



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 9 April 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:

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SCHEDULE OF OUTSTANDING RESOLUTIONS

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



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 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 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 sent written correspondence to NSW Crown Lands on the 26 February 2015 requesting attention to the following key matters.
 - 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.

Following further concerns relating to sediment laden surface waters coming from the Boormans Road Crown Road Reserve a site inspection was undertaken on the 26 March 2015 by Tweed Shire Council. The inspection revealed that the maintenance of erosion and sediment controls was not being undertaken and that the replacement of temporary sediment fencing with a more permanent solution at the lower extent of the property had not been undertaken. The findings of the site inspection have been forwarded to the NSW EPA as the appropriate regulatory authority and to NSW Crown Lands for action.

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 May 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. A separate report was submitted to Council on this proposal on the 19 March 2015 by the Director Engineering. Council resolved to object to the closure of the sections of Boormans Rd, Tyalgum until such time that the EPA, Crown Lands and Council are satisfied that the land owner has complied with the relevant environmental remediation requirements of the agencies.

In the interim, given the current outstanding compliance issues affecting this site, the General Manager has sent the following advice to the CEO of the Office of Environment and Heritage:

"Tweed Shire Council continues to receive complaints relating to sediment laden run-off entering Hopping Dicks Creek from road works on a Crown Road Reserve at the end of Boormans Road Tyalgum. Under the provisions of the Protection of the Environment Operations Act 19997 (POEO Act) the EPA is the appropriate regulatory authority due to Crown Lands being in control of the land. This has been confirmed by the EPA. The investigations undertaken to date by the EPA have revealed inadequacies or failings in the erosion and sediment (ERSED) controls associated with the works on the Crown Road Reserve. A summary of the key event are provided below.

- *EPA received a report via Environment Line advising that sediment laden run-off from road works on the 20 November 2014.*
- *EPA undertook an inspection of the site with Tweed Shire Council Officers on the 5 December 2014.*
- *The EPA inspection revealed inadequacies or failings in the ERSED controls associated with the road works on the crown road reserve. The EPA communicated the identified ERSED issues to Crown Lands immediately post the 5 December 2014.*
- *To confirm adequacies of the ERSED controls an inspection was undertaken with the EPA, Tweed Shire Council and Crown Lands on the 6 February 2015.*
- *At the time of the inspection the EPA found that the works to be substantively compliant with the requirements set out under the accepted performance standards for ERSED controls as identified in the Managing Urban Stormwater, Soils and Construction, commonly referred to as the 'blue book'.*
- *The inspection identified two ERSED issues with the site that required further attention or an ongoing commitment. The two items included the ongoing maintenance of existing sediment and erosion controls*

and the replacement of temporary sediment fencing with a more permanent solution at the lower extent of the property near the gate. Communication was sent to Crown Lands on the 19 February 2015 requesting attention to these two matters.

- *Subsequent to the request to Crown Lands by the NSW EPA on the 26 February 2014 further complaints relating to sediment laden water have been received by Tweed Shire Council. A site inspection undertaken by Tweed Shire Council on the 26/03/2015 following the complaint has revealed that both matters have not been addressed.*

Tweed Shire Council continues to receive complaints relating to the outstanding matters and sediment laden run-off from the Crown Road Reserve. The EPA have requested Tweed Shire Council to refer the matters to the Crown Lands directly. Tweed Shire Council respectfully requests that this matter is followed up by the NSW EPA as the appropriate regulatory agency to ensure that that all outstanding actions have been completed to the satisfaction of the NSW EPA."

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

SUBMITTED BY: Development Assessment and Compliance

Valid



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council considered a report at the Planning Committee Meeting of 5 February 2015 regarding the road works at 389 Dulguigan Road and resolved as follows:

- "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."*

A Councillors Workshop was held on 26 February 2015 where Councillors were advised that a site visit and stakeholders meeting was undertaken on 24 February 2015 and was attended by Office of Environment Heritage and Office of Water officers, NSW Sugar Milling Co-op and Tweed Canegrowers representatives, the landowner and Council staff.

The State Government agency officers advise the following:

- The receiving waters in the Rous River control the extent and length of inundation in the Dulguigan catchment.
- The "new" drain crossings on 389 Dulguigan Road, Dulguigan are working effectively with insignificant impacts on upstream farms in respect to flooding or prolonged inundation.
- The gravel access in its current formation poses insignificant upstream impacts.

Council received an enquiry in October 2014 regarding a possible race track located on land described as Lot 11 DP 1192473 and situated at 389 Dulguigan Road, Dulguigan.

A site inspection revealed that the road appears to be a race track and a search of Council's files has revealed that no approval has been granted for such at the abovementioned property. To enable Council officers' to determine whether or not a Development Application would be required for the road, correspondence was forwarded to the owner of the property on 1 October 2014 seeking further clarification of its intended use. It should be noted that the road is 10m wide, 2.4km in length and is configured in a closed loop similar to a race track. Correspondence received from Darryl Anderson Consulting dated 17 November 2014 (See Attachment 1) on behalf of the property owner advised that the subject road is a 'farm road' and has been undertaken as part of development for the purpose of extensive agriculture and such can be undertake without any Council approvals.

An email was received from Darryl Anderson Consulting on 14 January 2015 advising that given "*Council's primary concern is that the farm road is looped and they wish to formally amend their submission dated 17 November 2014 to remove approximately 100m of the looped road at the northern end and instead provide connections to the shed and other internal road.*"

Given the advice received and the fact that Council has not received a complaint or observed the farm road being used as a race track, it is recommended that Council respond to the owner's submission as follows:

- Council notes the correspondence submitted by Darryl Anderson Consulting dated 17 November 2014 on behalf of the property owner;
- Council acknowledges the farm road has been constructed as part of development for the purpose of extensive agriculture; and
- Council will engage its solicitors should any complaints be received or Council officers' observe the farm road being use as a race track or for any purpose other than extensive agriculture or any other purpose that is not ordinarily ancillary to extensive agriculture.

RECOMMENDATION:

That Council, in respect of the road works (farm road) being undertaken on land described as Lot 11 DP 1192473 and situated at 389 Dulguigan Road, Dulguigan endorses as follows:

- 1. Council notes the submission lodged by Darryl Anderson Consulting dated 17 November 2014 on behalf of the property owner;**
- 2. Council acknowledges the farm road has been constructed as part of development for the purpose of extensive agriculture; and**
- 3. Council will engage its solicitors should any complaints be received or Council officers' observe, the farm road being used as a race track or for any purpose other than extensive agriculture or any other purpose that is not ordinarily ancillary to extensive agriculture.**

REPORT:

Council received an enquiry in October 2014 regarding a possible race track located on land described as Lot 11 DP 1192473 and situated at 389 Dulguigan Road, Dulguigan.

A site inspection revealed that the road appears to be a race track and a search of Council's files has revealed that no approval has been granted for a race track at the abovementioned property. The constructed road has also been investigated in light of it potentially interrupting the overland flow of water. The owner has advised Council officers that laser levels have confirmed that the height of the constructed road is below the existing road on the subject site and roads in the local area.

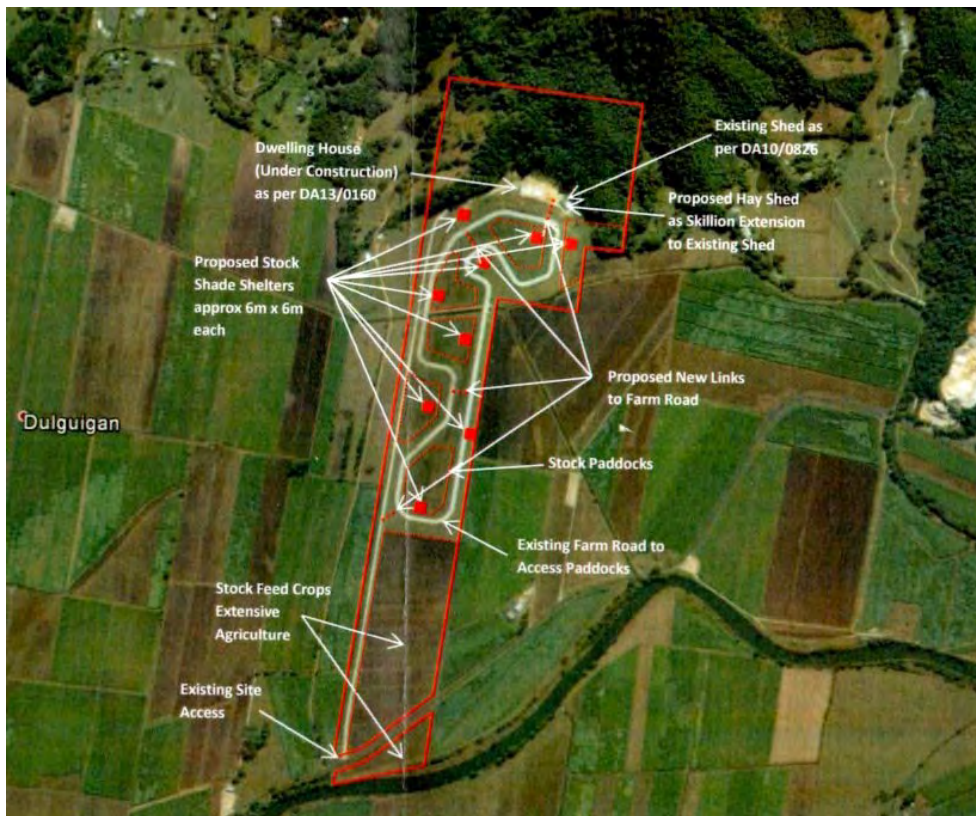
To enable Council officers' to determine whether or not a Development Application would be required for the road, correspondence was forwarded to the owner of the property on 1 October 2014 seeking further clarification of its intended use. Correspondence received from Darryl Anderson Consulting dated 17 November 2014 on behalf of the property owner states *the subject road works have been undertaken as part of development for the purpose of extensive agriculture and such can be undertake without any Council approvals. The farm road allows for the movement of farm machinery and equipment to the various parts of the property.* It should be noted that the farm road is 10m wide, 2.4km in length and is configured in a closed loop similar to a race track.

Below is an image from **Google earth** dated 2015, which clearly indicates the extent of the road works (farm road) undertaken by the owner and the configuration of such.



It should be noted Council to date has not received any complaints or Council officers have not observed the farm road being used as a race track.

The owner has provided the below concept plan indicating the scope of works proposed for the site.



Site Concept Plan

Correspondence received from the owner's planning consultant Darryl Anderson Consulting acknowledges that if the farm road was to be used for purposes other than agriculture, then a Development Application would be required for that use.

However, given there is concern regarding the future use of the farm road, an email was received from Darryl Anderson Consulting on 14 January 2015 advising that given *"Council's primary concern is that the farm road is looped and they wish to formally amend their submission dated 17 November 2014 to remove approximately 100m of the looped road at the northern end and instead provide connections to the shed and other internal road."*

In light of the above, there is still potential for the farm road to be used for non-extensive agricultural uses. It is therefore considered reasonable that Council advises the owner immediate legal action will be initiated should any complaints be received or Council officers' observe the farm road being used as an unlawful race track.

OPTIONS:

That Council:

1. Supports the officer's recommendation.
2. Commences legal action for the use of the farm track as an unlawful race track.
3. Not support the officer's recommendation.

The officers recommend Option 1

CONCLUSION:

Given the advice received from the owner of the property and the fact that Council has not received a complaint or Council officers have not observed the farm road being used as a race track, it is recommended that Council respond to the owner's submission as follows:

- Council notes the submission lodged by Darryl Anderson Consulting dated 17 November 2014 on behalf of the property owner;
- Council acknowledges the farm road has been constructed as part of development for the purpose of extensive agriculture; and
- Council will engage its solicitors should any complaints be received or Council officers' observe, the farm road being use as a race track or for any purpose other than extensive agriculture or any other purpose that is not ordinarily ancillary to extensive agriculture.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Potential legal costs to carry out enforcement action if required.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Submission from Darryl Anderson Consulting dated 17 November 2014 (ECM 3565316)

Attachment 2. Email from Darryl Anderson Consulting dated 14 January 2015 (ECM 3567028)

3 [PR-PC] Development Application DA14/0665 for a Roof over Existing Patio at Lot 57 DP 264646 No. 14 Tattler Court, Tweed Heads West

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: DA14/0665 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:

A development application DA14/0665 was lodged for the erection of a roof over an existing patio at Lot 57 DP 264646 No. 14 Tattler Court, Tweed Heads West. A request has since been received from the owner requesting a variation to Control 22 of Tweed Development Control Plan 2008 - Section A1 Part A Residential and Tourist Development Code (3.1 Setbacks).

The relevant extract from the DCP is as follows:

Canal frontages

C21. The setback from a canal frontage is:

- i. 5.5m where the boundary is on the canal side of a revetment wall, or
- ii. 3.4m from the revetment wall where the wall is on the boundary,

C22. No structures are to be built within the setback area other than fences to 1.2 metres high, swimming pools, retaining walls, suspended decks that do not exceed the level of the allotment at the top of the batter and boat ramps.

The proposed development does not comply with the above controls.

The proposed patio roof is considered to be an unacceptable form of development due to its likely impact on views and vistas up and down the canal and should not be considered for approval. The owner of the subject site was informed of this during the assessment process, and was advised to submit additional information and diagrams to address the impact. This supporting information was not provided, instead, the applicant has requested that the development application be determined at a Council meeting, without this additional information.

On balance of the assessment of the relevant planning matters, it is recommended that the development should not be supported.

This application was called up for Councillor determination by Councillors Polglase and Youngblutt.

RECOMMENDATION:

That Development Application DA14/0665 for a roof over existing patio at Lot 57 DP 264646 No. 14 Tattler Court, Tweed Heads West be refused for the following reasons:

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) any environmental planning instrument in that the proposal does not satisfy Clause 1.2(c) of Tweed Local Environmental Plan 2014 as it will affect the visual amenity of the adjoining waterway.**

- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(iii) - the provisions of any Development Control Plan in that the development is inconsistent with the Tweed Development Control Plan 2008 Section A1 - Residential Development Code in respect of the following:**
 - a. The proposal does not satisfy Control 22 (3.1 Setbacks) in that the roof projects into the 5.5m canal frontage which affects the amenity afforded to the canal residents and the views and vistas along the canal;**

 - b. The proposal does not satisfy objective 06 of 3.1 Setbacks A which is "To maintain views and vistas along canal foreshores"; and**

 - c. Approval of the proposal would set a harmful precedent that erodes canal amenity.**

REPORT:

Applicant: Patiocraft Gold Coast
Owner: Mr Jeffery T Bennett
Location: Lot 57 DP 264646; No. 14 Tattler Court, Tweed Heads West
Zoning: R2 - Low Density Residential
Cost: \$8,925

Background:

The Subject Site

The site has a total area of 687.6m² and is located at the end of a cul-de-sac having a uniform width of 20m and a depth of 37m. The site has a slight fall to the rear canal frontage and is located mid way along the length of the canal where it contributes to the canal vistas and views availed to the canal properties to the east and west.

The site has a single storey dwelling house with a pontoon into the rear canal.

Surrounding development consists predominantly of low density, detached dwelling houses with variable rear setbacks and areas of deep soil zones comprising dense vegetation.

The Proposed Development

Council received a Development Application on 30 September 2014 for the erection of a roof 4.1m wide by 7.1m long with a height of 2.5m located over an existing patio/deck. The patio was approved, under DA06/1172 on 12 December, 2006.

The proposed roof does not satisfy Control 3.1 Setbacks of DCP A1 Part A as the roof would encroach into the 5.5m canal setback and exceeds the maximum permitted height of 1.2m for structures in this setback area. The 1.2m is to allow for a swimming pool fence.

Correspondence was sent to the applicant requesting that they withdraw the application due to the non compliance. Also the following DCP extract was included in the correspondence:

Canal frontages

C21. The setback from a canal frontage is:

- i. 5.5m where the boundary is on the canal side of a revetment wall, or***
- ii. 3.4m from the revetment wall where the wall is on the boundary,***

C22. No structures are to be built within the setback area other than fences to 1.2 metres high, swimming pools, retaining walls, suspended decks that do not exceed the level of the allotment at the top of the batter and boat ramps.

Response by owner

The owner stated that he required sun protection for his grandchildren, and had observed roofed structures within the canal frontage whilst boating around the canals.

An inspection was carried out by Council officers on 5 January 2015 where the owner was informed of Council's DCP requirements and in particular how the application for a roof that would encroach on the canal frontage, due to its location and height, could not be supported.

Request for additional information:

In response, the owner was advised as follows:

"...we cannot support a variation to C22 above, however, should you wish to seek a variation to this requirement you will need to make a formal request which should address Objective 06. To maintain views and vistas along canal foreshores. In this

regard you may consider engaging the services of a Consultant Planner. It is also to be noted that the submission of such variation is no guarantee of approval..."

The intention of this request was to obtain details from the applicant (and/or his consultant) to demonstrate that views and vistas are not adversely affected. This could be used in a notification process and then taken into account in our assessment. The failure to provide this additional information has prompted the Council officers to recommend to refuse the application.

Submission by owner to Councillors

The owner in his representations to councillors included a brief justification as follows:

"As discussed, we are trying to install a small section of insulated roofing over a portion of our deck to protect the grandchildren (and us) from the sun when they (we) play on the area. The section represents the artificial grassed section or approx. 40% of the deck. The insulated roof would be approx. 65mm thick including the fascias to reduce any visual effect.

The area is bounded with high glass balustrades and has a removable section to keep the children contained. As described in a letter (enclosed) we do not want the younger generation to suffer the sun exposure we went through and are now suffering for. I have tried varying umbrellas which tend to blow away in the breeze and are further a hazard. There will not be any sides, or ends built as part of the shade to restrict views, just a roof."

Conclusion

It is considered that the development is non-compliant with Section 3 Building Envelope Controls, 3.1 Setbacks, Control 22 of DCP A1 Part A as the proposed structure is higher than 1.2m and Clause 1.2 "Aims of the Plan" to protect visual amenity and scenic routes, of Tweed LEP 2014, and is recommended for refusal.

Further additional information requested to support the application and to demonstrate that proposal did not impact views and vistas, was not provided by the applicant.

The only feasible alternative would be to defer the matter to allow additional information to be submitted to demonstrate the visual impact and to then initiate the notification process.

SITE DIAGRAM:

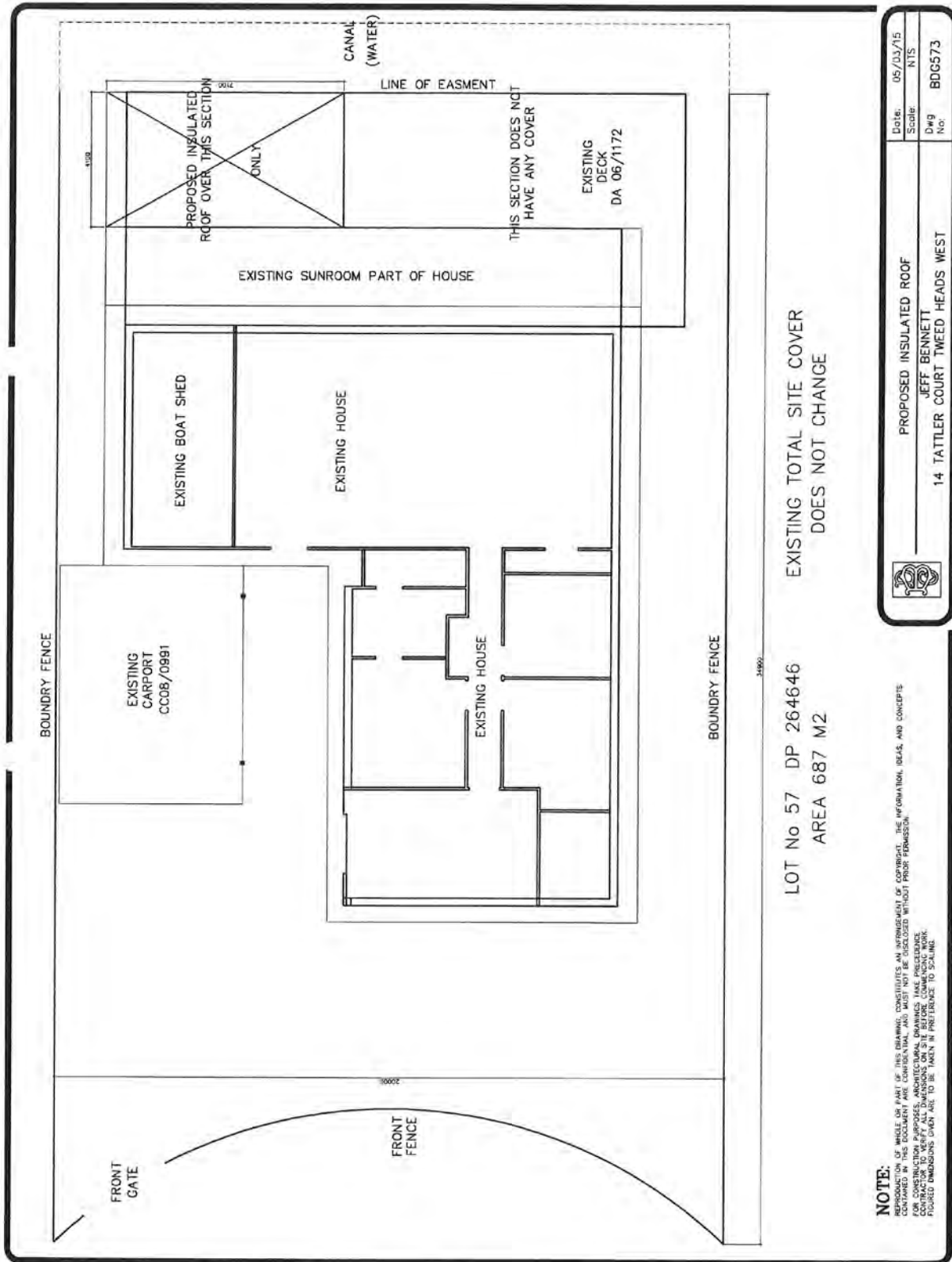


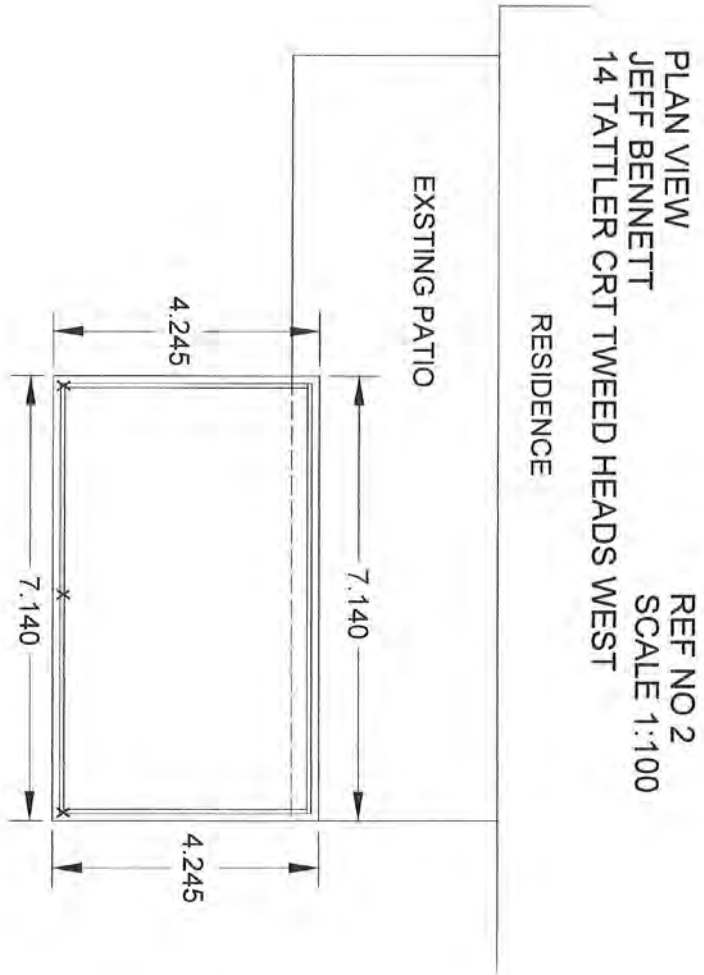
Locality Plan

Lot 57 DP 264646
No.14 Tattler Court, Tweed Heads West

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any transactions a "find before you dig" enquiry must be made by calling 1316. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 25 March, 2015 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 Km 1:50,000 @ A4 Portrait COPY ONLY - NOT CERTIFIED</p> <p>Map provided by: Horizontal Datum: Geoidetic Datum of Australia 1996 Grid: Map Grid of Australia, Zone 56</p>	<p>Civic and Cultural Centre 3 Tumbulgan Road Murwillumbah NSW 2484 PO Box 216 Murwillumbah NSW 2484 T (02) 6870 2400 1300 292 872 F (02) 6870 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	 <p>TWEED SHIRE COUNCIL</p>
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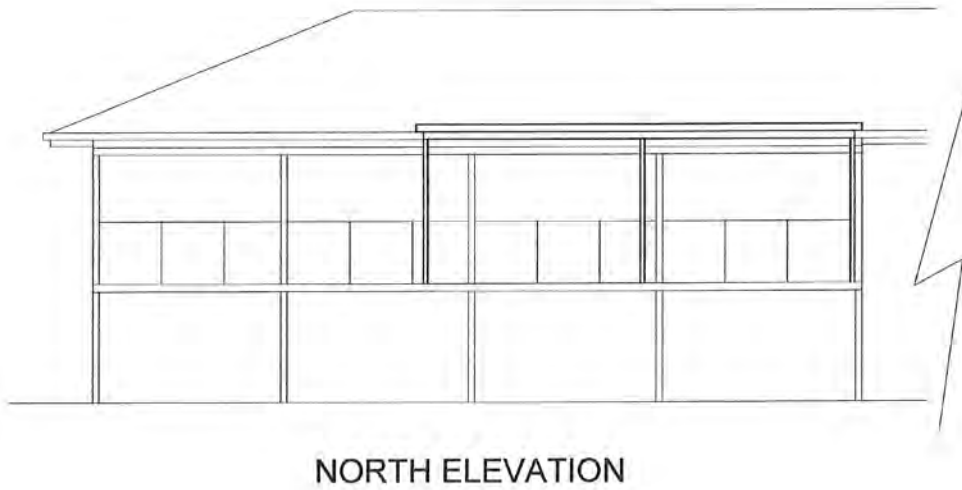
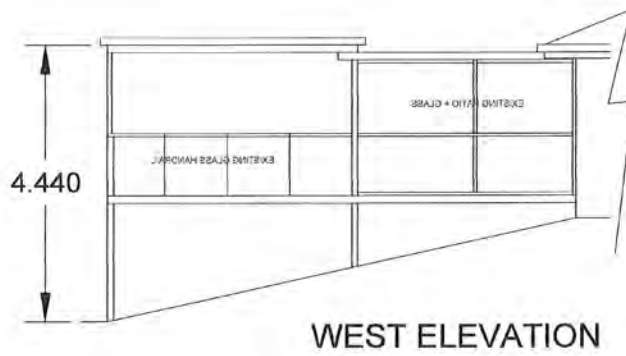
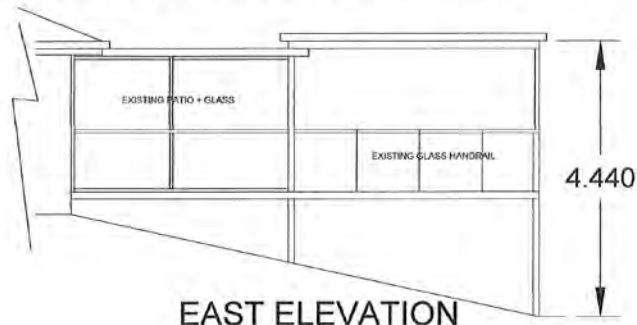
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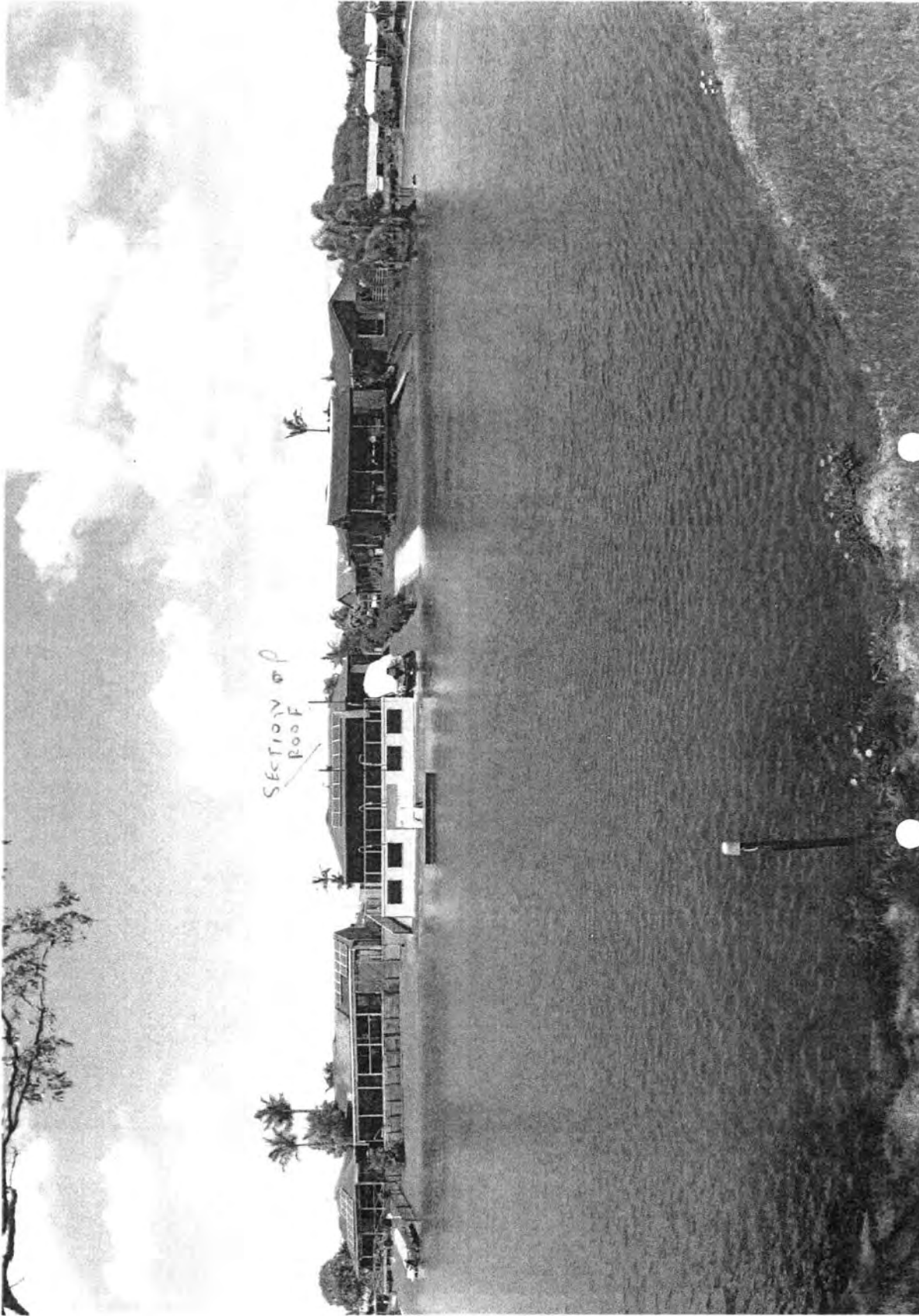


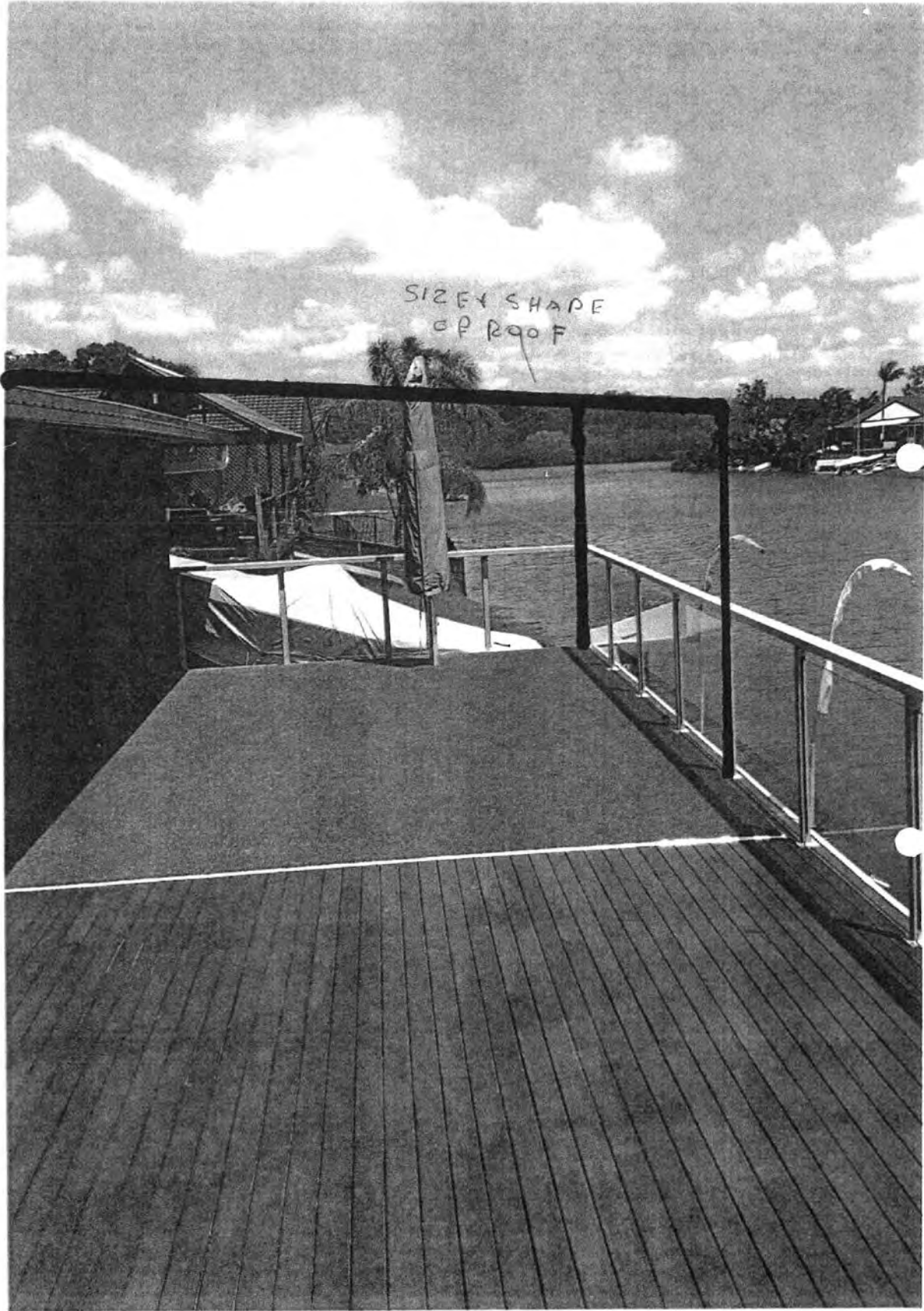


ELEVATIONS
JOHN BENNETT
14 TATTLER CRT TWEED HEADS WEST

REF NO 3
SCALE 1:100













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

Clause 1.2 – Aims of the Plan

The proposal does not meet the aims of the plan with regard to Clause 1.2(c) as the proposal would affect the visual amenity and scenic routes of the immediate waterway.

Clause 2.3 – Zone objectives and Land use table

The proposed development meets the R2 zone objectives as it is ancillary residential development.

Clause 4.3 - Height of Buildings

The proposal provides a height of 4.4m and, therefore does not exceed the 9m maximum height restriction for this site.

Clause 7.3 – Flood Planning

The objectives of Clause 7.3 are to minimise the flood risk to life and property, to allow development on land which is compatible with the lands flood hazard and to avoid significant adverse impacts on flood behaviour.

The subject site is identified as flood affected however there are no implications as the proposed development is to be attached to an existing deck.

Clause 7.4 - Floodplain risk management

There are no implications as the patio roof is over an existing approved deck.

Clause 7.8 – Airspace operations

The subject property is located in the Gold Coast Light Zone therefore if approved a condition would be included in respect of the reflectivity of the roof.

Clause 7.10 - Essential Services

All services are currently available to the subject site. No additional services are required.

State Environmental Planning Policies

SEPP No. 71 – Coastal Protection

The subject site is nominated as being SEPP 71 affected and within a Sensitive Coastal Location. The site is located within 40m of the waterway however the Office of Water have advised that a Controlled Activity Approval is not required under clause 39A of the *Water Management Amendment (Controlled Activities Regulation 2008* and no further assessment required.

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

No Draft Environmental Planning Instruments affect this proposal.

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

Tweed Development Control Plan 2008 A1-Residential and Tourist Development Code

Preliminaries

The roof will potentially affect the neighbouring properties view of the canal. Therefore any approval would set a harmful precedent allowing a proliferation of similar structures to be erected in the canal frontages throughout the Tweed and should not be supported.

Part A

Part A applies to this application and includes detailed parameters for improved site outcomes including the provision of height controls, private open space, setbacks and general street presence that are relevant to this proposal.

Design Theme: Context (Streetscape, views and vistas)

The proposed roof is to be constructed over the existing rear patio awning which encroaches upon the required rear boundary canal frontage setback of 5.5m and will be readily visible from the canal.

The development will compromise the objectives of this control as it has the potential to dominate the canal vista and impact on views from properties up and down the canal and canal users.

Design Theme: Building Envelope (Setbacks, heights and site coverage)

The rear canal frontage setback requirements have been enforced by Council for over 20 years originally within a Council policy and recently these have been transferred unchanged into Council's current DCP.

The proposed encroachment into the canal setback is contrary to Objective 06 of 3.1 Setbacks which is "To maintain views and vistas along canal foreshores".

The controls require that no structures are to be built in the setback area of 5.5m where the boundary is on the canal side of a revetment wall other than fences to 1.2m high, swimming pools, retaining walls, suspended decks that do not exceed the level of the allotment at the top of the batter and boat ramps.

The encroachment upon the canal frontage setback will result in a greater dominance of the rear patio awning upon the canal which in turn affects the canal vista and the visual amenity.

The owner has mentioned that there are existing structures which encroach upon the canal frontages but the particulars of these have not been provided.

This argument is only relevant if the applicant can demonstrate that these structures do not impact views and vistas, or have been erected with Council approval.

It is considered that rear canal frontage setback variations should not be used as an argument in support for variations as this will set an undesirable precedent where the visual amenity to canal properties will be eroded over time.

A3-Development of Flood Liable Land

The development accords with the requirements of Section A3 of the DCP.

A11-Public Notification of Development Proposals

Due to the lack of supporting information the application was not notified.

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

Clause 92(1)(a)(ii) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed against the objectives of this policy. The proposal does not pose a threat to coastal processes.

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

Context and Setting

The site comprises both an artificial canal and a residential property, with the area surrounded by residential development with the waterway containing pontoons for private usage. The proposed roof over the existing patio is not in keeping with surrounding development and it is considered that the roof will significantly impact visual amenity of the canal.

(c) Suitability of the site for the development

Site Orientation

The encroachment of the proposed roof upon the 5.5m rear canal setback will have an effect of the views previously available to the adjoining properties.

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

The application was not notified and no submissions have been received.

(e) Public interest

To approve the proposed roof would impact public and/or community interests and would set an undesirable precedent for similar proposals in the future.

OPTIONS:

That Council:

1. Refuses the application as per the recommendation; or
2. Defers determination of the application pending submission of comprehensive amended plans accompanied by a Planning Consultants report addressing the criteria of DCP A1 Part A and the completion of notification; or
3. Grants in-principle approval for this application and that a report be brought back to the next Planning Committee Meeting with recommended conditions of consent.

The Council officers recommend Option 1.

CONCLUSION:

It is considered that the development is non-compliant with Section 3 Building Envelope Controls, 3.1 Setbacks, Control 22 of DCP A1 Part A as the proposed structure is higher

than 1.2m and Clause 1.2 "Aims of the Plan" to protect visual amenity and scenic routes, of Tweed LEP 2014, and is recommended for refusal.

Further additional information requested to support the application and to demonstrate that proposal did not impact views and vistas, was not provided by the applicant.

The only feasible alternative would be to defer the matter to allow additional information to be submitted to demonstrate the visual impact and to then initiate the notification process.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 4 [PR-PC] Development Application DA14/0435 for a 26 Lot Subdivision and Associated Road Infrastructure at Lot 115 DP 755701 & Lot 4 DP 549393 Clothiers Creek Road, Bogangar; Lot 2 DP 873399 Poinciana Avenue, Bogangar; Lot 1 DP 1172935, Lot 192 DP 217678 & Lot 2 DP 1172935 Poplar Avenue, Bogangar

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0435 Pt2

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

The application seeks approval for a 26 Lot subdivision, of which 21 Lots will be for residential purposes. The site consists of six existing allotments and multiple zones which are as follows: R2 - Low Density Residential, RU2 - Rural Landscape, W1 - Natural Waterways, 7(a) - Wetlands and Littoral Rainforest, 7(l) - Habitat.

The application is integrated development with: NSW Office of Water, NSW Rural Fire Service and Office of Environment & Heritage.

The Office of Environment & Heritage advised Council that there are a number of issues that require further information for their department to be able to properly assess the application.

The NSW Rural Fire Service advised Council that further information would be required for their agency to be able to properly assess the application.

The application required concurrence from the Department of Planning and Environment.

The Department of Planning and Environment, whilst granting concurrence, strongly suggested Council review the provisions of clause 4.1B which is proposed to enable the creation of proposed Lot 5 which does not meet the minimum lot size for the RU2 Rural Landscape zone. Council advised the applicant that proposed Lot 5 will need to be reviewed to contain both residential and RU2 zoned land, with the residential portion of the lot to be no less than the minimum lot size for the residential zone.

Council officers requested further information in regards to: engineering - road construction and roundabout construction, clearing of Endangered Ecological Community, works within 100m of a SEPP 14 wetland and loss of koala habitat/food trees.

The application was advertised for a period of 30 days. Council received 30 submissions objecting to the application and a petition containing 207 signatures objecting to the application.

This application has been called up to Council for determination by Councillor Polglase and Councillor Youngblutt.

Given the insufficient detail and number of issues arising from the proposed development, the application for subdivision is not supported.

Ideally, the application should have been withdrawn and the outstanding issues satisfactorily addressed, prior to the re-lodgement with Council.

UPDATED SUMMARY OF REPORT

Council received an email from the applicant dated 18 March 2015, which proposes the following amendments to the proposed subdivision:

1. Deletion of proposed Lots 2 and 3 at the end of Poinciana Avenue and incorporation of those lots into the residue lot which will now be renumbered Lot 2. Also, delete the proposed cul-de-sac head at the end of Poinciana Avenue from the application as there are now no new lots proposed in this location and therefore a cul-de-sac is not considered to be required.
2. Withdrawal of the offer to dedicate Lots 7 and 8 to the National Parks and Wildlife Service for incorporation into the Cudgen Nature Reserve on the basis that Kenmar Farms will continue to negotiate with the NPWS, after the development consent is granted, in relation to transfer to Cudgen Nature Reserve of proposed offset areas on the western edge of proposed Lot 5 (now proposed Lot 2) which will contain offset plantings.
3. It was also agreed to include proposed Lots 4, 5, 7 and 8 into one lot with a vinculum across Clothiers Creek Road.

The applicant's proposed amendment removes such issues such as:

1. Proposed dedication of Lots 7 and 8 to the NSW Office of Environment & Heritage;
2. The required SEPP 1 objection relating to 7(a) zoned land within Lot 5;
3. The issue relating to the provisions of clause 4.1B of the Tweed Local Environmental Plan 2014, with proposed Lot 5 does not meeting the minimum lot size for land zoned RU2 (Rural Landscape);
4. Works within 100m of a SEPP 14 wetland are no longer required;
5. Proposed EEC and Koala habitat removal relating to proposed Lots 2 and 3 and the cul-de-sac.

However, it is important to note that amended application does not address issues relating to the retained residential lots numbered 10 - 26. These lots in the current layout are not supported by Council's Natural Resource Management Unit. The following issues remain outstanding:

- Clearing for development envelopes and APZs, together with filling of the site to create the proposed lot layout will result in the loss of a minimum of approximately 4000m² of EEC;
- The extent of clearing has been underestimated in the development application;
- The offsets proposed appear inadequate, occur in an area already afforded protection under the LEP zoning, capture areas proposed to accommodate Lots 1-3 and are close to the boundaries with existing residential development;

- Recent fauna survey effort has been limited to incidental records and has not targeted likely threatened species including koala, acid frogs and glossy black cockatoo. Koala scats were recorded within 20 m of the site and evidence of foraging by glossy black cockatoo was observed at two locations within the site during a recent Council site inspection;
- The site is located within the Cudgen Lake Koala Activity Precinct of the Tweed Coast Comprehensive Koala Plan of Management;
- A koala habitat assessment has not been completed and the ecological assessment has not referenced the Tweed Coast Koala Habitat Study 2011;
- There are actively used Preferred Koala Food Trees along the road frontage of the site.

Due to the outstanding issues listed above, the amended application is still recommended for refusal.

The Applicant has requested that Council defer the determination, noting that they expect to have a response to Council's request for further information within four to six weeks. If the applicant's request was to be supported, please note that an entire new assessment would need to occur, re-advertising would be required and the applicant would also have to address the KPOM (Koala Plan of Management), given its recent adoption by Council. This would all result in significant delays in the assessment process and is not supported.

The following report is based on information on file prior to the applicant's latest submission on 18 March 2015.

RECOMMENDATION:

That Development Application DA14/0435 for a 26 lot subdivision and associated road infrastructure at Lot 115 DP 755701 & Lot 4 DP 549393 Clothiers Creek Road, Bogangar, Lot 2 DP 873399 Poinciana Avenue, Bogangar; Lot 1 DP 1172935, Lot 192 DP 217678 & Lot 2 DP 1172935 Poplar Avenue, Bogangar be refused for the following reasons:

- 1. The application is insufficient in detail and with information outstanding, Council is unable to determine the likely impacts the proposed development could create on the natural or built environments or the suitability of the development for the site.**
- 2. The NSW Rural Fire Service has not provided conditional approval.**
- 3. The Office of Environment & Heritage has not provided conditional approval.**
- 4. The proposal is not in the public interest.**

REPORT:

Applicant: Kenmar Farms Pty Ltd

Owner: Kenmar Farms Pty Ltd

Location: Lot 115 DP 755701 & Lot 4 DP 549393 Clothiers Creek Road, Bogangar; Lot 2 DP 873399 Poinciana Avenue, Bogangar; Lot 1 DP 1172935, Lot 192 DP 217678 & Lot 2 DP 1172935 Poplar Avenue, Bogangar

Zoning: R2 - Low Density Residential, RU2 - Rural Landscape, W1 - Natural Waterways, 1(a) Rural, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 7(l) Environmental Protection (Habitat)

Cost: \$1,000,000

Background:

The application seeks approval for a 26 lot subdivision, of which 21 lots will be for residential purposes. The application also proposes various subdivision works including:

- Construction of proposed roads to serve Lots 10 to 26.
- Extension of Poinciana Avenue including the provision of reticulated water, sewer, power and telephone services to proposed Lots 2 and 3.
- Provision of reticulated water, sewer, power and telephone services to proposed Lot 1 in Kurrajong Avenue.
- Minor landforming, road construction and provision of all necessary underground services including water, sewer, power and telephone in respect of proposed Lots 10 to 26.
- Minor landforming of proposed Lots 1, 2, 3 and 10 to 26 to establish suitable finished surface levels.
- Ancillary stormwater drainage and water quality control works related to the proposed subdivision.
- Construction of a roundabout at the intersection of Clothiers Creek Road, Kauri Avenue and the proposed street servicing Lots 10 to 26.
- Construction of the extension of Poinciana Avenue and of a cul-de-sac head.

Staging of the proposed subdivision is as follows:

- Stage 1 – Lots 1, 2 and 3.
- Stage 2 – Lots 4 to 26.

