



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: G Bagnall (Deputy Mayor)
C Byrne
B Longland
W Polglase
P Youngblutt

Agenda

Planning Committee Meeting Thursday 6 October 2016

held at **Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads** 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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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA10/0737 for Alterations to Existing Highway Service Centre Comprising of Two (2) New Diesel Refuelling Points Expansion of Truck Refuelling Canopy New Truck Parking Area (30 New Bays) and the Replacement of Existing Truck Parking Area With Additional Car Parking Spaces and Dedicated Bus Drop-off Area (Application Includes LEP Amendment PP15/0001) at Lot 1 DP 1127741 & Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah

SUBMITTED BY: Development Assessment and Compliance

Validms



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

Council received a combined request for a planning proposal and development application (DA), under s.72J of the *Environmental Planning and Assessment Act 1979*, in November 2010.

Council has since been actively seeking further information from the applicant to address specific concerns, particularly the ecological, traffic and noise impacts of the proposal.

Given the failure by the applicant to satisfactorily address these concerns, two reports have been submitted to Council in 2012 and 2014, recommending the refusal of the DA. On both occasions, Council resolved to defer determination of the DA to allow the applicant further time to respond to the site impact concerns. Concurrently, Council supported advancing the Planning Proposal (PP15/0001) to amend the Tweed Local Environmental Plan, and create a permissible use for the extension of the existing service station. PP15/0001 has since been gazetted by the State Government.

In respect of the latest DA plans and information submitted by the applicant, it is considered that they fail to adequately resolve the previously identified ecological, traffic and noise impacts.

The Ecology Report fails to comply with the offsets framework adopted by Council in November 2015 in association with Planning Proposal PP15/0001 (version 3). The report is also inconsistent with the Tweed Coast Comprehensive Koala Plan of Management, specifically in relation to the identification of preferred koala habitat and offsets.

The Noise Report fails to address noise generated by the braking of trucks on the adjoining Pacific Motorway when entering the site. The report also fails to acknowledge residential dwellings closer to the site. The Noise Report is also largely based on the understanding that the proposal would not generate any additional truck movements entering the site, which is still a point of contention.

The Traffic Report is based on "Preconstruction Processes Manual" published by the Department of Transport and Main Roads, which is a Queensland based guideline and therefore not applicable to the proposal. The Traffic Report should use the NSW Roads and Maritime Services - Guide to Traffic Generating Developments document, which indicates that the proposal would create an increase in traffic entering and using the site and therefore would create an increase in noise on surrounding residents.

The DA for this proposal has now been in Council's system for over 5 years. Given the significance of this development, Council has previously resolved on two occasions in 2012 and 2014 to defer determination of the application, in order to provide the applicant with an opportunity to address the concerns identified by Council officers. Most recently, since May 2014 the officers have been attempting to seek an appropriate level of technical assessment and resolution of a number of key outstanding issues. The latest plans and technical justification provided by the applicant are not in a form that could be supported by the officers.

The development application was reported to the Planning Committee Meeting dated 4 August 2016, seeking Council's direction as to whether they wish to provide the applicant with a further opportunity to address the outstanding concerns, or that a further report be submitted to Council with a more detailed assessment and recommendation for determination. Given the extensive amount of staff resources expended on this application to date, without any immediate prospect of resolving outstanding matters, the latter was recommended. Council resolved that a further report be brought back to Council with a more detailed assessment of the latest plans and information, and with a recommendation for determination.

Therefore, this report is in response to Council's resolution which seeks to determine the application based on the information provided with a recommendation for refusal.

RECOMMENDATION:

That Development Application DA10/0737 for alterations to existing highway service centre comprising of two (2) new diesel refuelling points expansion of truck refuelling canopy new truck parking area (36 new bays) and the replacement of existing truck parking area with additional car parking spaces and dedicated bus drop-off area (application includes LEP Amendment PP15/0001) at Lot 1 DP 1127741 & Lot 2 DP 1010771; No. 1 Ozone Street Chinderah be refused for the following reasons:

- 1. Pursuant to Section 79C (1) (b) the proposal is considered to create a significant impact on the natural environment. The proposal is considered to create adverse impacts on koala habitat, due to the removal of koala habitat.**
- 2. Pursuant to Section 79C (1) (b) the proposal is considered to create an unacceptable impact on the built environment. The proposal is considered to create an adverse impact on adjoining residential properties in relation to increased noise due to the increasing number of trucks breaking to enter the site.**
- 3. Pursuant to Section 79C (1) (e) the proposed development is considered not to be within the public interest. The proposal is contrary to the provisions of the Tweed Coast Comprehensive Koala Plan of Management. The proposal is inconsistent with the provisions in relation to the identification of preferred koala habitat and offsets.**

REPORT:

Applicant: BP Australia Pty Ltd
Owner: BP Australia Limited
Location: Lot 1 DP 1127741 & Lot 2 DP 1010771; No. 1 Ozone Street Chinderah
Zoning: 1(a) Rural, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), RU2 - Rural Landscape, IN1 - General Industrial
Cost: \$4,500,000

Background:

Council received a combined request for a planning proposal and development application, under s.72J of the *Environmental Planning and Assessment Act 1979*, in November 2010.

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

Initial concerns were raised with the proponent regarding flooding, stormwater, access, parking, noise and ecology, as reported to the Council meeting of 15 May 2012, where Council officers recommended the application be refused. Council resolved to defer determination of the application for four weeks.

The applicant provided a response to Council's request for further information dated 14 June 2012, which contained; amended plans, revised Ecology Report, revised Stormwater Report, revised Hydraulic Report, and a revised Noise Report.

Council advised the applicant on 9 April 2013, that due to the impact on the ecology of the site, the proposal is not supported in its current form unless the development footprint was substantially reduced. The applicant advised that their ecologist is unavailable to prepare a response until after mid-May 2013. The applicant provided a response to Council's letter dated 9 April 2013 by submitting an amended Ecological Report on 17 January 2014. Council officers reviewed the Ecological Report and advised that the Report does not provide any additional information that would suggest Council's comments should be reconsidered and the Report also fails to provide any modification to the development footprint. Therefore, the recommendation to refuse the application is maintained.

A report was submitted to the 1 May 2014 Planning Committee Meeting, recommending refusal of the application as ecological issues remained outstanding. Council resolved to defer determination for a workshop, which was conducted on 22 May 2014. The outcome of the workshop was that the development application be pursued further, subject to reconfiguring the development footprint to provide adequate buffers to adjoining EEC (Endangered Ecological Community).

Post the workshop, additional information had been submitted by the proponent on 2 October 2014, along with amendments to the proposed design, specifically, a reduction of the number of truck parking spaces to 30 and reduced manoeuvring area footprint. Council officers reviewed the amended Ecological Report and advised that the Report and amended designs continue to create an unacceptable impact on the significant ecological communities and is therefore is not supported.

The applicant submitted an amended plan on 13 January 2015, which illustrates a reduced development footprint and 20 metre buffer to EEC vegetation.

Council issued the applicant a request for further information 2 April 2015, in relation to the required Offsets required for compensatory Habitat, and the Sewer Rising Main. The applicant provided a response on 14 April 2015, which was to address the sewer rising main issue. Council staff advised that the information did not satisfy Council's request. A further information request was sent to the applicant on 22 April 2015.

