



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 4 August 2016

held at **Council Chambers, Murwillumbah Civic & Cultural Centre,**
Tumbulgum Road, Murwillumbah 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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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 at Lot 1 DP 1127741 and 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 |
| 1.1 | Ensure actions taken and decisions reached are based on the principles of sustainability |
| 1.1.2 | Create a sustainable, social and environmentally aware community through education |
-

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.

Therefore, this report seeks 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 is recommended.

RECOMMENDATION:

That Council, in respect of 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 at Lot 1 DP 1127741 and Lot 2 DP 1010771 No. 1 Ozone Street, Chinderah, endorse 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.

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: RU2 - Rural Landscape IN1 - General Industrial, 1(a) Rural 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 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.

SITE DIAGRAM:



Locality Plan

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

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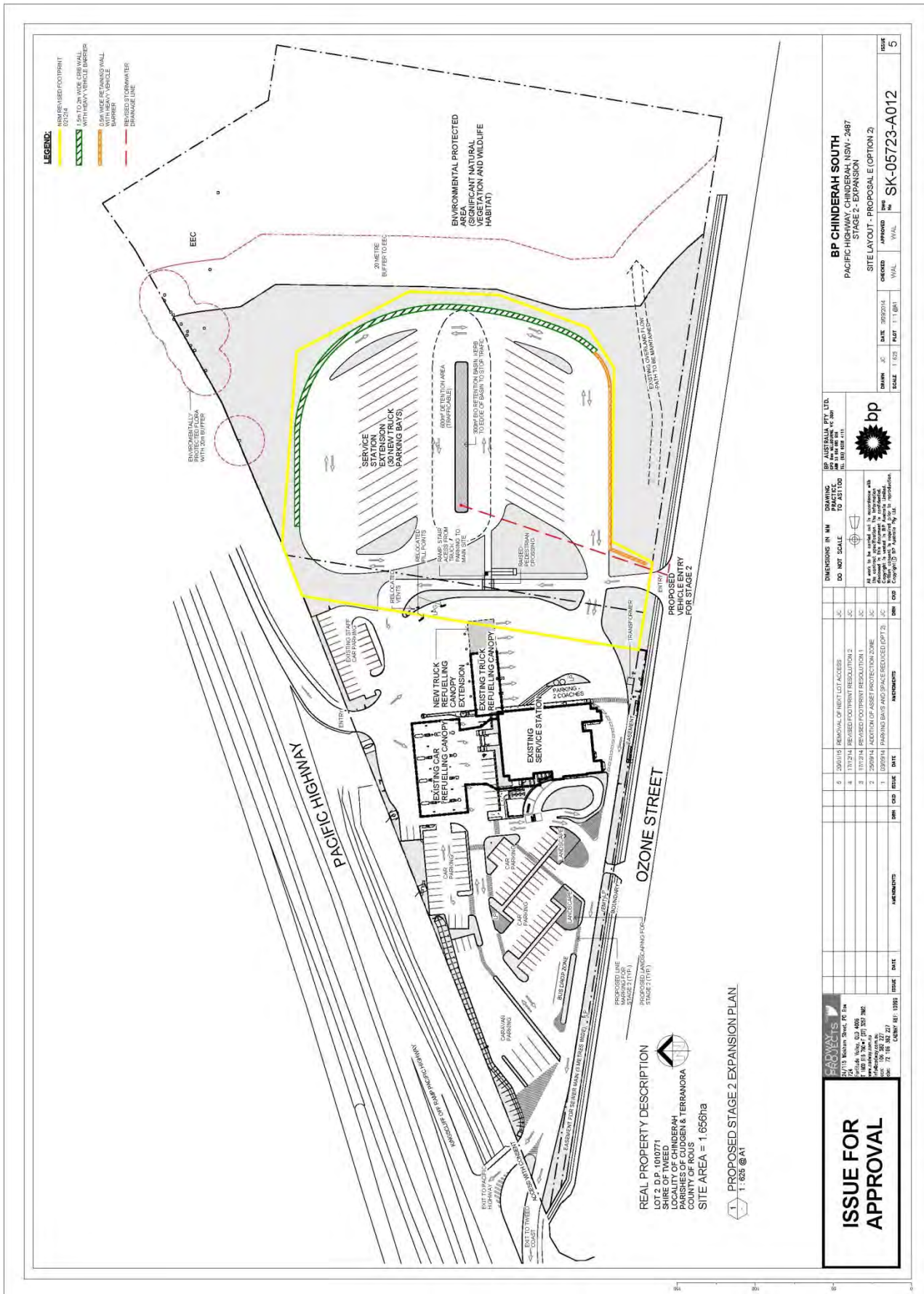
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Date Printed: 13 July 2016

DEVELOPMENT/ELEVATION PLANS:



ASSESSMENT

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 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. The development application seeks development consent for the extension to the existing highway service centre at Chinderah.

Council requested further information on issues such as; flooding, stormwater, access, parking, noise and ecology on 18 February 2011. Council has continually requested further information from the applicant with the latest set of information from the applicant relating to; ecology, noise and traffic. These reports have been assessed by Council officers and considered not to be acceptable.

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 1.

Offset requirement	Cumberland May 2016 proposed response
Offsite offset koala habitat on an area of 5.25 ha, established and maintained as per Koala Plan of Management (KPOM) offset provisions	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	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	Unspecified number of nest boxes, including monitoring and maintenance to be included as part of the Vegetation Management Plan.

Table 1: Summary of proposed May 2016 response to offset requirements

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:

Additional area of the site for truck parking = $17,500\text{m}^2$

Truck percentage entering the site $(447/5024) = 8.9\%$

RMS guidelines

Hourly

$0.04 \times 17,500\text{m}^2 = 700$ additional vehicles per peak hour

As the additional car park area will be used by trucks only

$700 \times 0.089 = 62.3$ additional trucks per peak hour into the site

Daily

Existing Peak hour truck movements is 5.8% ($26/447$) of daily

$100/5.8 = 17.24$

$17.24 \times 62.3 = 1,074$ additional daily truck movements into 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 2: Existing and proposed parking

OPTIONS:

1. That Council endorse that a further report be submitted to Council with a more detailed assessment of the latest plans and information, and with a recommendation to determine the development application; or
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 dwellings 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 IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

The applicant may appeal any determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 2 [PR-PC] Development Application DA14/0435 for a 21 Lot Subdivision and Associated Road Infrastructure at Lot 115 DP 755701 & Lot 4 DP 549393 Clothiers Creek Road, Lot 2 DP 873399 Poinciana Avenue, Lots 1 & 2 DP 1172935, Lot 192 DP 217678, Poplar Avenue,

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:

Original Proposal

The existing 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 original plans for this staged, 21 lot residential subdivision were publicly advertised and notified in July/August 2014.

The application is integrated development, requiring referral for comment to the NSW Office of Water, NSW Rural Fire Service and Office of Environment & Heritage. The concurrence of the NSW Department of Planning is also required.

Council received 30 submissions and a petition containing 207 signatures objecting to the original plans.

The application was called up for Council determination by Councillors Polglase and Youngblutt.

A report was submitted to the 9 April 2015 Planning Committee Meeting, with a recommendation for refusal, based on a failure to address key planning, ecology and infrastructure issues identified by both Council and the Office of Environment & Heritage and the NSW Department of Planning and Environment. At this meeting Council resolved the following:

“Council allows the applicant to provide further information to address the issues identified and requests for further information. This information is to be submitted to Tweed Shire Council within 3 months.”

Amended Proposal

The applicant submitted an amended subdivision proposal which was re-notified in September 2015.

A total of 83 submissions objecting to the application were received.

The main differences between the original subdivision plan and the amended subdivision plan are:

- Lot 1 retains the same size and dimensions (770m² Kurrajong Avenue);
- Lots 2 and 3 have been modified;
- Lots 4, 5, 7 and 8 have now been consolidated to form a new Lot 2, with a land area of 73 Hectares, which now complies with clause 4.1B of the Tweed LEP 2014. A potential building envelope is proposed on the amended proposed lot 2 in the location of previous proposed lot 2 (Poinciana Avenue);
- The previous Lot 6 now becomes the new Lot 3 with the same size and dimensions (0.94 Hectare, this lot is subject to NSW Major Project No. 08/0118); and
- The 17 allotments proposed adjacent to Clothiers Creek Road remain unchanged.

The amended application seeks approval for a 21 Lot subdivision within two stages, of which 19 Lots will be for residential purposes. The proposed staging is as follows:

Stage 1 - the creation of Lot 1 and Lot 2 and Residue Lot; and

Stage 2 – subdivision of the Residue Lot for the creation of Lots 3 to 21.

The following table illustrates the lot number, the corresponding proposed use and stage.

Proposed Lot No.	Area	Tweed LEP 2000 Zoning	Enabling Clause	Tweed LEP 2014 Zoning	Enabling Clause	Proposed Use	Stage
Lot 1	770 m ²	Not applicable		R2	Clause 4.1	Residential	Stage 1
Lot 2	73 ha	Part 7(a) Part 7(l)	Clause 20(2) Clause 20(2)	Part R2 Part RU2	Clause 4.1 Clause 4.1B	Agricultural	Stage 1
Lot 3	0.94 ha			R2	Clause 4.1	Residential (See Project Approval No. MP 08_0118. Approved 02/12/10 approving 12 residential lots)	Stage 2
Lot 4	8 ha	Part 7(l) Part 7(a)	Clause 2.75 SEPP Codes	Part W1 Part RU2	Clause 2.75 of SEPP Codes	Proposed drainage reserve incorporating the existing drainage channels and riparian areas to be dedicated to Council.	Stage 2

Lots 5 – 21 (17 lots)	600m ² - 1030m ²	Not applicable	R2	Clause 4.1	Residential	Stage 2
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The response by the relevant government agencies to the amended application was as follows:

- The NSW Office of Water provided General Terms of Approval and advised that the proposed amended subdivision does not warrant any change to previous advice or conditions;
- The NSW Rural Fire Service provided general terms of approval subject to conditions;
- The Office of Environment & Heritage raised no objection to the proposal advising Council to ensure that the proposed offsets are of a suitable size and rehabilitated. The amended proposal resolved issues previously raised by the department, mainly being dedication of land;
- The Department of Planning and Environment advised that the proposed amended subdivision resolved the Department's previous concerns with regards to the provisions of clause 4.1B (variation in regards to land zoned RU2) of Tweed Local Environmental Plan 2014, as proposed Lot 2 is now greater than 40 ha. The Department also advised that a variation is no longer required with respect to 7(a) zoned land as the 7(a) zoned land will now be incorporated into proposed Lot 2 which is now greater than 40 ha (73 ha).

The development requires the removal of a small amount of Core Koala Habitat and vegetation representative of an Endangered Ecological Community (EEC). Council's Natural Resource Management Unit reviewed the proposal and advise that, subject to conditions (mainly requiring offsets), it has been satisfied that any adverse ecological impacts likely to be associated with the proposed development can be avoided, minimised and managed to an acceptable level.

It is therefore recommended that the application be approved.

RECOMMENDATION:

That Development Application DA14/0435 for a 21 lot subdivision and associated road infrastructure at Lot 115 DP 755701 & Lot 4 DP 549393 Clothiers Creek Road, Lot 2 DP 873399 Poinciana Avenue; Lots 1 & 2 DP 1172935 & Lot 192 DP 217678 Poplar Avenue Bogangar be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 19090 D Rev E sheet 1, 2 and 3, dated 01/07/2015 prepared by B&P Surveys Plan Nos Sk.8 Issue C prepared by Cozens Regan Williams Prove and dated 02/16 Plan Sk.7 Issue C dated 03/15 prepared by Cozens Regan Williams Prove, except where varied by the conditions of this consent.**

[GEN0005]

- 2. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.**

[GEN0045]

3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

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. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then applications for these details are to be shown on the application for a Construction Certificate.

[GEN0155]

6. The 17 lot residential subdivision (Lots 5-21) requires each lot to be serviced by a pressure sewer system. A capital contribution of \$14,800 per lot shall be provided for the installation of each individual pressure sewer pump station prior to the issue of the subdivision certificate. Tweed Shire Council will then install the pump station at a suitable location within each lot at the building stage.

[GENNS01]

7. The applicant shall not remove, damage or disturb native vegetation unless such activity is carried out in accordance with the approved site based Vegetation and Fauna Management Plan and where all necessary permits/approvals have been obtained from the relevant authority/s.

[GENNS02]

8. To achieve the aims of the *Tweed Coast Comprehensive Koala Plan of Management 2015* ('TCKPoM'), the applicant must provide an onsite 'koala habitat restoration and management area' capturing the following areas:

- a. An area of 10.73 ha based on:
- i. A ratio of 1:22 (remove:replace) to offset the direct loss of 0.48 ha of Core Koala Habitat (CKH) totalling 10.56 ha; and
 - ii. Section 5.9.4 of the TCKPoM, where 10% of the land area of the proposed development envelope must be revegetated to create additional CKH.
- b. An appropriate area of the site to achieve compensation for the loss of individual Preferred Koala Food Trees (as defined under the TCKPoM) greater than 250 mm Diameter at Breast Height in the form of revegetation at a ratio of 1:33 (remove:replace). Revegetation shall involve the planting of preferred koala feed tree species at a density of one (1) plant per four (4) square metres and occur within an area additional to that required above (Condition 8(a)(i-ii)).

The 'koala habitat restoration and management area' described above shall meet the following criteria and be reflected in an approved site based Koala Offset and Habitat Management Plan to be accepted as a variation to development assessment provisions of the TCKPoM (under Section 5.12):

- c. Capture an existing cleared area of the site to enable the establishment of new Core Koala Habitat
 - d. Be largely contiguous and consolidated
 - e. Be exclusive of land afforded statutory protection under the following land use zones
 - i. 7(a) Environmental Protection (Wetlands and Littoral Rainforests); and
 - ii. 7(l) Environmental Protection (Habitat) zoningOr any equivalent zone as adopted under any future local statutory environmental planning instrument
 - f. Not form part of a bushfire management zone as approved by the NSW Rural Fire Service and required by conditions of this consent
 - g. Be actively managed under an approved restoration program for a minimum of five (5) years
 - h. Be protected under a Section 88B Restriction of Use (*Conveyancing Act 1919*) for long term protection.
- [GENNS02]
9. To compensate for direct development impact on 0.48 ha of an Endangered Ecological Community being *Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions* the applicant shall:
- a. Undertake ecological restoration of an area of 1.47 ha in the location as generally shown on Figure 12 *Proposed Offset Site in Revised Ecological Assessment (REA) dated June 2015 prepared by JWA Ecological Consultants* (reference to the REA is only made for the purposes of this condition only) identified as the 'Proposed Offset Area - 1.47 ha'
 - b. Actively manage the specified restoration area under an approved restoration program for a minimum of five (5) years
- Register a Section 88B Restriction of Use (*Conveyancing Act 1919*) instrument over the specified restoration area to ensure the area is secured and managed for conservation purposes in the long term.
- [GENNS02]
10. A Section 88B Restriction of Use (*Conveyancing Act 1919*) shall be registered on Lots 5-21 indicating that Preferred Koala Food Trees (as scheduled under the TCKPoM) are not to be planted to avoid encouraging koalas to enter the enclaved development area (consistent with Section 5.10.5 of the TCKPoM).
- [GENNS02]
11. The 'Potential Building Envelope Proposed Lot 2 (10 m x 15 m) on the subdivision plan *Dwg. No. 19090 D Rev. E Sheet 2 of 3 dated 02 October 2012 prepared by B&P Surveys* is not approved.
- [GENNS03]
12. The Office of Water should be notified if any plans or documents are amended and these amendments significantly change the proposed development or result in works on waterfront land (which includes (i) the bed of any river together with any land within 40 metres inland of the highest bank of the river, or (ii) the bed of any lake, together with any land within 40 metres of the shore of the lake, or (iii)

the bed of any estuary, together with any land within 40 metres inland of the mean high water mark of the estuary).

[GENNS04]

13. Once notified, the Office of Water will ascertain if the amended plans require review or variation/s to the GTA. This requirement applies even if the proposed works are part of Council's proposed consent conditions and do not appear in the original documentation.

[GENNS04]

14. The Office of Water should be notified if Council receives an application to modify the development consent and the modifications change any activities on waterfront land.

[GENNS04]

15. The Office of Water requests notification of any legal challenge to the consent.

[GENNS04]

16. The attached GTA are not the licence. The applicant must apply (to the Office of Water) for a licence after consent has been issued by Council and before the commencement of any dewatering.

[GENNS04]

17. The development is to occur in the following stages:

Stage 1 - Lots 1, 2 and residual lot.

Stage 2 - subdivision of the residual lot into Lots 3 to 21.

All conditions within this consent are to be applied to each relevant stage, where applicable.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

18. 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]

19. 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 (public infrastructure) 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 Subdivision is issued.

[PCC0275]

20. 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]

21. 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. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be detailed in the application for a Construction Certificate.

[PCC0485]

22. Notwithstanding any other condition of this consent separate construction certificates for bulk earthworks and subdivision works may be issued and the carrying out of bulk earthworks may be commenced prior to the issue of a Construction Certificate for subdivision works where it can be demonstrated all works are compatible.

[PCC0495]

23. Prior to the issue of a Construction Certificate, a Detailed *Geotechnical Investigation* shall be undertaken by an appropriately qualified practising professional Geotechnical Engineer, unless considered unjustified by the Geotechnical Engineer and supported in writing and endorsed by Council.

In addition further geotechnical testing and advice is required through the uncontrolled fill material on proposed residential allotments 1, 2, 3, 5 to 21. A series of boreholes and DCP testing in a maximum 20m grid pattern over the proposed allotments is to be carried out along with density testing at various levels in the fill material.

The investigation shall identify any areas of compressible clay materials, loose sands, landslip, subsidence or reactive soil profiles which may impact on construction or building activities. If unsuitable materials are identified the investigation shall provide recommendations such as a preloading or other forms of treatment necessary to achieve surface movement (y_s) rates consistent

with a site classification M as defined by AS 2870 (current version). All consolidation resulting from preloading shall be monitored by settlement plates or detailed survey to determine consolidation/settlement characteristics.

[PCC0500]

24. All residential allotments shall be filled to a minimum of the design flood level (DFL), in accordance with the following:

Lot 1 DFL = RL 3.1m AHD

Lots 5 - 21 (inclusive) DFL = RL 3.0m AHD

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 filing on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.

[PCC0675]

25. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (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 for Subdivision Works. Safe public access shall be provided at all times.

[PCC0865]

26. The proponent shall submit plans and specifications with an application for construction certificate for Stage 2 for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

URBAN ROAD

- (a) Construction of an urban sealed road formation, 7.5m in width within a 14m wide road reserve with upright kerb and guttering to service future Lots 5 to 21 in accordance with Council's road standards.
- (b) Kerb and guttering and any associated road widening is to be provided along the full frontage of Rosewood Avenue / Clothiers Creek Road between the proposed T intersection and roundabout to accommodate the future access road. Adequate drainage is also to be addressed in the kerb and guttering design / required road widening.
- (c) The new subdivision road servicing lots 5 to 21 shall be designed to achieve minimum top of kerb levels of 3.0m AHD to provide flood evacuation access.
- (d) A 1.2m wide concrete reinforced footpath is to be provided on the proposed road serving Lots 5-21. The footpath is to link into the existing footpath on Rosewood Avenue. Pram ramps are to be provided on both sides of Rosewood Avenue to facilitate safe crossing.

INTERSECTIONS / ROUNDABOUT

- (a) Construction of a roundabout in accordance with Ausroads Guide to Traffic Engineering Practice, Part 6 Roundabouts at the intersection of the proposed new road servicing future Lots 5 to 21, Kauri Avenue, Clothiers Creek Road and Rosewood Avenue. The design of the concrete raised apron is to be a minimum of 50mm.

- (b) The proposed roundabout is to ensure that minimum lane widths of 3.4m to 3m are shown on the plans as specified in Ausroads Guide to Traffic Engineering Practice, Part 6 Roundabouts.
- (c) Construction of an intersection layout to service future Lots 5 to 21 with a 'left in and left out' type arrangement in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.
- (d) Turning templates for a 12.5m long bus and 19m semi trailer are to be shown for the proposed roundabout on Clothiers Creek Road.
27. 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]
28. Prior to the issue of a Construction Certificate for civil works, the following detail 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:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
- (c) All pressure mains shall be located in road reserve. The Developer shall provide a Boundary Kit for connection for each lot to be serviced by the pressure sewer within each associated lot, in accordance with Council's standard specifications and drawings. The location of connection or the pressure main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations*

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.

29. 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.

[PCC1105]

30. 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]

31. 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]

32. For developments containing less than four attached or detached dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the

meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

33. 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]

34. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), 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. Applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

[PCC1310]

35. A site based Koala Offset and Habitat Management Plan ('KO&HMP') shall be submitted and approved by Council's General Manager or delegate prior to the issue of the first of any construction certificate or prior to the issue of Stage 1 - Lots 1, 2 and residual lot subdivision certificate whichever occurs first. The KO&HMP shall be prepared by persons suitably qualified in Zoology, Botany and/or Ecology and shall include the following information:

- a. Detailed tree survey of suitable scale overlaid onto bulk earthworks and civil plans showing the following:
 - i. Preferred Koala Food Trees to be removed and those to be retained; and
 - ii. Description of surveyed Preferred Koala Food Trees including height, canopy spread, diameter at breast height, condition, any habitat features or evidence of fauna use
- b. Identify the location/s of the 'koala habitat restoration and management area' pursuant to Condition 8a-8b demonstrating achievement of criteria specified in Condition 8c-8h
- c. Provide a summary of those actions prescribed in the site based Vegetation and Fauna Management Plan and Habitat Restoration Plan (pursuant to Condition 36 and Condition 37) as they relate to Koala management
- d. Detail the following specific Koala management measures:
 - i. Fencing specifications in accordance with TCKKPoM Appendix D - Wildlife Infrastructure Design Guidelines for both fauna friendly fencing and fauna exclusion fencing in the following locations:
 - A. Fauna friendly fencing:
 - Around the perimeter of the 'koala habitat restoration and management area' (pursuant to Condition 8) of a design that

would restrict the entry of domestic animals/livestock

- Where fencing exists this shall be either replaced or retrofitted to be fauna friendly

B. Fauna exclusion fencing:

- At the common boundary between proposed Lots 10-20 and the riparian reserve to be dedicated to Council
 - Along the entire southern boundary of proposed Lot 10
 - At the common boundary between proposed Lot 1 and Lot 2
 - An approximate 85 m section of fencing at the boundary between proposed Lot 2 and the Clothiers Creek Road reserve to be taken from the north-eastern boundary of proposed Lot 2. The fence shall have a perpendicular return of no less than 10 m at each terminal end
- ii. Koala monitoring shall be completed in accordance with the TCCKPoM *Appendix E - Koala Activity Assessment* methodology. In this regard sampling intervals shall be based on greater than 50 ha criteria;
- iii. The management and monitoring period (habitat restoration and koala monitoring) shall not be less than five (5) years;
- iv. An interval of two (2) years is considered appropriate where the abovementioned methodology and scope of monitoring is adopted. A final monitoring report shall be provided at completion of year five (5); and
- v. Baseline monitoring shall be undertaken at commencement of works.

[PCCNS01]

36. A Vegetation and Fauna Management Plan ('V&FMP') shall be prepared by a suitably qualified ecologist to be implemented during the construction (for all relevant stages of the development) and operational phase of the development (where specified). The V&FMP shall be submitted and approved by Council's General Manager or delegate prior to the first of any construction certificate or prior to the issue of Stage 1 - Lots 1, 2 and residual lot subdivision certificate whichever occurs first. The currency period of the approved FMP component is two (2) years from the date of FMP approval. A contemporary FMP component or addendum must be submitted to Council for approval if works are not substantially started within the 2 year period. The V&FMP shall include (but not be limited to) the following:

Vegetation Management

- a. A vegetation management figure/plan shall be provided showing:
- i. Areas to be protected and those areas of habitat to be removed;
 - ii. Locations of specific Preferred Koala Food Trees to be removed and retained consistent with the site based Koala Offset and Habitat Management Plan;
 - iii. Details of all proposed infrastructure, site access and services;
 - iv. Direction of clearing;
 - v. Locations of preferred Glossy Black Cockatoo (*Calyptorhynchus lathamii*) feed trees (i.e *Allocasuarina littoralis* and/or *Allocasuarina*

- torulosa*) greater than 100 mm diameter at breast height (measured at 1.4 m above natural ground level); and
- vi. Location, alignment and specifications of vegetation protection fencing consistent with *AS4970:2009 Protection of trees on development sites*.
- b. Include management measures to minimise disturbance as a result of stormwater infrastructure installation
- c. Specify that all clearing operations and the installation and maintenance of vegetation protection measures are to be supervised by a project arborist (minimum AQF Level 5 arboricultural qualifications).

Fauna Management

- d. Identification of known and potential habitat trees (displaying values such as hollows, fissures, nests, drays, arboreal termitaria used as nests etc.) and description of fauna species known/likely to utilise habitat features
 - e. Targeted pre-works search methodology (as endorsed by the Office of Environment & Heritage based on accepted best practice / current state of scientific knowledge) for those threatened species known or likely to occur on the subject site.
 - f. Information on how trees are to be inspected for denning or nesting animals including constraints for inspecting trees (to provide acceptable alternative methods) and summary of removal and relocation methods for each faunal group (including observed species and species likely to occur in the area to be disturbed)
 - g. Considerations relating to time periods for when fauna is to be removed/flushed prior to clearing
 - h. Details of special equipment required (such as cameras, elevated platforms etc.)
 - i. Identification of general locations that wildlife will be relocated/translocated to if required (based on habitat requirements and in accordance with licence/permit conditions)
 - j. Specify that a suitably qualified ecologist who holds a fauna survey licence is required to manage wildlife onsite during any tree removal and/or disturbance to wildlife habitat. Fauna management methods employed should be generally consistent with the *Draft Queensland Code of Practice for the Welfare of Wild Animals Affected by Clearing and Other Habitat and Wildlife Spotter/Catchers* (Hangar & Nottidge 2009). Where translocation is required the proponent shall seek any relevant permits from the state regulating agency (Office of Environment & Heritage). It is the responsibility of the proponents to ensure all relevant licences have been obtained prior to any fauna interactions
 - k. Specify Koala management pre-survey and construction phase measures consistent with Section 5.10.3.7 of the TCCKPoM
 - l. Provide details of post clearing reporting to be provided by a suitably qualified ecologist engaged to oversee clearing works.
37. A Habitat Restoration Plan ('HRP') shall be prepared generally in accordance with TSC Draft Habitat Restoration Plan Preparation Guideline (HRPPG) - Site specific guidelines for the ecological restoration and ongoing management of habitat utilised by native flora and fauna dated February 2012 by a person suitably qualified in Bushland Regeneration or Ecological Restoration and with

[PCCNS01]

knowledge and experience in local vegetation communities (e.g. wetlands, rainforest, riparian areas) to address the following areas and actions:

- a. The 'koala habitat and restoration management area' pursuant to Condition 8
- b. The endangered ecological community offset area (1.47 ha) pursuant to Condition 9
- c. Riparian zone to be dedicated to Council adjacent to proposed Lots 5-21 - 7(d) Environmental Protection (Habitat) zone (LEP 2000) as shown on the approved subdivision plan
- d. Riparian zone to be dedicated to Council along the perimeter of proposed Part Lot 2 (North) associated with the canal - RU2 Rural Landscape (LEP 2014) and 7(a) Environmental Protection (Wetlands and Littoral Rainforests) (LEP 2000) as shown on the approved subdivision plan
- e. Incorporation of compensatory Glossy Black Cockatoo (*Calyptorhynchus lathamii*) feed tree (*Allocasuarina littoralis* and/or *Allocasuarina torulosa* - greater than 100 mm dbh) offset plantings at a ratio of 1:5 (remove:replace). The quantum of offsets shall be based on the number of preferred Glossy Black Cockatoo feed trees removed to facilitate the development as identified in the site based Vegetation and Fauna Management Plan.

The HRP shall be submitted and approved by Council's General Manager or delegate prior to the first of any construction certificate or prior to the issue of Stage 1 - Lots 1, 2 and residual lot subdivision certificate whichever occurs first prior to issuing the first of any construction certificate associated with the development and shall include the following:

- g. A description of the overall site based ecological restoration strategy involving all areas prescribed in Condition 37a - 37e above. The total collective of offset areas shall be clearly shown on an overall offset area plan depicting/describing:
 - i. Area estimates
 - ii. An appraisal of the present condition of remnant vegetation
 - iii. The purpose of the offset
 - iv. The approach to habitat restoration
- h. The approach to restoration i.e. assisted natural regeneration, reconstruction and/or a combination shall be determined based on the level of site resilience and at the end of year one (1) the offset areas shall achieve one (1) native plant per m² (whether planted or naturally recruited)
- i. Plan overlaying an aerial photograph of the site which divides the area into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate
- j. Management strategy for each of the zones, including the approach, methods and techniques to be used for vegetation restoration
- k. Summary of actions required under the site based Koala Offset and Habitat Management Plan
- l. Schedule of local native plant species to be used for planting
- m. Incorporation of preferred Glossy Black Cockatoo feed tree offsets pursuant to Condition 37(e) within an appropriate are of the site
- n. Program of works to be undertaken to remove invasive weed species

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- o. A schedule of activities not permitted within areas to registered under an 88B Restriction as to User referred to in this consent
 - p. Requirement for a 132C Licence under the *National Parks and Wildlife Act 1974*
 - q. Management of domestic farm/feral animals (if appropriate) and any fencing/signage requirements to restrict access and increase landholder/public awareness
 - r. Schedule of timing of proposed works
 - s. Set of performance criteria to achieve site capture over the five (5) year management period
 - t. Maintenance, monitoring and reporting schedule with developer commitment for a period of not less than five (5) years. The number of treatment rotations shall be adequate to successfully achieve site capture by completion of the five (5) year maintenance period
 - u. An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of the General Manager or delegate for such changes
 - v. Include working and hygiene protocol within/adjacent to areas known to be occupied by Grey-headed Flying-fox (*Pteropus poliocephalus*) and Wallum Froglet (*Crinia tinnula*)
 - w. An educational package shall be developed and attached to the HRP. The educational material is to be provided to all residents occupying future residential Lots created as part of the proposed development. [PCCNS01]
38. A detailed plan of landscaping is to be submitted and approved by Council's General Manager or delegate prior to the issue of a Construction Certificate. The detailed plan of landscaping shall meet the following plant selection criteria:
- a. A minimum of 80% locally occurring Australian native species and maximum of 20% non-locally occurring Australian native species to apply to all trees
 - b. A minimum of 80% locally occurring Australian native species and maximum of 20% Australian native or exotic species to apply to other plants (shrubs, ground cover and similar)
 - c. No noxious or environmental weed species. [PCCNS01]
39. The extent of the proposed drainage reserve Lot 4 shall be amended to align generally with the mean high water mark of the drainage canals, and shall not include environmental land, buffers and/or asset protection zones. [PCCNS02]
40. All retaining walls and batters are to comply with Council's Development Design Specification D6 - Site regrading. [PCCNS04]
41. The proposed pressure sewer system for Lots 5-21 shall comply with the following:
- The design of sewer pressure systems shall comply with the Water Services Association (WSA) of Australia's Pressure Sewerage Code of Australia WSA07-2007.
 - The pressure pump unit must be installed in the front corner of each lot next to the proposed road for ease of access purposes.
-

- The entire building lot envelope must be able to drain to the pressure pump unit.
- An easement must be created on the lot for the pressure pump unit and the rising main.
- The rising main to be located in the road reserve on the appropriate alignment
- The pressure sewerage system manufacturer must be Council approved.
- At least 24 hours emergency storage capacity shall be provided within the system.
- Pumps should be designed to pump a minimum of less than every 8 hours to reduce septicity in the pump well and rising mains.

[PCCNS05]

42. As the Water Supply Authority under the Water Management Act 2000, prior to the issue of a construction certificate the water supply and sewerage system information outlined in the Tweed Shire Council Development Design Specification - D13 shall be to be submitted to Council's General Manager or his delegate for approval.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

43. 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]

44. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

45. 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]

46. 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.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate.

[PCW0375]

47. 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]

48. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and driveway are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to Council prior to commencement of ANY works on the site.

[PCW0775]

49. 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 a Certifying Engineer to certify the compliance of the completed works.

The Certifying Engineer shall be an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with NPER registration. Documentary evidence is to be provided to Council demonstrating current NPER accreditation.

- (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 Subdivision Works Accredited Certifier 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 Subdivision 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.

[PCW0815]

50. 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]

51. 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 to the satisfaction of the Principal Certifying Authority. 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]

52. A Dewatering Management Plan shall be prepared and submitted to Council's General Manager or his delegate for consideration and approval, where dewatering is required, which details the following:

- * A site plan drawn to scale which indicates the extent of the excavation area and estimated zone of influence of the dewatering activity relative to any adjoining buildings together with an assessment of any impacts likely to occur to any adjoining buildings as a result of the dewatering activities.
- * The location to be indicated on the site plan of the area that will be utilised for the positioning of any treatment tank or sedimentation pond on the site including any reserve area to be used for such purpose in the event of the need for additional treatment facilities to be incorporated on the site.
- * Details of the proposed method of mechanical aeration to be used in the event that it is necessary to aerate the groundwater to achieve an acceptable Dissolved Oxygen level prior to the offsite discharge of groundwater and where this will be incorporated on the site.
- * The provision of written advice from the operator of any on site groundwater treatment system stating that the system to be used will be able to treat the groundwater to the required treatment level prior to discharge. Note. Particular attention is to be given to achieving the required detention times prior to discharge of the groundwater. Advice that the system is simply capable of achieving the necessary treatment will not be acceptable.

[PCW1015]

53. All pre-construction vegetation and fauna management measures shall be satisfactorily completed in accordance with the approved Vegetation and Fauna Management Plan.

[PCWNS01]

54. A suitably qualified ecologist who holds a fauna survey licence shall inspect the site no more than two (2) weeks prior to clearing works commencing onsite and prepare a Pre-Clearing Wildlife Fauna Report. The report shall include a full list of faunal species encountered during the inspection, as well as the marking and identification of significant habitat trees. The Pre-Clearing Wildlife Fauna Report shall be provided to Council prior to commencement of any works on-site.

[PCWNS01]

55. All vegetation clearing shall be carried out under the supervision of suitably qualified ecologist who holds a fauna survey licence. The qualified ecologist will be responsible for ensuring all construction phase management measures as prescribed in the approved Flora and Fauna Management Plan are successfully implemented and fauna is managed appropriately.

[PCWNS01]

DURING CONSTRUCTION

56. 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]

57. 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]

58. 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]

59. 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]

60. All earthworks and filling shall be carried out in accordance with AS 3798 (current version) to a Level 1 inspection regime and testing in accordance with Table 8.1.

The earthworks and filling shall also be undertaken in accordance with the recommendations provided in the *Geotechnical Investigation* (provided prior to the issue of the Construction Certificate) and monitored by a Registered Geotechnical Testing Consultant.

Notwithstanding earthworks and filling, the frequency of field density tests for trenches shall be undertaken in accordance with Table 8.1 of AS 3798 (current version).

[DUR0795]

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

[DUR0815]

62. 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]

63. 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]

64. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- **Noise, water or air pollution.**
- **Dust during filling operations and also from construction vehicles.**
- **Material removed from the site by wind.**

[DUR1005]

65. All works shall be carried out in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting PL dated February 2014 and numbered HMC2014.006 ASS.

[DUR1065]

66. 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]

67. 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]

68. 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]

69. 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]

70. 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 Developers 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]

71. 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 Subdivision Certificate.

[DUR1955]

72. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

73. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

74. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

75. Drainage Reserve

- (a) The proposed drainage reserve is to be dedicated to Council at no cost.
(b) An accurate plan of the proposed drainage reserve shall be submitted to Council 60 days prior to lodgment of Application for Subdivision Certificate (form 13) to allow the land to be classified.

[DUR2295]

76. 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]

77. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

78. 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]

79. 60 days prior to lodgement of Application for Subdivision Certificate, an accurate plan of the subdivision is to be submitted to Council indicating all public land to be dedicated to Council (including Drainage Reserves, Sewer Pump Stations, Parks, Sports Fields, Conservation Areas and other lands as defined and excluding Roads, etc). The function of all such public land is to be indicated to allow classification of the land parcel by Council as either Operational or Community Land, as detailed in the Local Government Act 1993.

[DUR2455]

80. The Applicant shall submit the appropriate 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for the proposed Lots. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

81. Dust and Erosion Management

(a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed areas are to be topsoiled and seeded immediately 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.

(c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

[DUR2825]

82. All operations must comply with the approved Vegetation and Fauna Management Plan. In the event that any threatened species, populations, ecological communities or their habitats not addressed in the report are discovered during operations appropriate Plans of Management for those species must be formulated to the satisfaction of the General Manager or delegate and/or if required the Department of Environment and Heritage. No further site clearing will take place until any respective Plan(s) of Management is/are approved.

[DURNS01]

83. A supervising Project Arborist with a minimum Australian Qualification framework (AQF) level 5 in Arboriculture is required to oversee, and if necessary carry out mitigation/remediation works during the construction period. The Project Arborist will be responsible for completing certification of tree protection through the various stages of development (where required).

[DURNS01]

84. During the construction period and with respect to vegetation and fauna management measures the applicant must comply with any directions given by:

a. Project Arborist

- b. Qualified ecologist; and/or
- c. Council's General Manager or delegate

[DURNS01]

85. All practical measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DURNS01]

86. Landscaping of the site shall be carried out in accordance with the approved landscaping plans.

[DURNS01]

87. All fauna management and habitat restoration works shall be carried out in accordance with:

- a. The approved Koala Offset and Habitat Management Plan; and
- b. The approved Habitat Restoration Plan.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

88. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

89. 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.

A Subdivision Certificate for Stage 2 shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Council's Certificate of Compliance signed by an authorised officer of Council.

THIS IS ADVICE ONLY. The Section 64 Contributions for this development at the date of this approval have been estimated as:

Water DSP6: 19 ET @ \$13386 per ET \$254,334

Sewer Hastings Point: 18 ET @ \$6431 per ET \$115,758

[PSC0165]

90. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued for Stage 2 by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has 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: 110.5 Trips @ \$1395 per Trips (\$1,145 base rate + \$250 indexation) S94 Plan No. 4 Sector7_4	\$154,148
(b) Open Space (Casual): 17 ET @ \$557 per ET (\$502 base rate + \$55 indexation) S94 Plan No. 5	\$9,469
(c) Open Space (Structured): 17 ET @ \$638 per ET (\$575 base rate + \$63 indexation) S94 Plan No. 5	\$10,846
(d) Shirewide Library Facilities: 17 ET @ \$859 per ET (\$792 base rate + \$67 indexation) S94 Plan No. 11	\$14,603
(e) Bus Shelters: 17 ET @ \$67 per ET \$1,139 (\$60 base rate + \$7 indexation) S94 Plan No. 12	
(f) Eviron Cemetery: 17 ET @ \$125 per ET (\$101 base rate + \$24 indexation) S94 Plan No. 13	\$2,125
(g) Community Facilities (Tweed Coast - North) 17 ET @ \$1425 per ET (\$1,305.60 base rate + \$119.40 indexation) S94 Plan No. 15	\$24,225
(h) Extensions to Council Administration Offices & Technical Support Facilities 17 ET @ \$1909.57 per ET (\$1,759.90 base rate + \$149.67 indexation) S94 Plan No. 18	\$32,462.69

- (i) **Cycleways:**
17 ET @ \$485 per ET \$8,245
(\$447 base rate + \$38 indexation)
S94 Plan No. 22
- (j) **Regional Open Space (Casual)**
17 ET @ \$1119 per ET \$19,023
(\$1,031 base rate + \$88 indexation)
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
17 ET @ \$3928 per ET \$66,776
(\$3,619 base rate + \$309 indexation)
S94 Plan No. 26

[PCC0215/POC0395/PSC0175]

91. **Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

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 6 months from the date on which the plan of subdivision is registered.

It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

92. **Prior to the issue of a Subdivision Certificate, a performance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.**

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

93. **A bond to ensure acceptable plant establishment and landscaping performance at time of handover to Council shall be lodged by the Developer prior to the issue of the Subdivision Certificate. The bond shall be held by Council for a period of 12 months from the date of issue of the Subdivision Certificate and may be utilised by Council during this period to undertake essential plant establishment or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.**

The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

94. **At the completion of the earthworks/filling and prior to the issue of the Subdivision Certificate, an appropriately qualified practising professional Geotechnical Engineer shall provide an Engineering Certification that clearly states the following:**

1. All earthworks and filling have been inspected to a Level 1 standard in accordance with AS 3798 (current version) and in accordance with the recommendations of the detailed *Geotechnical Investigation* submitted prior to the issue of a Construction Certificate.
 2. All surface movement (y_s) has achieved rates that are consistent with a site classification M as defined by AS 2870 (current version). If expected surface movement (y_s) for the proposed allotments are likely to exceed a site classification of M, all affected allotments shall be burdened by a Restriction on Use pursuant to Section 88B of the Conveyancing Act advising future owners of the site classification.
 3. Trenches have been compacted in accordance with Council's Construction Specifications.
- [PSC0395]
95. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. 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.
- [PSC0725]
96. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.
- The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:
- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
 - (b) the plans accurately reflect the Work as Executed.
- 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 (WAX) plans.
- [PSC0735]
97. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.
- [PSC0825]
98. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.
- [PSC0830]
99. 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) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.
- (c) All previous easements are to be shown on the plan of subdivision or deleted if not required.
- (d) Right of carriageway for proposed Lots 6 & 7.
- (e) Vehicular access to Clothiers Creek Road is prohibited for proposed Lots 5 - 21.
- (f) Identify all allotments to be created as dual occupancies.
- (g) A positive covenant is required on Proposed Lot 2 and the residual allotment created in Stage 1 advising of the following;

Proposed Lot 2 and the residual allotment do not have reticulated water and sewer services connected to these allotments. Any future development on these allotments will require connection to reticulated water and sewer services to Tweed Shire Council standards at the expense of the future owner.
- (h) A positive covenant is required on Proposed Lot 2 and the residual allotment created in Stage 1 advising of the following;

Proposed Lot 2 and the residual allotment do not have electrical or telecommunication services connected to these allotments. Any future development on these allotments will require connection to electrical and telecommunication services as per the standards of the relevant authority at the expense of the future owner.
- (i) Restriction as to user regarding the following areas referred to in the approved site based Koala Offset and Habitat Management Plan and Habitat Restoration Plan:
 - i. 'Koala habitat and restoration management area'
 - ii. Endangered Ecological Community Offset Area (1.47 ha)
 - a. These nominated areas must be subject to an approved ecological restoration program (undertaken in accordance with an approved habitat restoration plan) and managed as a natural area for conservation purposes in perpetuity.
 - b. The following activities are not permitted within this area:
 - i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this approval unless otherwise approved by Council's General Manager or delegate;
 - ii. Erection of any fixtures or improvements, including buildings or structures;
 - iii. Construction of any trails or paths;
 - iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage,

waste or other material foreign to the protected area

- v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the Covenant Area; and
- vi. Performance of any other acts which may have detrimental impact on the values of the nominate areas. The area must be managed in accordance with the approved habitat restoration plan for the life of the development and the use of the premises.

Burden: Part Lot 2 Benefit: Tweed Shire Council

The creation of restrictions as to user referred to under part (i) shall be registered at the issue of subdivision certificate for Stage 1- Lots 1, 2 and residual lot.

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.

[PSC0835]

100. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each new lot in the deposited plan.

[PSC0845]

101. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

102. 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 2 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]

103. In conjunction with the application for a Subdivision Certificate, the applicant must also apply to Council (OR PCA if applicable) for a Compliance Certificate for Subdivision Works. This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following:

- (a) Roads
- (b) Water Reticulation
- (c) Sewerage Reticulation
- (d) Sewerage Pump Station
- (e) Drainage
- (f) Bulk Earthworks
- (g) Retaining Walls

Note:

- 1. All compliance certificate applications for Subdivision Works 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".**

[PSC0915]

104. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

105. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and gravity sewerage systems installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

106. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.
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.

[PSC1115]

107. A pressure sewer system shall be available to service those lots that cannot be serviced by conventional gravity sewers. Only those lots which are demonstrated to the satisfaction of the Director Engineering or his delegate not to be serviceable by conventional gravity sewers may be served by a pressure sewer system. Prior to the issue of the Subdivision Certificate, for each lot serviced by the pressure sewer system, a capital contribution of \$14,800 shall be paid by the Developer to Council for the installation of individual pressure sewer pump stations at a suitable location within each lot at the time of construction of the dwelling on that lot.

[PSC1135]

108. A Positive Covenant in relation to each lot to be sewered by a pressure sewer system shall be created pursuant to Section 88B of the Conveyancing Act to provide Tweed Shire Council with rights to construct, install and maintain the pressure sewerage infrastructure in accordance with the following terms:

TERMS OF PUBLIC POSITIVE COVENANT

1. Pressure sewerage reticulation infrastructure is to be constructed within the land referred to herein and such infrastructure will comprise a pump station, valve pit, control panel and associated pipelines excluding gravity house connections and plumbing.
2. Such infrastructure is to be supplied by Tweed Shire Council at commencement of construction of a dwelling on the land referred to herein.
3. All costs in relation to the installation of the pressure sewer reticulation infrastructure within the land referred to herein will be borne by Tweed Shire Council.
4. The control panel for the pumping station is to be wired into the household switchboard by a registered electrician and all electricity to operate the control panel and pump station shall be supplied from the household switchboard. All costs in relation to the running of the pressure sewerage reticulation are to be borne by the registered proprietor.
5. The pressure sewer infrastructure will at all times remain the property of Tweed Shire Council to be inspected, serviced, repaired and maintained in good working order only by Tweed Shire Council.
6. Tweed Shire Council shall have the right to enter upon the land referred to herein with or without equipment, at all reasonable times to inspect,

construct, repair, service and maintain in good working order all pressure sewerage reticulation infrastructure in or upon the said land pursuant to "Power of Entry" provisions under sections 191 and 191A of the NSW Local Government Act, 1993. This right to enter is restricted to the land in which the pressure sewerage infrastructure is placed for the time being and includes any points of egress or ingress to or from the said land.

7. The registered proprietor of the land referred to herein shall not construct any type of development, including external buildings, swimming pools or permanent structures which may interfere with the sewerage reticulation infrastructure, or impede access to any part of the sewerage reticulation infrastructure for the purposes of repair, maintenance and service.
8. If at any time it becomes necessary to relocate any part of the sewerage reticulation infrastructure for the purposes of construction of external buildings, swimming pools or building extensions and/or modifications Tweed Shire Council will not object to the relocation of the existing sewer pump station or associated pipeline providing that the registered proprietor makes the necessary application to Tweed Shire Council as the consent authority to modify the existing sewerage reticulation infrastructure and upon the registered proprietor obtaining development consent to do so. The registered proprietor will bear all costs in relation to the application and the re-location which is to be carried out by Tweed Shire Council.
9. The registered proprietor shall be responsible for notifying Tweed Shire Council when maintenance, repair, relocation or service is necessary on the sewerage reticulation infrastructure.
10. Should any part of the sewerage reticulation 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.
11. The registered proprietor shall indemnify Tweed Shire Council and any adjoining landowners against any damage and injury to their land, property or person arising from the failure of any component of the sewerage reticulation infrastructure due to the negligent use or misuse of the sewerage reticulation system by the registered proprietor or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor.
12. Tweed Shire Council shall indemnify the registered proprietor against all damage and injury to property and person (including any damage to the land referred to herein and any land adjacent to the land referred to herein) arising from the failure of any component of the sewerage reticulation infrastructure and its construction, inspection, repair, service and maintenance and or in entering upon and occupying the subject property for such purposes.
13. Any reference to Tweed Shire Council, excepting as consent authority, means its employees, agents, contractors, servants.

[PSC1145]

109. 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 the allotment has been completed.

[PSC1165]

110. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential) has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

Street lighting is to be provided at the future left in left out intersection and the proposed roundabout in accordance with AS1158 - Lighting for roads and public spaces.

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]

111. An arboricultural certification report prepared by the Project Arborist (Minimum AQF Level 5 Arborist) shall be submitted to Council prior to the issue of the subdivision certificate for Stage 2 - subdivision of the residual lot into Lots 3 to 21, demonstrating compliance with:

- a. The approved Vegetation and Fauna Management Plan (tree protection requirements only)
- b. Australian Standard AS4970 - 2009 *Protection of trees on development sites*; and
- c. Any other tree management measure to protect retained vegetation as directed by Council's General Manager or delegate or Project Arborist during the construction period.

[PSCNS01]

112. The applicant must provide to Council immediately prior to the issue of the respective subdivision certificate, certification from a suitably qualified professional that all works/measures have been completed in accordance with the following approved plans:

- a. Habitat Restoration Plan to a level specified in the plan - Stage 1- Lots 1, 2 and residual lot
- b. Flora and Fauna Management Plan - Stage 2 - Subdivision of the residual lot into Lots 3 to 21
- c. Koala Offset and Habitat Management Plan to a level specified in the plan - Stage 1 - Lots 1, 2 and residual lot

[PSCNS01]

113. Environmental restoration works shall be completed to a level specified in the approved Habitat Restoration Plan prior to the release of the Stage 1 - Lots 1, 2 and residual lot subdivision certificate and shall be maintained at all times in accordance with the approved Plans.

[PSCNS01]

114. A cash bond or bank guarantee to ensure that the approved Habitat Restoration Plan (HRP) is implemented and completed (within areas to be transferred to Council), must be lodged with Council prior to the release of the Stage 2 - Subdivision of the residual lot into Lots 3 to 21 subdivision certificate unless all ecological restoration works (within those areas to be transferred to Council) over a five (5) year period have been completed in accordance with the approved HRP to the satisfaction of Council's General Manager or delegate. The amount of such bond will be based on the cost of environmental repair, enhancement and maintenance works to be undertaken in accordance with the approved HRP. In this regard, two (2) written quotes from suitably experienced and qualified bush regenerators (to the satisfaction of the General Manager or delegate) must be submitted to Council which detail the cost of all works associated with the HRP. The amount of the bond will be equivalent to 130% of the estimated cost of works.

The bond will be held until Council is satisfied the condition has been complied with.

The cash bond is only to relate to land/areas to be transferred to Council.

[PSCNS01]

115. All landscaping shall be completed in accordance with the approved detailed landscape plan and maintained for a minimum period of twelve (12) months prior to the issue of subdivision certificate. Landscaping must be maintained at all times to the satisfaction of Council's General Manager or delegate.

[PSCNS01]

116. As part of the release of the subdivision the Stage 2 - Subdivision of the residual lot into Lots 3 to 21 proponent shall dedicate at no cost to Council the following riparian areas to be classified as public Community Land under the *Local Government Act 1993* as shown on the approved subdivision plan:

- a. Riparian zone adjacent to Lots 5-21 - 7(d) Environmental Protection (Habitat) zone (LEP 2000)
- b. Riparian zone along the perimeter of proposed Part Lot 2 (North) associated with the canal - RU2 Rural Landscape (LEP 2014) and 7(a) Environmental Protection (Wetlands and Littoral Rainforests) (LEP 2000)
- c. Riparian zone adjacent to proposed Lot 3 - 7(l) Environmental Protection (Habitat) zone (LEP 2000).

[PSCNS01]

GENERAL TERMS OF APPROVAL UNDER PART 5 OF THE WATER ACT 1912 (dewatering)

1. Before commencing any works or using any existing works for the purpose of dewatering an approval under Part 5 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 megalitres 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 development proposal is to comply with the subdivision layout identified on the drawings prepared by B & P Surveys numbered 19190 D (Revision E) - Sheets 1, 2 and 3 (ref: T15844) dated 1 July 2015.

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

2. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on proposed Lots 1 and 5 to 21 requiring the entire area of each lot to be managed as an inner protection area as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
3. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on proposed Lot 2 (benefiting proposed Lot 1) for the purpose of an asset protection zone over the area indicated as (R) on the plan prepared by B & P Surveys numbered 19090 D (Revision E) - Sheet 2 of 3 (ref: T15844) dated 1 July 2015. The asset protection zone shall be managed as an inner protection area as outlined within section 4.1.3 and Appendix 5 of

'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

- 4. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on proposed Lot 1 to prohibit any habitable building, or ancillary building within 10 metres of a habitable building, over the area indicated as (R) on the plan prepared by B & P Surveys numbered 19090 D (Revision E) - Sheet 2 of 3 (ref: T15844) dated 1 July 2015.**
- 5. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on proposed Lots 10 to 20 to prohibit any habitable building, or ancillary building within 10 metres of a habitable building, over the area indicated as "10m APZ buffer" on the plan prepared by B & P Surveys numbered 19090 D (Revision E) - Sheet 3 of 3 (ref: T15844) dated 1 July 2015.**
- 6. The building envelope on proposed Lots 5, 9 and 10 shall be no closer than 21 metres to the edge of the vegetation (drip line) on the southern side of Clothiers Creek Rd.**
- 7. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on proposed Lots 5, 9 and 10 to prohibit any habitable building, or ancillary building within 10 metres of a habitable building, between the building envelope and the southern lot boundary.**
- 8. The area of proposed off-set planting within proposed Lot 2 to the south and west of Kauri Avenue and Kurrajong Avenue shall not encroach within 20 metres of the interface boundary between the existing residential lots and proposed Lot 2.**

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- 9. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.**

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

- 10. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.**

General Advice - consent authority to note

Any future development application lodged within this subdivision under section 79BA of the 'Environmental Planning & Assessment Act 1979' will be subject to requirements as set out in 'Planning for Bush Fire Protection 2006'.

The establishment of asset protection zones required under this bush fire safety authority may involve the clearing of vegetation. This bush fire safety authority does not authorise the clearing of any vegetation, nor does it include an assessment of potential ecological impacts of clearing vegetation for the purpose of establishing asset protection zones. Approvals necessary for the clearing of vegetation should be obtained prior to the establishment of any asset protection zones.

The building envelopes on proposed Lots 5, 9 and 10 are approved on the basis that existing vegetation between the Clothiers Creek Road formation and the proposed building envelopes (including any vegetation within the road reserve) will be managed as an asset protection zone, as indicated in the Bushfire Threat Assessment Report prepared by Bushfire Certifiers (ref: 14/020a) dated 2 July 2015 (amended).

Any easement or restriction to use required under this approval should be implemented in accordance with the NSW Rural Fire Service Community Resilience Practice Note 1/12 'Establishment of Easements for the Purpose of Asset Protection Zones'.

REPORT:

Applicant: Kenmar Farms Pty Ltd

Owner: Kenmar Farms Pty Ltd

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

Zoning: R2 - Low Density Residential, RU2 - Rural Landscape, W1 - Natural Waterways, 7(a) - Wetlands and Littoral Rainforest, 7(l) - Habitat.

Cost: \$1,000,000

Background:

Original Proposal

The original Development Application sought approval for a 26 Lot subdivision, of which 21 Lots will be for residential purposes. The existing 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 requiring referral for comment to the NSW Office of Water, NSW Rural Fire Service and Office of Environment & Heritage.

The Office of Environment & Heritage advised Council that there were a number of issues that required 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 NSW Department of Planning and Environment.

The Department of Planning and Environment, whilst granting concurrence, strongly suggested Council review the provisions of clause 4.1B of Tweed Local Environmental Plan 2014, as the proposal seeks the creation of 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, 23 July to the 22 August 2014. Council received 30 submissions and a petition containing 207 signatures objecting to the application.

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

A report was submitted to the 9 April 2015 Planning Committee Meeting, with a recommendation for refusal, based on a failure to address key planning, ecology and infrastructure issues identified by both Council and the Office of Environment & Heritage and the NSW Department of Planning and Environment. At this meeting Council resolved the following:

“Council allows the applicant to provide further information to address the issues identified and requests for further information. This information is to be submitted to Tweed Shire Council within 3 months.”

Amended Proposal

The applicant submitted an amended subdivision proposal which was re-notified in September 2015.

A total of 83 submissions objecting to the application were received.

The main differences between the original subdivision plan and the amended subdivision plan are:

- Lot 1 retains the same size and dimensions (770m² Kurrajong Avenue);
- Lots 2 and 3 have been modified;
- Lots 4, 5, 7 and 8 have now been consolidated to form a new Lot 2, with a land area of 73 Hectares, which now complies with clause 4.1B of the Tweed LEP 2014. A potential building envelope is proposed on the amended proposed lot 2 in the location of previous proposed lot 2 (Poinciana Avenue);
- The previous Lot 6 now becomes the new Lot 3 with the same size and dimensions (0.94 Hectare, this lot is subject to NSW Major Project No. 08/0118); and
- The 17 allotments proposed adjacent to Clothiers Creek Road remain unchanged.

The amended application seeks approval for a 21 Lot subdivision within two stages, of which 19 Lots will be for residential purposes. The proposed staging is as follows:

Stage 1 - the creation of Lot 1 and Lot 2 and Residue Lot; and

Stage 2 – subdivision of the Residue Lot for the creation of Lots 3 to 21.

The following table illustrates the lot number, the corresponding proposed use and stage.

Proposed Lot No.	Area	Tweed LEP 2000 Zoning	Enabling Clause	Tweed LEP 2014 Zoning	Enabling Clause	Proposed Use	Stage
Lot 1	770 m ²	Not applicable		R2	Clause 4.1	Residential	Stage 1
Lot 2	73 ha	Part 7(a) Part 7(l)	Clause 20(2) Clause 20(2)	Part R2 Part RU2	Clause 4.1 Clause 4.1B	Agricultural	Stage 1
Lot 3	0.94 ha			R2	Clause 4.1	Residential (See Project Approval No. MP 08_0118. Approved 02/12/10 approving 12 residential lots)	Stage 2
Lot 4	8 ha	Part 7(l) Part 7(a)	Clause 2.75 SEPP Codes	Part W1 Part RU2	Clause 2.75 of SEPP Codes	Proposed drainage reserve incorporating the existing drainage channels and riparian areas to be dedicated to Council.	Stage 2

Lots 5 – 21 (17 lots)	600m ² - 1030m ²	Not applicable	R2	Clause 4.1	Residential	Stage 2
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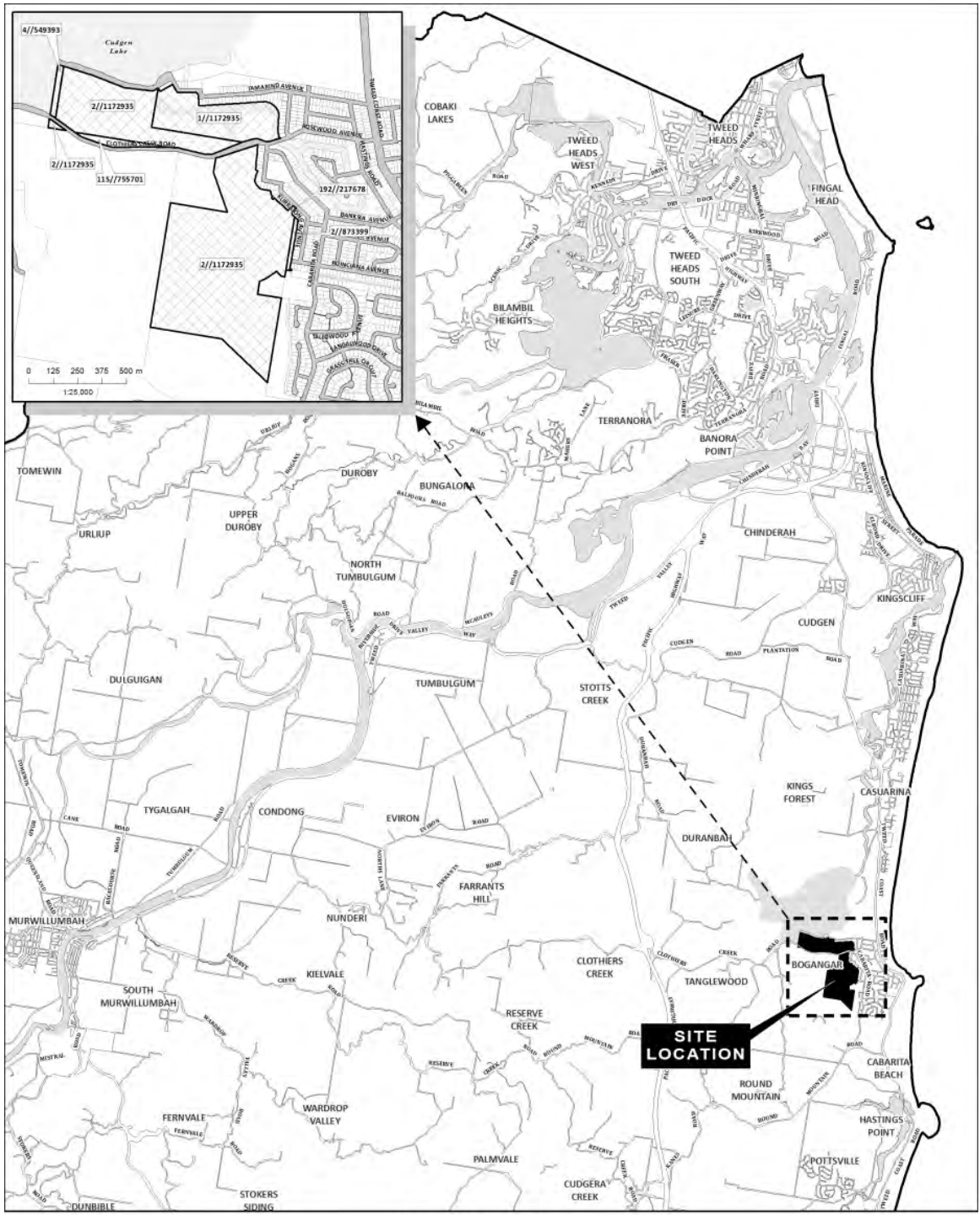
The response by the relevant government agencies to the amended application was as follows:

- The NSW Office of Water provided General Terms of Approval and advised that the proposed amended subdivision does not warrant any change to previous advice or conditions;
- The NSW Rural Fire Service provided general terms of approval subject to conditions;
- The Office of Environment & Heritage raised no objection to the proposal advising Council to ensure that the proposed offsets are of a suitable size and rehabilitated. The amended proposal resolved issues previously raised by the department, mainly being dedication of land;
- The Department of Planning and Environment advised that the proposed amended subdivision resolved the Department's previous concerns with regards to the provisions of clause 4.1B (variation in regards to land zoned RU2) of Tweed Local Environmental Plan 2014, as proposed Lot 2 is now greater than 40 ha. The Department also advised that a variation is no longer required with respect to 7(a) zoned land as the 7(a) zoned land will now be incorporated into proposed Lot 2 which is now greater than 40 ha (73 ha).

The development requires the removal of a small amount of Core Koala Habitat and vegetation representative of an Endangered Ecological Community (EEC). Council's Natural Resource Management Unit reviewed the proposal and advise that, subject to conditions (mainly requiring offsets), it has been satisfied that any adverse ecological impacts likely to be associated with the proposed development can be avoided, minimised and managed to an acceptable level.

It is therefore recommended that the application be approved.

