



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr K Milne

**Councillors:** P Allsop  
R Byrnes  
C Cherry (Deputy Mayor)  
R Cooper  
J Owen  
W Polglase

# Agenda

## **Planning Committee Meeting Thursday 2 February 2017**

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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## Items for Consideration of Council:

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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA16/0733 for Markets - Knox Park at Lot 2 DP 1220632 Brisbane Street, 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 |

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### SUMMARY OF REPORT:

Council has received a development application for the ongoing operation of monthly markets at Knox Park, Murwillumbah in accordance with Council's Markets Policy.

Following development consent, the markets will be coordinated by a market operator following approval under Section 68 of the Local Government Act 1993. In accordance with Council's Markets Policy, the Market Operator will be required to provide a *Market Management Plan* which must include the following information to Council prior to commencement:

- Market Layout Plan
- Traffic Management Plan
- Insurance
- Market Operator and Market Stall Holder responsibilities
- Mechanical Rides and Devices
- Electrical Connections and Devices
- Fire Control
- Amplified Sound
- Market Stall Types
- Waste Disposal
- Communications Strategy
- Sustainability Practices
- Sanitary Provisions
- Security.

The Markets will cater for the following stalls:

- Fresh Food/Farmers Market such as items from local farms
- New and used goods and services
- Speciality items such as designer goods, arts and crafts, retro and second hand items.

Markets at the subject site are proposed for the third Saturday of each month between 7am and 6pm which involves operating from 8am to 5pm and set up and pack up times.

The proposed markets are to utilise existing on site car parking accessed from Wollumbin and Brisbane Streets (approximately 140 spaces) in addition to the formed on-street parking around the perimeter of the park. The application originally proposed 110 stalls however after a review of the application and submission by Council's Traffic Engineer, it was considered appropriate, to cap the stall numbers at 50. However, should any future market operator wish to expand, a traffic assessment supporting the proposal would need to be approved by Council Officers.

The proposed markets are likely to result in minor short term traffic impacts. However, the extent of which is not considered unreasonable given the proposal's temporary nature and the impact being adequately mitigated with conditions for consent ensuring onsite parking availability and capping stall numbers. When weighed against the social and economic benefits to the community, the overall proposal is considered acceptable.

The subject site is zoned RE1 Public Recreation pursuant to the TLEP 2014. Markets are a permissible use with consent upon RE1 land.

The application was placed on public exhibition for 14 days. During this period one submission was received.

This application has been presented to Council for determination in the interests of transparency, given Tweed Shire Council is the applicant.

## **RECOMMENDATION:**

**That Development Application DA16/0733 for a markets - Knox Park at Lot 2 DP 1220632 Brisbane Street, Murwillumbah be approved subject to the following conditions:**

### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Tweed Shire Council and undated, except where varied by the conditions of this consent.**  
[GEN0005]
- 2. 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]
- 3. Hours of operation of the market are restricted to the third Saturday of each month between 7am and 6pm which involves operating from 8am to 5pm and set**



**up and pack up times to the satisfaction of the General Manager or his delegate, unless otherwise stated in the adopted market management plan.**

[USE0185]

- 4. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act* 2003, FSANZ Food Safety Standards and any other requirements of Councils Environmental Health Officer included in this approval.**  
[USE0835]
- 5. The market shall be operated strictly in accordance with the Local Government Act Section 68 approval to operate conditions of approval and the adopted/approved Market Management Plan to the satisfaction of the General Manager or his delegate.**
- 6. Current public liability insurance shall be maintained by the market operator at all times that a market is conducted.**
- 7. The market operator or their employee shall be present to supervise the site at all times during the market operations.**
- 8. The market shall be subject to periodic inspection by Council's Authorised Officer.**
- 9. The sale of food is permissible subject to compliance with the NSW Food Authority's Food Handling Guidelines for Temporary Events and the NSW Food Act 2003 to the satisfaction of the General Manager or his delegate. All food businesses and vendors shall be registered with Council to the satisfaction of the General Manager or his delegate.**  
[USENS01]
- 10. The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate.**
- 11. Prior to the commencement of use an Approval to engage in a trade or business on community land under Section 68 of the Local Government Act 1993 shall be obtained from Council.**  
[USENS02]
- 12. The market operator must liaise with Council's park management staff regarding condition of the grounds, particularly after rain. Should the grounds not be considered suitable for the activity, Council will retain the right to close the park to the market until the grounds are suitable.**  
[USENS03]
- 13. Car parking on the site must remain available for vehicles. No stalls are to be located within the Knox Park car park.**
- 14. Markets are to have a maximum of 50 stalls, unless an adequate traffic assessment supporting the proposal is approved by the General Manager or his delegate and forms part of the Market Management Plan.**

15. **An Evacuation Management Plan shall be developed and approved by the General Manager or delegate prior to issue of approval under Section 68 of the Local Government Act 1993.**

[USENS04]

**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council & The State of New South Wales  
**Location:** Lot 2 DP 1220632 Brisbane Street, Murwillumbah  
**Zoning:** RE1 - Public Recreation  
**Cost:** Nil

**Background:**

This application seeks development consent for the ongoing use of the park for markets in accordance with Council’s Markets Policy which nominates a maximum of 12 day markets per year at the site. Markets have historically operated at the site for many years and this application is to formalise this use.

Site Details

The subject site is a Council park classified as ‘Council Administered Crown Land’. The subject site is an urban park catering to a variety of sporting and recreational pursuits featuring tennis and netball courts, croquet green, associated club houses, community centre, children’s playground, skate park and youth precinct in addition to passive open space areas and associated amenities. The site is surrounded by Murwillumbah’s CBD and shopping centre to the north east, and a mix of low density residential, community facilities (school and place of public worship) and mixed use developments to the south, east and west.

Mature vegetation, established gardens and a freshwater pond is located within the site with formed car parks accessed from Wollumbin Street and Brisbane Street.



## Subject Site and Proposed Markets Location



**Proposed Markets Location highlighting car parking and amenities proximity**

### Proposal

The markets will be coordinated by a market operator following approval under Section 68 of the Local Government Act 1993. Markets at the subject site are proposed for the third Saturday of each month between 7am and 6pm which involves operating from 8am to 5pm and set up and pack up times.

In accordance with Council's Markets Policy, the market operator will be required to provide a *Market Management Plan* which must include the following information to Council prior to commencement:

- Market Layout Plan
- Traffic Management Plan
- Insurance
- Market Operator and Market Stall Holder responsibilities
- Mechanical Rides and Devices
- Electrical Connections and Devices
- Fire Control
- Amplified Sound
- Market Stall Types
- Waste Disposal
- Communications Strategy
- Sustainability Practices
- Sanitary Provisions
- Security.

The Markets will cater for the following stalls:

- Fresh Food/Farmers Market such as items from local farms
- New and used goods and services

- Speciality items such as designer goods, arts and crafts, retro and second hand items.

The proposed markets are to utilise existing on site car parking accessed from Wollumbin and Brisbane Streets (approximately 140 spaces) in addition to the formed on-street parking around the perimeter of the park. The application originally proposed 110 stalls however after a review of the application by Council's Traffic Engineer, it was considered appropriate for the mitigation of traffic impacts, to cap the stall numbers at 50. However, should any future market operator wish to expand, an adequate traffic assessment supporting the proposal would need to be approved by Council officers.

### Markets Policy

The purpose of this policy is to establish Tweed Shire Council's position in relation to markets that are held on Council land or facilities or public space of which Council is the responsible trustee. It outlines Council's expectations in relation to markets to ensure they are well managed, are complementary to offerings of local businesses, are supportive of the local community and are connected to the character and identity of the specific location.

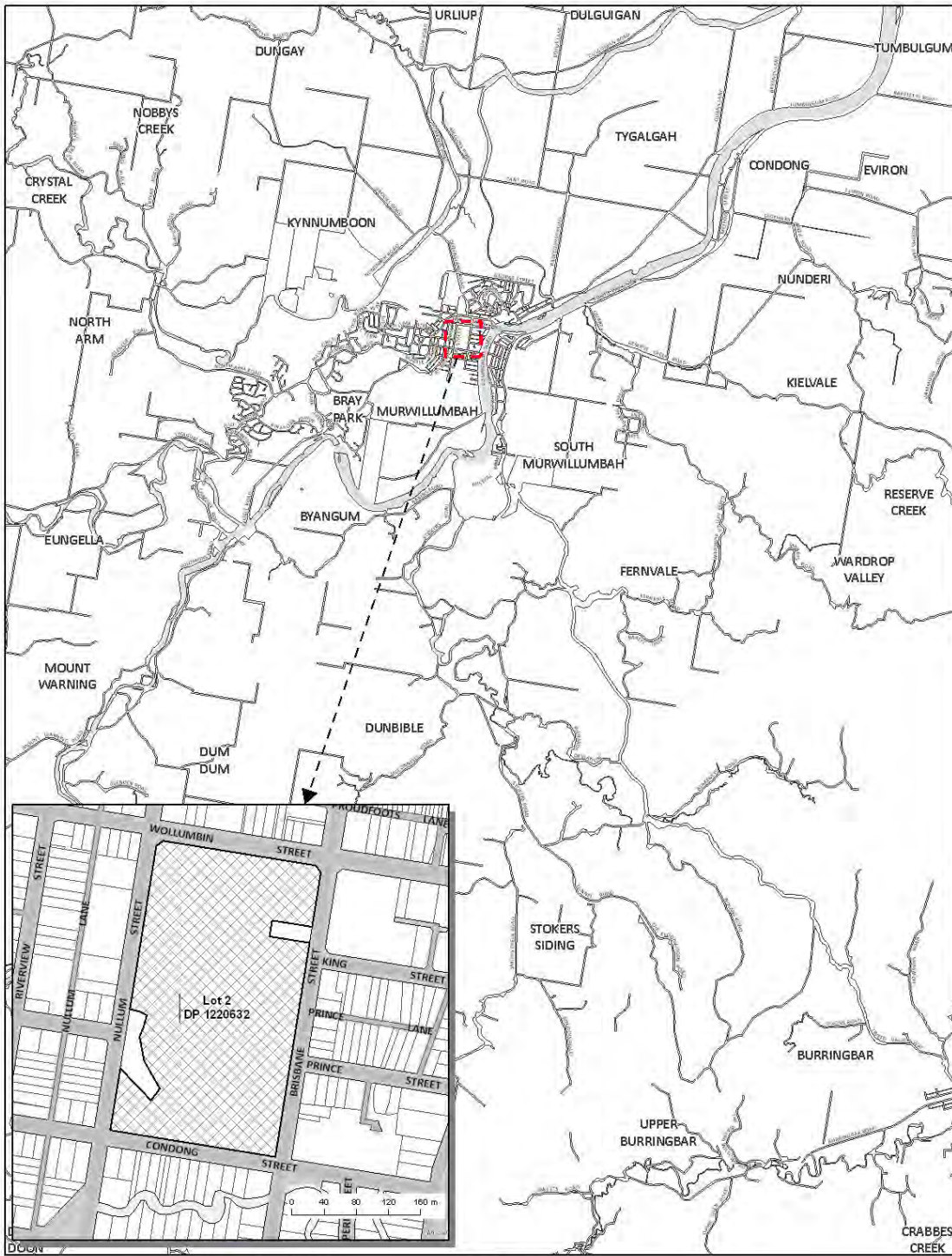
The policy provides guiding principles for the operation of markets to which the Policy applies. The subject site is a nominated location and allocates a frequency of 12 day markets per year which the subject application is consistent with. Further, the Policy makes reference to *Market Management Plan Guidelines* which outlines the contents of the Market Management Plan which is to be accepted by Council prior to issue of approval under Section 68 of the Local Government Act 1993 and operation.

### Knox Park Master Plan

In June 2014 Council adopted a Masterplan for the redevelopment of Knox Park, to better establish the park as a social hub for the district and address underutilisation by most of the local community and historic anti-social behaviour. This was following Council successfully attaining funding through the Regional Development Australia grant program for the design and construction of a youth precinct within the park. For the youth precinct to be successful, it was considered critical that the location and design be made in the context of a master plan for the whole park.

Stage 1 of the upgrade is complete with Stage 2 pending which involves works in the area of the proposed market site. Works involve the construction of new public toilet facilities, pathways, lighting, park furniture and earthworks addressing drainage issues. Council's Recreation Services Unit have advised that the market site as proposed is consistent with Masterplan as adopted, however it is appropriate that those who tender for the market be aware of the possible timing of the redevelopment due to the potential temporary loss of amenity while the works are undertaken. A funding schedule is yet to be confirmed however the work could possibly occur late 2017.

**SITE DIAGRAM:**



**Locality Plan**

**Lot 2 DP 1220632  
Brisbane Street, MURWILLUMBAH**

Cadastral: 16 January 2017  
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Boundaries shown should be considered approximate only.



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 Map prepared by: Spatial Information Systems  
 Metadata File No: Geographic Edition of Australia 1994  
 Grid: The Grid of Australia, Zone 56

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

- (1) *This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
  - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
  - (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
  - (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
  - (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
  - (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
  - (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
  - (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
  - (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*

- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and permissibility at this location.

#### Clause 2.3 – Zone objectives and Land use table

The proposed market area is zoned RE1 Public Recreation under the provisions of the Plan. The objectives of the RE1 zone are as follows:

- 1 *Objectives of zone*
  - *To enable land to be used for public open space or recreational purposes.*
  - *To provide a range of recreational settings and activities and compatible land uses.*
  - *To protect and enhance the natural environment for recreational purposes.*

The proposal is defined as *markets which means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.*

Markets are permissible with consent in the RE1 zone. The use of the subject site for markets on a regular basis for a short period of time is considered to be within the scope of a recreational activity upon public open space. The use of the land for markets will not have any adverse impact on the natural environment and is considered compatible with the surrounding facilities subject to the implementation of management plans.

#### Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed as part of the application.

#### Clause 5.4 - Controls relating to miscellaneous permissible uses

Markets are not a listed as a miscellaneous permissible use.

#### Clause 5.5 – Development within the Coastal Zone

The subject site is not located within the coastal zone and as such, this clause does not apply.



Clause 5.9 – Preservation of Trees or Vegetation

No existing vegetation will be impacted by the operation of these markets. The protection of existing vegetation shall be incorporated in the Market Management Plan.

Clause 5.10 - Heritage Conservation

The subject site is not located within a Heritage Conservation Area and does not feature a Heritage Item. Therefore this clause is considered satisfied.

Clause 5.11 - Bush fire hazard reduction

The subject site is not mapped as bushfire prone and does not require bush fire hazard reduction work.

Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as Class 3 Acid Sulfate Soils. Council's Environmental Health Unit have reviewed the application and as no works are proposed with no soil disturbances required, the proposal is considered acceptable in this regard.

Clause 7.3 – Flood Planning

The proposed market site is subject to the 100 year ARI flood event and as such is mapped as within the *Flood Planning Area*. The objectives of this clause are to minimise the flood risk to life and property associated with the use of land and to avoid adverse impacts on flood behaviour.

Development 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 compatible with the flood hazard of the land, and*
- (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*
- (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Due to the nature of markets involving temporary structures and operations being cancelled during weather events in addition to the site benefitting from the existing levy wall, the risk is considered acceptable. A Communications Strategy is required as part of the Market Management Plan that is to be approved by Council under Section 68 of the Local Government Act 1993. This is considered to be an adequate appropriate measure to manage the flood risk associated with the proposed land use at the subject site.

Clause 7.4 - Floodplain risk management

Although the subject site is mapped as subject to the 100 year ARI flood event, markets are not one of the nominated uses that require additional measures and as such, this clause is considered satisfied.

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. As no works are proposed as part of this application that would impact urban stormwater, this clause is considered satisfied.

Clause 7.10 - Essential Services

The objective of this clause is to ensure that services that are essential for the development are available or that adequate arrangements have been made to make them available when required. Markets and similar events have occurred at the subject site for many years and as such, the services required for the land use are established. Public toilets are located at onsite. This clause is considered satisfied.

**State Environmental Planning Policies**

SEPP No. 44 - Koala Habitat Protection

This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

In accordance with Clause 6, this Policy applies as the site is greater than one hectare. However, the land is not considered to be core koala habitat and therefore not subject to a Koala Plan of Management. Therefore, the provisions of this Policy are considered satisfied.

SEPP No. 55 - Remediation of Land

The application has addressed land contamination in accordance with the provisions of this Policy. Council records show that the subject park has been in use since 1962 for various public purposes and events with no other intensive or industrial land uses with the potential to cause gross contamination of the site is known to have been performed. Council's Environmental Health Unit has reviewed this information and concludes that the subject site is satisfactory for the proposed temporary uses and as such, the provisions of SEPP No 55 are considered satisfied.

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

No known draft environmental planning instruments apply to the subject proposal.

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

Tweed Development Control Plan

Section A2-Site Access and Parking Code

The purpose of this Section is to guide provision of safe, convenient and equitable access to developed land for pedestrians, cyclists, motorists and public transport users and manage generated traffic volumes and to minimise potential adverse impacts on the local road network.

With regard to car parking provision, Section A2 states that markets are to be assessed on merits in accordance with RMS guidelines.

On site car parking exists to the north of the market location consisting of approximately 125 spaces, in addition to 15 spaces associated with the Red Cross building to the east and formed on-street parking around the perimeter of the park. Further, a main bus stop is located adjacent to the market site along with pedestrian crossings to the north and east providing pedestrian connectivity to the town centre and adjacent shopping centre.

The application was referred to Council's Traffic Engineer for comment and the following comments were provided:

*"Council has recently conducted parking studies in the Murwillumbah CBD area which found that parking demand in the Knox Park and Sunnyside precinct were high during peak business hours such as Saturday morning.*

*The RMS Guide to traffic generating developments recommends a minimum of 2 parking spaces per stall, therefore 220 are required. Whilst these spaces may be available within a short walking distance, on a Saturday morning the spaces may be occupied.*

*Without specific data identifying parking availability it is recommended that the maximum number of stalls be capped to 50.*

*Whilst the grassed park may not be suitable for stall holders during inclement weather any proposal to use the sealed car park area for tents or stalls is not supported."*

Given the above, the proposed markets are likely to result in minor impacts from a short term increase in traffic. However, the extent of which is not considered unreasonable given the proposal's temporary nature and the impact being adequately mitigated with conditions for consent ensuring onsite parking availability and capping stall numbers to 50 subject to further investigation.

Therefore the proposal is considered acceptable with regard to the provisions of Section A2.

Section A3-Development of Flood Liable Land

The proposed market site is subject to the 100 year ARI flood event and as such the provisions of Section A3 apply. The aim of Section A3 is to provide a flood mitigation strategy and standards for land development in order to minimise the adverse effect of flooding on the community.

Due to the nature of markets involving temporary structures and operations being cancelled during weather events, in addition to the site benefitting from the existing levy wall, the risk is considered acceptable. A Communications Strategy and Evacuation Management Plan is required as part of the Market Management Plan that is to be approved by Council under Section 68 of the Local Government Act 1993. This is considered to be an adequate appropriate measure to manage the flood risk associated with the proposed land use at the subject site and as such, the provisions of Section A3 are considered satisfied.

Section A4-Advertising Signs Code

Signage does not form part of this application.

Section A11-Public Notification of Development Proposals

The development application was advertised for a period of 14 days from Wednesday 19 October 2016 to Wednesday 2 November 2016. During this period one submission was received which is addressed elsewhere in this report. As such, Section A11 is considered satisfied.

Section A13-Socio-Economic Impact Assessment

The purpose of this Section is to ensure that Development Applications for certain developments that are likely to have a significant social and/or economic impact are properly considered. In accordance with clause A13.5.1, the application did not require a socio-economic impact statement and as such, this Plan is considered satisfied.

Section A15-Waste Minimisation and Management

The purpose of this section of the Plan is to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development (ESD).

Under Part B, a Waste Management Plan is required to be approved as part of the development.

The application and *Market Management Plan Guidelines* state that Waste Disposal is to be addressed sufficiently as part of the Market Management Plan to be approved by Council as part of a Section 68 application. A Waste Management Plan is to form part of the submission.

Council's Waste Management Unit reviewed that application and had no objections to the proposal subject to the following condition of consent:

*"The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate"*

Given the above, it is considered that the proposal is consistent with Section A15, subject to the abovementioned condition of consent.

Section A16-Preservation of Trees or Vegetation

No tree removal is proposed as part of this application and as such, Section A16 is considered satisfied.

Section B22-Murwillumbah Town Centre

Section B22 provides more detailed provisions to expand upon the Tweed Local Environmental Plan (LEP) for development within the Murwillumbah Town Centre that will contribute to the growth and character of the Murwillumbah Town Centre, whilst protecting and enhancing the public domain.

The subject application is for monthly markets within Knox Park which is an existing district park. Within the Section B22 Structure Plan, Knox Park is nominated as open space and a focal point within the public domain of the town. Further, Strategy 2 of the Plan is to create an active, liveable town centre, which provides for residential growth (that cannot be accommodated elsewhere) and which integrates Knox Park.

Given the recent and ongoing upgrades at Knox Park, in addition to the existing pedestrian linkages to the town centre, the proposed monthly markets are considered to be consistent with the Plan by way of contributing to the activation of Knox Park and the town centre and as such, Section B22 is considered satisfied.

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

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

The subject land is not located within the area affected by the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast* and as such, this Policy does not apply.

**(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 subject site is not located on the coastal foreshore and is not affected by coastal hazards. The proposed development is located approximately 17km from the coastal foreshore and as such, the proposed markets are considered to be consistent with this Plan.

### **Coastal Zone Management Plan for the Tweed Coast Estuaries 2013**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

**(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 subject site is a Council park classified as 'Council Administered Crown Land' zoned RE1 Public Recreation. The subject site is district urban park catering to a variety of sporting and recreational pursuits with the provision of passive open space areas and associated amenities. The site is surrounded by Murwillumbah's CBD and shopping centre to the north east, and a mix of low density residential, community facilities (school and place of public worship) and mixed use developments to the south, east and west.

The ongoing use of the land for markets of a temporary nature for a limited number of days of the year is considered appropriate given the context and setting.

Overall, the markets are considered to have positive social and economic benefits for the locality and stall holders being a positive injection in to the local economy.

#### **Access, Transport and Traffic**

Onsite car parking exists to the north of the market location consisting of approximately 125 spaces, in addition to 15 spaces associated with the Red Cross building to the east and formed on-street parking around the perimeter of the park. Further, a main bus stop is located adjacent to the market site. It is noted that during market times, the parking will also need to cater for visitors for other park uses.

The application was referred to Council's Traffic Engineer for comment and the following comments were provided.

*"Council has recently conducted parking studies in the Murwillumbah CBD area which found that parking demand in the Knox Park and Sunnyside precinct were high during peak business hours such as Saturday morning.*

*The RMS Guide to traffic generating developments recommends a minimum of 2 parking spaces per stall, therefore 220 are required. Whilst these spaces may be available within a short walking distance, on a Saturday morning the spaces may be occupied.*

*Without specific data identifying parking availability it is recommended that the maximum number of stalls be capped to 50.*

*Whilst the grassed park may not be suitable for stall holders during inclement weather any proposal to use the sealed car park area for tents or stalls is not supported."*

The proposed markets are likely to result in minor impacts from a short term increase in traffic. However, the extent of which is not considered unreasonable given the proposal's temporary nature and the impact being adequately mitigated with conditions for consent ensuring onsite parking availability and capping stall numbers to 50 subject to further investigation.