The application was advertised for a period of 30 days from Wednesday 24 June 2015 to Friday 24 July 2015. During the advertised period Council received three submissions, the submissions highlighted the following issues; Noise (truck exhaust breaking), increase in traffic movements and impact on flora and fauna. Copies of the submissions were forwarded to the applicant.

Council provided the applicant with a Draft Offsets framework 4 September 2015 and a request for additional information regarding the sewer rising main.

An updated Draft Offsets proposal was submitted by the applicant 18 January 2016. This Draft Offsets proposal was reviewed by Council staff, which advised the proposal was not supported and teleconference was held between Council and the applicant on 25 February 2016. At this meeting the applicant agreed to amend the Draft Offsets proposal in accordance with Council's Draft Offsets Framework.

The applicant provided revised sewer rising main plans 26 February 2016, this was assessed by Council's Water and Wastewater Engineer, no objections were raised subject to recommended conditions.

On the 30 May 2016, the applicant submitted an amended Draft Offsets report; Noise Report and Traffic Statement. Council staff did not support the comments made within the respective reports and requests further information. Council staff advised that the amended Draft Offsets report fails to address Council's offsets framework adopted by Council and the Tweed Coast Comprehensive Koala Plan of Management and therefore the Draft Offsets report is not supported.

The development application was reported to the Planning Committee Meeting dated 4 August 2016, seeking Council's direction as to whether they wish to provide the applicant with a further opportunity to address the outstanding concerns, or that a further report be submitted to Council with a more detailed assessment and recommendation for determination. Given the extensive amount of staff resources expended on this application to date, without any immediate prospect of resolving outstanding matters, the latter was recommended. Council resolved that a further report be brought back to Council with a more detailed assessment of the latest plans and information, and with a recommendation for determination.

SITE DIAGRAM:

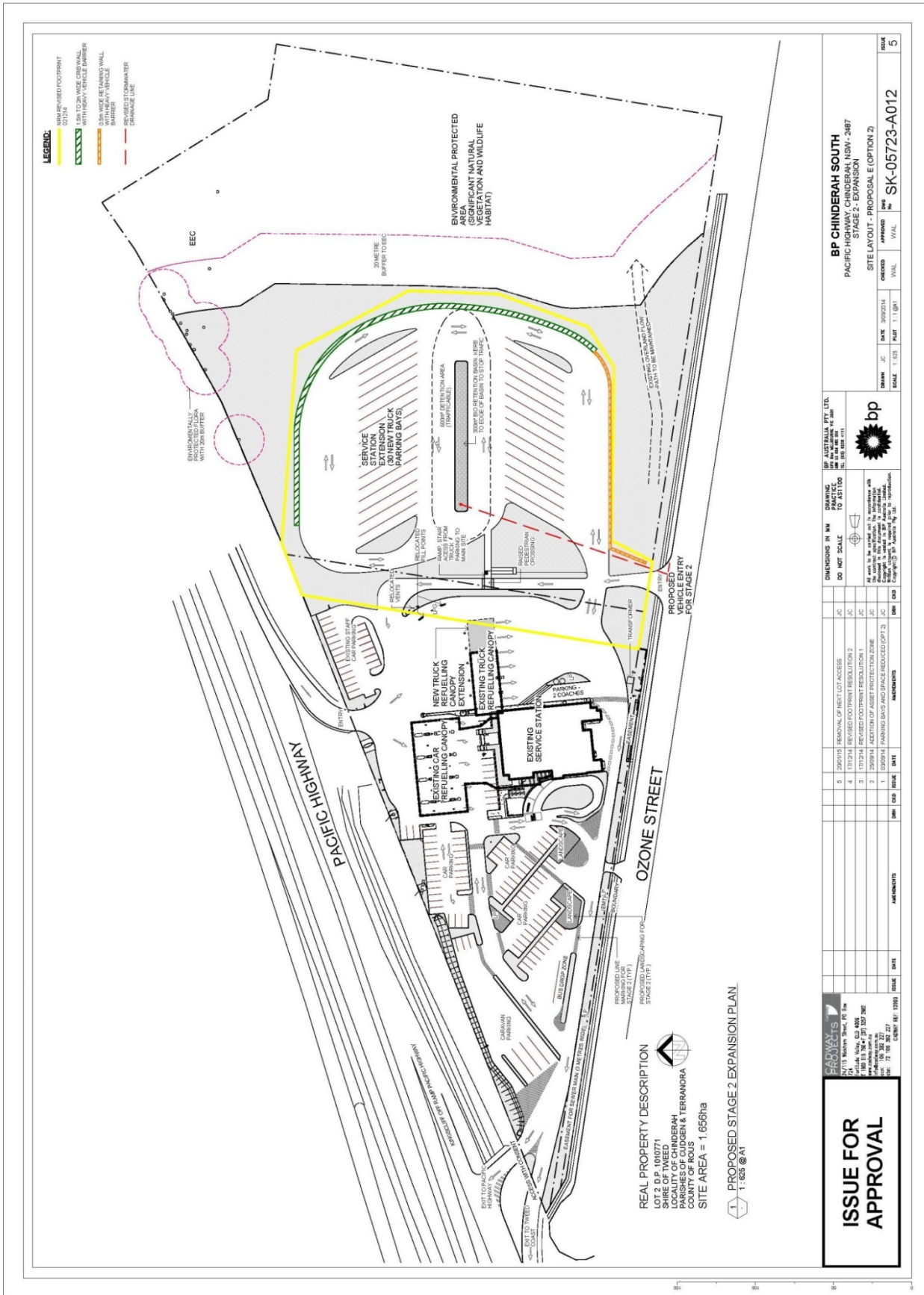


Locality Plan

Lot 1 DP 1127741 and Lot 2 DP 1010771
 No. 1 Ozone Street, Chinderah – DA10/0737

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p><small>Cadastre: 13 July, 2016 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 0.08 0.16 Km 1:8,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</small></p>	<p><small>Chivis and Cultural Centre 3 Tamboulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planningreform@tweed.nsw.gov.au</small></p>	

DEVELOPMENT/ELEVATION PLANS:



REAL PROPERTY DESCRIPTION
 LOT 2, D.P. 1010771
 SHIRE OF TWEED
 LOCALITY OF CHINDERAH
 COUNTY OF ROUS
 SITE AREA = 1.656ha

PROPOSED STAGE 2 EXPANSION PLAN
 1:300 @ A1

REV	DATE	DESCRIPTION	BY	CHKD
1	10/09/16	ISSUE FOR APPROVAL
2
3
4
5

BP CHINDERAH SOUTH
 PACIFIC-HIGHWAY CHINDERAH NSW-2487
 STAGE 2 - EXPANSION
 SITE LAYOUT - PROPOSAL E (OPTION 2)

DATE: 20/09/16
 SCALE: 1:300
 DRAWN BY: J.C.
 CHECKED BY: J.C.
 APPROVED BY: J.C.



BP AUSTRALIA PTY LTD.
 100 WILSON ROAD, WILSON
 VIC 3207
 TEL: 03 958 1111

ISSUE FOR APPROVAL

PROPOSALS
 27/15 Victoria Street, St. Ives
 NSW 1585
 Tel: 02 9371 3500
 Fax: 02 9371 3502
 Email: info@proposals.com.au
 Website: www.proposals.com.au

ISSUE FOR APPROVAL

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 considered not to be consistent with the aims of the plan as the proposal would adversely impact on koala habitat and areas of high ecological value.