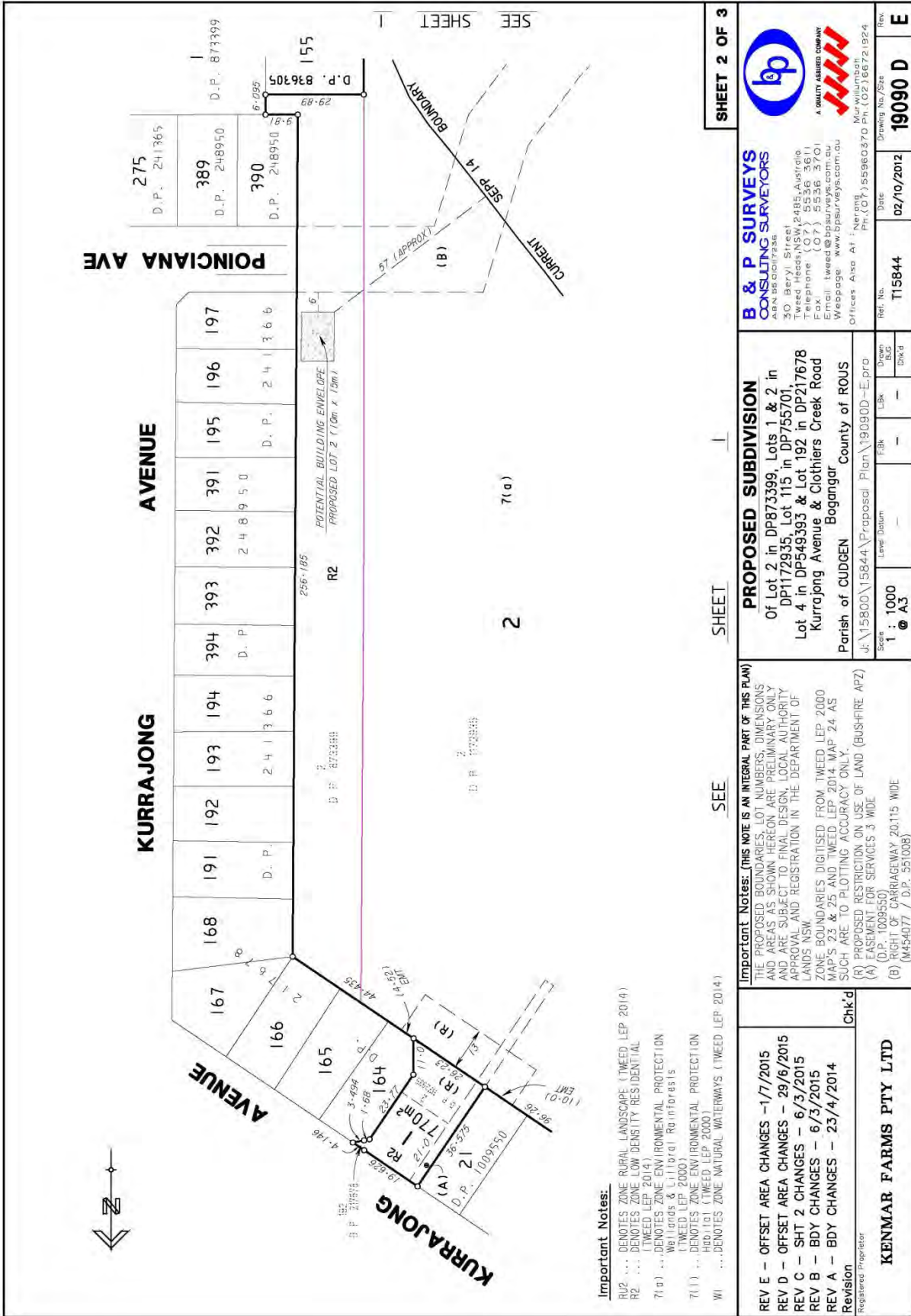
SITE DIAGRAM:



Locality Plan

Lot 115 DP 755701 & Lot 4 DP 549393; Clothiers 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 to 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>1:100,000 @ A4 Portrait COPY ONLY - NOT CERTIFIED</p> <p>GDA Map Projection: Universal Transverse Mercator Horizontal Datum: Geodesic Datum of Australia 1984 Grid: Map Grid of Australia, Zone 56</p>	<p>Civic and Cultural Centre 2 Tumbulgun Road Murwillumbah NSW 2484 PO Box 616 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2425 W www.tweed.nsw.gov.au E planningreform@tweed.nsw.gov.au</p> <p>TWEED SHIRE COUNCIL</p> <p>Author: Distribution - Planning Information Unit Date Printed: 19 March, 2015</p>
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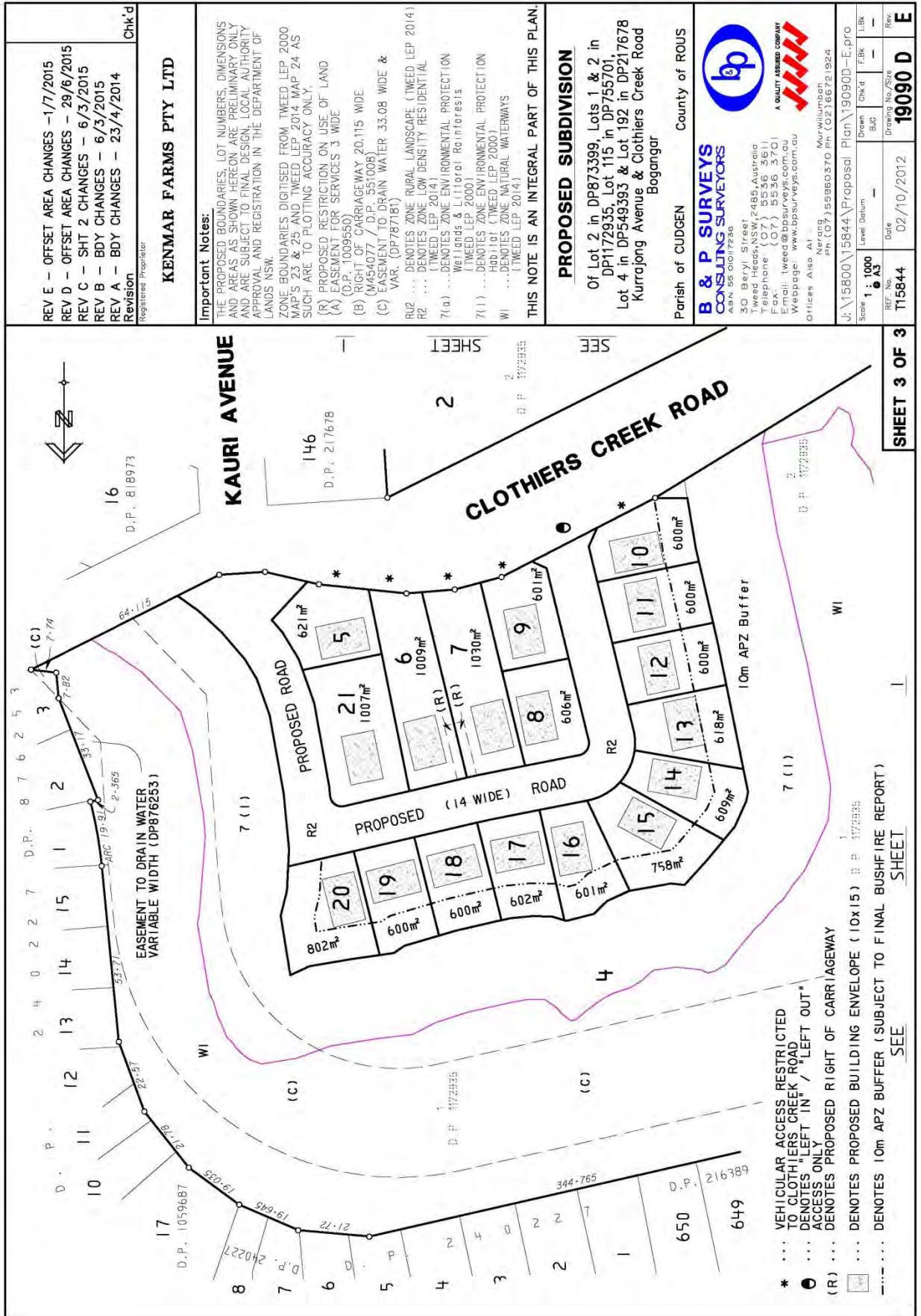
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Ref. No.	T15844	Date	02/10/2012
Drawing No./Size	19090 D	Rev.	E

Scale	1 : 1000	Level Datum	-	Eqk	-	Lbk	-	Open	-
	A3							B/C	D/K'd

PROPOSED SUBDIVISION
Of Lot 2 in DP873399, Lots 1 & 2 in DP172935, Lot 115 in DP755701, Lot 4 in DP549393 & Lot 192 in DP217678
Kurrajong Avenue & Clothers Creek Road
Parish of CUDGEN
Bogangar
County of ROUS

Important Notes: (THIS NOTE IS AN INTEGRAL PART OF THIS PLAN)
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 (BUSHFIRE APZ)
(A) EASEMENT FOR SERVICES 3 WIDE
(B) RIGHT OF CARRIAGEWAY 20.115 WIDE
(M454077 / D.P. 551008)

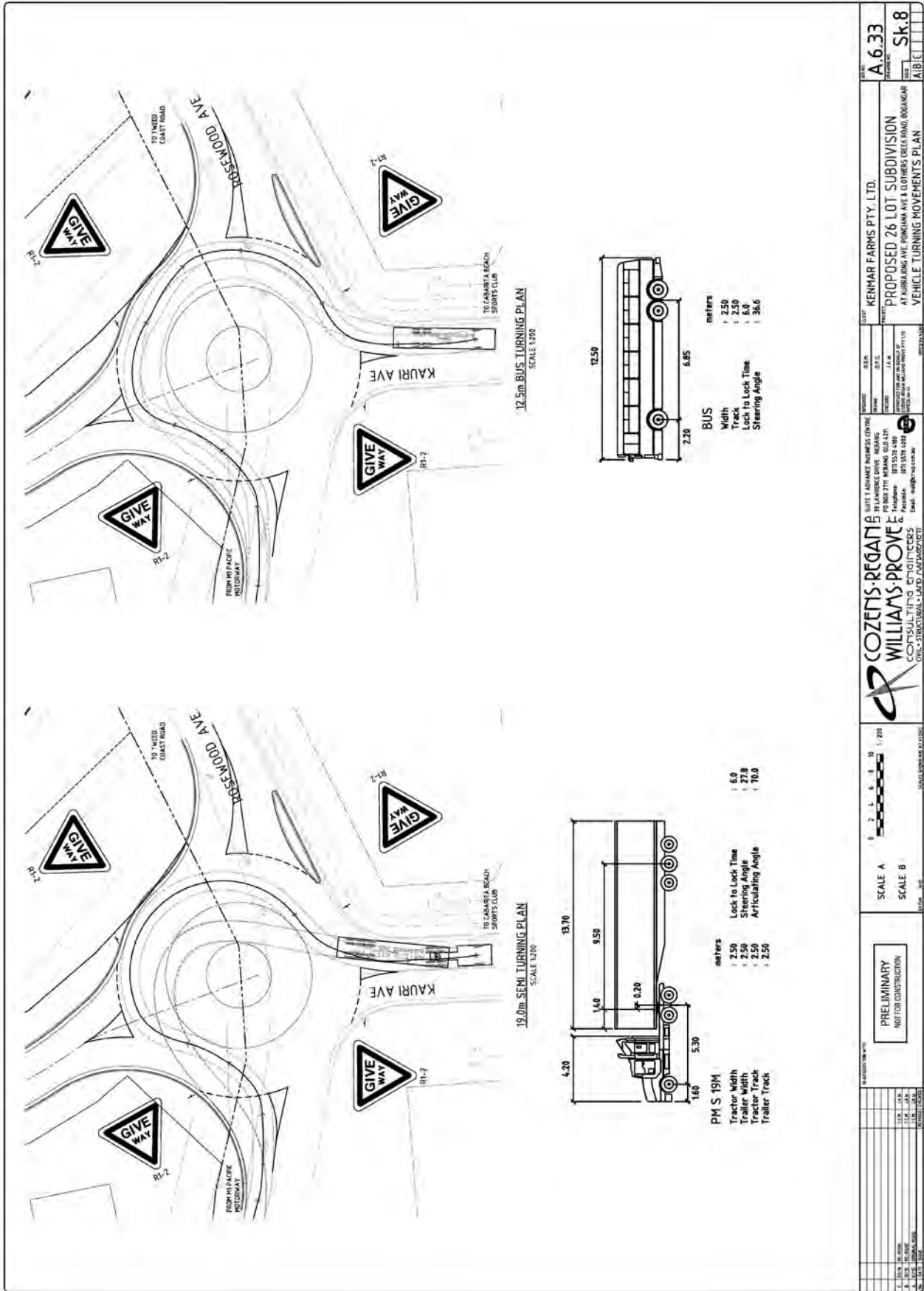


SHEET 3 OF 3

SEE SHEET 1

SEE SHEET 2

- * ... VEHICULAR ACCESS RESTRICTED TO CLOTHIERS CREEK ROAD
- ... DENOTES "LEFT IN" / "LEFT OUT" ACCESS ONLY
- (R) ... DENOTES PROPOSED RIGHT OF CARRIAGEWAY
- ... DENOTES PROPOSED BUILDING ENVELOPE (10x15)
- ... DENOTES 10m APZ BUFFER (SUBJECT TO FINAL BUSHFIRE REPORT)



PROJECT NO: A.6.33
 SHEET NO: Sk.8
 DATE: A.B.C.

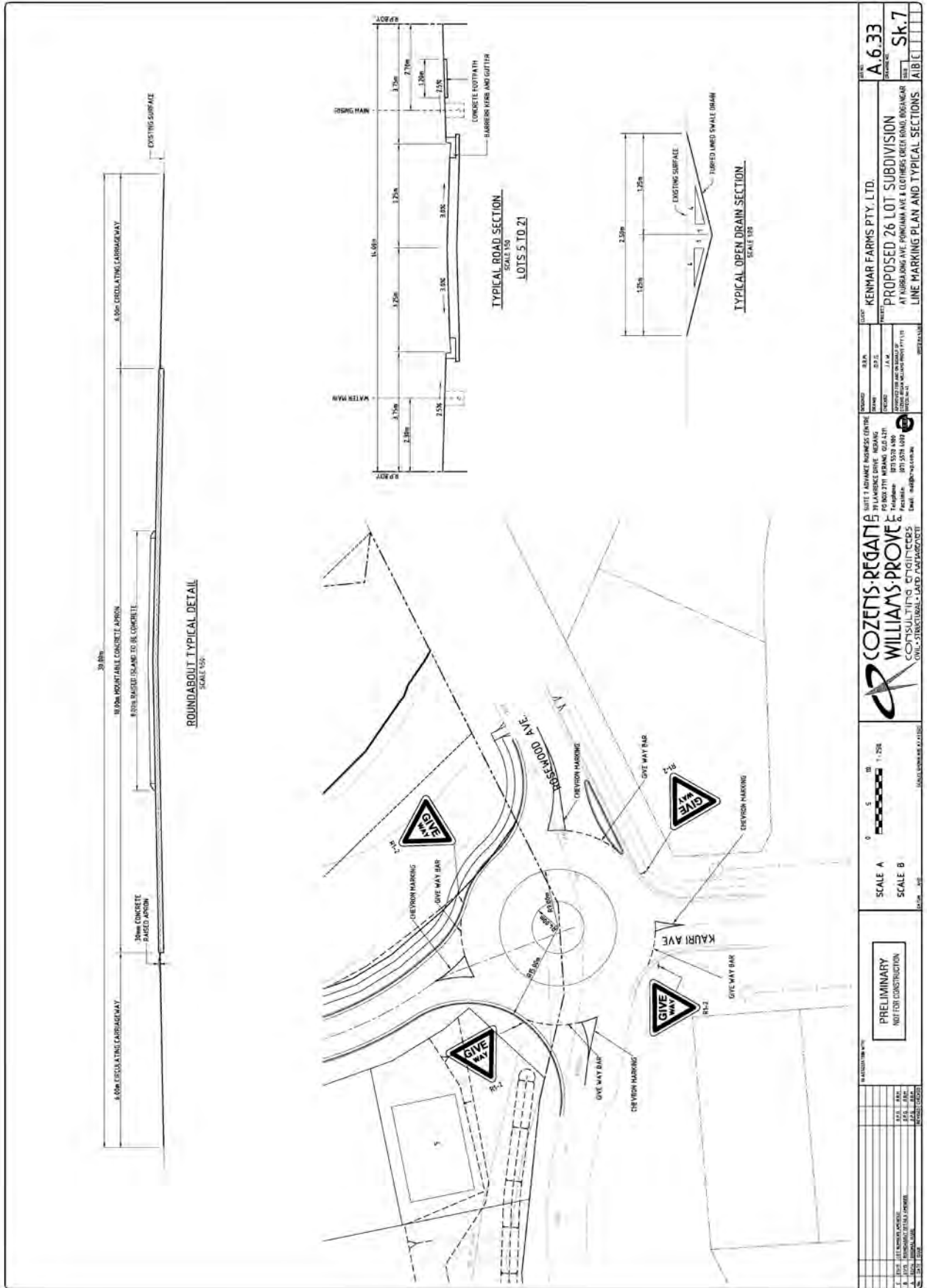
CLIENT: KENMAR FARMS PTY. LTD.
 PROJECT: PROPOSED 26 LOT SUBDIVISION
 AT KAIRORANG AVE, KAIRORANG AVE & COLEBURN DRIVE, BIRKENHEAD

CONSULTING ENGINEERS: COZENS-REGAN & WILLIAMS-PROVE CONSULTING ENGINEERS
 CIVIL-STRUCTURAL-LANDSCAPE/ASPECT

SCALE A: 1:200
 SCALE B: 1:500

PRELIMINARY
 NOT FOR CONSTRUCTION

DRAWN BY: J.A.M.
 CHECKED BY: J.A.M.
 DATE: 11/08/16



<p>COZENS REBORN SUITE 7 ADVANCE BUSINESS CENTRE 1500 21st WILKING ROAD Telford WA 6107 Tel: 08 9437 5573 Fax: 08 9437 5574 www.cozensreborn.com.au</p>		<p>DATE: A.6.33 PROJECT: PROPOSED 26 LOT SUBDIVISION AT KURRING AVE, FORUMMA AVE & CLOVERS CREEK ROAD, BIRBAHAR LINE MARKING PLAN AND TYPICAL SECTIONS</p>
<p>WILLIAMS-PROVE & PARTNERS CONSULTING ENGINEERS 100/100 WILKING ROAD, BIRBAHAR Telford WA 6107 Tel: 08 9437 5573 Fax: 08 9437 5574 www.williams-prove.com.au</p>		<p>SCALE A 1:250 SCALE B 1:500 PRELIMINARY NOT FOR CONSTRUCTION</p>
<p>DATE: A.6.33 PROJECT: PROPOSED 26 LOT SUBDIVISION AT KURRING AVE, FORUMMA AVE & CLOVERS CREEK ROAD, BIRBAHAR LINE MARKING PLAN AND TYPICAL SECTIONS</p>		<p>SCALE A 1:250 SCALE B 1:500 PRELIMINARY NOT FOR CONSTRUCTION</p>

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 to be consistent with the aims of the Plan subject to recommended conditions.

Clause 2.3 – Zone objectives and Land use table

The site contains multiple zones being: R2 - Low Density Residential, RU2 - Rural Landscape and W1 - Natural Waterways.

The R2 zone objectives state:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The RU2 zone objectives state:

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

The W1 zone objectives state:

- *To protect the ecological and scenic values of natural waterways.*
- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
- *To provide for sustainable fishing industries and recreational fishing.*

The proposal is considered to be in accordance with the objectives of the zones, as the R2 zoned land will be used for residential use, the RU2 zoned land will be maintained retaining the rural landscape character of the land and the W1 zoned land will be maintained as waterways and dedicated to Council.

Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)

This Clause requires that the size of any lot is not to be less than the minimum size shown on the lot Size Map. All of the proposed allotments comply with the minimum lot size.

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 has reviewed the amended proposal and raised no objection subject to conditions.

Clause 5.11 - Bush fire hazard reduction

The proposal requires bushfire hazard reduction and is integrated development with the NSW Rural Fire Service (NSWRFS). The NSWRFS provided General Terms of Approval which will be recommended as conditions if the development were to be approved. It is noted that the proposal will require vegetation removal in order to provide assets protection zones. The loss of vegetation is to be compensated through the provision of offsets, which has been addressed via recommended conditions from Council's Natural Resource Management Unit.

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. Proposed lots 5 - 21 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

The proposal is considered to be consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The proposal is considered to be consistent with clause 5 which 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.

Council's Natural Resource Management Unit has reviewed the amended proposal and no objections were raised subject to recommended conditions.

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 (l) 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 amended proposal and recommended conditions, the proposal is considered to be consistent with the primary objectives of either of the zones listed above.

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 (l) 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 2 consists of land zoned 7(a) and 7(l), Lot 2 is to remain undeveloped and protected to conserve significant wetlands and habitat. The proposal is considered to be consistent with the objectives of the zones.

Clause 15 - Essential Services

All essential services can be supplied to proposed residential lots.

Clause 16 - Height of Building

The proposal is for subdivision only, 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 each allotment created is at least 40 hectares.

Proposed Lot 2 (as amended)

Proposed Lot 2 consists of land zoned 7(a) and 7(l). Subdivision is permissible in these zones if the area of land of each allotment created is at least 40 hectares or more. In this case, the proposed Lot 2 has an area of 73 hectares, which exceeds the 40 hectare minimum. The proposal is considered to comply.

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 has recommended an appropriate condition in regards to bus servicing and turning templates for bus 12.5m and semi-trailers of 19m in length for the proposed roundabout.

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.*

All proposed dwelling sites nominated in this application 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.

Council's Natural Resource Management Unit has reviewed the amended proposal and has raised no objection subject to recommended conditions.

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 2 and 4 contain land zoned 7(l). There is clearing of vegetation and earthworks within proposed Lot 4 that will result in the loss of a minimum of approximately 4000m² of Ecologically Endangered Community (EEC) land.

Proposed Lot 4 is to be dedicated to Council with the water being operational land and the 7(l) zoned land being community land. The land to be dedicated to Council (Lot 4) supports high ecological values such as candidate EEC and regarded as Preferred Koala Habitat and offering foraging, refuge and breeding opportunities for a suite of other threatened species. The area is contiguous with other existing/proposed publically managed reserves.

Where maintained appropriately the riparian area would contribute to maintaining/improving water quality and would provide a higher degree of protection to certain areas of the riparian area (currently Zone RU2) with the land being transferred to Council.

Council's Natural Resource Management Unit has indicated that funding/resourcing (provided by the applicant) for the long term management of these areas to be dedicated to Council is not necessary in this particular instance. The basis of this decision was founded on the following aspects/features of the area to be dedicated:

- The relative size of the area is small compared to the broader conservation network.
- The riparian area has been requested to be the subject of habitat restoration in accordance with an approved plan to be implemented

and managed by the developer for a period of 5 years. The plan will include measurable performance criteria and responsibility for the land not accepted until these criteria are met.

- The riparian area is currently well vegetated and largely dominated by remnant vegetation limiting the amount of effort required in the long term (post developer responsibilities – 5 years) to maintain habitat integrity; and
- Public access to the area is likely to be limited reducing future maintenance burden. Proposed development consent conditions in relation to fencing, access and building envelopes seek to ensure that the dedicated area has limited maintenance requirements.

Council's Natural Resource Management Unit has reviewed the amended proposal and has raised no objection subject to recommended conditions.

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 2 and 4 are adjacent to Cudgen Nature Reserve. However, vegetation removal is not 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 MHW 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 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 are 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 is integrated development with the NSW Rural Fire Service, as the development proposes residential subdivision of bushfire prone land.

The NSW Rural Fire Service provided general terms of approval which will be added to the consent if the application were to be approved.

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.

Council's Natural Resource Management Unit has reviewed the amended proposal and has raised no objection subject to recommended conditions.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

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 2 is zoned 7(a), 7(l) and RU2 with the RU2 portion being 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 and Lots 5-21 that connects to the Cudgen Lake. Council's Natural Resource Management Unit has reviewed the amended proposal and has raised no objection subject to recommended conditions.

Clause 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 and Lots 5-21 that connects to the Cudgen Lake. Council's Natural Resource Management Unit has reviewed the amended proposal and has raised no objection subject to recommended conditions.

Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that the proposal 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 33: Coastal hazard areas

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

Clause 43: Residential development

The proposed density of the residential allotments has been maximised without adversely affecting the environmental features of the land.

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

The proposal is compliant with the minimal lots size development standards. A SEPP 1 variation is not required.

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. These three lots become proposed Lot 2.

The SEPP 14 wetlands area of most interest is within proposed Lot 2, generally southwest of Poinciana Avenue, where the 'potential building envelope' is located. However, Council is not in support of the 'potential building envelope' and a condition and the plans will be amended accordingly.

The amended proposal subject to conditions is considered not to encroach into or impact on SEPP 14 land.

SEPP No. 44 - Koala Habitat Protection

The site contains Koala Habitat. Council's Natural Resource Management Unit reviewed the amended application and raised no objection subject to recommended conditions.

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 or impact to the coastal foreshore.

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.

The proposal is considered to be consistent with matters for consideration under 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 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 5 to 21 currently range in height from RL 3.0m to RL 4.0m AHD, Lot 1 ranges from RL 4m to RL 4.2m AHD. 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

Section 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 Section A5 and has recommended approval subject to conditions.

The proposed subdivision lots will each provide an area of greater than 450m² and will provide for a building envelope of 10m x 15m clear of the applicable building setbacks which apply under DCP 2008. The development is considered to comply with all of the urban subdivision design guidelines and development standards, outlined within Clause A5.4. The subdivision has been designed in accordance with the sites constraints to provide optimum solar orientation, lot sizes, access, services and drainage.

The proposal is compliant with Table A5-9.1: Land in Zone R1 General Residential.

A11-Public Notification of Development Proposals

The original application was advertised for a period of 30 days from 23 July to 22 August 2014. During this period Council received 30 submissions objecting to the proposal and one petition containing 207 signatures. The application was amended and notified for a period of 14 days from 8 September 2015 to 22 September 2015. During this period Council received 83 submissions objecting to the proposal. The details of the submissions are addressed later within this report.

A13-Socio-Economic Impact Assessment

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

However, the applicant provided a completed socio economic checklist stating that the proposal will create a positive economic and employment impact and an uncertain/neutral social impact. The proposal is considered to create acceptable social and economic impacts on the locality.

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 also proposes offsets within Lot 2 to compensate for the vegetation to be removed. Council's Natural Resource Management Unit has reviewed the amended proposal and has raised no objection subject to recommended conditions.

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 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 considered not 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. The site 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

The proposal is considered to create acceptable impacts on the natural and built environments subject to recommended conditions.

Context and Setting

The site is located on the western fringe of urban development of Bogangar. To the north and east of the site contains residential properties consisting of mainly detached single dwelling houses. Located to the far north is the Cudgen Lake, to the south of the site is land zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and to the west is land zoned E1 National Parks and Nature Reserves.

Access, Transport and Traffic

Council's Traffic Engineer and Subdivisions Engineer raised no objection to the proposal in relation to traffic and access subject to recommended conditions. The existing road network is considered acceptable for the proposal.

Tweed Coast Comprehensive Koala Plan of Management

The following comments were provided by Council's Natural Resource Management Unit.

"In order to facilitate the proposed development it is expected that 0.48 ha of Core Koala Habitat and vegetation representative of an Endangered Ecological Community (EEC) Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions shall be directly impacted. With reference to the Tweed Coast Comprehensive Koala Plan of Management 2015 the site occurs within a designated Koala Activity Precinct known to support koalas.

During assessment of the application the following key issues were raised:

- Offsetting principles and methodology adopted by the applicant to compensate for the loss of Core Koala Habitat and candidate EEC under the respective TCKPoM and 'OEH Principles for the Use of Biodiversity Offsets in NSW' policies.*
- The proposed approach to habitat restoration*
- Long term management arrangements of compensatory habitat areas and those riparian areas to be transferred to Council*
- The location of a proposed Building Envelope on Lot 2 and likely impact in the future on significant ecological values*

In response the applicant submitted further information to address those concerns detailed above. As part of the response a Koala Offset Management Plan was prepared and publically notified in accordance with Section 5.12 Variations to Development Assessment Provision of the TCKPoM.

Upon review and assessment of the applicant's response a determination was made that the information did not satisfactorily address all concerns raised by Council's NRM Unit. Notwithstanding, it is proposed that the outstanding issues can be addressed through the application of conditions of consent to ensure:

- The aims of the TCKPoM are met through accurately calculating, appropriately positioning and protecting in the long term Core Koala Habitat offsets on site.*
- The proposal avoids having a significant impact on an EEC being Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions through the rehabilitation and long protection of a nominated offset area onsite*
- Long term protection and rehabilitation of a suitable offset area/s onsite*
- Appropriate management and rehabilitation of riparian land to be transferred to Council for conservation purposes*
- Preparation and implementation of construction/operational based vegetation and fauna management plans.*
- Deletion of the Building Envelope attached to Lot 2 as shown on the proposed Lot layout plan.*

On the basis of where the abovementioned fundamental conditions are imposed, NRM are satisfied that any adverse ecological impacts likely to be associated with

the proposed development can be avoided, minimised and managed to an acceptable level.”

(c) Suitability of the site for the development

As detailed within the body of this report, the site is considered suitable for the proposed subdivision, subject to recommended conditions.

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

Public Authority Submissions Comment on the Amended Proposal

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

The NSW Office of Water provided General Terms of Approval and advised that the proposed amended subdivision does not warrant any change to previous advice or conditions.

The NSW Rural Fire Service provided general terms of approval subject to conditions.

The Office of Environment & Heritage raised no objection to the proposal advising Council to ensure that the proposed offsets are of a suitable size and rehabilitated. The amended proposal resolved issues previously raised by the department, mainly being dedication of land.

The original application required concurrence from the Department of Planning and Environment, however the modified application was referred to the Department with the Department advising that concurrence was no longer required as all allotments exceed the minimum lot size.

Public Submissions Comment

The application was advertised for a period of 30 days from 23 July to 22 August 2014. During this period Council received 30 submissions objecting to the proposal and one petition containing 207 signatures. The application was amended and notified for a period of 14 days from 8 September 2015 to 22 September 2015. During this period Council received 83 submissions objecting to the proposal. An assessment of the submissions is provided in the table below.

Summary of Submissions

Response from applicant and Council staff

Sensitive environment

The application has been modified to remove the proposed residential Lot 2 and Lot 3 (which contained proposed building envelopes). These lots which were located at the end of Poinciana Avenue, which were within close proximity to SEPP 14 Wetlands. Therefore, construction works are no longer proposed within this area. A condition is recommended prohibiting the 'potential building envelope from proposed Lot 2 (which is in the same location as the previously proposed Lot 2 and building envelope).

Summary of Submissions	Response from applicant and Council staff
Threatened species	<p>The applicant's assessment of significance concluded that the development would not have a significant impact on threatened flora, fauna and endangered ecological communities where amelioration measures were successful applied and implemented.</p> <p>Council officers concur with the applicant's determination where additional conditions of consent are applied to appropriately manage construction activity, offset the removal of habitat (through restoration activity), manage offset areas in the long term (88B instrument for conservation purposes). Based on the above-mentioned determination an SIS is not considered warranted.</p> <p>(Section 5A (significant effect on threatened species, populations or ecological communities, or their habitats) Environmental Planning & Assessment Act 1979).</p>
Koala habitat	<p>Council officers have reviewed the proposal with particular regard to Koala habitat. Council officers consider that the proposal is considered acceptable in regards to Koala habitat subject to recommended conditions. The applicant is required to provide 10.73 Hectares of Offset in order to comply with TCCLPoM, which will be provided within the RU2 zone of proposed Lot 2.</p>
Amenity of adjacent residential properties	<p>Council officers consider that the proposed development which seeks approval for residential subdivision on residential zoned land will create standard residential impacts in relation to amenity. The proposal is considered to create acceptable levels of impact on the amenity of adjacent residential properties.</p>
2005 flooding	<p>The applicant provided the following comment.</p> <p><i>"Approximately 5200m³ is required for filling of Lots 5 to 21 to ensure that each lot is at the required level.</i></p> <p><i>Most of this fill is required around the edges of the proposed lots as the majority of the land is currently at, or above, RL 3.0m AHD. The Q100 flood level is RL 2.9m AHD. The volume of material to be imported is relatively minor and Council's Engineers have raised no</i></p>

Summary of Submissions

Response from applicant and Council staff

objection to the proposal on flooding grounds. Indeed, the proposal is consistent with Council's Policy for development of flood prone land (Tweed Development Control Plan 2008, Section A3 - Development of Flood Liable

Land). In addition, flooding was also taken into account at the time the subject land was rezoned in 2005.

In summary, it is submitted that the proposed development will not have any significant adverse impacts in terms of flood flows, volumes and afflux."

Council staff have reviewed the proposal in relation to flooding, and consider the proposal to be acceptable subject to recommended conditions. The residential allotments numbered 5 to 21 have been cleared and filled to a level of exceeding RL 3.0m AHD, with the required adopted minimum floor level being RL 3.5m AHD, therefore a minimal level of fill is required.

2004 and 2009 bushfires

The applicant provided the following comment.

"Bushfire hazards and compliance with Planning for Bushfire Protection 2006 are addressed in the amended Bushfire Hazard Assessment IBCA Check, 2 July 2015). The proposed lots and cul-de-sac at the end of Poinciana Avenue have been deleted from the development proposal."

The application was referred to the NSW Rural Fire Service pursuant to section 100b of the Rural Fires Act 1997. The NSW Rural Fire Service have provided their General Terms of Approval.

Increased traffic movements

The applicant provided the following comment.

"The proposed 17 additional residential lots adjacent to Clothiers Creek Road will generate approximately 150 vehicles per day (vpd) or 15 vehicles per hour (vph) at peak times.

Assuming (based on anecdotal evidence, the Tweed Coast Road is a quicker route to Tweed Heads than Clothiers Creek Road/Pacific Highway) that 70% of vehicles travel to the east and 30% to the west, an additional 45 vpd or 4.5 vph (at peak times) would travel past the existing Tanglewood properties. Given the very

Summary of Submissions

Response from applicant and Council staff

low additional traffic volumes and existing speed restrictions, it is highly unlikely that traffic generated by the development will have capacity or amenity impacts on Clothiers Creek Road at Tanglewood, or within the Cabarita/Bogangar residential street network."

Council officers have reviewed the proposed development in relation to traffic and no objection has been raised subject to recommended conditions. A review of the traffic volume history on Clothiers Creek Road on the Tanglewood Flat since 2004 show static volumes just below 2, 000 movements per day, which is well within the capacity of the road. The expected traffic generation will not necessitate upgrades to the wider road network.

Expansion of Village and Population Increase

The applicant provided the following comment.

"Current Strategic (Far North Coast Regional Strategy, 2006 - 2031) and Statutory Plans (Tweed Local Environmental Plan 2014) foreshadow development of those parts of the site zoned Residential for low density residential uses, as is proposed in this current Development Application.

No "urban" lots are proposed in the non-urban zones. There will be no expansion of the village beyond the existing residential zone boundaries and the proposed densities and ultimate population are consistent with relevant Strategic and Statutory Plans, including Tweed Development Control Plan 2008, Section B 19 - Bogangar/Cabarita Beach."

The proposed development is for the subdivision of residentially zoned land to create 19 residential lots. The proposed development is considered to be of a relatively minor scale which would generate a population of approximately 43 persons.

Stormwater Management

The applicant provided the following comment.

"The concerns raised by residents are addressed in the Stormwater Management Plan and Civil Engineering Report at Annexure 6 of the Statement of Environmental Effects. In addition, it is noted that Tweed Shire Council Engineers have no issues in relation to storm water management and flooding issues.

Summary of Submissions

Response from applicant and Council staff

In summary, the proposal complies with Tweed Shire Council requirements as contained in Tweed DCP 2008, Section A5 - Subdivision Manual and Section A3 - Development of Flood Liable Land."

Council officers raised not objection to the proposed development in relation to stormwater subject to recommended conditions of consent.

The issues raised within the submissions are considered to have been adequately addressed by the amended application and subject to recommended conditions.

(e) Public interest

The amended application is considered to mitigate issues previously raised, in addition to recommended conditions. Therefore, the proposal as amended subject to conditions is considered to be in the public interest.

OPTIONS:

1. Approve the application subject to the recommended conditions; or
2. Refuse the application and provide reasons for refusal.

Council officers recommend Option 1.

CONCLUSION:

The amended application submitted is considered to acceptable subject to recommended conditions.

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.

3 [PR-PC] Development Application DA15/1069 for a Child Care Centre at Lot 1701 DP 1214550 No. 44 Seabreeze Boulevard, Pottsville

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:

This Development Application was called up for Council determination by Councillors Milne and Bagnall.

On 22 December 2015 Council received an application for a Child Care Centre on a corner allotment within the Seabreeze Estate, Pottsville with frontage to Tom Merchant and Seabreeze Boulevard. Access to the subject site is via Seabreeze Boulevard. The proposal describes a service for a maximum of 90 children and 15 staff with a gross floor area of 645.6m².

The proposal contains two separate outdoor play areas northward of the proposed car parking area and building, away from adjacent residential allotments to the south. Internally the facility contains a kitchen, laundry, office/staff area, six activity areas, two sleeping rooms and storage areas.

The application was notified to adjoining and affected landholders via letter on 6 January 2016 for a period of fourteen days being 13 January 2016 to 26 January 2016.

Nine submissions were received in relation to the proposal. The concerns raised were with regard to noise, traffic including on street parking concerns, misunderstanding of the permissibility of the use within the zone, confusion over the defined use compared with commercial premises, hours of operation, and some submitters stating notification compliance was not carried out correctly as they did not receive a letter. The applicable matters raised have been recommended to be conditioned appropriately with reference to the Traffic Impact Statement and Acoustic Report recommendations which mitigate the potential impacts raised by submitters.

The application is a consistent use within the zone and is generally compliant with the requirements of the Tweed Local Environmental Plan 2014, Development Control Plan 2008 and Council Policies. The development application is recommended for approval subject to conditions including improvements to design and operational requirements.

It should also be noted that there is an adjoining development application (DA16/0031) for a gymnasium on the adjoining parcel of land seeking access via the subject site. DA16/0031 is a separate item on the business paper for Council consideration and these two applications should be considered in conjunction with one another.

RECOMMENDATION:

That Development Application DA15/1069 for a Child Care Centre at Lot 1701 DP 1214550 No. 44 Seabreeze Boulevard, Pottsville be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects, Acoustic Report prepared by CGCAcoustics dated 21 April 2016, except where varied by the conditions and the Approved Plans provided in the following table:

Title	Prepared By	Dated	Reference
Site Plan	Raymond Design	11/04/2016	RD15002/P3
Floor Plan	Raymond Design	08/05/2015	RD15002/P1
Landscape Intent Plan	Raymond Design	05/05/2015	RD15002/P1
Planting Schedule and Details	Raymond Design	08/05/2015	RD15002/P1
Elevations	Raymond Design	TBA	RD15002/PT BA
Material and Colour Schedule	Raymond Design	TBA	RD15002/PT BA

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]
3. 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]
4. Sewer manholes are present on this site. Manholes are not to be covered with soil or other material. Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. 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.
5. Any business or premises proposing to discharge wastewater containing pollutants differing from domestic sewage must submit a Liquid Trade Waste Application Form to Council. The application is to be approved by the General

Manager or his delegate prior to any discharge to the sewerage system. A Liquid Trade Waste Application fee will be applicable in accordance with Council's adopted Fees and Charges.

[GEN0190]

- 6. 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]

- 7. Separate approval must be obtained from Council for permission to carry out works within a road reserve under S138 of the Roads Act 1993. An application is to be made to council seeking approval of works to carry out the construction of the crossover and driveway to service the development. This application is to be lodged with Council prior to or as part of the application for Construction Certificate.**

The application shall include engineering plans and specifications for the following required works:

- (a) Provision of an access for the Child Care in accordance with Councils standard drawing S.D.017 and Section A2 - "Site Access and Parking Code" of Council's consolidated Tweed Development Control Plan and Council's "Driveway Access to Property - Part 1 " Design Specification June 2004**
- (b) Concrete sealing of the access from the existing road kerb to the property boundary in accordance with Tweed Shire Councils standards and specifications.**
- (c) The submitted plans are to detail a minimum driveway width of 9m at the kerb line and of 6m at the property boundary as per Tweed Shire Councils standard drawing S.D.017 - Driveway Access to Properties Fronting Road with Kerb & Gutter.**

Additional documentation to be included is available from Council's website, <http://www.tweed.nsw.gov.au/Building/Stage2> (Driveway Application s138).

[GENNS01]

- 8. 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 or drainage works (including connection of a private stormwater drain to a public stormwater drain or installation of erosion and sediment control works.)**

[GENNS02]

- 9. Stormwater management shall be in general accordance with the Stormwater Management Plan prepared by Cozens Regan Williams Prove Pty Ltd dated May 2015, except where varied by the conditions of this consent.**

[GENNS03]

- 10. Erosion and Sediment Control shall be designed, installed and maintained 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".**

[GENNS04]

11. All deferred payments approved by Council will require the recipient to provide a bank guarantee for the full amount of any outstanding deferred monies prior to the issue of a Construction Certificate.

Alternatively Council may choose to enter into a general or specific security agreement/deed under the *Personal Property Securities Act 2009*. The bank's obligations are discharged when payment to the council is made in accordance with this guarantee or when council notifies the bank in writing that the guarantee is no longer required.

Where a bank guarantee has been deposited with council, the guarantee shall not be cancelled until such time as the original contribution and accrued interest (if applicable) are paid. The bank guarantee must be provided by an Australian bank or recognised financial institution.

[PCCNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

12. 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.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.

BELOW IS ADVICE ONLY

The Section 64 Contributions for this development at the date of this approval have been estimated as:

Water:	5.3 ET @ \$13,386	= \$70,945.80
Sewer:	9.5 ET @ \$6,431	= \$61,094.50

13. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all relevant Section 94 Contributions have been paid and the Certifying Authority has 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.

Initial Payment (required prior to issue of Construction Certificate)

- (a) Tweed Road Contribution Plan:
48.325 Trips @ \$1364 per Trips \$39,549.00
(**\$1,284 base rate + \$80 indexation**)
(\$26,366 has been subtracted from total for commercial job creating developments)
S94 Plan No. 4
Sector8_4
- (b) LCA3 - Koala Beach/Seabreeze: \$2,087.40
48.325 trips at \$72 per trip
(**\$68.00 base rate + \$4.00 indexation**)
(\$1,391.60 has been subtracted from this total as this is deemed a commercial job creating development)

Second payment (required 1 year from the date of issue of the Construction Certificate)

- (a) Tweed Road Contribution Plan:
48.325 Trips @ \$1364 per Trips \$39,549.00
(**\$1,284 base rate + \$80 indexation**)
(\$26,366 has been subtracted from total for commercial job creating developments)
S94 Plan No. 4
- (b) Sector8_4
LCA3 - Koala Beach/Seabreeze: \$2,087.40
48.325 trips at \$72 per trip
(**\$68.00 base rate + \$4.00 indexation**)
(\$1,391.60 has been subtracted from this total as this is deemed a commercial job creating development)

Third payment (required 2 years from the date of issue of the Construction Certificate)

- (a) Tweed Road Contribution Plan:
48.325 Trips @ \$1364 per Trips \$39,549.00
(**\$1,284 base rate + \$80 indexation**)
(\$26,366 has been subtracted from total for commercial job creating developments)
S94 Plan No. 4

Sector8_4

(b) LCA3 - Koala Beach/Seabreeze: **\$2,087.40**

48.325 trips at \$72 per trip

(\$68.00 base rate + \$4.00 indexation)

(\$1,391.60 has been subtracted from this total as this is deemed a commercial job creating development)

Final payment (required 3 years from the date of issue of the Construction Certificate)

(a) Tweed Road Contribution Plan:

48.325 Trips @ \$1364 per Trips **\$39,549.00**

(\$1,284 base rate + \$80 indexation)

(\$26,366 has been subtracted from total for commercial job creating developments)

S94 Plan No. 4

Sector8_4

(b) LCA3 - Koala Beach/Seabreeze: **\$2,087.40**

48.325 trips at \$72 per trip

(\$68.00 base rate + \$4.00 indexation)

(\$1,391.60 has been subtracted from this total as this is deemed a commercial job creating development)

[PCC0215]

14. 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]

15. In accordance with Section 68 of the Local Government Act, 1993 any premises proposing to discharge wastewater into Councils sewerage system other than domestic sewage, shall submit to Council a completed Liquid Trade Waste Application for a Liquid Trade Waste Services Agreement. The Application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Council's sewerage system.

[PCC1255]

16. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. grease arrestor, oil separator, basket traps) must be installed in accordance with Tweed Shire Council's Policy - Discharge of Liquid Trade Waste to Council's Sewerage System. Submission of detailed hydraulic

plans and specifications indicating the size, type and location of pre-treatment devices and full details of drainage installations in accordance with AS 3500 shall be submitted to Council for approval along with a Liquid Trade Waste Application Form and all required information required therein.

[PCC1265]

17. Three copies of detailed hydraulic plans shall be submitted with all Liquid Trade Waste Applications indicating the size, type and location of pre-treatment devices. All plumbing and drainage installations to these devices must comply with AS3500.

[PCC1275]

18. A single dwelling or group of up to three attached or detached dwellings, having a Building Code classification of 1a, must be connected by means of a single water service pipe each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1305]

19. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), 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. Applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

[PCC1310]

20. 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]

21. Prior to the construction certificate being issued plans drawn to a scale of 1:50 detailing the following with regards to all food related areas (storage & preparation) shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fitout and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:

- Floor plan
- Layout of kitchen showing all equipment and washing facilities
- All internal finish details including floors, wall, ceiling and lighting
- Hydraulic design in particular method of disposal of trade waste where required
- Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required

[PCCNS01]

22. A revised landscaping plan is to be submitted to Council identifying that at least 80 percent of plantings are local species. The applicable list of species to choose from is available on Council's website titled "Native Flora for Planting at Koala Beach". The revised landscaping plan must be approved to the satisfaction of the General Manager or delegate prior to the issue of Construction Certificate.

PRIOR TO COMMENCEMENT OF WORK

23. 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.
24. The erection of a building in accordance with a development consent must not be commenced until: [PCW0005]
- (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.
25. 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. [PCW0215]
26. 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: [PCW0225]
-

- (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]

27. 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]

28. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

29. Prior to commencement of building works provide hydraulic drawings on the proposed sewer drainage systems including pipe sizes, details of materials and discharge temperatures.

[PCW1085]

DURING CONSTRUCTION

30. 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]

31. 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]

32. 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]

- 33. 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]

- 34. 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]

- 35. 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]

- 36. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:**

- Noise, water or air pollution.**
- Dust during filling operations and also from construction vehicles.**
- Material removed from the site by wind.**

[DUR1005]

- 37. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.**

[DUR1015]

- 38. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.**

[DUR1025]

- 39. 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]

40. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.

[DUR2185]

41. A garbage storage area shall be provided in accordance with Council's "Development Control Plan Section A15 - Waste Minimisation and Management".

[DUR2195]

42. 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]

43. 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]

44. 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]

45. 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]

46. 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]

47. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. The pre-treatment device service frequency will be approved as part of the Liquid Trade Waste Services Agreement and General Conditions of Approval.

[DUR2595]

48. A Liquid Trade Waste Services Agreement will be issued and a Liquid Trade Waste Approval Number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

[DUR2685]

49. Council is to be notified, in writing, of any proposed changes to the wastewater pre-treatment devices.

[DUR2765]

50. The Applicant shall submit the appropriate 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for the proposed lot, from the existing water main in Seabreeze Boulevard. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

51. Works in the vicinity of public infrastructure must comply with the following requirements:

- a) No portion of any structure may be erected over or within one meter of the public infrastructure over the subject site. All structures shall be designed and sited such that all structure loads will be transferred to the foundation material outside of the zone of influence of any public infrastructure.**
- b) Surface treatment over the sewer pipe shall be limited to soft landscaping, noninterlocking paving, asphalt or similar treatments as specified by Council officers, to allow ready access to the pipe for excavation. Council will not be responsible for the reinstatement of plantings, unauthorised structures or decorative surfacing in the vicinity of the pipe in the event of pipe excavation or other maintenance works.**

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

52. 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]

53. 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]

54. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

55. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

56. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

57. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

58. 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]

59. 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]

60. Hours of operation of the business are restricted to the following hours:

- * 6am to 6pm - Mondays to Fridays
- * All deliveries and pickups relating to the business are to occur between the hours 7am to 6pm Mondays to Fridays

[USE0185]

61. 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]

62. 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]

63. The servicing of waste facilities shall be limited to between the hours of 7am to 6pm Monday to Friday.

[USE0285]

64. The development shall be carried out in accordance with the provisions of the acoustic assessment report prepared by CRG Acoustics and dated 21 April 2016.

[USE0305]

65. 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]

66. 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 and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

67. All commercial / industrial / residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.

[USE0875]

68. 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]

69. Hours of operation of the business are restricted to between 6am and 6pm Monday to Friday

70. All deliveries to the premises are to occur only within the hours of 6am to 6pm Monday to Friday unless otherwise approved by Councils General Manager or his delegate.

71. The Child Care Centre is restricted to a maximum capacity of 90 children and 15 staff.

REPORT:

Applicant: J Burnett and S Rees-Burnett
Owner: Metricon Qld Pty Ltd
Location: Lot 1701 DP 1214550 No. 44 Seabreeze Boulevard, Pottsville
Zoning: R2 - Low Density Residential
Cost: \$1,200,000

Background:

Council on 22 December 2015 received a development application that proposes the construction of a Child Care Centre within the Seabreeze Estate of Pottsville. The proposal is situated on a corner allotment with frontage to Seabreeze Boulevard and Tom Merchant Drive. The proposal is for a maximum of 90 children with a total floor area of 645.6m² with 15 staff nominated.

The proposal contains two separate outdoor play areas northward of the proposed car parking area and building, away from adjacent residential allotments to the south. Internally the facility contains a kitchen, laundry, office/staff area, six activity areas, two sleeping rooms and storage areas.

Carparking is proposed with 27 spaces and shared access to the neighbouring proposed development is also included on plan.

The building is constructed with variations in brick, rendered block, and cladding material with offset sections of the building providing articulation. The original colour scheme was not consistent with the surrounding locality and it was requested a revised colour palette be provided (Refer Figure 1).

The proposed amended colour scheme appears consistent with the adjacent Breezes gated community. Further, the proposal includes a landscaping plan to vegetate all areas of the subject site, improving the amenity and visual appeal of the proposal.

A request for Further Information was issued on 17 March 2016 requesting an acoustic report, hours of operation and change to the proposed access location to be consistent with Council Policy *Driveway Access to Property – Design Specification* v1.4 dated July 2013 as well as requesting a response to submitter raised concerns.

The response to the request for Further Information (RFI) was received 28th April 2016.

The response to RFI provided an Acoustic report. The report outlined that the proposed hours of operation are from 6am to 6pm which is generally consistent with child care hours of operation. The response also provided that the applicant is prepared to implement the recommendations of the acoustic report. Amended plans were also provided showing the relocated access location consistent with Council Policy.

Submissions

The application was notified to adjoining and affected landholders via letter on 6 January 2016 for a period of fourteen days being 13 January 2016 to 26 January 2016.

Nine submissions were received in relation to the proposal. The concerns raised were with regard to noise, traffic including on street parking concerns, misunderstanding of the permissibility of the use within the zone, confusion over the defined use compared with commercial premises, hours of operation, and some submitters stating notification compliance was not carried out correctly as some did not receive a letter.

The submitters were provided a copy of the response to the request for further information to review the applicant's response to submitter concerns. No new matters were raised as a result however the repeated themes were concerning noise and traffic impacts.

The matters raised by submitters have been addressed further in this report and applicable matters have been recommended to be conditioned appropriately with reference to the Traffic Impact Statement and Acoustic Report recommendations which mitigate the potential impacts raised by submitters.

History of the Subject Site

Stages 1 to 14 of the Seabreeze Estate comprising 500 allotments was granted, sealed and constructed as per consent K99/1837 (and its modifications, construction certificates etc). Stages 15-18 were rezoned to R2 Low Density Residential by way of TLEP2000 Amendment No.69 gazetted 24 December 2010.

The subdivision for stages 15 - 18 creating 88 allotments including the parent parcel of the subject site was permitted by Development Consent DA13/0577 and approved by Tweed Shire Council on 10 June 2014. This parent parcel known legally as lot 1540 in DP1207462 was identified on Map 7A of DCP B15 (Seabreeze Estate) as a landmark location due to its size and central location within Stage 2 of the estate on a corner allotment with frontage to both Tom Merchant Drive and Seabreeze Boulevard. Modification of that subdivision consent occurred with the most recent modification (DA13/0577.03) granted on 29 December 2014 being a subdivision of lot 1540 (1 into 2 lots) creating the subject site and splitting the landmark location in two.

The creation of the subject site was sealed by way of subdivision certificate SC15/0029 on 9 October 2015.

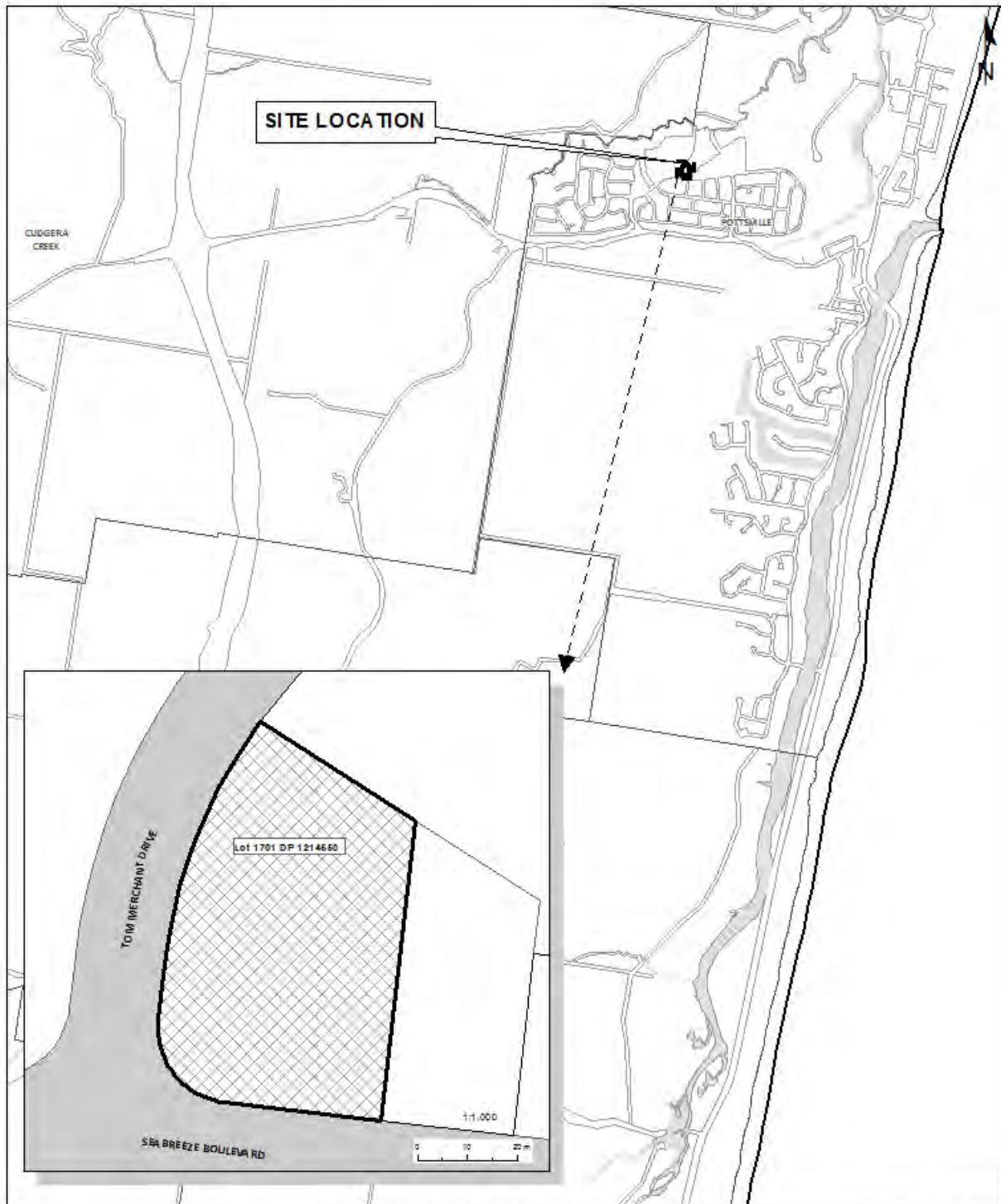
Site Details

The site is described as Lot 1701 on DP 1214550 being 44 Seabreeze Boulevard, Pottsville within the Seabreeze Estate.

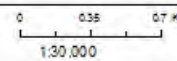
Lot 1701 has an area of 3012m². The subject land is vacant and has been filled with site levels generally between RL 3.0m AHD towards the southern boundary and up to RL 4.0m AHD towards the northern boundary. Present site levels batter down to approximately RL 2.5m AHD at the western boundary. A rock retaining wall exists along the northern boundary. To the north of the site is a drainage reserve containing an artificial waterbody/stormwater detention area. The allotment is burdened by an easement (B) for sewer along the southern boundary and easement (A) traversing full length of the northern boundary which contains the rock wall (refer to Figure 1).

To the south of the subject site are residential dwellings, dual occupancy and multiple dwelling units. Further south of the development site is a retirement home and Pottsville Road linking the site with the township of Pottsville and the Pacific Motorway. East of the subject site is a proposal for a Recreational Facility (indoor/outdoor) and further east contains additional

SITE DIAGRAM:



LOCALITY PLAN



Lot 1701 DP 1214550 Seabreeze Boulevard, Pottsville – DA15/1069

Report: Z:\GIS_Jobs\00079001-00080000\00079034\Site Plan Lot 1701 Seabreeze.rxd

Author: S. Scott - GIS

Date Printed: 19 July 2016

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Coordinate System - MGA Zone 56
Datum - GDA 94



Cadastral: 30 June, 2010
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2 Tumbugh Road
Nunukulbah NSW 2454

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T: (02) 6670 2400 / 1 800 292 812

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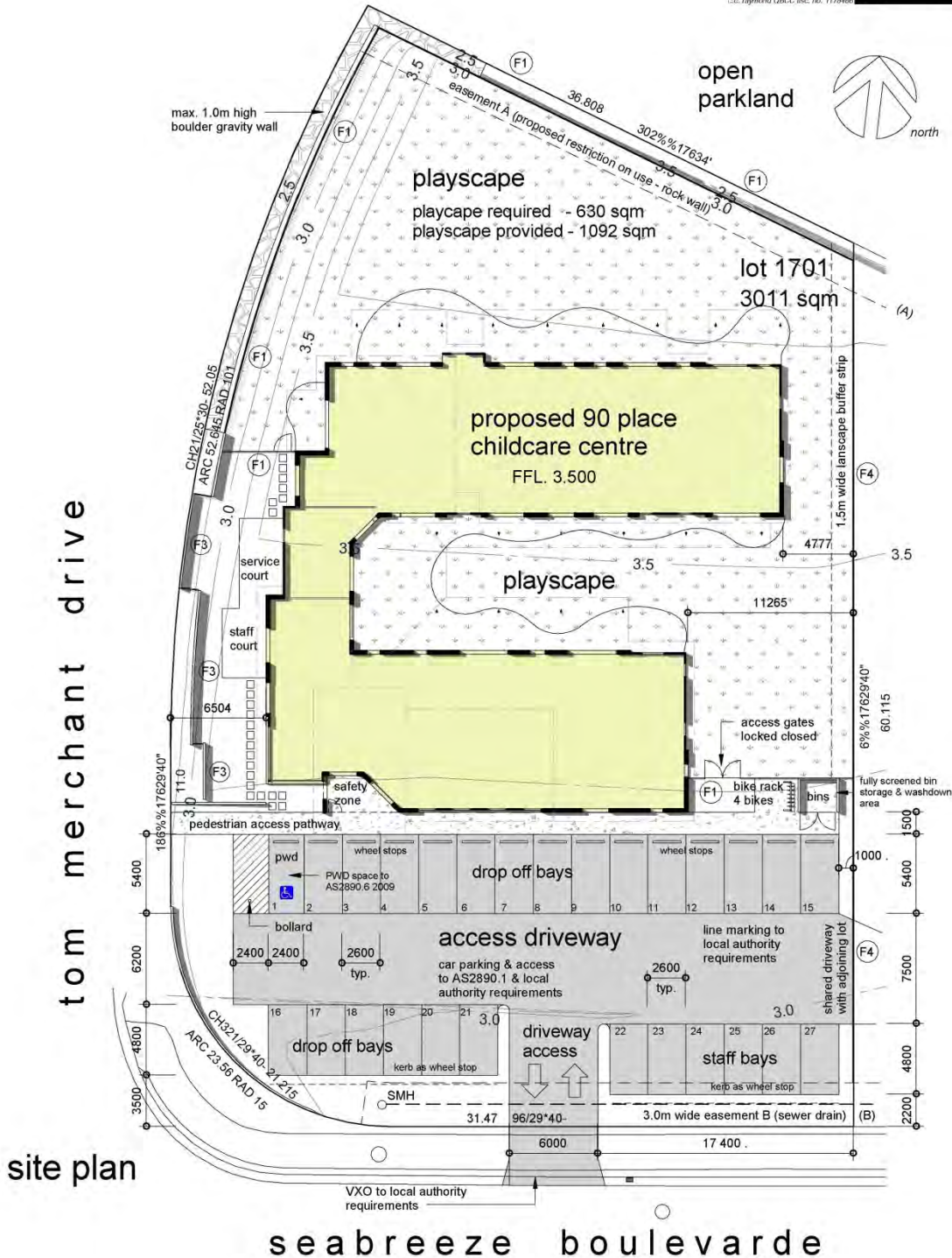
W: www.tweed.nsw.gov.au

E: planning@twm@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:



site plan

03.

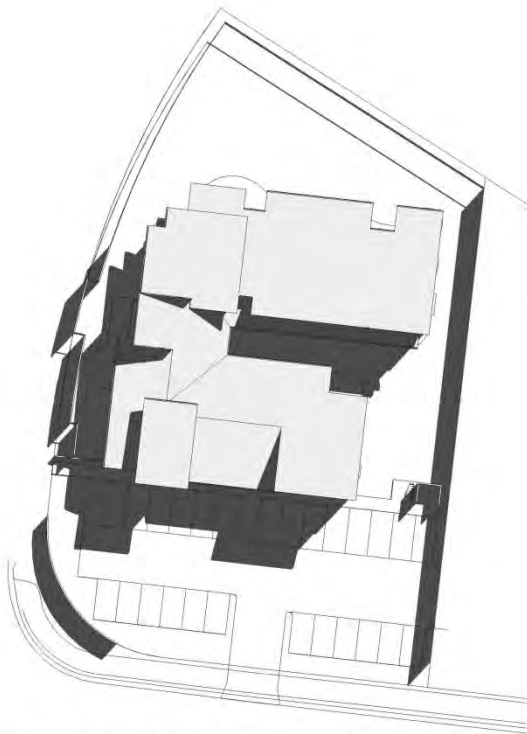
site layout

proposed childcare centre, pottsville, nsw.



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RD15002 : january_2015
issue P3 - 11/04/16
drawn - d.m.c



shadow diagram - june 21st, 9.00am.



shadow diagram - june 21st, 12.00pm.



shadow diagram - june 21st, 3.00pm.

05.

shadow diagrams

proposed childcare centre, pottsville, nsw.

1:500 (A3)

25m

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RD15002 : january_2015
issue P2 - 18/03/16
drawn - c. c. r.



floor plan

floor area	- 677.5 sqm
veranda area	- 196.2 sqm
safety zone area	- 9.5 sqm
total	- 883.2 sqm

IMPORTANT NOTE

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design parameters

class 9 building
 BCA class 2 to 9
 N2

06.

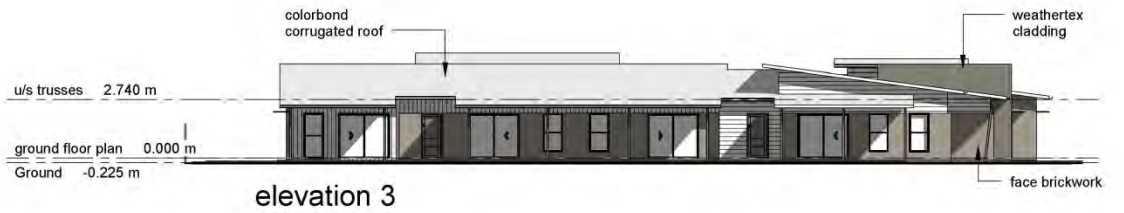
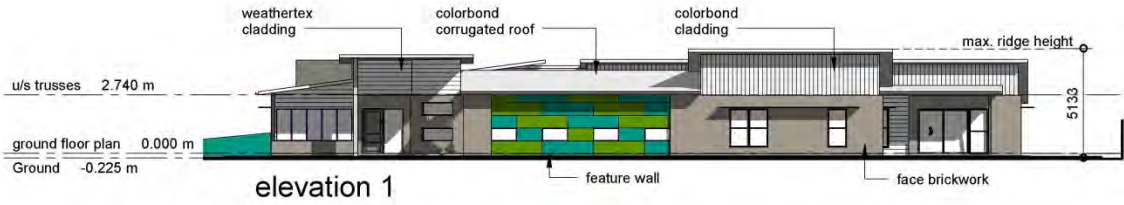
floor plan

proposed childcare centre, pottsville, nsw.



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RD15002 : january_2015
 issue P1 - 08/05/15
 drawn - d.m.c



centre logo

07.

elevations

proposed childcare centre, pottsville, nsw.



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RD15002 : january_2015
issue P1 - 08/05/15
drawn - d.m.c

material & colour
 schedule

code	description	texture/finish	colour
①	wall face brick	sand/cement matt	austral bricks 'freedom'
②	wall weathertex weatherboards	smooth	white duck quarter
③	wall colorbond corrugated cladding	smooth	colorbond surf mist
④	wall colorbond corrugated cladding	smooth	colorbond bushland
⑤	wall weathertex rubix cladding	pre primed	resene bingo/bilbao
	roof sheet	smooth colorbond	surf mist
	windows	anodised aluminium	natural

colour swatch



colorbond bushland



resene bingo



resene bilbao



white duck quarter

external items

face brickwork



colorbond roofing



window frames



wall cladding



weathertex rubix



weathertex
weatherboard



colorbond surfmist
corrugated

08.

material & colour schedule

proposed childcare centre, pottsville, nsw.



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RD15002 : january_2015
 issue P1 - 08/05/15
 drawn - c. c. f.



3D View 1



3D View 2



3D View 3



3D View 4

09.

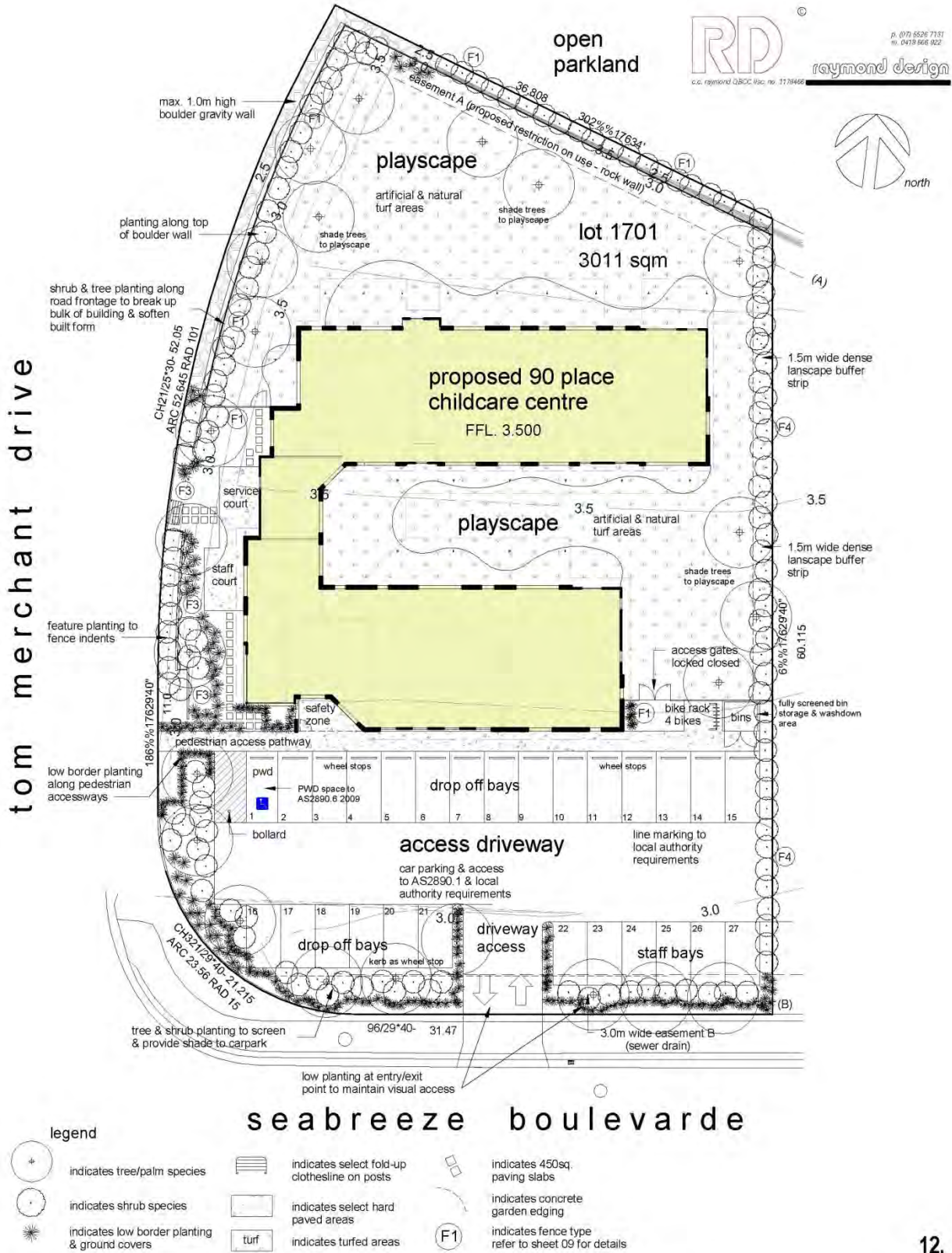
3D views

proposed childcare centre, pottsville, nsw.



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RD15002 : january_2015
issue P1 - 08/05/15
drawn - d.m.c



12.

landscape intent plan

proposed childcare centre, pottsville, nsw.

1:250 (A3)

12.5m

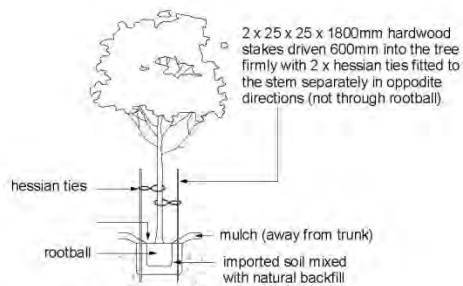
note: this proposal is subject to site survey and development approval(s) from the relevant authority. this drawing shall not be copied or used without authorisation and is protected by copyright.

RD15002 : january_2015
issue P1 - 08/05/15
drawn - c. c. r.



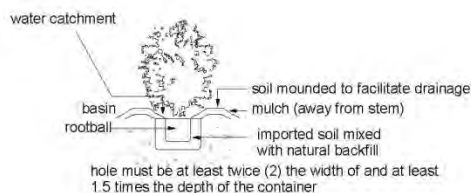
suggested planting schedule

botanical name	common name	pot
trees buckinghamia celsissima cupaniopsis anacardioides	ivory curl tree tuckeroo	100ltr 100ltr
small trees acemena smithii syzygium australe	hotflush lillypilly	25ltr 25ltr
palms wodyetia bifurcata	foxtail palm	25ltr
shrubs acalypha philodenron sp. syzygium	firestorm xanadu elegance	200ltr 200ltr 200ltr
ground covers diets grandiflora lomandra hystrix liriope spp. and cultivars	butterfly iris slender rush impatiens	140ltr 140ltr 140ltr



hole must be at least twice (2) the width of and at least 1.5 times the depth of the container.

the installation of root barrier is required for tree species situated within three (3) metres of any structure eg. building external wall. it must be placed at least one (1) metre from structure and installed strictly to manufacturers specifications.



13.

planting schedule & details

proposed childcare centre, pottsville, nsw.

RD15002

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RD15002 : January_2015
issue P1 - 08/05/15
drawn - c. c. r.

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 proposed development relates to a Child Care centre on appropriately zoned land. The proposed development is considered to be consistent with the aims of the plan. In that the proposal is considered to accord with local planning instruments, encourages local small business and employment, and proposes a responsibly built structure for its use in consideration of its surroundings.

Clause 2.1 – Land use zones

The subject development site is zoned R2 Low Density Residential under the provisions of this clause.

Clause 2.3 - Zone objectives and Land use table

The objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development is considered to be consistent with the objectives of the zone as the provision of a child care centre which provides a service to meet the day to day needs of local residents consistent with the intent of Bullet Point 2.

Clause 2.6 - Subdivision - Consent Requirements

As lodged, the Applicant did not propose any subdivision as part of this application. However the proposal is seeking to grant access to the neighbouring allotment currently subject to DA16/0031 requiring a Right of Carriageway.

An easement will be required to grant a legal point of access through the subject site in favour of the neighbouring development should it be approved.

A standard condition is to be applied to any consent issued for DA16/0031 prompting a right of carriageway application to be lodged prior to lodgement or as part of an application for construction certificate.

Clause 4.3 - Height of Buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

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 is identified as allowing a maximum building height of 9m. The proposed development has a maximum roofline of 5.1m.

The proposal is consistent with this Clause.

Clause 4.4 - Floor Space Ratio

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The maximum floor space ratio for the subject site is mapped at 0.8:1.

The proposed site cover is 883m² over a land area of 3011m² providing a floor space ratio of 0.29:1 which is consistent with this Clause.

