



**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 5 March 2015**

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:

ITEM	PRECIS	PAGE
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2	[PR-PC] Combined Development Application (DA10/0737) and Planning Proposal (PP15/0001) for Expansion of the BP Highway Service Centre at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah (Southbound Lane)	10
3	[PR-PC] Results of NSW Planning and Infrastructure's Local Development Performance Monitoring Report 2013/14	23
4	[PR-PC] Alleged Unauthorised Works at Lot 301 DP 1053375 and Lot 2 DP 1190805 No. 239 Zara Road, Chillingham	30
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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 - 5 FEBRUARY 2015

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

P 15

Cr K Milne  
Cr G Bagnall

#### RECOMMENDED 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 5 March 2015 Planning Committee Meeting for a further report on:
  - 1. Advice of the outcomes of the next site inspection with the Environment Protection Authority.
  - 2. Options for more stringent enforcement.

**Current Status:** A joint site inspection took place on 6 February 2015, involving representatives from Council, NSW Environment Protection Authority

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and NSW Crown Lands, as well as the site owner. The main outcomes from the meeting were:

- NSW EPA were generally satisfied with the mitigation works completed to date by the site owner.
- Council recommended that further works be undertaken at the lower extent of Boormans Rd. The works related to the removal of temporary sediment fencing and replacement with a more permanent solution being a rock check.
- The site owner advised that site inspections are carried out every second day to ensure controls are maintained in an effective condition. Maintenance is then undertaken as required.
- NSW EPA advised they have consulted the NSW Office of Water who stated that the deposited sediments in the adjacent tributary should remain in-situ. After the inspection of the adjacent tributary the NSW EPA advised that they agree with the advice from the NSW Office of Water. The NSW EPA stated that the sediment appears to be stable and the removal of sediments may lead to scouring of historical alluvial and a lesser environmental outcome.
- The NSW EPA advised they were going to write to the site owner with the following key points.
  - Inspections and maintenance of controls by the site owner must be ongoing.
  - Further works at the lower extent of Boormans Rd are required, as detailed by Council during the site inspection.
  - Engage NSW Soil Conservation Services to undertake a further inspection of the adjacent tributary and advise of the current status and recommendations.

Council officers are awaiting further advice from the EPA and Crown Lands regarding the further examination of the Crown Road remediation and rectification works. A further report will be submitted to the April Planning Committee Meeting, providing an update on these matters. In the interim, it should be noted that the EPA are currently the lead compliance agency on any complaints received in terms of any run-off from the site to the adjoining Hopping Dicks Creek.

Council has also received notification from the NSW Minister for Natural Resources, Lands and Water that consideration is being given to the closure of Boormans Road (Crown Road) within the subject site. The notification requests Council to consider if there are any interests which may be affected by the closing of the road. As per general practice, a separate report will be submitted to Council on this proposal by the Director Engineering.

In the interim, given the current compliance issues affecting this site, the officers have sent the following advice to the Minister's Department:

*“The road subject to the proposed road closure is currently the subject of an ongoing compliance investigation by the NSW EPA relating to potential water pollution under the Protection of the Environment Operations Act 1997. The compliance investigation was triggered by unauthorised earthworks undertaken within the Crown Road Reserve.*

*It is considered appropriate that the proposed road closure does not occur until the NSW EPA, NSW Crown Lands and Tweed Shire Council are satisfied that all outstanding actions resulting from the investigation are completed. It is also considered appropriate that the NSW EPA is satisfied that offsite impacts on the adjacent tributary to the Crown Road Reserve have been adequately addressed.”*

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## **PLANNING COMMITTEE - 5 FEBRUARY 2015**

### **16 [PR-PC] Roadworks at Lot 11 DP 1192473 No. 389 Dulguigan Road, Dulguigan**

**P 17**

**Cr G Bagnall  
Cr K Milne**

**RECOMMENDED** that:

1. This matter be deferred, to enable a Councillors Workshop to be held;
2. Council officers consult with, and seek technical advice from relevant government agencies in respect of the drainage and flooding impacts of the works carried out on the site (as identified in this report), and that the results of these investigations be presented at the Councillors Workshop; and
3. A further officers' report be brought back to 9 April 2015 Planning Committee Meeting.

**Current Status:** A Councillors Workshop will be held on 26 February 2015. A further report will be submitted to the April Planning Committee meeting.

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**PLANNING ITEM FROM EXTRA-ORDINARY COUNCIL MEETING - 12 FEBRUARY 2015**

- 3 [PR-PC] Development Application DA03/0445.02 for an Amendment to Development Consent DA03/0445 for Use of an Existing Stock & Domestic Water Bore for the Purpose of a Rural Industry Comprising the Harvesting & Bottling of Mineral Water at Lot 1 DP 735658 No. 477 Urliup Road, Bilambil**

**P 2**

**Cr B Longland  
Cr G Bagnall**

**RECOMMENDED** that Development Application DA03/0445.02 for an Amendment to Development Consent DA03/0445 for Use of an Existing Stock & Domestic Water Bore for the Purpose of a Rural Industry Comprising the Harvesting & Bottling of Mineral Water at Lot 1 DP 735658 No. 477 Urliup Road, Bilambil:

1. Be deferred for consideration of the application to allow the applicant to supply information necessary to complete the assessment and a report be brought back to 9 April 2015 Planning Committee meeting.
2. Hold a Councillor Workshop on this application.
3. That the proponent be allowed a maximum of eight (8) trips per day for delivery movement using the current sized (six (6) metres) delivery vehicles as a temporary measure, up until Council's determination of Section 96 application DA03/0445.02.

**Current Status:** A Councillors Workshop will be held on 26 February 2015. A further report will be submitted to the April Planning Committee meeting.

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## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 2 [PR-PC] Combined Development Application (DA10/0737) and Planning Proposal (PP15/0001) for Expansion of the BP Highway Service Centre at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah (Southbound Lane)

**SUBMITTED BY:** Strategic Planning and Urban Design

**FILE REFERENCE:** DA10/0737 Pt2 & PP15/0001 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 received a combined request for a planning proposal and development application, under s.72J of the *Environmental Planning and Assessment Act 1979*, in November 2010. This Report deals exclusively with the planning proposal.

The intent of the Applicant's application is to enable redevelopment and expansion of the existing BP highway service centre, located at Pacific Highway/Tweed Coast Road intersection in Chinderah. The need for redevelopment and expansion of the highway service centre is linked to traffic safety on the southbound carriageway, where at times congestion caused by lack of movement around the current truck refuelling and parking areas backs-up traffic along the 'off' slip lane into the site. The proposed expansion of the centre is designed to free-up movement by allowing construction of a new designated truck park and modification of the refuelling area, along with a new area for caravan parking, which will permit greater traffic separation and generally better flow within the site.

An initial review of the Application identified an unacceptable level of encroachment into an environmentally sensitive area of the site. This resulted in a notable amendment to the design and footprint of the proposal through positive negotiation with the Applicant (BP Australia Pty Ltd) that has resulted with the future protection of those areas, to the point that the proposal is now considered suitable.