Clause 2.3 – Zone objectives and Land use table

The planning proposal sought to rezone the site to IN1 General Industrial and to also create an additional entry to Schedule 1 Additional Permitted Uses to enable a Highway Service Centre to be permitted on the site. The Tweed LEP 2014 Amendment No 12 (expansion and redevelopment of BP station in Chinderah) was made by the State Government on 22 January 2016. This development application seeks development consent for the extension to the existing highway service centre at Chinderah. Therefore the proposal is considered to satisfy the clause.

Clause 4.3 - Height of Buildings

The site is identified as having a 10 metre building height limitation. The proposed canopy extension has a matching height to the existing canopy which has is 8.2 metre height. The proposal complies with the clause.

Clause 4.4 – Floor Space Ratio

The site is not covered by a Floor Space Ratio.

Clause 5.5 – Development within the Coastal Zone

The site is located within the area to which the coastal policy applies. The proposal is considered not to be in conflict with the clause. The following comments are made in response to the considerations within the clause:

- (2) *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:*
 - (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 proposal will not alter the existing public access to and along the coastal foreshore. No opportunity exists to provide new public access to the 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 development is suitable for the locality and is compatible with the character of the area.

- (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, and*

The proposal will not create any detrimental impact on the amenity of the coastal foreshore, particularly in the form of overshadowing or loss of views from a public place.

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

The scenic qualities of the NSW coast will remain unchanged.

- (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 will not impact on biodiversity and ecosystems.

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

The proposal is considered to create a cumulative impact on the coastal catchment. Significant adverse impacts on the environment are expected.

- (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*

The proposed development will not impede the physical, land-based right of access of the public to or along the coastal 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 is not required to connect to Council's reticulated sewerage system.

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

The proposal is not required to connect to Council's reticulated stormwater system.

- (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 will not be significantly affected by coastal hazard or significant impact on coastal hazards or increase the risk of coastal hazards in relation to any other land.

Clause 5.9 – Preservation of Trees or Vegetation

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. The site is covered by a Trees Preservation Orders 1990, 2004 and 2011 (koala habitat). Council officers do not support the proposed removal of vegetation, this is addressed in detail within the body of this report.

Clause 5.11 - Bush fire hazard reduction

Tweed Shire Council's Bushfire Hazard Maps indicate that the site is affected by the buffer area of a potential bushfire hazard and contains category 1 vegetation.

The proposed development does not comprise subdivision or a Special Fire Protection Purpose and therefore does not require a Bushfire Safety Authority for the purposes of Section 100B of the Rural Fires Act 1997. Council officers do not support the proposed removal of vegetation, this is addressed in detail within the body of this report.

Clause 7.1 – Acid Sulfate Soils

The site is identified as being affected by Class 3 ASS affect the site, however, the proposal is considered not to disturb ASS, due to filling of the site. Council's Environmental Officers did not raise an objection to the proposal in regards to Acid Sulfate Soils.

Clause 7.2 - Earthworks

The development proposes the filling of the site, however, the proposed earthworks are considered unlikely to create a detrimental impact on the environment or neighbouring properties.

Clause 7.3 – Flood Planning

The site is affected by flooding with Council officers raising no objection in relation to flooding. The Applicant provided a flood modelling assessment which indicates that the proposal will not create significant adverse impact in the area.

Clause 7.5 - Coastal risk planning

The site is not identified as being at risk to coastal processers. The site is located landward (west) of the Coastal Hazard Lines.

Clause 7.6 - Stormwater Management

Council officers did not raise an objection in relation to stormwater. The Applicants Stormwater Quality Management Report is considered to be satisfactory.

Clause 7.8 – Airspace operations

The site is not within the Gold Coast Airports obstacle limitations area.

Clause 7.9 - Development in areas subject to aircraft noise

The site is not within the Gold Coast Airports ANEF 2031.

Clause 7.10 - Essential Services

All essential services are available to the site.

State Environmental Planning Policies

SEPP 71 – Matters for Consideration

The aims of this policy are to manage and protect the New South Wales Coast, to improve and protect existing public access to the and along the coastal foreshore and measures to conserve animals and vegetation. The proposal is considered to be inconsistent with the policy as the proposal is considered to create an adverse impact on vegetation and habits of animals.

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

There are not any Draft Environmental Planning Instruments applicable to the proposal.

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

Tweed Development Control Plan

Section A2 Site Access and Parking Code

The development consent (1375/2000DA.14) for the existing BP Service Centre requires the provision of 74 off street car parking spaces, 12 truck spaces, 4 caravan spaces, 2 coach spaces and 1 service dock. It is noted from the table below that the existing parking spaces are consistent with the development consent.

The table below illustrates the existing and proposed parking breakdown for the different vehicles. There appears to be a total increase of 50 parking spaces - 33 cars and 18 trucks.

Existing	Proposed	Additional
75 cars	108 cars	33
8 B double	24 B double	16
3 Articulated Vehicles	6 Articulated Vehicles	3
1 medium Rigid	0	-1
4 caravan or car with trailer	4	0
2 buses	1	-1
TOTAL		50

Table 1: Existing and proposed parking

The most relevant category within the policy is 'service Station' which calculates parking requirements for staff and customer parking based on the number of staff and, work bay and floor area of convenience or retail store.

The rates are as follows:

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (class)	Delivery/ Service Vehicle parking	Resident Parking	Staff parking	Customer car parking
C30	Service stations	Customer parking requirement is inclusive of the work bay		1/4 car park (3)	min 1 articulated truck parking AV		1/staff	3.2/work bay + 2.8/100m ² convenience or retail store

The application states that 'as the proposal does not seek to increase the number of staff, seating or floor area. The proposed increase in parking is a result of existing demand rather than a change to parameters that determine car parking. The proposal would result in additional parking over and above that which is required by the current approval'.

As the proposal does not generate the need for additional parking, the proposal is considered to be compliant with the policy.

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

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

The proposed site is located within the Government Coastal Policy, and has been assessed with the objectives of this policy in mind. The Government Coastal Policy contains aims to, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is considered that the proposal contradicts the objectives of the Government Coastal Policy.

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

Tweed Shire Coastline Management Plan 2005

The site is not covered by the policy.

Tweed Coast Estuaries Management Plan 2004

The site is not covered by the policy.

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

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

The proposed development is considered not suitable for the site. To date the applicant has not provided an adequate response in relation to ecology, traffic and noise.

Flora and Fauna

Ecology

The applicant's offsets proposal dated 26 May 2016 is not consistent with:

- The offsets framework adopted by Council in November 2015 in association with Planning Proposal PP15/0001 (version 3); and
- The Tweed Coast Comprehensive Koala Plan of Management – specifically provisions in relation to the identification of *preferred koala habitat* and offsets.

A summary of the proposed offsets in relation to the offsets framework adopted by Council is presented below in Table 2.

Offset requirement – adopted by Council November 2015	Cumberland May 2016 proposed response
Offsite offset koala habitat of an area of 5.25 ha, established and maintained as per Koala Plan of Management (KPOM) offset provisions – to offset the loss of 0.35 ha of mapped <i>preferred koala habitat</i> .	Plant 40 preferred koala food trees at Cudgen Nature Reserve to offset the loss of two Forest Red Gum
456 preferred koala food trees planted and maintained offsite as per KPOM offset provisions – to offset the loss of an estimated 36 mature Pink Bloodwood trees.	Unspecified number of local endemic plant species to be included in on site restoration zone (0.7 ha).
Installation, monitoring and maintenance of nest boxes in retained trees on site to replace tree hollows at minimum 1:1 ratio. Nest box installation and management plan to be reviewed and approved by Council – to offset any tree hollows lost as a result of the proposed clearing.	Unspecified number of nest boxes, including monitoring and maintenance to be included as part of the Vegetation Management Plan.

