below.

The proposed tourist accommodation does not conflict with the primary or secondary objectives of this zone. The proposed tourist accommodation will not interfere with agricultural land uses on the site itself or adjoining sites.

The proposed tourist accommodation is considered to be in keeping with the scale, density and height of surrounding development.

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

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the established rural nature of the subject area.

#### Clause 11 - Zone Objectives

The subject site is located within the 1(a) Rural zone. The primary objectives of that zone are:

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development, and*
- *to protect rural character and amenity.*

Secondary objectives for the 1(a) Rural zone include:

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism*
- *to provide for development that is not suitable in or near urban areas*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion, and*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

It is submitted that the proposal, being a form of residential tourist development within a rural zone that does not require excessive servicing and is of a similar scale to existing development within the locality. It is therefore considered that the proposed meets the objectives and is not considered to have any adverse effects on the character and amenity of the area.

#### Clause 15 - Essential Services

Essential services such as electricity and phone are available to the site. However, no town water or sewerage services are available. The site will be serviced by onsite effluent disposal and rainwater. Council's Environmental Health Unit have assessed the On-site Sewer Management system and have confirmed that it is adequate to service the development.

#### Clause 16 - Height of Building

The proposal does not contravene the imposed three-storey height restriction on the subject site as the cabins are single storey.

#### 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. Due to the relatively minor nature of the proposal, it is not considered to create a significant social or economic impact.

#### Clause 22 - Development near designated roads

The clause applies to the subject site as it has a frontage to and vehicular access from Tyalgum Road, which is a Council designated road as per the TLEP 2000.

It is considered that the location of the existing access point and on-site traffic movement and parking arrangements will not disrupt traffic movement along Tyalgum Road. The development and access point is not anticipated to adversely affect any future improvements to, or realignment of Tyalgum Road.

It is not considered that the development will detract from the scenic values of the locality given the proposal is set back by approximately 900m from Tyalgum Road and is relatively well screened by vegetation.

The proposal is therefore consistent with the clause.

#### Clause 24 – Setbacks to designated roads

Tyalgum Road is classified as a designated road. Under the requirement of Clause 24, tourist accommodation is required to be setback 30m from the designated road.

In this instance the cabins are setback approximately 900m from the designated road. The proposed setbacks are considered to be adequate in this instance and the proposal is therefore consistent with the clause.

#### Clause 34 - Flooding

The site has been identified within Council GIS as an area which could be affected by flooding. Council's Flooding Engineer has outlined that the proposed development is located in an area which provides adequate access to and from Tyalgum Road and is elevated from the water course. It is therefore considered that the proposal is compliant with the requirements of the Clause 34 of the TLEP 2000.

#### Clause 35 - Acid Sulfate Soils

Class 5 Acid Sulfate Soils are present on the site. Works are not located within 500 metres of Class 1, 2, 3 or 4 land which would be likely to lower the watertable

below 1 metre AHD in adjacent Class 1, 2, 3 or 4 land. It is therefore considered that this clause has been complied with.

#### Clause 39 - Remediation of Contaminated Lands

The applicant submitted a preliminary site investigation referred to as the SEPP 55 Chemical Residue Report No 140702 (The Report) prepared by Rob Aungle & Associates and dated 7th August 2014. A suitably qualified person prepared the report (Investigator identified in report as Tom Grace B.App.Sc (Environmental)). A Statutory Declaration was submitted with this application that stated that *'Historically the vegetation of the proposed cabin site consisted of cleared, weed infested landscape with some regrowth or pioneer species on the lower slopes to selectively logged existing wet and dry sclerophyll on the upper slopes. The site has never been used as a banana plantation or other agricultural uses as far as I know as it is frost prone, has poor soil quality and limited sun aspect'*.

Council's Environmental Health Unit has assessed the submitted information in relation to contaminated lands and has raised no objections to the proposal with the imposition of suitable conditions.

#### Clause 39A - Bushfire Protection

The site is mapped as bushfire prone land. The proposed cabin site is located within the vegetation buffer 30m and 100m and Category 1 Vegetation. A Bushfire Report has been prepared and included with the application. The application was referred to the NSW Rural Fire Service in accordance with section 91 of the Environmental Planning and Assessment Act 1979. The NSW Rural Fire Service did not object to the proposal and issued a bush fire safety authority with conditions to be included within the recommendation. The proposal is considered compliant with Clause 39A.

#### Clause 54 – Tree Preservation Order

The subject site is not located within an area identified as having a Tree Preservation Order however the removal of vegetation has been discussed in detail elsewhere in this report.

### **State Environmental Planning Policies**

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

The provisions of the NCREP apply to the proposal.

#### Clause 12: Impact on agricultural activities

This clause relates to the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land. The proposed development is located in an elevated area which is surrounded by significant vegetation. It has been identified on Council's GIS Agricultural Land Suitability 1998 as being 'land unsuitable for agriculture'. It is considered that the proposal will not impact the

agricultural activities on the land. The subject site will continue to be utilised for pasture land elsewhere on the site.

#### Clause 75: Tourism development

Clause 75 of the NCREP requires Council to consider whether there is adequate access to the subject site by road, taking into consideration the scale of the proposed development; that the development will not be detrimental to the scenery or other significant features of the environment; and that reticulated water and sewerage are available, or arrangements satisfactory to the Council have been made for the provision of those facilities.

The proposal will be accessed via Tyalgum Road which is connected to the Kyogle Road in the north. Tyalgum Road and Kyogle Road are Council Designated Roads. Each of the roads service traffic travelling north and south, therefore the proposal is considered to be adequately serviced by transport networks.

The subject proposal will not result in impacts that could be detrimental to the scenery or other natural environments. The site is relatively well screened from the road by vegetation to the northern boundary and the distance from Tyalgum Road of approximately 900m. The proposal is considered to be in keeping with the general scenic character of the surrounding area. The subject property is currently mostly degraded grazing land and conditions have been included for the regeneration of vegetation around the site.

The site will feature on-site sewerage management and water collected via rain water tanks. The proposed services have been assessed by Council Environmental Health department as being adequate.

#### SEPP No. 55 - Remediation of Land

The applicant submitted a preliminary site investigation referred to as the SEPP 55 Chemical Residue Report No 140702 (The Report) prepared by Rob Aungle & Associates and dated 7 August 2014. A suitably qualified person prepared the report (Investigator identified in report as Tom Grace B.App.Sc (Environmental)).

Council's Environmental Health Unit has assessed this report in conjunction with Council records and have concluded that *'the supporting contaminated land site history information provided and the Environmental Health Unit Council records search is adequate and the proposed cabins site is suitable. No further considerations are required.'*

It is therefore considered that this SEPP has been complied with.

#### SEPP (Rural Lands) 2008

The aims of this Policy are as follows:

- (a) *to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) *to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and*

- protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) *to implement measures designed to reduce land use conflicts,*
  - (d) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
  - (e) *to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

As previously mentioned, the location of the cabins is on 'land unsuitable for agriculture' as identified within the Agricultural Land Suitability 1998 map. It is considered that the proposed cabins will have minimal impact upon Rural Lands and as such is considered to be compliant with this SEPP.

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

Tweed Local Environmental Plan 2014

Tweed Local Environmental Plan 2014 was gazetted on 4 April 2014. The application was submitted prior to this LEP commencing and as such the application will be assessed as if this plan had not commenced as per Clause 1.8A of the Tweed LEP 2014.

Clause 1.8A is as follows:

*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.*

As the Tweed LEP 2014 was in draft form when the application was submitted the provisions of the Plan are still to be assessed as follows.

Tweed LEP 2014 identifies the land as being zoned RU2 - Rural Landscape. The proposed development 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 prohibited within the RU2 zone however the use could be defined by the child definition of a farm stay accommodation as defined below.

***farm stay accommodation*** means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.

Farm stay accommodation is permitted with consent within the RU2 zone.

The objectives of the RU2 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

It is considered that the tourist accommodation as proposed will be provided for a land use on an existing agricultural block of land and will not impact upon the status-quo of the agricultural land. The proposed development is permitted with consent under this TLEP 2014 and is considered to comply with aims and objectives of the LEP.

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

*Tweed Development Control Plan*

*A1 – Residential and Tourist Development Code*

The DCP defines tourist accommodation as being a building that provides temporary or short-term accommodation on a commercial basis. It is considered that an A1 assessment under a dual occupancy category is the most appropriate classification of the development. Whilst not all part of A1 will be directly relevant to the development it is considered that the proposal adequately addresses the requirements, as detailed within the A1 Assessment appended to the file.

*A2 – Site Access and Parking Code*

The existing driveway enters and exits at Tyalgum Road. No change to the existing access is required.

The proposed cabins could be most closely defined as farm stay as per this section of the DCP. The proposed has adequate area for two car parking spaces per one bedroom cabin. The proposed development is therefore consistent with this DCP and Council's Development Engineer raised no issues with the proposal.



A3 – Development of Flood Liable Land

As previously detailed the subject site is nominated as an area which could be affected by flood. Council's Flood Engineer has advised that the proposal is elevated and unlikely to be flood affected. The section 149 classification is based on a rough ground contour estimate. The Flooding Engineer has no concerns with the proposal and no flood related controls are required.

On this basis it is considered that the proposal complies with the requirements of A3.

A11 – Public Notification of Development Proposals

The proposal was both advertised and notified in accordance with Council policy for the notification of development proposals. Three submissions were received and these have been addressed in Section (iv)(d) of this report as detailed below.

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

Clause 92(1)(a) Government Coastal Policy

The development is not located on land to which Clause 92(a) applies.

Clause 92(1)(b) Applications for demolition

The proposed application does not involve any demolition

Clause 93 Fire Safety Considerations

Council's Building Services Unit has assessed the proposed development and has raised no issues in regards to Clause 93 Fire Safety Considerations.

Clause 94 Buildings to be upgraded

Council's Building Services Unit has assessed the proposed development and has raised no issues in regards to Clause 94 Buildings to be upgraded.

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

The land is not affected by a coastal zone management plan.

**Tweed Shire Coastline Management Plan 2005**

The land is not affected by this plan.

**Tweed Coast Estuaries Management Plan 2004**

The land is not affected by this plan.

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

The land is not affected by this plan.

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

**Context and Setting**

The proposed development overall is considered to represent a reasonable response to the constraints of the site and the subject location.

**Flora and Fauna**

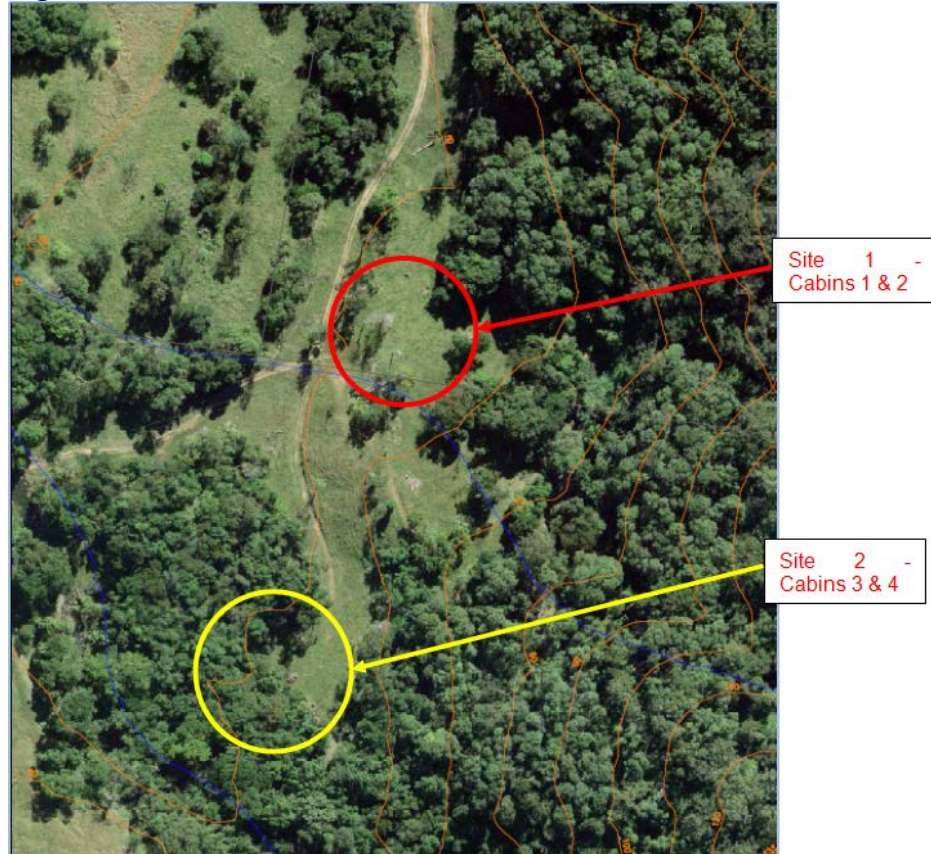
Council's Natural Resource Management (NRM) Unit has undertaken comprehensive assessment from site visits and desktop assessments of the subject site in relation to works which have been undertaken. The following forms part of the assessment:

*"Of concern to NRM unit was that the proposed cabin pad as shown on the latest plans was to be situated within an area of mapped vegetation (representative of Lowland Rainforest in the NSW North Coast and Sydney Basin bioregions Endangered Environmental Community (EEC)) and that vegetation observed at the time of inspection may have since been removed.*

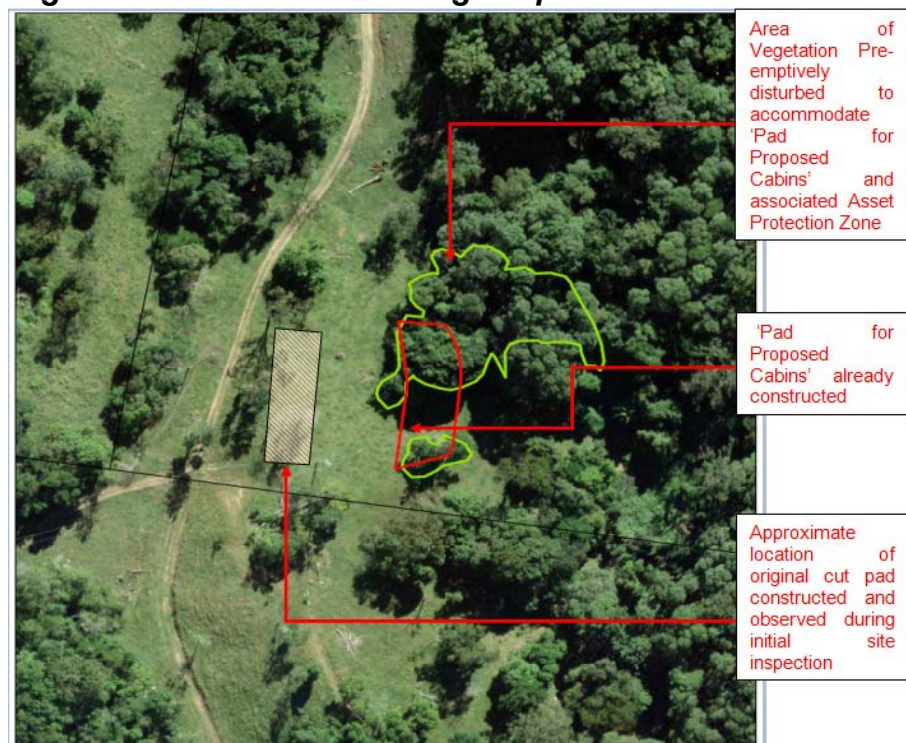
*To verify the positioning of the proposed cabins a site inspection was conducted on the 13 October 2014. Based on the inspection and with reference to the recent 'Location Plan', 2012 aerial mapping, previous site photographs and inspection notes:*

- An estimated 1500m<sup>2</sup> (based on canopy cover) area of native vegetation representative of Lowland Rainforest had been significantly disturbed since the initial inspection. See Figure 3*
- The 'Pad for Proposed Cabins' as shown on the 'Location Plan' had been constructed and was positioned to the east of the original cut pad. See Figure 3.*

**Figure 3 Previous Cabin Locations**



**Figure 4 Geo-referenced 'Proposed Pad' location, area of disturbed vegetation and location of original pad**



*Whilst the applicant positively responded to Council's advice by consolidating development (relocating cabins 3 and 4 to Site 1) it was also made clear during discussion that careful consideration be given to the final positioning of the cabins at Site 1. Specifically, it was to be demonstrated*

*that adequate separation between the existing vegetation and cabins could be achieved to avoid the need to remove/modify existing native vegetation for bushfire management purposes.*

*A total of 2000m<sup>2</sup> of candidate Lowland Rainforest EEC has been estimated to have been pre-emptively removed to facilitate the proposal. The classification of the area disturbed as candidate EEC was validated during the recent site inspection by NRM where natural regeneration of rainforest species was evident, the more elevated non disturbed edge was reflective of a rainforest community and several isolated canopy rainforest trees remained within areas of clearing (identified on the 'Layout Plan').*

*The applicant did not respond to the request for the submission of an ecological assessment and therefore has not disputed Council's determination that the vegetation community disturbed was a candidate EEC.*

*The determination of rainforest to the east is however consistent with the findings of the Bushfire Assessment Report (pp. 10) submitted by the applicant indicating that 'The vegetation to east is rainforest....' 'The rainforest vegetation is for approximately 60m before developing into wet sclerophyll forest on the higher ridges'.*

*NRM are not aware of any provisions under the Native Vegetation Act that would allow for the clearing of candidate remnant EEC for Routine Agricultural Management Activities."*

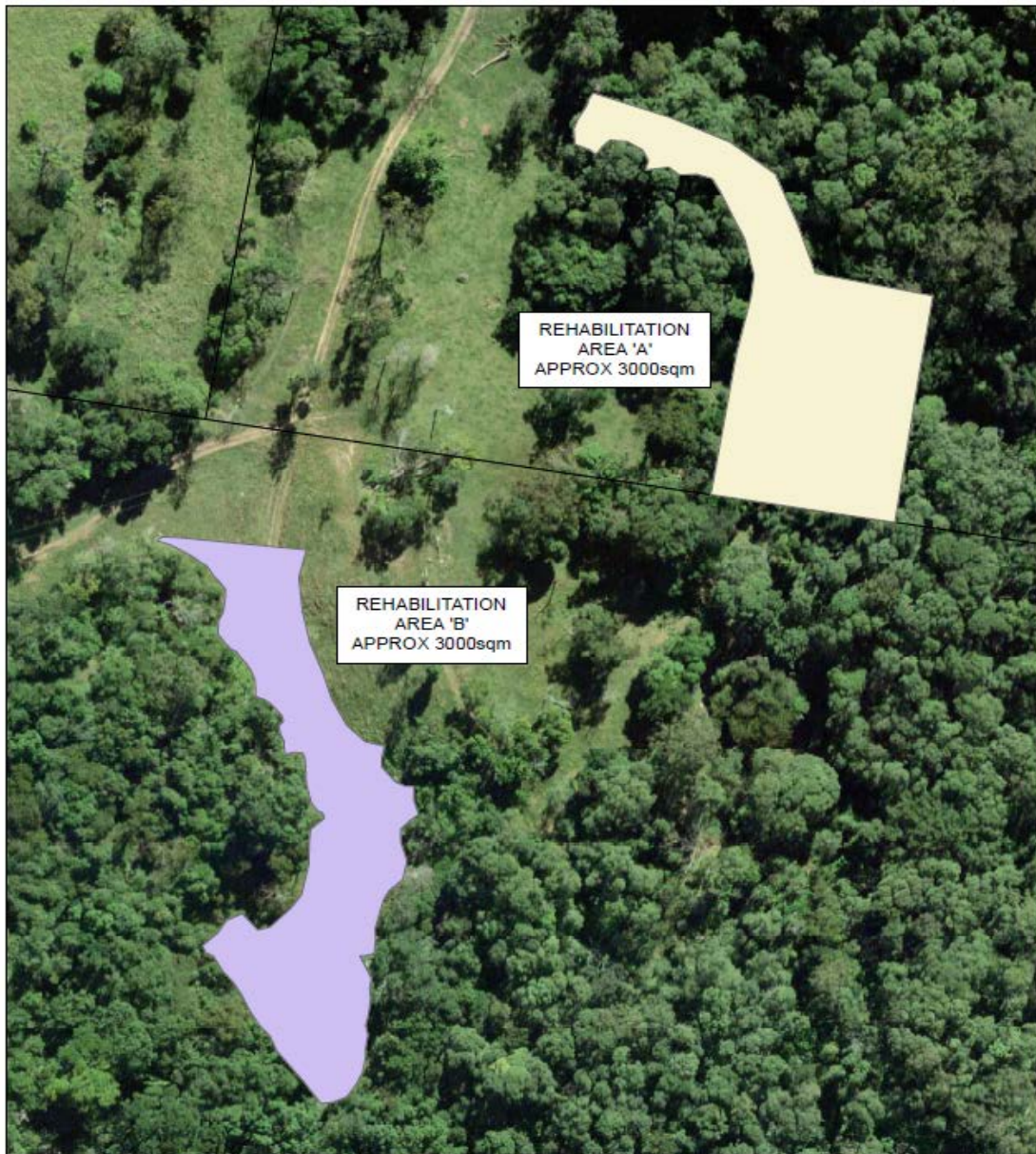
Based on the information collected by Council's Natural Resource Management Unit and information provided by submitters a number of recommendations have been identified to rehabilitate areas of Endangered Ecological Community as follows:

- *"Make reference to the 'Location Plan' that identifies isolated existing mature trees situated in close proximity to cabins to ensure long term retention/protection.*
- *Undertake remediation and restoration activity to improve areas of significant ecological value situated adjacent to the proposed cabin site and compensate for the loss of native vegetation disturbed. The rehabilitation areas are to be actively managed for a period of five (5) years and protected for the life of the development.*
- *To mitigate impacts and compensate for the loss of candidate EEC the remediation and restoration area is to be calculated using a ratio of 3:1 (Loss: Replace). This ratio has been derived following review and consideration of:*
  - *Previous cases involving disturbance/potential disturbance of equivalent EEC in the Tweed Shire - MP09\_0166 DA09/0701 Altitude Aspire Terranora, Plath v Rawson (2009) NSW LEC178 Terranora Country Club*
  - *Location of rehabilitation offset areas. Areas are to be provided onsite, to capture significantly disturbed areas that would be expected to have previously supported Lowland Rainforest EEC ('like for like')*

- *Based on the compensatory ratio of 3:1 the loss of approximately 2000m<sup>2</sup> of candidate EEC equates to a compensatory remediation and restoration area of 6000m<sup>2</sup>. The areas comprise two areas (Area 'A' and Area 'B') of 3000m<sup>2</sup> per area and are shown on Attachment 1 of the Conditions of Consent."*

The map shown below includes the area identified by Council's Natural Resource Management Unit to be rehabilitated as a requirement of this proposal. The NRM Unit has advised that even with the rehabilitation areas they are confident that the trees may be retained in the long term without conflicting with NSW Rural Fire Service conditions in respect to Asset Protection Zone establishment and maintenance.