The land under consideration is zoned RU2 Rural Landscape under the *Tweed Local Environmental Plan 2014* (LEP). Highway service centres are a prohibited land-use in all zones and therefore it is proposed to amend the lands zoning to IN1 General Industrial, to reflect the general nature of the lands use and to be consistent with adjoining developed land, as well as to include within Schedule 1 "Additional Permitted Uses" the land-use definition for a "Highway Service Centre", which will extend permissibility only to the land described.

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The detailed assessment and any additional studies relating to the Applicant's application will commence following an affirmative resolution of the Council to prepare a planning proposal. This report does not relate to the assessment or determination of the development application and cannot be construed in any way as approving or implying an approval, acceptance or support for any aspect of it, as that is a separate process that will be assessed and reported independently.

A 'Costs Agreement' has been executed between Council and the Applicant. This ensures all costs arising in association with preparing the planning proposal and making of the amended LEP are borne by the Applicant. Demonstrating their commitment to the proposal the first funding instalment under the Agreement has been paid.

This report concludes that there are no identified significant engineering or planning matters that would prevent future development of the site as proposed. This report recommends that a planning proposal be prepared for a Gateway Determination referral.

#### **RECOMMENDATION:**

**That:**

- 1. A planning proposal, pursuant to s.55 of the *Environmental Planning and Assessment Act 1979*, to facilitate redevelopment and expansion of the highway service centre on Lot 1 DP 1127741 and Lot 2 DP 1010771 be prepared and submitted for a Gateway Determination, as administered by the NSW Department of Planning & Environment.**
- 2. The Minister for Planning & Environment or their Delegate be advised that Tweed Council is not seeking plan making delegations for the planning proposal.**
- 3. The Minister for Planning & Environment or their Delegate be requested that the minimum exhibition period for joint exhibition of the Planning Proposal and corresponding Development Application (DA10/0737) should be for a period not less than 28 days and should be concurrent.**
- 4. On receipt of the Minister's Gateway Determination Notice to proceed any 'conditional' requirements of the Minister and any other study or work required by Council for the purpose of making a proper determination of the lands suitability are to be completed, and included within the public exhibition material.**
- 5. Following public exhibition of the Planning Proposal a report is to be submitted to Council detailing the content of submissions received and any proposed amendment(s).**

## REPORT:

### 1. Background

In November 2010, BP Australia submitted to Council a joint Development Application and request for a Local Environmental Plan (LEP) amendment (planning proposal) to enable the eastward expansion of the existing BP Chinderah Highway Service Centre. The development application seeks a number of alterations to the existing service station and refuelling layout (currently located on Lot 2 DP 1010771), however the primary focus of the application was to construct approximately 37 truck parking bays and associated manoeuvring areas through expansion to the adjoining Lot 1 DP 1127741. The LEP amendment seeks:

- An amendment in zoning of Lot 2 DP 1010771 to the IN1 General Industrial Zone.
- An amendment in zoning of Lot 1 DP1127741 to part IN1 General Industrial and Part E2 Environmental Conservation.
- An 'Additional Permitted Use' to permit Highway Service Centre for both lots where zoned IN1.

The remainder of Lot 1 DP 1127741 has significant vegetation and contains endangered ecological communities (EEC). It is proposed that this area be recommended to be zoned E2 Environmental Conservation under the LEP 2014, subject to the support of the Department of Planning and Environment (DP&E).

Initial concerns were raised with the proponent regarding flooding, stormwater, access, parking, noise and ecology, as reported to the Council meeting of 15 May 2012, where Council resolved to defer determination of the application. Additional information was submitted soon after this resolution which satisfactorily addressed all concerns, with the exception of ecology.

A report was prepared to Council's meeting of 1 May 2014, recommending refusal of the application as ecological issues remained outstanding. Council resolved to defer determination for a workshop, which was conducted on 22 May 2014. The Outcome of the workshop was that the development application is pursued further, subject to reconfiguring the development footprint to provide adequate buffers to adjoining EEC.

Post the workshop, additional information has been submitted by the proponent, along with amendments to the proposed design, specifically, a reduction of the number of truck parking spaces to 30, reduced manoeuvring area footprint, buffer areas of at least 20m from identified EEC and proposed habitat restoration areas. Council's Natural Resource Management officers are now satisfied that the proposal can advance on this basis.

### 2. The Planning Proposal

Whilst the development application has undergone a public exhibition process and the merits of the development application primarily assessed, the Planning Proposal process to amend the LEP has not progressed to the Gateway Panel for a Gateway Determination in light of the previously prohibitive ecological concerns.

To facilitate the best planning outcome, the Planning Proposal document, prepared by the Strategic Planning and Urban Design Unit, recommends the following amendments to the LEP 2014:

- Amendment to the Land Zoning Map to rezone Lot 2 DP 1010771, being the existing service centre site, and part of Lot 1 DP 1127741, being the site proposed for the expansion, from the RU2 Rural Landscape to the IN1 General Industrial zone,
- Amendment to the Land Zoning Map to rezone the remainder of Lot 1 DP 1127741 from RU2 Rural Landscape and Deferred Matter (thereby remaining part 1(a) Rural and Part 7(a) Environmental Protection (Wetland and Littoral Rainforest under the Tweed LEP 2000) to E2 Environmental Conservation,
- Additional entry to Schedule 1 Additional Permitted Uses to enable a Highway Service Centre to be permitted on the site,

- Amendment to the Land Application Map to include Lot 1 DP 1127741 entirely within the Tweed LEP 2014,
- Amendment to the Lot Size Map to apply standard lot size control for the IN1 General Industrial zone.

The location of highway service centres are planned and to some extent regulated by both DP&E and NSW Roads and Maritime Services (RMS). The existing BP Service Station site is identified within Ministerial Direction 5.4 *Commercial and Retail Development along the Pacific Highway, North Coast*, which identifies State supported highway service centre locations. Whilst it is an option to include "Highway Service Centre" as a permitted use within the IN1 land use table, this would apply to all IN1 zones within the Shire, as opposed to restricting permissibility to this specific site, and as there are no other 'planned' sites inclusion of the definition within the general land-use table is not warranted.

The proposed LEP amendment does not require a change to the maximum building heights or maximum floor space ratio provisions.