Table 2: Summary of proposed May 2016 response to offset requirements

The applicants' justification for the proposed offset response is based on a reassessment of the vegetation communities of the site and analysis of whether the vegetation constitutes *preferred koala habitat* as per the Tweed Coast Comprehensive Koala Plan of Management 2015 (KPOM).

Cumberland Ecology argue that the vegetation proposed for clearing does not constitute *preferred koala habitat* as per the KPOM as its "best fit" categorisation with the Tweed Vegetation Management Strategy 2004 is *Code 302 Coastal Pink Bloodwood / Brush Box Open Forest to Woodland*. This vegetation community is not categorised as Primary, Secondary A or Secondary B koala habitat by the Tweed Coast Koala Habitat Study Appendix II, which is the criteria applied to define *preferred koala habitat* by the KPOM.

The categorisation of the vegetation community by Cumberland as *Code 302 Coastal Pink Bloodwood / Brush Box Open Forest to Woodland*, is not accepted as:

- Cumberland justify it is as a 'best fit' categorisation without clarification as to why this constitutes a best fit, whilst at the same time recognising similarities of the vegetation with *Code 303 Coastal Brush Box Open Forest to Woodland* (Code 303 is categorised as Secondary A koala habitat by the Habitat Study and thus *preferred koala habitat* under the KPOM).
- Cumberland previously identified the vegetation as 'broadly consistent' with Code 303 vegetation type in the 2014 *Review of Ecological Assessment by James Warren and Associates for a Proposed Expansion of BP Australia site at Chinderah: lot 1 DP 1127741 and Lot 2 DP 1010771*.

- There are at least three vegetation types identified by the Tweed Vegetation Management Strategy that the vegetation on site could potentially be typed as. The latest assessment does not systematically analyse vegetation typing nor provide analysis in relation to TVMS vegetation codes but does recognise that a large proportion of the site is in a regenerating state.

Further, the absence of preferred koala food trees from the subject vegetation is not considered sufficient justification to disregard all vegetation at the site as *preferred koala habitat* due to the following:

- The koala habitat categories of Appendix II of the Tweed Coast Koala Habitat Study, as noted in the May 2016 report, include species present as dominant, co-dominant, sub-dominant or regular occurrences. Limiting consideration of this issue to within the subject site only, whilst also acknowledging its regenerating state, is not sufficient to make this determination.
- The preferred koala food tree *Eucalyptus tereticornis* does occur on site and is noted in Appendix D of the May 2016 report as qualifying '*at least some areas of vegetation therein as koala habitat*'.
- The statement on page 3 of Appendix D in relation to whether the vegetation community satisfies criteria for recognition as *preferred koala habitat* is qualified to relate to '*the greater proportion of the vegetation community therein*'. Council does not claim that the entire area is *preferred koala habitat*.
- The vegetation type descriptions of the Tweed Vegetation Management Strategy (Appendix 6) identify that all three potential vegetation types contain koala food tree species.
- The categories of koala habitat identified in Appendix 3 of the NSW Koala Recovery Plan (November 2008) acknowledge that primary food tree species may or may not occur in both Secondary A and Secondary B habitat.

In response to the critical situation with regard to conservation of the Tweed Coast koala population, the KPOM takes by necessity a precautionary approach to the retention of all existing koala habitat through the identification of *preferred koala habitat*. The need for this approach has recently been endorsed by the April 2016 gazettal of the Tweed Brunswick Koala Population as an endangered population under the *Threatened Species Conservation Act 1995*.

The NSW Scientific Committee notes the following in relation to koala habitat in the final determination of the endangered population:

"Development pressures continue in the Tweed and Byron coastal area, with several approved and proposed developments likely to lead to further loss and fragmentation of Koala habitat. Habitat loss and fragmentation also have the potential to further impede dispersal and recruitment between sub-populations and are associated with increased risks of vehicle strike and domestic dog attack (McAlpine et al. 2006; Phillips et al. 2011). 'Clearing of native vegetation' is listed as a Key Threatening Process under the Act."

Based on the uncertainty of vegetation classification and the significant need for protection of all categories of koala habitat within the Tweed Coast, it is

recommended that a precautionary approach is applied and thus that the 0.35 ha of mapped *preferred koala habitat* as per the KPOM remain considered as such for the purposes of assessment of the development application. This will enable the loss of habitat at the subject site to be appropriately compensated for at another location.

It is also noted that a series of errors were also identified through review of the latest offset proposal including in relation to the authorship, development provisions and terminology of the KPOM.

Council have completed significant work to date to negotiate a development envelope that protects the most significant ecological values of the site whilst providing adequate space for the proposed development. Development of the proposed envelope was based on a best practice, hierarchical approach to the avoidance, mitigation and finally offsetting of ecological impacts.

The offsets framework adopted by Council in November 2015 in association with Planning Proposal PP15/0001 (version 3) is the result of this work and remains the recommended approach for the proposed development.

Noise

The Noise Report is based on the assumption that the proposal will not generate additional truck movements into the site. The report also did not take into consideration the truck vehicle noise from braking on the highway when entering the site. The proposal is considered to generate additional truck movements and additional truck braking on the highway, refer to traffic comments below, and therefore additional noise.

The Noise Report also indicates the nearest dwelling to be 350 metres away and attenuation was calculated on the basis that the attenuation distance was 400 metres. However, the nearest dwelling is 290-300 metres, with vehicles on the highway potentially closer to the nearest dwellings.

Council is in receipt of various objections which largely relate to the assertion that no additional traffic will be generated, and the impacts this assertion has on the limited noise assessment.

Traffic

Council staff reviewed the Traffic Assessment dated 18 April 2016, and advised that the Traffic Assessment makes reference to "Preconstruction Processes Manual" published by the Department of Transport and Main Roads (DTMR) which is a Queensland based guideline and therefore not applicable to the proposal. The Preconstruction Processes Manual defines traffic generation rates based for urban service stations based on the Gross Floor Area (GFA) of the service station, which is defined as the critical factor in determining the traffic demand to these sites. The proposal is not an urban service station and the site is not located within Queensland.

The Traffic Report should use the NSW Roads and Maritime Services - Guide to Traffic Generating Developments document, which indicates that the proposal would create an increase in traffic entering and using the site and therefore would

create an increase in noise on surrounding residents. The NSW RMS Guide to Traffic Generating Developments provides that for service stations with convenience stores the evening peak hour vehicle trips are calculated as $(0.04 \times \text{the area of the site}) + (0.3 \times \text{the gross floor area of the convenience store})$. Based on the NSW RMS guidelines Council calculates that an additional **62.3** trucks per peak hour entering the site which is an additional **1,074** trucks per day as a result of the additional parking. This was calculated as follows:

The proposed additional area for truck parking is $17,500\text{m}^2$

The current truck percentage entering the site $(447/5024) = 8.9\%$.

Hourly rate

The RMS guidelines recommend $0.04 \times \text{the parking area}$ to calculate the number of vehicles peak hour.