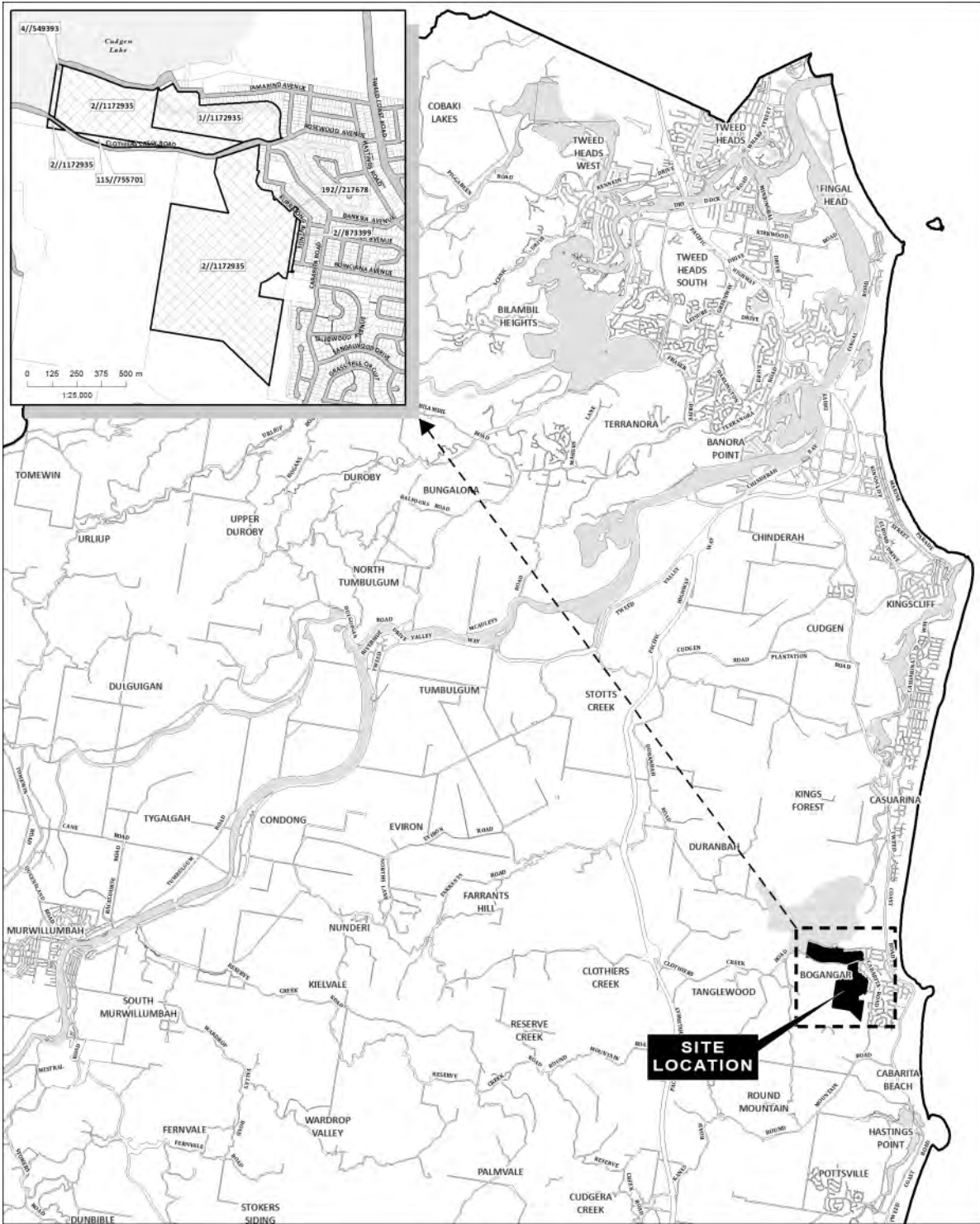
Council and other State Government authorities have requested further information which has not been provided by the applicant. Therefore the application is recommended for refusal.

A development application on the same site for a five lot subdivision (DA10/0099) was refused for the following reasons:

1. The Department of Planning has not issued concurrence.
2. The proposed subdivision does not comply with the 40 hectare minimum development standard contained within Clause 20(2)(a) of the Tweed LEP 2000.
3. The SEPP 1 objection has not demonstrated that the development standard is unnecessary and unreasonable.

4. The applicant has not addressed matters for consideration under Clause 7 of SEPP 14 in relation to clearance of mapped wetland and concurrence for the proposal is required by the Director of National Parks and Wildlife.

SITE DIAGRAM:

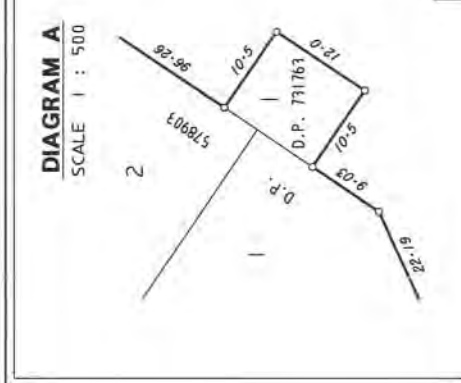
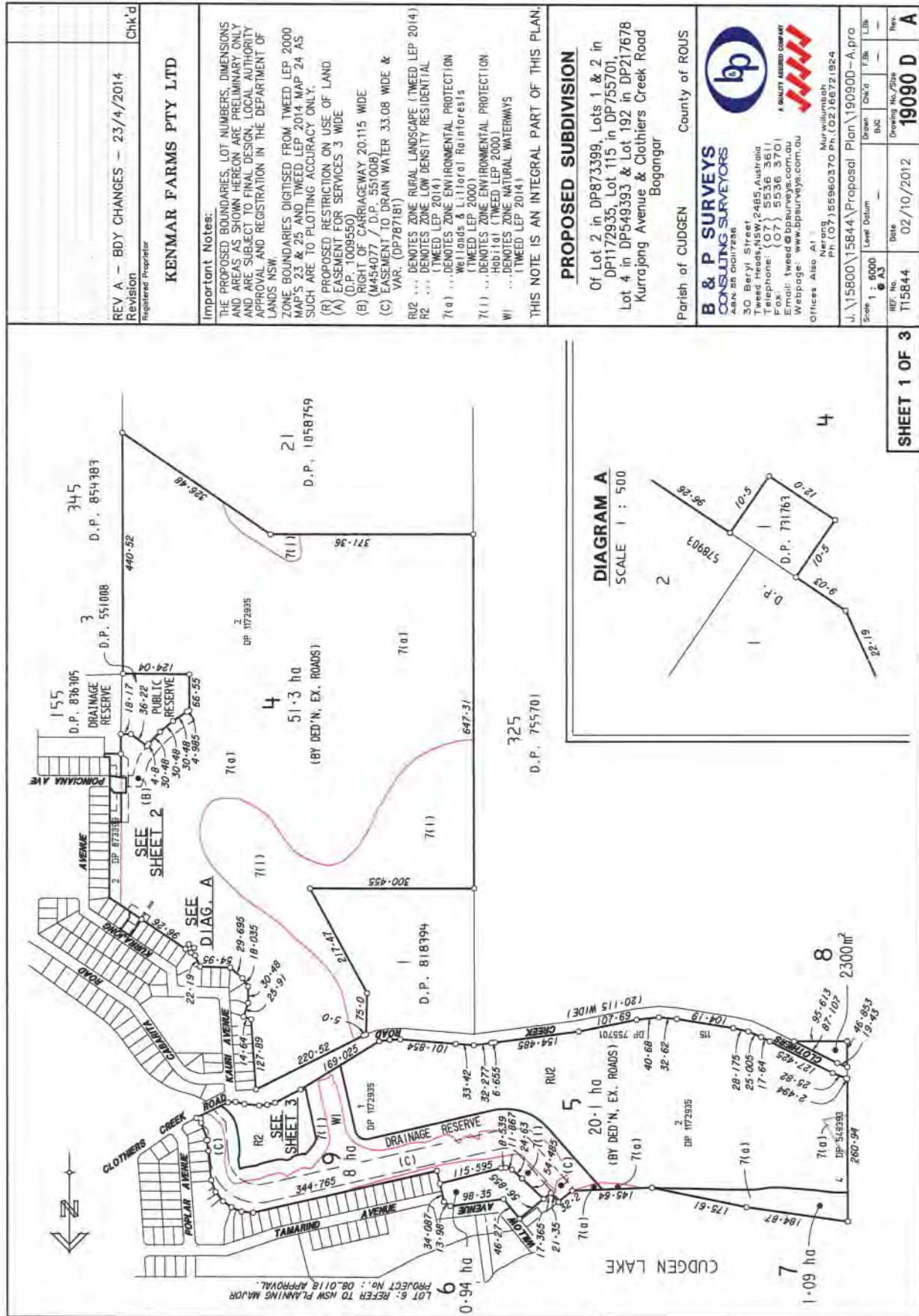


Locality Plan

Lot 115 DP 755701 & Lot 4 DP 549393; Clothers Creek Road; Lot 2 DP 873399; Poinciana Avenue;
 Lot 1 DP 1172935, Lot 192 DP 217678 & Lot 2 DP 1172935; Poplar Avenue Bogangar

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Dig before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p> <p>Cadastre: 19 March, 2015 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>		<p>Civic and Cultural Centre 2 Tumbulgum Road Murwillumbah NSW 2484</p> <p>PO Box 816 Murwillumbah NSW 2484</p> <p>T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planningreform@tweed.nsw.gov.au</p>
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DEVELOPMENT/ELEVATION PLANS:



REV A - BDY CHANGES - 23/4/2014
Revision

KENMAR FARMS PTY LTD
Registered Proprietor

Important Notes:
THE PROPOSED BOUNDARIES, LOT NUMBERS, DIMENSIONS AND AREAS AS SHOWN HEREON ARE PRELIMINARY ONLY AND ARE SUBJECT TO FINAL DESIGN, LOCAL AUTHORITY APPROVAL AND REGISTRATION IN THE DEPARTMENT OF LANDS NSW.
ZONE BOUNDARIES DIGITISED FROM TWEED LEP 2000 MAP'S 23 & 25 AND TWEED LEP 2014 MAP 24 AS SUCH ARE TO PLOTTING ACCURACY ONLY.
(R) PROPOSED RESTRICTION ON USE OF LAND
(A) EASEMENT FOR SERVICES 3 WIDE
(B) RIGHT OF CARRIAGEWAY 20.115 WIDE (W/4077/ D.P. 551008)
(C) EASEMENT TO DRAIN WATER 33.08 WIDE & VAR. (DP787181)
RU2 ... DENOTES ZONE RURAL LANDSCAPE (TWEED LEP 2014)
R2 ... DENOTES ZONE LOW DENSITY RESIDENTIAL (W/4077/ D.P. 551008)
71(a) ... DENOTES ZONE ENVIRONMENTAL PROTECTION Wetlands & Littoral Rainforests (TWEED LEP 2014)
71(i) ... DENOTES ZONE ENVIRONMENTAL PROTECTION Habitat (TWEED LEP 2000)
WI ... DENOTES ZONE NATURAL WATERWAYS (TWEED LEP 2014)

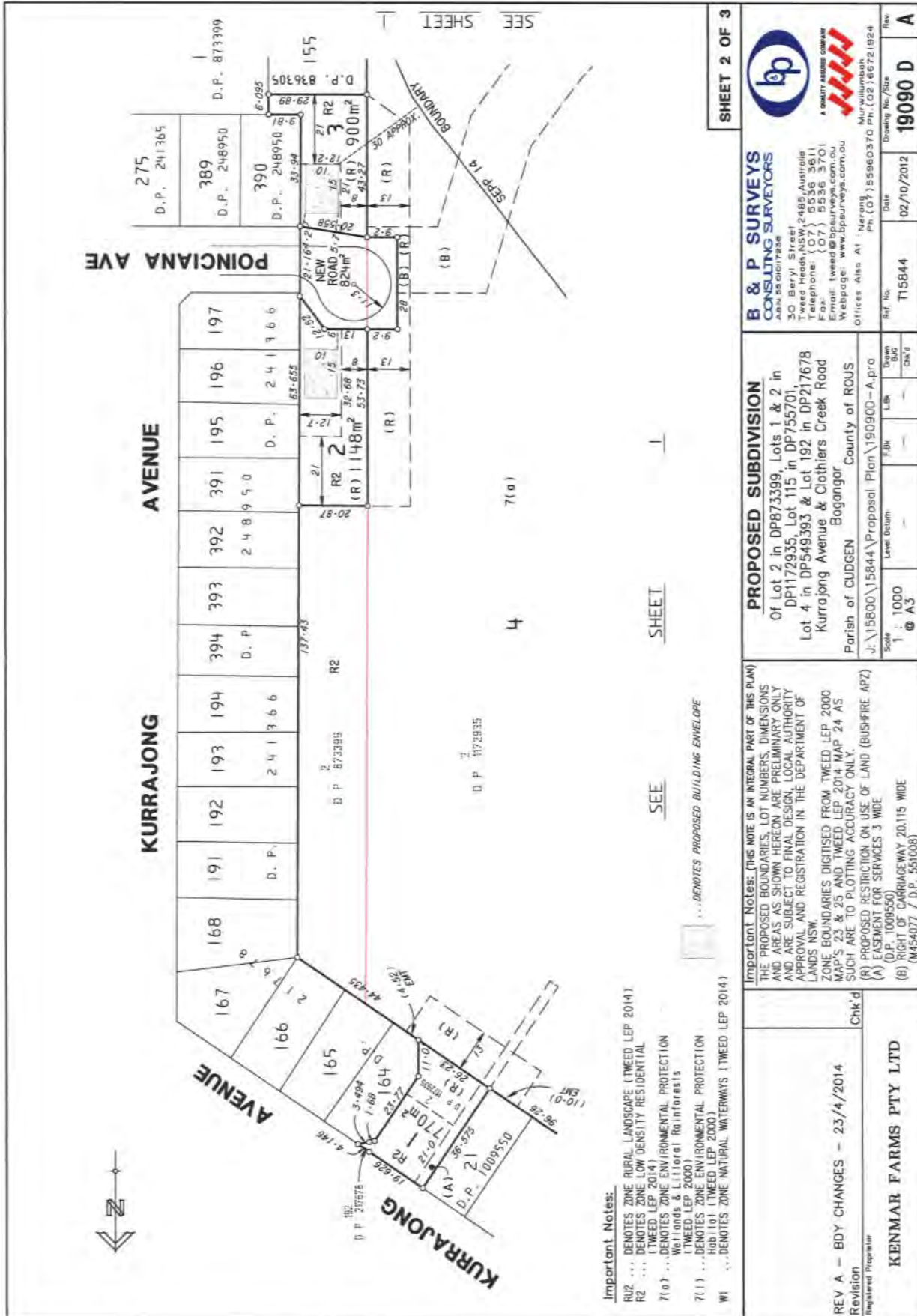
THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.

PROPOSED SUBDIVISION
Of Lot 2 in DP873399, Lots 1 & 2 in DP1172935, Lot 115 in DP755701, Lot 4 in DP549393 & Lot 192 in DP217678 Kurrajong Avenue & Clothiers Creek Road Bogongar

Parish of CUDGEN County of ROUS

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Offices Also At:
Nerang Murwillumbah
Ph: (07) 55960370 Ph: (02) 5672 1924

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Date
Drawing No./Size
19090 D
Rev. A



Important Notes:
 R2 ... DENOTES ZONE RURAL LANDSCAPE (TWEED LEP 2014)
 R2 ... DENOTES ZONE LOW DENSITY RESIDENTIAL (TWEED LEP 2014)
 7(a) ... DENOTES ZONE ENVIRONMENTAL PROTECTION Wetlands & Littoral Reintrests (TWEED LEP 2000)
 7(1) ... DENOTES ZONE ENVIRONMENTAL PROTECTION Herb 1101 (TWEED LEP 2000)
 W1 ... DENOTES ZONE NATURAL WATERWAYS (TWEED LEP 2014)

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 (R) PROPOSED RESTRICTION ON USE OF LAND (BUSHFIRE APZ)
 (A) EASEMENT FOR SERVICES 3 WIDE (D.P. 1009550)
 (B) RIGHT OF CARRIAGEWAY 20.115 WIDE (M454077 / D.P. 551008)

REV A - BDY CHANGES - 23/4/2014	Chk'd
Registered Proprietor	
KENMAR FARMS PTY LTD	

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PROPOSED SUBDIVISION
 Of Lot 2 in DP873399, Lots 1 & 2 in DP1172935, Lot 115 in DP755701, Lot 4 in DP549393 & Lot 192 in DP217678 Kurrajong Avenue & Clothiers Creek Road Parish of CUDGEN Bogongor County of ROUS
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B & P SURVEYS CONSULTING SURVEYORS
 30 Beryl Street Tweed Heads NSW 2485, Australia
 Telephone: (07) 5536 3611
 Fax: (07) 5536 3701
 Email: tweed@bpsurveys.com.au
 Website: www.bpsurveys.com.au
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 Ph: (07) 55960370 Ph: (02) 166721824

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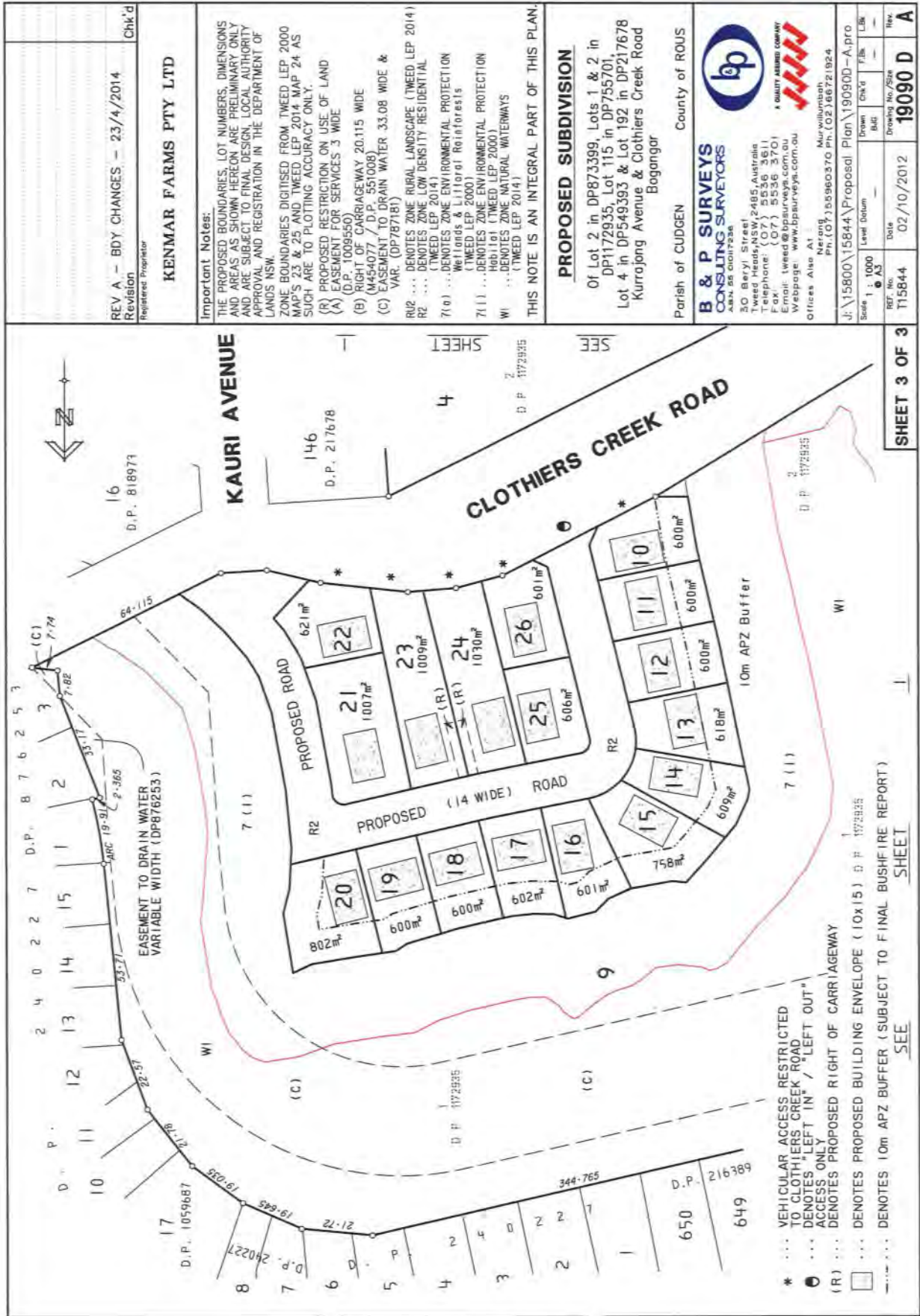


SHEET 2 OF 3

SEE SHEET 1

SEE SHEET 4

SEE SHEET 7(a)





SHEET 3 OF 3

SHEET

SEE

REV A - BDY CHANGES - 23/4/2014
 Revision
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 (S) PROPOSED RESTRICTION ON USE OF LAND
 (A) EASEMENT FOR SERVICES 3 WIDE (D.P. 1009550)
 (B) RIGHT OF CARRIAGEWAY 20.115 WIDE (M454077 / D.P. 551008)
 (C) EASEMENT TO DRAIN WATER 33.08 WIDE & VAR (DP787181)
 R/2 ... DENOTES ZONE RURAL LANDSCAPE (TWEED LEP 2014)
 RZ ... DENOTES ZONE LOW DENSITY RESIDENTIAL (TWEED LEP 2014)
 71(a) ... DENOTES ZONE ENVIRONMENTAL PROTECTION Wetlands & Littoral Rainforests (TWEED LEP 2000)
 71(1) ... DENOTES ZONE ENVIRONMENTAL PROTECTION R/01101 (TWEED LEP 2000)
 W1 ... DENOTES ZONE NATURAL WATERWAYS (TWEED LEP 2014)
 THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.

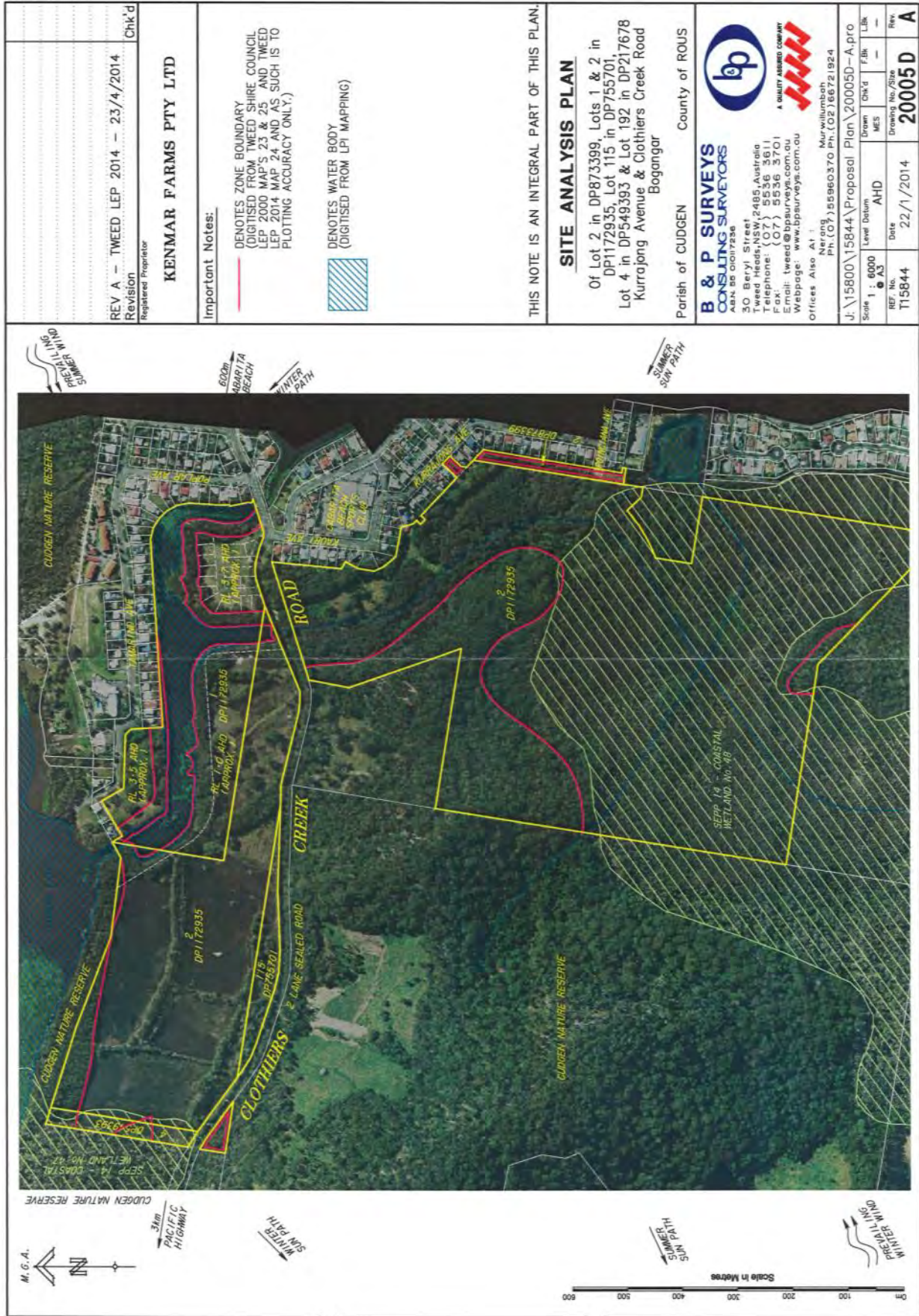
AERIAL OVERLAY

Of Lot 2 in DP873399, Lots 1 & 2 in DP1172935, Lot 115 in DP755701, Lot 4 in DP549393 & Lot 192 in DP217678 Kurrojong Avenue & Clothiers Creek Road Bogangar

Parish of CUDGEN County of ROUS

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 Ph. (07) 555960370 Ph. (02) 766721824

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REV A - TWEED LEP 2014 - 23/4/2014
 Revision
 Registered Proprietor
KENMAR FARMS PTY LTD

Important Notes:

— DENOTES ZONE BOUNDARY (DIGITISED FROM TWEED SHIRE COUNCIL LEP 2000 MAP'S 23 & 25 AND TWEED LEP 2014 MAP 24 AND AS SUCH IS TO PLOTTING ACCURACY ONLY.)

▨ DENOTES WATER BODY (DIGITISED FROM LPI MAPPING)

THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.

SITE ANALYSIS PLAN

Of Lot 2 in DP873399, Lots 1 & 2 in DP1172935, Lot 115 in DP755701
 Lot 4 in DP549393 & Lot 192 in DP217678
 Kurrajong Avenue & Clothiers Creek Road
 Bogangar

Parish of CUDGEN County of ROUS

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REF No. T15844	Date 22/1/2014
REF No. T15844	Drawing No./Size 20005D
REF No. T15844	Rev. A



REV A - BDY CHANGES - 23/4/2014
 Registered Proprietor
 Chk'd

KENMAR FARMS PTY LTD

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 (R) PROPOSED RESTRICTION ON USE OF LAND
 (A) EASEMENT FOR SERVICES 3 WIDE (D.P. 1009550)
 (B) RIGHT OF CARRIAGEWAY 20.115 WIDE (M454077 / D.P. 551008)
 (C) EASEMENT TO DRAIN WATER 33.08 WIDE & VAR. (DP787181)
 R12 ... DENOTES ZONE RURAL LANDSCAPE (TWEED LEP 2014)
 R2 ... DENOTES ZONE LOW DENSITY RESIDENTIAL (TWEED LEP 2014)
 7(a) ... DENOTES ZONE ENVIRONMENTAL PROTECTION Wetlands & Littoral Rainforests (TWEED LEP 2000)
 7(1) ... DENOTES ZONE ENVIRONMENTAL PROTECTION Habi.101 (TWEED LEP 2000)
 W1 ... DENOTES ZONE NATURAL WATERWAYS (TWEED LEP 2014)

THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.

AERIAL OVERLAY

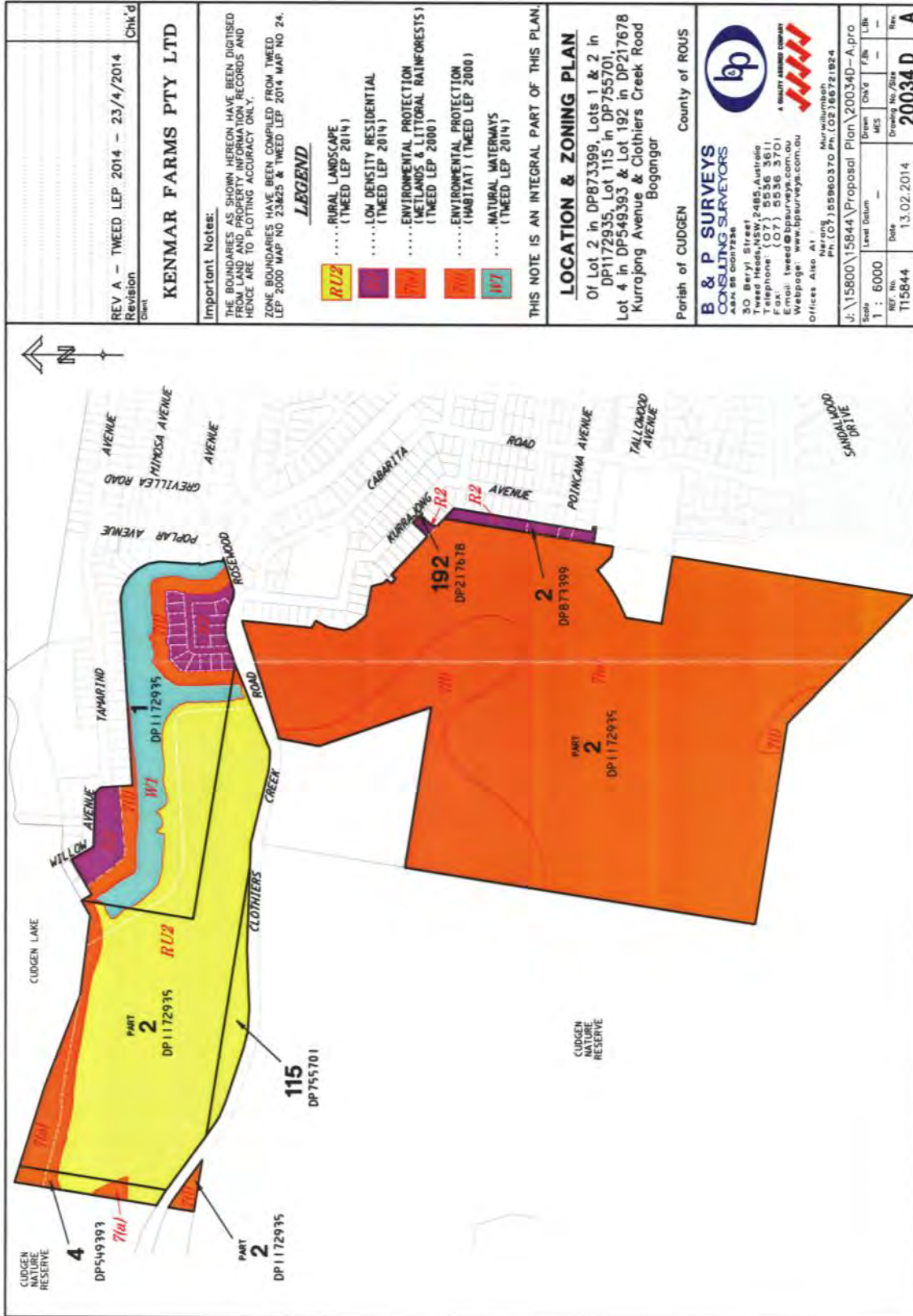
Of Lot 2 in DP873399, Lots 1 & 2 in DP1172935, Lot 115 in DP755701
 Lot 4 in DP549393 & Lot 192 in DP217678
 Kurrajong Avenue & Clothiers Creek Road
 Bogangar

Parish of CUDGEN County of ROUS

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SHEET 1 OF 3



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

Clause 1.2 – Aims of the Plan

The proposal is not considered to be consistent with the aims of the Plan, as the proposal does not conserve or enhance areas of defined high ecological value, or provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

Clause 2.3 – Zone objectives and Land use table

The site contains multiple zones being: R2 - Low Density Residential, RU2 - Rural Landscape, W1 - Natural Waterways, 1(a) Rural, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 7(l) Environmental Protection (Habitat).

The proposal is considered not to be in accordance with the objectives of the zones.

Clause 4.1 - Minimum subdivision lot size

This Clause requires that the size of any lot is not to be less than the minimum size shown on the lot Size Map. Proposed Lots 1, 2, 3, part Lot 4 (part zoned R2), 6 and 10 to 26 comply with the 450m² minimum lot size.

Proposed Lot 5 does not comply with the 40 hectare minimum lot size.

Clause 4.1B - Minimum subdivision lot size for certain split zones

The clause states the following:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,*
 - (b) *to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*
- (2) *This clause applies to each lot (an **original lot**) that contains:*
 - (a) *land in a residential, business or industrial zone, and*
 - (b) *land in Zone RU1 Primary Production or Zone RU2 Rural Landscape.*
- (3) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if:*
 - (a) *one of the resulting lots will contain:*
 - (i) *land in a residential, business or industrial zone that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land, and*
 - (ii) *all the land in Zone RU1 Primary Production or Zone RU2 Rural Landscape, and*
 - (b) *all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.*

The applicant was advised that Council does not agree with their interpretation of clause 4.1B of the Tweed LEP 2014. The clause requires that one of the resulting lots is to contain both residential and RU2 zoned land. The residential portion of the lot is to be not less than the minimum lot size for the residential zone (450m²).

Proposed Lot 5 does not comply with clause 4.1B as proposed Lot 5 does not contain both residential and RU2 zoned land.

Clause 5.5 – Development within the Coastal Zone

The proposed subdivision will not alter existing access arrangements to the foreshore. The subject land does not have frontage to the coastal foreshore. The subject land is not affected by coastal hazards.

Clause 5.9 – Preservation of Trees or Vegetation

The proposal will result in the removal of significant/highly valued vegetation. Council's Natural Resource Management Unit does not support the proposal due to the impact on significant ecological values and koala food trees.

Clause 5.11 - Bush fire hazard reduction

The proposal requires bushfire hazard reduction and integrated development with the NSW Rural Fire Service (RFS). The RFS requires further information prior to providing final comments. Council's Natural Resource Management Unit does not support the proposal due to the impact on significant ecological values and koala food trees, as a result of required APZ clearing.

Clause 7.1 – Acid Sulfate Soils

The site is identified as having class 2, 3 and 5 ASS. An Acid Sulfate Soil Management Plan (HMC2014.006 ASS) has been prepared by HMC Environmental Consulting PL dated February 2014. Council officers have reviewed the report and advised that the report appears adequate with condition recommended if the application were to be approved.

Clause 7.2 - Earthworks

Minor earthworks are proposed as part of this application to achieve required finished surface levels on the proposed residential allotments. Council's Engineers advised that the applicant will fill these residential lots as required to meet the minimum Design Flood Level (DFL). The extent of this fill is minor in nature, and is clear of high flow areas. Lots 10-26 in particular are in an area that has previously been cleared and filled to levels exceeding RL 3.0m AHD. Therefore no significant impacts are expected, from an engineering perspective.

Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) *to avoid significant adverse impacts on flood behaviour and the environment.*

The application has been reviewed by Council's Flooding Engineer, no objections were raised and conditions were recommended, if the application were to be approved. The following comments were noted:

"Where residential lots are being created, these are required by the DCP to be filled to meet design flood level (the 1% AEP flood). Most of the development areas where work is proposed have previously been filled and only require regrading, and therefore the additional fill proposed is relatively minor. Accordingly, there has been no detailed flood modelling provided and considered not to be warranted from an impact perspective."

Clause 7.4 - Floodplain risk management

The objectives of this clause are as follows:

- (a) *in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding in events exceeding the flood planning level,*
- (b) *to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.*

The application has been reviewed by Council's Flooding Engineer, no objections were raised and conditions were recommended. The following comments were noted:

"While the DCP allows infill development less than 5ha to occur without provision of evacuation routes, the subject residential allotments being created can satisfactorily achieve these evacuation routes to high land."

Clause 7.5 - Coastal risk planning

The site is not identified as being covered by the coastal risk planning map.

Clause 7.6 - Stormwater Management

The application has been reviewed by Council's Flooding Engineer, no objections were raised and conditions were recommended.

A very small part of the overall site which is the subject of this Development Application will be urbanised and where possible, water will be infiltrated from future hardstand areas on residential allotments. Runoff from hardstand areas including future public roads will be appropriately treated prior to being discharged to the existing waterways.

Clause 7.10 - Essential Services

The proposed residential allotments will be connected to reticulated water and sewer services. Underground electricity and telephone services will also be provided together with appropriate stormwater drainage and stormwater management measures. Public roads will be constructed and dedicated to provide suitable vehicular access to the proposed residential lots. The residue lots will have access via existing public roads. The proposal is considered to be consistent with the clause and suitable conditions have been recommended.

Tweed Local Environmental Plan 2000

The proposal incorporates areas of land nominated as Deferred Matters under Tweed LEP 2014. As such, a dual assessment under LEP 2014 and LEP 2000 is required. The LEP 2000 component only relates to the "deferred matters".

Clause 4 - Aims of the Plan

One of the aims of the plan is:

- (d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

In order for future dwellings to be located upon proposed residential Lots 1, 2, 3, 6, 10-26, considerable Asset Protection Zones need to be maintained off-site that encroach into sensitive ecological land. In addition, the earthworks needed to take place in order to create acceptable dwelling pads upon Lots 2 and 3 requiring existing sensitive vegetation to be removed in the process.

As such, it is questionable whether the proposed development sustains economic development of the area without compromising the area's environmental qualities.

Clause 5 - Ecologically Sustainable Development

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

It is not clear whether irreversible environmental damage may be caused by the proposal given the ecological significance of the site. Impacts upon inter-generational equity and conservation of biological diversity and ecological integrity have not been resolved.

Clause 8 – Consent Considerations

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

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

The site contains 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 7(l) Environmental Protection (Habitat). The primary zone objectives are:

Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests)

Zone objectives

Primary objectives

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

Zone 7 (I) Environmental Protection (Habitat)

Zone objectives

Primary objectives

- *to protect areas or features which have been identified as being of particular habitat significance.*
- *to preserve the diversity of habitats for flora and fauna.*
- *to protect and enhance land that acts as a wildlife corridor.*

Based on the information provided, the proposal is considered not to be consistent with the primary objectives of either of the zones listed above.

In this instance, Asset Protection Zones extend into areas containing sensitive vegetation, mapped wetland and evidenced Koala habitat. For this to occur, the applicant needs to demonstrate 'exceptional circumstances'. This has not been demonstrated.

Loss of important biodiversity in this locality constitutes an unacceptable cumulative impact on the community.

Clause 11 – Zone Objectives

The site contains 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 7(l) Environmental Protection (Habitat). The zone objectives are:

Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests)

Zone objectives

Primary objectives

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

Secondary objectives

- *to protect the scenic values of wetlands and littoral rainforests.*
- *to allow other development that is compatible with the primary function of the zone.*

Zone 7 (I) Environmental Protection (Habitat)

Zone objectives

Primary objectives

- *to protect areas or features which have been identified as being of particular habitat significance.*
- *to preserve the diversity of habitats for flora and fauna.*
- *to protect and enhance land that acts as a wildlife corridor.*

Secondary objectives

- *to protect areas of scenic value.*
- *to allow for other development that is compatible with the primary function of the zone.*

Proposed Lot 4 consists of land zoned 7(a) and 7(l). Subdivision is permissible in these zones if the area of land or each allotment created is at least 40 hectares or more. In this case, the proposed Lot 4 has an area of 51.3 hectares. This is considered acceptable.

Proposed Lot 5 consists of land zoned 7(a). Subdivision is permissible in these zones if the area of land or each allotment created is at least 40 hectares or more. In this case, the proposed Lot 5 has an area of 20.1 hectares. This is not considered acceptable.

Proposed Lot 7 consists of land zoned 7(a). Subdivision is permissible in these zones if the area of land or each allotment created is at least 40 hectares or more. In this case, the proposed Lot 7 has an area of 1.09 hectares. This is not considered acceptable, however proposed Lot 7 is proposed to be dedicated to the NPWS subject to the Department's acceptance of the lot.

Proposed Lot 8 consists of land zoned 7(l). Subdivision is permissible in these zones if the area of land or each allotment created is at least 40 hectares or more. In this case, the proposed Lot 8 has an area of 0.23 hectares. This is not considered acceptable, however proposed Lot 8 is proposed to be dedicated to the NPWS subject to the Department's acceptance of the lot.

Proposed Lot 9 consists of land zoned 7(a) and 7(l). Subdivision is permissible in these zones if the area of land or each allotment created is at least 40 hectares or more. In this case, the proposed Lot 9 has an area of 8 hectares. This is not considered acceptable, however proposed Lot 9 is proposed to be dedicated to Council as a drainage reserve and as such, is not subject to minimal lot size requirements.

Clause 15 - Essential Services

All essential services can be supplied to proposed residential lots.

Clause 16 - Height of Building

There are no buildings proposed.

Clause 17 - Social Impact Assessment

The scale of this development proposal does not necessitate a social impact assessment (the proposal is less than 50 lots).

Clause 35 - Acid Sulfate Soils

The site is identified as having 2, 3 and 5 ASS. An Acid Sulfate Soil Management Plan (HMC2014.006 ASS) has been prepared by HMC Environmental Consulting PL dated February 2014. Council officers have reviewed the report and advised that the report appears adequate with condition recommended if the application were to be approved.

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent.

Clause 20 – Subdivision in Zones 1(a), 1(b), 7(a), 7(d) and 7(l)

The main objective of this clause is to prevent the potential for fragmentation of rural land that would lead to an adverse impact upon its agricultural and/or environmental character. It is also to prevent unsustainable development and to protect the area of Tweed's water supply quality.

Clause 20(2)(a) states that consent may only be granted to subdivision of land within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of zoned land within each allotment created is at least 40 hectares.

Proposed Lot 4

This lot has an area of 51.3 hectares and therefore complies with the minimum 40 hectare lot size.

Proposed Lot 5

This lot has an area of 20.1 hectares and a small part of the lot is zoned 7(a) (approximately 2400m²) and therefore the minimum 40 hectare standard applies. The proposed lot does not comply with the development standard and therefore a State Environmental Planning Policy No. 1 Objection is required. The applicant states that the 40 hectare development standard is unreasonable and unnecessary because the area of land zoned 7(a) within proposed Lot 5 is considerably less than 40 hectares and the whole of the land 7(a) will be contained within the lot thus avoiding fragmentation. Refer to SEPP 1 assessment later in this report.

Proposed Lots 7 and 8

These proposed lots have areas of 1.09 hectares and 2300m² respectively and therefore do not comply with the minimum 40 hectare lot size. However, Clause 2.75 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 enables the creation of the lots on the basis that they are intended to be used for a public purpose (addition to Cudgen Nature Reserve). It is to be noted that the Office of Environment and Heritage stated that they are interested in the proposed dedication subject to further detail being provided by the applicant.

Proposed Lot 9

This lot has an area of 8 hectares of which approximately 3 hectares is zoned part 7(l) and part 7(a) and therefore the proposed lot does not comply with the minimum 40 hectare lot size. However, Clause 2.75 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 enables the creation of the lot on the basis that it is intended to be used for a public purpose (drainage reserve), as does clause 19 of LEP 2000.

Variations to this standard are therefore the subject of a SEPP 1 Variation Report which received the concurrence of the Director General and is discussed in full at a later stage within this report.

It should be noted that the Department of Planning and Environment, whilst granting concurrence, strongly suggested Council review the provisions of clause 4.1B of the Tweed LEP 2014, with regard to enabling the creation of proposed Lot 5 which does not meet the minimum lot size for the RU2 Rural Landscape zone. Council advised the applicant that proposed Lot 5 will need to be reviewed to contain both residential and RU2 zoned land, with the residential portion of the lot to be no less than the minimum lot size for the residential zone.

Clause 22 – Development near Designated Roads

Clothiers Creek Road is a Council Designated Road. The objectives of this clause are:

- *to protect and improve the capacity, efficiency and safety of*

designated roads.

- *to prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.*
- *to prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.*

Council's Traffic Engineer requested further information in regards to bus servicing and turning templates for bus 12.5m and semi trailers of 19m in length for the proposed roundabout. The information requested has not been provided.

The proposal is generally not sensitive to traffic noise and will not impact on the scenic values from the point of view of the road users.

Clause 24 – Setbacks to Designated Roads

Clothiers Creek Road is a designated road and therefore this Clause applies. The objective of the Clause is as follows:

(1) *Objective*

- *to control development along designated roads.*

No buildings or potential dwelling sites are nominated in this application which do not comply with this Clause.

Clause 25 – Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The objective of this clause is to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the Tweed.

Consent must not be granted to the carrying out of development on land within Zone 7(a) or on land adjacent to land within Zone 7(a) unless the consent authority has taken into consideration:

- (a) the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest; and*
- (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing; and*
- (c) a plan of management showing how any adverse effects arising from the development can be mitigated; and*
- (d) the likely effects of the development on the water table; and*
- (e) the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavation or filling.*

Proposed subdivision and associated works are within or are adjacent to land within Zone 7(a). The proposal requires earthworks and vegetation removal of significant vegetation (Endangered Ecological Community EEC).

The degree of impact and potential for disturbance in relation to the above points is not clear and has not been adequately justified by the applicant. Council's Natural Resource Management Unit does not support the application.

Clause 28 – Development in Zone 7(l) Environmental Protection (Habitat) and on adjacent land

The objective of this clause is to protect wildlife habitat from the adverse impacts of development. Similar points for consideration as those above apply to assessment of development proposals.

Proposed Lots 4, 8 and 9 contain land zoned 7(l). There is clearing of vegetation and earthworks within proposed Lot 9 that will result in the loss of a minimum of approximately 4000m² of EEC. The extent of clearing has been underestimated in the development application, the offsets proposed appear inadequate and occur in an area already afforded protection under the LEP zoning.

Council's Natural Resource Management Unit does not support the application.

Clause 29 - Development adjacent to Zone 8(a) National Parks and Nature Reserves

The objective of this clause is to ensure that development of land adjacent to Zone 8(a) does not have a significant impact on wildlife habitat.

Proposed Lots 4, 5, 7, 8 and 9 are adjacent to Cudgen Nature Reserve. However, vegetation removal should not be required to areas adjacent to 8(a) zoned land and the existing use of these lots will not change as a result of the proposed development.

Clause 31: Development Adjoining Waterbodies

The clause applies to land that adjoins the MHWL of a waterbody.

The objectives of this clause include:

- *protection and enhancement of scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors*
- *provision of adequate public access to waterways, and*
- *minimisation of the impact on development from known biting midge and mosquito breeding areas.*

The proposed development subdivision is not likely to impact upon waterbodies subject to suitable conditions relating to sedimentation and erosion control.

Clause 34 – Flooding

Clause 34 of the TLEP refers to flood liable land and requires Council to ensure that appropriate development occurs in order to minimise future flood damage on the local community.

The application has been reviewed by Council's Flooding Engineer, no objections were raised and conditions were recommended, should approval be granted.

Clause 35 – Acid Sulfate Soils

The site is identified as having 2, 3 and 5 ASS. An Acid Sulfate Soil Management Plan (HMC2014.006 ASS) has been prepared by HMC Environmental Consulting PL dated February 2014. Council officers have reviewed the report and advised that the report appears adequate with condition recommended if the application were to be approved.

Clause 39 – Remediation of Contaminated Land

This clause requires contaminated land to be remediated adequately prior to development occurring in accordance with SEPP 55.

Council's Environmental Health Unit reviewed the submitted Preliminary Site Investigation (PSI) Proposed Subdivision Report (HMC2014.006 CL) has been prepared by HMC Environmental Consulting P/L dated February 2014. No objections were raised with the report stating that the proposed lots are suitable for the proposed residential use.

Clause 39A – Bushfire Protection

The objective of Clause 39A is:

- *to minimize bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.*

The development application was forwarded to the NSW Rural Fire Service on 17 July 2014 for consideration and comment, as the subject site is bushfire prone land. The first response received 29 August 2014 required further information. This request for further information was forwarded to the applicant, a response is still outstanding.

It is noted that the location of proposed/required Asset Protection Zones is likely to result in an unacceptable impact to sensitive 7(a) zoned land, 7(L) zoned land, Koala Habitat and SEPP 14 mapped land and is generally not supported in planning terms.

Clause 54 – Tree Preservation Order

The objective of this clause is to enable the protection of vegetation for reasons of amenity or ecology.

The subject site is affected by the 1990, 2011 (Bushland), 2011 Koala Habitat and 2004 Tree Preservation Orders (TPO's).

In effect, the TPO's prohibit clearing of vegetation without development consent.

Vegetation clearing is proposed within 1990, 2004, and 2011 Koala Habitat.

In granting approval of the proposal, it is expected that unacceptable clearing and subsequent maintenance of vegetation would take place for the purpose of bushfire threat reduction.

State Environmental Planning Policies

North Coast Regional Environmental Planning

Clause 12: Impact on agricultural activities

This clause states that council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

Lot 4 is zoned 7(a) and 7(l) Lot 5 is zoned RU2. It is low quality agricultural land that is currently used for low intensity cattle grazing. This land use will not change. Therefore, the development would not lead to a loss of prime crop and pasture land, or adversely impact upon nearby agricultural activities.

Clause 15 – Wetlands or Fishery Habitats

The application proposes earthworks and vegetation clearing within 7(l) zoned land adjacent to the drainage reserve that connects to the Cudgen Lake being Lots 10-26 and also earthworks and vegetation clearing on land mapped as wetland in accordance with SEPP 14 being Lots 2 and 3, and therefore does not comply with the provisions of clause 15.

29A – Natural Areas and Water Catchment

This clause considers the impact the development may have upon wildlife habitat, scenery and site erosion.

As stated above, the application proposes earthworks and vegetation clearing within 7(l) zoned land adjacent to the drainage reserve that connects to the Cudgen Lake being Lots 10-26 and also earthworks and vegetation clearing on land mapped as wetland in accordance with SEPP 14 being Lots 2 and 3, and therefore does not comply with the provisions of clause 29A.

Clause 32B: Coastal Lands

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

Clause 43: Residential development

The proposed road width of the Poinciana Road extension is not excessive for the function of the road and so complies with this clause.

Clause 81: Development adjacent to the ocean or a waterway

The site contains the drainage reserve and is adjacent to Cudgen Lake.

The proposal does not contradict the objectives of this Clause as proposed works are generally removed from the immediate lake area. It does not reduce the scenic quality of the locality or impact on Cudgen Lake in this respect.

SEPP No. 1 - Development Standards

A State Environmental Planning Policy No.1 Objection has been prepared by the applicant and relates to the 40 hectare minimum lot size, which applies to land zoned 7(a) pursuant to Clause 20(2) of Tweed Local Environmental Plan 2000. Proposed Lot 5 comprises land which is zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and will have a total area of 20.1 hectares and therefore does not comply with the 40 hectare development standard.

The objectives of clause 20 states:

- *to prevent the potential for fragmentation of ownership of rural land that would:
 - (i) *adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.**
- *to protect the ecological or scenic values of the land.*

- *to protect the area of Tweed's water supply quality.*

Clause 20(2) of Tweed Local Environmental Plan 2000 states the following:

"Consent may only be granted for the subdivision of land;

- a) Within zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of each allotment created is at least 40 ha."*

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, the Hon. Brian Preston, Chief Justice of the Land and Environment Court, set out a new test.