3. Mapping



**Locality Plan**

Planning Proposal -- PP15/0001 BP Chinderah Highway Service Centre  
 Lot 1 DP 1127741 and part of Lot 2 DP 1010771; 1 Ozone Street, Chinderah

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**Image 1: Locality plan**



SOURCE:  
Aerial imagery was captured on  
6th to 9th May 2012 © AAM Pty Ltd

### Aerial Photo - taken May 2012

Planning Proposal -- PP15/0001 BP Chinderah Highway Service Centre  
Lot 1 DP 1127741 and part of Lot 2 DP 1010771; 1 Ozone Street, Chinderah

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Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geodesic Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

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FilePath: N:\GIS & MAPS\GIS\stage-Planning\Unfiled\PP15-0001 BP Chinderah Highway Service Centre\MXD\Aerial 2012.mxd

Author: J Stachler - Planning Reform Unit

Date Printed: 06 February, 2015

Image 2: Aerial photography of the subject site

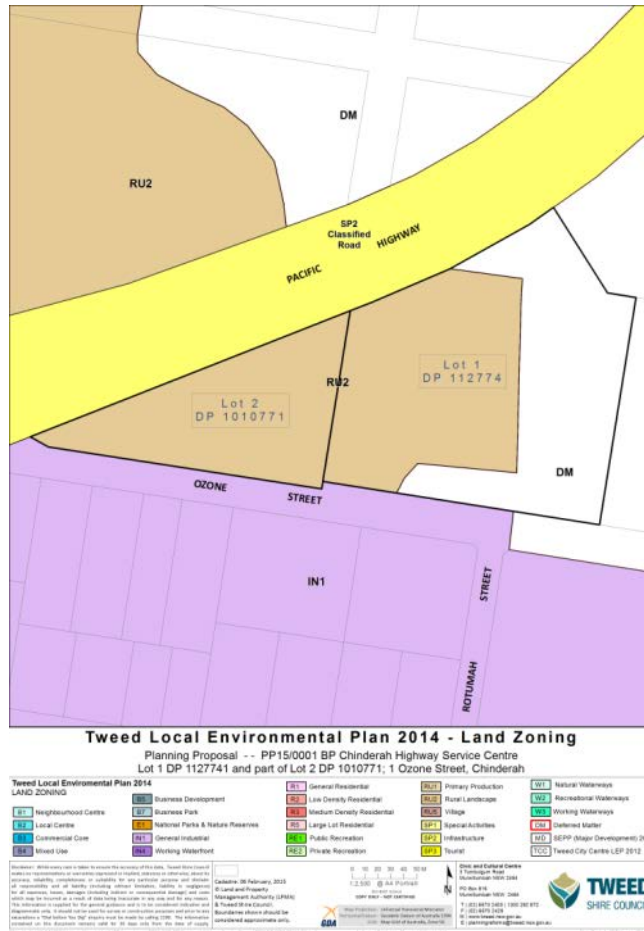


Image 3 - Current zoning of the subject site under LEP 2014



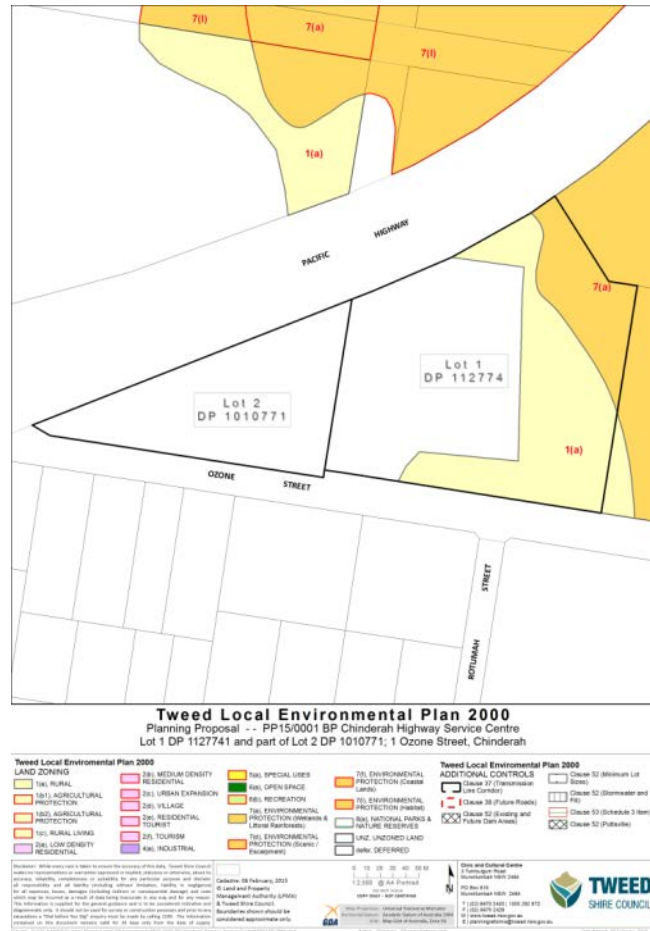
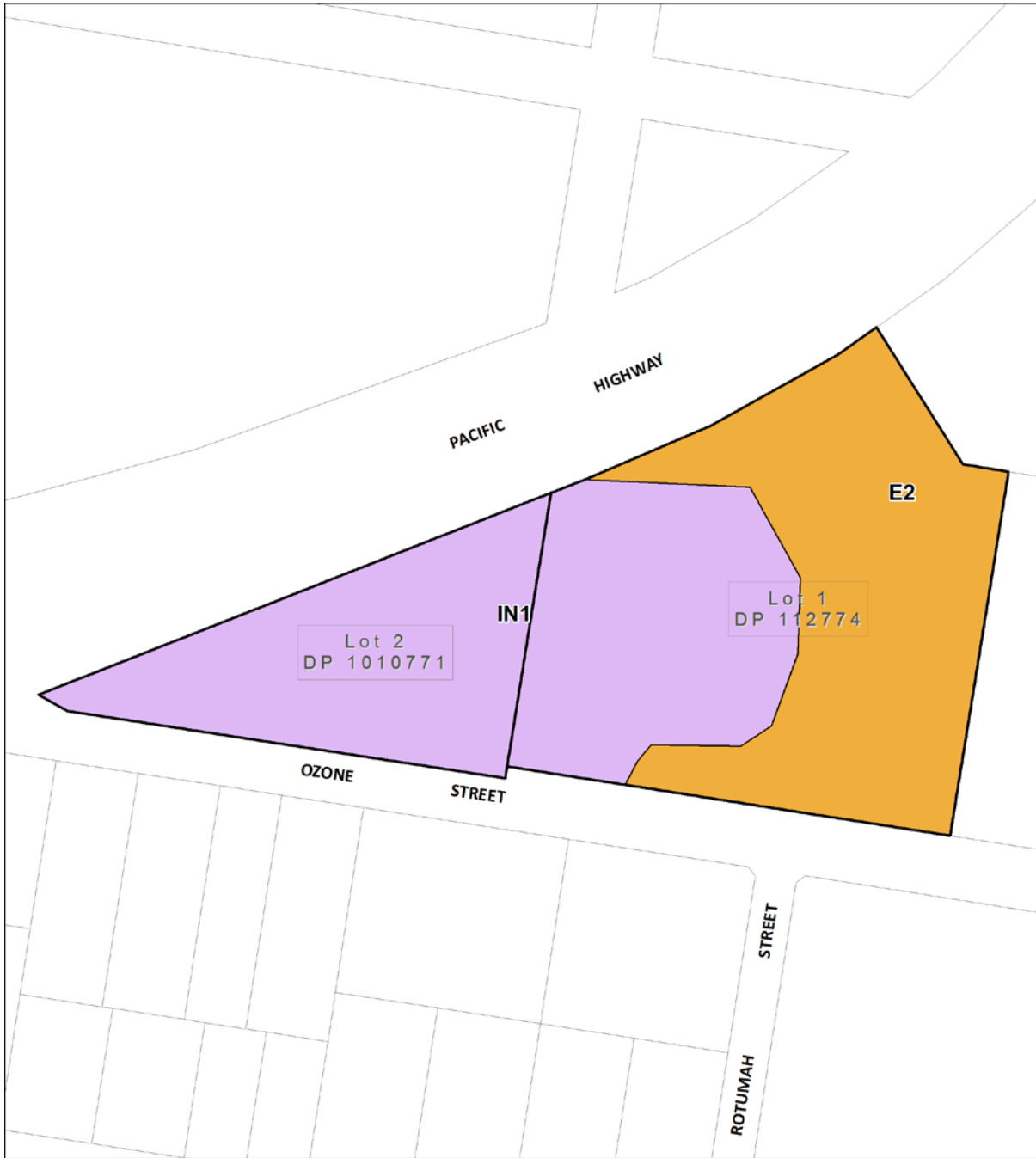