Clause 4.6 - Exceptions to development standards

This clause provides a mechanism by which development standards may be varied under the local planning instrument.

The applicant is not seeking any exceptions to development standards.

Clause 5.4 Controls relating to miscellaneous permissible uses

The Child Care Centre is not listed as a miscellaneous permissible use.

Clause 5.5 Development within the Coastal Zone

The subject site is located on lands to which the NSW Coastal Policy 1997 applies. This proposal is considered compliant with the provisions of the NSW Coastal Policy. The proposed development does not adjoin any foreshore area, accordingly will not obstruct public foreshore access or result in overshadowing of the nearby beach or open space areas.

The proposed development is considered consistent with the aims of Clause 5.5.

Clause 5.9 Preservation of Trees or Vegetation

No vegetation is currently present on site. This Clause is not applicable

Clause 5.10 Heritage Conservation

The site has been created as a result of subdivision and is devoid of any vegetation or structures ready for development consistent with the intent of the zone. Any heritage matters would have been addressed under the subdivision application.

It is therefore considered that in this regard the proposal is not considered to impact negatively on the provisions of this clause.

Clause 5.11 Bush Fire Hazard reduction

The subject site is not mapped as being bushfire prone land.

Clause 7.1 Acid Sulfate Soils

The subject site demonstrates Class 3 Acid Sulfate Soils (ASS) in accordance with the provisions of this clause. The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The submitted application has been reviewed by Council's Environmental Health Unit and DA Engineering unit. In which it was determined to condition no disturbance of ASS.

In this regard, the proposal is considered to be acceptable.

Clause 7.2 Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposed earthworks have been reviewed by Council's Development Assessment Engineering Unit who have advised the following:

The minor earthworks proposed for the development will require service trenches excavation and minor site re-grading. No material is expected to be imported or removed from site.

Development of the site will involve building construction, carpark and services connection. The development will alter the present land use and an assessment is required to determine the impact of these proposed changes.

Standard conditions of consent have been recommended to ensure earthworks can be managed during construction. In this regard, the proposal is considered to be acceptable having regard to this clause.

Clause 7.3 Flood Planning

The Development Engineering Unit have provided that the subject site has been created as part of a recent subdivision and the site has been filled to comply with flooding requirements.

As such, it is considered that this development does not contravene the objectives of this clause.

Clause 7.6 Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

This clause outlines that consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

The proposal has been reviewed by Council's Development Engineering Unit with respect to stormwater discharge which has determined no requirements for onsite detention however standard conditioning for Stormwater quality and s68 (s305 of *Water Management Act 2000* for certificate of compliance) application is required with any consent granted.

Clause 7.10 Essential Services

This clause states that development consent must not be granted for development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

The allotment has the ability to connect to all essential services including water, sewer, stormwater, electricity and telephone.

State Environmental Planning Policies

State Environmental Planning Policy (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 reserve areas.

- (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, given the spatial separation between the site and foreshore reserve.

- (d) *The suitability of the development given its type, location and design and its relationship with the surrounding area*

The proposed development is sited and designed in general accord with the relevant Council controls and is therefore considered acceptable with respect

to the above considerations. The proposal is unlikely to create an adverse imposition upon the immediate area in terms of size, scale or design, given the desired future development of the area, reflected in the land zoning under the Tweed LEP 2014.

- (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 to impact on the amenity of the coastal foreshore, given its separation from the foreshore (being West of Pottsville village). In particular there is considered to be no loss of views or overshadowing associated with this application.

- (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, with the development being spatially separated from the coastal foreshore.

- (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 fauna or their habitats. The subject development site has been previously developed for residential purposes via subdivision and earthworks. Whilst some minor vegetation on the site is to be removed (grass), it is considered that this will not impact on measures as identified to conserve wildlife.

- (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.

- (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 subject site is not located within an area affected by Coastal Erosion and is landward of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by significant 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 site is not identified as having cultural heritage significance on Council's draft cultural heritage mapping.

- (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,*

The site is not considered to contain items of heritage, archaeological or historical significance.

- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities;*

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 proposal is likely to adapt energy efficiency devices to the building. 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. The provisions of SEPP 71 are considered satisfied.

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

There are no relevant draft Environmental Planning Instruments in relation to this proposal.

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

Tweed Development Control Plan

Section A2 - Site Access and Parking Code

DCP Section A2 provides for the consideration of on-site access and vehicle and bicycle parking, to ensure that sufficient facilities are provided and the road network is not compromised, whilst ensuring consistency with ESD principles. The proposed development is subject to the provisions of DCP Section A2 with respect to site access and parking.

Access

The subject site is currently vacant, the proposal includes a single 6m wide crossover located in Seabreeze Boulevard. The cross over is to be shared by right of carriageway to the neighbouring allotment. This is to be conditioned for right of access as part of a s138 application or the Construction Certificate.

Council’s standard s138 application condition will be applied to any consent issued with respect to this proposal. Specific inclusion of a 9m flare to kerb width will be included on plan as part of the s138 application for the development and has been conditioned as approved by Council Traffic and Development Engineers. It is considered that the proposal results in an acceptable access provision for the proposed development. There remains no concerns outstanding from Council’s Traffic Engineer nor Development Engineer.

Parking

When considering the requirements of Table 4.9a – Access & Parking Generation – Educational Establishment Group of DCP Section A2, Child care centres (Item F1) requires the provision of vehicular parking as outlined below.

Item	Development	Comment	Delivery	Staff Parking	Customer Parking
F1	Child Care Centre	Preferably sites should provide separate entry/exit access	1 SRV	1/staff	1/7.5 child

Table 1. Car Parking Requirements for Child Care Centres LGA-wide

The proposal is for a maximum of 90 children and 15 staff. The development is proposing to provide 27 off-street car parking spaces, including 1 space for person with disability. The following car parks are required for the proposed development:

Use	Rate	Number	Parking required
Child Care Centre	1 space per staff	15 Staff	15
	1 space per 7.5 children	90 Children	12
Total			27

Table 2. Specific Car Parking Requirements

As per the above the application is compliant with Tweed Shire Council DCP Section A2.

Section A4 - Advertising Signs Code

No advertising was proposed as part of this application, however subsequent amendments to the application have added an advertising device for the proposed development. The device is a single sign to be affixed to the fencing with no lighting proposed. The business identification sign totalling 2.4m² is considered exempt development and not subject to this section of the DCP.

Section A7 – Child Care Centres

The stated aim of this DCP is to present Council's requirements for the siting of Child Care Centres and outlines the locational requirements for this type of development under Section A7.2.

This section outlines the following:

- (a) *In residential zones Council shall strongly favour the location of child care centres adjacent to non-residential uses such as retailing uses (neighbourhood shopping centres), schools, community facilities and the like.*

This application relates to a development which is proposed upon vacant land further subdivided via modification as part of Stage 2 of the Seabreeze Estate and is highlighted within the Seabreeze DCP B15, as a central location within this stage, mapped on Map 7A as an area highlighted as a landmark location (for the previous allotment 1540 in DP1207462). Noting that the structure plan is a high level, conceptual strategic instrument only. In consideration of the history of the subject site, and the subdivision of lot 1540, it is considered that the landmark priority of the previous allotment has been diminished and does not factor into the current proposal. However as the allotment is on the northern entry to the estate a vegetation management plan must match the southern entry to create a welcome statement upon entry to the estate in which conditions this effect have been recommended.

- (b) *The development of child care centres on "infill" sites within low density residential areas shall not be favoured unless:-*
 - (i) *The lot has a minimum area of 800m², a 3.0 metre perimeter landscape buffer with adjacent properties and a minimum 1.8 metre high intervening fence. If the proposed building and play areas comprising the Child Care Centre are 10 metres or more from any adjacent dwelling, then the 3.0 metre landscape buffer and 1.8 metre high fence is not required. Some landscaping and fencing will still be required, however, each application will be treated on its own merits;*

The subject site has been created as a result of greenfield development by way of subdivision. The proposal is consistent with the intent of this provision in terms of setback. Landscaping and fencing has also been provided and is shown on plan and is compliant in terms of sightlines for the intersection of Tom Merchant Drive and Seabreeze Boulevard.

- (ii) *The applicant can demonstrate that noise emanating from the use of the child care centre will not be detrimental to the amenity of adjacent residents;*

Amenity impacts in relation to noise have been addressed by an acoustic report in which it will be conditioned for the development to be carried out in accordance with specific hours of operation, activity restriction outdoors prior to 7am, restricted waste collection timeframes, construction of acoustic barrier fences and improvements to driveway surface coatings as well as appropriate siting of air conditioning units and any plant equipment. As such, the proposal is considered to be acceptable in this regard. It must also be noted that the findings of the report determined that noise from the proposed development will not exceed

industry standards. Furthermore acoustic monitoring is required as part of the operational use of the proposed premises in the event of any complaint received

- (iii) *Car parking is provided in such locations that will minimise disturbance to adjacent neighbours by the frequent arrival and departure of cars; and*

Car parking has been provided on the subject site to provide for the additional capacity of the child care centre. This has been reviewed by Councils Planning and Infrastructure section who have advised that the proposal is acceptable with respect to this provision and is in accordance with sA2 of the DCP. In this regard, it is considered that there would be minimal disturbance to adjacent neighbours as there is no direct access to Seabreeze Blvd from the southern neighbouring properties as they access the road network via Ballina Street to the South. Furthermore the construction materials required as part of the acoustic report have been a conditional requirement of any approval granted.

- (iv) *The overall traffic impact to the immediate neighbourhood is not detrimental to the amenity.*

The proposal would result in additional traffic at the site as the development would be an intensification in number of children and staff attending in comparison to the existing vacant land use. This is not considered to result in an unacceptable detrimental impact to the amenity of the neighbourhood as the service the proposal provides for the local community (with the objection of some submitters) is of benefit for the long term support a local child care centre can provide to the local community and is generally consistent with traffic requirements in terms of the adjacent road hierarchy (being collector streets) and the proposal's general compliance with the DCP section A2.

- (c) *For new urban release areas there should be planned provision within a development control plan for a particular release area to locate child care centres immediately adjacent to retailing, commercial and community uses and which are essentially located to provide convenient access to the population served.*

There are no existing commercial uses within the SeaBreeze Estate in which the proposal could be situated. It is considered that the proposed development is located in a convenient location on the corner of two collector designed streets. The proposed location is highlighted as a landmark location in which a community use such as a child care centre could be considered an effective use of the land in consideration of the R2 zoning.

The proposed development is considered to be acceptable having regard to the controls of this DCP.

Section A15 – Waste Minimisation and Management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

The application has been reviewed with respect to waste management by Council's Waste Management Unit who have advised that the submitted waste

management plan was adequate for both the construction and operation phase, and that the centre would be required to undertake a private collection arrangement with a waste service provider with respect to the proposal.

It is considered appropriate that a standard condition or advice note be attached to any consent in the event of approval. As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this section of the DCP.

Section B15 SeaBreeze Estate

B15.2.9 Indicative Layout For the Site

The key corner site identified at the juncture of Tom Merchant Drive and Seabreeze Boulevard is to include the provision of higher order land use and design excellence through the subdivision pattern and built form to reflect and reinforce the landmark location of the corner. Generally, the development of the corner location for the purposes of a single dwelling house is not supported.

The proposed structure and articulation in the building wall, with varying pitches of the skillion roof and design materials aim for design excellence. The originally chosen colour palette (figure 2), was not acceptable and additional colours were requested to improve the visual appeal of the structure which will enhance the articulation and materials proposed. The amended elevation plan is shown below which includes an improved colour palette for the child care centre building (as Figure 3).



Figure 2. Original Colour Palette

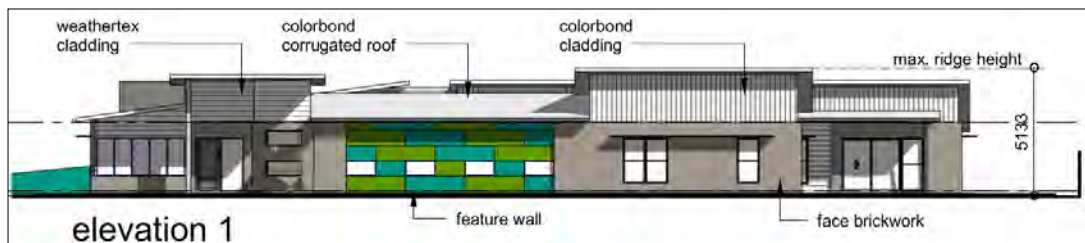


Figure 3. Revised Colour Palette

B15.3.9 Streetscape and Landscaping

Land use and landscaping of land parallel and immediately adjacent to Tom Merchant Drive must reflect its status as the Northern entrance to Seabreeze and is to include a landscape treatment of quality consistent with the existing Southern entrances.

A landscaping plan has been submitted which outlined the location and species of groundcover, shrubs and trees to be planted on site. The species are not consistent with the 80/20 split for native species. The only local natives are the tuckeroos, the two lilly pilly's and lomandra hystrix therefore 4 out of the 11 (36%)

proposed are local natives. A condition is to be included for any consent granted outlining an amended landscaping plan to be provided as part of the application for construction certificate and is to be revised in accordance with the Council guideline "Native Flora for Planting at Koala Beach"

B15.3.12 Non-Residential Development

C1 Provide for neighbourhood shopping centre, church and other appropriate non-residential facilities such as childcare centres, and a medical centre in a central location as shown on B15 – Map 7 and Map 7A - Structure Plan .

The subject site is situated within Stage 2 of the Seabreeze estate and Map 7A is relevant in this regard. As the subject site is central to the Estate and listed as a Landmark location not to be used for a single dwelling house, the proposal for Child Care Centre, which is explicitly listed for Non-Residential Development, is consistent with the intent of this provision.

M3 Any childcare centre to be located and designed in accordance with Section A7 of the Tweed Development Control Plan 2008.

The proposal has been assessed against DCP Section A7 for Child Care Centres and the proposed development is considered to be acceptable having regard to the controls of this DCP as per the assessment provided earlier in this report.

Section B21 Pottsville Locality Based Development Code

3.4 Strategy – Education

This part of section B21 includes a provision for a site for a child care centre within the Seabreeze estate, adjacent to what has been referred to as the Seabreeze Neighbourhood Shops. This area was a vision from 2010 which has never eventuated and is now no longer possible.

There exists two private home occupations within the estate and an established Aged Care Centre all of which are situated within the Stage 1 component of the Estate. The proposed Child Care Centre is situated within Stage 2 of the Estate upon a previously flagged landmark location (prior to subdivision of the superceded lot 1540) and adjacent to a site which has been, for years, anticipated as a potential school site.

As neither the town centre, nor school has been developed, the proposal is considered to be located in preference for a school going ahead and also in a location providing better exposure to also service the neighbouring estate of Koala Beach.

The DCP proposed site for a child care centre (shown in Figure 7 as yellow) is adjacent to Ballina Street and is now occupied by two dwelling houses. The concept plan (DCP Figure 4.41) was provided as a concept and was never realised in actuality with the current cadastre showing a number of low density residential allotments across this location and little scope for any neighbourhood centre currently exists in this location meaning provision of these services are warranted elsewhere within Stage 2 of the Estate.



Figure 4. DCP Proposed Neighbourhood Centre versus Actual 2015 Residential Development

It is considered that the proposal is consistent with relevant parts of B21 which are still valid for non-residential development today, in particular *Part 4.3 Development Control and Implementation Build Form Controls* being the specific requirements for the Seabreeze Estate.

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

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

The subject land is within the coastal policy area affected by the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*. The proposed development is consistent with the objectives, strategies and actions of the policy.

(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 located away from the Tweed Coastline and therefore the provisions of this plan are not considered to be impacted by the proposed development.

Coastal Zone Management Plan for the Tweed Coast Estuaries 2013

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

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

As the subject site is not located in proximity to either the Cobaki or Terranora Broadwater to which this plan relates, this plan is not considered relevant to the proposed development.

The subject site does not have frontage to the coastal foreshore reserve and therefore will not restrict public access to the foreshore. The development is consistent with the zone objectives of TLEP 2014, the requirements of relevant Council DCPs and policies. It is therefore considered that the proposal satisfies the matters for consideration under SEPP 71 and the local management plans, in which it relates to the *Coastal Protection Act 1979*.

(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

Compatibility with Adjoining Land Uses

The proposal provides a service for the surrounding community for young families. Within the estate there is also an aged care facility. The proposed child care centre offers a balance in demographics and will allow diversity amongst the Estates residents.

Acoustic Amenity

There are no specific State or Federal criteria for noise from childcare centres in particular, other than an Acoustic Association's Guideline for Child Care Centre Acoustic Assessment (2010). However, the NSW Industrial Noise Policy provides guidelines for many industrial, commercial and domestic types of noise sources with the aim minimising the occurrence of offensive noise in the community (amenity and intrusive noise criteria assessment).

Generally, the intrusive criterion applies for all new industries until an area begins to become more developed, causing increased noise levels. The intrusiveness criterion is given as: $L_{Aeq, 15 \text{ minute}} \leq \text{rating background level plus } 5\text{-}10\text{dB(A)}$.

The Association of Australian Acoustical Consultants' (AAAC) Guideline for Child Care Centre Acoustic Assessment 2010 provided the following information in consideration of noise impacts (and in relation to the NSW Industrial Noise Policy), from child care centres, on residential and commercial receptors:

For most centres as the duration of time that children are allowed to play outside is reduced then the overall noise impact reduces. Therefore, it is reasonable to allow a higher level of noise impact for a shorter duration of outdoor play. AAAC members regard that a total time limit of approximately 2 hours outdoor play per day (e.g. 1 hour in the morning and 1 hour in the afternoon) should allow an additional emergence above the background of 5 dB.

Up to 2 hours (total) per day - *The Leq15 min noise level emitted from the outdoor play area shall not exceed the background noise level by more than 10 dB at the assessment location.*

More than 2 hours per day - *The Leq15 min noise level emitted from the outdoor play area shall not exceed the background noise level by more than 5 dB at the assessment location.*

The assessment location is defined as the most affected point on or within any residential receiver property boundary. Examples of this location may be:

- 1.5 m above ground level;
- On a balcony at 1.5 m above floor level;
- Outside a window on the ground or higher floors.

Indoor Play Area, Mechanical Plant, Pick up and Drop off

The Leq15 min noise level emitted from the cumulative noise impact of children playing indoors, mechanical plant and traffic on the site shall not exceed the background noise level by more than 5 dB at the assessment location.

Commercial Receptors

The Leq,15 min noise level emitted from the Child Care Centre shall not exceed 65 dB(A) when assessed at the most affected point at or within any commercial property boundary.

The proposed criteria suggested by AAAC appears to be reasonable and is generally in agreement with the noise assessment using the intrusive noise criteria proposed by the NSW Industrial Noise Policy. The submitted Acoustic Report provided a table demonstrating a site specific response based on the relevant standards and assessments undertaken onsite. Refer to Figure 8 for specific acoustic measures

Noise source	Predicted Noise Impact, SPL Leq 15min dB(A)
Existing dwellings due South across Seabreeze Blvd	Nearest Façade to Onsite Activity
Car door closures 80 events	30
Car bypass at 5km/hr 40 events	36
40 children playing normally	32
40 children playing boisterously	41
Teacher with raised voice	31
A/C unit x 2	34
Toilet exhaust fan	20
Combined impacts prior to 7am (no outdoor children's play)	39
Combined impacts after 7am with normal children's play	40
Combined impacts after 7am with boisterous children's play	43
Future dwellings due west across Tom Merchant Drive	Nearest Façade to Onsite Activity
Car door closures 80 events	30
Car bypass at 5km/hr 40 events	35
40 children playing normally	34
40 children playing boisterously	43
Teacher with raised voice	33
A/C unit x 2	40
Toilet exhaust fan	25
Combined impacts prior to 7am (no outdoor children's play)	41
Combined impacts after 7am with normal children's play	43
Combined impacts after 7am with boisterous children's play	45
Morning and Daytime 6am to 6pm Criterion dB(A)	6am to 7am: 42 / 7am to 6pm: 45

Figure 5. Site Specific Predicted Noise Impacts Accord with Industry Standard

The above information demonstrates that noise levels emitted at the Leq15 min dB(A) by the development for any likely scenario on the subject site does not exceed that of the requirements of the AAAC *Guideline for Child Care Centre Acoustic Assessment 2010* for the measured site background noise of L90 40 dB(A).

(c) Suitability of the site for the development

Context and Setting

For the reasons outlined in this report the proposed development is considered suitable for the site.

Access, Transport and Traffic

The site is situated adjacent Seabreeze Boulevard and Tom Merchant Drive, both of which are classified as Collector Streets under Council's Road Hierarchy. The proposal meets the requirements for onsite carparking and is consistent with Council Policy *Driveway Access to Property Design Specification v1.4*.

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

Public Submissions Comment

Summary of Submissions	Response
Car Parking Concerns	The proposed development provides car parking rates consistent with council policy and the Australian Standards and includes disabled parking and bicycle spaces. The proposed development has been conditioned to comply with the rate of 27 car parks consistent with the intent of Council policy.
Concern the use is not permissible within the zone	There was confusion between the proposed use Child Care Centre and its consistency with the intent of the Zone to that of a Commercial Premises. A Commercial Premises is prohibited within the zone hence the confusion of the general public in determining that the Child Care Centre should also be prohibited. However a Child Care Centre is separately defined under the TLEP 2014 and does not fall under the Commercial Premises group as a Use type. The proposed definition of Child Care Centre is permissible within the R2 zone subject to consent.
Public Notification not in accordance with A11 of DCP	The proposal was publically notified in accordance with DCP Section A11 for development of this use type within a Residential Zone to be notified by letter to adjoining owners and affected owners. The concern with this matter was that additional landholders became aware of the proposal via neighbours and the notification sign present on the land for the adjacent development for a Recreation Facility. Confusion was then met as to the differences between the two uses and why

Summary of Submissions	Response
Additional Traffic Load on the Estate	<p>a notice wasn't placed on the subject site. Notification occurred as required by the DCP.</p> <p>As the subject site is adjacent to two Collector ranked carriageways within Council's Road Hierarchy, it is considered the use does not detrimentally burden the principal access roads for the development and the hierarchy has been designed to ensure it can support the proposed use combined with residential development in the Estate. It has been determined that the setback and fencing locations will not detrimentally impact upon road users of the estate in terms of navigating the intersection of Tom Merchant Drive and Seabreeze Boulevard.</p>
Hours of Operation	<p>The proposal described by response to a Request for Further Information that the Hours of Operation would be between 6am and 6pm. The hours are common for the use as a child care centre. The hours of operation have been supported by the Environmental Health team and is conditioned for any consent granted.</p>
Noise from the Children and Traffic	<p>The Applicant has provided at the request of Council an Acoustic Report which has been conditioned to ensure noise measures are mitigated and ameliorated where possible. It must be realised that the study undertaken by the consultant identified that any noise emanating from the development would remain below the $L_{eq15min}$ requirement for Childcare Centres.</p> <p>Furthermore, the traffic report identified that the additional traffic load onto Tom Merchant Drive and Seabreeze Boulevard does not exceed the adopted noise criteria (NSW Road Noise Policy) of 55dB(A). The report also included that additional noise monitoring be carried out prior to building works for some of the plant equipment has not been formally identified. As the report was further queried by submitters in terms of validity, the recommendations are supported and conditioned accordingly for further acoustic monitoring post occupation of the building. This is a common occurrence in ensuring compliant development which is subject to potential</p>

Summary of Submissions	Response
Stormwater discharge concerns over regulation	acoustic amenity concerns. Stormwater discharge from the proposed development has been reviewed by Council Engineers and it has been determined that there are no additional requirements for the management of stormwater. The discharge from the subject site will be into the estates stormwater network where it will discharge in accordance with existing stormwater detention and stormwater quality improvement devices present within the estate, namely the adjoining bioretention basin (North-East of the site) by which there is to be no increased risk to downstream properties or environments (no worsening effect). This is a general engineering requirement throughout Australia and deemed sufficient for the propose development as conditioned.
Landmark Location	The Seabreeze DCP intention to nominate this site for a landmark location is noted. Since the DCP was drafted multiple DAs have been assessed over various parts of the estate that have shaped the character of the area. The proposed child care centre is now entirely consistent with that character and satisfies the zone objectives by providing local services to the residents of the area.

(e) Public interest

The proposed development is in the public interest as it is suitable for the subject site and will not detrimentally impact upon the locality.

OPTIONS:

1. Approve the application in accordance with the recommendations within this report; or
2. Refuse the application and provide reasons.

The Officers recommend Option 1.

CONCLUSION:

The applicant has provided outcomes which adequately address submitter concerns demonstrating an amenable outcome for its future neighbours. The proposal for a Child Care Centre is consistent with the intent of the Zone providing a service within the estate which is consistent with the intent of the TLEP2014 and DCP2008.

The application is recommended for approval subject to the imposition of relevant conditions as outlined in this report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

The applicant has the right to appeal any Council determination in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Development Application DA16/0031 for a Recreation Facility Including Gym and Swimming Pool and Signage at Lot 1702 DP 1214550 No. 42 Seabreeze Boulevard & Lot 1701 DP 1214550 No. 44 Seabreeze Boulevard Pottsville

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:

This Development Application was called up for Council determination by Councillors Milne and Bagnall.

On 15 January 2016 Council received a development application that proposes construction of a Recreation Facility within the Seabreeze Estate of Pottsville consisting of a gymnasium and swimming pool for swimming lessons and hydrotherapy classes.

The application was notified to adjoining and affected landholders via letter on 20 January 2016 for a period of fourteen days being 27 January 2016 to 10 February 2016. The application was also advertised in the Tweed Link and a notice was placed on the land for fourteen days for the same period. Fifteen submissions were received in relation to the proposal. Four in support of the proposed use and eleven objections. All objections raised are capable of being mitigated or managed as per the recommended conditions, principally which relate to traffic and acoustic amenity.

The application is a consistent use within the zone and is generally compliant with the requirements of the Tweed Local Environmental Plan 2014, Development Control Plan 2008 and Council Policies. The development application is recommended for approval subject to conditions including improvements to the design of the building and operational restrictions.

It should also be noted that the proposed development is seeking access via a proposed access easement through the adjacent allotment, 44 Seabreeze Boulevard currently subject to a development application for a Child Care Centre (DA15/1069). DA15/1069 is a separate item on the business paper for Council consideration and these two applications should be considered in conjunction with one another.

RECOMMENDATION:

That Development Application DA16/0031 for a recreation facility including gymnasium and swimming pool and signage at Lot 1702 DP 1214550 No. 42 Seabreeze Boulevard and Lot 1701 DP 1214550 No. 44 Seabreeze Boulevard Pottsville be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA02 to DA17 prepared by Glen Petersen Architect and dated 20 June 2016, except where varied by the conditions of this consent.

[GEN0005]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

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. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. 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.

[GEN0155]

6. Any business or premises proposing to discharge wastewater containing pollutants differing from domestic sewage must submit a Liquid Trade Waste Application Form to Council. The application is to be approved by the General Manager or his delegate prior to any discharge to the sewerage system. A Liquid Trade Waste Application fee will be applicable in accordance with Council's adopted Fees and Charges.

[GEN0190]

7. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

8. 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]

9. Owners Consent is required from adjacent allotment 1701 on DP 1214550 for a shared driveway arrangement for a Right of Carriageway benefiting Lot 1702 and burdening Lot 1701 on DP 1214550.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. The developer shall provide 19 parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.
Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to the Principal Certifying Authority with the Construction Certificate for Building/Civil Works.

[PCC0065]

11. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has 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:

80.5 Trips @ \$1364 per Trips \$65,881.20

(\$1,284 base rate + \$80 indexation)

(\$43,920.80 has been subtracted from total for commercial job creating developments @ 40%)

S94 Plan No. 4

Sector8_4

(b) LCA3 - Koala Beach/Seabreeze: \$3,477.60

80.5 trips at \$72 per trip

(\$68.00 base rate + \$4.00 indexation)

(\$2,318.40 has been subtracted from total for commercial job creating developments @ 40%)

[PCC0215]

12. 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.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.

BELOW IS ADVICE ONLY

The Section 64 Contributions for this development at the date of this approval have been estimated as:

Water:	2.594 ET @ \$13,386.00/ET	\$34,723.28
Sewer:	3.9188 ET @ \$6,431.00/ET	\$25,201.80

[PCC0265]

13. 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 (public infrastructure - insert / delete as applicable) 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 Subdivision/Occupation Certificate is issued.

[PCC0275]

14. 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]

15. 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]

16. 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. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

17. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (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 for Subdivision Works. Safe public access shall be provided at all times.

[PCC0865]

18. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: -

(a) Vehicular access

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Traffic control plan

[PCC0895]

19. 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) 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) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All "end of line" proprietary permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 - Stormwater Quality, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.

- (d) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

20. 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]

21. 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]

22. Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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.

[PCC1185]

23. 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]

24. In accordance with Section 68 of the Local Government Act, 1993 any premises proposing to discharge wastewater into Councils sewerage system other than domestic sewage, shall submit to Council a completed Liquid Trade Waste Application for a Liquid Trade Waste Services Agreement. The Application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Council's sewerage system.

[PCC1255]

25. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), 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. Applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

[PCC1310]

26. Prior to the construction certificate being issued, plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be provided to Council's Environmental Health Officer for assessment and approval. Prior discussion with Council's Environmental Health Officer is recommended:

- a. Floor plan and sectional elevations in two directions
- b. Layout of kitchen showing all equipment
- c. All internal finish details including benches and work surfaces, floors, wall, ceiling and lighting
- d. Hydraulic design in particular method of disposal of trade waste
- e. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required
- f. Servery areas including counters etc.

[PCCNS01]

27. The proposed mechanical design for the site shall be reviewed by an acoustic consultant during the design phase to ensure that all required treatments as specified within the Environmental Noise Impact Report for 42 Seabreeze Boulevard, Pottsville prepared by CRG Acoustics Pty Ltd dated 7 June 2016 (crgref: 16091 report) have been incorporated into the design. Written confirmation of compliance from the acoustic consultant shall be submitted to the satisfaction of Council's General Manager or delegate prior to the Construction Certificate being issued.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

28. 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]

29. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.
30. The erection of a building in accordance with a development consent must not be commenced until: [PCW0015]
- (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.
31. 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: [PCW0215]
- (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]
32. 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]

33. Subdivision work in accordance with a development consent must not be commenced until:

- (a) a Construction Certificate for the subdivision 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 a Certifying Engineer to certify the compliance of the completed works.

The Certifying Engineer shall be a Professional Engineer (Civil) with National Engineering Register (NER) or a Registered Surveyor. Documentary evidence is to be provided to Council demonstrating currency of the above accreditation, and

- (iv) has notified the Consent Authority and the council (if the council is not the Consent Authority) of the appointment,

- (v) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and 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 Subdivision 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 subdivision work.

[PCW0815]

34. 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.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

35. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

37. 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]

38. 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]

39. The development shall be carried out in accordance with the provisions of the the Environmental Noise Impact Report for 42 Seabreeze Boulevard, Pottsville prepared by CRG Acoustics Pty Ltd dated 7 June 2016 (crgref: 16091 report) or any addendum to the report to the satisfaction of Council's General Manager or delegate.

[DUR0275]

40. If window systems to be used are not openable or are required to remain closed in order to satisfy the requirements of the Environmental Noise Impact Report for 42 Seabreeze Boulevard, Pottsville prepared by CRG Acoustics Pty Ltd dated 7 June 2016 (crgref: 16091 report), then a system of mechanical ventilation complying with the relevant provisions of the Building Code of Australia shall be installed to service all habitable areas of the dwelling.

[DUR0295]

41. 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]

42. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

43. 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]

44. 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]

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

[DUR0815]

46. 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]

47. 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]

48. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- **Noise, water or air pollution.**
- **Dust during filling operations and also from construction vehicles.**
- **Material removed from the site by wind.**

[DUR1005]

49. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

50. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

51. During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health

officer to ensure compliance with all health related conditions of approval and respective legislation.

[DUR1575]

52. 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]

53. The proponent must not undertake any work within the public road reserve without giving Council's Engineering Division (48 hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

54. 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]

55. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

56. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.

[DUR1925]

57. A garbage storage area shall be provided in accordance with Council's "Development Control Plan Section A15 - Waste Minimisation and Management".

[DUR2195]

58. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

59. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate and NSW Office of Water.

[DUR2425]

60. 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]

61. 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]

62. 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]

63. 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]

64. 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]

65. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

66. The Applicant shall submit the appropriate 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for proposed Lot 1702, from the existing water main in Seabreeze Boulevard. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

67. 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.

[POC0005]

68. A Site Management Plan shall be prepared and submitted to the satisfaction of Council's General Manager or his delegate which details how noise from onsite activities will be managed and controlled, so as to prevent the generation or emission of intrusive noise. Such management plan shall be submitted and approved prior to the issue of the occupation certificate.

[POC0125]

69. 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]

70. 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]

71. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.
The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

72. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

73. The proprietor of the food premises shall provide appropriate notification to Council prior to commencement of operations by completing the "Application for Food Premises Registration" form available from www.tweed.nsw.gov.au or alternatively by contacting Council on 02 6670 2400.

[POC0625]

74. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

75. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

76. 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]

77. 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]

78. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final

inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

79. Prior to occupation the applicant or business operator is to be registered in Council's Public Swimming Pool Register and pay the appropriate fee under Council's schedule of fees and charges.

[POC1095]

80. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of a Right of Carriageway for a shared driveway arrangement burdening Lot 1702 and benefiting Lot 1701 in DP 1214550.

No permanent structures are permitted within this easement, unless endorsed by Council.

USE

81. 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]

82. 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]

83. Hours of operation of the business are restricted to the following hours:

* 5.00am to 10.00pm - Mondays to Sunday

[USE0185]

84. All deliveries to the premises are to occur only within the hours of 7.00am to 6.00pm Monday to Saturday and 8.00am to 6.00pm Sunday and public holidays, unless otherwise approved by Councils General Manager or his delegate.

[USE0195]

85. 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]

86. 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]

87. The servicing of waste facilities shall be limited to between the hours of 7.00am to 6.00pm Monday to Saturday and 8.00am to 6.00pm Sunday and public holidays.

[USE0285]

88. A noise impact compliance assessment report prepared by a suitably qualified acoustic consultant shall be prepared and submitted to the satisfaction of the

General Manager or delegate in respect to noise generated by the activities associated with the recreation facility.

The assessment report shall consider the Environmental Noise Impact Report for 42 Seabreeze Boulevard, Pottsville prepared by CRG Acoustics Pty Ltd dated 7 June 2016 (crgref: 16091 report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager or delegate and include any recommended noise amelioration measures to be carried out by the applicant. The report shall be submitted within a period not exceeding 60 days of the date of operation of the recreation facility.

The applicant shall carry out any such recommendations as provided within the noise impact compliance assessment report to the satisfaction of the General Manager or delegate within 30 days from the date of the acoustic assessment, provided that the General Manager or delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or delegate.

- [USE0295]
- 89. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact Report for 42 Seabreeze Boulevard, Pottsville prepared by CRG Acoustics Pty Ltd dated 7 June 2016 (crgref: 16091 report), the approved Site Management Plan, and any addendum(s) or amendment(s) to these reports as approved by the General Manager or delegate.**
- [USE0305]
- 90. 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]
- 91. All trade materials, product and plant to be kept within confines of the building at all times.**
- [USE0515]
- 92. All loading/unloading to take place within the boundary of the subject property.**
- [USE0525]
- 93. 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 and other requirements of Council's Environmental Health Officer included in this approval.**
- [USE0835]
- 94. All wastes shall be collected, stored, and disposed of to the satisfaction of the General Manager or his delegate.**
- [USE0875]
- 95. The premises shall be maintained in a clean and tidy manner.**
- [USE0965]
- 96. The public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012.**
- [USE0985]
- 97. Suitable receptacles with close fitting lids must be provided and maintained in a clean and serviceable condition for soiled towels and trade wastes.**
- [USE1015]

98. 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]

99. 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]

100. Food is to be restricted to the sale of coffee and pre-packaged non-potentially hazardous food products to visitors of the gym only. No food is to be prepared at the premises without the prior approval of Council's General Manager or delegate.

[USENS01]

REPORT:

Applicant: Sinalei Pty Ltd
Owner: Metricon Qld Pty Ltd
Location: Lot 1702 DP 1214550 No. 42 Seabreeze Boulevard and Lot 1701 DP 1214550 No. 44 Seabreeze Boulevard Pottsville
Zoning: R2 - Low Density Residential
Cost: \$400,000

Background:

The proposal is situated on a rectangular allotment (1421m²) with frontage to Seabreeze Boulevard. The proposal is for a Gym and pool (defined as Recreational Facility) with a total floor area of 315.6m² with site cover of 22%, and 3 staff. Car parking for the proposed development is provided with 19 car parking spaces via a proposed access easement through the adjacent allotment, 44 Seabreeze Boulevard currently subject to a development application for a Child Care Centre (DA15/1069).

As part of a request for further information the applicant was required to undertake an acoustic assessment of the area and the potential the proposed use may have upon the amenity of the surrounding locality.

The acoustic report provided many recommendations involving improvements to the design of the building comprising internal wall treatments to absorb any noise, amending the type and location of windows on the building, provision of an acoustic barrier wall along the eastern boundary to mitigate any potential noise impacts to future residents east of the proposed development, to locate plant equipment such as air-conditioning condensers at the northern or western façade of the building, as well as construction of driveway and car parking areas to be finished with surface coatings which prevent tyre squeal.

The recommendations were adopted by the applicant with further changes to the plans of development demonstrating accordance with acoustic recommendations for the building design which was amended and submitted as part of the response to the request for further information which also included the acoustic report.

Submissions

The concerns raised were with regard to noise, traffic including on street parking concerns, interpretation of the permissibility of the use within the zone, hours of operation, and some submitters stating notification compliance was not carried out correctly as some did not receive a letter.

The submitters were provided a copy of the response to the request for further information to review the applicant's response to submitter concerns. No new matters were raised as a result however the repeated themes were concerning noise and traffic impacts.

The matters raised by submitters have been addressed further in this report and applicable matters have been recommended to be conditioned appropriately with reference to the Traffic Impact Statement and Acoustic Report recommendations which mitigate the potential impacts raised by submitters.

History of the Subject Site

Stages 1 to 14 of the Seabreeze Estate comprising 500 allotments was granted approval and constructed as per consent K99/1837 (and its modifications, construction certificates etc). Stages 15-18 were rezoned to R2 Low Density Residential by way of TLEP2000 Amendment No.69 gazetted 24 December 2010.

The subdivision for stages 15 - 18 creating 88 allotments including the parent parcel of the subject site was permitted by Development Consent DA13/0577 and approved by Tweed Shire Council on 10 June 2014. This parent parcel known legally as lot 1540 in DP1207462 was identified on Map 7A of DCP B15 (Seabreeze Estate) as a landmark location due to its size and central location within Stage 2 of the estate on a corner allotment with frontage to both Tom Merchant Drive and Seabreeze Boulevard. Modification of that subdivision consent occurred with the most recent modification (DA13/0577.03) granted on 29 December 2014 being a subdivision of lot 1540 (1 into 2 lots) creating the subject site and splitting the landmark location in two.

The creation of the subject site was approved by way of subdivision certificate SC15/0029 on 9 October 2015.

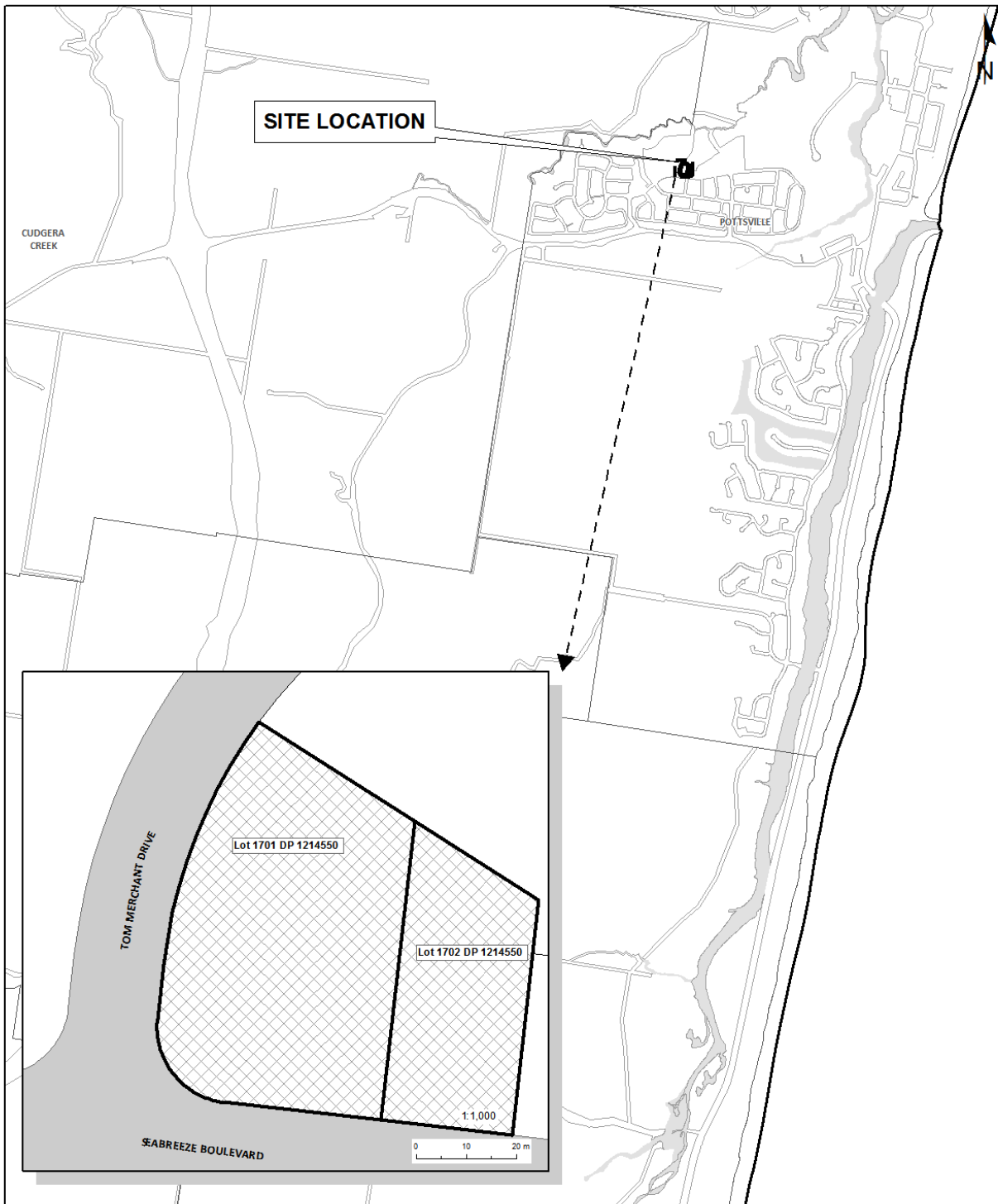
Site Details

The site is described as Lot 1702 on DP 1214550 being 42 Seabreeze Boulevard, Pottsville within the Seabreeze Estate.

Lot 1702 has an area of 1421m². The subject site is vacant and has been filled with site levels generally between RL3.0m AHD towards the southern boundary and up to RL4.0m AHD towards the northern boundary. A rock retaining wall exists along the northern boundary. To the north of the site is a drainage reserve containing an artificial waterbody/stormwater detention area. The allotment is burdened by an easement (B) for sewer along the southern boundary, Easement (C) contains a substation, and easement (A) traversing full length of the northern boundary which contains the rock wall (refer to Figure 1).

To the south of the subject site are residential dwellings, dual occupancy and multiple dwelling units. Further south of the development site is a retirement home and Pottsville Road linking the site with the township of Pottsville and the Pacific Motorway. Immediately East of the subject site is a drainage easement, further east are additional residential allotments and a sports field within the estate. Adjacent to the West of the subject site includes a current proposal for Child Care Centre and further West of the subject site is currently vacant however subject to additional residential subdivision development.

SITE DIAGRAM:



LOCALITY PLAN

0 0.5 1 Km
1:30,000

Lot 1701 and 1702 DP 1214550 Seabreeze Boulevard, Pottsville – DA16/0031

Filepath: Z:\GIS_Jobs\00079001 - 00080000\00079034\Site Plan Lot 1701 and 1702 Seabreeze.mxd

Author: S. Scott - GIS

Date Printed: 19 July, 2016

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dial before you Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Coordinate System - MGA Zone 56
Datum - GDA 94



Cadastral: 30 June, 2010
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DO NOT SCALE
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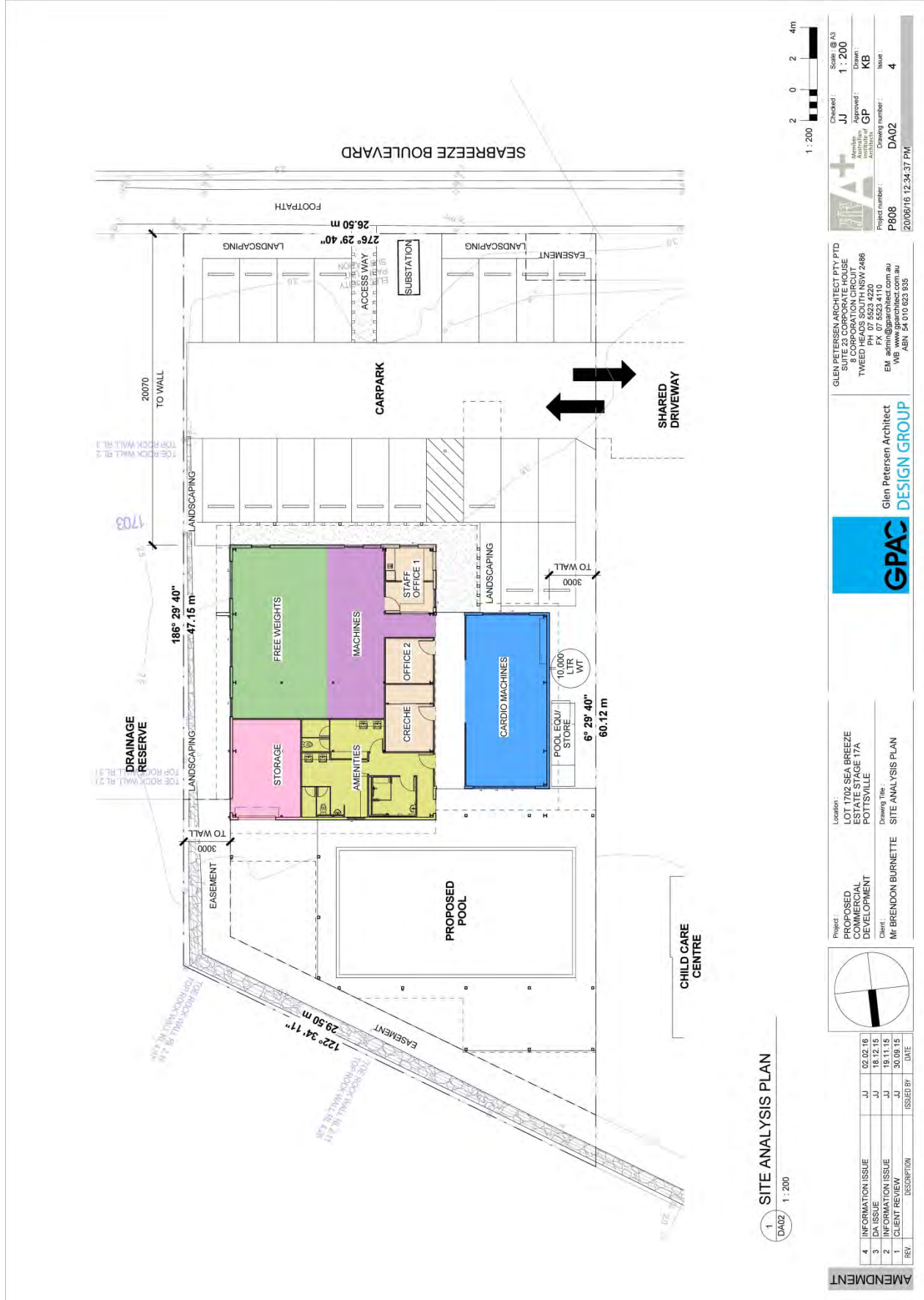
Civic and Cultural Centre
3 Tumbulgum Road
Munwillumbah NSW 2484
PO Box 816
Munwillumbah NSW 2484

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F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:



1 SITE ANALYSIS PLAN
DA02 / 1: 200

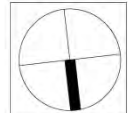


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Member:	GP	Date:	
Approved:	KB	Issue:	4
Project number:	P808	DA02 number:	DA02
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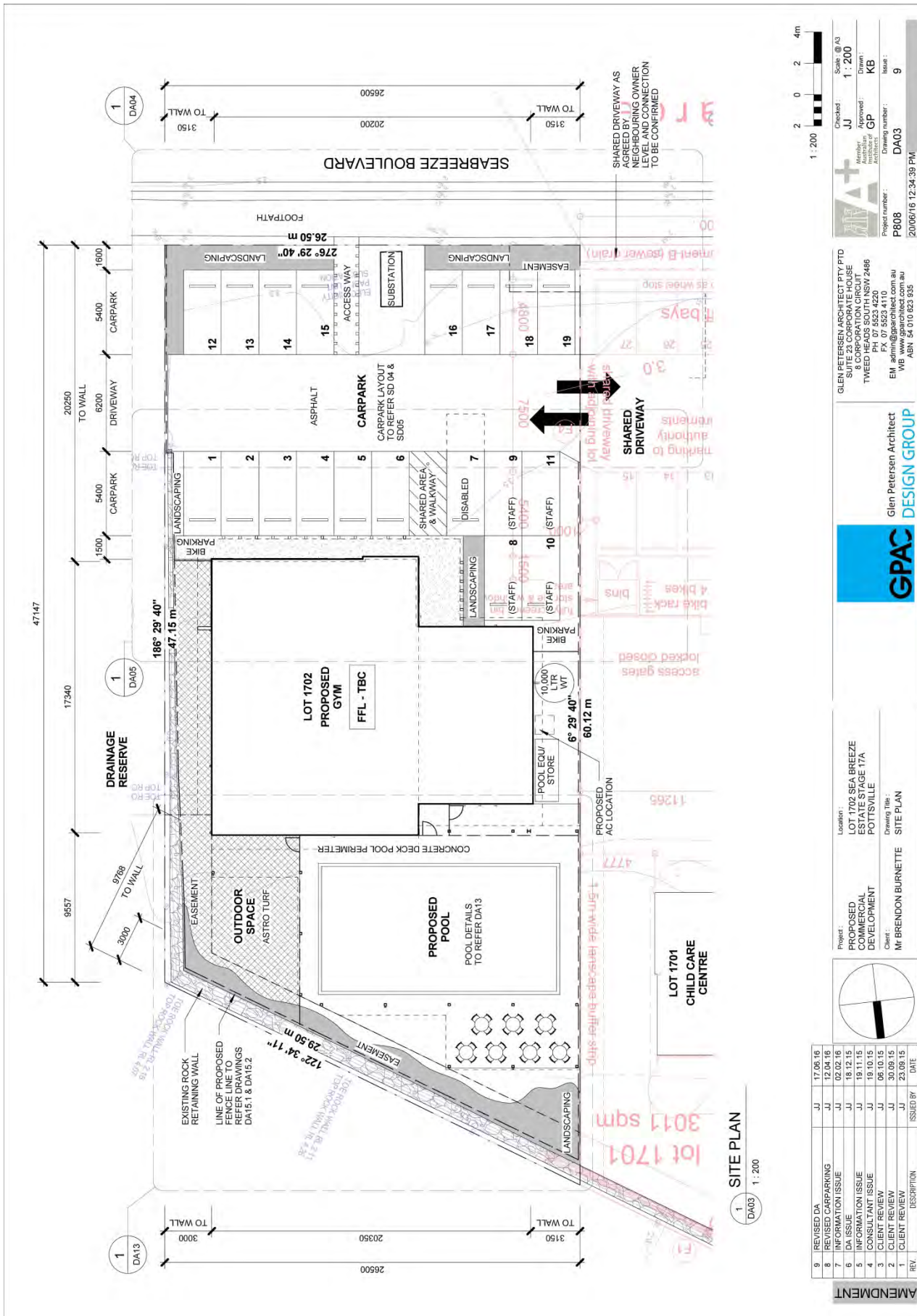


Project: PROPOSED COMMERCIAL DEVELOPMENT
 Location: LOT 1702 SEA BREEZE INDUSTRIAL PARK STAGE 1/A POTTSVILLE
 Client: MR BRENDON BURNETTE
 Drawing Title: SITE ANALYSIS PLAN



REV	DESCRIPTION	ISSUED BY	DATE
4	INFORMATION ISSUE	JJ	02.02.16
3	DA ISSUE	JJ	18.12.15
2	INFORMATION ISSUE	JJ	19.11.15
1	CLIENT REVIEW	JJ	30.09.15

AMENDMENT

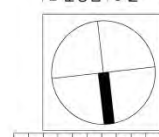


Checked: JJ
 Member: GP
 Architect: KB
 Drawing number: P808
 Issue: 9
 Scale: @ A3
 1:200

GLEN PETERSEN ARCHITECT PTY LTD
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 ABN 54 010 623 835

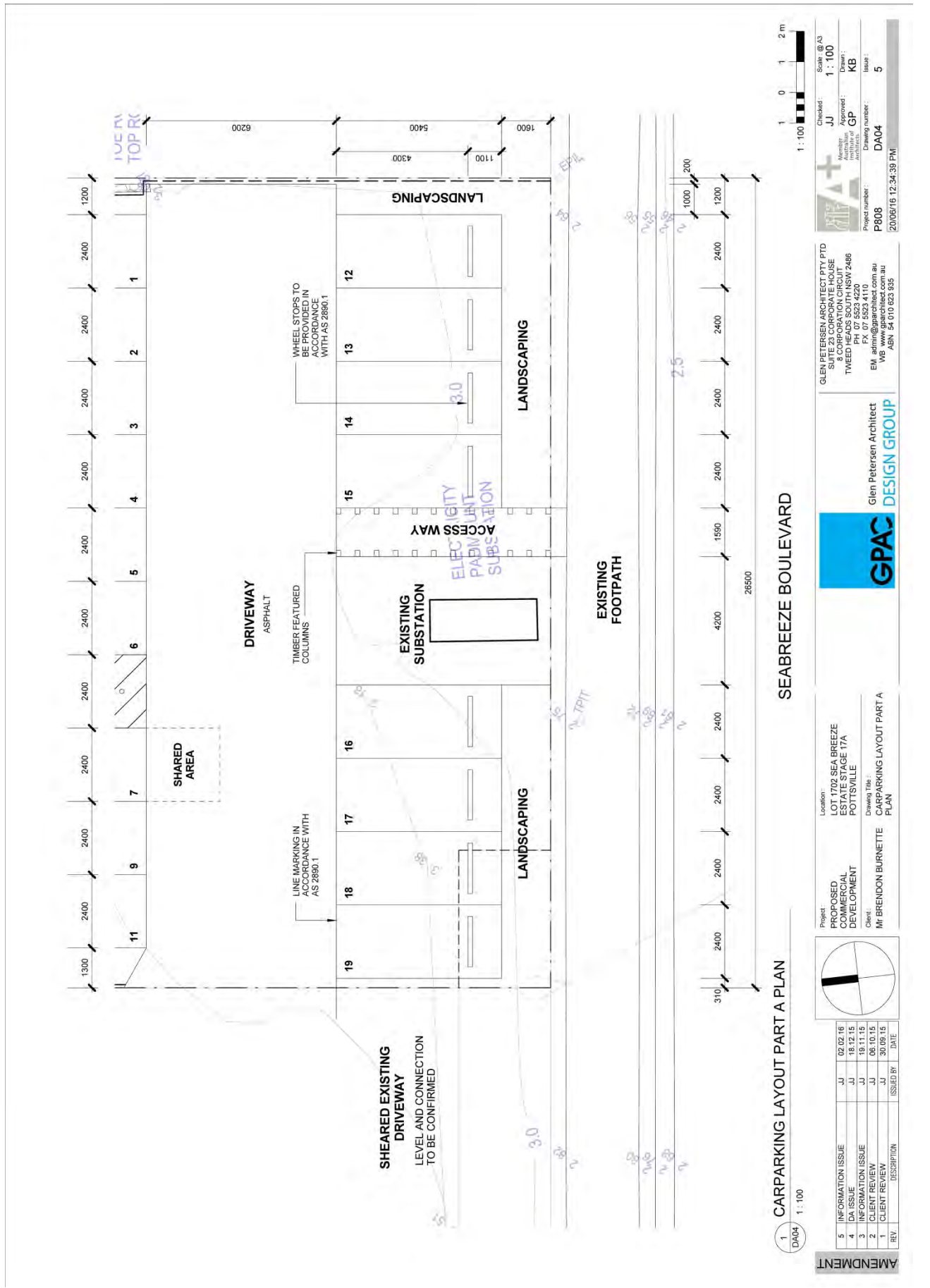
GPAC
 Glen Petersen Architect
DESIGN GROUP

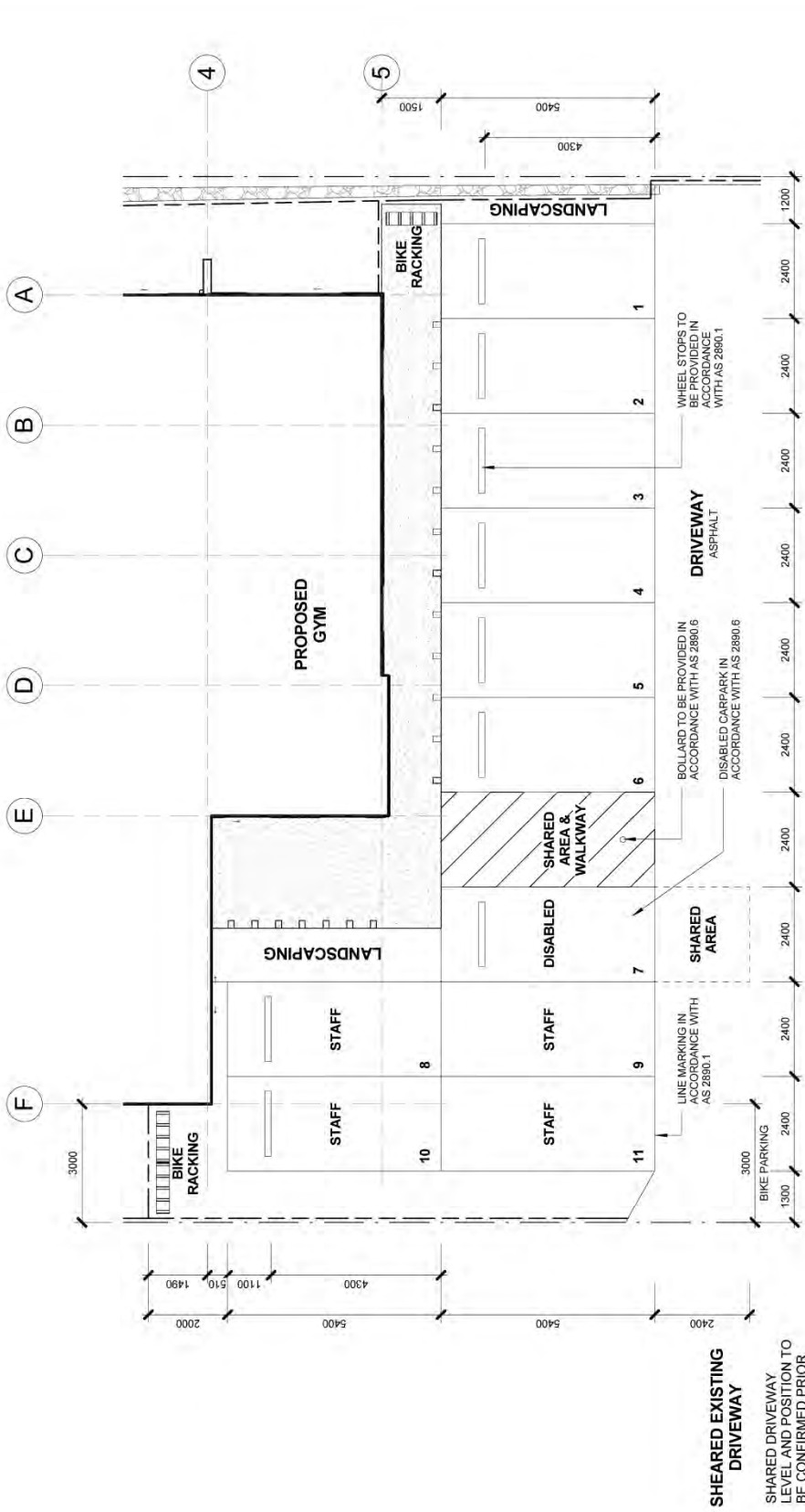
Project: PROPOSED COMMERCIAL DEVELOPMENT
 Location: LOT 1702 SEA BREEZE ESTATE STAGE 17A POTTSVILLE
 Client: Mr BRENDON BURNETTE
 Drawing Title: SITE PLAN



REV.	DESCRIPTION	ISSUED BY	DATE
9	REVISED DA	JJ	17.06.16
8	REVISED CARPARKING	JJ	12.04.16
7	INFORMATION ISSUE	JJ	02.02.16
6	ISSUE FOR PERMIT	JJ	08.12.15
5	ISSUATION ISSUE	JJ	18.10.15
4	CONSULTANT ISSUE	JJ	18.10.15
3	CLIENT REVIEW	JJ	08.10.15
2	CLIENT REVIEW	JJ	30.09.15
1	CLIENT REVIEW	JJ	23.09.15

AMENDMENT





SHARED EXISTING DRIVEWAY
 SHARED DRIVEWAY LEVEL AND POSITION TO BE CONFIRMED PRIOR TO CONSTRUCTION

1 CARPARKING LAYOUT PART B PLAN



AMENDMENT

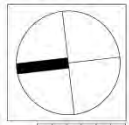
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5	INFORMATION ISSUE	JJ	02.02.16
4	DA ISSUE/REVISION ISSUE	JJ	18.12.15
3	CLIENT REVIEW	JJ	08.10.15
2	CLIENT REVIEW	JJ	08.10.15
1	CLIENT REVIEW	JJ	30.08.15

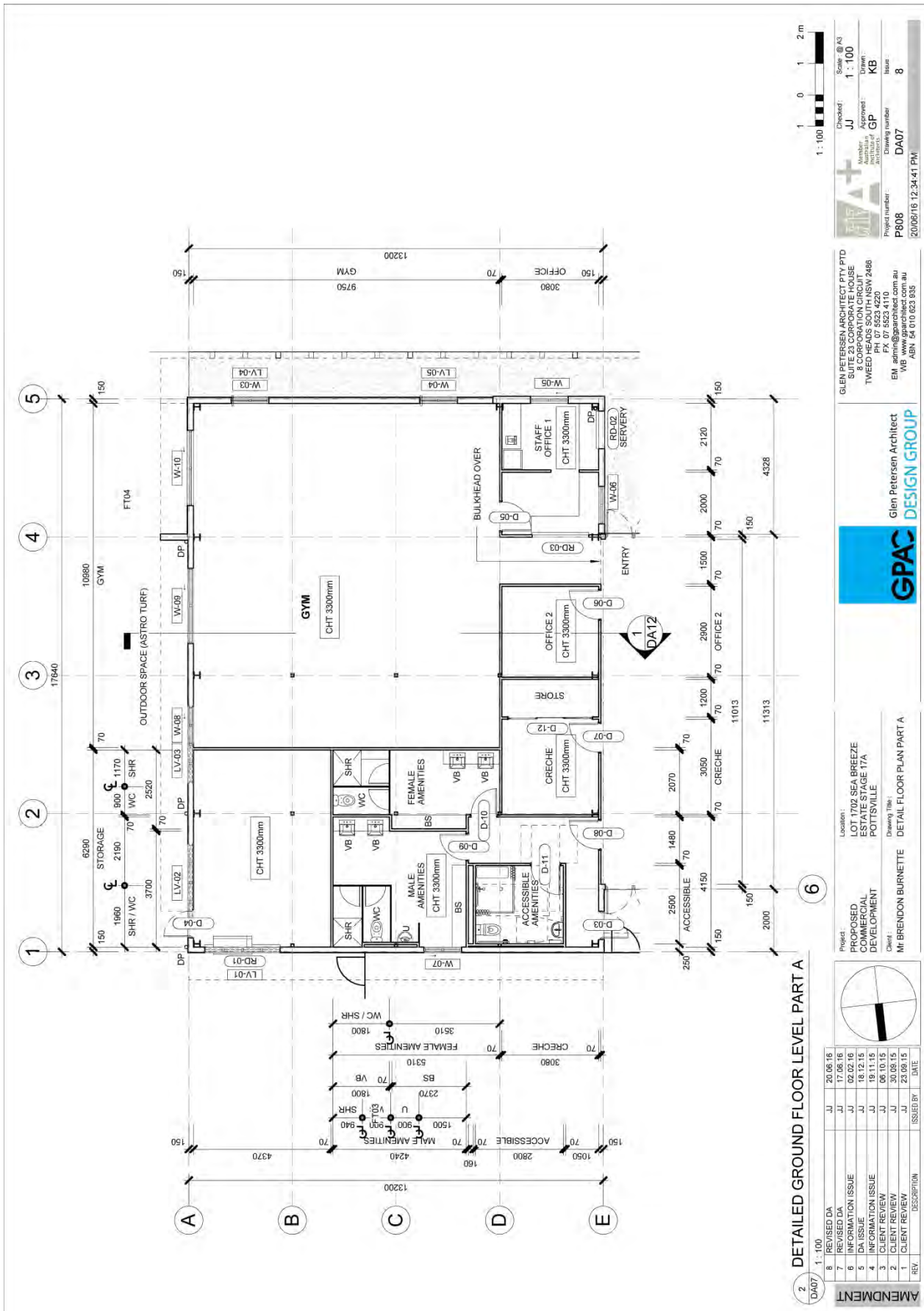
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 Drawn: KB
 Approved: GP
 Issue: DA05
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 Drawing number: DA05
 Issue date: 20/06/16 12:34:39 PM

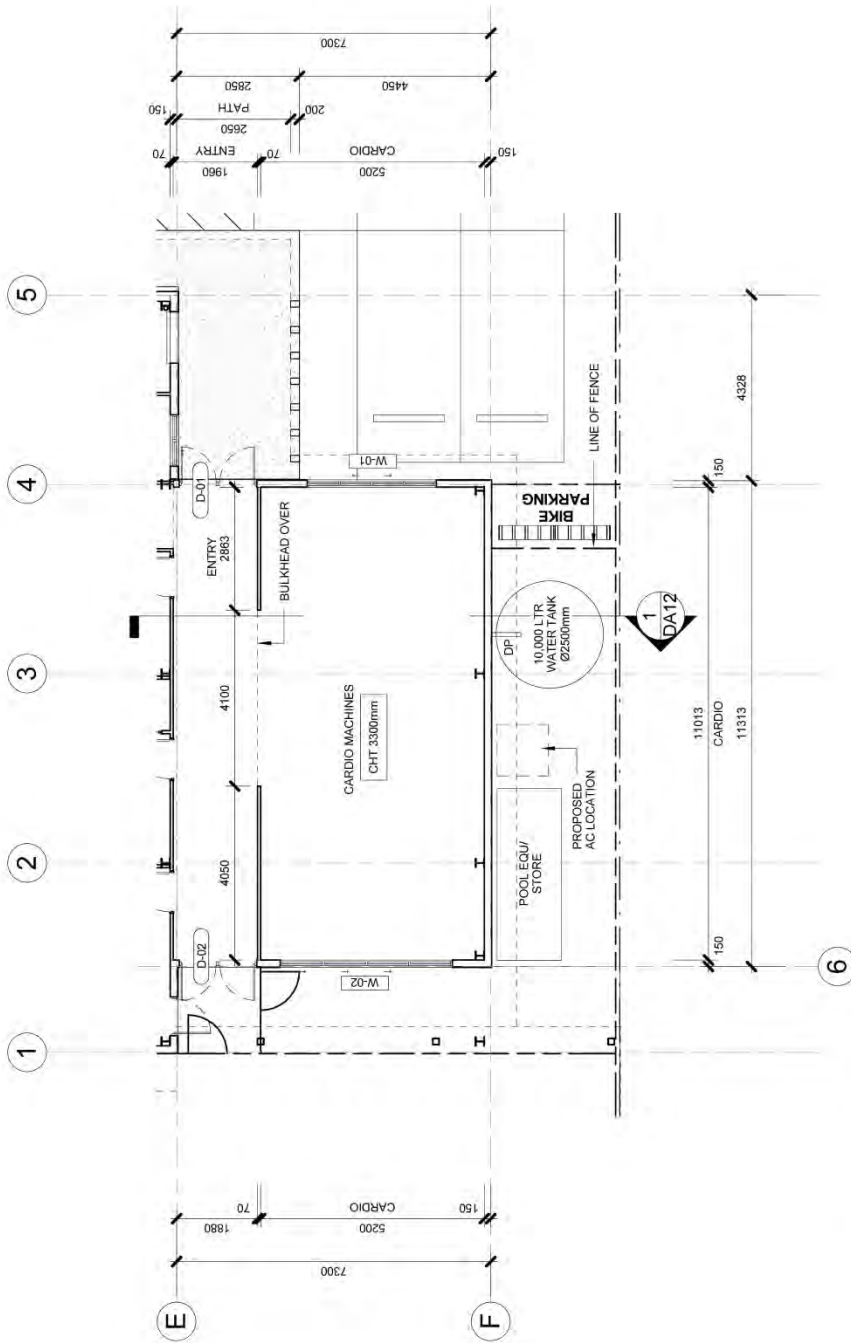
GLEN PETERSEN ARCHITECT PTY LTD
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Project: PROPOSED COMMERCIAL DEVELOPMENT
Client: Mr BRENDON BURNETTE
Location: LOT 1702 SEA BREEZE ESTATE STAGE 17A POTTSVILLE
Drawing Title: CARPARKING LAYOUT PART B PLAN