Therefore $0.04 \times 17,500\text{m}^2 = 700$ additional vehicles (truck and cars) per peak hour.

As the additional park area will be used by trucks only, 8.9% of 700 equates to the number of trucks in a peak hour.

Therefore, 700×0.089 (8.9%) = **62.3** additional trucks per peak hour entering the site because of the proposed truck parking bays.

Daily rate

To calculate the potential daily truck movements the proposal could generate, the following was calculated.

The RMS Guide to Traffic Generating Develops provides that daily trip generation for a Service Station with convenience store varies from 17 to 19 times the evening peak hour. Using the lower value of 17 times, the potential daily increases in truck movements to the site is calculated as $17 \times 62.3 = 1,059$ potential additional truck movements per day.

Whilst the above is a theoretical model it does indicate that potential additional truck movements to the site could be significant contrary to the submitted report and further assessment should be provided accordingly.

It is important to note that the proposal also seeks to create an additional 33 car parking spaces which would increase the number of cars entering the site.

The Department of Transport and Main Roads – Queensland, method should not be used in this instance as there will obviously be an increase in truck movements to the site in direct correlation to additional parking spaces to be provided with Application. It is also identified within the applicants Statement of Environmental Effects, (page 37) that states *“It is probable that the number of heavy vehicles may increase between 5% and 10% but as these vehicles represent a minority of vehicles using the site the overall increase in the site would be insignificant”*.

The table below illustrates the existing and proposed parking breakdown for the different vehicles. There appears to be a total increase of 50 parking spaces - 33 cars and 18 trucks.

Existing	Proposed	Additional
75 cars	108 cars	33
8 B double	24 B double	16
3 Articulated Vehicles	6 Articulated Vehicles	3
1 medium Rigid	0	-1
4 caravan or car with trailer	4	0
2 buses	1	-1
TOTAL		50

Table 3: Existing and proposed parking

(c) Suitability of the site for the development

The proposed development is considered not suitable for the site. To date the applicant has not provided an adequate response in relation to ecology, traffic and noise.

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

Council received three submissions objecting to the Development Application and Planning Proposal. The objections raised issues such as; increase in noise from truck breaking and increased traffic to and from the site, new or additional dwellings not included within the most recent Noise Report, outdated specialist reports, specifically in respect to the Statement of Environmental Effects, Noise Assessment and Ecological Assessment.

(e) Public interest

The development is considered to create unacceptable impacts on the natural and built environments through the removal of preferred koala habitat, and increased noise on nearby dwellings due to the increase in the number of trucks using the site. As such Council considers the likely impacts on the natural environments unacceptable and therefore not in the public's interest.

OPTIONS:

1. Refuse the development application.
2. That Council resolve to defer this matter, to provide the applicant with a further opportunity to address the outstanding concerns identified in this report.

Council officers recommend Option 1.

CONCLUSION:

The development is considered to create unacceptable impacts on the natural and built environments through the removal of preferred koala habitat, and increased noise on nearby

dwellingings due to the increase in the number of trucks using the site. It is considered that the applicant has been given more than sufficient time (over 5 years) to address various development impact concerns. Council officers recommended that the development application be refused.

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.

2 [PR-PC] Rural Land Strategy - Stage 3a Policy Directions Paper Public Consultation Review and Commencement of Stage 4

SUBMITTED BY: Strategic Planning and Urban Design

Validms



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development

SUMMARY OF REPORT:

This report provides a summary of the public exhibition of the Stage 3a 'Draft Policy Directions Paper' for the Rural Lands Strategy and recommends preparing the final Stage 4 Strategy.

Public exhibition occurred during the period 19 July 2016 to 19 August 2016 at eight locations across the Tweed and included six community information sessions at which approximately 70 people attended.

41 submissions were received from the public raising issues which can be summarised as:

- concerns about a proposed caravan park development at Dungay;
- Multiple Occupancy and conversion to Community Title;
- dwelling entitlement;
- affordable housing;
- rural tourism opportunities, and
- rural land subdivision.

The majority of submissions raise matters which did not relate specifically to policy level considerations, but rather property-specific concerns that will be further and better addressed during the final stage of the project.

No submission raised a matter warranting an amendment to the draft Policy Directions Paper as exhibited; as such this report recommends proceeding with preparing the final strategy guided by those policy directions.

RECOMMENDATION:

That Council:

- 1. Receive and note the report and summary of submissions received in respect of the recent public exhibition of the draft Rural Lands Policy Directions Paper; and**
- 2. Adopts the draft Policy Direction Papers, as exhibited, and the policy directions provided are to guide the direction and deliverables of a new draft Rural Lands Strategy document.**

REPORT:

This report provides a summary of the public exhibition of the Stage 3a Draft Policy Directions Paper (“the PDP”) and seeks Council’s adoption of the PDP.

Once adopted the policy directions in the PDP will be used to guide the overall direction and actions to be delivered through the Rural Land Strategy (“the RLS”). This is represented as Stage 4 of the overall project, and being the final stage, will deliver a strategy document and compendium of background and resource information at its completion.

Public exhibition

In accordance with Council’s resolution of 7 July 2016, the Stage 3a draft PDP was placed on public exhibition during the period 19 July 2016 to 19 August 2016 at the following eight locations:

- Civic and Cultural Centre;
- Uki Post Office;
- Tyalgum General Store;
- Chillingham Village Store;
- Pottsville Beach Neighbourhood Murwillumbah Centre;
- Tweed Heads Civic Centre
- Kingscliff Library;
- Burringbar General Store, and
- Council’s website.

The PDP was circulated to the community based RLS Reference Panel for review and response prior to exhibition.

Six ‘community information sessions’ were conducted during the exhibition period at Piggabeen, Tyalgum, Chillingham, Murwillumbah, Burringbar and Pottsville at which approximately 70 members of the local community attended.

A total of 41 submissions were received from the public and no government agency submissions. A summary of submissions received, planning response, and recommendations can be seen in Attachment 1 to this report.

The range of matters raised in submissions varied considerably but can be summarised as:

- Concerns about a proposed caravan park development at Dungay (26 submissions using template format);
- Multiple Occupancy and conversion to Community Title (5 submissions from one family), and
- Property and issue specific matters and general comments relating to potential to subdivide, concern with bicycles on rural roads, dwelling entitlement, affordable housing, rural tourism opportunities (10 submissions from individual landowners).

The following discussion addresses the common themes raised in submissions.

Proposed Caravan Park at Dungay

Concerns were expressed about a proposal for a caravan park at Dungay which may contain predominantly manufactured homes. As it is, caravan parks are permissible with consent in the RU2 Rural Landscape zone and as such any development application will need to be assessed according to prevailing rules and procedures.

The exhibited PDP promotes, among others, protection of agricultural land, growth in rural tourism, rural employment generation, and diversity in rural housing; and is targeted at addressing higher level policy development. As such it did not seek to address those actions based strategies that will ultimately be in the final RLS, and which themselves may address or alleviate the concerns raised in the submissions, consequently the next and final stage of the RLS is the appropriate time for considering submissions of a site based nature.

Conversion of Multiple Occupancies to Community Title

Five submissions received from the one family discussed problems associated with existing 'multiple occupancy' development and requested that the ability to convert to Community Title or provision of independent title to individual dwellings be considered in the final stage of the RLS.

Direction 5 of the PDP concerns greater diversity in rural housing and includes an actionable strategy for investigating alternative approaches to housing and land tenure. While conversion of multiple occupancy to enable other forms of registrable property interests has not been singled out, it is a longstanding matter that the final RLS will seek to address.