Image 4 - Current zoning of the subject site under the LEP 2000 (as deferred from LEP 2014)



### Proposed Amendment LEP 2014 - Land Zoning

Planning Proposal -- PP15/0001 BP Chinderah Highway Service Centre  
 Lot 1 DP 1127741 and part of Lot 2 DP 1010771; 1 Ozone Street, Chinderah

**Tweed Local Environmental Plan 2014**  
**LAND ZONING**

<b>B1</b> Neighbourhood Centre	<b>B5</b> Business Development	<b>R1</b> General Residential	<b>RU1</b> Primary Production	<b>W1</b> Natural Waterways
<b>B2</b> Local Centre	<b>B7</b> Business Park	<b>R2</b> Low Density Residential	<b>RU2</b> Rural Landscape	<b>W2</b> Recreational Waterways
<b>B3</b> Commercial Core	<b>E1</b> National Parks & Nature Reserves	<b>R3</b> Medium Density Residential	<b>RU5</b> Village	<b>W3</b> Working Waterways
<b>B4</b> Mixed Use	<b>IN1</b> General Industrial	<b>R5</b> Large Lot Residential	<b>SP1</b> Special Activities	<b>DM</b> Deferred Matter
	<b>IN4</b> Working Waterfront	<b>RE1</b> Public Recreation	<b>SP2</b> Infrastructure	<b>MD</b> SEPP (Major Development) 2005
		<b>RE2</b> Private Recreation	<b>SP3</b> Tourist	<b>TCC</b> Tweed City Centre LEP 2012

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**Image 5 - Proposed zoning of the subject site under the planning proposal amendment**

#### 4. Key Matters addressed within the Planning Proposal Request

##### 4.1 Expected impact of the Northern Councils E-zone review on zoning of the subject site

The review of environmental zones in the Far North Coast region has been initiated by DP&E to inform councils on the application of environmental zones and environmental overlays. In May 2014, an interim report, prepared by consultants engaged by the DP&E was released for public exhibition, and remains under review. Once finalised it is expected that a new Ministerial direction will be issued detailing the criteria to be applied for evaluating the use and application of the E2 Environmental Conservation or E3 Environmental Management zones. There is no indication from DP&E as to when this might be expected.

In the meantime it is noteworthy that the exhibited interim report contained recommendations relevant to the zoning of the site subject to this planning proposal:

- Environmental zones should only be applied to those areas which have important environmental values, based on validated ecological evidence,
- E2 and E3 zoning should only be applied where there is proven evidence of significant environmental values that meet the specific criteria,
- Land that does not meet the criteria should be zoned according to its primary use.

Although the subject land demonstrates environmental attributes befitting an environmental zoning the DP&E has shown an unwillingness to entertain any environmental zoning change until the Government issues its directions.

Notwithstanding the above, a recent planning proposal finalised in the Byron Shire (amendment (513) in August 2014 by DP&E) resulted in the E2 Environmental Conservation zone being applied over a site that demonstrated consistency with the recommendations of the exhibited interim report and which had the support of the landowner. It is the Officer's view that this precedence provides an opportunity to also seek the application of the E2 zone in this instance, as the same criteria or 'standards' are being fulfilled.

Should the DP&E refuse to support the use of the E2 zone on the subject site, an alternative zone will be sought to ensure that ecological qualities of the subject site are adequately protected, within the limits of the zonings available. This is likely to be RE2 Private Recreation.

##### 4.2 Proximity to endangered ecological community

The part of Lot 1 DP 1127741 located outside of the development footprint contains an ecologically sensitive site comprising an endangered ecological community (EEC). The following advice was received from NRM Unit in relation to this Planning Proposal:

*NRM is of the view that the LEP amendment resulting from the planning proposal should rezone the land outside the development footprint line as E2 Environmental Conservation. This is the preferred outcome although this zone has been excluded from the LEP due to ongoing review of environmental zones.*

and

*NRM is of the view that an appropriate offset strategy remains to be resolved. This will include clarification of the impact associated with the revised development footprint and confirmation that an onsite offset can be achieved. Offsetting will be required to be undertaken as a development consent condition through the preparation of an offset management plan.*

The required offset strategy will be required as part of the development application which is processed concurrent to this planning proposal.

##### 4.3 Consistency of the proposal with the strategic planning framework

The planning proposal seeks to respond to the regional objectives identified within the NSW Far North Coast Regional Strategy by providing additional employment land, which is well-located adjacent the national highway infrastructure, buffered from the potential conflicts of residential

development and seeks to improve the efficiency of the existing highway service centre and industrial node.

Currently containing approximately 28.5 ha of industrial-zoned land as well as the existing highway service centre, the West Kingscliff industrial node is ideally placed between the Pacific Highway, the Tweed Coast Road and the planned West Kingscliff growth footprint. Whilst the Pacific Highway is unlikely to undergo further expansion in the near future, Tweed Coast Road is planned to be expanded to 4-lanes and Kingscliff's population likely to increase to the upper limit of a Coastal Town, to close to, or to, a Coastal City scale (as defined within the Coastal Design Guidelines). The expansion of this employment node to the north-east seeks to unlock land to increase the critical mass and efficiency of the node, whilst the proposed environmental protection areas provide a logical footprint boundary. Expansion of this industrial node provides a contribution towards the 32,500 jobs required for the region, within an accessible location, whilst ensuring the scale and character of the nearby Kingscliff and Chinderah localities is not adversely affected.

This planning proposal is consistent with the following relevant Objectives of the Tweed Community Strategic Plan 2013-2023:

<p>Objective 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economically viable agricultural land</p>	<p>The planning proposal balances the proposed development and needs of the natural environment by limiting the extent of the proposed industrial zone strictly within the development footprint. Land outside of the development footprint is proposed to be zoned E2 Environmental Conservation, and subject to the offset vegetation rehabilitation plan.</p>
<p>Objective 2.4 An integrated transport system that services local and regional needs.</p>	<p>The expansion of the service centre will improve road safety for south bound traffic by providing a safe place to stop and rest, particularly for heavy vehicles.</p>
<p>Objective 3.4 Provide land and infrastructure to underpin economic development and employment.</p>	<p>The service centre is a specialised land use that can only be located in a small number of places. Expansion of the existing site is critical to ensure safety of traffic and long-term viability of the highway service centre.</p>
<p>Objective 4.1 Protect the environment and natural beauty of the Tweed.</p>	<p>The service centre will not result in the loss of any significant habitat. It will not impact excessively on the scenic qualities of the area in the context of the existing interchange and adjacent industrial development. The development application accompanying the planning proposal will seek environmental enhancement through a habitat embellishment and management plan.</p>

Compliance with the State Environmental Planning Policies and the Section 117 Direction has is discussed in more detail within Part 3A of the attached planning proposal document Version 1.