### Flora and Fauna

The flora and fauna attributes of the subject site were previously considered as part of the Knox Park Redevelopment – Review of Environmental Factors (TSC, 2013). Following is a summary advised from Council's Environmental Science Officers:

- *Knox Park consists of three main ecological communities: Reconstructed lowland rainforest on flood plain, freshwater pond and grass parkland with isolated amenity plantings. None of these are characteristic of an endangered ecological community.*
- *The park caters to a number of threatened flora species including Fine-leaved Tuckeroo, Durobby, and Davidson's Plum. These individuals are largely confined to the patch of reconstructed rainforest to the west of the park. One individual is also located on an island within the freshwater pond.*
- *The resultant fauna attributes within Knox Park are limited, providing habitat for generalist species adapted to urban environments such as passerine birds.*
- *Threatened fauna with the potential to forage within the site are limited to highly mobile bat species such as Grey-headed Flying-fox and Little Bentwing-bat. However, roosting habitat suitable for these species is not present within the site.*

The proposed markets involve the temporary use of a small part of the site devoid of significant vegetation. While the wider park has some conservation value, the

proposal would be removed from these and no detrimental impact on flora and fauna is predicted.

#### Operation and Amenity

Council's Recreation Services Unit who manage the land reviewed the application and provided the following comments:

*"Recreation Services has no objection to this Development Application for markets to be held at Knox Park. This activity was frequently held year some years ago with no major issues we are aware of. The location indicated in the SEE is consistent with where the previous market activities were held."*

Council's Environmental Health Unit reviewed the application and provided the following comments:

*"Use – the activity does have the potential to impact local amenity through multiple factors including set up, operating hours, vehicle movements, customer movements, noise, waste and the like."*

*However, the market operated monthly on this site for years without significant notifications to Council. As can be seen from the site plan below, the markets are contained within the public park. The successful applicant under the EOI [Expression of Interest] process will be required to submit a market management plan which will address operational limits and suitable conditions will be imposed on the S68 approval to operate.*

*The operation of a market is largely defined by the adopted and approved MMP. The SEE indicates that the MMP will address:*

- *Market Layout Plan*
- *Traffic Management Plan*
- *Insurance*
- *Market Operator and Market Stall Holder responsibilities*
- *Mechanical Rides and Devices*
- *Electrical Connections and Devices*
- *Fire Control*
- *Amplified Sound*
- *Market Stall Types*
- *Waste Disposal*
- *Communications Strategy*
- *Sustainability Practices*
- *Sanitary Provisions*
- *Security.*

*The SEE indicates 12 monthly events, third Saturday of the month, layout plan consistent with historical practices and operating hours to be 7am to 6pm (extended for set up and pack down).*



*Council separately calls for expressions of interest to operate the market each 3 years and appoints an operator. A Local Government Act Section 68 approval is issued, subject to conditions, which imposes specific controls over the market operation.*

*The market operator is usually a charitable community group (although a private operator is feasible), the members of which supervise the market operation and are willing to comply with reasonable requests from Council and the Community.*

*Unreasonable impacts are not anticipated if compliance with the conditions of consent and S68 approval is achieved. The following condition will be imposed:*

- *The market shall be operated strictly in accordance with the Local Government Act Section 68 approval to operate conditions of approval and the adopted/approved Market Management Plan.*

It is considered that any future operational issues can be managed by the market operators in consultation with Council's Recreation Services Unit or Environmental Health Unit as the matters arise or upon the required periodic renewal of the Section 68 approval.

Council's Water Unit raised no concerns with the application noting that public amenities are located on the site, which are connected to Council's sewer network.

Overall, given the history of the markets at the subject site, the operation of the markets and subsequent amenity impacts are considered to be reasonable and adequately mitigated and regulated by way of Section 68 approval of a Market Management Plan.

#### Noise

The application states that the proposal does not include the use or operation of mechanical rides and devices or amplified sound.

Council's Environmental Health Unit have reviewed the application and have raised no objections subject to standard conditions of consent and Section 68 approval.

Therefore noise impacts are considered acceptable subject to conditions of consent and future Section 68 approvals.

#### Waste

The application states that Waste Disposal is to be addressed sufficiently as part of the Market Management Plan to be approved as part of a Section 68 application.

Council's Waste Management Unit reviewed that application and had no objections to the proposal subject to the following condition of consent:

*“The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate”*

No unreasonable impacts with regard to waste management are anticipated subject to consent conditions and therefore the proposal is considered acceptable in this regard.

### Food Premises

Council’s Environmental Health Unit reviewed the application and provided the following comments:

*Restrictions have been historically imposed over the number of food handlers which sell ‘conventional food and drink’, with all other food being required by Council Policy to be home grown or home made. It is the ‘norm’ to impose a condition to the S68 which restricts the number of conventional food vendors to four (4). The concept of limiting the number of food vendors has been challenged in recent times and may be varied by Council in future.*

*Sale of food is also subject to common law requirements such as the Food Act and Food Standards Code.*

With regard to the sale of food, the proposed markets are considered acceptable and sufficiently regulated subject to conditions of consent requiring approval under Section 68 of the Local Government Act 1993.

## **(c) Suitability of the site for the development**

### Surrounding Landuses/Development

The subject site is district urban park catering to a variety of sporting and recreational pursuits with the provision of passive open space areas and associated amenities. The site is surrounded by Murwillumbah’s CBD and shopping centre to the north east, and a mix of low density residential, community facilities (school and place of public worship) and mixed use developments to the south, east and west.

The use of the open space portion of the land for markets of a temporary nature for a limited number of days of the year is considered appropriate and consistent with the objectives of the zoning.

The markets are considered to have positive social and economic benefits for the locality and stall holders being a positive injection in to the local economy.

Appropriate controls and management measures can be imposed to minimise any disturbance of the environment and adjoining commercial and residential properties during market days. These measures are to be addressed in detail within the *Market Management Plan* required to be compiled and accepted by

Council as part of the required approval under Section 68 of the Local Government Act 1993.

Any future issues due to any conflicting landuses can be managed by the market operators in consultation with Council's Recreational Services Unit or Environmental Health Unit as the matters arise or upon the required periodic renewal of the Section 68 approval.

#### Ground condition

Council's Recreation Services Unit who manage the land raised the matter of drainage at the subject site and the potential for damage to the site if the markets were held if the ground conditions are not appropriate. The following comments were provided:

*"The area shown is quite low, and extensive rain can cause the surface to become wet and muddy. This could affect the market experience for attendees and stall holders as well as park maintenance. It is desirable that the market management plan for the Knox Market includes a section on determining if the ground conditions are suitable after rain. A suggested consent condition:*

- The market operator must liaise with Council's park management staff regarding condition of the grounds, particularly after rain. Should the grounds not be considered suitable for the activity, Council will retain the right to close the park to the market until the grounds are suitable."*

It is considered appropriate that Council retains control over decisions regarding condition of the ground and its suitability for markets to be held, particularly after weather events. It is considered that this matter is adequately addressed subject to the abovementioned condition of consent.

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

The development application was advertised for a period of 14 days from Wednesday 19 October 2016 to Wednesday 2 November 2016. During this period one submission was received.

#### Concerns

The Centre Manager Charter Hall Sunnyside Shopping Centre although provided in principle support to the proposal, raised concerns with a potential negative impact on parking at the Sunnyside Mall shopping centre located to the east of the proposed market site.

Further, it was requested that Charter Hall be consulted as part of the Section 68 approval of the Traffic Management Plan.

### Council Officer Assessment

It is noted that the car park associated with Sunnyside Shopping Centre is time limited. It is generally not Council's responsibility to monitor and regulate privately owned car parks.

As outlined elsewhere in the report, the proposed markets are to utilise existing public car parking within Knox Park accessed from Wollumbin and Brisbane Streets, in addition to the formed on-street parking around the perimeter of the park.

The application originally proposed 110 stalls. In response to the submission, Council's Traffic Engineer proposed the capping of stall numbers to 50.

The proposed markets are likely to result in minor short term traffic impacts. However, the extent of which is not considered unreasonable given the proposal's temporary nature and the impact being adequately mitigated with conditions for consent ensuring onsite parking availability and capping stall numbers.

Further, it is not considered appropriate to involve adjacent landowners in the assessment of applications made under Section 68 of the Local Government Act 1993.

As such, the concerns raised within public submissions are considered to be adequately addressed.

#### **(e) Public interest**

Given the nature of the proposed development, being for the ongoing use of public land for temporary markets on a predetermined schedule on appropriately zoned land, it is considered that the proposal would be unlikely to result in an unacceptable impact on the wider public interest at this location which includes objectives to provide for the recreational needs of the community.

#### **OPTIONS:**

1. Approves the development application with the recommended conditions of consent; or
2. Refuses the application and provide reasons.

Option 1 is recommended.

#### **CONCLUSION:**

Having regard to the assessment of the proposed development highlighted throughout this report, it is recommended that development consent should be granted for the proposed development given the application relates to an appropriate land use on land zoned for residential purposes.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Markets v1.1

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

Not Applicable.

**c. Legal:**

The applicant may lodge an appeal in the NSW Land and Environment Court if dissatisfied with Councils determination.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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2 [PR-PC] Development Application DA16/0692 for Markets - Phillip Street Reserve at Lot 7069 DP 1113590 Coronation Avenue, 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:

Council has received a development application for the ongoing operation of markets at Phillip Street Reserve, Pottsville in accordance with Council's Markets Policy.

Following development consent, the markets will be coordinated by a market operator following approval under Section 68 of the Local Government Act 1993. In accordance with Council's Markets Policy, the Market Operator will be required to provide a *Market Management Plan* which must include the following information to Council prior to commencement;

- Market Layout Plan
- Traffic Management Plan
- Insurance
- Market Operator and Market Stall Holder responsibilities
- Mechanical Rides and Devices
- Electrical Connections and Devices
- Fire Control
- Amplified Sound
- Market Stall Types
- Waste Disposal
- Communications Strategy
- Sustainability Practices
- Sanitary Provisions
- Security.

The Markets will cater for the following stalls:

- Fresh Food/Farmers Market such as items from local farms
- New and used goods and services
- Speciality items such as designer goods, arts and crafts, retro and second hand items.

Markets at the subject site are proposed for the first and third Sunday of each month between 7am and 6pm which involves operating from 8am to 5pm and set up and pack up times. Council's Market Policy nominates that the maximum number of markets to operate at the site each year would include 24 day time markets. Although the number of stalls is not specified, the market is limited to the nominated area.

The proposed markets are likely to result in minor short term traffic impacts. However, the extent of which is not considered unreasonable given the proposal's temporary nature and the impact being adequately mitigated with conditions for consent requiring Traffic Management Plan that includes the provision of a traffic controller to manage pedestrians crossing Coronation Avenue. When weighed against the social and economic benefits to the community, the overall proposal is considered acceptable.

The subject site is zoned RE1 Public Recreation pursuant to the TLEP 2014. Markets are a permissible use with consent upon RE1 land.

The application was placed on public exhibition for 14 days. During this period no submissions were received.

This application has been presented to Council for determination in the interests of transparency, given Tweed Shire Council is the applicant.

#### **RECOMMENDATION:**

**That Development Application DA16/0692 for markets - Phillip Street Reserve at Lot 7069 DP 1113590 Coronation Avenue, Pottsville be approved subject to the following conditions:**

#### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Tweed Shire Council and undated, except where varied by the conditions of this consent.**  
[GEN0005]
- 2. 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]
- 3. Hours of operation of the market are restricted to the first and third Sunday of each month between 7am and 6pm which involves operating from 8am to 5pm and set up and pack up times to the satisfaction of the General Manager or his delegate, unless otherwise stated in the adopted market management plan.**  
[USE0185]
- 4. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003* and Food Safety Standards Code and any other requirements of Councils Environmental Health Officer included in this approval.**  
[USE0835]

5. **The market shall be operated strictly in accordance with the Local Government Act Section 68 approval to operate conditions of approval and the adopted/approved Market Management Plan to the satisfaction of the General Manager or his delegate.**
6. **Current public liability insurance shall be maintained by the market operator at all times that a market is conducted.**
7. **The market operator or their employee shall be present to supervise the site at all times during the market operations.**
8. **The market shall be subject to periodic inspection by Council's Authorised Officer.**
9. **The sale of food is subject to compliance with the NSW Food Authority's Food Handling Guidelines for Temporary Events and the NSW Food Act 2003 to the satisfaction of the General Manager or his delegate. All food businesses and vendors shall be registered with Council.**

[USENS01]
10. **The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate.**
11. **Prior to the commencement of use an Approval to engage in a trade or business on community land under Section 68 of the Local Government Act 1993 shall be obtained from Council.**

[USENS02]
12. **The market operator must liaise with Council's park management staff regarding condition of the grounds, particularly after rain. Should the grounds not be considered suitable for the activity, Council will retain the right to close the park to the market until the grounds are suitable.**

[USENS03]
13. **An Evacuation Management Plan shall be developed and approved by the General Manager or delegate prior to issue of approval under Section 68 of the Local Government Act 1993.**
14. **A traffic controller directing pedestrians crossing Coronation Avenue is required onsite during hours of operation of the market. This requirement to be included within any Traffic Management Plan that forms part of the Market Management Plan to be approved by Council under Section 68 of the Local Government Act 1993.**

[USENS04]



**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council  
**Location:** Lot 7069 DP 1113590 Coronation Avenue, Pottsville  
**Zoning:** RE1 - Public Recreation  
**Cost:** Nil

**Background:**

This application seeks development consent for the ongoing use of the park for markets in accordance with Council’s Markets Policy which nominates a maximum of 24 day markets per year at the site. Markets have operated at the site for many years and this application is to formalise this use.

Site Details

The subject site is a Council park classified as ‘Council Administered Crown Land’. The site is surrounded by the road reserves of Tweed Coast Road, Phillip Street, Coronation Avenue and Overall Drive. Pottsville South Caravan Park and Ambrose Brown park are located to the east, Pottsville Memorial Oval to the north and Pottsville commercial centre to the west. The site is grassed, relatively flat and vacant with trees lining Tweed Coast Road.



**Subject Site and Proposed Markets Location**

## Proposal

The markets will be coordinated by a market operator following approval under Section 68 of the Local Government Act 1993. Markets at the subject site are proposed for the first and third Sunday of each month between 7am and 6pm which involves operating from 8am to 5pm and set up and pack up times. Although the number of stalls is not specified, the market is limited to the nominated area.

Vehicle access to the site is available from Phillip Street with on-street car parking located along Phillip Street and Tweed Coast Road in addition to nearby streets and nearby public car parks (Ambrose Brown Park and Berkleys Lane).

In accordance with Council's Markets Policy, the market operator will be required to provide a *Market Management Plan* which must include the following information to Council prior to commencement:

- Market Layout Plan
- Traffic Management Plan
- Insurance
- Market Operator and Market Stall Holder responsibilities
- Mechanical Rides and Devices
- Electrical Connections and Devices
- Fire Control
- Amplified Sound
- Market Stall Types
- Waste Disposal
- Communications Strategy
- Sustainability Practices
- Sanitary Provisions
- Security.

The Markets will cater for the following stalls:

- Fresh Food/Farmers Market such as items from local farms
- New and used goods and services
- Speciality items such as designer goods, arts and crafts, retro and second hand items.

## Markets Policy

The purpose of this policy is to establish Tweed Shire Council's position in relation to markets that are held on Council land or facilities or public space of which Council is the responsible trustee. It outlines Council's expectations in relation to markets to ensure they are well managed, are complementary to offerings of local businesses, are supportive of the local community and are connected to the character and identity of the specific location.

The policy provides guiding principles for the operation of markets to which the Policy applies. The subject site is a nominated location and allocates a frequency of 24 day markets per year which the subject application is consistent with. Further, the Policy makes reference to *Market Management Plan Guidelines* which outlines the contents of the Market

Management Plan which is to be accepted by Council prior to issue of approval under Section 68 of the Local Government Act 1993 and operation.

**SITE DIAGRAM:**



**Locality Plan**

**Lot 7069 DP 1113590**  
**Coronation Avenue, Pottsville**

**Cadastre: 16 January, 2017**  
 © Land and Property Information (LPI) and Tweed Shire Council.  
 Boundaries shown should be *considered approximate only*.



**GVIC and Cultural Centre**  
 3 Tambulung Road  
 Mullumbidgee NSW 2484  
 PO Box 816  
 Mullumbidgee NSW 2484  
 Tel: 02 6352 2200 / 6352 2272  
 Fax: 02 6352 2429  
 Web: www.tweedshire.nsw.gov.au  
 Email: info@tweedshire.nsw.gov.au

**GDA**  
 Map Projections: Pseudo Cylindrical Albers for the map area. Geoidetic Datum of Australia 1984. GDA: Map of Australia, Case 55.

Disclaimer: This site is provided to you to view the accuracy of the data. Tweed Shire Council has no responsibility for any use or purpose of any kind, whether or not it is intended, or for any consequences, including those arising from the use of the data, being inaccurate, out of date, incomplete or unreliable, for any particular purpose or for any particular person. The information is provided for general guidance and should not be used for any other purpose. Boundaries shown should be considered approximate only. This information is provided as a guide only and should not be used for any other purpose. The information contained on this document remains a draft for 30 days only, from the date of approval.

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

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

**Tweed Local Environmental Plan 2014**

**Clause 1.2 – Aims of the Plan**

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

- (1) *This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
  - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
  - (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
  - (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
  - (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
  - (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
  - (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
  - (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
  - (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*

- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and permissibility at this location.

#### Clause 2.3 – Zone objectives and Land use table

The proposed market area is zoned RE1 Public Recreation under the provisions of the Plan. The objectives of the RE1 zone are as follows:

- 1 *Objectives of zone*
  - *To enable land to be used for public open space or recreational purposes.*
  - *To provide a range of recreational settings and activities and compatible land uses.*
  - *To protect and enhance the natural environment for recreational purposes.*

The proposal is defined as *markets which means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.*

Markets are permissible with consent in the RE1 zone. The use of the subject site for markets on a regular basis for a short period of time is considered to be within the scope of a recreational activity upon public open space. The use of the land for markets will not have any adverse impact on the natural environment and is considered compatible with the surrounding facilities subject to the implementation of management plans.

#### Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed as part of the application.

#### Clause 5.4 - Controls relating to miscellaneous permissible uses

Markets are not a listed as a miscellaneous permissible use.

#### Clause 5.5 – Development within the Coastal Zone

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

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*

- (i) maintaining existing public access and, where possible, improving that access, and*
- (ii) identifying opportunities for new public access, and*

The markets will not alter existing access arrangements given the proximity of the market to the foreshore (200m).

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

The proposed markets are permissible on the subject site and meet all requirements with respect to the zone objectives and Clauses of the LEP. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

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

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

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

The proposed markets are not located on coastal headlands and are not anticipated to impact the visual amenity and scenic qualities of the coast given the subject site's proximity to the coast.

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

The proposed markets consist of temporary structures and will not require any permanent change to the existing environment. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems.

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

The proposed markets are not considered to result in an unacceptable cumulative impact on the coastal catchment given the site's zoning and the temporary nature of the development at this location.

This clause goes on to further state:

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

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

The proposal will not impede or diminish the right of access of the public either to or along the public foreshore as the proposed markets are not located on the foreshore.

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

Existing facilities within adjacent Ambrose Brown park will be utilised that meet the above criteria.

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

No change to the existing stormwater collection arrangement given the temporary structures associated with the market stalls or use and as such, this is considered satisfied.

- (d) *the proposed development will not:*

- (i) *be significantly affected by coastal hazards, or*  
(ii) *have a significant impact on coastal hazards, or*  
(iii) *increase the risk of coastal hazards in relation to any other land.*

The markets are not located within an area impacted by coastal hazards and are not anticipated to impact coastal hazard areas.

The proposed market development is considered to be acceptable having regard to the coastal environment as outlined above due to its nature, scale, and physical separation of use from any coastal location and as such Clause 5.5 is considered satisfied.



Clause 5.9 – Preservation of Trees or Vegetation

No existing vegetation will be impacted by the operation of these markets. The protection of existing vegetation within the adjacent road reserve shall be incorporated in the Market Management Plan.

Clause 5.11 - Bush fire hazard reduction

The subject site is not mapped as bushfire prone and does not require bush fire hazard reduction work.

Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as Class 3 Acid Sulfate Soils. Council's Environmental Health Unit have reviewed the application and as no works are proposed with no soil disturbances required, the proposal is considered acceptable in this regard.

Clause 7.3 – Flood Planning

The proposed market site is subject to the 100 year ARI flood event and as such is mapped as within the *Flood Planning Area*. The objectives of this clause are to minimise the flood risk to life and property associated with the use of land and to avoid adverse impacts on flood behaviour.

Development 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 compatible with the flood hazard of the land, and*
- (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*
- (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Due to the nature of markets involving temporary structures and operations being cancelled during weather events, the risk is considered acceptable. A Communications Strategy and Evacuation Management Plan is required as part of the Market Management Plan that is to be approved by Council under Section 68 of the Local Government Act 1993. This is considered to be an adequate appropriate measure to manage the flood risk associated with the proposed land use at the subject site.

Clause 7.4 - Floodplain risk management

Although the subject site is mapped as subject to the 100 year ARI flood event, markets are not one of the nominated uses that require additional measures and as such, this clause is considered satisfied.

Clause 7.5 - Coastal risk planning

The subject site is not identified on the *Coastal Risk Planning Map* and as such, this clause does not apply.

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. As no works are proposed as part of this application that would impact urban stormwater, this clause is considered satisfied.

Clause 7.10 - Essential Services

The objective of this clause is to ensure that services that are essential for the development are available or that adequate arrangements have been made to make them available when required. Markets have occurred at the subject site for many years and as such, the services required for the land use are established. Public toilets are located at adjacent Ambrose Brown Park. This clause is considered satisfied.

**State Environmental Planning Policies**

SEPP No. 44 - Koala Habitat Protection

Under the *Tweed Coast Comprehensive Koala Plan of Management* adopted in accordance with SEPP No 44, the subject site is within the *Southern Tweed Coast Koala Management Area* and is not within an IKPoM Precinct. The subject application does not propose the removal of any koala food trees and as such the proposal is considered to be consistent with the Plan and SEPP No 44.

SEPP No. 55 - Remediation of Land

The application has addressed land contamination in accordance with the provisions of this Policy.

Council's Environmental Science Officers provided historical information with regard to land contamination, stating the following:

*The subject site has been utilised as a public/park reserve since 1976 and prior to this, the subject site formed part of the drainage or creek line connecting Cudgera Creek and Mooball Creek. As such it is likely the subject site has been filled to create the reserve as it occurs today.*

With regard to potentially land contaminating uses of properties adjoining the site:

*Sand mining was performed throughout the broader locality, each and south of the subject site as indicated by mapping of potentially contaminated land and a heavy mineral sand mining path (Mason, 2003) as reproduced by Council's GIS system Weave. No other intensive land uses with the*

*potential to cause land contamination of the site are known to have been performed on adjoining properties. Sand mining is associated with the disposal of radioactive materials such as radium and thorium. However, available information indicates the subject site was not subjected to mining.*

Council's Environmental Health Unit has reviewed this information and have provided the following assessment that is consistent with the above and refers to previous assessments made for the subject site.

*The site was the subject of a PTV16/0002 application for placement of sewer through the park, which addressed this issue. Notes from the EH Section comments for that application stated:*

*A surface radiation survey was conducted.*

*The surface radiation levels recorded during the survey are representative of background levels which indicates that radioactive materials from past sand mining activities are not present at the site. Surface radiation levels recorded did not exceed the NSW Department of Health action level thresholds, therefore no further investigation or remediation is required.*

Given the above assessment, the subject site is satisfactory for the proposed market use and is considered to meet the provisions of SEPP No 55.

#### SEPP No 71 – Coastal Protection

The subject site is within the Coastal Zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71. The southern corner of the subject site is also mapped Sensitive Coastal Location.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

#### *Clause 8 – Matters for consideration*

*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 markets 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 markets are located giving consideration to the site constraints and relationship with the surrounding area and are considered an acceptable land use for the site reflected in the land zoning under the Tweed Local Environmental Plan 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 markets are considered not to impact on the amenity of the coastal foreshore, given it is located approximately 200m from the foreshore. 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 animals, plants or their habitats.

- (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 markets.

