

Addendum Report

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

a12 [PR-CM] Development Application DA15/0354.01 for an Amendment to Development Consent DA15/0354 for Change of Use to Recreation Facility (Indoor), Fitout and Associated Signage (5 Signs) at Lot 7 DP 785566; No. 20-26 Greenway Drive Tweed Heads South

SUBMITTED BY: Development Assessment and Compliance

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:

Consent was issued for the change of use of a vacant bulky goods retail tenancy to a 24 hour recreation facility (indoor), fitout and associated signage (5 signs) on 26 August 2015.

The proposed development is for 'World's Gym' which are a large indoor recreation/gym franchise.

The facility includes multiple training zones, cycle/group fitness room, crèche, bulky goods retail area, fitness exhibit and massage room with a total floor area of 1435m².

Approval was issued to operate the gym 24 hours per day, 7 days per week. Peak hours are estimated between 4am to 8.30am and 5.30pm to 9pm.

Considerable S64 and S94 contribution charges were levied on the consent as follows:

- Water DSP4: \$22,252.00
- Sewer Banora: \$11,510.30
- Tweed Road Contribution Plan: \$192,155.00

The applicant seeks to vary the way in which the charge under the Tweed Road Contribution Plan was levied by applying the rate only to that part of the floor area that exceeds the 1000m² Eligible Business Criteria.

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It is also sought to enter into a deferred payment arrangement for the TRCP charge.

Prior to the original consent being issued, the applicant was informed that a reduction in the TRCP for this proposal was not supported.

The application has been called up to Council for determination by Councillors Byrne and Polglase.

It is recommended that the proposed modification is inconsistent with the provisions of Council's Section 94 Plan No. 4 – Tweed Road Contribution Plan, and should therefore be refused. The proposed development does not meet the criteria to be considered an 'Eligible Business Enterprise' under the Plan and that there is insufficient justification to vary the criteria to only apply that part of the floor area that exceeds 1000m².

Notwithstanding, Council staff do not object to the request for staged payments of the TRCP charge. The options reflect this and provide a mechanism for refusal of the eligible business argument whilst providing for staged payments.

RECOMMENDATION:

That:

A. Development Application DA15/0354.01 for an amendment to Development Consent DA15/0354 for change of use to recreation facility (indoor), fitout and associated signage (5 signs) at Lot 7 DP 785566; No. 20-26 Greenway Drive Tweed Heads South be refused in so far as it relates to a variation of the Eligible Business Enterprise criteria contained in Section 94 Plan No 4 – Tweed Road Contribution Plan for the following reasons:

- 1. The application is inconsistent with Council's Section 94 Plan No. 4 – Tweed Road Contribution Plan, in particular Section 3.0 as it deals with 'Eligible Business Enterprises'.**
- 2. The application is not in the public interest.**

B. In so far as the amendment to Development Consent DA15/0354.01 relates to staged payment of contributions under the Tweed Road Contribution Plan, approval is recommended subject to an amendment to Condition 33 as follows:

33A. 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) or in accordance with the provisions of a deferred payment arrangement between the applicant and Council, all Section 94 Contributions must be paid. The Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council (if relevant).

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

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

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

(a) Tweed Road Contribution Plan:

138.54 Trips @ \$1387 per Trips \$192,155.00

(\$1,318 base rate + \$69 indexation)

S94 Plan No. 4

Sector2_4

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REPORT:

Applicant: World Gym Australia Pty Ltd
Owner: Bagcorp Pty Limited
Location: Lot 7 DP 785566; No. 20-26 Greenway Drive Tweed Heads South
Zoning: B4 Mixed Use
Cost: \$100, 000

BACKGROUND:

The submitted application relates only to the contribution charge levied under the Tweed Road Contribution Plan.

The charge was levied as follows:

- Tweed Road Contribution Plan:
138.54 Trips @ \$1387 per Trips \$192,155.00
(\$1,318 base rate + \$69 indexation)
S94 Plan No. 4
Sector2_4

Prior to issue of consent, the applicant was furnished with the estimated charge out of courtesy to enable the provision of a traffic report by the applicant to justify a reduced charge.

The applicant provided a written response including justification from a traffic engineer. The argument presented was that the proposed development should only be levied TRCP on that portion of the floor area that exceeds the 1000m² floor area prescribed for an Eligible Business Enterprise under that policy. An alternative trip rate was also proposed.

It was determined that the proposal to charge only the portion of the floor area that exceeds 1000m² was not supported.

Whilst the applicant's trip rate was accepted, their GLA calculation was not supported.

The applicant's request in the subject S96 application is the same as that posed under the original DA. The applicant has not proposed to reduce the floor area of the facility.