The Chief Justice stated that the assessment process is:

1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and
3. It is also important to consider:
 1. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and
 2. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

The Chief Justice then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The applicant provided the following comments:

"Clause 20(1) of the Local Environmental Plan provides the following objectives in relation to subdivisions in zones 1(a), 1(b), 7(a), 7(d) and 7(l), which is directly associated with development standard in question.

- *To prevent the potential for fragmentation of ownership of rural land that would;*
 - i) *Adversely affect the continuance or aggregation of sustainable agricultural units, OR*
 - ii) *Generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- *To protect the ecological or scenic values of the land.*
- *To protect the area of Tweed's water supply quality.*

The terms of Clause 20(1) of TLEP 2000 are not to prevent any fragmentation, rather it is to prevent only fragmentation that has potential to create certain adverse impacts.

The relevant questions to properly assess whether the objectives of the standard are achieved notwithstanding non-compliance with the standard are as follows:

- a) *Will the proposed subdivision result in fragmentation that has potential to adversely affect the continuance or aggregation of sustainable agricultural units?*
- b) *Will the proposed subdivision result in fragmentation which would generate pressure to allow isolated residential development in an uncoordinated manor?*
- c) *Will the proposed subdivision result in any adverse impact upon the ecological or scenic values of the land?*
- d) *Will the proposed subdivision result in any adverse impact upon the area of Tweed's water supply quality?*

The responses to these questions are provided as follows:

- a) *Will the proposed subdivision result in fragmentation that has potential to adversely affect the continuance or aggregation of sustainable agricultural units?*

In the proposed subdivision, the part of the subject site which is located to the north of Clothiers Creek Road (Proposed Lot 5) is to become a separate Lot. The land to the north of Clothiers Creek Road contains the only Rural 1(a) zoned land within the Parent Parcel.

This part of the site, while being mostly cleared, has very poor soil structure and is unsuitable for any form of intensive agriculture. The property has been, and is presently used for, low intensity cattle grazing however it is not possible to operate the property as a "sustainable agricultural unit".

The site adjoins a parcel of rural zoned land to the north, however the rural zoned land to the north contains a drainage canal and therefore would still not provide enough land to provide 40ha in a consolidation. Accordingly, it is clear that the proposed subdivision will not adversely affect the continuance of, or aggregation of, sustainable agricultural units.

Proposed Lot 5 will have a total area of 20.1ha, of which approximately 2400m² is zoned 7(a). The whole of the 7(a) zoned land will be contained in Lot 5 and will not be fragmented.

- b) *Will the proposed subdivision result in fragmentation which would generate pressure to allow isolated residential development in an uncoordinated manor?*

The proposed development will facilitate the orderly and economic development of the land in accordance with the current land use zones. Proposed Lot 5 will not have a dwelling entitlement.

- c) *Will the proposed subdivision result in any adverse impact upon the ecological or scenic values of the land?*

In respect of proposed Lot 5 the application is for a subdivision. The ecological impacts of the proposal have been addressed in the Ecological Assessment prepared by JWA (Annexure 10). That Assessment concludes that the proposal will not result in a significant effect. No physical works or disturbances are proposed on Lot 5. Therefore the subdivision is unlikely to have any adverse impacts on the ecological or scenic values of the land.

- d) *Will the proposed subdivision result in any adverse impact upon the area of Tweed's water supply quality?*

The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment.

It is therefore submitted that the proposed development is consistent with the objectives for subdivision in the Rural 1(a) zone as set out in Clause 20(1) of Tweed LEP 2000.

*For the above stated reasons we submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard. Following from the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827, we conclude that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

2. *That the granting of consent is consistent with the aims of SEPP 1.*

The aims and objectives of the Policy (SEPP 1) are as follows:

"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."

Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 is stated inter alia:

"(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,"*

Proposed Lot 5 will have an area of 20.1 hectares, including approximately 2400m² within land zoned 7(a).

Compliance with the 40 hectare development standard in relation to land located within the 7(a) zone would preclude a logical subdivision of the land which will create an allotment of 20.1 hectares in total area, including all non-urban zoned land within the one ownership located to the north of Clothiers Creek Road.

In this case, compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

3. *That clause 8 matters (in SEPP 1) are satisfied i.e.*
- Whether noncompliance raises matters of State or regional planning significance.*
 - The public benefit of maintaining the planning controls.*

In considering whether the proposal creates any matters of Regional or State planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.

- No change in land use results from the subdivision;*
- Proposed Lot 5 will provide an allotment with an area of 20.1 hectares;*
- Proposed Lot 5 will contain approximately 2400m² of land within the 7(a) zone;*
- The boundaries of proposed Lot 5 include all non-urban zoned land within the site north of the alignment of Clothiers Creek Road, which is a logical and efficient layout;*
- The proposed subdivision will create lots that are similar to the size of other lots in the immediate locality;*
- No adverse impacts are likely to be created by the proposal on the surrounding area.*

We conclude that the proposed subdivision does not raise any matters of Regional planning significance and there is considered to be no public benefit in maintaining the standard.

CONCLUSION

It is submitted that upholding of the Objection would be consistent with the aims of State Environmental Planning Policy No. 1 in that strict compliance with the 40 hectare development standard would unreasonably preclude the appropriate subdivision of the site in accordance with the capability of the land.

The proposal (in relation to proposed Lot 5) does not involve any change of use and accordingly, in the circumstances of this case, non-compliance with the development standard is well founded and is consistent with the aims of State Environmental Planning Policy No. 1. We conclude that upholding the Objection is in the public interest and consistent with the objects of the Act."

Assessment of the applicant's submission:

It is considered that compliance with the 40 hectare development standard in this instance would unreasonably prevent the subdivision of the site in accordance with the capability of the land.

The areas zoned 7(a) presently represent nonconforming uses as they are presently not each within their own allotment of at least 40 hectares.

The proposal does not involve any change of use, does not involve any physical works (within the location of the 7(a) zoned land) and will not create any additional dwelling entitlements on the land.

Accordingly, in the circumstances of this case non-compliance with the development standard is well founded. It is concluded that upholding the Objection is considered to be in the public interest and consistent with the objects of the Act.

Concurrence was granted by the Department of Planning and Environment.

SEPP No. 14 - Coastal Wetlands

The site is covered by SEPP 14 Coastal Wetlands and SEPP 14 buffer, affecting existing lots; Lot 2 in DP 1172935, Lot 2 in DP 873399 and Lot 4 in DP 549393 or effecting proposed Lots 2, 3, 4, 5, 7 and 8.

The area of most interest is proposed Lots 2, 3, and 4 generally southwest of Poinciana Avenue. Where the SEPP 14 wetlands area is only approximately 7m from the boundary of proposed Lot 3 and approximately 70m from proposed Lot 2.

The applicant states that *"the actual wetland boundary is approximately 100m west of the western boundary of proposed Lots 2 and 3. The proposal does not involve any of the works within the mapped area as nominated in Clause 7 of the Policy (ie. clearing, constructing a levee, draining, or filling). Accordingly the proposal does not comprise designated development."*

Council officers and the Office of Environment and Heritage do not support the applicant's assessment in that the proposal encroaches into significant biodiversity areas without associated impacts being considered.

SEPP No. 44 - Koala Habitat Protection

The site contains Koala Habitat. Council's Natural Resource Management Unit reviewed the application and advised that the application is not supported as the proposal would require the removal of significant, large preferred koala food trees.

SEPP No. 55 - Remediation of Land

A Preliminary Site Investigation (PSI) Proposed Subdivision Report (HMC2014.006 CL) has been prepared by HMC Environmental Consulting P/L dated February 2014. Council's Environmental Health unit reviewed the report and advised that the report is adequate and the proposed allotments are considered suitable for the proposed use.

SEPP No 71 – Coastal Protection

The proposed development does not compromise public access to, or result in any overshadowing of the coastal foreshore.

Clause 8 of SEPP 71 sets out matters for consideration. Of note is:

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

Application documentation does not clarify the impact that the proposal may have, in terms of earthworks and vegetation removal on sensitive adjacent land and habitat located within the 7(a) zone, some of which is mapped as wetland under SEPP 14.

Clause 18 of the Policy provides that a Development Control Plan is required if the subdivision relates to land within a residential zone and the site is within a sensitive coastal location.

The site is within a sensitive coastal location and is partly within a residential zone. Therefore, in accordance with Clause 18 a Development Control Plan would normally be required. However, the Department of Planning has waived the requirement for a Development Control Plan in accordance with Clause 18(2) of the Policy.

SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

Provisions contained within this SEPP must be taken into account in consideration of granting consent for a dwelling on rural land. A residential use must not conflict with existing uses, adjoining uses and/or preferred uses.

Measures designed to reduce these land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities.

However, this SEPP does not specifically apply to this development as no dwellings (indicative dwelling sites) are proposed on rural land.

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

There are no Draft Environmental Planning Instruments applicable.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

Parts of the land to which the application relates are subject to flooding in the climate change flood event and the design flood event. The majority of the land is below the probable maximum flood level.

The design flood level ranges from RL 2.9m AHD north of Clothiers Creek Road to RL 3.1m AHD south of Clothiers Creek Road. The climate change level is RL 3.1m AHD on both sides of Clothiers Creek Road and the probable maximum flood level is RL 5.7m AHD.

Lots 10 to 26 currently range in height from RL 3.0m to RL 4.0m AHD, Lot 1 ranges from RL 4m to RL 4.2m AHD, Lot 2 ranges from RL 2m to RL 3m AHD and Lot 3 ranges from RL 4m to RL 4.5m AHD. Relatively minor filling will be required on Lot 2 to achieve the required flood level. Minor landforming will also

be required on the lots to improve drainage requirements.

The remaining lots, given their zoning and as they are residue lots, do not require any filling.

Council's Flooding Engineer, no objections were raised and conditions were recommended. The following comments were noted:

"From an engineering perspective, these levels comply with Council's DCP A3 requirements subject to works not impacting upon adjacent properties by way of causing ponding or drainage issues."

A5-Subdivision Manual

Part A5 of the Tweed Consolidated DCP provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State.

Council's Development Assessment Engineer has reviewed the proposal with regard to compliance with DCP A5 and requested further information, which has not been addressed by the applicant.

A11-Public Notification of Development Proposals

The application was advertised for a period of 30 days. Council received 30 submissions during this period which are addressed later within this report.

A13-Socio-Economic Impact Assessment

The applicant provided a completed socio economic checklist stating that the proposal will create a positive economic and employment impact and a uncertain/neutral social impact.

A15-Waste Minimisation and Management

Due to the nature of the proposed development there will be minimal waste generated during the construction phase of the subdivision.

A16-Preservation of Trees or Vegetation

The site is covered by tree preservation order. The applicant states the following vegetation to be removed.

TABLE 8
VEGETATION TO BE LOST FOR PROPOSED DEVELOPMENT

Vegetation Community	Total Area (Ha)	Area to be Lost (Ha)	Area to be Retained (Ha)
1 – Tall closed/open forest (<i>Melaleuca quinquenervia</i>)	32.05	0.20	31.85
2 – Tall closed/open forest (<i>Lophostemon suaveolens/ Melaleuca quinquenervia</i>)	5.05	1.35	3.69
3 – Very tall open forest (<i>Eucalyptus pilularis</i>)	10.91	0.00	10.91
4 – Tall open forest (<i>Lophostemon confertus</i>)	1.83	0.00	1.83
5 – Tall open forest (<i>Eucalyptus robusta/ Melaleuca quinquenervia</i>)	1.07	0.00	1.07
6 – Tall open forest (<i>Corymbia intermedia</i>)	1.62	0.00	1.62
7 – Tall wet heathland to shrubland (<i>Banksia robur/Leptospermum spp.</i>)	0.53	0.00	0.53
8 – Low open forest (<i>Allocasuarina littoralis</i>)	0.11	0.00	0.11
9 – Very tall sedgeland/rushland (<i>Lepironia articulata</i>)	5.55	0.00	5.55
10 – Low closed grassland/sedgeland (with regenerating <i>Melaleuca quinquenervia</i>)	10.86	0.00	10.86
11 – Low closed grassland (with scattered trees)	9.13	1.60	7.53
Water	4.85	0.00	4.85
TOTAL	83.57	3.15	80.41

The applicant also proposes offsets within Lot 4 to compensate for the vegetation to be removed.

Council's Natural Resource Management Unit does not support the proposal.

B19-Bogangar/Cabarita Beach Locality Plan

Council's vision for Bogangar/Cabarita Beach is:

To retain and enhance the unique natural environmental character and coastal lifestyle offered by Bogangar/Cabarita Beach, whilst embracing high quality development promoting the area as a popular location for residential living, tourism and business.

Based on the information provided the proposal is considered not to be consistent with the plan.

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

Clause 92(1)(a)(ii) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

Clause 92(1)(b) Applications for demolition

Not Applicable - Demolition is not proposed.

Clause 93 Fire Safety Considerations

Not Applicable - proposal is for subdivision only. No building works or change in use is proposed.

Clause 94 Buildings to be upgraded

Not Applicable - proposal is for subdivision only. No building works or change in use is proposed.

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

Tweed Shire Coastline Management Plan 2005

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

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

The subject site is located within the Bogangar - Cabarita Beach Area identified under the Plan at Clause 3.1.5. The subject site however is not directly impacted upon by the issues identified for that area.

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

Tweed Coast Estuaries Management Plan 2004

The Tweed Coast estuaries of Cudgen, Cudgera and Mooball Creeks, situated south of the Tweed River mouth between Kingscliff and Wooyung, are small barrier estuaries, highly regarded by the local communities, with substantial productivity and biodiversity values.

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. Cudgen Creek is located adjacent to Cudgen Lake which then feeds into Cudgen Creek approximately 1.4km north-east of the subject development site, however, the provisions of this plan are not considered to be impacted by the subject development.

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

Existing estuary management plans for the Cobaki and Terranora Broadwaters, implemented over the past decade, are in need of revision to incorporate new scientific knowledge, changes to the physical environment and recent legislative and policy changes. A revision of the management plans is also timely given the proposed large scale urban development planned for the catchment. The Plans have been updated in accordance with the NSW Coastal Policy 1997, consistent with all other relevant environmental planning instruments, and aim to provide strategies that will contribute to meeting relevant targets in the Northern Rivers Catchment Action Plan.

The site is not covered by the policy.

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

Based on the information provided the proposal is considered to create significant environmental impacts on the natural environment.

(c) Suitability of the site for the development

Based on the information provided the site is not considered suitable for the proposal.

Flora and Fauna

For reasons stated previously within this report, the site is considered unsuitable for the development and should be refused. Apart from the stated planning reasons for refusal, it is considered that insufficient ecological survey and assessment has been provided to support the conclusion that there will not be a significant impact upon threatened species, populations or ecological communities. Given the uncertainty over continued viability of Koalas on the Tweed Coast, it is considered that the development represents an unwarranted risk to the species.

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

Public Authority Submissions Comment

The application is integrated development with: NSW Office of Water, NSW Rural Fire Service and Office of Environment & Heritage.

Office of Environment & Heritage advised Council that there are a number of issues that require further information the department to be able to properly

assess the application.

NSW Rural Fire Service advised Council that further information would be required for the department to be able to properly assess the application.

The application required concurrence from the Department of Planning and Environment.

The Department of Planning and Infrastructure, whilst granting concurrence for the 7(a) zone, strongly suggested Council review the provisions of clause 4.1B which is proposed to enable the creation of proposed Lot 5 which does not meet the minimum lot size for the RU2 Rural Landscape zone. Council advised the applicant that proposed Lot 5 will need to be reviewed to contain both residential and RU2 zoned land, with the residential portion of the lot to be no less than the minimum lot size for the residential zone.

Public Submissions Comment

The proposal was required to be advertised for a period of 30 days, during this period Council received 30 submissions objecting to the proposal and a petition containing 207 signatures objecting to the proposal. The objections were focused on the suitability of the site given the impacts of the development, such as:

- Sensitive environment,
- Threatened species,
- Koala habitat,
- Amenity of adjacent residential properties,
- 2005 flooding,
- 2004 and 2009 bushfires and
- Increased traffic movements.

The issues raised within the submissions have not been adequately addressed by the applicant and therefore the proposal is considered not to be within the public interest and is not supported.

(e) Public interest

The issues considered in the assessment of the proposal are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for the location of Asset Protection Zones within environmentally sensitive land and the perpetuation of the fragmentation of such land. Therefore it is in the public interest for this application to be refused.

OPTIONS:

That Council:

1. Refuses this application in accordance with the recommendation for refusal; or
2. Allows the applicant to provide further information to address the issues identified and requests for further information.

Council officers recommend Option 1.

CONCLUSION:

The application submitted is deficient in detail. However, it is considered that sufficient information has been submitted to determine that the nature of the proposal is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application. The proposed subdivision is not considered suitable for the location and therefore the proposed development is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Development Application DA13/0469 for a Boundary Adjustment and Highway Service Centre - Two Stages (Concurrent Planning Proposal PP13/0003) at Lot 1 DP 1165676, Lot 11 DP 1134229 No. 9392 Tweed Valley Way, Chinderah; Lot 1 DP 210674 No. 9441 Tweed Valley Way, Chinderah

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA13/0469 Pt3

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 Planning Proposal (PP13/0003) and Development Application (DA13/0469) in July 2013 for the development of a Highway Service Centre. Concurrent lodgement of such an application is permitted under Section 72J of the Environmental Planning and Assessment Act, 1979.

The S72J Application is for the purpose of a highway service centre on Lot 11 DP 1134229, Lot 1 DP 1165676 and Lot 1 DP 210674 located at Tweed Valley Way, Chinderah. This report relates solely to the Development Application. At its meeting of 12 December 2013 Council resolved to publicly exhibit the joint application and this occurred between 23 April and 26 May 2014. Further, Council at its meeting of 7 August 2014 endorsed the Planning Proposal (which sought amendment to the Tweed Local Environmental Plan 2014 (LEP 2014) Lot Size Map and inclusion of "Highway Service Centre" within Schedule 1 – Additional Permitted Uses) and resolved to forward the relevant documentation to the Minister for Planning for making of the plan. The LEP amendment (via PP13/0003) was made on 2 March 2015. Subsequently, the Development Application component of the application is now recommended for approval, subject to conditions of consent.

Specifically, the development entails:

Stage 1

A boundary adjustment between three existing allotments (Lot 11 DP1134229, Lot 1 DP 1165676 and Lot 1 DP 210674 Tweed Valley Way, Chinderah) into three new allotments and the dedication of two areas of land as road widening to enable the construction of a roundabout and bypass lane on Tweed Valley Way. The proposed lots and respective areas are:

- Proposed Lot 110 – 29.02 Ha
- Proposed Lot 111 – 50.34 Ha
- Proposed Lot 112 – 4.49 Ha (proposed highway service centre)

Road widening is also required to accommodate a roundabout and bypass lane on Tweed Valley Way for both access to the future highway service centre on proposed Lot 112 and for vehicles bypassing the development to remain on Tweed Valley Way.

Stage 2

Construction of the highway service centre as follows:

Service centre single story building with a Gross Floor Area (GFA) of approximately 1408m². The building also contains the service centre control centre and four other tenancies to provide food outlets and a dining area. Two of the food outlets are proposed to have drive through facilities. Stage 2 also involves the creation of a roundabout and bypass lane on Tweed Valley Way, an additional exit from the Pacific Highway (to provide northbound access to the service centre) and car parking and landscaped areas.

In relation to signage, it was considered that the original design was unacceptable for reasons of adverse visual amenity and unreasonable impact on the surrounding hinterland and ridgeline views (especially when juxtaposed against Wollumbin/Mt Warning). In order to support the signage, significant redesign is required in addition to the provision of detailed visual analysis which has not occurred to date. In order to meet the deadline for the current Planning Committee meeting, the applicant has advised that they wish to withdraw the signage component of the application and seek approval for it at a later date (under separate Development Application). This approach provides sufficient time for the appropriate level of assessment to be undertaken by the applicant whilst still allowing reporting of the current application (without signage) to the April Council meeting. It is noted that concurrence from Roads and Maritime NSW (RMS) was also required for the proposed signage. To date, RMS have not been satisfied with the proposed design and concurrence has not been issued.

In relation to landscaping, a detailed condition has been applied requiring submission of a further, detailed plan which has regard for the National Iconic Landscape Values of the Shire, prior to issue of Construction Certificate. The plan is required to contain a minimum of 80% local native species and prohibits any plant species listed as Myrtle Rust hosts (which could impact adversely on the adjoining tea tree agricultural operation). The condition has been worded such that perimeter screen planting is required.

In accordance with Council's policy on the provision of draft conditions, the applicant was provided with draft conditions of approval on 16 March 2015. The applicant provided correspondence dated 19 March which requested some changes which have been incorporated where appropriate.

The application is being reported to Council at the request of the Director, Planning and Regulation, given the previous Council determination of this proposal.

RECOMMENDATION:

That Development Application DA13/0469 for a boundary adjustment and highway service centre - two stages (concurrent Planning Proposal PP13/0003) at Lot 1 DP 1165676, Lot 11 DP 1134229 No. 9392 Tweed Valley Way, Chinderah; Lot 1 DP 210674 No. 9441 Tweed Valley Way, Chinderah be approved subject to the following conditions:

GENERAL

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

Title	Drawn By	Dated
Proposed Subdivision Plan (DWG 19582 E) Rev C	B&P Surveys	28/07/14
Concept Site Layout (10948 SK02) Issue Q (as amended in red)	Cadway Projects	11/12/14
Floor Plan (10948 SK03) Issue O	Cadway Projects	03/03/14
Building Elevations (10948 SK12) Issue C	Cadway Projects	03/03/14
Building Elevations/Section (10948 SK13) Issue C	Cadway Projects	03/03/14

2. Submission of a further Development Application(s) for the first use of the internal tenancies, such to be approved by Council prior to their use or occupation.

[GEN0055]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]
4. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]
5. The applicant shall arrange for a site inspection to be carried out with Council's Environmental Health Officer and key representatives involved in the dewatering activity including consultants and personnel responsible under any Dewatering Management Plan approved by Council's General Manager or his delegate. Such site inspection shall be arranged and carried out prior to the commencement of any offsite dewatering activity occurring.

[GEN0180]
6. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]
7. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

8. No new connections or upgrades to the existing service connections on trunk main for the development are allowable.
9. Provision of adequate cover over existing trunk water main (ie: minimum of 600mm in areas subject to vehicular loading) at all times is the preferred option of protection for the trunk water main. Should this not be feasible during construction, adequate protection of the trunk water main must be provided to ensure breakages do not occur.
10. Should the proposed protection of the trunk water main not be considered by Council to be sufficient during construction, Council may request that the trunk water main be permanently diverted along the proposed bypass road verge at the expense of the developer.
11. A defects liability period of 24 months is required for ALL road infrastructure to be dedicated to Council. A registered geotechnical, experienced in settlement is required to monitor any settlement of the road pavement/infrastructure using accurate survey methods reportable on a 6 monthly basis. A copy of the 6 monthly monitoring reports are to be provided to Council.

An Off Defects inspection by Council Officers is required at the end of the 24 month defect liability period.

[GENNS02]

12. This is a staged consent as follows:

STAGE 1

Subdivision of Lot 11 DP1134229, Lot 1 DP 1165676 and Lot 1 DP 210674 into three new allotments and the dedication of two areas of land as road widening to enable the construction of a roundabout and bypass lane on Tweed Valley Way. The proposed lots and approximate respective areas are:

- Proposed Lot 110 - 28.66 Ha
- Proposed Lot 111 - 50.11 Ha
- Proposed Lot 112 - 4.49 Ha (proposed highway service centre)

STAGE 2

Filling of the site and construction of the Highway Service Centre and associated access, parking and landscaped areas.

A subdivision certificate for Stage 1 must be issued prior to commencement of any works associated with Stage 2.

13. Where statutorily required, signage shall be subject to future development application(s) and shall have regard to the *National Iconic Landscape Values* of the Shire. Any application(s) shall have regard to the policies of both Council and Roads and Maritime NSW. Any development application for signage structures along the Pacific Highway and Tweed Valley Way frontage must be accompanied by a comprehensive internal signage and delineation plan for the site and the adjacent road network. Detailed visual analysis shall be undertaken

to support all proposed signage structures on the Pacific Highway and Tweed Valley Way frontages of the site.

14. The development shall be completed generally in accordance with the road design plans contained in Appendix D of TTM Consulting Traffic Impact Assessment dated 1 December 2014.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

15. The developer shall provide parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code and drawing no.10948 SK02 titled 'Concept Site Layout' prepared by Cadway Projects dated 19 February 2013 (amended 11.12.14), Issue Q.

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

[PCC0065]

16. Prior to the issue of a Civil Construction Certificate for each stage of the project, a Construction Management Plan shall be submitted to and approved by the Principle Certifying Authority. A copy of the approved plan shall be submitted to Council. The Plan shall address, but not be limited to, the following matters where relevant:

- a) Hours of work;
- b) Contact details of site manager;
- c) Traffic and pedestrian management;
- d) Noise and vibration management;
- e) Construction waste management;
- f) Erosion and sediment control; and,
- g) Flora and fauna management.

Where construction work is to be undertaken in stages, the Proponent may, subject to agreement with the Principle Certifying Authority, stage the submission of the Construction Management Plan consistent with the staging of activities relating to that work. The Proponent shall submit a copy of the approved plan to Council.

[PCC0125]

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

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

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

[PCC0275]

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

[PCC0285]

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

[PCC0465]

20. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimising the impact of filling on local drainage. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

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

[PCC0485]

21. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. Such a plan shall have regard to the *National Iconic Landscape Values* of the Shire. The plan shall not contain any plant species listed as Myrtle Rust hosts by the New South Wales Department of Primary Industries. Currently there are 100 plant species on the list. The site adjoins the only commercial tea tree plantation in Tweed Shire and Myrtle Rust infects *Melaleuca Alternifolia* (Tea Tree). Specifically, the Landscaping Plan shall incorporate perimeter screen planting of various heights along the site boundaries.

[PCC0585]

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

- (a) Design flood level of RL 3.5m AHD.
- (b) All building materials used below Council's design flood level must not be susceptible to water damage.

- (c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (d) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

23. A Traffic Control Plan in accordance with AS1742 and the latest version of the RMS publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

24. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

25. Prior to the issue of a Construction Certificate for civil works, the proponent shall submit plans and specifications with an application for a Construction Certificate for the following civil works in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon.
- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include but are not limited to the following:

Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (c) copies of compliance certificates relied upon.
- (d) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:

Earthworks

- Details of the fill material properties and haulage route.
- Earthworks are to be designed in accordance with the geotechnical report prepared by Geotech Investigations dated March 2014. A statement from a qualified geotechnical engineer is to confirm the proposed earthworks are in accordance with the recommendations from the geotechnical report.

Roadworks/furnishings

The application shall include engineering plans and specifications undertaken in accordance with Austroads, Australian Standards, Roads and Maritime Services Supplements, and Councils Development Design and Construction Specifications (with the greater requirement taking precedence in cases of inconsistency). The engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Road works (concrete pavement design, sight distance, grades, super-elevation)
- Street lighting
- Signage and linemarking
- Speed zoning
- Medians and required offsets (including adequacy of the median gap shown on Drawing 706471 Sheet 2 Issue A, to cater for all farm vehicles for length, width and turning paths)
- Stormwater drainage
- Location of all services/conduits
- Water main protection/realignment works
- Sediment and erosion control plans
- Construction management plan, including staging and traffic control plans, to the satisfaction of the applicable Roads Authority
- Landscaping

Stormwater drainage

Water supply works

- Pipeline shall be located in the embankment road verge of bypass and above the level of acid sulphate soils.
- Damage to coating must be reported and repaired in an approved manner.
- As per works in proximity policy, the minimum permissible depth of cover for the water main subject to vehicular loading is 600mm. Minimum permissible depth of cover the areas not subject to vehicular loading is 450mm. Consideration of vehicular loading during construction must be included in assessment.
- Pipeline must be designed according to Tweed Shire Council Development Specifications for Design and Construction of Water Supply (D11 and C401) with particular reference to sections D11.11

Sewerage works

Landscaping works

Sedimentation and erosion management plans

Location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

Where Council is requested to issue a construction certificate for civil works, the above mentioned works can be incorporated as part of the construction certificate application, to enable one single approval to be

issued. If Council is issuing the Construction Certificate, separate approval under Section 138 of the Roads Act will then not be required.

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

26. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.
 - (ii) All hardstand runoff shall be treated in accordance with Development Design Specification D7 - Stormwater Quality prior to discharge to the public realm.

[PCC1105]

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

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

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

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

[PCC1145]

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

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

[PCC1155]

29. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be no greater than pre-development. This can be achieved by On site stormwater detention (OSD) utilising above and/or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the S68 stormwater application.

[PCC1165]

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

[PCC1195]

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

Any approval to install an on site sewage treatment and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the Revised On-site Sewage Management Assessment for Memorandum of Understanding between Tweed Shire Council and P. Guinane Pty Ltd Report No.2013.034.01, March 2014, prepared by HMC Environmental Consulting Pty Ltd dated (and amended Site Plan titled On-site Sewage Management Design - Proposed Land Application Areas (LAA) to be filled above 2.9mAHD (>1:50yr ARI), Job No. 2013.034, Revised 28 August 2014) including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

[PCC1285]

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

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

[PCC1325]

33. Certification shall be provided by a suitably qualified person, that the design of any underground petroleum storage system shall be in accordance with the NSW Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008, AS4897-2008 and demonstrated adoption of industry best practice. Certification shall include the provision for minimum mandatory pollution protection equipment has been installed, consistent with the Regulation, comprising non-corrodible secondary containment tanks and associated pipework and overfill protection devices.
34. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 *Design, construction and Fit-out of Food Premises* to the satisfaction of the General Manager or delegate.
35. Prior to the issue of Section 68 Approval to install an on-site sewage management system the applicant shall provide a statement from a suitably qualified and experienced person certifying the selected sewage treatment plant generally complies with the recommendations of the amended On-site Sewage Management Report (2013.034.01) prepared by HMC Environmental Consulting Pty Ltd dated March 2014 (and amended Site Plan - STP Location and Proposed Effluent Land Application Areas (Report No. HMC2013.034.01, August 2014) with particular reference to:
- (i) Has the capacity to treat at least 24kL/ day of wastewater to secondary standard with capability to meet recommended nutrient reduction and final disinfection criteria as recommended within the amended On-site Sewage Management Report (2013.034.01) prepared by HMC Environmental Consulting Pty Ltd dated March 2014 (refer to Table 6) and is suitable for sub-surface drip irrigation.
 - (ii) Incorporates a front end wastewater inflow balance tank to manage peak flows.
 - (iii) Incorporates influent monitoring for loading, surge control and character analysis.
 - (iv) Minimum 160KL wet weather storage capacity.
 - (v) Automated irrigation inclusive of moisture sensors and override provisions in wet weather conditions.

- (vi) Provides detail for any separate in line pre-treatment devices from the commercial retail tenancies.
36. Prior to the issue of Section 68 Approval to install an on-site sewage management system the applicant shall provide to the satisfaction of the General Manager:
- (i) A Recycled Water Management Plan, and
 - (ii) An Operation and Maintenance Plan, and
 - (iii) Incorporates operation and maintenance schedules for any pre-treatment devices for the commercial retail tenancies.

Such plans shall be in accordance with the amended On-site Sewage Management Report (2013.034.01) prepared by HMC Environmental Consulting Pty Ltd dated March 2014 (and amended Site Plan - STP Location and Proposed Effluent Land Application Areas (Report No. HMC2013.034.01, August 2014).

[PCCNS01]

37. Prior to issue of a Civil Construction Certificate, the developer is required to enter into a Works Authorisation Deed (WAD) with Roads and Maritime for all road works on the Pacific Highway, including access to the site from the northbound off-ramp and the construction of the Tweed Valley Way roundabout by-pass lane. Evidence of the WAD deed and a copy of the plans approved by Roads and Maritime are to be submitted to Council with the application for a Civil Construction Certificate.

[PCCNS02]

38. Advice from an appropriately qualified geotechnical engineer is to be provided with the application for a Construction Certificate/138 application to address the long term settlement issues raised in the geotechnical report prepared by Geotech Investigations titled 'Proposed highway service centre No. 9392 Tweed Valley Way Chinderah NSW' final revision dated 4/4/2014. The geotechnical advice is to include the proposed highway service centre development, plus ALL associated roadworks and pipelines required to service the development (including areas where the relocation of services is required). This advice is to be provided prior to the issue of a Construction Certificate.

If preloading is required the Construction Certificate will not be issued until a geotechnical engineer has certified that settlement has terminated in the area of the proposed roadworks locations (including roundabout, bypass lane and all on/off ramps), development area and in all locations where service pipelines are required for the development or be relocated.

[PCCNS03]

39. Prior to issue of a Construction Certificate, a plan shall be submitted to Council for approval which shows the provision of an obligation free rest area. The area shall include an obligation free picnic area with picnic tables and adequate provision for shade to the satisfaction of NSW Roads and Maritime Services (RMS).

[PCCNS04]

40. The location of the existing 500mm trunk water main shall be clearly marked on all Civil Works Plans.
41. Prior to construction certificate, where construction is planned on or nearby the 500mm trunk water main, plans shall be to be submitted to Council as the owner of the Water Supply works under the Local Government Act 1993. The plans shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act 1993 for any water and sewer works including relocation and or protection works. The plans will be considered to be draft and are subject to change to meet Council requirements.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

42. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

43. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

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

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

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

[PCW0215]

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

[PCW0225]

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

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

[PCW0245]

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

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

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

[PCW0255]

48. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

[PCW0375]

49. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

50. A Dilapidation Report detailing the current general condition (including the structural condition) of the adjoining buildings/sites, infrastructure and roads is to be prepared and certified by a suitably qualified and experienced structural engineer. The report is to be submitted to Council prior to the commencement of ANY works on the site.

[PCW0775]

51. Road Works and Civil work in accordance with a development consent must not be commenced until:

(a) a Construction Certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the consent authority, or**
- (ii) an accredited certifier, and**

(b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,**
- (ii) has appointed an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.**
- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,**
- (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and the Certifying Engineer is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Occupation Certificate is issued, and**

(c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

(d) On completion of the civil works and road works an engineering certification for the works is to be provided to Council by a registered engineer with NPER registration.

[PCW0815]

52. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

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

[PCW0985]

54. A piling/ground improvement management plan is to be provided to the satisfaction of Council's General Manager or delegate prior to commencement of works and is required to adequately address the proposed construction/piling requirements for the proposed development. The plan is to include the following:
- a) Detail on the proposed piling/ground improvement method for the development.
 - b) Impacts on adjoining and surrounding properties.
 - c) Dilapidation reports for the surrounding properties prior to piling works.
 - d) Mitigation measures to address noise and vibration issues.
 - e) Length of time for piling / ground improvement construction activities.
 - f) Appointment of a community liaison officer to manage complaints/queries. Contact details of the community liaison officer are to be clearly provided on signage in a prominent position on the site safety fence.

A copy of the piling/ground improvement management plan is to be provided to Council.

[PCWNS01]

55. Prior to commencement of works a certification of adequacy for the proposed imported fill material is to be provided by a suitably qualified Geotechnical Engineer stating that the fill material is suitable for the site and the proposed development.

[PCWNS02]

56. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCWNS03]

57. Any alterations to approved construction certificate plans shall be resubmitted to Council for approval by General Manager or his delegate prior to construction works.

58. As key TSC trunk main infrastructure, at least one months notice is to be provided to Council's General Manager or his delegate for planned water main works.

59. Council's General Manager or his delegate reserve the right to delay water main works if other trunk or reservoir works are occurring during the planned water main works.

60. Any trunk main works must be planned and constructed to provide minimum water interruption.

61. Excavation, shoring and dewatering of the approved works must be considered when undertaking works. Any permits required to undertake dewatering shall be obtained prior to commencing. The applicant shall conduct a thorough site assessment to determine trench safety for the approved works.

62. Prior to commencement of works, the applicant shall submit a detailed Waste Management Plan for the approval of Council's General Manager or delegate. The plan shall be developed in accordance with the provisions of Council's Development Control Plan Section A15 - Waste Minimisation and Management and cover both the construction and operation phases of the development.

[PCWNS04]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

66. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

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

[DUR0245]

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

[DUR0375]

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

[DUR0405]

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

[DUR0415]

71. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

73. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

74. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

75. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[DUR1045]

76. All works shall be carried out in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd (HMC 2011.066AA) dated July 2013.

[DUR1065]

77. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

78. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.**
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.**
- (c) That site fill areas have been compacted to the specified standard.**
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.**

[DUR1805]

79. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:

- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.**
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.**

[DUR1825]

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

[DUR1875]

81. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, cycleways - formwork/reinforcement
- (h) Final Practical Inspection - on maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final Practical Inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developer's Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all subdivision works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

82. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation Certificate.

[DUR1955]

83. A garbage storage area shall be provided in accordance with Council's "Development Control Plan Section A15 - Waste Minimisation and Management". The storage area shall be appropriately landscaped to screen it from public view.

[DUR2195]

84. Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.

[DUR2315]

- 85. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.**

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

- 86. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.**

[DUR2445]

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

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

[DUR2485]

- 88. Plumbing**

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

[DUR2495]

- 89. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.**

[DUR2505]

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

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

93. The piers/footings are to be sited at least 1.0 metres horizontally clear of water main on site. All footings and slabs within the area of influence of the water main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the water main and that the design meets the Council - Works in Proximity Policy.

94. Dust and Erosion Management

- (a) Completed areas are to be topsoiled and seeded within 2 weeks to protect them from water and wind erosion.
- (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.

[DUR2825]

95. All works shall be carried out in accordance with the Dewatering Management Plan prepared by HMC Environmental Consulting Pty Ltd dated July 2013.

96. Prior to the commencement of installation of the on-site sewage management system the applicant shall provide a statement from a suitably qualified and experienced person certifying that the imported base fill for the effluent land application areas has been suitably compacted to the recommended indicative permeability (K_{sat}) of <0.12- 0.5m/day with DIR 3 mm/day as per the amended On-site Sewage Management Report (2013.034.01) prepared by HMC Environmental Consulting Pty Ltd dated March 2014 (and amended Site Plan - STP Location and Proposed Effluent Land Application Areas (Report No. HMC2013.034.01, August 2014). Certification shall demonstrate that the imported base fill has achieved the design height of at least 2.9m AHD. Certification shall provide detail that the system is suited to ground conditions as reported in the geotechnical report prepared by Geotech Investigation Pty Ltd (GI1189-A) dated March 2014.

97. Prior to the commencement of installation of the on-site sewage management system the applicant shall provide a statement from a suitably qualified and experienced person certifying that the imported topsoil for the effluent land application areas is consistent in soil texture, structure and chemistry as per the recommended characteristics within the amended On-site Sewage Management Report (2013.034.01) prepared by HMC Environmental Consulting Pty Ltd dated

March 2014 (and amended Site Plan - STP Location and Proposed Effluent Land Application Areas (Report No. HMC2013.034.01, August 2014), and has indicative permeability (K_{sat}) of <0.5-1.5m/day with DIR 3.5mm/day. Certification shall include that the irrigation area has achieved a minimum depth of topsoil of 300mm.

[DURNS01]

98. Should any part of the trunk water infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.
99. Any petrol pump facility installed in the development shall be of such a manufacture as to require 'pay before you pump' operation to the satisfaction of NSW Police.
100. The developer must liaise with the Tweed Byron Local Aboriginal Land Council to ensure that a representative makes intermittent visits to the development site to ensure compliance with the duty of care towards cultural heritage protection.
101. The developer shall liaise with the Tweed Byron Local Aboriginal Land Council to ensure a monitor is present on site during any ground disturbance works that go below the level of agriculture (approximately 0.5m).

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

102. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.
103. Prior to the issue of an Occupation Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

[POC0005]

The bond shall be based on 5% of the value of the (public infrastructure) works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 24 months. The 24 month defect liability period is to commence from the issue of an Occupation Certificate for the service centre.

It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 24 month period.

[POC0165]

104. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

105. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

106. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

[POC0355]

107. Section 94 Contributions

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

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

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

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

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

- | | |
|---------------------------------------|----------|
| (a) Tweed Road Contribution Plan: | |
| 36.76 Trips @ \$1189 per Trips | \$43,708 |
| (\$1,137 base rate + \$52 indexation) | |
| S94 Plan No. 4 | |
| Sector6_4 | |

[POC0395]

108. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP2:	19.97 ET @ \$12907 per ET	\$257,752.80
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These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

[POC0675]

109. Section 94 Contributions

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

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

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

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:

$$\text{\$Con TRCP - Heavy} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con TRCP - Heavy}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads (trip one way)

\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[POC0715]

110. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

111. Upon completion of all civil and roadworks for the development and prior to the issue of an Occupation Certificate (including interim) Work as Executed plans are to be provided to Council in accordance with Councils Development Design Specification D13.

The plans are to be endorsed by a Registered Surveyor OR Consulting Engineer certifying that:

a) The plans accurately reflect the work as executed.

b) All stormwater lines, sewer lines, services and structures are wholly contained within the relevant easements or boundaries.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[POC0765]

112. Submission to the Principal Certifying Authority, Certification for the stability of any retaining structures in excess of 1.2m erected on the site by a suitably qualified structural engineer prior to the issue of an Occupation Certificate (including interim).

[POC0815]

113. Upon completion of all works on the site and prior to the issue of an Occupation Certificate (including interim), a further Dilapidation Report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the current general condition (including the structural condition) of the adjoining buildings/sites, infrastructure and roads.

The dilapidation report shall take into consideration the findings of the original report and advise if any damages have occurred. If damages have occurred the report is to detail how the damages have been rectified and that the repairs carried out are acceptable.

A copy of the report is to be provided to Council.

[POC0825]

114. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate (including interim).

[POC0865]

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

[POC0950]

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

[POC0955]

117. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

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

[POC1035]

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

[POC1040]

120. Certification shall be provided by a suitably qualified person, that the installation and commissioning of any underground petroleum storage system shall be in accordance with the NSW Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008, AS4897-2008 and demonstration adoption of industry best practice. Certification shall provide detail that the tanks have structural integrity in relation to the ground conditions as reported in the geotechnical report prepared by Geotech Investigation Pty Ltd (GI1189-A) dated March 2014. Certification shall provide detail that groundwater monitoring wells have been installed and tested in accordance with the Regulation and an equipment integrity test has been carried out in line with the written directions of the duly qualified persons.

Groundwater monitoring wells must be sealed to exclude surface water, constructed to prevent cross-contamination with other groundwater monitoring wells, clearly marked to indicate their presence and properly secured.

121. An operational litter management plan shall be provided to the satisfaction of Council's General Manager or delegate prior to commencement of operations. The operations of the Centre shall comply with the approved litter management plan.

[POCNS01]

122. Certification is to be provided by a suitably qualified geotechnical engineer for all batters walls prior to the issue of an Occupation Certificate (including interim).

[POCNS02]

123. Geotechnical certification is to be provided from a qualified geotechnical engineer certifying that the long term settlement issues identified for the development and ALL roadworks (including pipe relocation areas) have been satisfactory addressed by an engineering solution such as piling / ground improvement techniques.

The certification is to state that the settlement has terminated and the engineering solution has satisfactory addressed long term settlement for the site (including roadworks and pipe relocation areas). The geotechnical certification is to be provided prior to the issue of an Occupation Certificate (including an interim Occupation Certificate) or Council's acceptance of any roadwork infrastructure.

[POCNS03]

124. Prior to the application for a Occupation Certificate (including interim) a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Drainage

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[POCNS04]

125. Prior to issue of an Occupation Certificate (interim or final), a Pre-Qualified Contractor will be required to complete all road works under the Works Authorisation Deed (WAD) to practical completion, as determined by Roads and Maritime. The developer is responsible for all costs associated with the works and administration of the WAD.

126. Prior to issue of an occupation certificate (including interim), documentary evidence is to be provided demonstrating the creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) An easement for drainage shall be established to cater for over flows from the dam to the lawful point of discharge.

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

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

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

[POCNS05]

USE

- 127. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.
[USE0125]
- 128. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.
[USE0175]
- 129. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.
[USE0225]
- 130. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.
[USE0245]

131. The development shall be carried out in accordance with the provisions of the acoustic assessment report prepared by TTM Consulting Pty Ltd dated 7 June 2013 (Ref:13GCA0058 R01 3).

[USE0305]

132. All plant and equipment installed or used in or on the premises:

(a) Must be maintained in a proper and efficient condition, and

(b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

133. All landscaping work is to be completed and maintained in accordance with the approved plans prior to any use or occupation of the building.

[USE0735]

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

[USE0965]

135. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.

[USE1035]

136. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate as outlined in the Liquid Trade Waste Services Agreement and General Conditions of Approval.

[USE1055]

137. The applicant and occupier of the premises is alerted to the requirements of the Smoke-Free Environment Act 2000 and the Smoke Free Environment Regulation 2007 and the guidelines in the Regulation for determining what is an enclosed public place. Enquires may be directed to the NSW Department of Health. The legislation may be viewed on the following website:

<http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/O>

[USE1075]

138. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owners expense.

[USE1455]

139. Any underground petroleum storage system shall be operated, maintained and monitored in accordance with the NSW Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008, AS4897-2008 and demonstration adoption of industry best practice.

Groundwater monitoring wells must be maintained to ensure they are sealed to exclude surface water at all times, clearly marked to indicate their presence and

properly secured and tested for hydrocarbon contamination at minimum intervals of six months.

The Environment Protection Plan shall include details of loss monitoring and incident management procedures and development and use of loss detection procedures. The Plan must be kept up-to date and amended as necessary.

140. The operations of the Centre shall incorporate compliance with the approved litter management plan.

[USENS01]

141. Use and operation of the development shall comply with the approved Waste Management Plan.

[USENS02]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

142. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent relating to Stage 1 have been complied with.

[PSC0825]

143. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

(a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

(b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

144. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of proposed Lots 110 and 111 has been completed.

The production of written evidence from the local telecommunications supply authority advising that financial arrangements have been made with the local telecommunications supply authority for the provision and commissioning of underground telephone supply at the front boundary of proposed Lot 112. In addition, a restriction to user contained in a Section 88B instrument is also required to advise future purchases of proposed Lot 112 that the provision and commissioning of underground telephone supply to the allotment is the responsibility of the future owner.

[PSC1165]

145. The production of written evidence from the local electricity supply authority certifying that reticulation and energising of overhead electricity (rural residential) has been provided adjacent to the front boundary of proposed Lots 110 and 111 prior to the issue of the Subdivision Certificate.

The production of written evidence from the local electricity supply authority advising that financial arrangements have been made with the electricity supplier for the reticulation and energising of overhead electricity adjacent to the front boundary of proposed Lot 112 prior to the issue of the Subdivision Certificate. In addition, a restriction to user contained in a Section 88B instrument is also required to advise future purchases of proposed Lot 112 that electrical reticulation and provisioning is not available and the reticulation and energising of overhead electricity to the allotment is the responsibility of the future owner.

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands. Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

146. The existing water meter cannot be moved from Lot 11 DP 1134229. In order to service proposed Lot 112, an easement shall be created over the meter on Lot 11 DP 1134229 and dedicated to proposed Lot 112. Lot 11 DP 1134229 shall not connect to this meter as Council allows only one meter per property.

[PSCNS01]

General Terms of Approval for work requiring a controlled activity approval under s91 of the Water Management Act 2000

1. These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA 13/0469 and provided by Council. Any amendments or modifications to the proposed controlled activities may render these GTA invalid.

If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.

2. Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the lake identified.
3. The consent holder must prepare or commission the preparation of:
 - (i) Erosion and Sediment Control Plan

4. All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The plans must be prepared in accordance with the NSW Office of Water's guidelines located at:
www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx
5. The consent holder must:
 - (i) carry out any controlled activity in accordance with approved plans and
 - (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and
 - (iii) when required, provide a certificate of completion to the NSW Office of Water.

Rehabilitation and maintenance

6. The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.
7. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.

Disposal

14. The consent holder must ensure that no materials or cleared vegetation that may:
 - (i) obstruct flow,
 - (ii) wash into the water body, or
 - (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.

Drainage and Stormwater

15. The consent holder is to ensure that all drainage works:
 - (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and
 - (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.
16. The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.

Erosion control

17. The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.

Excavation

- 18. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.**

Maintaining river

- 20. The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any controlled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the NSW Office of Water.**

General Terms of Approval for work requiring a licence (dewatering) under Part 5 of the Water Act 1912

- 1. Before commencing any works or using any existing works for the purpose of dewatering an approval under Part V of the Water Act 1912 must be obtained from the Department if the take of water exceeds 3ML/yr. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.**
- 2. An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.**
- 3. When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.**
- 4. All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.**
- 5. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.**
- 6. The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.**
- 7. All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.**
- 8. The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.**
- 9. A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.**

10. The water extracted under the approval to be granted shall be used for the purpose of dewatering and for no other purpose. A proposed change in purpose will require a replacement license to be issued.
11. Works for construction of a bore must be completed within such period as specified by the Department.
12. Within two months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.
13. The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
14. The licensee must allow authorised officers of the Department, and its authorised agents reasonable access to the licensed works with vehicles and equipment at any time for the purposes of:
 - 1 inspecting the said work
 - 2 taking samples of any water or material in the work and testing the samples.
15. The licensee shall within 2 weeks of being notified install to the satisfaction of the Department in respect of location, type and construction an appliance(s) to measure the quantity of water extracted from the works. The appliance(s) to consist of either a measuring weir or weirs with automatic recorder, or meter or meter(s) of measurement as may be approved by the Department. The appliance(s) shall be maintained in good working order and condition. A record of all water extracted from the works shall be kept and supplied to the Department upon request. The licensee when requested must supply a test certificate as to the accuracy of the appliance(s) furnished either by the manufacturer or by some person duly qualified.
16. The authorised work shall not be used for the discharge of polluted water into a river or lake otherwise than in accordance with the conditions of a licence granted under the protection of the Environment Operations Act 1997. A copy of the licence to discharge is to be provided to the Department.
17. The maximum term of this licence shall be twelve (12) months.
18. The volume of groundwater extracted from the work authorised by this licence shall not exceed 5 mega litres for the term of the licence.
19. The authorised work shall not be used for the discharge of water unless the ph of the water is between 6.5 and 8.5, or the water has been treated to bring the ph to a level between 6.5 and 8.5 prior to discharge, or the water is discharged through the council's sewerage treatment system.
20. The licensee shall test the ph of any water extracted from the work prior to the commencement of discharge and at least twice daily thereafter and record the

date, time and result of each test in the site log. A copy of the records of the ph testing is to be returned with the form 'AG'.