#### 4.4 Flooding

According to the Hydraulic Investigation study prepared by Cardno in July 2010, filling of the development site will be required to ensure the truck parking area is flood free to the local Q<sub>100</sub> flood level. According to this study, as there is enough freeboard to existing dwellings and the Pacific Motorway there are no adverse impacts anticipated by this proposed truck parking area.

#### 4.5 Bushfire

A Bushfire Risk Management Plan (BushfireSafe, 2010) prepared for this planning proposal concluded that the proposed development will comply with the minimum requirements for:

1. Asset protection zones detailed in Table A2.5 Minimum Specifications for Asset Protection Zones for Residential and Rural Residential Subdivision Purposes (for class 1

& 2 buildings) in FDI 80 Fire Areas in the *Planning for Bushfire Protection Manual (RFS, 2006)*, and

2. Access in accordance with section 4.1.3-2 (Property Access) in the *Planning for Bushfire Protection Manual (RFS, 2006)*.

#### 4.6 Cultural heritage

A Cultural Heritage Due Diligence Assessment was prepared by Converge Heritage + Community in 2010. No areas or objects of Aboriginal cultural heritage significance were identified within the project area.

#### 4.7 Noise

A Noise Impact Assessment was provided in May 2012 and will be placed on public exhibition along with other supplementary studies received by Council so far. The impact of noise on adjoining land is not considered to critically impact on the planning proposal, and ultimately development of the subject site, therefore the planning proposal can proceed to the Gateway Determination.

As outlined in Section 1 (Background) of this Report, the Hydraulic Investigation study, Bushfire Risk Management Plan, Cultural Heritage Due Diligence Assessment as well as other studies lodged with this planning application were assessed by relevant Council units and request for further information was sent to the Applicant. In response, additional information was provided by the applicant in mid 2012.

Following recent resolution to progress with this planning application, the Applicant was requested to update studies lodged in 2010 to reflect agreed changes to the development footprint and to include additional information provided to Council in 2012.

#### **OPTIONS:**

That Council:

1. Proceeds with preparation of a planning proposal in accordance with the recommendations of this report; or
2. The report be deferred for a Councillor workshop or to seek further information;
3. Rejects the proposal (noting that this will prevent an affirmative determination of the DA) and provide reasons for doing so, as these will be required to inform the DP&E and in the case of a Gateway Determination administrative review the Joint Regional Planning Panel (JRPP).

Council staff recommend Option 1.

#### **CONCLUSION:**

The Proponent has lodged a combined planning proposal request and development application for expansion of the BP highway service centre in Chinderah. The expansion is currently prohibited and requires amendment to the Tweed LEP 2014. The amendment is for both zoning and a change to the "Additional Permitted Uses" Schedule of the LEP to include the land-use definition of a "Highway Service Station".

The amendment seeks to apply an E2 Environmental Conservation zone over the remainder of Lot 1 DP 1127741 due to its environmental attributes. It is noted however, that this recommendation may not be supported by the DP&E due to ongoing review of the environmental zones. Should the E2 zone be rejected, Council will seek an alternative zone to protect the EEC present on the subject site.

Preliminary assessment has indicated that there are no significant site engineering matters to be addressed or finalised and the site appears capable of accommodating the expanded service centre,

without significant adverse impacts to the broader community. It is also noted that the existing configuration of the entry to the site from the Pacific Motorway results in congestion on the motorway and poses high risk of accidents.

In conclusion, the preliminary assessment has not identified any matters that might otherwise present as a barrier to proceeding with a planning proposal and as such it is recommended that a planning proposal be prepared and forwarded to the DP&E for a Gateway Determination and subsequent public exhibition in accordance with an affirmative determination.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1                      Planning Proposal BP Highway Service Centre (ECM  
3591319)

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**3 [PR-PC] Results of NSW Planning and Infrastructure's Local Development Performance Monitoring Report 2013/14**

**SUBMITTED BY: Development Assessment**



**Civic Leadership**

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

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations

**SUMMARY OF REPORT:**

The purpose of this report is to provide Council with a summary of the results from the recently released data for the NSW Department of Planning and Environment's (DP&E), "Local Development Performance Monitoring 2013/14".

This form of reporting commenced for all NSW Councils for the 2005/06 financial year, with subsequent reports over the last 8 years. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

The Department has decided to provide the 2013/14 (financial year, 1 July 2013 to 30 June 2014) results in a new inter-active, web-based format, in contrast to the more consolidated report documents of previous years. This information can be viewed on the DP&E's web site through the following link <http://datareporting.planning.nsw.gov.au/ldpm-download-data>. Council officers have raised concerns with the Department regarding the limitations of this new format, particularly the lack of comparative performance data and analysis. Tweed officers have drawn from a broader data file to provide a comparative range of data, similar to the information reported to Council in recent years.

Tweed Council has maintained a solid level of development and building assessment performance in 2013/14, as compared against the State and comparable sized council averages.

The mean gross (or average) determination result for all Council DAs has increased slightly from **62 days** in 2012/13 to **67 days**, as compared to the 2013/14 State (**71 days**) and Group 5 Councils (**62 days**) averages.

The mean gross mean determination time for Section 96 applications has also increased from **57 days** in 2012/13 to the 2013/14 result of **76 days**. The increase in days for Section 96 determinations can be attributed to delays in the processing of major amendments to the development applications for the first two subdivision precincts of Leda's Cobaki development, which were greatly beyond Council's control.

Over the last 12-18 months Council has sought improved efficiencies and performance through the advancement of various recommendations from the Council adopted Sinc Solutions report in response to previous complaints made by Leda. The most notable of these initiatives have been the introduction of a new Independent Chair process, and an enhanced reporting format to assist in the monitoring of KPIs for all staff involved in development assessment. Council management have also worked closely with the proponents of new major commercial, retail and residential developments (such as Masters, the Tweed City Shopping Centre, Bunnings, Stone and Wood brewery and Villawood, Casuarina) to expedite their applications, and to provide creative, and financially viable solutions to the provision of new public infrastructure. These actions are starting to flow through positively to the performance statistics of the 2014/15 period to date, and it is expected that Council will achieve determination times below 60 days for both DAs and Section 96 applications.

Council's Building Section has also continued to excel in its various certification roles, most notably producing an average processing time result for the determination of complying development certificates (CDCs) of **10 days** in 2013/14 (as compared to the respective State and Group 5 averages of **18** and **11** days), with all CDCs being determined within the statutory requirement of **10** days. The volumes of issued construction and occupation certificates also demonstrates Council's Building Section is providing a highly competitive and reliable service in both the residential and commercial building certification markets.