- (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 Coastal Processes.

- (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 proposed markets are not considered to impact any traditional Aboriginal cultural values.

- (m) *likely impacts of development on the water quality of coastal waterbodies,*

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*

It is not considered that the proposed markets impact upon the conservation or preservation of any of the above items.

- (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 markets are 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.*

Any energy use will be minimal given the temporary nature of the markets and relative needs for power and water.

The proposal is generally consistent with the matters for consideration as it does not impede public access to the foreshore nor result in any unacceptable loss of

view or overshadowing. The proposal has a minimal impact on flora or fauna and the proposed site is considered acceptable with respect to Aboriginal significance. The provisions of SEPP 71 are considered satisfied.

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

The Draft State Environmental Planning Policy (SEPP) (Coastal Management) 2016 applies to the subject site. This document is to replace SEPP No 14 – Coastal Wetlands, SEPP No 26 – Littoral Rainforests and SEPP No 71 – Coastal Protection. The proposed markets are considered to be consistent with the aims and provisions of this Draft Policy.

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

*Tweed Development Control Plan*

*Section A2-Site Access and Parking Code*

The purpose of this Section is to guide provision of safe, convenient and equitable access to developed land for pedestrians, cyclists, motorists and public transport users and manage generated traffic volumes and to minimise potential adverse impacts on the local road network.

With regard to car parking provision, Section A2 states that markets are to be assessed on merits in accordance with RMS guidelines.

The application was referred to Council's Traffic Engineer for comment and the following comments were provided:

*The markets have been conducted in the same location for a number of years with limited complaints to Council however parking needs further consideration.*

*Traffic and access for the proposal, including access to the subject site for market stallholders including delivery, loading and unloading, would be managed in accordance with the Market Management Plan (MMP) prepared by the Market Operator and approved by Tweed Shire Council. Namely, a Traffic Management Plan would form part of the approved MMP.*

*The Statement of Environmental Effects identified 65 parking spaces in close proximity to the site. The RMS guide to traffic generating developments recommends 2 spaces per stall, ie 330 spaces. It would be expected that customers would park in the recently formed Lane behind the shops on Coronation Avenue and cross the road to access the market site.*

*There is no marked pedestrian crossing in this area and it is recommended that within the Traffic Management Plan for the markets that a traffic controller managing pedestrians crossing Coronation Ave be included as a condition of consent for any market approvals.*

Given the above, the proposed markets are likely to result in minor impacts from a short term increase in traffic. However, the extent of which is not considered unreasonable given the proposal's temporary nature and the impact being adequately mitigated with conditions for consent ensuring management of potential traffic and pedestrian conflict.

Therefore the proposal is considered acceptable with regard to the provisions of Section A2.

*Section A3-Development of Flood Liable Land*

The proposed market site is subject to the 100 year ARI flood event and as such the provisions of Section A3 apply. The aim of Section A3 is to provide a flood mitigation strategy and standards for land development in order to minimise the adverse effect of flooding on the community.

Due to the nature of markets involving temporary structures and operations being cancelled during weather events, the risk is considered acceptable. A Communications Strategy is required as part of the Market Management Plan that is to be approved by Council under Section 68 of the Local Government Act 1993. This is considered to be an adequate appropriate measure to manage the flood risk associated with the proposed land use at the subject site and as such, the provisions of Section A3 are considered satisfied.

*Section A4-Advertising Signs Code*

Signage does not form part of this application.

*Section A11-Public Notification of Development Proposals*

The development application was advertised for a period of 14 days effective from Wednesday 28 September 2016 to Wednesday 12 October 2016. During this period no submissions were received. The proposal is considered satisfactory with regard to the requirements of Section A11.

*Section A13-Socio-Economic Impact Assessment*

The purpose of this Section is to ensure that Development Applications for certain developments that are likely to have a significant social and/or economic impact are properly considered. In accordance with clause A13.5.1, the application did not require a socio-economic impact statement and as such, this Plan is considered satisfied.

*Section A15-Waste Minimisation and Management*

The purpose of this section of the Plan is to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development (ESD).

Under Part B, a Waste Management Plan is required to be approved as part of the development.

The application and *Market Management Plan Guidelines* state that Waste Disposal is to be addressed sufficiently as part of the Market Management Plan to be approved by Council as part of a Section 68 application. A Waste Management Plan is to form part of the submission.

Council's Waste Management Unit reviewed that application and had no objections to the proposal subject to the following condition of consent:

*“The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate”*

Given the above, it is considered that the proposal is consistent with Section A15, subject to the abovementioned condition of consent.

#### Section A16-Preservation of Trees or Vegetation

No tree removal is proposed as part of this application and as such, Section A16 is considered satisfied.

#### Section B21-Pottsville Locality Based Development Code

The purpose of this Section of the Plan is to provide more detailed provisions to expand upon TLEP 2014 and to:

- *Contribute to the growth and character of the Pottsville village centre and surrounding areas,*
- *Protect and enhance the public domain, and*
- *Provide for future retail and employment centres as the population on increases to meet the needs of the Pottsville locality area.*

The Plan nominates Pottsville Village Centre as a key strategy area stating the following:

*Pottsville village centre will continue as the dominant meeting place and business centre focus for the local community. Strategies have been designed to ensure the dominant role of the village as the primary business and shopping area in the locality, and to ensure that the village remains the hub for community activity and events.*

Traffic and Transport is addressed within Part 3.2 *Locality Wide Strategies*. The Plan makes the following relevant comments with regard to Parking:

#### *Parking*

*Pottsville village centre as a whole has ample parking to meet the current parking demand of the village. This has been verified not only by on-site*



*observations but also by parking demand survey information provided by the Pottsville Community Association (Undertaken in May 2007).*

*On the weekend, particularly when the Pottsville markets occur the parking demand increases to 75% occupancy overall with higher demands experienced in streets close to the market itself. This is indicative of peoples preference to park as close as possible to their end destination even when there is alternative parking options within 5 minutes walking distance. Parking occupancy on Sunday is the lowest of all days of the week when the Pottsville markets does not occur.*

The following is noted within the *Key Transport Issues* within Part 2.

*There is high parking demand in close proximity to the market site during market days although as a whole parking supply is considered to be adequate;*

Pottsville Village Centre is addressed within Part 4 *Area Specific Strategies*. The subject site is nominated as open space around the Pottsville Village Centre and is referred to as 'Market Park'. The subject application is consistent with the Plan in this regard.

The Plan makes the following comments with regard to the subject site:

*The green space surrounding much of the village centre provides a welcome entry statement to the village centre when approaching from the north, south and west as well as opportunities for active and passive recreation and activity. The Pottsville Memorial Oval and Market Park at the village centre entry is a significant asset and contributor to village character. The presence of the greenspace maintains a human scale to the village centre and softens the built form by providing a green view almost entirely throughout the precinct.*

The proposed *Structure Plan* for the village envisions the following for the site:

*Consolidation of open space within the village centre, namely the Market Park (passive open space and market use) and Pottsville Memorial Oval (active open space).*

Given the above, it is considered that the subject application for ongoing use of markets at the subject site is consistent with *Pottsville Locality Based Development Code*.

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

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

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the

Coastal Policy. It is not considered that the markets contradict the objectives of the Government Coastal Policy.

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

**Tweed Shire Coastline Management Plan 2005**

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 subject site is not located on the coastal foreshore and is not affected by coastal hazards. The proposed development is located approximately 200m from the coastal foreshore and as such, the proposed markets are considered to be consistent with this Plan.

**Coastal Zone Management Plan for the Tweed Coast Estuaries 2013**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

- (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 subject site is surrounded by the road reserves of Tweed Coast Road, Phillip Street, Coronation Avenue and Overall Drive. Pottsville South Caravan Park and Ambrose Brown Park are located to the east, Pottsville Memorial Oval to the north and Pottsville commercial centre to the west.

The ongoing use of the land for markets of a temporary nature for a limited number of days of the year is considered appropriate given the context and setting.

Overall, the markets are considered to have positive social and economic benefits for the locality and stall holders being a positive injection in to the local economy.

**Access, Transport and Traffic**

Vehicle access to the site is available from Phillip Street with on-street car parking located along Phillip Street and Tweed Coast Road in addition to nearby streets and nearby public car parks (Ambrose Brown Park and Berkleys Lane).

The application was referred to Council's Traffic Engineer for comment and the following comments were provided:

*The markets have been conducted in the same location for a number of years with limited complaints to Council however parking needs further consideration.*

*Traffic and access for the proposal, including access to the subject site for market stallholders including delivery, loading and unloading, would be managed in accordance with the Market Management Plan (MMP) prepared by the Market Operator and approved by Tweed Shire Council. Namely, a Traffic Management Plan would form part of the approved MMP.*

*The Statement of Environmental Effects identified 65 parking spaces in close proximity to the site. The RMS guide to traffic generating developments recommends 2 spaces per stall, ie 330 spaces. It would be expected that customers would park in the recently formed Lane behind the shops on Coronation Avenue and cross the road to access the market site.*

*There is no marked pedestrian crossing in this area and it is recommended that within the Traffic Management Plan for the markets that a traffic controller managing pedestrians crossing Coronation Avenue be included as a condition of consent for any market approvals.*

It is considered that any future traffic and parking issues can be managed by the Market Operators in consultation with Council's Traffic Engineer or Environmental Health Unit as the matters arise or upon the required periodic renewal of the Section 68 approval.

Given the above, the proposed markets are likely to result in minor impacts from a short term increase in traffic. However, the extent of which is not considered unreasonable given the proposal's temporary nature and the impact being adequately mitigated with conditions for consent ensuring management of potential traffic and pedestrian conflict.

#### Flora and Fauna

Given no works are proposed, no tree removal is proposed and the site is an established Council park currently utilised for markets and other recreational uses, the proposed impacts to flora and fauna at the site is considered negligible.

#### Operation and Amenity

Council's Recreation Services Unit who manage the land reviewed the application and provided the following comments:

*Recreation Services has no concerns with this application and supports the activity. The activity has previously occurred over many years at this location without any significant issues that we are aware of. It appears to be an appropriate use of the land.*

Council's Environmental Health Unit reviewed the application and provided the following comments:

*Use – the activity does have the potential to impact local amenity through multiple factors including set up, operating hours, vehicle movements, customer movements, noise, waste and the like. However, this market has operated bi-weekly on the site for about 20 years. The market site is within the Pottsville 'CBD' precinct (parks, shops, caravan park) and whilst there are several flat buildings in close proximity no record of major complaints or disturbances was identified for this market operation.*

*The operation of a market is largely defined by the adopted and approved Market Management Plan (MMP). The SEE indicates that the MMP will address:*

- *Market Layout Plan*
- *Traffic Management Plan*
- *Insurance*
- *Market Operator and Market Stall Holder responsibilities*
- *Mechanical Rides and Devices*
- *Electrical Connections and Devices*
- *Fire Control*
- *Amplified Sound*
- *Market Stall Types*
- *Waste Disposal*
- *Communications Strategy*
- *Sustainability Practices*
- *Sanitary Provisions*
- *Security.*

*The SEE indicates 24 bi-weekly Sunday events, layout plan compliant with current practices and operating hours to be 8am to 5pm (extended for set up and pack down).*

*Council separately calls for expressions of interest to operate the market each 3 years and appoints an operator. A Local Government Act Section 68 approval is issued, subject to conditions, which imposes specific controls over the market operation.*

*The market operator is usually a charitable community group (currently the Pottsville Beach Neighbourhood Centre), the members of which supervise the market operation and are willing to comply with reasonable requests from Council and the Community.*

*Unreasonable impacts are not anticipated. The following condition will be imposed:*

- *The market shall be operated strictly in accordance with the Local Government Act Section 68 approval to operate conditions of approval and the adopted/approved Market Management Plan.*

It is considered that any future operational issues can be managed by the market operators in consultation with Council's Recreation Services Unit or Environmental Health Unit as the matters arise or upon the required periodic renewal of the Section 68 approval.

Council's Water Unit have reviewed the application and raised no objection to the proposal. The following comments were provided with regard to water and sewerage assets:

*"As per the Statement of Environmental Effects (SEE), public shall use the existing public amenities to the North East of the market site as shown in Figures 1 & 2. Therefore, there shall be no impact of the water & sewerage assets as a result of this application"*

Overall, given the history of the markets at the subject site, the operation of the markets and subsequent amenity impacts are considered to be reasonable and adequately mitigated and regulated by way of Section 68 approval of a Market Management Plan.

#### Noise

The application states that the proposal does not include the use or operation of mechanical rides and devices. Entertainment would utilise a small amplifier only for performances. The amplifier would only be used after 8am on market days.

Council's Environmental Health Unit have reviewed the application and have raised no objections subject to standard conditions of consent and Section 68 approval.

Therefore noise impacts are considered acceptable subject to standard conditions of consent and future Section 68 approvals.

#### Waste

The application states that Waste Disposal is to be addressed sufficiently as part of the Market Management Plan to be approved as part of a Section 68 application.

Council's Waste Management Unit reviewed that application and had no objections to the proposal subject to the following condition of consent:

*"The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate"*

No unreasonable impacts with regard to waste management are anticipated subject to consent conditions and therefore the proposal is considered acceptable in this regard.

### Food Premises

Council's Environmental Health Unit reviewed the application and provided the following comments:

*Restrictions have been historically imposed over the number of food handlers which sell 'conventional food and drink', with all other food being required by Council Policy to be home grown or home made. The subject market has had a condition imposed which restricted the number of conventional food vendors to two (2). The concept of limiting the number of food vendors has been challenged in recent times and may be varied by Council in future. Limitations will be determined by the details submitted in the MMP and any conditions subsequently imposed on the Sec 68 LGA approval.*

*Sale of food is also subject to common law requirements such as the Food Act and Food Standards Code.*

With regard to the sale of food, the proposed markets are considered acceptable and sufficiently regulated subject to conditions of consent requiring approval under Section 68 of the Local Government Act 1993.

### **(c) Suitability of the site for the development**

#### Surrounding Landuses/Development

The subject site is surrounded by the road reserves of Tweed Coast Road, Phillip Street, Coronation Avenue and Overall Drive. Pottsville South Caravan Park and Ambrose Brown Park are located to the east, Pottsville Memorial Oval to the north and Pottsville commercial centre to the west.

The ongoing use of the land for markets of a temporary nature for a limited number of days of the year is considered appropriate and consistent with the objectives of the zoning.

The markets are considered to have positive social and economic benefits for the locality and stall holders being a positive injection in to the local economy.

Appropriate controls and management measures can be imposed to minimise any disturbance to the environment and adverse traffic effects during market days. These measures are to be addressed in detail within the *Market Management Plan* required to be compiled and accepted by Council as part of the required approval under Section 68 of the Local Government Act 1993.

Any future issues due to any conflicting land uses can be managed by the market operators in consultation with Council's Recreational Services Unit or Environmental Health Unit as the matters arise or upon the required periodic renewal of the Section 68 approval.

Ground condition

Council's Recreation Services Unit who manages the land raised the matter of drainage at the subject site and the potential for damage to the site if the markets were held if the ground conditions are not appropriate. The following comments were provided:

*"It is appropriate that Council retains control over decisions regarding condition of the ground and its suitability for markets to be held, particularly after heavy rain. It is possible a section, or all of the grounds may need to be closed if conditions are not suitable. A suggested consent condition is:*

- *The market operator must liaise with Council's park management staff regarding condition of the grounds, particularly after rain. Should the grounds not be considered suitable for the activity, Council will retain the right to close the park to the market until the grounds are suitable."*

It is considered that this matter is adequately addressed subject to the abovementioned condition of consent.

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

The development application was advertised for a period of 14 days from Wednesday 28 September 2016 to Wednesday 12 October 2016. During this period no submissions were received.

**(e) Public interest**

Given the nature of the proposed development, being for the ongoing use of public land for markets on a predetermined schedule on appropriately zoned land, it is considered that the proposal would be unlikely to result in an unacceptable impact on the wider public interest at this location which includes objectives to provide for the recreational and economic needs of the community.

**OPTIONS:**

1. Approve the development application with the recommended conditions of consent; or
2. Refuse the application and provide reasons.

Option 1 is recommended.

**CONCLUSION:**

Having regard to the assessment of the proposed development highlighted throughout this report, it is recommended that development consent should be granted for the markets given the application relates to an appropriate land use on land zoned for recreational purposes.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Markets v1.1

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

Not Applicable.

**c. Legal:**

The applicant may lodge an appeal in the NSW Land and Environment Court if dissatisfied with Councils determination.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**3 [PR-PC] Development Application DA16/0689 for Markets - Recreation Ground at Part Lot 1 DP 1082080 No. 6 Park Street, Tweed Heads**

**SUBMITTED BY: Development Assessment and Compliance**

Validms



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

Council has received a development application for the ongoing operation of weekly markets at Recreation Ground, Tweed Heads in accordance with Council's Markets Policy.

Following development consent, the markets will be coordinated by a market operator following approval under Section 68 of the Local Government Act 1993. In accordance with Council's Markets Policy, the Market Operator will be required to provide a *Market Management Plan* which must include the following information to Council prior to commencement:

- Market Layout Plan
- Traffic Management Plan
- Insurance
- Market Operator and Market Stall Holder responsibilities
- Mechanical Rides and Devices
- Electrical Connections and Devices
- Fire Control
- Amplified Sound
- Market Stall Types
- Waste Disposal
- Communications Strategy
- Sustainability Practices
- Sanitary Provisions
- Security.

The Markets will cater for the following stalls:

- Fresh Food/Farmers Market such as items from local farms
- New and used goods and services
- Speciality items such as designer goods, arts and crafts, retro and second hand items.

Markets at the subject site involve a maximum of 110 stalls and are proposed for every Sunday between 7am and 6pm which involves operating from 8am to 5pm and set up and pack up times. Council's Market Policy nominates that the maximum number of markets to operate at the site each year would include 52 day time markets.

The subject site is zoned RE1 Public Recreation pursuant to Tweed Local Environmental Plan 2014. Markets are a permissible use with consent upon RE1 land.

The application was placed on public exhibition for 14 days. During this period no submissions were received.

This application has been presented to Council for determination in the interests of transparency, given Tweed Shire Council is the applicant.

#### **RECOMMENDATION:**

**That Development Application DA16/0689 for markets - Recreation Ground at Part Lot 1 DP 1082080 No. 6 Park Street, Tweed Heads be approved subject to the following conditions:**

#### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Tweed Shire Council, undated, except where varied by the conditions of this consent.**  
[GEN0005]
- 2. 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]
- 3. Hours of operation of the market are restricted to Sundays between 7am and 6pm which involves operating from 8am to 5pm and set up and pack up times to the satisfaction of the General Manager or his delegate, unless otherwise stated in the adopted market management plan.**  
[USE0185]
- 4. Any premises used for the storage, preparation or sale of food shall comply with the *Food Act* 2003 and Food Safety Standards Code and any other requirements of Council's Environmental Health Officer included in this approval.**  
[USE0835]
- 5. The market shall be operated strictly in accordance with the Local Government Act Section 68 approval to operate conditions of approval and the adopted/approved Market Management Plan to the satisfaction of the General Manager or his delegate.**
- 6. Current public liability insurance shall be maintained by the market operator at all times that a market is conducted.**
- 7. The market operator or their employee shall be present to supervise the site at all times during the market operations.**

8. **The market shall be subject to periodic inspection by Council's Authorised Officer.**
9. **The sale of food is permissible subject to compliance with the NSW Food Authority's Food Handling Guidelines for Temporary Events and the NSW Food Act 2003 to the satisfaction of the General Manager or his delegate. All food businesses and vendors shall be registered with Council to the satisfaction of the General Manager or his delegate.**

[USENS01]
10. **The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate.**
11. **Prior to the commencement of use an Approval to engage in a trade or business on community land under Section 68 of the Local Government Act 1993 shall be obtained from Council.**

[USENS02]
12. **The market operator must liaise with Council's Park Management Staff regarding condition of the grounds, particularly after rain. Should the grounds not be considered suitable for the activity, Council will retain the right to close the park to the market until the grounds are suitable.**

[USENS03]
13. **An Evacuation Management Plan shall be developed and approved by the General Manager or his delegate prior to issue of the Section 68 approval.**

[USENS04]

**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council  
**Location:** Part Lot 1 DP 1082080 No. 6 Park Street, Tweed Heads  
**Zoning:** RE1 Public Recreation  
**Cost:** Nil

**Background:**

This application seeks development consent for the ongoing use of the park for markets to occur on a weekly basis. Weekly markets have operated at the site for many years and this application is to formalise this use.

Site Details

The subject site is a Council park classified as 'Community Land' and as such is subject to a Plan of Management. The land is also the location of the PCYC, men's shed and child care centre. The site is primarily surrounded by low to medium density residential development and the Tweed Heads Cemetery to the west and Croquet Club Grounds to the south east. The site slopes down towards the east with the area proposed for the markets being relatively flat.



**Subject Site and Proposed Markets Location**

Proposal

The markets will be operated by a market operator following approval under Section 68 of the Local Government Act 1993. Markets at the subject site involve 110 stalls and are

proposed for every Sunday between 7am and 6pm which involves operating from 8am to 5pm and set up and pack up times.

Vehicle access is available from Florence Street, Recreation Street, Park Street and Adelaide Street. Onsite parking is available that currently services the existing developments on the site. Additional on-street parking is located around the perimeter of the park.

In accordance with Council's Markets Policy, the market operator will be required to provide a *Market Management Plan* which must include the following information to Council prior to commencement:

- Market Layout Plan
- Traffic Management Plan
- Insurance
- Market Operator and Market Stall Holder responsibilities
- Mechanical Rides and Devices
- Electrical Connections and Devices
- Fire Control
- Amplified Sound
- Market Stall Types
- Waste Disposal
- Communications Strategy
- Sustainability Practices
- Sanitary Provisions
- Security.

The Markets will cater for the following stalls:

- Fresh Food/Farmers Market such as items from local farms
- New and used goods and services
- Speciality items such as designer goods, arts and crafts, retro and second hand items.

### Markets Policy

The purpose of this policy is to establish Tweed Shire Council's position in relation to markets that are held on Council land or facilities or public space of which Council is the responsible trustee. It outlines Council's expectations in relation to markets to ensure they are well managed, are complementary to offerings of local businesses, are supportive of the local community and are connected to the character and identity of the specific location.

The policy provides guiding principles for the operation of markets to which the Policy applies. The subject site is a nominated location and allocates a frequency of 52 day markets per year which the subject application is consistent with. Further the Policy makes reference to *Market Management Plan Guidelines* which outlines the contents of the Market Management Plan which is to be accepted by Council prior to issue of approval under Section 68 of the Local Government Act 1993 and operation.