21. The work shall be managed in accordance with the constraints set out in a Dewatering Management Plan approved by the Department.
22. The retention or holding pond must be lined with an impermeable material (such as clay or geotextile) to prevent seepage, leakage or infiltration of treated water.

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

1. The proposed boundary adjustment and highway service centre - two stages, has been assessed against information referred to the NSW RFS by Tweed Shire Council dated 15/4/14.

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

- Plan prepared by Cadway Projects, titled 'Concept Site Layout', numbered 10948 SK02, issue Q and dated 11/12/14.
- Plan prepared by B and P Surveys Consultant Surveyors, titled 'Proposed Subdivision' numbered 19582 A, Issue C and dated 28/3/2014.
- 'Bushfire Risk Management Plan', dated March 2014 and prepared by Bushfiresafe (Aust) Pty Ltd

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

2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
3. Landscaping of the proposed highway service centre, located on proposed Lot 112, shall comply with the requirements of Appendix 5 of 'Planning for Bushfire Protection 2006'.

REPORT:

Applicant: P Guinane Pty Ltd
Owner: P Guinane Pty Ltd
Location: Lot 1 DP 1165676, Lot 11 DP 1134229 No. 9392 Tweed Valley Way, Chinderah; Lot 1 DP 210674 No. 9441 Tweed Valley Way, Chinderah
Zoning: 1(b)2 - Agricultural Protection (LEP 2000)/RU1 Primary Production (LEP 2014)
Cost: \$8,300,000

Background:

In July 2013 Tweed Shire Council (TSC) received a joint application under Section 72(J) of the Environmental Planning and Assessment Act containing the request for a Planning Proposal and concurrent Development Application.

Under Tweed Local Environmental Plan 2000 (under which the application was lodged), the site was zoned 1(b)(2) Agricultural Protection. The proposed development (defined as a 'service station' under LEP 2000) was prohibited.

The Planning Proposal thus sought a site-specific amendment to the LEP to include the land use definition of "Highway Service Centre" within Schedule 1 - Additional Permitted Uses of the Tweed LEP 2014 for the allotments subject to this application. The proposal also sought amendment to the Lot Size Map to facilitate the required subdivision and boundary adjustments.

It is noted that since the application was submitted, Tweed Local Environmental Plan 2014 was gazetted. This plan maintains the rural zoning of the land prescribed by LEP 2000, zoning the site the equivalent RU 1 Primary Production. As such, it is now LEP 2014 which required amendment to facilitate the proposal.

The definition of highway service centre (a specific definition is now prescribed by LEP 2014) is as follows:

"highway service centre" means a building or place used to provide refreshments and vehicle services to highway users. It may include any one or more of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) service stations and facilities for emergency vehicle towing and repairs,
- (d) parking for vehicles,
- (e) rest areas and public amenities.

On 7 August 2014, Council endorsed the Planning Proposal and on 2 March 2015 the Minister for Planning made the LEP amendment. As such, the development application can now be determined. Therefore, the purpose of this report is to recommend approval of the Development Application (with conditions).

The Development

The proposed development will take place in two stages as follows:

Stage 1

A boundary adjustment is proposed between three existing allotments (Lot 11 DP1134229, Lot 1 DP 1165676 and Lot 1 DP 210674 Tweed Valley Way, Chinderah) into three new allotments and the dedication of two areas of land as road widening to enable the

construction of a roundabout and bypass lane on Tweed Valley Way. The proposed lots and respective areas are:

- Proposed Lot 110 – 28.66 Ha
- Proposed Lot 111 – 50.11 Ha
- Proposed Lot 112 – 4.49 Ha (proposed highway service centre)

Road widening is also required to accommodate a roundabout and bypass lane on Tweed Valley Way for both access to the future highway service centre on proposed Lot 112 and for vehicles bypassing the development to remain on Tweed Valley Way.

Stage 2

Construction of the highway service centre as follows:

- Service centre single story building with a Gross Floor Area (GFA) of approximately 1408m². The building also contains the service centre control centre and four other tenancies to provide food outlets and a dining area. Two of the food outlets are proposed to have drive through facilities. These facilities propose the following floor area:
 - Tenancy 1 - convenience restaurant with drive through facilities. GFA of 170m².
 - Tenancy 2 - unspecified shop with GFA of 100m²
 - Tenancy 3 - convenience restaurant with drive through facilities. GFA of 109m².
 - Tenancy 4 - unspecified shop with GFA of 80m²
 - Tenancy 5 - Service station convenience store with GFA of 298m².
 - Communal dining area of 160m²
- 95 public car spaces, 24 staff car spaces, 5 caravan/bus spaces and 25 truck parking spaces.
- Outdoor dining area and playground.
- Truckers lounge and public amenities.
- Landscaped area of 12,334m².
- Two lane arterial roundabout at Tweed Valley Way to provide ingress and egress into and out of the service centre.
- Construction of an off ramp from the Pacific Highway to provide ingress to the proposed service centre for northbound traffic.
- Construction of a bypass lane west of the proposed roundabout approximately 565m in length.
- Filling of the site to RL3.5m AHD to enable the building and refuelling areas to be above Council's design flood level.
- Onsite effluent disposal,

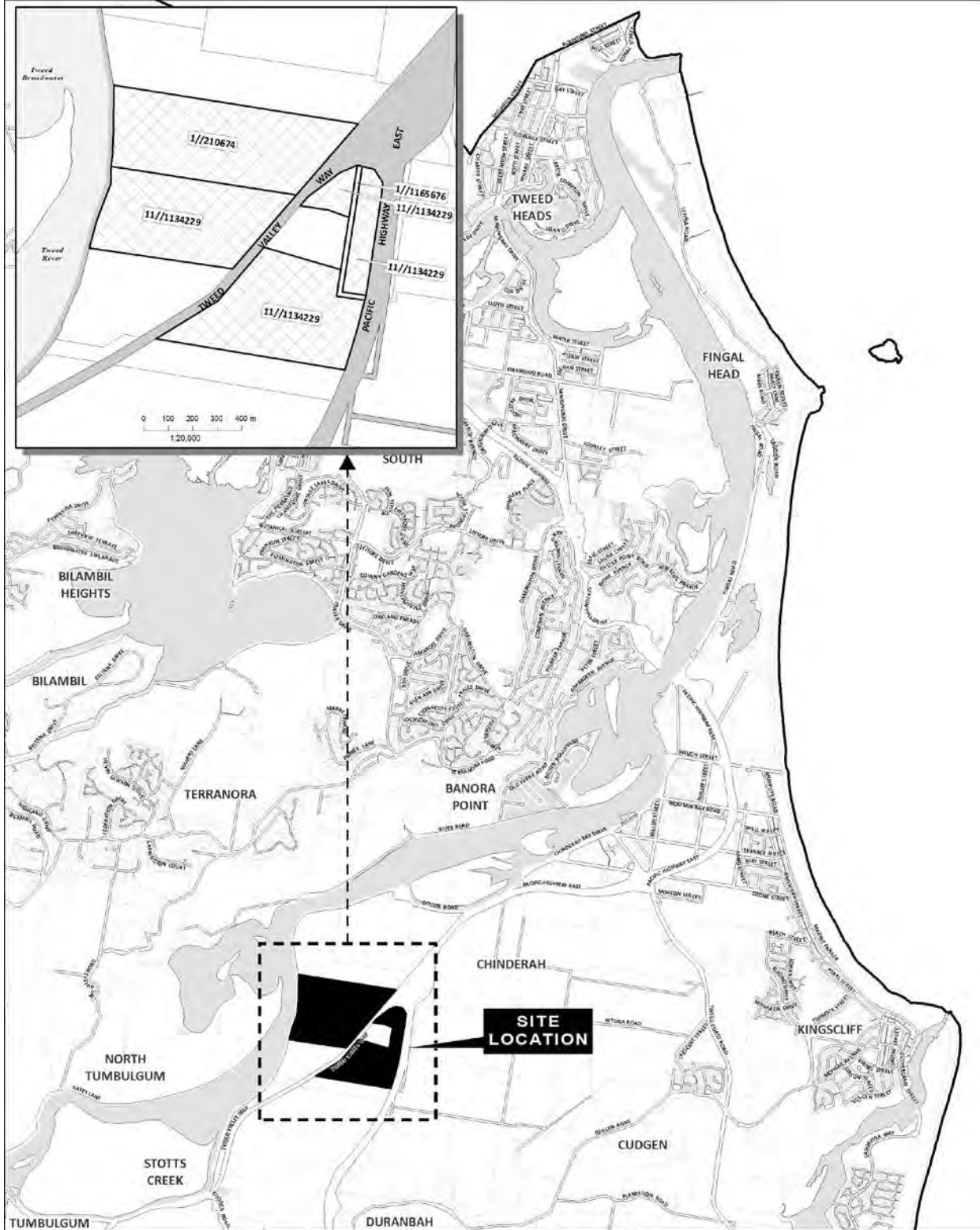
The Development Application and concurrent Planning Proposal were advertised in the Tweed Link for a period of 30 days from Wednesday 23 April 2014 to Monday 26 May 2014.

During this time, three submissions were received in relation to the Development Application. Two of the submissions opposed the proposed development. All submissions are addressed further in this report.

In accordance with Council's policy on the provision of draft conditions, the applicant was provided with draft conditions of approval on 16 March 2015. The applicant provided correspondence dated 19 March which requested some changes which have been incorporated where appropriate.

The application is being reported to Council at the request of the Director, Planning and Regulation, given the previous Council determination of this proposal.

SITE DIAGRAM:

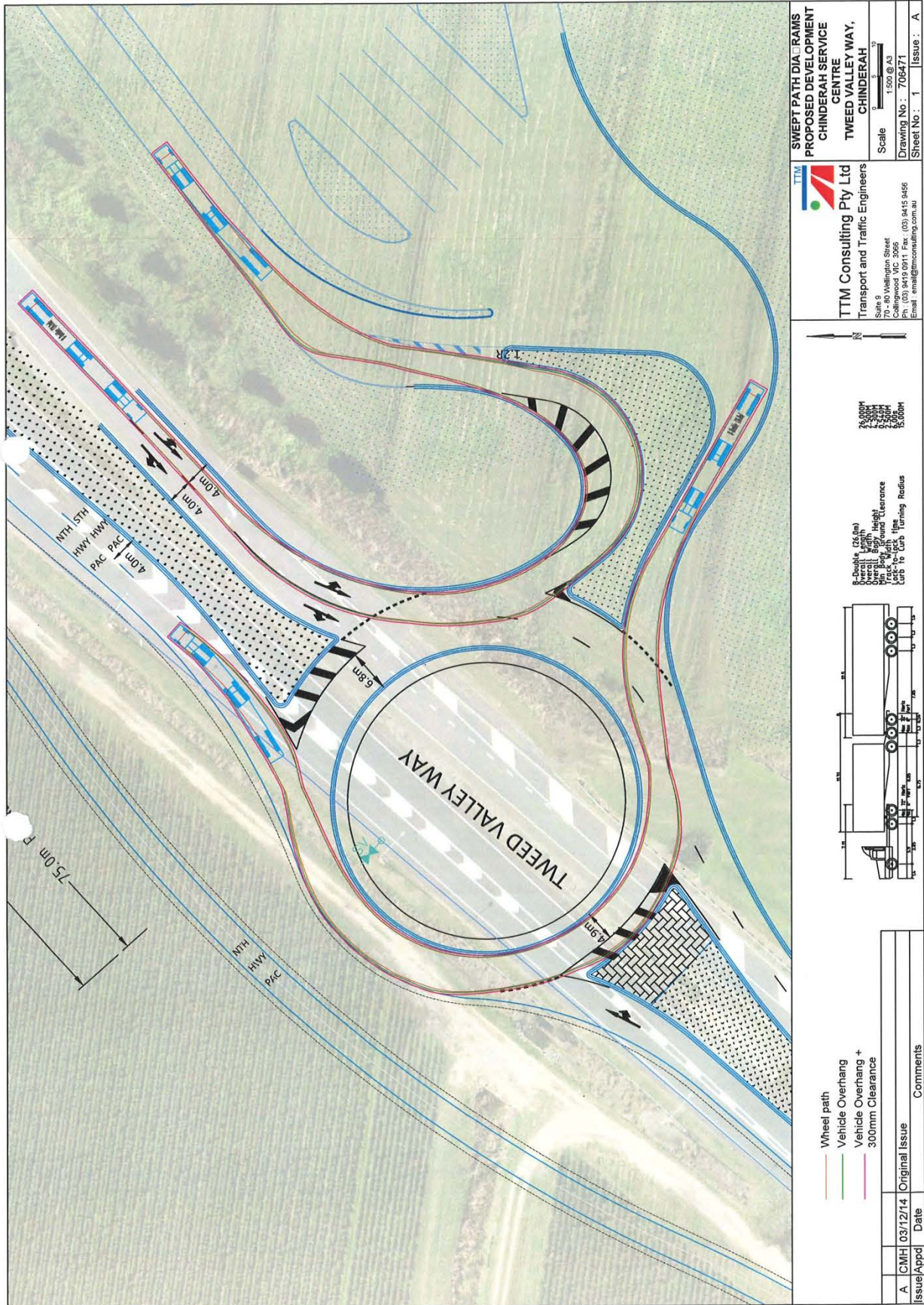


Locality Plan

Lot 1 DP 1165676 & Lot 11 DP 1134229; No. 9392 Tweed Valley Way; Lot 1 DP 210674;
No. 9441 Tweed Valley Way Chinderah

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, relating to 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 excavation a 'Dig before You Dig' enquiry must be made by calling 8100. The information contained on this document remains valid for 30 days only from the date of receipt.</p>	<p>Cadastre 10/03/2015 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 Km 1:50,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT LEGITIMED</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murrumbidgee NSW 2484 PC Box 816 Murrumbidgee NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>
	<p>GDA</p>	<p>Map Information: Universal Transverse Mercator Geospatial Datum: Geospatial Datum of Australia 1984 © M. Map Grid of Australia, Zone 56</p>	

DEVELOPMENT/ELEVATION PLANS:



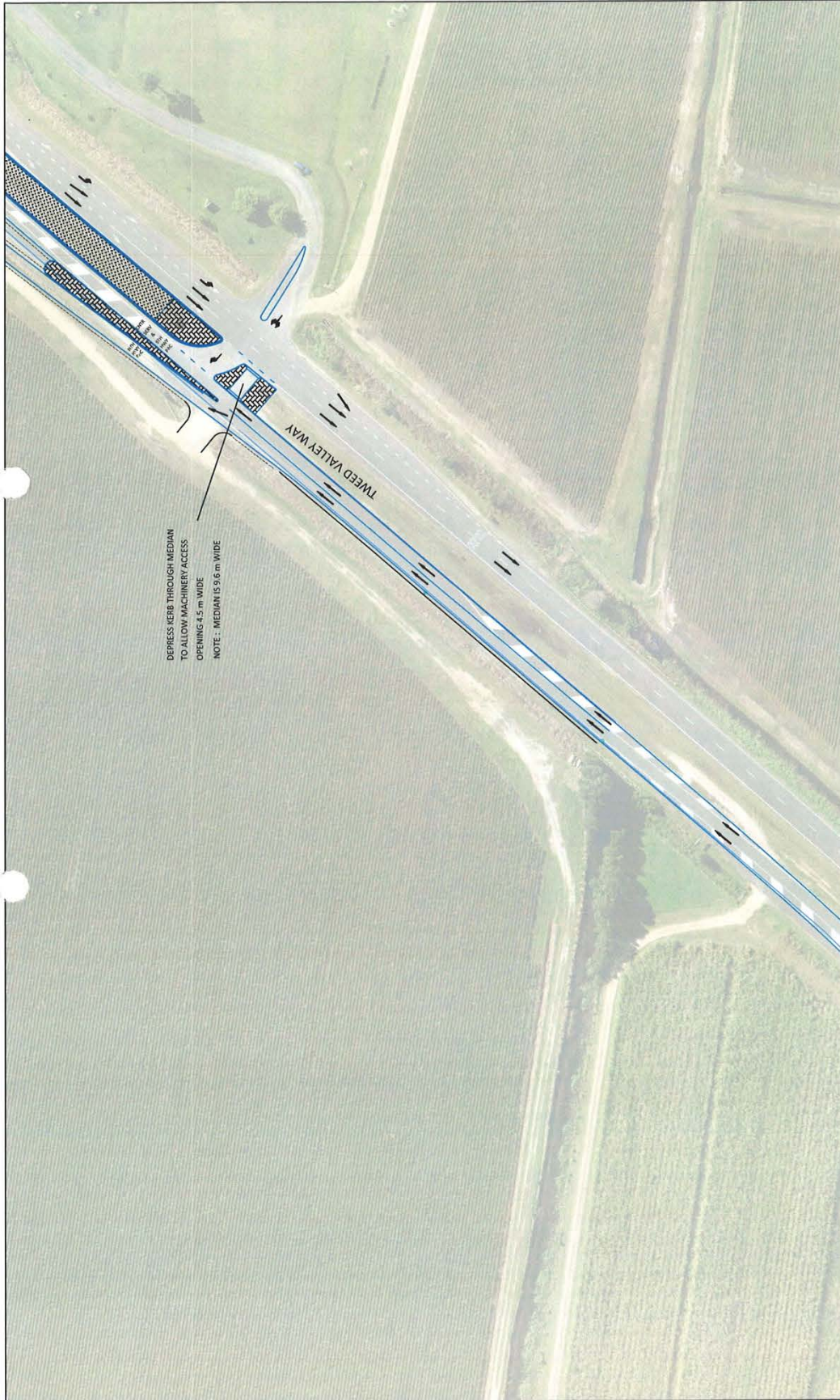
SWEPT PATH DIA. RAMS
 PROPOSED DEVELOPMENT
 CHINDERAH SERVICE
 CENTRE
 TWEED VALLEY WAY,
 CHINDERAH

TTM Consulting Pty Ltd
 Transport and Traffic Engineers
 Suite 6
 72 - 80 Wellington Street
 Collingwood VIC 3066
 Ph: (03) 9419 0911 Fax: (03) 9415 9466
 Email: emma@ttmconsulting.com.au

Scale: 1:500 @ A3

Drawing No: 706471

Sheet No: 1 Issue: A




DEPRESS KERB THROUGH MEDIAN
TO ALLOW MACHINERY ACCESS
OPENING 4.5 m WIDE
NOTE: MEDIAN IS 9.6 m WIDE

	<p>ROADWORKS - PROPOSED DEVELOPMENT CHINDERAH SERVICE CENTRE TWEED VALLEY WAY, CHINDERAH</p>	<p>Scale 1:1,000 @ A3 Drawing No : 706471 Sheet No : 2 Issue : A</p>
	<p>TTM Consulting Pty Ltd Transport and Traffic Engineers</p> <p><small>Suite 9, Wattleup Street Coburg VIC 3096 Ph: (03) 9419 0511 Fax: (03) 9415 8456 Email: email@ttmconsulting.com.au</small></p>	

Issue/Issued	Date	Comments
A	JDH 02/12/14	Original Issue




TTM Consulting Pty Ltd
 Transport and Traffic Engineers

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 70-80 Wallingford Street
 Newcastle NSW 2300
 Ph: (08) 9415 9466
 Email: email@ttmconsulting.com.au

ROADWORKS -
PROPOSED DEVELOPMENT
CHINDERAH SERVICE
CENTRE
TWEED VALLEY WAY,
CHINDERAH

Scale 1:1,000 @ A3
 Drawing No.: 706471
 Sheet No.: 3 Issue: A

Issue/Appd	Date	Original Issue	Comments
A	JDH 02/12/14	Original Issue	

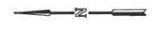



ROADWORKS -
PROPOSED DEVELOPMENT
CHINDERAH SERVICE
CENTRE
TWEED VALLEY WAY,
CHINDERAH


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Suite 9
 70 - 80 Wellington Street
 Collingwood VIC 3066
 Australia
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Scale: 1:1,000 @ A3
 Drawing No: 706471
 Sheet No: 4 Issue: A



Issue/Appd	Date	Comments
A	JDH 02/12/14	Original Issue



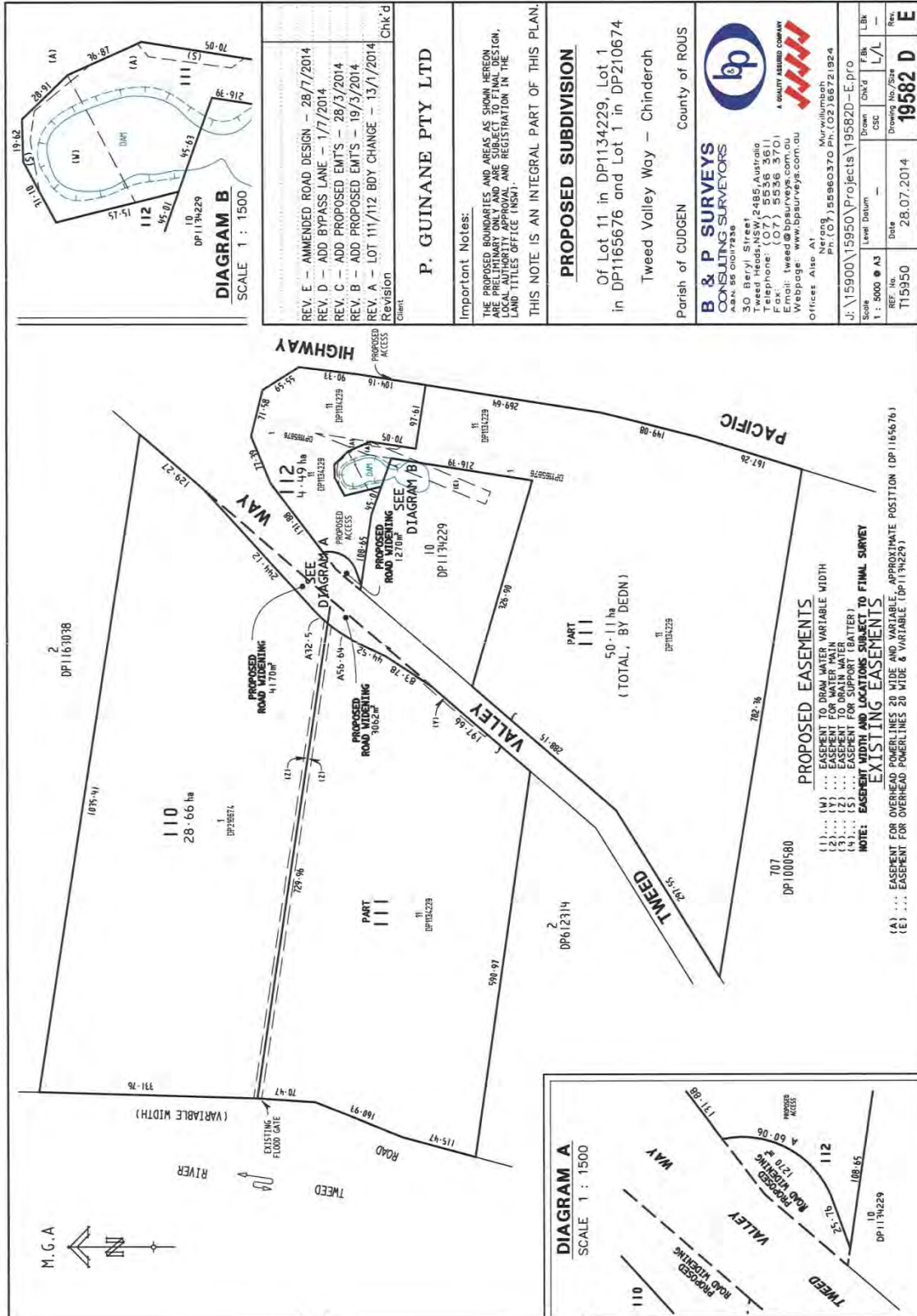
ROADWORKS -
 PROPOSED DEVELOPMENT
 CHINDERAH SERVICE
 CENTRE
 TWEED VALLEY WAY,
 CHINDERAH

Scale 1:1,000 @ A3
 Drawing No : 706471
 Sheet No : 5 Issue : A

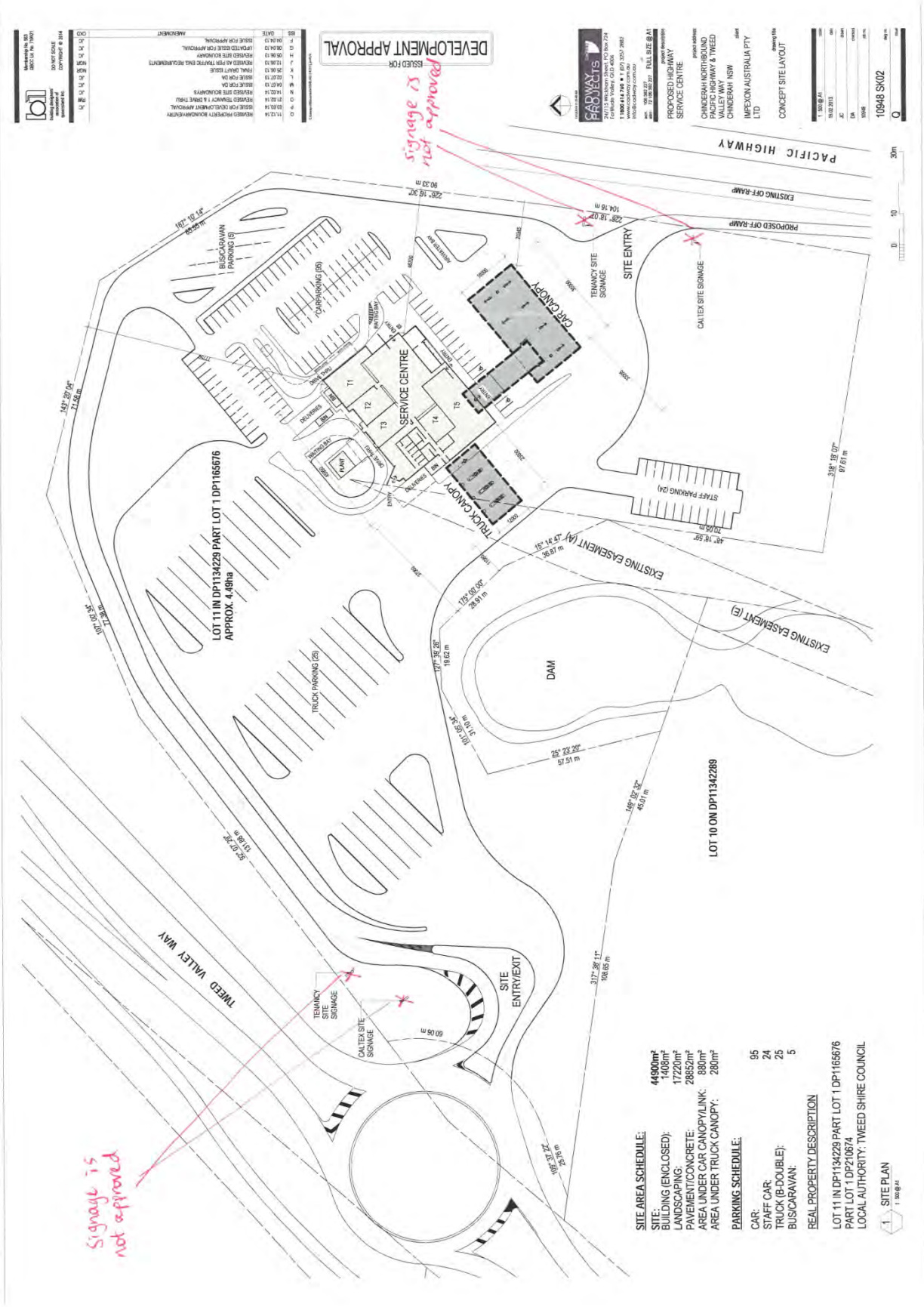
TTM Consulting Pty Ltd
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 Suite 8 Wallingford Street
 Collingwood VIC 3066
 Ph: (03) 9415 0911 Fax: (03) 9415 9456
 Email: email@ttmconsulting.com.au



Issue/Appd	Date	Original Issue	Comments
A	JDH 02/12/14		

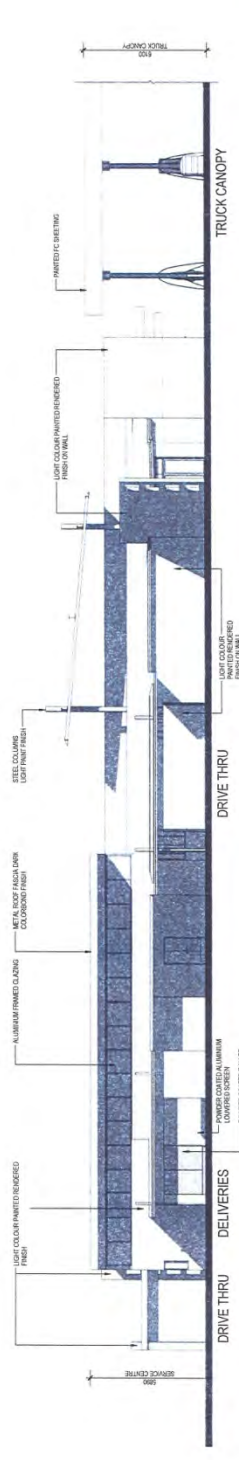


<p>REV. E - AMENDED ROAD DESIGN - 28/7/2014 REV. D - ADD BYPASS LANE - 1/7/2014 REV. C - ADD PROPOSED EMTS - 28/3/2014 REV. B - ADD PROPOSED EMTS - 19/3/2014 REV. A - LOT 111/112 BDY CHANGE - 13/1/2014</p> <p>Client: P. GUINANE PTY LTD</p>	<p>Important Notes: THE PROPOSED BOUNDARIES AND AREAS AS SHOWN HEREON ARE SUBJECT TO SURVEY, LOCAL AUTHORITY APPROVAL AND REGISTRATION IN THE LAND TITLES OFFICE (NSW). THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.</p> <p>PROPOSED SUBDIVISION Of Lot 11 in DP1134229, Lot 1 in DP1165676 and Lot 1 in DP210674 Tweed Valley Way - Chinderoh Parish of CUDGEN County of ROUS</p>	<p>B & P SURVEYS CONSULTING SURVEYORS A QUALITY ASSURED COMPANY</p> <p>30 Beryl Street 2486 Australia Tweed Heads NSW 2486 Telephone (07) 5536 3611 Fax (07) 5536 3701 Email: tweed@bpsurveys.com.au Webpage: www.bpsurveys.com.au</p> <p>Offices Also At: Mackay: Ph (07) 55960370 Brisbane: Ph (07) 55960370</p>	<p>J:\15900\15950\Projects\19582D-E.prt Scale: 1 : 5000 @ A3 Level Datum: — Date: 28.07.2014 Ref. No.: T15950 Drawing No./Size: 19582 D Rev. No.: E</p>
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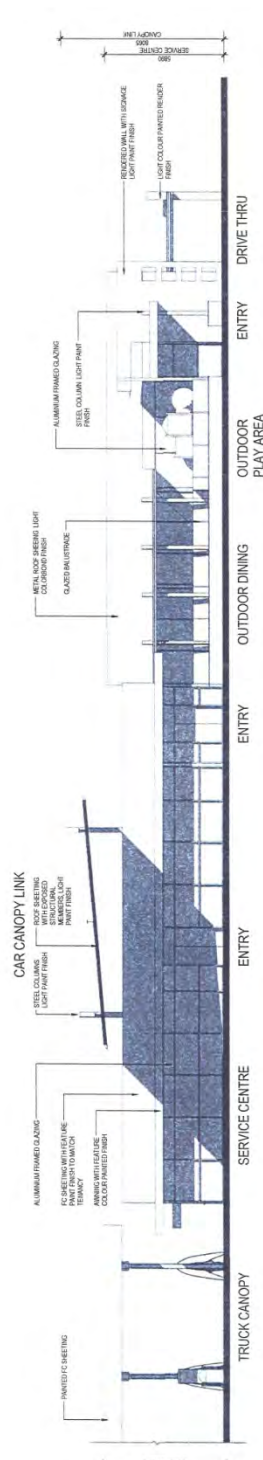


iQI Infrastructure Quality Institute 404-405 Market Street, Suite 205 Perth, Western Australia 6000 Telephone: (08) 9438 1111 Fax: (08) 9438 1110 Email: info@iqi.com.au www.iqi.com.au		
Q1	1:4	1:4
Q2	1:4	1:4
Q3	1:4	1:4
Q4	1:4	1:4
Q5	1:4	1:4
Q6	1:4	1:4

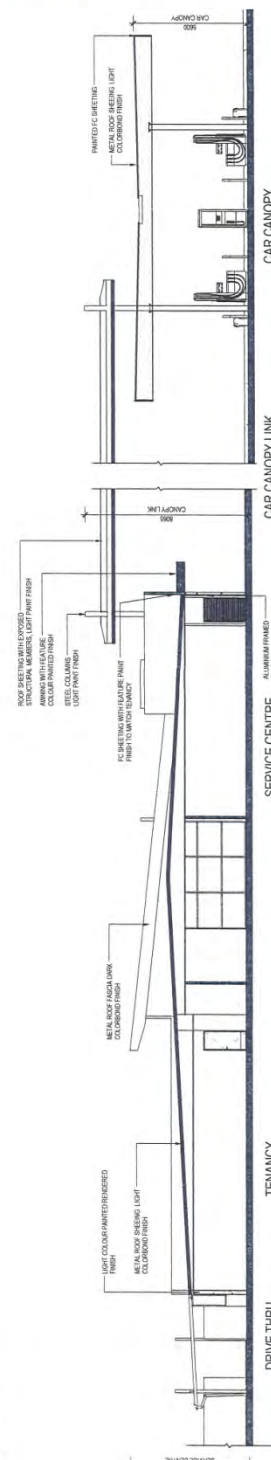
ISSUED FOR DEVELOPMENT APPROVAL



3 NORTH ELEVATION
1:100 @ A1



4 SOUTH ELEVATION
1:100 @ A1



A SECTION A-A
1:100 @ A1

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ARCHITECTS
2/1173 Woodhouse Street, Level 2/7/8
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PROPOSED HIGHWAY SERVICE CENTRE

CHIRDERAH NORTHBOUND
PACIFIC HIGHWAY & TWEED
CHIRDERAH
CHIRDERAH NSW
IMPERION AUSTRALIA PTY
LTD

FILE SIZE @ A1

BUILDING ELEVATIONS / SECTION

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1:500	200
1:1000	100
1:2000	50
1:5000	20

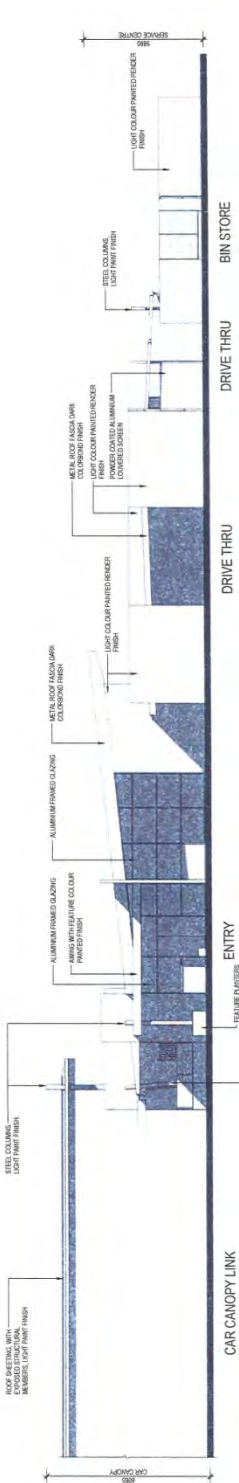
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NO.	DATE	DESCRIPTION
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02	2014.04.14	FINAL DRAWINGS
03	2014.04.14	FOR DEVELOPMENT APPROVAL
04	2014.04.14	FOR DEVELOPMENT APPROVAL

ISSUED FOR DEVELOPMENT APPROVAL



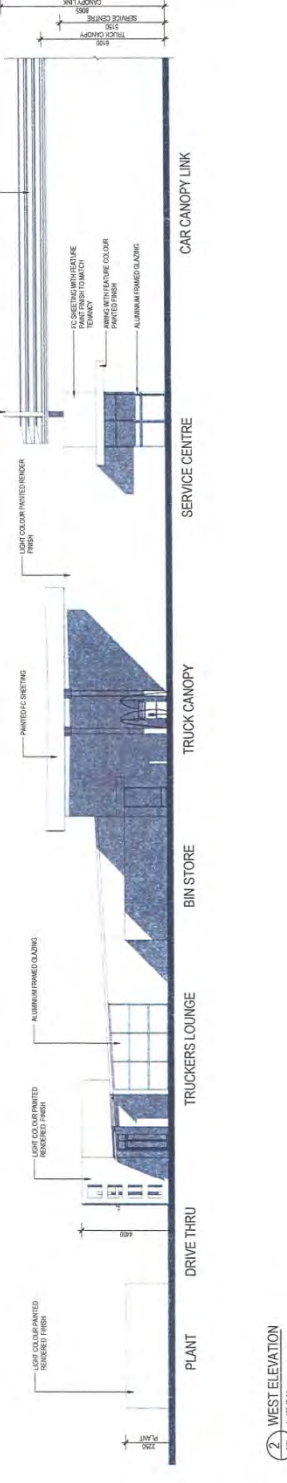
1 EAST ELEVATION
1:100 @ A1


 H88 architects
 24/15 Wyndham Street, Level 2/3
 Sydney NSW 2000
 1601 332 2346 • 071 333 2362
 h88@h88.com.au
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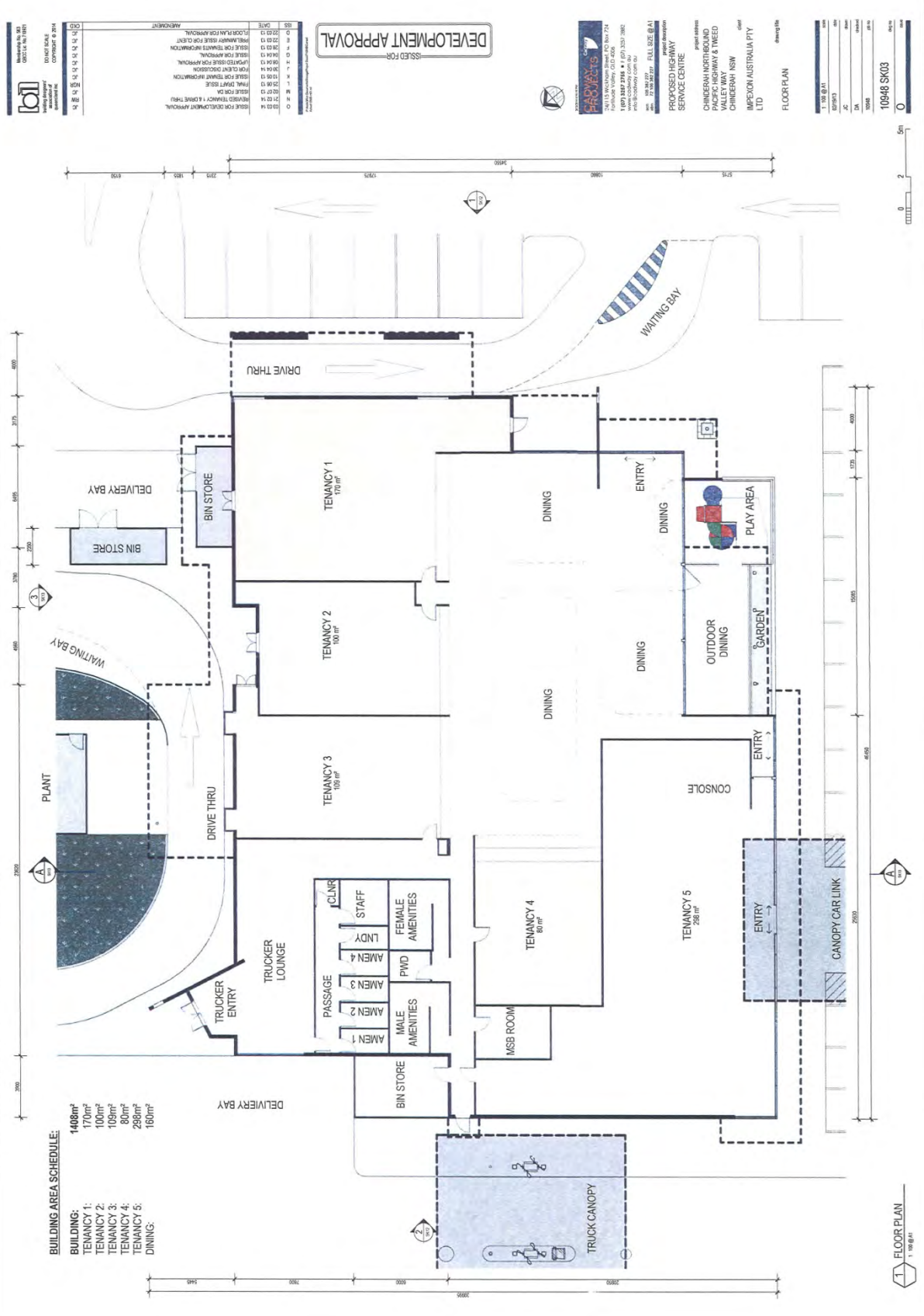
BUILDING ELEVATIONS
 CHINDERAH NORTHBOUND
 PACIFIC HIGHWAY & TWEED
 CHINDERAH NSW

NO.	DATE	DESCRIPTION
01	2014.04.14	ISSUED FOR DEVELOPMENT APPROVAL
02	2014.04.14	FINAL DRAWINGS
03	2014.04.14	FOR DEVELOPMENT APPROVAL
04	2014.04.14	FOR DEVELOPMENT APPROVAL



2 WEST ELEVATION
1:100 @ A1





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

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

The application was lodged under Tweed Local Environmental Plan 2000 with the Planning Proposal relating to the zoning in force at that time. However, Tweed Local Environmental Plan 2014 (LEP 2014) was gazetted on 4 April 2014 and as such the Planning Proposal had to amend LEP 2014 to permit the proposed development.

LEP 2014 is the document which now permits (as of 2 March 2015) the proposed development via a change to the Lot Size Map and the inclusion of the Highway Service Centre definition in the Additional Permitted Uses for the subject land.

Notwithstanding, the below assessments of both documents are provided for completeness.

Tweed Local Environmental Plan 2014

LEP 2014 was in draft form at the time at which the application was submitted, however has now been gazetted and is in force.

Assessment of the development against LEP 2014 is provided below.

The subject site is zoned RU1 - Primary Production under this plan in which a Highway Service Centre (refer definition below) is prohibited. The Planning Proposal has resulted in the proposed development being added to the Schedule of Additional Permitted Uses within LEP 2014 and an amendment made to the Lot Size Map to facilitate the proposed subdivision.

Detailed assessment is supplied below:

Part 1 Preliminary

1.2 Aims of Plan

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

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

- (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
- (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to the need for the facility in the area (as prescribed by the relevant S117 Direction as discussed below) and its location adjacent to two major road facilities on a parcel of land which has limited additional uses due to its size and shape. The proposed development is considered to represent a logical development of the site which will provide additional services and facilities for members of the community and the travelling public. The development is well sited such that there are no significant adverse environmental impacts.

1.4 Definitions

Under this Plan, the proposed development would be defined as a 'highway service centre'.

'Highway service centre' means a building or place used to provide refreshments and vehicle services to highway users. It may include any one or more of the following:

- a) *A restaurant or cafe*
- b) *Takeaway food and drink premises*
- c) *Service stations and facilities for emergency vehicle towing and repairs*
- d) *Parking for vehicles*
- e) *Rest areas and public amenities*

As above, such development is prohibited in the RU1 zone, hence the initiation of the Planning Proposal process. As the LEP amendment has now been made, the application can be considered. The Planning Proposal process has demonstrated that the site is suitable for the proposed development.

Clause 1.9 Application of SEPPs

The following SEPPs do not apply to land to which LEP 2014 applies:

SEPP 1 - Development Standards

SEPP (Rural Lands) 2008 (Clause 9)

SEPP (North Coast Regional Environmental Plan)

Brief assessment of the development against these SEPPs is provided above (though strictly not required).

*Note - the list above is not exhaustive and represents those SEPPs which relate to the subject application only.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned RU1 Primary Production under the provisions of this plan.

2.3 Zone objectives and Land Use Table

The TLEP 2014 zones the development area as RU1 Primary Production. The objectives of this zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area*
- *To minimise the fragmentation and alienation of resource lands*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones*
- *To protect prime agricultural land from the economic pressure of competing land uses.*

Inclusive of the LEP amendment which has now been gazetted to permit the proposed development, the proposed development is considered to be consistent with the objectives of the zone as the balance of the site will remain available for ongoing productive agricultural use. Should the service centre development not go ahead, the land use will remain rural in nature and as such the status quo would be maintained.

2.5 Additional Permitted Uses for particular land

Clause 2.5 prescribes that additional permitted uses (as per Schedule 1) may be carried out on certain land. This is the enabling mechanism for the proposed highway service centre development.

Part 4 Principal development standards

4.1 Minimum subdivision lot size

This clause specifies that the size of any lot resulting from the subdivision of land to which the clause applies shall not be less than the minimum size shown on the corresponding minimum size map. The lot size map defines a minimum lot size of 40ha for the area.

As outlined above, the development will result in two lots of less than the minimum lot size, proposed Lot 110 (which contains an existing dwelling) and proposed Lot 112 (the service centre allotment). Note - in relation to Lot 112 that the Lot Size Map has been amended to permit the smaller lot.

In relation to Proposed Lot 110, Clause 2.6 (Subdivision - consent requirements) prescribes that if a subdivision is specified as exempt development in an applicable EPI, the Act enables it to be carried out without development consent. Thus, the provisions of SEPP (Exempt and Complying Development Codes) 2008 relating to road widening authorise the creation of smaller proposed Lot 110 without impact on the status of the dwelling on the site.

Proposed Lot 111 will meet the minimum lot size.

4.2 Rural subdivision

Clause 4.2 provides further controls for rural subdivision and specifies that smaller lots than the minimum lot size can be created, however an existing dwelling cannot be sited on such a lot, and a future dwelling cannot be erected on such a lot. Clause 4.2 provides permissibility for the creation of the smaller highway service centre lot (Lot 112) but not for Lot 110 as an existing dwelling would be located on this lot. As above, the provisions of SEPP (Exempt and Complying Development Codes) 2008 relating to road widening authorise the creation of smaller proposed Lot 110 without impact on the status of the dwelling on the site. Notwithstanding, the Planning Proposal amended the Lot Size Map to permit the creation of small Lot 112.

4.3 Height of buildings

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the subject site has a maximum building height of 10m (Control 'K').

The service centre building is a single storey structure with a maximum height of 5.7m. The car and truck canopies have heights of 5.325m and 5.975m respectively. The car canopy link is 7.875m high. All these components comply with the height limit.

4.6 Exceptions to development standards

Clause 4.6(6) provides that consent may not be granted for subdivision of land if it will result in two or more lots being undersized, or at least one lot which is less than 90% of the prescribed minimum area. This clause would prohibit the proposed subdivision, however the Lot Size Map amendment and SEPP (Exempt and Complying Development Codes) 2008 operate to authorise it.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

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

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

The subject site is located away from the coastal foreshore and is not considered to either offer opportunities with respect to new public access or impact upon any existing public access at the coastal foreshore.

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

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

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

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

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

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

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

The proposal is to be undertaken on a highly disturbed site and the removal of significant vegetation is not required, as the development area has been previously cleared. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard.

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

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the site's zoning and the isolated nature of the location.

This clause goes on to further state:

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

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

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

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

The proposal utilises onsite sewerage management which has been subject to detailed assessment by Council staff. Subject to conditions, there are not considered to be any likely negative effects on any aquatic environment.

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

Appropriate measures for dealing with stormwater have been applied.

The proposed development is to be acceptable in this regard and will not discharge polluted stormwater to any waterbody.

(d) *the proposed development will not:*

(i) *be significantly affected by coastal hazards, or*

(ii) *have a significant impact on coastal hazards, or*

(iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, scale, and appropriateness given the suitability of the location.

Part 7 Additional local provisions

7.1 Acid sulfate soils

The site occurs on Class 2 land. An Acid Sulfate Soils Management Plan was submitted with the application. Council's Environmental Health Officer has reviewed this plan in detail and applied standard conditions. No further consideration is required under the draft LEP.

7.2 Earthworks

The application incorporates earthworks which would require consent under this clause. Detailed assessment has been given to landforming matters by Council's engineering staff. Subject to conditions, it is considered that the proposed earthworks (filling of the site) would be acceptable with regard to the matters for consideration prescribed by the Clause.

7.3 Flood planning

The site is floodprone, thus fill will be imported in order to raise the development site. Subject to conditions the development is considered to comply with the matters prescribed by Clause 7.3. It is not considered that the development would impact adversely on the existing flood hazard or significantly affect flood behaviour.

7.4 Floodplain risk management

This clause does not apply to the proposed development type. The development is not considered to impact adversely on floodplain risk management.