The decision by the NSW State Government in late 2013 not to proceed with reforms to the Planning Act continues to impact on the capacity for Council's to determine applications for smaller developments in a more efficient matter. In 2013/14, the proportion of complying development approvals (CDCs) as compared to the combined number of DAs and CDCs was 29% for all NSW Councils, which compares poorly against the take up of code assessable developments in other states such as Queensland and the ACT, where the proportion exceeds 80%. Tweed Council recorded a proportion of 19% for the use of CDC approvals, which is reflective of the complexities of the current State Environmental Planning Policy (Exempt and Complying Development) for regional areas.

**RECOMMENDATION:**

**That the results of NSW Planning and Infrastructure's Local Development Performance Monitoring Report 2013/14 be received and noted.**



## REPORT:

### Background Explanation of the Local Development Performance Monitoring (LDPM) Report Process

The purpose of this report is to provide Council with a summary of the results from the recently released data for the NSW Department of Planning and Environment's (DP&E), "Local Development Performance Monitoring 2013/14".

This form of reporting commenced for all NSW Councils for the 2005/06 financial year, with subsequent reports over the last 8 years. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

The Department has decided to provide the 2013/14 (financial year, 1 July 2013 to 30 June 2014) results in a new inter-active, web-based format, in contrast to the more consolidated report documents of previous years. This information can be viewed on the DP&E's web site through the following link <http://datareporting.planning.nsw.gov.au/ldpm-download-data>. Council officers have raised concerns with the Department regarding the limitations of this new format, particularly the lack of comparative performance data and analysis. Tweed officers have drawn from a broader data file to provide a comparative range of data, similar to the information reported to Council in recent years.

In terms of interpreting the data, there are a number of key definitions which underpin the collection of application processing times:

Gross determination time – full length of the development assessment process, from lodgement to determination.

Net Time – the gross time minus referral and/or stop-the-clock time.

Mean determination time – the mean or average of a set of data values, which is the sum of all of the data values divided by the number of data values (ie. for DAs, the total number of days taken, divided by the number of DAs determined).

Median determination time – the median of a set of date values is the middle value of the data set when it has been ordered.

Referral time – the time taken by State agencies to either grant concurrence consent (some DAs require council and agency consent), or to provide advice to council on a development proposal.

Stop the clock – the time taken by applicants to respond to requests by councils or agencies for further information on a DA.

The Department provides a useful explanation on how best to interpret these forms of measurement:

*“Gross time is important to applicants as it measures the total processing time taken between lodging an application and receiving the final decision. Net time is an indicator of the time taken by councils to determine the application, including the time taken to assess the application but excluding the time taken for delays for which they are not responsible.”*

*Both net and gross times are examined to assess the service provided to applicants and to understand the factors affecting processing time, including the time taken by applicants to submit further information and the time taken by state agencies to assess referred DAs.*

*Only by understanding all components of the process can planning reforms be targeted to improve overall assessment times.*

*The differences between mean gross (processing) and mean net (determination) times indicate the significant impacts of stop-the-clock (STC) and referrals on processing times.”*

### OLG Group Averages

Many data tables in the Department's report refer to NSW Office of Local Government (OLG) groups. All 152 councils are grouped into one of 11 council types or groups based on population, size, location and development. Grouping councils according to similar socio-economic characteristics allows comparison between councils' results and the performance of like councils.

The OLG groupings are based on the Australian Classification of Local Governments (ACLG) classification of local government areas as adapted by the NSW OLG for NSW Local Government Councils Comparative Information publication.

The source data tables show the OLG code for each council and the average result for each of the 11 OLG groups. These tables allow anyone to see how a council's data compares to the average for the relevant OLG group.

Tweed Shire Council is classified in OLG Group 5, and referred to as a Regional City/Town, which also consists of the major regional councils of Coffs Harbour, Lake Macquarie, Newcastle, Port Macquarie-Hastings, Shoalhaven and Wollongong.

### **Summary of Main Results for Tweed Council**

In terms of determination times for DAs and Section 96 Applications (measured in days), Council's results, as compared to the State and Group 5 (comparably sized) Councils averages were:

*NB. The results of the previous years are provided in parentheses.*

### Development Applications

	MEAN GROSS	MEAN NET	MEDIAN GROSS	MEDIAN NET
<b>Tweed Shire Council 2013/14</b>	67 (62)	47 (39)	47 (38)	36 (32)
<b>All NSW Councils 2013/14</b>	70 (68)	N/A (45)	44 (42)	N/A (40)
<b>OLG Statistical Division 5 2013/14</b>	62 (66)	35 (35)	40 (37)	27 (26)

### Section 96 Applications

	MEAN GROSS
<b>Tweed Shire Council 2012/13</b>	57
<b>Tweed Shire Council 2013/14</b>	76
<b>All NSW Councils 2013/14</b>	N/A
<b>OLG Statistical Division 5 2013/14</b>	49

## Other Key Results

The following statistics have been drawn from the LDMP report as they apply to the Tweed LGA:

### Volume and Value of TSC DAs and S96

Number of DAs determined	Total estimated value of DAs determined	Total estimated value of DAs approved	Number of S96 determined
787 (653)	\$341.1M (\$195.6M)	\$305.4M (\$182.8M)	145 (144)

### Volume and Value of TSC Complying Development Certificates

Number determined	Total estimated value	% determined by Council	% determined by private certifiers
188 (122)	\$15.6M (\$10.8M)	44 (31)	56 (69)

### Mean gross DA determination (days) by type

	Residential alterations and additions	Single new dwelling	Commercial Retail Office
Tweed	49 (45)	46 (45)	100 (84)
All NSW Councils	N/A (52)	N/A (55)	N/A (70)
OLG Division 5	50 (50)	54 (49)	76 (87)

### Volume of Construction Certificates and Occupation Certificates Issued by Council and Private Certifiers

CONSTRUCTION CERTIFICATES COUNCIL	CONSTRUCTION CERTIFICATES PRIVATE CERTIFIERS	OCCUPATION CERTIFICATES COUNCIL	OCCUPATION CERTIFICATES PRIVATE CERTIFIERS
341	355	136	198

### Staff Allocated to DA Assessment

	Average DAs determined per EFT 2012/13	Average DAs determined per EFT 2013/14	Total DAs determined	EFT Staff for DA assessment 2012/13
Tweed Shire Council	34	41	787 (653)	19 (19)
OLG Division 5 Councils	N/A	N/A	N/A	17 (16) (average)

### Legal Appeals

Tweed Council had a relatively limited amount of Land and Environment Court appeal activity in 2013/14, with 4 x Class 1 appeals (one upheld), and no Class 4 or 5 LEC or Supreme Court matters.

### **LDMP Assessment Results - Elected Council and Northern Joint Regional Planning Panel**

A small proportion (approximately 5%) of the total number of DAs and Section 96 applications were reported to the elected Tweed Council and the Northern Joint Regional Planning Panel in accordance with Council delegation and meeting procedures, and relevant State Government legislation.

Whilst this proportion is relatively small, these applications generally involve a greater amount of community representation and Councillor Workshop briefings, resulting in major impacts on the overall determination times.