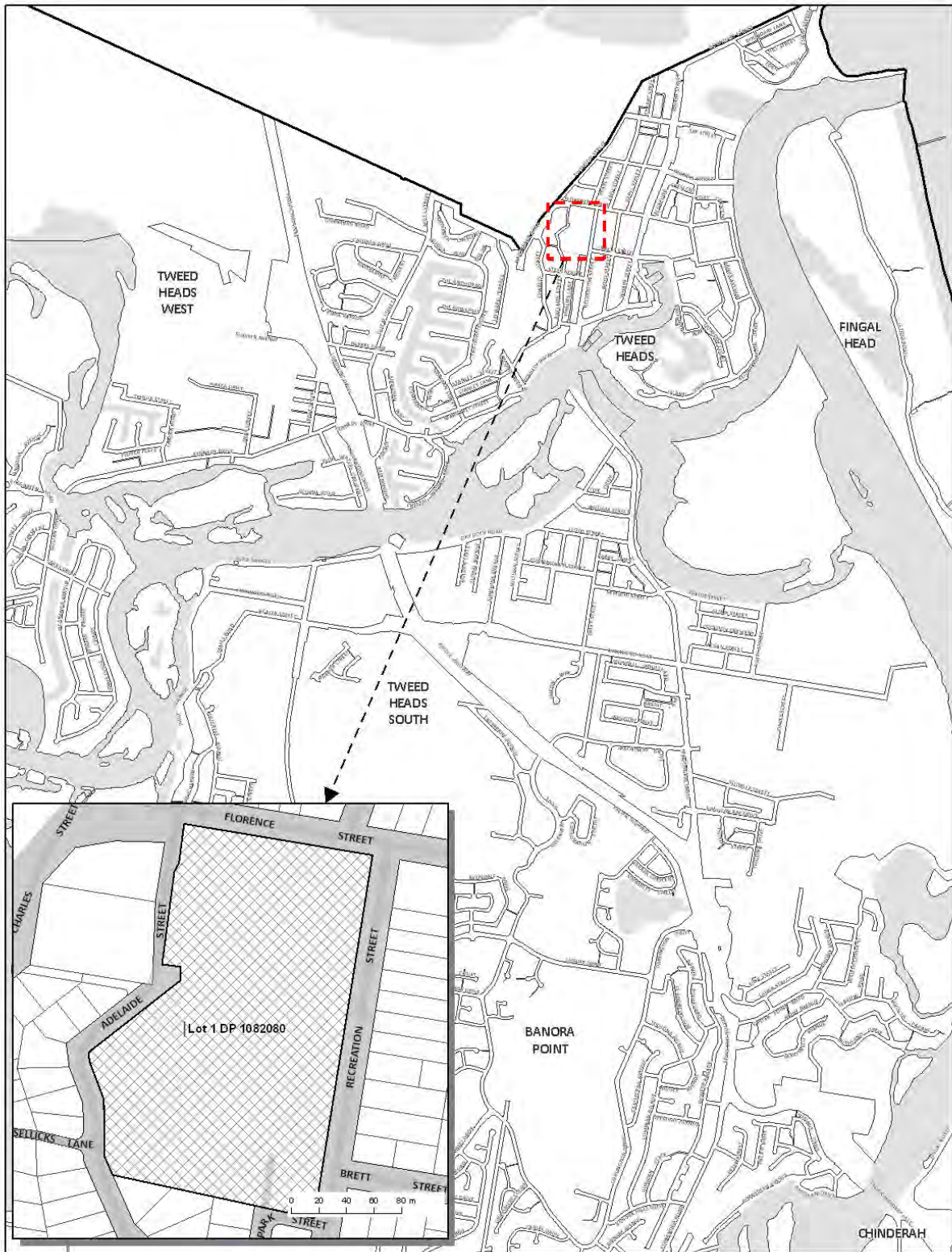
Plan of Management

*Recreation Street Public Reserve Plan of Management* (POM) dated July 2004 for the subject site divides the site into two 'Management Units', namely – Unit 1: Sports ground/Playground and Unit 2: Community Facilities/Police & Community Youth Club/Child Care Centre.

The subject application relates to land that forms part of Unit 1 which includes an active playing field which is not formally utilised, in addition to public facilities including seating, lighting and a toilet block. The POM acknowledges existing markets that at the time were coordinated by the Police & Community Youth Club and held every 1<sup>st</sup> and 3<sup>rd</sup> Sunday of the month, however the Plan does not limit the frequency of the use.

It is considered that the proposed markets are consistent with the Plan of Management that applies to the subject site.

**SITE DIAGRAM:**



**Scale:** 0 0.1 0.2 0.3 0.4 0.5 Km  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED

**GDA** Map Projection: Australian National Map Grid  
Horizontal Datum: Geoidetic Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

**Localities Plan**

**Lot 1 DP 1082080**  
**No. 6 Park Street**  
**TWEED HEADS**

**Cadastral:** 16 January 2017  
© Land and Property Information (LPI) and Tweed Shire Council.  
*Boundaries shown should be considered approximate only.*

**City and Cultural Centre**  
3 Tambulung Road  
Murrumbidgee NSW 2484  
PO Box 816  
Murrumbidgee NSW 2484

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

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

**Tweed City Centre Local Environmental Plan 2012**

Clause 1.2 – Aims of the Plan

This Plan aims to make local environmental planning provisions for land in Tweed City Centre in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

*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,*
- (b) to promote employment, residential, recreational, arts, social, cultural and tourism opportunities in Tweed City Centre,*
- (c) to encourage the responsible sustainable management and conservation of Tweed City Centre's natural and environmentally sensitive areas, the built environment and cultural heritage,*
- (d) to promote development that is consistent with the principles of ecologically sustainable development,*
- (e) to promote the economic revitalisation of Tweed City Centre,*
- (f) to strengthen Tweed City Centre as a multi functional and innovative regional centre that encourages employment and economic growth,*
- (g) to protect and enhance the vitality, identity and diversity of Tweed City Centre,*
- (h) to facilitate building design excellence appropriate to a regional city in Tweed City Centre.*

The proposed development relates to markets on appropriately zoned land. The proposed development is considered to be consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The proposed market area is zoned RE1 Public Recreation under the provisions of the Plan. The objectives of the RE1 zone are as follows:

- 1 *Objectives of zone*
  - To enable land to be used for public open space or recreational purposes.*
  - To provide a range of recreational settings and activities and compatible land uses.*
  - To protect and enhance the natural environment for recreational purposes.*

The proposal is defined as *markets* which means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes



*temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.*

Markets are permissible with consent in the RE1 zone. The use of the subject site for markets on a regular basis for a short period of time is considered to be within the auspice of a recreational activity upon public open space. The use of the land for markets will not have any adverse impact on the natural environment and is considered compatible with the surrounding facilities, subject to the implementation of management plans.

#### Clause 4.6 - Exceptions to development standards

No exceptions to development standards are proposed as part of the application.

#### Clause 5.2 Classification and reclassification of public land

The objective of this clause is to enable the Council to classify or reclassify public land as “operational land” or “community land” in accordance with Part 2 of Chapter 6 of the Local Government Act 1993.

The subject site is classified as “community land”. The subject application does not involve the reclassification of the site and as such, this clause is considered satisfied.

#### Clause 5.4 - Controls relating to miscellaneous permissible uses

Markets are not a listed as a miscellaneous permissible use.

#### Clause 5.5 – Development within the Coastal Zone

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

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

The markets will not alter existing access arrangements given the proximity of the market to the foreshore (over 1km)

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*

- (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
- (ii) *the location, and*
- (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed markets are permissible on the subject site and meet all requirements with respect to the zone objectives and Clauses of the LEP. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

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

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

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

The proposed markets are not located on coastal headlands and are not anticipated to impact the visual amenity and scenic qualities of the coast given the subject site's proximity to the coast.

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

The proposed markets consist of temporary structures and will not require any permanent change to the existing environment. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems.

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

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

This clause goes on to further state:

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

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

The proposal will not impede or diminish the right of access of the public either to or along the public foreshore as the proposed markets are not located on the foreshore.

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

Existing facilities within the park will be utilised that are located adjacent to the market sites.

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

No change to the existing stormwater collection arrangement given the temporary structures associated with the market stalls or use and as such, this is considered satisfied.

(d) *the proposed development will not:*

- (i) *be significantly affected by coastal hazards, or*
- (ii) *have a significant impact on coastal hazards, or*
- (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed market development is considered to be acceptable having regard to the coastal environment as outlined above due to its nature, scale, and physical separation of use from any coastal location.

#### Clause 5.9 – Preservation of Trees or Vegetation

No existing vegetation will be impacted by the operation of these markets. The protection of existing vegetation shall be incorporated in the Market Management Plan. The site does not contain any listed rare or threatened plants.

#### Clause 6.1 – Acid Sulfate Soils

The subject site is mapped as Class 2 and Class 5 Acid Sulfate Soils. Given no works to the site are proposed as part of this application, this clause is

considered satisfied. Further, Council's Environmental Health Unit raised no concerns in this regard.

Clause 6.2 – Flood Planning

The subject site is mapped as affected by only the Probable Maximum Flood (PMF) and not within the *Flood Planning Area*. As such, this clause does not apply.

Clause 6.3 - Floodplain risk management

Although the subject site is mapped as affected by the Probable Maximum Flood (PMF), markets are not one of the nominated uses that require additional measures and as such, this clause is considered satisfied.

Clause 6.4 - Terrestrial biodiversity

As the site within an established urban area and is not mapped as *Bushland*, this clause is considered satisfied.

Given the above assessment, the proposed weekly markets are considered to be in accordance with Tweed City Centre Local Environmental Plan 2012.

**State Environmental Planning Policies**

SEPP No. 44 - Koala Habitat Protection

Under the *Tweed Coast Comprehensive Koala Plan of Management* adopted in accordance with SEPP No 44, the subject site is within the *Tweed Heads Koala Management Area* and is not within an IKPoM Precinct. The subject application does not propose the removal of any koala food trees and as such the proposal is considered to be consistent with the Plan and SEPP No 44.

SEPP No. 55 - Remediation of Land

The application has addressed land contamination in accordance with the provisions of this Policy. Council Environmental Health Unit has reviewed this information and concludes that the subject site is satisfactory for the proposed temporary uses.

SEPP No 71 – Coastal Protection

The subject site is within the Coastal Zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No. 71.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

*Clause 8 – Matters for consideration*

*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 markets 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 markets are located giving consideration to the site constraints and relationship with the surrounding area and are considered an acceptable land use for the site reflected in the land zoning under the Tweed City Centre LEP 2012.

- (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 markets are considered to impact on the amenity of the coastal foreshore, given it is located approximately 850m from the foreshore. 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 animals, plants or their habitats.

- (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 markets.

- (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 Coastal Processes.

- (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 proposed markets are not considered to impact any traditional Aboriginal cultural values.

- (m) *likely impacts of development on the water quality of coastal waterbodies,*

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

- (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 markets are 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.*

Any energy use will be minimal given the temporary nature of the markets and relative needs for power and water.

The proposal is generally consistent with the matters for consideration as it does not impede public access to the foreshore nor result in any unacceptable loss of view or overshadowing. The proposal has a minimal impact on flora or fauna and the proposed site is considered acceptable with respect to Aboriginal significance. The provisions of SEPP 71 are considered satisfied.

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

The Draft State Environmental Planning Policy (SEPP) (Coastal Management) 2016 applies to the subject site. This document is to replace SEPP No 14 – Coastal Wetlands, SEPP No 26 – Littoral Rainforests and SEPP No 71 – Coastal Protection. The proposed markets are considered to be consistent with the aims and provisions of this Draft Policy.

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

*Tweed Development Control Plan*

*Section A2-Site Access and Parking Code*

The purpose of this Section is to guide provision of safe, convenient and equitable access to developed land for pedestrians, cyclists, motorists and public transport users and manage generated traffic volumes and to minimise potential adverse impacts on the local road network.

With regard to car parking provision, Section A2 states that markets are to be assessed on merits in accordance with RMS guidelines.

The application was referred to Council's Traffic Engineer for comment and the following comments were provided:

*There are a significant number of on parking spaces surrounding the park on Florence and Recreation Streets.*

*There are approximately 88 existing off-street car parking spaces on site and I concur with the SEE (Statement of Environmental Effects) that these spaces would also accommodate existing site uses such as the men's shed, child care centres and youth club where the typical operation of the markets on weekends (currently Sunday mornings), would occur outside the peak demand times of the other uses.*

*The adjacent road network is considered capable of accommodating the expected traffic generation for the markets and no road upgrades are required.*

*Accordingly I have no concerns with the proposal from traffic and parking assessment purposes.*

Given the above considerations, the proposal is considered acceptable with regard to the provisions of Section A2.

*Section A3-Development of Flood Liable Land*

The subject site is mapped as affected by only the Probable Maximum Flood (PMF) with the western half of the site is not flood prone. Given the above and that the site is not subject to the 100 year ARI flood event, the provisions of Section A3 are considered satisfied.

Section A4-Advertising Signs Code

Signage does not form part of this application.

Section A11-Public Notification of Development Proposals

The development application was advertised for a period of 14 days effective from Wednesday 28 September 2016 to Wednesday 12 October 2016. During this period no submissions were received. The proposal is considered satisfactory with regard to the requirements of Section A11.

Section A13-Socio-Economic Impact Assessment

The purpose of this Section is to ensure that Development Applications for certain developments that are likely to have a significant social and/or economic impact are properly considered. In accordance with clause A13.5.1, the application did not require a socio-economic impact statement and as such, this Plan is considered satisfied.

Section A15-Waste Minimisation and Management

The purpose of this section of the Plan is to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development (ESD).

Under Part B, a Waste Management Plan is required to be approved as part of the development.

The application and *Market Management Plan Guidelines* state that Waste Disposal is to be addressed sufficiently as part of the Market Management Plan to be approved by Council as part of a Section 68 application. A Waste Management Plan is to form part of the submission.

Council's Waste Management Unit reviewed that application and had no objections to the proposal subject to the following condition of consent:

*"The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate"*

Given the above, it is considered that the proposal is consistent with Section A15, subject to the abovementioned condition of consent.

Section A16-Preservation of Trees or Vegetation

No trees removal is proposed as part of this application and as such, Section A16 is considered satisfied.



Section B2-Tweed City Centre

A purpose of this Section is to compliment the provisions of Tweed City Centre Local Environmental Plan 2012, to contribute to the growth and character of Tweed City Centre and protect and enhance the public domain. The subject site is zoned RE1 Public Recreation providing open space within the Ridgeline & Razorback Precinct which is otherwise primarily low and medium density residential in character. Given the public recreation zoning the proposed development is not considered to be inconsistent with Section B2.

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

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

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the markets contradict the objectives of the Government Coastal Policy.

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

**Tweed Shire Coastline Management Plan 2005**

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 subject site is not located on the coastal foreshore and is not affected by coastal hazards. The proposed development is located approximately 1km from the coastal foreshore and as such, the proposed markets are considered to be consistent with this Plan.

**Coastal Zone Management Plan for the Tweed Coast Estuaries 2013**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

**(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 subject site Council managed open space which features various community facilities (PCYC, men's shed and child care centre). The site is primarily surrounded by low to medium density residential development with the Tweed Heads Cemetery to the west and Croquet Club Grounds to the south east.

The use of the open space portion of the land for markets of a temporary nature for a limited number of days of the year is considered appropriate given the context and setting.

No retail premises are in proximity to the subject site which could have the potential to raise conflict in this regard. Overall however, the markets are considered to have positive social and economic benefits for the locality and stall holders being a positive injection in to the local economy.

Access, Transport and Traffic

Onsite car parking exists to the west and south of the market location consisting of approximately 88 spaces, with and on-street parking around the perimeter of the park. Further, a bus stop is located adjacent to the market site. It is noted that during market times, the parking will also need to cater for visitors for other park uses.

The application was referred to Council's Traffic Engineer for comment and the following comments were provided:

*"There are a significant number of on parking spaces surrounding the park on Florence and Recreation Streets.*

*There are approximately 88 existing off-street car parking spaces on site and I concur with the SEE (Statement of Environmental Effects) that these spaces would also accommodate existing site uses such as the men's shed, child care centres and youth club where the typical operation of the markets on weekends (currently Sunday mornings), would occur outside the peak demand times of the other uses.*

*The adjacent road network is considered capable of accommodating the expected traffic generation for the markets and no road upgrades are required.*

*Accordingly I have no concerns with the proposal from traffic and parking assessment purposes."*

The markets are likely to result in minor impacts from a short term increase in traffic. However, the extent of which is not considered unreasonable given the

proposal's temporary nature and the lack of concern raised previously on the matter at the subject site.

### Flora and Fauna

Given no works are proposed, no tree removal is proposed and the site is an established Council park, currently utilised for markets and other community and recreational use, the proposed impacts to flora and fauna at the site is considered negligible.

### Operation and Amenity

Council's Recreation Services Unit who manage the land reviewed the application and provided the following comments:

*"Recreation Services has no concerns regarding this application and supports it. The activity has previously occurred on the site over many years with no significant issues I am aware of. It appears to be a popular and successful use of the land."*

Council's Environmental Health Unit reviewed the application and provided the following comments:

*"Use – the activity does have the potential to impact local amenity through multiple factors including set up, operating hours, vehicle movements, customer movements, noise, waste and the like. However, this market has operated on the site for about 20 years (initially bi-weekly, but more recently on a weekly basis). No record of major complaints or disturbances was identified for this market operation."*

*The operation of a market is largely defined by the adopted and approved Market Management Plan (MMP). The SEE indicates that the MMP will address:*

- *Market Layout Plan*
- *Traffic Management Plan*
- *Insurance*
- *Market Operator and Market Stall Holder responsibilities*
- *Mechanical Rides and Devices*
- *Electrical Connections and Devices*
- *Fire Control*
- *Amplified Sound*
- *Market Stall Types*
- *Waste Disposal*
- *Communications Strategy*
- *Sustainability Practices*
- *Sanitary Provisions*
- *Security.*

*The SEE indicates 52 weekly Sunday events, 110 stalls, layout plan compliant with current practices and operating hours to be 8am to 5pm (extended for set up and pack down).*

*Council separately calls for expressions of interest to operate the market each 3 years and appoints an operator. A Local Government Act Section 68 approval is issued, subject to conditions, which imposes specific controls over the market operation.*

*The market operator is usually a charitable community group (currently the Tweed Heads Men's Shed), the members of which supervise the market operation and are willing to comply with reasonable requests from Council and the Community.*

*Unreasonable impacts are not anticipated. The following condition will be imposed:*

- *The market shall be operated strictly in accordance with the Local Government Act Section 68 approval to operate conditions of approval and the adopted/approved Market Management Plan."*

It is considered that any future operational issues can be managed by the market operators in consultation with Council's Recreation Services Unit or Environmental Health Unit as the matters arise or upon the required periodic renewal of the Section 68 approval.

Council's Water Unit raised no concerns with the application noting that public amenities are located on the site which are connected to Council's sewer network.

Overall, given the history of the markets at the subject site, the operation of the markets and subsequent amenity impacts are considered to be reasonable and adequately mitigated and regulated by way of Section 68 approval of a Market Management Plan.

### Noise

The application states that the proposal does not include the use or operation of mechanical rides and devices or amplified sound. Any performances as part of the proposal would include acoustic instruments only between 8am and 5pm.

Council's Environmental Health Unit have reviewed the application and have raised no objections subject to standard conditions of consent and Section 68 approval.

Therefore noise impacts are considered acceptable subject to conditions of consent and future Section 68 approvals.

### Waste

The application states that Waste Disposal is to be addressed sufficiently as part of the Market Management Plan to be approved as part of a Section 68 application.

Council's Waste Management Unit reviewed that application and had no objections to the proposal subject to the following condition of consent:

*"The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate"*

No unreasonable impacts with regard to waste management are anticipated subject to consent conditions and therefore the proposal is considered acceptable in this regard.

### Food Premises

Council's Environmental Health Unit reviewed the application and provided the following comments:

*"Restrictions have been historically imposed over the number of food handlers which sell 'conventional food and drink', with all other food being required by Council Policy to be home grown or home made. The subject market has had a condition imposed which restricted the number of conventional food vendors to four (4). The concept of limiting the number of food vendors has been challenged in recent times and may be varied by Council in future. Limitations will be determined by the details submitted in the MMP and any conditions subsequently imposed on the Sec 68 LGA approval.*

*Sale of food is also subject to common law requirements such as the Food Act and Food Standards Code."*

With regard to the sale of food, the proposed markets are considered acceptable and sufficiently regulated subject to conditions of consent requiring approval under Section 68 of the Local Government Act 1993.

## **(c) Suitability of the site for the development**

### Surrounding Landuses/Development

The subject site Council managed open space which features various community facilities (PCYC, men's shed and child care centre). The site is primarily surrounded by low to medium density residential development with the Tweed Heads Cemetery to the west and Croquet Club Grounds to the south east.

The use of the open space portion of the land for markets of a temporary nature for a limited number of days of the year is considered appropriate and consistent with the objectives of the zoning.

The markets are considered to have positive social and economic benefits for the locality and stall holders being a positive injection in to the local economy.

Appropriate controls and management measures can be imposed to minimise any disturbance of the environment and adjoining residential properties during market days. These measures are to be addressed in detail within the *Market Management Plan* required to be compiled and accepted by Council as part of the required approval under Section 68 of the Local Government Act 1993.

Any future issues due to any conflicting landuses can be managed by the market operators in consultation with Council's Recreational Services Unit or Environmental Health Unit as the matters arise or upon the required periodic renewal of the Section 68 approval.

#### Ground condition

Council's Recreation Services Unit who manage the land raised the matter of drainage at the subject site and the potential for damage to the site if the markets were held if the ground conditions are not appropriate. The following comments were provided:

*"It is appropriate that Council retains control over decisions regarding condition of the ground and its suitability for markets to be held, particularly after heavy rain. It is possible a section, or all of the grounds may need to be closed if conditions are not suitable. A suggested consent condition is:*

- *The market operator must liaise with Council's park management staff regarding condition of the grounds, particularly after rain. Should the grounds not be considered suitable for the activity, Council will retain the right to close the park to the market until the grounds are suitable."*

It is considered that this matter is adequately addressed subject to the abovementioned condition of consent.

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

The development application was advertised for a period of 14 days from Wednesday 28 September 2016 to Wednesday 12 October 2016. During this period no submissions were received.

#### **(e) Public interest**

Given the nature of the proposed development, being for the ongoing use of public land for markets on a predetermined schedule on an appropriately zoned site, it is considered that the proposal would be unlikely to result in an unacceptable impact on the wider public interest at this location which includes objectives to provide for the recreational and economic needs of the community.

#### **OPTIONS:**

1. Approve the development application with the recommended conditions of consent; or
2. Refuse the application and provide reasons.

Option 1 is recommended.

**CONCLUSION:**

Having regard to the assessment of the proposed development highlighted throughout this report, it is recommended that development consent should be granted for the markets given the application relates to an appropriate land use on land zoned for recreational purposes.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Markets v1.1

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

Not Applicable.

**c. Legal:**

The applicant may lodge an appeal in the NSW Land and Environment Court if dissatisfied with Councils determination.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**4 [PR-PC] Development Application DA16/0707 for Markets - Jack Bayliss Park and Lions Park Kingscliff at Reserve 1001008 Tweed Coast Road, Kingscliff**

**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

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### **SUMMARY OF REPORT:**

Council has received a development application for the operation of temporary markets upon the foreshore parklands at Kingscliff in accordance with Council's Markets Policy.

This application seeks approval for two separate market events to operate at different times each month. Day time markets are proposed to be located north of the Kingscliff Beach Bowls Club and night time markets are proposed within the Lions Park to the south of the Cudgen Headland Surf Life Saving Club.

The markets will be operated by a market operator following the necessary development consent and approval under Section 68 of the Local Government Act 1993.

It is noted that the markets are currently operating in the proposed format and location with no changes to the location, frequency or length of market proposed.

The market operator will be required to provide the following information prior to commencement:

- Market Layout Plan;
- Traffic Management Plan;
- Insurance;
- Market Operator and Market Stall Holder responsibilities;
- Mechanical Rides and Devices;
- Electrical Connections and Devices;
- Fire Control;
- Amplified Sound;
- Market Stall Types;
- Waste Disposal;
- Communications Strategy;
- Sustainability Practices;



- Sanitary Provisions; and
- Security.

The Markets will cater for the following stalls:

- Fresh Food and Farmers Market such as items from local farms
- New and used goods and services
- Speciality items such as designer goods, arts and crafts, retro and second hand items.

The current market policy indicates that the maximum number of markets to operate at each of the two sites in a 12 month period is a total of 26 day time markets and 12 night time markets. Generally the day time markets would operate between 8am and 5pm and night time markets between 5pm and 9pm.

The set-up and closure of the markets will require stall holders to be onsite outside these hours.

The subject sites are zoned RE1 Public Recreation pursuant to the TLEP 2014. Markets are a permissible use with consent upon RE1 land.

The application was placed on public exhibition for 14 days. During this period one submission was received objecting to the proposal.