**HABITAT RESTORATION AREAS PLAN - DA13/0446  
LOT 2 DP535854 & LOT 2 DP628210**

<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, damage (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you Dig" enquiry must be made by calling 1100. The information contained in this document remains valid for the 30 days only from the date of supply.</small></p>	<p>Cadastral: 23 October, 2014 © Land and Property Information (LPI) &amp; Tweed Shire Council Boundaries shown should be considered approximate only.</p> <p>Date Printed: 23 October, 2014 Author: Filepath: J:\Biodiversity\Michael_Bankal\GIS\Bunella\RestorationAreas\Plan_1.mxd</p>	<p>0 5 10 20 Metres</p> <p>1:1,000,000</p> <p>conf75207.5015.000000</p> <p>Coordinate System MGA Zone 56 Datum - GDA 94</p>	<p>Civil and Cultural Centre 3 Tunbulgan Road Murwillumbah NSW 2484</p> <p><b>TWEED</b> SHIRE COUNCIL</p> <p>PO Box 916 Murwillumbah NSW 2484</p> <p>T   (02) 6670 3400   1300 262 673 F   (02) 6600 3424 W   www.tweed.nsw.gov.au E   planning@tweed.nsw.gov.au</p>
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Based on the information provided by the Natural Resource Management Unit, it is considered appropriate to incorporate the rehabilitation area into the recommendations in order to rectify the current situation on site. To mitigate impacts and compensate for the loss of candidate EEC as calculated by the NRM Unit it was considered that a ratio of 3:1 (Loss: Replace) was appropriate. It is therefore considered that if the recommended rehabilitation program is implemented into the conditions then there will be minimal impact on the existing vegetation as a result of this application.

## Earthworks

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 states the following:

### 2.29 Specified development

*Earthworks and the construction or installation of a retaining wall or other form of structural support is development specified for this code if it is not carried out, constructed or installed on or in a heritage item or a draft heritage item, on a flood control lot or in an environmentally sensitive area.*

### 2.30 Development standards

*The standards specified for that development are that the development must:*

- (a) not be a cut or fill of more than 600mm below or above ground level (existing), and*
- (b) be located at least 1m from each lot boundary, and*
- (c) if it is carried out, constructed or installed in a heritage conservation area or a draft heritage conservation area—be located in the rear yard, and*
- (d) be located at least 40m from a waterbody (natural), and*
- (e) not redirect the flow of any surface water or ground water or cause sediment to be transported onto an adjoining property, and*
- (f) if it is a retaining wall or structural support for excavation or fill, or a combination of both:
  - (i) be not be more than 600mm high, measured vertically from the base of the development to its uppermost portion, and*
  - (ii) be separated from any retaining wall or other structural support on the site by at least 2m, measured horizontally, and*
  - (iii) be located at least 1m from any registered easement, sewer main or water main, and*
  - (iv) have adequate drainage lines connected to the existing stormwater drainage system for the site, and**
- (g) if the fill is more than 150mm deep—not occupy more than 25% of the area of the lot, and*
- (h) if the fill is imported to the site—be free of building and other demolition waste, and only contain virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the Protection of the Environment Operations Act 1997.*

A small portion of the allotment is located within an area which 'could be affected by flooding'. As a result of this the earthworks which have been undertaken cannot be classified as exempt development. It is considered that as the works were undertaken without approval then a Penalty Infringement Notice (PIN) will be issued for the breach.

As the earthworks were undertaken where the proposed tourist cabins are to be located then it is considered inappropriate for the applicant to restore the land to

its original form. The earthworks are considered reasonable in the context and scale of the cabin sites and if the application is to be approved then no further action should be taken in regards to the breach. If the recommendations are not supported then the applicant may be requested to reinstate the land to its original form.

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

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan with minimal environmental impact with the imposition of conditions. The proposal is consistent with the rural character of the locality.

Surrounding Landuses/Development

The surrounding development is generally of a rural nature. It is considered that due to the setbacks of the proposed development and the relatively minor nature of the proposed development it will continue to be consistent with the rural character of the area.

On Site Sewer Management

Council's Environmental Health Unit has assessed the report submitted with the application and have provided the following comments:

*'A revised On-site Sewage Management Design Report in relation to the proposed tourist cabins (to be referred to as 'the revised report') has been submitted. The revised report was prepared by HMC Environmental Consulting and dated April 2014 (reference HMC 2014.029).*

*The revised report continues to state that each tourist cabin has 1 bedroom. Provided the bunk beds are removed the cabins will be considered as one bedroom. A condition to be applied "Each tourist cabin is to have a maximum occupancy of two people. The bunk beds are to be removed as per the requirements of the Revised On-site Sewage Management Assessment Report (reference HMC 2014.029)."*

*Given the above information, it is considered that the proposed OSSM is capable of supporting the proposed development. The revised report is in accordance with AS/NZS 1547:2012 and NSW Health Environment and Health Protection Guideline "On-Site Sewage Management for Single Households" 1998 NSW Health. The revised report has been prepared and signed by a suitably qualified consultant and is considered adequate. No objections are raised subject to conditions.*

*In regards to recommended buffers to the property boundaries, the location of the proposed tourist cabins appear to be adequate as per the requirements of the Living and Working in Rural Areas - A handbook for managing land use conflict issues on the NSW North Coast (Learmouth et al. 2007), Table 6 Recommended buffers (metres) for primary industries*



*indicates that for rural tourist accommodation the recommended buffer to the grazing of stock is 50m and to bananas the distance is 150m.'*

Based on the information provided from Council's Environmental Health Unit the OSSM has been provided in accordance with the legislative requirements and is of a size that can accommodate the proposed four tourist cabins as proposed. Each tourist cabin is to have a maximum occupancy of two people which will be conditioned within any approval.

#### Infrastructure Charges

The proposed development being a tourist use will have Section 94 infrastructure charges applicable to the proposed development. Council Officer's recommend that the applicant be required to pay all applicable developer contributions (\$41,490) prior to issue of a construction certificate rather than the normal occupation certificate given works were unlawfully commenced.

The following is a breakdown of associated infrastructure plans and rates applicable. As there are no sewer and water connections available to the site the development has no Section 64 charges applied.

#### *S94 Plan No. 4 - Tweed Road Contribution Plan*

Plan No. 4 is applicable to the site as it is a tourist development. The rate most closely associated with a cabin is a self contained dwelling. No onsite community facilities (apart from communal laundry, washing) which is a rate of 3 trips per cabin. As such a total of 12 trips are chargeable to the site. A 40% Employment Generating Development discount can be applied to the site for this plan in relation to the ongoing operation of the tourist cabins. The charges applicable are 7.2 trips with the discount applied. No credit is available as the four cabins are in addition to the existing dwelling located on the site.

#### *S94 Plan No. 11 - Shirewide Library Facilities*

Plan No. 11 is applicable to the site as it is a tourist development. The rate is based on the number of bedroom units at a rate of 1.3 ET per one bedroom unit. As such there are 5.2 ET chargeable for the proposed.

#### *S94 Plan No. 15 - Community Facilities*

Plan No. 15 is applicable to the site as it is a tourist development. The rate is based on the number of bedroom units at a rate of 1.3 ET per one bedroom unit. As such there are 5.2 ET chargeable for the proposed.

#### *S94 Plan No. 18 - Council Admin and Technical Support Facilities*

Plan No. 18 is applicable to the site as it is a tourist development. The rate is based on the number of bedroom units at a rate of 1.3 ET per one bedroom unit. As such there are 5.2 ET chargeable for the proposed.

*S94 Plan No. 22 - Cycleways*

Plan No. 22 is applicable to the site as it is a tourist development. The rate is based on the number of bedroom units at a rate of 1.3 ET per one bedroom unit. As such there are 5.2 ET chargeable for the proposed.

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

**Public Notification**

The application was notified for 14 days in accordance with the Tweed Development Control Plan Section A11 - Public Notification of Development Proposals. During this time, three submissions from the public were received. The main points of contention are outlined below:

Objection	Response
<u>Illegal clearing and earthworks have been undertaken without consent</u>	This report acknowledges the illegal works and has recommended the following to rectify the matter: <ul style="list-style-type: none"> <li>• Penalty Infringement Notices;</li> <li>• Rehabilitation plans;</li> <li>• Contributions to be paid prior to CC stage;</li> <li>• Referral to State Government if the DA does not proceed.</li> </ul>
<u>Willing Workers on Organic Farms</u>	The proposed development is for a tourist accommodation and does not result in Willing Workers on Organic Farms being employed on the site. It is therefore considered that this objection does not warrant refusal of the application in this instance.
<u>Visual Impact</u>	The proposed cabins are located approximately 900m from the Tyalgum Road Boundary, 20m from the southern boundary and 60m from the western boundary. All four (4) cabins are now located on the one site and it is considered that due to the large setbacks from the road and boundary that there will be minimal impact upon the views within the locality. The use is in keeping with the amenity of the area.
<u>Cumulative Impact</u>	The location of the cabins have been relocated so that they are all on the same site. The onsite effluent disposal system has been assessed by Council's Environmental Health Unit and it is considered adequate to cater for the proposal with buffer areas from watercourses and boundaries which are acceptable. Additionally, Council's Natural Resource Management Unit has assessed the impact of the proposal on vegetation. Conditions are recommended to be imposed to ensure the rehabilitation of vegetation is undertaken for areas currently disturbed.  It is considered that with the imposition of conditions relating to the rehabilitation of vegetation and onsite effluent and that the distance the cabins are from the boundaries this objection does not warrant refusal in this instance.

Objection	Response
<u>SEE illegible</u>	During the course of the assessment reports were submitted in relation to On-Site Effluent and Bushfire Threat Assessments. It is considered that the information included within these reports when used in conjunction with the original Statement of Environmental Effects as submitted that there was adequate information to assess the application and provide recommendations. It is considered that this objection does not warrant refusal in this instance.
<u>Onsite Effluent Issues</u>	The onsite effluent disposal system has been assessed by Council's Environmental Health Unit and it is considered adequate to cater for the proposal with buffer areas from watercourses and boundaries which are acceptable. Cabins 3 and 4 have been proposed to be relocated onto the same site as Cabins 1 and 2. It is considered that a number of the perceived issues were resolved when this amendment was received.

### NSW Rural Fire Service

The development was referred to the NSW Rural Fire Service.

The RFS returned recommended conditions of consent which have been applied to the application.

### (e) Public interest

Subject to the recommended conditions, the proposed development is considered to be in the public interest.

### OPTIONS:

That Council:

1. Approves the application in accordance with Recommendation A (and the relevant conditions of consent) and adopt Recommendation B and C as follows:
  - B. If the Development Application is commenced in accordance with the consent (Schedule B) a Penalty Infringement Notice for unauthorised works be issued.

and

  - C. That should Development Application DA13/0446 for four tourist cabins at Lot 2 DP 628210 Tyalgum Road, Eungella not proceed Council is to seek legal advice in regards to commencing legal action for the unauthorised works.
2. Refuses the development for specified reasons; or
3. Approve the application without a Penalty Infringement Notice and without future compliance action.

Council officers recommend Option 1.

**CONCLUSION:**

The subject application seeks consent for the construction of four tourist cabins on the site. The proposed cabins are single storey in height and are to be accessed off Tyalgum Road. It is considered that sufficient justification has been provided to support the application on the provision that a number of conditions are included relating to rehabilitation of vegetation. The above assessment is considered to demonstrate that the proposal is generally acceptable with respect to the appropriate legislative considerations.

Subject to the recommended conditions of consent, the application is recommended for approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

The applicant has a right of appeal to the Land and Environment Court in respect to any determination made by Council.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**6 [PR-PC] Use of Existing Building - The Lake, Cabarita - Lot 618 DP 508200  
No. 2-8 Willow Avenue, Bogangar**

**SUBMITTED BY: Development Assessment and Compliance**

**FILE REFERENCE: DA13/0618 Pt2**

Valid



## **Civic Leadership**

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

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

### **SUMMARY OF REPORT:**

Council received two complaints in late October 2014 in relation to functions being held at the subject site.

The first complaint was in relation to a wedding being held at the premises, now known as 'The Lake, Cabarita', on Saturday 25 October 2014. The second complaint related to a Halloween function held on 31 October 2014. Both complaints were from a neighbouring property. Council officers were also made aware of a Melbourne Cup function held at the premises on 4 November 2014.

Given that no approval has been granted on the subject site for a Function Centre, the landowner and business operator were issued with a letter from Council's legal representatives, inviting the land owner and business operator to show cause as to why Council should not take compliance and enforcement action.

In response to the show cause letter, the land owner and business operator each submitted a response (refer to Confidential Attachments 1 and 2), which state that the business is being operated in accordance with the original approval for a restaurant. The submissions went on to state that any functions held at the premises were ancillary to the primary use of the business as a restaurant. The landowner and business operator have also provided their own legal advice on this matter and a copy of this advice is provided as Confidential Attachment 3.

The applicant's submissions are supported in that it is considered that the development is being operated in accordance with the original 1974 approval for a restaurant, with a recommendation that no further action be taken on the matter.

**RECOMMENDATION:**

**That:**

1. **ATTACHMENTS 1 and 2 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because they contain:-**
  - (g) **advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
  
2. **Council acknowledges that The Lake, Cabarita is being operated lawfully as a restaurant with occasional, ancillary functions and no further action is considered necessary with regard to the two recent complaints.**

## REPORT:

**Owner:** Living Lifestyles (For The Over 55's) Pty Ltd  
**Location:** Lot 618 DP 508200 No. 2-8 Willow Avenue, Bogangar  
**Zoning:** RE2 - Private Recreation

### Background:

The subject site is located at 2-8 Willow Avenue, Bogangar. The site has an old approval from 1974 for a dwelling, shop and restaurant (Development Permit 4373). Whilst the old consent clearly identifies the approved use, it is very limited in terms of conditions of consent, with no specific hours of operation etc.

Council has more recently (April 2014) approved the use of the existing building as a restaurant and shop, including the use of the 'Blue Room', which only had approval as a dining room associated with the approved dwelling, under Development Permit 4374.

Despite the approval of DA13/0618, the owner has since advised that the business being operated from the existing building will rely on the old 1974 approval.

As was reported to the November Planning Committee meeting, the property owner was issued with a Penalty Infringement Notice (PIN) in relation to unauthorised building works at the subject site. The owner challenged the PIN and Council engaged solicitors to defend the matter in the Local Magistrate's Court on 2 October 2014, whereby the owner then pleaded guilty and the Magistrate issued the following Orders:

1. *The Defendant was convicted of the offence of "development without consent";*
2. *The Defendant was fined \$500;*
3. *The Defendant was ordered to pay professional costs of the prosecution in the amount of \$1,500;*
4. *The Defendant has 28 days to pay the fine and costs."*

Council has no record of payment of the \$1500 by the landowner to date and the matter is currently being followed up by Council staff.

### Complaint:

Council staff became aware that the premise had commenced operation under the old consent at the end of October when two complaints were received.

The first complaint related to a wedding function being held on Saturday 25 October 2014. The complaint noted that at 11.15pm guests from the wedding function were going home, some by cars, taxis and some had been picked up by charter bus. The complaint also noted that the wedding was held in the area of the building facing the road, not the lake and that they had a band playing music till 11pm. Photos were provided of cars parked along the road.

The second complaint (from the same person) highlighted that a Halloween function had been held on Friday 31 October 2014, noting that "*windows that are supposed to be screened are now fully open- giving us no privacy*" and that cars were again parked all over the road.

The second complaint also noted that whilst the complainant was happy to see the adjoining property operate as a restaurant and that "*it would be good for them and the community*", they were concerned that if the occasional function was ignored, they would eventually see functions being held there all the time.

Following the two abovementioned complaints, Council officers became aware of a further function being held at the premise on 4 November 2014 for a Melbourne Cup lunch.

**Assessment:**

Council officers instructed their legal representatives to issue a letter on Council's behalf to the land owner and business operator on 4 November 2014, advising that use of the premise as a Function Centre was not lawful and would be a breach of the EP&A Act without the necessary development consent. The letters advised of the various enforcement powers that Council had in relation to breaches of the Act and invited the land owner and business operator to show cause as to why Council should not take enforcement and legal action on the matter.

The land owner engaged the services of Planit Consulting to respond to Council's letter (see Confidential Attachment 1). The business owner also submitted a response to Council's show cause letter (see Confidential Attachment 2). Both letters noted that the restaurant commenced trading on Thursday 16 October 2014, with minimal opening hours to date (10am to 5pm Wednesdays and Thursdays, as well as 10am to 10pm Fridays, 8am to 10pm Saturdays and 8am to 5pm Sundays).

Both letters acknowledged that a wedding took place on the afternoon and evening of Saturday 25 October 2014, for the business owner's daughter (i.e. a private event).

The letters go on to stipulate that the business is being operated lawfully as a restaurant. In addition, the letters state that the odd function/event being held is ancillary to the primary use of the premise as a restaurant, similar to any other restaurant.

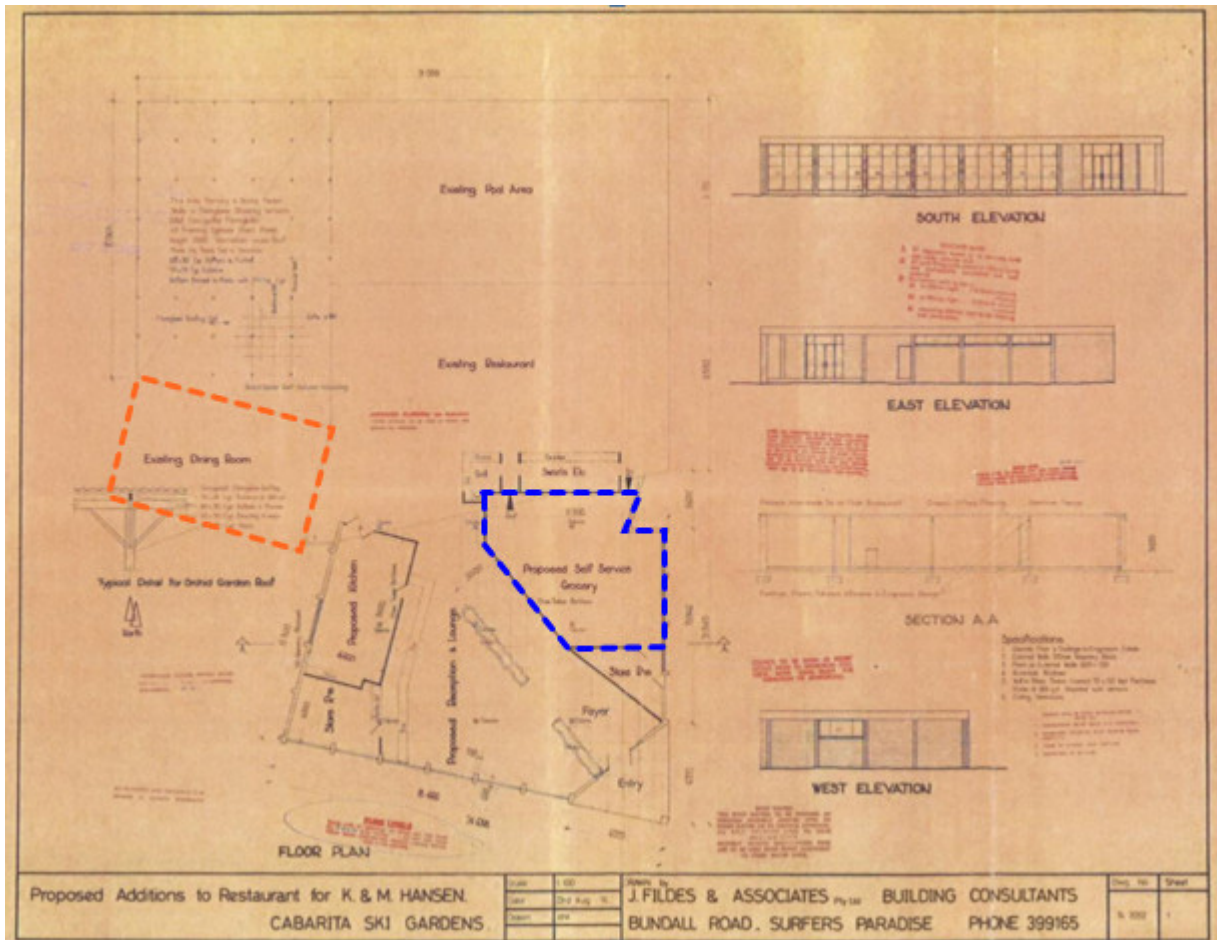
The business owner has questioned the consistency of Council on this matter, asking whether every other restaurant in Tweed Shire holding Melbourne Cup lunches were issued with the same 'please explain' letter.

The letters have noted that they hope the matter has been resolved and the business operators can "*simply get on with their livelihood at the earliest and without the need for the adjoining owners to continue to engage in petty complaints and engage Council in this manner*".

**Conclusion:**

It is acknowledged that the business is being operated as a restaurant under the old 1974 consent. A site inspection was undertaken on 14 November 2014 to ensure that the premise was being operated in accordance with the old consent, particularly with regard to the use of the Shop and the Blue Room (as shown in Figure 1 below).





**Figure 1 - Approved Plan identifying the Shop in blue & the Blue Room in orange**

Upon arrival it was clear that the premise was being operated as a restaurant, with a menu available etc. Whilst the majority of the premise was in accordance with the old consent, it was pointed out to the business owner that the approved Shop area had tables and chairs within it. The business owner advised that they would be removed, so as to comply.

The Blue Room was being used as a storage area for furniture, with the business owner commenting that staff occasionally ate their lunch in the room.

It was also noted that the stairs leading to the roof top deck (not approved for use associated with the restaurant) was cordoned off from customers.

The complainant's comment that "*windows that are supposed to be screened are now fully open-giving us no privacy*" is considered to relate to the requirements of the 2014 approval, which is no longer being relied upon by the proponent.

A follow up site inspection on 20 November 2014 confirmed that all tables and chairs had been removed from the Shop area.

The business owner's point that many restaurants within the Tweed operate in the same manner is considered to be valid. If Council is going to proceed with further investigations as to whether the premise is operating as a function centre, it stands to reason that the same investigation needs to apply to all restaurants within the Shire that hold functions.

In summary, it is considered that The Lake, Cabarita is being operated lawfully as a restaurant under the old 1974 development consent. The occasional use of the premise for a function is considered to be ancillary to the primary use as restaurant. No further action in relation to the two complaints received by Council is considered necessary.

**OPTIONS:**

That Council:

1. Accepts the property owner and business operator's response that the business is being operated as a lawful restaurant and no further action is considered necessary with regard to the two recent complaints; or
2. Instructs its legal representatives to undertake further enforcement/compliance action with regard to the use of the premise as a function centre.

Council officers recommend Option 1.