7.10 Essential services

The site will be provided with reticulated water and will utilise onsite sewerage management. Appropriate arrangements are in place for the provision of electricity, stormwater management and vehicular access.

Schedule 1

'Highway Service Centre' has been added to the list of additional permitted land uses under LEP 2014.

The development is considered to be consistent with LEP 2014.

Tweed Local Environmental Plan 2000

This assessment has been provided for completeness as LEP 2000 was the planning instrument in force when the application was submitted.

Clause 4 - Aims of the Plan

The development is consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The development, by virtue of its public need and location is considered to be consistent with the provisions of ecologically sustainable development.

Clause 8 - Consent Considerations

Through the Planning Proposal process, the site has been considered suitable for the proposed development and consistency with the zone objectives is considered to be achieved by the bulk of the agricultural land. The development does not contravene any of the aims or objectives of the LEP and is not considered to have an unacceptable cumulative impact on the community or locality as a whole. The development satisfies Clause 8.

Clause 11 - Zone Objectives

The site is zoned 1(b)2 Agricultural Protection under LEP 2000.

The primary zone objective is:

- *To protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.*

The secondary objective is to allow other development that is compatible with agricultural activities.

The site has been considered to be suitable for the proposed development through the Planning Proposal process, which acknowledges that the development is

appropriate for the site. The development does not further fragment rural land and is considered to remain compatible with surrounding agricultural development.

Clause 15 - Essential Services

A detailed assessment of servicing of the development is provided below. The site will be connected to Council's reticulated water supply (via an existing connection). An onsite sewer management system will be utilised.

Clause 16 - Height of Building

The site has a three storey height limit under LEP 2000. No element of the proposal exceeds three storeys.

Clause 17 - Social Impact Assessment

A socio-economic impact assessment was submitted with the application which identifies predominantly positive socio-economic impacts stemming from the proposed development. Detailed comments on the assessment are provided later in this report. Planning staff concur that socio-economic impacts (in the form of job creation and the provision of additional services and facilities) are likely to occur from the proposed development. The provisions of Clause 17 are satisfied.

Clause 19 - Subdivision General

This clause provides that most subdivision must be carried out with consent. Subdivision is included in the subject application.

Road widening is also proposed to facilitate the construction of the north bound slip lane. Clause 19 (1) (4) provides that road widening may be undertaken notwithstanding that a lot may not meet the applicable lot size for the subject zone upon completion. It is noted that Lot 110 (subject to the road widening) is already undersize. This lot contains an existing dwelling.

Clause 20 - Subdivision in Zones 1(a), 1(b), 7(a), 7(d) and 7(l)

This clause aims to prevent the fragmentation of rural land and provides a minimum lot size of 40ha for lots within the subject 1(b)2 zone.

The diagram below shows the proposed subdivision layout:



Proposed Lots 110 and 112 are both below the minimum lot size. Proposed Lot 111 remains above the minimum lot size.

The clause enables flexibility in the creation of a lot which is less than the minimum lot size for uses other than agricultural or residential, for which consent could be granted. Initially, the proposed use ('*service station*' under LEP 2000) was prohibited, hence the lodgement of the Planning Proposal. Adoption of the LEP amendment via the Planning Proposal has added the subject use (now 'highway service centre' under LEP 2014) to the list of additional permissible uses. Thus, the development has become a permitted land use (as of 2 March 2015), and consent can be granted for the creation of a smaller lot (Lot 112) for that purpose.

In relation to proposed Lot 110, it is noted that proposed Lot 110 is similar to the parent parcel Lot 1 DP 210674 except for road widening around the proposed roundabout to enable access for the proposed service centre. This Lot has an existing dwelling and appears to have been created in 1963. Under Clause 19 above, road widening is permitted notwithstanding that a resulting lot may not comply with the minimum standard. Road widening is also permitted as exempt development under Clause 2.75 of SEPP (Exempt and Complying Development) 2008 (see further detail below).

Lot 111 remains above the minimum lot size.

Clause 22 - Development Near Designated Roads

Under LEP 2000, Tweed Valley Way is a 'proposed classified' road and Clause 22 applies. In relation to the matters for consideration under the clause, subject to conditions it is not considered that the development would constitute nor create a traffic hazard or unreasonably reduce the capacity or efficiency of Tweed Valley Way. The proposed design inclusive of the northbound slip lane will ensure appropriate movement of through traffic on Tweed Valley Way. The proposed development is not sensitive to traffic noise and necessitates the proposed location due the development type itself needing to be located on the Pacific Highway - the subject site also provides for access from Tweed Valley Way to provide services to northbound motorists on that road too. Subject to conditions, the proposed development is not considered to impact adversely on the scenic values of the locality. It is noted that Roads and Maritime Services (RMS) have undertaken detailed assessment of the application and have provided their support to the proposed road design.

Clause 23 - Control of Access

The subject application requires creation of additional access points to both Tweed Valley Way and the Pacific Highway and consent has been sought for these works. Clause 23 is considered satisfied.

Clause 24 - Setbacks to Designated Roads

This clause requires a setback of 30m between Tweed Valley Way and the proposed development. The development exceeds this setback.

Clause 31 - Development Adjoining Waterbodies

This clause applies as the overall site adjoins the Tweed River. A large farm dam is also located on the main service centre site. The proposed development is not considered to have an adverse effect on the scenic amenity or environmental quality of the river in this location. It is noted that NSW Office of Water have

reviewed the application and provided general terms of approval. No objections have been raised in terms of the proximity to the river or the farm dam. The clauses provides that rehabilitation of riverbank can be sought by Council on land to which this clause applies. As there is no development occurring on the riverfront land, there is no nexus for rehabilitation in this case.

The provisions of Clause 31 are considered satisfied.

Clause 34 - Flooding

The site is flood prone and Council's engineers have reviewed the submitted flood modelling in detail and provided appropriate conditions of consent (detailed consideration of flooding impacts is provided under DCP A3 below). The service centre building will be situated above the design flood level. In terms of the matters prescribed by Clause 34, it is not considered that the proposed development would increase the risk or severity of flooding of other land in the vicinity or create undue impacts for emergency services, subject to conditions of consent. Clause 34 is considered to be satisfied.

Clause 35 - Acid Sulfate Soils

The site occurs on Class 2 land. An Acid Sulfate Soils Management Plan was submitted with the application. Council's Environmental Health Officer has reviewed this plan in detail and applied standard conditions.

Clause 39A - Bushfire Protection

The subject site is partially bushfire prone owing to a small non contiguous area of vegetation on the eastern side of the Pacific Highway. The proposed development (if managed appropriately) is not considered to worsen the bushfire risk of the area, nor impact upon the demands of emergency services in that regard. The development is considered to be appropriately designed and sited having regard to the low level of bushfire threat. The NSW Rural Fire service have examined the development proposal and provided a Bushfire Safety Authority with conditions. Such conditions have been applied and the proposed development is considered to be consistent with regard to Clause 39A.

Clause 47 - Advertising Signs

Advertising is not proposed in the current application (see further detail provided under SEPP 64 below).

In summary, the application is generally consistent with LEP 2000.

State Environmental Planning Policies

SEPP 33 - Hazardous and Offensive Development (and Underground Petroleum Storage Systems)

Council's Environmental Health Officer has reviewed the application with regard to SEPP 33 - Hazardous and Offensive Development and the guideline *Planning and Development Process for Sites with Underground Petroleum Storage Systems* prepared by NSW DECC&W dated Aug 2009 and *Hazardous and Offensive Development Application Guidelines Applying SEPP 33* prepared by NSW Planning dated January 2011. The submitted assessment covers all these documents.

The applicant has submitted a preliminary hazard analysis and it would appear the report has been prepared by a suitably qualified and experienced company. The report demonstrates that whilst a preliminary hazardous analysis was

conducted it was not required as the criteria for quantity, transport and distance thresholds were not exceeded.

Six 110,000L double-walled fibreglass underground petrol storage tanks are proposed together with one 30,000L underground LPG vessel. *This equates to <600 tonnes of petroleum product and <20 tonnes of LPG.*

It is noted the Environment Protection Authority is the appropriate regulatory authority for the regulation of underground petroleum storage systems (UPSS). NSW Workcover regulates the storage and handling of dangerous and hazardous goods.

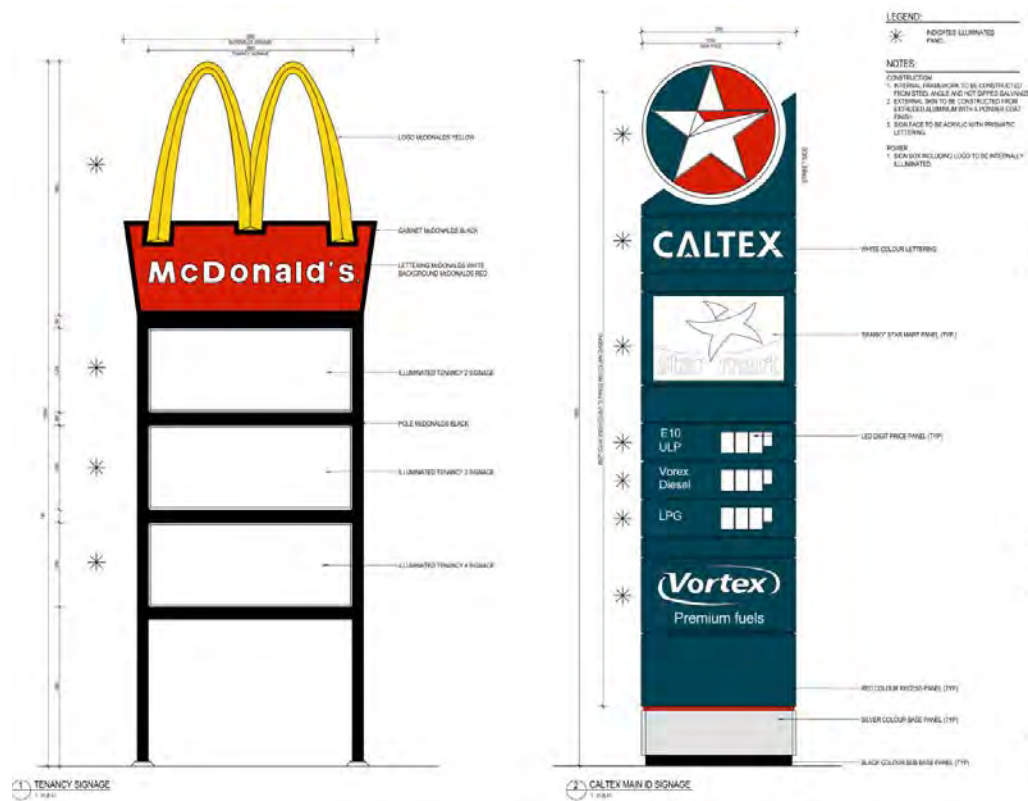
No objections to the proposed fuel storage system were raised by Council's Environmental Health Officers. Appropriate conditions have been applied to ensure the underground storage system is installed, used and maintained in accordance with relevant legislation (Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008 NSW) and industry best practice.

SEPP 55 - Remediation of Land

The applicant has carried out the necessary site investigations and it is concluded that the site is suitable for the intended use. SEPP 55 is considered satisfied.

SEPP 64 - Advertising and Signage

The application as originally submitted included signage as shown in the graphic below, with two free standing pylon signs fronting the Pacific Highway and two fronting Tweed Valley Way. As outlined below, all signage has now been removed from the current application.



The initially proposed Caltex signs are 10m high x 2.2m wide. They contain the Caltex logo with provision for fuel prices in LEP digital panels below. All would be internally illuminated and contain Caltex corporate colours as shown above.

The initially proposed 'tenancy' signage has a height of 10m and a variable width (2.905m to 3.6m wide). The major takeaway food tenant will be McDonalds, hence the large logo at the top of the sign as per above. Underneath, provision is made for individual panels for the remaining food outlets which are not known at this stage. These panels are 2.05m x 1.2m and would be internally illuminated.

Clause 15 of the SEPP applies to land in a rural or non urban zone. The subject site will maintain its RU1 - Primary Production zoning (LEP 2014 now permits the development as an 'additional permitted use', though the zoning remains the same). As such, Clause 15 applies.

The clause provides that consent must not be granted to signage on affected land unless a development control plan for advertising design in the locality has been prepared. DCP A4 applies to the proposed development but there is no site specific DCP for this area. If a DCP is not in force, the advertisement must relate to the land on which it is displayed, or premises located on that land and it must provide specific information. The initially proposed signage (now removed from the application) would appear to satisfy the Clause 15 criteria.

Clause 17 applies to advertisements with a display area greater than 20m² or higher than 8m above ground. As such, it applies to both sign types and provides that:

- The development must be advertised (this has occurred).
- An impact statement and consideration of Schedule 1 assessment criteria is provided (the applicant has provided sufficient documentation).
- A copy of the application was given to the RTA (now RMS). This occurred however RMS have not issued concurrence to the proposed signage (as required by Clause 18).

Clause 18 applies to advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road and thus also applies to both sign types. Clause 18 requires RTA (now RMS) concurrence for such signage. RMS have provided comments to the effect that their preference is for a single sign only at each entry point to the development. Concurrence has not been provided.

In addition to the concurrence issue, Council planning staff do not support the proposed signage for reasons of adverse visual amenity and unreasonable impact on the surrounding hinterland and ridgeline views (especially when juxtaposed against Wollumbin/Mt Warning). In order to support the signage, significant redesign is required in addition to the provision of detailed visual analysis which has not occurred to date. Upon receiving this advice from Council Planning staff, the applicant has advised that they wish to withdraw the signage component of the application and seek approval for it at a later date (under separate Development Application). This approach provides sufficient time for the appropriate level of assessment to be undertaken by the applicant whilst still allowing reporting of the current application (without signage) to the April Council meeting.

As such - all signage has been withdrawn from the proposed development and will be subject to future consent. Additionally, tenancy identification signage will be assessed with future applications for the internal tenancies. Appropriate conditions have been applied in relation to both these matters.

Clause 23 relates to freestanding advertisements and provides that the advertising structure on which the advertisement is displayed does not protrude above the dominant skyline, including any buildings, structures or tree canopies, when viewed from ground level within a visual catchment of 1 kilometre.

However, the clause does not prevent consent being granted to a freestanding sign on rural or non urban land under Clause 15. Notwithstanding, the proposed signage is considered to adversely impact on the dominant skyline. Thus, it has been removed from the current application and will be subject to detailed future assessment under separate application.

Schedule 1 of the SEPP provides assessment criteria for signage in NSW. These criteria have not been satisfied by the proposed signage.

As all signage has been removed from the current application, SEPP 64 does not at this time, present an impediment to approval of the application.

SEPP 71 - Coastal Protection

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

The proposed development is considered to be consistent with the aims of the policy as set out in clause 2.

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

The proposal development will not alter or restrict the public's access to the foreshore (which is not provided in this location)

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

The proposal does not generate any additional opportunities to improve public access to foreshore reserve areas and the like, nor is it considered that there are any physical opportunities to do so.

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

The proposed development is generally sited and designed in general accord with the relevant Council controls and is considered unlikely to create any form of adverse imposition upon the immediate area in terms of size, scale or design.

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

The proposed development is not considered impact on the amenity of the coastal foreshore, given it is physically removed from any coastal foreshore environment.

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

The proposal is unlikely to impact upon the scenic quality of the NSW coast.

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

The proposal is not considered to impact negatively upon animals or their habitats. The submitted flora and fauna assessment did not identify any significant impacts and none have been raised by Council's Ecological staff in their review of the application.

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

The proposal is unlikely to have an adverse impact upon marine environments or habitats.

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

It is considered that there are no wildlife corridors impacted by the proposed development. The subject development is to be located on a cleared and highly disturbed site which has been under historic agricultural production.

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

The site is not located in an area to which DCP B25 applies. The development is highly unlikely to be affected by coastal hazards.

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

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

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

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

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

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

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items. In this regard it is noted that a cultural heritage assessment has been undertaken which has returned no records of items of cultural significance on the site.

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

Not applicable to the subject application.

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

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

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

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

The subject application has not provided measures in relation to the minimisation of water and energy usage. It is noted that the proposed development does not require a BASIX certificate be submitted as the development is not residential in nature. The subject application is considered to be acceptable in this regard.

The proposal is generally consistent with the matters for consideration as it does not impede public access to the foreshore nor result in any unacceptable loss of view or overshadowing. The proposal has a minimal impact on flora or fauna and the proposed development site is not known to contain any items of Aboriginal significance. The provisions of SEPP 71 are considered satisfied.

SEPP (Infrastructure) 2007

Division 17 of the SEPP applies to Roads and Traffic. Clause 99 provides that development for the purpose of a highway service centre may be carried out in a road corridor only with consent. It is noted that the development will occur on private land however part of the access will be within the Pacific Highway road corridor.

Clause 101 provides that development with frontage to a classified road must not compromise the effective and ongoing function of that road whilst ensuring that potential impacts of traffic noise and vehicle emission on development adjacent to a classified road are limited. Consent must not be granted unless the function of the road will not be compromised. In this regard, the proposal is considered to have satisfied the matters for consideration under the clause. The efficiency of the Pacific Highway will not be compromised by the proposed development and RMS have raised no objection to the proposed road design on these grounds. Impacts on the efficiency of Tweed Valley Way have been appropriately mitigated by the inclusion of the north bound slip lane, to the satisfaction of Council's Traffic Engineers.

Clause 104 relates to traffic generating development and specifies that the RTA (now RMS) must provide representations to the consent authority on any development to which Column 1 of the table to Schedule 3 applies. In this instance, Schedule 3 prescribes that sites with access to a classified road with parking for more than 50 vehicles must be referred. Referral was undertaken and RMS have provided their concurrence to the proposed development. Additionally, the proposed development is considered to be appropriate in terms of site accessibility. There are not considered to be any adverse traffic safety or congestion impacts as a result of the development. The design of the onsite parking area is considered to be appropriate.

The proposed development is consistent with SEPP (Infrastructure) 2007.

SEPP (Rural Lands) 2008

This SEPP aims to ensure the orderly and economic use and development of rural lands.

As the proposed development is to be considered under LEP 2014 (see comments in this regard later in this report), this SEPP technically does not apply.

Notwithstanding:

There are seven Rural Planning Principles with which the proposed development is considered to remain consistent. Specifically, the proposed development will maintain the status quo for most of the rural land to which the application relates. The small lot to be created for the highway service centre is located on land which has been the subject of an agricultural assessment which concluded that its potential was limited due to the size, shape and isolated location of the parcel.

There are not considered to be any land use conflict issues as the service centre site is physically separated from the bulk of the agricultural land. The existing agricultural activity (tea tree farming) will continue to occur on the bulk of the land.

The proposed development is considered to be consistent with the guiding principles of SEPP (Rural Lands) 2008.

SEPP (Exempt and Complying Development Codes) (2008)

This SEPP is relevant in so far as Subdivision 38 (Subdivision), Clause 2.75 prescribes that road widening may be carried out as exempt development. Thus it is considered that the minimum lot size provisions under both LEPs do not apply to the proposed road widening within proposed Lot 110 and this widening may thus be undertaken with no affect on the status of the existing dwelling on the site.

SEPP (State and Regional Development) 2011

The development is not of a category or value that triggers determination of the proposal by the Joint Regional Planning Panel. Subsequently, this Council Report has been prepared.

SEPP (North Coast Regional Environmental Plan)

Clause 120 of Schedule 6 to the Environmental Planning and Assessment Act 1979) prescribes that from 1 July 2009, the NCREP is taken to be a SEPP.

As the proposed development is to be considered under LEP 2014, this SEPP technically does not apply. Notwithstanding:

Clause 12 provides that the council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land. With respect to Clause 12, it is considered that the isolated nature of the development site, coupled with its small size and odd shape sterilise it somewhat from productive agricultural use. This has been confirmed by an independent agricultural assessment that was submitted with the application. The proposed development is not considered to cause a significant loss in prime crop or pastureland.

Clause 15 provides that wetlands or fishery habitats must not be adversely impacted by proposed development. Part of the subject site adjoins the Tweed River. It is not considered that the proposed development would impact adversely upon water flows into the river, nor result in the decline of riverine habitats by way of impacts on flora and fauna or pollution. There are appropriate measures in place (by way of conditions) to safeguard against impacts from

sediment and erosion, stormwater runoff or flood water. The development is considered to be consistent with Clause 15.

Clause 32B applies as the land is covered by the Government Coastal Policy. The proposed development does not contravene the Coastal Policy, Coastline Management Manual or North Coast: Design Guidelines. The development will not impede public access to the foreshore or create overshadowing on coastal land.

The development is considered to be consistent with SEPP (North Coast Regional Environmental Plan).

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

There are no draft environmental planning instruments that relate to the application.

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

Tweed Development Control Plan

A review of the proposed development against Council's Consolidated Development Control Plan is provided below.

Section A2 - Site Access and Parking Code

Revised plans indicate that 95 parking spaces for customers and 24 staff spaces are to be provided on site.

Section A2 has the following car parking requirements for the proposed service station and fast food outlets.

Staff Parking Requirement

Proposed Use	Equivalent Parking Code Use	Area / No	Staff Parking rate	Staff Parking requirement
Service Station Convenience Store	Convenience Store	298m ²	0.5 spaces per 100m ²	2
Restaurant/s with drive through service	Fast food outlet	16 staff	1 space per staff at peak operating time	16
Commercial tenancies	Fast food outlet	6 staff	1 space per staff at peak operating time	6
Total car parking spaces required				24
Total car parking spaces provided				24

Updated car parking calculations (provided on 31 March 2014) provides further detail in relation to staff parking as follows:

“McDonalds will have a maximum of ten (10) staff on-site at any one time.

It is estimated that the second convenience store with drive-thru component will have up to six (6) staff members on site.

Likely occupants of the commercial tenancies will be take away uses that do not require a drive-thru, such as a café or ‘Subway’. Peak staffing level at the two outlets has been estimated at 3.”

24 staff car parking spaces have been provided on the southern area of the site, located in a separate car park from customer parking areas. The car park is generally compliant with AS2890.1 – Off Street car parking code.

The number of car parks provided is compliant with DCP A2 – Site Access and Parking Code.

Customer Parking Requirement

Proposed Use	Equivalent Parking Code Use	Area / No	Customer parking rate	Customer parking requirement
Service Station Convenience Store	Convenience Store	298m ²	3.5 spaces per 100m ² GFA	11
Restaurant/s with drive through service	Fast food outlet	279m ²	Greater of 12 spaces per 100m ² GFA or 1space per 4 seats Queuing for 6 cars where drive thru	34
Commercial Tenancies	Fast food outlet	180m ²	Greater of 12 spaces per 100m ² GFA or 1space per 4 seats Queuing are for 6 cars where drive thru	22
Dining Area	Fast food outlet	160m ²	Greater of 12 spaces per 100m ² GFA or 1space per 4 seats Queuing are for 6 cars where drive thru	20
Total car parking spaces required				87
Total car parking spaces provided				95

The application states that parking areas have been based upon floor area as seating numbers have not yet been determined. The communal dining area has also been included in the car parking analysis.

The fast food outlets with drive through facilities require queuing for 6 vehicles at the drive through. Turning templates were supplied which indicate that sufficient queuing space is available.

95 customer car parking spaces have been provided directly in front of the service station entry and adjacent the service station building. The car parking widths, lengths and aisle width appear to comply with AS2890.1 – Off Street car parking code.

The number of car parks provided is compliant with DCP A2 – Site Access and Parking Code.

Truck and Bus Parking

25 truck parking spaces have been provided on the western side of the site. 5 bus/Heavy Rigid Vehicle (HRV) spaces are also provided adjacent to the customer parking area.

The application is generally compliant with Section A2 – Site Access and Parking Code. Appropriate conditions relating to the provision of site access and parking areas have been applied.

Section A3-Development of Flood Liable Land

Section A3 aims to present detailed standards for land development in order to minimise adverse impacts of flooding on the community. It also provides the mechanism for implementation of various Council flood risk policies and management plans.

The Plan provides in Section A3.2.5 that certain development is restricted in high flow areas. Most of the site is mapped as "low flow", however some areas around the extremities are affected by "high flow" classification. Fill is proposed over the entire site and some of this occurs unavoidably in the high flow areas.

Independent flood modelling was submitted with the application which predicts a minor and insignificant increase in peak flood level as a result of the proposed application. Council's Flooding Engineer advises that these results are not unexpected, given the site is surrounded by filled development, particularly the Pacific Highway formation.

The site is proposed to be filled to between RL 1.8m and 3.9m AHD which correlates with 1m to 3m of fill over the whole site. Whilst Section A3 prescribes the Design Flood Level of RL 3.5m AHD, it does not contain specific provisions for the subject site nor development typology. Detailed review has been undertaken by Council's Engineering staff and no objection has been raised to the development on flooding grounds. It is considered that the proposed development, subject to conditions is consistent with the intent of Section A3 and that flooding impacts as a result of its construction are unlikely.

Section A4-Advertising Signs Code

As discussed under SEPP 64 above, the proposed signage has been withdrawn from the subject application and will be assessed in the future under separate development application.

Section A5-Subdivision Manual

Section A5 contains a strategic approach to subdivision in the Shire and prescribes specific principles for the subdivision of land in rural areas.

Consideration of the following is required:

A5.5.2 Physical Constraints (Rural Land)

The physical constraints of the site have been extensively mapped by the applicant and addressed in detail by various Council staff. In terms of physical constraints, the site exhibits the following:

- Flood prone
- Bushfire prone
- Acid sulphate soils
- Low soil bearing capacity/loose sands
- High groundwater table

In relation to flooding, Section A5 controls relate only to filling of land for residential development. There is no fill proposed on any other allotment other than Lot 112 which will contain the highway service centre. Appropriate conditions have been applied in relation to this fill and Section A5 provisions in this regard are considered satisfied.

In terms of bushfire risk, the Rural Fire Service have reviewed the proposed development (as integrated development). A bushfire safety authority has been issued for the proposed subdivision. Appropriate measures are considered to be in place to mitigate bushfire impacts over the wider site. It is noted that the service centre site is predominantly cleared and the bushfire risk comes from a small and isolated patch of vegetation on the eastern side of the highway. The balance of the site is under active management as part of a tea tree plantation.

The site occurs on acid sulphate soil Class 2 land. A Management Plan was submitted with the application. Council's Environmental Health Officer has reviewed this plan in detail and applied standard conditions.

In relation to engineering matters (low soil bearing capacity, loose sands and high groundwater table), detailed review has been undertaken by Council's Engineering staff. Subject to conditions of consent including the submission of further detailed information to address the long-term settlement issues at Construction Certificate stage (possible piling or similar solutions), these matters are considered adequately addressed in terms of the subdivision component of the application and do not represent a reason for refusal of the application.

Section A5.5.2 also requires consideration of landscape visual character. In this instance (and as discussed in detail elsewhere in this report), adverse visual impacts of the proposed development are considered to be limited (note that signage is to be subject to future application). The location of the site is such that it is located at a significant road junction in an existing area of disturbance, including the lobster farm just north of the site. The bulk of the site will continue to be used as is (for agricultural production) with no change to visual amenity. Conditions have been applied requiring submission of a detailed landscaping plan to provide for additional green space around the proposed development.

The development utilises onsite sewerage management and an appropriate design has been proposed. The site contains sufficient land area to accommodate the required land application areas. Appropriate conditions have been applied.

The physical constraints of the site are considered to be appropriately addressed by the application.

A5.5.3 Rural Watercourses and Drainage

The majority of the site remains untouched by the proposed development and thus the balance of the agricultural land will have no change to the existing method of drainage (noting that this part of the site adjoins the Tweed River).

Council's Engineering staff note that levels on the site range from RL-0.6m to RL 1.1m AHD. The site drains via sheet flow and minor surface drains, and then grades towards the west into a table drain along Tweed Valley Way. The table drain flows south, into an irrigation channel to the west into a 1500mm diameter culvert under Tweed Valley Way. The irrigation channel discharges into the Tweed River through a flood gated outlet.

Subject to conditions, the proposed development is considered to be appropriately designed with regard to the management of drainage and impact on rural watercourses, including the Tweed River.

A5.5.4 Rural Subdivision Structure

The bulk of the rural land is protected by the subdivision and it is not considered that the use of the smallest lot for non agricultural purposes will significantly

detract from the viability of the remaining land for ongoing agricultural pursuits. Section A5.5.4 also requires consideration of access and an appropriate movement network around the proposed subdivision. Whist new access will be provided to the service centre allotment, access arrangements for the two remaining lots will remain as is. As such the existing movement network and access arrangements are considered to remain appropriate.

A5.5.5 Rural Subdivision and Lot Layout

The proposed subdivision design is considered to be relatively innocuous in impacts as it generally retains the existing shape and use of the current lots. There are not considered to be adverse impacts on the natural environment as a result of the subdivision design and adequate buffers are considered to be provided between the rural land, the proposed service centre use and adjoining development. Sufficient measures are in place regarding bushfire protection and the development is considered to be appropriately sited with regard to mitigating visual impacts. A discussion of the proposed lot sizes is provided under LEP 2000 above. Lots are considered to be appropriately designed so as to facilitate the proposed highway service centre as well as ensure the ongoing agricultural use of the bulk of the site. Section A5.5.5 is considered satisfied.

A5.5.6 Rural Movement Network

As above, access arrangements for the proposed subdivision are considered to be appropriate. Appropriate arrangements are in place for the provision of water and management of onsite sewerage.

The proposed subdivision component of the application is considered to be consistent with Section A5.

Section A11-Public Notification of Development Proposals

The combined S72J Application was jointly advertised for 30 days from 23 April to 26 May 2014. The provisions of Section A11 have been satisfied. Matters arising in the public submissions received are addressed in detail later in this report.

Section A13-Socio-Economic Impact Assessment

A socio-economic impact assessment (SEIA) was carried out by RPS in accordance with Section A13 and submitted with the application. The assessment concludes that the proposed development is expected to offer a range of economic and social benefits to the community which include:

- Increases in retail services within the local area (for use by locals and the travelling public)
- Increase in facilities within the local area (for use by locals and the travelling public)
- The development represents the highest use of the site, which will provide ongoing economic activity and employment generation, rather than once only (as would be the case with a residential development)
- Potential positive impact on tourism in the region via a small tourist information booth to be located within the centre
- Provision of employment during construction (approx 95 jobs) and operation (approx 212 jobs over permanent, part time and casual employees)
- Up to approximately \$10 million investment in the development

- Provides an obligation free rest area for the public
- Increases the choice of local shopping facilities

Council planning staff generally concur with the points raised above and accept the socio-economic impact assessment. Overall socio-economic impacts of the proposed development are considered to be positive and beneficial for the community.

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

Appropriate conditions have been applied with regard to fire safety.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded.

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

Tweed Shire Coastline Management Plan 2005

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

The development is not located on lands to which this plan applies. Nil impacts are thus envisaged in this regard.

Coastal Zone Management Plan for the Tweed Coast Estuaries 2013

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The site is not in proximity to these areas and as such, the proposal is not considered to impact on the provisions of this management plan.

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

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

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

Context and Setting

It is considered that the proposed development is well located in terms of minimising impacts on the surrounding setting, which is predominantly rural interspersed with industrial development including the nearby lobster farm. The rural character is not considered to be adversely impacted upon by the proposed highway service centre which is located on a small portion of the overall site, the bulk of which will remain under agricultural production.

Access, Transport and Traffic

Extensive negotiation was undertaken between the applicant and multiple Council staff (and RMS officers) with regard to the proposed access arrangement. Initially, Council was unwilling to accept the proposed Tweed Valley round-a-bout due to adverse impact on the local road network and local community (whilst benefits were received for private development).

After considerable negotiation, the applicant acquiesced to Council's request for a north bound slip lane on Tweed Valley Way and revised plans were submitted in this regard.

Specifically, the final development now includes the following elements:

- **Pacific Highway exit ramp**

An exit ramp will be required to be constructed off the Pacific Highway to provide northbound access to the development in the south eastern corner of the site. The access will be designed as an exit ramp from the existing exit ramp connecting Pacific Highway (northbound) to Tweed Valley Way (southbound).

- **Proposed Roundabout**

The roundabout is a two lane arterial roundabout constructed in concrete to accommodate heavy vehicles using the roundabout. The approach speed to the roundabout is designed at 60km/h.

- **Proposed Bypass Lane**

A bypass lane has been provided for traffic on Tweed Valley Way for vehicles travelling northbound. The bypass lane will allow vehicles to remain travelling on Tweed Valley Way without slowing down due to the proposed roundabout to service the development. The bypass lane including tapers is approximately 900m in length.

Appropriate conditions have been applied with regard to road construction.

Engineering Matters/Earthworks and Proposed Fill Levels

The site is proposed to be filled to between RL 1.8m and 3.9m AHD, indicating that 1m to 3m depth of fill will be required. Approximately 85,000m³ of fill material is proposed to be imported to the site to raise the service centre building and refuelling areas above the Design Flood Level of RL 3.5m AHD.

The remaining car park and access areas proposes finished surface levels which range from between RL 1.8m AHD from the proposed access off Tweed Valley Way to RL3.675m AHD (northern side of the main building). The highest levels are located around the onsite effluent disposal areas showing RL 3.9 AHD.

The proposed perimeter levels for the development are similar to the finished level of the Pacific Highway and Tweed Valley Way located to the east and west.

Earthworks to the development site will create approximately 3.9Ha of disturbed area during construction. Conditions relating to erosion and sediment controls and groundwater/acid sulphate soils management plans have been applied.

Geotechnical information supplied with the application identifies the high water table in this location and also points to the site having long term settlement issues due to liquefaction (caused by shallow ground water and loose sands). Detailed conditions, requiring the provision of detailed engineering solutions and certifications have been applied.

Water Supply

Council's Enlighten GIS mapping system shows a 500mm water main located on Tweed Valley Way adjacent to the site. The 500mm ductile iron water main runs past the proposed highway service centre. The 500mm Ductile Iron (DICI) pipeline is the Murwillumbah to Tweed Heads water supply trunk main. This pipeline is essential for the supply of water to Tweed Shire residents. The pipeline was originally constructed in 1960 and sections of the pipeline were replaced between 1995 to 1999 to ensure its longevity.

The submitted engineering report states the following in relation to reticulated water supply:

"Tweed Shire Council have advised that they would not provide a new connection for the proposed development from the existing DN300 trunk water main in Tweed Valley way. Therefore alternative options for the provision of potable water and fire fighting for the proposed service station have been investigated."

The engineering report states that the development is proposing to use an existing 15mm diameter water connection and water meter coming off the existing trunk main which services Lot 11 DP 1134429 and extend this connection approximately 350m to the proposed development. The 15mm diameter connection is then proposed to fill a 22.5KL tank on site for the purpose of providing potable water to service the proposed highway service centre. The water tank is proposed to provide 1.5 days supply of potable water to the development.

The engineering report further states that a 50mm diameter supply main is proposed between the existing 15mm connection and the proposed water tank. Installation of a larger diameter main onto an existing much smaller diameter water main will not enable the supply of potable water at a faster rate.

Whilst this option is not ideal, as Council does not allow water connections to the Trunk Water Main (due to the significance of the supply line), the existing water meter cannot be moved from Lot 11. In order to service proposed Lot 112, an easement shall be created over the meter on Lot 11 and dedicated to proposed Lot 112. Lot 11 shall not connect to this meter as Council allows only one meter per property.

The developer will be required to protect the water main during construction of the roundabout and bypass lane and if required relocate it (at their cost) to ensure continued water supply. At Council's request, the applicant provided a written undertaking to doing this (if required) at their cost.

Detailed conditions of consent relating to the provision of water to the development have been applied.

Onsite Sewer Management

An onsite sewer system is proposed which has been assessed in detail by Council's Environmental Health staff. Detailed conditions have been applied to regulate the proposed system (utilising land application areas in the south and south western corners of the site).

Underground Fuel Storage

Six 110,000L double-walled fibreglass underground petrol storage tanks are proposed together with one 30,000L underground LPG vessel.

A condition has been applied requiring appropriate certification that the proposed underground storage system is in accordance with the NSW Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008, AS4897-2008 and industry best practice.

Flora and Fauna

The land is mapped as Substantially Cleared of Native Vegetation under the Tweed Vegetation Management Strategy. No significant vegetation or wetlands are mapped on the site. Vegetation in the vicinity of the site is limited to very small remnant patches located to the north (an isolated planting of eucalypts) and east (a linear patch of *Casuarina* forest) adjacent to the Pacific Highway.

The Flora and Fauna Assessment lodged with the application describes the existing vegetation on the subject site as introduced grasses with scattered Camphor Laurel and Swamp Oak trees, consistent with the mapping and aerial photography.

The consultant report did not identify any threatened flora or fauna species occurring on the site. Whilst it is possible that the Black-necked Stork or Grass Owl are able to use the site for foraging, it is considered that due to its isolated and disturbed nature, the site is unlikely to provide significant or valuable habitat for any of the threatened species recorded elsewhere in the locality.

The site is not mapped for purposes of Council's Tree Preservation Orders or identified as ecologically significant or sensitive. At a landscape scale, the site does not represent a significant linkage or corridor area. The area is not mapped as part of a regional or subregional corridor, and the site's proximity to the highway and existing surrounding landuses further preclude its corridor value.

Council's Natural Resource Management Unit have reviewed the application and advised that it is considered unlikely that the proposal will result in an unacceptable impact on threatened species, communities or ecological values. It was recommended that Council's standard landscaping condition be applied, requiring submission of a detailed landscaping plan for approval prior to issue of construction certificate. This condition has been applied.

Waste Management

Council's Waste Management Unit reviewed the proposed Preliminary Waste Management Plan (WMP). There appears to be adequate provision for waste storage on site once the site is operational and the applicant has committed to providing additional information on waste management practices of specialty commercial outlets once these businesses have been determined and leases

have been finalised. A commitment has been made in the WMP to dispose of waste at the Stotts Creek resource recovery centre and to provide additional bins on site to recovery reusable/recyclable construction material. The proposed development is considered appropriate with regard to waste management and conditions have been applied regarding the submission of a final detailed plan and compliance with that plan during construction and operation of the development.

Flooding

The site is to be filled to the design flood level. Appropriate conditions have been applied.

Aboriginal Cultural Heritage

A Cultural Heritage assessment was submitted with the application which concluded that the site was unlikely to contain items of significance as it has been substantially cleared and managed for agriculture. The application was referred to the Tweed Byron Local Aboriginal Land Council (TBLALC) through the Aboriginal Advisory Committee (AAC). No objections to the development were raised by the TBLALC/AAC. Conditions relating to the presence of a site monitor were requested by the AAC and these have been applied.

Amenity (24 hour operation)

The premises proposes 24 hour operation. In terms of amenity impacts, the location of the site is such that it is considered that impacts by way of noise or lighting are unlikely to be significant. Council's Environmental Health Officer has reviewed the application with regard to potential amenity impacts and applied standard conditions including compliance with the submitted acoustic report. The isolated and discrete nature of the subject site is considered to provide considerable protection against amenity impacts as a result of the proposed development.

Food Premises/Fit out

Individual tenancy fit-outs will be subject to future consent. Appropriate conditions have been applied.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development has undergone considerable land use suitability and compatibility assessment throughout the Planning Proposal/rezoning process. It has been concluded that the site is suitable for the rezoning and the proposed development.

S117 (2) Direction 5.3 - Farmland of State and Regional Significance on the NSW Far North Coast

This direction applies when a planning authority prepares a Planning Proposal for land mapped under the Northern Rivers Farmland Protection Project, Final map 2005.

The site is partially mapped as Regionally Significant Farmland.

The direction provides that a Planning Proposal must not 'rezone' regionally significant farmland for urban or rural residential purposes. The proposed development does not seek to 'rezone', (rather to permit an additional use), nor is

it for urban or rural residential purposes. Comment was sought from the Department of Primary Industries (DPI) with regard to the farmland mapping.

DPI advised that although the site is mapped this way, it is restricted by two major road networks and is small in size and irregular in shape. These features inhibit the use of the land for agricultural production. Additionally, an agricultural assessment was submitted as part of the application which concludes that the highway service centre site has limited agricultural value. The site is considered to be suitable for the use.

Further, Section 117 (2) Direction 5.4 and Highway Service Centre Policy Review (below) nominates the current site as the preferred location for such a development. As such, it is considered that S117 (2) Direction 5.3 does not provide an impediment to approval of the application.

Section 117 (2) Direction 5.4 - Commercial and Retail Development along the Pacific Highway, North Coast/Highway Service Centre Policy Review May 2014

This document provides a list for highway service centres which may proceed, in the area covered by the document. Two sites for Chinderah are nominated, southbound at the Chinderah Bay Drive interchange (existing service centre) and northbound on the western side of the highway in urban zoned land.

A Policy Review document of May 2014 notes that changes are required to the S117 direction to update it inline with latest design and site information. It specifically updates the information pertaining to a northbound service centre at Chinderah as follows:

Chinderah - northbound highway service centre is proposed to be located on the western side of the highway at the interchange with Tweed Valley Way instead of in the urban area of Chinderah.

The Policy Review notes that the revised policy will be implemented through the proposed North Coast Regional Growth Plan (which has not yet been finalised), through the Minister's amendment to the current S117 direction (has not yet occurred) or via Roads and Maritime Services (RMS) when they make independent comment on development applications.

In this regard, RMS have undertaken detailed review of the proposed development, both through the Planning Proposal and development application process. RMS have provided support for the new site and have raised no objections to the proposed development.

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

Public Submissions

Three submissions were received from the local community and business operators during the exhibition period. Two of these submissions objected to the proposed development application on varied grounds. The applicant was referred a copy of all submissions and provided a detailed response to all matters raised.

A summary of the issues raised in submissions is provided below:

- **Submission from the Cudgen Land Pty Ltd.**

Submission summary:

The submission expresses support for the development as it will provide a good alternative for families and travellers to source fuel and food travelling either north or south of the highway.

Comment:

Noted. No further consideration is required of this submission. Planning officers agree that the development will provide benefits in this regard.

- **Submission from the operators of the adjacent Melaleuca Station Crematorium and Memorial Gardens (via Planit Consulting).**

Submission summary:

The submission objects to the proposed development on the basis of visual impact that the development may have on the adjoining Melaleuca Crematorium and Memorial Gardens. The submission raises lack of appropriate detail of the Visual Impact Assessment and Landscape Plan in relation to ensuring that the visual impact of the development is adequately addressed.

The submission also raises objection to the earthworks (filling) proposed for the highway service centre site, recommended under the Engineering Impact Assessment Report prepared for the proposal. According to the submission, the level of proposed earthworks will negatively impact on the Melaleuca Crematorium and Memorial Gardens in the event of flood. An example is given from the 2013 flood event when the floodwater came within 5 cm from the level of the crematorium and reception centre. In this regard, the submission also raises concern about the culvert under the Pacific Highway and its ability to carry the floodwater in light of recent earthworks (fill) on the other side of the highway for the Australian Bay Lobster site. The submission calls for additional flood modelling to be undertaken for the highway service centre site.

Objection is also raised to the proposed traffic layout, particularly the level of consideration given to the visitors of the Melaleuca Crematorium and Memorial Gardens. The submission concludes that the development should be accommodated on an alternative site, with the Chinderah intersection suggested as an example.

Comment:

The visual and flooding impact of the proposed earthworks have been subject to detailed assessment by various Council staff with detailed conditions applied in order to regulate impacts. Further information was sought from the applicant in terms of landscaping, particularly the provision of a landscaped buffer between the two land uses. Subject to the recommended conditions, the proposed earthworks are considered to be acceptable with regard to visual and flooding impacts.

In relation to this issue, the applicant asserts that the operators of the crematorium do not have any proprietary rights to the scenic amenity provided by the adjacent property (the development site). At present it could be seen that the

existing crematorium derives a commercial advantage from the adjoining property. Notwithstanding, the applicant has advised that the proponent has already planted a line of screen trees between the two sites to mitigate visual impacts and is amenable to completing further landscaping in accordance with a landscaping plan which will be conditioned to be provided prior to issue of construction certificate. This approach is considered to be appropriate.

In relation to filling impacts, the applicant has stated that the assessments provided are detailed and in accordance with Council policy requirements. Assessment by Council staff generally concurs with the assessments presented by the applicant in that the proposal will not have any significant adverse effects on the area in terms of flooding. The applicant contends that the assertions in the submission are unwarranted.

In relation to traffic impacts, at Council's suggestion, the applicant revised the originally submitted roundabout configuration which now incorporates a north bound slip lane to provide for through traffic on Tweed Valley Way. Detailed assessment has been given to the application by Council's Engineers and it is now concluded that subject to conditions, the anticipated traffic impact is minor and the development is able to be supported.

With respect to the existing access point to the Crematorium, the proposed arrangement removes the existing protected right turn lane for northbound traffic into the facility, as it is located at a conflict point. Instead of turning right, northbound traffic wanting to enter the facility will continue a short distance north and turn around at the new roundabout, allowing a safer left hand turn at the entry. A right turn out of the Crematorium is still permitted, through the roundabout and then onto the Motorway (either north to Tweed, or south to Ballina). Left turns southbound are unaffected. Longer term, there is also opportunity in the concept design for the Crematorium to connect directly to the roundabout. In email correspondence dated 7 November 2014, Planit Consulting advised that their client was happy with the revised access arrangements.

In relation to the comments that the proposal should be located on an alternative site, the applicant has initiated the process of a Planning Proposal/rezoning to facilitate the subject application and this process has indicated that the site is suitable for the proposed development. The Chinderah intersection site is not suitable for a variety of reasons and the proposed site is considered to be appropriate.

- **Submission from a local resident:**

Submission summary:

The submission objects to the proposed development on the basis of the increased noise, increased lighting in the area and visual impact on the rural landscape. The submission requests additional measures to mitigate those impacts, and lists few examples: appropriate road surfacing to minimise tyre noise and vibration, road signage so trucks and cars could begin slowing sometime before the centre to reduce braking and gear changes, sound barriers such as earth mounds to minimise noise and lighting direction and appropriate screening by trees to reduce the visual effects.

Comment:

The application was supported by a Visual Impact Assessment and Acoustic Assessment.

Significantly, the Visual Impact Assessment provides that:

- The site does not contain any distinctive or landmark visual elements which would be obliterated by its development,
- The service centre building and attendant car and truck canopies are all below 6.0 metres in height. The car canopy link is approximately 7.9m high to the top of the supporting steel columns. The total building area is 1270m². The total site area covered by the building, canopies and paved driveways, car parking etc. is 2.66 ha. In the context of a site area of 3.9 hectares the apparent height, bulk and scale of the development is considered to be reasonable and visually consistent with its setting having regard to the location of the site,
- The project design incorporates generous landscaped areas (approx. 12,344m²) which have been designed to achieve appropriate softening and integration of the development into the highway landscape.

In relation to potential visual impacts, the assessment relies on the Tweed Shire Scenic Landscape Evaluation study, which provides in part that *'the foreground to the Pacific Highway should remain open to views of canefields and/or natural landscape without advertising signs or developments'*.

It is considered that the proposed development will not have a significant adverse visual impact on the foreground canefields (when viewed from Terranora or Cudgen Ridges) or the natural landscape. Review of the submitted project photomontages and site perspectives, it is apparent that the proposed development occurs on a small piece of the coastal floodplain which is nestled in to the fork of the Tweed Valley Way and Pacific Highway interchange, adjacent to the not insubstantial Melaleuca Station development and the Australia Bay Lobster plant. These existing developments form a small cluster of development adjacent to the highway which is not unreasonable in such a location, nor unsightly when viewed in context from the surrounding ridges. It is noted the signage has been removed from the current application and will be subject to detailed assessment under separate application.

In terms of impacts from night lighting (the centre is proposed to operate 24 hours per day), it is evident that there is already a strip of night-lighting that delineates the Pacific Highway and Tweed Valley Way in this location. Some of this light (particularly from the Tweed Valley Way overpass) spills onto the subject site at present. Whilst additional lighting from the centre will be visible at night from Terranora and Cudgen Ridges, by virtue of the site being nestled right into the fork of the two roads in a location that is already night lit, the impact is not considered to be significant, nor out of context. Conditions to regulate lighting impacts have been applied as an additional safeguard.

The submitted Acoustic Report makes the following recommendations aiming to reduce the traffic noise:

- Surface finish of drive way/drive-thru for grade should be low-squeal i.e. no polished or painted concrete etc;
- No metal speed bumps. Speed bumps should be built into the finished surface of the car park;
- Any grates or other protective covers in the car parks and access driveways must be rigidly fixed in position to eliminate clanging, and be maintained.

In relation to the findings of the Acoustic Report, Council's Environmental Health Officer has provided a detailed assessment. Suitable conditions including compliance with the acoustic report have been applied.