PROPOSAL:

The applicant seeks to:

- Amend Condition 33 which relates to the Tweed Road Contribution to reduce the charge (but has not supplied an alternate figure); and
- Seek deferred payments of the balance of the charge

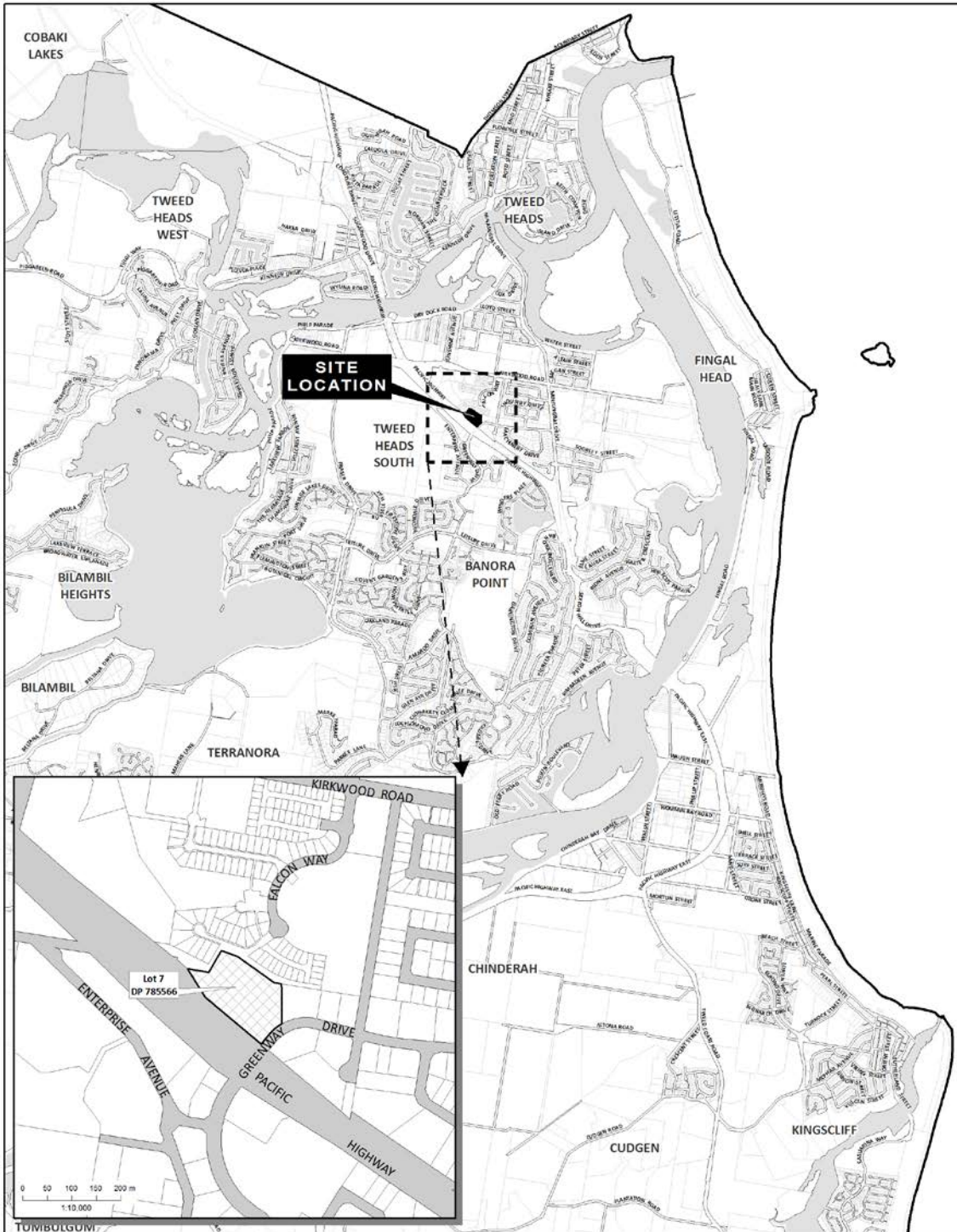
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It is critical to note the following:

- The applicant has not supplied a revised TRCP figure;
- A further calculation based on the applicant's scenario has been undertaken. The resultant charge is **zero** as the credit from the earlier approval for the overall building outweighs the charge;
- As the resultant charge is zero, under the applicant's scenario there would be no point in following through with a deferred payment scenario; and
- It is assumed that the applicant intends to seek deferred payment should the current charge remain.

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SITE DIAGRAM:



Locality Plan

Lot 7 DP 785566
No.20-26 Greenway Drive, Tweed Heads South

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Cadastral 11/11/2015
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Boundaries shown should be considered approximate only.

0 0.5 1 Km
1:50,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
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 2450 | 1300 292 873
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Considerations under Section 96 of the Environmental Planning and Assessment Act 1979:

S96 of the Act specifies that;

“(1A) Modifications involving minimal environmental impact

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 proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (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*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) 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.*
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.”*

Minimal environmental impact

The proposed modification does not alter the building or any proposed use and is subsequently considered to be of minimal environmental impact. The modification relates solely to contribution charges.

Substantially the same development

The proposed modification does not alter the building and would be substantially the same development as that originally approved. The modification relates solely to contribution charges.

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Notification

The application did not require public notification.

Submissions

The application did not require public notification and no submissions were received.