1 DETAILED GROUND FLOOR LEVEL PART B

1:100

REV	DESCRIPTION	ISSUED BY	DATE
9	REVISED DA	JJ	20.06.16
8	INFORMATION ISSUE	JJ	02.02.16
7	DA ISSUE	JJ	18.12.15
6	INFORMATION ISSUE	JJ	18.11.15
5	DA ISSUE	JJ	18.11.15
4	INFORMATION ISSUE	JJ	05.10.15
3	CLIENT REVIEW	JJ	30.09.15
2	CLIENT REVIEW	JJ	23.09.15
1	ISSUED BY	JJ	DATE

AMENDMENT

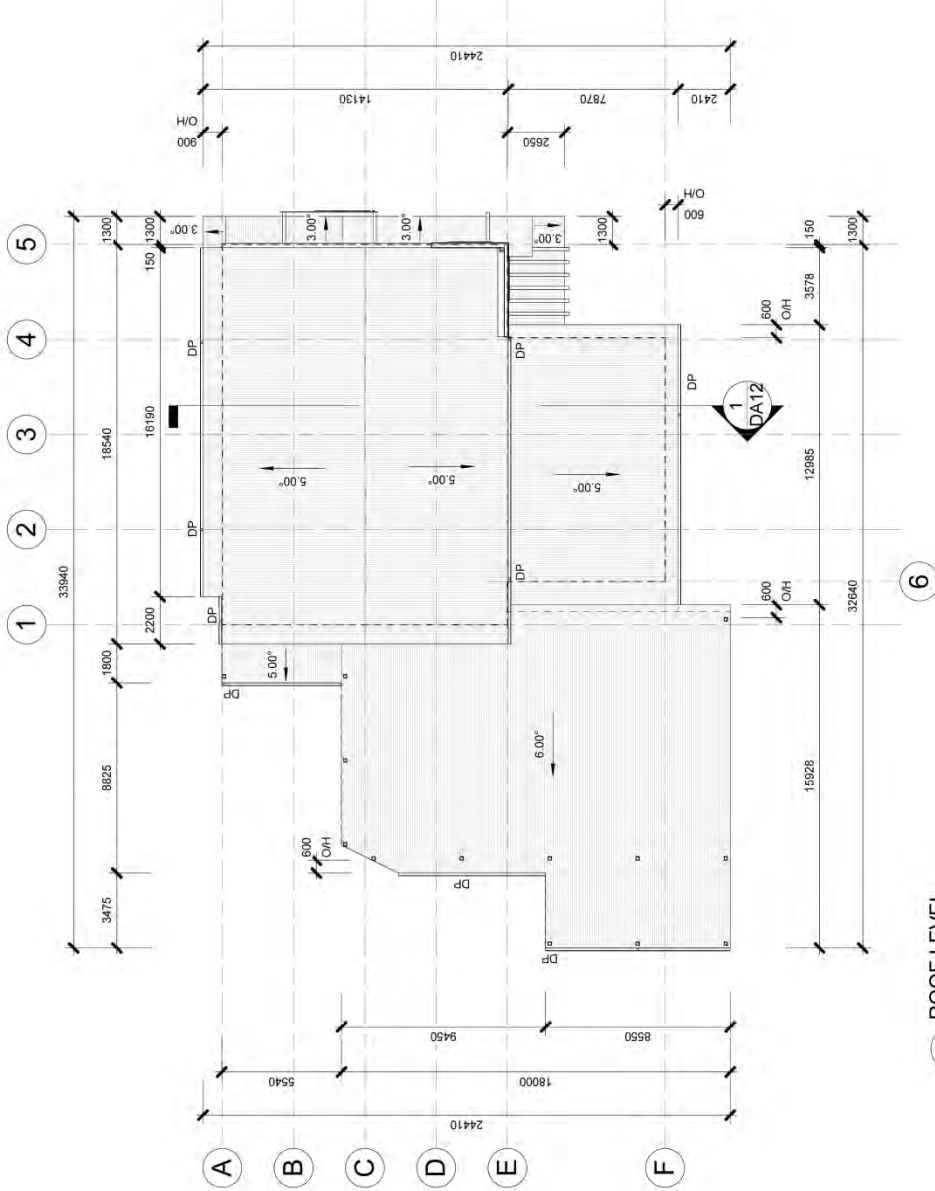
Project: PROPOSED COMMERCIAL DEVELOPMENT
 Client: MR BRENDON BURNETTE
 Location: LOT 1702 SEA BREEZE STAYS STAGE 17A POTTSVILLE
 Drawing Title: DETAIL FLOOR PLAN PART B



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Checked: JJ
 Member: JJ
 Author: GP
 Date: KB
 Drawing number: DA08
 Project number: P808
 Issue: 8
 20/06/16 12:34:42 PM





1 ROOF LEVEL
DA09 1:200



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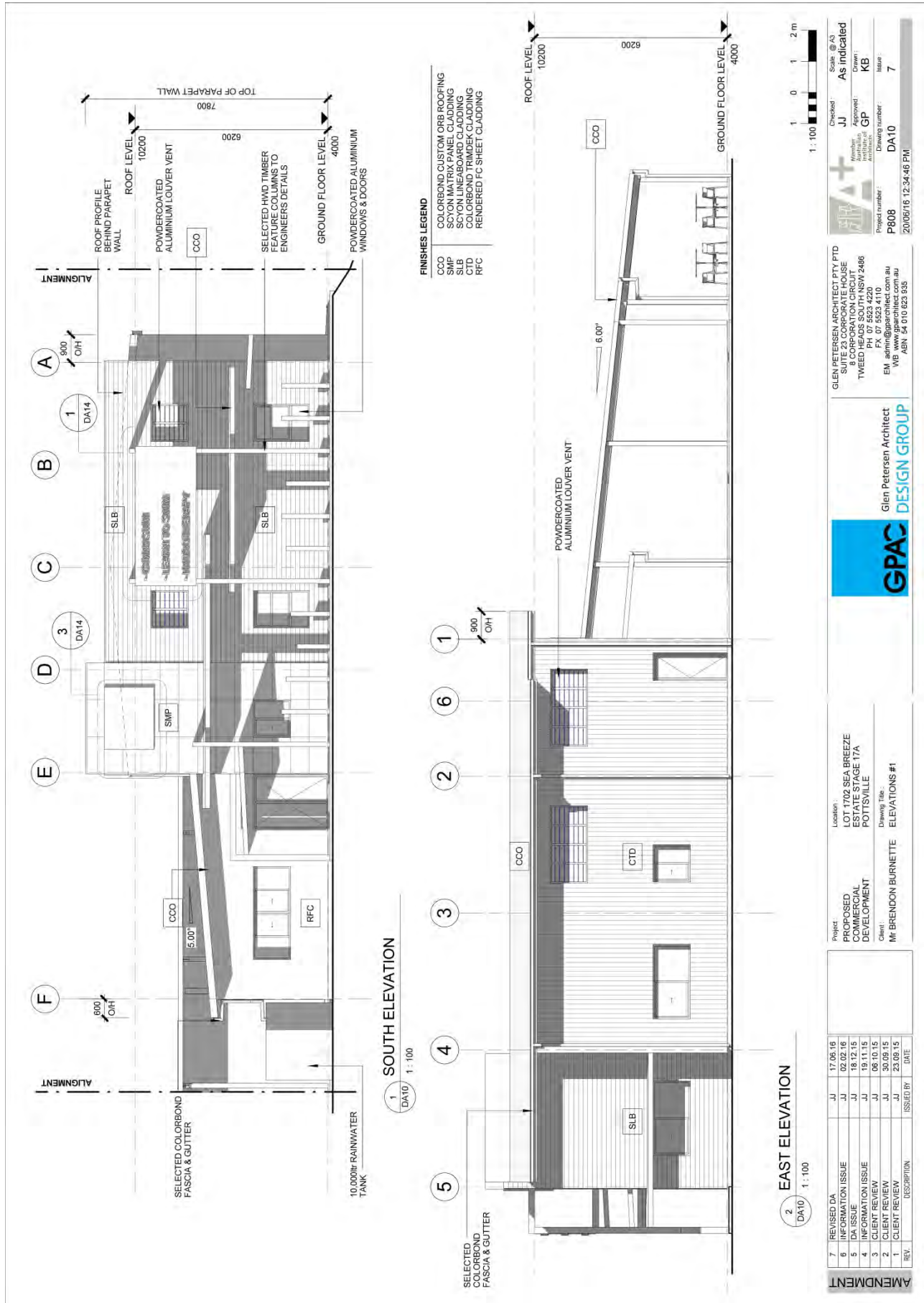
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 Member: **1:200**
 Attribution: **GP**
 Architects: **KB**
 Project number: **DA09** Issue: **6**
 Drawing number: **P808**
 20/06/16 12:34:42 PM

GPAC
 Glen Petersen Architect
DESIGN GROUP

Project: **PROPOSED COMMERCIAL DEVELOPMENT**
 Location: **LOT 1702 SEA BREEZE ESTATE STAGE 1/A PORTSVILLE**
 Client: **MR BRENDON BURNETTE**
 Drawing Title: **ROOF PLAN**

AMENDMENT

REV.	DESCRIPTION	ISSUED BY	DATE
6	REVISED DA	JU	17/08/16
5	INFORMATION ISSUE	JU	02/02/16
4	DA ISSUE	JU	18/12/15
3	INFORMATION ISSUE	JU	19/11/15
2	CLIENT REVIEW	JU	08/10/15
1	CLIENT REVIEW	JU	30/09/15



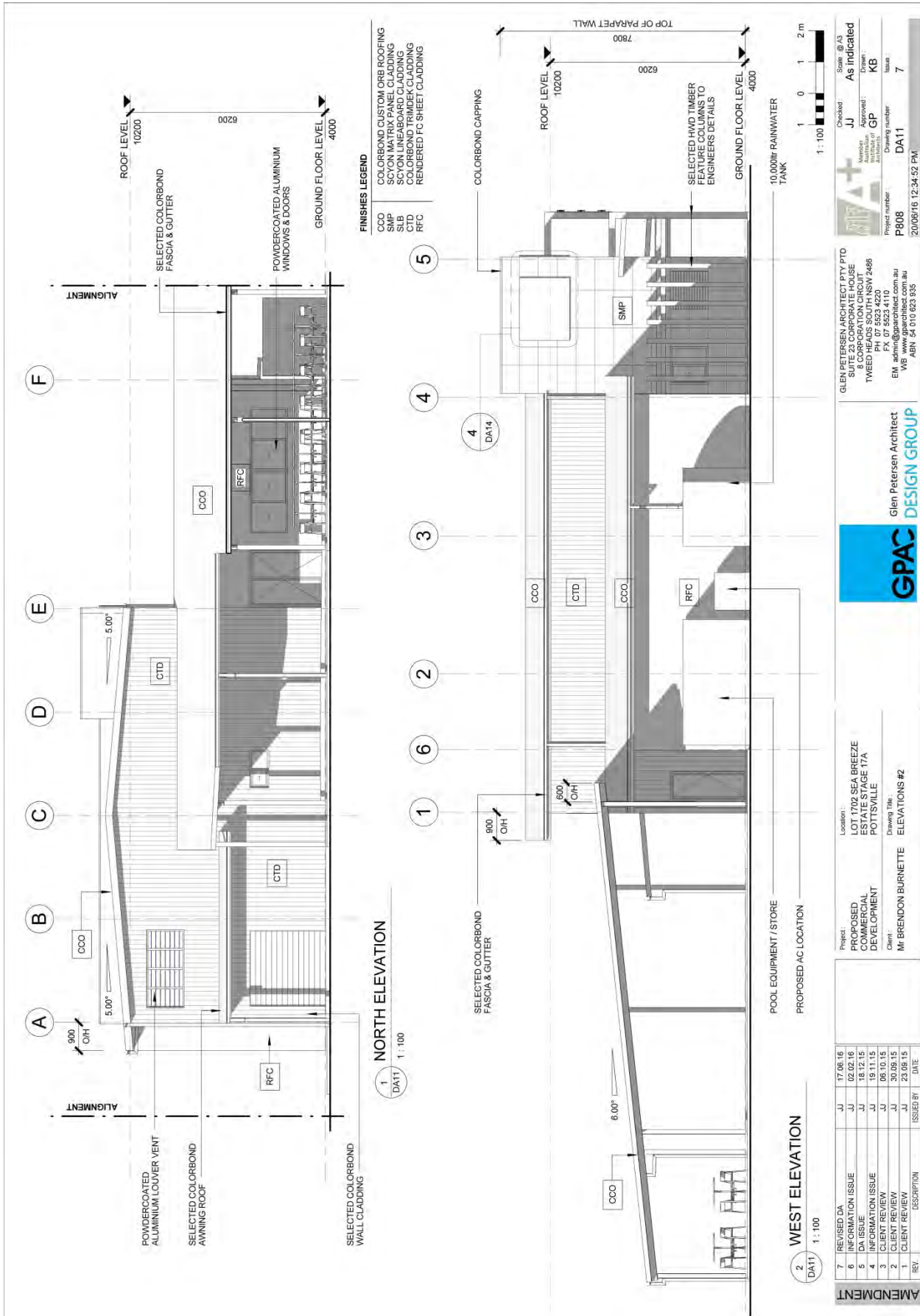
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ABN 54 010 623 655

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DESIGN GROUP

Project: PROPOSED COMMERCIAL DEVELOPMENT
Client: Mr BRENDON BURNETTE
Location: LOT 1702 SEA BREEZE ESTATE STAGE 17A POTTSVILLE
Drawing Title: ELEVATIONS #1

REV.	DESCRIPTION	ISSUED BY	DATE
7	REVISED DA	JJ	17.06.16
6	INFORMATION ISSUE	JJ	02.02.16
5	DA ISSUE	JJ	16.12.15
4	INFORMATION ISSUE	JJ	19.11.15
3	CLIENT REVIEW	JJ	08.10.15
2	CLIENT REVIEW	JJ	30.09.15
1	CLIENT REVIEW	JJ	23.09.15

AMENDMENT

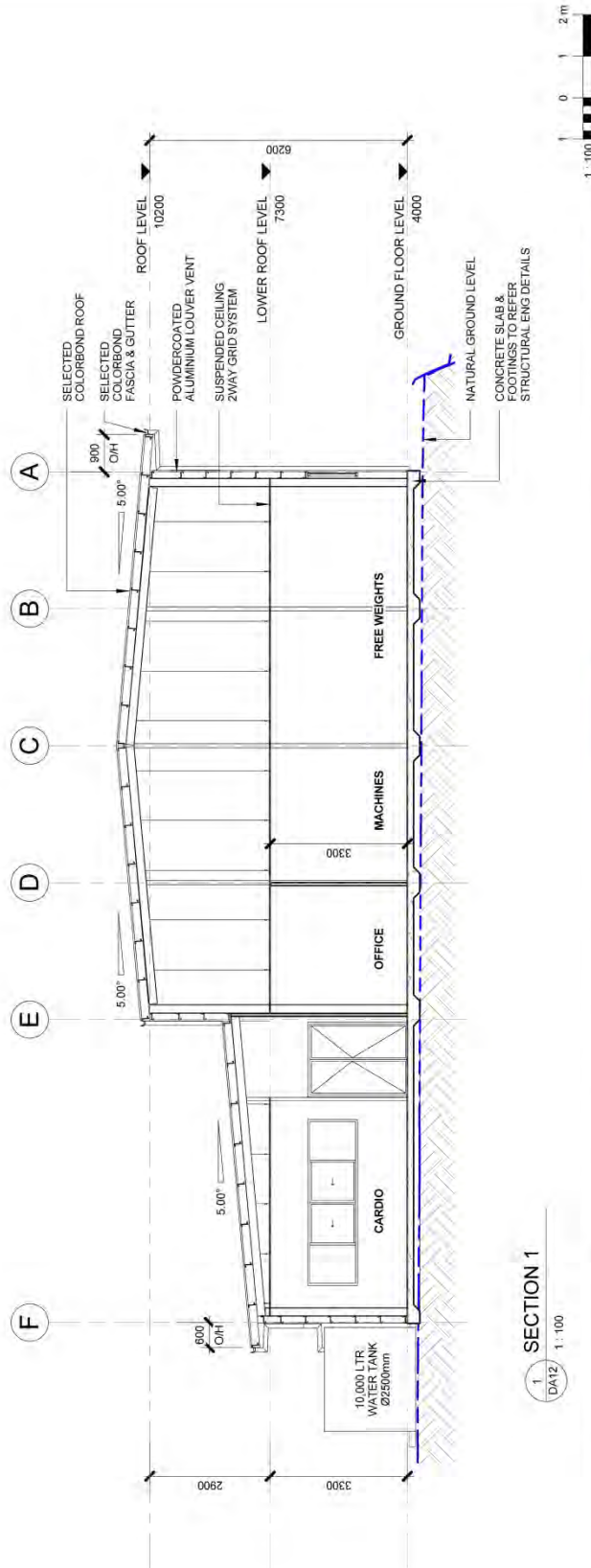


WINDOW SCHEDULE			
WINDOW NUMBER	WIDTH	HEIGHT	COMMENTS
LV-01	2400	1200	ALUMINIUM LOUVRES
LV-02	2400	1200	ALUMINIUM LOUVRES
LV-03	2400	1200	ALUMINIUM LOUVRES
LV-04	1200	1200	ALUMINIUM LOUVRES
LV-05	1200	1200	ALUMINIUM LOUVRES
W-01	3000	1200	ALUMINIUM FRAMED SLIDING
W-02	4000	1200	ALUMINIUM FRAMED STACKING SLIDER
W-03	900	1800	ALUMINIUM FRAMED DOUBLE HUNG
W-04	900	1800	ALUMINIUM FRAMED DOUBLE HUNG
W-05	1200	1200	ALUMINIUM FRAMED SLIDING
W-06	1200	1200	ALUMINIUM FRAMED SLIDING
W-07	1200	600	ALUMINIUM FRAMED SLIDING
W-08	1200	1200	ALUMINIUM FRAMED SLIDING
W-09	2400	1200	ALUMINIUM FRAMED SLIDING
W-10	2400	1200	ALUMINIUM FRAMED SLIDING

DOOR SCHEDULE			
DOOR NUMBER	WIDTH	HEIGHT	COMMENTS
D-01	1800	2400	ALUMINIUM FRAMED GLAZING SWING DOUBLE
D-02	1800	2400	ALUMINIUM FRAMED GLAZING SWING DOUBLE
D-03	900	2400	ALUMINIUM FRAMED GLAZING SWING SINGLE
D-04	900	2400	ALUMINIUM FRAMED GLAZING SWING SINGLE
D-05	920	2340	HOLLOW CORED SWING
D-06	920	2340	HOLLOW CORED SWING
D-07	920	2340	HOLLOW CORED SWING
D-08	920	2340	ACCESSIBLE HOLLOW CORED SWING
D-09	920	2340	ACCESSIBLE HOLLOW CORED SWING
D-10	920	2340	ACCESSIBLE HOLLOW CORED SWING
D-11	920	2340	ACCESSIBLE HOLLOW CORED SWING
D-12	2700	2400	STORAGE SLIDING 3 PANEL DOORS
RD-01	2400	1200	COLORBOND ROLLER DOOR SILL HEIGHT 1200mm
RD-02	1200	1200	COLORBOND ROLLER DOOR SILL HEIGHT 1200mm
RD-03	1800	1200	COLORBOND ROLLER DOOR SILL HEIGHT 1200mm

NOTE:
1. ALL WINDOWS ARE TO BE POWDERCOATED ALUMINIUM FRAME, UNLESS NOTED OTHERWISE

NOTE:
1. ALL EXTERNAL GLAZED DOORS ARE TO BE POWDERCOATED ALUMINIUM



SECTION 1
1:100

Checked	JJ	Scale	@ A3
Approved	JJ	1:100	
Drawn	GP		
Issue	KB		
Project number	P808	Drawing number	DA12
Issue	7		

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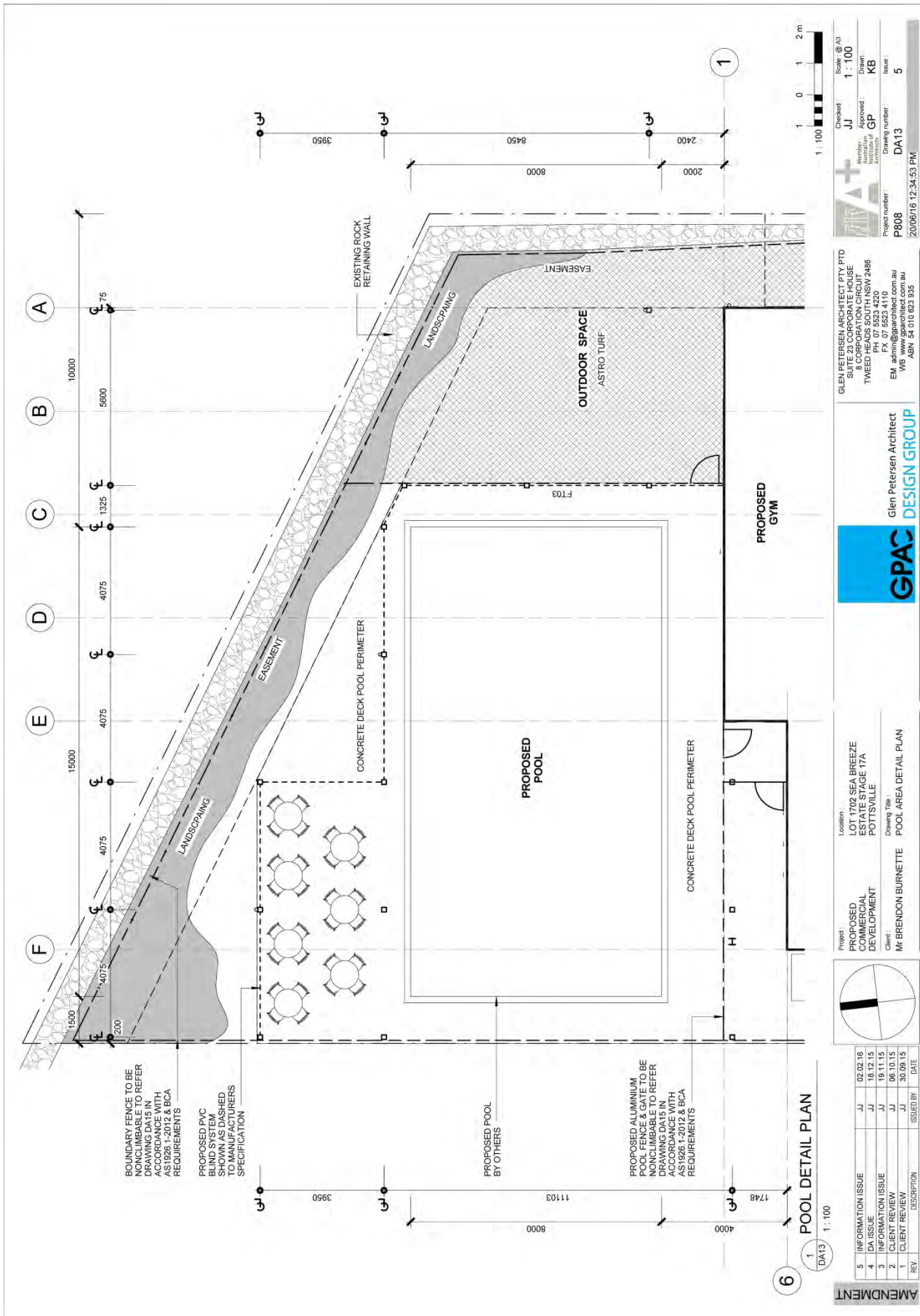


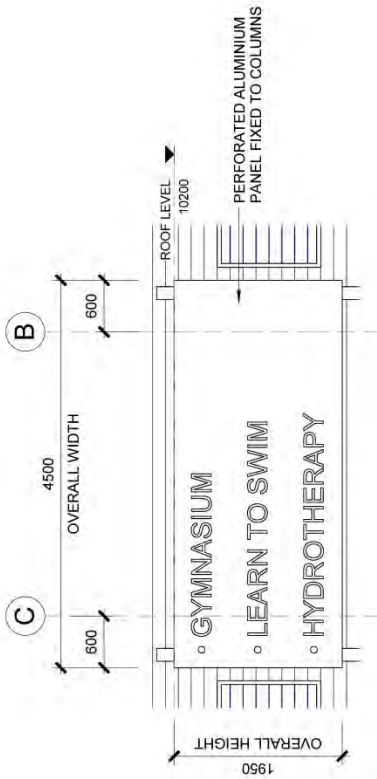
Location
LOT 1702 SEA BREEZE
ESTATE STAGE 17A
POTTSVILLE
Client
MR BRENDON BURNETTE
SECTION & DOOR / WINDOW
SCHEDULES

Project	PROPOSED COMMERCIAL DEVELOPMENT
Client	MR BRENDON BURNETTE

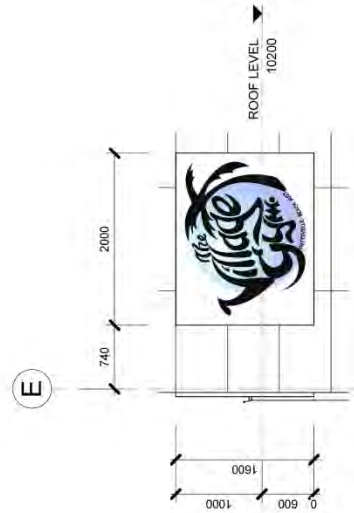
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6	REVISED DA	JJ	17/06/16
5	INFORMATION ISSUE	JJ	02/02/16
4	DA ISSUE	JJ	18/12/15
3	INFORMATION ISSUE	JJ	19/11/15
2	CLIENT REVIEW	JJ	06/10/15
1	CLIENT REVIEW	JJ	30/09/15

AMENDMENT

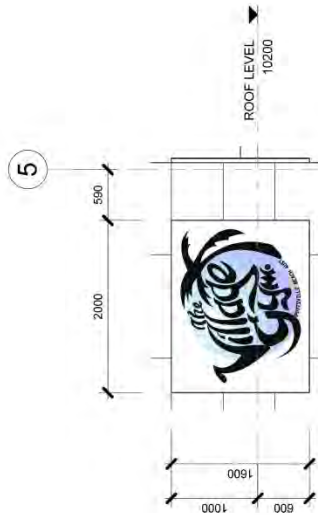




1 SIGNAGE 1 DETAIL ELEVATION (SOUTH)
DA14 1:50



3 SIGNAGE 2 DETAIL ELEVATION (SOUTH)
DA14 1:50



4 SIGNAGE 3 DETAIL ELEVATION (WEST)
DA14 1:50

SIGNAGE MAXIMUM AREA	
TWEED SHIRE COUNCIL REQUIREMENTS	ACHIEVED
(20.2m FRONTAGE)	
SIGN 1 - 4.5W x 1.95H	= 8.7m ²
SIGN 2 - 2.0W x 1.6H	= 3.2m ²
SIGN 3 - 2.0W x 1.6H	= 3.2m ²
MAXIMUM AREA	= 15.1m ²
TOTAL AREA	= 15.1m ²

REV	DESCRIPTION	ISSUED BY	DATE
5	INFORMATION ISSUE	JJ	07.02.16
4	DA ISSUE	JJ	16.02.16
3	INFORMATION ISSUE	JJ	19.11.15
2	CLIENT REVIEW	JJ	05.10.15
1	CLIENT REVIEW	JJ	30.08.15

Project: PROPOSED COMMERCIAL DEVELOPMENT
Client: Mr BRENDON BURNETTE
Location: LOT 1702 SEA BREEZE ESTATE STAGE 17A POTTSVILLE
Drawing Title: SIGNAGE DETAILS

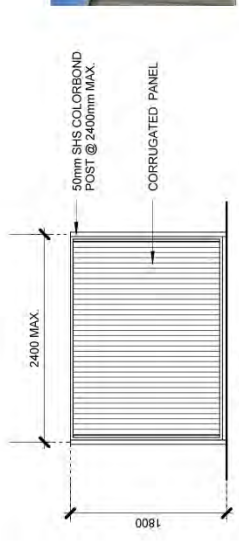
GPAC
Glen Petersen Architect
DESIGN GROUP

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Checked: JJ
As Indicated
Drawn: KB
Approved: GP
Project number: P808
Drawing number: DA14
Issue: 5
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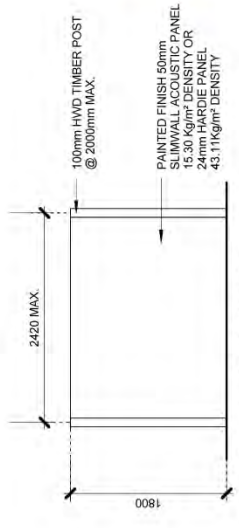
AMENDMENT



FT-1 FENCE TYPE 1
1.8M HIGH COLORBOND FENCE
IN ACCORDANCE WITH AS1926.1:2012



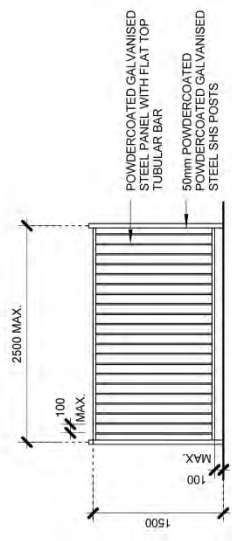
FENCE TYPE 1 - EXAMPLE



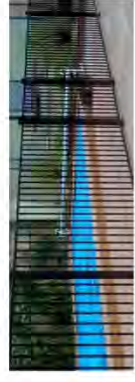
FT-4 FENCE TYPE 4 - ACOUSTIC
1.8M HIGH FC SHEET FENCE
IN ACCORDANCE WITH AS1926.1:2012



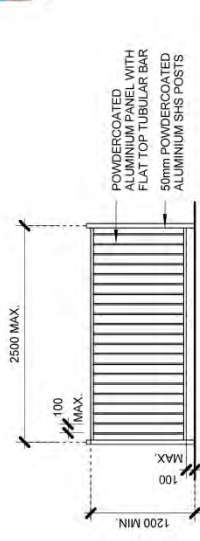
FENCE TYPE 4 - EXAMPLE



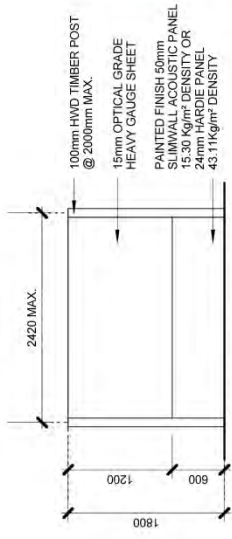
FT-2 FENCE TYPE 2
1.5M HIGH POWDERCOATED GALVANISED STEEL FENCE & GATE
IN ACCORDANCE WITH AS1926.1:2012



FENCE TYPE 2 & 3 - EXAMPLE



FT-3 FENCE TYPE 3
1.2M HIGH ALUMINIUM POOL FENCE & GATE
IN ACCORDANCE WITH AS1926.1:2012



FT-5 FENCE TYPE 5 - ACOUSTIC
1.8M HIGH FC SHEET + CLEAR ACRYLIC PANEL FENCE
IN ACCORDANCE WITH AS1926.1:2012



FENCE TYPE 5 - EXAMPLE

NOTE:

1. ALL FENCE TO BE NONCLIMBABLE TO IN ACCORDANCE WITH AS1925.1:2012 & BCA REQUIREMENTS
2. ACOUSTIC FENCE FT-4 & FT-5 DETAILS TO BE READ IN CONJUNCTION WITH "ENVIRONMENTAL NOISE IMPACT REPORT" PROVIDED BY CRG ACOUSTICS.

FENCE TYPE DETAILS



REV.	DESCRIPTION	ISSUED BY	DATE
7	REVISED DA	JJ	20.06.16
6	REVISED DA	JJ	17.05.16
5	INFORMATION ISSUE	JJ	02.02.16
4	DA ISSUE	JJ	18.12.15
3	INFORMATION ISSUE	JJ	19.11.15
2	CLIENT REVIEW	JJ	05.10.15
1	CLIENT REVIEW	JJ	30.07.15

Project:	PROPOSED LOT 1702 SEA BREEZE COMMERCIAL DEVELOPMENT
Client:	M BRENDON BURNETTE

Location:	LOT 1702 SEA BREEZE ESTATE STAGE 17A POTTSVILLE
Drawing Title:	FENCE TYPE DETAIL

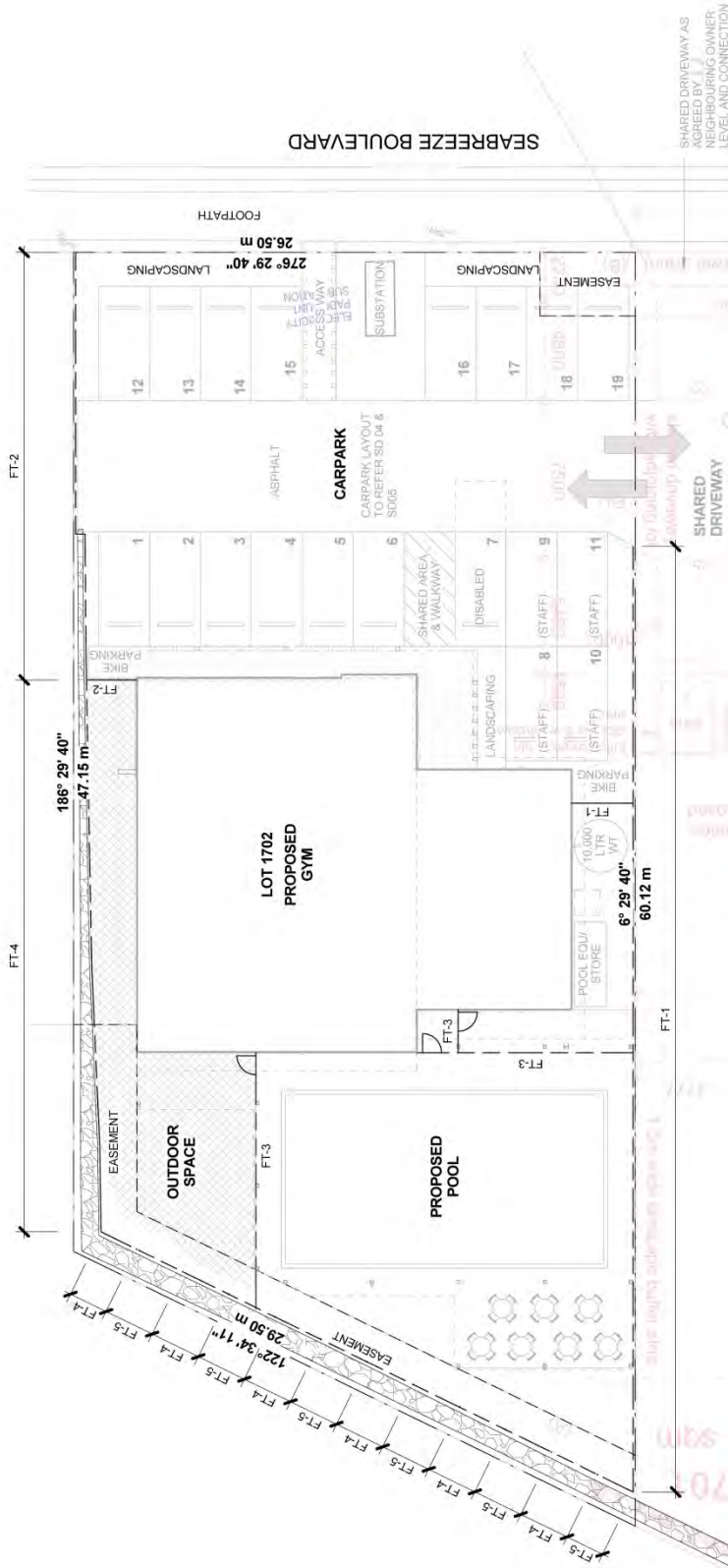


Glen Petersen Architect
DESIGN GROUP

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ABN: 54 010 623 855

Checked: JJ
Scale: @ A3
As Indicated
Approved: GP
Drawn: KB
Issue: 7
Project number: DA15.1
Drawing number: P808
Issue: 7
20/06/16 12:34:53 PM





- NOTE:**
1. ALL FENCE TO BE NON-COMBUSTIBLE TO IN ACCORDANCE WITH AS1926.1-2012 & BCA REQUIREMENTS
 2. ACOUSTIC FENCE FT-4 & FT-5 DETAILS TO BE PROVIDED BY CRG ACOUSTICS. REPORT PROVIDED BY CRG ACOUSTICS.

FENCE TYPE CODE	
FT XX	DENOTES NUMBER OF TYPE
FT X	DENOTES FENCE TYPE
*	FENCE TYPE DETAILS TO REFER DRAWING DA15.1

1 FENCE PLAN
DA15.2 1:200



Checked: JJ As indicated
 Number: GP
 Approved: KB
 Architect: GP
 Project number: P808
 Drawing number: DA15.2
 Issue: 1
 20/06/16 12:34:54 PM

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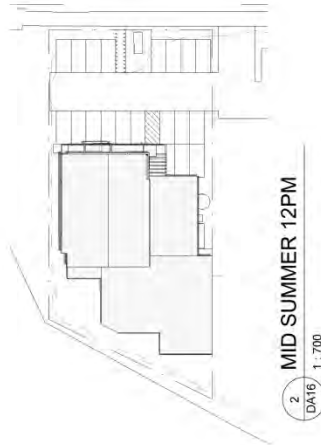
Project: PROPOSED COMMERCIAL DEVELOPMENT
 Location: LOT 1702 SEA BREEZE ESTATE STAGE 17A POTTSVILLE
 Client: Mr BRENDON BURNETTE
 Drawing Title: FENCE TYPE PLAN

REV	REVISED DA	DESCRIPTION	ISSUED BY	DATE
1	DA15.2		JJ	20.06.16

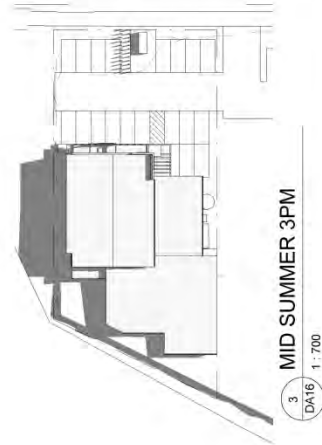
AMENDMENT



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MID SUMMER 9AM



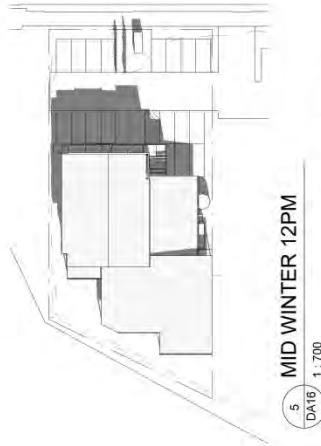
2
DA16 1:700
MID SUMMER 12PM



3
DA16 1:700
MID SUMMER 3PM



4
DA16 1:700
MID WINTER 9AM



5
DA16 1:700
MID WINTER 12PM



6
DA16 1:700
MID WINTER 3PM

AMENDMENT

REV	DESCRIPTION	ISSUED BY	DATE
5	DA ISSUE	JJ	18.12.15
4	INFORMATION ISSUE	JJ	19.11.15
3	CLIENT REVIEW	JJ	05.10.15
2	CLIENT REVIEW	JJ	30.09.15
1	CLIENT REVIEW	JJ	23.09.15



Project: PROPOSED
MIDWINTER
DEVELOPMENT

Client: Mr BRENDON BURNETTE

Location: LOT 1702 SEA BREEZE
ESTATE STAGE 1/A
POTTSVILLE

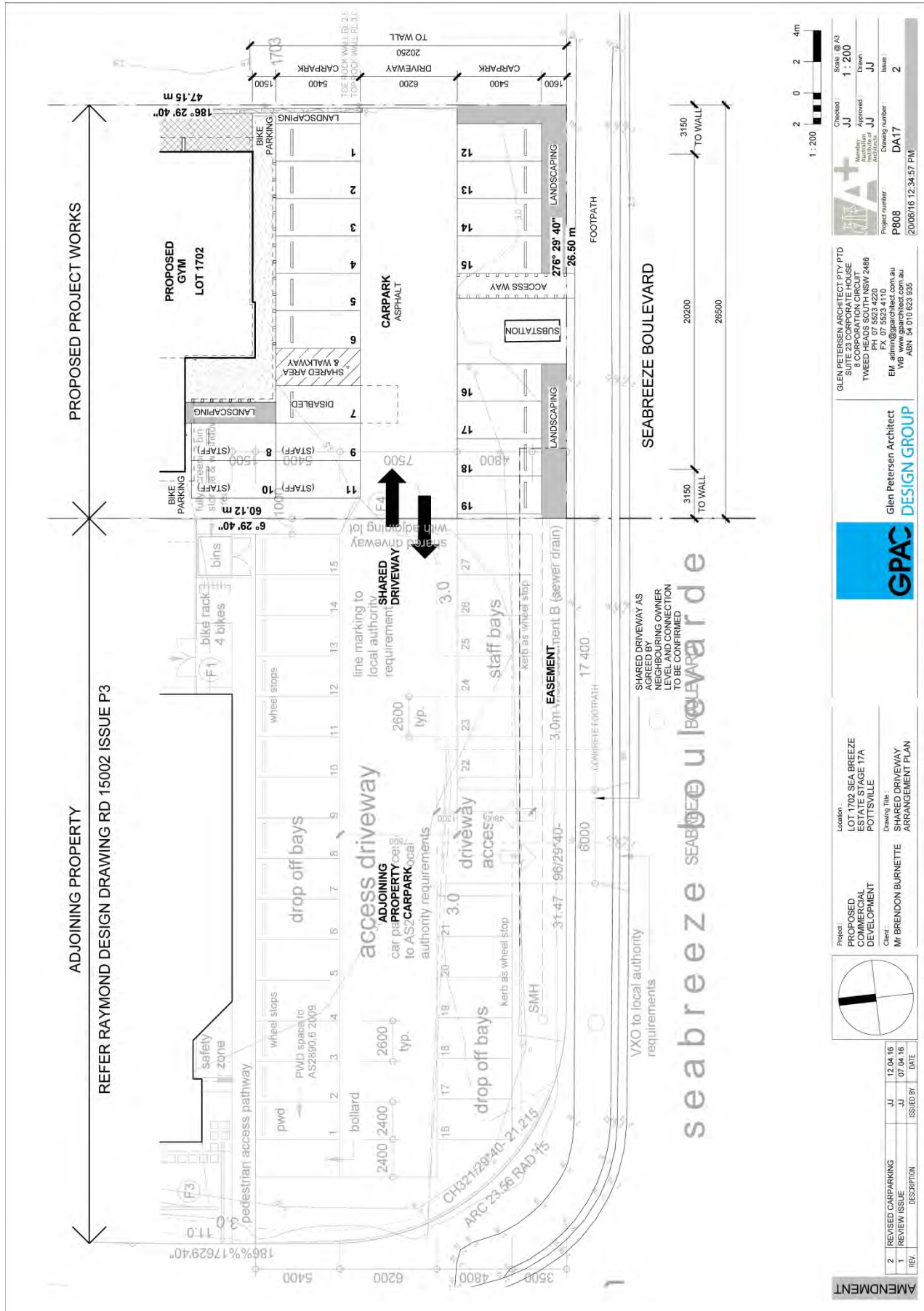
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Glen Petersen Architect
GPAC DESIGN GROUP

GLEN PETERSEN ARCHITECT PTY LTD
SUITE 101/102 CORPORATION CIRCUIT
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ABN 54 010 623 935

Checked: JJ
Member: GP
Project number: P808
Drawing number: DA16
Scale: 1:700
Drawn by: KB
Issue: 5
Date: 20/06/16 12:34:57 PM



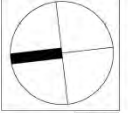
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Checked:	JJ	Scale:	@ 3
Member:	JJ	Drawn:	1:200
Approved:	JJ	Project number:	P808
Author:	JJ	Drawing number:	DA17
		Issue:	2
		Date:	20/06/16 12:34:57 PM

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Project: PROPOSED CARPARK DEVELOPMENT
 Client: MT BRENDON BURNETTE
 Location: LOT 1702 SEA BREEZE POTTSVILLE
 Drawing Title: SHARED DRIVEWAY ARRANGEMENT PLAN



REV	DESCRIPTION	ISSUED BY	DATE
2	REVISED CARPARK	JJ	12.04.16
1	REVIEW ISSUE	JJ	07.04.16

AMENDMENT

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 proposed development relates to a Recreation Facility (Indoor) on appropriately zoned land. The proposed development is considered to be consistent with the aims of the plan. In that the proposal is considered to accord with local planning instruments, encourages local small business and employment, and proposes a responsibly built structure for its use in consideration of its surroundings.

Clause 2.1 – Land use zones

The subject development site is zoned R2 Low Density Residential under the provisions of this clause.

Clause 2.3 - Zone objectives and Land use table

The objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development is considered to be consistent with the objectives of the zone as the provision of a Recreation Facility (Indoor) which provides a service to meet the day to day needs of local residents consistent with the intent of Bullet Point 2 with the provision of a gymnasium and pool for both swimming and hydrotherapy classes.

Clause 2.6 - Subdivision - Consent Requirements

As lodged, the Applicant did not propose any subdivision as part of this application. However the proposal is seeking access via the neighbouring allotment currently subject to DA15/1069 (Child Care Centre) requiring a Right of Carriageway.

An easement will be required to grant a legal point of access through the neighbouring allotment in favour of the development should it be approved.

A standard condition is to be applied to any consent issued for this proposal (DA16/0031) prompting a right of carriageway application to be submitted prior to lodgement or as part of an application for a construction certificate.

Clause 4.3 - Height of Buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

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 is identified as allowing a maximum building height of 9m. The proposed development has a maximum roofline of 7.8m (to the top of the parapet wall).

The proposal is consistent with this Clause.

Clause 4.4 - Floor Space Ratio

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The maximum floor space ratio for the subject site is mapped at 0.8:1.

The proposed site cover is 315.6m² over a land area of 1421m² providing a floor space ratio of 0.22:1 which is consistent with this Clause.

Clause 4.6 - Exceptions to development standards

This clause provides a mechanism by which development standards may be varied under the local planning instrument.

The applicant is not seeking any exceptions to development standards.

Clause 5.4 Controls relating to miscellaneous permissible uses

The Recreation Facility is not listed as a miscellaneous permissible use.

Clause 5.5 Development within the Coastal Zone

The subject site is located on lands to which the NSW Coastal Policy 1997 applies. This proposal is considered compliant with the provisions of the NSW Coastal Policy. The proposed development does not adjoin any foreshore area, accordingly will not obstruct public foreshore access or result in overshadowing of the nearby beach or open space areas.

The proposed development is considered consistent with the aims of Clause 5.5.

Clause 5.9 Preservation of Trees or Vegetation

No vegetation is currently present on site. This Clause is not applicable

Clause 5.10 Heritage Conservation

The site has been created as a result of subdivision and is devoid of any vegetation or structures and has been prepared for development consistent with the intent of the zone. Any heritage matters would have been addressed under the subdivision application.

It is therefore considered that in this regard the proposal is not considered to impact negatively on the provisions of this clause.

Clause 5.11 Bush Fire Hazard reduction

The subject site is not mapped as being bushfire prone land.

Clause 7.1 Acid Sulfate Soils

The subject site demonstrates Class 3 Acid Sulfate Soils (ASS) in accordance with the provisions of this clause. The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The submitted application has been reviewed by Council's Environmental Health Unit and DA Engineering unit. In which it was determined to condition no disturbance of ASS.

In this regard, the proposal is considered to be acceptable.

Clause 7.2 Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Standard conditions of consent have been recommended to ensure earthworks can be managed during construction. In this regard, the proposal is considered to be acceptable having regard to this clause.

Clause 7.3 Flood Planning

The Development Engineering Unit have advised that the subject site has been created as part of a recent subdivision and the site has been filled to comply with flooding requirements. The proposed development will be required to be constructed to a minimum floor level which is to be described in any conditions of consent should the proposal be approved.

As such, it is considered that this development does not contravene the objectives of this clause.

Clause 7.6 Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

This clause outlines that consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

The proposal has been reviewed by Council's Development Engineering Unit with respect to stormwater discharge which has determined no requirements for onsite detention however standard conditioning for Stormwater quality and s68 (s305 of *Water Management Act 2000* for certificate of compliance) application is required with any consent granted.

Clause 7.10 Essential Services

This clause states that development consent must not be granted for development unless the consent authority is satisfied that any of the services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

The allotment has the ability to connect to all essential services including water, sewer, stormwater, electricity and telephone.

State Environmental Planning Policies

State Environmental Planning Policy (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 reserve areas.

(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, given the spatial separation between the site and foreshore reserve.

(d) *The suitability of the development given its type, location and design and its relationship with the surrounding area*

The proposed development is sited and designed in general accord with the relevant Council controls and is therefore considered acceptable with respect to the above considerations. The proposal is unlikely to create an adverse imposition upon the immediate area in terms of size, scale or design, given the desired future development of the area, reflected in the land zoning under the Tweed LEP 2014.

(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 to impact on the amenity of the coastal foreshore, given its separation from the foreshore (being West of Pottsville village). In particular there is considered to be no loss of views or overshadowing associated with this application.

- (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, with the development being spatially separated from the coastal foreshore.

- (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 fauna or their habitats. The subject development site has been previously developed for residential purposes via subdivision and earthworks.

- (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 Act), 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.

- (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 subject site is not located within an area affected by Coastal Erosion and is landward of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by significant 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 site is not identified as having cultural heritage significance on Council's draft cultural heritage mapping.

- (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,*

The site is not considered to contain items of heritage, archaeological or historical significance.

- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities;*

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 proposal is likely to adapt energy efficiency devices to the building. 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. The provisions of SEPP 71 are considered satisfied.

State Environmental Planning Policy (SEPP) 64 Advertising and Signage

Wall Advertisements

This subclause provides that only one wall advertisement may be displayed per building elevation. The proposal is consistent with this subclause as there is one wall advertisement on the western and one on the southern elevation. The devices are not protruding more than 300mm, it does not protrude above the parapet, does not obstruct or extend over a window or opening. The principal business identification sign is not displayed upon the building elevation, as it is affixed to poles architecturally designed to enhance the appeal of the structure and thus meeting this requirement of the SEPP.

Schedule 1 Assessment Criteria

A further assessment was undertaken in relation to the three signs as per schedule 1 of the SEPP. It was determined that the location, design and purpose of the signs were consistent with the intent of the assessment criteria.

The proposed signage is consistent with the overall aims of the SEPP having satisfied the relevant subclauses and schedule of the policy. The signage is capable of being assessed under A4 of Council's DCP which is outlined further in this report.

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

There are no relevant draft Environmental Planning Instruments in relation to this proposal.

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

Tweed Development Control Plan

Section A2 - Site Access and Parking Code

DCP Section A2 provides for the consideration of on-site access and vehicle and bicycle parking, to ensure that sufficient facilities are provided and the road network is not compromised, whilst ensuring consistency with ESD principles. The proposed development is subject to the provisions of DCP Section A2 with respect to site access and parking.

Access

The subject site is currently vacant, the proposal includes a single 6m wide crossover located at 44 Seabreeze Boulevard (neighbouring allotment). The cross over is to be shared by right of carriageway with the neighbouring allotment. This is to be conditioned for right of access as part of s138 application or the Construction Certificate.

Council's standard s138 application condition will be applied to any consent issued with respect to this proposal. Specific inclusion of a 9m flare to kerb width will be included on plan as part of the s138 application for the development and has been conditioned as approved by Council Traffic and Development Engineers. It is considered that the proposal results in an acceptable access provision for the proposed development. There remains no concerns outstanding from Council's Traffic Engineer nor Development Engineer.

Parking

When considering the requirements of Table 2h – Access & Parking Generation – Community Infrastructure, Recreation and Assembly Place Group of DCP Section A2, Child care centres (Item F1) requires the provision of vehicular parking as outlined below.

Item	Development	Public Transport, Bus Stop Seating	Bicycle parking rate (Class)	Staff Parking	Customer Parking
H17	Recreation Facility (Indoor)	1/5 car park	Employees: 1/4 staff (2). Visitors: 1/200m ² GFA (3)	0.5/staff	5/100m ² GFA
H20	Water recreation structures		Employees: 1/2 staff (2). Visitors: 1/25m ² pool surface (3)		1/60m ² of water surface

Table 1. Car Parking Requirements for Recreation Facilities LGA-wide

The proposal comprises 315.6m² GFA plus 120m² pool and 3 staff. The development is proposing to provide 19 off-street car parking spaces, including 1 space for person with disability. The following car parking rates are required for the proposed development:

Use	Rate	Number	Parking required
Recreation Facility (Indoor)	0.5 space per staff	3 Staff	1.5
	5/100m ² GFA	Customer Parking	15
Water recreation structures	1/60m ² of water surface @120m ²	Customer Parking	2
Total Required			18.5 (19 provided)

Table 2. Specific Car Parking Requirements

As per the above the application is compliant with Tweed Shire Council DCP Section A2 providing 19 car parking spaces, two spaces more than what is required.

Section A4 - Advertising Signs Code

The proposal includes three signs. The principal business identification sign is proposed to be affixed to two poles forming part of the façade of the building. No lighting is proposed. The business identification sign totals 8.76m² (4.5m x 1.95m). Two smaller wall signs are also proposed on the southern and western elevations affixed to the parapet wall, each of the secondary signs are totalling 3.2m² in area (2m x 1.6m).

A4.2.3 Maximum Number of Signs per Business

This subclause provides that the maximum number of signs a business may utilise is 5. The proposal seeks 3, which is consistent with this requirement.

A4.2.4 Maximum Area of Signs per Business

This subclause outlines the formula to calculate the maximum area in which signage may be utilised upon a structure in relation to any business. In terms of the proposed structure the maximum area in which signs could be utilised equates to 16.5m² in area. The three combined signs total 11.96m² in area which is less than that prescribed. The signage is consistent with this subclause.

A4.3.4 Residential Areas

The intent of signage within residential areas is as follows:

- To preserve the residential amenity of the locality.
- To minimise the visual impact of signs.
- To ensure that service/shopping uses in residential areas do not interfere with the residential amenity.

In consideration that the proposed advertising devices are not backlit and are not illuminated at night and given the above consistencies it is considered the signage for the proposed development is compatible with the intent of signage within residential areas.

A4.4 Types of Signs

The advertising devices are comprised of a single business identification sign, affixed to architecturally designed poles, the secondary signs are known as wall signs which are also located in compliant locations affixed to the building in accordance with this subclause of the Advertising Signs Code.

It is therefore considered the proposed signage for the development is consistent with this section of the DCP.

Section A15 – Waste Minimisation and Management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

The application has been reviewed with respect to waste management by Council's Waste Management Unit who have advised that the centre would be required to undertake a private collection arrangement with a waste service provider with respect to the proposal.

It is considered appropriate that a standard condition be attached to any consent in the event of approval. As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this section of the DCP.

Section B15 SeaBreeze Estate

B15.3.7 Noise and Amenity Impact

To ensure that future development, particularly residential development, is designed to minimise noise and amenity impact to future residents.

This objective was designed with the intent of providing amenity and reverse amenity provisions for the construction of dwelling houses immediately adjacent Mooball-Pottsville Road. Due to the number of negative submissions received in relation to the proposed use, the applicant was requested as part of a Request for Further Information to undertake an acoustic assessment of the area and the potential the proposed use may have upon the amenity of the surrounding locality.

The acoustic report provided many recommendations involving improvements to the design of the building comprising internal wall treatments to absorb any noise, amending the windows of the building, provision of an acoustic barrier wall along the eastern boundary to mitigate any potential noise impacts to future residents east of the proposed development, locate plant equipment such as air-conditioning condensers at the northern or western façade of the building, as well as construction of driveway and car parking areas to be finished with surface coatings which prevent tyre squeal.

The recommendations were adopted by the applicant with further changes to the plans of development demonstrating accordance with acoustic recommendations for the building design which was submitted as part of the response to the Request for Further Information which included the acoustic report as well.

B15.3.9 Streetscape and Landscaping

Land use and landscaping of land parallel and immediately adjacent to Tom Merchant Drive must reflect its status as the Northern entrance to Seabreeze and is to include a landscape treatment of quality consistent with the existing Southern entrances.

A landscaping plan was not submitted with the application. A standard condition is to be included for any consent granted outlining a landscaping plan is to be provided as part of the application for construction certificate and is to be revised in accordance with the Council guideline "Native Flora for Planting at Koala Beach" with minimum 80% native species.

B15.3.12 Non-Residential Development

To facilitate provision of appropriate community facilities and other non-residential development to meet the neighbourhood service needs of this housing estate.

The subject site is situated within Stage 2 of the Seabreeze estate. As the subject site is central to the Estate and listed as a Landmark location not to be used for a single dwelling house, the proposal for Recreation Centre is consistent with the overall objective of this subclause as it offers a small scale gymnasium, swimming lessons and hydrotherapy classes for residents of the estate.

Section B21 Pottsville Locality Based Development Code

It is considered that the proposal is consistent with DCP Section B21 which are still valid for non-residential development today, in particular *Part 4.3 Development Control and Implementation Build Form Controls* being the specific requirements for the Seabreeze Estate.

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

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

The subject land is within the coastal policy area affected by the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*. The proposed development is consistent with the objectives, strategies and actions of the policy.

(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 located away from the Tweed Coastline and therefore the provisions of this plan are not considered to be impacted by the proposed development.

Coastal Zone Management Plan for the Tweed Coast Estuaries 2013

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

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

As the subject site is not located in proximity to either the Cobaki or Terranorra Broadwater to which this plan relates, this plan is not considered relevant to the proposed development.

The subject site does not have frontage to the coastal foreshore reserve and therefore will not restrict public access to the foreshore. The development is consistent with the zone objectives of TLEP 2014, the requirements of relevant Council DCPs and policies. It is therefore considered that the proposal satisfies the matters for consideration under SEPP 71 and the local management plans, in which it relates to the *Coastal Protection Act 1979*.

(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

Compatibility with Adjoining Land Uses

The proposal provides a service for the surrounding community providing a gymnasium, swimming lessons and hydrotherapy classes at a local, small scale capacity for local residents. The estate also includes a sports field and the use in conjunction with the sports field provides residents with a local choice in leading a healthy and active lifestyle.

Acoustic Amenity

The submitted acoustic report has been reviewed by Council's Environmental Health unit who advise that the development should be constructed and operate in accordance with the recommendations of this report.

(c) Suitability of the site for the development

Context and Setting

The potential for this site is advantageous as the location provides shorter travel distances offering a walkable or cycling catchment to utilise the centre and promote residents to lead an active lifestyle.

Access, Transport and Traffic

The proposal gains access via Seabreeze Boulevard which is a collector ranked carriageway which is an appropriately ranked road for the proposed use. The proposal also meets the requirements for onsite carparking and is consistent with Council Policy *Driveway Access to Property Design Specification v1.4*.

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

Public Submissions Comment

Summary of Submissions

Response

Car Parking Concerns

The proposed development provides car parking rates consistent with council policy and the Australian Standards and includes

Summary of Submissions	Response
	disabled parking and bicycle spaces. The proposed development has been conditioned to comply with the rate of 19 car parks consistent with the intent of Council policy.
Additional Traffic Load on the Estate	It has been determined by the Traffic Impact Assessment report that the additional load on the council network is negligible. The development is also recommended to be operated as per the recommendations of this report.
Concern the use is not permissible within the zone	There was confusion between the proposed use as Recreation Facility and its consistency with the intent of the Zone for Residential purposes. The proposed definition is a permissible use within the R2 zone subject to consent.
Public Notification not in accordance with A11 of DCP	The proposal was publically notified in accordance with DCP Section A11 for development of this use type within a Residential Zone. The requirements are for this use to be notified by letter to adjoining owners and affected owners and also advertised in the newspaper/Tweed Link as well as providing a sign on the land. Public Notification was correctly undertaken in accordance with the DCP.
Hours of Operation	The proposal described that the Hours of Operation would be between 5am and 10pm. The hours of operation have been supported by the Environmental Health team and is conditioned for any consent granted.
Landmark Location	The Seabreeze DCP intention to nominate this site for a landmark location is noted. Since the DCP was drafted multiple DAs have been assessed over various parts of the estate that have shaped the character of the area. The proposed Recreation Facility is now entirely consistent with that character and satisfies the zone objectives by providing local services to the residents of the area.

Summary of Submissions	Response
Benefit of gymnasium and water classes complements existing sports grounds	A number of positive submissions stated that Pottsville had a large number of residents that would benefit from having local access to a facility such as this.
Elderly people would utilise hydrotherapy classes	A submission received by a local care worker provided a positive submission stating that “elderly people would love it if they had a hydrotherapy pool in Pottsville” providing that they currently had to incur costs to travel to Murwillumbah to attend classes.

(e) Public interest

The proposed development is in the public interest as it is suitable for the subject site and will not detrimentally impact upon the locality.

OPTIONS:

1. Approve the application in accordance with the recommendations within this report; or
2. Refuse the application and provide reasons.

The Officers recommend Option 1.

CONCLUSION:

The applicant has provided outcomes which adequately address submitter concerns demonstrating an amenable outcome for its future neighbours. The proposal for a Recreation Facility is consistent with the intent of the Zone providing a service within the estate which is consistent with the intent of the TLEP2014 and DCP2008.

The application is recommended for approval subject to the imposition of relevant conditions as outlined in this report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

The applicant has the right to appeal any Council determination in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 5 [PR-PC] Development Application DA12/0170.13 for an Amendment to Development Consent DA12/0170 for Alterations and Additions to Motel (Staged) at Lot 100 DP 1208306 Nos. 19-25 Cypress Crescent, Cabarita Beach, Lot 1 Sec 4 DP 29748, Lot 2 Sec 4 DP 29748 No. 26-28 Tweed Coast Road, Cabarita Beach

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:

This Modification Application was called up for Council determination by Councillors Milne and Bagnall.

The proposed modification lodged 19 May 2016 seeks to amend the existing approval DA12/0170.12, in particular, the Stage Five ancillary building. The Stage 5 building is currently approved for a Caretaker's Dwelling, storeroom, common amenities and a multipurpose space.

The proposed modification seeks to amend the external and internal design of the Stage 5 building for better use by motel guests and more appropriate as an ancillary use of the building in support of the principal use of the site for Tourism purposes.

As currently approved, the Stage 5 building is primarily intended to provide a Caretakers dwelling and multipurpose area among other uses no longer applicable for the development. The modification seeks to utilise this building for a Manager's office, Day Spa, Staff room and Storeroom. The modification also seeks to reflect the 1950s design of the motel building with the addition of archway facades consistent with the principal motel building. It is important to note that the proposed Day Spa component is exclusively for the use of hotel guests and will not open to the general public. It is considered that by providing a Day Spa for the guests, the modification offers a refined intent for stage 5 of the boutique motel. The modification is an improvement on the existing approved building for the purposes of Tourist Accommodation in which the proposal can be supported as substantially the same development for the refined purpose which provides an ancillary service for guests of the motel.

The Building, Environmental Health and Development Assessment teams have provided support for the modification subject to conditions including an updated acoustic report prior to construction of the Stage 5 building.

RECOMMENDATION:

That Development Application DA12/0170.13 for an amendment to Development Consent DA12/0170 for alterations and additions to motel (staged) at Lot 100 DP 1208306 Nos. 19-25 Cypress Crescent, Cabarita Beach, Lot 1 Sec 4 DP 29748, Lot 2 Sec 4 DP 29748 No. 26-28 Tweed Coast Road, Cabarita Beach be approved subject to the modification or addition of the following conditions:

1. Delete Condition 1C and replace with Condition 1D as follows:

1D The development shall be carried out in five (5) stages as follows:

Stage 1:

- Demolition Work, Earthworks and Extension of walls to third floor roof.

Stage 2:

- Construction of new covered entry including common amenities;
- Conversion of existing caretakers dwelling, laundry, reception and restaurant service kitchen area to new circulation space, reception, reception office, restaurant dining space, new kitchen, chef office, dry store, cold store, freezer, lift and laundry;
- Renovation of rooms 1 through 5 including room enlargement and new individual ground level balcony areas;
- Conversion of room 6 and adjoining storage space into new kitchen store and communal lounge room;
- Renovation of existing south apartment and existing rooms 7 through 12 (identified as rooms 6 through 11 on proposed plans) including room and balcony enlargement;
- Conversion of rooms 14 and 15 into new north apartment;
- Renovation of existing external staircase access upgraded to comply with the Building Code of Australia (BCA);
- Construction of outdoor food and beverage service area;
- Construction of lounge, bar and outdoor bar area;
- Construction of external bin storage area, equipment store and new at grade car parking;
- Partial site landscaping;
- Renovation of existing stair access to foreshore reserve;
- Retention and renovation of existing swimming pool; and
- New section of timber pool fencing to eastern boundary.

Stage 3:

- Final construction of third level including new motel rooms 12 through 19;

- Extension of existing external stairs to provide access to third level; and
- Partial site landscaping.

Stage 4:

- Construction of car park room and covered pedestrian entry.

Stage 5:

- Construction of new day spa, storeroom, manager's office and staff room.

2. Delete Condition 1.1B and replace with Condition 1.1C as follows:

1.1C. The development shall be completed in accordance with the Statement of Environmental Effects and Plans identified as:

- Site Plan, S96 101 Revision B, dated 28/11/2014;
- Ground Level Option 1, S96 101 Revision B, dated 28/11/2014;
- Level One, S96 102, Revision B, dated 28/11/2014;
- Level Two, S96 103, Revision B, dated 28/11/2014;
- Roof, S96 104, Revision B, dated 28/11/2014;
- Section AA, S96 200, Revision B, dated 28/11/2014;
- North and South Elevation, S96 300, Revision B, dated 28/11/2014;
- East and West Elevation, S96 310, Revision B, dated 28/11/2014.

For the Stage 5 building:

- Site Plan with reference DA100 dated 20/04/2016.
- Ground Floor Plan Proposed with reference DA110, nd.
- First Floor Plan Proposed with reference DA120 dated 20/04/2016.
- North Elevations Proposed with reference DA200 dated 20/04/2016.
- East and West Elevations Proposed with reference DA210 dated 20/04/2016.
- South Elevations Proposed with reference DA220 dated 20/04/2016.

All prepared by Virginia Kerridge Architect, except where varied by the conditions of this consent.

3. Delete condition 99B and replace with Condition 99C as follows:

99C. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council for each of the remaining applicable stages to verify that the necessary requirements for

the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.

[PCC0265]

4. **New Condition 38.1 is to be inserted under heading PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE as follows:**

38.1. An updated noise management plan shall be prepared and submitted to the satisfaction of the General Manager or delegate detailing the type of plant and equipment proposed, proposed location of all plant and equipment, and proposed noise mitigation measures to ensure that the emission of intrusive noise from the operation of the proposed Day Spa is prevented. Such management plan shall be submitted and approved prior to the issue of the construction certificate.

[PCCNS01]

5. **New Conditions 89.1-89.4 are to be inserted under heading DURING CONSTRUCTION as follows:**

89.1. 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]

89.2. The premises shall be constructed in accordance with the provisions of Part 3 of Schedule 2, Standards for Beauty Salons, under the Local Government (General) Regulation 2005.

[DUR1665]

89.3. Swimming Pools (Building)

(a) The plunge pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.3 - 2010 & AS 1926.2-2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.

(b) The plunge pool is to have suitable means for the drainage and disposal of overflow water.

(c) The plunge pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.

(d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

(e) Once your plunge pool is complete please register it at www.swimmingpoolregister.nsw.gov.au.