Dwelling entitlement and housing opportunities

Concerns have been raised regarding dwelling entitlements on undersized rural allotments. Under Draft Policy Direction 5 this matter has been acknowledged and while no definitive response can be given regarding the site-specific nature of comments received in submissions at this stage of the project, the ability to do away with the need for dwelling entitlement investigations has been proposed for consideration in the final stage of the project.

One submission provided advice on the significance of affordable housing in support of detached dual occupancy / secondary dwellings which, in combination with an evidence base on the cost of allowing such a change, will be addressed in the final RLS.

Subdivision of rural land

This is a vexed and complex area of planning, the rules for which are seemingly largely misunderstood, with many landowners apparently unaware that subdivision of rural land is permissible on many fronts, and providing that it is not intended for residential purposes. For others the main complaint is that land cannot be subdivided for housing, and the RLS is seen as the policy vehicle for bring about a change in these rules.

Because of this, it has been necessary to make clear at every stage that the RLS is about the best **use** of rural land and is not to be confused with a 'rural residential strategy', which is specifically concerned with housing in rural zoned areas. Therefore the identification of

rural (Greenfield) land for housing supply at either a rural, peri-urban or urban scale is neither a specific aim nor objective of the RLS.

Similarly, subdivision of land is not a 'land use' per se, despite the rules of subdivision themselves being 'land use controls'. Subdivision comprises the division of land into two or more parts that, after the division, would likely be adapted for separate occupation, use or disposition. In that sense; the **use** of land is not the 'subdivision' itself, but the subsequent use of those divided parcels or lots; for example; agriculture, tourism, rural industry, or a dwelling house for residential living.

These caveats are essential for understanding the function and limits of the RLS, but they are not totally preclusive of strategy actions that may come through the final RLS in response to those actions that seek to address, for example; rural housing or rural employment generating opportunities. The PDP, as exhibited, provides the broad policy directions for these investigations to occur. What they do not do, as it would undermine legitimate strategies to advance the best long-term **use** of rural land, is promote wholesale changes to subdivision regulation or alter the minimum lot size requirement for rural housing.

Issues raised by way of submissions regarding land subdivision, irrespective of its intended purpose, will be better addressed by and following public exhibition of the final stage of the RLS. This will provide the community with the opportunity to review the proposed strategy actions and for staff to relate the strategy response to concerns on a site and case by case basis, which should lead to a more meaningful reply.

At present and to address issues regarding land subdivision it is sufficient to highlight that the PDP, as exhibited, provides several overarching directions the response to which may lead to actions that alter the current rules regulating land subdivision, the specificity and detail of which is to follow in the final strategy.

Rural tourism opportunities

One submission identified a rural tourism opportunity relating to utilisation of the diversity of rural produce grown and manufactured in the Tweed, a concept generated from discussions at Council's recent Food for Thought Forum.

The draft PDP supports innovation, diversification and value-adding of rural enterprises, including rural tourism, which may be related, and are seen as opportunities for some landowners to generate alternative sources of income not tied solely to the productive capability or capacity of the land.

More details regarding how the RLS will support growth of rural tourism and associated agricultural activities will be addressed in the final stage of the project when specific actions are developed and exhibited.

Status of the directions and lack of autonomy of the Draft Paper

One submission raised concern that the comments and directions proposed have all been raised during the preparation of previous rural land strategies and that the current Strategy was not a standalone document but linked to other strategies of Council.

The process established for the development of the RLS has sought to provide transparency in both the process and the outcomes delivered, and while previous documents have provided valuable insight into matters relevant to the current process, the ability of the final RLS document to provide clear guidance on the planning and management of rural land is not tied to these documents and seeks to present a contemporary perspective and develop actions that support a diverse range of rural land use opportunities.

With identification of potential actions for inclusion in the draft RLS in the next stage, supported by technical data and information, comments from the community, and further investigation, an objective evaluation of potential actions is expected to provide clear understanding of how the actions have been derived and potential implications relevant to current circumstances.

The final strategy will endeavour to make clear linkages to other related Council documents such as the Sustainable Agriculture Strategy, Economic Development Strategy, the Vegetation Management Strategy and the Rural Villages Strategy. Each of these strategies and others not mentioned will continue to provide guidance on matters more specific to their individual objectives. This does not mean that any one of these strategies is subservient to another; they all operate to achieve their objectives, but are not intended to duplicate outcomes.

OPTIONS:

1. Adopt the Policy Directions Paper, as exhibited, and as the basis for the preparation of the final Rural Land Strategy document, and proceed with preparation of the Rural Land Strategy, or
2. Revise the draft policy directions, as exhibited.

The officers' recommendation is Option 1.

CONCLUSION:

While submissions raised matters of interest and relevant to understanding the individual concerns or desires of the writer, the majority of submissions did not raise concerns with the policy directions proposed.

No new issues have been raised during public exhibition of the draft Policy Directions Paper which would lead to a modification of that as exhibited.

With the exception of matters raised that can be dealt with under existing Council procedures and policies, the majority of comments will be carried forward for further consideration in preparation of the final RLS and actions to support implementation of the policy directions as exhibited.

Over the preceding 2 years a significant compendium of resources about Tweed's rural lands has been collected and complemented with extensive community, industry and government agency feedback. The process has been greatly assisted by the community based RLS reference panel, who have persisted over this period, and upon adoption of the PDP the final stage of the RLS can be commenced.

It is recommended that the PDP, as exhibited, be adopted and the final RLS document be prepared.

COUNCIL IMPLICATIONS:

a. Policy:

It is recommended that the PDB be used as the basis for the preparation of a Draft Rural Lands Strategy.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Submissions - Planning Response to submissions (ECM 4235273)

3 [PR-PC] Environmental Damage and Unauthorised Works at Lot 469 DP 1144944 off Henry Lawson Drive, Terranora

SUBMITTED BY: Development Assessment and Compliance

Validms



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:

This report compiles a number of serious compliance issues that have occurred on the subject site, relating to construction works associated with stages 17 and 18 of Terranora Village.

Council granted consent S96/0066 for a 101 lot residential subdivision and open space on the subject site, known as the Terranora Village Estate. Stages 1 to 16. The new Terranora Tennis Club complex has recently been constructed on a large portion of the open space. A new landowner has purchased the two final stages 17 and 18, and has sought modifications to advance the development.

As identified in this report, there have been a variety of non-compliance and regulatory issues brought to the attention of both Council and the NSW State Government. This has resulted in a number of fines being issues.

Despite these enforcement actions being taken, the proponents of the development have continued with a number of alleged, serious unlawful activities, the latest being the apparent unauthorised earthworks and stockpiling, causing damage to marine vegetation.

The purpose of this report is to bring to Council's attention the continuing compliance issues experienced with the proponents of this development. A further report will be submitted to Council following a response from the owner and proponents of the latest alleged unauthorised activity.

This report should be read in conjunction with a separate report on the Business Paper, which identifies similar instances of unauthorised activity by the same development proponent of another residential subdivision site at Lot 12 DP 1163855 Fraser Drive Tweed Heads South.