**CONCLUSION:**

Council officers consider that the business is being operated as a lawful restaurant and that occasional, ancillary functions are acceptable. The matter is considered to be closed, with no further action required with regard to the two complaints received.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Any further enforcement action undertaken by Council is likely to result in substantial legal costs and loss of resources with regard to staff having to undertake detailed investigations into the matter in order to provide sufficient evidence for such action.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Confidential Attachment Landowners response via consulting firms to Council's letter (ECM 3522973)

*(Confidential)* Attachment 2. Confidential Attachment Business Owners response to Council's letter (ECM 3522975)

*(Confidential)* Attachment 3. Confidential Attachment Legal Advice from Owners Solicitor dated 21 November 2014 (ECM 3525915)

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**7 [PR-PC] Development Application DA14/0171 for a Change of Use of Part of the Existing Building to a General Store at Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South**

**SUBMITTED BY: Development Assessment and Compliance**

**FILE REFERENCE: DA14/0171 Pt1**

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

Council is in receipt of a Development Application which seeks approval for a change of use of part of the existing building for the use of a General Store. The proposed General Store will likely comprise a small IGA or similar offering with a total Gross Floor Area of 460m<sup>2</sup>. The use of the existing building has recently been approved as Tourist Facility comprising; Tavern, Function Room, Café, Restaurant, Shop, Playground and Pontoon.

The application is required to be assessed against the provisions of the Tweed Local Environmental Plan 2000 (TLEP 2000) due to the savings provisions in the Tweed Local Environmental Plan 2014 (TLEP 2014). The subject site is zoned 6(b) Recreation in accordance with TLEP 2000. In accordance with the TLEP 2000 shops are prohibited in this zone.

The subject site is zoned RE2 Private Recreation under TLEP 2014. In accordance with the TLEP 2014 shops and neighbourhood shops (limited to 300m<sup>2</sup>) are prohibited in this zone. Only kiosks (limited to 15m<sup>2</sup>), markets and food and drink premises are permissible. In accordance with the TLEP 2014 the proposal is prohibited in this zone.

The recent decision in the NSW Land and Environment Court, determined that the proposed General Store (Supermarket) at the Seagulls complex was not consistent with the objectives of the 6(b) Recreation zone.

The applicant has lodged this application as a "general store" (TLEP 2000) and has submitted legal advice to support the view that the proposal is consistent with the primary objectives of the zone. The legal advice is provided as a confidential attachment to this report.

Council has also received legal advice which is provided in full as a confidential attachment to this report. The legal advice states that the applicant has not adequately demonstrated that the proposed development's factual matrix can be distinguished from that which arose

in the Seagulls court case. As such, the proposed general store is inconsistent with the primary objectives of the 6(b) Recreation zone and therefore not permitted.

This report assesses the application for a General Store on its merits having regard to the matters for consideration under the Environmental Planning and Assessment Act 1979.

The proposed development is considered not to adequately demonstrate how the proposed development:

- Satisfies the primary objective of the 6(b) Recreation zone;
- Satisfies the objectives relating to social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2014;
- Satisfies the general public interest and the impact the proposal would have on the existing commercial uses in the locality.

Accordingly the application is recommended for refusal.

**RECOMMENDATION:**

**That:**

- A. ATTACHMENT 2 and 3 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because they contain:-**
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- B. Development Application DA14/0171 for a change of use of part of the existing building to a general store at Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South be refused for the following reason:**
- 1. The proposal is not permissible as the development is not consistent with the primary objectives of the 6(b) Recreation Zone required by Clause 8(1)(a) – Consent Considerations of the Tweed Local Environmental Plan 2000.**

**REPORT:**

**Applicant:** Mormatsal Investments Pty Ltd Atf Wingham Plaza Unit Trust  
**Owner:** Mormatsal Investments Pty Ltd  
**Location:** Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South  
**Zoning:** 6(b) Recreation TLEP 2000  
**Cost:** \$250,000

**Background:**

Council received a Development Application for a proposed Tourist Facility comprising a Tavern, Café, Restaurant, **Shop (General Store)**, Playground and Pontoon (DA13/0669) on 15 November 2013.

During the assessment of the application Council Officers advised the applicant that Council were not in a position to support the proposed 'General Store' component given Council's position regarding the General Store (1,965m<sup>2</sup>) application DA12/0527 at Seagulls, Tweed Heads West. At the time DA12/0527 was currently the subject of a Land and Environment Court (LEC) appeal against Council's refusal. The appeal was dismissed by the NSW Land and Environment Court in a judgment handed down on 16 July 2014.

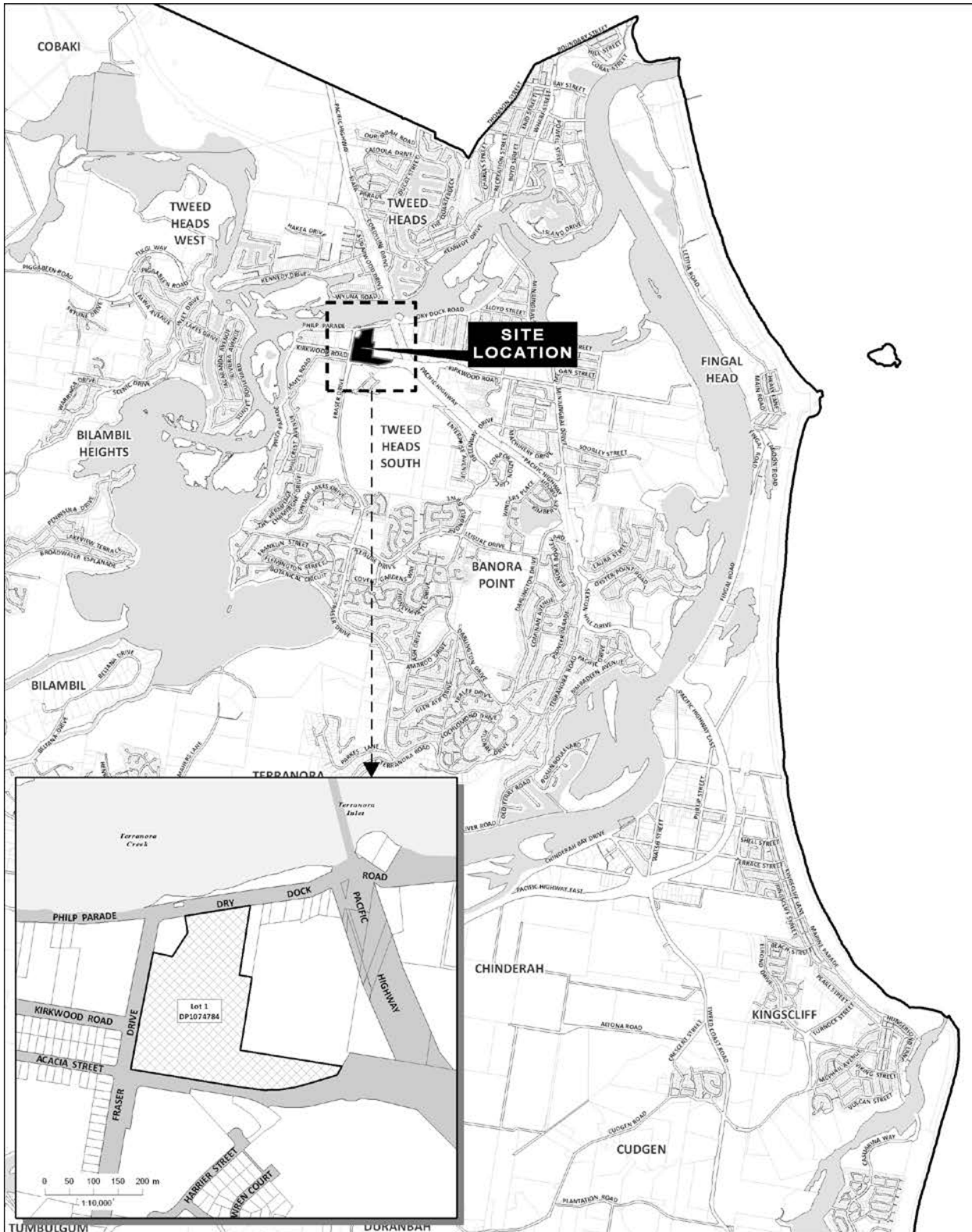
Council Officers advised the Applicant to look at an alternate pathway that will enable DA13/0669 to be determined without significant delay. On this basis, the Applicant amended DA13/0669 to delete the 460m<sup>2</sup> General Store component of the proposal and lodged a second application (DA14/0171) that seeks to change the use of part of the existing building from Recreation Facility to the 460m<sup>2</sup> General Store.

The Development Application for a proposed Tourist Facility comprising a Tavern, Café, Restaurant, Function Room, Playground and Pontoon (DA13/0669) was granted approval on 24 October 2014.

The proposed General Store is intended to be located within the Function Room approved under DA13/0669.



**SITE DIAGRAM:**



**Locality Plan**

Lots 1 DP1074784  
No.136-150 Dry Dock Road, Tweed Heads South

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including 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 disjunctive 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 110. The information contained on this document remains valid for 30 days only from the date of supply.

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Boundaries shown should be considered approximate only.

Scale: 1:50,000 @ A4 Portrait  
DO NOT SCALE  
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Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geocentric Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

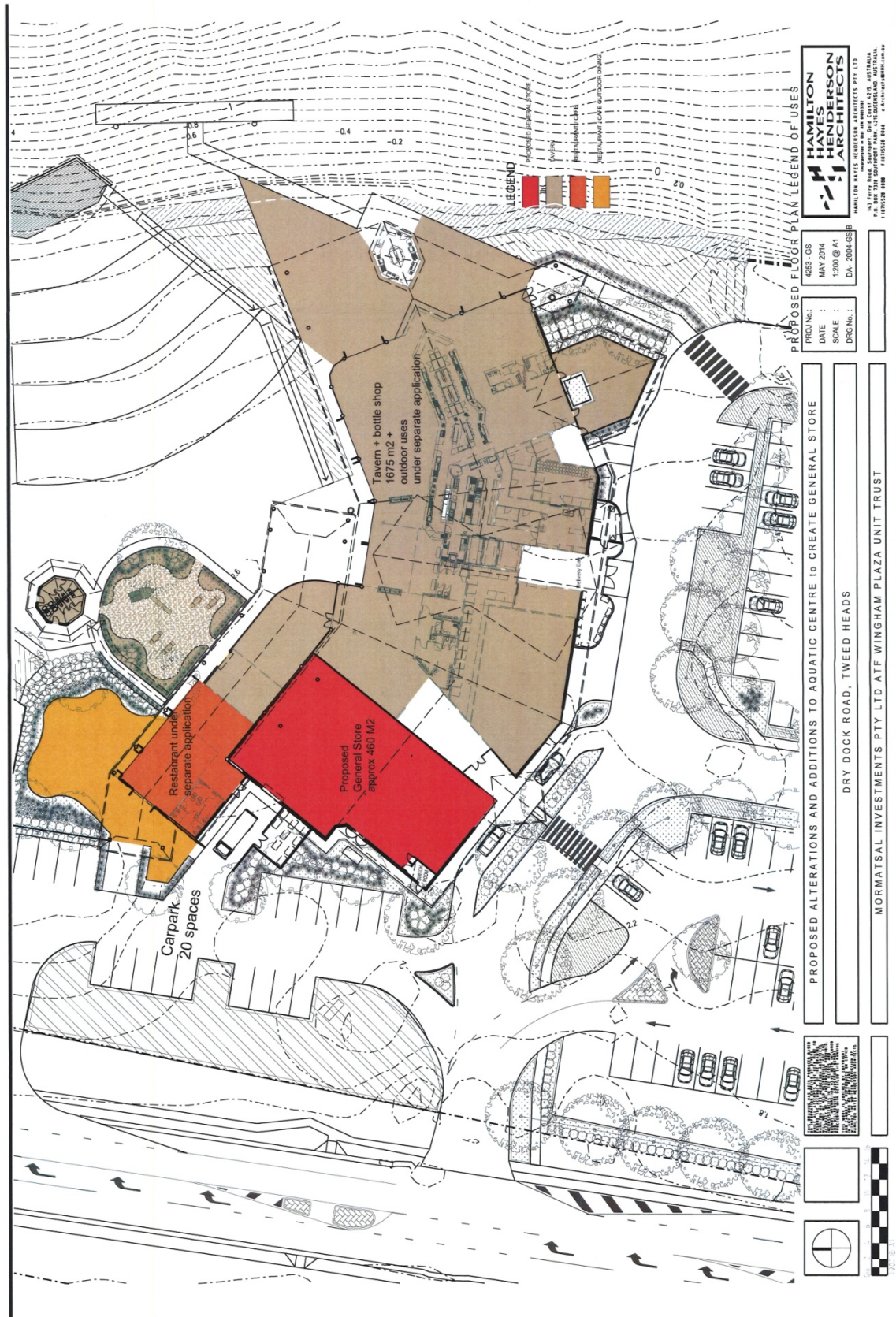
Civic and Cultural Centre  
3 Tumbulgum Road  
Murrumbidgee NSW 2484

PO Box 816  
Murrumbidgee NSW 2484

T | (02) 6670 2400 | 1300 292 872  
F | (02) 6570 2423  
W | www.tweed.nsw.gov.au  
E | planningreform@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:

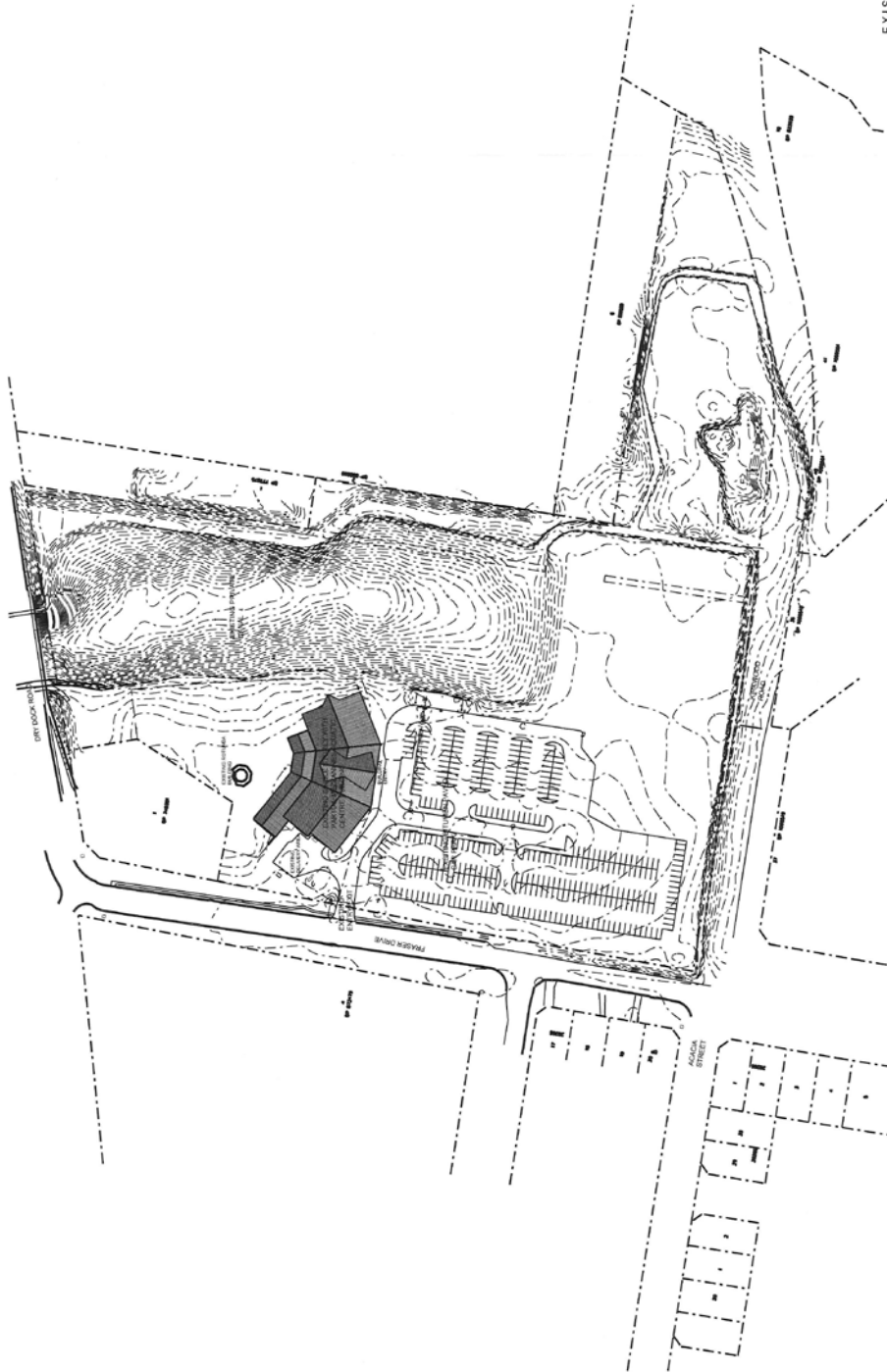


**HAMILTON HAYES HENDERSON ARCHITECTS**  
 HAMILTON HAYES HENDERSON ARCHITECTS PTY LTD  
 15 Fernside Way, Hamilton, QLD 4047, AUSTRALIA  
 P 07539 8888 F 07539 8844 E HAMILTON@HHAC.COM.AU

PROPOSED FLOOR PLAN LEGEND OF USES  
 PROJ No: 4253 - GS  
 DATE: MAY 2014  
 SCALE: 1:200 @ A1  
 DA: 2004-GSRB  
 DRG No: :

PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE  
 DRY DOCK ROAD, TWEED HEADS  
 MORMATSAL INVESTMENTS PTY LTD ATF WINGHAM PLAZA UNIT TRUST

North arrow symbol, graphic scale bar, and a small site plan inset.



**EXISTING SITE PLAN**

**HAMILTON HENDERSON ARCHITECTS**

REGISTERED ARCHITECTS PTY LTD  
 1/100 WYNDHAM STREET, WYNDHAM VIC 3208  
 P.O. BOX 128 WYNDHAM PARK, 4715 GLENLAND AVENUE, AUSTRALIA  
 TEL: (03) 5251 0888 FAX: (03) 5251 0888

PROJ No: 4283-GS  
 DATE: MAR 2014  
 SCALE: 1:1000 @ A1  
 DRG No: DA-100-GS-

PROJ No: [ ]  
 DATE: [ ]  
 SCALE: [ ]  
 DRG No: [ ]

PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE

DRY DOCK ROAD, TWEED HEADS

MORMATSAL INVESTMENTS PTY LTD ATF WINGHAM PLAZA UNIT TRUST

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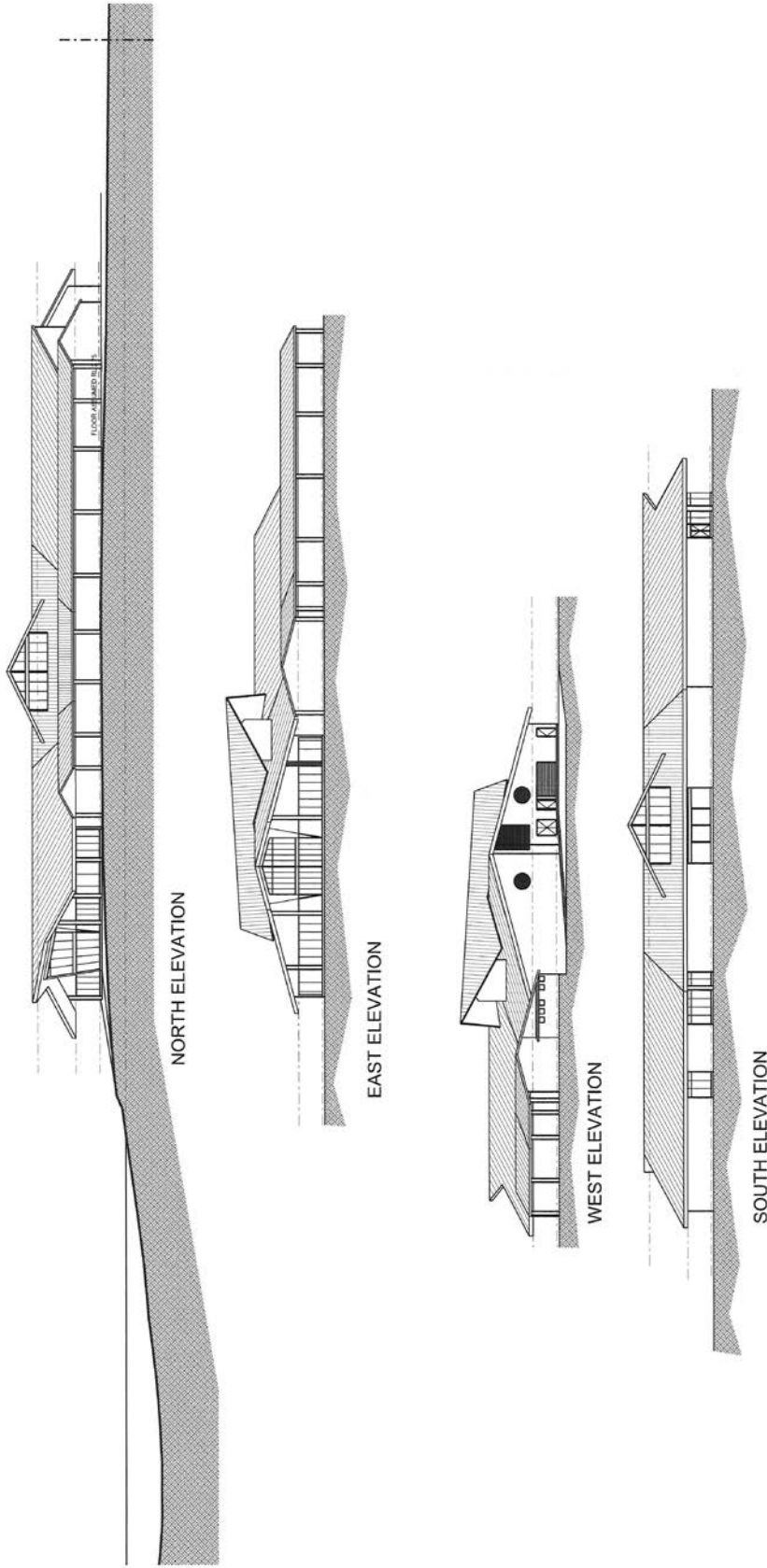
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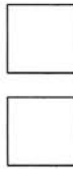


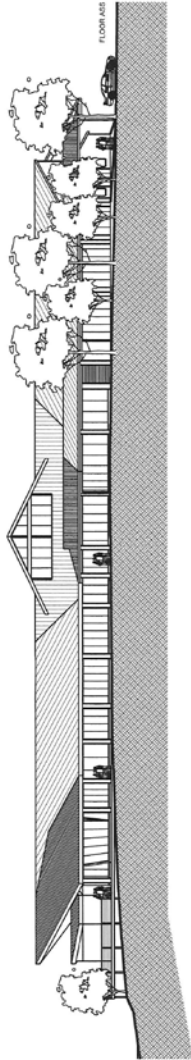
EXISTING ELEVATIONS  
**HAMILTON HAYES HENDERSON ARCHITECTS**  
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 MAR 2014  
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 DA-3000-SSA

PROJ No.:  
 DATE :  
 SCALE :  
 DRG No. :

PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE  
 DRY DOCK ROAD, TWEED HEADS  
 MORMATSAL INVESTMENTS PTY LTD ATF WINGHAM PLAZA UNIT TRUST

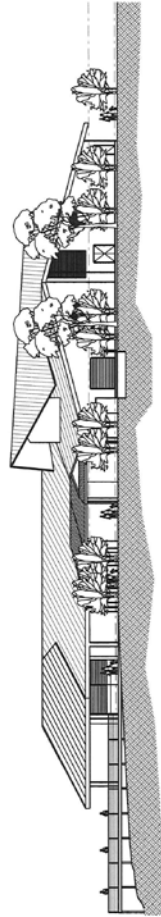




NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION



SOUTH ELEVATION

PROPOSED ELEVATIONS

HAMILTON HAYES HENDERSON ARCHITECTS PTY LTD  
 143 BERRY ROAD, HAMILTON, QUEENSLAND 4215, AUSTRALIA  
 P.O. BOX 338, CORROBY PARK, QUEENSLAND 4215, AUSTRALIA  
 PHONE: 07 5531 0000 FAX: 07 5531 0000

PROJ No: 4253-GS  
 DATE: MAY 2014  
 SCALE: 1:200 @ A1  
 DRG No: DA-3007-05B

PROPOSED ALTERATIONS AND ADDITIONS TO AQUATIC CENTRE TO CREATE GENERAL STORE

DRY DOCK ROAD, TWEED HEADS

NORMATSAI INVESTMENTS PTY LTD ATF WINGHAM PLAZA UNIT TRUST



**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** of the TLEP 2000 specifies that the aims of the plan are:

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

The proposal is considered not to be consistent with the aims of the plan as the proposal is not consistent with the primary objectives of the 6(b) Recreation zone and not suitable for the site.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the TLEP requires consideration of the four principals of ecologically sustainable development. The proposed development seeks a change of use to part of an existing building. The principals of ecologically sustainable development have not been comprised by this application.

