



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

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

Agenda

Planning Committee Meeting Thursday 5 October 2017

held at
Council Chambers, Murwillumbah Civic & Cultural Centre, Tumbulgum Road, Murwillumbah
commencing at 5.30pm

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C

79C Evaluation

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

Note: See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

(2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
 - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
 - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note: The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
 - (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
 - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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Items for Consideration of Council:

ITEM	PRECIS	PAGE
	REPORTS THROUGH THE GENERAL MANAGER	6
	REPORTS FROM THE DIRECTOR PLANNING AND REGULATION	6
1	[PR-PC] Development Application DA16/0795 for a Two Lot Subdivision and Dwelling at Lot 7 DP 1178620 No. 2041 Kyogle Road, Terragon	6
2	[PR-PC] Development Application DA17/0497 for an Extended Use of a Temporary Structure for a Film Production at Lot 7007 DP 1056645 and Lot 7335 DP 1154509 Tweed Coast Road, Hastings Point	56
3	[PR-PC] Fingal Head Building Height Review - Outcomes and Recommendations	77
4	[PR-PC] Draft Aboriginal Cultural Heritage Management Plan 2017	89
5	[PR-PC] Short-term Holiday Letting - Tweed Council's Submission Reply to the NSW Department of Planning and Environment's Option Paper	101
6	[PR-PC] Unlawful Development and Land Use - Lot 5 DP 631620 No. 656 Upper Crystal Creek Road Upper Crystal Creek	109
7	[PR-PC] Unauthorised Land Use and Development at Lot 5 DP 871177 No. 102 Crooks Valley Road, Crystal Creek	113
8	[PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	118

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1 [PR-PC] Development Application DA16/0795 for a Two Lot Subdivision and Dwelling at Lot 7 DP 1178620 No. 2041 Kyogle Road, Terragon

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: **Provider**

SUMMARY OF REPORT:

Addendum Summary

At the Planning Committee meeting of 7 September 2017 a decision for the subject application was deferred for a site inspection and consideration of further information supplied by the applicant prior to the meeting. This amended report addresses the additional information supplied by the applicant and matters raised at the site inspection.

The development application was recommended for refusal and immediately prior to the meeting, the applicant submitted a response to some matters detailed within the Council report and provided some further information, primarily with regard to Asset Protection Zones and ecological considerations.

A site visit was conducted on 15 September 2017 with the applicant, Council staff, and Councillors Katie Milne, Chris Cherry and Ron Cooper, which focused on the unauthorised dwelling and the immediate surrounds which would be impacted by the recommend Asset Protection Zones (APZ). The matters addressed during the site inspection related primarily to vegetation located to the east of the proposed dwelling and the impact of establishing APZs as recommend by the Rural Fire Service. The extent of the proposed APZs as detailed in the Council Report was noted as well as the existing condition of the vegetation and the stepping of the landform beneath the vegetation.

The original Council Report considered at the Planning Committee meeting held on 7 September 2017 is included at the end of this addendum. The application has been recommended for refusal for the reasons contained within the original report.

Addendum Report

Development Application DA16/0795 for a two Lot Subdivision and Dwelling at Lot 7 DP 1178620 No. 2041 Kyogle Road, Terragon was recommended for refusal at the Planning Committee Meeting of 7 September 2017. Immediately prior to the meeting the applicant submitted a response to the Council Report contesting some matters addressed in the report, specifically with respect to the establishment of APZ and ecological assessments.

At the meeting it was recommended that:

"Development Application DA16/0795 for a two lot subdivision at Lot 7 DP 1178620; No. 2041 Kyogle Road, Terragon be deferred for a site inspection and that a report be brought back after the site inspection considering the additional information has been provided."

The additional information supplied by the applicant argues that the recommendation for refusal is based on inaccurate information and the incorrect classification of the subject site a Core Koala Habitat. Further information is provided in the applicants report regarding the area of vegetation to be impacted by the recommended APZ, alternative sites and onsite sewerage management. A detailed response to matters addressed in the applicants report is provided below.

A site visit was conducted on 15 September 2017 which focused on the unauthorised dwelling and the immediate surrounds which would be impacted by the recommend Asset Protection Zones (APZ). The matters addressed during the site inspection related primarily to vegetation located to the east of the proposed dwelling and the impact of establishing APZ as recommend by the Rural Fire Service. The extent of the proposed APZ as detailed in the Council Report was noted as well as the existing condition of the vegetation and the stepping of the landform beneath the vegetation. Councillors also had the opportunity to view the extent of the unauthorised earthworks.

A detailed response to matters addressed in the applicants report and during the site visit is provided below.

Asset protection zones

Applicant's statement from report:

The quoting of 4500sqm of disturbed area in the planning report is inaccurate, grossly overstating the impact of the proposed DA.

The area of vegetation to be directly impacted by the establishment of APZs is shown in the image below (Figure 1). The area highlighted plus a 3-5m curtilage around the APZ equates to an *approximate area* of 4,500m² of vegetation that will be impacted by the APZ. The 3-5m curtilage around the APZ is included as the clearing of canopy trees along that edge will result in direct disturbance to vegetation occurring under that canopy.

The areas without canopy are included as these areas would likely colonise with natives over time in the absence of cattle, and the establishment of the APZ would prevent this recolonization.

The extent of the APZ was further clarified during the site inspection.



Figure 1 Area of vegetation to be impacted by the establishment of APZs

Applicant's statement from report:

Out of the 62m within the APZ to the East, the vast majority (53m) can be retained as modified vegetation....The creation of a managed APZ will allow for the regeneration of this area and the restoration of native vegetation to the understory, significantly improving its biodiversity value.

To achieve establishment of an APZ in accordance with NSW RFS Planning for Bushfire Protection and Standard for Asset Protection Zones:

- No greater than 15% canopy cover is to extend across the APZ
- Crowns are to be separated by 2-5m,
- Flammable species such as those trees with rough/flaky/scaly bark should be removed
- Ground fuels need to be maintained at low levels,
- Removal/thinning of shrubs and trees less than 3m in height, lower limbs of trees are to be removed.

Given the stem density, type of vegetation (sclerophyll with high flammability and rough/flaky/scaly bark) and canopy cover within the APZ it would be expected that significant modification to the vegetation community would be required and that opportunities for allowing for the regeneration of typically sclerophyll species would be limited. It is further noted that the entire APZ is to be managed as an Inner Protection Area

as required by NSW RFS this results in a higher degree of modification as contemplated in the Bushfire Report where an Outer Protection Area (reducing canopy removal) was proposed.

An attachment from a Bushfire Consultant was included with the applicant's report detailing "*Standards for the construction and maintenance for terracing for asset protection zone for DA16/0795*". The existing stepping of the land beneath the area of vegetation to be impacted by the recommended APZ was noted during the site visit. Confirmation by the Bushfire Consultant would be required to determine if the existing terracing of the proposed APZ is sufficient to meet the standards detailed by the Bushfire Consultant or if further earthworks would be required.

It is noted that the Addendum to the Ecological Assessment submitted in May 2017 has provided a tree survey of the number of trees with a Diameter at Breast Height of 150mm or greater within the area affected by the proposed APZ. A total of 87 trees with a DBH over 150mm were recorded. A detailed survey and plan detailing which trees would be removed or retained to comply with APZ requirements has not been provided.

Ecological assessment

Applicant's statement from report:

No threatened or endangered species were identified in the impacted area of the original or amended DA. The specific assessment of the APZ area concluded that "no significant impact" would result in any threatened or endangered species in the creation of the proposed APZ for either the original or amended DA.

...proposal was unlikely to significantly impact on any of the occurring or potentially occurring species or communities listed under the TSC Act 1995. Also assessment under the EPBC Act 1999, found that the proposal was unlikely to significantly impact on any Matters of National Environmental Significance. Finally, under SEPP 44 Koala Habitat Assessment, potential koala habitat is present at the site however core koala habitat does not occur.

BushfireSafe Environmental Services

The above quote is from the Ecological Assessment (EA) dated September 2016 submitted with the original proposal for two proposed dwelling sites adjacent to Kyogle Road. The Applicant makes numerous references to this *property wide survey*. The EA dated September 2016 was not a property wide survey. The boundaries of this survey are stated in the report as being:

The subject site consists of land within the immediate development footprint...This area is bound to the north by Kyogle Road, with proposed dwelling footprints of the two allotments located at this northern boundary. The study area extends approximately 100m to the south east and west of the subject site.