[DUR2075]

89.4. Backwash from the plunge pool and the existing swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

6. New Conditions 109.1-109.3 are to be inserted under heading PRIOR TO ISSUE OF OCCUPATION CERTIFICATE as follows:

109.1. Upon completion of the plunge pool the builder is to submit to the Principal Certifying Authority a certificate stating that the “Water Recirculation System” has been installed in accordance with AS 1926.3-2010.

[POC0905]

109.2. Prior to occupation the applicant or business operator is to be registered in Council's Public Swimming Pool Register and pay the appropriate fee under Council's schedule of fees and charges.

[POC1095]

109.3. Prior to commencement of operations the applicant or business operator is to be registered on Council's Public Health Register, and pay the appropriate fee under Council's schedule of fees and charges

[POCNS01]

7. New Conditions 120.1-120.8 are to be inserted under heading USE as follows:

120.1. Hours of operation of the Day Spa business are restricted to the following hours:

*** 10am to 6pm - Mondays to Sundays**

*** All deliveries and pickups relating to the business are to occur within the approved hours**

[USE0185]

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

[USE0965]

120.3. Skin penetration activities at the premises shall be conducted in accordance with the Public Health Act 2010 and Part 4 of the Public Health Regulation 2012.

[USE0975]

120.4. The public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012.

[USE0985]

120.5. The premises must be provided with facilities that are adequate for the purpose of keeping towels, appliances, utensils and the like clean.

[USE1005]

120.6. Suitable receptacles with close fitting lids must be provided and maintained in a clean and serviceable condition for soiled towels and trade wastes.

[USE1015]

120.7. A sharps container shall be provided for the storage of used disposable needles in any skin penetration process. The sharps container shall be collected by an authorised medical waste collection service to the satisfaction of Council's General Manager or his delegate.

[USE1025]

120.8. The ancillary use of the Day Spa is exclusively for guests of the motel only and will not be open to the general public.

[USENS01]

REPORT:

Applicant: Western Trust Partnership
Owner: Flaskas Bickle Pty Ltd & Wadley Bickle Pty Ltd
Location: Lot 100 DP 1208306 Nos. 19-25 Cypress Crescent, Cabarita Beach, Lot 1 Sec 4 DP 29748, Lot 2 Sec 4 DP 29748 No. 26-28 Tweed Coast Road, Cabarita Beach
Zoning: R2 - Low Density Residential
Cost: \$0 (unknown)

Background:

DA12/0170

On 1 May 2012 Tweed Shire Council received Development Application DA12/0170 seeking approval for a number of alterations and additions to the existing Hideaway Motel at 19-25 Cypress Crescent, Cabarita Beach. DA12/0170 originally proposed a number of ancillary facilities for guests of the motel such as new 'at grade' parking facilities, restaurant, lounge room, outdoor food and beverage service area and swimming pool to be constructed in three stages.

A number of submissions were received from neighbouring residents raising concerns in relation to overlooking, overshadowing of the foreshore and residential properties, noise and disturbance in relation to the proposed modifications to the existing land use.

Council at the meeting of 14 February 2013, resolved to approve DA12/0170 for 'Alterations and Additions to Motel'.

DA12/0170.01

Council on 11 July 2013 received a Section 96 (s96) application DA12/0170.01 seeking to modify the staging of contribution payments in line with the staging as approved within DA12/0170, and modifying the conditions to shift the payment of contributions from prior to issue of a construction certificate, to prior to the issue of the occupation certificate in line with Council's policy. The application was approved under delegated authority on 12 September 2013.

DA12/0170.04

Council on 12 September 2013 received a s96 application DA12/0170.04 seeking a number of internal and external modifications to the building which generated increased contribution charges on the basis of the intensification of use of the building.

It also proposed modification to the first dot-point of Condition 113 to extend approved hours of operation of the under roof dining areas to 7am - 12 midnight seven days a week and public holidays (from 7am to 10pm Sunday to Thursday and 7am to midnight Fridays, Saturdays and Public Holidays).

The Section 96 application was generally supported with the exception of the requested changes to the first dot-point of Condition 113. As such, Council Officers recommended no change to the hours of operation in the first dot-point.

The applicant did not propose any modification to the approved hours of operation for outdoor facilities in the second dot-point of Condition 113 (7am to 10pm seven days a week). As such, no changes to the approved hours of operation in the second dot-point were required to be considered or recommended by Council Officers.

Council approved DA12/0170.04 to this effect at the Planning Committee Meeting of 6 March 2014.

However, following a successful Notice of Rescission and an unsuccessful Notice of Motion at the Council Meeting of 20 March 2014 to extend operational hours in the first dot-point of Condition 113 in line with the applicant's proposal (7am - 12 midnight seven days a week), a Notice of Motion was carried to amend Condition 113 as follows:

113A Hours of operation of the business are restricted to the following:

- *Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 10pm Sunday to Wednesday and 7am to 12 midnight Thursday, Friday, Saturday, and gazetted NSW Public Holidays, and any Sunday immediately before gazetted NSW Public Holidays that occur on the Monday.*
- *Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday. This shall be for a trial basis for a period of twelve (12) months from the commencement of use and a report be brought back to Council at the conclusion of the trial period.*

It was noted that the first dot-point of Condition 113A extended hours of operation on Thursdays, and Sundays that occur prior to a public holiday falling on a Monday, from 10pm to midnight.

The amended condition also imposed a twelve month 'trial period' from the commencement of use at the second dot-point, modification of which was not proposed by the applicant nor required to be considered by Council Officers in their assessment of the Section 96 application.

DA12/0170.07

Council on 15 May 2014 received a s96 application DA12/0170.07 seeking to amend an error in the wording of Condition No. 93A clarifying the requirement for payment of s94 contributions prior to the issue of an occupation certificate in line with Council's amended policy. The application was approved under delegated authority on 29 May 2014.

DA12/0170.10

Council on 3 November 2014 received a s96 application DA12/0170.10 seeking a number of internal and external design modifications and staging amendments which resulted in recalculation of contribution charges. The application was approved under delegated authority on 29/12/2014.

DA12/0170.11

Council on 8 December 2014 received a s96 application DA12/0170.11 which sought the minor addition of an external terrace to an apartment unit and amendment of Condition 113A to remove a 12 month 'trial period' for the use of outdoor facilities. Legal advice accompanied the modification application to support removal of the trial period.

The s96 application was presented to Council for determination as the 'trial period' restriction in Condition 113A was imposed by way of a Notice of Motion in association with DA12/0170.04. The application for DA12/0170.11 was approved by Council on 3 February 2015.

DA12/0170.12

Council on 20 August 2015 received a s96 application DA12/0170.12 seeking to amend Condition 84A to include a reference to an additional Noise Management Plan review (dated

11 August 2015) which supports a concurrent proposed operational hour modification to Condition 113 which would result in trading of the enclosed dining/lounge and outdoor bar areas from 7am to midnight, 7 days per week (currently 7am to 10pm Sunday to Wednesday and 7am to midnight Thursday, Friday, Saturday and gazetted NSW Public Holidays and any Sunday immediately before a gazetted NSW Public Holiday that occurs on a Monday). Outdoor facilities, including the pool and BBQ would remain as is, being 7am to 10pm, 7 days per week.

The Noise Management Plan was produced after 2-3 months of operation and it was recommended that the proposed change in hours of operation only be supported on a trial basis for 6 months to gauge the developments impact over a busy summer period.

The application was reported to Council's meeting of 3 December 2015 as the application was called up by Councillors Bagnall and Milne.

The application was approved at this meeting.

PROPOSAL

The proposed modification lodged 19 May 2016 seeks to amend the existing approval DA12/0170.12, particularly the Stage 5 ancillary building, from:

- Caretakers dwelling, storeroom, common amenities and multipurpose space
- To:
- Day spa for motel guests, storeroom, manager's office and staff room.

The proposed modification seeks to amend the external and internal design of the Stage 5 building for an improved use by motel guests and to reflect the 1950s design of the motel building. The proposal includes an additional floor to provide for the three treatment rooms, lounge area, storeroom and staff kitchen area. On the ground floor is the manager's office, staff room, a treatment room, steam room and internal plunge pool as well as female/male change rooms.

As currently approved, the Stage 5 building is primarily intended to provide a caretaker's dwelling, multipurpose area and common amenities among other uses considered no longer applicable for the five star motel development. It is important to note that the proposed Day Spa is exclusively for the use of hotel guests and will not open to the general public. It is considered that by providing a Day Spa for the guests, the modification offers a refined intent for the final stage (5) of the boutique motel.

DEVELOPMENT/ELEVATION PLANS:



<p>NOTES:</p> <p>THIS DRAWING IS NOT FOR CONSTRUCTION PURPOSES AND THE ARCHITECT AND/OR ENGINEER DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.</p>	<p>DATE: 20 April, 2019</p>	<p>PROJECT: SECTION 96 21 CYPRESS CRESCENT, CABARITA BEACH, 2486, NSW</p>	<p>SCALE: 1:500 H A3</p>
	<p>DATE: 20 April, 2019</p>	<p>PROJECT: SECTION 96 21 CYPRESS CRESCENT, CABARITA BEACH, 2486, NSW</p>	<p>SCALE: 1:500 H A3</p>
<p>DATE: 20 April, 2019</p>	<p>PROJECT: SECTION 96 21 CYPRESS CRESCENT, CABARITA BEACH, 2486, NSW</p>	<p>SCALE: 1:500 H A3</p>	<p>DA-100</p>
<p>DATE: 20 April, 2019</p>	<p>PROJECT: SECTION 96 21 CYPRESS CRESCENT, CABARITA BEACH, 2486, NSW</p>	<p>SCALE: 1:500 H A3</p>	<p>DA-100</p>



ID	BOTANICAL NAME
TREES AND TALL SHRUBS	
BI	Banksia integrifolia
CUP	Carpobrotus anacardiolobus
RF	Randia fitzalanii
STE	Stenocarpus sinuatus
WF	Westringia fruticosa
SHRUBS AND GROUND COVERS	
ED	Eremophila debilis
KB	Kunzea bracteolata
KP	Kennedia prostrata
VH	Viola hederacea

NOTES:
 - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPING THE BUDGET DESIGN FRAME ONLY.
 - THIS DRAWING IS NOT FOR CONSTRUCTION OR CONTROL APPLICATION.

VIRGINIA KERRIDGE ARCHITECT
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 INFO@VK.COM.AU WWW.VK.COM.AU ASN 12 083 17 159

DATE: 15/08/2016
 DRAWN BY: [Name]
 CHECKED BY: [Name]

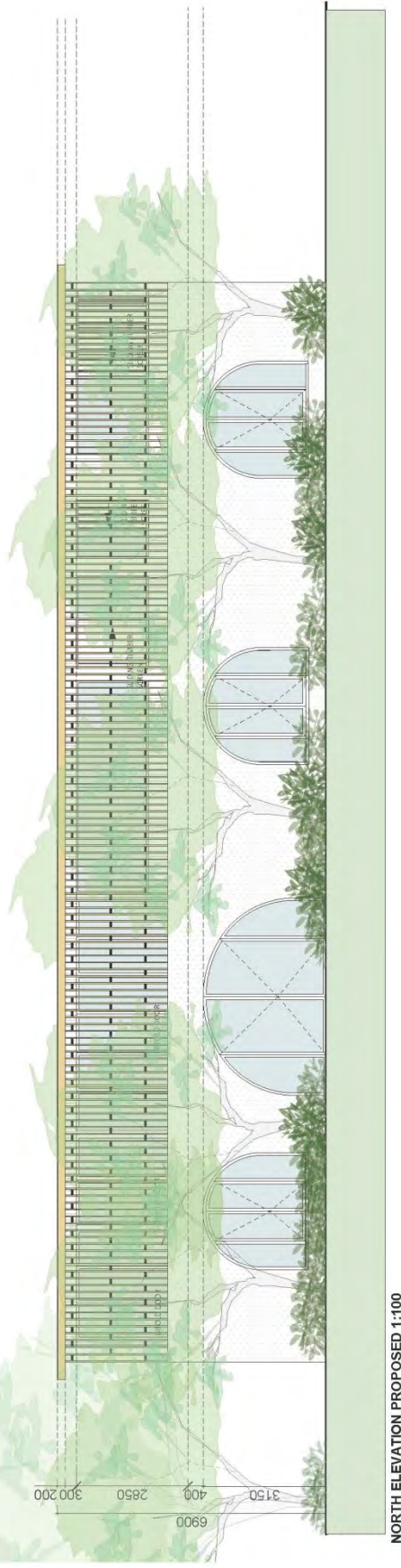
PROJECT:
 21 CYPRESS CRESCENT, CABARITA BEACH,
 2488, NSW

SCALE: 1:100 @ A3
 DRAWING NO: DA110

DESCRIPTION: GROUND FLOOR PLAN PROPOSED



NORTH ELEVATION BEHIND SCREEN 1:100

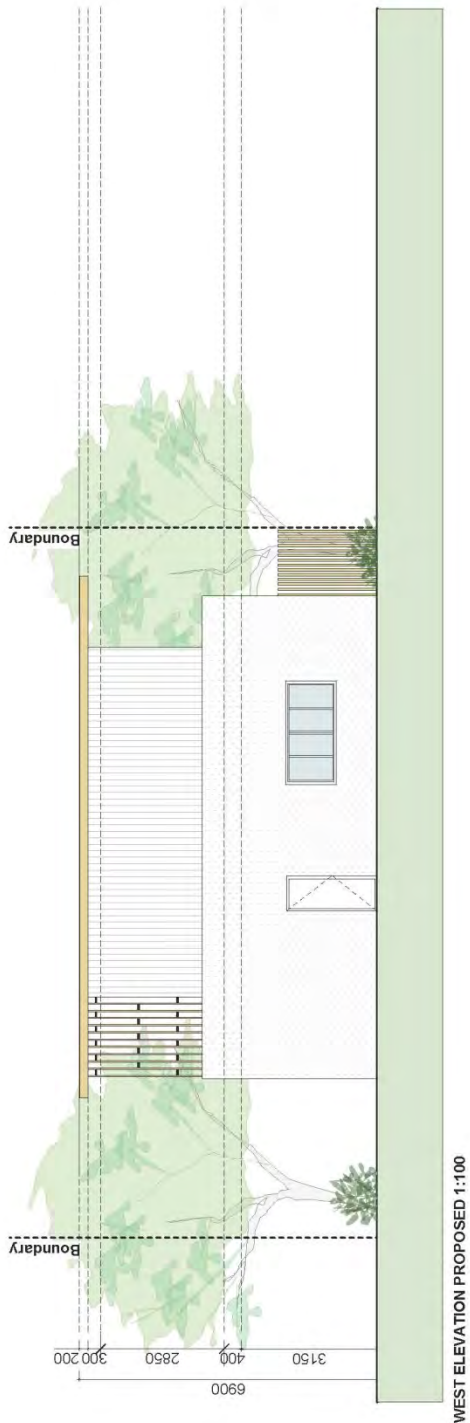
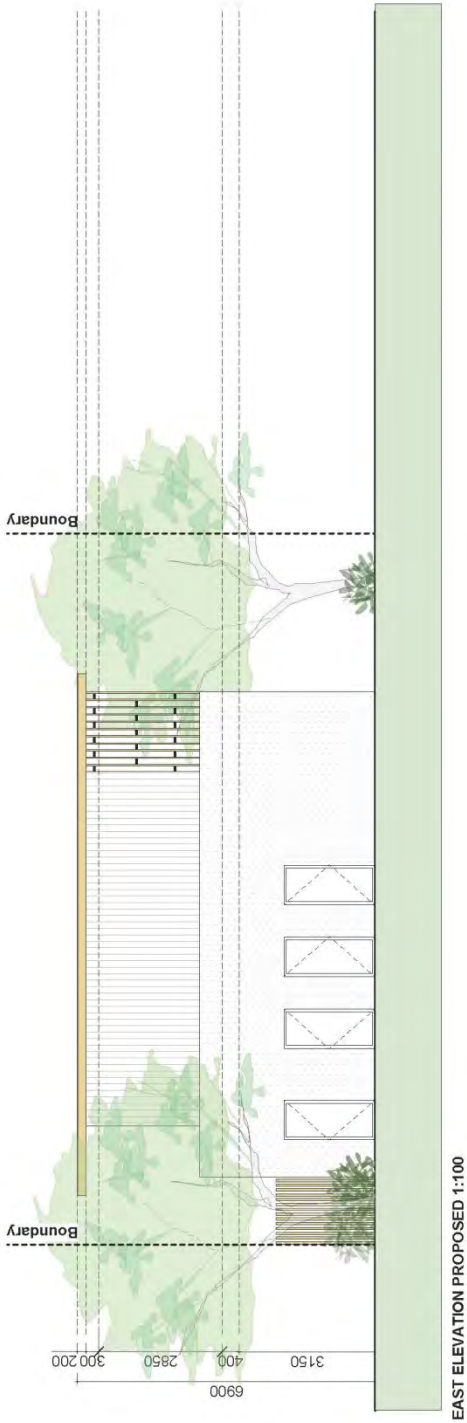


NORTH ELEVATION PROPOSED 1:100

NOTES:
 - THIS DRAWING IS FOR INFORMATION ONLY AND SHOULD NOT BE USED FOR CONSTRUCTION OR OBTAINING PERMITS.
 - THIS DRAWING IS NOT FOR CONSTRUCTION OR OBTAINING PERMITS.

VIRGINIA KERRIDGE ARCHITECT
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DATE	20 APR 2016
	DATE
SCALE	1:100 @ A3
	SCALE
SECTION OF 21 CYPRESS CREST, GARTISTOWN, 2888 NSW	
NORTH ELEVATION PROPOSED	
DA 200	

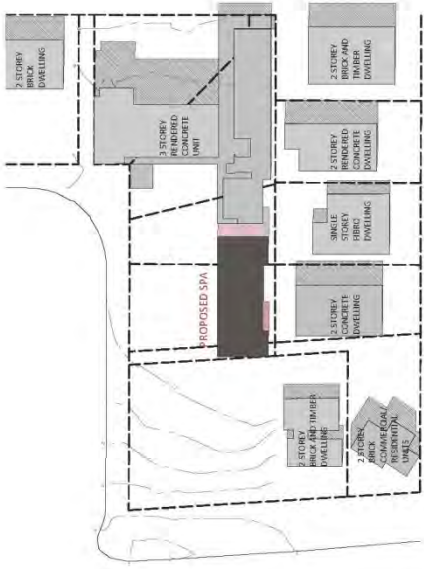


<p>NOTES:</p> <p>- THIS DRAWING IS FOR THE PURPOSES OF DEVELOPING THE SITE FOR DESIGN PHASE ONLY.</p> <p>- THIS DRAWING IS NOT FOR CONSTRUCTION OR CONVEYANCE.</p>		<p>DATE: 20 Apr. 2016</p>	<p>PROJECT: SECTION 88 21 CYPRESS CRESCENT, CABARITA BEACH, 2488, NSW</p>	<p>DATE: 11/09/15</p>	<p>PROJECT NO: DA 210</p>
		<p>SCALE: 1:100</p>	<p>DESCRIPTION: EAST AND WEST ELEVATIONS PROPOSED</p>	<p>DATE: 11/09/15</p>	<p>PROJECT NO: DA 210</p>
<p>VIRGINIA KERRIDGE ARCHITECT B 03 / 59 STREAT BUCKINGHAM APT 101/102 SYDNEY NSW 2016 P 02 9559 3487 F 02 9559 8522 E v.k.02@vka.com.au INFO@VKA.COM.AU WWW.VKA.COM.AU PHN 12 053 17 155</p>					



SOUTHERN FACADE 1:100

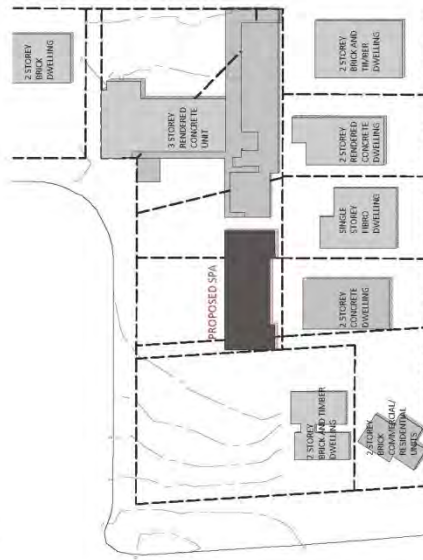
<p>NOTES:</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSES OF DEVELOPING THE SITE AND DESIGN FRAME ONLY. - THIS DRAWING IS NOT FOR CONSTRUCTION OR CONSULTATION. 		<p>DATE: 20 APR 2016</p>	<p>SCALE: 1:100 @ A3</p>	<p>PROJECT NO: DA220</p>
		<p>PROJECT:</p> <p>SECTION 88 SUBSTANTIAL BENCH, 21 CYPRESS CREST, 2488 NSW</p>	<p>DATE:</p>	<p>SCALE:</p>
<p>VIRGINIA KERRIDGE ARCHITECT</p> <p>9 03 758 31741 6 UCKINGHAM STREET TULLAHERRIN NSW 2016 P.O. BOX 9689 34487 P.H. 02 9699 8527 FAX 02 9699 4826 INFO@VK.AU WWW.VK.AU ABN 12 083 17 159</p>				



3 9am 22nd December



1 12pm 22nd December



2 3pm 22nd December

KEY

- EXISTING SHADOWS
- ADDITIONAL SHADOWS
- EXISTING BUILDINGS
- NEW BUILDING

<p>NOTES:</p> <p>THIS DRAWING IS NOT A RECORD OF THE EXISTING 360 DEG SHADOW (HATCHING).</p> <p>THIS DRAWING IS NOT FOR CONSTRUCTION OR CONSULTATION.</p>	<p>TRUE NORTH</p>	<p>DATE: 20/04/2016</p> <p>SCALE: 1:1000 @ A3</p>	<p>PROJECT: SECTION OF ROBERTA BEACH, 2488 NSW</p> <p>CLIENT: SHADOW DIAGRAMS - 22nd DECEMBER</p> <p>DATE: 20 APR. 2016</p> <p>SCALE: 1:1000 @ A3</p> <p>PROJECT CODE: DA SD1</p>
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3pm 21st June

3



9am 21st June

1



12pm 21st June

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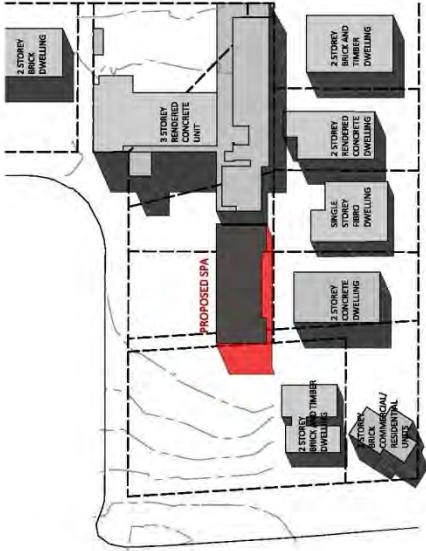


<p>VIRGINIA KERRIDGE ARCHITECT 8 03 / 59 Great Buckleisham Street, Redfern NSW 2016 ph 02 9667 3487 fa 02 9668 8827 fax 02 9669 4828 info@vka.com.au www.vk.com.au abn 15 085 17 159</p>		<p>DATE: 20 Apr. 2016 SCALE: 1:1000 (Rt. A3) DRAWING NO: DA SD2</p>	
<p>PROJECT: SECTION 94 BARBARITA BEACH, 21 CYPRESS CROSSLANDS, 2488 NSW</p>		<p>DATE: 20 Apr. 2016 SCALE: 1:1000 (Rt. A3) DRAWING NO: DA SD2</p>	
<p>REVISIONS:</p>		<p>DATE: 20 Apr. 2016 SCALE: 1:1000 (Rt. A3) DRAWING NO: DA SD2</p>	
<p>NOTES:</p>		<p>SECTION 94 BARBARITA BEACH, 21 CYPRESS CROSSLANDS, 2488 NSW</p>	
<p>THIS DRAWING IS FOR THE PURPOSES OF THE LOCAL GOVERNMENT DEVELOPMENT APPLICATION. THIS DRAWING IS NOT FOR CONSTRUCTION OR CONTRACT DOCUMENTATION.</p>		<p>SECTION 94 BARBARITA BEACH, 21 CYPRESS CROSSLANDS, 2488 NSW</p>	



3pm EQUINOX 20 September & 22 March

3



9am EQUINOX 20 September & 22 March

1



12pm EQUINOX 20 September & 22 March

2



<p>VIRGINIA KERRIDGE ARCHITECT 4/3/59 Great Buckingham Street, Sydney NSW 2016 PH: 02 9888 3487 / PH: 02 9888 8527 / FAX: 02 8609 4620 INFO@VKAC.COM.AU / WWW.VKAC.COM.AU / 401 12 053 17 159</p>	<p>DATE: 20 APR, 2016</p>		<p>SCALE: 1:1000 RL AS</p>
	<p>PROJECT: SECTION 88 21 CYPRESS CRESCENT, CABARITA BEACH, 2486, NSW</p>	<p>DATE: 20 APR, 2016</p>	<p>SCALE: 1:1000 RL AS</p>
<p>NOTES: - THIS DRAWING IS FOR THE PURPOSES OF DEVELOPING THE INITIAL DESIGN FRAME ONLY. - THIS DRAWING IS NOT FOR CONSTRUCTION OR LEGAL USES.</p>			

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

The Section 96 Modification only requests the consideration of the proposed modifications to the previously approved development application. Therefore this s96 Modification only requests reconsideration of the policies relevant to the proposed amendments.

CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96 of the Act specifies that:

“(1A) Modifications involving minimal environmental impact

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

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

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.”*

Accordingly the following report addresses these heads of consideration.

79C (1) Assessment – Environmental Planning and Assessment Act 1979

To determine if the s96 Application is of minimal environmental impact and substantially the same development a 79C (1) Assessment has been undertaken.

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

Tweed Local Environmental Plan 2014 (current standard instrument)

The proposed development is defined as *hotel or motel accommodation* which is a type of *tourist and visitor accommodation*. The proposal is a prohibited form of development under the TLEP 2014 current zoning. However, continuing operation relies upon compliance with the definition of an *existing use* in accordance with s107 of the EP&A Act 1979 and the establishment of existing use rights. The Motel has been onsite for in excess of fifty (50) years and predates any surrounding dwelling houses in the vicinity.

This modification is capable of determination and is assessed against s109B(2)(b) of the EP&A Act which states that the section "*does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent...*"

Clause 1.2 – Aims of the Plan

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 EP&A Act.

The proposed development is considered consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

R2 - Low Density Residential zone

The proposed development is defined as *hotel or motel accommodation* which is a type of *tourist and visitor accommodation*. The proposal is a prohibited form of development in the R2 zone. This is consistent with prohibition of a motel use in the former 2(a) Low Density Residential zone under the TLEP 2000.

However, operation of the motel has existing use rights (s107 of the EP&A Act) and the motel has been onsite for in excess of fifty (50) years. As such the proposed modification is capable of being considered within the R2 zone as it meets the provisions of s109B of the EP&A Act.

Clause 2.7 – Demolition requires development consent

Any demolition associated with the proposal has been included in the original application. No demolition is required as part of this modification request.

Clause 4.3 - Height of Buildings

The current proposal modifies the height of the Stage 5 building however the height remains consistent with the intent of this provision for the zoning of the allotment and does not exceed the maximum height of 9 metres. Furthermore the potential for overshadowing on adjacent properties is not detrimental to adjoining private open space and is consistent with the requirements of the DCP with respect to overshadowing upon adjacent dwellings.

Clause 4.4 – Floor Space Ratio (FSR)

The subject site is affected by a maximum 0.8:1 FSR standard. The approved development achieved an FSR of 0.375:1 which does not exceed the standard and is not varied by way of this modification request.

Clause 5.5 – Development within the Coastal Zone

The proposal is located within the Coastal Zone and adjacent to the coastal foreshore. An assessment against the provisions of this clause was undertaken at the time of the original assessment against the standard instrument and statutory documents in force at the time. Therefore it is considered that there will be no additional impact (beyond what has already been assessed and accepted) upon the Coastal Zone in terms of; existing access to the coastal foreshore, overshadowing, stormwater, effluent and coastal hazards.

Clause 5.9 – Preservation of Trees or Vegetation

The current modification application does not propose any removal of vegetation.

Clause 5.11 - Bush fire hazard reduction

The current modification application does not propose any bush fire hazard reduction.

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Class 4 (ASS) is identified on the subject site. The assessment of potential ASS disturbance was previously undertaken with the assessment of the original proposal which included assessment of the subject building which encompasses Stage 5 of the approval. The modification is consistent with this clause.

Clause 7.2 - Earthworks

The objective of this clause is to generally ensure that earthworks for which development consent is required will not have a detrimental impact on the locality.

Earthworks required for the proposed Stage 5 building will not vary to that which it has already been conditioned. The modification is consistent with this clause.

Clause 7.5 - Coastal risk planning

The current modification application does not propose any development that impacts upon current standards for Coastal Hazards. The modification is consistent with this clause.

Clause 7.6 - Stormwater Management

Stormwater management was approved at the time of the original application and relevant conditions were imposed for further detail to be supplied at construction

certificate stage. No change to stormwater management conditions are requested or required. The modification is consistent with this clause.

Clause 7.10 - Essential Services

All essential services are available to the site.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

The proposal remains consistent with the requirements of SEPP 55. Site contamination has previously been assessed by Council.

SEPP No. 64 – Advertising and Signage

The proposed amendments do not alter the signage previously proposed. This application does not seek to amend conditions of development consent relating to advertising signage.

SEPP No 71 – Coastal Protection

The proposed amendment does not impact upon the proposal's compliance with SEPP 71. In terms of visual impact, the proposal will remain generally not visible from the beach and will be obscured by the existing coastal heath vegetation within the foreshore reserve. As such, the proposal remains consistent with the intent and relevant specific provisions of SEPP 71.

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

There are no Draft Environmental Planning Instruments that apply to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A detailed assessment against the requirements of DCP A1 was carried out for the original application. In general, the proposed development was considered to be consistent with the provisions of DCP A1 in respect of setbacks, landscaping provision, orientation, building design and so on.

The proposed modification to amend the Stage 5 building does not contain any accommodation aspect and thus a further assessment of A1 is not required in relation to this modification.

A2-Site Access and Parking Code

The proposed modification does not require the provision of additional parking spaces as the modification is for use by motel guests only. There are no additional staff employed as a result of the modification. Therefore as parking has previously been assessed, there is no further impact to the use onsite. In fact the

refined use restricts the intent of the Stage 5 building to that which was previously approved as a multi-purpose space (which had no restriction on terms of public use).

The 25 spaces required in accordance with Condition 16A within the development consent remain sufficient to service the development. As such the proposal retains compliance with the requirements of DCP A2.

The ancillary change from multipurpose space to day spa does not affect the s94 contribution charges.

A4-Advertising Signage

The proposed modification does not alter the signage previously proposed. This application does not seek to amend conditions of development consent relating to advertising signage.

A11-Public Notification of Development Proposals

Upon receipt of the proposed modification to the application, the application was notified to adjoining landholders in accordance with Council policy for a period of 14 days from 1 June 2016 to 15 June 2016. An extension of 5 days was granted to the 20 June 2016. During this period two submissions were received in relation to the modified details.

The issues raised in submissions are detailed further within this report.

A15-Waste Minimisation and Management

The proposed amendments do not alter the previously provided waste management plan. The recommendations of the previous plan remain valid.

B19-Bogangar/Cabarita Beach Locality Plan

The s96 application is seeking to modify the use of the Stage 5 building for motel guests by providing a day spa as opposed to the use as a caretakers dwelling and multi-use space. The modification is consistent with the intent of this Locality Plan and this is specifically reflected in the Vision, Structure Plan and intent of the Locality with reference to the Motel's improvement for tourist accommodation in the locality.

B25-Coastal Hazards

As detailed within the original assessment of the application, the existing motel is currently located forward of the 2100 Hazard Line. There are no additional improvements to the existing approval located eastward of the 2100 and 2050 Hazard Line (closest to the frontal dune area).

NB: Council at its meeting of 20 February 2014 approved revised Hazard Lines. It should be noted the revised 2050 Hazard Line has moved eastward therefore the impacts have been reduced.

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

Clause 92(1)(a) Government Coastal Policy

The subject modifications do not raise any significant implications in respect to the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

The subject modifications do not raise any significant implications in respect to demolition.

Clause 93 Fire Safety Considerations

The subject modifications do not raise any significant implications in respect to fire safety.

Clause 94 Buildings to be upgraded

There are no existing buildings to be upgraded as a consequence of the current modification application.

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

The subject modification does not raise any significant implications in respect of any coastal zone management plan, as detailed within this report.

Tweed Shire Coastline Management Plan 2005

It was considered that the proposed alterations and additions as approved would be unlikely to impact on the natural environment, coastal processes, the visual amenity or scenic quality of the area.

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

Context and Setting

The proposed modification seeks to amend the external and internal design of the Stage 5 building to reflect the 1950s archway design of the motel building and to be better utilised by motel guests rather than a caretaker. As currently approved, the Stage 5 building primarily provides use as a multipurpose area which is undefined and capable of varying use types both public and private. It is considered that providing a Day Spa for the guests offers a refined intent for Stage 5 of the boutique motel.

(c) Suitability of the site for the development

Surrounding Landuses / Development

Residential development is located to the north and south of the subject site. The subject site is identified and supported by the Cabarita/Bogangar Locality Plan

(DCP B19) as the preferred site for Tourist accommodation. The proposal is considered to be consistent with tourist accommodation land use within the vicinity of Cabarita Beach.

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

Upon receipt of the proposed modification to the application, the application was notified to adjoining landholders in accordance with Council policy for a period of 14 days from 1 June 2016 to 15 June 2016. An extension of 5 days was granted to the 20 June 2016. During this period two submissions were received in relation to the modified details. The summary of the items are included as follows.

Submission 1

- Concern the modification will increase congestion in the locality;
- Lack of consultation by the Developer and Operator;
- Dispute the ability of the proposal to fall within the bounds of a modification request under s96(1A) of the EP&A 1979.

The submission included ten (10) names and addresses of surrounding and nearby allotments in relation to the motel site. The names and addresses do not accurately match Council records in entirety with names presented along incorrect addresses. The submission also does not include any signatures of the names involved.

Submission 2

- Mention of waste bins being placed in the road reserve;
- Car parking quota onsite is not to standard

Council Officer Assessment of Submissions

Car parking and Congestion

Car parking onsite was assessed under the existing consent. This modification request does not increase traffic generation as the component of Day Spa is for the exclusive use of guests of the motel. As there is no additional traffic generation, the perceived concern over increased congestion is also not warranted.

Lack of Consultation from the developer

This is not a matter for Council.

Modification requirements

The proposal is considered to be of minimal environmental impact as the proposed use is to occur within an existing approved building, therefore there is no additional impact to the original proposal (in accordance with s96(1A)(a) of the EP&A Act 1979).

The proposal meets the test of modification being substantially the same development (in accordance with s96(1A)(b) of the EP&A Act 1979) to that in which it was approved, whereby the modification seeks to better utilise the use of the Stage 5 building for benefit of motel guests as tourists to the region. This is consistent with the intent of the overall development as tourist accommodation and the Locality Plan.

The proposal has been notified and submissions have been considered herein with consideration to the proposed modification (in accordance with s96(1A)(c)&(d) of the EP&A Act 1979) the submissions have informed the assessment and conditioning of any approval granted.

The proposed modification is therefore considered to be a modification involving minimal environmental impact and has forthwith been treated as such in the assessment process consistent with s79C and s96(1A) of the *Environmental Planning and Assessment Act 1979*.

Waste Collection

One submission included comment in relation to collection of waste by refuse vehicle occurring from the road reserve. The details were not clear however collection of refuse from the road reserve is not an uncommon practice. Commercial waste collection contracts generally occur on alternate days to local community refuse collection to reduce the potential of traffic impacts. Notwithstanding, additional waste generating from the operation of the day spa is not likely to be of any large scale resulting in additional load of refuse collection resources.

(e) Public interest

The proposed modification is in the public interest as it is suitable for the subject site and will not detrimentally impact upon the locality.

OPTIONS:

1. Approve the s96 application in accordance with the recommendations within this report; or
2. Refuse the s96 application and provide reasons.

The Officers recommend Option 1.

CONCLUSION:

The application is recommended for approval subject to the modification of relevant conditions and imposition of new conditions as attached to this report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant has the right to appeal any Council determination in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 6 [PR-PC] Development Application DA12/0170.14 for an Amendment to Development Consent DA12/0170 for Alterations and Additions to Motel (Staged) at Lot 100 DP 1208306 Nos. 19-25 Cypress Crescent, Cabarita Beach, Lot 1 Sec 4 DP 29748, Lot 2 Sec 4 DP 29748 No. 26-28 Tweed Coast Road, Cabarita Beach

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:

This Modification Application was called up for Council determination by Councillors Milne and Bagnall.

On 3 December 2015 Council resolved to approve extended operating hours for the internal areas of the existing Halcyon House Motel development. Conditions of the development include strict acoustic amenity requirements and in the event of a substantiated complaint further actions are required of the operator of the Motel to ameliorate the acoustic amenity impacts experienced in the vicinity.

A condition of approval for the most recently approved modification (DA12/0170.12) granted that the development included the following requirement as part of Condition 113C in relation to hours of operation:

A Section 96 Application is to be received before the 6 month trial period lapses to remove the trial period criteria if the extended hours are sought on a permanent basis.

It is for this reason an application has been received (within the 6 month time period) to remove the temporary nature of the hours of operation which currently are:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 12 midnight Monday to Sunday.
- Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday

Over the course of the six month trial period there have been no complaints registered on Council's database systems, nor Police records or with the Office of Liquor and Gaming.

The application to remove the temporary nature of the operating hours is supported by Council Officers.

RECOMMENDATION:

That Development Application DA12/0170.14 for an Amendment to Development Consent DA12/0170 for Alterations and Additions to Motel (Staged) at Lot 100 DP 1208306 Nos. 19-25 Cypress Crescent, Cabarita Beach, Lot 1 Sec 4 DP 29748, Lot 2 Sec 4 DP 29748 No. 26-28 Tweed Coast Road, Cabarita Beach be approved subject to amendment of the following conditions:

1. Condition No. 84B is to be deleted and replaced with Condition No. 84C which reads as follows:

84C. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) and recommendations made in the Noise Management Plan Review prepared by MWA Environmental (ref: L37014/PAK/13-048 dated 1 December 2014) and MWA Environmental (ref: L26315/PAK/13-048 dated 11 August 2015) except where modified by this consent.

2. Condition No. 113C is to be deleted and replaced with Condition No. 113D which reads as follows:

113D. Hours of operation of the business are restricted to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 12 midnight Monday to Sunday.
- Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday.

REPORT:

Applicant: Western Trust Partnership
Owner: Flaskas Bickle Pty Ltd & Wadley Bickle Pty Ltd
Location: Lot 100 DP 1208306 Nos. 19-25 Cypress Crescent, Cabarita Beach, Lot 1 Sec 4 DP 29748, Lot 2 Sec 4 DP 29748 No. 26-28 Tweed Coast Road, Cabarita Beach
Zoning: R2 - Low Density Residential
Cost: Nil

Background:

DA12/0170

On 1 May 2012, Tweed Shire Council received Development Application DA12/0170 seeking approval for a number of alterations and additions to the existing Hideaway Motel at 19-25 Cypress Crescent, Cabarita Beach. DA12/0170 originally proposed a number of ancillary facilities for guests of the motel such as new 'at grade' parking facilities, restaurant, lounge room, outdoor food and beverage service area and swimming pool to be constructed in three stages.

A number of submissions were received from neighbouring residents raising concerns in relation to overlooking, overshadowing of the foreshore and residential properties, noise and disturbance in relation to the proposed modifications to the existing land use.

Council at the meeting of 14 February 2013, resolved to approve DA12/0170 for 'Alterations and Additions to Motel'.

DA12/0170.01

Council on 11 July 2013 received a Section 96 (s96) application DA12/0170.01 seeking to modify the staging of contribution payments in line with the staging as approved within DA12/0170, and modifying the conditions to shift the payment of contributions from prior to issue of a construction certificate, to prior to the issue of the occupation certificate in line with Council's policy. The application was approved under delegated authority on 12 September 2013.

DA12/0170.04

Council on 12 September 2013 received a s96 application DA12/0170.04 seeking a number of internal and external modifications to the building which generated increased contribution charges on the basis of the intensification of use of the building.

It also proposed modification to the first dot-point of Condition 113 to extend approved hours of operation of the under roof dining areas to 7am - 12 midnight seven days a week and public holidays (from 7am to 10pm Sunday to Thursday and 7am to midnight Fridays, Saturdays and Public Holidays).

The Section 96 application was generally supported with the exception of the requested changes to the first dot-point of Condition 113. As such, Council Officers recommended no change to the hours of operation in the first dot-point.

The applicant did not propose any modification to the approved hours of operation for outdoor facilities in the second dot-point of Condition 113 (7am to 10pm seven days a week). As such, no changes to the approved hours of operation in the second dot-point were required to be considered or recommended by Council Officers.

Council approved DA12/0170.04 to this effect at the Planning Committee Meeting of 6 March 2014.

However, following a successful Notice of Rescission and an unsuccessful Notice of Motion at the Council Meeting of 20 March 2014 to extend operational hours in the first dot-point of Condition 113 in line with the applicant's proposal (7am - 12 midnight seven days a week), a Notice of Motion was carried to amend Condition 113 as follows:

113A Hours of operation of the business are restricted to the following:

- *Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 10pm Sunday to Wednesday and 7am to 12 midnight Thursday, Friday, Saturday, and gazetted NSW Public Holidays, and any Sunday immediately before gazetted NSW Public Holidays that occur on the Monday.*
- *Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday. This shall be for a trial basis for a period of twelve (12) months from the commencement of use and a report be brought back to Council at the conclusion of the trial period.*

It was noted that the first dot-point of Condition 113A extended hours of operation on Thursdays, and Sundays that occur prior to a public holiday falling on a Monday, from 10pm to midnight.

The amended condition also imposed a twelve month 'trial period' from the commencement of use at the second dot-point, modification of which was not proposed by the applicant nor required to be considered by Council Officers in their assessment of the Section 96 application.

DA12/0170.07

Council on 15 May 2014 received a s96 application DA12/0170.07 seeking to amend an error in the wording of Condition No. 93A clarifying the requirement for payment of s94 contributions prior to the issue of an occupation certificate in line with Council's amended policy. The application was approved under delegated authority on 29 May 2014.

DA12/0170.10

Council on 3 November 2014 received a s96 application DA12/0170.10 seeking a number of internal and external design modifications and staging amendments which resulted in recalculation of contribution charges. The application was approved under delegated authority on 29/12/2014.

DA12/0170.11

Council, on 8 December 2014 received a s96 application DA12/0170.11 which sought the minor addition of an external terrace to an apartment unit and amendment of Condition 113A to remove a 12 month 'trial period' for the use of outdoor facilities. Legal advice accompanied the modification application to support removal of the trial period.

The s96 application was presented to Council for determination as the 'trial period' restriction in Condition 113A was imposed by way of a Notice of Motion in association with DA12/0170.04. The application for DA12/0170.11 was approved by Council on 3 February 2015.

DA12/0170.12

Council on 20 August 2015 received a s96 application DA12/0170.12 seeking to amend Condition 84A to include a reference to an additional Noise Management Plan review (dated

11 August 2015) which supports a concurrent proposed operational hour modification to Condition 113 which would result in trading of the enclosed dining/lounge and outdoor bar areas from 7am to midnight, 7 days per week (currently 7am to 10pm Sunday to Wednesday and 7am to midnight Thursday, Friday, Saturday and gazetted NSW Public Holidays and any Sunday immediately before a gazetted NSW Public Holiday that occurs on a Monday). Outdoor facilities, including the pool and BBQ would remain as is, being 7am to 10pm, 7 days per week.

The Noise Management Plan was produced after 2-3 months of operation and it was recommended that the proposed change in hours of operation only be supported on a trial basis for 6 months to gauge the developments impact over a busy summer period.

The application was reported to Council's meeting of 3 December 2015 as the application was called up by Councillors Bagnall and Milne.

The application was approved at this meeting.

DA12/0170.13

Council on 19 May 2016 received a s96 application DA12/0170.13 seeking to amend the internal and external design of the Stage 5 building and change the ancillary use of the building from caretakers dwelling, storeroom, common amenities and multipurpose space to day spa for motel guests, storeroom, manager's office and staff room.

This application is currently subject to council determination.

PROPOSAL

The proposed modification lodged 30 May 2016 seeks to remove the temporary provision of the hours of operation as conditioned under DA12/0170.12 through modification of Conditions 84 and 113. The existing conditions read as follows:

84B. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) and recommendations made in the Noise Management Plan Review prepared by MWA Environmental (ref: L37014/PAK/13-048 dated 1 December 2014) and MWA Environmental (ref: L26315/PAK/13-048 dated 11 August 2015) and as it relates to operating hours (approved only on a 6 month trial basis as per Condition 113C), except where modified by this consent.

113C. Hours of operation of the business are restricted to the following for a trial period of 6 months from the date of the endorsed modified consent (DA12/0170.12):

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 12 midnight Monday to Sunday.
- Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday.

A Section 96 Application is to be received before the 6 month trial period lapses to remove the trial period criteria if the extended hours are sought on a permanent basis. If the hours of operation are not modified by way of s96 Application then the hours of operation revert back to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar – 7am to 10pm Sunday to Wednesday and 7am to 12 midnight Thursday, Friday, Saturday, and gazetted NSW Public Holidays, and any Sunday immediately before gazetted NSW Public Holidays that occur on the Monday.
- Outdoor facilities, including pool and BBQ - 7am to 10pm Monday to Sunday.

Officer Findings

Timing

The subject application was lodged on 30 May 2016 meaning the proposal was received within the 6 month time period.

Environmental Health Unit

On the 9 June 2016, the Environmental Health Officer who assessed the original application and subsequent modifications, and the Manager of the unit advised that no noise complaints had been received in relation to the development.

The EHO assessment report for this modification provided support for the requested change.

Compliance Unit

On 6 and 20 June 2016 the Compliance Unit advised that no complaints had been received in relation to the development. There had been apparent visits to the site by the Compliance Unit prior to the current approval in relation to storage of garbage on site, however any matters addressed were not formally recorded as complaints.

Tweed/Byron Police Local Area Command

On 23 June 2016 the assessing officer contacted the Police in relation to any complaints received from the development site. The Senior Constable advised that there were no records of any incidents occurring at the subject site on Police records.

SITE DIAGRAM:



Locality Plan

Lot 100 DP 1208306; No.19-25 Cypress Crescent, Cabarita Beach;
 Lot 1 Sec 4 DP 29748; No.26 Tweed Coast Road, Cabarita Beach;
 Lot 2 Sec 4 DP 29748; No.28 Tweed Coast Road, Cabarita Beach

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Cadastral 19/11/2015
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 Boundaries shown should be considered approximate only.

0 0.5 1 1.5 Km
 1:80,000 @ A4 Portrait
 50,000 SCALE
 COPY ONLY - NOT CERTIFIED
 Map Projection: Universal Transverse Mercator
 Geoidic Datum of Australia 1994
 Map Grid of Australia, Zone 56

Civic and Cultural Centre
 3 Tumbalum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484
 T (02) 6670 2450 1300 292 872
 F (02) 6670 2429
 W www.tweed.nsw.gov.au
 E planningreform@tweed.nsw.gov.au



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

The Section 96 Modification only requests the consideration of the proposed modifications to the previously approved development application. Therefore this S96 Modification only requests reconsideration of the policies relevant to the proposed amendments.

CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96 of the Act specifies that:

“(1A) Modifications involving minimal environmental impact

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

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

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.”*

Accordingly the following report addresses these heads of consideration.

79C (1) Assessment – Environmental Planning and Assessment Act 1979

To determine if the s96 Application is of minimal environmental impact and substantially the same development a 79C (1) Assessment has been undertaken in the first instance.

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

Tweed Local Environmental Plan 2014 (current standard instrument)

The proposed development is defined as *hotel or motel accommodation* which is a type of *tourist and visitor accommodation*. The proposal is a prohibited form of development under the TLEP 2014 current zoning. However, continuing operation relies upon compliance with the definition of an *existing use* in accordance with Clause 106 of the EP&A Act and the establishment of existing use rights. The Motel has been onsite for in excess of fifty (50) years and predates any surrounding dwelling houses in the vicinity.

This modification is capable of determination and is assessed against s109B(2)(b) of the EP&A Act which states that the section "*does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent...*"

Clause 1.2 – Aims of the Plan

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 EP&A Act.

The proposed development is considered consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

R2 - Low Density Residential zone

The proposed development is defined as *hotel or motel accommodation* which is a type of *tourist and visitor accommodation*. The proposal is a prohibited form of development in the R2 zone. This is consistent with prohibition of a motel use in the former 2(a) Low Density Residential zone under the TLEP 2000.

However, operation of the motel has existing use rights (Clause 106 of the EP&A Act) and the motel has been onsite for in excess of fifty (50) years. As such the proposed modification is capable of being considered within the R2 zone as it meets the provisions of s109B of the EP&A Act.

Clause 2.7 – Demolition requires development consent

Any demolition associated with the proposal has been included in the original application.

Clause 4.3 - Height of Buildings

The current proposal does not modify building height.

Clause 4.4 – Floor Space Ratio

The subject site is affected by a maximum 0.8:1 FSR standard. The approved development achieved an FSR of 0.375:1 which does not exceed the standard and is not varied by way of this modification request.

Clause 5.5 – Development within the Coastal Zone

The proposal is located within the Coastal Zone and adjacent to the coastal foreshore. An assessment against the provisions of this clause was undertaken at the time of the original assessment against the standard instrument and statutory documents in force at the time. Therefore it is considered that there will be no additional impact (beyond what has already been assessed and accepted) upon the Coastal Zone in terms of; existing access to the coastal foreshore, overshadowing, stormwater, effluent and coastal hazards.

Clause 5.9 – Preservation of Trees or Vegetation

The current modification application does not propose any removal of vegetation.

Clause 5.11 - Bush fire hazard reduction

The current modification application does not propose any bush fire hazard reduction.

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Class 4 (ASS) is identified on the subject site. The current proposal does not comprise any earthworks which would disturb any potential ASS, merely the proposal requests a straightforward, warranted change to an existing condition.

Clause 7.2 - Earthworks

The objective of this clause is to generally ensure that earthworks for which development consent is required will not have a detrimental impact on the locality.

The current modification application does not change the extent of any approved earthworks.

Clause 7.5 - Coastal risk planning

The current modification application does not propose any development that impacts upon current standards for Coastal Hazards.

Clause 7.6 - Stormwater Management

Stormwater management was approved at the time of the original application and relevant conditions were imposed for further detail to be supplied at construction certificate stage. No change to stormwater management conditions are requested or required.

Clause 7.10 - Essential Services

All essential services are available to the site.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

The proposal remains consistent with the requirements of SEPP 55. Site contamination has previously been assessed by Council.

SEPP No. 64 – Advertising and Signage

The proposed amendments do not alter the signage previously proposed. This application does not seek to amend conditions of development consent relating to advertising signage.

SEPP No 71 – Coastal Protection

The proposed amendment does not impact upon the proposal's compliance with SEPP 71. In terms of visual impact, the proposal will remain generally not visible from the beach and will be obscured by the existing coastal heath vegetation within the foreshore reserve. As such, the proposal remains consistent with the intent and relevant specific provisions of SEPP 71.

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

There are no Draft Environmental Planning Instruments that apply to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A detailed assessment against the requirements of DCP A1 was carried out for the original application. In general, the proposed development was considered to be consistent with the provisions of DCP A1 in respect of setbacks, landscaping provision, orientation, building design and so on.

The proposed modification to condition requesting removal of the temporary restriction does not vary any physical component of the established development.

A2-Site Access and Parking Code

There is no additional impact upon access and parking as a result of approving this modification request to remove the temporary restriction on operating hours by which the development has been successfully operating for a period of six months with no complaints received by Council.

A4-Advertising Signage

The proposed amendments do not alter the signage previously proposed. This application does not seek to amend conditions of development consent relating to advertising signage.

A11-Public Notification of Development Proposals

Upon receipt of the proposed modification to the application, the application was notified to adjoining landholders in accordance with Council policy for a period of 14 days from 13 June 2016 to 27 June 2016. During this period two submissions were received in relation to the modified details.

The issues raised in submissions are detailed further within this report.

A15-Waste Minimisation and Management

The proposed amendments do not alter the previously provided preliminary waste management plan. The recommendations of the previous plan remain valid.

B19-Bogangar/Cabarita Beach Locality Plan

The s96 application is seeking the removal of a temporary imposition of operating hours. The modification does not seek to vary any additional requirements under this provision of the DCP.

B25-Coastal Hazards

As detailed within the original assessment of the application, the existing motel is currently located forward of the 2100 Hazard Line, with proposed extensions to the motel being located forward of the 2050 Hazard Line.

NB: Council at its meeting of 20 February 2014 approved revised Hazard Lines. It should be noted the revised 2050 Hazard Line has moved eastward therefore the impacts have been reduced.

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

Clause 92(1)(a) Government Coastal Policy

The subject modifications do not raise any significant implications in respect to the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

The subject modifications do not raise any significant implications in respect to demolition.

Clause 93 Fire Safety Considerations

The subject modifications do not raise any significant implications in respect to fire safety.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded as a consequence of the current modification application.

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

The subject modification does not raise any significant implications in respect of any coastal zone management plan, as detailed within this report.

Tweed Shire Coastline Management Plan 2005

It was considered that the proposed alterations and additions as originally approved would be unlikely to impact on the natural environment, coastal processes, the visual amenity or scenic quality of the area.

A previous modification proposed to construct the structure housing the dining/lounge/bar area from brick and concrete so that it would be fully amalgamated with the existing building. Council Officers were of the opinion that the construction and crane removal technique for the proposed alterations to the dining/lounge/bar area were satisfactory and met the intent of the management plan.

This s96 application does not propose any further modification of the approved dining/lounge/bar area.

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

Context and Setting

The proposed modification will not significantly alter the general design or appearance of the previously approved building. From an operational perspective and the setting, the development has been operating to the temporary hours conditioned with no complaints received.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Residential development is located to the north and south of the subject site. The proposal is considered to be consistent with the general residential/tourist accommodation land uses within the vicinity in Cabarita Beach.

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

Upon receipt of the proposed modification to the application, the application was notified to adjoining landholders in accordance with Council policy for a period of 14 days from 13 June 2016 to 27 June 2016. During this period two submissions were received in relation to the modified details.

Submission 1

- Disputing the operation of the Outdoor Bar and Restaurant Area after 10pm. Stating "...Operational House of Outdoor Bar and Restaurant area must be limited to 10pm"

- Stating complaints have been lodged with Council, Police and Office of Liquor and Gaming (OLGR).

This submission objects to the approved hours of operation of the BBQ, pool, bar and outdoor dining areas currently subject to a temporary period of six months stating complaints have been lodged with relevant authorities. In reviewing the existing conditions of approval, should a complaint ever be received by Council, existing conditions are in place to regulate noise impacts in perpetuity.

The submission included ten (10) names and addresses of surrounding and nearby allotments in relation to the motel site. The names and addresses do not accurately match Council records in entirety with names presented along incorrect addresses. The submission also does not include any signatures of the names involved.

Submission 2

- Impact of unacceptable noise levels
- Support for the previous refurbishments

This submission indicated that whilst the development is a tremendous result with the extensions and refurbishments, acoustic amenity remains of concern to the owners of the adjacent allotment.

Council Officer Assessment of Submissions

The two submissions received both relate to acoustic amenity impacts experienced by the submitters in respect of the motel business. The Motel has been onsite for in excess of fifty (50) years and predates any surrounding dwelling houses in the vicinity. This is an important fact as it indicates all surrounding dwellings were constructed post the development and the business operates today due to existing use rights.

The submissions which both relate to acoustic amenity in relation to the operation of the outdoor area beyond 12midnight have been considered by the assessing officer in the recommendation of this modification request. The assessing officer has raised the matter of noise complaints which were stated to have been raised with Council, Police and the Office of Liquor, Gaming and Racing (OLGR) with the relevant section of Council and the other Authorities.

The outcome of this research was that there have been no complaints received and registered with Council during the trial period.

Particularly:

- The Compliance Unit was consulted in which no formal complaints have been received and registered on Council's records.
- The Environmental Health Unit has been consulted in which there have been no recorded complaints received and registered on Council Records.

The assessing officer's next step was to then contact the local area command Police Service in which the Police (on 23/06/2016) provided that there have been no complaints registered on Police records at any time in relation to the development.

The assessing officer also discussed with OLGR whether any complaints had been received by their department during the six (6) month Trial Period, of which it was discovered there were none.

The investigation discovered that the claims of the submitters in terms of complaints on hours of operation and acoustic amenity (Noise) are unsubstantiated with no complaints received by Council nor Police. Following notification of the current modification request to adjoining and affected landholders a complaint was subsequently lodged with OLGR by Submitter 1. The determination of OLGR in relation to that matter is not anticipated to be resolved prior to 4 August 2016.

It is therefore considered that given Council, the Police and OLGR have not been receiving regular complaints to substantiate the matters of submission during the 6 month trial period, that there are no solid reasons for the proposed application to be refused. Should a complaint ever be received by Council, existing conditions are in place to regulate noise impacts in perpetuity.

(e) Public interest

The proposed modification is in the public interest as it is suitable for the subject site and will not detrimentally impact upon the locality.

OPTIONS:

1. Approve the s96 application in accordance with the recommendations within this report; or
2. Refuse the s96 application and provide reasons.

The Officers recommend Option 1.

CONCLUSION:

The application is recommended for approval subject to the modification of relevant conditions as outlined in this report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

The applicant has the right to appeal any Council determination in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

7 [PR-PC] Development Application DA15/0532.01 for an Amendment to Development Consent DA15/0532 for Use of Part of Tavern Floor Area as a Retail Shop at Lot 2 Section 10 DP 2087 No. 9 Commercial Road, Murwillumbah

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:

Updated Information

Council, at its Planning Committee meeting of 7 July 2016 recommended as follows:

"RECOMMENDED that the matter be deferred for a workshop to discuss the matter further and provide for a site visit and that this item be brought back to the Planning Committee meeting of 4 August 2016 for determination."

A workshop and site visit was held on 14 July 2016 and this item has been brought back for consideration following the workshop.

Original Report

Council granted approval on 11 September 2015 for the change of use of part of the existing hotel to allow part of the tavern floor to be used as a retail shop. The approved shop, having a total area of approximately 58m² is being used as a homeware shop, and has been fitted out.

A S96 application was lodged in March 2016, proposing modifications in relation to:

- **Condition 6**, which sets out the timeframe for the submission of a separate development application for a number of matters;
- **Condition 7**, which relates to surfacing and line marking of the rear car park area;
- **Condition 8**, which requires the parking area to be open to the public at all times;
- **Condition 10**, which relates to the occupation of the building; and
- **Condition 14** in terms of the approved hours of operation.

It was resolved at Council's 5 May 2016 Planning Committee meeting that **Condition 7** be amended as follows:

- 7A. *The developer shall construct the parking area at the rear of the site including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.*

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council on or before 11 June 2016 and prior to any construction of the car park commencing for determination by the General Manager or his delegate.

The car park design shall identify and consider any and all rights of carriageway/restrictions as to user which burden the subject Lot to provide rear vehicular access to any adjoining Lot. Access must be maintained at all times through the subject site to any allotment to which it lawfully exists by way of these instruments.

The parking area must be constructed as per the approved plan on or before 11 September 2016.

The proponent was contacted on 14 June 2016 and requested to provide a proposed lodgement date for the car parking plan required under amended Condition 7.

The proponent responded on 17 June 2016 advising that they would not be providing such plan.

Accordingly, it is recommended that legal advice be sought to determine an appropriate course of action to resolve the outstanding car parking matter.

RECOMMENDATION:

That Council engage solicitors to undertake enforcement action to address the car park layout and construction at Lot 2 Section 10 DP 2087 No. 9 Commercial Road, Murwillumbah.

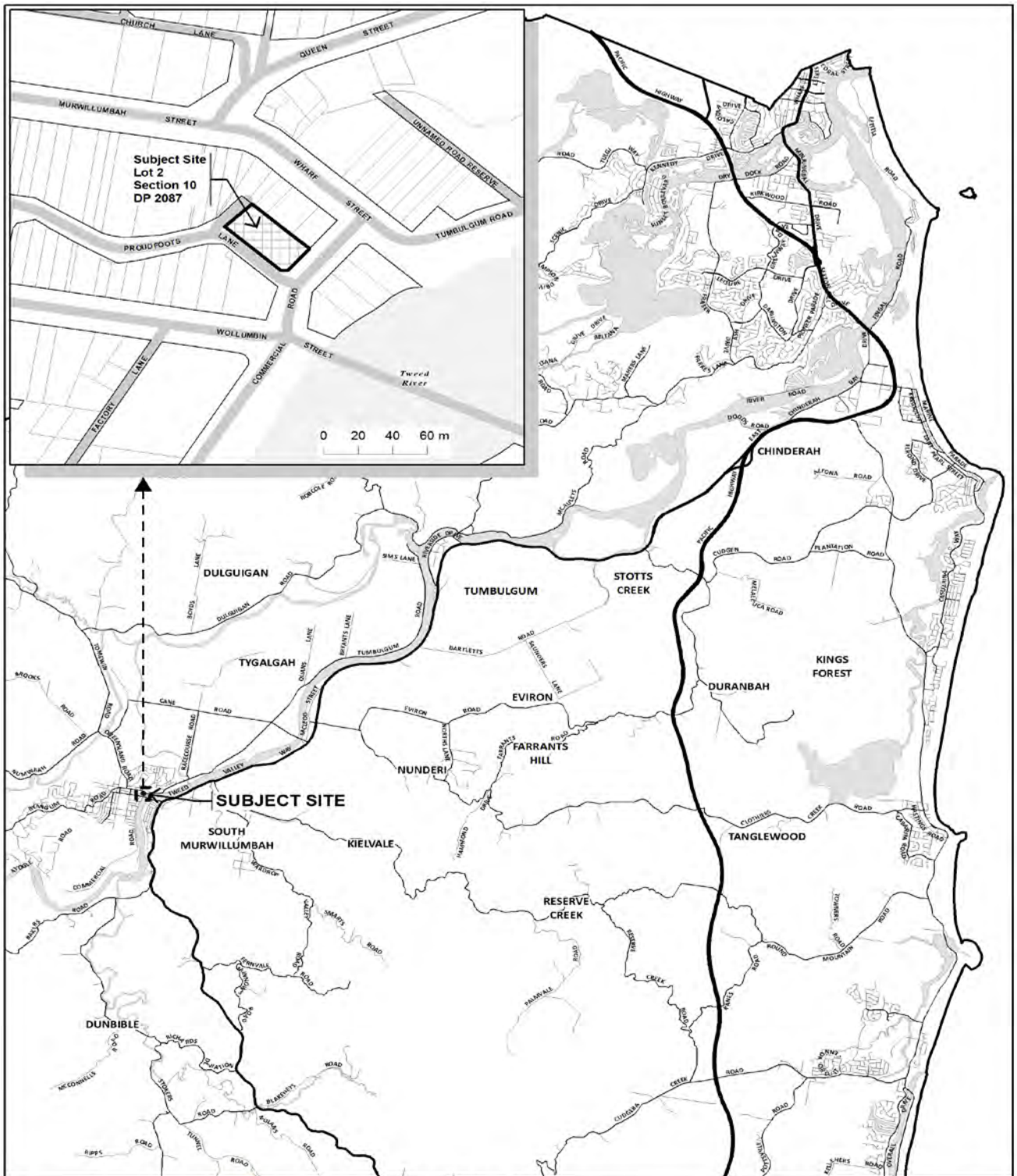
REPORT:



The site:

The subject site is located on the corner of Commercial Road and Proudfoots Lane, Murwillumbah. The total area of the site is 1138m². The site contains the existing Australian Hotel building and a partly sealed/gravel (but not line marked) car park area at the rear.

Council granted approval on 11 September 2015 for the change of use of part of the existing hotel to allow part of tavern floor to be used as a retail shop. The approved shop, having a total area of approximately 58m² is being used as a homeware shop, and has been fitted out.

SITE DIAGRAM:



 <p>1:110,000 @ A4 Portrait 0 0.5 1 1.5 2 Km COPY ONLY - NOT CERTIFIED Map Projection: Universal Transverse Mercator Geospatial Datum: Geospatial Datum of Australia 1994 GDA</p>	 <p>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</p>	<p>Locality Plan Lot 2 Section 10 DP 2087 No. 9 Commercial Road, Murwillumbah</p>	<p>Council File DA15/0532.01 Revised 19/04/2016 Cadastre: 19 April, 2016 © Land and Property Information (LPI) and Tweed Shire Council. <i>Boundaries shown should be considered approximate only.</i></p>
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Filepath: Z:\GIS_Data\HR\Templates\LocalityPlans\LocalityPlan_106_A4.mxd Author: JGallagher - Strategic Planning & Urban Design Unit Date Printed: 19 April 2016

BACKGROUND:

Conditions 7 – Rear Car Park

A car parking assessment was undertaken during the assessment of the original application, whereby it was identified that an existing parking credit existed from the previous use (hotel). No additional car parking provisions were required in relation to DA15/0532.



Figures 1 and 2: Photo & aerial imagery of rear car parking area

However, the state of the rear partly sealed/gravel car parking area (see Figures 1 and 2 above) was such that it was considered appropriate to require the area to be resurfaced and line marked. Condition 7 was applied as follows:

- 7. The developer shall construct the parking area at the rear of the site including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.*

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council within 90 days of the date of this consent and prior to any construction of the car park commencing for determination by the General Manager or his delegate.

The car park design shall identify and consider any and all rights of carriageway/restrictions as to user which burden the subject Lot to provide rear vehicular access to any adjoining Lot. Access must be maintained at all times through the subject site to any allotment to which it lawfully exists by way of these instruments.

The parking area must be constructed as per the approved plan within 6 months of the date of this consent.

The applicant's S96 proposed to delete Condition 7, relying on site credits for car parking. A detailed analysis of the car parking history was undertaken during the assessment of the S96. The applicant's submission was not supported. The previous use of the tavern was taken into consideration when assessing parking requirements in the original assessment. The credits available to the site outweigh the parking requirements applicable to the retail use of the shop. As such, no additional parking requirements were applied to the consent for DA15/0532.

However, Condition 7 relates to the **upgrade** of the existing car parking area at the rear of the tavern. The carpark (in association with the Tavern component) was conditioned as part of the T4/1442 approval. T4/1442 required 7 car spaces and the payment of \$30,000 in car parking contributions. No additional parking spaces were required as part of the change of use proposal under DA15/0532.

Given that no additional car parking spaces are required under DA15/0532, the applicant's submission with regard to credits and parking concessions was considered to be invalid.

The applicant's statement that car parking contributions have been paid in lieu of parking requirements for the whole site was also considered to be incorrect. Council's records indicate that an offer of \$10,000 was made to Council in relation to the use of the shops associated with T4/1442. The old consent appeared to be staged, with the Tavern being constructed at a later date than the shops, once a liquor licence was issued. This allowed the use of the tavern site for the purposes of parking until the tavern was under construction. Whilst Council did accept the payment of \$10,000 this was only in relation to the shops and offices associated with T4/1442.

The S96 application related to the change of use of part of the Tavern, which was not associated with the \$10,000 cash payment. Such payment was not in lieu of the requirement for seven car spaces at the rear of the tavern. The parking contribution was in addition to the requirements for 7 spaces at the rear of the tavern. Therefore, it was considered that the car parking requirements of Condition 7 of DA15/0532 remain valid.

The existing Rights of Carriageway (to provide access to the rear of adjoining commercial tenancies) have been recognised and are referenced within the wording of Condition 7. The applicant is simply required to provide Council with a layout of proposed parking at the rear of the site. The easements must be taken into consideration and it may be that the resulting car park design is in a completely different configuration, with possibly less spaces than that required by T4/1442. Once an acceptable car parking design has been approved by Council, the applicant is required to provide a compliant car park surface (i.e. bitumen) to the existing partly sealed/gravel area and line mark the approved spaces, as per the requirements of Council's specifications.

Council has offered a number of informal extensions of time to submit a car park layout, and the approved Condition 7A provided the applicant with even further additional time (11 June 2016) to undertake the appropriate design.

On 14 June 2016 the applicant was contacted and requested to provide Council with a time frame for the submission of their design. As noted above, the applicant formally advised Council on 17 June 2016 the following:

"Please be advised that Maddison Bea Pty Ltd is not taking any action in respect to DA15/0532.01 and relies for its current occupation of a retail shop on conditions in DA T4/1442".