#### Council Determined Applications

APPLICATION TYPE	NUMBER DETERMINED	GROSS MEAN DETERMINATION DAYS
Development Applications	41	195
Section 96 Applications	8	319

Of particular note, the overall increase in average days for Council's Section 96 determinations can be attributed to delays in the processing of major amendments to the development applications for the first two subdivision precincts of Leda's Cobaki development, which were greatly beyond Council's control:

DA10/0800.03 - 897 days

DA10/0801.02 - 979 days

#### Joint Regional Planning Panel (JRPP) DA Determinations

In terms of Tweed Shire, the Northern Joint Regional Planning Panel only determined development three applications in 2013/14 - the gross mean determination time was **281** days.

Of particular note was the refusal determination of DA12/0364 (Proposed Tourist Accommodation at Firetail Crescent Tweed Heads), in which the Panel provided the applicant with an extended period to provide additional information. The Council officers had earlier sought a withdrawal of the DA. The total determination time was **629 days**.

This result was off-set by the officers efficient assessment of 2 major redevelopment DAs for the Tweed City Shopping Centre, with respective estimated capital investment values of \$20.4M. and \$134.5M., and determination times of **74 days** and **139 days**.

#### Analysis of Tweed Shire Council Results

Tweed Council has maintained a solid level of development and building assessment performance in 2013/14, as compared against the State and comparable sized council averages.

The mean gross (or average) determination result for all Council DAs has increased slightly from **62 days** in 2012/13 to **67 days**, as compared to the 2013/14 State (**71 days**) and Group 5 Councils (**62 days**) averages.

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Over the last 12-18 months Council has sought improved efficiencies and performance through the advancement of various recommendations from the Council adopted Sinc Solutions report in response to previous complaints made by Leda. The most notable of these initiatives have been the introduction of a new Independent Chair process, and an enhanced reporting format to assist in the monitoring of KPIs for all staff involved in development assessment. Council management have also worked closely with the proponents of new major commercial, retail and residential developments (such as Masters,

the Tweed City Shopping Centre, Bunnings, Stone and Wood brewery and Villawood, Casuarina) to expedite their applications, and to provide creative, and financially viable solutions to the provision of new public infrastructure. These actions are starting to flow through positively to the performance statistics of the 2014/15 period to date, and it is expected that Council will achieve determination times below 60 days for both DAs and Section 96 applications.

Council's Building Section has also continued to excel in its various certification roles, most notably producing an average processing time result for the determination of complying development certificates (CDCs) of **10 days** in 2013/14 (as compared to the respective State and Group 5 averages of **18** and **11** days), with all CDCs being determined within the statutory requirement of **10** days.

The decision by the NSW State Government in late 2013 not to proceed with reforms to the Planning Act continues to impact on the capacity for Council's to determine applications for smaller developments in a more efficient matter. In 2013/14, the proportion of complying development approvals (CDCs) as compared to the combined number of DAs and CDCs was 29% for all NSW Councils, which compares poorly against the take up of code assessable developments in other states such as Queensland and the ACT, where the proportion exceeds 80%. Tweed Council recorded a proportion of 19% for the use of CDC approvals, which is reflective of the complexities of the current State Environmental Planning Policy (Exempt and Complying Development) for regional areas.

**OPTIONS:**

That the results of the Department of Planning and Infrastructure's Local Development Performance Monitoring Report 2013/14 be received and noted.

**CONCLUSION:**

The 2013/14 LDMP results are validation of a continuing efficient development assessment performance by Tweed Shire Council. Council management and its staff have been working towards the goal of being one of the better performing regional sized councils.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**4 [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:**

This report provides a further update to the previous reports submitted to Council on this matter.

The most recent report was submitted to the 5 February 2015 Planning Committee Meeting and included the following options:

"Option 1

*That 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; or*

Option 2

*Council resolves to seek a further report on the options for more stringent enforcement."*

The Council officers recommended Option 1.

Council resolved at the meeting that a further report be brought back to a future Council meeting on options for more stringent enforcement.

Tweed Shire Council requested that mitigation works be carried out to minimise the potential for water pollution from the site. The site owner has remained cooperative with all recommended works being completed and maintained appropriately. No enforcement action under the provision of the Protection of the Environmental and Operations Act 1997 is proposed. Works completed to date include:

- Sediment and erosion controls including sediment fencing, drainage lines and hay bales were installed along exposed surfaces. This included exposed surfaces along the water course and the access track;

- The installation of rock checks along an existing drain adjacent to the tributary.
- The controls appeared to have been installed and main an effective manner; and
- All exposed surfaces have been seeded. Specific areas have been fenced off to protect from grazing.

It is considered in this instance that the regulatory response by Tweed Shire Council was in accordance with the NSW Environmental Protection Authorities Compliance Policy. Compliance and enforcement actions are most effective when they raise environmental awareness and encourage behavioural change. These changes in attitudes and behaviour both improve compliance rates and secure long-term environmental improvements. The regulatory response in this instance has achieved a positive environmental outcome and has influenced a positive change in attitude of the site owner. The site owner has remained cooperative with all recommended works being completed and maintained appropriately. No enforcement action under the provision of the Protection of the Environmental and Operations Act 1997 is proposed.

**RECOMMENDATION:**

**That the report titled 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 be received and noted.**

## **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 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 "Dial before You Dig" enquiry must be made by calling 1500. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p><small>Cadastre: 21 November, 2014 © Land and Property Information (LPI) &amp; Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 1 2 Km 1:100,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</small></p> <p><small>Map Projection: Universal Transverse Mercator Horizontal Datum: Geocentric Datum of Australia 1994 Or M: Map Grid of Australia, Zone 56</small></p>	<p><small>Civic and Cultural Centre 3 Yungulgun Road Murwillumbah NSW 2484 PO Box 016 Murwillumbah NSW 2484</small></p> <p><small>T   (02) 6670 2400   1300 292 872 F   (02) 6670 2429 W   www.tweed.nsw.gov.au E   planning@tweed.nsw.gov.au</small></p>	
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## 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** - Works were undertaken to clear approximately 100m x 10m of vegetation within Lot 301 DP 1053375 for an internal access road (Photo 1).



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

The EPA advised that the works do not fall within the PFA. The EPA further advised that the OEHL is the ARA for land clearing activities outside of a PFA under the Native Vegetation Act 2003. The OEHL was notified of the incident on 17 November 2014. A response from OEHL 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 presented 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 been completed.

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** - A 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 been completed.



***Photograph 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.

An inspection undertaken on the 3 December 2014 revealed that the site owner has installed sediment and erosion controls as summarised below:

- Sediment and erosion controls including sediment fencing, drainage lines and hay bales were installed along exposed surfaces. This included exposed surfaces along the water course and the access track;
- The controls appeared to have been installed in an effective manner; and
- All exposed surfaces have been seeded. Specific areas have been fenced off to protect from grazing.

A follow up inspection was undertaken on Friday 9 December 2015 with the site owner to assess the performance of sediment and erosion controls since the recent rain events. The sediment and erosion controls appear to be maintained in an effective manner. The land

previously cleared has been re-established with grass and isolated to protect from animal grazing. No further land clearing activities were observed.