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 2014

There is no further consideration required of the proposal under the Tweed LEP 2014.

State Environmental Planning Policies

There is no further consideration required of the proposal under any SEPP.

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

There is no draft LEP.

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

There is no further consideration required of the proposal under any part of Council's DCP.

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

No further consideration is required under the Regulations.

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

No further consideration is required under any coastal zone management plan.

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

The proposed modification proposes no additional environmental impacts.

(c) Suitability of the site for the development

The proposed development remains suitable for the site.

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

No submissions were received.

(e) Public interest

The proposed modification is not considered to be in the public interest.

Considerations under Section 94 of the Environmental Planning and Assessment Act 1979:

The Act provides that contribution charges may be levied under Section 94 as follows:

"94 Contribution towards provision or improvement of amenities or services

(1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provisions of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*

(a) *the dedication of land free of cost, or*

(b) *the payment of a monetary contribution,*

or both

(2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public services concerned.*

(3) *If:*

(a) *a consent authority has, at any time, whether before or after the date of commencement of the Part, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area, and*

(b) *development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,*

the consent authority may grant the development consent subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations).

(4) *A condition referred to in subsection (3) may be imposed only to require a reasonable contribution towards recoupment of the cost concerned.*

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- (5) *The consent authority may accept:*
- (a) *the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (3), or*
 - (b) *the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (3).*
- (6) *If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, the consent authority must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than:*
- (a) *a benefit provided as a condition of the grant of development consent under this Act, or*
 - (b) *a benefit excluded from consideration under section 93F (6)."*

Council's Section 94 Plan No 4 – Tweed Road Contribution Plan prescribes an explicit rate for the proposed development and also a specific rate at which credit can be calculated (in accordance with the original approval for the overall building).

The following calculations were undertaken by Council's staff for the original application, and are still relevant:

"The previous consent for this site (DA08/1242.1, for bulky goods retail) applied 158 trips. Apportioning this over the site with GFA of 2650m² = 5.96 trips per 100m².

This application is requesting 1255.08m² GFA of Gym usage. Therefore credit of 74.8 trips applies.

*I can accept that based on previous studies of Gyms on the lower Gold Coast a trip rate of 28.33 trips per 100m² **Gross Floor Area** could be applied in this instance, not **Gross Leasable Area** which is levied in the Plan.*

*Therefore, 1255.08 (GLA)/100 x 28.33 = 355.56 trips
X 0.6 (employment generating discount)*

213.34 – 74.8 (credit)

= 138.54 Trips

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|--|------------------|
| « Tweed Road Contribution Plan: 138.54 Trips @ \$1387 per Trips (\$1,318 base rate + \$69 indexation) S94 Plan No. 4 Sector2_4” | \$192,155 |
|--|------------------|

The applicant has not submitted a traffic study to justify a departure from the standard, stating only that the TRCP charge should only be applied to the area that exceeds 1000m² and also that staged payment is sought.

Utilising the applicant's logic, the following calculations are relevant:

1255.08 (GLA) – 1000 (EBE floor area) = 255.08m² to charge

255.08m²/100 x 28.33 = 72.26 trips
X 0.6 (employment generating discount)

43.35 trips to charge. Credit is 74.8 trips so as such there would be **no charge**.

*Note even if employment generating discount was not applied, the credit would outweigh the charge.

Council staff have reviewed the current proposal and provided the following comment:

“The applicant has lodged a S96 with the primary purpose of reducing the TRCP contributions applied in the original DA.

Traffic comments were provided on the original DA by memo (25 May 2015) and records indicate that the TRCP contribution was reviewed by EMT. The result was a decision not to support charging TRCP contributions on only the portion of the floor area that exceeds 1000m².

The S96 submitted does not alter the proposal at all and therefore the previous comments and EMT decision are still relevant”.

The applicant's proposal is not supported and the officer's recommendation is for refusal of the application.

In relation to the staged payment proposal, Council staff have advised that there is no objection in principle. To provide for such an arrangement, it is necessary to amend the condition that deals with the charge, being Condition 33.

DISCUSSION OF OPTIONS

It is recommended that the first part of the application, being the application of the EBE criteria to the first 1000m² of floor area be refused. However, it is considered that there is merit in approving the second part of the request, being the request for staged payment of the TRCP charge. This would necessitate a change to the wording of Condition 33 to facilitate an arrangement with Council as follows:

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S94 Plan No. 4
Sector2_4

[POC0395]

Alternatively, should Council wish to approve the application, this could occur via a deletion of Condition 33 in its entirety (but this is not recommended)

OPTIONS:

1. Refuse the first part of the application in accordance with the recommended reasons for refusal and approve an amendment to Condition 33 as follows:

33A. Section 94 Contributions

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2. Approve the application with Condition 33 deleted.

CONCLUSION:

The proposed modification is considered to represent a significant departure from Council's adopted standards and would result in a loss of \$192,155 to Council under the provisions of Section 94 Plan 4 – Tweed Road Contribution Plan as well as creating an undesirable precedent in relation to the application of the plan.

It is therefore recommend that the application be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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