It appears that the applicant is trying to rely on the provisions of T4/1442 for the proposed development. Although the consent only references Lot 2 Section 10 DP 2087, it is considered that the approval T4/1442 relates to Lot 2 Section 10 DP 2087 and SP62510. This is shown in the approved plans and accords with what has been constructed. The

approved offices/shops component of the T4/1442 approval relates only to SP62510 (refer to Figure 3 below).



Figure 3: Plan identifying the different portions applicable to T4/1442

The subject premise (retail shop) was originally approved as part of the tavern under T4/1442 on Lot 2, hence the need for DA15/0532 (for the change of use of part of tavern floor area as a retail shop). As such, the applicant's statement that they are relying on T4/1442 conditions for its current occupation is not supported.

OPTIONS:

That Council:

1. Takes no further compliance or enforcement action; or
2. Engages solicitors to undertake enforcement actions to resolve the car parking matter.

Option 2 is recommended by Council staff.

CONCLUSION:

It has been evident that the owner of the subject site has little or no intention of complying with the car parking requirements for DA15/0532. Council officers have made numerous attempts to seek cooperation from the applicant to submit the necessary design details for the rear car park. Given the lack of cooperation in these matters, it is now considered appropriate to engage solicitors with a view to taking enforcement action.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

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.

8 [PR-PC] Development Application DA04/0162.02 for an Amendment to Development Consent DA04/0162 for Expansion and Amalgamation of Existing Quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan

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:

In November 2004 Council approved DA04/0162 which authorised the amalgamation and expansion of three existing quarries at Dulguigan Road, North Tumbulgum. These quarries were the Reedy Creek, Sanderson's, and Pollards Quarries. DA04/0162 was issued as a deferred commencement consent which was later activated on 7 March 2005. The quarries were merged and the material between the three quarries has started to be removed to allow the site to operate as one quarry operation over new Lot 28 in DP 1079480. The amalgamated quarry was previously known as the Reedy Creek Quarry but is now known as the Hy-Tec Tumbulgum Quarry as new owners took over the site in 2011.

In December 2014 Council received a Section 96(2) Modification to DA04/0162 from Hy-Tec Industries (Queensland) Pty Ltd. The application specifically seeks consent to amend the extraction boundary of the quarry (predominantly increasing the development footprint to allow an extra 1,400,000m³ of resource to be extracted over an extra 7 years). In addition the application seeks consent to modify conditions 1, 26 and 27 of the existing consent as it relates to the approved plans, noise barriers and the acoustic fence requirements.

The S96(2) Modification was initially advertised and notified to any adjoining neighbours within 1.5km of the site in January 2015. Council received 13 submissions (from 9 individuals) objecting to the proposal predominantly concerned with the visual implications of the expansion, and the extra noise, dust, traffic and environmental impacts that could be associated with the proposed larger quarry. There was great concern that Dulguigan Road in its existing format is inadequate for the existing traffic.

In response to Council's initial assessment and the 13 submissions the applicant amended their S96 (2) Modification by reducing the size of the proposed expansion. However, revised figures of extraction indicated that whilst the actual footprint is being reduced the extraction figure was increasing to 1,755,000m³ (which will add 9 years to the total life of the quarry) as the original figures were incorrect. This amended S96 was placed on Council's DA Tracker and the neighbours were given a further 14 days in May 2015 to comment on

the proposal in June 2015. Following this exhibition Council received a further 5 submissions (including a petition with 10 signatures) objecting to the proposal and 10 letters of support for the business.

Council Officers still had some concerns with the proposed expansion footprint and the proposed environmental mitigation measures and asked the applicant to again consider amending their plans to better address these concerns. Subsequently the applicant lodged their final set of proposed plans with Council in August 2015.

The final version of the amended S96 was again placed on Council's DA Tracker and the neighbours were given a further 14 days in September 2015 to comment on the proposal. Council received a further submission objecting to the proposal and requesting additional blast information.

The following report assesses the amended S96 as received on 5 August 2015.

Council's role in the assessment of this S96(2) application is to only modify the consent if :

- it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted;
- it has had regard for any government agency submissions;
- it has considered the submissions; and
- it has considered those matters of relevance under 79C(1);

The following report has addressed each of these matters. It should be noted that whilst the proposed expansion of Hy-Tec Tumbulgum Quarry will result in the quarry extracting an additional 1,755,000m³ which will add 9 years to the life of the quarry and the revised boundaries will result in a change to the visual outlook for adjoining neighbours the actual overall day to day operations of the quarry will remain unchanged.

The quarry will **continue** to:

- Extract 200,000m³ per annum (195,000m³ average over a three year period);
- Operate between the hours of 7.30am – 6pm Monday to Friday, 7.30am to 12 Noon Saturdays and have no works Sundays or Public Holidays;
- Blast 3 times per month;
- Have a maximum of 40 trucks per day (averaged over the year); and
- Keep the existing single access point.

Therefore the amendment before Council seeks to

- Increase the boundary of extraction (an extra 1,755,000m³ of material over 9 years). This is more than originally notified (1,400,000m³ over 7 years) however, since originally lodged the applicant has undertaken more detailed extraction figures and through the amended plans the figure has been refined. So whilst the extraction amount is more than originally notified the actual boundary has been reduced from the original plan. This change results in Condition 1 needing to be amended;
- Amend Condition 26 to remove the reference to a noise barrier for an existing house (Lot 27 DP 814950) which is now owned by the proponent; and

- Delete Condition 27 in regards to the noise barrier for Lot 7 DP 814950.

The original and amended application was also referred to the NSW Office of Environment & Heritage (OEH) to consider the likely environmental impact as a result of the additional clearing required to accommodate the expanded quarry boundary. The amended application addressed initial agency concerns by preparing reports generally in accordance with the NSW Biodiversity Banking and Offsets Scheme as adopted under the Threatened Species Conservation Act 1995. OEH have now concluded that:

the applicant has clearly and reportedly demonstrated an intention to provide an offset for the biodiversity impacts of the proposal'

Accordingly, additional conditions of consent have been recommended by OEH and Council's Natural Resource Management Unit to formalise the proposed Biobanking Agreement. While such agreement is being drafted the offset area will be protected under a 88B Instrument which no longer have effect once the Biobanking Agreement is in place with OEH. It is important to note that, once the Biobanking Agreement is in place. OEH will be responsible for enforcing compliance with the terms of the Agreement and Council will have no role in compliance over the Agreement. The applicant has agreed to these extra conditions which now form part of the proposed S96(2) Application.

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

The amended S96 Modification has been carefully balanced and assessed against the public submissions and the current applicable planning controls.

The quarry's significance as a regionally significant extractive resource (as per the Far North Coast Regional Strategy) has resulted in the recommendation for approval of the proposed amended S96 Application with additional recommended conditions to more effectively manage the environmental considerations of the site. Such conditions have been accepted by the applicant and can therefore lawfully be imposed. No further additional conditions can be imposed without the prior authorisation of the applicant.

It should be noted that since the application was publically exhibited the quarry operators have made steps to purchase two of the nearest adjoining properties which are 36 Pollards Rd Tumbulgum and 645 Dulguigan Rd Tumbulgum. The original objections received from 645 Dulguigan Road Tumbulgum have since been withdrawn. Therefore, the objection numbers referenced above need to be reduced as the objections have been formally withdrawn.

On the balance of these factors, it is recommended that the proposed Modification be approved, subject to conditions.

RECOMMENDATION:

That Development Application DA04/0162.02 for an amendment to Development Consent DA04/0162 for expansion and amalgamation of existing quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan be approved subject to the following changes being made to Schedule B of the consent:

1. Delete Schedule B Condition 1 and replace it with Condition 1A which reads as follows to reflect the new plan:
 - 1A. The development shall be completed in accordance with the following:
 - a. Statement of Environmental Effects prepared by Jim Glazebrook & Associates Pty Ltd (JGA) dated February 2004,
 - b. Further information as per the JGA letter of 30 July 2004 as later amended by their letter of 8 October 2004
 - c. The approved "Rehabilitation and Environmental Management Plan" approved from time to time by Council's Director of Planning & Regulation

Except where varied by the approved S96 DA04/0162.02 application material specifically incorporating Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus

AND

Except where varied by the following conditions

2. Insert new condition in Schedule B after Condition 1A which is numbered 1.1 which reads as follows to reflect the NSW Office of Environment & Heritage requirement for BioBanking:
 - 1.1. Prior to the commencement of the quarry expansion (as approved by DA04/0162.02), the proponent must develop a biodiversity offset strategy to the written satisfaction of the Office of Environment and Heritage and the Tweed Shire Council. The strategy must quantify the biodiversity impacts of the quarry expansion using the BioBanking Assessment Methodology and identify the BioBanking biodiversity credit requirements required to offset the impacts of the proposal. The strategy must also identify the measures proposed to offset these impacts. If the measures include the securing of any identified offset site in perpetuity, then this strategy must identify a suitable mechanism to achieve this.
3. Insert new condition in Schedule B after Condition 1.1 which is numbered 1.2 which reads as follows to reflect the requirements for the REMP:
 - 1.2. Within 90 days of the issue of S96 DA04/0162.02 consent, the amended REMP prepared in accordance with those matters prescribed in new Attachment 1 forming part of this consent shall be submitted to and approved by Council. The amendments may be made as an attachment and/or addendum of the REMP. Where any conflict or inconsistency exists between the REMP and attachment and/or addendum (consistent with Attachment 1 of this consent) the provisions detailed in the later shall prevail.
4. Insert new condition in Schedule B after Condition 1.2 which is numbered 1.3 which reads as follows to reflect the requirements for the Restrictive Covenant:
 - 1.3. Within 90 days of the issue of S96 DA04/0162.02 consent a restrictive statutory covenant for conservation purposes in respect of the entire area

described as 'Offset Area (15.08 ha)' shown on Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus shall be created under s. 88B of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below:

- a. The area described as 'Offset Area (15.08 ha)' must be subject to a habitat restoration program undertaken in accordance with an approved REMP and managed as a natural area for conservation purposes in perpetuity.
- b. The following activities are not permitted within the 'Offset Area (15.08 ha)':
 - i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this consent;
 - ii. Erection of any fixtures or improvements, including buildings or structures;
 - iii. Construction of any trails or paths unless otherwise approved by the NSW Rural Fire Service (or equivalent state agency) and Council;
 - iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area;
 - v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the Offset Area; and
 - vi. Performance of any other acts which may have detrimental impact on the values of the Offset Area.

Burden: Part Lot 28 DP1079480. Benefit: Tweed Shire Council

5. Insert new condition in Schedule B after Condition 1.3 which is numbered 1.4 which reads as follows to reflect the requirements for the new boundary to be surveyed:

1.4. Within 90 days of the issue of S96 DA04/0162.02 consent the following boundary lines as shown on Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus shall be physically surveyed, clearly marked and delineated at regular intervals by a registered surveyor:

The 'Offset Area (15.08 ha)'; and
The 'Proposed Extraction Boundary (19 ha)'

6. Insert new condition in Schedule B after Condition 1.4 which is numbered 1.5 which reads as follows to reflect the requirements for separate approvals:

1.5. The applicant is required to seek under a separate application to the NSW Local Land Services (or equivalent state consent authority), approval for the removal of native vegetation regulated under the *Native Vegetation Act 2003* where:

- a. The native vegetation proposed to be removed occurs within the 'Proposed Extraction Boundary (19 ha)' shown on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus* the 'plan' referred herein) yet not within the area identified on the plan as 'Approved Extraction Boundary (15.08 ha)' (pursuant to Condition 26A); and/or
 - b. Where clearing is proposed within the 'Approved Extraction Boundary (15.08 ha)' as shown on the plan and is to exceed 2 ha per annum
7. Insert new condition in Schedule B after Condition 1.5 which is numbered 1.6 which reads as follows to reflect the requirements for an 88B Instrument until the BioBanking Agreement is in place:
 - 1.6. Upon entering into a BioBanking Agreement with the NSW Office of Environment and Heritage that involves securing in perpetuity the onsite Offset Area under the Threatened Species Conservation Act 1995, the Tweed Shire Council (as covenantee) will agree to revoke any 88B instrument (registered for conservation purposes under the Conveyancing Act 1919) that applies to that land.
8. Insert new condition in Schedule B after Condition 1.6 which is numbered 1.7 which reads as follows to reflect the requirements for a S68 Approval for onsite sewage management system:
 - 1.7. Within 90 days from the date of consent (DA04/0162.02) the applicant is required to lodge an application to operate any new onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a determination.
9. Insert new condition in Schedule B after Condition 1.7 which is numbered 1.8 which reads as follows to reflect the requirements for a S68 Approval for onsite sewage management system:
 - 1.8. In regard to DA04/0162.02 prior to the relocation of the amenities building the applicant is required to lodge an application to install/operate any new onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a determination. Any application shall be supported by design report prepared by a suitable qualified and experienced consultant.
10. Insert new condition in Schedule B after Condition 1.8 which is numbered 1.9 which reads as follows to reflect the requirements for a S68 Approval for onsite sewage management system:
 - 1.9. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the NSW Office of Environment & Heritage are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.

11. Delete condition 26 in Schedule B and replace it with a new proposed Condition 26A which updates the conditions to reflect the new plan:

26A. No work (excluding rehabilitation) shall be undertaken beyond the 'Proposed Extraction Boundary (19 ha)' as shown on Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus unless works are required by the NSW Rural Fire Service (or equivalent state agency) for bushfire hazard management and those works are concurrently approved by Council's General Manager or delegate.

12. Delete condition 27 in Schedule B (as noise barrier not required for adjoining site anymore) and replace it with a new proposed Conditions 27.1 and 27.2 which provides generic noise conditions leaving specific noise criteria to the NSW EPA:

27.1. The LAeq, 15 min noise level emitted from the premises shall not exceed the adopted noise criteria of 37dB(A) during the approved operating hours at any affected residence as detailed in the Assessment of Noise and Dust Impacts prepared by MWA Environmental dated 17 November 2014.

27.2. 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 that assesses compliance with the adopted noise criteria detailed in the Assessment of Noise and Dust Impacts prepared MWA Environmental dated 17 November 2014. The NIS is to be submitted to the satisfaction of the General Manager or delegate and is to include recommendations for noise attenuation if required. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's Authorised Officer.

13. Delete condition 32 in Schedule B and replace it with a new proposed Condition 32A which updates the condition to reflect the current provisions surrounding Native Vegetation removal with the relevant State Agency:

32A. Any proposal to clear native vegetation in excess of 2ha per annum within the area shown as 'Approved Extraction Boundary (15.08 ha)' on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus* (the 'plan' referred herein) yet not within the expanded area shown on the plan as 'Proposed Extraction Boundary' (pursuant to Condition 1.5) is to be the subject of a separate application to the NSW Local Land Services (or equivalent state consent authority).

14. Delete condition 36 in Schedule B relating to hours of operation as this is licenced by NSW EPA and detailed in the General Terms of Approval by NSW EPA which form part of this consent.

15. Delete condition 41 in Schedule B relating to noise levels and blasting criteria as this is licenced by NSW EPA and detailed in the General Terms of Approval by NSW EPA which form part of this consent.

16. Insert After Condition 43) – The NSW EPA – GENERAL TERMS OF APPROVAL as follows:

GENERAL TERMS OF APPROVAL UNDER SECTIONS 43(b), 48 and 55 OF THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997 (Environment protection licence to authorise carrying out of scheduled activities at any premises)

Administrative conditions

Note: Mandatory conditions for all general terms of approval

A1. Information supplied to the EPA

A1.1 Except as expressly provided by these general terms of approval, works and activities must be carried out in accordance with the proposal contained in:

- **Development Application No.2015.069 submitted to Council on 30 September 2014 and attachments;**
- **Statement of Environmental Effects - Section Amendment to DA04/0162 and attachments.**

Discharges to Air and Water and Applications to Land

P1.1 The following utilisation areas referred to in the table below are identified in the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, for the purposes of the monitoring and/or setting of limits for any application of solids or liquids to the utilisation area.

EPA Identification no.	Type of Monitoring Point	Type of Discharge Point	Location Description
Sediment Basin Discharge	Water	Water	Overflow point of stormwater from quarry floor

Limit conditions

L1. Pollution of waters

Note: Mandatory condition

L.1.1 Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.

L2. Concentration limits

L2.1 For each monitoring/discharge point or utilisation area specified in the tablets (by a point number), the concentration of a pollutant discharged at that

point, or applied to that area, must not exceed the concentration limits specified for that pollutant in the table.

L2.2 Where a pH quality limit is specified in the Table, the specified percentage of samples must be within the specified ranges.

L2.3 To avoid any doubt, this condition does not authorise the pollution of waters by any pollutant other than those specified in the table.

L2.4 Water and/or Land Concentration Limits

DISCHARGE POINT 1 (Sediment Basin Discharge)

<i>Pollutant</i>	<i>Units of measure</i>	<i>100% concentration</i>
<i>Total Suspended Solids</i>	<i>mg/L</i>	<i>50</i>
<i>pH</i>	<i>pH units</i>	<i>6.5-8.5</i>
<i>Oil and grease</i>	<i>mg/L</i>	<i>Nil</i>

L2.5 The concentration limits in the above table do not apply to any discharge from the sediment basin (at Point 1) solely arising from rainfall measured at the premises exceeding 82.5 mm in total falling over any consecutive five day period.

L2.6 If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must develop a statistical correlation which identifies the relationship between NTU and TSS for water quality in the sediment basin/s in order to determine the NTU equivalent of 50 mg/L TSS prior to its use.

L2.7 If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must provide the EPA with a copy of the statistical correlation assessment methodology and results before using NTU in place of TSS.

L2.8 If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must develop and implement a method to enable the ongoing verification of the relationship between NTU and TSS.

L2.9 If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must provide the EPA with any amendments the applicant makes to the statistical correlation as a result of the ongoing verification required by Condition L2.8 before using the revised statistical correlation.

L3. Waste

L3.1 The applicant must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.

L3.2 This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.

L4. Noise limits

L4.1 Noise from the premises must not exceed an LAeq (15 minute) noise emission criterion of 37 dB(A) for the nearest residential receivers as identified in Statement of Environmental Effects - Drawing 1, except as expressly provided by these general terms of approval.

L4.2 Noise from the premises is to be measured at nearest residential receiver as identified in the Statement of Environmental Effects - Drawing 1, that does not have written permission from the property owners for an exceedance of condition L4.1 has been provided to the EPA.

L4.3 The noise limits set out in condition L4.1 apply under all meteorological conditions except for the following:

- **Wind Speeds greater than 3 metres/second at 10 metres above ground level; or**
- **Temperature inversion conditions up to 30 C/100m and wind speeds greater than 2 metres/second at 10 metres above ground level; or**
- **Temperature inversion conditions greater than 30Cf100m.**

L5. Blasting

L5.1 Blasting operations at the premises may only take place between 09:00 to 15:00 Monday to Friday. (Where compelling safety reasons exist, the Authority may permit a blast to occur outside the above mentioned hours. Prior written (or facsimile) notification of any such blast must be made to the Authority).

L5.2 The airblast overpressure level from blasting operations in or on the premises must not exceed:

- a) **115 dB (Lin Peak) for more than 5% of the total number of blasts during each reporting period;**

and

- b) **120 dB (Lin Peak) at any time,**

at any point within 1 metre of any affected residential boundary or other noise sensitive location unless the location is owned by the licensee or is subject to a private written agreement between the owner of the residence or noise sensitive location as to an alternative overpressure level.

L5.3 The ground vibration peak particle velocity from blasting operations carried out in or on the premises must not exceed:

- a) **5mm/s for more than 5% of the total number of blasts carried out on the premises during each reporting period; and**

b) 10 mm/s at any time,

at any point within 1 metre of any affected residential boundary or other noise sensitive location unless the location is owned by the licensee or is subject to a private written agreement between the owner of the residence or noise sensitive location as to an alternative ground peak velocity level.

L5.4 All sensitive receivers are to be given at least 24 hours' notice when blasting is to be undertaken.

L6. Hours of operation

L6.1 Activities covered by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must only be carried out between the hours of 7:30 am and 6:00 pm Monday to Friday, and 8:00 am and 1:00 pm Saturday, and at no time on Sundays and Public Holidays.

L6.2 This condition does not apply to the delivery of material outside the hours of operation permitted by condition L6.1 if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification must be provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.

L6.3 The hours of operation specified in condition L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.

L6.4 Heavy vehicles (including excavators, haul trucks, loader and water carts) and machinery [including screening plant, jaw crusher, feed bin, cone crusher, rock drill, water pump and generator (genset)] cannot be started, maintained, arrive or leave the site or operated outside of operating hours as detailed in L6.1 and at no time on Sundays and Public Holidays."

Operating conditions

01. Dust

01.1 Activities occurring in or on the premises must be carried out in a manner that will minimise the generation, or emission from the premises, of wind-blown or traffic generated dust.

02. Processes and management

02.1 Sediment basins shall be treated, if required, to reduce the Total Suspended Solids level to the concentration limit of 50 mg/L provided by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, before being released to the environment. Treatment can be with gypsum or any other material that has been approved by the EPA.

02.2 The applicant must maximise the diversion of run-on waters from lands upslope and around the site whilst land disturbance activities are being undertaken.

02.3 The applicant must maximise the diversion of stormwater runoff containing suspended solids to sediment basins installed on the premises.

02.4 Where sediment basins are necessary, all sediment basins and associated drainage must be installed and commissioned prior to the

commencement of any clearing or grubbing works within the catchment area of the sediment basin that may cause sediment to leave the site.

02.5 The applicant must ensure the design storage capacity of the sediment basins installed on the premises is reinstated within 5 days of the cessation of a rainfall event that causes runoff to occur on or from the premises.

02.6 The applicant must ensure that sampling point(s) for water discharged from the sediment basin(s) are provided and maintained in an appropriate condition to permit:

- a) the clear identification of each sediment basin and discharge point;*
- b) the collection of representative samples of the water discharged from the sediment basin(s); and c) access to sampling point(s) at all times by an authorised officer of the EPA.*

02.7 The applicant must endeavour to maximise the reuse of captured stormwater on the premises.

02.8 Each sedimentation basin must have a marker (the "sediment basin marker") that identifies the upper level of the sediment storage zone.

02.9 Whenever the level of liquid and other material in any sedimentation basin exceeds the level indicated by the sedimentation basin marker, the licensee must take all practical measures as soon as possible to reduce the level of liquid and other material in the sedimentation basin.

02.10 The sediment basins must meet the design and operational standards of Managing Urban Stormwater Soils and Construction: Volume 1 and Volume 2 E. Mines and quarries. This document requires that at a minimum 85 percentile five-day rainfall event be used to determine basin sizing for quarries.

02.11 All liquid chemicals, fuels and oils must be stored in tanks or containers inside suitable bund(s). Bund(s) are to be designed, constructed and maintained in accordance with AS1940-2004 Storage and Handling of Flammable and Combustible Liquids.

Monitoring and recording conditions

M1 Monitoring records

M1.1 The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.

M1.2 All records required to be kept by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must be:

- a) in a legible form, or in a form that can readily be reduced to a legible form;*
 - b) kept for at least 4 years after the monitoring or event to which they relate took place; and*
 - c) produced in a legible form to any authorised officer of the EPA who asks to see them.*
-

M1.3 The following records must be kept in respect of any samples required to be collected:

- a) the date(s) on which the sample was taken;
- b) the time(s) at which the sample was collected;
- c) the point at which the sample was taken; and
- d) the name of the person who collected the sample.

M2. Requirement to monitor concentration of pollutants discharged

M2.1 The applicant must monitor (by sampling and obtaining results by analysis) the concentration of each pollutant specified in Column 1. The applicant must use the sampling method, units of measure, and sample at the frequency, specified opposite in the other columns:

POINT 1 Water and Land

Discharge point 1

Pollutant	Units of measure	Frequency
Total Suspended Solids	mg/L	Special Frequency 1
pH	pH units	Special Frequency 1
Oil and grease	mg/L	Special Frequency 1

< Special Frequency 1 > means sampling any discharge, whether controlled or otherwise, which has not occurred from rainfall exceeding 82.5 mm over any consecutive five day period.

M3. Testing methods - concentration limits.

M3.1 Subject to any express provision to the contrary of the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, monitoring for the concentration of a pollutant discharged to waters or applied to a utilisation area must be done in accordance with the Approved Methods Publication unless another method has been approved by the EPA in writing before any tests are conducted.

M4. Environmental monitoring

M4.1 The applicant is required to install and maintain a rainfall depth measuring device.

M4.2 Rainfall at the premises must be measured and recorded in millimetres per 24 hour period, at the same time each day.

Note: The rainfall monitoring data collected in compliance with Condition M4.2 can be used to determine compliance with L2.4.

M6. Other monitoring and recording condition

M6.1 For the purposes of monitoring for compliance with the noise limit conditions of the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, (condition L4) noise emitted from the premises must be measured or computed at 30 metres from the nearest residential dwelling/s over a period of 15 minutes using the

"FAST" response on the sound level meter. A modifying factor correction must be applied for tonal, impulsive, or intermittent noise in accordance with the document NSW Industrial Noise Policy (NSW EPA, January 2000).

M7. Blast Monitoring

M7.1 The time of blasting, the air-blast overpressure level from blasting operations and the ground vibration peak particle velocity from blasting operations must be measured at the nearest sensitive receiver for each blast.

Reporting conditions

Note: Mandatory condition to be used on all general terms of approvals

R1.1 The applicant must provide an annual return to the EPA in relation to the development as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the development. In the return the applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the development, report on compliance with licence conditions and provide a calculation of licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return.

Special Conditions

E1. Noise and dust mitigation measures

E1.1 The applicant must implement all noise and dust mitigation measures recommended in the Statement of Environmental Effects - Attachment 6 - Assessment of noise and dust impacts of proposed modification of extraction boundary Tumbulgum Quarry Dulguigan, prepared by MWA Environmental dated 17 November 2014.

Noise mitigation measures to be implemented are to be found in section 2.3.2 of the aforementioned Statement of Environmental Effects attachment.

Dust mitigation measures to be implemented are to be found in section 3.4 of the aforementioned Statement of Environmental Effects attachment.

E1.2 The noise and dust mitigation measures outline in condition E1.1 must be completed prior to the commencement of quarrying activities.

- 17. Insert (after GENERAL TERMS OF APPROVAL) ATTACHMENT 1 - CONDITIONS – REHABILITATION AND ENVIRONMENTAL MANAGEMENT PLAN (REMP) AMENDMENTS as follows:**

ATTACHMENT 1

CONDITIONS – REHABILITATION AND ENVIRONMENTAL MANAGEMENT PLAN (REMP) AMENDMENTS

As referenced in Condition 1.2 of the s96 Consent DA04/0162.02

The applicant shall amend the existing approved REMP being *Rehabilitation & Environmental Management Plan for Reedy Creek Quarry at Dulguigan Road North Tumbulgum* dated December 2004 prepared by Jim Glazebok & Associates Pty Ltd in accordance with all the amendment items detailed herein.

The amendments may be made as an attachment and/or addendum of the REMP. Where any conflict or inconsistency exists between the REMP and attachment and/or addendum (consistent with Attachment 1 of this consent) the provisions detailed in the later shall prevail.

To be clear, the following amendments have been based on review of the contemporary draft REMP being *Rehabilitation and Environmental Management Plan (REMP 2015) Version 5.0 dated May 2015 prepared by Groundwork Plus* submitted on the 19 May 2015 as part of the application material for DA04/0162.02

1. Amendment Item 1 General Provisions

- a. All REMP components and reference to the quarry layout plan shall be consistent with and reflect the approved layout plan being *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus*
- b. Ensure consistency between any general provisions of the REMP and those stipulated in specific supplementary management plan sub-components described below
- c. Remove reference to:
 - i. NSW National Parks & Wildlife Service concurrence requirements
 - ii. Survey requirements of the ecotone line - Monitoring shall be focussed on the progress of restoration effort and health of threatened flora species in accordance with the Habitat Restoration Plan (HRP) sub-component of the REMP (pursuant to the relevant provisions detailed below)
- d. Section 3.10.4 Monitoring
 - i. The 'Monitoring Table' shall be modified to be consistent with the Vegetation Management Plan (VMP) and HRP sub-components of the REMP
 - ii. On-site *Endiandra muelleri ssp. bracteata* population monitoring shall be undertaken for the duration of quarry operations. Based on the monitoring an annual health status report shall be provided to Council's Natural Resource Management (NRM) Unit every year for the 5 (five) year HRP monitoring period and 2 (two) years thereafter.
- e. Section 3.10.7 Corrective Action - This shall include consultation with Council's NRM Unit to ensure corrective actions are appropriate
- f. Provide an updated Environmental Monitoring Summary Table (similar to that included in the REMP 2004) based on the detail provided in the supplementary plans

2. Amendment Item 2 Vegetation and Fauna Management Plan

A Vegetation and Fauna Management Plan ('V&FMP') shall be prepared by a suitably qualified ecologist to be implemented during the construction and operational phase of the development. The V&FMP shall be included as a sub-component of the REMP and detail the following:

- a. Particulars and locations of vegetation to be removed and vegetation to be retained in order to facilitate the development

- b. Clearly identify the 'Proposed Extraction Boundary (19 ha)' (as shown on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus* to ensure all necessary measures are implemented to:
 - i. Ensure works remain within the 'Proposed Extraction Boundary (19 ha)'
 - ii. Habitat beyond the 'Proposed Extraction Boundary (19 ha)' is afforded adequate protection during the construction and operational phase of quarry operations
- c. Details of all proposed infrastructure, site access and services
- d. Details of strategies and methods to be implemented to protect vegetation and habitat to be retained in accordance with the *Australian Standard AS 4970-2009 Protection of trees on development sites*
- e. Information on how the clearing will be undertaken including:
 - i. Whether the clearing will be undertaken in stages
 - ii. Special considerations for clearing (e.g. juvenile vegetation first)
 - iii. Time periods between clearing of staged areas (where applicable) or immature vegetation
 - iv. Direction of clearing
 - v. Details of erosion and sediment control measures to be employed prior to, or immediately following clearing activity
- f. Methods for the reuse of felled vegetation from the subject site (i.e. sensitively placing felled material where appropriate within retained areas to improve habitat values)
- g. Disposal methods for remaining debris after the above methods have been employed
- h. Identification of known and potential habitat trees (displaying values such as hollows, fissures, nests, drays, arboreal termitaria used as nests etc.) and description of fauna species known/likely to utilise habitat features
- i. Information on how trees are to be inspected for denning or nesting animals including constraints for inspecting trees (to provide acceptable alternative methods) and summary of removal and relocation methods for each faunal group (including observed species and species likely to occur in the area to be disturbed)
- j. Considerations relating to time periods for when fauna is likely to be removed/flushed prior to clearing. Regard shall be given to nesting/roosting times when scheduling tree works
- k. Details of special equipment required (such as cameras, elevated platforms etc.)
- l. Identification of general locations that wildlife may be relocated/translocated to if required (based on habitat requirements and subject to any required licences/permits)
- m. Specify that all fauna management procedures shall be undertaken by a suitably qualified wildlife specialist who holds all necessary permits/licences issued by the NSW Department of Environment & Heritage (or equivalent agency at the time)
- n. Any long term fauna management requirements i.e. installation of nest boxes (where hollows are to be removed), removal of unnecessary barbed fencing or retrofitting to make fauna friendly

- o. Any other vegetation management measures as detailed in Section 5.0 of the *Further Ecological Assessment Tumbulgum Quarry, Dulguigan NSW dated 07 May 2015 prepared by BMM Ecological Consultants*

3. Amendment Item 3 Long Term Voluntary Conservation Area Management Plan

A general long term Voluntary Conservation Area Management Plan (VCMP) sub- component for the area described as 'Offset Area (15.08 ha)' shown on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus* shall be incorporated into the REMP detailing all management measures and monitoring to be undertaken within the Offset Area in perpetuity (under a secure statutory mechanism). The VCMP sub-component shall include (but not be limited to):

- a. Description of the approved development including a plan showing the location of the Offset Area
- b. A description of how the document is to be read, including the purpose and intent of the Offset Area and general requirements at each phase of the development
- c. Schedule of prohibited activities within the Offset Area consistent with relevant conditions of the consent
- d. Detailed descriptions of the Offset Area including:
 - i. Topography
 - ii. Waterways, flow paths, gullies
 - iii. Vegetation communities and significant species
 - iv. Fauna habitat and significant species
 - v. Other significant features.
- e. Summary of requirements to be fulfilled by the proponent including:
 - i. Construction phase habitat protection requirements (vegetation and fauna management, sediment and erosion control)
 - ii. Rehabilitation, including summaries of rehabilitation activities (based on the Habitat Restoration Plan sub-component)
 - iii. Maintenance requirements including activities, timeframes and standards to be achieved following the five (5) year active establishment/maintenance phase
 - iv. Monitoring details including baseline data/photographs; and
 - v. Compliance/certification
- f. General information, including:
 - i. Duration of requirements / responsibilities;
 - ii. Checklists for Council to assess compliance with the VCMP sub-component (including remedial actions for non-compliance)

4. Amendment Item 4 Habitat Restoration Plan

A Habitat Restoration Plan ('HRP') shall be prepared as a sub-component of the REMP for the entire 'Offset Area (15.08 ha)' as shown on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus*

The HRP shall be prepared by a suitably qualified professional in accordance with Council's *Draft Habitat Restoration Plan Preparation*

Guideline dated February 2012 (attached) to include the following information (but not be limited to):

- a. An appraisal of the present condition of remnant and regrowth vegetation
 - b. A plan overlaying an aerial photograph of the site which divides the area into appropriate management zones
 - c. A management strategy for each of the zones, using a combined 'Assisted Natural Regeneration' and 'Reconstruction' approach
 - d. A schedule of local native plant species (necessary to re-establish the pre-clear vegetation community) including Glossy Black Cockatoo (*Calyptorhynchus lathami*) feed trees (i.e. *Allocasuarina littoralis* and *A. torulosa*). Planting density shall be prescribed at one (1) plant per two (2) square metres in areas where a 'reconstruction' approach is adopted.
 - e. Where 'Assisted Natural Regeneration' is applied natural recruitment must exceed one (1) plant per metre square
 - f. A program of works to be undertaken to remove invasive weed species (noxious and environmental weeds);
 - g. A schedule of timing of proposed works and frequency of activities developed to achieve site capture and meet both the short and long term objectives of the Offset Area
 - h. A schedule of activities not permitted within the Offset Area consistent with relevant conditions of the consent
 - i. Requirement for a Section 132C Licence issued under the *National Parks and Wildlife Act 1974*
 - j. Management of domestic farm/feral animals (if appropriate) and any fencing/signage requirements to restrict access and increase landholder/public awareness
 - k. Nomination of key performance indicators/criteria for monitoring purposes
 - l. An active maintenance, monitoring and reporting schedule with developer commitment for a period of not less than five (5) years
 - m. An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of Council's General Manager or delegate for such changes.
 - n. Incorporate threatened flora species monitoring and evaluation similar to that adopted in the REMP 2004
5. **Amendment Item 5 Site Remediation Works**

The applicant shall provide the following details in respect to progressive rehabilitation of internal quarry batters as shown on *Dwg. No. 1374.056 Rev.1* in *Rehabilitation Management Plan dated 05 May 2015 prepared by Groundwork Plus*:

- a. Clear schedule of timeframes for remediation activity and establishment and maintenance periods to achieve site capture and slope stabilisation
- b. Species list comprising 100% local native species suitable to the site and conditions
- c. Provide a 10 m x 10 m indicative planting palette showing one (1) plant per metre square.

- d. **Provide details of performance criteria generally consistent with Council's *Draft Habitat Restoration Plan Preparation Guideline dated February 2012* requirements i.e. 90% success of planted stock, no environmental weed species present, growth of 1 m by year 3 and 1.5 m by year 5**

REPORT:

Applicant: HY-Tec Industries (Queensland) Pty Ltd
Owner: Mr Leslie J Cowell & Ms Sandra M Cowell & Ms Julie R Cowell
Location: Lot 28 DP 1079480 Pollards Road, Dulguigan
Zoning: RU2 Rural Landscape
Cost: \$1,000,001

Background:

The current quarry is located on Lot 28 in DP 109480 (which was a consolidated Lot created in 2005) on the north western side of Dulguigan Road, approximately 7 kilometres north east of Murwillumbah and 2.5 kilometres west of Tumbulgum. The surrounding area comprises sugar cane, bushland, grazing land and six dwelling houses. The land comprises a ridge rising up to approximately RL 90 metres at the peak, which is located in the centre of the site. Other than the existing extraction areas, the land is heavily vegetated.

The site contains a significant well connected tract of remnant vegetation known to support a suite of threatened flora and fauna species and ecological communities. The vegetation proposed to be removed as part of the quarry expansion includes:

- 2.9 ha Brush Box Open Forest / Brush Box Tall Moist Forest (drier forest on ridges)
- 1.5 ha Brush Box Open Forest / Brush Box Tall Moist Forest (moister forest on lower slopes)

The application proposes that areas to the immediate north, east and west of the extraction boundary are to remain undisturbed and protected and managed for conservation purposes. This area is shown on the site layout plan and described as 'Offset Area (15.05 ha)'. Koalas are known to occur across the northern part of the site whilst potential koala habitat exists to the east of the extraction footprint. Incidental sightings of koala have been reported from neighbouring properties.

Following is a table detailing the history of the site and how the amalgamated quarry and current controls came about with a comparison to the proposed amended consent:

ITEM	REEDY CREEK QUARRY	SANDERSON'S QUARRY	POLLARDS QUARRY	AMALGAMATED QUARRY AS PER DA04/0162	PROPOSED QUARRY AS PER DA04/0162.02
EXTRACTION RATE	200,000m ³ pa 195,000m ³ average over a three year period	30,000m ³ pa 20,000m ³ average over a three year period	7,300m ³ pa 0.3ha lateral expansion during any 12 month period	200,000m ³ pa 195,000m ³ average over a three year period (Approximately 5,100,000m ³ total extraction)	No increase (Approximately 4,239,800m ³ total extraction as a result of increased boundaries but also increased bench widths which lowers the overall extraction volume)

QUARRY LIFE	20 years	40-50 years	Unknown	27 years from November 2014 (2031)	<p>An Extra 9 Years to enable extraction of the additional material 1,755,000m³ (2040)</p> <p>Note: The amended S96 plans reassessed extraction volumes and resulted in more accurate extraction rates which are increased to that originally notified but decreased in physical area.</p>
OPERATING HOURS	<p>7.30am – 6pm Monday to Friday</p> <p>7.30am to 12 Noon Saturdays</p> <p>No works Sundays or Public Holidays</p>	<p>7.00am to 5pm Monday to Friday</p> <p>7.00am to 12 Noon Saturdays</p>	Unknown	<p>7.30am – 6pm Monday to Friday</p> <p>7.30am to 12 Noon Saturdays</p> <p>No works Sundays or Public Holidays</p>	<p>No change proposed however the current EPA licence states:</p> <p><i>Saturday operating hours as 8am to 1pm</i></p> <p>The applicant needs to comply with both approvals so Council Officer's recommend Council align the consent with the existing EPA licence.</p>
BLASTING FREQUENCY	Max 3 times per month	As required	Unknown	Max 3 times per month	No change
TRAFFIC	Max 40 trucks per day (averaged over a year)	No specific limits on consent, however the EIS indicated 8 truck loads per day	Unknown	Max 40 trucks per day (averaged over a year)	No change
ACCESS	One main entry/exit.	One small unformed	One small unformed	One main entry/exit (the old Reedy Creek	No change

		entry/exit	entry/exit	access) with all other access points off Dulguigan Road removed	
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The 2004 approval documentation anticipated a total yield of 5,100,000m³ with 10m high and 4m wide benches. The applicant has now advised that such figures were overly generous and that the benches should be 10m wide to allow better stability and sufficient soil for re-vegetated benches. This effectively means that the site will actually only yield 4,239,800m³ taking into account the newly proposed extraction areas and increased bench widths.

The facility maintains an existing NSW EPA Licence No.3430 issued on the 3 August 2011. The quarry is required to operate in accordance with a Rehabilitation and Environmental Management Plan (REMP) which was updated in August 2014. An updated version of the REMP has been provided addressing the items Council initially identified. A Safety, Health and Environment Policy has been provided to demonstrate management commitments and capabilities.

The current S96 Modification therefore seeks approval for:

- An overall increase to the boundary of extraction (an extra 1,755,000m³ of material over 9 years). to the west and east of the site as shown below from the red to the pink line (note there are some areas on the eastern boundary where the proposed boundary has been pulled in):



This results in the need for Condition 1 to be amended to reflect the revised plan. Condition 1 currently reads as follows:

1. *The development shall be completed in accordance with the Statement of Environmental Effects prepared by Jim Glazebrook & Associates Pty Ltd (JGA) dated February 2004, further information as per the JGA letter of 30 July 2004 as later amended by their letter of 8 October 2004, and the approved "Rehabilitation and Environmental Management Plan" approved from time to time by the Director Development Services, except where varied by the following conditions.*
- Amendment of Condition 26 to remove the reference to a noise barrier for an existing house (Lot 27 DP 814950). Condition 26 currently reads as follows:
 26. *No work, including the construction of noise barrier, is to be undertaken beyond the boundary of the extraction area as identified in the REMP (excluding rehabilitation). The noise barrier and any bushfire retardation measures are to occur within the identified extraction area unless otherwise approved by Council, NSW Rural Fire Service and the National Parks and Wildlife Service.*

- Delete Condition 27 in regards to the noise barrier for Lot 7 DP 814950 (shown diagrammatically below).



Condition 27 currently reads as follows:

27. The noise barrier is to consist of a fence constructed in accordance with the recommendations of the Noise Impact Statement by James Heddle Acoustical Consultants dated 10 January 2004 in the vicinity of the wet sclerophyll/rainforest vegetation. An earthen bund will not be accepted in this vicinity due to the disturbance to vegetation.

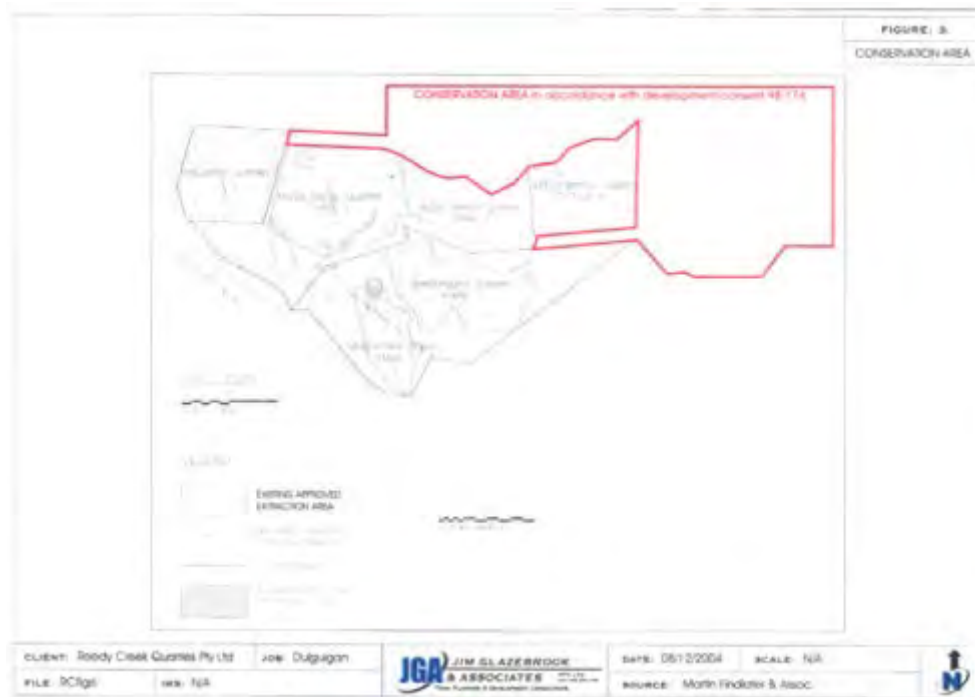
The applicant has advised that “The noise barrier referred to in Condition 26 and 27 was required in relation to the dwelling located on Lot 7 DP814950 which at the time of the 2004 application was owned by a member of the public and the assessment by James Heddle Acoustical Consultants determined that a noise barrier would be required to protect the amenity of that dwelling. However, Lot 7 on DP814950 is now owned by Hy-Tec and is no longer utilised as a private residence. Hy-Tec intend to amalgamate Lot 7 DP814950 with the Quarry in due course. Accordingly, the requirement to retain the noise barrier is no longer applicable.

It should also be noted that as a result of this detailed assessment it has been necessary to amend many more conditions of consent to ensure the consent reflects current legislation and assessment of DA04/0162.02. Each of the required amendments are further discussed throughout this report and can be seen combined in the recommendation for approval.

Council Officers and some Councillors attended a site visit on 19 February 2015. As part of this site visit the neighbouring properties were also visited.

Council Officers reviewed the application as lodged in December 2014 and requested additional information from the applicant on 25 March 2015 in regard to:

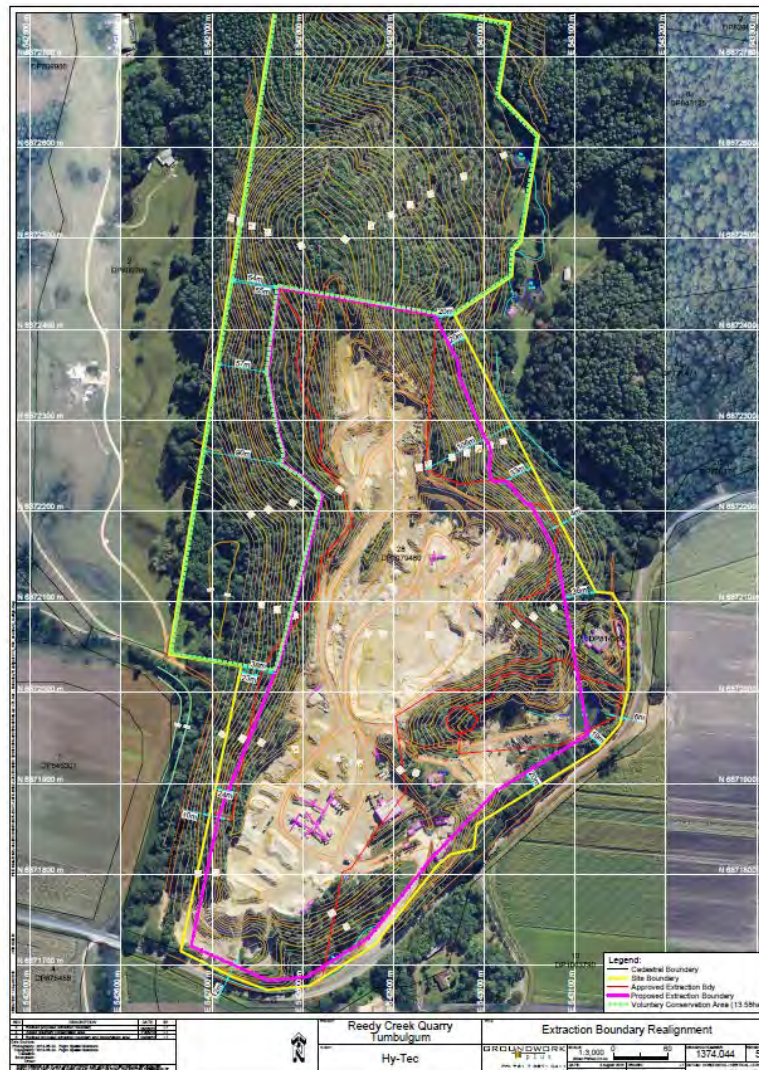
- Compliance matters with the existing Rehabilitation and Environmental Management Plan (REMP) in regards to a possible Voluntary Conservation Agreement which may have satisfied National Parks and Wildlife Services about vegetation loss associated with the quarry.



- Satisfying the substantially the same test as required by S96(2) of the Environmental Planning & Assessment Act 1979;
- The economic effect on the local community;
- A more comprehensive visual analysis;
- A more comprehensive ecological survey and flora and fauna assessment incorporating assessments of significance and site pegging; and
- A revised Rehabilitation and Environmental Management Plan (REMP).

The applicant responded to this additional information request (19 May 2015), and below are some extracts from that response:

- *There is no evidence that the previous operator established the proposed Voluntary Conservation Area. Hy-Tec will pursue this matter after the assessment of the current S96 Modification. The revised plan as later submitted in August 2015 shows a revised Voluntary Conservation Area measuring 13.58ha in size protecting all land north of the existing extraction boundary and most of the land west of proposed extraction boundary. This proposed area is shown in green below:*



- The proposed modification does not alter the approved land use, annual extraction volumes, truck movements, method of extraction and processing equipment, plant, operating hours or depth of construction. The proposed boundaries allow for the rationalisation of boundaries and the clear delineation of the areas now proposed for protection as part of a Voluntary Conservation Area. The proposed modification is substantially the same as that originally approved.*
- Extractive resources underpin all urban and infrastructure development and make a major contribution to the ongoing economic growth of local communities through direct and indirect employment opportunities. Extractive resources are site specific, limited in occurrence by geological conditions and are finite. Because they are high volume, low value materials, they need to be located close to communities that use them as the cost of transport to the end user contributes greatly to the overall cost of the delivered product. No new quarries have established in the Tweed Shire Council Area for quite some time and as Council is aware the establishment of a new quarry is very complex. Accordingly there is a general preference to extend the operational life of an existing quarry wherever possible rather than initiate a new quarry and introduce new impacts to a community and environment. Hy-Tec estimates that the quarry provides \$5,000,000 per annum to the local community per annum by way of direct sales to customers, employment of local staff, associated trades and supplies. The*

quarry plays an important role in the local economy and Hy-Tec wish to continue that role over the long term.

- Detailed visual analysis has been provided in the form of a 3D image that rotates around the entire site. Based on the latest plans the residents to the west will not have direct sight lines into the quarry.
- A Further Ecological Assessment was provided to justify the proposal and the latest proposed boundary alignment protects the significant vegetation identified by Council.
- A revised Rehabilitation and Environmental Management Plan (REMP) was provided as per Council's request.
- A response to the 13 submissions was provided as follows:

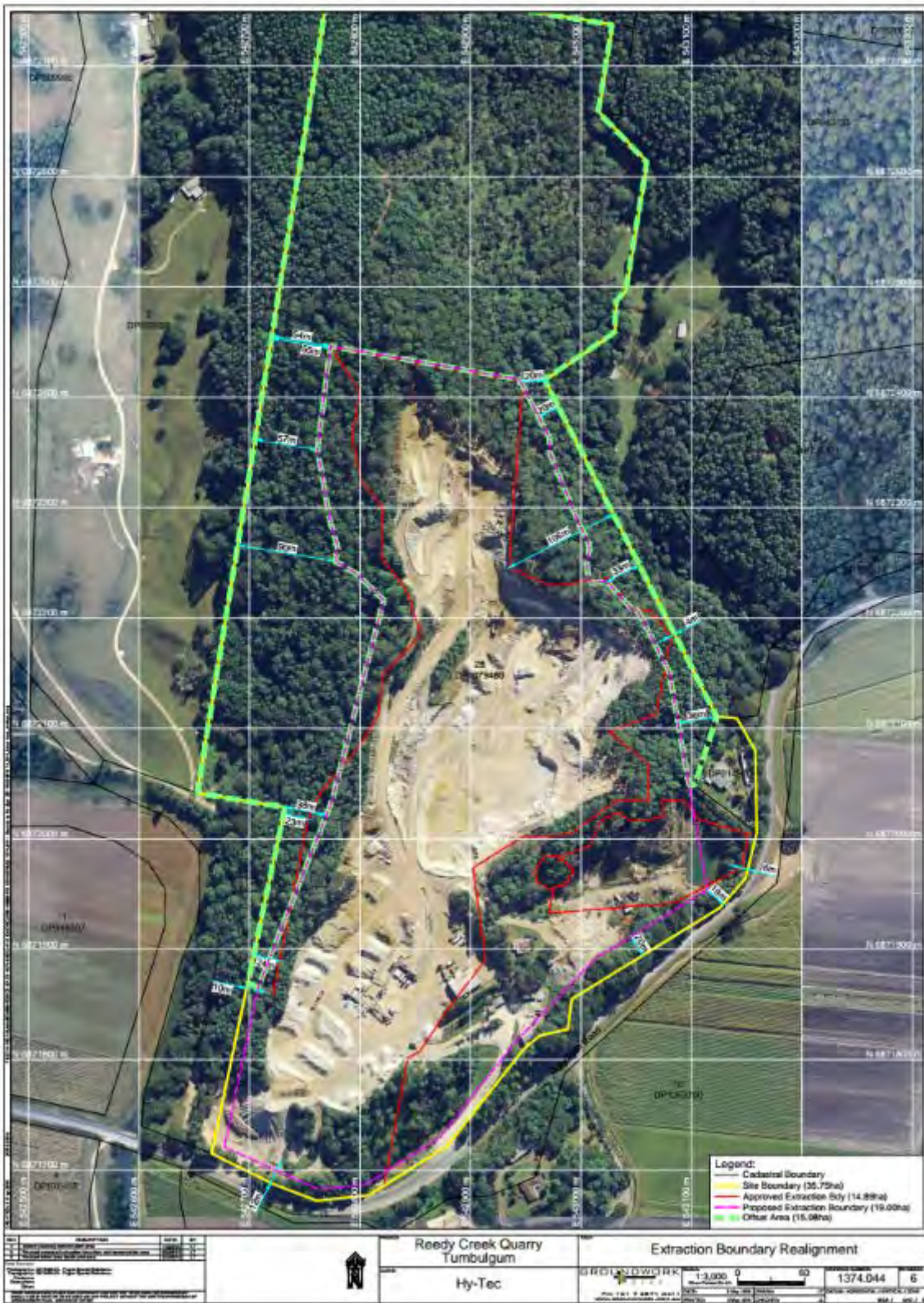
Table 1 – Submissions

Summary of submitter comments	Applicant response
Assessment of potential impacts to properties east of the quarry.	The dwellings to the west of the quarry are closer than the dwellings located to the east of the quarry. Furthermore, the approved quarry footprint extends to within 4m of the eastern boundary of the site. Whereas, the proposed extraction boundary increases the setback to the eastern boundary to 20m. Compliance with the relevant noise, dust and vibration criteria were already required under the existing approval for operations within 4m of the property boundary. Therefore, as the separation distance to the properties to the east of the quarry will be increased from that currently approved, the technical assessments rightly focused on the primary area of change to the extraction boundaries, being the risk of potential impacts to the properties to the west of the quarry.
Visual amenity impacts to properties west of the quarry.	The applicant met with the surrounding residents and following receipt of the information request from Council, undertook a full review of the proposed extraction boundary and quarry design. Subsequently, the proposal has been revised. The proposal as shown on the attached drawings ensures dwellings to the west of the quarry will not have line of sight into the quarry. The higher level of topographic shielding will also assist in managing and mitigating other potential impacts such as noise.
Proximity of extraction and associated noise dust and vibration impacts.	The proposed extraction boundary moves closer to the property boundaries. Technical assessments of noise, dust, and vibration impacts have been provided which confirm that compliance with the relevant performance criteria can continue to be achieved.
Potential impacts to flora and biodiversity values.	The further ecological assessment by BAAM identified a number of protected plants and mapped the extents of the 'lowland subtropical rainforest'. The proposed extraction boundary and quarry design has been revised to protect those identified values. A VCA has been identified and will be actioned by Hy-Tec following the assessment of this application.

Summary of submitter comments	Applicant response
Potential impacts to fauna including koalas.	The further ecological assessment by BAAM confirms that <i>'the study area does not meet the definition of potential Koala habitat under SEPP 44'</i> . BAAM also undertook an 'Assessment of Significance' as requested by Council which determined that no significant impact was likely for each identified species.
Protection of downstream water quality	The revised REMP continues to require the implementation of stormwater management measures. It should be noted that the Environment Protection Authority have contacted Hy-Tec to review the existing conditions of the Environment Protection Licence (EPL) 3430. Outcomes of those discussions will be incorporated into the REMP as necessary.
Removal of the requirement for noise fencing.	The assessment by James Heddle Acoustical Consultants dated 10 January 2004 considered 'residence b' within Lot 7 DP814950 and as depicted on Figure 9.3.1 of that assessment recommended the installation of an acoustic fence (directly adjacent to the residence) to protect the amenity of the residence. Hy-Tec now own Lot 7 DP814950, accordingly an acoustic fence for that residence is no longer required. Subsequently, this application seeks that the requirement for the acoustic fence to the residence on Lot 7 DP814950 be removed.
Heavy vehicle traffic	As previously noted, this application does not seek to change the maximum annual rate of extraction or hours of operation. Accordingly, there will be no increase in the volume of heavy vehicle traffic from quarry on an annual basis beyond what has previously be approved. It should be noted that an existing condition of approval states as follows, 'the average number of trucks departing the quarry is to be 40 vehicles per day', and it is not proposed to change this condition.

Council's assessment of the submissions is detailed later in this report.

Upon review of this material Council's Natural Resource Management Unit were concerned that some significant vegetation along the western alignment was not protected. Accordingly the applicant again re-aligned the boundary (Amended Plan dated August) and is now proposing all significant vegetation (as identified by the applicant's reports and agreed to by Council's Natural Resource Management Unit) be protected and managed for conservation purposes. This area is shown on the site layout plan and described as 'Offset Area (15.05 ha)' in a plan Version 6 which was submitted to Council and OEH in May 2016 and which now forms part of this application.

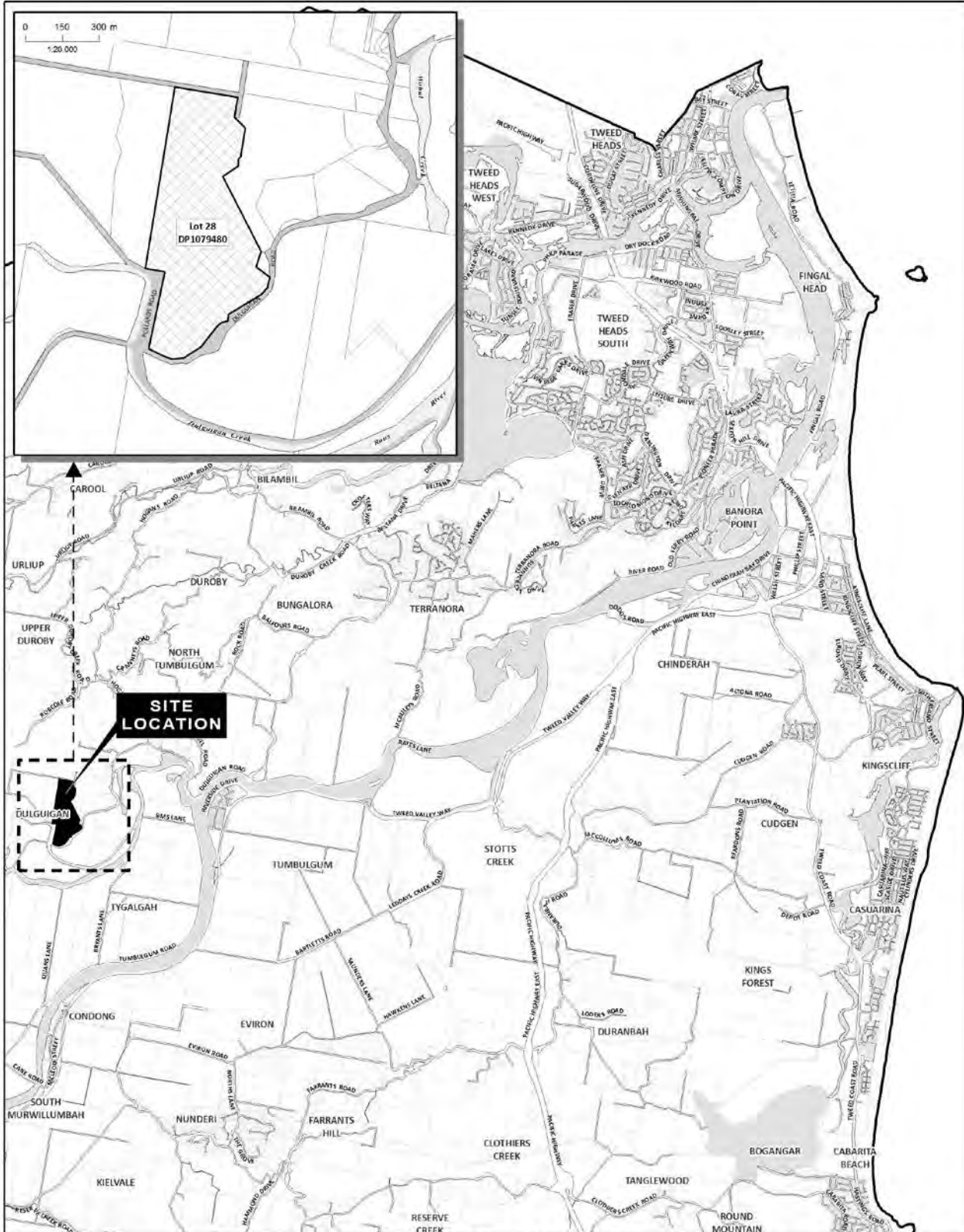


In addition the applicant again responded to the additional public submissions.

Accordingly the following report reviews the latest version of the application and undertakes an assessment of public submissions and the current applicable planning controls. The amended footprint to protect significant vegetation and the quarry's significance as a regionally significant extractive resource (as per the Far North Coast Regional Strategy) has resulted in Council Officer's recommending approval of the proposed amended S96

Application with additional recommended conditions to more effectively manage the environmental considerations of the site. Such conditions have been accepted by the applicant and can therefore lawfully be imposed. No further additional conditions can be imposed without the prior authorisation of the applicant. The changes sought by the S96 Modification are considered to satisfy the substantially the same development test as required by the Act.

LOCALITY PLAN:



Locality Plan

Lot 28 DP1079480
Pollards Road, Dulguigan

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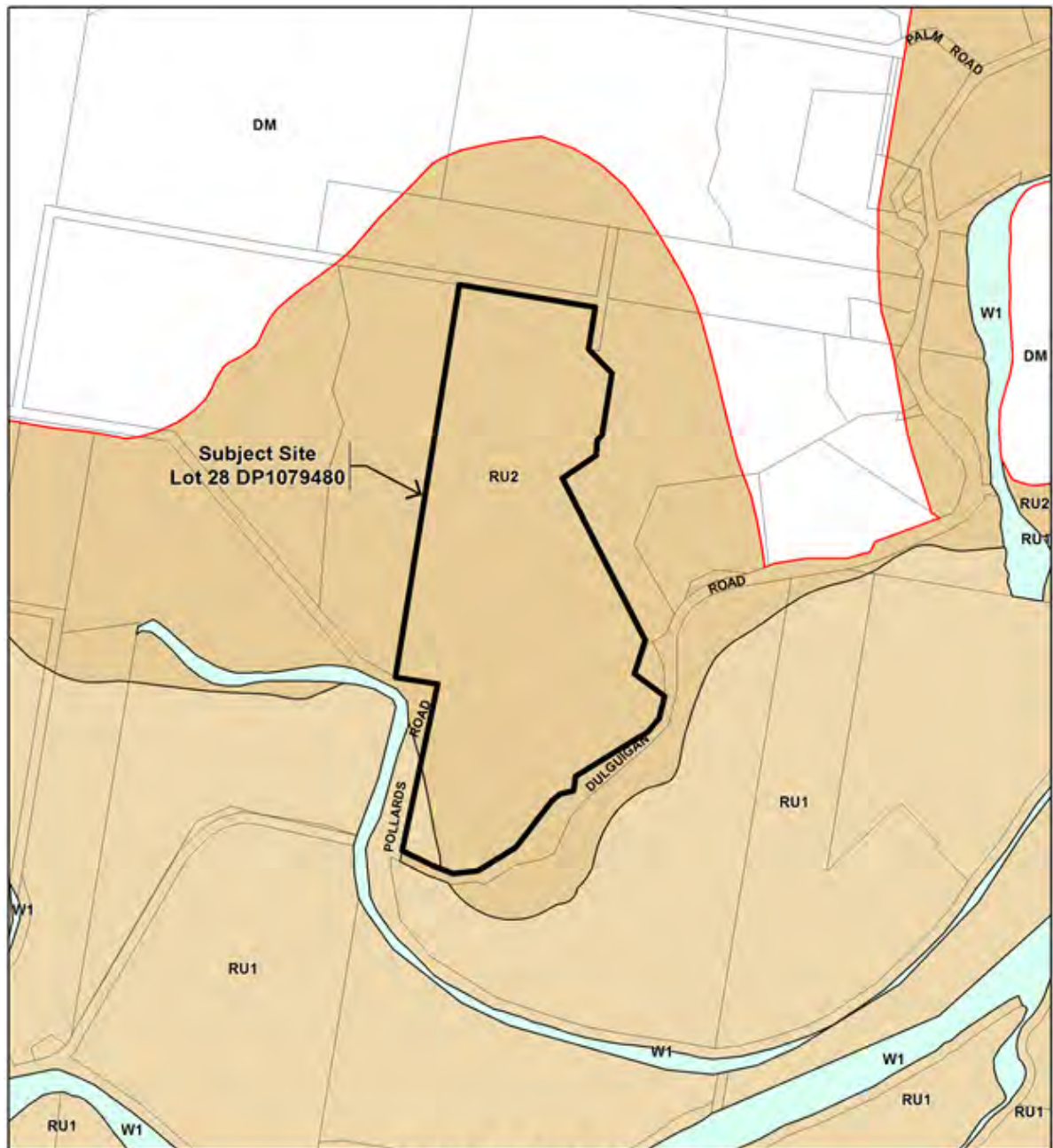
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GDA Map Projection: Universal Transverse Mercator
Reference Datum: Geoidetic Datum of Australia 1996
Zone: Map Grid of Australia, Zone 56

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ZONING PLAN:



CURRENT LAND ZONING

Lot 28 DP1079480
Pollards Road, Dulguigan

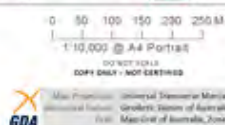
Tweed Local Environmental Plan 2014

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: Information General Information Municipalities
Geographic Details: Geometric Details of Australia 1984
Data: MapInfo of Australia, June 95

OpenStreetMap, © 1996-2016

AERIAL IMAGE:





AERIAL PHOTO - April 2015

Lot 28 DP1079480
Pollards Road, Dulguigan

SOURCE:
Aerial imagery was captured
April 2015 © AAM Pty Ltd and NSW LPI

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

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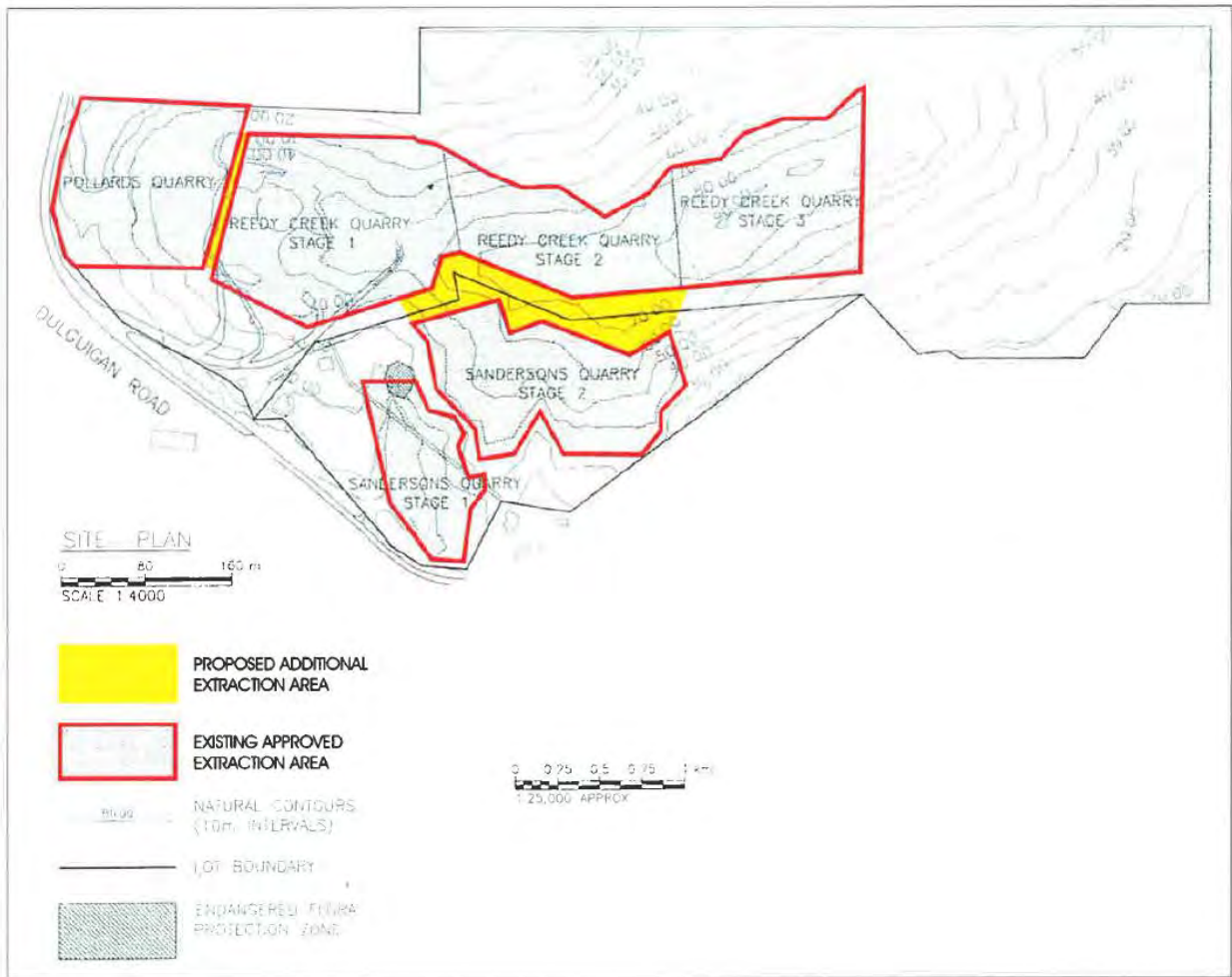


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Author: J. Batchelor - Strategic Planning & Urban Design Unit

Date Printed: 21 October, 2015

ORIGINAL DA04/0162 DEVELOPMENT PLANS:



CURRENT S96 MODIFICATION DA04/0162.02 PROPOSED PLAN SUBMITTED MAY 2016

(Note: red line existing approved boundary, pink line proposed alignment; green line depicts area for a Biodiversity Offset Area as Per OEH Guidelines):



Considerations under Section 96(2) and 79C of the Environmental Planning and Assessment Act 1979.