This application has been presented to Council for determination in the interests of transparency, given Tweed Shire Council is the applicant.

#### **RECOMMENDATION:**

**That Development Application DA16/0707 for Markets – Jack Bayliss Park and Lions Park Kingscliff at Reserve 1001008 Tweed Coast Road, Kingscliff be approved subject to the following conditions:**

#### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects (SEE) prepared by Tweed Shire Council undated, except where varied by the conditions of this consent.**  
[GEN0005]
- 2. The use of the subject site for the purpose of temporary markets will cease if the land becomes unsuitable due to coastal processes or coastal hazards.**  
[GENNS01]
- 3. Prior to the commencement of use an Approval to engage in a trade or business on community land under Section 68 of the Local Government Act 1993 shall be obtained from Council.**
- 4. An evacuation management plan shall be developed and approved by the General Manager or delegate prior to issue of the Section 68 approval for the Market activity. This plan must incorporate the bushfire protection plan reviewed by the Rural Fire Service dated December 2016.**

5. The markets shall be conducted strictly in accordance with the Local Government Act Section 68 approval to operate conditions and the adopted/approved Market Management Plan to the satisfaction of the General Manager or his delegate.

[POCNS01]

6. 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]

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

**Day Markets**

- 26 bi-weekly events, second and fourth Saturday of the month, 8am to 5pm operating hours;
- Not prior to 7am setup and departure no later than 6.30pm,

**Night Markets**

- 12 monthly night events, first Friday of the month, 5pm to 9pm operating hours;
- Not prior to 4pm setup and departure no later than 10.30pm,

To the satisfaction of the General Manager or his delegate, unless otherwise stated in the approved market management plan.

[USE0185]

8. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003* and other requirements of Councils Environmental Health Officer included in this approval.

[USE0835]

9. Current public liability insurance shall be maintained by the market operator at all times that a market is conducted.

10. The market operator or their employee shall be present to supervise the site at all times during the market operations.

11. The market shall be subject to periodic inspection by Council's Authorised Officer.

12. The sale of food is permissible subject to compliance with the NSW Food Authority's Food Handling Guidelines for Temporary Events and the NSW Food Act 2003 to the satisfaction of the General Manager or his delegate. All food businesses and vendors shall be registered with Council to the satisfaction of the General Manager or his delegate.

[USENS01]

13. The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate.

14. Amplified music such as a musician or band is permissible at the 'night market' only. Amplified music shall be performed in accordance with the acoustic report Proposed Lantern Markets, Lot 2 DP 1122062, Marine Parade, Kingscliff - Acoustic Report, Acoustic Works 19/12/2012. Amplified music shall be modified in accordance with any instruction by Council's Authorised Officer. [USENS02]
15. All vegetation shall be retained and afforded adequate protection during operation of all approved events
16. The applicant shall incorporate a fauna management component of a Market Management Plan (MMP) to address the management and protection of the threatened Bush Stone-curlew (*Burhinus grallarius*) known to occur on the subject site. The component of the MMP shall be prepared by a suitably qualified consultant to include the following details:
- Inspection and reporting protocol to be undertaken within a buffer area of 200m from the event site prior to each event to determine presence/absence of Bush-stone Curlew
  - Site specific management protocol to be implemented where Bush-stone Curlew are present within the event site or the 200m buffer zone. Management measures to be prescribed are to include (but not be limited to):
    - Installation of temporary awareness signage at strategic locations around the event site reinforcing:
      - The importance/significance of Bush Stone-curlew
      - The requirement for all domestic animals to be appropriately controlled and 'on-leash'
      - Driver awareness around car-parking areas
    - In the event where birds are reported nesting, the provision for adequate buffers (as determined by Council's General Manager or delegate) around the area where birds are nesting shall be provided. Buffers shall be appropriately fenced, signposted to exclude all infrastructure/activity associated with the event.
  - Post event reporting requirements.
17. All operations must comply with the fauna management component of the approved Market Management Plan.
18. This consent restricts the day time markets to 124 stalls within the mapped area and 50 stalls for the night time markets within the mapped area. [USENS03]

**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Land and Property Management Authority  
**Location:** Reserve 1001008 Tweed Coast Road, Kingscliff  
**Zoning:** RE1 – Public Recreation  
**Cost:** Nil

**Background:**

This application seeks development consent for the ongoing use of the public foreshore for existing markets that occur on a bi-weekly and monthly basis. The bi-weekly day market has operated for 20 years and the monthly night market has been operating for approximately 3 years.

The market operator will be required to provide the following information prior to commencement:

- Market Layout Plan;
- Traffic Management Plan;
- Insurance;
- Market Operator and Market Stall Holder responsibilities;
- Mechanical Rides and Devices;
- Electrical Connections and Devices;
- Fire Control;
- Amplified Sound;
- Market Stall Types;
- Waste Disposal;
- Communications Strategy;
- Sustainability Practices;
- Sanitary Provisions; and
- Security.

The Markets will cater for the following stalls:

- Fresh Food and Farmers Market such as items from local farms
- New and used goods and services
- Speciality items such as designer goods, arts and crafts, retro and second hand items.

The day time markets will cater for up to 124 stalls. The night markets will cater for up to 50 stalls as well as a marquee. Generally the day time markets would operate between 8am and 5pm and night time markets between 5pm and 9pm. The set-up and closure of the markets will require stall holders to be onsite outside these hours.

The current market policy indicates that the maximum number of markets to operate at each of the two sites in a 12 month period is a total of 26 day time markets and 12 night time markets. The day markets operate on the second and fourth Saturday of every month. The night markets operate on the first Friday of every month.

Amplified sound will be use for the night time market only. No mechanical rides or devices will be incorporated into the markets.

### Site Details

It is advised that the markets will be ongoing as currently operating with daytime markets being held north of the Bowls Club and night time markets operating to the south of the Surf Club within the Lions Park.

### Night time Markets Location



Figure 2: Lions Park Kingscliff temporary markets site plan including proposed stall configuration

### Daytime Markets Location



Figure 4: Jack Bayliss Park temporary markets site plan including proposed stall configuration

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

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
  - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
  - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
  - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
  - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
  - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
  - (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
  - (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
  - (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
  - (i) to conserve or enhance areas of defined high ecological value,

- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and permissibility at this location.

## **Part 2 Permitted or prohibited development**

### Clause 2.1 Land use zones

The proposed development area is zoned RE1 Public Recreation under the provisions of this plan.

### Clause 2.3 – Zone objectives and Land use table

The TLEP 2014 zones the subject site RE1.

The objectives of the zone are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes*

The use of the subject site of markets on a regular basis for a short period of time weekly and monthly is considered to be within the auspice of a recreational activity upon public open space. The use of the land for markets will not have any adverse impact on the natural environment due to a range of mitigation measures implemented as part of the management of the market operation. The use and management of the activities are therefore considered compatible with the locality and Kingscliff town centre, subject to the implementation of management plans.

Markets are a permissible with consent within the RE1 Public Recreation zone as provided within the landuse table.

### Clause 5.5 – Development within the Coastal Zone

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

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

Comment: The markets will not alter existing access arrangements to the foreshore. Areas for stall holders will be appropriately marked to ensure pathways to the foreshore remain clear.

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

Comment: The proposed development is permissible on the subject site and meets all requirements with respect to the zone objectives and Clauses of the Tweed LEP 2014. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

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

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

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

Comment: The proposed development, being the erection of temporary market stalls behind the dune will not impact upon the existing scenic quality of the coast as any structures are not permanent and of very low scale and bulk. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast.

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



Comment: The proposed development is temporary and will not require any permanent change to the existing environment. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems.

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

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

*This clause goes on to further state:*

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

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

Comment: The proposal will not impede or diminish the right of access of the public either to or along the public foreshore. This will be maintained by the Market Managers and has been the case since the operations commenced on these two sites.

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

Comment: The proposed development does not need to connect into Councils reticulated sewer system. Existing facilities within the park will be utilised that are located adjacent to the market sites.

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

Comment: No stormwater will be generated from the market stalls or use.

*(d) the proposed development will not:*

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

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

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

Comment: The proposed market development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, scale, and physical separation of development works from any area affected by coastal hazards.

#### Clause 5.9 – Preservation of Trees or Vegetation

No existing vegetation will be impacted by the operation of these markets. The protection of existing vegetation shall be incorporated in the Market Management Plan. The site does not contain any listed rare or threatened plants.

#### Clause 7.1 – Acid Sulfate Soils

The sites are mapped as Class 5 Acid Sulphate Soils. No disturbances to grounds are required for the market stalls.

#### Clause 7.5 - Coastal risk planning

- (1) The objectives of this clause are as follows:
  - (a) *to avoid significant adverse impacts from coastal hazards,*
  - (b) *to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards,*
  - (c) *to enable the evacuation of land identified as coastal risk in an emergency,*
  - (d) *to avoid development that increases the severity of coastal hazards.*
- (2) *This clause applies to the land identified as “Coastal risk” on the Coastal Risk Planning Map.*
- (3) *Development 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 not likely to cause detrimental increases in coastal risks to other development or properties, and*
  - (b) *is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and*
  - (c) *incorporates appropriate measures to manage risk to life from coastal risks, and*
  - (d) *is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and*
  - (e) *provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and*
  - (f) *has regard to the impacts of sea level rise.*

The two sites are partially within the 2050 hazard line as identified within the coastal hazard maps.

It is considered that the application is not inconsistent with the provisions of this Clause for the following reasons:

- The temporary nature of the proposal will not cause detrimental increases in coastal risks;
- The temporary activities and lack of permanent structures will ensure the development will not alter coastal processes;
- The temporary and mobile nature of the use enable the markets to be relocated if coastal processes were to erode the subject areas of land; and
- The use is easily cancelled in the event of an event impacting the site due to sea level rise or major weather event.

**Clause 79BA - Consultation and development consent—certain bush fire prone land**

The land is mapped as being bushfire prone. The development application including a bushfire assessment was forwarded to the Rural Fire Service for comment. The Service responded on 23 December 2016 raising no issues or conditions in regards to the development.

**State Environmental Planning Policies**

*SEPP No. 55 - Remediation of Land*

The application has addressed land contamination in accordance with the provisions of this Policy. Council's Environmental Health Unit has reviewed this documentation and concludes that the subject site is satisfactory for the proposed temporary uses

*SEPP No 71 – Coastal Protection*

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No. 71.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

*Clause 8 – Matters for consideration*

*(a) the aims of this Policy set out in clause 2,*

The proposal is generally in accordance with the aims of this policy.

*(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,*

Comment: It is noted that the subject site, although close to access points for the foreshore, will not restrict any existing access. Uncontrolled access across the

dune directly behind the two market locations are not favoured due to the fragile nature of these areas.

- (c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

Comment: It is not considered appropriate that this application for temporary markets should offer any opportunities for new public access to the foreshore.

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

Comment: The proposal is considered suitable, having regard to its permissibility and imposed management restrictions.

- (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,*

Comment: The proposal will not result in any detrimental impact on the coastal foreshore, given its temporary nature and market management controlling the location of market stalls consistent with the market management plan on recreational land.

- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

Comment: This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast given the nature and scale of the markets.

- (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,*

Comment: The proposal will not impact negatively any animals or their habitats.

- (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*

Comment: The proposal is not considered to have an adverse impact upon marine environments or habitats, given the nature of the temporary use and location relative to the marine environments.

- (i) *existing wildlife corridors and the impact of development on these corridors,*

Comment: The proposed development is not considered to impact negatively on wildlife corridors.

- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

Comment: The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*

Comment: The proposal is not considered to provide any opportunities for conflict between land-based and water-based activities given the nature and scale of the temporary development.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

Comment: The subject development is not considered to impact on any traditional Aboriginal cultural values.

- (m) *likely impacts of development on the water quality of coastal water bodies,*

Comment: The subject development will not have any significant impact upon the water quality of coastal waterbodies.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*

Comment: It is not considered that the proposal impacts upon the conservation or preservation of any of the above items

- (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,*

Comment: 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*

Comment: This 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.*

Comment: Any energy use will be minimal given the temporary nature of the markets and relative minor demands for power and water.

Conclusion

It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

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

**Draft SEPP – Coastal Management**

The site is located within the land application map for this SEPP. The site is also within the coastal hazard map identified by this SEPP.

However, given the lack of permanent structures required for the temporary use the proposal will not exacerbate any risk to coastal hazards as required by Clause 16.

The proposal is also considered consistent with the provision of Clause 15 as the proposal will not overshadow any coastal areas, result in loss of views, impact any existing access points nor impact any places of aboriginal cultural heritage.

A condition of consent will be included that requires the Markets to cease operation if the site is no longer suitable for such due to coastal hazards or erosion.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

This DCP does not identify parking requirements for Markets, rather requires the consent authority to assess the application on its merits. The RMS guidelines provide for 2 spaces per market stall. The night market would therefore generate the need for 100 car space and the day markets could generate the need for up to 248 spaces.

However, Council's Traffic Engineer has assessed the application and provides the following response:

*"It is proposed that a market management plan will be developed by the market operator following their approval and this will include a Traffic management Plan for the sites which will be approved by Council.*

*The markets have been operation previously without significant traffic concerns being raised whilst parking demand can be high it is temporary in nature.*

*There are community benefits associated with the conduct of markets and recent parking studies have indicated that in general parking is available within a short distance walk in the Kingscliff CBD area.*

*I can concur with the submitted SEE that states "the existing ongoing nature of the proposal is considered to demonstrate satisfactory operation with minor impacts from a short term increase in traffic. Further, the locality is considered to possess the necessary vehicle parking, pedestrian and cycling infrastructure to support a satisfactory level of access for the proposal. A traffic management plan would also address any conflicts between traffic and pedestrian safety."*

*Accordingly there are no objections to the proposed DA.*

It is noted that the Market Management Plan will be required to provide a traffic management plan. This plan will be assessed and approved by Council prior to the issue of the Section 68 Certificate. No additional parking spaces are considered necessary for these two uses.

#### A11-Public Notification of Development Proposals

The development application was advertised for a period of 14 days effective from 5 October 2016 to 19 October 2016. During this period one submission was received. This submission has been addressed later in this report. The proposal is considered satisfactory with regard to the requirements of Section A11.

#### A13-Socio-Economic Impact Assessment

The purpose of this Section is to ensure that Development Applications for certain developments that are likely to have a significant social and/or economic impact are properly considered. In accordance with clause A13.5.1, the application did not require a socio-economic impact statement and as such, this Plan is considered satisfied.

#### A15-Waste Minimisation and Management

Council's Waste Unit is satisfied that the development will adequately cater for the disposal of waste from the markets as required by the Market Management Plan. A condition of consent will be incorporated in to the consent that reads as follows:

*"The area utilised for markets shall be maintained in a clean and tidy manner. All waste materials and miscellaneous items shall be removed from the Park after the completion of market operation to the satisfaction of the General Manager or his delegate"*

#### B9-Tweed Coast Strategy

A purpose of this Section is set Council's policies for the management of the growth of the Kingscliff and District of the Tweed Coast. The subject site is within a public recreation area and the proposed development is not considered to be inconsistent with this development control plan.

B25-Coastal Hazards

The two sites are partially within the Immediate Hazard Line (red) and partially within the Maximum 2050 Hazard Line (green), as mapped within this DCP.



This DCP states that development that is temporary or can be relocated or sacrificed may be considered within both the immediate hazard line and 2050 hazard zone.

As noted no permanent structures are proposed, only temporary structures for stalls will be erected for each market. These markets will be removed after each event that is conducted over a 6 hour or 11 hour period.

Given the lack of permanency of the use, lack of permanent structures or changes to the landform, the proposed use will not exacerbate the seven coast line hazards as defined in the NSW Coastal Protection Act 1979.

Ongoing protection of the dunal area will be managed separately to the operation of the markets to ensure access to this sensitive land is restricted at all times, including during market days.

Kingscliff Foreshore Revitalisation Plan

It is noted that the two market locations are outside the area impacted by the Kingscliff foreshore revitalisation plan.





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

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

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy given the nature and terms of the use, with associated mitigation measures for potential issues.

**(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 subject site is located on the coastal foreshore and is affected by coastal hazards. However, the use is for temporary markets within the foreshore with no permanent structures being erected. The use will not exacerbate any existing erosion through the exclusion of access to the dunes and no disturbance of the dunes. The proposed development is not considered to be inconsistent with this Plan.

**Tweed Coast Estuaries Management Plan 2004**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

**(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 day time markets have been operating as proposed without notifications (objections) to Councils Environmental Health Unit for approximately 20 years. The night time markets have been operating for 3 years with minimal disturbances generating notifications for Council.

Councils Environmental Health Unit report that some amenity issues have previously been raised with Council about these markets due to noise emanating from generators. The issues relating to noise emanating from generators required for stalls was resolved through consultation with the market managers. Other notifications from nearby businesses relating to competition conflicts are difficult to deal with as these matters are not a health and safety matter in the care and control of our regulatory arm of Council.

Council as a body need to consider what is acceptable in regards to market stalls in the proximity of nearby business operators in the CBD of Kingscliff and how these markets impact upon these commercial premises.

From a regulatory perspective, it is noted that commercial property owners have not submitted any objections throughout the notification period in regards to unfair competition or conflicts in trade as a result of the night or day markets.

Competition issues are not usually a consideration for this 79C assessment whether it is for a new shop or food and drink premise within a locality or food stall in proximity to the CBD. It is further noted that Council has been advised through the canvassing of local businesses through the assessment of market renewal applications and the overwhelming response is support for these markets. This support, regardless of stalls being present in direct competition with the local shops, is due to the increased patronage of the adjoining businesses on market days. Accordingly, while the markets may be in direct conflict with some business operations within Kingscliff, the central business district will experience an overall benefit from the markets operating in these two locations on a temporary basis.

The locations of the markets are considered to be appropriate, given the lack of complaints received from adjoining property owners, proximity to the CBD and facilities and the beach.

The accessibility of the markets for all ages and abilities due to their proximity to carparking, the CBD and flat topography ensure the setting of the markets is a suitable location.

### Amenity

The market location within close proximity of residential, commercial and tourist uses do have to be managed appropriately to ensure the amenity of the locality is not compromised, despite the temporary nature of the development. The preparation, approval and implementation of a Market Management Plan will ensure these adjoining uses are not adversely impacted during the operation of the markets.

### Emergency Evacuation Procedures

A comprehensive Emergency Management Plan will be required to be prepared and incorporated into the Bushfire Response Plan and Market Management Plan. This Management Plan and any required amendments will be incorporated into the Section 68 approval prior to commencement.

### Flora and Fauna

The application is accompanied by an assessment of significance for the bush stone curlew due to its known presence in the locality.

Council's Natural Resource Management Unit have assessed this 7 part test and made several recommendations. These recommendations include the preparation and implementation of a management and protection plan for the Bush stone curlew that will be approved by Council and integrated into the Market Management Plan.

These measures are outlined below:

The component of the MMP shall be prepared by a suitably qualified consultant to include the following details:

- *Inspection and reporting protocol to be undertaken within a buffer area of 200 m from the event site prior to each event to determine presence/absence of Bush-stone Curlew*
- *Site specific management protocol to be implemented where Bush-stone Curlew are present within the event site or the 200 m buffer zone. Management measures to be prescribed are to include (but not be limited to):*
  - *Installation of temporary awareness signage at strategic locations around the event site reinforcing:*
    - *The importance/significance of Bush Stone-curlew*
    - *The requirement for all domestic animals to be appropriately controlled and 'on-leash'*
    - *Driver awareness around car-parking areas*
  - *In the event where birds are reported nesting, the provision for adequate buffers (as determined by Council's Natural Areas Management Biodiversity Planning officer in liaison with the event manager) around*

*the area where birds are nesting shall be provided. Buffers shall be appropriately fenced, signposted to exclude all infrastructure/activity associated with the event.*

- *Post event reporting requirements*

The implementation of these measures will provide Council with satisfactory confidence that this threatened species will be protected during the operations of this activity.

### Markets Policy

The purpose of this policy is to establish Tweed Shire Council's position in relation to markets that are held on Council land or facilities or public space of which Council is the responsible trustee. This policy outlines Council's expectations in relation to markets to ensure they are well managed, are complementary to offerings of local businesses, are supportive of the local community and connected to the character and identity of the specific location.

The policy provides guiding principles for the operation of markets upon land to which the Policy applies. The subject sites are both nominated locations with a frequency identified of 12 night markets per year and 26 day markets per year. The application is consistent with the policy in this regard. The Policy makes reference to *Market Management Plan Guidelines* which outlines the contents of the Market Management Plan which is to be accepted by Council prior to issue of approval under Section 68 of the Local Government Act 1993 and operation.

## **(c) Suitability of the site for the development**

### Surrounding Landuses/Development

The surrounding land, being under the care and control of Council, while in the ownership of Crown Lands is intended for use for appropriate public recreation. The use of a small portion of the land for markets of a temporary nature on certain days of the year is considered appropriate and consistent with the objectives of the zoning.

Appropriate controls and management measure will be imposed to minimise any disturbance of the environment and adjoining residential properties during market days.

The markets are considered to have positive social and economic benefits for the locality and stall holders being a positive injection in to the local economy.

Any issues that may arise during the future operations can be managed by the market operators in consultation with Councils Recreational Unit or Environmental Health Unit, dependent upon the specific matter that arises.

### Contributions

TRCP Plan No 4. Roads

Due to the temporary nature of the use and cross utilisation with local traffic networks and carparking, contributions are not applicable for this development.

#### Section 64 Water and Sewer

As per the Statement of Environmental Effects (SEE), liquid wastes for this development would include sewerage, however these would be managed as part of Council's existing sewer network via the use of existing public amenities. Therefore, no modifications to Council's public water and sewer infrastructure are required in this development and no additional demand generated.

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

The development application was advertised for a period of 14 days effective from 5 October 2016 to 19 October 2016. During this period one submission was received.

The reasons provided for objecting the proposal are as follows:

1. Excessive noise during setup and pack up and noise from live music.

**Comment:** It is acknowledged that the markets generate noise during setup and closure. The management plan and its implementation by operators will ensure these periods are within a reasonable timeframe to reduce impacts later in the evening upon neighbouring properties. Noise on a Friday night that will cease from market sales at 9pm and pack up by 10.30pm is not considered unreasonable given the location and proximity to other noise generating activities in the CBD. i.e. Hotel and Restaurants.

Council's Environmental Health Unit have indicated that a very small number of notifications from the night market due to noise was due to generators for stall holders and such was resolved quickly through consultation. Given the length of time these markets have been operating and the lack of notifications received by Council in this time, coupled with the receipt of only 1 submission during the notification period, it is concluded that noise levels emanating from the site are accepted by the general residential population within the locality.

2. Waste generation.

**Comment:** The management of waste generated from the markets will be incorporated in to the Market Management plan. As mentioned above, notifications have not been received by Council over the history of either market in regards to waste. This issue can be easily monitored on an ongoing basis and it is considered that any issues raised can be resolved in conjunction with Council as the landowner and market operators. A condition of consent has also been included to ensure the areas are left in a tidy state. The market management plan will provide details in regards to the provision of additional waste receptacles for garbage and recycling

3. Risk to the Bush Stone Curlew

**Comment:** The protection measures outlined within the SEE for the bush stone curlew have been assessed and addressed by Councils Natural Resource Management Unit. This assessment has concluded that the markets can operate without compromising threatened species. A range of measures will be incorporated into the development consent to ensure these measures are implemented for the life of the markets.

4. Economic Impact on Local Businesses during night markets.

**Comment:** The markets attract members of the public to the Kingscliff CBD from the township and greater surrounds. No objection has been raised to the continuation of the markets from any businesses operating. Council has previously canvassed business owners and the overwhelming response being that the markets increase patronage of the business district during the operating times. Given this canvassing and the lack of objections from the local traders during the notification period, this reason for objection is not considered valid or substantiated.