Public Authority Submissions

Authority	Comments
Rural Fire Service (Integrated Development under S100B of the Rural Fires Act 1997)	The site is bushfire prone and the development comprises a subdivision. Thus integrated referral was required. The RFS issued a Bushfire Safety Authority.
Department of Primary Industries, Office of Water (Integrated Development under S91 of the Water Management Act 2000)	This referral was required as the proposed development requires excavation that will intercept the water table. Office of Water have provided General Terms of Approval requiring the applicant to obtain a controlled Activity Approval. These conditions have been applied.
Roads and Maritime Services (Integrated Development under Clause 104 - Traffic Generating Developments of SEPP (Infrastructure) 2007)	RMS were heavily involved in negotiations with the applicant and Council staff in relation to a suitable road outcome. Final comments were provided by RMS on 4 February 2015. RMS note that the proposed round-about on Tweed Valley Way is under Council's control. No objection is raised to the proposal. All works associated with the Pacific Highway will be required to be covered by an RMS 'Works Authorisation Deed' and such works will be required to be carried out by an RMS authorised contractor. RMS identify that provision must be made for an obligation free rest area which should include picnic tables and shade. Appropriate conditions have been applied.
Roads and Maritime Services under Clause 18 of SEPP 64 - Advertising Signage	RMS have not issued concurrence to the signage proposal, nor are Council planning staff satisfied with the design. This element of the proposal has been removed from the application and will be subject to separate, future application.
Department of Primary Industries (Agriculture NSW)	This referral was undertaken as the site is partially mapped as regionally significant farmland. DPI have provided comment that although the site is mapped as regionally significant farmland it is restricted by two major road networks and is small in size and irregular in shape. These features

Authority	Comments
	<p>inhibit the use of the land for agricultural production. Advice was given that the site is flood prone and if approved, conditions of the approval must ensure that runoff and flood water are managed such that there are no offsite impacts to surrounding farms. It is considered that appropriate conditions have been applied by Council staff in this regard.</p>
NSW Police	<p>NSW Police were not formally referred a copy of the application however discussions were held with officers during the assessment process. A concern was raised with the potential of the development to increase fraud offences in the Shire, which are currently trending upwards.</p> <p>NSW Police advise that <i>'fail to pay for fuel offences contribute to over 50% of all frauds reported in the Command. Unfortunately, the BP Service Centre at Chinderah contributes to over 75% of all fail to pay offences in the Command. This is no doubt due to its location on the Pacific Motorway and the sheer volume of road users utilising the facility. We are working with BP to try and address this problem. However the simple solution of paying for fuel before it is pumped cannot be implemented at BP Chinderah due to design of pumps. We have been advised by BP that alterations would cost millions of dollars to rectify this situation.'</i></p> <p><i>It is requested that the DA approval for DA 13/0464 include a condition that any petrol pump facility installed in this development be of such a manufacture as to require 'pay before you pump' operation. We would strongly object to installation of any pumps that cannot be operated in this manner'.</i></p> <p>This issue has been discussed with the developer who has indicated their support for a condition requiring a 'pay before you pump' arrangement at the proposed development. An appropriate condition has been applied.</p>

Authority	Comments
Tweed Byron Local Aboriginal Land Council	<p>TBLALC were referred a copy of the application and a presentation given at the Aboriginal Advisory Council meeting of 2 May 2014. The following was resolved at the meeting:</p> <p>RECOMMENDATION:</p> <ol style="list-style-type: none"> 1. That the Aboriginal Advisory Committee makes a further recommendation that the Tweed Byron Local Aboriginal Land Council be notified by Council at the commencement of the proposed Chinderah Highway Service Centre, 9392 and 9441 Tweed Valley Way, Chinderah project DA13/0469; and 2. That a Tweed Byron Local Aboriginal Land Council representative make intermittent visits to the proposed Chinderah Highway Service Centre, 9392 and 9441 Tweed Valley Way, Chinderah development DA13/0469 to ensure compliance with the duty of care towards cultural heritage protection; and 3. The Aboriginal Advisory Committee reaffirms the previous recommendation made at its meeting on 7 February 2014 requesting a monitor to be on site during any ground disturbance works that go below the level of agriculture (approximately 0.5m) at the proposed Chinderah Highway Service Centre, Pacific Highway, Chinderah DA13/0469. <p>Points 2 and 3 above have been formulated into conditions and applied.</p>

None of the submissions received are considered to present a reason for refusal of the application. The recommended conditions of consent are considered to appropriately respond to the matters raised in submissions, both from members of the community and public authorities.

(e) Public interest

Subject to the recommended conditions and based upon the positive social impact and improvement in highway services and facilities offered by the proposed development, the development is considered to be in the public interest. It is considered that the development will provide important services for the community without significant adverse impact on the local community and should thus be supported.

OPTIONS:

That Council:

1. Approves the application in accordance with the recommended conditions; or
2. Refuses the application.

Council officers recommend Option 1.

CONCLUSION:

The development proposal has been subject to a lengthy and detailed assessment process for the Planning Proposal as well as through the Development Application process. It is considered that the foregoing report has demonstrated that the proposal is suitable for approval, subject to detailed conditions of consent.

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.

6 [PR-PC] Development Application DA14/0908 for a Carport and Verandah Additions and Various Alterations to Unit 1 at Lot 1 Section 3 DP 413085 No. 84 Tweed Coast Road, Pottsville

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0908 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:

Consent is sought for alterations and additions to a unit within a three unit townhouse development at 84 Tweed Coast Road, Pottsville.

The existing townhouse development unit was approved on the site in 1983 under Permit Number T4/2607. Council does not have an approved plan, however, the conditions for this approval require the provision of four car spaces on the site. The development contains three single garages at the rear of the site. The fourth space is not formalised on site.

The site zoned R2 - Low Density Residential under Tweed Local Environmental Plan 2014.

The site is adjacent to a large vacant block of Council managed Crown land and opposite Pottsville Beach Primary School. The site is one of only two allotments on the northern side of the roundabout to Elfran Avenue. There are no significant streetscape features in the immediate area, which is categorised mainly by the existence of low, scrub vegetation and further north, the school parking area and bus drop off zone.

The site has an area of 714.5m².

The proposed alterations and additions comprise the following:

- Addition of a carport (6m x 6.27m) in the front setback. The proposal reduces the front setback from 7.5m to 1.5m;
- Addition of a verandah (6m x 3.76m) in the front setback. The proposal reduces the front setback from 7.5m to 1.5m;
- **Internal reconfiguration of Unit 1 kitchen and living/dining spaces incorporating removal of an internal wall, movement of the existing Bedroom 1 wall and inclusion of new shelving;**
- **Replacement of Unit 1 Bedroom 1 window with slightly smaller window to account for the wall relocation;**
- **Internal reconfiguration of existing Unit 1 bathroom, laundry and WC to create an ensuite for Bed 2;**

- **Inclusion of robes in Bedrooms 1 and 2 (Unit 1);**
- **Replacement of window in Unit 1 dining room with sliding door access into proposed verandah; and**
- **Modification of existing north facing verandah and inclusion of a privacy screen to the portion allocated to Unit 2.**

There is an existing 1.8m high solid fence on the front boundary which does not appear to have Council approval.

Note that the components of the application in **BOLD** above have been entirely or substantially completed prior to consent being issued.

The applicant has been served with a Cease and Show Cause Notice for the works. They have responded to the Notice and advised that works commenced in November 2014, prior to the application being submitted to Council on 23 December 2014.

The applicant has twice been advised formally that Council planning staff are not supportive of the proposed double carport and verandah in the front setback due to non compliance with Development Control Plan Section A1 (Part B). Due to the fact that the existing design of the unit development provides a constraint to complying with current controls, a compromise of a 4m wide (single) carport and verandah area has been discussed with the applicant and is considered to represent an acceptable outcome. The applicant has advised that such a design would not meet their needs.

The application is being reported to Council as it has been called up by Councillors Byrne and Youngblutt.

The application is recommended for refusal by planning officers. Should the application be refused in accordance with the recommendation, the applicant will be required to submit an application for a Building Certificate for the works that have been carried out without approval. Development consent cannot be issued for works that have already been carried out.

RECOMMENDATION:

That:

- A. Development Application DA14/0908 for a carport and verandah additions and various alterations to Unit 1 at Lot 1 Section 3 DP 413085 No. 84 Tweed Coast Road, Pottsville be refused for the following reasons:**
- 1. The development application is contrary to Clause 1.2 of the Tweed Local Environmental Plan 2014 in that the proposed development does not meet the aims of the plan.**
 - 2. The development is inconsistent with Development Control Plan Section A1 - Residential Development Code (Part B), particularly:**
 - **Design Control 1 - Public Domain Amenity (Streetscape)**
 - **Design Control 2 - Site Configuration (Deep Soil Zones)**
 - **Design Control 2 - Site Configuration (Impermeable Site Area)**
 - **Design Control 2 - Site Configuration (Landscaping)**
 - **Design Control 3 - Setbacks (Front setbacks)**
 - **Design Control 4 - Carparking and Access (Carparking Generally)**

- **Design Control 4 - Carparking and Access (Carports)**
3. **The development application is not considered to be in the public interest.**
 4. **Approval of the proposed development would create an undesirable precedent.**
- B. A Penalty Infringement Notice be issued to the builder in relation to unlawful works undertaken to date.**

REPORT:

Applicant: Parameter Designs
Owner: Mr Ian P Moorfield & Mrs Linder C Moorfield
Location: Lot 1 Section 3 DP 413085 No. 84 Tweed Coast Road, Pottsville
Zoning: R2 - Low Density Residential
Cost: \$48,000

Background:

The existing three unit townhouse development was approved on the site in 1983 under Permit Number T4/2607. Council does not have an approved plan however the conditions for this approval require the provision of four car spaces on the site. The development contains three single garages at the rear of the site. The fourth space is not formalised on site.

The site is adjacent to a large vacant block of Council managed Crown land and opposite Pottsville Beach Primary School. The site is one of only two allotments on the northern side of the roundabout to Elfran Avenue. There are no significant streetscape features in the immediate area, which is categorised mainly by the existence of low, scrubby vegetation and further north, the school parking area and bus drop off zone.

The applicant contends that the double carport at the front of the site is required because the small garages at the rear of the site are inconveniently located, too small and unable to be easily accessed.

An initial site inspection was undertaken 6 February 2014. This revealed that significant work had been commenced on the site. The carport and verandah structures had not been built. The builder was telephoned and advised to cease works. A Cease and Show Cause notice was sent to the applicant.

A further site inspection was undertaken with Council's Building Surveyor, the site builder and the owners. In this inspection the extent of the internal works was viewed. Most works had been completed, including:

- New kitchen
- Movement of internal wall
- New bathroom/ensuite
- Laundry nearly finished
- Robes installed in all rooms
- Various windows and doors replaced as per plan
- External works as per previous inspection.

The applicant was advised they must respond to Council's Cease and Show Cause letter dated 11 February 2015. The single carport scenario was again discussed with the applicant.

On 2 March the applicant responded to Council's letter, however, they had not amended the plans as discussed, and had not included a response to the request to Show Cause.

On 10 March the applicant responded to the Show Cause notice and provided a list of works carried out and a list of the tradespeople who carried out the works.

On 18 March a final letter was sent to the applicant giving a final chance to amend the design within 7 days and seeking further (more detailed) Show Cause information from the Builder (to ascertain exactly what work had been carried out to determine whether a Penalty Infringement Notice (PIN) should be issued).

The applicant advised by email 20 March 2015 that they had spoken to the Councillors and that they wished for the application to be called up. Planning staff received notice of the call-up to Council on 19 March 2015.

The application is recommended for refusal based on non compliance with Councils Development Control Plan Section A1 - Residential Development Code (Part B). It is considered that approval of the application would undermine the standards set by the Section A1 (Part B) and set an undesirable precedent.

SITE DIAGRAM:

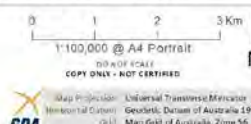


Locality Plan

Lot 1 Section 3 DP 413085
No. 84 Tweed Coast Road, Pottsville

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 approximate only. It should not be used for survey or construction purposes and prior to any excavations a "Dig Before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of issue.

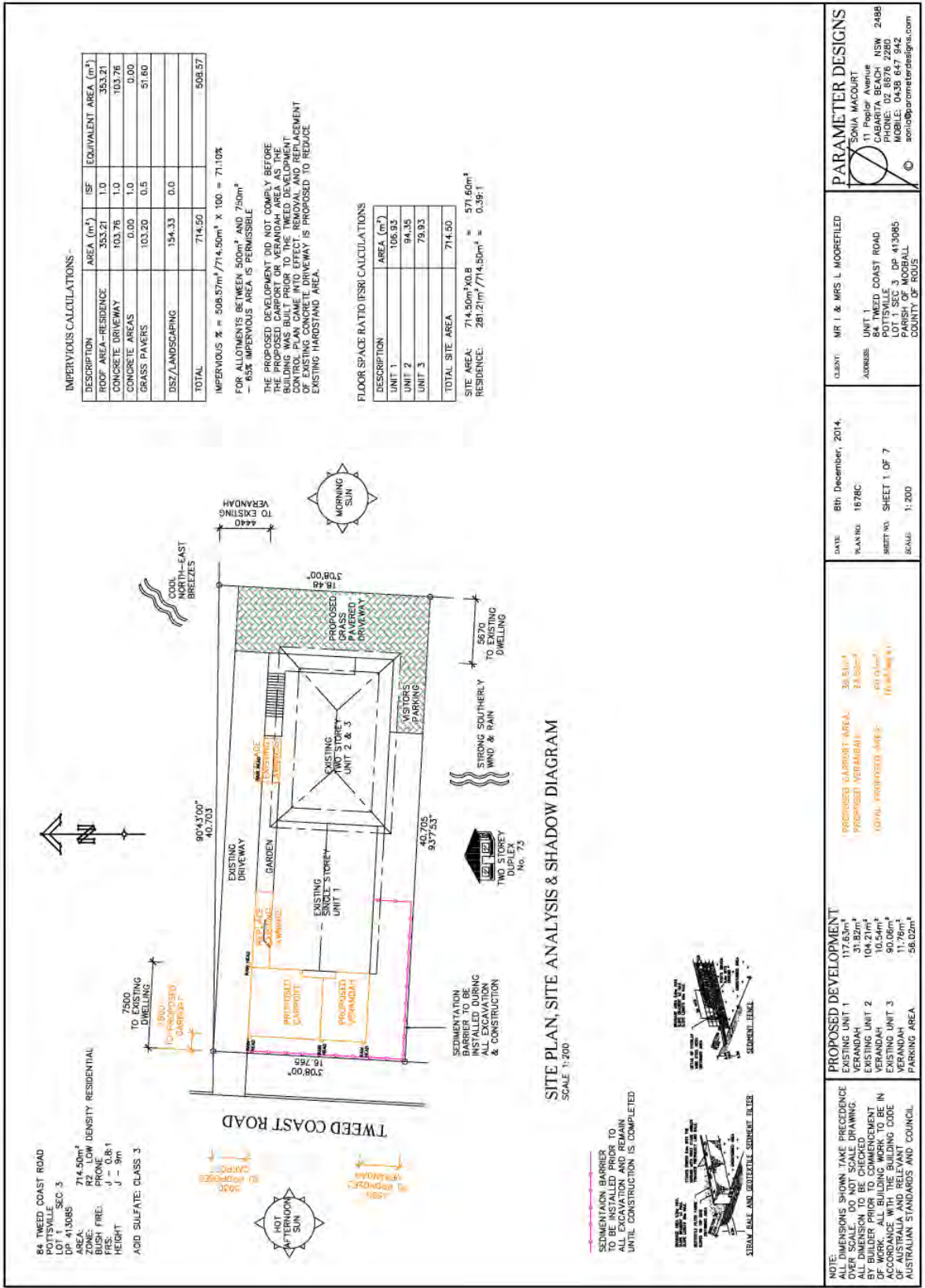
Cadastral: 24 March, 2015
© Land and Property Management Authority (LPMA) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

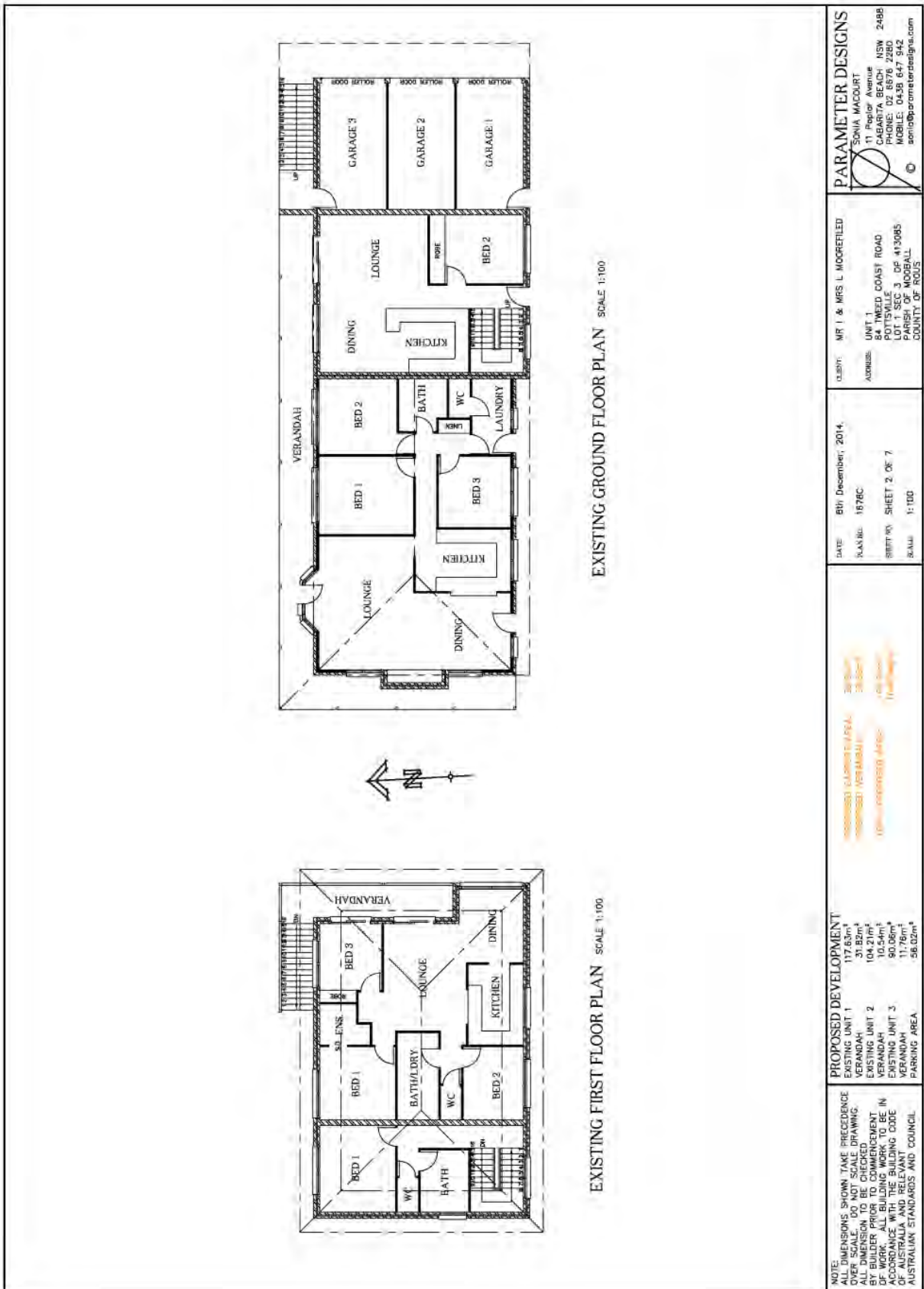


Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T (02) 6670 2400 / 1300 292 872
F (02) 6670 2429
W www.tweed.nsw.gov.au
E planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:

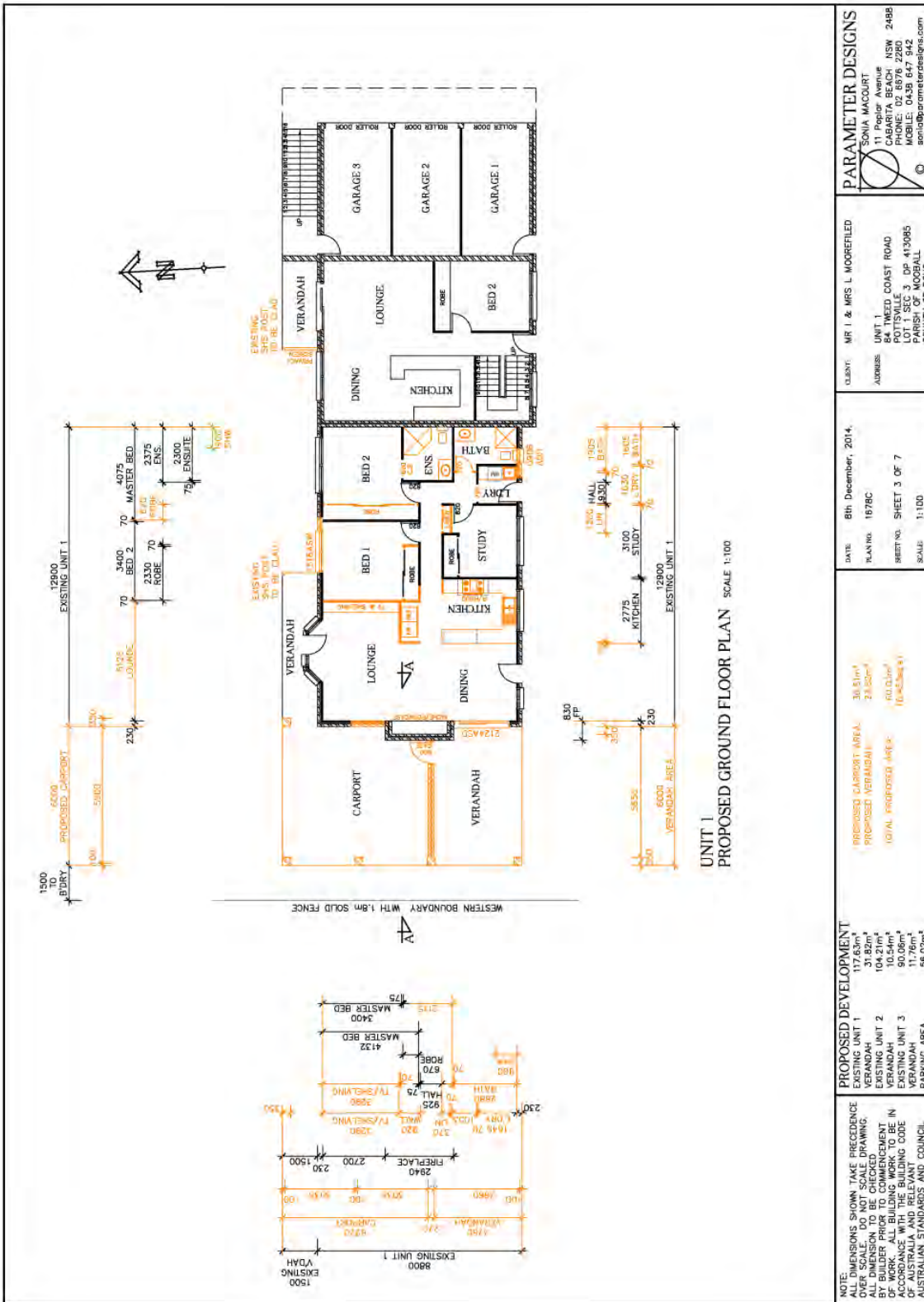


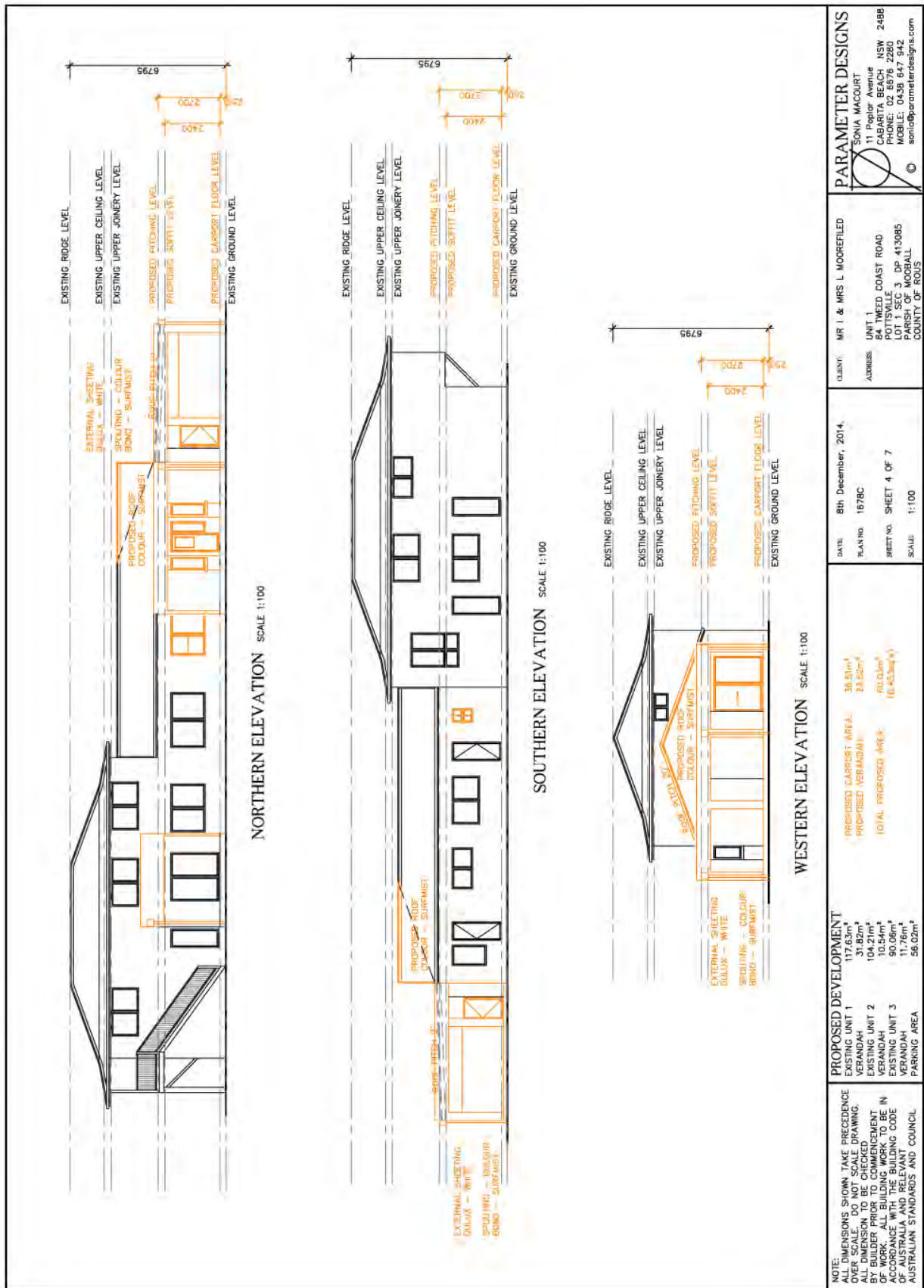


EXISTING GROUND FLOOR PLAN SCALE 1:100

EXISTING FIRST FLOOR PLAN SCALE 1:100

<p>NOTE: ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER ALL DIMENSIONS TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND COUNCIL STANDARDS AND COUNCIL.</p>	<p>PROPOSED DEVELOPMENT</p> <table border="1"> <tr><td>EXISTING UNIT 1</td><td>117.63m²</td></tr> <tr><td>VERANDAH</td><td>31.82m²</td></tr> <tr><td>EXISTING UNIT 2</td><td>104.21m²</td></tr> <tr><td>VERANDAH</td><td>10.54m²</td></tr> <tr><td>EXISTING UNIT 3</td><td>90.08m²</td></tr> <tr><td>VERANDAH</td><td>11.79m²</td></tr> <tr><td>PARKING AREA</td><td>58.02m²</td></tr> </table>	EXISTING UNIT 1	117.63m ²	VERANDAH	31.82m ²	EXISTING UNIT 2	104.21m ²	VERANDAH	10.54m ²	EXISTING UNIT 3	90.08m ²	VERANDAH	11.79m ²	PARKING AREA	58.02m ²	<p>DATE: 8th December, 2014. PLAN NO: 1878C SHEET NO: SHEET 2 OF 7 SCALE: 1:100</p>	<p>CLIENT: MR I & MRS I MOOREFIELD ADDRESS: UNIT 1, BEND COAST ROAD, ROTTSVILLE, QLD 4130B5, PARISH OF MOBBALL, COUNTY OF ROUS</p>	<p>PARAMETER DESIGNS SONIA MACCOURT 11 Poplar Avenue CAGARITA BEACH NSW 2488 PHONE: 0438 647 542 MOBILE: 0438 647 542 sonia@parameterdesigns.com</p>
EXISTING UNIT 1	117.63m ²																	
VERANDAH	31.82m ²																	
EXISTING UNIT 2	104.21m ²																	
VERANDAH	10.54m ²																	
EXISTING UNIT 3	90.08m ²																	
VERANDAH	11.79m ²																	
PARKING AREA	58.02m ²																	





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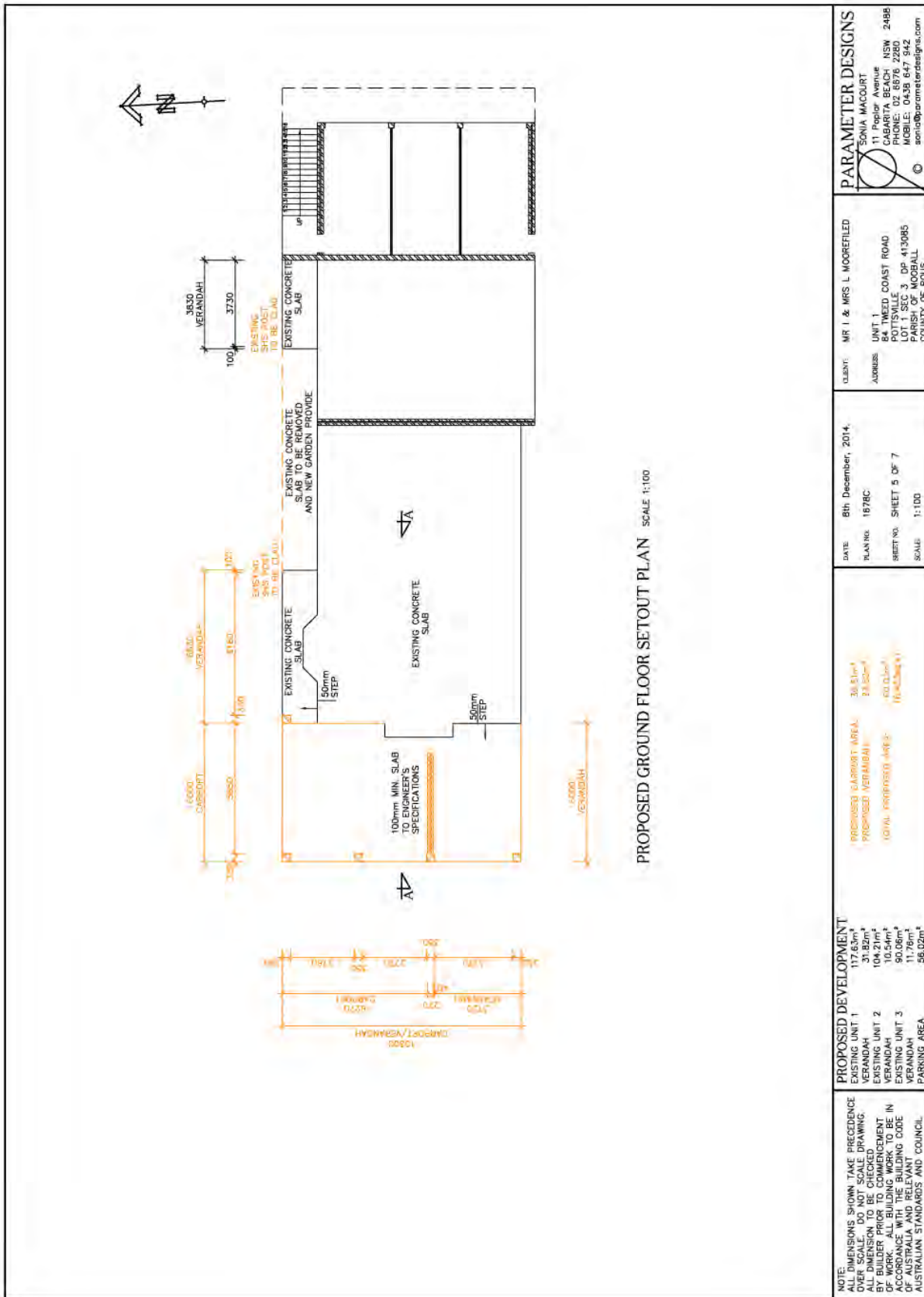
CLIENT: MR I & MRS L MOOREFIELD
UNIT 1
84 TWEED COAST ROAD
POTTISVILLE
LOT 1 SEC 3 DP 413085
PART OF MOOBALL
COUNTY OF RUGBY

DATE: 8th December, 2014.
PLAN NO: 1878C
SHEET NO: SHEET 4 OF 7
SCALE: 1:100

PROPOSED CARPORT AREA: 38.51m²
PROPOSED VERANDAH: 28.52m²
(TOTAL PROPOSED AREA: 67.03m²)

PROPOSED DEVELOPMENT	
EXISTING UNIT 1	117.63m ²
VERANDAH	31.82m ²
VERANDAH	10.21m ²
EXISTING UNIT 3	90.06m ²
VERANDAH	11.76m ²
PARKING AREA	56.02m ²

NOTE:
ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING.
ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. DIMENSIONS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL



ROOF PLAN SCALE 1:100

SECTION A-A SCALE 1:50

BOX GUTTER 1
CARPORT/VERANDAH ROOF CATCHMENT AREA: 61.50m²
Q(L/S) = 5.17
WIDTH 200mm(WX)145mm(H)
RAIN HEAD 160mm(WX)160mm(D)
DOWN PIPE 100mm DIA. MIN.
100X75mm REC/50

BOX GUTTER 2
ENTRY ROOF CATCHMENT AREA: 38.80m²
Q(L/S) = 3.26
WIDTH 200mm(WX)120mm(H)
RAIN HEAD 130mm(WX)140mm(D)
DOWN PIPE 100mm DIA. MIN.
100X75mm REC/50

BOX GUTTER 3
VERANDAH ROOF CATCHMENT AREA: 5.27m²
Q(L/S) = 0.44
WIDTH 200mm(WX)110mm(H)
RAIN HEAD 100mm(WX)120mm(D)
DOWN PIPE 100mm DIA. MIN.
100X75mm REC/50

TE DOWN

TE DOWN	DESCRIPTION	TABLE	ULLET FORCE	ALLOW FORCE
TE DOWN	CHEMICAL EXPANSION OR FIBRE REINFORCERY PASTERS @ 160 CTRS. TO MANUFACTURERS SPECIFICATIONS	9.16	11.00	NOM
TE DOWN	RAFTERS TO VERANDAH BEAMS VA.2 FRAMING ANCHOR WITH 42.68 NAILS EACH END @ 450 CTRS. ST/425 @ 450 CTRS.	9.19	5.60	5.90
TE DOWN	RAFTERS TO VERANDAH BEAMS VA.2 FRAMING ANCHOR WITH 42.68 NAILS EACH END @ 300 CTRS	9.21	3.80	5.90
TE DOWN	RAFTERS TO VERANDAH BEAMS VA.2 FRAMING ANCHOR WITH 42.68 NAILS EACH END @ 175 CTRS @ 160 CTRS	9.22	3.80	3.90
TE DOWN	RAFTERS TO VERANDAH BEAMS VA.1 FRAMING ANCHOR WITH 42.68 NAILS EACH END @ 300 CTRS	9.22	1.00	3.90
TE DOWN	RAFTERS TO VERANDAH BEAMS VA.1 FRAMING ANCHOR WITH 42.68 NAILS EACH END @ 160 CTRS	9.22	12.00	17.00
TE DOWN	WITHIN 200 OF LODGES 175mm HD. 14 TYPE 17 BATTENS @ 900 CTRS	9.25	1.50	9.30
TE DOWN	GENERAL AREA 1750X30mm @ DEFORMED SHANK NAILS 1 NAIL ONLY TO BE USED WITH 2500mm WIDE BATTEN @ 900 CTRS	9.25	0.60	3.80
TE DOWN	VERANDAH/ CARPORT RAFTERS @ 2° ROOF PITCH REINFORCEMENT WITH 150mm L/A TO VERTICAL	9.26	14.30	20.00
TE DOWN	BEAMS TO BHS POSTS VA 1500X80X160 ANGLE WITH A MIN. OF 75X75MM @ 90° BHP POST WITH BOLT 38mm FROM SIDE OF BEAMS TO MASH/RYSLID	9.26	6.50	30.00
TE DOWN	SLAB AND 150mm FROM BATTENS	9.26	11.10	20.00

COLOUR BOND - TRIMDECK ROOF SHEETING
@ 2° ROOF PITCH
COLOUR - SURFMIST

ROOF BATTENS @ 900 CTRS.
MAX. SPAN 900
70X45 MPT10 OR EQUIVALENT

VERANDAH/CARPORT BEAM MAX. SPAN .3370
240X35 15 SMART LVL

VERANDAH BEAMS MAX. SPAN
6180 TO ENGINEER'S SPECIFICATIONS
3730 170X35 15 SMART LVL

VERANDAH RAFTERS @ 2° ROOF PITCH
MAX. SPAN 1500
120X35 15 SMART LVL

VERANDAH/CARPORT RAFTERS @ 2° ROOF PITCH
MAX. SPAN 900 TO ENGINEER'S SPECIFICATIONS
300X35 15 SMART LVL

ROOF BEAM MAX. SPAN 2620
165X65 17 SMARTLAM GL17C

LINTELS (SINGLE/UPPER LEVEL)
L1 - 2400 190X35 15 SMART LVL
100X100 GALV. LINTEL 9.5kg/m

CONCRETE FOOTINGS @ SLAB DESIGN TO ENGINEER'S SPECIFICATIONS

PROPOSED DEVELOPMENT

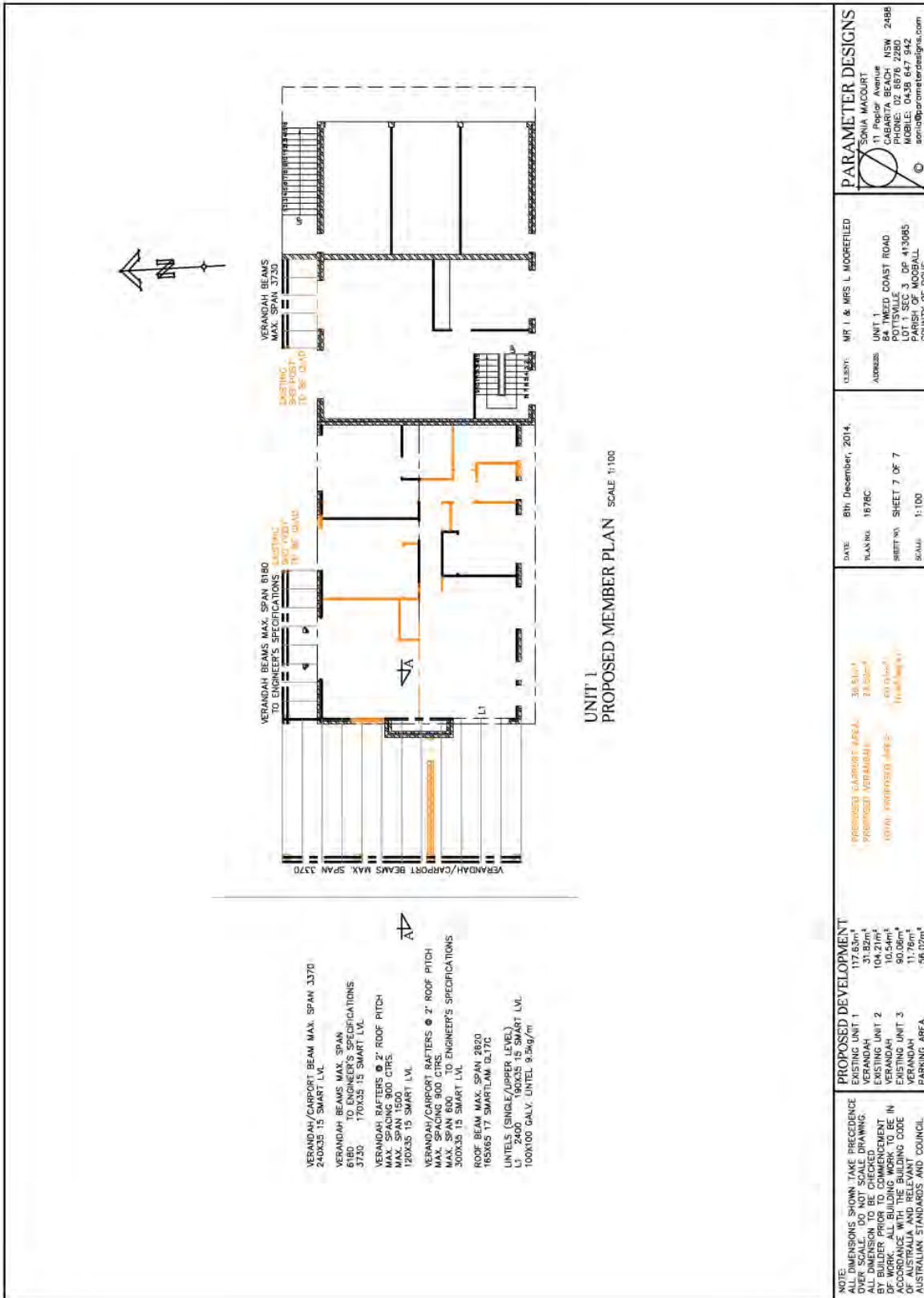
EXISTING UNIT 1	EXISTING UNIT 2	EXISTING UNIT 3	PARKING AREA
117.63m ²	31.92m ²	104.21m ²	11.62m ²
VERANDAH	VERANDAH	VERANDAH	
EXISTING UNIT 1	EXISTING UNIT 2	EXISTING UNIT 3	
117.63m ²	31.92m ²	104.21m ²	11.62m ²
PROPOSED CARPORT (AREA)	PROPOSED VERANDAH	PROPOSED VERANDAH	
38.80m ²	61.50m ²	5.27m ²	
PROPOSED CARPORT (AREA)	PROPOSED VERANDAH	PROPOSED VERANDAH	
38.80m ²	61.50m ²	5.27m ²	

NOTE: DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL.

CLIENT: MR I & MRS L MOOREFIELD
UNIT 1
84 TWEED COAST ROAD
POTTSVILLE
LOT 1 SEC 3 DP 413085
PARISH OF MOOBALL
COUNTY OF ROUS

DATE: 8th December, 2014
PLAN NO: 1578C
SHEET NO: SHEET 6 OF 7
SCALE: 1:100, 1:50

PARAMETER DESIGNS
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POTTSVILLE NSW 2486
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sonia@parameterdesigns.com



VERANDAH/CARPपोर्ट BEAM MAX. SPAN 1370
240X35 15 SMART LVL

VERANDAH BEAMS MAX. SPAN
8180 TO ENGINEER'S SPECIFICATIONS
3730 170X25 15 SMART LVL

VERANDAH BATTERS @ 2' ROOF PITCH
MAX. SPAN 1500
120X35 15 SMART LVL

VERANDAH/CARPपोर्ट BATTERS @ 2' ROOF PITCH
MAX. SPAN 800 TO ENGINEER'S SPECIFICATIONS
300X35 15 SMART LVL

ROOF BEAM MAX. SPAN 2820
165X65 17 SMARTLVL 0.37C

LINTELS (SINGLE/SUPPER LEVEL)
LVL 240X35 15 SMART LVL
100X60 GALV. LINTEL 3.5kg/m

PARAMETER DESIGNS
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MOBILE: 0438 647 942
sonia@parameterdesigns.com

CLIENT: MR I & MRS L MOOREFIELD
ADDRESS: UNIT 1, WOOD COAST ROAD
POTTSVILLE
LOT 1 SEC 3 DP 413095
PARISH OF MOODBALL
COUNTY OF ROSS

DATE: 8th December, 2014.
PLAN No: 1878C
SHEET NO: SHEET 7 OF 7
SCALE: 1:100

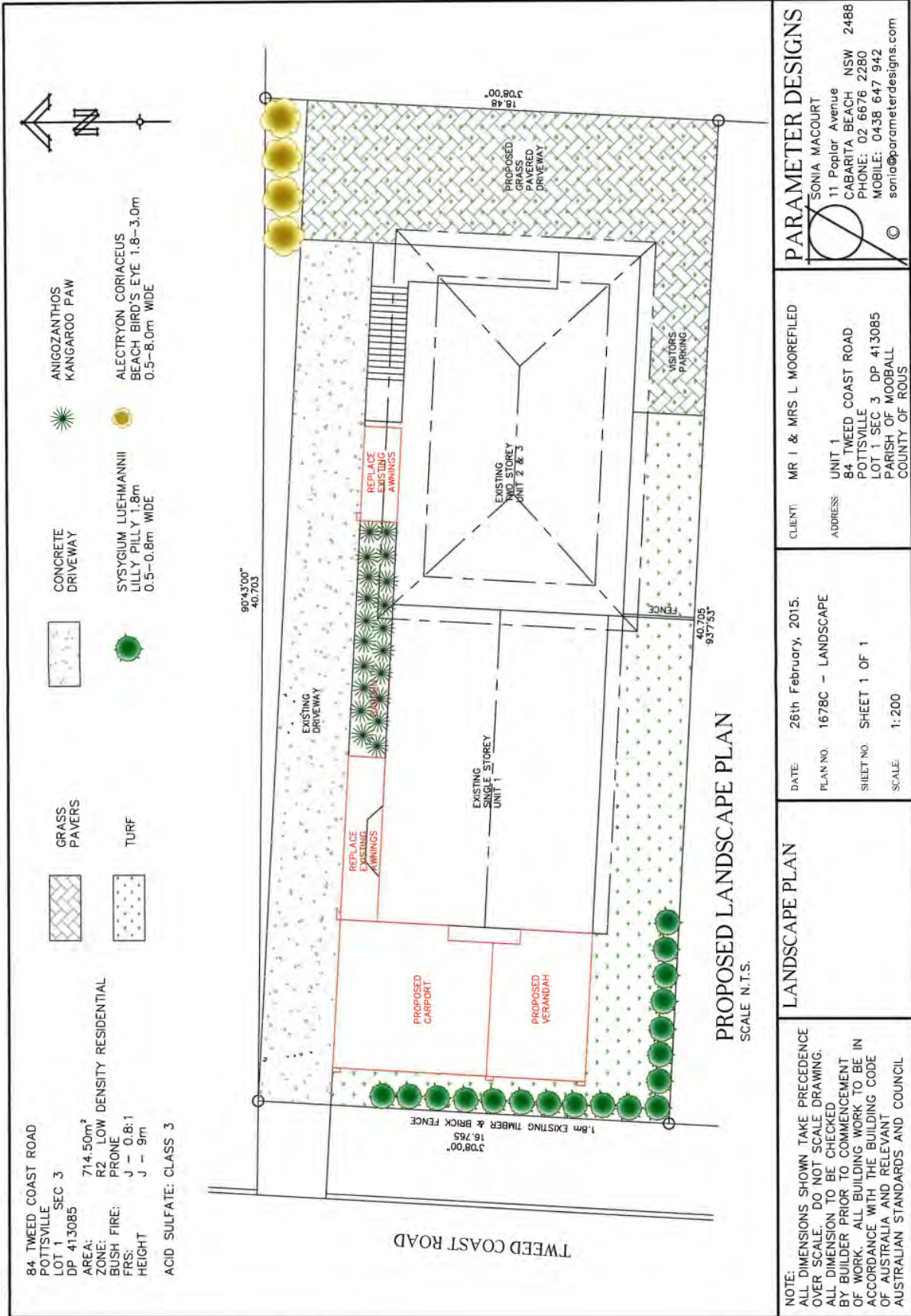
36.51m²
28.00m²
68.51m²
(10.00m² verandah)

PROPOSED CARPORT AREA
PROPOSED VERANDAH
(EXISTING VERANDAH)

PROPOSED DEVELOPMENT
EXISTING UNIT 1 117.63m²
VERANDAH 31.82m²
EXISTING UNIT 2 104.21m²
VERANDAH 10.54m²
EXISTING UNIT 3 117.28m²
VERANDAH 11.72m²
PARKING AREA 58.02m²

NOTE:
ALL DIMENSIONS SHOWN TAKE PRECEDENCE
OVER ANY DIMENSIONS SHOWN ON
ANY DRAWINGS.
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OF WORK. ALL BUILDING WORK TO BE IN
ACCORDANCE WITH THE BUILDING CODE
OF AUSTRALIA AND RELEVANT
AUSTRALIAN STANDARDS AND COUNCIL

UNIT 1
PROPOSED MEMBER PLAN SCALE 1:100



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

Clause 1.2 – Aims of the Plan

It is not considered that the proposal demonstrates consistency with the aims of the plan as it undermines Council's shirewide policy on residential development.

Clause 2.3 – Zone objectives and Land use table

The development maintains the residential use of the site and would maintain consistency with the zone objectives. It is noted that a townhouse development would not be permissible on the site under current controls.

Clause 4.3 - Height of Buildings

There is no change to the building height. The proposed carport and verandah have a height of approximately 3.1m. The small roof extension above retains the existing roofline at a height of 4.7m. Neither exceeds the 9m maximum building height for the site.

Clause 4.4 – Floor Space Ratio

Total FSR is 0.39:1 which does not exceed the maximum FSR of 0.8:1 for the site.

Clause 4.6 - Exception to development standards

The application does not contain any exceptions to development standards.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The application does not relate to a miscellaneous permissible use.

Clause 5.5 – Development within the Coastal Zone

The development site is within a dedicated residential area in the coastal zone. It is not considered that the proposed development would impact adversely on the coastal zone.

Clause 5.9 – Preservation of Trees or Vegetation

The site is not covered by any of Council's Tree Preservation Orders and no removal of significant vegetation is proposed.

Clause 5.11 - Bush fire hazard reduction

The site is bushfire prone. The applicant has submitted a cursory bushfire assessment. It is considered that if the application were approved (which is not recommended) that suitable conditions could be applied regarding bushfire protection at the site.

Clause 7.1 – Acid Sulfate Soils

The site is located on Class 3 Acid Sulfate Soils (ASS). The proposed works require footings set approximately 250mm deep. ASS are unlikely to be disturbed. Notwithstanding, the application is recommended for refusal.

Clause 7.2 - Earthworks

No earthworks are required to facilitate the proposal.

Clause 7.3 – Flood Planning

The site is not flood prone. No consideration is required under this clause.

Clause 7.4 - Floodplain risk management

The site is not located on the floodplain. No consideration is required under this clause.

Clause 7.5 - Coastal risk planning

The site is not in a coastal risk area and is well behind the relevant coastal hazard lines.