S96(2) and 96(3) of the Act specifies that:

(2) Other modifications

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

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

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

Accordingly, the following report addresses these heads of consideration.

To determine if the S96 Application meets the substantially the same test a 79C (1) Assessment has been undertaken in the first instance:

79C (1) Assessment – Environmental Planning and Assessment Act 1979

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

Tweed Local Environmental Plan 2014

(Note : The original DA was assessed against LEP 2000)

Clause 1.2 – Aims of the Plan

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

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) The particular aims of this Plan are as follows:*

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
- (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
- (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
- (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

Through the lodgement of the additional information the applicant has sufficiently demonstrated that the amended S96 Modification can be supported subject to the recommended conditions of consent that specifically address environmental management.

Clause 2.3 – Zone objectives and Land Use Table & Permissibility

The subject site is now zoned RU2 Rural Landscape which has the following zone objectives:

Objectives of zone

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

The quarry would be best defined as an extractive industry which is permissible with consent however permissibility of this modification is derived by S109B 2(b) of the Environmental Planning and Assessment Act 1979 which states:

109B Saving of effect of existing consents

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

The proposed expansion of the quarry is considered a rationalisation of the existing boundaries to ensure as much of the available product is sustainably removed. This particular quarry is quite unique in that different parts of the site have different types of rock material in terms of colour and texture. The operators have advised that this quarry is essential to supplying the required rock material for the local industry and it should be utilised as effectively as possible.

The revised boundaries are considered to offer a good compromise between utilising an existing finite resource while keeping sufficient surrounding vegetation in a conservation area.

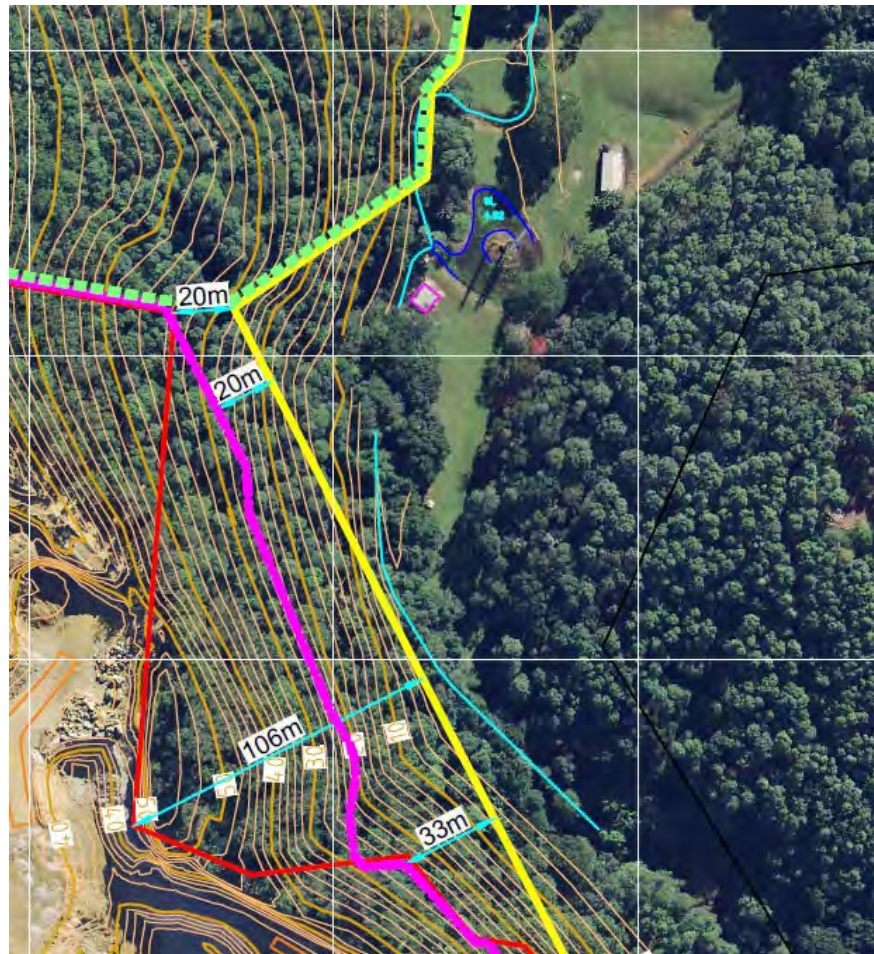
In terms of the impact on scenic quality, the zone objective refers to maintenance of the 'rural landscape' character of the land. It is important to note that whilst a loss of 'naturalness' may represent a loss of that particular valued scenic quality, the established landscape character within an area is not necessarily described exclusively by natural features. The present day rural character of the Tweed Valley is based on a rich cultural history which has transformed the landscape through each stage of European settlement. The resulting landscape includes cultural landmarks which form recognisable features within the rural setting. Historical aerial photography shows that the quarry has been operational since at least 1962, and as mentioned above it provides an essential resource to local industry and is directly related to the primary zone objective of encouraging sustainable primary industry. In that regard, whilst it may not be aesthetically agreeable it can justifiably be recognised as a pre-existing feature of the 'rural landscape'.



Aerial photography from August 1962 shows the quarries in operation.

Regarding the impact for nearby residents, the applicant has submitted detailed 3D images to assist Council's assessment in terms of the shorter range visual impact on the rural landscape character of the area. Where the quarry expands to the west the view lines for residents in that area won't significantly change as the elevation and vegetation will continue to shield the quarry floor.

However where the quarry expands to the east it will have a visual impact for the residents at No. 645 Dulguigan Road as the Quarry wall will be between 20m -30m from their property boundary when the current allowable setback is between 20m - 106m at its greatest depth. The current residents at this location stated that they use the southern part of this property for outdoor enjoyment and the proposed quarry location will affect this residential amenity. The main house however is located 126m to the north east of the property boundary. However, this property has recently been purchased by the quarry operators and the objections from this property have been withdrawn.



Despite the objection being withdrawn and the property being bought by the quarry owners the individual impacts on any adjoining property owners needs to be weighted against the broader strategic objectives of utilising a finite resource in a sustainable manner. Subject to the recommended conditions of consent regarding site management and environmental conservation the proposed S96 Modification on balance is considered to be consistent with the zone objectives.

Clause 5.9 – Preservation of Trees or Vegetation

Council’s Natural Resource Management Unit have reviewed the application and recommended suitable amendments to the applicant’s extraction boundary (which forms the applicant’s latest plans) to protect significant vegetation. In addition the remaining areas north and west of the extraction boundary will be protected and managed in an Offset Area for conservation purposes. This clause is considered satisfied subject to the recommended conditions of consent.

Clause 5.10 – Heritage Conservation

This Clause has an objective to conserve Aboriginal objects and Aboriginal places of heritage significance.

The application was supported by an initial Due Diligence Report and a final Cultural Heritage Assessment (Feb 2016) which were considered by the Aboriginal Advisory Committee.

The Aboriginal Advisory Committee resolved at their meeting of the 4 March 2016 (endorsed at Council on 21 April 2016) as follows:

"That Council notes that the Aboriginal Advisory Committee raises no objection to the proposed S96 Application (DA04/0162.02) for Dulguigan Quarry as long as the standard conditions of consent are imposed including:

1. *Retention of highest point on the site.*
2. *If any artefacts are identified on site standard protection measures will apply through notification to relevant authorities.*
3. *Protection of remaining vegetation into the future."*

The highest point is retained by condition 1 by virtue of the approved plan.

A new condition has been imposed which states:

If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.

The Biodiversity offset area will protect the remaining vegetation into perpetuity.

The recommended conditions of consent are considered adequate to address the issues raised by the AAC and Clause 5.10.

Clause 5.11 - Bush fire hazard reduction

The application was referred to the NSW Rural Fire Service who made no objection to the proposal.

Clause 7.1 – Acid Sulfate Soils

The subject site is partially affected by Class 5 Acid Sulfate Soils. The REMP adequately addresses this.

Clause 7.2 - Earthworks

The REMP adequately addresses the method of extraction and site management in regards to earthworks.

Clause 7.3 – Flood Planning

The quarry is designed for all water to drain back into the centre of the site. Furthermore the floor of the quarry will not change as a result of the S96 Modification (5.00mRL) and therefore the modification will have no impact on flood planning.

Clause 7.4 - Floodplain risk management

The floor of the quarry will not change as a result of the S96 Modification (5.00mRL) and therefore the modification will have no impact on floodplain risk management.

Clause 7.6 - Stormwater Management

The proposed amendments will make no change to the existing stormwater management as all works will ensure drainage back into the quarry site and the REMP adequately addresses stormwater management.

Clause 7.10 - Essential Services

All essential services are available to the development.

State Environmental Planning Policies

SEPP (Mining, Petroleum Production and Extractive Industries) 2007 and SEPP (Infrastructure) 2007

In accordance with Clause 104 Traffic Generating Developments and Schedule 3 of the Infrastructure SEPP and Clause 16 of the SEPP (Mining, Petroleum Production and Extractive Industries) 2007 the application was referred to the Roads and Maritime Services who advised that Council should be satisfied as to certain matters pertaining to traffic as the affected roads are local roads and for Council's consideration.

The application was accordingly referred to Council's Traffic Engineer who advised that:

*"The quarry will **continue** to:*

- *Extract 200,000m³ per annum (195,000m³ average over a three year period);*
- *Operate between the hours of 7.30am – 6pm Monday to Friday, 7.30am to 12 Noon Saturdays and have no works Sundays or Public Holidays;*
- *Blast 3 times per month;*
- *Have a maximum of 40 trucks per day (averaged over the year); and*
- *Keep the existing single access point.*

From a traffic engineering perspective, this is largely a continuation of the previously approved status quo, albeit with a prolonged lifetime.

Dulguigan Road

Traffic volumes on Dulguigan Road are currently around 500 vpd (481 vpd @ quarry - 2012) at the quarry and approaching 900 vpd (812 vpd @ Terranora Rd - 2012) at the Tumbulgum end. Traffic count records for Dulguigan Rd dating back to 2003 show little to no growth in traffic volumes during the period.

The Dulguigan Road formation typically incorporates a sealed width of 6.6m or greater which roughly corresponds to a class B rural road in Council's specifications. Council's development design specification D2 - Road Design and Standard Drawing SD.009 suggest a class B rural road is suitable for up to 250 vpd. However, Austroads Guide to Road Design Part 3: Geometric Design (Table 4.5) suggests that a road of this width is suitable for up to 1000 vpd.

No detailed analysis of sight distances at the multiple corners and intersections along the haul route has been performed.

Dulguigan Rd has a rural speed limit of 100kph, however, the road geometry along the haul route generally restricts speeds to less than this. A truck speed limit of 60kph is applied to the haul route between the quarry and Terranora Rd.

Public Submissions

The S96 application has been through 3 rounds of public comment receiving a total of 19 objections and 10 letters of support.

Objections from members of the public which contain traffic related comments generally include:

- *Safety concerns related to the quarry trucks sharing the road with cars, cyclists, school buses and pedestrians on Dulguigan Rd.*
- *The capacity of Dulguigan Rd to cater for the volume of heavy vehicle traffic generated by the quarry*
- *Road maintenance issues*
- *Damage caused to the road by heavy vehicle traffic*

As mentioned above, the S96 does not propose to increase average daily extraction or traffic on Dulguigan Rd over the levels already approved in DA04/0162 and therefore, for the already approved lifetime of the quarry (extraction boundaries), the application does not present an opportunity to reassess the traffic aspects of the quarry. However, the application will result in an extended lifetime for the quarry and therefore a review of the traffic aspects relating to the extended component of the quarries lifetime is warranted.

No major changes to the Dulguigan/North Tumbulgum road network are programmed in Council's forward planning. There are no earmarked urban or employment land release areas in the vicinity. The surrounding road network is expected to remain substantially the same for the lifetime of the quarry with minimal increases in traffic volume.

Public submissions that include reference to a specific area of road or issue:

"...road needs repairing regularly on the corner of Skinners Reserve where the weight of the trucks has impacted on the integrity of the road".

Council's maintenance crews have recently completed repairs to this area and this should no longer be an issue. Also, it would be unfair to blame these defects entirely on quarry traffic as they are not the only heavy vehicles to use Dulguigan Rd (i.e. Cane trucks) and defective pavement is a likely factor.

"Between the bridge and the Rous River. This section of road is falling into the river...."

Council has recently completed revetment works in this area to stabilise the riverbank. The primary cause of this slumping would be erosion due to the proximity of the river.

"Just west of Mayes Hill Road. This section has formed a 30+ metre drain on the north section of the road...."

Although heavy vehicles may be the major cause of the pavement deformation, the root of the problem here is insufficient pavement depth. This area of pavement is scheduled for replacement by Council's maintenance staff.

RMS Comments

1. *"The Statement of Environmental Effects (SoEE) and Rehabilitation and Environmental Management Plan (REMP) provide limited information regarding the primary haulage routes used for the transport of extracted materials on public roads. The SoEE refers to a Traffic Impact Assessment undertaken in 2004, which may not reflect current or future network conditions. Council should be satisfied that the proposed modification will not impact adversely on the safety and efficiency of the road network for the proposed life of the development."*

As per above comments, the surrounding road network is expected to remain substantially the same for the lifetime of the quarry with minimal increases in traffic volume.

2. *"Council should consider the safety of key intersections along the primary haulage routes and that they are consistent with the applicable guidelines and standards".*

No detailed analysis of the intersections along the haul route has been performed. The road network has already been deemed appropriate for the traffic generated by the quarry through the DA approval. No increase in average daily traffic from the quarry is proposed, the surrounding road network is expected to remain substantially the same for the lifetime of the quarry and minimal increases in traffic volume are expected.

3. *"Council may wish to require that the REMP include a Code of Conduct relating to the transport of materials on public roads as referred to under Clause 16(1)(c) of the SEPP. It is suggested that the code address, but not be limited to;*
 - a. *A map of the primary haulage routes highlighting critical locations.*
 - b. *Procedures and/or safety initiatives specific to residential areas and school zones.*
 - c. *Format of an induction process for new operators and regular toolbox meetings.*
 - d. *A complaints resolution and disciplinary procedure.*

- e. *Any community consultation measures to address busy haulage periods”*

The DA applied extensive traffic related conditions upon the development and the applicants REMP outlines procedures/responsibilities, similar to a code of conduct, for traffic.

The REMP contains:

- *Traffic strategy*
- *Staff Training and Induction Measures*
- *Incidents and Complaints Procedure*
- *Communication Procedure*

The requirements of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 clause 16(1)(c) appear to have been fulfilled through the applicant's REMP”

Therefore S96 Modification is considered satisfactory with all other provisions of the SEPP's as the Modification is consistent with the existing consent and its conditions of consent.

SEPP44 - Koala Habitat Protection

Forested habitat within the study area is assessed as:

- (a) not meeting the definition of either core Koala habitat or potential Koala habitat under the NSW State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44);
- (b) meeting the definition of 'habitat critical to the survival of Koala' under the EPBC Act referral guidelines, with a habitat score of 5; however the project is likely to have a low risk of a significant impact on Koala.

Numerous surveys were undertaken by the applicant, all of which were considered inadequate by Council's NRM Unit as they were undertaken outside the peak activity period for the Koala, and SEPP 44 potential koala habitat assessment was not undertaken within the area where a higher density of Koala feed trees occur.

Notwithstanding, during each field inspection conducted by Council (2 officers over 3 visits totalling approximately 15 hours), no signs of Koala occupation was recorded on the western side of the quarry despite extensive searches beneath the canopy of the preferred feed tree species. A number of pellets were found along the eastern edge in proximity to several semi-mature koala food trees (*Eucalyptus microcorys*), yet due to their age a positive identification could not be made. Council's independent assessment concluded that preferred feed tree species density did not exceed the 15% threshold in any areas within or immediately adjacent to the proposed quarry footprint expansion to qualify as Potential Koala Habitat for the purposes of the SEPP 44.

Koalas have been anecdotally reported on adjoining properties and are known to occur in the northern parts of the site, however this area will be protected and managed in an Offset Area for conservation purposes. Given the restrictions of the

SEPP particularly with regard to the non-localised schedule of Koala feed tree species and incidental (non-verified) observations of Koala, a precautionary approach should be taken to avoid significant impact on any koala habitat. As such the area of higher density *E. microcorys* on the eastern flank is to be retained, positioned outside the proposed quarry footprint. It is recommended that this amended footprint be used to ensure all necessary environmental impacts be appropriately mitigated. Furthermore, compensatory planting will take place to offset the loss of any preferred Koala food trees, and is required under the approved habitat restoration and management plan.

SEPP 55 – Remediation of Land

The land that is subject of any proposed quarrying activity is vegetated land that has not been used for any farming activities, or other uses that may potentially result in land contamination. Given the land use history of the site, soil contamination is an unlikely risk. Therefore SEPP 55 is not considered to apply to this application.

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

Nil applicable

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

A16-Preservation of Trees or Vegetation

See the detailed Flora and Fauna comments below.

There are no other specific sections of the DCP, which would apply to the proposal.

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

Designated Development

In November 2004 Council resolved that:

the application DA04/0162) is not considered to constitute Designated Development within the meaning of Section 77A of the Environmental Planning & Assessment Act, as the development would not significantly increase the environmental impacts; and the application be approved with the following conditions.....

This decision was based on Clause 35 of Schedule 3 to the Environmental Planning & Assessment Regulation 2000 which provides that alterations and additions to development (whether existing or approved) are not designated development, where the consent authority is of the opinion that the development would not significantly increase the environmental impacts of the total development compared with the existing or approved development.

Having regard to Clause 36 of Schedule 3 (which details the factors that the Consent Authority must have consideration for when determining the applicable environmental factors) the amalgamation of the three quarries and the expansion between the existing quarry areas did not significantly increase the environmental

impacts of the total development compared with the existing or approved development.

Therefore as the original application did not constitute "Designated Development" the current S96(2) has been assessed against the relevant legislation but not as a Designated S96 Application.

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

The proposed site is located outside the area covered by the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

No consideration of fire safety within the bounds of Clause 93 is required.

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),**

Not applicable

Tweed Shire Coastline Management Plan 2005

Not applicable

Tweed Coast Estuaries Management Plan 2004

Not applicable

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

Not applicable

- (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**

Flora and Fauna

The site occurs within a Regional Fauna Corridor aligned east-west to the north of the site. Focal species include the Common Blossom Bat, Koala, Grey headed Flying Fox and Black Bittern. Remnant vegetation onsite forms part of a broader connected remnant heterogeneous tract of habitat greater than 500 ha. The site

supports remnant vegetation representative of the following Endangered Ecological Communities as listed under the *Threatened Species Conservation Act 1995* (TSC Act):

- *Lowland rainforest in the NSW North Coast and Sydney Basin bioregions*
- *Lowland rainforest on floodplain in the NSW North Coast bioregion*

Both of the above-mentioned communities qualify as Critically Endangered Ecological Community - *Lowland Rainforest of Subtropical Australia* as listed under the (EPBC Act). Five flora species identified onsite during contemporary survey are listed as threatened under the TSC Act, two (2) of these species are listed under the federal *Environmental Protection & Biodiversity Conservation Act 1999* being:

- *Endiandra muelleri subsp. bracteata* - Green-leaved Rose Walnut
- *Archidendron hendersonii* - White Lace Flower
- *Endiandra hayesii* - Rusty Rose Walnut
- *Syzygium hodgkinsoniae* - Red Lilly Pilly
- *Lepiderema pulchella* - Fine-leaved Tuckeroo

Three (3) fauna species observed onsite during contemporary survey are listed as threatened under the TSC Act being:

- Glossy Black Cockatoo - *Calyptorhynchus lathami*
- Wompoo Fruit Dove - *Ptilinopus magnificus*
- Rose-crowned fruit dove - *Ptilinopus regina*

Numerous modifications to the original proposal were made which increased buffers from vegetation communities regarded as candidate EEC; the natural waterway to the west of the site and associated riparian habitats; potential koala habitat to the east; known Glossy Black Cockatoo habitat to the east; and known threatened flora species and associated habitats.

Furthermore, the applicant agreed to detailed conditions of consent to ensure long term protection, rehabilitation of core habitat areas and commitment to the preparation and implementation of construction/operation based vegetation and fauna management plans.

Finally, to ameliorate the ecological impact of the expansion of the quarry by 4.1ha, which will involve the removal of an additional 1.6ha of remnant vegetation 15.08 ha (Offset Area) is to be protected under a statutory covenant (88B instrument), which will be the subject of future restoration effort in accordance with a detailed habitat restoration plan. The existing Rehabilitation and Environmental Management Plan is to be updated to reflect the modifications and additional commitment to site management including preparation and implementation.

Based on the amended footprint and implementation of conditions of consent, it is considered that any adverse ecological impacts likely to be associated with the proposed development can be avoided, minimised and managed to an acceptable level.

The application was referred to the NSW Office of Environment and Heritage (OEH) for comment. A response was received dated 27 February 2015. The OEH disagreed with the applicant's claims that the proposed modification would not have an environmental impact additional to what has already been described and approved as part of the DA04/0162 consent.

To address the agencies concerns and demonstrate that the proposal would not have significant impact on threatened species and endangered ecological communities the applicant prepared the following reports generally in accordance with the NSW Biodiversity Banking and Offsets Scheme as adopted under the *Threatened Species Conservation Act 1995*:

- *Addendum Biodiversity Assessment Report Tumbulgum Quarry, Dulguigan NSW dated July 2016 prepared by NGH Environmental*
- *Biodiversity Offset Plan Tumbulgum Quarry dated July 2016 prepared by NGH Environmental*

The reports were reviewed and assessed by the OEH. On the 01 July 2016 a letter was forwarded to Council expressing the view that '*the applicant has clearly and reportedly demonstrated an intention to provide an offset for the biodiversity impacts of the proposal*' Anomalies and errors in the calculation of offsets were noted however the OEH were satisfied that any shortfall of offsets could be resolved in the future prior to the quarry expansion. Accurately calculated offset requirements and details of offsetting measures would be detailed in a Biodiversity Offsets Strategy and approved by the OEH and Council. As such the OEH recommended a condition that reflects this requirement.

It is important to note that once the Biobanking Agreement is in place OEH will be responsible for enforcing compliance with the terms of the Agreement and Council will have no role in compliance over the Agreement.

Upon review it was considered that additional conditions of consent were required to be imposed (rather than rely solely on the OEH condition) to satisfactorily address matters of habitat compensation and long term land management of the 'Offset Area'. The primary grounds for imposing additional standalone conditions are as follows:

1. The OEH condition only applies 'prior to commencement with quarry expansion'. This may not occur for many years depending on extraction material demand and therefore fundamental requirements such as securing the conservation area and rehabilitation that are required regardless of the quarry expansion under the existing approval that still remain outstanding would be further delayed.
2. There is no certainty that offsets are to be made onsite where reliant on the OEH condition alone.
3. There is no specified timing as to when areas have to be secured and rehabilitation works implemented

Therefore additional/modified conditions of consent to ensure the sites ecological values are appropriately protected, restored and managed in the interim period,

prior to a BioBanking Agreement being secured under the *Threatened Species Conservation Act 1995* is recommended.

The OEH condition is to be imposed requiring that a BioBanking Agreement is secured prior to commencement of quarry expansion and a condition shall be imposed that generally reads:

'Where the proponent enters into a BioBanking Agreement that involves securing in perpetuity the onsite Offset Area under the Threatened Species Conservation Act 1995 any 88B instrument that applies to that land will be sterilised upon completion of the Bio-Banking agreement by the Tweed Shire Council'

In addition, Condition 32 currently reads

"Any proposal to clear native vegetation in excess of 2ha per annum is to be the subject of a separate application to the Department of Infrastructure Planning and Natural Resources"

This condition appears to have been transferred from the surrendered DA98/174 consent that incorporated NPWS Concurrence Conditions. By virtue of the condition it may be taken that any clearing on the subject site within the existing and approved extraction boundary may not require separate consent from Local Land Services regardless of current *Native Vegetation Act 2003* (NV Act) provisions, unless the clearing is proposed to exceed the threshold limit of 2 ha per annum.

Under the current proposal however the following aspects of the development and regulatory requirements in respect to the NV Act are to be considered:

The quarry boundary has expanded capturing additional native remnant vegetation not contemplated for removal under the existing conditions:

- The current *Native Vegetation Regulation 2013* does not provide any exemptions for native vegetation clearing for the purposes of quarry operations; and
- The current application did not require concurrence from the Office of Environment and Heritage in order for the agency to consider the implications of the condition under the NV Act if remained unchanged.

Based on the above dual consent is likely to be required for the future removal of native vegetation beyond the previously approved quarry boundary regardless of the rate of annual clearing. As such, it is considered prudent that a condition be imposed in this regard to ensure that the applicant's obligations under the *Native Vegetation Act 2003* are clearly stipulated. Accordingly, it is recommended that Condition 32A read as follows:

32A. Any proposal to clear native vegetation in excess of 2ha per annum within the area shown as 'Approved Extraction Boundary (14.89 ha)' on Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus (the 'plan' referred herein) yet not within the expanded area shown on the plan as 'Proposed Extraction Boundary' (pursuant to Condition 1.4) is to be the subject of

a separate application to the NSW Local Land Services (or equivalent state consent authority).

The final recommended conditions of consent are considered to ensure any adverse ecological impacts likely to be associated with the proposed development can be avoided, minimised and managed to an acceptable level.

Access, Transport and Traffic

As mentioned above, the application was referred to Council's Traffic Engineer who made the following general comments regarding access, transport and traffic:

"The S96 application does not propose to increase daily traffic volumes generated by the development and therefore does not present opportunity to make any changes to the traffic aspects of the existing approval.

A review of the extended lifetime of the quarry with respect to future plans for the haul route and projected growth in traffic indicates that the road network will remain capable of catering for the quarry traffic.

No objection to the proposed amendments to DA04/0162 are raised on traffic grounds."

With regards to Section 94 developer contributions, the following comments were given:

"TRCP is primarily levied off daily trip generation. The S96 does not propose an increase in the average daily traffic to the quarry and therefore involves no increase in traffic over what is already approved. Heavy Haulage contributions are linked to the destination, not the origin, of heavy vehicle trips and are therefore not applicable (see section 3.6.2 of CP04). No additional roads contributions are necessary."

Noise & Hours of Operation

The subject site is located within 1km of existing residential dwellings. The closest residence is the dwelling located immediately east of the Quarry on Lot 7 DP814950, however that property is now owned by Hy-Tec. Surrounding residences are also located to the north east, north west, west and south of the quarry.

Council's consent limits the existing and proposed hours of operation as:

- 7.30am to 6pm Monday to Friday;
- 7.30am to 12pm Saturday; and
- Nil Sunday or Public Holidays.

An Assessment of Noise and Dust Impacts has been prepared by MWA Environmental Pty Ltd dated 17 November 2014. The report states the following;

"The proposed quarrying activities within the modified Extraction Boundary (western area):

1. Can comply with the relevant NSW Industrial Noise Policy criteria at the nearest residences to the west; and
2. Not result in a significant change to noise levels that would otherwise be expected within the currently approved Extraction Boundary."

The report has been prepared by a suitably qualified consultant and in general accordance with the NSW Industrial Noise Policy. The report is considered adequate and all monitoring, control and management strategies have been detailed in the amended Rehabilitation and Environmental Management Plan.

The study does not include an assessment of noise impacts on the closest dwelling being Lot 7 DP 814950. This site is currently owned by the proponent and it is proposed to amend and delete conditions that reference the requirement for a noise barrier. It is stated that the noise barrier was only required for Lot 7 DP814950. The removal of conditions relating to the noise barrier are supported.

Noise modelling is to be verified in the event that justified complaints are received. Suitable new conditions have been provided below and form part of the recommendation for approval:

New Condition: The LAeq, 15 min noise level emitted from the premises shall not exceed the adopted noise criteria of 37dB(A) during the approved operating hours at any affected residence as detailed in the Assessment of Noise and Dust Impacts prepared by MWA Environmental dated 17 November 2014.

New Condition: 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 that assesses compliance with the adopted noise criteria detailed in the Assessment of Noise and Dust Impacts prepared MWA Environmental dated 17 November 2014. The NIS is to be submitted to the satisfaction of the General Manager or delegate and is to include recommendations for noise attenuation if required. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's Authorised Officer.

Delete Conditions - No.27 (relating to construction of noise barrier), *No. 41* (relating to general noise levels and will be replaced with specific performance criteria as added above).

The EPA Licence has the following criteria for Hours of Operation:

L6. Hours of operation

L6.1 Activities covered by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must only be carried out between the hours of 7:30 am and 6:00 pm Monday to Friday, and 8:00 am and 1:00 pm Saturday, and at no time on Sundays and Public Holidays.

L6.2 This condition does not apply to the delivery of material outside the hours of operation permitted by condition L6.1 if that delivery is required by police or other authorities for

safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification must be provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.

L6.3 *The hours of operation specified in condition L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.*

L6.4 *Heavy vehicles (including excavators, haul trucks, loader and water carts) and machinery [including screening plant, jaw crusher, feed bin, cone crusher, rock drill, water pump and generator (genset)] cannot be started, maintained, arrive or leave the site or operated outside of operating hours as detailed in L6.1 and at no time on Sundays and Public Holidays."*

To avoid inconsistency it is proposed to remove Council's Condition 36 in regard to hours of operation and allow EPA to licence this aspect.

Delete Condition 36 which currently states:

36. *The hours of operation are: -*
- *Quarrying & Hauling: 0730 hrs - 1800 hrs Monday to Friday*
 - *0730 hrs - 1200 hrs Saturday*
 - *No work on Sundays or public holidays*

Dust

An Assessment of Noise and Dust Impacts has been prepared by MWA Environmental Pty Ltd dated 17 November 2014. The report states the following;

"Based upon our review of the available dust monitoring results the current quarrying activities are compliant with the relevant objective by a significant margin at the nearest residential land to the west. As such, subject to implementation of the dust management measures recommended in Section 3.4, it is considered that the proposed extraction activities within the western area of Modified Extraction Boundary can occur in compliance with the requirements of the REMP and without causing unreasonable dust nuisance at properties to the west"

The report has been prepared by a suitably qualified consultant and is considered adequate. Monitoring, control and management strategies have been detailed in the updated Rehabilitation and Environmental Management Plan.

Vibration/Blasting

A Blasting Impact Assessment prepared by ORICA Quarry Services dated 19 September 2014 has been submitted. The report has been prepared by a suitably qualified consultant and recommends monitoring and management strategies which have been detailed in the Rehabilitation and Environmental Management Plan. The monitoring and management strategies are detailed in the Rehabilitation and Environmental Management Plan and appear to be adequate.

Some of the recent objectors raised issue with some recent blast activities stating that they were not correctly notified and that the blasts themselves seemed to be

particularly noisy. Council is not the regulatory authority for the blasting activities and forwarded these complaints to the EPA as the licencing authority.

EPA responded to these complaints as follows:

“The EPA has been communicating with the complainant on blasting activities at Reedy Creek Quarries Dulguigan [Environment Protection Licence (EPL) 3430], specifically in relation to the blasts of 28 May & 12 August 2015. Upon request, the licensee has provided information to the EPA showing that the blasts on these occasions were within EPL limits. This has been communicated to the complainant.

The EPA has sought assurance from the licensee that an additional blast monitor will be set up at a neighbouring property for subsequent blasts.”

On-Site Sewage Management

The REMP states that there is an existing on-site sewage management system and that approval will be obtained prior to relocation of the amenities building.

Standard conditions of consent are recommended for this to ensure approval to operate is obtained for any existing systems and approval to install is obtained for any future relocation of these facilities.

New Condition: Within 90 days from the date of consent (DA04/0162.02) the applicant is required to lodge an application to operate any new onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a determination.

New Condition: Prior to the relocation of the amenities building the applicant is required to lodge an application to install/operate any new onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a determination. Any application shall be supported by design report prepared by a suitable qualified and experienced consultant.

Water Quality

The surface water management strategy for the property includes the diversion of all stormwater runoff from within the quarry to a central sediment control pond. This water will be utilised for dust suppression and any excess water will be pumped to the polishing pond including water treatment prior to any controlled discharges. Any controlled discharges will be required to meet performance goals detailed in the Tweed Shire Council Development Design Specifications D7 - Stormwater Quality.

The NSW EPA General Terms of Approval do not specify any water quality performance criteria. The performance criteria detailed in the REMP is consistent with the Tweed Shire Council Development Design Specifications D7 - Stormwater Quality. The monitoring and management strategies are detailed in the Rehabilitation and Environmental Management Plan and appear to be adequate.

Approvals from other Regulatory Authorities

The facility maintains an existing NSW EPA Licence No.3430 issued on the 3 August 2011. The NSW EPA recommended general terms of approval will be incorporated into the consent and existing conditions will be amended where required to ensure consistency.

In particular Section 3.5.3 Management Measures relating to noise states that vehicle operators will be permitted to arrive at the site from 6:50am only.

This appears to conflict with the proposed operating hours and the general terms of approval provided by the NSW EPA. The applicant will be asked to align both approvals in terms of operating hours as follows

- 7.30am – 6pm Monday to Friday (change REMP to not allow trucks before 7.30am)
- 8.00am to 1pm Saturdays (previously Council said 7.30 – noon but change as per EPA Licence)
- No works Sundays or Public Holidays (no change)

Rehabilitation and Environmental Management Plan

A comprehensive review of the Rehabilitation and Environmental Management plan was undertaken by Council staff in 2013 following the submission of the REMP for approval under the existing consent Condition No.1. The items identified during this review and subsequent reviews have now been addressed.

Where any conflicts exist between REMP and the NSW EPA General Terms of Approval or conditions of consent these will be required to be corrected in an amended REMP with 60 days from issue of the consent. Condition No.1 can be amended to require an amended REMP.

Visual Analysis & Amenity

There are long distance sight lines to the quarry from many areas throughout the Shire including the intersection of Cane and Tumbulgum Roads Murwillumbah when travelling north (see Photo 1), and the increased footprint will change the visual appearance of the already very prominent quarry by enlarging the extent of visual interruption to the forested hillsides which are highly valued and form the scenic backdrop to the site. However, the expansion will be gradual over multiple years, as it has been since prior to 1970 (see Photo 2), meaning the public will become consistently accustomed to the change rather than having to accept a single drastic event, which would have a far greater perceived impact. Given the quarry face is already highly visible (due to the lack of vegetation and unique white rock) the slowly advancing footprint is considered an acceptable intensity of gradual impact over time. This, coupled with the requirement for future rehabilitation of exhausted quarry areas, means the cumulative long term impact to scenic quality will be negligible.



Photo 1: Quarry as viewed from intersection of Cane Road and Tumbulgum Road, Murwillumbah.



Photo 2: Quarry as viewed from intersection of Cane Road and Tumbulgum Road, Murwillumbah (zoomed in).

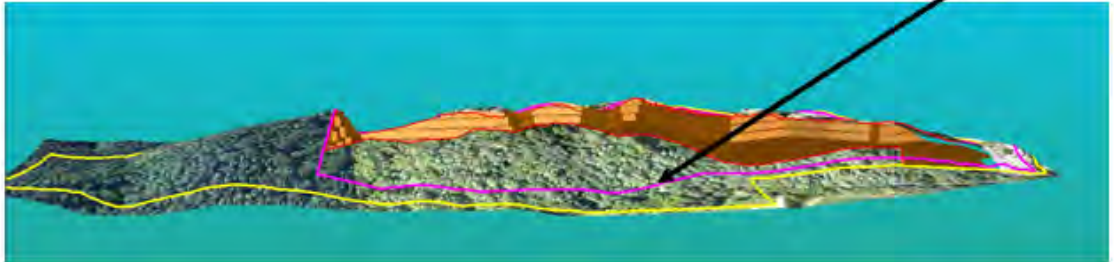


Photo 3: Aerial photography from 11 January 1970

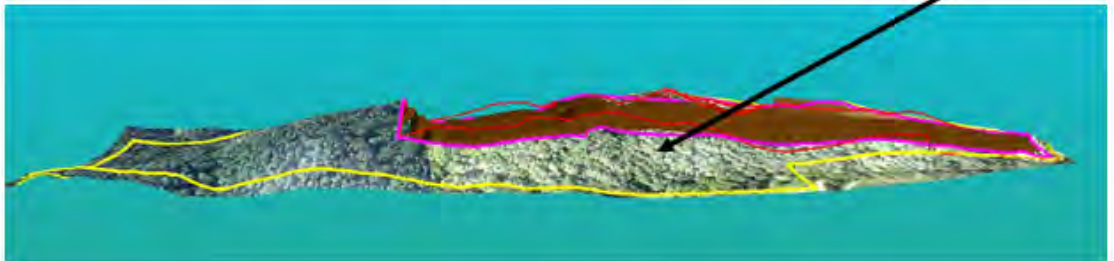
Some of the submissions contained hand drawn view analysis diagrams to depict the impact of the proposed extension to the extraction boundaries. As a result the applicant had a complete 3D Visualisation of the amended quarry design which is a 360 degree view of the quarry from a drone hovering around the site.

Where the quarry expands to the west the view lines for residents in that area won't significantly change as the elevation and vegetation will still shield the quarry floor.

The Existing Approved Pit 3D Visualisation Video for the western view is shown below (note that the pink line shown below as indicated here was the original proposed expansion which has since been reduced by way of the amended plans of August 2015):



The Proposed Pit 3D Visualisation Video for the western view is shown below with the proposed pink line much closer to the existing extraction boundary allowing for the retention of the vegetation in this area:

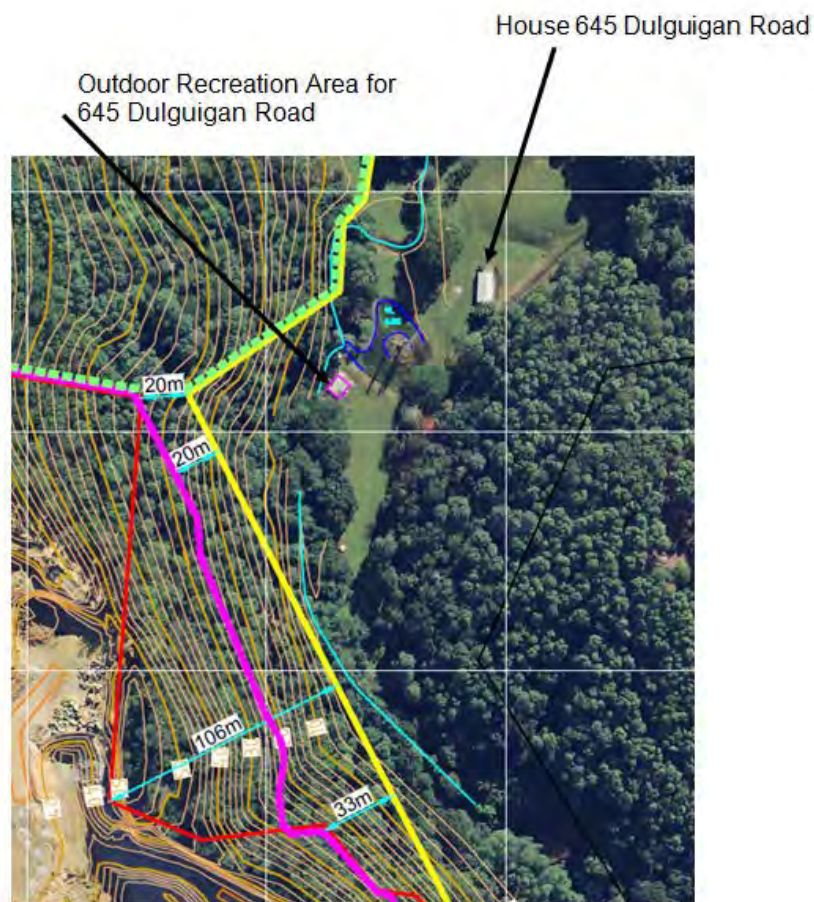


Based on the amended plans the view lines from the west are considered satisfactory.

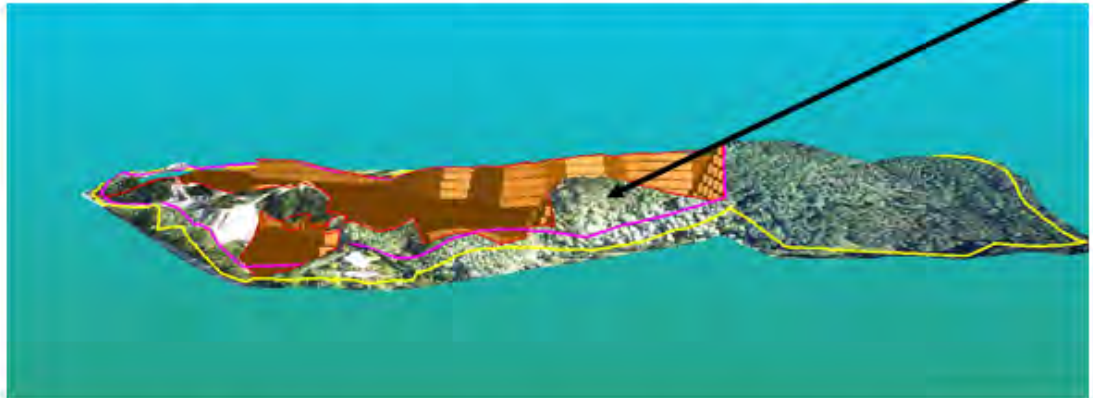
However where the quarry expands to the east it will have a visual impact for the residents at No. 645 Dulguigan Road as the Quarry wall will be between 20m -30m from their property boundary when the current allowable setback is between 20m - 106m at its greatest depth. The residents at this location use the southern part of this property for outdoor enjoyment and the proposed quarry location will affect this residential amenity. The main house however is located 126m to the north east of the property boundary.

However this property has now been purchased by the Quarry operators and the objections previously received by this landowner have been formally withdrawn.

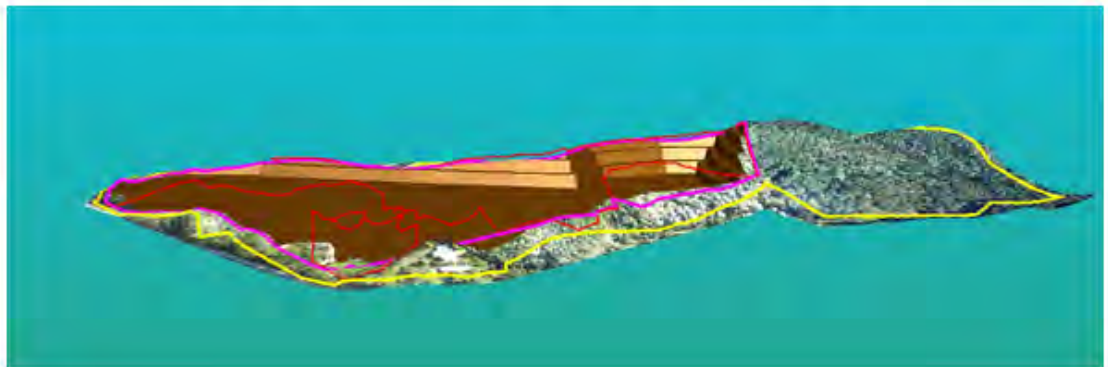
See the below map extract:



The Existing Approved Pit 3D Visualisation Video for the eastern view is shown below and it is the removal of this area that will impact the neighbours the most:



The Proposed Pit 3D Visualisation Video for the eastern view is shown below:



Despite this neighbouring property now being owned by the quarry the individual impacts on any adjoining property owner needs to be weighted against the broader strategic objectives of utilising a finite resource in a sustainable manner. Given the view implications predominantly affect the property of No. 645 Dulguigan Road rather than the house at No. 645 Dulguigan Road the proposed expansion is considered reasonable on merit. Subject to the recommended conditions of consent regarding site management and environmental conservation the proposed S96 Modification on balance is considered acceptable when considering the view analysis.

Scenic Landscape Impacts

Consideration was given to *Brouwer, C. 1995, Tweed Shire Scenic Landscape Evaluation Report, prepared for Tweed Shire Council by Catherine Brouwer Landscape Architects, Teneriffe*. Brouwer recognises that the prominent characteristics that give the Tweed landscapes their scenic quality are amongst the major reasons it has a high sensitivity to change of its visual character and loss of scenic quality. It identifies one of these major scenic qualities as the openness of the Tweed River valley and the wide long views this affords, coupled with the uniformity of the forested hillsides that form its natural edge and accentuate any intrusion or clearing. Within the Tweed Valley Scenic District, Tumbulgum and Dulguigan Roads are recognised as designated scenic routes yet the existing quarry is acknowledged as an existing 'Degraded Area'.

In *Corkery, N. 2004, Visual Management System for NSW Coast (Tweed Pilot)*, prepared for the *Comprehensive Coastal Assessment (DoP)* by URS Asia Pacific, North Sydney, 'adverse visual impact' is defined as 'any modification in landforms, water bodies, or vegetation, or any **introduction** of structures which negatively interrupts the visual character of the landscape and disrupts the harmony of the basic elements (l'e form, line, colour and texture)' – the existing quarry is already considered an existing degraded area – minor expansion cannot be deemed a new and therefore unacceptable adverse impact.

In *Super Studio v Waverley [2004] NSW LEC 91*, SC Roseth states "that the acceptability of an impact depends not only on the extent of the impact but also on reasonableness of, and necessity for, the development that causes it. In his judgement SC Roseth continues by inferring that just because a type of development will be new when compared to that surrounding does not make the development inappropriate, only that its impact should be assessed with heightened sensitivity, and further that it the development is only acceptable if its impact were minor or negligible.

Further, in *Tenacity Consulting v Warringah [2004] NSW LEC 140* SC Roseth in relation to view sharing establishes the step of assessing the reasonableness of the proposal that is causing the impact, stating "[a] development that complies with all planning controls would be considered more reasonable than one that breaches them."

The applicant has agreed to detailed conditions of consent to ensure long term protection, rehabilitation of core habitat areas and commitment to the preparation and implementation of construction/operational based vegetation and fauna management plans. These measures as well as the proposed development's consistency with the relevant planning controls are considered to make the proposed quarry expansion reasonable. In addition the proposal includes extensive rehabilitation measures that will restore the scenic and environmental qualities of the disturbed areas of the site in the future, and the acceptance of a restrictive statutory covenant over 15ha which shall be managed as a natural area for conservation purposes in perpetuity.

Given the quarry face is already highly visible (due to the lack of vegetation and unique white rock) the slowly advancing footprint is considered an acceptable intensity of gradual impact over time and the expected long term impact to scenic quality will be negligible.

The resultant short term impacts on scenic quality are considered acceptable as there will be a gradual increase over several years to what is an existing extractive industry resulting in a necessary interruption to the scenic landscape character of the Tweed Valley.

(c) Suitability of the site for the development

Strategic Framework – Far North Coast Regional Strategy

The strategy is intended to protect the unique environmental assets, cultural values, and natural resources of the Region while ensuring that future planning maintains the character of the Region and provides for economic opportunities.

The key elements of the Strategy are represented on the overall Regional Strategy map, supported by a series of more detailed maps. The Natural Resources map identifies the site as a Regionally Significant Extractive Resource as shown below by purple shading. The surrounding orange shading represents regionally significant farmland which accurately depicts the areas sugar cane crops.



The Strategy seeks to ensure sustainable management of and access to natural resources and protection of rural landscapes from increased settlement.

The amended plan is considered a good balance between use of a finite resource and environmental conservation by way of the Biodiversity Offset.

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

The S96 Application was referred to the following Government Agencies and their relevant responses are detailed below:

Government Agency	Nature of Government Agency Comments
<i>NSW Rural Fire Service</i>	No objection – no conditions
<i>NSW Office of Environment & Heritage</i>	In February 2015 OEH raised objections to the increased footprint of the development as a result of the outdated Flora and Fauna Survey and deficient ecological data. In addition OEH requested an Aboriginal Cultural Heritage Assessment. The amended application and Biodiversity Offset have adequately responded to the ecological issues raised by OEH. The submitted Aboriginal Cultural Heritage Assessment of March 2016 was considered acceptable.
<i>NSW Transport Roads and Maritime Services</i>	The roads in the area are classified as local roads and are under the responsibility of Council. The RMS wants Council to be satisfied to the validity of the old traffic report figures, the adequacy of the key intersections and the possibility of having a Code of Conduct relating to Traffic in the REMP. Council's Traffic & Transport Engineer has advised that no

Government Agency	Nature of Government Agency Comments								
	<p>objections are raised to traffic issues.</p> <p>Therefore the issues raised by RMS have been adequately addressed by way of the recommended conditions of consent.</p>								
<p>NSW Department of Primary Industries</p>	<p>Agriculture No objection – No conditions</p> <p>Industry & Investment – No comment</p> <p>Resource Planning & Development Unit – No comment</p>								
<p>NSW Environment Protection Authority</p>	<p>This application relates to an existing facility which is currently licensed under the Protection of the Environment Operations Act (POEO Act). The premise holds Environmental protection Licence (EPL) 3430.</p> <p>The EPA have recommended General Terms of Approval to ensure the consent reflects the current and future licence requirements as follows (these are included in the recommendation and have been accepted by the applicant):</p> <p>GENERAL TERMS OF APPROVAL UNDER SECTIONS 43(b), 48 and 55 OF THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997 (Environment protection licence to authorise carrying out of scheduled activities at any premises)</p> <p>Administrative conditions</p> <p>Note: Mandatory conditions for all general terms of approval</p> <p>A1. Information supplied to the EPA</p> <p>A1.1 Except as expressly provided by these general terms of approval, works and activities must be carried out in accordance with the proposal contained in:</p> <ul style="list-style-type: none"> • Development Application No.2015.069 submitted to Council on 30 September 2014 and attachments; • Statement of Environmental Effects - Section Amendment to DA04/0162 and attachments. <p>Discharges to Air and Water and Applications to Land</p> <p>P1.1 The following utilisation areas referred to in the table below are identified in the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, for the purposes of the monitoring and/or setting of limits for any application of solids or liquids to the utilisation area.</p> <table border="1" data-bbox="619 1518 1380 1778"> <thead> <tr> <th data-bbox="619 1518 831 1630">EPA Identification no.</th> <th data-bbox="837 1518 1018 1630">Type of Monitoring Point</th> <th data-bbox="1024 1518 1193 1630">Type of Discharge Point</th> <th data-bbox="1200 1518 1380 1630">Location Description</th> </tr> </thead> <tbody> <tr> <td data-bbox="619 1639 831 1778">Sediment Basin Discharge</td> <td data-bbox="837 1639 1018 1778">Water</td> <td data-bbox="1024 1639 1193 1778">Water</td> <td data-bbox="1200 1639 1380 1778">Overflow point of stormwater from quarry floor</td> </tr> </tbody> </table> <p>Limit conditions</p> <p>L1. Pollution of waters</p> <p>Note: Mandatory condition</p> <p>L.1.1 Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.</p> <p>L2. Concentration limits</p>	EPA Identification no.	Type of Monitoring Point	Type of Discharge Point	Location Description	Sediment Basin Discharge	Water	Water	Overflow point of stormwater from quarry floor
EPA Identification no.	Type of Monitoring Point	Type of Discharge Point	Location Description						
Sediment Basin Discharge	Water	Water	Overflow point of stormwater from quarry floor						

Government Agency	Nature of Government Agency Comments												
	<p>L2.1 For each monitoring/discharge point or utilisation area specified in the tablets (by a point number), the concentration of a pollutant discharged at that point, or applied to that area, must not exceed the concentration limits specified for that pollutant in the table.</p> <p>L2.2 Where a pH quality limit is specified in the Table, the specified percentage of samples must be within the specified ranges.</p> <p>L2.3 To avoid any doubt, this condition does not authorise the pollution of waters by any pollutant other than those specified in the tablets.</p> <p>L2.4 Water and/or Land Concentration Limits</p> <p>DISCHARGE POINT 1 (Sediment Basin Discharge)</p> <table border="1" data-bbox="719 607 1481 835"> <thead> <tr> <th data-bbox="719 607 970 651">Pollutant</th> <th data-bbox="970 607 1201 651">Units of measure</th> <th data-bbox="1201 607 1481 651">100% concentration</th> </tr> </thead> <tbody> <tr> <td data-bbox="719 651 970 734">Total Suspended Solids</td> <td data-bbox="970 651 1201 734">mg/L</td> <td data-bbox="1201 651 1481 734">50</td> </tr> <tr> <td data-bbox="719 734 970 786">pH</td> <td data-bbox="970 734 1201 786">pH units</td> <td data-bbox="1201 734 1481 786">6.5-8.5</td> </tr> <tr> <td data-bbox="719 786 970 835">Oil and grease</td> <td data-bbox="970 786 1201 835">mg/L</td> <td data-bbox="1201 786 1481 835">Nil</td> </tr> </tbody> </table> <p>L2.5 The concentration limits in the above table do not apply to any discharge from the sediment basin (at Point 1) solely arising from rainfall measured at the premises exceeding 82.5 mm in total falling over any consecutive five day period.</p> <p>L2.6 If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must develop a statistical correlation which identifies the relationship between NTU and TSS for water quality in the sediment basin/s in order to determine the NTU equivalent of 50 mg/L TSS prior to its use.</p> <p>L2.7 If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must provide the EPA with a copy of the statistical correlation assessment methodology and results before using NTU in place of TSS.</p> <p>L2.8 If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must develop and implement a method to enable the ongoing verification of the relationship between NTU and TSS.</p> <p>L2.9 If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must provide the EPA with any amendments the applicant makes to the statistical correlation as a result of the ongoing verification required by Condition L2.8 before using the revised statistical correlation.</p> <p>L3. Waste</p> <p>L3.1 The applicant must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.</p> <p>L3.2 This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.</p>	Pollutant	Units of measure	100% concentration	Total Suspended Solids	mg/L	50	pH	pH units	6.5-8.5	Oil and grease	mg/L	Nil
Pollutant	Units of measure	100% concentration											
Total Suspended Solids	mg/L	50											
pH	pH units	6.5-8.5											
Oil and grease	mg/L	Nil											

Government Agency	Nature of Government Agency Comments
	<p>L4. Noise limits</p> <p>L4.1 Noise from the premises must not exceed an LAeq (15 minute) noise emission criterion of 37 dB(A) for the nearest residential receivers as identified in Statement of Environmental Effects - Drawing 1, except as expressly provided by these general terms of approval.</p> <p>L4.2 Noise from the premises is to be measured at nearest residential receiver as identified in the Statement of Environmental Effects - Drawing 1, that does not have written permission from the property owners for an exceedance of condition L4.1 has been provided to the EPA.</p> <p>L4.3 The noise limits set out in condition L4.1 apply under all meteorological conditions except for the following:</p> <ul style="list-style-type: none"> • Wind Speeds greater than 3 metres/second at 10 metres above ground level; or • Temperature inversion conditions up to 30 C/100m and wind speeds greater than 2 metres/second at 10 metres above ground level; or • Temperature inversion conditions greater than 30Cf100m. <p>L5. Blasting</p> <p>L5.1 Blasting operations at the premises may only take place between 09:00 to 15:00 Monday to Friday. (Where compelling safety reasons exist, the Authority may permit a blast to occur outside the above mentioned hours. Prior written (or facsimile) notification of any such blast must be made to the Authority).</p> <p>L5.2 The airblast overpressure level from blasting operations in or on the premises must not exceed:</p> <p>a) 115 dB (Lin Peak) for more than 5% of the total number of blasts during each reporting period;</p> <p>and</p> <p>b) 120 dB (Lin Peak) at any time,</p> <p>at any point within 1 metre of any affected residential boundary or other noise sensitive location unless the location is owned by the licensee or is subject to a private written agreement between the owner of the residence or noise sensitive location as to an alternative overpressure level.</p> <p>L5.3 The ground vibration peak particle velocity from blasting operations carried out in or on the premises must not exceed:</p> <p>a) 5mm/s for more than 5% of the total number of blasts carried out on the premises during each reporting period; and</p> <p>b) 10 mm/s at any time,</p> <p>at any point within 1 metre of any affected residential boundary or other noise sensitive location unless the location is owned by the licensee or is subject to a private written agreement between the owner of the residence or noise sensitive location as to an alternative ground peak velocity level.</p> <p>L5.4 All sensitive receivers are to be given at least 24 hours' notice when blasting is to be undertaken.</p> <p>L6. Hours of operation</p> <p>L6.1 Activities covered by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must only be carried out between the hours of 7:30 am and 6:00 pm Monday to Friday, and 8:00 am and 1:00 pm Saturday, and at no time on Sundays and Public Holidays.</p> <p>L6.2 This condition does not apply to the delivery of material outside the</p>

Government Agency	Nature of Government Agency Comments
	<p><i>hours of operation permitted by condition L6.1 if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification must be provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.</i></p> <p>L6.3 <i>The hours of operation specified in condition L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.</i></p> <p>L6.4 <i>Heavy vehicles (including excavators, haul trucks, loader and water carts) and machinery [including screening plant, jaw crusher, feed bin, cone crusher, rock drill, water pump and generator (genset)] cannot be started, maintained, arrive or leave the site or operated outside of operating hours as detailed in L6.1 and at no time on Sundays and Public Holidays.”</i></p> <p>Operating conditions</p> <p>01. Dust</p> <p>01.1 <i>Activities occurring in or on the premises must be carried out in a manner that will minimise the generation, or emission from the premises, of wind-blown or traffic generated dust.</i></p> <p>02. Processes and management</p> <p>02.1 <i>Sediment basins shall be treated, if required, to reduce the Total Suspended Solids level to the concentration limit of 50 mg/L provided by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, before being released to the environment. Treatment can be with gypsum or any other material that has been approved by the EPA.</i></p> <p>02.2 <i>The applicant must maximise the diversion of run-on waters from lands upslope and around the site whilst land disturbance activities are being undertaken.</i></p> <p>02.3 <i>The applicant must maximise the diversion of stormwater runoff containing suspended solids to sediment basins installed on the premises.</i></p> <p>02.4 <i>Where sediment basins are necessary, all sediment basins and associated drainage must be installed and commissioned prior to the commencement of any clearing or grubbing works within the catchment area of the sediment basin that may cause sediment to leave the site.</i></p> <p>02.5 <i>The applicant must ensure the design storage capacity of the sediment basins installed on the premises is reinstated within 5 days of the cessation of a rainfall event that causes runoff to occur on or from the premises.</i></p> <p>02.6 <i>The applicant must ensure that sampling point(s) for water discharged from the sediment basin(s) are provided and maintained in an appropriate condition to permit:</i></p> <ul style="list-style-type: none"> a) <i>the clear identification of each sediment basin and discharge point;</i> b) <i>the collection of representative samples of the water discharged from the sediment basin(s); and c) access to sampling point(s) at all times by an authorised officer of the EPA.</i> <p>02.7 <i>The applicant must endeavour to maximise the reuse of captured stormwater on the premises.</i></p> <p>02.8 <i>Each sedimentation basin must have a marker (the "sediment basin marker") that identifies the upper level of the sediment storage zone.</i></p> <p>02.9 <i>Whenever the level of liquid and other material in any sedimentation basin exceeds the level indicated by the sedimentation basin marker, the licensee must take all practical measures as soon</i></p>

Government Agency	Nature of Government Agency Comments												
	<p>as possible to reduce the level of liquid and other material in the sedimentation basin.</p> <p>02.10 The sediment basins must meet the design and operational standards of Managing Urban Stormwater Soils and Construction: Volume 1 and Volume 2 E. Mines and quarries. This document requires that at a minimum 85 percentile five-day rainfall event be used to determine basin sizing for quarries.</p> <p>02.11 All liquid chemicals, fuels and oils must be stored in tanks or containers inside suitable bund(s). Bund(s) are to be designed, constructed and maintained in accordance with AS1940-2004 Storage and Handling of Flammable and Combustible Liquids.</p> <p>Monitoring and recording conditions</p> <p>M1 Monitoring records</p> <p>M1.1 The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.</p> <p>M1.2 All records required to be kept by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must be:</p> <ul style="list-style-type: none"> a) in a legible form, or in a form that can readily be reduced to a legible form; b) kept for at least 4 years after the monitoring or event to which they relate took place; and c) produced in a legible form to any authorised officer of the EPA who asks to see them. <p>M1.3 The following records must be kept in respect of any samples required to be collected:</p> <ul style="list-style-type: none"> a) the date(s) on which the sample was taken; b) the time(s) at which the sample was collected; c) the point at which the sample was taken; and d) the name of the person who collected the sample. <p>M2. Requirement to monitor concentration of pollutants discharged</p> <p>M2.1 The applicant must monitor (by sampling and obtaining results by analysis) the concentration of each pollutant specified in Column 1. The applicant must use the sampling method, units of measure, and sample at the frequency, specified opposite in the other columns:</p> <p>POINT 1 Water and Land</p> <p>Discharge point 1</p> <table border="1" data-bbox="619 1709 1385 1939"> <thead> <tr> <th>Pollutant</th> <th>Units of measure</th> <th>Frequency</th> </tr> </thead> <tbody> <tr> <td>Total Suspended Solids</td> <td>mg/L</td> <td>Special Frequency 1</td> </tr> <tr> <td>pH</td> <td>pH units</td> <td>Special Frequency 1</td> </tr> <tr> <td>Oil and grease</td> <td>mg/L</td> <td>Special Frequency 1</td> </tr> </tbody> </table> <p>< Special Frequency 1 > means sampling any discharge, whether controlled or otherwise, which has not occurred from rainfall exceeding 82.5 mm over any consecutive five day period.</p> <p>M3. Testing methods - concentration limits.</p>	Pollutant	Units of measure	Frequency	Total Suspended Solids	mg/L	Special Frequency 1	pH	pH units	Special Frequency 1	Oil and grease	mg/L	Special Frequency 1
Pollutant	Units of measure	Frequency											
Total Suspended Solids	mg/L	Special Frequency 1											
pH	pH units	Special Frequency 1											
Oil and grease	mg/L	Special Frequency 1											

Government Agency	Nature of Government Agency Comments
	<p>M3.1 Subject to any express provision to the contrary of the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, monitoring for the concentration of a pollutant discharged to waters or applied to a utilisation area must be done in accordance with the Approved Methods Publication unless another method has been approved by the EPA in writing before any tests are conducted.</p> <p>M4. Environmental monitoring</p> <p>M4.1 The applicant is required to install and maintain a rainfall depth measuring device.</p> <p>M4.2 Rainfall at the premises must be measured and recorded in millimetres per 24 hour period, at the same time each day.</p> <p>Note: The rainfall monitoring data collected in compliance with Condition M4.2 can be used to determine compliance with L2.4.</p> <p>M6. Other monitoring and recording condition</p> <p>M6.1 For the purposes of monitoring for compliance with the noise limit conditions of the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, (condition L4) noise emitted from the premises must be measured or computed at 30 metres from the nearest residential dwelling/s over a period of 15 minutes using the "FAST" response on the sound level meter. A modifying factor correction must be applied for tonal, impulsive, or intermittent noise in accordance with the document NSW Industrial Noise Policy (NSW EPA, January 2000).</p> <p>M7. Blast Monitoring</p> <p>M7.1 The time of blasting, the air-blast overpressure level from blasting operations and the ground vibration peak particle velocity from blasting operations must be measured at the nearest sensitive receiver for each blast.</p> <p>Reporting conditions</p> <p>Note: Mandatory condition to be used on all general terms of approvals</p> <p>R1.1 The applicant must provide an annual return to the EPA in relation to the development as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the development. In the return the applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the development, report on compliance with licence conditions and provide a calculation of licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return.</p> <p>Special Conditions</p> <p>E1. Noise and dust mitigation measures</p> <p>E1.1 The applicant must implement all noise and dust mitigation measures recommended in the Statement of Environmental Effects - Attachment 6 -Assessment of noise and dust impacts of proposed modification of extraction boundary Tumbulgum Quarry Dulguigan, prepared by MWA Environmental dated 17 November 2014.</p> <p>Noise mitigation measures to be implemented are to be found in section 2. 3.2 of the aforementioned Statement of Environmental Effects attachment.</p> <p>Dust mitigation measures to be implemented are to be found in section 3.4 of the aforementioned Statement of Environmental Effects attachment.</p> <p>E1.2 The noise and dust mitigation measures outline in condition E1.1 must be completed prior to the commencement of quarrying</p>

Government Agency	Nature of Government Agency Comments
	<i>activities.</i>

Therefore, in accordance with Clause 96(2)(b) Council has adequately consulted the relevant Government Agencies and made appropriate recommendations based on the advice provided.

Further to the Government agency referrals the application was initially advertised and notified for a period of 14 days initially in January 2015.