The image below is from the September 2016 report and shows the area for which the report was prepared and the area that was the subject of the ecological assessment. The report does take into consideration *potential indirect or residual impacts* only for areas beyond initial immediate development footprint area adjacent to Kyogle Road.

The EA dated September 2016 did not include an assessment of direct impacts for the development footprint (including APZs) for the current unapproved structure.

A seven part test to determine impacts on occurring or potentially occurring species or communities listed under the *TSC Act 1995* for the development footprint of the current unapproved structure was not provided. Furthermore, the *Addendum to Ecological Assessment* submitted 19 May 2017 stated:

Activities under the proposed development will have direct impact on koala habitat in the locality, via the removal of preferred feed trees and habitat with the required APZ setback distances.

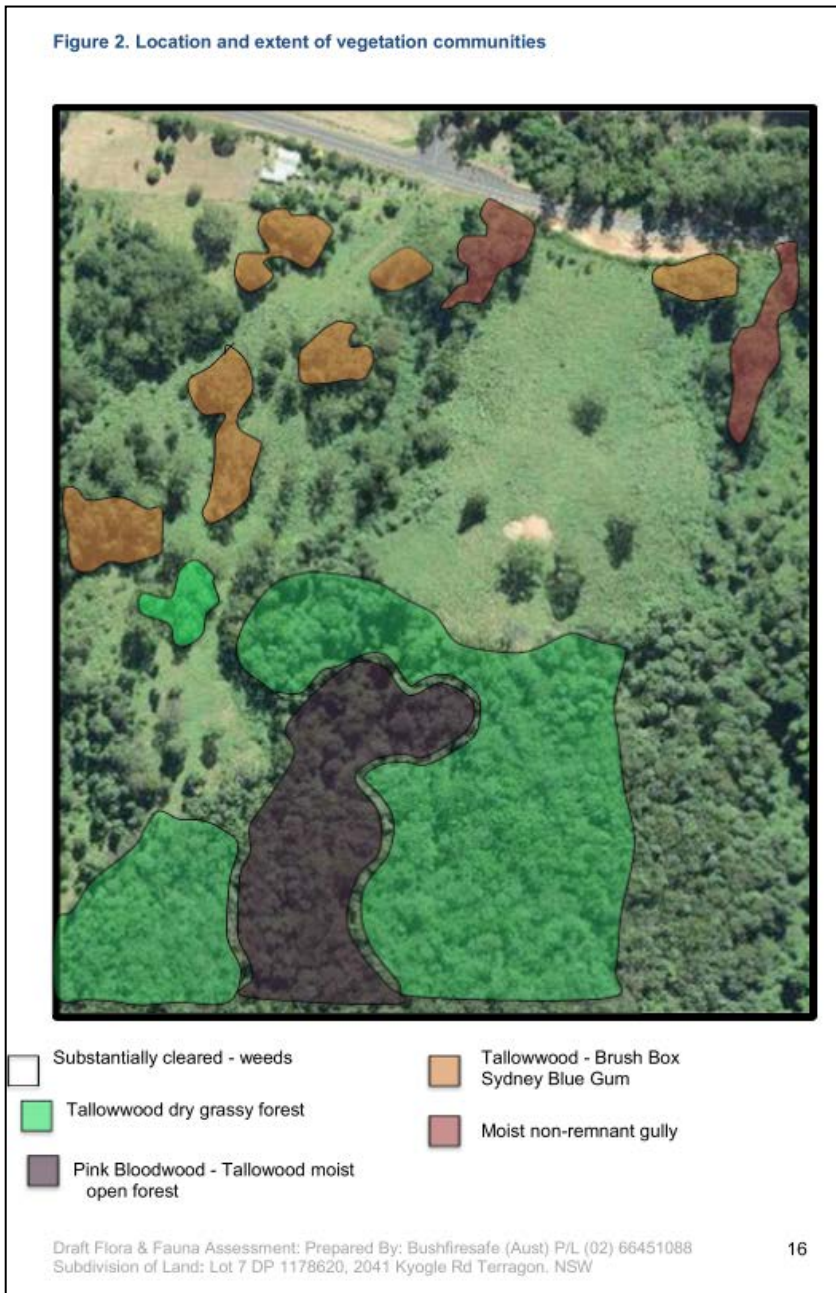


Figure 2 Area of Ecological Assessment Report dated September 2016

Koala Habitat

Applicant's statement from report:

The planning report incorrectly classifies the subject site as Core Koala Habitat

Biolink ecological consultants conducted a koala survey utilizing the Spot Assessment Technique (SAT) and in a report dated 19 May 2017 concluded that no significant koala activity was detected. The report recognises that a Koala population is known to occur in the locality, further noting that *'Koala is likely to occasionally move through forested areas and forage on Eucalyptus microcorys at the study site'*. Notwithstanding these assertions, the report failed to consider previous historical records as part of the SEPP 44 assessment in defining whether core koala habitat occurs onsite and relied on a single survey site only.

It is noted that the definition of 'core koala habitat' for the purposes of the SEPP 44 means *'an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records* of a population'*. Clearly historic records need to be considered as part of determining whether 'core koala habitat' occurs onsite. It is noted that the paper being *'The Spot Assessment Technique: a tool for determining localised levels of habitat use by Koalas Phascolarctos cinereus'* (Stephen Phillips and John Callaghan 2011) similarly states that the technique is suitable for use in conjunction with a range of other sampling techniques including grid based sampling and that a precautionary approach should be applied to activity levels in low use areas.

Furthermore, it is noted that due to difficulties in detecting Koala in low density populations the *Referral Guidelines for the vulnerable koala* (Commonwealth of Australia 2014) provides precautionary advice on the reliance of single surveys to determine presence/absence of Koala. It is suggested that spatial and temporal survey replication using a suite of survey methods is required in order to infer true absence.

Council Officers are of the opinion that regardless of the absence of evidence of Koala returned during the recent **single** SAT survey (Biolink 2017) within the disturbance footprint **only** the site continues to support 'core koala habitat' as defined under SEPP 44 for the following reasons:

Potential Koala Habitat was recognised to occur onsite remaining as a significant habitat node within a Regional Wildlife Corridor.

As indicated in the Ecological Assessment – *'the Tweed Coast Koala Habitat Study shows generational persistence of Koalas around Uki, Kunghur and Byrrill Creek and sightings as recent as 2013 and 2015 are recorded within less than one kilometre of the site. Of the total 74 records within the area, greater than 98% have been recorded since 2000 and 35 records since 2013'*.

Koala pellets were found by Council's Biodiversity Officer within the study area.

Indicative scratch marks were also observed on *Eucalyptus propinqua* trees within Tallowood dry grassy forest vegetation (TVMS 208).

It is noted that the classification of the site as Core Koala Habitat was not discussed at the site visit.

Classification of Remnant Vegetation

Applicant's statement from report:

...the disputed vegetation in the proposed APZ did not exist in 1991

The image provided by the applicant is not an accurate representation of the location of the proposed APZ. The image below is an aerial imagery from Council's mapping data from the year 2000. The image shows the existence of an undisturbed patch of vegetation within the proposed APZ. Figure 4 below provides an estimate of the proposed APZ area on imagery from 1991.



Figure 3 Proposed APZ with imagery from the year 2000.



Figure 4 Proposed APZ on imagery from 1991

Applicant's statement from report:

The location of the existing structure represents the most suitable location of a dwelling when compared to the alternative location on Lot 17 when all issues are taken into consideration.

It is noted that the site of the current unauthorised structure requires a 114m x 43m (8,322m²) APZ due to a combination of vegetation type adjacent to the structure and the steepness of the slopes on which that vegetation is located.

The map submitted with the applicant's Bushfire Report dated April 2017 shows the unauthorised structure is located within an area covered by Forest Vegetation. An area not mapped as containing Forest Vegetation adjacent to Kyogle Road was not considered as an alternative site. There may be other suitable sites however this would require a more detailed assessment of all the constraints of the site which is outside the scope of Assessing Officers.