### Clause 8 - Consent Considerations

Clause 8 of the TLEP 2000 sets out the consent considerations when determining a development application.

- 8(1) *The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:*
- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
  - (b) *it has considered those other aims and objectives of this plan that are relevant to the development, and*
  - (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

To address Clause 8(1) (a) the primary objectives of the 6(b) zone states:

#### **Primary objective**

*“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”*

The proposed General Store comprises a floor area of 460m<sup>2</sup>. Whether the facility is legally defined as a general store, a shop or a commercial premises it does not change the nature of the proposed use. The nature of the use is a supermarket and this use needs to be assessed against the primary objective for the 6(b) Open Space Recreation Zone.

The applicant provides the following comments:

*“The proposed development seeks to use part of the existing buildings for the purposes of providing a General Store. It is important to note that the Primary Objective does provide the opportunity for uses other than recreational purposes to occur from the subject site, in this regard, the proposed General Store by virtue of its size (460m<sup>2</sup>) is considered to be subservient to other recreational uses that will occupy the site at some point in the future. Accordingly the proposal does not sterilize from being used for recreational purposes.*

*On this basis the proposed development is considered to be consistent with both the primary and secondary objectives of the 6(b) Recreation Zone.”*

The proposed General Store is not considered to satisfy Clause 8(1)(a) of the TLEP 2000 as the primary objective of the 6(b) zone has not been met as the General Store use is retail in nature and not recreational.

Clause 8(1)(b) this report considers those other aims and objectives of this plan that are relevant to the development.

Clause 8(1)(c) it is considered that the development would have an unacceptable cumulative impact on the community, locality and catchment and accordingly cumulative impact forms one of the recommended reasons for refusal.

#### Clause 11 - Zone Objectives

The subject site is zoned 6(b) Recreation and has the following zone objectives which must be considered:

**Primary objective:**

*“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”*

**Secondary objective:**

*“to allow for other development that is compatible with the primary function of the zone.”*

As discussed above Clause 8(1)(a) states that that consent may only be granted if the development is consistent with the primary objective of the zone within which it is located. The proposed General Store in itself cannot be considered to be recreational in any way. It is a retail use that must be considered as a standalone development. Therefore the primary objective of the zone has not been satisfied. This forms one of the reasons for the recommendation for refusal of this application.

#### Clause 15 - Essential Services

Clause 15 of the TLEP requires Council to ensure adequacy of services prior to determining any application. All essential services are currently provided to the subject site.

#### Clause 16 - Height of Building

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. The subject land has a maximum height limitation of 3 storeys.

The existing building is single storey in height. The proposed development represents a change of use within the existing building. The change of uses will not incorporate additional building height and therefore satisfies the three storey height limit.

#### Clause 17 - Social Impact Assessment

The TLEP specifies that:

*“Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to*

*the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.”*

Tweed DCP Section A13 – Socio-Economic Impact Assessment specifies that a Socio Economic Impact Assessment is required where a place of employment employees more than 25 people, where a club exceeds a gross floor area of 1000m<sup>2</sup>, or where a retail development exceeds a gross floor area of 1500m<sup>2</sup>. Given the proposed General Store has a gross floor area of 460m<sup>2</sup> the proposed development is not considered of a size or scale that requires a Socio Economic Impact Assessment. However the applicant provided a Socio-Economic Impact Assessment. Below is the applicant’s summary of their findings in regards to socio economic impact:

*“The size of the proposed General Store at 460m<sup>2</sup> is not large enough to have a significant social impact hence sub clause (3) and the requirement to undertake a social impact assessment is not considered necessary.*

*With respect to the perceived impact of the development on the affected community which includes adjoining Palm Village Convenience Store and Bottle Shop as well the established retail hierarchy within the locality (e.g. Tweed Heights, Banora Central and Banora Point). The following conclusions have been drawn from the EIA (Economic Impact Assessment):*

- > the population residing in the MTA (Main Trade Area) is currently under-serviced as far as supermarket-type facilities are concerned;*
- > the resident population of the MTA exhibits an older age profile, lower levels of mobility (as measured by car ownership) and low income levels. As such residents would significantly benefit from an improvement in local convenience retail services;*
- > there is sufficient demand in the MTA to support both the proposed supermarket and the existing convenience store in the adjacent Palms Village;*
- > the impacts of the proposed development on existing centres outside the MTA will be in the very low category of impact and thus will not pose any threat to the viability of these centres;*
- > even if as a result of competition from the proposed development the existing convenience store in the adjacent Palms Village development were to cease trading (an outcome considered most unlikely), residents of the MTA would be substantially better off in terms of their access to basic supermarket facilities; and*
- > the proposed development is consistent with the objectives of the Tweed Shire Retail Strategy as it will not pose a threat to any existing retail centre while improving basic retail facilities in an area where no centre is planned.*

*In light of the above comments it is evident that the economic impacts of the proposed General Store are minimal and would not preclude Tweed Shire Council, as the consent authority, approving the development.*

*The report concludes significant social gain would be achieved by approval of the General Store*

The applicants Economic Impact Assessment identified an estimated impact in 2016 of between -0.3% and -3.2% on local businesses and a loss of -\$1.1 million on the adjacent convenience store (Palm Village) and other centres in 2016.

Council maintains the view that the proposed development is not suited to the subject site given the sites recreational zoning and the potential impact on adjoining commercial zones.

The proposed development is considered unacceptable having regard to Clause 17 of the TLEP 2000 as the application has not adequately demonstrated that the development won't have an unacceptable social or economic impact on the locality.

#### Clause 22 – Designated Roads

The subject site has frontage and existing access to Fraser Drive, which, to the south-west of the site is a Council designated road. As such this clause applies to this site. This clause states that the consent authority may grant consent to development on land to which this clause applies only if the following is satisfied:

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

The proposal is not considered to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road.

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

The subject application has been reviewed by Councils Traffic Engineer who has raised no concerns with respect to the above criteria.

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

The proposed development is not considered to prejudice any future road widening works. It is noted that Fraser Drive is to be upgraded to a four lane road in the future. This application has been reviewed by Council's Traffic Engineer with no concerns raised in this regard. The proposal is considered to be acceptable having regard to this objective.



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

Not applicable. The subject site is zoned 2(e) Residential Tourist and 6(b) Recreation.

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

The proposed development is not considered to be a type which is particularly sensitive to traffic noise as outlined above. The application has been reviewed generally in terms of noise by Councils Environmental Health Unit and it is considered that the proposal is acceptable.

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

The proposal is not considered to detract from the scenic values of the locality, due to the proposal mainly consisting of the use of an existing building, setback from the street boundary and existing and proposed landscaping.

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

Given the existing building and existing access of the proposed development, it is considered that the subject proposal cannot practically provide vehicular access except from the designated road.

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

- (i) *would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*
- (ii) *would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
- (iii) *would not compromise highway safety and efficiency, and*
- (iv) *would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

Not applicable. The subject site is zoned 2(e) Residential Tourist and 6(b) Recreation.

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

### Clause 32- Aircraft noise

The subject site is located within both the 25-30 ANEF and 30-35 ANEF area as designated under the 2031 Aircraft Noise Exposure Forecast, with the existing building being located in the 25- 30 ANEF area only. The objectives of this clause are:

- *to prevent certain noise sensitive developments from locating in proximity to Coolangatta Airport and its flight paths, and*
- *to minimise the noise impact from the operation of Coolangatta Airport on development in its vicinity.*

Under this Clause, when deciding whether to grant consent to development for the purpose of a community building, place of assembly, place of public worship or retail, commercial or light industrial purposes within the 25 or higher ANEF contour the consent authority must consider Australian Standard AS 2021–1994 (*Acoustics—Aircraft noise intrusion—Building siting and construction*).

Councils Environmental Health Section reviewed the applicants Aircraft Noise Assessment Report and recommended conditions in relation to this assessment and its recommendations.

Having regard to the above comments and the submitted Aircraft Noise Assessment, the proposed development is considered to satisfy the provisions of this clause and is considered acceptable.

### Clause 34 Flooding

The site is partially mapped as being affected by flooding. It is noted that the Q100 flood level for the site is RL 2.6m AHD with the existing floor level of the building being RL 2.75m AHD. The proposed change of use within an existing commercial building is suitable for the subject site and consistent with the clause.

### Clause 35 - Acid Sulfate Soils

The subject site is located on land identified as Class 2 on the Acid Sulfate Soil Planning Maps. As the works are within an existing building, disturbance to ASS is not expected.

### Clause 38- Future road corridors

The subject development site is located on land which is partially mapped as being a future road under the provisions of this clause. The objective of the clause is '*to cater for the alignment of, and development in proximity to, future roads.*'

This clause outlines that development, other than exempt development or agriculture, must not be carried out on land in or adjoining a future road corridor shown on the zone map, except with development consent. Furthermore, this clause requires Council to consider the effect of that development on the future alignment of the road corridor.

In this instance it is noted that the future road corridor was provided for the development of Kirkwood Road to the western side of Pacific Motorway, for which a specific alignment was approved under PTV10/0032 which is located to the south site boundary, (not within the site). The subject application has been reviewed by Council officers with respect to the Kirkwood Road upgrade with no objections raised to the proposal in relation to this. In addition the proposal seeks to use a portion of the existing building, as such, the proposed development is considered to be acceptable having regard to future road development to which this clause relates.

#### Clause 39 – Remediation of Contaminated Land

The objective of this clause is *‘to ensure that contaminated land is adequately remediated prior to development occurring.’*

The application has been reviewed in terms of land contamination by Council's Environmental Health Unit with no issues raised with respect to the proposed development area being contaminated. The proposed development is not considered to contravene the provisions of this clause.

#### Clause 47 – Advertising Signs

There is no signage proposed as part of this development application. The application states, a separate application will be submitted to Council in due course in order to secure advertising rights for the development.

### **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 the proposal 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 81: Development adjacent to the ocean or a waterway

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

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

To the north of Dry Dock Road, which is the road reserve which borders the northern section of the site, it is noted that there is a portion of foreshore open space which is accessible from the public road by way of walkway. This area extends from the motorway bridge to the west and includes an area in close proximity to the north of the site. In this regard the proposal is considered to be compliant with the provisions of this control.

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

It is noted that the building proposed to be used by this application is existing and located approximately 130m from the waterway, and therefore outside of the area covered by this clause (i.e. within 100m of waterway). In any event it is considered that the proposed development will not detract from the amenity of the waterway.

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

The provisions of the Coastal Zone Management Plan for Cobaki and Terranora Broadwater which are applicable to the subject site are detailed elsewhere in this report. It is considered that the proposed development is consistent with the principles of this 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 within the coastal zone and is subject to the matters for consideration under Clause 8 of this Policy. The proposed development will be located within the footprint of the existing building and considered to be consistent with Clause 8. The application is considered to satisfy the provisions of Clause 8.

SEPP (Infrastructure) 2007

Section 104 of SEPP (Infrastructure) 2007 requires Council to consider all traffic generating developments and consult with the local Development Traffic Advisory Group to determine the accessibility of the site concerned, the efficiency of movement and any potential traffic safety, road congestion or parking implications of the development.

A traffic generating development is considered an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.

In this regard Schedule 3 of the SEPP lists different land uses and specifies a size or capacity deemed to be traffic generating. The proposed development was not required to be referred to Council's Development Traffic Advisory Group as the proposal (Shop/General Store) is not over 500m<sup>2</sup>.

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

The Draft LEP 2014 proposes to change the zoning of the subject site from 6(b) Recreation to RE2 Private Recreation. It is noted that the draft Tweed Local Environmental Plan 2014 was gazetted (as amended) on 4 April 2014.

The RE2 zone has the following objectives and permissible uses

**Zone RE2 Private Recreation**

**1 Objectives of zone**

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

**2 Permitted without consent**

*Environmental facilities; Environmental protection works*

**3 Permitted with consent**

*Biosolids treatment facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Charter and tourism boating facilities; Child care centres; Community facilities; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Flood mitigation works; Food and drink premises; Forestry; Function centres; Helipads; Heliports; Industrial training facilities; Information and education facilities; Jetties; Kiosks; Marinas; Markets; Mooring pens; Moorings; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Respite day care centres; Roads; Sewage treatment plants; Signage; Tourist and visitor accommodation; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities*

**4 Prohibited**  
*Any development not specified in item 2 or 3*

Based on the new definitions within the Draft LEP 2014 the proposed development would be best defined as a commercial premises, which has a child definition of retail premises which has a child definition of a shop which has a child definition of a neighbourhood shop (limited to 300m<sup>2</sup>).

All of which are **prohibited** in the RE2 Private Recreation zone.

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

Tweed Development Control Plan

Section A2-Site Access and Parking Code

The subject site has approval for 289 existing car parking spaces located on the subject site (DA13/0669). In accordance with the Site Access and Parking Code Development Control Plan (DCP) the parking rate for a General Store equates to 3.5 spaces per 100m<sup>2</sup> of GFA for customers and 0.5 per 100m<sup>2</sup> of GFA for staff. On this basis the proposed development is required to provide a total of 20 car parking spaces.

The Traffic/parking Assessment – prepared by CRG Traffic for Development Application DA13/0669, recommended a minimum of 201 spaces. Therefore there is a credit of 88 spaces. It is not clearly identified how many spaces are attributed to the approved Function Room, however, regardless the 88 parking space credit easily accommodates the 20 parking spaces required by the proposed General Store.

It is also important to note that separate loading bay/waste collection area is provided that will ensure any conflicts between customer parking and refuse collection will be unlikely to occur. Minor changes to the existing car parking layout and circulation aisles are also proposed in order to permit a more functional and efficient layout. Appropriate conditions can be recommended if the application was to be approved.

Section A3-Development of Flood Liable Land

The subject site is located in a flood affected area with a defined Design Flood Level (DFL) of 2.6m AHD and a Probable Maximum Flood (PMF) level of 5.7m AHD. The application proposes to change the use of part of the existing building on the site which has been designed with a minimum floor level of 2.75m AHD, the existing development is located at approximately 150mm above the DFL. Provided the site's use (i.e. commercial) the proposed use would not be habitable during an extreme flooding event and as such Emergency Response provisions are not applicable. The site is also not located within a high flow area as noted on Council's GIS. In this regard the site is not required to adhere to any specific flooding controls and filling is permissible.

Having regard to these comments, it is considered that the proposed development is generally in accordance with the provisions of DCP A3 and is acceptable in terms of development on flood liable land.

Section A4-Advertising Signs Code

The application states:

*“No advertising content is sought as part of the subject application. A separate application will be submitted to Council in due course in order to secure advertising rights for the development.”*

Section A11-Public Notification of Development Proposals

The proposed development was notified to adjoining neighbours for a period of 14 days from Wednesday 9 April 2014 to Monday 28 April 2014. Following the exhibition period Council received two submissions objecting to the proposal raising issues with the possible impact on the existing Palms Village convenience store and other established retail centres. These submissions are considered in detail later in this report.

Section A13-Socio-Economic Impact Assessment

As detailed under Clause 17 of the TLEP 2000 in the above report the proposed development is not considered suitable having regard to the potential social and economic impacts as a result of the proposed development.

Section A15-Waste Minimisation and Management

This section of the DCP aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

A Waste Management Plan has not been prepared, however, suitable conditions can be recommended if the application were to be approved.

Section B3-Banora Point West- Tweed Heads South

The subject site is partially (36.20%) located within the area to which this DCP applies, being the southern portion of the site, which includes some of the proposed/existing car parking area. The remaining portion of the site 63.8% is not covered by the plan. The general aims of the DCP are to:

- *Present Council's objectives with regard to development of Banora Point West - Tweed Heads South;*
- *Provide more detailed provisions than that contained in the Tweed Local Environmental Plan 2000;*
- *Provide guidelines for determination of the merits of developments within Banora Point West - Tweed Heads South as required by Section 90(1)(a) of the Environmental Planning and Assessment Act, 1979; and*

- *Give detailed guidance to those wishing to develop within the Banora Point West - Tweed Heads South Area, to indicate Council's policies with respect to development, and to form a basis for negotiations should a departure from the provision of this plan be requested.*

The portion of the site that is covered by this plan is specifically located in the Special Uses (Aquatic Club) Area in Precinct 2. As the portion of the existing and proposed car parking spaces relating to the "Aquatic Club" are located within the area specifically identified for the "Aquatic Club" the proposal is consistent with the plan.

Section B3.9 Traffic and Transport outlines that distributor roads (including Kirkwood Road and Fraser Drive) are expected to carry large volumes of traffic in the future. To increase traffic safety and to avoid the need for wide road reservations, vehicular access to a distributor road may only be made by way of another road. Thus, direct access from individual private properties to a distributor road is prohibited. Furthermore it is noted that Subdivisions creating allotments adjoining distributor roads are required to prepare restrictions as to user under Section 88B of the Conveyancing Act to effectively prevent direct vehicular access to and from allotments across the distributor road.

The application proposes to use of part of the existing building, existing parking spaces and existing access from Fraser Drive. Having regard to the above, it is considered that the proposed development is generally in accordance with this section of the DCP and represents an acceptable development at this location.

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

Clause 92(a) Government Coastal Policy

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this Policy.

Clause 92(b) Applications for demolition

The proposed development could be appropriately conditioned to satisfy the demolition requirements.

Clause 93 Fire Safety Considerations

The proposed development could be appropriately conditioned to satisfy the fire safety requirements.

Clause 94 Buildings to be upgraded

The proposed development could be appropriately conditioned to satisfy the building code of Australia provisions.



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

**Tweed Shire Coastline Management Plan 2005**

The proposed development will have no negative impact on the Coastline Management Plan.

**Tweed Coast Estuaries Management Plan 2004**

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

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

The proposed development will have no negative impact on the Terranora Broadwater Catchment and satisfies the objectives of this Policy.

- (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**

As detailed in the above report the proposed development would have an unacceptable economic impact on the existing commercial zones in the locality. It is unreasonable to have such an impact on these businesses when the proposed land use does not comply with the primary zone objective in which the site is located.

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

This report details that from a physical perspective the site is capable of adequately accommodating this business, however from a planning perspective the proposed development should not be approved on the subject site due to the site's recreational zoning.

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

**Public Notification**

The proposed development was notified to adjoining neighbours for a period of 14 days from Wednesday 9 April 2014 to Monday 28 April 2014. Following the exhibition period Council received two submissions objecting to the proposal raising issues with the possible impact on the existing Palms Village convenience store and other established retail centres. The following table summarises these objections:

<b>Objection</b>	<b>Comment</b>
Objection 1 The objector currently owns the two shops at 122 Dry Dock Road being the	The economic impact is considered to be unacceptable particularly as the proposal is not in accordance with

Objection	Comment
<p>Palms village convenience store and Dry Dock Bottle shop.</p> <p>The objector states:</p> <p>The proposal is not in accordance with the Clause 47 of the North Coast Regional Environmental Plan, Clause 17 Social Impact Assessment of the Tweed LEP 2000. The proposal is prohibited within the RE2 zone and is considered to create significant adverse economic and social impacts.</p>	<p>objectives of the zone. The applicant's Economic Impact Assessment identifies an estimated impact in 2016 between -0.3% and -3.2% on local businesses and a loss of -\$1.1 million on the adjacent convenience store and other centres in 2016.</p> <p>The proposal is considered not to satisfy Clause 17 Social Impact Assessment of the Tweed LEP 2000.</p> <p>Clause 47 of the North Coast Regional Environmental Plan is considered not to be relevant to this application as the proposal does not relate to preparing a draft local environmental plan or industrial development.</p>
<p>Objection 2</p> <p>The objector currently leases the two shops at 122 Dry Dock Road being the Palms Village convenience store and Dry Dock Bottle shop. The objector states that:</p> <p><i>"these businesses have suffered substantial loss due to the arrival of COLES &amp; BWS on Frazer Drive. The proposed development will no doubt in my mind this force us to close down with no resale value for our businesses."</i></p>	<p>As above.</p>

**(e) Public interest**

On review of this application it is recommended that this DA be refused as the development has failed to demonstrate suitable compliance with the relevant heads of consideration in accordance with Section 79C of the Environmental Planning & Assessment Act 1979.

**OPTIONS:**

That Council:

1. Refuses the application in accordance with the recommended reasons for refusal; or
2. Resolves that conditions be brought back to the next Planning Committee Meeting to enable further consideration of the application.

Council officers recommend Option 1.

## CONCLUSION:

The proposed development seeks approval for a general store (460m<sup>2</sup>) within a recreational zone.

The proposed development has failed to adequately demonstrate how the proposed development:

- Satisfies the primary objective of the 6(b) Recreation zone;
- Satisfies the objectives behind social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2014;
- Satisfies the general public interest and the impact the proposal would have on the existing commercial uses in the locality.

Accordingly the application is recommended for refusal.

## COUNCIL IMPLICATIONS:

### a. Policy:

Corporate Policy Not Applicable

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

If the applicant lodges an appeal with the NSW Land and Environment Court Council will incur legal costs to defend any such appeal.

### c. Legal:

The applicant may appeal any decision of the Council before the NSW Land and Environment Court.

### d. Communication/Engagement:

Not Applicable.

## UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Applicant's Letter regarding Economic Impact and compliance with the zone objectives of the 6(b) Recreation zone and RE2 Private Recreation zone dated 29 September 2014 (ECM 3523811)

Attachment 2. Applicant's Socio Economic Assessment dated September 2014 (ECM 3523812)

(Confidential) Attachment 3. Confidential Attachment Applicant's Legal Advice Letter dated 9 September 2014 (ECM 3523823)

(Confidential) Attachment 4. Confidential Attachment Council's Legal Advice Letter dated 13 November 2014 (ECM 3523824)

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- 8 [PR-PC] Development Application D91/0281.03 for an Amendment to Development Consent D91/0281 for Dredging of the Tweed River North of Dodds Island to Barneys Point Bridge and Establishment of a Land Base Facility at Part Lot 9 DP 830659 Naru Street, Chinderah; Lot 6 DP 565926 No. 204-206 Chinderah Bay Drive, Chinderah; Lot 5 DP 565926 No. 208-218 Chinderah Bay Drive, Chinderah; Part Lot 9 DP 830659 No. 4-12 Naru Street, Chinderah; Tweed River Chinderah

**SUBMITTED BY:** Development Assessment and Compliance

**FILE REFERENCE:** GR1/5/5-D Pt2 & PF4010/40 Pt1

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

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### SUMMARY OF REPORT:

Council is in receipt of a Section 96(2) Amendment D91/0281.03 which seeks consent to amend the Action Sands approval for dredging of the Tweed River at Chinderah. The modification seeks approval to amend condition 3 only. Condition 3 currently states:

*"3. The development shall be completed within 20 years of commencement."*

Commencement of the development occurred on 24 March 1994.

The Section 96 Amendment currently before Council is to request an amendment to Condition 3 to enable the operations to continue until 24 March 2024.

The request for amendment is a simple numerical change to enable Action Sands to continue operating for an additional 10 years. The actual amount of sand to be extracted will not increase (the application originally approved 3,000,000m<sup>3</sup> of sand for extraction). The modification allows the time taken to extract this material to be extended from 20 years to 30 years.

However, this change raises two complicated planning questions as follows:

- Q1. Can Council legally consider the Section 96 Amendment as the time period specified in the consent has already lapsed (as at 24 March 2014); and if the answer to this question is yes, then:
- Q2. Is the proposed change to the timeframe considered substantially the same development as that originally granted in 1992 (as this is the required test under Section 96 of the EP&A Act 1979).

Council have sought legal advice on Question 1 and were advised that yes the consent would be amenable to modification in accordance with the Act under Section 96 by operation of Section 109B(2)(b) of the EP&A Act 1979 which relates to saving existing consents.

Based on this legal advice the only remaining matters for Council to determine in regards to the proposed modification are:

1. Question 2: Is the proposed change to timeframe considered substantially the same development as that originally granted in 1992? and
2. Has Council taken into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application (extension of time).

The assessment of this Section 96 has addressed these heads of consideration.

Council staff requested the applicant to provide a revised Environmental Management Plan to clearly set out mitigation measures and other dredge management procedures that will ensure environmental impacts are minimised.

The original approval authorised works from adjacent to Dodds Island east to Barney's Point Bridge, Chinderah. This was shown as dredging areas A - P. Areas A-E and Part of F (closest to Barney's Point Bridge) have been completed. The only areas not yet dredged downstream of Chinderah Island are within boxes F (part), G and H. These areas are environmentally constrained by the location of Seagrass beds. The current Environmental Management Plan does not discuss management of areas downstream of Box M but the associated plans indicate the possibility of these areas being dredged.

Accordingly NSW Fisheries and Council's Natural Resource Management Unit have recommended conditions of consent on this Section 96 to regulate any future dredging of these areas. The conditions prohibit dredging until Council and NSW Fisheries are satisfied with the required Seagrass Impact Assessment. Furthermore, new conditions are proposed to regulate compliance with the agreed batters, and 50-100m setbacks to manage sensitive environmental areas. The applicant has agreed to the imposition of these conditions.

This additional information provided as detailed above (in conjunction with approval from the relevant government agencies for the relevant licenses) has enabled Council staff to feel confident that the continuation of the existing operation would result in substantially the same development which was approved in 1992.

Furthermore, the assessment against 79C(1) has re-iterated the findings as per the original assessment in 1992 and for this reason the Section 96 Application is recommended for approval to modify Condition 3 to allow operations to continue until 24 March 2024.

However, due to the historic nature of the original consent, Council staff have recommended that some of the other conditions of consent also be modified to reflect the latest studies and best practice.

Council cannot legally modify the consent beyond the request of the Section 96 without the applicant's authorisation and subsequently the applicant's authorisation was obtained to

amend the consent as detailed in the recommendation below. Subsequent changes to the consent cannot occur without prior authorisation of the applicant.

It should also be noted that Council has previously considered and granted similar extensions to time periods as substantially the same development. For example, the filming of "I'm a Celebrity Get Me Out of Here" at Dungay has been granted six Section 96 Amendments which have extended the time period for production from December 2002 to June 2017.

The application before Council is not an opportunity to revisit the merits of the whole application but rather determine whether authorising the extension of existing operations is considered substantially the same development as that issued in 1992.

An associated Section 96 Application D96/0248.01 is also before Council for determination as it approved the stockpiles of the dredged material on Lots 5 and 6 in DP 565926. This consent was limited in time in the same manner as the subject application. Therefore if Council were to approve the subject application, the other related Section 96 D96/0248.01 would also require approval in a similar manner.

#### **RECOMMENDATION:**

**That Development Application D91/0281.03 for an amendment to Development Consent D91/0281 for dredging of the Tweed River north of Dodds Island to Barneys Point Bridge and establishment of a land base facility at Part Lot 9 DP 830659 Naru Street, Chinderah; Lot 6 DP 565926 No. 204-206 Chinderah Bay Drive, Chinderah; Lot 5 DP 565926 No. 208-218 Chinderah Bay Drive, Chinderah; Part Lot 9 DP 830659 No. 4-12 Naru Street, Chinderah; Tweed River Chinderah be approved subject to the following amendments:**

**1. Delete Condition 1 that stated:**

- 1. The development shall be carried generally out in accordance with the EIS prepared by Landplan Aust Pty Ltd, dated September 1991 except where varied by the following conditions.**

**and replace with new Condition 1A that states:**

- 1A. The development shall be carried out in general accordance with the Action Sands Environmental Management Plan dated July 2014.**

**2. Delete Condition 3 that stated:**

- 3. The development shall be completed within 20 years of commencement.**

**and replace with new Condition 3A that states:**

- 3A. The development shall be completed by 24 March 2024.**



**3. Delete Condition 5 that stated:**

- 5. Following completion of the operations, the land-based processing site shall be rehabilitated, including replacement of topsoil to the satisfaction of Council's Director Development Services.**

**and replace with new Condition 5A that states:**

- 5A. Following the completion of the operations, the land based processing site shall be rehabilitated, including replacement of topsoil to the satisfaction of Tweed Shire Council's General Manager or delegate.**

**4. Delete Condition 6 that stated:**

- 6. The applicant shall obtain any necessary approvals from the Department of Agriculture and Fisheries under the Fisheries and Oyster Farms Act.**

**and replace with new Condition 6A that states:**

- 6A The applicant shall obtain and maintain any necessary approvals from the NSW EPA, NSW Office of Water, NSW Department of Primary Industries and NSW Crown Lands.**

**5. Delete Condition 9 that stated:**

- 9. Prior to commencement of any work, a proper metes and bounds survey is required to be submitted to and approved by the Director Development Services. The survey must comply with the following:**

- a. The origin of co-ordinates of the survey must be related to a cadastral or other official survey.**
- b. Soundings of the existing river bed are to be shown over the entire area to be dredged. The soundings must be of sufficient number to enable 0.5 metre contours to be confidently drawn. Soundings must be based on a datum of levels of Local Indian Spring Low Water or other datum acceptable to the Director Development Services. Levels must also be related to an official bench mark in the area.**
- c. All proposed depths of dredging and side batters are to be clearly shown on the survey plan.**
- d. The proposed method and area in which any dredge waste is proposed to be discarded is to be clearly indicated on the survey plan.**

**and replace with new Condition 9A that states:**

- 9A. Prior to commencement of any work, a proper metes and bounds survey is required to be submitted to and approved by Tweed Shire Council's General Manager or delegate. The survey must comply with the following:**

- a. The origin of co-ordinates of the survey must be related to a cadastral or other official survey.
- b. Soundings of the existing river bed are to be shown over the entire area to be dredged. The soundings must be of sufficient number to enable 0.5 metre contours to be confidently drawn. Soundings must be based on a datum of levels of Local Indian Spring Low Water or other datum acceptable to the Director Development Services. Levels must also be related to an official bench mark in the area.
- c. All proposed depths of dredging and side batters are to be clearly shown on the survey plan.
- d. The proposed method and area in which any dredge waste is proposed to be discarded is to be clearly indicated on the survey plan.

**6. Delete Condition 10 which stated:**

10. The tenant shall supply to the Director Development Services a plan of soundings to the same standard as indicated in Condition 10(b) taken within the area of the application on an annual basis and at the completion of dredging operations.

and replace with new Condition 10A that states:

- 10A. The tenant shall supply to Tweed Shire Council's General Manager or delegate a plan of soundings to the same standard as indicated in Condition 9(b) taken within the area of the application on an annual basis and at the completion of dredging operations.

**7. Delete Condition 11 that stated:**

11. Retention ponds to be raised or bunded above 1 in 20 year flood event to satisfaction of Director Engineering Services. Above ground storage of material to be reduced to maximum of 5000m<sup>2</sup> at any one time.

and replace with new Condition 11A that states:

- 11A. Retention ponds are to be raised or bunded above 1 in 20 year flood event to the satisfaction of Tweed Shire Council's General Manager or delegate. Above ground storage of material to be reduced to a maximum of 5000m<sup>2</sup> at any one time.

**8. Delete Condition 12 that stated:**

12. Applicant to lodge a bond equal to the current estimated value of full rock protection of that section of bank identified in EIS as susceptible to erosion plus 20%. Applicant to set up survey control cross sections to the satisfaction of Director Engineering Services. Cross sections to be monitored and reports provided three monthly and inspected with Council officers at no greater than six monthly intervals. All work deemed necessary by the Director Engineering Services to be carried out with funds

drawn from the bond. Bond to be held and monitoring to continue for 12 months after completion of dredging after which any monies not expended be refunded to the applicant.

and replace with new Condition 12A that states:

**12A. Applicant to lodge a bond equal to the current estimated value of full rock protection of that section of bank identified in EIS as susceptible to erosion plus 20%. Applicant to set up survey control cross sections to the satisfaction of Tweed Shire Council's General Manager or delegate. Cross sections to be monitored and reports provided three monthly and inspected with Council officers at no greater than six monthly intervals. All work deemed necessary by Tweed Shire Council's General Manager or delegate to be carried out with funds drawn from the bond. Bond to be held and monitoring to continue for 12 months after completion of dredging after which any monies not expended be refunded to the applicant.**

**9. Delete Condition 32 that stated:**

**32. A system of dampeners is to be installed to allow irrigation of the sand stockpile to prevent the loss of airborne particulate matter from the site. A watering system is also to be installed to enable irrigation of the haulage and access roads within the site. Plan to be submitted to and approved by the Director Environment and Community Services and system to operational prior to completion of the stockpiling referred to Condition 31 above.**

and replace with new Condition 32A that states:

**32A. A system of dampeners is to be installed to allow irrigation of the sand stockpile to prevent the loss of airborne particulate matter from the site. A watering system is also to be installed to enable irrigation of the haulage and access roads within the site. Plan to be submitted to and approved by Tweed Shire Council's General Manager or delegate and system to operational prior to completion of the stockpiling referred to Condition 31 above.**

**10. Delete Condition 34 that stated:**

**34. The submission of a management plan addressing the issue of potential and actual acid sulphate soils in respect to:**

- i. The stockpiled material referred to in Condition 31;**
- ii. The silt material placed in the pond and subsequent future dredging from the pond.**

**for the approval of the Director Environment and Community Services, prior to commencement of dredging operations pursuant to Condition No. 31.**

and replace with new Condition 34A that states:

**34A. The submission of a management plan addressing the issue of potential and actual acid sulphate soils in respect to:**

- i. The stockpiled material referred to in Condition 31;**
- ii. The silt material placed in the pond and subsequent future dredging from the pond.**

**for the approval of Tweed Shire Council's General Manager or delegate, prior to commencement of dredging operations pursuant to Condition 31.**

**11. Insert new Condition 36 that reads as follows:**

**36. All future works following approval of D91/0281.03 shall achieve a 1:6 batter in accordance with approved plans.**

**12. Insert new Condition 37 that reads as follows:**

**37. All future works following approval of D91/0281.03 shall maintain a 50-100 metre buffer to TYPE 1 Highly Sensitive Key Fish Habitat (such as seagrass beds  $>5\text{m}^2$  and SEPP 14 wetlands) and a 50m buffer to TYPE 2 Moderately Sensitive Key Fish Habitats (such as seagrass beds  $<5\text{m}^2$  and mangroves) as referenced in *Fisheries NSW* current policy and guidelines.**

**13. Insert new Condition 38 that reads as follows:**

**38. Any dredging works to be undertaken downstream of Box M requires the submission of detailed Seagrass Impact Assessment. The Impact Assessment is to be lodged and approved to the satisfaction of both Tweed Shire Council and NSW Fisheries.**

**REPORT:**

**Applicant:** Action Sands Pty Ltd  
**Owner:** Action Sands Pty Ltd & Tweed Shire Council (Council administered Crown Land)  
**Location:** Part Lot 9 DP 830659 Naru Street, Chinderah; Lot 6 DP 565926 No. 204-206 Chinderah Bay Drive, Chinderah; Lot 5 DP 565926 No. 208-218 Chinderah Bay Drive, Chinderah; Part Lot 9 DP 830659 No. 4-12 Naru Street, Chinderah; Tweed River, Chinderah  
**Zoning:** IN1 - General Industrial, RE1 Public Recreation, W1 Natural Waterways, W2 Recreational Waterways  
**Cost:** N/A - Section 96 amendment only

**History:**

On 11 February 1992 Council issued a Designated Development approval for an extractive industry to carry out dredging from within the bed of the Tweed River from adjacent to Dodds Island east to Barney's Point Bridge, Chinderah. There were two approved locations for dredging Site B (56ha in size) and Site C (135ha in size), these were named this way to coincide with the tendering process by the then Department of Lands. Note there was no approved Site A.

The overall quantity of material to be extracted was 3,000,000m<sup>3</sup> over a then envisaged 20 year period. The proposal indicated a direct on site disposal by dredge to building sites requiring fill at a maximum distance of 3km with pumplines placed in stormwater drainage easements where practicable. The remainder of the extracted material was to be stored within the land based storage facility for haulage to required locations on demand.

The approved dredging plan nominated that a minimum bank setback of 10m from mean high water mark, underwater batters no steeper than 1 in 6 from the toe of the bank setback and a maximum dredging depth of 8m below mean high water mark. The dredging was to involve a suction dredge to pump the material to the land based facility and other approved disposal sites. The application anticipated a maximum of 120 vehicle movements per day associated with the facility.

At the time of the original assessment (1992) the Tweed LEP 1987 applied and the river was unzoned land and the land based activities were located on 1(b2) Agricultural Protection. Extractive Industries were permissible in both zones with development consent.

The original application was accompanied by a full Environmental Impact Statement (EIS) that specifically considered tides, floods, bed and bank stability, sediment transport, cumulative effects, estuarine ecology, estuarine ornithology (birds), water quality, fishing and recreational river usage, noise air pollution and traffic, and archaeology.

The application acknowledged four specific locational characteristics associated with the dredging which were Chinderah Bay, Seagrass beds, Sandbars and Dodds Island back channel. Different measures for each of these locational characteristics were established in the approved EIS.

The original application was referred to all the relevant State government agencies and publically exhibited. Council received 57 public submissions objecting to the application. Despite these objections, Council approved the application subject to 30 conditions of

consent which included the requirement for the applicant to obtain all the necessary licences from the NSW State Government. Specifically the application was also conditioned with a built in time limit at Condition 3 which read as follows:

3. *The development shall be completed within 20 years of commencement.*

In June 1993 the applicant obtained approval (D91/9281) from Council for a Modification (at that time known as a Section 102 Amendment) to:

- Delete Condition 5 (in regards to dredging Chinderah Bay and Dodds Island Back Channel) and have the consent re-numbered accordingly;
- Amend Condition 18 (now Condition 17 due to numbering) in regards to noise; and
- Add a new Condition 31 (now Condition 30 due to re-numbering) in regards to access

On 24 March 1994 the development physically commenced thus starting the 20 year time period as referenced by Condition 3.

In December 1995 the applicant obtained approval (D91/8281) from Council for a second Modification (at that time known as a Section 102 Amendment) to alter one condition (Condition 11) in regard to the amount of above ground storage of sand permitted at any one time. The consent was also amended by adding Conditions 31-35 in relation to stockpile requirements, licensing requirements, geotechnical stability and the need for the lodgement of management plans.

The effect of these two amendments is a consent with 35 Conditions regulating the dredging operations.

In addition the dredging activities have licences from:

- NSW Trade & Investment - Crown Land Dredging Permit Licence No. RI 526941, expires 1 March 2015 (and can be extended pending the outcome of the Section 96 Application).
- NSW Environmental Protection Agency pursuant to the Protection of the Environment Operations Act 1997. The EPA Licence No. 4723 is issued for dredging 100,000m<sup>3</sup> to 500,000m<sup>3</sup> obtained or moved per annum; and
- Department of Land & Water Conservation - Ground Water Licence No 30BL179392 (valid till November 2021) for use of the offstream lake area sedimentation pond

Dredging of the Tweed River has occurred by virtue of this consent and the above licences since 24 March 1994.

### **Current Proposal:**

The Section 96 Application currently before Council was lodged on 7 February 2014 and seeks approval to amend Condition 3 of D91/0281 which currently states:

3. *The development shall be completed within 20 years of commencement.*

Commencement of the development occurred on 24 March 1994.

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This means that as of 25 March 2014 (when the 20 year time frame lapsed) any dredging of the river in accordance with D91/0281 was in breach of Condition 3 however the consent itself is still active and remains active forever as the consent was lawfully commenced in 1994.

The Section 96 Amendment currently before Council is to request an amendment to Condition 3 to enable the dredging operations as approved by D91/0281 to continue until 24 March 2024 (30 years from the commencement rather than the currently conditioned 20 years).

The request for amendment is a simple, numerical change to enable Action Sands to continue operating for an additional 10 years. The actual amount of sand to be extracted will not increase (the application originally approved 300,000m<sup>3</sup> of sand for extraction) it just means that the time taken to extract this material will be extended from 20 years to 30 years.

However, as discussed in the summary, this change raises complicated planning questions which are discussed in detail in this report.

The applicant was conscious that after 24 March 2014 any continued operation of dredging in the Tweed River would be in breach of Condition 3. It should be noted that the consents remain valid indefinitely and the condition only limits the timeframe of the development not the development consent. The applicant was also aware that the current Section 96 Amendments were unlikely to be determined prior to the expiration date nominated in the respective conditions. Therefore on 7 March 2014 Council received a request by Ocean Park Consulting on behalf of Action Sands Pty Ltd to permit the current operations to continue until the Section 96 Applications are determined by Council.

In March 2014 the timeframe for determination of the applications was unknown as additional information was required for the assessment. The dredging operation operates under licence from the Crown Lands Department and they advised as follows:

*"Crown Lands is prepared to provide in principle support to a short term licence (up to 12 months) to Actions Sands (sic) continue their dredging operations, subject to usual policy and legislative requirements, and receiving advice from Council to support this action."*

Council's Director Planning & Regulation circulated this communication to all Councillors in March 2014 indicating that given the advice from Crown Lands it is recommended to send the following advice to the applicant:

*"With reference to your letter dated 7 March 2014 regarding continued operations for the developments under D91/0281 and D96/0248 I advise provided you receive the required licences and approvals from the Crown Lands Department and any other relevant agency Council will not take action for the continuation of the developments for 12 months from 24 March 2014 or until the Section 96 amended applications are determined whichever occurs first. Setting aside the time limitation conditions the developments must be carried out in accordance with the respective consents."*

No objection was received from the elected Councillors and accordingly the applicant was provided with the above advice and has subsequently been continuing operations pending the outcome of the subject Section 96 Applications.

The applicant has stated that the primary reason the sand has not been removed from the approved lease areas in the Tweed River is a result of the downturn in demand due to the global financial crisis and its impacts on the building and construction industry in the Tweed Region and South East Queensland.

The current Section 96 Application was accompanied by a written document addressing the proposed Section 96 Amendment and the applicable planning instruments. The application was referred to various Council Officers and Government Agencies as follows:

<b><u>Referral Officer/Agency</u></b>	<b><u>Response Summary</u></b>
Council's Environmental Health Officer	The application as submitted fails to adequately consider cumulative impacts beyond the current approval process. Additional information is required.
Council's Development Engineer	No objection.
Council's Flooding/Stormwater Engineer	No objection.
Council's Waterways Program Leader	Will review the amended EIS upon receipt.
NSW Department of Environment Climate Change & Water Environment Protection Regulation Group	No objection. Licence 4723 adequate.
NSW Department of Industry & Investment Fisheries	Additional information sought to address the affect on the environment by continuing the proposal for a further 10 years.
NSW Department of Industry & Investment Mineral Resources	No objections provided it is permissible development in the new zone.
NSW Department Primary Industry Office of Water	No objection if groundwater licence in place.
NSW Roads and Maritime Service	No objection.
NSW Trade & Investment - Crown Land	No objection - Licence No: 496079 to secure access to further sand reserves (lapsed 29/02/2014 but granted a one year extension to 1/03/2015 pending the outcome of the Section 96 Application).

The current Section 96 Application was advertised in the Tweed Link and notified to adjoining land owners who had the opportunity to comment between 19 February 2014 and 5 March 2014. During this time Council received three objections to the proposed Section 96 Amendment these are discussed in detail later in the report and have been addressed by the applicant.

On 21 July 2014 Council received additional information from the applicant as requested by Council and the NSW Department of Industry and Investment -Fisheries. The amended application incorporated:

- Detailed responses to Council's and Government requests for additional information;
- Ceres Law Letter addressing permissibility;

- Action Sands Pty Ltd Report on Existing and Proposed Dredging Operation Tweed River; and
- Action Sands Pty Ltd Environmental Management Plan - Tweed River and Land Based Premises July 2014.

This information was forwarded as an additional referral to the relevant Council Officers and the NSW Department of Industry & Investment (Fisheries) for comment and final recommendations in regards to the Section 96 Application. The report below discusses this assessment in detail but on review of all referral responses, submissions and having regard to the legislative tests for Section 96 Assessments Council staff are of the opinion that the continuation of the existing operation (and cumulative impact of the continued operations) would result in substantially the same development which was approved in 1992. Furthermore, the assessment against 79C (1) has re-iterated the findings as per the original assessment in 1992 and for this reason the Section 96 Application is recommended for approval to modify Condition 3 to allow operations to continue until 24 March 2024.

In addition Council staff have recommended that some of the other conditions of consent also be modified to reflect the latest studies and ensure the consent is updated (not substantially changed). Council cannot legally modify the consent beyond the request of the Section 96 without the applicant's authorisation and subsequently the applicant's authorisation was obtained to amend the consent as detailed in the staff recommendation. Subsequent changes to the consent cannot occur without prior authorisation of the applicant.