Clause 7.6 - Stormwater Management

Stormwater from the additions will be connected to existing systems and directed to the street. Note that the proposed development results in a decrease in permeable area at the site. To mitigate this, the applicant has advised that they are amenable to utilising grass pavers for the rear setback (which forms the access to the existing garages). The merit of this is acknowledged however the application is recommended for refusal for other reasons.

Clause 7.10 - Essential Services

All essential services are available at the site. It would appear that the applicant has augmented plumbing and drainage at the site without approval.

SEPP No 71 – Coastal Protection

The proposal occurs on lands covered by SEPP 71; however the site is not identified as a sensitive coastal location under the policy. The officers are of the opinion that subject to general conditions of consent, the proposal is considered to be consistent with the matters for consideration under the policy.

SEPP (Exempt and Complying Development Codes) 2008

Some of the work (for example the kitchen replacement) could have potentially been exempt development under SEPP (Exempt and Complying Development Codes) 2008. However, the applicant incorporated all work within the subject development application (as often occurs when exempt work is carried out in association with work that requires consent).

Notwithstanding, the application is recommended for refusal.

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

There are no Draft Environmental Planning Instruments that apply to the proposed development.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The application relates to alterations and additions to an existing three unit townhouse development on a site of approximately 714.5m². The existing development was approved via T4/2607 on 11/07/1983. Though the design and layout of the development is more indicative of the traditional low density dual occupancy configuration, as it is comprised of three units it is best characterised as a 'town house' development and thus assessment has been carried out against DCP A1, Part B.

There is an existing 1.8m high solid fence on the front boundary which does not appear to have Council approval.

Specifically, the alterations comprise:

- Addition of a carport (6m x 6.27m) within the front setback. This reduces the front setback from 7.5m to 1.5m.
- Addition of a verandah (6m x 3.76m) within the front setback. This reduces the front setback from 7.5m to 1.5m.
- **Internal reconfiguration of Unit 1 kitchen and living/dining spaces incorporating removal of an internal wall, movement of the existing Bedroom 1 wall and inclusion of new shelving.**
- **Replacement of Unit 1 Bedroom 1 window with slightly smaller window to account for the wall relocation.**
- **Internal reconfiguration of existing Unit 1 bathroom, laundry and WC to create an ensuite for Bed 2.**
- **Inclusion of robes in Bedrooms 1 and 2 (Unit 1).**
- **Replacement of window in Unit 1 dining room with sliding door access into proposed verandah.**
- **Modification of existing north facing verandah and inclusion of a privacy screen to the portion allocated to Unit 2.**

Note the items in bold above have been completed or substantially completed prior to approval being granted for the works. The carport and verandah structures have not been commenced.

A detailed Section A1 assessment has been undertaken. The application is recommended for refusal as the proposed development does not comply with Section A1 (Part B). In forming this opinion, Council planning staff have considered the history of the application and the fact that consent was granted prior to the current controls applying. However, the proposed carport (and subsequent reduced front setback) represents a variation that is too great when compared to the current controls and would undermine Council's policy as set out in Development Control Plan Section A1 - Residential Development Code (DCP A1) and set a highly undesirable precedent.

In relation to the specific Section A1 (Part B) controls, the following assessment is provided.

Design Control 1 - Public Domain Amenity (Streetscape)

- The site is adjacent to a large vacant block of Council managed crown land and opposite Pottsville Beach primary School. The site is one of only two allotments on the northern side of the roundabout to Elfran Avenue. There are no significant streetscape features in the immediate area, which is categorised mainly by the existence of low, scrub vegetation and further north, the school parking area and bus drop off zone. The site exhibits an 1.8m high fence on the front and side boundary which is considered to have an adverse impact on the streetscape (though it does provide privacy for the subject development). This fence does not appear to have Council approval. The applicant has been requested to incorporate the fence into the subject application however has not indicated their willingness to do this.

- Further, consent is sought for a carport and verandah extension forward of the building line which is prohibited by Control (c). Whilst the design is contemporary, it is not reflective of other development in the locality and does not contribute to the streetscape. The dwelling entries are at present not visible from the street and the proposed development (whilst it does not change dwelling entries except for Unit 1 which has been moved slightly closer to the front boundary), will not improve this situation.
- The proposal does not satisfy Design Control 1 - Public Domain Amenity (Streetscape) Controls (a), (b), (c), (d) or (e).

Design Control 2 - Site Configuration (Deep Soil Zones)

- At present, the site contains around 75m² of deep soil zone area which is at the front of the allotment, essentially forming the front setback. There is a small amount of garden area available along a portion of the southern boundary (around 35m²) however this area has a width of only 2.5m and as such is not really suitably sized (or located) so as to function as deep soil area.
- There is no rear deep soil zone as this area forms part of the driveway and garage access.
- Whilst the Deep Soil Zone controls cannot be strictly enforced as they were not in place when the original application was approved, it is evident that the subject application will considerably reduce the available deep soil zone area at the front of the site by building a verandah extension and carport in this area. The applicant plans to offset this by the replacement of a gravel 'turning' area at the rear of the site (which gives access to the three single garages) with permeable grass pavers. Whilst this would be an improvement in permeable area in the absence of the proposed new development at the front of the site, the pavers will still need to function as driveway area and thus cannot serve as deep soil zone area. As such, the new development will essentially result in no deep soil zone area being provided at the site and certainly none that comply with the current DSZ controls which apply to the application.
- The proposal does not satisfy Design Control 2 - Site Configuration (Deep Soil Zone) Controls (a), (b), (e), (f), (g) or (h).

Design Control 2 - Site Configuration (Impermeable Site Area)

- The size of the allotment is 714.50m² and thus 65% of the site area is permitted to be impermeable. At present, it would appear that around 525m² of the allotment is impermeable which equates to 73% of the site and does not comply. The applicant has advised that with the new addition and the inclusion of the proposed grass pavers at the rear of the site, around 508m² would be impermeable. This equates to 71% of the site and continues to not comply.
- The proposal does not satisfy Design Control 2 - Site Configuration (Impermeable Site Area) Control (g).

Design Control 2 - Site Configuration (External Living Areas)

In relation to external living areas, there is no specific variation proposed however the following discussion is relevant.

- There is an external living area proposed in the current application which is located off the Unit 1 dining area at ground level. The external living area (verandah as per the plans) has an area of 6m x 3.76m. There is a front setback of 1.5m and a side setback of 3.5m.
- It has been suggested to the applicant that the verandah be reduced in width from 6m to 4m to provide an improved deep soil, permeable area and landscaping outcome (though still representing a variation to the specified controls). The applicant has not taken up this option.

Design Control 2 - Site Configuration (Landscaping)

In relation to external living areas, there is no specific variation proposed however the following discussion is relevant.

- The development essentially proposes removal of all established landscaping at the site. A landscaping plan has been submitted however it is considered that the outcome is unsatisfactory with regard to the size and location of the carport and verandah area.
- The development is not considered to provide a satisfactory landscaping outcome.

Design Control 3 - Setbacks (Front setbacks)

The wording pertaining to the required width of a front setback in an infill area is as follows:

"In established areas and on infill sites Dual Occupancy Housing and Town Housing are to be consistent with the setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings on either side. This setback can be varied up to plus or minus 1m".

- The land is an infill site with one neighbouring property to the south. The current setback of the existing development is 7.5m. The adjoining site has a greater setback of 10m. As there is no other neighbouring dwelling, the required setback for the subject site is considered to be 10m, plus or minus a metre, i.e.: a minimum of 9m. The current development obviously doesn't meet this and was approved with a setback of 7.5m. As such, the reduction in the front setback from 7.5m to 1.5m by the proposed development is unacceptable. It represents too great a variation from the neighbouring property and nearby properties sited further along Tweed Coast Road which have a minimum setback of 5.5m.
- The applicant cites the existence of the 1.8m high front fence as justification for the reduced setback (based on negligible streetscape impacts occurring), however this fence does not appear to have been the subject of Council approval and this justification is thus unreasonable. Further, the fence is visually unappealing and in contravention with Council's fencing controls.
- The proposal does not satisfy Design Control 3 - Setbacks (Front Setbacks) Control (c).

Design Control 4 - Carparking and Access (Carparking Generally)

There is no change to the number of bedrooms/units and as such, car parking requirements remain the same, as per the original consent which required the provision of a minimum of four offstreet spaces.

- The carport is proposed forward of the building line, in the dwelling's front setback. The three criteria required to be met for this arrangement to be considered acceptable are all contravened by the application. These criteria are:

A garage or carport may be located in front of an existing dwelling if:

- *there is no other suitable position on the allotment; and*
- *the carport or garage accommodates a single car space; and*
- *there is no vehicular access to the rear or side of the allotment.*

In relation to the subject application:

- There is existing parking (albeit small and inconveniently located for Unit 1) located at the rear of the site. There is no trigger for additional parking to be provided.
- The carport is 6m wide and thus accommodates a double car space.
- There is existing lawful vehicular access to the rear of the site, via the existing driveway.

As such, there is no justification for the proposed carport forward of the building line.

- The proposal does not satisfy Design Control 4 - Carparking and Access/Carparking Generally Controls (d) or (e).

Design Control 4 - Carparking and Access (Carpports)

The carport controls specify the following:

- *Carpports cannot be wider than one car space width or 4m where other means of undercover parking is provided on-site.*
- *A maximum of two carport spaces can be stacked down the site.*
- *Double carports can only occur, on very steep sites or where there is no other solution possible for car parking on the site.*
- *Carpports must not necessitate an extra driveway additional to the driveway for a garage or other parking structure.*
- *The design and materials used for carports must be in keeping with the main dwelling.*
- *The carport must not be enclosed on any of its sides.*
- *Carpports cannot have rooms within the roof.*
- *For new dwelling carports cannot be erected between the street alignment and the front building alignment of the dwelling. The minimum setback behind the front building alignment is 1 metre.*

In relation to the subject application, the proposed carport is 6m wide. The solution of a 4m wide carport has been suggested to the applicant, but not accepted. There is lawful parking provided at the rear of the site (though it is noted that one additional space needs to be formalised on the site in order for the proposal to be compliant with the original conditions which require the provision of 4 spaces on the site).

- The proposal does not satisfy Design Control 4 - Carparking and Access/Carports Controls (a) or (c).

In relation to the internal modifications, appropriate compliance is considered to be achieved with respect to the provisions of Section A1. A detailed assessment in this regard is provided on file. There are no concerns with regard to variations to Section A1 arising from the internal works as these all relate to an existing lawful building (though they were carried out without the appropriate approvals).

A2-Site Access and Parking Code

Under Section A2, at today's car parking rates a total of 6.5 spaces would be required for the development as follows:

Unit 1 (3 bedrooms) - 2 spaces

Unit 2 (2 bedrooms) - 1.5 spaces

Unit 3 (3 bedrooms) - 2 spaces.

PLUS 1 visitor space/4 units = 1 space.

However - the proposed development does not seek to increase the number of units or bedrooms at the site and as such, there is no change to the parking rate which was enforced at the time of approval of the development. As such, the original conditions continue to apply, and only 4 spaces are technically required to be provided on site. This does not negate the applicant's desire to create additional parking on the site however it is technically not required. As such, Council planning staff do not see 'need' as a reason to support the proposed double carport within the front setback. Additionally, it is considered that a proposal for a single carport in the same area (as suggested by Council planning staff as an outcome which could be supported) could achieve compliance with the original conditions (i.e.: the provision of four car spaces on the site).

The proposal is recommended for refusal.

A11-Public Notification of Development Proposals

The application was notified for a period of 14 days from 12 January to 27 January 2015 in accordance with the provisions of Section A11. During this time, no submissions were received.

B21-Pottsville Locality Based Development Code

Section B21 prescribes a broad settlement pattern and intended rationale for the future development of the wider Pottsville area and includes area specific strategies to guide development.

The site is located within the Pottsville North precinct as defined by Section B21. Pottsville North is an established residential area with varying housing forms and supporting land uses. The precinct comprises a variety of housing stock, with which the subject residential development will continue to be consistent.

The document promotes design excellence and design which contains outstanding landscaping, inviting front entrance and desirable street character which is unimpeded by impacts from garages and driveways (and the like). Whilst the proposed development relates to an existing lawful building, the proposed carport and verandah are not seen to be consistent with the overarching principles of Section B21.

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

Clause 92(1)(a)(ii) Government Coastal Policy

The subject site is located on land to which the Government Coastal Policy applies. The policy contains a strategic approach aiming to protect, rehabilitate and improve the natural environment of areas covered by it. This proposal has been assessed with this in mind, and it is considered that the proposal does not contravene the objectives of the policy.

Clause 92(1)(b) Applications for demolition

Demolition has been undertaken at the site without approval. A Waste Management Plan was submitted however not approved prior to works being undertaken.

Clause 93 Fire Safety Considerations

Council's Building Surveyor has recommended appropriate conditions, should the application be supported.

Clause 94 Buildings to be upgraded

Council's Building Surveyor has recommended appropriate conditions, should the application be supported.

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

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by the Tweed Shire Coastline Management Plan 2005. No further assessment is required.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by this plan. No further assessment is required.

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

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater. No further assessment is required.

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

Context and Setting

It is considered that the development would have an adverse impact on the streetscape as well as the environment by way of reducing permeable and landscaped area. The applicant points out that the site is next to a large Council managed area of undeveloped land which is highly vegetated and this is noted. However it is considered that approval of the development would create an undesirable precedent with regard to inappropriate development within the front setback, and particularly development that unduly reduces permeable and landscaped area.

Access, Transport and Traffic

The applicant has supplied the following justification for the front setback variation:

"It is proposed to request a variation to the front setback to both the attached carport and verandah area. Due to the restraints of the existing layout of the development in adequate car parking is provided for the existing development. There is no other area on the site that can accommodate a carport or open verandah area. It is believe due to the existing solid fence line of 1.8m in height that the visual impact will be minimal, and the proposed roof lines are design to be low and unobtrusive. The proposed carport and verandah has been designed to be open to three sides. The carport and verandah proposed will also provide solar protection to the existing living area and give a comfortable area.

Due to the existing development provides only 3 spaces and 1 visitor space, which the configuration is quite tight for manoeuvring, and due to the rear of the property lends visitors to park on the street, which is limited due to the existing structural traffic constraints. The existing stamped plans show the visitors parking to the rear which it totally impracticable. Our proposal is to provide a covered space for Unit (1) one and (1) one visitor, located within the front 8m setback. This then denotes the carport would be required to be for two (2) spaces.

Due to the location of the site, in relation to street and location of a large primary school. There is very limited street parking especially in the pick up and drop off times for school. The front road reserve has not been formalised, and the entrance to the site is very close to the existing round about. As each of the units are tenanted with families, there is limited parking on the site (most families have two vehicles) parking has to be street parking which again causes problems with access to site, and line of sight leaving the property".

Council planning staff do not agree with the above justification.

(c) Suitability of the site for the development

Surrounding Landuses/Development

There are no suitability concerns with regard to the nature of the site which is considered to remain suitable for residential development.

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

There were no submissions made in relation to the application.

(e) Public interest

The application is not considered to be in the public interest as it is considered to contravene Council's adopted Residential Development Code and set an undesirable precedent for the locality.

OPTIONS:

That Council:

1. Refuses the application in accordance with the submitted reasons for refusal and issue a Penalty Infringement Notice to the Builder; or
2. Approves the application in principle, and submit a further report to Council with recommended conditions of approval.

Council officers recommend Option 1.

CONCLUSION:

It is considered that the proposed carport and verandah within the front setback undermines Council's planning controls for such structures. The applicant has not undertaken to work with Council to achieve a mutually acceptable outcome in relation to a carport and verandah with a reduced width (maximum 4m) which is considered to still improve the existing parking and outdoor living outcome on the site without constituting an unreasonable variation to Council's adopted standards. As such, the application is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may lodge an appeal to the Land and Environment Court in respect of Council's determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

7 [PR-PC] Local Environmental Plan Amendment No. 14 - Correction of Zoning Error in Tweed Heads West

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: GT1/LEP/2014 Pt1 and PP15/0002 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:

This report seeks Council's resolution to prepare an amendment to the Tweed Local Environmental Plan 2014 (Tweed LEP 2014), by way of a planning proposal.

During the preparation of the Tweed LEP 2014, a residential property located at 16A Anconia Avenue, Tweed Heads West (Lot 1 DP 1126205) has been zoned E1 National Parks and Nature Reserves. This zoning is an error which may have financial implications for the owners as the property is listed for sale.

NSW Planning & Environment staff have advised that a planning proposal is required and will be given a high priority, with expedited Gateway determination process and limited community consultation.

RECOMMENDATION:

That:

- 1. Council endorses a Planning Proposal to rezone Lot 1 DP 1126205 be prepared and submitted to the NSW Department of Planning and Environment for a Gateway Determination, in accordance with s56 of the *Environmental Planning and Assessment Act*;**
- 2. The Minister for Planning and Infrastructure or his Delegate be advised that Tweed Shire Council is not seeking plan making delegations for this planning proposal;**
- 3. The Minister for Planning and Infrastructure or his Delegate be advised that public exhibition is not required in this instance; and**
- 4. Where no public exhibition is conditioned by the Minister or their delegate, Council endorses the correction of the zoning error of Lot 1 DP 1126205, to the**

extent only shown in this report, without the need for any further report to Council.

REPORT:

1. Zoning Error

During the post-exhibition review of the Tweed LEP 2014 (LEP), land in Tweed Heads West, being Lot 1 DP 1126205 was incorrectly rezoned from dual zoning of 2(a) Low Density Residential and 1(a) Rural to E1 National Parks and Nature Reserves. This error occurred while the draft Land Zoning Map was undergoing significant amendments related to the application of environmental zones in coastal areas identified for koala habitats and ecological corridors.

The further mapping amendments occurred post public exhibition and in response to Council's resolution of 31 May 2013. The LEP was made by publication on the NSW Government's Legislation website on 4 April 2014.

The purpose and application of the E1 National Parks zone is for the identification of current or proposed National Parks and Nature Reserves. This site is not a national park or nature reserve and is not proposed as such.

2. Background

The preparation of the Tweed LEP 2014 concluded on 4 April 2014, when the LEP was published on the NSW Government legislation website. The Tweed LEP 2014 replaced the previous plan, LEP 2000, with the exception of areas deferred due to review of environmental zones, undertaken by the NSW Planning & Environment.

The preparation of the Tweed LEP 2014 was largely based on the principle of best fit conversion, which included conversion of the Land Zoning Map of the Tweed LEP 2000 into the required standard instrument template zones and format, where practical.

The public exhibition, undertaken from November 2012 to January 2013 resulted in requests from the community for further amendment to the environmental zones, particularly with respect to protecting areas of important koala habitat, within the koala habitat study which includes Tweed Heads West.

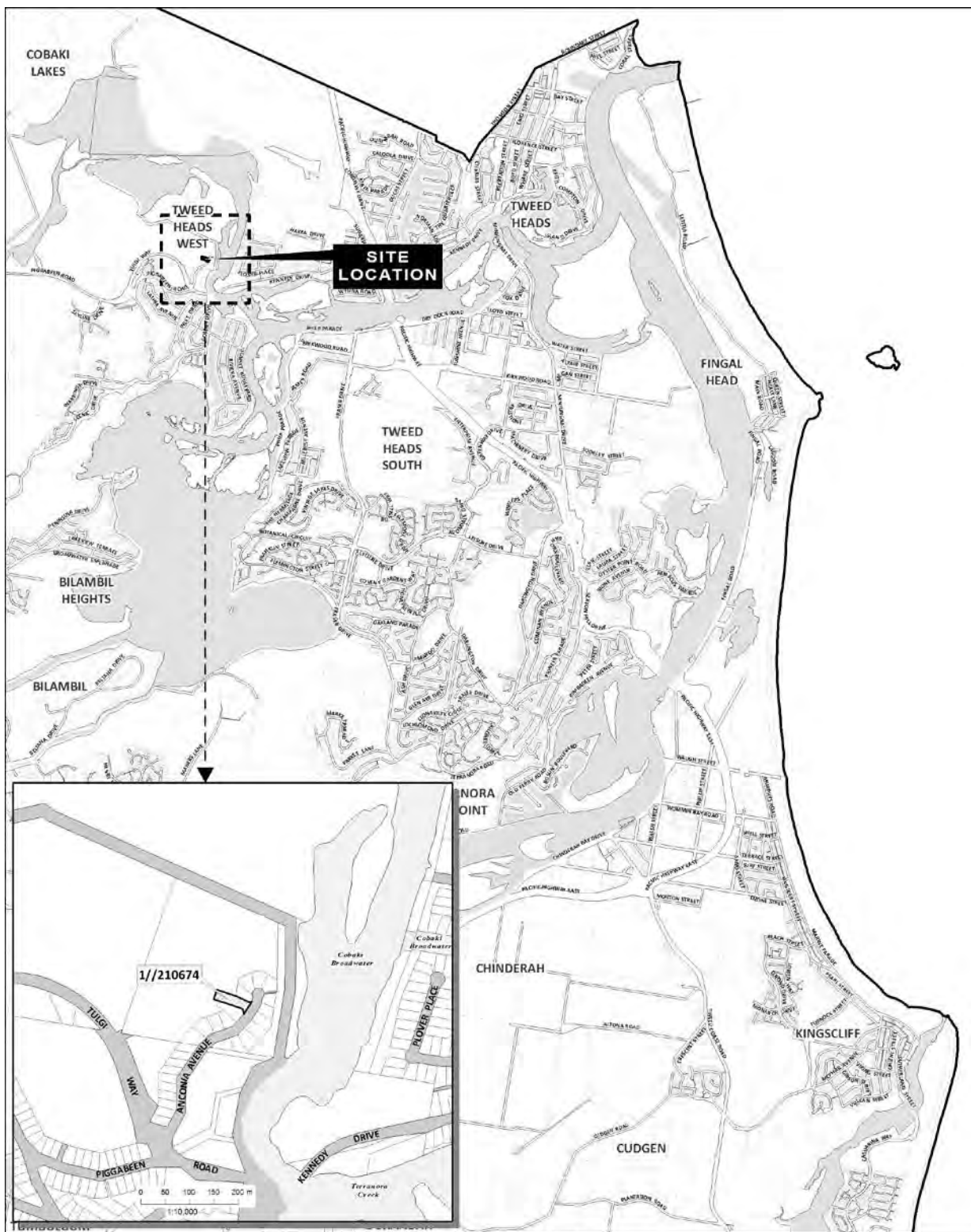
Council responded to the community's submission for further environmental zoning and resolved at its meeting of 31 May 2013 to reintroduce the environmental zoning as was first publicly exhibited in 2010. The zoning error over Lot 1 occurred during the reintroduction of this environmental zoning.

The Planning Proposal Version 1 - Gateway Determination is provided as Attachment 1 to this report.

3. Location of Lot 1 DP 1126205

The subject site is located in a residential pocket along Anconia Avenue in Tweed Heads West which backs bushland to the west, as provided on Figures 1 and 2 following.

FIGURE 1 - LOCATION OF LOT 1 DP 1126205



Locality Plan

Lot 1 DP1126205
No. 16A Anconia Avenue, Tweed Heads West

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TWEED SHIRE COUNCIL

FIGURE 2 - SUBJECT SITE OVERLAID WITH AERIAL PHOTOGRAPHY (2012)



Aerial Photo - taken May 2012

Planning Proposal PP15/0002 -- 16A Anconia Avenue, Tweed Heads West
 Subject Site - Lot 1 DP1126205

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

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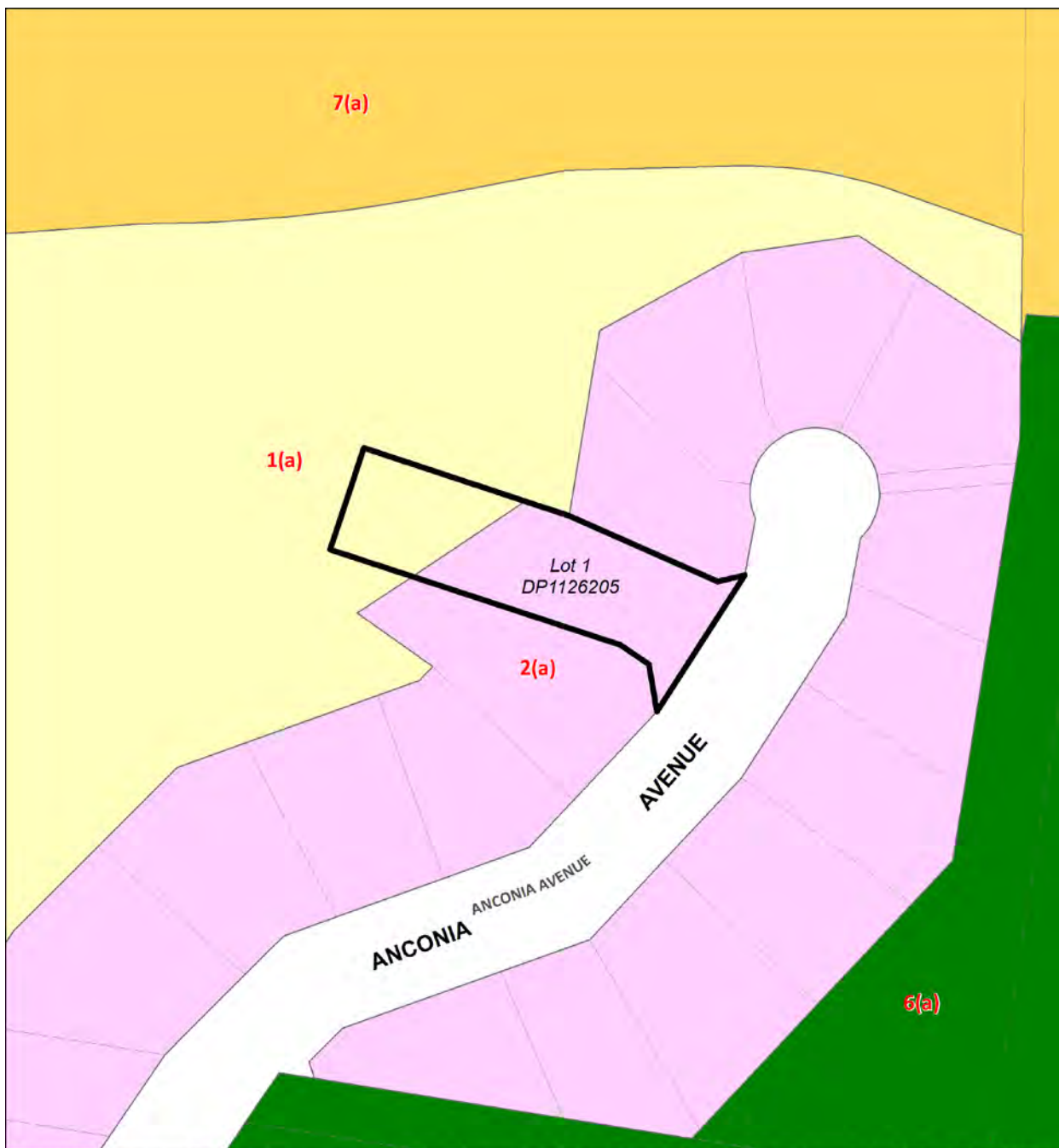
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FIGURE 3 - ZONING OF THE SUBJECT SITE UNDER THE TWEED LEP 2000



Tweed Local Environmental Plan 2000 (@11/02/2013) - LAND ZONING

Planning Proposal PP15/0002 -- 16A Anconia Avenue, Tweed Heads West
Subject Site - Lot 1 DP1126205

ZONING	RESIDENTIAL	BUSINESS	INDUSTRIAL	ENVIRONMENTAL PROTECTION	NATIONAL PARKS & NATURE RESERVES
RURAL 1(a) Rural 1(c) Rural living 1(b1) Agricultural Protection 1(b2) Agricultural Protection	2(a) Low Density Residential 2(b) Medium Density Residential 2(f) Tourism 2(c) Urban Expansion 2(d) Village 2(e) Residential Tourist	3(a) Sub-Regional Business 3(b) General Business 3(c) Commerce & Trade 3(d) Waterfront Enterprise 3(e) Special Tourist (Jack Evans Boat Harbour)	4(a) Industrial SPECIAL USES 5(a) Special Uses OPEN SPACE 6(a) Open Space 6(b) Recreation	7(a) Environmental Protection (Wetlands and Littoral Rainforest) 7(d) Environmental Protection (Science / Escarpment) 7(f) Environmental Protection (Coastal Lands) 7(i) Environmental Protection (Habitat)	8(a) National Parks and Nature Reserves DEFER defer

ADDITIONAL CONTROLS

<input type="checkbox"/> Clause 37 (Transmission Line Corridor) <input type="checkbox"/> Clause 38 (Future Roads)	<input type="checkbox"/> Clause 41 (Heritage Conservation Area) <input type="checkbox"/> Clause 52 (Existing and Future Dam Areas)	<input type="checkbox"/> Clause 52 (Minimum Lot Sizes) <input type="checkbox"/> Clause 52 (Stormwater and Fill)	<input type="checkbox"/> Clause 53 (Schedule 3 Item) <input type="checkbox"/> Clause 52 (Pottsville)
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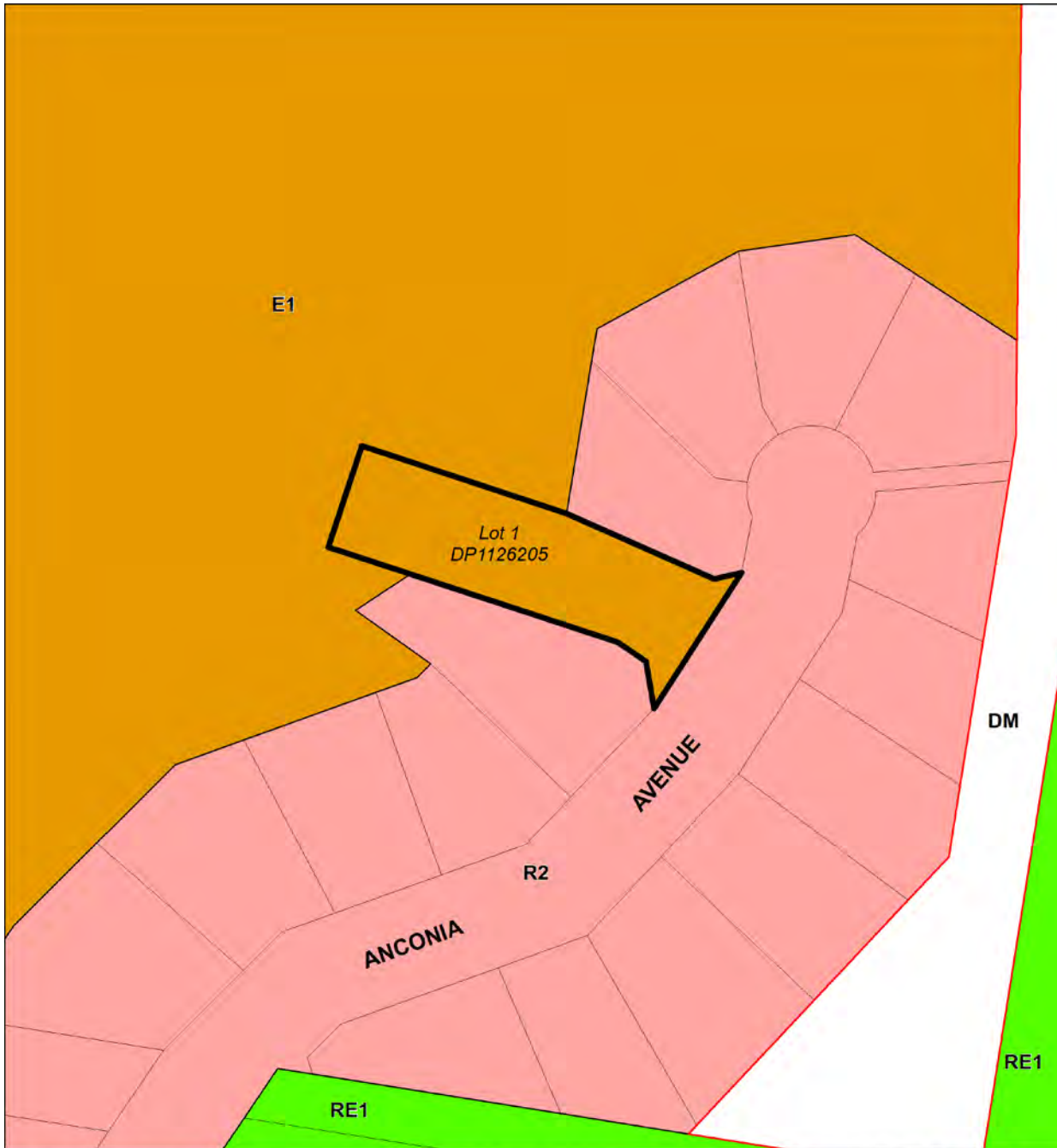
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FIGURE 4 - TWEED LEP 2014 AS PUBLISHED ON LEGISLATION WEBSITE.



Tweed Local Environmental Plan 2014 - CURRENT LAND ZONING

Planning Proposal PP15/0002 -- 16A Anconia Avenue, Tweed Heads West
Subject Site - Lot 1 DP1126205

LAND ZONING

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

Legend

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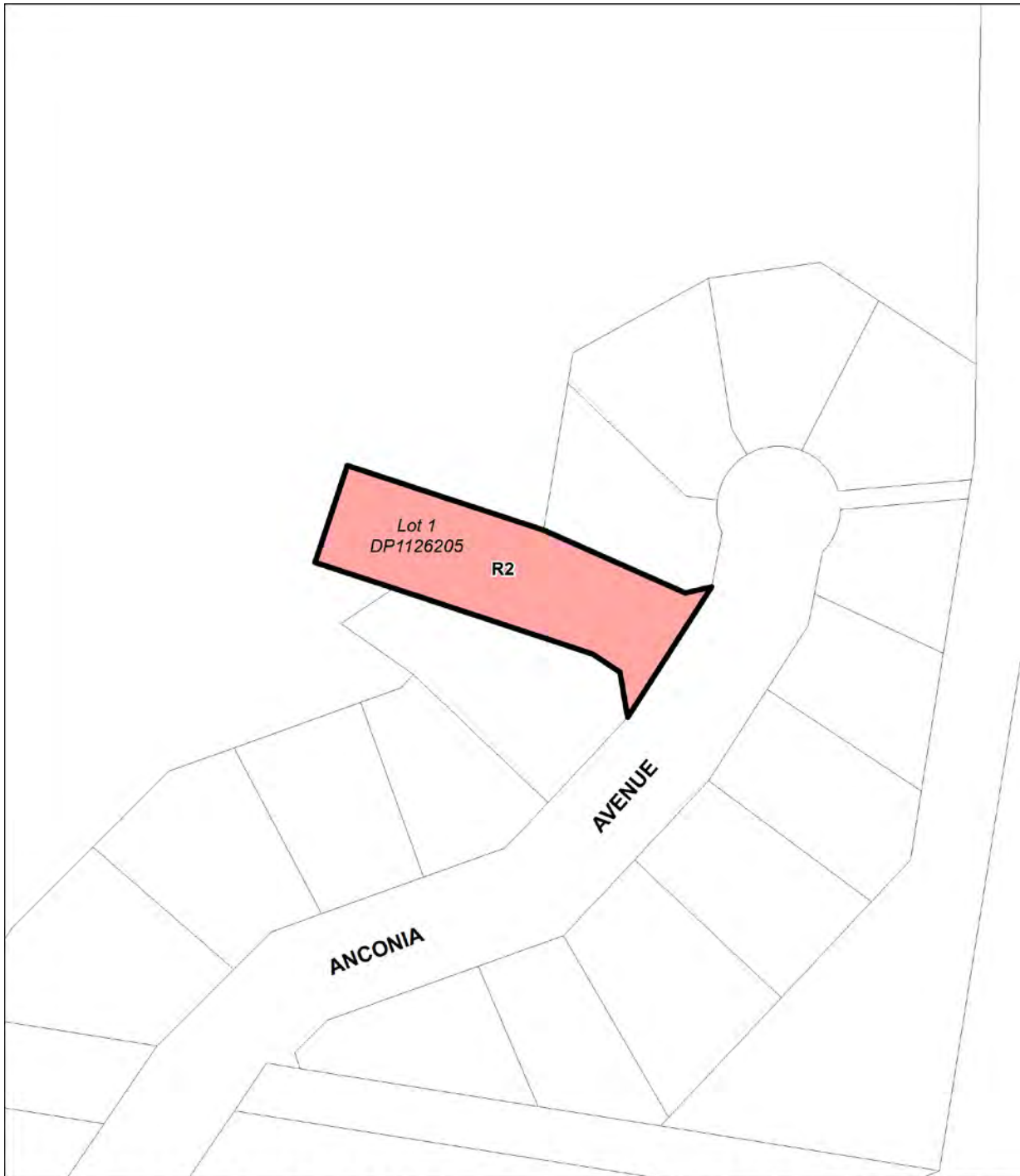


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FIGURE 5: PROPOSED AMENDMENT TO THE LAND ZONING MAP.



Tweed Local Environmental Plan 2014 - PROPOSED LAND ZONING

Planning Proposal PP15/0002 -- 16A Anconia Avenue, Tweed Heads West
Subject Site - Lot 1 DP1126205

PROPOSED LAND ZONING

R2 Low Density Residential

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4. Current status of the property and proposed zoning amendment

The property has been listed for sale and the owners advised Council that the incorrect zoning may have financial implications as it may delay the sale and/or be used by potential buyers to reduce the value. Given this is an error in the drafting of the LEP it is imperative this be amended as soon as possible. While Council was initially considering inclusion of this site into the "housekeeping" LEP amendment, which is currently at the early stage of scoping, recent advice from NSW Planning and Environment suggests that a spot rezoning of this site is a better way to proceed.

Under the LEP 2000, the majority of Lot 1 DP 1126205 was zoned 2(a) Low Density Residential, with a small portion zoned 1(a) Rural, as outlined on Figure 3 above. This report seeks to rezone the site R2 Low Density Residential, without the rural zoning. This is justified by changed zoning of the adjoining land, being Lot 2 DP 1126205, acquired as part of a habitat compensation package for Tugun bypass and gazetted as Cobaki Nature Reserve. Changed status of Lot 2 DP 1126205 resulted in rezoning it from 1(a) Rural to E1 National Parks and Nature Reserve. In this context, rezoning of the entire Lot 1 DP 1126205 to R2 Low Density Residential is the best way to achieve consistent zoning within this locality.

OPTIONS:

That:

1. Council prepares a planning proposal to rectify the zoning error detailed within this report; or
2. Council defers the matter for a Councillor workshop.

Deferring the matter may leave Council open to legal proceedings and the officers recommend Option 1.

CONCLUSION:

This Report recommends the preparation of an LEP amendment to correct a zoning error in the finalisation of the LEP 2014.

The error has significant implications for the owners of the site and, should Council support the amendment of this error, the amendments should be expedited as quickly as possible by way of planning proposal.

The priority of the amendment has the support of the NSW DP&E and the owners of the site.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

There may be legal costs associated with potential Court proceedings and the engagement of Council's legal services provider should the matter not be addressed.

c. Legal:

Legal services have been obtained.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Planning Proposal PP15/0002 for Lot 1 DP 1126205 No. 16A
Anconia Avenue, Tweed Heads West V1 Gateway
Determination (ECM 3630647)

8 [PR-PC] PP10/0005 Hundred Hills, Murwillumbah Planning Proposal - Lot 1 DP 1046935 Old Lismore Road, Murwillumbah (Subject Site) and Housekeeping Review of the Hundred Hills Release Area

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP10/0005 Pt3

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
 - 1.5.1 Sustainable management of the population in accordance with strategic decisions of previous councils, the NSW and Commonwealth Governments and the Far North Coast Regional Strategy, including provision of amenities, infrastructure and services
-

SUMMARY OF REPORT:

This report has a dual and related purpose. Firstly, it is a status report on the progress of Planning Proposal PP10/0005 for “Hundred Hills” and in particular the conclusions of the additional studies underpinning it. Secondly, is the inclusion of further rezoning amendments arising from a locality specific LEP ‘housekeeping’ review, which can be readily incorporated into the planning proposal without additional cost or impost on the proponent.

The Planning Proposal has now reached a stage in the evaluation where it is suitable for a Gateway Determination referral, which will enable the Department of Planning and Environment (DP&E) to evaluate the proposal and if appropriate issue a conditional determination notice. The planning proposal recommends public exhibition and if endorsed by DP&E will commence at the earliest time, for a period not less than that recommended in this report at 28 days.

In respect of the Proponent’s request their land is recommended from a current zoning of R5 Large Lot Residential to R2 Low Density Residential, consistent with the development pattern emerging through the development of adjoin housing estates.

Council’s endorsement for the additional rezoning and referral of the Planning Proposal to the DP&E for a Gateway Determination, and subsequent public exhibition, is sought.

RECOMMENDATION:

That:

- 1. The Housekeeping review amendments as discussed within this report be included within the Planning Proposal PP10/0005;**
- 2. The Planning Proposal PP10/0005 be referred to the NSW Planning and Environment for a Gateway Determination, in accordance with s56 of the *Environmental Planning and Assessment Act, 1979*;**
- 3. The Minister for Planning and Environment be advised that delegation of the Plan making functions will not be sought in this instance; and**
- 4. The planning proposal be publicly exhibited, where required in accordance with the Gateway Determination or for a period of not less than 28 days where the Gateway Determination is less than this time.**

REPORT:

Background

The Hundred Hills Planning Proposal PP10/0005 (the Proposal) was lodged with Council in August 2010 and initially reported to Council 19 October 2010, at which time Council resolved:

- "1. As the relevant planning authority (RPA), prepares a planning proposal for the site identified as Lot 1 DP 1046935 Old Lismore Road, Murwillumbah; and*
- 2. Endorses the Planning Reforms Unit (PRU) to enter into dialogue with the landowners of Lot 1 DP 1046935 regarding the relevant supporting documentation and technical assessment to satisfy the RPA's requirements for preparing a planning proposal for subsequent lodgement of a planning proposal with the Department of Planning for a Gateway Determination."*

As part of the preparation of the planning proposal it was identified that part of the adjoining lot (in the same ownership) had been omitted from the planning proposal and should have been included. This matter was reported to Council 19 July 2011, at which time Council resolved:

- "1. That Planning Proposal PP01/0005 for Lot 1 DP 1046935 Old Lismore Road, Murwillumbah be amended to include that part of Lot 279 DP 1145129 currently zoned 1 (c) Rural Living, as shown on Map 3 within this [that] report."*

A Memorandum of Understanding (MOU) to guide the scope and outcomes of the required additional studies was developed and signed by both parties in August 2011. The project then stalled, as was reported to Council a number of times within the Strategic Planning and Urban Design Unit (SP&UD). A report on the slow progress of the Proposal was considered by Council at the meeting of 4 September 2014, at which time Council resolved (in part):

- "1. Council defers consideration of the Officers' recommendation to discontinue Planning Proposal PP10/0005 Hundred Hills, Murwillumbah until the October Planning Committee meeting."*

Project update - the Proponent's Rezoning Request

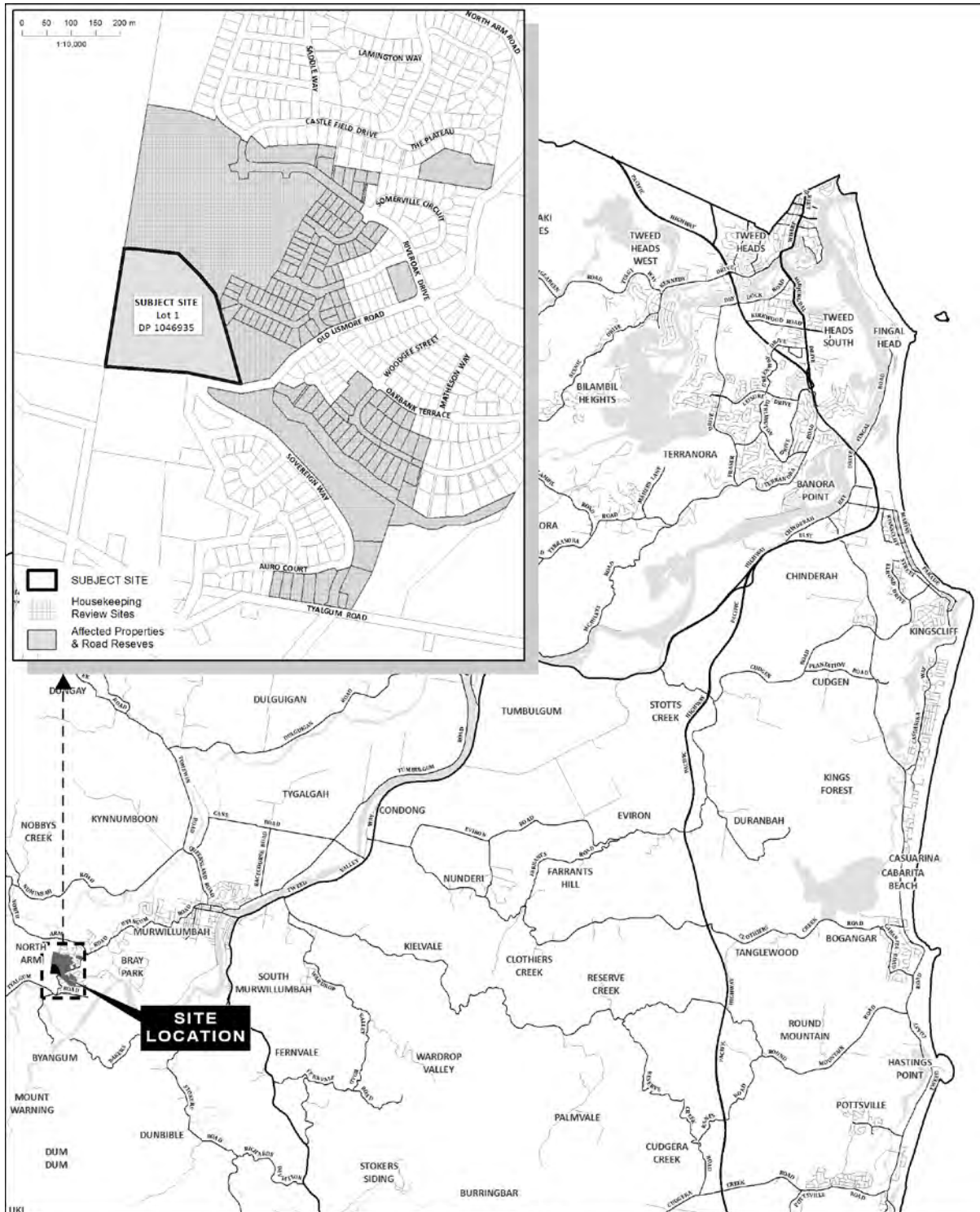
The proponent has indicated a commitment to proceeding with this planning proposal within a timely manner and has subsequently lodged all required draft additional reports.

The study requirements of the MOU have now been submitted and included the following:

- Traffic: Castlefield Drive extension assessment;
- Geotechnical, engineering and stormwater;
- Flora and fauna;
- Aboriginal cultural heritage due diligence; and
- Contaminated land assessment.

REFERENCE MATERIALS - SITE AND LOCALITY MAPS:

Map 1 Locality plan - subject site shown edged in black and housekeeping review lots shown hatched.



Locality Plan
 Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
 Subject Site - Lot 1 DP 1046935 and housekeeping review sites

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 1:120,000 @ A4 Portrait
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Map Projection: Universal Transverse Mercator
 Geodetic Datum of Australia 1994
 Map Grid of Australia Zone 56

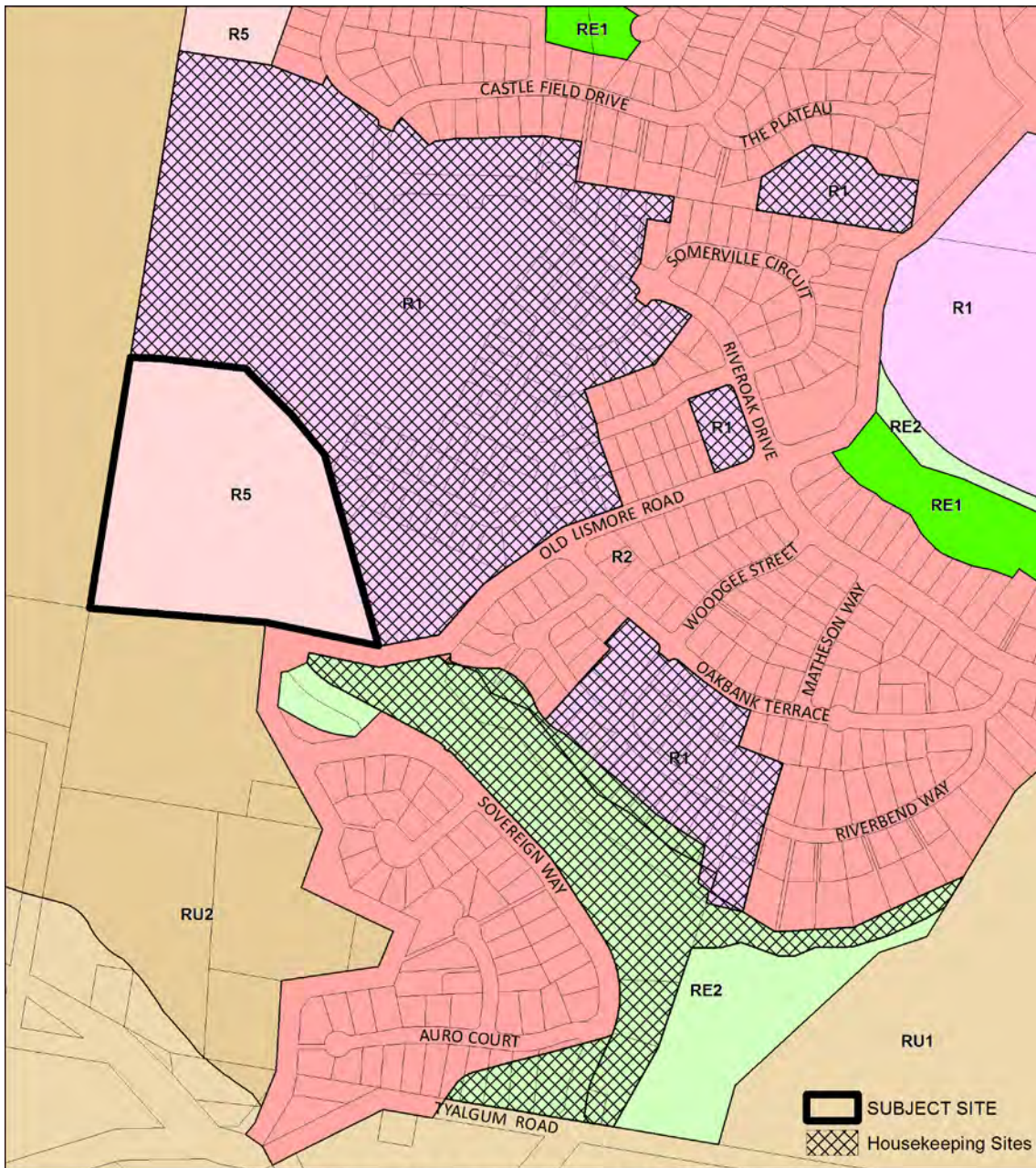
GDA

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Map 2 Location of the sites proposed to be amended under this planning proposal with the subject site shown edged in black and housekeeping review lots shown hatched overlaid with the LEP 2014 current zoning.