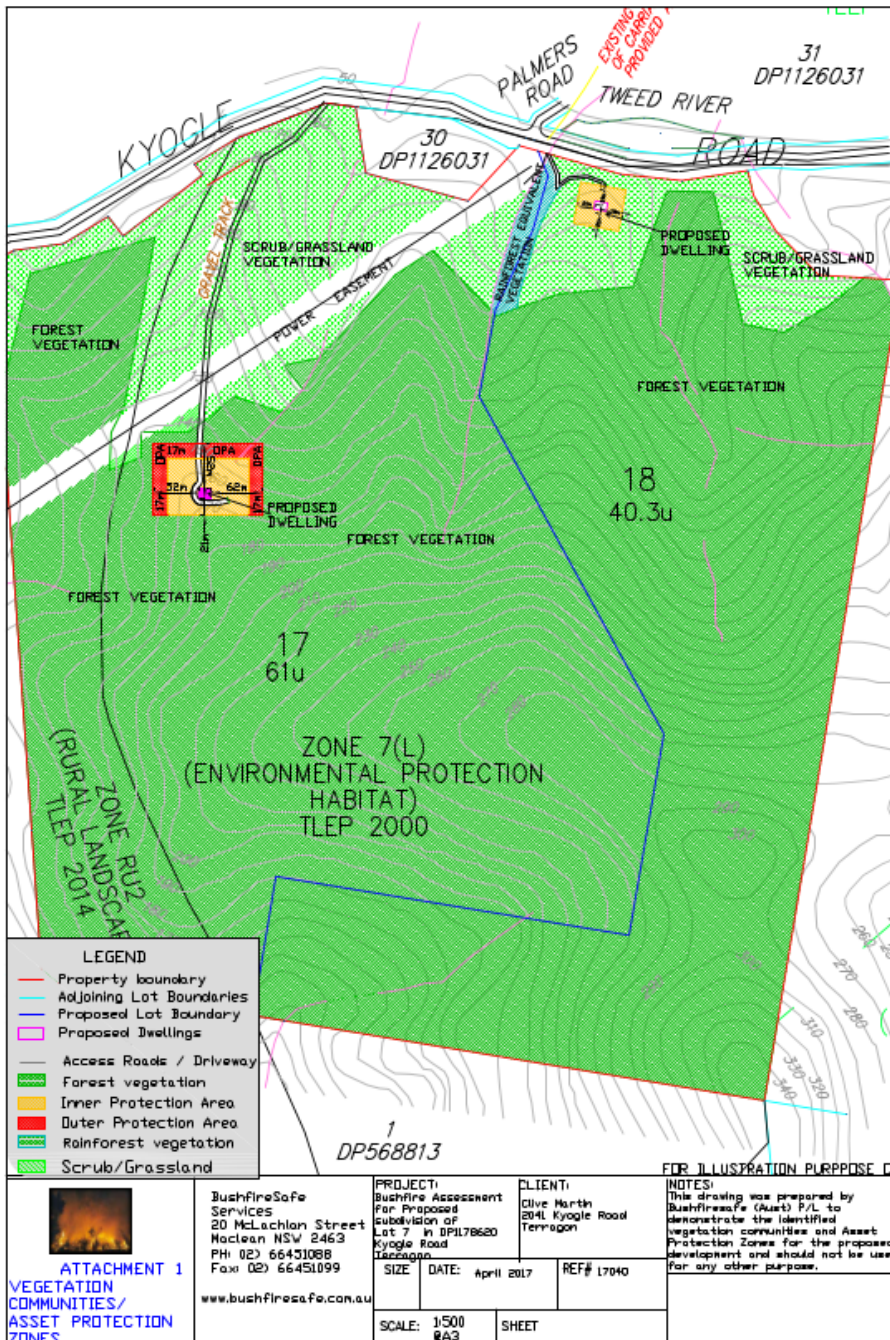


Figure 5 Mapped from Bushfire Risk Report April 2017

It is noted that the proposed dwelling site on Lot 18 is located outside the area mapped as containing Forest Vegetation and requires a smaller APZ of 40m x 40m (1,600m²).

With regard to on-site sewerage management, Council’s Officers reviewed the OSSM Report submitted with the original application and found the recommendations of the report to be acceptable.

Other matters noted from the site visit

Earthworks

The applicant noted that the unauthorised earthworks undertaken to create a level area for the building and parking area have not been the subject of any engineering assessment.

It is noted that the applicant has previously been advised (12 May 2015) that earthworks require development consent within the 7(l) zone in a response to an Expression of Interest for Disposal of Fill.

Works

The applicant was given notice to stop all building and development works immediately in a letter dated 8 March 2017. It appears that some minor additional work has been undertaken since the request to stop work in March.

ORIGINAL REPORT:

Below is the original report and summary that was considered at the Planning Committee meeting held 7 September 2017.

SUMMARY OF ORIGINAL REPORT:

A development application has been received proposing a two lot subdivision and seeking approval for the use of an existing unauthorised structure for the purposes of a dwelling on one of the proposed allotments at Lot 7 DP 1178620; No. 2041 Kyogle Road, Terragon.

The existing subject lot is 101.26 hectares with no dwellings currently approved over the site. The lot is heavily vegetated with some cleared grass areas and is mapped as being bushfire prone and having a high ecological status. The subdivision proposes two new lots with Lot 17 being 61 hectares and Lot 18 being 40.3 hectares. A new proposed dwelling site is nominated for proposed Lot 18 and an unapproved structure is currently located on proposed Lot 17 for which the applicant seeks ongoing approval as a dwelling.

The application was initially lodged seeking consent for a two lot subdivision and minor earthworks at the subject site with a proposed dwelling site nominated for each of the proposed lots. Previous correspondence from the applicant prior to the lodgement of the application indicated that the construction of the unauthorised structure and some earthworks have been completed without development approval. A site visit revealed extensive development works had been previously undertaken without development consent including; earthworks; a habitable structure (the 'unauthorised structure'); three water tanks, on-site sewerage management system; five shipping containers; and a spa.

The applicant was subsequently requested to withdraw the application or alternatively amend the application nominating the existing unauthorised structure as a dwelling. In response to this request the applicant submitted amended plans for a two lot subdivision and nominated the existing unauthorised structure as a dwelling on proposed Lot 17 and a proposed new dwelling site on proposed Lot 18.

The existing unapproved structure is required to comply with Planning for Bushfire Protection 2006, including the establishment of Asset Protection Zones (APZ). Achieving compliant APZs requires a 65m APZ to the east of the existing structure which would necessitate the removal and modification of approximately 4,500m² of additional vegetation to that which has been already undertaken onsite without approval. The vegetation forms part of a Regional Wildlife Corridor and includes area defined as Core Koala Habitat under State Environmental Planning Policy 44 Koala Habitat Protection.

The subject site contains a number of previously cleared areas. The amended application failed to identify alternate dwelling sites on proposed Lot 17 that would result in a more favourable environmental outcome. An application for a two lot subdivision with proposed dwelling sites for each of the proposed lots that do not require extensive vegetation removal would be generally supportable in the absence of the existing unauthorised works.

The removal of vegetation required to achieve compliant APZs for the existing unapproved structure on proposed Lot 17 is considered to have an unacceptable impact on significant habitat and as such the proposal is not supported and this application is recommended for refusal. Should the application be refused it is also recommended that Council seek legal advice in regards to the best way forward for compliance action to restore the site to its previous state prior to the construction of all the unauthorised structures.

Parts of the site have previously been cleared and the application does not consider alternative dwelling sites for proposed Lot 17 that have a more favourable outcome with regard to significant habitat retention.

RECOMMENDATION:

That:

- A. Development Application DA16/0795 for a two lot subdivision at Lot 7 DP 1178620 No. 2041 Kyogle Road, Terragon be refused for the following reasons:**
- 1. The development is not considered to be consistent with aims of the Tweed Local Environmental Plan 2000 outlined in clause 4(a) and (d).**
 - 2. The development is not considered to satisfy Clause 8(1)(a) - Consent Considerations of the Tweed Local Environmental Plan 2000 as the development is considered not to be consistent with the primary objectives of the 7(l) Environmental Protection (Habitat) zone.**
 - 3. The development is not considered to satisfy Clause 8(1)(c) - Consent Considerations of the Tweed Local Environmental Plan 2000 as the removal of significant habitat, proposed by bushfire protection measures, is considered to have an unacceptable cumulative impact on the locality.**
 - 4. The development is not considered to comply with Clause 28 of the Tweed Local Environmental Plan 2000 as the development is considered to have an unacceptable impact on flora and fauna in the locality.**
 - 5. The development is not considered to comply with Clause 39A(2)(d) and (e) of Tweed Local Environment Plan 2000 in that consideration was not given to the siting of the development to mitigate the threat from bushfires and that the environmental and visual impacts of clearing of vegetation for bushfire hazard reduction would be unacceptable.**
 - 6. The development is not consistent with Chapter A5.5 of the Tweed Development Control Plan Section A5 Subdivision Manual which relates to Rural Subdivision in regard to its impact on the local native flora and fauna**

and the need for rural subdivision to have adequate regard to bushfire provisions.