Please note that an associated Section 96 Application D96/0248.01 is also before Council for determination as it approved the stockpiles of the dredged material on Lots 5 and 6 in DP 565926 and Lot 9 in DP 830659. This consent was limited in time in the same manner as the subject application. Therefore if Council were to approve the subject application D96/0248.01 would also require approval in a similar manner. The land based processing facility also contains an associated concrete batching plant under separate consent 0285/2001DA.02.

**SITE DIAGRAM:**



**Locality Plan**

Lots 5-6 DP565926, No.204-218 Chinderah Bay Drive, Chinderah  
 Lot 9 DP830659 No.4-12 Naru Street, Chinderah

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 damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before you Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre 10/11/2014  
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 Boundaries shown should be considered approximate only.

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

Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geoid66, Easting of Australia 1984  
 Grid: Map Grid of Australia, Zone 56

**GDA**

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 2425  
 W | www.tweed.nsw.gov.au  
 E | planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:

NO.	REVISIONS	DATE
1	ISSUED FOR TENDERS	08/11/2014
2	FOR INFORMATION	08/11/2014
3	FOR INFORMATION	08/11/2014
4	FOR INFORMATION	08/11/2014
5	FOR INFORMATION	08/11/2014
6	FOR INFORMATION	08/11/2014
7	FOR INFORMATION	08/11/2014
8	FOR INFORMATION	08/11/2014
9	FOR INFORMATION	08/11/2014
10	FOR INFORMATION	08/11/2014

**NOTES & DISCLAIMERS**

- This plan was prepared by ACTION SANDS PTY LTD from a 2014/15 Survey of the site for the purpose of providing a plan of site for the purpose of development, construction or other use. The plan is not intended to be used for any other purpose.
- The site boundaries shown on this plan were determined as part of a measurement and therefore could be subject to error.
- Services shown on this plan have been located where possible by means of a survey. The plan is not intended to be used for any other purpose. The plan is not intended to be used for any other purpose.
- Levels have not been shown on the plan for safety reasons. The plan is not intended to be used for any other purpose.
- Colour related to the plan.
- This note is an integral part of this plan.

**ADDITIONAL INFORMATION**

**LINE TYPE LEGEND:**

- Topographic Line
- Drainage Line
- Power Lines (Overhead)
- Power Lines (Underground)
- Underground Electricity

**MICHEL GROUP SERVICES**  
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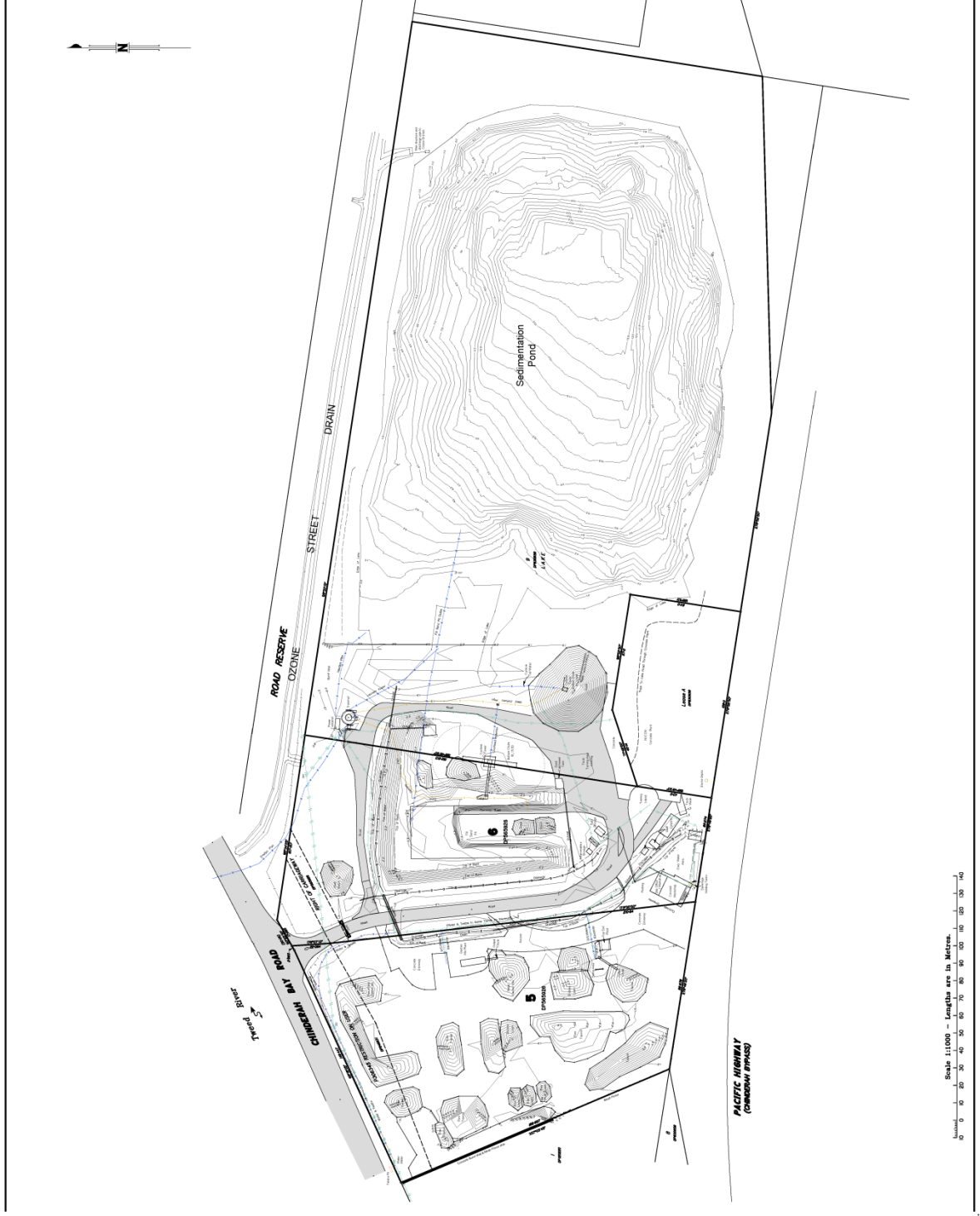
**Plan of Site Details on Lots 5 & 6 on Chinderah Bay Road, Chinderah, NSW**

NO.	DATE	CITY	COUNTY	STATE
1	08/11/2014	CHINDERAH	CHINDERAH	NSW
2	08/11/2014	CHINDERAH	CHINDERAH	NSW
3	08/11/2014	CHINDERAH	CHINDERAH	NSW
4	08/11/2014	CHINDERAH	CHINDERAH	NSW
5	08/11/2014	CHINDERAH	CHINDERAH	NSW
6	08/11/2014	CHINDERAH	CHINDERAH	NSW
7	08/11/2014	CHINDERAH	CHINDERAH	NSW
8	08/11/2014	CHINDERAH	CHINDERAH	NSW
9	08/11/2014	CHINDERAH	CHINDERAH	NSW
10	08/11/2014	CHINDERAH	CHINDERAH	NSW

**SHEET NUMBER 1 of 2**

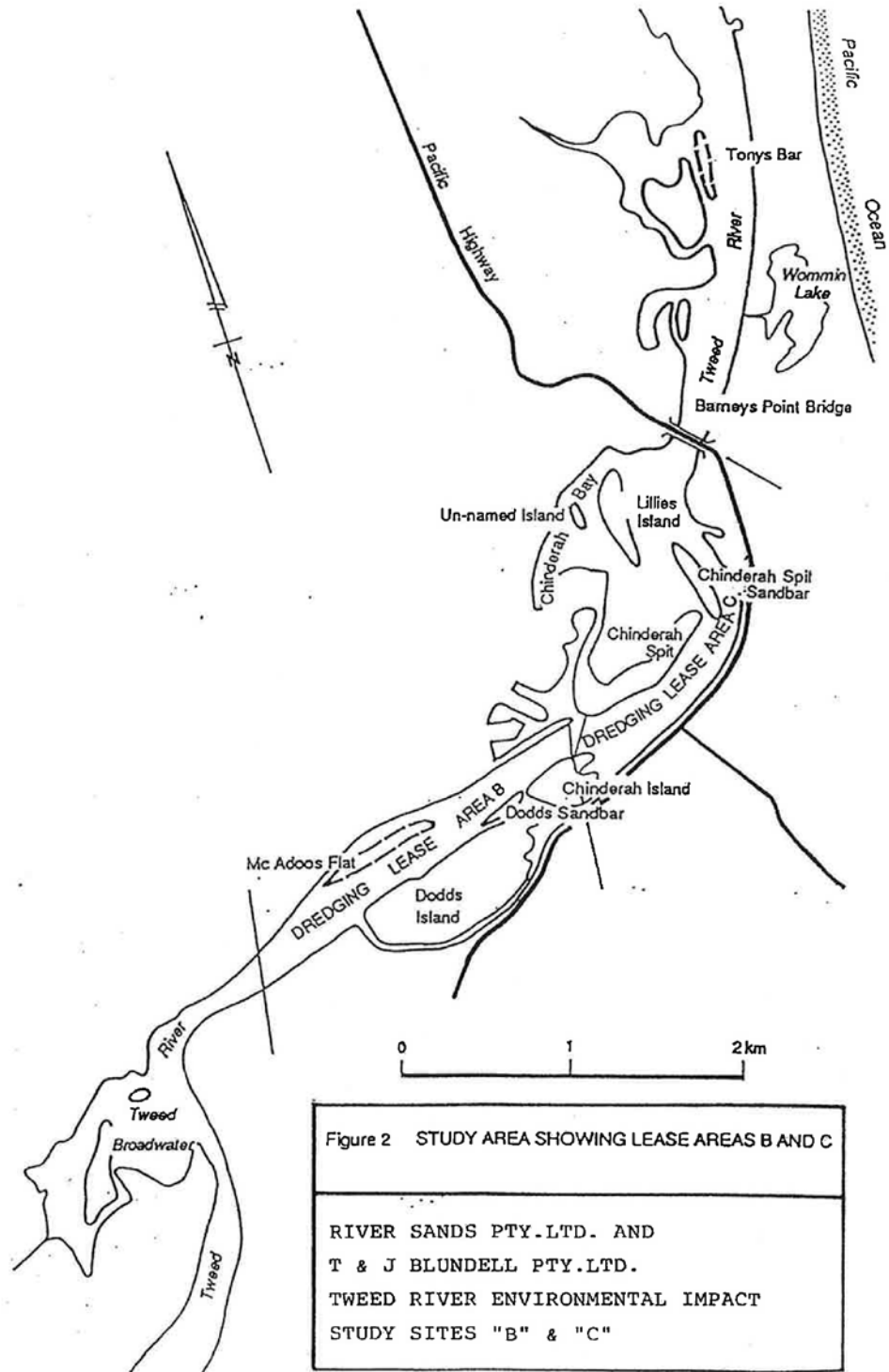
**7922-19**

**C**





















## General Permissibility & Applicable Planning Legislation

The summary of this report stated that the proposed Section 96 Application raises two complicated planning questions as follows:

- Q1. Can Council legally consider the Section 96 Amendment as the time period specified in the consent has already lapsed (as at 24 March 2014); and if the answer to this question is yes then:
- Q2. Is the proposed change to timeframe considered substantially the same development as that originally granted in 1992 (as this is the required test under Section 96 of the EP&A Act 1979).

To answer Question 1 Council needs to understand how the original consent was granted and how the various Planning Instruments adopted since 1992 affect the existing consent and the proposed variation.

D91/0281 was approved under LEP 1987 as an extractive industry. The waterways at that time were not zoned and development on unzoned land was permissible with development consent.

The current Section 96 Application was lodged on 7 February 2014 (while LEP 2000 was the applicable planning instrument), yet the application is being determined in December 2014 while LEP 2014 is the applicable planning instrument.

Clause 1.8A of the Tweed LEP 2014 does have a savings provision relating to development applications which states:

*"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."*

Given the Tweed LEP 2014 has been gazetted (April 2014) and commenced before determination of the modification application it would not be saved by the savings provision as the savings provision only saves Development Applications and not modification applications pursuant to Section 96. Therefore the modification application will need to be dealt with according to the law as it applies at the time of determination.

The current law applicable to the Section 96 is Tweed LEP 2014. This LEP has zoned the waterways W2 Recreational Waterway in which extractive industries are prohibited.

Therefore Section 109B of the Environmental Planning & Assessment Act 1979 applies and states that:

- (1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.

- (2) This section:
  - (a) applies to consents lawfully granted before or after the commencement of this Act, and
  - (b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and
  - (c) has effect despite anything to the contrary in section 107 or 109.
- (3) This section is taken to have commenced on the commencement of this Act.

So long as there is an existing development consent in force s109B of the EP&A Act authorises the carrying out of the development in accordance with that consent. The subject Section 96 Application would be amenable to modification in accordance with the Act under Section 96 by operation of section 109B(2)(b).

The applicant has amended their Section 96 Application to be considered under the provisions of Section 109B(2)(b).

The Council (or Court on appeal) can only grant consent to the modification if certain matters are met, the main matter being satisfaction under s96(2)(a) that:

...the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).

The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. That is, *Council must be satisfied that the modified development is substantially the same as the originally approved development.*

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The following assessment undertakes this test and concludes the proposed Section 96 will result in a development which is "essentially or materially" the same as the (currently) approved development.



**Considerations under S96(2) of the Environmental Planning and Assessment Act 1979:**

S96(2) states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and**

To establish whether the Section 96 will result in "essentially or materially" the same as the (currently) approved development Council staff have reviewed the revised Environmental Management Plan (EMP) having specific regard to the documentation considered in the original application. The EMP has been developed to clearly set out mitigation measures and other dredge management procedures that will ensure environmental impacts are minimised.

The EMP describes the commitments made by Action Sands to environmental management by:

- a. Identifying aspects of the quarry project that require environmental management. There are individual management component in the EMO relating to Dust Management, Noise Management, Water Quality Management & Sediment and Erosion Control Plan, Hydrocarbons and Chemicals Management, Community Relations Management, Waste Management;
- b. Establishing practical and achievable work methods and control measures for the containment to acceptable levels of environmental impacts;
- c. Clearly identifying authority and responsibility for implementing management measures during both construction, operational and rehabilitation stages;
- d. Nominating acceptable performance criteria for the measuring of impact levels and any sources from which the criteria may have been derived, including legislative requirements and government policies;
- e. Describing courses of action (and responsibilities) for responding to incidents of noncompliance and emergency events which may be detected or arise; and
- f. Establishing procedures for monitoring and reporting.

A review of the EMP has been undertaken and considered adequate to manage impacts to as low as reasonably practical associated with noise, amenity, dust, erosion & sediment control, water quality, groundwater and acid sulfate soils.

In regards to Acid Sulfate Soils, the EMP indicates that acid sulfate soil testing has been conducted at the Chinderah site since 1991. Sands and soils for sale are regularly tested for acid generating capability and comply with permissible chromium reducible sulphur levels of Scr < 0.03%. The lake/sedimentation pond water chemistry is monitored and reported under the terms of the Groundwater Licence for the site.

This includes pH monitoring of the lake over its depth profile and monitoring of pH of discharge. Existing management measures and conditions are considered adequate and no further considerations are required.

In regards to the proposed operating hours, the hours nominated in the EMP are consistent with the existing consent (Condition No. 28) being 7:00am to 6:00pm Monday to Friday and 8:00am to 1:00pm on Saturday. No history of concerns relating to amenity or noise is recorded in ECM. Existing conditions are considered adequate and no further considerations required.

In regards to the potential impacts associated with threatened species, populations, ecological communities and their habitats the application was reviewed by Council's Natural Resource Management Unit who advised given the sensitivity and value of the Tweed River, and its great value as a recreational and amenity feature for the Shire the impact of continued operations for ten years must be seriously considered. Upon review the NRM Unit are of the opinion that the most important issue is the impact of possible dredging occurring downstream of Chinderah Island in Boxes F and G. The applicant's Ecological Assessment did not address in any detail such dredging in this area. However the plans associated with the Environmental Management Plan indicate the possibility of these areas being dredged in the future despite the licenced area being constrained by and subject to avoidance of damage to submarine fibre optic cables that cross the river in this area. To ensure dredging in areas F, G and H do not proceed without a Seagrass Impact Assessment a new condition of consent is recommended as follows:

*"Any dredging works to be undertaken downstream of Box M require the submission of a detailed Seagrass Impact Assessment. The Impact Assessment is to be lodged and approved to the satisfaction of both Tweed Shire Council and NSW Fisheries."*

The proposed development was also referred to NSW Fisheries who provided the following comments on similar issues on the amended EMP:

*"Assessment of the additional information finds inconsistencies between the operations and the approved development application. The effect of these inconsistencies has exacerbated impacts of the existing dredging operation on recreational and commercial fishers. It is Fisheries NSW recommendation that addressing these inconsistencies and resolving issues outlined would need to be conditioned as part of any amendment to the subject proposal."*

*Batters steeper than 1:6*

- *D91/0281 requires the post dredging to achieve a 1:6 batter. This is documented on Figure 4: Contour Plan of sections of Tweed River showing proposed contours after dredging complied 6/3/1991 and signed on 9/1/92 as 2 of 2. The batter of 1:6 is also reported by the proponent in Section 8 Proposed Future Dredging Areas and Criteria (Attachment 3).*
- *Plan Number 7922-32 Drawing Title: Hydrographic survey over part of the Tweed River Chinderah February 2013 Sheet 3 of 6 depicts dredge batters as steep as 1:3 over 100s of metres within Box M. This area which includes Macadoo Flats is important to both recreational and commercial fishers. The steep batters that have been left following the dredging work and 'pot-hole'*

effect due to the dredging technique impact on fishers respective enjoyment and commercial use of the River.

- It should be noted that batters in previously worked areas depicted in sheets 5 and 6 exhibit steep batters that in some areas, after several major floods, are still very close to, or exceeding, the required 1:6 slope. Considering the steepness of these previously worked batters, it may be appropriate to require investigation of whether some of the batters in Box M dredge area can be modified to achieve compliance with the DA conditions.

Inconsistency between DA approved dredging footprint and works

- The proponent notes this inconsistency in the additional information in Plan Number 7922-33 and Section 4: Dredging profile - deviation in boxes L and M - past 5 years. This additional information illustrates that previously dredged areas depicted in Plan Number 7922-32 Drawing Title: Hydrographic survey over part of the Tweed River Chinderah February 2013 Sheets 3 and 4 did not match the Contour Plan of sections of Tweed River showing proposed contours after dredging complied 6/3/1991 and signed on 9/1/92 as 2 of 2. That document has a distinct narrowing of the dredge area at the upstream end of Chinderah Island. The initial amendment for ongoing dredging was based on the plan: Plan showing dredge area breakup and respective volumes.
- I note the proponent suggests in Section 8: Proposed future dredging areas and criteria that the D91/0981 'provides for the dredging of the top of McAdoos Flats' however Fisheries NSW cannot see any clear evidence such as a statement in the DA or maps provided of this in the documentation that has been provided to date. Furthermore, Fisheries NSW stresses that the large sandbar that covers M, N, O and north east corner of P is used by licensed commercial fishers and recreational fishers. Council, in their consideration of the proposed amendment should consider these uses of the sandbar cognisant of the D91/0281 approved area. The amendment to extend the dredging operation by 10 years provides an additional impost on the enjoyment and commercial use of this area by fishers and other waterway users.

Strategies to minimise impacts on other waterway users including licensed commercial fishers

- It is Fisheries NSW view that the proponent has not adequately addressed how this situation is going to be managed over the next 10 years.

Marine vegetation buffers

- Fisheries NSW notes that the Updated ecological advice - Action Sands development consent modification final report May 2014 recommends 50 and 60 metre buffers respectively to seagrass and mangroves. Fisheries NSW current policy and guidelines recommends a 50 - 100 metre buffer to TYPE 1 Highly Sensitive Key Fish Habitat such as seagrass beds >5m<sup>2</sup> and SEPP 14 Wetlands. A 50m buffer is recommended for TYPE 2 Moderately Sensitive Key Fish Habitats such as seagrass beds <5m<sup>2</sup> and mangroves. It

*is noted that this is quite achievable with the proposed operations. Fisheries NSW recommends these updated buffer requirements be applied to the subject amendment if it is approved rather than the 30 metre buffer provided for in the original 1991 DA.*

### **Conclusion**

*Fisheries NSW recommend Tweed Shire Council consider the matters identified above when assessing whether to amend D91/0281.03."*

In regards to the Fisheries comment that the application fails to adequately address how this application will affect other waterway uses the following comments are provided.

The original application was objected to by the fishing community. The applicant at the time stated that:

*"The proposed dredging configuration ensures all areas significant for fish habitat are retained and some are improved. A significant benefit of the proposal will be an improvement in navigability of the river which is important both to commercial and recreational fishermen and the general boating public."*

With the lodgement of a revised dredging plan Council and the NSW Fisheries agreed to the dredging to provide for the following:

- *A reduced impact on wetland areas north of Chinderah Island including benthic communities;*
- *Retention of valuable shoals/fishing habitats adjacent to Pacific Highway Chinderah;*
- *Provision for a more uniform navigational channel as required by the Department of Public Works;*
- *Preservation of a 30m buffer around wetland and seagrass areas as required by Fisheries and Oyster Farms Act.*

Having regard to the current Fisheries comments the applicant has agreed to modify the consent by imposing two new conditions to enforce:

- the 1:6 batter as shown in previously approved plans and application documentation; and
- current buffers to Type 1 and Type 2 Key Fish Habitat (seagrass beds, mangroves, SEPP 14 wetlands).

These conditions will improve the ability for commercial fishing within the Tweed River and are deemed to satisfy the issues raised by the NSW Fisheries.

Therefore, having regard to the original application, the proposed modification and the comments received from the relevant government agencies the continuation of the existing extractive industry for another 10 years is considered "essentially or materially" the same as the originally approved development.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and**

As detailed in the above report this application was referred to all relevant government agencies. The necessary licenses are all in place and can continue should the Section 96 be approved by Council. The recommendation incorporates the General Terms of Approval from the Department of Primary Industries (Fisheries) dated 18 September 2014.

- (c) it has notified the application in accordance with:**

- (i) the regulations, if the regulations so require, or  
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**

The current Section 96 Application was advertised in the Tweed Link and notified to the adjoining land based owners who had the opportunity to comment between 19 February 2014 and 5 March 2014.

- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.**

During the period of exhibition Council received three objections to the proposed Section 96 Application. These are summarised below:

Submission 1

- significant changes have been made to the development assessment process since development approval was granted;
- the proposal is beyond that of a Section 96 and requires a new development application;
- the proposal is not considered to be substantially the same development;
- a new development application would be identified as designated development.

Submission 2

- dredging work directly impact upon commercial fishing operations.

Submission 3

- an increase of a decade from 20 to 30 years is a significant alteration to the development;
- the proposal is not considered to be substantially the same development;

- Council may only consider those matters in respect of modification applications which arise from the modification and not matters which cannot be said to relate to the application (ie. extension of time to carry out dredging in a period of time where no dredging would have occurred);
- Dredging of a river is designated development.

### Council Assessment

The issues raised by the submissions above have been significantly canvassed in this report. In regards to the issue of river dredging being designated development, this would be true of a fresh development application. However, Council is of the opinion that the proposal is substantially the same development and may be considered as a Section 96 modification application.