Tweed Local Environmental Plan 2014
 Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
 Subject Site - Lot 1 DP 1046935 and housekeeping review sites

LAND ZONING

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

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Map Projection: Universal Transverse Mercator
 National Datum: Geocentric Datum of Australia 1984
 SRS: MGRS of Australia, Zone 56

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Filename: C:\36\PP10\0005 & 0746\0005\PP10-2005\AMENDMENTS\0005-PP10-2005\1046935-01-15\PP1014_0115.mxd Date Printed: 12 March, 2015

Council previously considered a report on the Proposal at the meeting of 19 October 2010. Whilst much of this assessment remains current, the standard instrument based Local Environmental Plan (LEP) 2014 has commenced in the intervening period and further assessment relating to the planning changes since 2010 is provided.

Previously the planning proposal was extended to include both Lot 1 DP 1046935 (the subject site) and part of Lot 279 DP 1145129 to capture a slither of rural land which otherwise would have remained as rural 1(c) due to boundary alignments between the cadastre and the zoning layers. Under the LEP 2014, Lot 279 was zoned R1 General Residential as a translation of the previous 2(c) Urban Expansion zone. This included the slither of land to align with the property boundary.

The Proponent's request is for an R1 General Residential zoning, and related development controls, to enable a development consistent with existing and emerging development in the area.

The subject site, as shown on Map 1 above, is about 25 hectares and is currently zoned R5 Large Lot Residential under the Tweed LEP 2014. The neighbouring land to the North, East and South-east comprises residential housing, whereas to the West and South-west is zoned RU2 Rural Landscape as shown in the Planning Proposal, which is provided as Attachment 1 to this report.

General context review of the subject site

Far North Coast Regional Strategy

The subject site is not within but adjoins the Town and Village Growth Boundary of the Far North Coast Regional Strategy (FNCRS) and is not within but adjoins Potential Urban Release Area 3 - Byangum. Further urban release areas are also identified to the west of the site. The site is currently a residential land classification; however, the site also requires the additional sustainability assessment under the FNCRS requirements. This is outlined in the attached Planning Proposal.

Flood prone land

A small area of the southern section of the site is subject to the Flood Planning Area of the LEP 2014. As opposed to engineering an alternate stormwater system and filling the land, it is proposed to support the natural system and keep the area free of urban development.

Notwithstanding, at this time the site is proposed to be zoned as residential as the boundary of the zones is not yet adequately determined and will be through a future DA. As has occurred in the adjoining Hundred Hills release area, the zoning of this area is likely to be amended at a future stage.

Bushfire prone land

The site is not subject to bushfire prone land under the 2012 mapping, however, does adjoin bushfire prone land to the west, with vegetation along the western boundary. Appropriate asset protect zones (APZ) are to be applied to lots along the western and southern boundaries. The APZ will need to be carefully integrated with the requirements of the bulk earthworks in this locality, as discussed in the following section on additional studies.

Vegetation

The site is largely clear of vegetation with some scattered trees within the site and clusters of camphor laurel along the western boundary. A number of Davidson's Plums (*Davidsonia jersyeana*), are located on the site. This is addressed under the following additional studies section.

Rural land

Urban expansion is proposed through Areas 2 and 3 of the Tweed Urban and Employment Land Release Strategy (TUELRs). Notwithstanding, the site adjoins rural land to the west and south. Conflict has the potential to arise with the interface of rural land and residential development.

The *Living and Working in Rural Areas* publication by the NSW Department of Primary Industries nominates a minimum separation buffer of 50m to the rural land uses, which is to be provided within the land to be developed. Whilst this is not proposed to be a zoned buffer, the need for minimising rural land conflict will be a consideration at the future development application stage. This is likely to correlate with the APZ to the western boundary.

Heritage

There are no heritage items on or in the vicinity of the site.

Additional studies undertaken

In accordance with the requirements of the Memorandum of Understanding the following additional studies have been prepared to inform the suitability of the planning proposal.

Aboriginal cultural heritage

An Aboriginal Cultural Heritage Due Diligence Assessment (ACHDD), by Everick Heritage Consultants (Sept 2013) has been prepared to accompany the application. This report finds there is no known Aboriginal cultural heritage, though the site is identified as having potential Aboriginal cultural heritage through the preliminary work of the draft Aboriginal Cultural Heritage Management Plan.

The ACHDD recommends appropriate management, including: site monitoring and cultural inductions as part of future works and appropriate stop work procedures should remains or cultural material be revealed.

The proposal has been considered by the Aboriginal Advisory Committee (AAC) on a number of occasions who have no major objection and have requested that the developers understand that the Tweed Byron Aboriginal Land Council (TBALC) are to be advised prior to any disturbance to enable monitors on site. This should be a requirement of future development applications.

Flora and Fauna

A Terrestrial Flora and Fauna Assessment by Planit Consulting, dated August 2012 has been prepared.

The site is largely modified and cleared, however, contains remanent vegetation and rainforest species. No koala habitat was identified on the site.

Davidson's Plums (*Davidsonia jersyeana*), are located on the site. *Davidsonia jersyeana* is listed as Endangered under both the NSW Threatened Species Conservation Act, 1995 (TSCA) and the Commonwealth Environmental Protection and Biodiversity Conservation Act, 1999 (EPBCA). The Flora and Fauna assessment provides a Davidson's Plum Management Plan, which covers the wider Hundred Hills release area, and proposes a balance of retaining some trees on site and translocating others. There are four juvenile stems within this subject site proposed to be translocated under the Implementation of a Habitat Restoration Management Plan. The management plan concludes that, subject to following the recommendations, the success rate is high and the local population of the species will be retained.

Council's Natural Resource Management Unit (NRM) accepts the Flora and Fauna Assessment as meeting the requirements of the MOU.

Geotechnical, engineering and stormwater

The subject site is steep with gradients ranging between less than 8 degrees on the southern boundary to greater than 18 degrees through the northern half of the site.

A Geotechnical Investigation by Geotech, dated December 2014, Bulk Landforming Report by Mortons, dated February 2015 and Conceptual Stormwater Management Report by Gilbert and Sutherland, dated December 2014 have been prepared.

The bulk earthworks study identifies a significant batter interface, of up to 12 metres, along the western boundary between the future internal site roads (Springbrook Avenue and Sisters Place). A planning proposal process does not endorse future subdivision lot layout, rather it uses this indicative layout in order to assess impact. With this in mind the studies are considered suitable for the purpose of public exhibition and rezoning. However, given the earthworks proposed, the proposed lot layout, particularly for the western boundary, will need to be reviewed as part of further development to ensure that the lot arrangement, size and tenure is appropriate to accommodate the competing requirements of land/slope management, drainage and asset protection zones.

The planning proposal seeks a minimum lot size control of 450m², being the typical minimum lot size used by Council for urban zones. Whilst 450m² is being pursued at this stage, further analysis is being requested providing an assessment of lot size to slope matrices to ensure the ultimate minimum lot size pursued can accommodate a complying dwelling design, particularly for lots south of the internal Sisters Place.

The Conceptual Stormwater assessment demonstrates a level of confidence that flooding or stormwater runoff to surrounding development will not be impacted. Notwithstanding, additional assessment will be required at the future development stage to further manage potential water quality impacts, particularly for the area east of the Castlefield Drive extension.

With this in mind, it is noted that the final subdivision layout will need to respond to the constraints and that this will likely result in a review of the minimum lot size, arrangement of the lots and tenure of the constrained land and potentially fewer lots than proposed.

Castlefield Drive extension

A traffic assessment of the Castlefield Drive extension was undertaken by Cardno (Dec 2012). This report identifies the road widening of part of Castlefield Drive, extension through the site to join Old Lismore Road and Sovereign Way, closure of the portion of Old Lismore Road (between Sovereign Way and Oakbank Terrace) to form a pedestrian and cycleway link and left in/left out restrictions at the intersection of Old Lismore Road and Tyalgum Road. These traffic modifications are consistent with the Tweed Development Control Plan 2008 Section B6 Murwillumbah West and will improve the safety of Old Lismore Road.

The Castlefield extension is consistent with Council's road network and planning and the assessment identifies that the intersections in the locality will continue to operate within appropriate thresholds.

Contaminated land

SEPP 55 introduces planning controls for the remediation of contaminated land. The policy states that land must not be developed if contamination renders it unsuitable for a proposed use. If the land is unsuitable, remediation must take place before the land is developed.

A Contamination Assessment, by Gilbert and Sutherland (November 2012) was prepared.

The report finds that a small part of the site has been remediated, the soil sampling over the balance of the site has not identified any other potentially contaminating activity and that the site is suitable for its intended residential use.

Proposed LEP amendments

The proponent submitted a request for the use of the 2(c) Urban Expansion zone (as the previous Tweed LEP 2000 was in effect at that time) or the R1 General Residential zone under the Standard Instrument Order (Local Environmental Plans) 2006.

This request has been reviewed by Council's project team, concluding that the zone objectives of the R2 Low Density zone better encompassed the site conditions, desired built form and character extension of the existing residential estate. Whilst the R1 General Residential zone, is considered predominately suitable, it is not considered the ideal zone as it permits Residential Flat Buildings, as well as encouraging tourist accommodation and related facilities. In light of the site constraints, those more intensive kinds of land use are not preferred.

The R1 General Residential zone was applied as a translation of the 2(c) Urban Expansion zone of the LEP 2000 to areas under development but not yet finalised. Under the methodology of the LEP 2014 preparation, areas previously zoned 2(c) and developed in a low density residential form were translated as R2 Low Density Residential to better reflect their form and land uses. Applying the R2 zone is consistent with this methodology. This is discussed further in the following section on "housekeeping review lots".

Further, when considering the site attributes, namely its slope, immediate proximity to adjoining rural landscape pursuits and the approximate walking distance of 2 kilometres to the nearest local centre (Bray Park), the suite of permitted land uses within the low density zone are considered the most appropriate for the site.

For the purposes of the Gateway Determination the planning proposal seeks a minimum lot size control of 450m², being the typical minimum lot size used by Council for urban zones. As noted above, additional review of the minimum lot size(s) is to be undertaken.

The maximum floor space ratio is required to be increased to facilitate the range of permissible development types within the zone, namely as an increase in development potential and a decrease in minimum lot size will result from the desired zone change. A maximum floor space ratio of 0.8:1 is used widely throughout R2 Low Density zone within the Tweed Shire and has been derived from extensive urban design testing.

The maximum height of building is currently 9 metres. As this is consistent with the surrounding low density residential development it is proposed to retain the maximum building height without amendment.

Council originating 'housekeeping' zoning amendments

As discussed earlier in this report, the R1 General Residential zone was applied as a translation of the 2(c) Urban Expansion zone, which existed prior to the standard instrument LEP 2014. The surrounding Hundred Hills 'release area' was for urban expansion to facilitate its transition from rural lands to a viable residential suburb.

The 2(c) zoning, and to a lesser extent the R1 zoning, permits a very wide range of land-uses, specifically tailored for use with larger Greenfield urban release sites where the ultimate development was not known in advance, but would likely comprise a broad range of development to service the new population; such as schools, parks, and employment development.

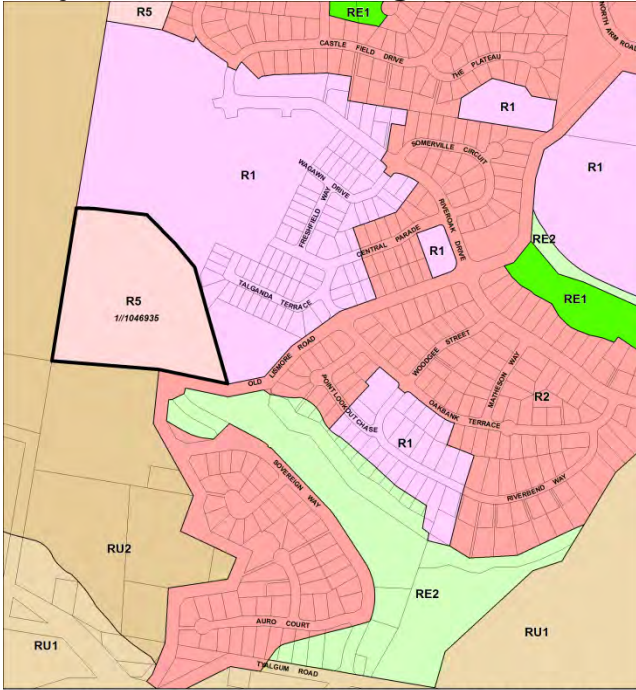
The future development of the subject site and approved residential housing estates is fairly well understood and is not planned to include those broader uses, consequently there is no longer a need or justification to maintain an urban expansion zone. The R2 Low Density Residential zoning provides for a much better and closely related zoning.

Given that the emerging development pattern is low density residential development and areas for other uses is well understood and set aside it is appropriate to review the current zoning and where appropriate bring about greater consistency with the application of the zones under the LEP. This planning proposal represents a good opportunity for the housekeeping amendments because it provides the local area context within which the land uses and scale of development has and is occurring.

For reference, the key difference between the R1 and R2 residential zones is one of scale and intensity. Unlike the low density zone the R1 zoning permits *Residential Flat Buildings, Tourist and Visitor Accommodation, and certain kinds of commercial premises*. When considering the site attributes as discussed above the suite of permitted land uses within the low density zone are considered the most appropriate for this locality.

The proposed amendments are termed "housekeeping review lots" and are as shown on Map 1 and Map 2. Amendments include the adjoining roadways consistent with the methodology of the LEP 2014. The proposed amendments are also discussed in the attached planning proposal, which may be summarised as:

Subject site current zoning



Tweed Local Environmental Plan 2014 - CURRENT LAND ZONING

Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

LAND ZONING			
DT1 Neighbourhood Centre	NS1 National Parks & Nature Reserves	RS Large Lot Residential	SPT1 Special Activities
LC2 Local Centre	NI1 General Industrial	PR Public Recreation	SP2 Infrastructure
CC1 Commercial Core	WV1 Working Waterfront	PR2 Private Recreation	T Tourist
MU Mixed Use	R1 General Residential	PP1 Primary Production	NW Natural Waterways
BD1 Business Development	LD1 Low Density Residential	RL1 Rural Landscape	OW Recreational Waterways
BP Business Park	MD1 Medium Density Residential	RL2 Village	WS Working Waterways
			DM Deferred Matter
			MD SEPP (Major Development) 2005
			TCC Tweed City Centre LEP 2012
			Subject Site

(Note: Detailed legend text is partially obscured in the image)

Subject site proposed zoning



Tweed Local Environmental Plan 2014 - PROPOSED LAND ZONING

Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

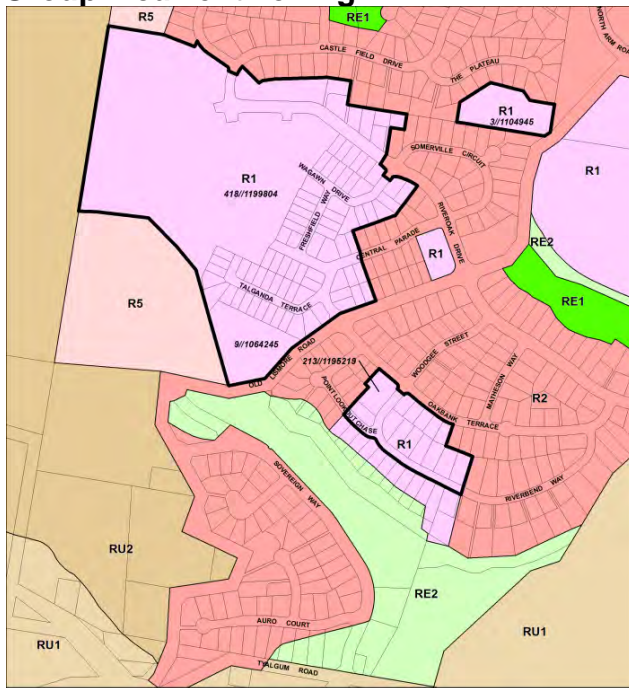
PROPOSED LAND ZONING	
R2 Low Density Residential	Subject Site

(Note: Detailed legend text is partially obscured in the image)

Group 1: Currently zoned R1 General Residential: Proposed to be zoned R2 Low Density Residential with 9m height of buildings; and 0.8:1 floor space ratio, consistent with the surrounding residential areas.

1. Lot 418 DP 1199804, currently owned by the same owner of the subject site (Stocklands PTY LTD) and approved for low density residential development.
2. Lot 9 DP1064245 off Old Lismore Road which is a large privately owned lot containing a single dwelling.
3. Lot 3 DP1104945 off Old Lismore Road which is a large privately owned lot containing a single dwelling.
4. 106 individually owned lots comprising both vacant land and single dwellings.
5. Lot 213 DP 1195219 owned by Tweed Shire Council.

Group 1 current zoning



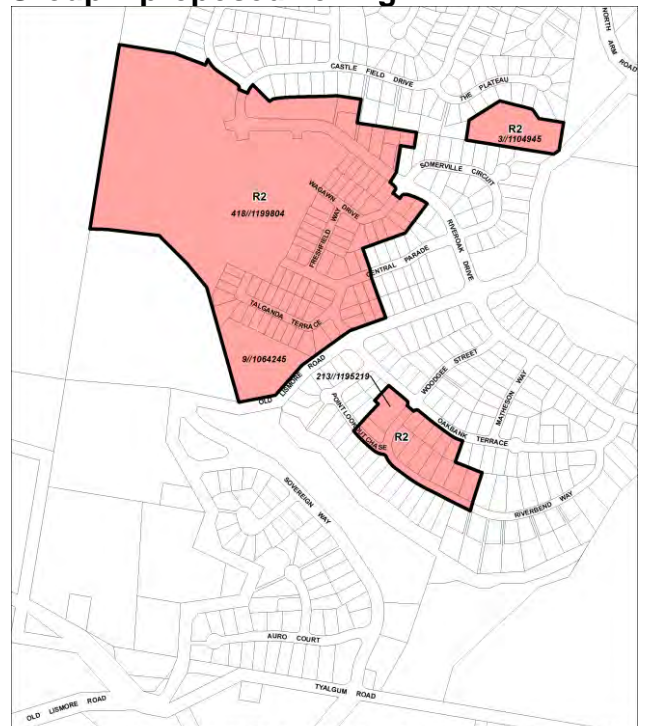
Tweed Local Environmental Plan 2014 - CURRENT LAND ZONING

Planning Proposal PP10/0005 - - Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

LAND ZONING	
101 Neighbourhood Centre	102 National Parks & Nature Reserves
103 Local Centre	104 General Industrial
105 Commercial Core	106 Working Waterfront
107 Mixed Use	108 General Residential
109 Business Development	110 Low Density Residential
111 Business Park	112 Medium Density Residential
113 Large Lot Residential	114 Special Activities
115 Public Recreation	116 Infrastructure
117 Private Recreation	118 Tourist
119 Rural Landscape	120 Natural Waterways
121 Village	122 Recreational Waterways
123 Working Waterways	124 Deferred Matter
125 SEPP (Major Development) 2005	126 Tweed City Centre LEP 2012

Group 1

Group 1 proposed zoning



Tweed Local Environmental Plan 2014 - PROPOSED LAND ZONING

Planning Proposal PP10/0005 - - Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

PROPOSED LAND ZONING	
102 Low Density Residential	Group 1

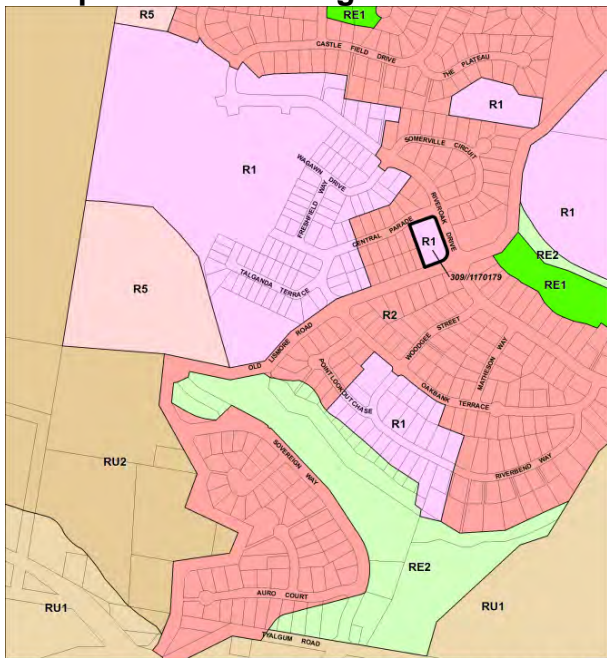
Group 1

1.

Group 2: Currently zoned R1 General Residential; proposed to be zoned B1 Neighbourhood Centre with no minimum lot size, a 13.6m height of buildings and a 2:1 floor space ratio. This reflects the nomination of a neighbourhood centre within the Tweed DCP Section B6 West Murwillumbah, will permit the approved childcare centre, and will, if required, allow other neighbourhood centre uses.

6. Lot 309 DP1170179 which has a current consent for a childcare centre.

Group 2 current zoning



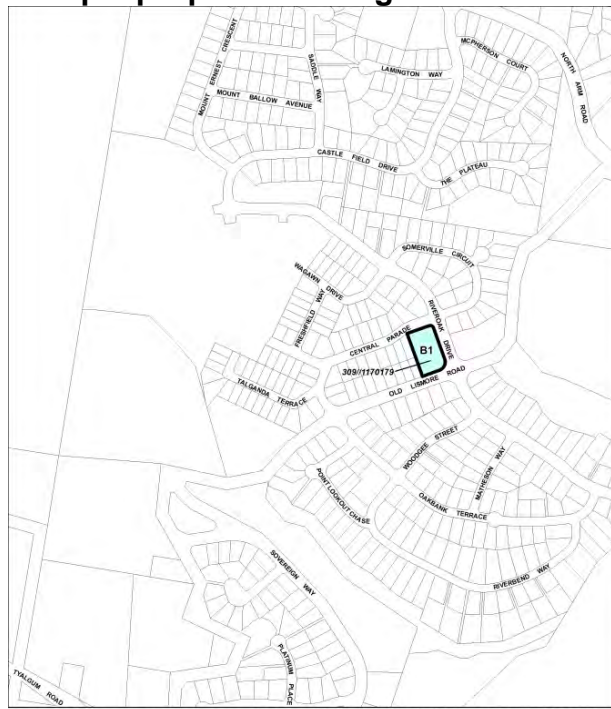
Tweed Local Environmental Plan 2014 - CURRENT LAND ZONING

Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

LAND ZONING			
B1 Neighbourhood Centre	R5 National Parks & Nature Reserves	R1 Large Lot Residential	SPI Special Activities
R1 Local Centre	NI General Industrial	PR Public Recreation	INF Infrastructure
CC Commercial Centre	WV Working Wattleford	PRV Private Recreation	T Tourist
WC Mixed Use	R1 General Residential	PP Primary Production	NW Natural Waterways
BD Business Development	LR Low Density Residential	RL Rural Landscape	RW Recreational Waterways
BP Business Park	MDR Medium Density Residential	V Village	WV Working Waterways
Group 2			

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Group 2 proposed zoning



Tweed Local Environmental Plan 2014 - PROPOSED LAND ZONING

Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

PROPOSED LAND ZONING			
B1 Neighbourhood Centre	Group 2		

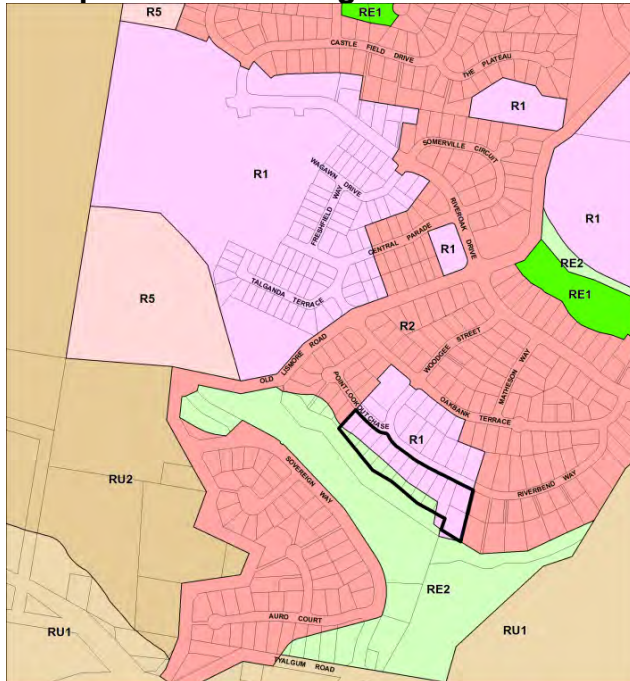
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Group 3: Currently part lots zoned R1 General Residential and part RE2 Private Recreation: proposed to be fully zoned *R2 Low Density Residential with a 450m2 lot size; 9m height of buildings; and 0.8:1 floor space ratio, consistent with the surrounding residential areas.*

7. 11 lots in Riverbend Way and Point Lookout Chase.

Group 3 current zoning

Group 3 proposed zoning



Tweed Local Environmental Plan 2014 - CURRENT LAND ZONING

Tweed Local Environmental Plan 2014 - PROPOSED LAND ZONING

Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

LAND ZONING	Group 3
<ul style="list-style-type: none"> Neighbourhood Centre Local Centre Commercial Core Mixed Use Business Development Business Park General Industrial Working Waterfront General Residential Low Density Residential Medium Density Residential National Parks & Nature Reserves Public Recreation Private Recreation Primary Production Rural Landscape Village Large Lot Residential Special Activities Infrastructure Tourist Natural Waterways Recreational Waterways Working Waterways Outlined Matter SEPP (Major Development) 2005 Tweed City Centre LEP 2012 	<ul style="list-style-type: none"> R2 Low Density Residential

Group 3

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Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

PROPOSED LAND ZONING

Group 3

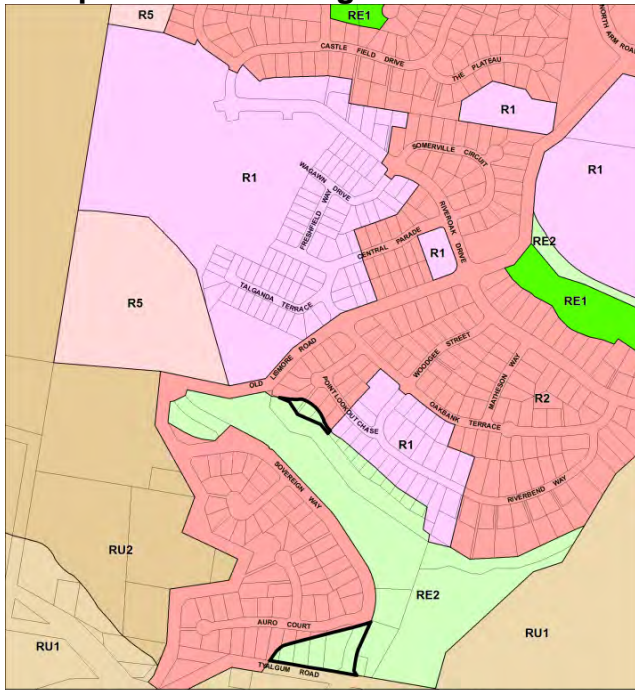
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Group 4: Currently part lot zoned R2 Low Density Residential and part RE2 Private Recreation: proposed to be fully zoned R2 Low Density Residential with a 450m2 lot size; 9m height of buildings; and 0.8:1 floor space ratio, consistent with the surrounding residential areas.

- 8. 4 lots in Point Lookout Chase.
- 9. 5 lots in Auro Court.

Group 4 current zoning



Tweed Local Environmental Plan 2014 - CURRENT LAND ZONING

Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

LAND ZONING			
R1 Neighbourhood Centre	R2 National Parks & Nature Reserves	R5 Large Lot Residential	SP1 Special Activities
R2 Local Centre	RE1 General Industrial	RE2 Public Recreation	SP2 Infrastructure
R3 Commercial Core	RE3 Working Waterfront	RU1 Private Recreation	SP3 Tourist
R4 Mixed Use	R11 General Residential	RU2 Primary Production	NW1 Natural Waterways
R5 Business Development	R2 Low Density Residential	RU3 Rural Landscape	NW2 Recreational Waterways
R6 Business Park	R3 Medium Density Residential	RU4 Village	NW3 Working Waterways

DM Deferred Matter
SEPP State Development 2005
TCC Tweed City Centre LEP 2012

Group 4
 Tweed Shire Council
 1000 Lakes Road, Murwillumbah NSW 2484
 Tel: (02) 6621 2655 Fax: (02) 6621 8172
 Email: info@tweedshire.nsw.gov.au

Group 4 proposed zoning



Tweed Local Environmental Plan 2014 - PROPOSED LAND ZONING

Planning Proposal PP10/0005 -- Hundred Hills, West Murwillumbah
Subject Site - Lot 1 DP 1046935 and housekeeping review sites

PROPOSED LAND ZONING			
R2 Low Density Residential	Group 4		

DM Deferred Matter
SEPP State Development 2005
TCC Tweed City Centre LEP 2012

Group 4
 Tweed Shire Council
 1000 Lakes Road, Murwillumbah NSW 2484
 Tel: (02) 6621 2655 Fax: (02) 6621 8172
 Email: info@tweedshire.nsw.gov.au

Group 5: Currently zoned RE2 Private Recreation: proposed to be fully zoned RE1 Public Recreation with no lot size; 10m height of buildings; and no floor space ratio, consistent with the surrounding public recreation areas.

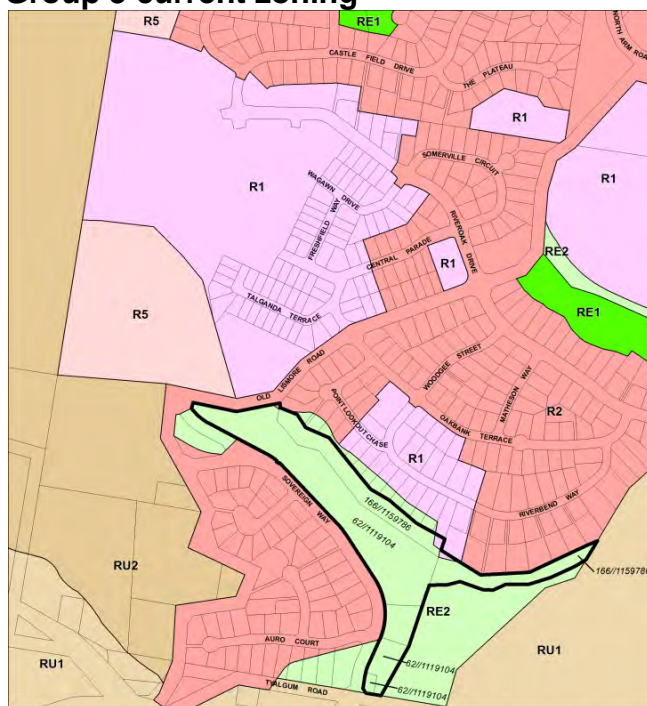
10. Lots now owned by Tweed Shire Council including Lot 62 DP1119104; Lot 166 DP1159786; Lot 61 DP1119104; Lot 63 DP1119104.

The following lot within the Hundred Hills release area will remain as R1 General Residential and retain the current development standards.

- Lot 3 DP733865 and DP 70168 which are both crown land and contains a church and associated accommodation.

Group 5 also picks up one small section of R2 land and two small sections of R1 zoned land to tidy up the zone boundaries which do not match the cadastre.

Group 5 current zoning



Tweed Local Environmental Plan 2014 - CURRENT LAND ZONING

Planning Proposal PP10/0005 - - Hundred Hills, West Murwillumbah

Subject Site - Lot 1 DP 1046935 and housekeeping review sites

LAND ZONING			
101 Neighbourhood Centre	102 Local Centre	103 Commercial Core	104 Mixed Use
105 Business Development	106 Business Park	107 Neighbourhood Centre	108 Local Centre
109 Commercial Core	110 Mixed Use	111 Business Development	112 Business Park
113 National Parks & Nature Reserves	114 General Industrial	115 Working Waterfront	116 General Residential
117 Low Density Residential	118 Medium Density Residential	119 Large Lot Residential	120 Public Recreation
121 Private Recreation	122 Primary Production	123 Rural Landscape	124 Village
125 Special Activities	126 Infrastructure	127 Tourist	128 Natural Waterways
129 Recreational Waterways	130 Working Waterways	131 Deferred Matter	132 SEPP (Major Development) 2005
133 Tweed City Centre LEP 2012	Group 5		

Group 5 proposed zoning



Tweed Local Environmental Plan 2014 - PROPOSED LAND ZONING

Planning Proposal PP10/0005 - - Hundred Hills, West Murwillumbah

Subject Site - Lot 1 DP 1046935 and housekeeping review sites

PROPOSED LAND ZONING			
101 Neighbourhood Centre	102 Local Centre	103 Commercial Core	104 Mixed Use
105 Business Development	106 Business Park	107 Neighbourhood Centre	108 Local Centre
109 Commercial Core	110 Mixed Use	111 Business Development	112 Business Park
113 National Parks & Nature Reserves	114 General Industrial	115 Working Waterfront	116 General Residential
117 Low Density Residential	118 Medium Density Residential	119 Large Lot Residential	120 Public Recreation
121 Private Recreation	122 Primary Production	123 Rural Landscape	124 Village
125 Special Activities	126 Infrastructure	127 Tourist	128 Natural Waterways
129 Recreational Waterways	130 Working Waterways	131 Deferred Matter	132 SEPP (Major Development) 2005
133 Tweed City Centre LEP 2012	Group 5		

These changes are seen to be minor as they reflect the actual use of the land. Whilst the housekeeping review amendments could be the subject of a separate planning proposal, including them within this planning proposal not only reduces the duplication of information, it also provides a greater contextual understanding of the type of development occurring within the locality, the suitability of both the proposed amended zoning and development standard for the subject site and the housekeeping review lots within the context of the LEP 2014 preparation methodology and is consistent with the Department of Planning and Environment guidelines.

Whilst consultation with the affected land owners has not occurred to date, all owners of affected properties will be directly notified by mail of the proposed changes during the public exhibition period.

OPTIONS:

That:

1. Council proceeds with the planning proposal for the subject site and the housekeeping review lot amendments by referring the proposal to the DP&E for a Gateway Determination; or
2. Council proceeds with the planning proposal for the subject site only at this time and refers the proposal to the DP&E for a Gateway Determination; or
3. Council defers the matter for further information.

Option 1 is recommended as this facilitates both the proponent's request and, within the Hundred Hills locality context, the housekeeping amendments.

CONCLUSION:

The additional assessments for the subject site (Lot 418 DP1046935) have been completed and used to inform the planning proposal for referral to the Department of Planning and Environment (DPE) for a Gateway Determination. The proposed zoning of the site for low density residential (R2) is consistent with the surrounding land uses and the sustainability criteria of the Far North Coast Regional Strategy. The supporting studies find that the future development of the subject site for low density residential use is suitable.

Due to the steepness of the subject site it is recommended further lot arrangement and lot size analysis be undertaken, prior to finalising the planning proposal and based on lot size to slope matrices to ensure the ultimate minimum lot size pursued can accommodate complying dwelling design.

In addition, a review of the wider Hundred Hills release area seeks to include a number of housekeeping amendments within the planning proposal to ensure a consistent approach to the application of the residential zones and better reflect the actual land uses of some sites.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

The continuation of the subject site planning proposal is on a cost recovery basis under a Costs Agreement. Housekeeping aspects of the proposal outside of the subject site will be undertaken within the Strategic Planning and Urban Design budget.

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. Hundred Hills Planning Proposal Version 1 LEP Amendment
Number 13 (ECM 3623135)

9 [PR-PC] Rural Fire Service - Bilambil Unit

SUBMITTED BY: Building and Environmental Health

Valid



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.4 Provide education and advocacy to promote and support the efforts of the police, emergency services and community groups to improve the safety of neighbourhoods and roads
-

SUMMARY OF REPORT:

The NSW Rural Fire Service have advised of their need to split the existing Bilambil Brigade into two separate brigades with proposed stations to be located at Bilambil and Piggabeen/Cobaki.

This report discusses the current situation and identifies a suitable site at Bilambil.

RECOMMENDATION:

That Council provides in-principle support to the relocation of the Bilambil rural fire station to Lot 1 DP 772273 and Lot 4 DP46052 Bilambil Road, Bilambil.

REPORT:

The RFS Bilambil station is currently located on Council-owned (operational) land at Snowgum Drive, Bilambil Heights, Lot 1 DP 596255. See Figure 1. Over time the growth of the area has resulted in the station now being engulfed within the Tweed Fire District serviced by Fire and Rescue NSW. The current situation means the brigade vehicles are travelling excessive kilometres along narrow and sometimes congested roads to service their designated rural areas.



Figure 1: Existing Bilambil Rural Fire Station.

The NSW Rural Fire Service (RFS) have therefore expressed a need to split the brigade into two brigades, proposing to locate stations at Bilambil and Piggabeen/Cobaki.

A suitable site for the proposed new Bilambil station has been identified on land at the entrance of the Jets Sporting Facility Bilambil Road, Bilambil, Lot 1 DP 772273 and Lot 4 DP46052 as indicated in Figure 2. The land is Council-owned (operational) land.



Figure 2: Proposed RFS Bilambil Station Site

The station will essentially comprise of a 2 bay shed with ancillary ablutions, office and kitchenette facilities in line with NSW RFS Category 2B standards, footprint approximately 15m x 14m. The RFS 2015-16 Tweed District Bids and Estimates have been forwarded to State-level RFS for approval inclusive of \$270,000 for the construction of a new station at the site. Council's contribution, if approved, would be approximately \$32,000 and be included within the Emergency Services Levy contributions.

It is envisaged the relocation to Bilambil Road would be the first step with Piggabeen/Cobaki following in 2-3 years. Investigations for Piggabeen/Cobaki have not yet commenced.

Following the splitting and relocation of the Brigade it is proposed to return the existing station in Snowgum Drive to Council for its own purposes.

It is therefore recommended to provide in-principle support for the siting of the new Bilambil rural fire station at Lot 1 DP 772273 and Lot 4 DP46052 Bilambil Road, Bilambil.

OPTIONS:

That Council:

1. Not support the relocation of the station. In doing so this continues to support the current situation of undesirable response times to emergencies.
2. Identifies an alternative site. A search of Council-owned land within the area did not identify a suitable alternative site. Purchasing a site would increase costs of the project.

CONCLUSION:

The Rural Fire Service have identified an operational need to relocate the Bilambil rural fire station to improve response times and minimise hazards to their members. To minimise costs to the Tweed community it was considered that, if possible, the station would be located on Council-owned land. A suitable site has been identified and it is recommended

to provide in-principle support for the siting of the new Bilambil rural fire station at Lot 1 DP 772273 and Lot 4 DP46052 Bilambil Road, Bilambil.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Included within the Emergency Service Levy contributions of an increase of approximately \$32,000 within the 15-16 contributions, if a successful bid is made.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

10 [PR-PC] Non-Motorised Water Recreation Businesses and Tweed Local Environmental Plan 2014/Tweed City Centres Local Environmental Plan 2012

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:

With the adoption of Tweed Local Environmental Plan (TLEP) 2014 and zoning of the waterways, legal advice was requested seeking clarification on water recreation businesses' requirement for consent and permissibility. Upon receiving the legal advice (which was included in confidential attachments in the original report to Council), a review has been undertaken regarding how to administer and regulate the commercial use of waterways and public space regarding recreation involving non-motorised watercraft.

Based on the legal advice received on the topic:

- The exchange of money is not a trigger for Development Consent i.e. the commercial activity (hiring or tours) associated with the recreation is not the trigger for a Development Application.
- The trigger for Development Consent is rather, which proposals constitute 'development' as defined by the EP&A Act and as interpreted by the Courts. What constitutes 'development' has been determined by the 'scale and degree of the use of the land' and whether the proposed use is deemed 'sufficiently regular'.
- If the use is deemed to constitute 'development' and requires development consent, characterisation is as per the attached Table A.

Given the recent degree of interest in proposals of this nature, the recent adoption of new LEPs, introduction of zoning of the waterways and regular enquiries to both Council's Development Assessment Unit and Recreational Services Unit, a unified approach to handling this matter was initiated.

Accordingly, a draft Policy providing thresholds for non-motorised water recreation businesses was prepared and reported to Council's Meeting of 11 December 2015, where Council resolved as follows:

- "1. *ATTACHMENT 1 and 2 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because they contain:-*
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*
2. *The draft policy provided in the attachments be placed on public exhibition for 28 days and invites public submissions up to 42 days.*
3. *Following the public exhibition period a report be prepared for Council's consideration of the submissions and any amendments to the draft if required."*

The draft Policy was exhibited from 14 January 2015 to 11 February 2015, and submissions were invited up to 25 February 2015. No submissions were received.

It is therefore recommended that Council adopts this Policy.

RECOMMENDATION:

That Council:

1. **Adopts the Draft Policy for Non Motorised Water Recreation Businesses and the interpretation of the Tweed Local Environmental Plan 2014 and the Tweed City Local Environmental 2012, as provided in the attachment to this report; and**
2. **Publishes a notice in the Tweed Link notifying of the adoption of the Policy.**

REPORT:

With the adoption of TLEP 2014 and zoning of the waterways, legal advice provided in the confidential attachments was requested seeking clarification on water recreation businesses' requirement for consent and permissibility. Upon receiving the legal advice dated 26 September 2014 and 30 October 2014, a review has been undertaken regarding how to administer and regulate the commercial use of waterways and public space regarding recreation involving non-motorised watercraft.

There is an argument that regulation of the waterway could be considered to draw parallels with roads in that the TLEP regulates development within the area but does not trigger consent for the driving of vehicles on the road associated with commercial activity. Further, the vehicles/vessels/craft require licensing for operation through NSW Roads and Maritime Services and not Council.

Also, there is an argument that the Tweed Local Environmental Plan 2014 or Tweed City Centre Local Environmental Plan 2012 does not provide definitions to cater for development outside buildings, structures or places.

The main points to consider are:

- What triggers Development Consent?
- How is the use of the Waterway (Crown land) regulated?
- How is the use of Council owned/managed parks regulated?
- If Development Consent is triggered, what is the characterisation and extent of the assessment under TLEP 2014 or TCCLEP 2012?

Based on the legal advice received on the topic:

- The exchange of money is not a trigger for Development Consent i.e. the commercial activity (hiring or tours) associated with the recreation is not the trigger for a Development Application.
- The trigger for Development Consent is rather, which proposals constitute 'development' as defined by the EP&A Act and as interpreted by the Courts. What constitutes 'development' has been determined by the 'scale and degree of the use of the land' and whether the proposed use is deemed 'sufficiently regular'.
- If the use is deemed to constitute 'development' and requires development consent, characterisation is as per the attached Table A.

In light of the received legal advice, a suggested way of regulating this matter involves focusing on what triggers development consent, which is by determining if the activity constitutes 'development' and consequently setting standards or tests that Council considers to be the *threshold*.

A proposed test for whether the commercial recreational activity is above the threshold, (and therefore constitutes 'development') involves consideration of the following factors:

- Frequency of the activity at a certain site.
- Duration of the activity.

- The site area nominated for the activity.

The proposed thresholds for constituting 'development' are as follows:

- Business delivery or pick up of equipment and craft - maximum 30 minutes per visit, maximum 2 visits per day per site.
- Guided tours, instruction or transport - maximum 3 hours per visit, maximum 3 visits per week per site. Parking is required to be lawful and offsite.

If the threshold is not exceeded, land owner consent (and associated licensing) is required particularly if on Council owned/managed land.

If the threshold is exceeded, the proposal requires development consent and therefore will require landowner's consent for the lodgement of a Development Application with the proposal characterised as per the attached Table A. The assessment of the Development Application will involve the areas (i.e. land and/or waterway) involved in the 'development'.

Provision of Council landowner's consent (and potential subsequent licensing) is dependent on advice from Council's Recreation Services Unit on a site by site basis and directed by any Plans of Management in place. Owners consent from the Crown will be required if Crown land is involved.

It should be noted that *recreation facility (outdoor)* and *recreation areas* are prohibited development in waterways zoned W1, W3 and SP2, as displayed in Table A.

Given the recent degree of interest in proposals of this nature, the recent adoption of new LEPs, introduction of zoning of the waterways and regular enquiries to both Council's Development Assessment Unit and Recreational Services Unit, a unified approach to handling this matter was initiated.

Accordingly, a draft Policy providing thresholds for non-motorised water recreation businesses was prepared and reported to Council's Meeting of 11 December 2015, where Council resolved as follows:

- "1. *ATTACHMENT 1 and 2 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because they contain:-*
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*
2. *The draft policy provided in the attachments be placed on public exhibition for 28 days and invites public submissions up to 42 days.*
3. *Following the public exhibition period a report be prepared for Council's consideration of the submissions and any amendments to the draft if required."*

The draft Policy was exhibited from 14 January 2015 to 11 February 2015, and submissions were invited up to 25 February 2015. No submissions were received.

It is therefore recommended that Council adopts this Policy.

Use	Is 'development' and therefore is Development Consent required?	If consent is required, characterisation under Standard Instrument	If development consent is required, permissibility under TLEP 2014 or TCCLP 2012																			
			RE1 Public Recreation	W1 Natural Waterways	W2- Recreational Waterways	W3 Working Waterways	SP2 Water Supply System	RU1 Primary Production	RU2 - Rural Landscape	RU5 Village												
Members of public using land or waterways (on privately owned or commercially hired craft)	No		Prohibited																			
Hiring of craft on public park	Yes, only if the activity is above the threshold	Retail Premises	Prohibited																			
Depositing or collecting craft in public parks		Retail Premises	Prohibited																			
Lessons and guided tours on waterways		Recreation area or recreation facility (outdoor)	Permitted with Consent	Prohibited	Permitted with Consent	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited

Table A - Example proposals for the commercial use of public land and waterways for water recreation businesses.
Please note that some Tweed Shire public boat ramps or jetties are located within road reserve which is zoned RU1, RU2 or RU5.

OPTIONS:

That Council:

1. Adopts the draft Policy; or
2. Adopts some other course of action.

The officers recommend Option 1.

CONCLUSION:

The proposed thresholds provide a defined position to manage waterway based recreation uses.

COUNCIL IMPLICATIONS:

a. Policy:

It is recommended that Council adopts the draft Policy.

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:

Attachment 1. Draft Policy for Non Motorised Water Recreation Businesses and the interpretation of the Tweed Local Environmental Plan 2014 and the Tweed City Local Environmental 2012 (ECM 3615127)

11 [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
-

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 there are no variations for the month of March 2015 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, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

ORDERS OF THE DAY



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making processes
-

12 [NOR] Class 1 Appeal - Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff

NOTICE OF RESCISSION:

Councillor C Byrne, P Youngblutt and B Longland hereby give notice that at the next Ordinary meeting of Council we will move that the resolution from the meeting held on Thursday 19 March 2015 at Minute No 129 Item No a11 titled [PR-CM] Class 1 Appeal - Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff being:

"that Council defends the Class 1 Appeal in relation to Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff and engages Council's solicitors and suitable consultants."

be rescinded.

13 [NOM] Class 1 Appeal - Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP 76023 Nos. 1-41/27-37 Bells Boulevard, Kingscliff

NOTICE OF MOTION:

Councillor C Byrne moves that Council engages its solicitors to negotiate consent orders or a s34 Agreement for Development Application DA14/0164 for Dual Use of Existing Tourist Accommodation - Residential and Tourist Accommodation at Lots 1-41 SP76023 Nos 1-41/27-37 Bells Boulevard, Kingscliff.

Councillor's Background Notes

Recommended Priority:

Nil.

Description of Project:

Nil.

Management Comments:

Delivery Program:

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

Budget/Long Term Financial Plan:

Council will incur expenses as a result of the Appeal.

Legal Implications:

Council has engaged Solicitors to assist Council with this matter. The Solicitors advise that at the telephone Directions hearing of 30 March 2015, in view of the Notice of Rescission to be considered at the Planning Committee meeting of 9 April 2015, the Court issued consent that this matter be adjourned for a further mention on 14 April 2015. No Directions were made in respect of filing a Statement of Facts and Contentions. Council's Solicitors also advised the Court of the foreshadowed application by Mantra to seek leave to be joined to the proceedings. Mantra have been advised of the Directions hearing outcome.

Policy Implications:

Not applicable.