7. The development fails to satisfy the provision of State Environmental Planning Policy 44 – Koala Habitat Protection in that a Koala Plan of Management was not provided.
 8. The applicant has failed to sufficiently evaluate under Section 5A of the EP&A Act the direct and indirect impact of the development (in its current form) on those threatened species known or considered to have a high likelihood of occurrence on or adjacent the subject site. As such significant uncertainty remains as to the extent and level of cumulative impact on threatened species, their habitats and Endangered and Threatened Ecological Communities listed under the Threatened Species Conservation Act 1995.
- B. Council seeks advice from its solicitors regarding appropriate action to remedy the unauthorised works.

REPORT:

Applicant: Mr Clive Martin
Owner: Mr Clive Martin and Ms Clare Miller
Location: Lot 7 DP 1178620, 2041 Kyogle Road, Terragon
Zoning: 7(l) Environmental Protection (Habitat) under Tweed Local Environment Plan 2000
RU2 Rural Landscape under Tweed Local Environment Plan 2014
Cost: \$10,000

Background:

Site details

The site is described as Lot 7 DP 1178620, 2041 Kyogle Road, Terragon, and has an area of 101.26 hectares. The majority of the subject site is located on the southern side of Kyogle Road with a small portion of the lot, approximately 3,521m², located to the north of Kyogle Road adjacent to the Tweed River. The site is accessed from Kyogle Road and is mapped as being bushfire prone and having a high ecological status. The site is within the Drinking Water Catchment area as mapped by the Tweed LEP 2014.

The land is relatively steep and rises up from Kyogle Road to an elevation approximately 290m above the road. The site is dominated with heavily vegetated slopes with some previously cleared areas on the ridgelines of lower portion of the site. Surrounding land uses include forested areas interspersed with land previously used for cattle grazing and agricultural uses. Clarrie Hall dam is located approximately 1km to the east of the site.

Application details

The application was lodged initially seeking consent for a two lot rural subdivision including minor earthworks. A proposed subdivision plan was submitted outlining proposed Lot 17 with an area of 61 hectares and proposed Lot 18 with an area of 40.3 hectares. Each of the proposed lots nominated a proposed dwelling site adjacent to the southern side of Kyogle Road (refer to figure below). The submitted plans and the Statement of Environmental Effects indicated there were no existing dwellings located on the site however the plans showed an "existing shed" is located on proposed Lot 17.

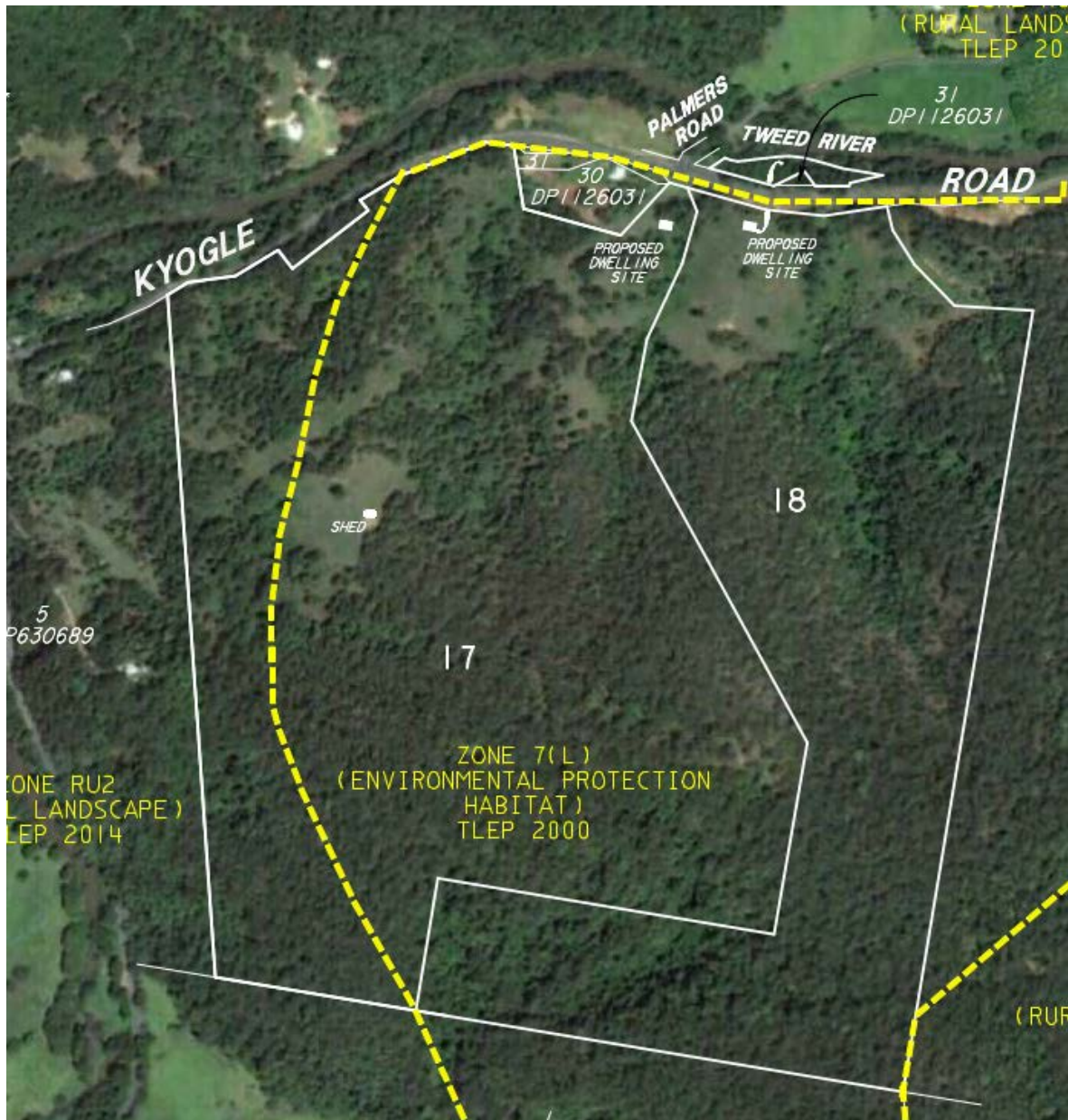
Following a site inspection it was resolved that the "existing shed" was in fact an unauthorised structure capable of being used as a dwelling.

The applicant also acknowledged the unauthorised dwelling and some earthworks being completed without development approval prior to their development application being lodged with Council.

The site visit revealed extensive construction and earthworks previously completed without approval at the location of the unauthorised structure proposed as a dwelling as part of this application. The extent of unauthorised works includes:

- Earthworks;
- Construction of a structure capable of habitation comprising of a single room structure with mezzanine level, bathroom and deck including hot water system and solar panels;

- On-site sewerage management system;
- Location of five shipping containers with various uses (additional rooms or storage);
- Three rainwater tanks; and
- An outdoor spa.



Initial proposal of a two lot subdivision with two proposed dwelling sites and unauthorised structure/shed as shown on Plan. The amended proposal deletes the proposed dwelling site from Lot 17 and proposes the unauthorised structure/shed be the approved dwelling site as part of this DA.

From aerial imagery it appears that the unauthorised structure was started sometime after Council's 2012 imagery as shown by the series of aerial photography below. The imagery also suggests that works have been undertaken to upgrade the access track to the current unauthorised structure.