RECOMMENDATION:

That Council:

- a. Receive and note this report; and**
- b. Note that a further report will be submitted to Council following a response from the owner and proponents of alleged unauthorised earthworks and stockpiles (causing damage to marine vegetation) at Lot 469 DP 1144944, off Henry Lawson Drive Terranora.**

REPORT:

Background:

Council Development Approval

Council granted consent S96/0066 for a 101 lot residential subdivision and open space on the subject site, known as the Terranora Village Estate - Stages 1 to 16. Part of the open space contains the recently completed Terranora Tennis Club complex. A new landowner has purchased the two final stages 17 and 18, and has sought modifications to advance the development.

Subdivision Construction Compliance Issues

In May 2015, bulk earthworks commenced on site without any Construction Certificate being issued. A \$6000 Penalty Infringement Notice (PIN) was issued by Council, but has never been paid.



Furthermore, the works were undertaken with unsatisfactory sedimentation and erosion control in place as required by the development consent and consequently a further \$1500 Penalty Infringement Notice (PIN) was issued. This PIN has also not been paid.

In August 2015, a complaint was received in respect to damage to the footpath and secondly, about sediment filtering down and affecting the water quality of an adjoining creek. After extensive warnings, both the footpath and water quality were eventually corrected.

A Construction Certificate was issued by Council in April 2016, but in August, new unauthorised sub-surface drainage works commenced within the road reserve. These works were outside the authority of the Construction Certificate and were consequently again undertaken without approval.

As the landowner was repeatedly warned not to commence without approval, a second \$6000 PIN was finally issued by Council. That PIN has again not been paid.

Waterway Compliance Issues

In 2015 the NSW Department of Primary Industry – Fisheries (DPI-F) alerted Council that the landowner had exposed acid sulfate soils and damaged mangroves whilst undertaking drainage works. Council officers inspected the site on 8 September 2015 and directed that

an Environmental Consultant be engaged immediately to oversee urgent remediation works through the spreading of lime to neutralise the exposed acid.



A suitable consultant was engaged and after initial advice and liming of the area, the preliminary laboratory results showed certain success in neutralising the acid sulfate soil. Those results however, also showed that certain 'hot spots' remained and needed further remediation. Officers wrote to the landowner again directing a proper Acid Sulfate Soil Mitigation Report be prepared by a qualified consultant prior to any further corrective works being undertaken. The consultant did not prepare that report as he was not paid for the preliminary site work and laboratory testing.

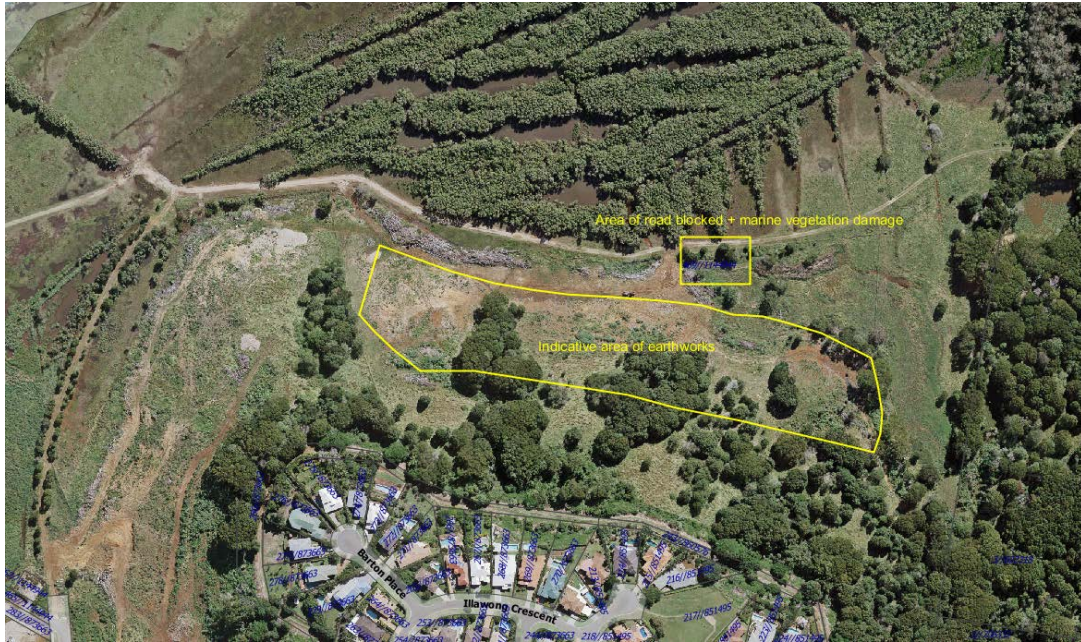
Further correspondence was sent due to ongoing concerns about the impacts from the drainage works occurring within an intertidal zone where acid could create a 'fish kill' and where the dredged soil was spread unevenly over marine vegetation (saltmarsh).

The lack of any response caused Council to issue a \$6000 PIN. That PIN has not been paid. It is probable that the outer crust of the dredged soil has now been naturally leached to some extent. No reports have been received of adverse impacts over the last 12 months.

Further Alleged Unauthorised Earthworks and Stockpiling (Resulting in Marine Vegetation Damage)

On 11 August 2016, the access road (secured by a registered easement in favour of Council) used by Council's sewer maintenance engineers and pest management team through the site had been blocked with rocks and the track heavily rutted due to frequent

movement by heavy earthmoving equipment. This access road had only recently been upgraded by Council to ensure all weather access to the rising main.



In addition, earthworks and the stockpiling of material had occurred.

Marine vegetation (saltmarsh) has been significantly damaged by heavy earthmoving equipment. Although a Construction Certificate had recently been issued for Stage 17, these works were well outside the development footprint and have no approval.

Due to the seriousness of this alleged activity, it is recommended that Council commence legal action against the land owner.



Other Compliance Issues

Impounding of Cattle

In 2014, Council received 15 complaints regarding cattle wandering on public road, in private properties, as well as public places within the Terranora township. This problem lasted for a period of 5 months and only stopped when the landowner's cattle were

impounded. They were finally removed by their previous owners from Lismore who had never been paid for the cattle in the first instance.

Four fines were issued for cattle wandering in a Public Place, and one fine was issued for failure to comply with a Fencing Order. No fines have been paid.

The RSPCA also took action in May 2014 against the landowner as some of his cattle (6 head) and a number of horses, had died because of lack of food and care.

Summary of Outstanding Issues:

- The first bulk earthworks issue is resolved, but the later dumping and/or stockpiling of fill in August 2016 is still unresolved.
- The Acid Sulfate Soil exposed from drainage works may have been remediated to some extent through the natural weathering processes of rain and sun.
- The three PINs totalling \$18,000 still have not been paid.

OPTIONS:

That Council:

1. take no further compliance or enforcement action; or
2.
 - a. Receive and note this report; and
 - b. Note that a further report will be submitted to Council following a response from the owner and proponents of alleged unauthorised earthworks and stockpiles (causing damage to marine vegetation) at Lot 469 DP 1144944, off Henry Lawson Drive, Terranora.

The officers recommend Option 2.

CONCLUSION:

The purpose of this report to bring to Council's attention the continuing compliance issues experienced with the proponents of this development, and to seek Council's endorsement to seek advice from Council's solicitors to commence legal action in respect of the latest alleged unauthorised activity.