The application is considered lawful and capable of approval having regard to the applicable planning legislation and on the individual merits having regard to the cumulative impact of the development continuing for a further 10 years.

**S96(3) states that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.**

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

#### **Tweed Local Environmental Plan 2014**

##### Clause 1.2 – Aims of the 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 extension of the approved extractive industry for a further 10 years is not an opportunity to revisit the entire application but rather only consider the amendment being sought. Given the application before Council does not seek to extract additional material but rather just extend the time period in which the material is removed the application is considered to satisfy the above aims provided the application continues to operate in accordance with the relevant licences and conditions of consent.

### Clause 2.3 – Zone objectives and Land use table

The W2 Recreational Waterway zone objectives are:

- *To protect the ecological, scenic and recreation values of recreational waterways.*
- *To allow for water-based recreation and related uses.*
- *To provide for sustainable fishing industries and recreational fishing.*

The above objectives do not specifically cater for extractive industries as they are a prohibited development within this zone. However, subject to compliance with the relevant licences and conditions of consent the development is considered to protect the ecological, scenic, and recreational values of the recreational waterway.

Despite the zone objectives his application must be assessed under Section 109B of the Environmental Planning & Assessment Act 1979 applies and states that:

- (1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.
- (2) This section:
  - (a) applies to consents lawfully granted before or after the commencement of this Act, and
  - (b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and
  - (c) has effect despite anything to the contrary in section 107 or 109.
- (3) This section is taken to have commenced on the commencement of this Act.

So long as there is an existing development consent in force s109B of the EP&A Act authorises the carrying out of the development in accordance with that consent. The subject Section 96 Application would be amenable to modification in accordance with Act under Section 96 by operation of section 109B(2)(b).

#### Clause 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 site does not impact on the provision of any public access to coastal lands nor is it considered to represent an opportunity for a new public access.

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

The proposed development is permissible by virtue of the Act. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

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

(i) *any significant overshadowing of the coastal foreshore, and*

(ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development is not considered to impact on any of the above. As such, the proposal will not result in any detrimental impact on the amenity of the coastal foreshore,

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

The proposed development is not considered to compromise the scenic qualities of the coast

(e) *how biodiversity and ecosystems, including:*

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

(ii) *rock platforms, and*

(iii) *water quality of coastal waterbodies, and*

(iv) *native fauna and native flora, and their habitats,*

*can be conserved, and*

The proposed development has been adequately operating for 20 years in accordance with its consent while satisfying the above objectives. An additional 10 years without increasing the extraction quantity is considered to result in the same outcome as approved in the original application.

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

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the sites compliance history and ability to continue operating in accordance with the relevant licences and conditions of consent.

This clause goes on to further state;

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

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

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

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

The proposed development does not propose a non-reticulated sewerage system.

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

The development does not discharge untreated stormwater to the sea.

- (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.

#### Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site demonstrates Class 1 Acid Sulfate Soils in accordance with this clause.

The EMP indicates that acid sulfate soil testing has been conducted at the Chinderah site since 1991. Sands and soils for sale are regularly tested for acid generating capability and comply with permissible chromium reducible sulphur levels of Scr < 0.03%. The lake/sedimentation pond water chemistry is monitored and reported under the terms of the Groundwater Licence for the site. This includes pH monitoring of the lake over its depth profile and monitoring of pH of discharge. Existing management measures and conditions are considered adequate and no further considerations are required.

#### Clause 7.3 – Flood Planning & Clause 7.4 - Floodplain risk management

The original application addressed flooding affects with negligible effects on existing flood conditions. The proposed change to the extraction period will not alter this original assessment.

## **State Environmental Planning Policies**

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

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

#### *Clause 8 – Matters for consideration*

- (a) *the aims of this Policy set out in clause 2,*
- (b) *existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*
- (c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*
- (d) *the suitability of development given its type, location and design and its relationship with the surrounding area,*
- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*
- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*
- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*
- (h) *measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats*
- (i) *existing wildlife corridors and the impact of development on these corridors,*
- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*
- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*
- (m) *likely impacts of development on the water quality of coastal water bodies,*
- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*
- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*
- (p) *only in cases in which a development application in relation to proposed development is determined:*
  - (i) *the cumulative impacts of the proposed development on the environment, and*
  - (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

It is considered that the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection. Subject to compliance with the existing licences and conditions of consent (as recommended) the development is considered suitable for approval

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

Nil

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

Nothing in the Tweed DCP is specifically relevant to the subject application.

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

Clause 92(a) Government Coastal Policy

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises the ongoing development of an existing extractive industry satisfying the conditions of consent. The development will not restrict access to any foreshore areas and is considered acceptable in this regard.

Clause 92(b) Applications for demolition

Not applicable

Clause 93 Fire Safety Considerations

Not applicable



Clause 94 Buildings to be upgraded

Not applicable

**1(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 plan does not specifically relate to the current application.

**Tweed Coast Estuaries Management Plan 2004**

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these creeks and as such this management plan does not apply to the subject application.

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

Not applicable

**1(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**

As detailed within the above report the application to extend the extraction period for a further 10 years (whilst not increasing the extraction amount) is considered reasonable subject to ongoing compliance with the existing licenses and conditions of consent.

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

The Tweed River is entirely suitable for the proposed extraction.

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

All submissions have been addressed in the above report.

**1(e) Public interest**

The ongoing operation of the existing business is considered to be in the public interest.

**OPTIONS:**

That Council:

1. Approves the Section 96 amendment to Development Consent D91/0281 in accordance with the recommendation.
2. Refuses the Section 96 amendment to Development Consent D91/0281 and provide reasons for refusal.

Council staff have recommended Option 1.

**CONCLUSION:**

The assessment of this Section 96 has seriously taken into consideration all the relevant heads of consideration. Council staff requested the applicant provide a revised Environmental Management Plan to clearly set out mitigation measures and other dredge management procedures that will ensure environmental impacts are minimised. This additional information (in conjunction with approval from the relevant government agencies for the relevant licensees) has enabled Council staff to feel confident that the continuation of the existing operation would result in substantially the same development which was approved in 1992. Furthermore, the assessment against 79C(1) has re-iterated the findings as per the original assessment in 1992 and for this reason the Section 96 Application is recommended for approval to change Condition 3 to allow operations to continue until 24 March 2024 in addition to minor amendments to update the consent.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

Yes, legal advice has been received as discussed in this report.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.	The original Council Report and Resolution for D91/0281 dated 5/02/1992 (ECM 3524101)
Attachment 2.	The DAP Report and Resolution for D91/9281 dated 25/06/1993 (ECM 3524170)
Attachment 3.	The DAP Report and Resolution for D91/8281 dated 6/12/1995 (ECM 3524102)

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**9 [PR-PC] Development Application D96/0248.01 for an Amendment to Development Consent D96/0248 for Proposed Sand Stockpiles at Lot 6 DP 565926 No. 204-206 Chinderah Bay Drive and Lot 5 DP 565926 No. 208-219 Chinderah Bay Drive, Chinderah**

**SUBMITTED BY: Development Assessment and Compliance**

**FILE REFERENCE: PF4030/2150 Pt2**

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

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### SUMMARY OF REPORT:

This Section 96 assessment should be considered after and in conjunction with the Section 96 assessment for D91/0281.03 as the two Section 96 Applications relate to one another in the following manner:

- D91/0281.03 relates to the dredging activities (water and land based) associated with Action Sands Dredging Operations. The report on this matter was first on the business paper.
- D96/0248.01 (the subject application) relates to the stockpiling of sand on an adjoining lot associated with Action Sands Dredging Operations. The report on this matter is below.

Council is in receipt of Section 96 amendment D96/0248.01 which seeks consent to amend the time frame for the stockpiling activities associated with Action Sands approval for dredging of the Tweed River at Chinderah. This modification specifically seeks approval to amend condition 3 of D96/0248 which currently reads as follows:

3. *The development shall be completed within 20 years of commencement of the works associated with Development Consent 91/281.*

As detailed within the dredging based Section 96 assessment commencement of D91/0281 occurred on 24 March 1994 and therefore the 20 year period nominated in Condition 3 ended on 24 March 2014.

The Section 96 amendment currently before Council is to request an amendment to Condition 3 to enable the stockpiling operations to continue until 24 March 2024 in line with the request for the dredging based activities.

The request for amendment is a simple numerical change to enable Action Sands to continue operating for an additional 10 years. The actual amount of sand to be stockpiled will not increase (as the extraction amounts have not changed) it just means that the time taken to extract and store the material this material will be extended from 20 years to 30 years.

In addition this Section 96 also seeks consent to amend Condition 1 of the consent which relates to the stockpile layout. The application seeks to amend the condition by providing a current stockpile plan which is different from that originally approved.

These changes raise two complicated planning questions as follows:

- Q1. Can Council legally consider the Section 96 amendment as the time period specified in the consent has already lapsed (as at 24 March 2014); and if the answer to this question is yes then:
- Q2. Is the proposed change to timeframe and stockpile layout considered substantially the same development as that originally granted in 1997 (as this is the required test under Section 96 of the EP&A Act 1979).

Council have sought legal advice on Question 1 and were advised that yes the consent would be amenable to modification in accordance with the Act under Section 96 by operation of Section 109B(2)(b) of the EP&A Act 1979 which relates to saving existing consents.

Based on this legal advice the only remaining matters for Council to determine in regards to the proposed modification are

1. Question 2: Is the proposed change to timeframe and stockpile layout considered substantially the same development as that originally granted in 1997? and
2. Has Council taken into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application (extension of time and amended stockpile layout).

The assessment of this Section 96 has seriously taken into consideration these two heads of consideration. Council staff feel confident that the continuation of the existing operation would result in substantially the same development which was approved in 1997. Furthermore, the assessment against 79C(1) has re-iterated the findings as per the original assessment in 1996 and for this reason the Section 96 Application is recommended for approval to change Condition 1 in regard to the approved plan and Condition 3 to allow operations to continue until 24 March 2024.

Please note Council staff have recommended that some of the other conditions of consent also be modified to reflect the latest studies and ensure the consent is updated (not substantially changed). Council cannot legally modify the consent beyond the request of the Section 96 without the applicant's authorisation and subsequently the applicant's authorisation was obtained to amend the consent as detailed in the staff recommendation. Any further change to the consent cannot occur without prior authorisation of the applicant.

The application before Council is not an opportunity to revisit the merits of the whole application but rather determine whether authorising the extension of existing operations

and an amended layout plan are considered substantially the same development to that originally issued.

**RECOMMENDATION:**

**That Development Application D96/0248.01 for an amendment to Development Consent D96/0248 for proposed sand stockpiles at Lot 6 DP 565926 No. 204-206 Chinderah Bay Drive and Lot 5 DP 565926 No. 208-218 Chinderah Bay Drive, Chinderah be approved subject to the following amendments:**

**1. Condition No. 1 is to be deleted which previously stated:**

- 1. The development shall be completed generally in accordance with the Environmental Impact Statement prepared by Martin Findlater & Associates dated 11 June 1996 and Drawing No 95024-01 REV A prepared by Martin Findlater & Associates dated 10 June 1996, accept where varied by these conditions.**

**and insert new Condition No. 1A which reads as follows:**

- 1A The development shall be completed generally in accordance with the Environmental Impact Statement prepared by Martin Findlater & Associates dated 11 June 1996 and *Drawing No 7922-19 (c) Sheet 1 of 2 and 2 of 2 dated 15 November 2013, prepared by Michel Group Services*, accept where varied by these conditions.**

**2. Delete the last sentence of Condition 2, Condition 2 in its entirety currently states:**

- 2. The storage and supply of any material that is not solely a result of the dredging operations associated with development consent 91/281 or as a result of site preparation works as a result of this consent is prohibited. The storage of landscape materials that are the result of mixing with materials that need to be imported to the site is prohibited. This does not involve material that is required to treat the material stockpiled on site to comply with condition 10(iv).**

**Insert new Condition 2A to read as follows:**

- 2A. The storage and supply of any material that is not solely a result of the dredging operations associated with development consent 91/281 or as a result of site preparation works as a result of this consent is prohibited. The storage of landscape materials that are the result of mixing with materials that need to be imported to the site is prohibited.**

**3. Condition No. 3 is to be deleted which stated:**

- 3. The development shall be completed within 20 years of the commencement of works associated with development consent 91/281.**

and insert new Condition No. 3A which reads as follows:

**3A The development shall be completed by 24 March 2024.**

**4. Amend Condition 4 which stated:**

**4. Following completion of the operations, the site is to be rehabilitated including the replacement of topsoil to the satisfaction of the Director, Development Services.**

**Insert new Condition 4A to read as follows:**

**4A. Following completion of the operations, the site is to be rehabilitated including the replacement of topsoil to the satisfaction of Tweed Shire Council.**

**5. Amend Condition 9 which stated:**

**9. Landscaping is to be carried out in accordance with the submitted landscaping plans maintained to the satisfaction of the Director, Development Services.**

**Insert new Condition 9A to read as follows:**

**9A. Landscaping is to be carried out in accordance with the submitted landscaping plans maintained to the satisfaction of Tweed Shire Council.**

**6. Condition No. 10 is to be partially deleted (points iii, iv, v, and vi) which stated:**

**10. Compliance with all requirements of Council's Environment and Community Services Division, specifically including the following matters:**

**(iii) Prior to any material leaving the site the material is to be sampled and tested for Net Acid Generating Potential (NGAP) and electrical conductivity in relation to pH at a rate of one (1) sample per 1000m<sup>3</sup>. This does not include the material sold as "brickies loam" for the sole purpose of mixing with cement to create mortar.**

**(iv) Material is not to leave this site unless sampled in accordance with Condition 10(iii) and demonstrated to be within the following limits.**

**\* NGAP < 0kg H<sub>2</sub> SO<sub>4</sub>/m<sup>3</sup>**

**\* Electrical Conductivity < 3.0mS/cm in 1:5 soil to water suspension.**

**\* pH > 5.5 in 1:5 soil to water suspension.**

**(v) Further testing of the existing "brickies" loam stockpiled on site is to be carried out if it is used for a purpose other than to mix with cement to create mortar.**

- (vi) All records of sampling are to be retained for inspection and investigation by Council's Environment and Health Services Unit upon request.

and insert new Condition No. 10A which reads as follows:

**10A. Compliance with all requirements of Council, specifically including the following matters:**

- (i) All of the mitigating measures and safeguards contained within the Environmental Impact Statement are to be implemented in full by the operators of the facility.
- (ii) All runoff from the proposed operation is to be collected and directed to stockpile irrigation or to the main pond via drains.
- (iii) Deleted
- (iv) Deleted
- (v) Deleted
- (vi) Deleted
- (vii) The site is to be engineered and maintained to avoid water standing for extended periods of time.
- (viii) The site is to be engineered and maintained to avoid water standing for extended periods of time. This does not apply to the pond required for irrigation purposes.
- (ix) If routine inspection by Councils entomological unit finds any mosquito breeding on site, control with larvicide will be carried out with all costs being borne by the owner.
- (x) All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
- (xi) 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, fumes or the like.
- (xii) Upon commencement of work on the proposed main stockpile, an irrigation/sprinkler system is to be installed on top of the stockpile and along the unsealed haulage roads within the site, to the satisfaction of the Director, Environment and Community Services.
- (xiii) The irrigation system is to be capable to provide sufficient dampening of the entire stockpile and haulage roads during periods of traffic and/or high speed winds. The use of the bucket to dampen the roads is only to be used as an additional method.



(xiv) During periods of high speed wind resulting in complaints from residents which Council deem to be reasonable, the stockpiles of other materials are to be covered so as to minimise the movement of dust and other particulates off site.

7. The following new condition 10.1 is to be added to the consent:

10.1 All environmental monitoring is to be carried out in accordance with the Environment Protection Licence relating to the site, issued by the Environment Protection Authority. In the event that the site is no longer licensed and regulated by the Environment Protection Authority, the applicant is to contact Council to determine appropriate environmental monitoring requirements.

**REPORT:**

**Applicant:** Action Sands Pty Ltd  
**Owner:** Action Sands Pty Ltd  
**Location:** Lot 6 DP 565926 No. 204-206 Chinderah Bay Drive; Lot 5 DP 565926 No. 208-218 Chinderah Bay Drive, Chinderah  
**Zoning:** IN1 - Industrial  
**Cost:** Not Applicable

**History:**

On 20 October 1997 Council issued a Development approval for the stockpiling of sand at Lots 5 and 6 in DP 565926 Pacific Highway Chinderah. The adjoining Lot 7 (now part Lot 9 in DP 803659 contains the land based facility originally operated by Action Sands Pty Ltd for the dredging of the Tweed River.

The approval authorised the stockpiling of sand on Lot 5 and 6 in DP 565926 which is hydraulically removed from the dredge pond on part Lot 9 in DP 803659. It was proposed that the stockpile of sand on Lot 5 and Lot 6 would be a supplementary stockpile for sand from the land based activity on part Lot 9. All runoff water was to return to the dredge pond. The perimeter of the stockpile sites had bund walls which have been grassed to stabilise materials. Upon completion of operations both lots will be reinstated to the natural surface level and grass established.

The original application was referred to all the relevant state government agencies and publically exhibited. Council received two public submissions objecting to the application. Despite these objections Council approved the application subject to 12 conditions of consent which included the requirement for the applicant to obtain all the necessary licences from the NSW State Government. Specifically the application was also conditioned with a built in time limit at Condition 3 which read as follows:

3. *The development shall be completed within 20 years of commencement of the works associated with Development Consent 91/281.*

**Current Proposal:**

The Section 96 application currently before Council was lodged on 30 December 2013 and seeks approval to:

1. Amend Condition 1 to reference a current stockpile plan which is different to that originally approved; and
2. Amend Condition 3 of D96/0248.01 which currently states:
  3. *The development shall be completed within 20 years of commencement of the works associated with Development Consent 91/281*

As detailed within the dredge based Section 96 assessment commencement of D91/0281 occurred on 24 March 1994 and therefore the 20 year period nominated in Condition 3 ended on 24 March 2014.

The Section 96 amendment currently before Council is to request an amendment to Condition 3 to enable the stockpiling operations to continue until 24 March 2024 in line with the request for the dredge based activities.

The request for amendment is a simple numerical change to enable Action Sands to continue operating for an additional 10 years. The actual amount of sand to be stockpiled will not increase (as the extraction amounts have not changed) it just means that the time taken to extract and store the material this material will be extended from 20 years to 30 years.

However, as discussed in the summary, this change raises complicated planning questions which are discussed in detail in this report.

The applicant was conscious that after 24 March 2014 any continued operation of stockpiling would be in breach of Condition 3. It should be noted that the consents remain valid indefinitely and the condition only limits the timeframe of the development not the development consent. The applicant was also aware that the current Section 96 amendments were unlikely to be determined prior to the expiration date nominated in the respective conditions. Therefore on 7 March 2014 Council received a request by Ocean Park Consulting on behalf of Action Sands Pty Ltd to permit the current operations to continue until the Section 96 applications are determined by Council.

In March 2014 the timeframe for determination of the applications was unknown as additional information was required for the assessment. The dredging operation operates under licence from the Crown Lands Department and they advised as follows:

*"Crown Lands is prepared to provide in principle support to a short term licence (up to 12 months) to Actions Sands (sic) continue their dredging operations, subject to usual policy and legislative requirements, and receiving advice from Council to support this action."*

Council's Director Planning & Regulation circulated this communication to all Councillors in March 2014 indicating that given the advice from Crown Lands it is recommended to send the following advice to the applicant:

*"With reference to your letter dated 7 March 2014 regarding continued operations for the developments under D91/0281 and D96/0248 I advise provided you receive the required licences and approvals from the Crown Lands Department and any other relevant agency Council will not take action for the continuation of the developments for 12 months from 24 March 2014 or until the Section 96 amended applications are determined whichever occurs first. Setting aside the time limitation conditions the developments must be carried out in accordance with the respective consents."*

No objection was received from the elected Councillors and accordingly the applicant was provided with the above advice and has subsequently been continuing operations pending the outcome of the subject Section 96 applications.

The applicant has stated that the primary reason the sand has not been removed from the approved lease areas in the Tweed River is a result of the downturn in demand due to the global financial crisis and its impacts on the building and construction industry in the Tweed Region and South East Queensland.

The current Section 96 application was accompanied by a written document addressing the proposed Section 96 amendment and the applicable planning instruments. The application was referred to various Council Officers and Government Agencies as follows:

<u>Referral Officer/Agency</u>	<u>Response Summary</u>
Council's Environmental Health Officer	Council's Environmental Health Officer did not raise any objection to the proposal subject to recommending the deletion of condition 10 (iii, iv, v, vi) and the inclusion of a condition requiring compliance with the Environment Protection Licence under the <i>Protection of the Environment Operations Act 1997</i> which is governed by the NSW Environment Protection Authority.
NSW Department of Environment Climate Change & Water Environment Protection Regulation Group	The proposed modification will not impact on the current EPA licence arrangements and hence ongoing environmental regulation (air, noise and water pollution) for the premise.
NSW Department Primary Industry Office of Water	A formal referral was not required, the activities covered by the Crown Lands Act 1989 are exempt and the stockpile is physically separated from the river by the road. It is noted that their groundwater licence has extended and now has an expiry date of 11.11.21. As long as the licence holder complies with the conditions of the licence it is likely that it could be extended to 2024 – the matter would be reviewed in 2021.”

The current Section 96 application was advertised in the Tweed Link and notified to adjoining land owners who had the opportunity to comment between 15 January 2014 and 30 January 2014. During this time Council received 1 objection to the proposed Section 96 amendment which is discussed in detail later in the report and have been addressed by the applicant.

On 21 July 2014 Council received additional information from the applicant as requested by Council and the NSW Department of Industry and Investment - Fisheries in regards to D91/0281.03. The amended application incorporated:

- Detailed responses to Council's and Government requests for additional information;
- Ceres Law Letter addressing permissibility;
- Action Sands Pty Ltd Report on Existing and Proposed Dredging Operation Tweed River; and
- Action Sands Pty Ltd Environmental Management Plan - Tweed River and Land Based Premises July 2014.

This additional information primarily related to the dredging operations in D91/0281.03 however as the two applications are linked the submissions for D96/0248.01 were addressed in this bundle of additional information.