2012 – no structure in circled location



2016 - structure appears in circled location



2017 Google Satellite - structure, clearing, access track and vegetation works now evident on aerial imagery

The works appeared to be ongoing as demonstrated by the following site photos:



Structure with deck and two shipping containers



Side view of structure showing front door



Internal view of structure showing mezzanine level and bathroom



View from rear showing two rainwater tanks

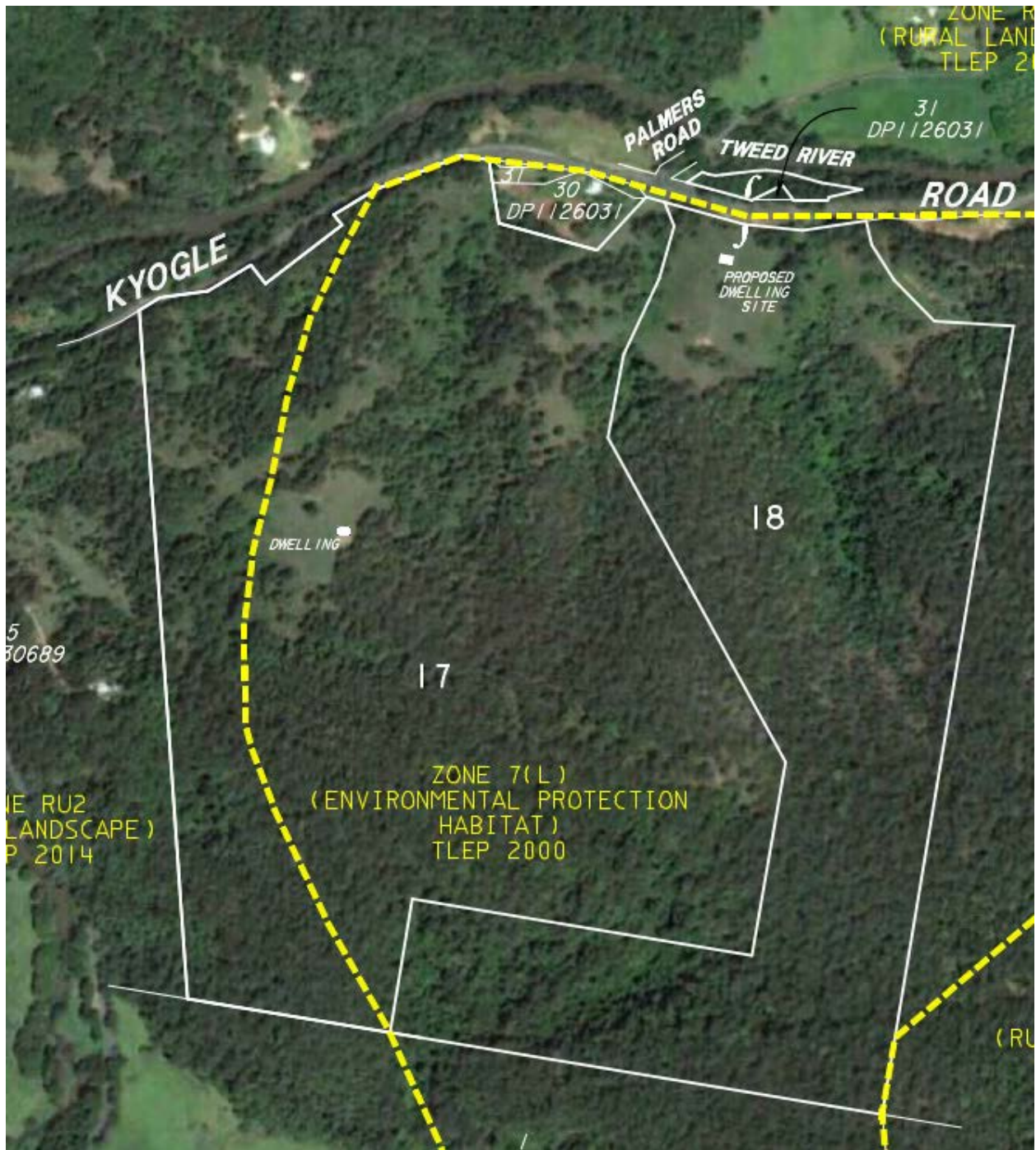


Two of five shipping containers located on the site

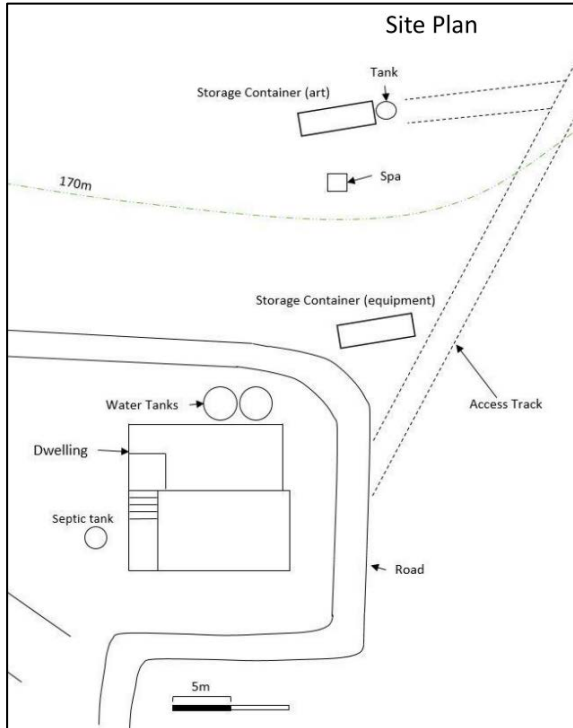
The unapproved works are located within the 7(l) zone under Tweed Local Environment Plan 2000. The structure appears to be capable of habitation and as such may be defined as a dwelling.

The applicant was given notice to stop all building and development works and requested to withdraw the application or alternatively amend the application to a proposed two lot subdivision and dwelling with the current unauthorised structure located on the site to be nominated as a dwelling. Revised plans and supporting documentation were requested if the application was to be amended.

The applicant advised that they wish to proceed with an amended application nominating the current unauthorised structure as a dwelling and submitted amended plans and documentation consisting of plans of existing authorised structure, an amended ecological assessment, on-site sewerage management report and bushfire risk management report.



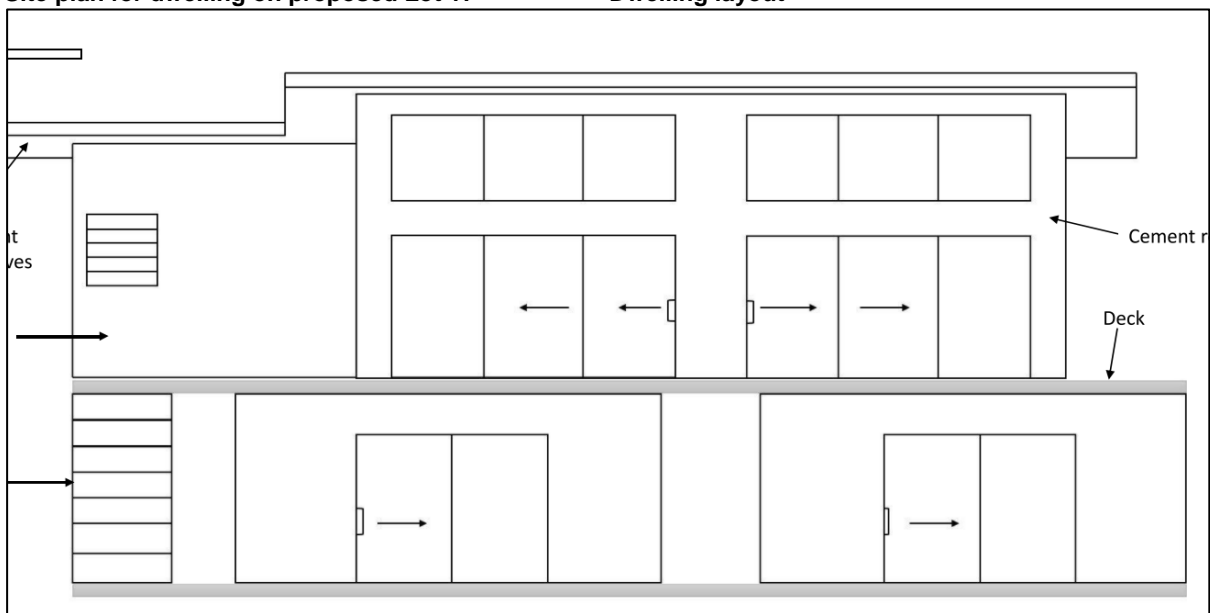
Current application plan for a two lot subdivision and dwelling (nominating the existing 'shed' as a dwelling)



Site plan for dwelling on proposed Lot 17



Dwelling layout



Elevations of existing dwelling

The existing unapproved structure (proposed dwelling) is split level with a single room open plan living/kitchen area, bathroom and deck on the upper level. This part of the dwelling is constructed from rendered straw bales with a colorbond roof and includes a non-habitable mezzanine area over the living area. The lower level is located below the deck and consists of two shipping containers to be utilised as bedrooms and a bathroom.

The existing unapproved structure (proposed dwelling) is located on the lower portion of a ridge line and benefits from views to the north of Wollumbin (Mt Warning). Land immediately to the north and west of the dwelling slopes down and is primarily grassland. Land to the east has a down slope of greater than 25° and comprises forest vegetation. Land to the north slopes upwards and also comprises of forest vegetation.