COUNCIL IMPLICATIONS:

a. Policy:

Multiple actions of non-compliance has occurred prompting action under Council's Enforcement Policy and various statutory instruments.

b. Budget/Long Term Financial Plan:

Financial resources will be required to initiate any legal challenge.

c. Legal:

Legal advice will be required.

d. Communication/Engagement:
Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Environmental Damage and Unauthorised Works at Lot 12 DP 1163855 Fraser Drive, Tweed Heads South

SUBMITTED BY: Development Assessment and Compliance

Validms



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:

This report compiles a number of serious compliance issues that have occurred on the subject site, relating to the initial construction works of a new residential subdivision.

On 4 November 2008 the Minister for Planning granted Project Approval No. 06_0243 for the carrying out of:

- i. Boundary adjustment and subdivision of the site into two master lots and separation of battle-axe handle for future consolidation with Lot 17 Section 11 DP 28392; and*
- ii. Residential subdivision in seven stages to create 145 residential lots that will provide for attached and detached dwellings including the creation of a 1.54 hectare "superlot" for a future integrated housing development comprising of strata or community titled subdivision, 5 open space lots and a lot for a local shop.*

There have been a number of subsequent modifications of this approval, and further construction certificate and subdivision approvals to enable the commencement of works of the initial stage of development.

As identified in this report, there have been a variety of non-compliance and regulatory issues brought to the attention of both Council and the NSW Department of Planning and Environment (DP&E). This has resulted in a number of fines being issued.

Despite these enforcement actions being taken, the proponents of the development have continued with a number of alleged, serious unlawful activities, the latest being the apparent unauthorised removal of vegetation.

The purpose of this report to bring is to Council's attention the continuing compliance issues experienced with the proponents of this development, and to seek Council's endorsement to

seek advice from Council's solicitors to commence legal action in respect of the alleged unauthorised removal of vegetation.

This report should be read in conjunction with a separate report on the Business Paper, which identifies similar instances of unauthorised activity by the same development proponent of another residential subdivision site off Henry Lawson Drive Terranora.

RECOMMENDATION:

That Council engage solicitors to seek advice on options for action in respect of alleged unauthorised removal of vegetation in respect of the current subdivision construction works at Lot 12 DP 1163855, Fraser Drive Tweed Heads South.

REPORT:

Background:

Major Projects Approval

On 4 November 2008 the Minister for Planning granted Project Approval No. 06_0243 for the carrying out of:

- i. Boundary adjustment and subdivision of the site into two master lots and separation of battle-axe handle for future consolidation with Lot 17 Section 11 DP 28392; and*
- ii. Residential subdivision in seven stages to create 145 residential lots that will provide for attached and detached dwellings including the creation of a 1.54 hectare "superlot" for a future integrated housing development comprising of strata or community titled subdivision, 5 open space lots and a lot for a local shop.*

There have been a number of subsequent modifications of this approval, and further construction certificate and subdivision approvals to enable the commencement of works of the initial stage of development.

Subdivision Construction Compliance Issues

On 5 April 2016, Council became aware that the landowner had removed concrete barriers and a guard rail previously installed by Council to prevent public access to an Aboriginal Midden. The Department of Planning and Environment (DP&E) was advised as they are the consent authority over the site.

On 26 April 2016, the DP&E issued a penalty notice for \$15,000 for failure to establish a semi-permanent fence around the midden site prior to works occurring on site. The penalty notice has not been paid to date.

An Order was issued by the DP&E to the landowner to erect the semi-permanent fence around midden site by 9 September 2016. As this Order was not completed by this date, on 23 September 2016 the DP&E issued an additional penalty notice for the sum of \$6,000, and a further warning that if the works were not completed within a 14 day period, further fines may be issued, along with the costs of the Department undertaking the works on behalf of the owner.

Unauthorised Container Compliance Issues

Two large marketing signs were attached to a container placed on the subject site without the required development consent for the container. After two prior warning letters, a Penalty Infringement Notice (PIN) for \$6000 was issued to the site owner by Council on 2 September 2016. This fine is yet to be paid.



Alleged Unauthorised Removal of Vegetation

On 1 September 2016, a neighbour complaint alerted Council that trees were being cleared. An immediate inspection confirmed that apart from Camphor Laurels, other native species were also being felled. An immediate Stop Work directive was issued. That matter is still being resolved, but represents the latest breach at a time when the landowner was still being investigated for other issues of non-compliance. On the basis of this activity, it is recommended that Council seek advice from its solicitors on options to commence legal action.



Other Council Compliance Issues

Overgrown Block Issues

Over the last few years, a number of routine Overgrown Block Notices were sent out by Council to the landowner. No action was taken in respect of these Notices, which triggered several Orders to be sent to the landowner. The landowner finally complied, but only after a lengthy process.

Summary of Current Outstanding Breaches:

- In terms of Overgrown Block Notices, Council still receives complaints about long grass adjacent the rear boundaries of the adjoining residential properties. A Notice has been sent recently.
- The Aboriginal Midden is still not fenced. The DP&E is currently considering further action.

- Further trees were cleared after the Stop Work directive was issued. That matter is still being resolved with officers from Council and DP&E.
- The unauthorised container which supports the two signboards is still on the site.
- The two PINs totalling \$21,000 still have not been paid.

OPTIONS:

That Council:

1. take no further compliance or enforcement action; or
2. engage solicitors to provide advice on options to address the ongoing unlawful activities.

The officers recommend Option 2.

CONCLUSION:

The purpose of this report to bring to Council's attention the continuing compliance issues experienced with the proponents of this development, and to seek Council's endorsement to seek advice from Council's solicitors to commence legal action in respect of the alleged unauthorised removal of vegetation.

COUNCIL IMPLICATIONS:

a. Policy:

Multiple actions of non-compliance has occurred prompting action under Council's Enforcement Policy and various statutory instruments.

b. Budget/Long Term Financial Plan:

Financial resources will be required to initiate any legal challenge.

c. Legal:

Legal advice will be required.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Director

Validms



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
 - 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community
-

SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

RECOMMENDATION:

That Council notes the September 2016 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Application has been supported where a variation in standards under SEPP1 has occurred.

DA No.	DA16/0581
Description of Development:	alterations and additions to existing dwelling
Property Address:	Lot 4 DP 26837 No. 7 Olga Street, Kingscliff
Date Granted:	25/8/2016
Development Standard to be Varied:	Clause 4.6 for the variation of height of building
Zoning:	R2 Low Density Residential
Justification:	<p>The Applicant has requested an exemption to development standard 4.3 - Heights of Buildings in relation to the height of the proposed additions.</p> <p>The maximum building height in this location is 9.0m however the proposed additions will exceed this height for part of the roof by 350mm which will result in a building height of 9.35m above finished ground level.</p> <p>The requested variation is less than 4% from the standard which is considered to be minor and will have no adverse impact on the streetscape or adjoining allotments.</p> <p>The adjoining property which is closest to the proposed additions is on the north side of the subject lot and therefore will not be impacted on by overshadowing.</p> <p>The design of the additions has been prepared by a professional building designer and is considered to be consistent with the overall design intent of the dwelling house.</p> <p>The dwelling is of a contemporary design and the additions are considered to be a positive contribution to the appearance of the building and to the streetscape.</p> <p>Allotments to the rear of the subject lot contain tennis courts and will not be affected by the proposal.</p> <p>It is recommended that the Applicant's request to vary standard 4.3 to permit the height of the dwelling additions to exceed the 9m height limit by 350mm for part of the roof be supported.</p>
Extent:	SEPP1 Variation is a minor increase in height limit, quantified as less than 4%
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:
Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