Council received 13 submissions from 9 objectors. The main issues raised were similar across the submissions, and are summarised as follows:

Issue	Assessment
<i>Negative impacts on the use and enjoyment of our property- especially visual impact</i>	<p>The quarry is currently operating under an existing approval, with conditions of consent. As noted in the submission, the objectors were aware of the quarry when purchasing their property. The proposed amendment does not intend to alter the approved land use, annual extraction volumes, daily or annual truck movements, methods of extraction or processing, equipment plant, operating hours or depth of extraction.</p> <p>The visual implications of the proposed expansions have been detailed throughout this report with a 3D Model provided by the applicant to show the existing and proposed implications of the expansion. And whilst the visual landscape will change this change needs to be considered against the broader strategic objectives of utilising a finite resource in a sustainable manner. This issue alone does not warrant refusal of the proposed amendment.</p>
<i>Detrimental Impact on property value</i>	Council has considered the amenity issues raised as a result of the proposed application and whilst these amenity issues may affect property prices in the immediate vicinity, they are not a matter for consideration under Section 79(C) of the EP& A Act.
<i>Adverse environmental impacts, wildlife and fauna</i>	The applicant has submitted a final revised layout plan (with a restricted quarry footprint) and a comprehensive Rehabilitation and Environmental Management Plan which addresses the ecological concerns of the NSW Office of Environment and Heritage and Council's Natural Resource Management Unit to a satisfactory level. The applicant has agreed to detailed conditions of consent to ensure long term protection, rehabilitation of core habitat areas and commitment to the preparation and implementation of construction/operational based vegetation and fauna management plans. Furthermore, a large proportion of the site consisting of a significant well connected tract of remnant vegetation, known to support a suite of threatened flora and fauna species and ecological communities, is to be protected under formal statutory protection mechanism for conservation purposes. Based on the above, it is considered that any adverse ecological impacts likely to be associated with the proposed development can be avoided, minimise and managed to an acceptable level.
<i>Impacts of the proposed amendments on neighbours</i>	<p>The nearest affected neighbouring properties have now been purchased by the quarry operators.</p> <p>The S96 itself will not significantly affect neighbouring properties</p>

Issue	Assessment
	further afield as the general quarry operations will remain unchanged. The visual implications have been discussed in detail throughout this report and do not warrant refusal of the application.
<i>Inadequate solicitation for public comment – inadequate time to seek legal advice; not placed in broad reaching newspaper</i>	The Environmental Planning and Assessment Regulations 2000 define Local newspaper as: <i>a newspaper circulating throughout the relevant area at intervals of not more than 2 weeks</i> . The Tweed Link is an ISSN registered print newspaper which is delivered free on a weekly basis to over 40,000 households in the Tweed Shire. It is well established that the Tweed Link carries Council's statutory advertising, which it has done for over 15 years. Advertising development proposals via the Tweed Link is in full compliance with Council's legislative requirements for public notification. Furthermore this application was on exhibition multiple times in accordance with the statutory obligations.
<i>Inconsistent with S96(2) Not substantially the same development</i>	The proposal is considered substantially the same development, justified as follows: It does not intend to alter the approved land use, annual extraction volumes, daily or annual truck movements, methods of extraction or processing, equipment plant, operating hours or depth of extraction. The modification relates only to a horizontal extension of the quarry boundary and an extension to the life of the quarry by approximately 9 years.
<i>Impact on roads, traffic & Road Safety</i>	As per Council's Traffic Engineer's comments, the proposed amendment would not result in a daily increase in the number of trucks on Dulguigan Road. The quarry currently has approval for an average of 40 truck movements a day and this limit will not change with approval of the proposed amendment as the day to day operations will remain the same. The condition of Dulguigan Rd will continue to be assessed on an annual basis as part of Council's standard works program and any repairs prioritised as necessary.
<i>Increased noise levels</i> <i>“Generator starts very early in the morning and hums all day long, the closer they come to our boundary the louder and more disruptive they will become. On a Sunday when the plant is down the silence is bliss.”</i>	The quarry is currently operating with development consent with both prescriptive and general terms of approval issued by the NSW EPA regarding regulating noise emission from the site. The NSW EPA is the regulatory authority for compliance issues in this regard. The proposal before Council does not intend to alter the approved land use, annual extraction volumes, daily or annual truck movements, methods of extraction or processing, equipment plant, operating hours or depth of extraction. Therefore there is no anticipated increase in noise. Any issues of non-compliance should be reported the NSW EPA. This objection does not warrant refusal of the proposal.
<i>Blasting / Land Stability/House damage</i>	The amendment does not propose any increase in blast frequency or intensity. The NSW EPA General Terms of Approval have prescriptive conditions for Blasting (L.5 Blasting) that the applicant is required to meet. In the event that the criteria are not met, the NSW EPA as the appropriate regulatory authority will seek compliance with the conditions and seek mitigation if required. The proposed amendment does not seek any changes to the currently approved blasting regime, and as such blasting is not a matter for further assessment.
<i>Impact on visual amenity</i>	The quarry already creates an existing scar on the visual landscape. The proposed expansion will impact on the view lines of the neighbouring properties however these view lines have been assessed in detail throughout the report with a digital 3D

Issue	Assessment
	<p>model provided by the applicant.</p> <p>The changed visual impact is not considered unreasonable and is not considered to warrant refusal of the application</p>
<i>Lifestyle</i>	<p>Council has considered the amenity issued raised as a result of the proposed application and Council also notes that the nearest affected properties have since been purchased by the quarry operators to mitigate this impact. The lifestyle implications for properties further afield are limited in nature and are not considered to warrant refusal of the application</p>
<i>Pollution</i>	<p>The quarry is currently operating with consent with conditions of approval which regulate potential pollution concerns. The proposal does not intend to alter the approved land use, annual extraction volumes, daily or annual truck movements, methods of extraction or processing, equipment plant, operating hours or depth of extraction. Therefore an increase in pollution is not anticipated.</p>
<p><i>Current practices not adhering to imposed restrictions. No confidence that future expanded practices will.</i></p> <p><i>Example stockpile collapse, falling boulders etc</i></p>	<p>Any breach of consent reported to Council or the EPA as the licencing authority is thoroughly investigated and action taken as necessary. Concern of future noncompliance is not considered grounds for refusal of any application</p>
<p><i>Existing use no longer compatible with neighbourhood</i></p>	<p>The site has been used as a quarry since the 1960's. The surrounding area has been used for residential and farming purposes since this time. Any purchasers to the local area would have been aware of the quarry and purchased in the area knowing that the quarry was in existence. The proposed expansion will not change the daily operational movements of the quarry. The new boundary has been reviewed and considered reasonable on merit subject to the recommended conditions of consent.</p>

Since this time any person who made a submission has been advised of the two amendments being placed on the Council's DA Tracker and invited to again comment on the application (in May and September).

Council received 10 letters of support from businesses and individuals who use the quarry and find it a valuable business and resource for the local community

A further 5 objections were received (including a petition with 10 signatures) to the amended application on similar grounds to the original application as follows (however please be aware that since this time the two nearest affected properties are under a sale of contract with the quarry operators to purchase the blocks and accordingly the objection letters from 645 Dulguigan Road have since been formally withdrawn):

Issue	Assessment
<i>Impact on view lines – appreciate changes but still concerned</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Financial impact</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Visual impact</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Increased dust and noise</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Not substantially the same development.</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Request blast monitoring devices be put on property</i>	Additional blast monitoring stations have been installed as requested.
<i>The Number of trucks leaving the quarry exceeds their current allowance.</i>	<p>Council received data from the quarry operators for 2015 which indicated they had 14,626 trucks leave the site which is 26 more than allowed by their consent (0.1% variation).</p> <p>The quarry is obligated to keep detailed logs of all material and trucks leaving the site to meet their licence obligations with NSW EPA. At any time Council or NSW EPA can request information from the quarry to ensure compliance with their conditions of consent.</p> <p>As the consent allows the operators to have a maximum of 40 trucks per day (averaged over a year) there may be times when there are more than 40 trucks a day however the consent allows for this and slower months throughout the year means the quarry can generally comply with the conditions of consent in regard to overall trip numbers in any given year.</p> <p>This objection does not warrant refusal of the proposed amendment.</p>
<p><i>This morning at 8.20 am 4/4/2016 XXXX was traveling down Pollards Road to Dulguigan Road when a large rock came down the hill from the quarry from above nearly hitting the car she moved to the other side of the road to avoid it and found she had to get out of the car to move it: When another rock came down to the side of her car she was scared to the point of tears: There was a a large machine clearing trees and bush above</i></p> <p><i>The quarry manager was contacted. He arrived by 8.35 and pushed the rocks</i></p>	<p>The following response was provided by Council's Team Leader Development Assessment:</p> <p><i>Thank you for your e-mail of 4 April 2016 advising Council of the recent site activities at the quarry.</i></p> <p><i>I have had Council's Environmental Health Officer and Council's Manager Roads and Stormwater review the situation in consultation with the site Manager and Mr Angus McDouall from the NSW Department of Primary Industry (Mines) who is the regulatory authority in regards to Mines.</i></p> <p><i>I believe Mr McDouall has also been in contact with you.</i></p> <p><i>The site Manager will be implementing additional site management techniques to ensure this sort of thing does not occur again including the implementation of a spotter or 'stop/go' person as a control measure.</i></p> <p><i>I hope the responses you have received in regards to this matter have been satisfactory.</i></p>

Issue	Assessment
<p><i>off the road then left.</i></p>	<p>The following response was received back from the complainant:</p> <p><i>Thank you we are pleased with the response from Council and action taken by the quarry</i></p> <p><i>The manager from the quarry is leaving soon I feel one mistake made from Hy tec has been a total lack of communication in the past I hope the new manager makes himself known to the neighbors</i></p> <p><i>From our end we are happy for the DA to go ahead and hope everything is settled soon.</i></p> <p><i>Thank you again for your help.</i></p>

The objections to date have all been addressed in the content of this report. They have been seriously considered, however, in this instance are not considered to warrant refusal of the application. The quarry will continue to operate as it does today. The revised boundaries will have very little impact on the day to day operations of the quarry. The extended life of the quarry, physical impacts from the expansion and the additional view implications are considered reasonable subject to the recommended conditions.

(e) Public interest

The S96 application is considered to generally be in accordance with the public interest as it allows for a finite resource to be utilised in a sustainable manner.

S96(2) Modification Substantially the Same Development

As detailed above the proposal to increase the level of extraction to 1,755,000m³ (which will add 9 years to the life of the quarry) will still result in less overall extraction than originally approved (despite the increased footprint) as the applicant is now proposing 10m wide benches instead of the approved 4m wide benching. Furthermore the quarry will **continue** to:

- Extract 200,000m³ per annum (195,000m³ average over a three year period);
- Operate between the hours of 7.30am – 6pm Monday to Friday, 7.30am to 12 Noon Saturdays and have no works Sundays or Public Holidays;
- Blast 3 times per month;
- Have a maximum of 40 trucks per day (averaged over the year); and
- Keep the existing single access point.

Therefore the Modification Application is considered to be substantially the same development as that approved by DA04/0162 and be capable of approval as substantially the same development as required by S96(2) of the Act.

OPTIONS:

1. Approve the S96 Modification subject to the recommended conditions which have been authorised by the applicant; or
2. Refuse the application.

Council Officers recommend Option 1.

CONCLUSION:

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

The amended S96 Modification has been carefully balanced and assessed against the public submissions and the current applicable planning controls.

The quarry's significance as a regionally significant extractive resource (as per the Far North Coast Regional Strategy) has resulted in Council Officer's recommending approval of the proposed amended S96 Application with additional recommended conditions to more effectively manage the environmental considerations of the site. Such conditions have been accepted by the applicant and can therefore lawfully be imposed. No further additional conditions cannot be imposed without the prior authorisation of the applicant.

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:

Attachment 1.	Original Determination Notice - DA04/0162 (ECM 4152228)
Attachment 2.	NSW Office of Environment and Heritage letter outlining benefits of biobanking (ECM 4134511)
Video presentation	3D Visual Implications Video - Existing Extraction Implications (to be shown at Planning Committee meeting if required)

Video presentation

3D Visual Implications Video - Proposed Extraction Implications (to be show at Planning Committee meeting if required)

9 [PR-PC] Unlawful Dwelling at Lot 1 DP 740293 No. 217 Sleepy Hollow Road, Sleepy Hollow

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:

Following a complaint with regard to an unlawful dwelling, a development application was submitted for an attached dual occupancy with associated works including a new carport and roofed walkway between dwellings (noting that one of the dwellings was approved under Development Consent T4/3213). The application sought approval for use of the unlawful dwelling. The subject site is legally described as Lot 1 DP 740293 and more commonly referred to as 217 Sleepy Hollow Road, Sleepy Hollow and has an approximate land area of 14.41 Hectares.

The assessment of the application found that the proposed development did not meet the definition of an “attached” dual occupancy. As such, Council advised the applicant that the application could not be supported given that “detached” dual occupancies are prohibited development in the RU2 zone.

Prior to determining the application, the applicant submitted documentation obtained from Council’s records, stating that they were of the opinion that two existing approvals were in place for the dwellings on the subject site.

Following a detailed assessment of the submission and Council’s records, the applicant was advised that Council did not support the view that two approvals were in place for the dwellings. The applicant was requested to withdraw the application for the dual occupancy.

The applicant subsequently advised that they did not wish to withdraw the application and requested that the assessment of the dual occupancy continue. Under delegated authority, Council refused a proposed attached dual occupancy on 24 May 2016.

The applicant was also advised that the unauthorised dwelling would need to be decommissioned and made uninhabitable. A program of such decommissioning was requested, to be provided to Council by 14 June 2016.

Council was provided with written notification on 29 June 2016 that the applicant was not prepared to accept that their house should be decommissioned and requested a further 28 days to obtain legal advice.

The applicant was advised that the matter was being reported to the 4 August 2016 Planning Committee meeting, which would provide them with a 36 day timeframe in which to obtain legal advice and provide a written response to Council and/or address Council prior to the Planning Committee meeting at Community Access.

Accordingly, Council officers are of the opinion that the second dwelling on the subject site does not have development consent. As such, it is recommended that legal advice be sought to determine an appropriate course of action in relation to the decommissioning of the unlawful dwelling and making it uninhabitable.

RECOMMENDATION:

That Council engage solicitors to undertake enforcement actions to address the unlawful dwelling at Lot 1 DP 740293 No. 217 Sleepy Hollow Road, Sleepy Hollow.

REPORT:

The subject site has an approximate area of 14.41 hectares, and is zoned RU2 Rural Landscape. The site comprises two existing structures which are currently being occupied as dwellings (refer to Figure 1 below).

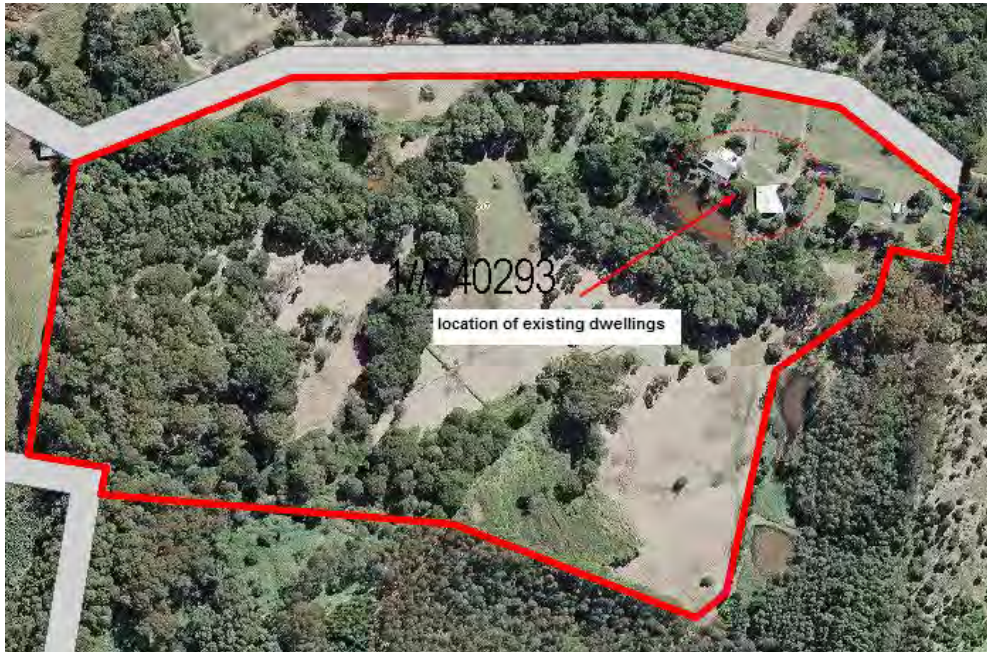


Figure 1: Aerial Photo of the subject site

Council records indicate that development consent T4/3213 was granted on 16 May 1984 for *the erection of a private dwelling house* was granted consent on Lot 4 DP 598379 (from which the subject lot was created). The location of the approved dwelling is shown in Figure 2 below.



Figure 2: Aerial Photo of the existing structure (approved dwelling on right)

Compliance History

In March 2013 Council received a written advice that there was an illegally constructed dwelling on the subject site. In July 2014 Council wrote to the owner seeking clarification in relation to the number of dwellings onsite. In August 2014 the owner responded to Council confirming that there was in fact a second dwelling (existing when the property was purchased); that they would like the dwellings to be recognised; and so would be engaging the services of a consultant planner to assist with this process.

In November 2014 Council again wrote to the owner seeking an update, as no application had been lodged with Council. In June 2015 Council received a follow up from the original complainant, as no response had been received by Council and the owners were still undertaking renovations without any approval.

In June 2015 advice was received from Planit Consulting Pty Ltd advising that they had been engaged to prepare and lodge a Development Application for the use of the illegal dwelling. In October 2015 a development application was lodged with Council (DA15/0911). Refer to Figure 3 below with regard to the proposed attached dual occupancy.

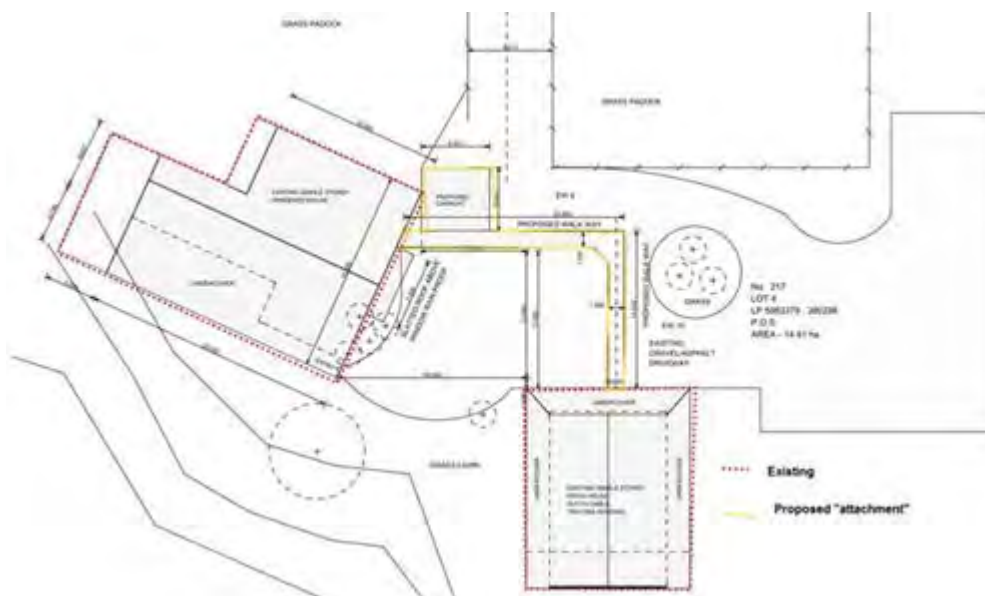


Figure 3: Plan of the Proposed “Attached” Dual Occupancy

Development Application History

Council officers undertook a detailed analysis of the proposed development, with particular regard to whether the development could be considered as an “attached” dual occupancy.

Given that the existing structures are approximately 18m apart and are clearly independent of each other, the proposed development (incorporating a 35.8m covered walkway to link the dwellings), was not considered to meet the definition of a *dual occupancy (attached)* under the Tweed Local Environmental Plan 2014 (TLEP 2014).

As such, it was considered that the proposed development could only be defined as *dual occupancy (detached)*, which is prohibited on land zoned RU2. Accordingly, Council officers could not support the proposed development.

Based on the above, the applicant was advised to withdraw the application or provide legal advice demonstrating how the proposed development met the definition of a *dual occupancy (attached)*. The applicant was given a seven day period to respond to Councils letter.

The applicant was granted two extensions to the requested timeframe, resulting in a three week period for response. Upon the deadline for further information to be provided to Council, the applicant was contacted, whereby Council was advised that the applicant had sought legal advice (which would not be forwarded to Council) and that the application would not be withdrawn.

Just prior to the application being determined by way of refusal in March 2016, the applicant submitted the following documentation, stating that they were of the opinion that two existing approvals were in place for the dwellings on the subject site.

Having regard to the above, the following matters of relevance are outlined to Council in its consideration of this matter: -

1. The following permits have been reviewed and reveal that at the time of approval of the more recent Town Planning Permit T4/3213 (16th of May 1984) no conditions were placed on the approval requiring the 4 bedroom building constructed under the Owner-Builder’s Permit to be decommissioned. It is therefore in our opinion that approvals exist for both dwellings currently on site.

Permits	Approved works:
Owner- Builder’s Permit Granted on the 16 th of August 1982	To erect a Dwelling comprising 4 bedrooms, dressing room, ensuite, bathroom, Sep W.C, Laundry, Pantry, Kitchen, Dining Room, Lounge Room and all round verandah of masonry block construction.
Town Planning Permit T4/3213 Granted on the 16 th of May 1984	Approval for New Buildings comprising of a study, 2 bedrooms, Lounge Room, Bathroom, Toilet, Kitchen, Laundry, Living room to be erected on lot 4 DP598379.

2. A further review of inspection notes dated 21st May 1984, indicates that the Council acknowledged the existence of an existing dwelling (to which the owner-builder’s permit

applies) on the site prior to the commencement of the new dwelling as approved under T4/3213.

In order to confirm that these approvals are recognized, we respectfully ask that Council formally confirm that the two (2) dwellings that exist at 217 Sleepy Hollow Road, do in fact have approvals relating to two separate dwellings (a 4-bedroom dwelling under owner builder's permit dated 16th August 1982 and a 2-bedroom plus study under town planning permit dated 16th May 1984).

Review of Council Records

A thorough review of the property information provided by the applicant was undertaken. A summary of Council's records is provided below:

- 11 Aug 1982 Building Application (BA) lodged (Application Number 724/82) for a dwelling on Lot 4, incorporating a brick house with metal roof.
- 16 Aug 1982 An Owner Builders Permit was issued for a 4 bed house of masonry block construction (An Owner Builders Permit is not considered to be Development Consent).
- 19 Aug 1982 Council acknowledged lodgement of BA724/82 and formally requested Development Application (DA) forms to be completed and returned to Council in relation to the same development proposed under BA724/82 (i.e. BA does not provide Development Consent – DA required).
- 15 May 1984 Almost three years later, a DA is lodged for a house, shed & workshop (T4/3213), with the dwelling incorporating a study, 2 bedrooms, lounge, living, kitchen and bathroom.
- 16 May 1984 DA Approved (T4/3213). Plans associated with the approval indicate a proposed 2 bedroom house and shed.
- 21 May 1984 BA724/82 inspection note states "...owner to submit amended plans for addition to existing building". This notation is considered to reflect that a component of the building proposed under T4/3213 was already constructed. It is not considered to reflect an additional (second) dwelling on the property, as suggested by the documentation submitted by the applicant.
- 1 June 1984 Building Permit issued (BA724/82) for study, 2 bedrooms, lounge, living, kitchen and bathroom. Condition 13 of the BA specifically requires compliance with T4/3213.
- 5 June 1984 BA724/84 Specifications and Amended Plan stamped by TSC. Importantly, the amended plans note "...hatched area existing dwelling" (refer to Figure 4 below). As noted above, the hatched area reflects the portion of the dwelling proposed under T4/3213 that was already constructed.

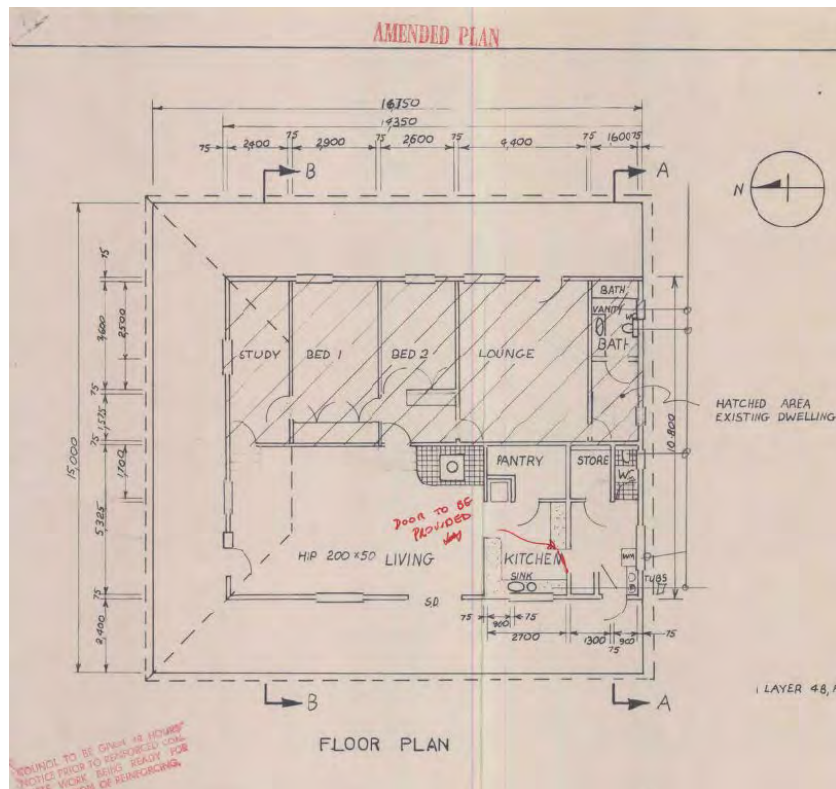


Figure 4: Extract from Approved Amended Plan associated with T4/3213

It is considered that the above summary of Council records clearly demonstrates that the second dwelling on the subject site does not have development consent. The only approved dwelling is that associated with T4/3213.

As a result, the applicant was advised on 18 May 2016 that Council did not accept that both dwellings on the property have been granted approval. The applicant was again requested to withdraw the application for the attached dual occupancy; otherwise the proposed development would be refused, given that it is considered to be a detached dual occupancy (which is prohibited development under the provisions of TLEP 2014).

Following a request from the applicant to proceed with the assessment (i.e. the DA would not be withdrawn), the applicant was advised on 24 May that the refusal notice was being prepared. A copy of the above summary of Council's records was forwarded to the applicant, as well as advice that the unauthorised dwelling would need to be made uninhabitable. Council requested that a program of the decommissioning be provided to Council by 14 June 2016.

The applicant provided written notification on 29 June 2016 that the owner was not prepared to accept that their house should be decommissioned and requested a further 28 days to obtain legal advice.

The applicant was advised that the matter was being reported to the 4 August 2016 Planning Committee meeting, which would provide them with a 36 day timeframe in which to obtain legal advice and provide a written response to Council and/or address Council prior to the Planning Committee meeting at Community Access.

OPTIONS:

That Council:

1. Takes no further compliance or enforcement action; or
2. Engages solicitors to undertake enforcement actions to address the unlawful dwelling.

Option 2 is recommended by Council staff.

CONCLUSION:

It is evident that the owner of the subject site is very unlikely to comply with Council's requirements to decommission the unlawful dwelling. Council officers have made several attempts to seek cooperation from the owner to make the structure uninhabitable. Given the lack of cooperation and compliance in these matters, it is now considered appropriate to engage solicitors with a view to taking enforcement action.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

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.

10 [PR-PC] Report on the 2015-16 Local Heritage Assistance Fund and Future Funding

SUBMITTED BY: Strategic Planning and Urban Design

Validms



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Supporting Community Life
2.1	Foster strong, cohesive, cooperative, healthy and safe communities
2.1.2	Preserve Indigenous and Non-Indigenous cultural places and values

SUMMARY OF REPORT:

This report provides feedback on the 2015-16 Local Heritage Assistance Fund Grants program. It provides a summary of each of the projects funded and the successful outcomes achieved through the funding, both for the property owners and for the maintenance and improvement of a number of the Shire's heritage properties.

Projects funded this year are a mix of heritage listed items and properties within a heritage conservation area. Their improvements will be of benefit to the streetscape and locality as well as facilitating a better understanding of heritage significance and appropriate heritage maintenance.

This report also updates Council on the Local Heritage Assistance Fund and Heritage Advisor program and seeks a commitment to supporting this program on an ongoing basis.

RECOMMENDATION:

That:

- 1. Council receives and notes the summary of the outcomes of the 2015-16 Local Heritage Assistance Fund Grants program (LHAF);**
- 2. Council support the continuation of the Local Heritage Assistance Fund and Heritage Advisor Programs;**
- 3. Consideration be given in the September 2016 Budget Review for the permanent inclusion of a total operating budget of \$18,000 towards the LHAF and \$16,000 towards the Heritage Advisor, noting that Council's annual budget commitment will increase by a small amount each year as the OEH grants decrease, as shown in Table 1 of this report, and not exceeding a total budget commitment of \$34,000 at the end of the grant period.**

REPORT:

Background

This is the second year of the Local Heritage Assistance Fund (LHAF) following the success of the 2014-15 inaugural program.

The aim of the LHAF is to encourage positive conservation work and best practice management and conservation of heritage items and heritage conservation areas in the Tweed Shire. The LHAF is part funded by Council and the Office of Environment and Heritage (OEH), managed by Council and is facilitated through grants to owners of heritage items and places within conservation areas who undertake positive conservation work within the parameters of the annual funding program.

The 2015-16 grants program

The inaugural 2015-16 grants were open to all owners of properties which are heritage items or within a heritage conservation area. A call for applications was advertised in the Tweed Link on 14 July 2015. A direct invitation letter was also sent all owners of a heritage item or within a heritage conservation area on 14 July 2015.

Seventeen applications were received and the 2015-16 grants were awarded, to seven recipients, consistent with the *Local Heritage Assistance Fund Grants Protocol* endorsed by the Executive Management Team on 4 December 2014. This is a significant increase on the 8 applications received in the first year and demonstrates the increased awareness and interest in the heritage programs.

A report on the awarding of the grants was considered and endorsed by the Executive Management Team at their meeting of 9 September 2015.

In accordance with the grant conditions recipients were to submit:

- Notification of commencement of works by 2 March 2016
- Progress updates midway; and
- Final reports for acquittal by 22 April 2016

One of the grant recipients withdraw from the program prior to the completion date due to difficulties in completing the stated works within the required timeframe. In accordance with the resolution of the EMT report of 9 September 2015, funding was reallocated. The balance of the grant was paid to recipients who had undertaken works significantly beyond their dollar for dollar requirement.

The funding of works to these heritage items will make a significant contribution towards their maintenance, appearance and generally towards the understanding and appreciation of our Shire's heritage.

In summary a total of \$14,909 was paid in grants towards a total cost of improvement works of \$40,698 undertaken to these properties.

A summary of each of the six projects follows and outlines the improvements made.

Heritage grant recipient	1 Eyles Avenue Murwillumbah
Grant paid	\$3,984.20
Total cost of improvements	\$7,968.00
Description of the works	Exterior painting of the house, fencing and garage
Comments	<p>Painting has been done to a high standard and consistent with the heritage style of the period, highlighting architectural features with traditional use of light, mid and dark tones and colours. The house is a prominent corner location within the Hartigans Hill Heritage Conservation Area and significantly contributes to the streetscape and the heritage conservation area.</p>



Front before (Eyles Avenue)



Front after



Side before (Prince Street)



Side after



Verandah paint and window condition before

Verandah painting after

Heritage grant recipient	5 Eyles Avenue Murwillumbah
Grant paid	\$925.00
Total cost of improvements	\$1850.00
Description of the works	Exterior painting
Comments	Painting has been done to a high standard and now provides a consistent colour scheme suitable for the period style. The house is part of a group of three within the Hartigans Hill Heritage Conservation Area and contributes to the streetscape and the heritage conservation area



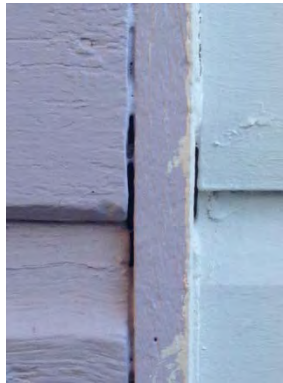
Front before (Eyles Avenue)



Front after



Southern side of house before



Southern side of house after



Northern side of house before



Northern side of house after

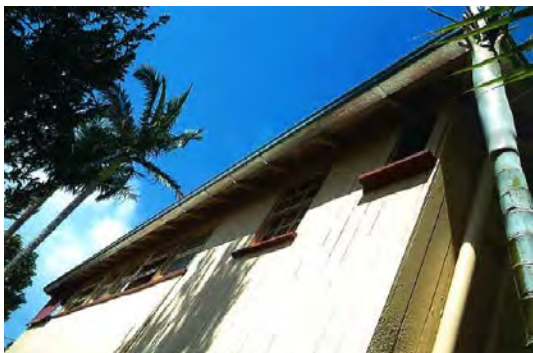
Heritage grant recipient	28 Prince Street Murwillumbah
Grant paid	\$3,000.00
Total cost of improvements	\$7,000.00
Description of the works	Repairs to roof sheeting and new guttering
Comments	
<p>The works included the repair of leaks and replacement of galvanised iron roof sheeting as well as new galvanised iron guttering, suitable to the period and style of the house. The house is a contributory item within the Hartigans Hill Heritage Conservation Area and will provide protection to the timber and iron dwelling to ensure it is not subject to decline.</p>	



Damaged and leaking roof before



After replacement with galvanised sheeting



Rusted guttering before



New galvanised guttering after

Heritage grant recipient	52 Condong Street Murwillumbah
Grant paid	\$1,000
Total cost of improvements	\$5,060.00
Description of the works	Exterior painting
Comments	
<p>Exterior painting of the house included removal of the modern black coloured trims, which were inappropriate to the period of the house. Traditionally the stucco would not have remained natural. The painting returned the stucco to a natural beige colour and trims in green and beige are more appropriate to the architectural style of the house.</p>	



Front of house (Condong St) before with inappropriate black rendering to stucco



Front of house after with stucco painted in a neutral colour and new awnings and trims in colours appropriate to the period of the house

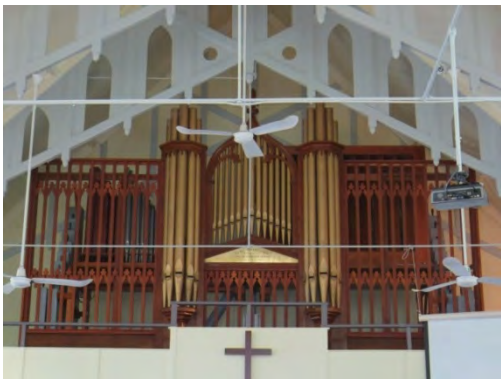


Side before



Side after with trims and windows painted

Heritage grant recipient	St Andrews Church 16 Wollumbin Street Murwillumbah
Grant paid	\$4,000
Total cost of improvements	\$12,100.00
Description of the works	Restoration works to the pipe organ
Comments	This was an interesting project for the heritage grants. The heritage listed St Andrews Church includes a beautiful pipe organ. Aging and damaged internal puffers and transformer was affecting the sound quality of the organ. Restoration of the puffers and replacement of the transformer was a specialised task and should see the continuance of the organ for many more years to come to the benefit and enjoyment of the community.



St Andrews Church pipe organ



Damaged puffers before



Restored puffers after



Aging transformer before



New transformer

Heritage grant recipient	1 Tweed Valley Way Condong
Grant paid	\$2,000.00
Total cost of improvements	\$6,720.00
Description of the works	Replacement of guttering
Comments	
<p>The guttering was in a bad state of repair placing the timber house at risk of further deterioration. Galvanised iron guttering has been installed suitable to the architectural period and style of the house. The house is a contributory item within the Condong Heritage Conservation Area and the repairs will provide protection to the timber and iron dwelling to ensure it is not subject to further decline.</p>	



Rusty guttering to side of house before



verandah guttering before



Rusty guttering to side of house after



verandah guttering after

Grants are offered on a minimum dollar for dollar basis and all funding is to be acquitted at the end of the financial year. In accordance with the grant conditions, a final report and project acquittal was submitted to the Heritage Branch of OEH by end of May 2016.

In addition, the outcomes of the LHAF grants will be promoted on the Council website, further encouraging the participation of property owners in future years and promoting the broader understanding of heritage.

2016-17 and future programs

The LHAF has operated successfully for two years now and has realised significant improvement to properties which are heritage listed or within a heritage conservation area. The LHAF and the Heritage Advisor position have been instrumental in improving the awareness and appreciation as well as the conservation of the rich heritage of the Tweed Shire.

Council has been successful in obtaining ongoing funding for the 2016-17 period to continue the Heritage Advisor and LHAF programs, which is contingent on Council matching the funds dollar for dollar.

The OEH local government funding program is anticipated to continue for 7-10 years. The program is intended to support local councils in their heritage program establishment phase and then to transition councils to self-funded. As such, it is noted that the OEH grants are offered on a decreasing level of assistance each year into the program.

In the first year Council received \$9,000 towards the LHAF, representing a total budget of \$18,000; and \$8,000 towards the heritage advisor, representing a total budget of \$16,000.

In the 2015-16 year Council received \$8,000 towards the LHAF, representing a total budget of \$16,000; and \$7,500 towards the heritage advisor, representing a total budget of \$15,000.

The grant offer for the 2016-17 year is \$7,000 towards the LHAF, representing a total budget of \$14,000; and \$6,500 towards the heritage advisor, representing a total budget of \$13,000.

It is also noted that under the OEH grants program the ratio of OEH funding to TSC funding is likely to change over the 7-10 year program, eventually requiring a TSC input of three times the OEH grant.

Inversely, the level of understanding and appreciation of heritage is growing and the demand for the heritage advisor's expertise is growing, as is the number of worthy applications for the LHAF. This is becoming increasingly difficult to manage within the reducing budget.

Council initially committed \$17,000 combined towards the LHAF and Heritage Advisor and is in the third year of a 7-10 year grant program, which is proving extremely valuable to our management and conservation of heritage within the Tweed Shire. Therefore, it is recommended that Council maintains the commencement total operating budget of \$18,000 for the LHAF and \$16,000 for the Heritage Advisor, as shown in the following Table 1.

Year of program	Heritage Program					
	LHAF			Heritage advisor		
	OEH grant	TSC funds	Total operating budget	OEH grant	TSC funds	Total operating budget
Year 1 actual	9,000	9,000	18,000	8,000	8,000	16,000
Year 2 actual	8,000	8,000	16,000	7,500	7,500	15,000
Year 3 actual	7,000	7,000	14,000	6,500	6,500	13,000
Year 4 forecast	6,000	12,000	18,000	6,000	10,000	16,000
Year 5 forecast	5,000	13,000	18,000	5,000	11,000	16,000
Year 6 forecast	4,000	14,000	18,000	4,000	12,000	16,000
Year 7 forecast	3,000	15,000	18,000	3,000	13,000	16,000
Year 8 forecast	2,000	16,000	18,000	2,000	14,000	16,000
Year 9 forecast	1,000	17,000	18,000	1,000	15,000	16,000
Year 10 forecast	00.00	18,000	18,000	00.00	16,000	16,000

Table 1 Actual and forecast budget allocations over the ten year program

This will result in a small increase in the heritage budget annually over the coming years of approximately \$2,000 per year, whilst maintaining the initial level of service and program support and noting that this would represent a maximum Council commitment of \$34,000 towards both the Heritage Advisor and LHAF programs at the end of this period.

As such it is recommended that Council:

- a) Support the continuation of the Local Heritage Assistance Fund and Heritage Advisor Programs;
- b) Continues to participate ongoing in the OEH Heritage Assistance Scheme; and
- c) Maintains a total operating budget of \$18,000 towards the LHAF and \$16,000 towards the Heritage Advisor, noting that Council's annual budget commitment will increase by a small amount each year as the OEH grants decrease, as shown in Table 1 above, and not exceeding a total budget commitment of \$34,000 at the end of the grant period.

Subject to the resolutions of Council within this report, the Application Guidelines and grant focus will be developed in the coming weeks and a call for 2016-17 applications expected to commence in September.

OPTIONS:

1. Council endorse the recommendations of the report; or
2. Council defer the matter for a workshop; or
3. Council receive and note the 2015-16 LHAF report and not endorse the ongoing budget and program commitments.

CONCLUSION:

The LHAF program has contributed just over \$40,000 in maintenance and improvements to properties which are heritage listed or within a heritage conservation area. This is a significant contribution towards their maintenance, appearance and generally towards the understanding and appreciation of our Shire's heritage.

The LHAF and Heritage Advisor programs continue to increase the level of awareness and consideration of the Heritage of the Tweed Shire. Property owners are increasingly using the Heritage Advisor service to resolve heritage considerations prior to lodging a DA, thus improving their DA processing.

At the same time the level of grant funding, and as a result, the total operating budget for the LHAF and Heritage Advisor programs is decreasing.

In order to continue the achievements in the conservation and protection of the Tweed's heritage, it is recommended to maintain a consistent total budget, noting that Council's annual budget commitment will increase by a small amount each year as the OEH grants decrease.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Continuation of the LHAF and Heritage Advisor programs require an ongoing budget commitment to match the OEH funding grant that is not currently included within the 2016/17 budget. In addition, a small increase in the heritage budget annually over the coming years of approximately \$2,000 per year is required to maintain a minimum level of continued service at a total budget of \$18,000 towards the LHAF and \$16,000.

At the end of the grant period this would represent a maximum Council commitment of \$34,000 towards to two programs.

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.

Summary of 2015-16 LHAF projects (ECM 4149719)

11 [PR-PC] Tweed Development Control Plan (DCP) Section A18 - Heritage

SUBMITTED BY: Strategic Planning and Urban Design

Validms



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Supporting Community Life
2.1	Foster strong, cohesive, cooperative, healthy and safe communities
2.1.2	Preserve Indigenous and Non-Indigenous cultural places and values
2	Supporting Community Life
2.3	Provide well serviced neighbourhoods
2.3.7	Preserve the character and heritage and enhance the amenity of existing towns and villages

SUMMARY OF REPORT:

The Draft Tweed Development Control Plan (DCP), Section A18 – Heritage, has been publically exhibited, which included three public information sessions held at Murwillumbah, Uki and Tyalgum.

The new Heritage section of the DCP will complete the suite of Council's key regulatory planning instruments and will guide development in association with a heritage item or within a heritage conservation area; and underpins the implementation of the heritage aims and objectives of the Tweed Local Environmental Plan.

This report provides a summary of the exhibition process and the content of the public submissions received. In addition, the report outlines minor amendments including updating of the Heritage Conservation Area (HCA) mapping to correct minor errors and improve the clarity of the maps; relocation of the views and vistas objectives and images from Part C to Part B under the specific HCA; minor amendments to the accessibility section to highlight universal access requirements; and refinement of the Statements of Significance for the HCAs, relating these back to the significance criteria.

These amendments are minor and do not significantly alter the content or the intent of the draft Heritage DCP, and as such the DCP is considered suitable for adoption without additional public consultation.

The report provides a recommendation to proceed with the Plan's adoption.

RECOMMENDATION:

That:

1. **Tweed Development Control Plan, Section A18 – Heritage (Heritage DCP), as amended in attachment 2 be adopted.**
2. **Public notification of the commencement of the adopted Tweed Development Control Plan, Section A18 – Heritage (Heritage DCP) be given in the Tweed Link within 28 days in accordance with Section 21(2) of the *Environmental Planning and Assessment Regulation 2000*.**
3. **A copy of the adopted Tweed Development Control Plan, Section A18 – Heritage (Heritage DCP) be referred NSW Department of Planning and Environment within 28 days of its commencement in accordance with Section 25AB of the *Environmental Planning and Assessment Regulation 2000*.**

REPORT:

Background

At the Planning Committee Meeting of 3 March 2016 Council resolved:

1. *Draft Tweed Development Control Plan, Section A18 – Heritage, is to be publically exhibited for a period of 42 days;*
2. *During the public exhibition a minimum of two public engagement forums are to be conducted by staff at a suitable location(s) reasonably accessible to Landowners of heritage items or that are within a heritage conservation area; and*
3. *Following public exhibition a further report is to be submitted to Council detailing the content and response of submissions received.*

The Draft Tweed Development Control Plan, Section A18 – Heritage (Heritage DCP) has been publically exhibited and this report provides a summary of the exhibition process and recommendations to proceed.

The previous Council report (3 March 2016) provides a summary of the Heritage DCP structure and intent.

The draft DCP has been developed based on the guiding principles of the Burra Charter and to support the objectives of Clause 5.10 of the applicable Local Environmental Plan (Tweed LEP 2014 and Tweed City Centre LEP 2012). The draft DCP applies to all land within a Heritage Conservation Area (HCA) or which is subject to listing as a heritage item. The draft DCP may also be used to guide development within the “vicinity” (immediately adjacent or opposite) of a heritage item in order to minimise any impact on the heritage item.

The draft Heritage DCP completes the suite of statutory documents which guides development in association with a heritage item or within a heritage conservation area and supports the aims and objectives of the applicable local environmental plan (LEP). Heritage management is also supported by a suite of fact sheets developed to assist property owners, which are available on Council’s website.

Consultation

The Heritage DCP was publicly exhibited for a period of 51 days from 16 March to 6 May 2016 to allow for Easter and public holidays and consistent with the requirements of Clause 18 of the *Environmental Planning and Assessment Regulation 2000* (the Regulations).

The exhibition material included the Draft Tweed Development Control Plan, Section A18 – Heritage, exhibition notice, Planning Committee Meeting Report of 3 March 2015 and a fact sheet on frequently asked questions.

The exhibition material was available at the Tweed Heads and Murwillumbah Administrative Offices and on Council’s website.

In addition, and in accordance with the Council resolution, public information sessions were held as follows:

1. Murwillumbah on Tuesday 29 March 2016 from 4-6:30 pm at the Canvas and Kettle Room with 17 attendees.
2. Uki on Wednesday 13 April 2016 from 4-6:30 pm at the Uki Hall with 10 attendees; and
3. Tyalgum on Tuesday 19 April 2016 from 4-6:30 pm at the Tyalgum Community Hall with 3 attendees.

Submissions

Five (5) submissions have been received in response to the public exhibition of the draft Heritage DCP. A table of the submissions is provided in Attachment 1 for consideration in accordance with the requirements of Clause 21 of the Regulations.

Two submissions were received from State Agencies, as owners of heritage items or within a heritage conservation area, and three from community members, as follows:

SUB NO	NAME	COMMENT	RESPONSE	RECOMMENDATIONS
State Agencies				
1	NSW Department of Education – Asset Management Directorate	Operate 32 schools within TSC. Understand the NSW Department Education has 6 schools listed as heritage items and 3 schools within heritage conservation areas. Values the rich history of the Tweed and will take into full considerations the guidelines of the draft DCP. Noted that Chillingham Public School is not listed in Schedule 5 and has been listed in previous LEPs.	Support is noted. Chillingham Public School was not listed in the LEP 2000 nor LEP 1987, however, was included in the draft LEP 2005 and did not proceed to LEP 2014.	No further action required.
2	Transport NSW - A/Principle Manager Land Use Planning and Development Transport Strategy	Have reviewed that draft plan and have no comments to make.	Noted.	No further action required.
Community				
3		Notes that controls are much stronger and more clearly defined for built heritage (HCAs) than for Aboriginal significance. Feels that Aboriginal	Support for Aboriginal cultural heritage is noted. The Heritage DCP applies to heritage items and conservation areas listed	No further action required.

SUB NO	NAME	COMMENT	RESPONSE	RECOMMENDATIONS
		<p>cultural heritage significance is arguably more significance and much has already been lost or destroyed. Not clear how removal of, for example, a bora ring would be avoided using these guidelines. Requests stronger wording and specific protection for Aboriginal heritage.</p>	<p>within Schedule 5 of the LEP, essentially built European heritage, as noted.</p> <p>The DCP, whilst acknowledging Aboriginal cultural heritage (ACH), does not apply to sites of ACH. Council is currently preparing an Aboriginal Cultural Heritage Management Plan (ACHMP). The management of ACH is significantly different to that of European heritage, as an example, the ACHMP will apply to both tangible and intangible cultural heritage.</p> <p>Notwithstanding, ACH is managed through the National Parks and Wildlife Act , which provides processes for the identification, assessment and potential harm of ACH. The ACHMP will not replace these requirements, rather it will highlight them.</p>	
4	Tyalgum Community Hall	<p>Association has always and continues to object to the listing of the Tyalgum Community Hall as a heritage items. Considers the significance has not been researched properly and the original structure has been added to such that little now remains.</p> <p>Objects to the cost of preparing a SOHI.</p> <p>Notes that the hall has been suitably maintained by the association; and they do not feel Council needs to supervise their hall maintenance.</p>	<p>Objection to the Hall listing is noted, however outside the scope of the Heritage DCP project as this is a matter for the LEP. The DCP provides development guidelines, but does not manage the listing of items.</p> <p>Notwithstanding, whilst the hall has been extended and modified over its history, as have most heritage buildings, it still meets 3 of the 7 significance criteria and as detailed in the SOHI submitted with recent works, states: <i>Tyalgum Community Hall demonstrates both historical and current associations with the local community and local community</i></p>	No further action required.

SUB NO	NAME	COMMENT	RESPONSE	RECOMMENDATIONS
		<p>Considers the advice received so far from Council as ridiculous.</p>	<p><i>groups. Its setting in the main street of Tyalgum also contributes to its historic and social significance as a public building for the local community. (updated April 2015 from the Statement of Heritage Impact by Cosmos Archaeology P/L January 2015).</i></p> <p>The ongoing maintenance of the hall by the association is commended and the heritage provisions of the DCP support this ongoing maintenance, whilst encouraging an understanding and respect for the heritage significance.</p> <p>The cost of the incremental Statement of Heritage Impact Assessments could be offset by the preparation of a Conservation Management Plan (CMP). Which, whilst more costly up front, would outline all works proposed to maintain the hall's significance, and thus alleviate the need for a SOHI at each stage of works. This has been discussed with the Association. The Association has also been advised that a CMP may be considered for funding within the local heritage assistance funding program.</p>	
5		<p>Submission is focussed largely on Aboriginal heritage matters, the naming of Mount Wollumbin/Mt Warning and the naming of the Tweed's "Bundjalung" people, all of which the submitter has ongoing concerns over with regards to process.</p> <p>Considers the CBHS; the</p>	<p>Concerns, action and referrals are noted.</p> <p>The matters of process regarding the CBHS are outside the scope of the Heritage DCP project as this is a matter for the LEP. The DCP provides development guidelines, but does not manage the listing of items.</p>	<p>No further action required.</p>

SUB NO	NAME	COMMENT	RESPONSE	RECOMMENDATIONS
		<p>draft DCP A18; the Aboriginal cultural mapping; naming of Mount Wollumbin/Mt Warning; the membership of the Aboriginal Advisory Committee (AAC); Bundjalung language Hub at SCU; as false documents, actions or groups.</p> <p>Outlined numerous actions and referrals to Councillors, Senior Management, Members of Parliament, ICAC, the United Nations, Australian Human Rights Commission, Geographical Names Board, and State and Federal Ombudsman, Notes that his family's cable car rights have been stolen because the property was removed from the CBHS and objects to the removal of Prospero Street from the CBHS.</p> <p>States the Draft Heritage DCP has not been prepared in adherence to the Burra Charter, does not preserve indigenous cultural heritage/places and does not preserve the character, heritage and amenity of existing towns and villages.</p>	<p>With regard to cable car rights this is also outside the scope of the Heritage DCP and is a matter for a DA and subject to permissibility and merit assessment.</p> <p>The Heritage DCP is prepared consistent with the objectives of the Burra Charter, the OEH Guidelines and best industry practice.</p> <p>The DCP applies to heritage items and conservation areas listed within Schedule 5 of the LEP, essentially built European heritage, as noted. It does not apply broadly to the character of the Tweed's towns and villages as this is not the role of the heritage DCP, rather this is the role of the Shire's locality plans.</p> <p>The DCP, whilst acknowledging Aboriginal cultural heritage (ACH), does not apply to sites of ACH.</p> <p>Council is currently preparing an Aboriginal Cultural Heritage Management Plan (ACHMP). The management of ACH is significantly different to that of European heritage, as an example, the ACHMP will apply to both tangible and intangible cultural heritage.</p> <p>Notwithstanding, ACH is managed through the National Parks and Wildlife Act, which provides processes for the identification, assessment and potential harm of ACH. The ACHMP will not replace</p>	

SUB NO	NAME	COMMENT	RESPONSE	RECOMMENDATIONS
			these requirements, rather it will highlight them.	

In summary the submissions raise no matters requiring amendment to the draft Heritage DCP, as exhibited.

No submission or representation was received from any members of NSW Parliament.

Minor review and updating

Internal review of the draft Heritage DCP has resulted in updating of the Heritage Conservation Area mapping to correct minor errors and improve the clarity of the maps; relocation of the views and vistas objectives and images from Part C to Part B under the specific HCA; and minor amendments to the accessibility section to highlight universal access requirements.

Further internal review by Council's Heritage Advisor has improved and refined the Statements of Significance for the Heritage Conservation Areas and related these back to the significance criteria.

An updated version of the draft Heritage DCP is provided in attachment 1.

These amendments are minor and do not significantly alter the content or the intent of the draft Heritage DCP, and as such the DCP is considered suitable for adoption without additional public consultation.

OPTIONS:

1. Adopt the Draft Tweed DCP Section A18 - Heritage and notify the Secretary of the Department of Planning and Environment in accordance with Section 25AB of the *Environmental Planning and Assessment Regulation 2000*, or
2. Resolve to not adopt the Draft Tweed DCP Section A18 - Heritage and provide reasons for not proceeding, so that an appropriate public notice that affect can be published.

It is recommended Council proceed with Option 1.

CONCLUSION:

The draft Heritage DCP provides a key guideline document to assist owners of heritage items and within heritage conservation areas. Currently the applicable Local Environmental Plan (LEP) lists properties as a heritage item or identifies them within a heritage conservation area. However, currently there is little guidance to assist property owners on what this means for them, what significance they should be respecting, and how they should respond to this. The draft Heritage DCP provides this guidance role by explaining what is significant about each of the heritage conservation areas and how development should respond to and conserve this significance.

The draft Heritage DCP has been prepared based on the guiding principles of the Burra Charter and to support the objectives of Clause 5.10 of the applicable Local Environmental Plan (Tweed LEP 2014 and Tweed City Centre LEP 2012).

Submissions in response to the public exhibition of the Draft Heritage DCP have raised no matters requiring further amendment to the draft Heritage DCP and, as such, it is recommend that Council adopt the Draft Tweed Development Control Plan, Section A18 – Heritage for inclusion in the Tweed DCP 2008.

COUNCIL IMPLICATIONS:

a. Policy:

Not applicable

b. Budget/Long Term Financial Plan:

There are no direct budget implications arising from the adoption of the Draft Tweed DCP Section A18 – Heritage.

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. Summary of submissions (ECM 4150289)

Attachment 2. Tweed DCP Section A18 - Heritage (ECM 4150300)

**12 [PR-PC] Heritage Conservation and Demonstration Project 2015-16
Murwillumbah Town Centre Pilot Project - 'Look Up' Completion Report**

SUBMITTED BY: Strategic Planning and Urban Design

Validms



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Supporting Community Life
2.3	Provide well serviced neighbourhoods
2.3.7	Preserve the character and heritage and enhance the amenity of existing towns and villages

SUMMARY OF REPORT:

This report provides a summary of the process and outcomes of the Heritage Conservation and Demonstration Project 2015-16 Murwillumbah Town Centre Pilot Project - 'Look Up'. The project has been very successful in delivering heritage appropriate conservation and maintenance improvements to the buildings funded and enlivening the wider Murwillumbah Town Centre Streetscape.

The increase in visitor numbers to the Tweed Art Gallery offers a fantastic opportunity to draw these visitors into Murwillumbah and surrounding rural towns and villages. Improving the streetscape appearance and enlivening the commercial areas contributes towards creating places people will want to visit.

The benefits of the program to-date have clearly come through a heightened streetscape contribution from the uplift in the buildings' appearance and presentation, as well as, an increased general awareness among property owners and visitors of the Town's heritage character and significance. Although it is too early to be conclusive about the economic benefits and spin-offs that could be leveraged from uplifting the broader Murwillumbah Main Street heritage conservation area, feedback received from locals and visitors suggests this programme has been very worthwhile.

A further report to the incoming Council post September 2016, addressing the continuation of the Look-Up project, will be submitted at an appropriate time between December 2016 and March 2017.

RECOMMENDATION:

That the summary of the outcomes of the Heritage Conservation and Demonstration Project 2015-16 Murwillumbah Town Centre Pilot Project - 'Look Up' be received and noted.

REPORT:

Background

In November 2014 Tweed Councillors supported a milestone heritage management project for the Murwillumbah Town Centre. This consisted of providing financial grants support and heritage advice to encourage owners of historic buildings with the Murwillumbah Town Centre to carry out repair and restoration works.

A key objective of the program was to enliven and improve the appearance of the town centre area through its heritage significance. Termed the Heritage Conservation and Demonstration Pilot Project, and later and more widely being known as the "Look Up" project, it sought to raise awareness of the town's heritage through a focus on key features and elements of buildings that are not regularly noticed or acknowledged; for example, the presence and diversity of the pressed metal under awnings and highlight windows.

In order to maximise the amount of funding available the program was developed around the same process of the Local Heritage Assistance Fund (LHAF) grants, being dollar for dollar grants and resulting in a greater investment in improvement and conservation works, effectively doubling the outcome of the project investment.

The project was presented to a Councillor workshop 26 February 2015. The theme of the project and the proposal to run a grants program was well received and subsequently commenced.

Advertising and notification

The Look Up project was developed and launched on Council's website at the end of April 2015. Promotion in the Tweed Link calling for applications occurred 5 May 2015 and 9 June 2015 and media release on 21 July 2015. 76 letters were sent out inviting town centre property owners to apply for the grants.

Trades Day

A Trades Day was held 13 June 2015. This brought together a range of trades-people to provide information, expertise and to assist property owners with quotes to include in their grant applications. Attending trades included builders, engineers, pressed metal experts, painting and heritage authors. Flyers advertising the Trades Day were distributed through the town centre and the event was advertised in the Tweed Link 9 June 2015 and by Media release on 10 June 2015.

The Trades Day included a walk and talk around the town centre with Council's Heritage Advisor.

Grant assessment and awarding

Applications closed 24 July 2015. Four applications for the Look Up project were received.

Within a similar timeframe, the 2015-16 Local Heritage Assistance Fund (LHAF) grants closed 11 August 2015. One of the grant applications for the LHAF, for "The Citadel" 21 Queen Street, Murwillumbah was more suitably considered for funding within the Look Up program as the application sought improvements to the façade and architectural lighting of

the building. It was recommended to, and endorsed by Executive Management Team (EMT) at their meeting of 9 September 2015, that this application be included within the Look Up Project, bringing the total applications to five.

The Executive Management Team considered a report on 9 September 2015 and endorsed proceeding with all five applications.

Variations

Whilst five projects were conditionally funded, only four have proceeded. Due to the applicant not meeting the required grant timeframes, the Mallam House grant offer was withdrawn 23 March 2016, releasing substantial funding from the grant commitments.

The costs involved in the temporary street footpath/car parking closures and prop hire required for awning works was not considered or included in any of the application quotes and this cost has been an additional cost variation to almost all projects. Whilst Council waived the application fees for the Look Up projects, this cost of actual materials (props etc) varied between approximately \$600-800 for each project.

Given the nature of the project, largely working with shop front and awnings, a number of the projects included variations due to additional unforeseen works and/or structural requirements. This possibility was flagged in the initial project scoping and reporting.

A further report on the redistribution of the Mallam House funding towards other applications and variations was considered and endorsed by EMT at their meeting of 3 May 2016.

Outcomes of the Look Up Project

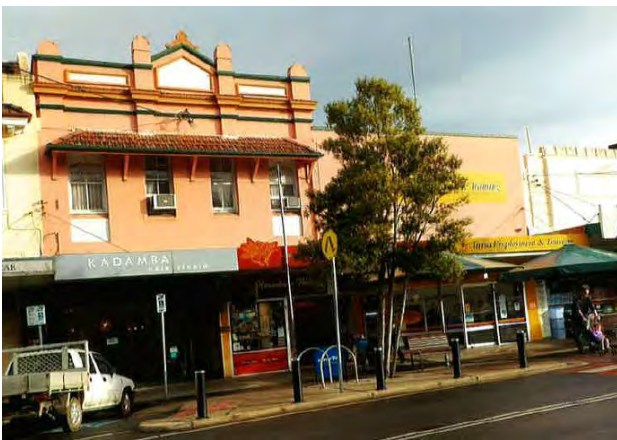
In summary a total of \$24,261 was paid in grants towards a total cost of improvement works of \$48,522 undertaken to these properties.

The outcomes of the project will be promoted on Council's website under the Look Up project.

A summary of each of the four projects and an outline of the improvements achieved is provided in the table below.

Location:		Centre Point Arcade 44-45 Murwillumbah Street, Murwillumbah	
Scope of works:		Lighting under awning; painting underside shop awning/eaves; painting front of building above awning.	
Quotation of works:	\$13,056	Final Cost of Works:	\$11,524
Conditional Grant:	\$6,528	Grant to be Paid:	\$5,762
Comments:		<p>The building façade, windows and the upper awning flashing has been painted to integrate with the building architecture/design. The colour schemes were resolved with the assistance of Council's heritage officer/staff to highlight the architectural features and period elements of the building, whilst down playing the non-significant elements.</p> <p>The under awning pressed metal soffit has been rust treated and painted in a light colour and new lighting installed under the awning. This improves the perceived safety and amenity of the footpath area as well as increasing light and visibility of the window displays.</p> <p>Advertising signage above the awning has been removed as part of the project, consistent with the wider objectives of the heritage conservation area.</p>	

Before



After



Location:		Austral Café 86-88 Murwillumbah Street, Murwillumbah	
Scope of works:		Repair or replace signage; painting above awning.	
Quotation of works:	\$7,460	Final Cost of Works:	\$9,550
Conditional Grant:	\$3,730	Grant to be Paid:	\$4,775
Comments:		<p>New painted signage (rather than vinyl panel, which is non sympathetic with the heritage conservation area) has been installed to match the existing sign shape with art deco lettering and styling of the building and existing signage. This brings the signage to a better state of repair whilst being sympathetic to the period detailing and established signage.</p> <p>The building façade and windows have been painted to integrate with the new signage and building architecture/design as well as the streetscape.</p>	

Before



After

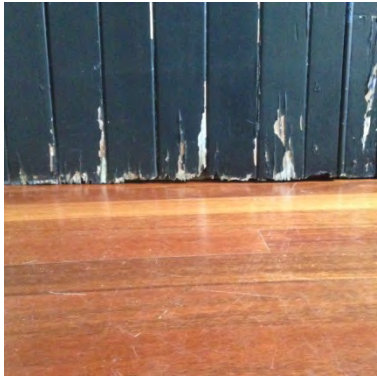


Location:		The Citadel 21 Queen Street, Murwillumbah	
Scope of works:		Repair to 6 windows; repaint façade; replace main entry door; lighting to façade	
Quotation of works:	\$15,000	Final Cost of Works:	\$11,676
Conditional Grant:	\$7,500	Grant to be Paid:	\$5,838
Comments:		<p>The previously painted surfaces of the Citadel have been repaired and painted in architecturally appropriate colours. Face brick work has been retained as this is a significant feature. The front stairs to the Citadel have been repainted in a colour that colour matched the original stair colours.</p> <p>The front doors were significantly damaged and have been replaced with doors matching the original period detailing. These doors have been stained, rather than painted, as originally detailed.</p> <p>Lighting has been installed to the front façade to improve the appearance and safety of the building after dark. This lighting highlights the architectural features of the building.</p> <p>The building is heritage listed and the improvements significantly contribute to the ongoing presentation and maintenance of the buildings as well as the streetscape.</p>	

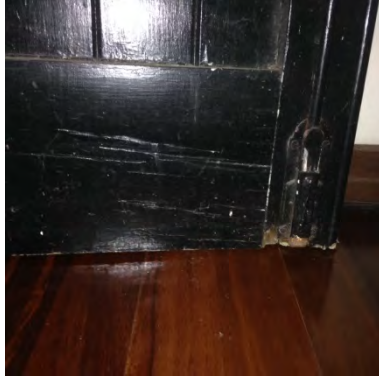
Before



Street frontage and entry



Condition of the door

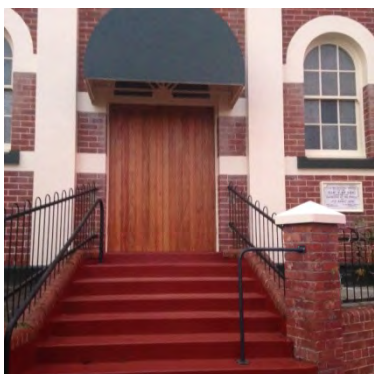


Lack of exterior lighting

After



Street frontage and entry



New doors in traditional style and stain



New exterior lighting (prior to front door installation)

Location:		43 Wollumbin Street, Murwillumbah	
Scope of works:		Repair and safety of awning; repair of pressed metal under awnings; under awning lighting; repaint above awning; repair/cleaning to front window;	
Quotation of works:	\$10,845	Final Cost of Works:	\$15,772
Conditional Grant:	\$5,423	Grant to be Paid:	\$7,886
Comments:		<p>A structural report and repairs was completed on the awning, including replacement of the awning fascia and repair and painting of the pressed metal awning soffit. This has improved the safety of the awning whilst retaining the significant pressed metal soffit. This also represents a cheaper alternative to new material replacement.</p> <p>Pressure cleaning of the façade and upper tiled awning was completed followed by painting of the previously painted surfaces. In undertaking this work it was revealed the upper awning tiles were porous and dull grey so these were painted to integrate with roof colours and provide better weather protection. In addition the upper awning guttering was to be painted, however, was found to be beyond repair and was instead replaced in a colour to coordinate with the façade works.</p> <p>The original vitrolite glass and aluminium window frames to the shop frontage have been cleaned and polished to remove rust and grime.</p> <p>Under awning lighting has been installed. This improves the perceived safety and amenity of the footpath area as well as increasing light and visibility of the window displays.</p> <p>One panel of the vitrolite glass is missing. This can be sourced and replaced, however, is a project for a later time. This would complete the improvements.</p>	

Before



Wollumbin Street frontage before

After



Wollumbin Street frontage after painting and pressure cleaning

Before



Rusted awning before

After



Awning cleaned, rust treated and painted



Rusted awning before



Awning cleaned, rust treated and painted and lighting installed



Tenancy before



Tenancy after

Benefits of the Project

The benefits of the project are seemingly far reaching. Initially the project sought to support and encourage owners of historic buildings to carry out repair and restoration works whilst enlivening the Murwillumbah Town Centre. The works funded have substantially improved each building's appearance and their contribution to the heritage conservation area and the Murwillumbah townscape.

Owners/applicants have been happy with the outcomes of the project and there have been many compliments to the owners on how fantastic the buildings are now looking as promoted in the Tweed Link on 26 April 2016.

From a business perspective the 43 Wollumbin Street building had been vacant for an extended period of time, However, following participation in the Look Up project this building is now tenanted and contributing to enlivening the Wollumbin Street active retail street presentation.

Installation of a consistent and appropriate style of under awning lighting and painting of the under awning in clean, light colours has greatly improved the presentation of the foot path area, not only for pedestrian safety but also brightening up the appearance and attractiveness of the shop fronts.

As a flow on there have been a number of development applications for improvement works to other buildings and shopfronts within the town centre, for example the NAB Bank.

The increase in visitor numbers to the Tweed Art Gallery offers a fantastic opportunity to draw these visitors into Murwillumbah and surrounding rural towns and villages. Improving the streetscape appearance and enlivening the commercial areas contributes towards creating places people will want to visit.

The benefits are not only realised through the building presentation and streetscape contribution but the project has also increased the general awareness, understanding and consideration of the heritage significance of the Murwillumbah Main Street heritage conservation area.

Council's heritage Advisor has provided heritage advice to approximately five Murwillumbah Street business/property owners in the last six months. In addition Council staff have been approached by a number of other shop owners interested in participating should the project continue.

Lessons learnt

The project has been significantly resource intensive in terms of, for example, organising, sourcing appropriate trades and running the trades day; ongoing heritage advice with owners regarding material, repair methods and colours; ongoing liaison with the trades involved; material sourcing; temporary traffic and footpath closure and management; and chasing of invoices and final reports.

Whilst the Look-Up project has achieved some very beneficial outcomes for the Murwillumbah Town Centre the overall management and delivery of the project, which was resource intensive, resulted with delays being experienced on other priority projects on the Strategic Planning and Urban Design Unit's Work Priorities Plan 2015/16. These impacts

will need to be reconciled within the next iteration of the Work Priorities Plan should the incoming Council resolve to continue with the programme.

OPTIONS:

1. The report be received and noted; or
2. The report be received and noted and further recommendation relating to a matter raised by Council to be included for the General Manager's action.

CONCLUSION:

The Look-Up mainstream heritage project was an initiative of the elected council and has proven to be a very worthwhile project, and although it has drawn significant resources away from other priority projects the outcome has been extremely encouraging. Some of the seen benefits include:

- heritage appropriate conservation and maintenance works to the buildings funded;
- improvements to the heritage conservation area streetscape presentation;
- the successful leasing of long term vacant shopfronts;
- improving the general awareness, understanding and consideration of the heritage significance of the Murwillumbah Main Street heritage conservation area; and
- a greater understanding of appropriate methods, materials and colours for heritage conservation and maintenance work.

Should the incoming Council, post September, resolve to continue with the programme there would likely be a far higher level of benefit occurring in the short-term, as there are already clear indicators of other building owners wanting/undertaking building improvements on the back of those showcased through this project initiative.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The project was delivered through the current allocated 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:

Nil.

13 [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 July 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.	DA15/0726
Description of Development:	demolition of existing structures and the construction of a residential flat building comprising 13 units
Property Address:	Lot 66 DP 237806 No. 24 McGregor Crescent, Tweed Heads
Date Granted:	7/7/2016
Development Standard to be Varied:	Clause 4.6 for the variation of height of building
Zoning:	R3 Medium Density Residential
Justification:	<p>The minor incursion above the maximum height of 0.77m will not be contrary to the objectives of Clause 4.3 for the following reasons;</p> <ul style="list-style-type: none"> • The 3.5% variation is associated with a lift overrun to service the residential tower. This overrun is located nearest to the western elevation that has a corresponding feature wall along its elevation to shield the appearance of the overrun • The small encroachment will not generate any additional overshadowing and will not create any undue bulk and scale issues for the site or surrounding locality. • The appearance of the building facades to each street is suitably articulated.
Extent:	Height variation 22m permitted - Proposed 22.77m
Authority:	Tweed Shire Council under assumed concurrence (under Delegated Authority)

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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