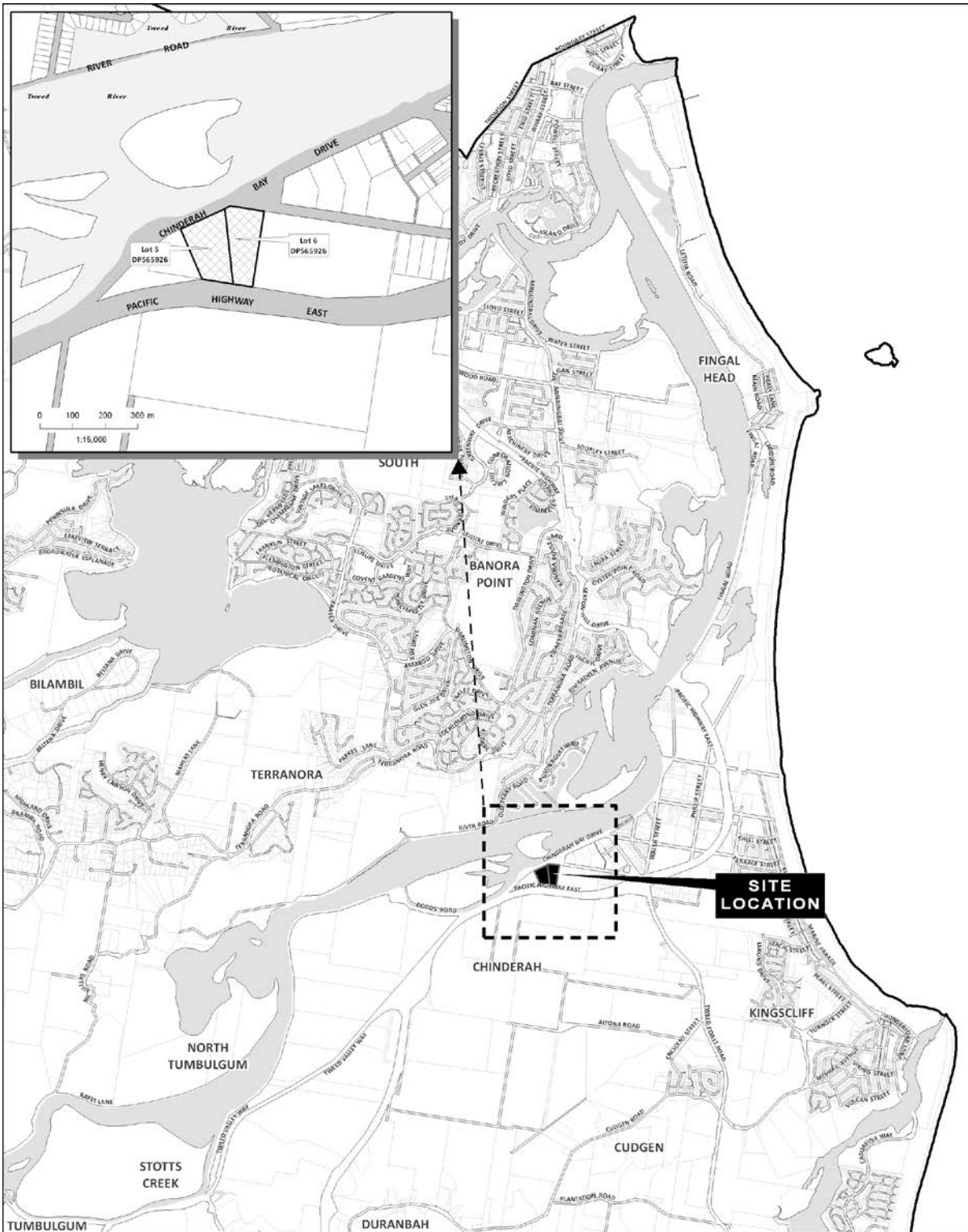
The below report discusses the assessment of this application but on review of all referral responses, submissions and having regard to the legislative tests for Section 96 assessments Council staff are of the opinion that the continuation of the existing operation (and cumulative impact of the continued operations) would result in substantially the same

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development which was approved in 1997. Furthermore, the assessment against 79C (1) has re-iterated the findings as per the original assessment in 1997 and for this reason the Section 96 application is recommended for approval to change condition 1 (stockpile plan) and Condition 3 to allow operations to continue until 24 March 2024.

In addition Council staff have recommended that some of the other conditions of consent also be modified to reflect the latest studies and ensure the consent is updated (not substantially changed). Council cannot legally modify the consent beyond the request of the Section 96 without the applicant's authorisation and subsequently the applicant's authorisation was obtained to amend the consent as detailed in the staff recommendation. Any further change to the consent cannot occur without prior authorisation of the applicant.

**SITE DIAGRAM:**



**Locality Plan**

Lots 5-6 DP565926;  
No.204-218 Chinderah Bay Drive, Chinderah

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Cadastre 10/11/2014  
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1:50,000 @ A4 Portrait  
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Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geodetic Datum of Australia 1994  
Srid: MapGrid of Australia, Zone 56

**GDA**

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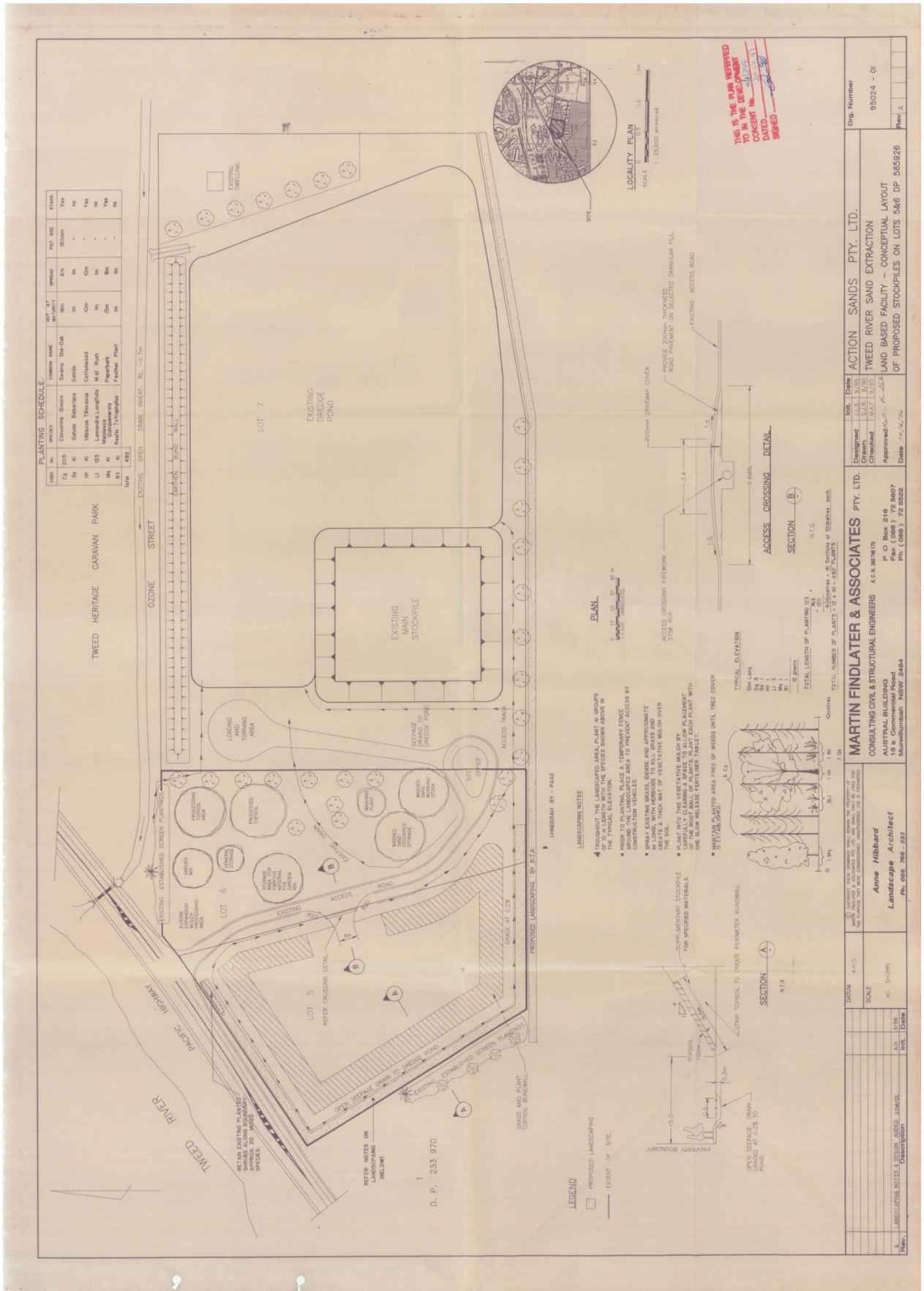
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Author: BJC/baker - Planning Section Unit

Date Printed: 10 November 2014



APPROVED STOCKPILE PLAN:





PROPOSED PLANS:

NO.	DESCRIPTION	DATE
1	Original Plan	10/12/14
2	Amendment 1	10/12/14
3	Amendment 2	10/12/14
4	Amendment 3	10/12/14
5	Amendment 4	10/12/14
6	Amendment 5	10/12/14
7	Amendment 6	10/12/14
8	Amendment 7	10/12/14
9	Amendment 8	10/12/14
10	Amendment 9	10/12/14
11	Amendment 10	10/12/14
12	Amendment 11	10/12/14
13	Amendment 12	10/12/14
14	Amendment 13	10/12/14
15	Amendment 14	10/12/14
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36	Amendment 35	10/12/14
37	Amendment 36	10/12/14
38	Amendment 37	10/12/14
39	Amendment 38	10/12/14
40	Amendment 39	10/12/14
41	Amendment 40	10/12/14
42	Amendment 41	10/12/14
43	Amendment 42	10/12/14
44	Amendment 43	10/12/14
45	Amendment 44	10/12/14
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49	Amendment 48	10/12/14
50	Amendment 49	10/12/14
51	Amendment 50	10/12/14
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92	Amendment 91	10/12/14
93	Amendment 92	10/12/14
94	Amendment 93	10/12/14
95	Amendment 94	10/12/14
96	Amendment 95	10/12/14
97	Amendment 96	10/12/14
98	Amendment 97	10/12/14
99	Amendment 98	10/12/14
100	Amendment 99	10/12/14
101	Amendment 100	10/12/14

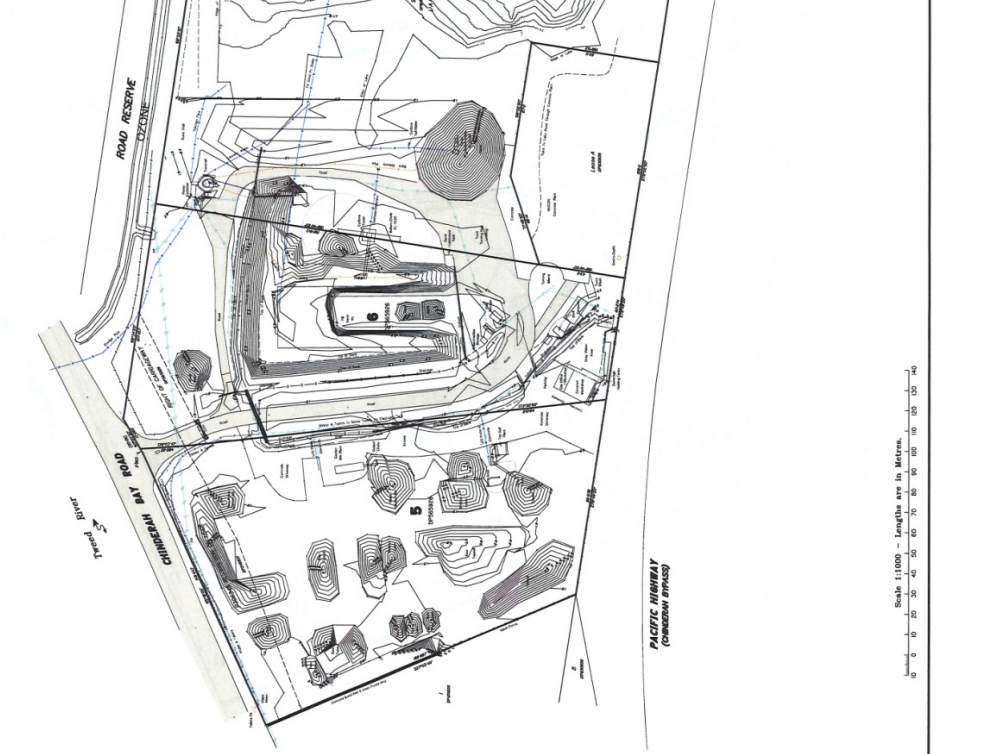
**NOTES & DISCLAIMERS**

- The information contained in this plan is for the use of the client only and is not to be used for any other purpose, particularly for the purpose of obtaining a building permit or other approval from any authority.
- The site boundaries shown on this plan were not surveyed as part of this project and are shown for information only. The client is advised that the boundaries shown could be subject to error and may not be accurate.
- Services shown on this plan have been located where possible by means of a utility search. The client is advised that the location of these services may vary from the records shown on the plan and the client is advised that the client should verify the location of these services before any construction commences on the plan. They may be located at a different depth or location.
- Levels have not been shown on the face of this plan for clarity.
- Colour notes in this document link to all relevant information.
- Customer received 22/11/14.
- This plan is an integral part of this plan.

**ADDITIONAL INFORMATION**

**LINETYPE LEGEND:**

- Thin Line
- Thin Line (Dashed)
- Thin Line (Dotted)
- Overhead Electricity
- Underground Electricity



**MICHEL**  
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PROJECT: ACTION SANDS PTY LTD  
 DATE: 10/12/14  
 SHEET NUMBER: 1 OF 2

**PROJECT:** ACTION SANDS PTY LTD

**DATE:** 10/12/14

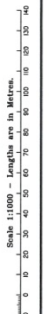
**SHEET NUMBER:** 1 OF 2

**SCALE:** 1:1000

**REVISIONS:**

NO.	DESCRIPTION	DATE
1	Issue for Information	10/12/14
2	Issue for Approval	10/12/14
3	Issue for Construction	10/12/14

**CLIENT:** ACTION SANDS PTY LTD  
**ADDRESS:** 21 Canal Street, Sydney NSW 2008  
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## General Permissibility & Applicable Planning Legislation

The summary of this report stated that the proposed Section 96 application raises two complicated planning questions as follows:

- Q1. Can Council legally consider the Section 96 amendment as the time period specified in the consent has already lapsed (as at 24 March 2014); and if the answer to this question is yes then:
- Q2. Is the proposed change to timeframe and stockpile layout considered substantially the same development as that originally granted in 1992 (as this is the required test under Section 96 of the EP&A Act 1979).

To answer Question 1 Council needs to understand how the original consent was granted and how the various Planning Instruments adopted since 1997 affect the existing consent and the proposed variation.

D96/0248 was approved under LEP 1987 when the site was zoned 1(b2) Agricultural Protection.

The current Section 96 application was lodged on 30 December 2013 (while LEP 2000 was the applicable planning instrument), yet the application is being determined in December 2014 while LEP 2014 is the applicable planning instrument.

Clause 1.8A of the Tweed LEP 2014 does have a savings provision relating to development applications which states:

*"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."*

Given the Tweed LEP 2014 has been gazetted (April 2014) and commenced before determination of the modification application it would not be saved by the savings provision as the savings provision only saves Development Applications and not modifications applications pursuant to Section 96. Therefore the modification application will need to be dealt with according to the law as it applies as the time of determination.

The current law applicable to the Section 96 is Tweed LEP 2014. This LEP has zoned the site IN1 Industrial and earthworks are still permissible with consent.

The Council (or Court on appeal) can only grant consent to the modification if certain matters are met, the main matter being satisfaction under s96(2)(a) that:

*...the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)*

The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. Council must be satisfied that the modified development is substantially the same as the originally approved development.

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The following assessment undertakes this test and concludes the proposed Section 96 will result in a development which is "essentially or materially" the same as the (currently) approved development.

**Considerations under and S96(2) of the Environmental Planning and Assessment Act 1979:**

S96(2) states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and**

To establish whether the Section 96 will result in "essentially or materially" the same as the (currently) approved development Council staff have reviewed the application having specific regard to the documentation considered in the original application.

The stockpiling of material on this site has been effectively operating for almost 20 years. A review of the documentation has been undertaken and considered adequate to manage impacts to as low as reasonably practical associated with noise, amenity, dust, erosion & sediment control, water quality, groundwater and acid sulfate soils. The ongoing use will not have any new environmental impacts that are not already being effectively managed.

The revised stockpiling layout is reasonable and will result in effective operations for the site. No objections are raised.

Therefore, having regard to the original application, the proposed modification and the comments received from the relevant government agencies the continuation of the existing stockpiling site for another 10 years is considered "essentially or materially" the same as the originally approved development.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and**

As detailed in the above report this application was referred to all relevant government agencies. The necessary licenses are all in place and can continue should the Section 96 be approved by Council.

- (c) it has notified the application in accordance with:**

- (i) the regulations, if the regulations so require, or**
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**

The current Section 96 application was advertised in the Tweed Link and notified to the adjoining land based owners who had the opportunity to comment between 15 and 30 January 2014.

- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.**

During the period of exhibition Council received one objection to the proposed Section 96 Application with issues that could not be separated from both the stockpiling and dredging components of proposed continued operations. This is summarised below:

Submission 1

- an increase of a decade from 20 to 30 years is a significant alteration to the development;
- the proposal is not considered to be substantially the same development;
- Council may only consider those matters in respect of modification applications which arise from the modification and not matters which cannot be said to relate to the application (ie. extension of time to carry out dredging in a period of time where no dredging would have occurred);
- Dredging of a river is designated development.

Council Assessment

The issues raised by the submission above have been significantly canvassed in this report and in association with assessment of D91/0281.03.

The application is considered lawful and capable of approval having regard to the applicable planning legislation and on the individual merits having regard to the cumulative impact of the development continuing for a further 10 years.



**S96(3) states that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.**

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

**Tweed Local Environmental Plan 2014**

**Clause 1.2 – Aims of the 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 extension of the approved stockpile for a further 10 years is not an opportunity to revisit the entire application but rather only consider the amendment being sought. Given the application before Council does not seek to extend the stockpile site but rather just extend the time period in which the material is stockpiled the application is considered to satisfy the above aims provided the application continues to operate in accordance with the relevant licences and conditions of consent.

### Clause 2.3 – Zone objectives and Land use table

The IN1 Industrial zone objectives are:

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To enable land uses that provide facilities or services to meet the day to day needs of workers in the area.

Earthworks are permissible with consent in this zone and accordingly the application is considered to satisfy the above objectives as the stockpiling operation support an existing extractive industry and needs to be located close to that business to be viable.

### Clause 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 site does not impact on the provision of any public access to coastal lands nor is it considered to represent an opportunity for a new public access.



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

The proposed development is permissible with consent. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

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

The proposed development is not considered to impact on any of the above. As such, the proposal will not result in any detrimental impact on the amenity of the coastal foreshore,

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

The proposed development is not considered to compromise the scenic qualities of the coast

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

The proposed development has been adequately operating for almost 20 years in accordance with its consent while satisfying the above objectives. An additional 10 years without increasing the footprint is considered to result in the same outcome as approved in the original application.

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

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the sites compliance history and ability to continue operating in accordance with the relevant licences and conditions of consent.

This clause goes on to further state;

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

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

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

The proposed development does not propose a non-reticulated sewerage system.

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

The development does not discharge untreated stormwater to the sea.

- (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.

#### Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site demonstrates Class 2 and Class 3 Acid Sulfate Soils in accordance with this clause.

The EMP indicates that acid sulfate soil testing has been conducted at the Chinderah site since 1991. Sands and soils for sale are regularly tested for acid generating capability and comply with permissible chromium reducible sulphur levels of Scr < 0.03%. The lake/sedimentation pond water chemistry is monitored and reported under the terms of the Groundwater Licence for the site. This includes pH monitoring of the lake over its depth profile and monitoring of pH of discharge. Existing management measures and conditions are considered adequate and no further considerations are required.

Clause 7.3 – Flood Planning & Clause 7.4 - Floodplain risk management

The original application addressed flooding affects with negligible affects on existing flood conditions. The proposed change to the stockpile period will not alter this original assessment.

**State Environmental Planning Policies**

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

*Clause 8 – Matters for consideration*

- (a) the aims of this Policy set out in clause 2,*
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*
- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,*
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*
- (h) *measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats*
- (i) *existing wildlife corridors and the impact of development on these corridors,*
- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*
- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*
- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*
- (m) *likely impacts of development on the water quality of coastal water bodies,*
- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*
- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*
- (p) *only in cases in which a development application in relation to proposed development is determined:*
  - (i) *the cumulative impacts of the proposed development on the environment, and*
  - (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

It is considered that the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection. Subject to compliance with the existing licences and conditions of consent (as recommended) the development is considered suitable for approval

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

Nil.

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

Nothing in the Tweed DCP is specifically relevant to the subject application.

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

Clause 92(a) Government Coastal Policy

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises the ongoing development satisfying the conditions of consent. The development will not restrict access to any foreshore areas and is considered acceptable in this regard.

Clause 92(b) Applications for demolition

Not applicable

Clause 93 Fire Safety Considerations

Not applicable

Clause 94 Buildings to be upgraded

Not applicable

**1(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 plan does not specifically relate to the current application.

**Tweed Coast Estuaries Management Plan 2004**

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these creeks and as such this management plan does not apply to the subject application.

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

Not applicable

**1(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**

As detailed within the above report the application to extend the stockpile period for a further 10 years (whilst not increasing the stockpile footprint) is considered reasonable subject to ongoing compliance with the existing licenses and conditions of consent.

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

The close proximity of the site to the Tweed River is entirely suitable for the proposed stockpile location.

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

All submissions have been addressed in the above report.

**1(e) Public interest**

The ongoing operation of the existing business is considered to be in the public interest.

**OPTIONS:**

That Council:

1. Approves the Section 96 amendment to D96/0248.01 in accordance with the recommendation; or
2. Refuses the Section 96 amendment to D96/0248.01 and provide reasons for refusal.

Council officers have recommended Option 1.

**CONCLUSION:**

The assessment of this Section 96 has seriously taken into consideration all the relevant heads of consideration. Council staff to feel confident that the continuation of the existing operation would result in substantially the same development which was approved in 1997. Furthermore, the assessment against 79C (1) has re-iterated the findings as per the original assessment in 1992 and for this reason the Section 96 application is recommended for approval to change condition 3 to allow operations to continue until 24 March 2024 in addition to minor amendments to update the consent.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable

**c. Legal:**

Yes, legal advice has been received as discussed in this report.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- Attachment 1.                    DAP Report and Minutes dated 21 January 1997 (ECM 3524344)
  - Attachment 2.                    DAP Report and Minutes dated 17 October 1997 (ECM 3524355)
  - Attachment 3.                    Determination Notice for D96/0248 dated 20 October 1997 (ECM 3524357)
-



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

**SUBMITTED BY: Director**

Valid



## **Civic Leadership**

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

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

### **SUMMARY OF REPORT:**

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

### **RECOMMENDATION:**

**That Council notes the November 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>	DA14/0179
<b>Description of Development:</b>	Two lot subdivision and refreshment room
<b>Property Address:</b>	Lot 223 DP 1048494 and Lot 115 SP 77971 Tweed Coast Road, Casuarina
<b>Date Granted:</b>	18/11/2014
<b>Development Standard to be Varied:</b>	Clause 21A(2)(a) - Minimum lot size 40ha
<b>Zoning:</b>	7(f) Environmental Protection (Coastal Lands)
<b>Justification:</b>	Application results in a subdivision of land zoned 7(f) Environmental Protection below the 40ha minimum requirement and greater than the 10% variation Council has delegation to grant consent to without concurrence.
<b>Extent:</b>	The subject application would result in 2.76% of the proposed site area, being zoned 7(f).
<b>Authority:</b>	Director General of the Department of Planning

**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.