5. Traffic Safety Issues - The traffic generation after dark during the night markets causes traffic safety issues for those people wanting to cross the road.

**Comments:** The night markets are situated in a well-lit area with good lighting, bike paths and generous public parking in the vicinity. The pedestrian access ways along the foreshore and crossing Marine Parade provide safe options for pedestrian after dark. Council's Traffic engineer has assessed the proposal and having regard to the long term operations of the markets for the past 20 years without significant incidents, the Markets as proposed are considered satisfactory. A traffic management plan will be incorporated into the MMP to ensure.

6. Toilets

**Comments:** the existing facilities have been adequate for the markets since their commencement. No change to this operational matter is considered necessary or warranted, based on anecdotal evidence over 20 years.

**(e) Public interest**

Given the nature of the proposed development, being for the ongoing use of public land for temporary markets on a predetermined schedule on an appropriately zoned site, it is considered that the proposal would be unlikely to result in an unacceptable impact on the wider public interest at this location which includes objectives to provide for the recreational needs of the community.

**OPTIONS:**

1. Approve the development application with the recommended conditions of consent; or

2. Refuse the application and provide reasons.

Option 1 is recommended.

**CONCLUSION:**

Having regard to the assessment of the proposed development highlighted throughout this report, it is recommended that consent should be granted for the proposed development given the application relates to an appropriate land use on land zoned for recreational purposes.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Markets v1.1

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

Not Applicable.

**c. Legal:**

The applicant may lodge an appeal in the NSW Land and Environment Court if dissatisfied with Councils determination.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**5 [PR-PC] Development Application DA16/0822 for a Temporary Farmers Market at Lot 102 DP 873985 No. 806 Cudgen Road, Cudgen; Lot 2 DP 803772 No. 806 Cudgen Road, Kingscliff**

**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

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### **SUMMARY OF REPORT:**

Council has received a development application for the operation of temporary 'farmers and produce' markets within the existing carpark of the Kingscliff TAFE property every Saturday morning between 7am and 11am.

The application seeks approval for the operation of markets each Saturday for stalls retailing fresh farm produce and homemade food as well as ready to consume food and beverages. The application originally included non-food related items, however, it is now confirmed that the markets will no longer host stalls with items other than those mentioned above.

The application seeks approval for stalls that can reasonably be accommodated into a selected area within the TAFE grounds used for carparking through the week.

The application proposes to include live entertainment during market hours incorporating the use of a small amplifier. No mechanical rides or devices are proposed.

While the stalls will be located within one of the existing carparks, a total of approximately 250 carparking spaces will be available onsite for customer parking.

The market operator will be required to provide the following information prior to commencement:

- Market Layout Plan;
- Traffic Management Plan;
- Insurance;
- Market Operator and Market Stall Holder responsibilities;
- Electrical Connections and Devices;
- Fire Control;
- Amplified Sound;



- Market Stall Types;
- Waste Disposal;
- Communications Strategy;
- Sustainability Practices;
- Sanitary Provisions; and
- Security.

The current market policy is applicable only to Markets held on Council land or facilities or public space of which Council is the responsible trustee. The subject site is not under the care or control of Tweed Shire Council therefore the market policy is not applicable.

The setting up and parking of the markets will require stall holders to be onsite outside the market hours of 7am to 11am. No market holders will be permitted onsite prior to 6am.

The subject site is zoned SP1 Educational Establishment pursuant to the Tweed Local Environmental Plan (TLEP) 2014. Permissible uses with consent are only those that relate to education establishments per the LEP definition. The application is reliant upon Clause 2.8 of the TLEP 2014 for permissibility being the Temporary use of land. The permissibility of the use relying upon this clause will be discussed within the report.

The application was placed on public exhibition for 14 days. During this period seven submissions were received. Six of these submissions objected to the proposal while one submission received was in support.

It is considered appropriate to limit the market use to twelve months to monitor the performance of the market. The proponent may lodge a S96 modification application for an extension of the use once the market has established and become operational. In this regard a condition is recommended to limit the development the subject of the consent to twelve months from commencement of the market. It should be noted the development consent does not lapse once the development has commenced however the development can be limited in duration via a condition of consent.

This application has been presented to Council for determination in the interests of a holistic review of market operations in the Shire, having regards to the other market applications currently before Council within this agenda for determination.

#### **RECOMMENDATION:**

**That Development Application DA16/0822 for a farmers market at Lot 102 DP 873985 No. 806 Cudgen Road, Cudgen; Lot 2 DP 803772 No. 806 Cudgen Road, Kingscliff be approved subject to the following conditions:**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects undated, and Plans identified as follows:**
  - **Village Farm Markets Site Plan;**
  - **Toilet Facilities Plan;**
  - **Car parking South Plan;**
  - **Car parking North Plan; and**
  - **Traffic Management Plan;**

prepared by the applicant, except where varied by the conditions of this consent.

[GEN0005]

2. The market stalls shall be limited to 100 stalls within the sealed carpark area nominated on the approved site plan.
3. Signage for the operation shall be limited to one small directional sign on the street frontage fence. No signage is permitted within the road reserve.
4. The development the subject of this consent is to cease 12 months from the date of commencement. In this regard the proponent is to advise Council in writing of the date of the first market day.
5. This market shall be limited to stalls selling fresh food or homemade foods for consumption, farmers produce and ready to consume food and beverages. The market is not permitted to include stalls selling handicraft, clothing, second hand items, jewelry, arts and crafts or homewares.
6. This development the subject of this consent is to cease if the approved educational facility expands normal classes to Saturdays or the current landuse changes.
7. An evacuation management plan shall be developed and approved by the General Manager or delegate prior to commencement of the approved use. This plan shall incorporate the Bushfire protection plan and any requirements of the Rural Fire Service.
8. Current public liability insurance shall be maintained by the market operator at all times during the market operations.  
[GENNS01]
9. 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]
10. The  $L_{Aeq, 15 \text{ min}}$  noise level emitted from the premises shall not exceed the background noise level ( $L_{A90}$ ) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) at the boundary of any affected residence.  
[USE0165]
11. Hours of operation of the business are restricted as follows:
  - Setup no earlier than 6am,
  - Market operation from 7am to 11am
  - Pack Up completed no later than 3.00pm
  - The market is to operate on Saturdays only

unless otherwise approved in writing by the Director Planning and Regulation.

[USE0185]

12. 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]
13. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and Guidelines for Food Businesses at Temporary Events, Department of Primary Industries June 2016 and other requirements of Councils Environmental health Officer.  
[USE0835]
14. No intensification of use beyond the provision of the market management plan is permitted without the approval of the General Manager or his delegate.  
[USE0855]
15. All wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate. Separate receptacles shall be provided for garbage and recycling for the duration of the market for patrons. The site shall be left in a clean and tidy manner.  
[USE0875]
16. The markets shall be operated in accordance with the Market Management Plan, Village Farm Markets and Site Plan (16 November 2016) submitted in support of the development application, to the satisfaction of the General Manager or his delegate. The location of the market within the property shall not be modified without the prior written consent of Council.
17. Live or amplified music shall not be played prior to 9.00am and shall not be audible from habitable rooms of any residence.
18. Generators shall be shielded so as not to be audible within the habitable room of any residence.
19. The Market Manager or their employee shall be present at the market at all times to supervise operation of the markets.
20. Markets generally, and food businesses in particular, shall be subject to periodic inspection by Council's Environmental Health Officer. Such inspections shall be subject to inspection fees in accordance with Council's adopted Management Plan and Fees and Charges.  
[USE0801]

**REPORT:**

**Applicant:** Village Farm Markets

**Owner:** Campus Manager

**Location:** Lot 102 DP 873985 No. 806 Cudgen Road, Cudgen; Lot 2 DP 803772 No. 806 Cudgen Road, Kingscliff

**Zoning:** SP1 - Special Activities Educational Establishment SP1 - Special Activities Educational Establishment

**Cost:** Nil

**Background:**

The application seeks approval for the operation of markets each Saturday for stalls retailing fresh farm produce, artisan (homemade) stalls and ready to consume food and beverages. The application originally included non-food related items however it is now confirmed that the markets will no longer host stalls with items other than those offering organic produce, ready to consume products and other artisan stalls such as:

- Plants and herbs,
- dairy,
- meat and seafood,
- dips, spices, olives, condiments,
- small goods,
- homemade pastries,
- bread,
- fresh pasta,
- muesli,
- eggs, and
- honey.

The applications seeks approval for stalls within an existing carpark area of the TAFE from 7am until 11am with pack up and close down times from 6am and after 11am until 3pm each Saturday. Stall holders will setup within an existing carpark onsite close to the front entrance of the TAFE site. The markets will be restricted to this carpark area with a maximum of 100 stalls to be onsite.

The TAFE onsite security officer will assist the private market operators open necessary gates and amenities for use by patrons and staff holders. Market visitors will enter the site and either park in the existing carpark on the eastern side of the market stalls (approximately 100 spaces) or travel approximately 200m to the two other large carparks onsite. An onsite security guard will protect the grounds from unauthorised activities outside the market area.

The use of one of the existing bitumen sealed carparks for stall holders will provide a weather proof area for both market holders and patrons. The availability of other large carparks onsite will however ensure parking for stallholders and patrols is satisfactory for the duration of the event.

The application proposes to include live entertainment during market hours incorporating the use of a small amplifier. No mechanical rides or devices are proposed.

The operators have indicated that the only signage required for the markets will be a small identification sign on the front fence due to word of mouth and social media opportunities to advertise the location of the proposed markets.

Discussions with TAFE management has confirmed that while the TAFE is not completely closed to all activities on weekend, the markets will in no way conflict with the operations of the facility, given the primary functions of the TAFE are conducted Monday to Friday.

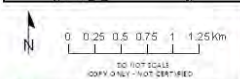
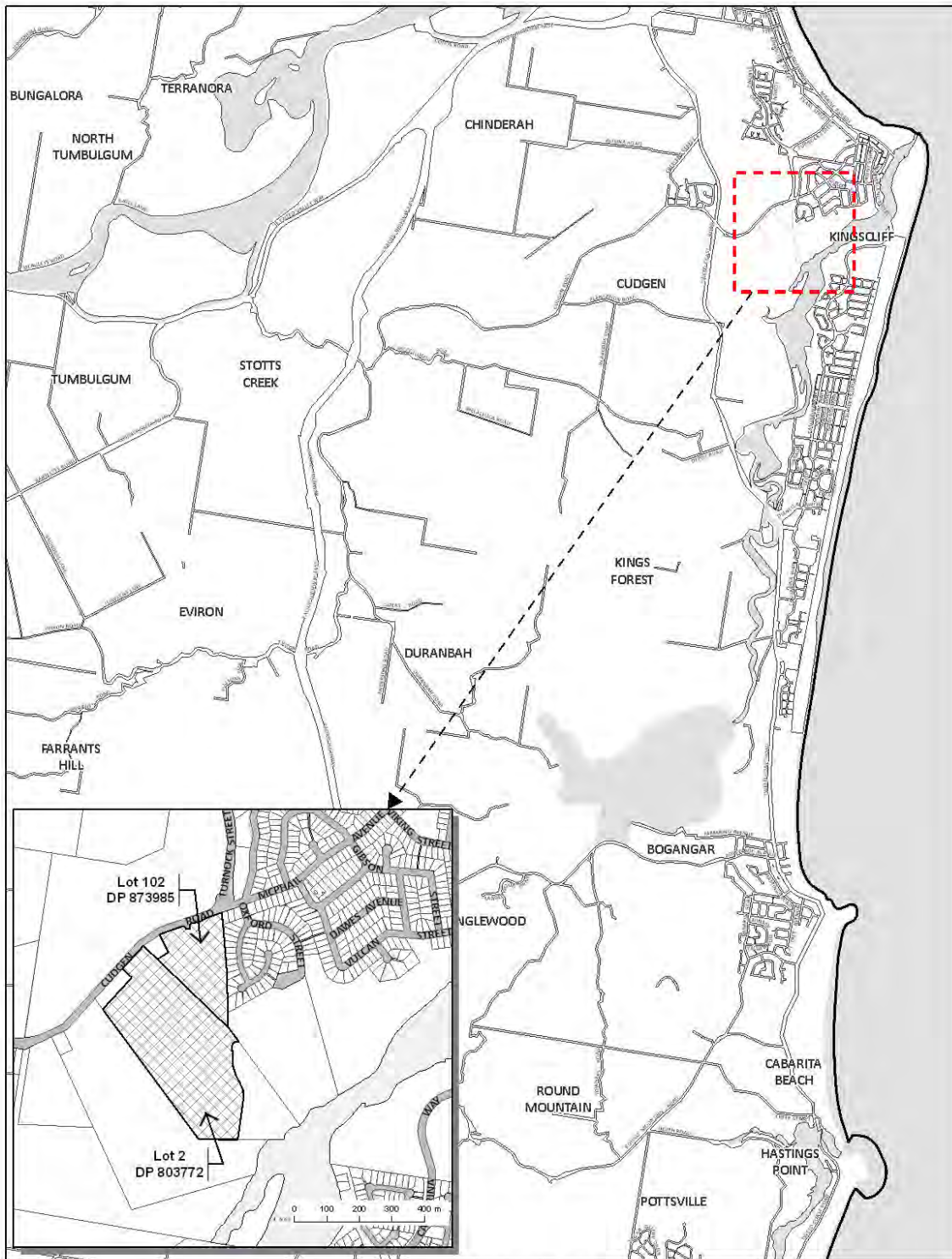
### Site Details


It is advised that the markets will be held within one of the existing car parks within the Kingscliff TAFE grounds.

Parking for market patrons will be available within the two other large car parks onsite, either to the east or to the south.



**SITE DIAGRAM:**




 Civic and Cultural Centre  
 3 Tumbulgum Road  
 Mullumbumby NSW 2484  
 PO Box 918  
 Mullumbumby NSW 2484  
 T: (02) 6670 2401 / 1300 242 872  
 F: (02) 6670 2489  
 W: www.tweed.nsw.gov.au  
 E: info@tweedshirecouncil.nsw.gov.au

**Locality Plan**  
 Lot 102 DP 873985 No. 806 Cudgen Road, Cudgen  
 Lot 2 DP 803772 No. 806 Cudgen Road, Kingscliff

Cadastre: 16 January, 2017  
 © Land and Property Information (LPI) and Tweed Shire Council.  
 Boundaries shown should be considered approximate only.

Disclaimer: This site plan is to be used for reference only. It does not constitute a contract or any other legal obligation. The information is provided for general information only and should not be relied upon for any specific purpose. The information is provided for general information only and should not be relied upon for any specific purpose. The information is provided for general information only and should not be relied upon for any specific purpose. The information is provided for general information only and should not be relied upon for any specific purpose.

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

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
  - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
  - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
  - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
  - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
  - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
  - (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
  - (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
  - (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,

- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and permissibility at this location. While the use of the site for markets is not permissible under the SP1 zoning the site will be satisfactory for a temporary occupation for market stalls each Saturday when the use for which the site is intended (Kingscliff TAFE) is unoccupied. The site has all the necessary services for the markets and given the predicted number of patrons, the site is satisfactory to accommodate traffic off Cudgen road and parking onsite. This is considered a sustainable use of existing resources and will promote small business, local foods and the economy within the Tweed Shire. These issues make the proposal consistent with the objectives of the TLEP 2014 despite its permissibility issues.

#### Clause 2.3 – Zone objectives and Land use table

The proposed development area is zoned SP1 Special Activities (Educational Establishment) under the provisions of this plan.

The objectives of the SP1 zone are:

- *To provide for special land uses that are not provided for in other zones.*
- *To provide for sites with special natural characteristics that are not provided for in other zones.*
- *To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land*

The site will accommodate temporary markets 1 day per week when the Educational facility is not operating i.e. Saturday mornings. These markets will be operated by a private enterprise that has a commercial agreement with the landowners.

Stall holders will then rent space from these market operators.

The use of the site for these markets is not regarded as a special use nor does the site have special characteristics that are not provided for in other zones.

Uses that are permitted with consent on this land are restricted to the purpose shown on the planning map (Educational facility) or development that is ordinarily incidental or ancillary to the development for that purpose. The proposed use is not considered ancillary or incidental to the educational facility. The market has no correlation with any activities onsite such as the sale of produce or goods produced onsite. The TAFE will however operate a promotional stall.

The applicant is reliant upon Clause 2.8 - Temporary Use of land for permissibility.



In regards to objective three, it is considered that the use can be conducted in such a way that any potential impacts on adjoining land are minimised. This management will be through the implementation of a Market Management plan that will be required prior to the market commencing.

### Clause 2.8 Temporary Use of Land

The proposed development is reliant upon this Clause for permissibility as markets are not a permissible use upon the subject SP1 zoned land.

- (1) *The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*

**Comment:** The use is proposed as temporary due to the markets operating on a one day per week basis being each Saturday morning when the TAFE facility is not in operation. This Saturday morning temporary operation will not have any impact on the ongoing use of the TAFE as a condition of consent will be inserted that advises the approved use will expire if the TAFE sites operations expand to Saturdays or the approved use onsite changes.

- (2) *Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.*

**Comment:** The use is considered temporary, being held each Saturday between 7am and 11am with less than 52 Saturdays being available in any 12 month period. The proposal is compliant in this regard.

- (3) *Development consent must not be granted unless the consent authority is satisfied that:*
- (a) *the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*

**Comment:** The use of the site for the purposes of a temporary market while the TAFE is not being used will be a condition of any consent granted. TAFE has advised that the site is not used on weekends for educational purposes and therefore no conflict between the educational use and markets will occur.

- (b) *the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*

**Comment:** The markets will be of a scale and size that the subject land is capable of accommodating. Conditions included in the consent require the implementation of a Market Management Plan that outlines a range of measures to protect the amenity of the locality particularly adjoining landowners.

Importantly, it is considered that the site can adequately cater for traffic and parking generated by the markets, given the weekday use of the TAFE and non-use of the TAFE on weekends.

Time restrictions will also be placed on the operation of the market (including setup and pack down) to protect the amenity of adjoining neighbours. Amplified music will also be limited given the timing of the markets on a Saturday morning.

- (c) *the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*

**Comment:** All structures associated with the markets are temporary and will be completely removed at the end of each market event. Structures will be limited to small pop up marquees that each stall holder will erect and remove each Saturday. The temporary nature of these small structures will ensure that the use is not detrimental to the environmental attributes or features of the land.

- (d) *at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*

**Comment:** Given the scale and nature of the temporary use, the land will be completely restored to its original condition as the only structures to be erected are small marquees on the existing carpark within the site boundary. The area will be required to be left in a clean and tidy condition with any rubbish removed.

- (4) *Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.*

**Comment:** Not applicable.

- (5) *Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).*

**Comment:** Not applicable.

Having regard to the possibility of the site and its ability to operate utilising this Clause, the consent will be limited to three years to ensure the use remains consistent with this Clause.

#### Clause 5.5 – Development within the Coastal Zone

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

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*

- (i) *maintaining existing public access and, where possible, improving that access, and*
- (ii) *identifying opportunities for new public access, and*

**Comment:** The markets will not alter existing access arrangements to the foreshore due to a spatial separation of greater than 1000m (direct) to the nearest foreshore.

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

**Comment:** The temporary use of the land for the purpose of a market will not have any impact on the scenic quality of the surrounding area given its location within existing landscaped grounds and lack of permanent structures.

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

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

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

**Comment:** The proposed development, being the erection of temporary market stalls within an existing education establishment will not impact upon the existing scenic quality of the coast as any structures are not permanent and of very low scale and bulk. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast.

- (e) *how biodiversity and ecosystems, including:*
  - (i) *native coastal vegetation and existing wildlife corridors, and*
  - (ii) *rock platforms, and*

(iii) *water quality of coastal waterbodies, and*

(iv) *native fauna and native flora, and their habitats, can be conserved, and*

**Comment:** The proposed development is temporary and will not require any permanent change to the existing environment. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems.

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

**Comment:** The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the site's zoning and the temporary nature of the development at this location.

*This clause goes on to further state:*

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

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

**Comment:** The proposal will not impede or diminish the right of access of the public either to or along the public foreshore due to spatial separation.

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

**Comment:** The proposed development does not need to connect into Councils reticulated sewer system. Existing facilities within the TAFE will be utilised that are located adjacent to the market sites.

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

**Comment:** No stormwater will be generated from the market stalls or use.

(d) *the proposed development will not:*

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

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

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

**Comment:** The proposed market development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, scale, and physical separation of development works from any area affected by coastal hazards.

Clause 5.9 – Preservation of Trees or Vegetation

No existing vegetation will be impacted by the operation of these markets. The protection of existing vegetation shall be incorporated in the Market Management plan.

Clause 7.1 – Acid Sulfate Soils

The sites are mapped as Class 5 Acid Sulfate Soils. No disturbances to grounds are required for the market stalls.

Clause 7.5 - Coastal risk planning

The site is not subject to coastal processes due to its location away from the coastal fringe.

Clause 7.6 - Stormwater Management

Existing stormwater processes onsite will be satisfactory to manage the temporary use.

Clause 7.10 - Essential Services

Electricity will be provided to all stall holders. Alternatively, generators can be used by stall holders.

**Clause 79BA - Consultation and development consent—certain bush fire prone land**

The land is mapped as being bushfire prone. The development application including a bushfire assessment was forwarded to the Rural Fire Service for comment. Any requirements of the service will be included within the conditions of consent.

**State Environmental Planning Policies**

SEPP No. 55 - Remediation of Land

The development is proposed within the existing Kingscliff TAFE campus and no physical disturbances of the site are required. Council's Environmental Health Unit has reviewed the application and concludes that the subject site is satisfactory for the proposed temporary uses.

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

*Clause 8 – Matters for consideration*

(a) *the aims of this Policy set out in clause 2,*

Comment: The proposal is generally in accordance with the aims of this policy.

(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,*

Comment: It is noted that the subject site, due to spatial separation from the coastal strip will not restrict any existing access.

(c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

Comment: It is not considered appropriate that this application for temporary markets should offer any opportunities for new public access to the foreshore.

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

Comment: The proposal is considered suitable, having regard to its permissibility and imposed management restrictions.

(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,*

Comment: The proposal will not result in any detrimental impact on the coastal foreshore, given its temporary nature and market management controlling the location of market stalls consistent with the market management plan on recreational land.

(f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

Comment: This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast given the nature and scale of the markets.

- (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,*

Comment: The proposal will not impact negatively any animals or their habitats.

- (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*

Comment: The proposal is not considered to have an adverse impact upon marine environments or habitats, given the nature of the temporary use and location relative to the marine environments.

- (i) *existing wildlife corridors and the impact of development on these corridors,*

Comment: The proposed development is not considered to impact negatively on wildlife corridors.

- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

Comment: The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*

Comment: 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,*

Comment: The subject development is not considered to impact on any traditional Aboriginal cultural values.

- (m) *likely impacts of development on the water quality of coastal water bodies,*

Comment: 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,*

Comment: It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

- (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,*

Comment: 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*

Comment: This 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.*

Comment: Any energy use will be minimal given the temporary nature of the markets and relative minor demands for power and water.

### Conclusion

It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

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

### **Draft SEPP – Coastal Management**

The site is located within the land application map for this draft SEPP. However, given the lack of permanent structures required for the temporary use and the spatial separation from the coast, the proposal will not exacerbate any risk to coastal hazards as required by Clause 16.

The proposal is also considered consistent with the provision of Clause 15 as the proposal will not overshadow any coastal areas, result in loss of views, impact any existing access points nor impact any places of aboriginal cultural heritage.

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

### Tweed Development Control Plan

### A2-Site Access and Parking Code

It is proposed to utilise one of the car parking areas onsite of the TAFE for the temporary markets for the setup of stalls. The remaining carparks and internal road system will be available and adequate for patrons and the existing education facility (TAFE).