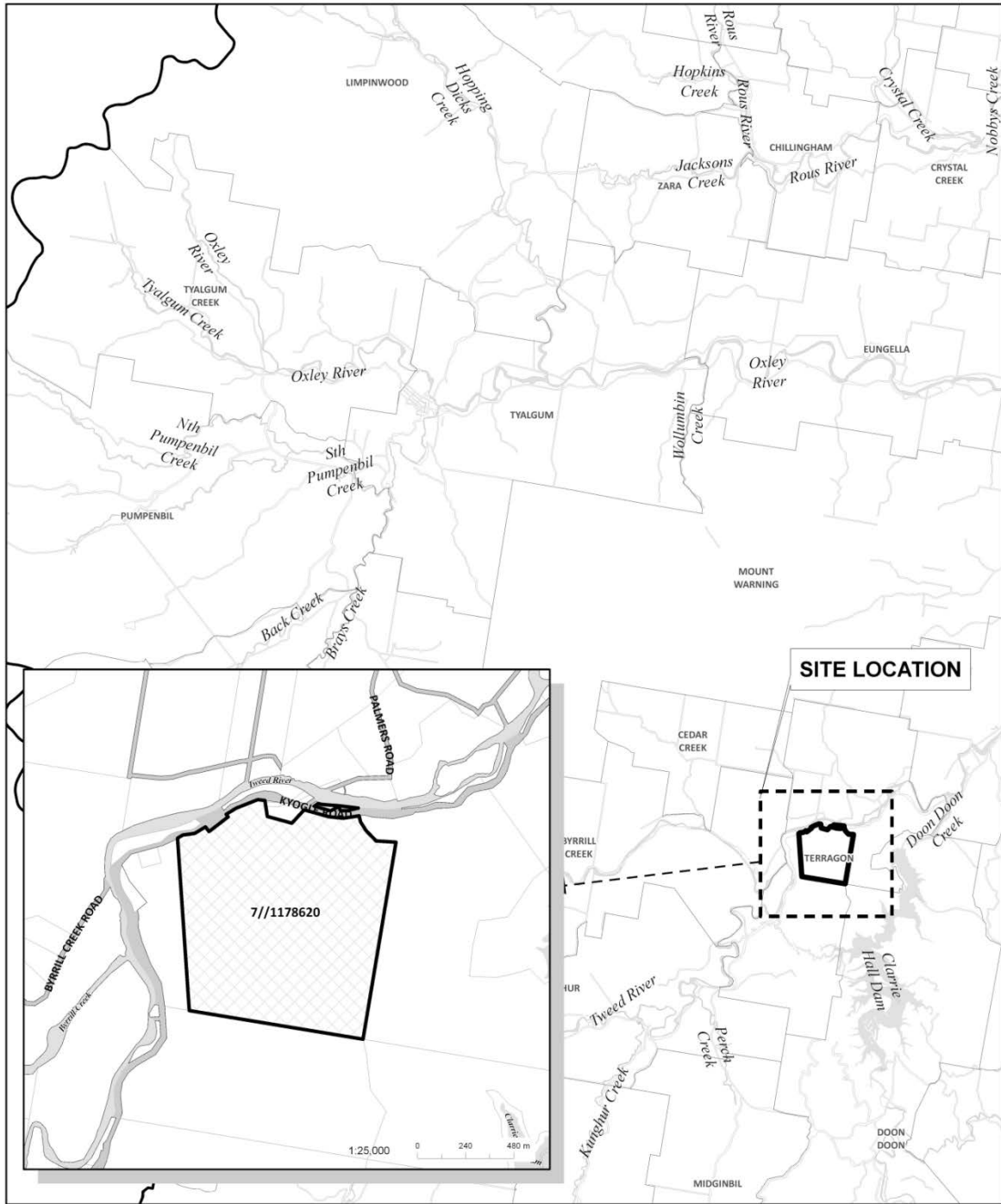
The site is mapped as bushfire prone and the existing unapproved structure is located adjacent to land mapped as vegetation category 1. The proposed dwelling is required to comply with *Planning for Bushfire Protection 2006* and the Rural Fire Service has recommended that an Asset Protection Zone (APZ) of 114m x 43m (8,322m²) is to be established and is to be maintained entirely as an Inner Protection Area (IPA). Due to the steepness of the site, a portion of this area will also require terracing to ensure the IPA can be maintained.

Achieving the recommended APZ requires the modification and disturbance of approximately 4,500m² of vegetation. This vegetation forms part of a Regional Wildlife Corridor and Council's assessment has identified the portion of vegetation to be impacted by the establishment of the APZs as being Core Koala Habitat as defined under State Environmental Planning Policy 44 Koala Habitat Protection.

Parts of the site have previously been cleared and the application does not consider alternative dwelling sites for proposed Lot 17 that have a more favourable outcome with regard to significant habitat retention.

This extent of clearing to comply with the recommended APZs is considered unacceptable in this sensitive environment and accordingly the application is recommended for refusal.

SITE PLAN:



Site Plan

Lot 7 DP 1178620
2041 Kyogle Road, TERRAGON

0 1 2 Km
1:100,000



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 30 June, 2010
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Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484

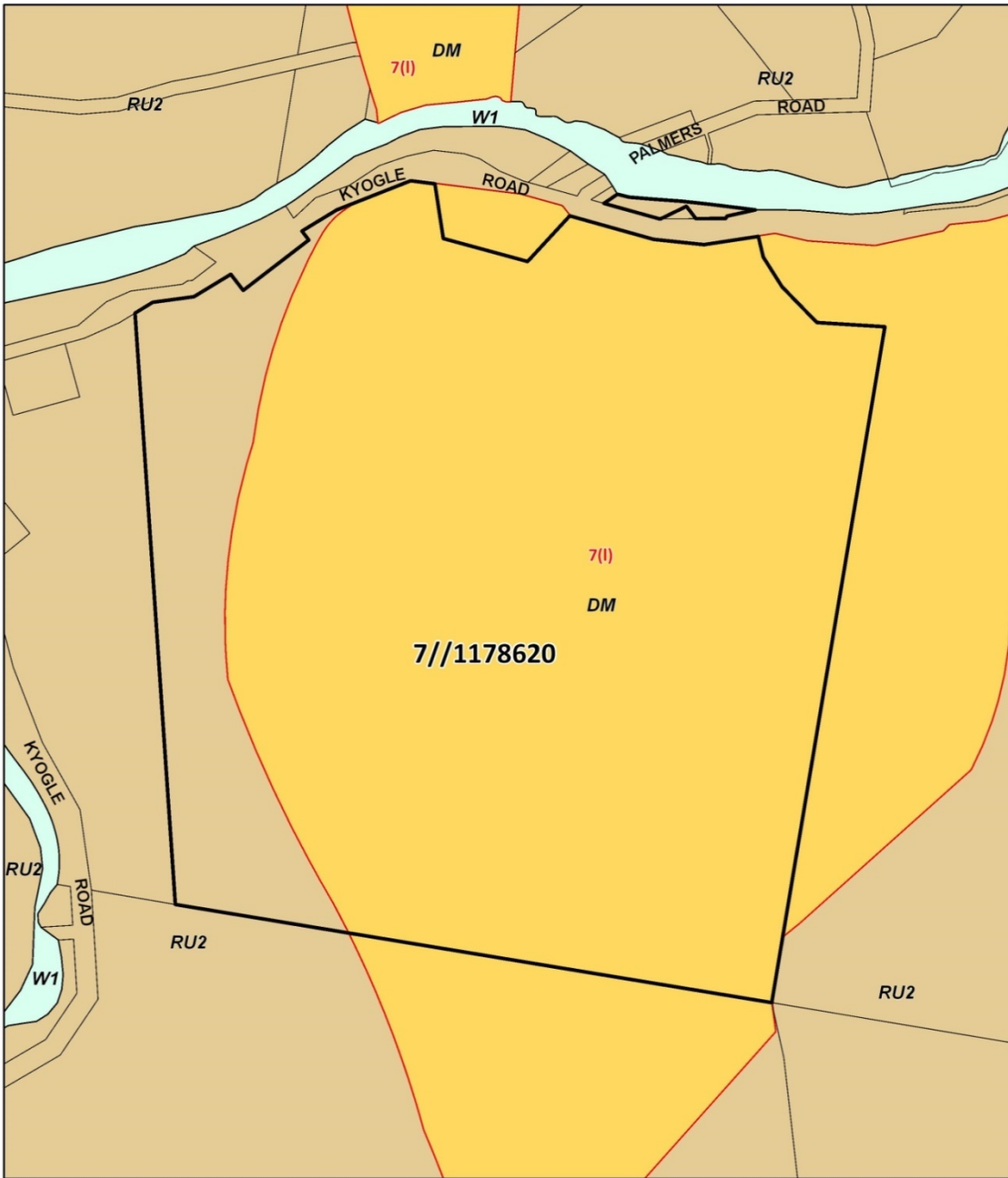
T: (02) 6670 2450 / 1300 292 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