***Photograph 3 - Indicates seeding has been effective in preventing erosion and sediment loss from the property. The area has been fenced off to eliminate animal grazing.***



***Photograph 4 - Demonstrates sediment and erosion controls have been installed along the exposed slope adjacent to the tributary that ultimately flows to Jacksons Creek.***

**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.

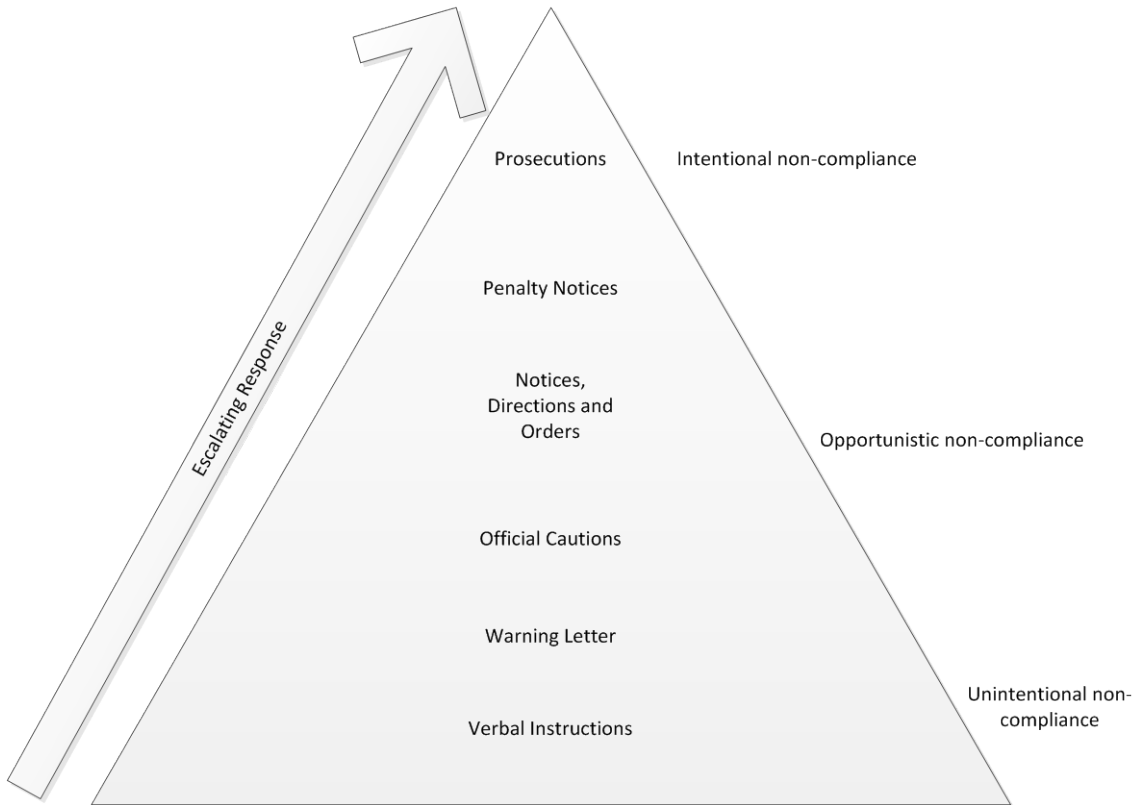
The land clearing activity does not require development consent under the Environmental Planning and Assessment Act 1979 as the activity has been undertaken as a RAMA under the Native Vegetation Act 2003. Therefore a Penalty Infringement Notice or Class 4 and 5 proceedings under the Environmental Planning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

### **Options for More Stringent Enforcement**

In terms of the recent works the site owner was cooperative with Council and various government agencies and has completed works to mitigate any potential water pollution. A positive environmental outcome was achieved without taking a more stringent enforcement action. In the event that cooperation was not forthcoming from the site owner, the following enforcement actions were 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).

It is considered in this instance that the regulatory response by Tweed Shire Council was in accordance with the NSW Environmental Protection Authorities Compliance Policy. Compliance and enforcement actions are most effective when they raise environmental awareness and encourage behavioural change. These changes in attitudes and behaviour both improve compliance rates and secure long-term environmental improvements. The figure adopted from the EPA Compliance Policy provides examples of the types of regulatory tools Tweed Shire Council may use to influence positive changes to attitudes and behaviour.



**Figure 1: Matching regulatory tools with attitudes and behaviour.**

The regulatory response in this instance has achieved a positive environmental outcome and has influenced a positive change in attitude of the site owner. The site owner has remained cooperative with all recommended works being completed and maintained appropriately. No enforcement action under the provision of the Protection of the Environmental and Operations Act 1997 is proposed.

### **General Environmental Enforcement Update**

On a broader level, the recent compliance issues generated by works on the subject site and an adjoining property, Boormans, Tyalgum, have highlighted the need for a more coordinated approach among multiple State Agencies and Council to address environmental related complaints. In this regard, the Environmental Health Section has consulted with the Office of Water and has agreed to establish a half yearly standing meeting to discuss a collaborative approach in dealing with complex environmental compliance matters across government agencies.

### **OPTIONS:**

#### Option 1

That 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.

Option 2

That Council determines an alternative course of action.

The Council officers recommend Option 1.

**CONCLUSION:**

To date the site owner has been cooperative with Council and relevant government agencies and has completed works to mitigate any potential water pollution. No enforcement action is proposed.

**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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**5 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**SUBMITTED BY: Development Assessment and Compliance**

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
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### **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 February 2015 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>	DA14/0480
<b>Description of Development:</b>	Two lot subdivision and two dwellings
<b>Property Address:</b>	Lot 24 DP 1162599 No. 316 Casuarina Way, Kingscliff
<b>Date Granted:</b>	10/2/2015
<b>Development Standard to be Varied:</b>	Clause 4.1 Minimum Subdivision Lot Size and Clause 20(2)(a) - Minimum Lot Size 40ha
<b>Zoning:</b>	R2 - Low Density Residential and 7(l) Environmental Protection (Habitat)
<b>Justification:</b>	Variation to the 450m <sup>2</sup> minimum lot size under Tweed Local Environmental Plan 2014 and Variation to the 40ha minimum lot size under Tweed Local Environmental Plan 2000.
<b>Extent:</b>	Greater than 10%
<b>Authority:</b>	Director-General of the Department of Planning

<b>DA No.</b>	DA14/0668
<b>Description of Development:</b>	Dual occupancy
<b>Property Address:</b>	Lot 344 DP 249520 No. 27 Leeward Terrace, Tweed Heads
<b>Date Granted:</b>	6/2/2015
<b>Development Standard to be Varied:</b>	Clause 4.1 Minimum Subdivision Lot Size
<b>Zoning:</b>	R2 - Low Density Residential
<b>Justification:</b>	Approximately 1.2m of the 21m length will be above 9m but below 10m. This is an approximate 5% variation of Clause 4.3 of Tweed LEP 2014
<b>Extent:</b>	5% variation
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**  
Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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