Given the size and operations at the TAFE site, the traffic generated by the proposal will be sufficiently catered for by the existing intersection and internal road system having regard to the size of the market, the limited time in which it operates and the scale of the TAFE in comparison.

Council's Traffic Engineer has made the following comments in support of the application.

*"The proposal is to conduct a farmer and produce market on the Kingscliff TAFE grounds each Saturday morning. The existing access from Cudgen Road will be utilized (which is adequate) and there a significant number of on-site parking spaces available (250) which will also be used for some stall holders to display their goods. It is assumed that the TAFE will not be in operation during market operation.*

*Signage for the market should not be placed in the road reserve and this should be specified in any DA approval.*

*There are no objections to the proposal from a traffic and parking assessment."*

#### A4-Advertising Signs Code

The use of one small sign on the fence for identification is considered consistent with the DCP.

A condition of consent will be imposed that prohibits any signage on the road reserve.

#### A11-Public Notification of Development Proposals

*The application was publicly notified for a 14 day period from 30 November 2016 until 14 December 2016. During this notification period, seven submissions were received, of these seven, one was in support of the market while six objected to the proposal for the following reasons:*

1. *A License from TAFE to operate has not been obtained*

Comment: A license has been obtained and the necessary approvals to operate will be obtained prior to commencement.

2. *Concern for Adjoining Roadside Stall – This business has undertaken the necessary steps to gain approval for the roadside stall. This market, being directly next door will have an unfair advantage. This market will be contrary to the support of local business promoted by Council. The markets will result in an increased risk of theft from adjoining farms.*

Comment: The site does adjoin a roadside stall. This roadside stall relates to development consent 0473/2001. This development consent limits the sale of goods from this site to those items grown on the property. The proposed markets will likely sell similar items, however it is intended that the markets will include

many items in addition to those that may be seasonally available at the adjoining roadside market.

The operation of a roadside stall by definition *'means a place or temporary structure used for the retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.'* This operation was never intended or approved as a commercial business of a scale and size that allows the retailing of goods regardless of origin.

It is also noted that the market operation may be an additional opportunity for the owners of the roadside stall to sell produce grown onsite or not sourced from the property to expand their business.

Regardless, Council does not consider competitive matters within a Section 79C assessment. Council supports markets in other locations adjacent to commercial business districts where such operators are potentially impacted by stalls retailing similar items. However, it is noted that markets normally attract additional persons to the locality and increase trade for full time businesses. This is considered comparable with the roadside stall with increased traffic potentially improving patronage to the roadside stall on market days.

It is unclear how the operation of the markets will increase the risk of theft from nearby farms.

3. *Only Tweed Shire residents should be allowed to operate from the market.*

Comment: It is not Council's role to restrict operators for this proposal. The type of goods to be sold will be restricted, however, the source of stallholders will be at the discretion of the operators.

4. *Council should consider who the commercial beneficiary of the proposed market is. The market holders are the ones most likely to benefit from the use.*

Comment: this is a commercial operation that will receive development consent from Council to operate on a temporary basis. The commercial benefits enjoyed by the private operators cannot be a reason to reject the proposed development; just as any other development is not dependent upon the profits made by the business operators. Market stall holders will only patronise the market if costs are reasonable compared to returns.

5. *The carparking will be a security risk for landowners in Yale Street.*

Comment: The TAFE security guard will be onsite during the markets. The use of the carpark for markets is no different security wise compared to weekday uses associated with the TAFE.

6. *The noise on a Saturday morning after 7am is too early and will result in an adverse amenity for adjoining residents, not only due to market setup but also traffic.*

Comment: Council's Environmental Health Unit have assessed this application and have determined that stall holders may only be permitted onsite from 6am on Saturdays, with the market operating from 7am. Amplified music can only be played from 9am to 11am to protect the amenity of the adjoining owners. The consent will also be conditioned to require ongoing management and review of noise levels, with Council having the ability to request further modifications or information if noise complaints are received. The amenity of the adjoining property owners will be protected by the conditions of consent and ability of Council to impose further restrictions if the operations warrant such

7. *Waste from the markets will be sitting in bins for three days and may cause a health issue to adjoining residents.*

Comments: The disposal of waste is intended to be incorporated into the current TAFE operations. The application states that all garbage will be removed at the end of the day and stored in the appropriate containers. More details regarding waste management associated with the site are provided below.

8. *The market should be held further down the coast, and to be conducted every week is unreasonable.*

Comment: The applicants have correctly stated that the reason the subject site was selected for the temporary use was due to the existing infrastructure onsite that would allow the property to cater for the markets on a weekend when the site is not operating as approved as an educational facility. Due to the estimated patron numbers over a small time frame the choice of location was critical to ensure traffic and carparking was adequate while not requiring the provision of additional infrastructure. Again the site is considered appropriate for the proposed use and a sustainable use of existing resources.

#### A15-Waste Minimisation and Management

While the proposal can rely upon existing waste services associated with the TAFE, some additional requirements will be imposed to accommodate the Saturday Morning markets. The organisers will need to ensure commercial waste arrangements are made as the Council recycling facility does not accept wheelie bins.

While bins are proposed to be spread over the site, a condition will be included requiring garbage and recycling bins to be provided around the stalls to encourage recycling and green waste. This can easily be incorporated into the Market Management Plan that will be a condition of any consent granted.

The removal of waste generated by the proposal will be a private arrangement between the landowner and market operators. The Market Management plan shall be required to provide details of such. A condition requiring the site to be left in a clean and tidy manner will also be imposed upon the consent.

No toxic chemicals will be allowed onsite.

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

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

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy given the nature and terms of the use, with associated mitigation measures for potential issues.

**(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 subject site is not located on the coastal foreshore nor is affected by coastal hazards. The proposed development is not considered to be inconsistent with this Plan.

**Tweed Coast Estuaries Management Plan 2004**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

**(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 markets on private land are a new commercial operation. Council has approved markets in other locations such as at the Murwillumbah Farmers Market at the Showground, temporary markets within the Salt Central park precinct and the Lantern Markets in Kingscliff. A carboot market was approved in 2012 upon residential land yet to be developed within the Hundred Hills estate.

This proposal is for the use of the TAFE for stall within a set area for a weekly Saturday Farmers Market. The TAFE facility is not in use on this day for normal educational facilities. This cross utilisation of an existing facility would seem appropriate, given the existing infrastructure in place to cater for the anticipated

level of customers visiting the site. The use of existing infrastructure including carparking, internal roads, essential services, waste and amenities would appear to serve the proposed use well and ensure the locality is not adversely impacted in this regard.

The choice of a site or this type of temporary use is critical to ensure all essential services are provided and appropriate. The use of a vacant site for such a temporary nature would not be viable as all these services would be required and would incur a huge cost.

Alternatively the use of an existing site when currently not being operated for the used approved is sustainable and logical use of existing resources for the benefit of all stakeholders.

#### Access, Transport and Traffic

As mentioned within the DCP A2 discussion, the site caters for significant traffic levels associated with the TAFE education facility from Monday to Friday. The upgraded intersection and carparking spaces in excess of 300 in total accommodate this large facility.

The facility basically shuts down on weekend with extremely limited uses being undertaken outside Monday to Friday. This limited use allows the temporary market to operate with access to satisfactory carparking spaces within a site that has safe and adequate access opportunities from Cudgen Road.

Council's Traffic Engineer's comments have previously been provided in this report above. These comments conclude that the site is adequate to cater for the development from a traffic and parking perspective.

#### Amenity

Following an initial assessment by Councils Environmental Health Unit, the proposed hours of operation have been reduced, prohibiting stall holders from setting up prior to 6am to protect adjoining residential properties. Similarly, the use of generators and inclusion of live music has the potential to impact upon adjoining owners. The consent will impose conditions that will allow these aspects of the operation if noise associated with generators and live music does not disturb neighbours.

Live music will not be permitted prior to 9am, unless approved by the General Manager or delegate after commencement if it can be demonstrated that such will not impact the neighbours.

While it is concluded from the SEE and assessment that the development can operate without negative impacts on adjoining residential properties, a condition will be imposed on the consent requiring a noise report to be prepared if the amenity of the adjoining properties is adversely impacted following commencement of the operation.

### Food Stalls

The market will include stalls selling ready to consume food and beverages.

Council's Environmental Health Unit has provided that:

*"Markets on public land are subject to restrictions over the number of vendors selling conventional food and drink. This market on private land is not subject to the Policy restriction. Sale of food is subject to compliance with the Food Act, Food Standards Code and relevant Guidelines (Guidelines for Food Businesses at Temporary Events, Department of Primary Industries June 2016)."*

Any consent granted will be conditioned accordingly.

### Tweed Coast Comprehensive Koala Plan of Management

The sites southern edge is partially within the Cudgen Linkage Precinct. In accordance with Clause 5.1 of this Plan, the development is considered to be minor due to its temporary nature and given it will be conducted within an existing development footprint, that is, the carpark for the TAFE, no further assessment in regards to Koala Management is considered necessary.

### Emergency Evacuation Procedures

The applicants have provided a comprehensive Emergency Management Plan to be incorporated into the Market Management Plan and Bushfire response Plan. This Management Plan and any required amendments will be incorporated into the Section 68 approval prior to commencement.

### Contributions

#### TRCP Plan No 4. Roads

Council's Traffic Engineer has undertaken calculation of the number of stalls and estimated trips relative the number of hours the market will operate. This calculation when compared with the approved use onsite determines that the existing credit for the TAFE exceeds the trips generated by the markets on a Saturday morning. Accordingly, no contributions will be payable for the application for road use.

#### Section 64 Water and Sewer

As per the Statement of Environmental Effects (SEE), liquid wastes for this development would include sewerage, however these would be managed as part of Council's existing sewer network via the use of existing public amenities. Therefore, no modifications to Council's public water and sewer infrastructure are required in this development and no additional demand generated.

**(c) Suitability of the site for the development**

Surrounding Landuses/Development

The land surrounding the TAFE site features residential and rural uses. A property to the south west does have consent for a roadside stall at 752 Cudgen Creek Road. The potential for commercial conflicts regarding this stall have been discussed elsewhere in this report

The use of the carpark for a temporary market has the potential to impact upon adjoining residents. Noise levels and operational times will be conditioned to ensure no adverse impact upon adjoining owners occurs as a result of this operation. The approval and implementation of the Market Management Plan should provide some comfort to the landowners adjoining that the amenity of the locality will be protected. It is further noted that the condition of consent require a noise report if any issues with adjoining landowners amenity arise following commencement. The restriction of twelve month consent will also provide security for these adjoining landowners in regards to adverse impacts emanating from the market operation.

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

No submissions have been received from any public authorities. The submissions received during the public notification period have been addressed within the DCP A11 Section of this report. It is concluded that the submissions received have been suitably addressed.

**(e) Public interest**

Given the nature of the proposed development, being for the sustainable use of private land for temporary markets on a predetermined schedule, it is considered that the proposal would be unlikely to result in an unacceptable impact on the wider public interest at this location which includes objectives to provide for the recreational needs of the community.

**OPTIONS:**

1. Approve the development application with the recommended conditions of consent; or
2. Refuse the application and provide reasons.

Option 1 is recommended.

**CONCLUSION:**

Having regard to the assessment of the proposed development highlighted throughout this report, it is recommended that consent should be granted for the proposed development given the application relates to an appropriate temporary land use upon the subject site.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Markets v1.1

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

Not Applicable.

**c. Legal:**

The applicant may lodge an appeal in the NSW Land and Environment Court if dissatisfied with Councils determination.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**6 [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:

Council originally 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 has a total area of approximately 58m<sup>2</sup> for use as a homeware shop.

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 heritage 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.

The compliance matter was reported to Council, whereby Council, at its Planning Committee meeting of **7 July 2016** resolved as follows:

***"RESOLVED** 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 the matter was brought back for consideration following the workshop, whereby Council, at its Planning Committee meeting of **4 August 2016** resolved as follows:

***"RESOLVED** that Council defers engaging solicitors pending the outcome of the current litigation involving the site between the landowner and a third party and a report be brought back to a future meeting".*

Council has recently received written correspondence from the adjoining landowner involved with the civil matter currently before the courts (see Confidential Attachment 1). Mediation meetings between the parties were abandoned in mid-December 2016 and a hearing date for the civil matter has been set for May 2017.

Regardless of the current litigation, Council has been requested by the adjoining landowner to enforce the conditions of consent relating to DA15/0532, specifically relating to the rear carpark requirements. As such, the matter is being reported back to Council for consideration.

An additional compliance matter has also been triggered since the Planning Committee meeting of 4 August 2016, in terms of Condition 6A of the same consent. Condition 6A states the following:

6A. *A development application must be submitted to Council for approval on or before 11 September 2016 along with payment of the appropriate fee for signage, the replacement of an awning along the building frontage and the existing doors/gates on the building facade. This application must consider the location of the site within the Murwillumbah Main Street Heritage Conservation Area and provide an assessment of the proposed works against the relevant Clauses in Tweed Local Environmental Plan 2014 and Development Control Plan B22 - Murwillumbah Town Centre.*

Council previously amended the lodgement date applied to this condition in good faith, in an effort to provide the applicant with additional time to prepare the application and address the heritage provisions that are applicable to the subject site. Given that the lodgement date of 11 September 2016 has been surpassed and the applicant has made no effort to contact Council officers with regard to the new application, it is not considered likely that the applicant has any intention on acting upon the provisions of Condition 6A. It should be noted that signage has been erected on the building's façade.

Accordingly, it is recommended that Council engages solicitors to undertake enforcement action to address the outstanding car parking matter and heritage matters relating to signage, awning and doors/gates.

**RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Council engages solicitors to undertake enforcement action to address the car park layout and construction, as well as enforcement action in relation to outstanding heritage matters at Lot 2 Section 10 DP 2087 No. 9 Commercial Road, Murwillumbah.**

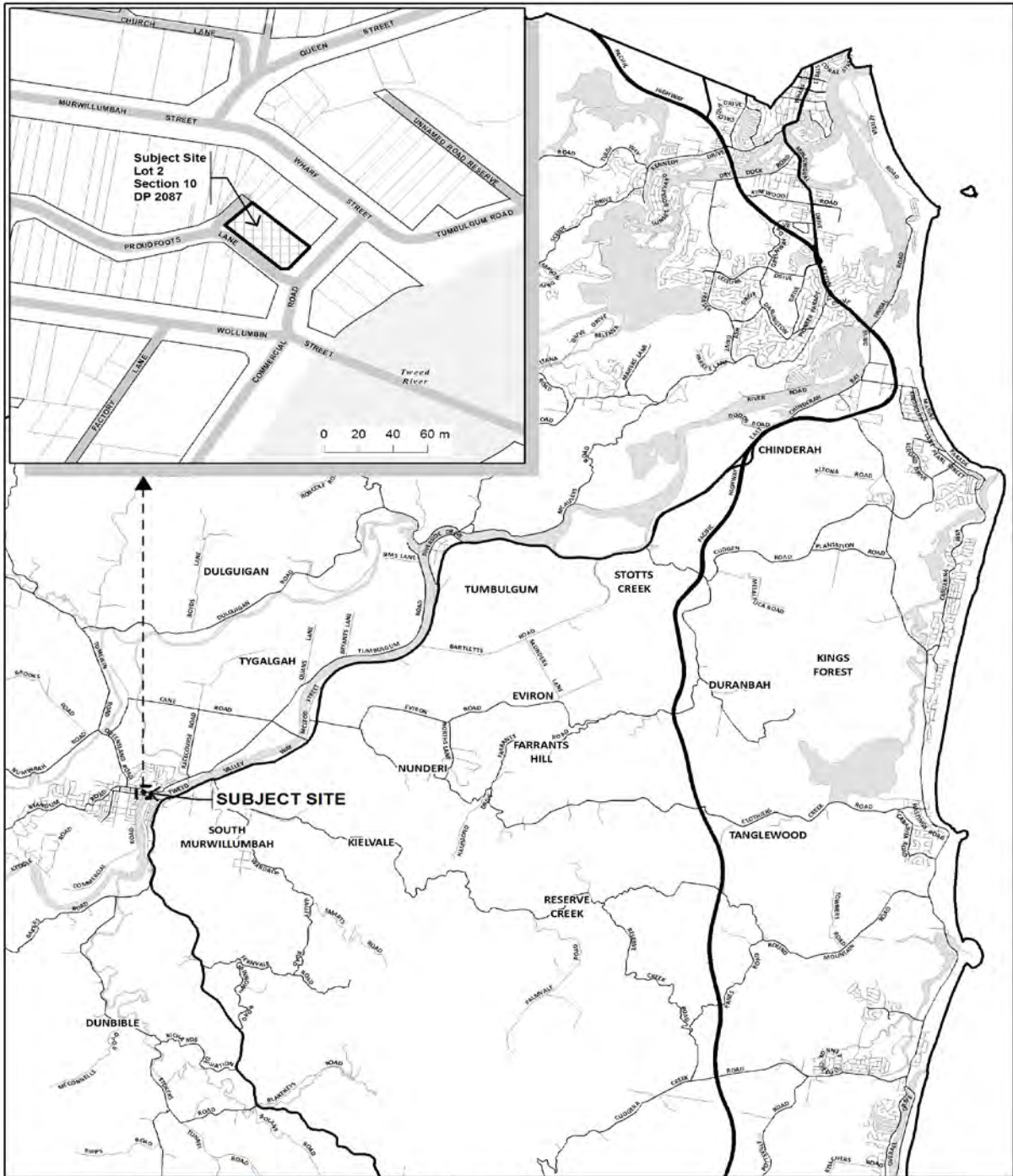
**REPORT:**

**The site:**

The subject site is located on the corner of Commercial Road and Proudfoots Lane, Murwillumbah. The total area of the site is 1138m<sup>2</sup>. 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 has a total area of approximately 58m<sup>2</sup> for use as a homeware shop.

**SITE DIAGRAM:**



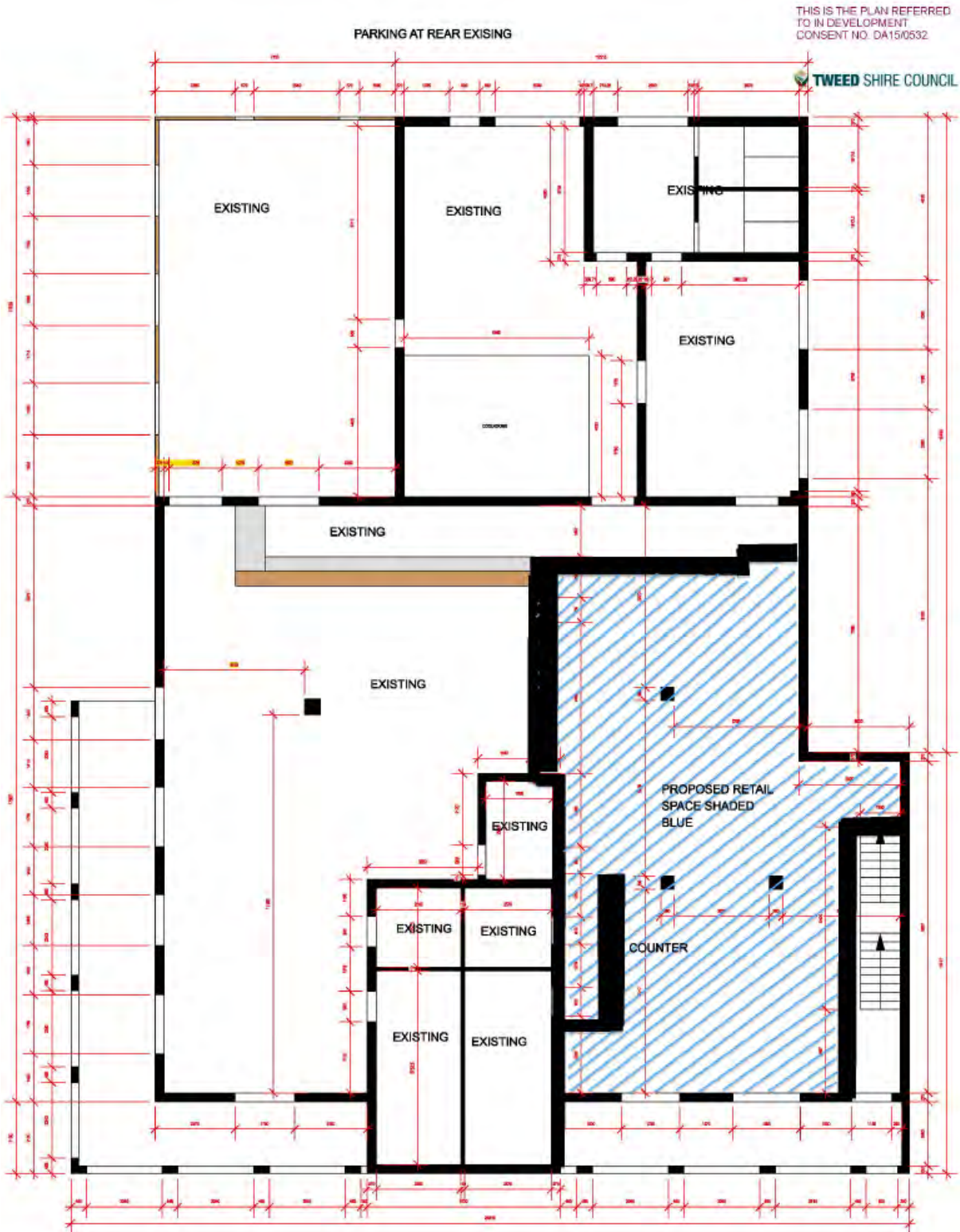
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 100 MET SCALE  
 COPY ONLY - NOT CERTIFIED  
 Map Projection: Universal Transverse Mercator  
 Geoid: Geoid of Australia 1984  
 GDA  
 Civil and Cultural Centre  
 3 Tumbulgum Road  
 Murwillumbah NSW 2484  
**TWEED**  
 IGO Box 816  
 Murwillumbah NSW 2484  
 T: (07) 4670 2400 | 1 300 362 972  
 F: (07) 4670 2424  
 W: www.tweed.nsw.gov.au  
 E: info@tweed.nsw.gov.au

**Locality Plan**  
 Lot 2 Section 10 DP 2087  
 No. 9 Commercial Road,  
 Murwillumbah

Council File | DA15/0532.01  
 Revised | 19/04/2016  
 Cadastre: 19 April, 2016  
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 Boundaries shown should be considered approximate only.

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 Filepath: Z:\GIS\_Data\GIS7\reports\locality\maps\locality\_plan\_100\_2.dwg  
 Author: jll@tweed.nsw.gov.au  
 Date Printed: 11 April 2016

APPROVED PLAN:



1 EXISTING GROUND FLOOR PLAN  
Scale: 1:100

ISSUED FOR APPROVAL

	Project Name	Project Number	Issue Number	Scale
				A-100

**BACKGROUND:**

**Condition 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 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 seven 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 seven spaces. 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 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 car park 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 was not supported.

Conditions 6 – Separate Development Application

By way of background the existing awning was removed and rendering of the building commenced in early March 2014. Photos of pre and post works are shown below in Figures 4 and 5.



**Figure 4: Google Maps Street View – January 2010**



**Figure 5: Google Maps Street View – July 2016**

During the assessment of the original application, it became apparent that the determination of the proposed development would be delayed by the additional information required by Council in terms of a number of issues (i.e. awning, signage and security doors/gates).

Council required a detailed assessment of these matters, particularly in relation to how they addressed the Murwillumbah Main Street Heritage Conservation Area provisions. In the knowledge that the applicant's had indicated their intention to open the shop to the public as soon as possible (i.e. the premises was already occupied), Council officers acted on the advice of the applicant's to proceed with the determination of the shop use and require the other outstanding heritage matters to be addressed by way of a separate application.

The applicant's request for a further six months' time to enable them to lodge a separate development application was supported. The original application was approved on 11 September 2015, with Condition 6 requiring the submission of a separate development application for the doors, signage and awning by 11 March 2016.