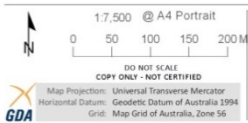
Date Printed: 03 May, 2017

ZONING MAP:



Tweed Local Environmental Plan 2014 Tweed Local Environmental Plan 2000

- | | |
|----------------------|---|
| Zone | ENVIRONMENTAL PROTECTION |
| RU2 Rural Landscape | 7(l) Environmental Protection (Habitat) |
| W1 Natural Waterways | |
| DM, Deferred Matter | |



Civic and Cultural Centre
 3 Turnbullum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484
TWEED
 9496 20044
 T (02) 6670 2400 | 1300 292 872
 F (02) 6670 2429
 W www.tweed.nsw.gov.au
 E l.p.lanning@tweed.nsw.gov.au

Tweed Local Environmental Plan

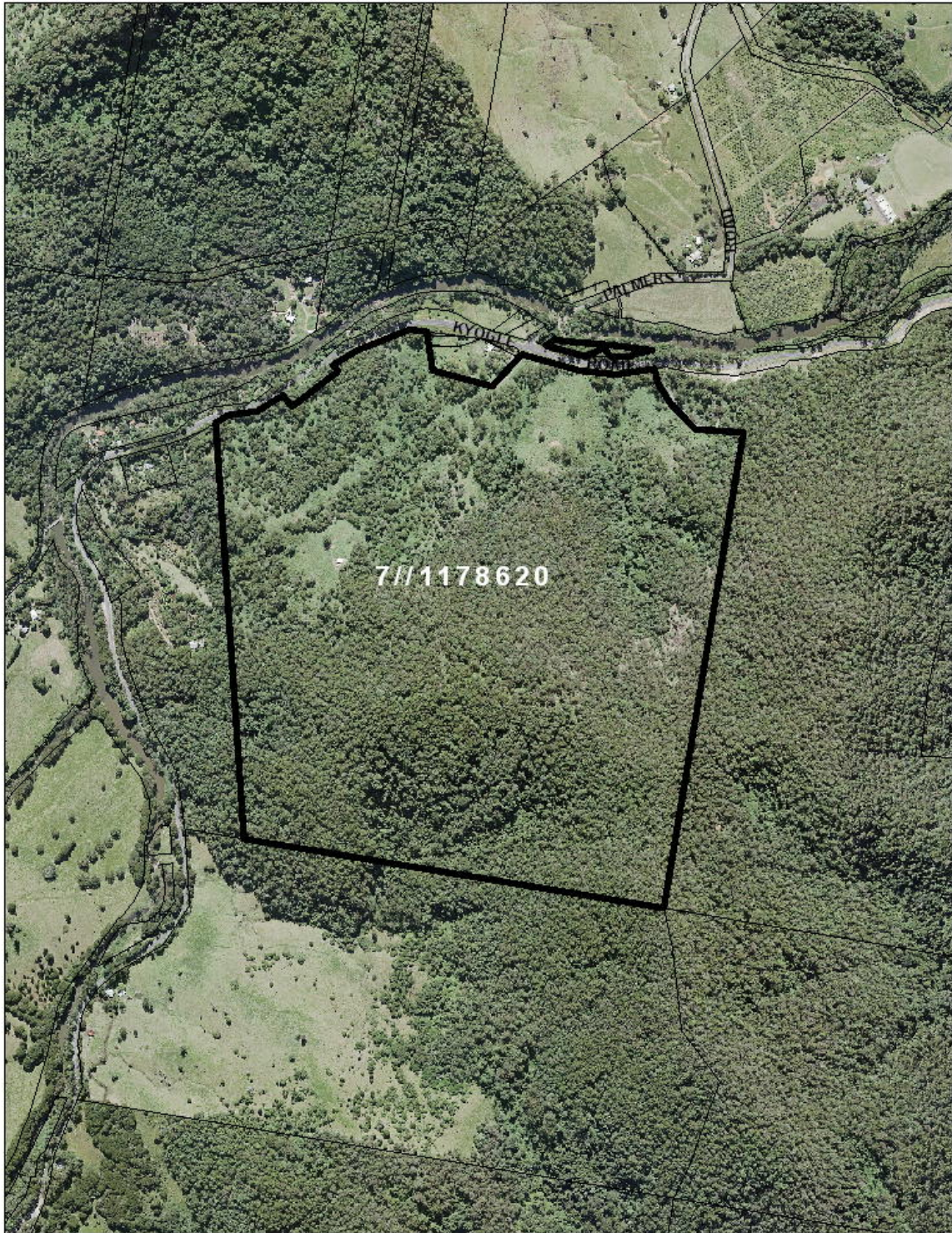
Lot 7 DP 1178620
 2041 Kyogle Road, TERRAGON

Base Data 04/10/2016
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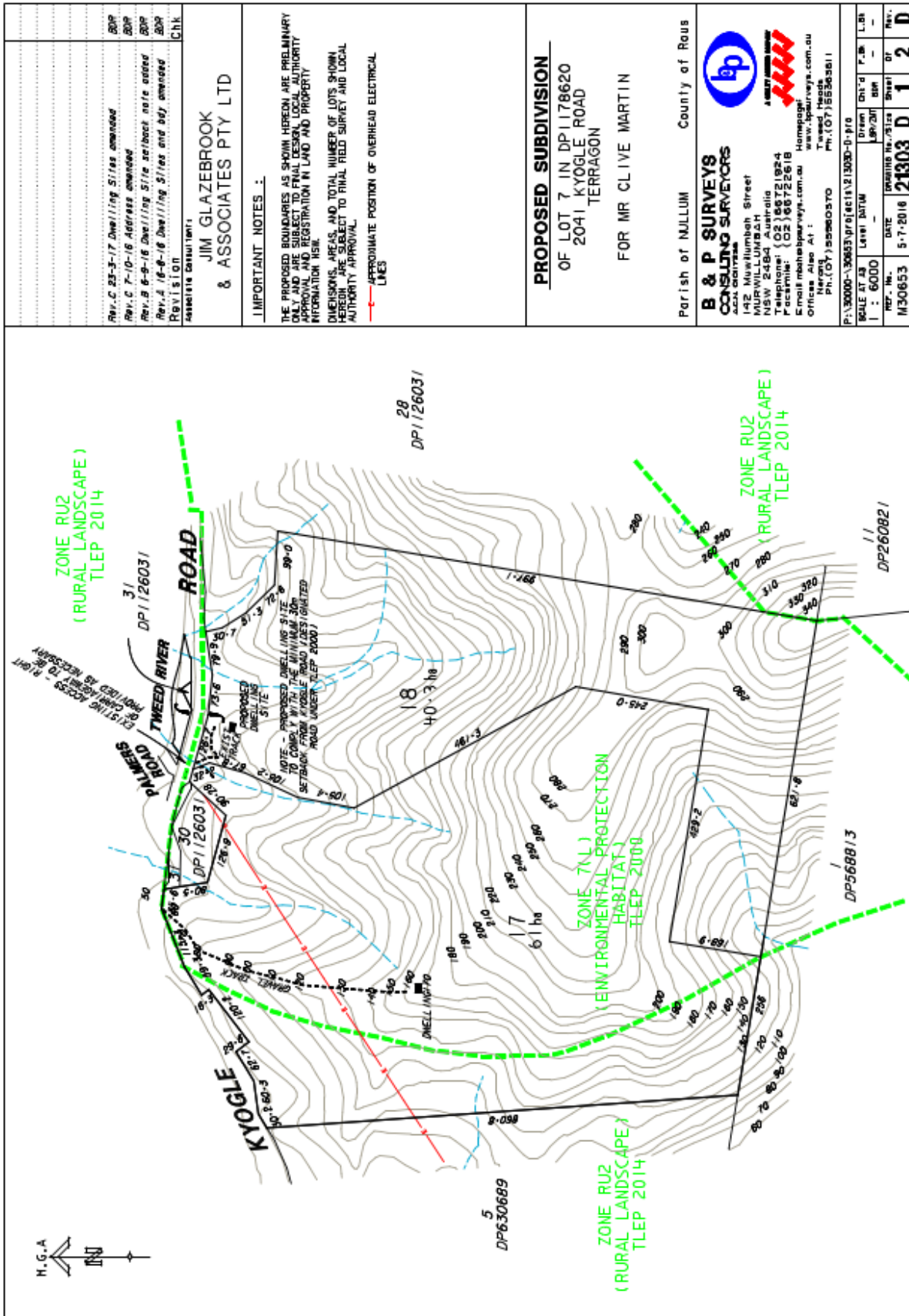
Date Printed: 03 May 2017