As such, Condition 6 was applied as follows:

6. *Within 6 months of the date of this consent, the applicant must submit a development application to Council for approval and pay the appropriate fee for signage, the replacement of an awning along the building frontage and the existing metal gates on the building facade. This application must consider the location of the site within the Murwillumbah Main Street Heritage Conservation Area and provide an assessment of the proposed works against the relevant Clauses in Tweed Local Environmental Plan 2014 and Development Control Plan B22 - Murwillumbah Town Centre.*

As noted above, an application to amend development consent DA15/0532 was lodged in March 2016. The applicant's submission for the S96 application noted the following:

*"Consent condition 6 in regards to the security doors referred to as metal gates, these security doors were discussed with council in February 2014.*

*The council agreed the security doors were exempt development and were fitted late February 2014 therefor should be removed as a condition on the DA Consent DA15/0532*

*The matter of signage and awning will be addressed with a separate DA. We request the timing of this to be deferred for a further six months”.*

An assessment of the Exempt and Complying Codes SEPP was undertaken, noting the following provisions of the Codes SEPP (emphasis added):

*An external alteration to, or the repair or replacement of, an existing shop front or awning, or the construction of a new awning, on a building that is used for any purpose other than for the purpose of a dwelling house is development specified for this code **if it is not carried out in a heritage conservation area or a draft heritage conservation area.***

The draft LEP 2012 incorporated heritage conservation area provisions, including the Murwillumbah Main Street Conservation Area. The draft LEP 2012 was exhibited from 14 November 2012 to 18 January 2013. As such, Council’s S96 assessment concluded that the applicant would have been unable to utilise the exempt provisions of the Codes SEPP in February 2014. Therefore, the fitting of the security doors on the external façade of the existing building requires development consent and the provisions of Condition 6 remained applicable.

It was considered reasonable to extend the timeframe for the lodgement of the separate development application to 11 September 2016, with the following amendment to Condition 6 being adopted (changes shown in bold):

- 6A. **A development application must be submitted to Council for approval on or before 11 September 2016 along with payment of the appropriate fee for signage, the replacement of an awning along the building frontage and the existing **doors** / gates on the building facade. This application must consider the location of the site within the Murwillumbah Main Street Heritage Conservation Area and provide an assessment of the proposed works against the relevant Clauses in Tweed Local Environmental Plan 2014 and Development Control Plan B22 - Murwillumbah Town Centre.**

As noted previously, this extended timeframe has now surpassed with no application lodged with Council. Despite being fully aware of the heritage provisions applicable to the subject site and the need for development consent, unlawful signage has been erected on the front façade of the building, as shown in Figure 6 below.



**Figure 6: Unlawful Signage – January 2017**

**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 and heritage matters relating to signage, awning and doors/gates.

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 provisions or the lodgement of a separate development application, as required by DA15/0532. Council officers have made numerous attempts in the past 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:**

*(Confidential)* Attachment 1. Confidential Attachment Correspondence from adjoining landowner (ECM 4381100)

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7 [PR-PC] Section 94 Contributions - Tweed Heads Bowls Club

SUBMITTED BY: Development Assessment and Compliance

Validms

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## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

### SUMMARY OF REPORT:

As part of the ongoing program to resolve unpaid developer contributions required as conditions for development consents the search has included a development consent issued for additions to the Tweed Heads Bowls Club in 2002 (DA02/1282). The works were carried out in 2002. The missed payment was inadvertent and there is no suggestion there was any attempt by the Club to avoid payment. The Club are willing to pay the original amount.

The Section 94 (S94) contribution is for the Tweed Road Contribution Plan (TRCP) and was for the amount of \$22,504.23. The condition of consent required the payment to be made prior to issue of the occupation certificate. An occupation certificate was not applied for and therefore one was never issued. Consequently the contribution was not paid. The contribution was required by the consent to be paid prior to issue of the occupation certificate. It is the applicant's responsibility to apply for an occupation certificate following the applicant's request for a final inspection. The reason there is no occupation certificate is because an application for one was not submitted. This is the reason why the contribution was not paid. It is the applicant's responsibility to comply with the development consent and conditions.

What is not so clear is why the contribution payment was triggered at the occupation certificate stage and not the construction certificate stage. It is likely it was to assist the Club with the timing of the payment.

Discussions have been held with Club Officials and Council staff and the Club's submission is provided at Attachment 1. The condition requiring payment is required to be complied with. An occupation certificate is also still required and the Club has secured an interim occupation certificate and will seek a final occupation certificate upon resolution of the S94 contribution.

Contributions are fixed for twelve months from the date of the development consent and thereafter in accordance with the rates applicable in the current version of the Plan current at the time of payment. In this regard the rates are adjusted annually (indexation) in accordance with the Australian Bureau of Statistics' Implicit Price Deflator for Non-Residential Construction (IPD). The other event that has affected the TRCP during this

period was the recalibration of costings in 2007 for works within the Plan that resulted in an increase in the dollar value trip rate. The three options in the recommendation reflect the contribution amount at the time of consent (Option A), the base amount with just IPD indexation added (Option B) and the base amount plus IPD indexation plus the 2007 recalibration (Option C).

**RECOMMENDATION:**

1. **That Council selects one of the following options for payment of the outstanding Section 94 contribution for DA02/1282:**

**Option A - \$22,504.23 or,**

**Option B - \$34,551.81 or,**

**Option C - \$98,353.00**

2. **That the General Manager advises the Tweed Heads Bowls Club in writing of the amount owing as resolved in 1 above and that payment is to be made to Council within thirty days of notification or prior to issue of a final occupation certificate whichever occurs first.**
3. **The General Manager negotiates a payment plan such as periodic instalments if requested by the Tweed Heads Bowls Club.**

**REPORT:**

As part of the ongoing program to resolve unpaid developer contributions required as conditions for development consents the search has included a development consent issued for additions to the Tweed Heads Bowls Club in 2002 (DA02/1282). The works were carried out in 2002. The missed payment was inadvertent and there is no suggestion there was any attempt by the Club to avoid payment. The Club are willing to pay the original amount.

The Section 94 (S94) contribution is for the Tweed Road Contribution Plan (TRCP) and was for the amount of \$22,504.23. The condition of consent required the payment to be made prior to issue of the occupation certificate. An occupation certificate was not applied for and therefore one was never issued. Consequently the contribution was not paid. The contribution was required by the consent to be paid prior to issue of the occupation certificate. It is the applicant's responsibility to apply for an occupation certificate following the applicant's request for a final inspection. The reason there is no occupation certificate is because an application for one was not submitted. This is the reason why the contribution was not paid. It is the applicant's responsibility to comply with the development consent and conditions.

The three options in the recommendation reflect the contribution amount at the time of consent (Option A), the base amount with just IPD indexation added (Option B) and the base amount plus IPD indexation plus the 2007 recalibration (Option C).

**Option A - \$22,504.23 or,  
Option B - \$34,551.81 or,  
Option C - \$98,353.00**

It is also considered reasonable in the circumstances that if the Club wishes a payment plan such as periodic instalments be negotiated.

**OPTIONS:**

As per the recommendation.

**CONCLUSION:**

The outstanding S94 contribution is required to be paid and the Club is willing to pay the original base amount. Council is required to determine the appropriate amount payable.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

The TRCP S94 fund will be impacted by the decision.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

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**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Submission from Tweed Heads Bowls Club - 15 December  
2016 (ECM 4374164)

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

**SUBMITTED BY: Development Assessment and Compliance**

Validms



## **Caring for the Environment**

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

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

### **SUMMARY OF REPORT:**

At its meeting of 6 October 2016, Council resolved the following in respect of this matter:

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

Legal advice has since been obtained, which can be summarised as follows:

- a. In respect of the unauthorised vegetation removal, given the current, ongoing enforcement action being taken by the NSW Department of Planning and Environment (DPE), Council should consult with the Department on how best Council can support their current action; and
- b. In respect of the unauthorised container/sign, Council’s solicitors will write to the proponent seeking removal of the structure within 14 days, or otherwise Council will commence Class 4 civil proceedings in the NSW Land and Environment Court.

Since receiving the legal advice, Council has been informed by the DPE that it has issued a \$15,000 fine for works prior to issue of a Construction Certificate which included the removal of vegetation. Accordingly, further action by Council is not required.

It is recommended that Council endorse point b. of the above actions.

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

**RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-  
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Council, in respect of the unauthorised erection of a container/sign at Lot 12 DP 1163855, Fraser Drive Tweed Heads South, endorse that, Council's solicitors' writes to the proponent seeking removal of the structure within 14 days, or otherwise Council will commence Class 4 civil proceedings in the NSW Land and Environment Court.**

## REPORT:

### Background:

A report was submitted to the 6 October 2016 Planning Committee Meeting that identified the following compliance concerns for this site:

#### Major Projects Approval

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

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

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

#### Subdivision Construction Compliance Issues

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

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

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

#### Unauthorised Container Compliance Issues

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



### Alleged Unauthorised Removal of Vegetation

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



### Other Council Compliance Issues

#### Overgrown Block Issues

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

#### Summary of Current Outstanding Breaches:

- In terms of Overgrown Block Notices, Council still receives complaints about long grass adjacent the rear boundaries of the adjoining residential properties. A Notice has been sent recently.

- The Aboriginal Midden has now been fenced. The DP&E is not taking further action apart from seeking payment of a \$15,000 PIN.
- No further trees were cleared after the Stop Work directive was issued. That matter is now resolved apart from DP&E seeking payment of a second \$15,000 PIN.
- The unauthorised container which supports the two signboards is still on the site.
- The two PINs totalling \$21,000 still have not been paid.

On the basis of this report, Council resolved the following:

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

### **Legal Advice:**

In accordance with Council’s resolution, legal advice has been obtained from Council’s solicitors. (Please refer to Confidential Attachment 1).

The advice can be best summarised as follows:

- a. In respect of the unauthorised vegetation removal, given the current, ongoing enforcement action being taken by the NSW Department of Planning and Environment and Planning (DPE), Council should consult with the Department on how best Council can support their current action; and
- b. In respect of the unauthorised container/sign, Council’s solicitors will write to the proponent seeking removal of the structure within 14 days, or otherwise Council will commence Class 4 civil proceedings in the NSW Land and Environment Court.

Since receiving the legal advice, Council has been informed by the DPE that it has issued a \$15,000 fine for works prior to issue of a Construction Certificate which included the removal of vegetation. Accordingly, further action by Council is not required.

It is recommended that Council endorse point (b) of the above actions.

### **OPTIONS:**

That Council:

1. Takes no further compliance action; or
2. Endorses the recommended advice of its solicitors.

Option 2 is recommended.

**CONCLUSION:**

The purpose of this report is to convey back to Council the legal advice sought on this matter, and to seek Council's endorsement to commence legal action should the developer not remove the sign and container, or lodge a Development Application within 14 days of receiving notice.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

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

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

Financial resources will be required to take legal action.

**c. Legal:**

Yes, legal advice has been attached.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Confidential Attachment Legal advice dated 21 November 2016 (ECM 4385819)

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

SUBMITTED BY: Development Assessment and Compliance

Validms



## Caring for the Environment

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

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### SUMMARY OF REPORT:

At its meeting of 6 October 2016, Council resolved the following in respect of this matter:

*“That Council:*

- a. *Receive and note this report; and*
- b. *Engage solicitors to seek advice on options for action in respect of alleged unauthorised earthworks and stockpiles (causing damage to marine vegetation) at Lot 469 DP 1144944, off Henry Lawson Drive Terranora.”*

In accordance with this resolution, legal advice has now been sought from Council’s solicitors, which can be best be summarised as follows:

- a. In respect to the **acid sulfate soil** exposed through drainage works, given that there are limitations in available evidence, particularly in relation to establishing environmental damage, it is not recommended that Council pursue further action; and
- b. In regard to **unauthorised earthworks and stockpiling** however, the proponent should be required to undertake remedial works to restore the area that has been unlawfully excavated and stockpiled; and to make good the damage to Council’s access path and undertake some form of remediation in respect to the marine vegetation that has been damaged. This can be achieved through the commencement of civil enforcement proceedings under s.123 of the Environmental Planning and Assessment Act.

It is recommended that Council endorse the recommended actions of Council’s solicitors.

It should also be noted that it has recently come to Council’s attention that additional stockpiling has occurred on low lying, flood liable land within the subject site. This is a separate area of stockpiling to the area currently under investigation. There is evidence that this may have caused environmental damage to marine vegetation/grasses and would



clearly not be exempt from requiring approval. No approval has been granted. It is also recommended that Council seek further advice from its solicitors in terms of enforcement actions relating to these more recent works and take appropriate action based on this advice.

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

**RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Council, in respect of alleged unauthorised earthworks and stockpiles on Lot 469 DP 1144944 off Henry Lawson Drive, Terranora, endorse the following actions:**
  - a. In respect to the acid sulfate soil exposed through drainage works, no further action be pursued;**
  - b. In regard to the originally reported unauthorised earthworks and stockpiling, instruct Council's solicitors to commence civil enforcement proceedings under s.123 of the Environmental Planning and Assessment Act; and**

**In regard to the more recent additional stockpiling that has occurred on low lying, flood liable land within the subject site, seek further advice from Council's solicitors in terms of enforcement options and commence enforcement proceedings based on the advice.**

## REPORT:

### Background:

A report was submitted to the 6 October 2016 Planning Committee Meeting that identified the following compliance concerns for this site:

#### Council Development Approval

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

#### Subdivision Construction Compliance Issues

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



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

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

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

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

## Waterway Compliance Issues

In 2015 the NSW Department of Primary Industry – Fisheries (DPI-F) alerted Council that the landowner had exposed acid sulfate soils and damaged mangroves whilst undertaking drainage works. Council officers inspected the site on 8 September 2015 and directed that an Environmental Consultant be engaged immediately to oversee urgent remediation works through the spreading of lime to neutralise the exposed acid.



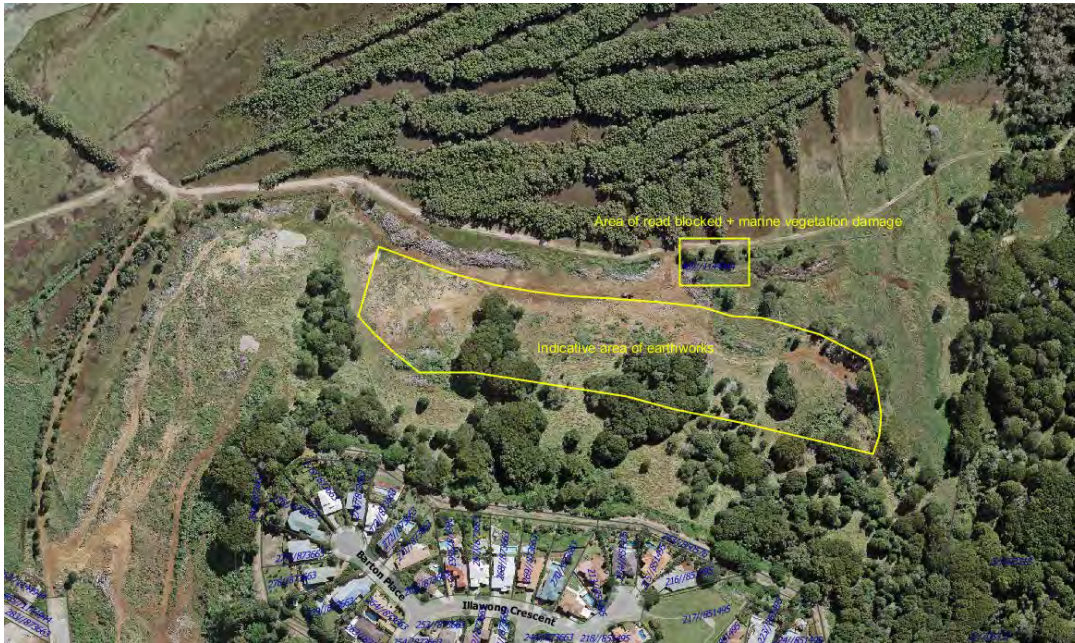
A suitable consultant was engaged and after initial advice and liming of the area, the preliminary laboratory results showed certain success in neutralising the acid sulfate soil. Those results however, also showed that certain 'hot spots' remained and needed further remediation. Officers wrote to the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

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

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

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

On 11 August 2016, the access road (secured by a registered easement in favour of Council) used by Council’s sewer maintenance engineers and pest management team through the site had been blocked with rocks and the track heavily rutted due to frequent movement by heavy earthmoving equipment. This access road had only recently been upgraded by Council to ensure all weather access to the rising main.



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

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

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



## Other Compliance Issues

### Impounding of Cattle

In 2014, Council received 15 complaints regarding cattle wandering on public road, in private properties, as well as public places within the Terranora township. This problem lasted for a period of 5 months and only stopped when the landowner's cattle were impounded. They were finally removed by their previous owners from Lismore who had never been paid for the cattle in the first instance.

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

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

### **Summary of Outstanding Issues:**

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

On the basis of this report, resolved the following:

*"That Council:*

- a. Receive and note this report; and*
- b. Engage solicitors to seek advice on options for action in respect of alleged unauthorised earthworks and stockpiles (causing damage to marine vegetation) at Lot 469 DP 1144944, off Henry Lawson Drive Terranora."*

### **Legal Advice:**

In accordance with Council's resolution, legal advice has been obtained from Council's solicitors. (Please refer to Confidential Attachment 1). This advice can be best be summarised as follows:

- a. In respect to the **acid sulfate soil** exposed through drainage works, given that there are limitations in available evidence, particularly in relation to establishing environmental damage, it is not recommended that Council pursue further action; and
- b. In regard to **unauthorised earthworks and stockpiling** however, the proponent should be required to undertake remedial works to restore the area that has been unlawfully excavated and stockpiled; and to make good the damage to Council's access path and undertake some form of remediation in respect to the marine vegetation that has been damaged. This can be achieved through the commencement

of civil enforcement proceedings under s.123 of the Environmental Planning and Assessment Act.

It is recommended that Council endorse the recommended actions of Council's solicitors.

**Further recent stockpiling:**

It has just come to the attention of Council on 16 January 2017 that additional stockpiling has occurred on low lying, flood liable land indicated below.



This is a separate area of stockpiling to the area currently under investigation. There is evidence that this may have caused environmental damage to marine vegetation/grasses and would clearly not be exempt from requiring approval. No approval has been granted.

It is also recommended that Council seek further advice from its solicitors in terms of enforcement actions relating to these more recent works and take appropriate action in accordance with the advice.

**Conclusion**

In view of the legal advice, and the fact that further detrimental and unauthorised works have occurred, it is concluded that Council's solicitors be directed to commence legal proceedings against the proponent.

**OPTIONS:**

That Council:

1. Takes no further compliance action; or
2. Acts on the advice provided by Council's solicitors, as recommended, and detailed in this report.

Option 2 is recommended.

**CONCLUSION:**

The purpose of this report is to convey back to Council the legal advice sought on this matter, and to seek Council's endorsement to commence legal action in respect to past and ongoing unauthorised works.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

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

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

Financial resources will be required to undertake this legal challenge.

**c. Legal:**

Yes, legal advice has been attached.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Confidential Attachment Legal Advice dated 21 November 2016 (ECM 4385776)

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**10 [PR-PC] Draft Preliminary Gold Coast Airport 2017 Master Plan**

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

Validms



## **Civic Leadership**

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

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

### **SUMMARY OF REPORT:**

Advice has been received from the Gold Coast Airport Pty Ltd, following the request by council, that they will accept a submission on the Preliminary Draft Gold Coast Airport 2017 Master Plan on Friday 3 February 2017.

Time constraints have limited the ability of staff to finalise the Submission in time for this Agenda and it is proposed that a Supplementary Report will be provided to Councillors prior to consideration at the Planning Committee Meeting to be held on 2 February 2017.

### **RECOMMENDATION:**

**That Council notes that a Supplementary Report on the submission to the Preliminary Draft Gold Coast Airport 2017 Master Plan will be provided prior to the Planning Committee Meeting of 2 February 2017.**



**REPORT:**

Advice has been received from the Gold Coast Airport Pty Ltd, following the request by council, that they will accept a submission on the Preliminary Draft Gold Coast Airport 2017 Master Plan on Friday 3 February 2017.

Time constraints have limited the ability of staff to finalise the Submission in time for this Agenda and it is proposed that a Supplementary Report will be provided to Councillors prior to consideration at the Planning Committee Meeting to be held on 2 February 2017.

**OPTIONS:**

Not applicable.

**CONCLUSION:**

Supplementary Report to be provided prior to the Planning Committee Meeting.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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

**SUBMITTED BY: Director**



**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 December 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 Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

<b>DA No.</b>	DA15/0042
<b>Description of Development:</b>	20 lot subdivision including demolition of existing structures and construction of a public road
<b>Property Address:</b>	Lot 2 DP 1098348; Lot 1 DP 1098348; Lot 2 DP 961928; Lot 1 DP 134787; Lot 1 DP 167380 No. 55-57 Walmsleys Road, Bilambil Heights
<b>Date Granted:</b>	6/12/2016
<b>Development Standard to be Varied:</b>	Clause 20(2)(a) - Minimum lot size 40ha
<b>Zoning:</b>	7(d) Environmental Protection (Scenic/Escarpment)
<b>Justification:</b>	Approx. 3ha residue lot created from Lot 2 DP 961928 following dedication of part of the lot as a road to service the proposed subdivision
<b>Extent:</b>	Residue lot of approx. 3 ha is 7.5% of 40 ha which is a 92.5% variation to the development standard.
<b>Authority:</b>	Director-General of the Department of Planning and Infrastructure

<b>DA No.</b>	DA16/0224
<b>Description of Development:</b>	Mixed use development including restaurant or café and residential and tourist and visitor accommodation
<b>Property Address:</b>	Lots 17 & 18 DP 1145386 Nos. 65-67 Cylinders Drive, Kingscliff
<b>Date Granted:</b>	2/12/2016
<b>Development Standard to be Varied:</b>	Clause 16 - Heights of Buildings
<b>Zoning:</b>	B4 Mixed Use, R3 Medium Density Residential
<b>Justification:</b>	<p>The proposed development has a maximum stated height of 10.991m which exceeds the 10m building height limit in Clause 4.3 of TLEP 2014. An application to vary the development standard has been submitted by the applicant in accordance with Clause 4.6 of TLEP 2014.</p> <p>The development standard to be varied may be assessed under delegated authority if the degree of variation does not exceed 10%.</p> <p>The application as submitted had a maximum stated height of 11.031m, which fell outside this 10% threshold and would have triggered a report to the Planning Committee meeting for determination. On advice from the assessing officer, the application was amended via a reduction in building height by 40mm, achieved through adjustment of Level 1 and Level 2 floor to floor heights by 20mm each.</p> <p>The amended maximum height of the proposed building is 10.991m in the south eastern corner, which at 9.9% degree of variation is not required to be reported to Council and may be determined under delegated authority.</p>

<b>Extent:</b>	Greater than 10%
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**CONFIDENTIAL ITEMS FOR CONSIDERATION**

**REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE**

**REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE**

- C1 [PR-PC] Class 1 Appeal Development Application DA16/0527 for the Demolition of Existing Structures and Erection of a Residential Flat Building (Seven Units) and Swimming Pool at Lot 14 Section 5 DP 758571 No. 204 Marine Parade, Kingscliff**

**REASON FOR CONFIDENTIALITY:**

This report concerns legal matters that could influence the appeal process.

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Validms

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**Civic Leadership**

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

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
- 
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**C2 [PR-PC] Class 1 Appeal Development Application DA15/0641 for a Two Lot Subdivision at Lot 7 DP 1077697 No. 768-770 Casuarina Way, Casuarina**

**REASON FOR CONFIDENTIALITY:**

This report concerns legal matters that could influence the appeal process.

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Validms

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**Civic Leadership**

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

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