AERIAL IMAGE:



<p>1:10,000 @ A4 Portrait GDA Map Projection: Universal Transverse Mercator Horizontal Datum: Geoidetic Datum of Australia 1996 Grid: Map Grid of Australia, Zone 56</p>	<p>Civic and Cultural Centre 3 Tumbalum Road Murwillumbah NSW 2484 PO Box 876 Murwillumbah NSW 2484 T 02 6670 2600 1800 261 878 F 02 6670 2426 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	<p>Aerial Photography 2015</p> <p>Lot 7 DP 1778620 2041 Kyogle Road, TERRAGON</p>	<p>Base Data 04/10/2016 © Land and Property Information (LPI) and Tweed Shire Council © Tweed Shire Council Boundaries shown should be considered approximate only</p>
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SUBDIVISION PLANS:



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 2000

Clause 4 - Aims of the Plan

The aims of the plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is: "The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced", and*
- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
 - (i) *that some or all development should be restricted to certain land within a zone,*
 - (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
 - (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*

*Tweed Shire 2000+ Strategy
Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.*

The subject proposed two lot subdivision and dwelling is considered to be inconsistent with the aims of the plan, specifically 4(d) as the proposal would result in an unacceptable environmental impact not compatible with the area's environmental qualities as it:

- a. Requires removal of remnant vegetation regarded as preferred threatened species habitat within a recognised Regional Wildlife Corridor
- b. Does not utilise available alternative sites to avoid impact to the areas' environmental qualities

Clause 5 - Ecologically Sustainable Development

An objective of the TLEP 2000 is to promote development that is consistent with the four principles of ecologically sustainable development. This clause outlines these four principles including the principle of:

conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration

Threaten fauna and flora species are identified as being located on the subject site. It is uncertain if this application is consistent with this principle in that the applicant has failed to sufficiently evaluate the impact of the proposal on threatened species, their habitats and Endangered and Threatened Ecological Communities.

An ecological assessment was provided with the application however the assessment did not include habitat in the vicinity of existing unauthorised structure (proposed dwelling).

Clause 8 - Consent Considerations

Clause 8(1) states that:

- (1) *The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:*
 - (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
 - (b) *it has considered those other aims and objectives of this plan that are relevant to the development, and*
 - (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The zone objectives as they apply to the proposal are discussed under clause 11 below.

Consideration with regard to subdivision objectives are discussed under clause 20.

The applicant has not satisfactorily established that the proposal will not result in an unacceptable cumulative impact on the locality. The site is within a recognised Wildlife Corridor and the proposal will result in the removal of Core Koala Habitat. Additionally the application has not sufficiently evaluated the impact on threatened species, their habitats and Endangered and Threatened Ecological Communities listed under the Threatened Species Conservation Act 1995.

Clause 11 - Zone Objectives

Two zones apply to the subject lot: Environmental Protection (Habitat) under Tweed local Environment Plan 2000; and RU2 Rural Landscape under Tweed

Local Environment Plan 2014. The proposed dwelling, ancillary structures and associated access are located in the 7(l) zone, the objectives of which are:

Primary objectives

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

Secondary objectives

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

The proposed subdivision is compatible with the primary function of the land.

The dwelling on proposed Lot 17 requires additional earthworks and the removal and modification of approximately 4,500m² of remnant vegetation on steep slopes to achieve compliant Asset Protection Zones to comply with *Planning for Bush Fire Protection 2006*.

The area of vegetation is identified as being Core Koala Habitat and is located within a designated Regional Wildlife Corridor as identified by the Upper North East and Lower East Regions – NSW Comprehensive Regional Assessment 1999 by National Parks and Wildlife Service. The habitat to be disturbed forms part of a significant functional wildlife corridor for the following fundamental reasons:

- The area of vegetation to be disturbed is intact and forms part of a well-connected and contiguous tract of vegetation. There is no significant break in the corridor on the subject site that may act as a barrier to wildlife movement;
- The vegetation to be disturbed offers preferred habitat for a suite of threatened species;
- Threatened species are known to occur onsite within the mapped wildlife corridor.

As such the unauthorised structure (proposed dwelling) on proposed Lot 17 does not meet the primary objectives of the zone in that the proposal fails to protect and enhance land that acts as a wildlife corridor.

Development permissible within the 7(l) zone is itemised as such:

Item 1 allowed without consent:

- *nil*

Item 2 allowed only with consent:

- *bed and breakfast*
- *bushfire hazard reduction that is not exempt development*
- *business identification signs*

- *dwelling houses if on an allotment of at least 40 hectares or an allotment referred to in clause 57 and if the number of dwellings does not exceed one for each 40 hectares of land contained within the allotment*
- *earthworks*
- *environmental facilities*
- *home businesses*
- *noxious weed control that is not exempt development*

Item 3 allowed only with consent and must satisfy the provisions of clause 8 (2):

- *agriculture*
- *camping grounds*
- *emergency service facilities*
- *forestry*
- *public utility undertakings*
- *roads*
- *urban stormwater water quality management facilities*
- *utility installations (other than gas holders or generating works)*
- *works for drainage and landfill*

Item 4 prohibited:

- *any buildings, works, places or land uses not included in Item 1, 2 or 3*

Each of the proposed lots is greater than 40 hectares and development of no more than one dwelling is permissible. Under TLEP 2000 a dwelling is defined as:

dwelling: *a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.*

The existing unapproved structure is nominated as a dwelling for proposed Lot 17 and proposed Lot 18 nominates a proposed house site setback a minimum of 30m from Kyogle Road.

Earthworks that require consent have under Item 2 have previously been undertaken without approval at the site. Details of the extent of these earthworks (e.g. volume of cut and fill) have not been provided.

The plans also indicate two storage containers (for art and equipment) and a spa located on the site ancillary to the dwelling.

Clause 15 - Essential Services

Council water and sewer infrastructure is not available to the site and the development proposes on-site collection, storage and disposal systems for water and waste water. The existing unapproved dwelling on proposed Lot 17 is currently serviced by two water tanks.

An existing unapproved on-site sewage management system (OSMS) currently services the dwelling on proposed Lot 17. An On-site Sewage Management Design report has been submitted with the application recommending rectification works to improve the functionality of the existing OSMS. Council's Environmental

Health Unit has reviewed the report and considers the on-site sewage system treatment system adequate in accordance with AS 1547/2012 and NSW Environment and Health Protection Guidelines "*On-site Sewage Management for Single Households*". An application to obtain approval to install an on-site sewage system under Section 68 of The Local Government Act 1993 would be required for any approval.

An OSMS report submitted with the initial application was considered to be satisfactory with regard to on-site sewerage management for the proposed dwelling site on proposed Lot 18.

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

The objectives of this clause are to:

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

The clause goes on to state that consent for the subdivision of land may only be granted if the area of the lot created is a least 40 hectares. Each of the proposed lots meets this provision being 61ha and 40.3ha respectively.

Clause 22 Development near designated roads

The site has frontage to Kyogle Road which is a designated road and as such this clause applies. The proposal involves the creation of one additional new lot and associated access to an existing unapproved dwelling and a proposed new dwelling site. The proposal has been assessed as being within the capacity of the current road network and no upgrades are required to accommodate the proposal. Proposed site access is not expected to result in any issues. As such the application is considered to compliant with the provisions of this clause.

Clause 24 Setback to designated road

This includes controls for setbacks to designated roads within the 7(l) zone and states that dwelling are to be setback from a designated road being Kyogle Road at a minimum distance of 30m. The plans indicate that the proposed dwelling site nominate on proposed Lot 18 is setback a minimum of 30m.

The existing dwelling on proposed Lot 17 is set back approx. 340m from Kyogle road. The proposal complies with this control.

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

The objective of this clause is to protect wildlife habitat from the adverse impacts of development.

The proposal involves the vegetation clearing of 4,500m² of remnant vegetation on steep slopes recognised as preferred habitat for a suite of threatened species. The area of impact occurs within a designated Regional Wildlife Corridor.

Vegetation clearing is defined in clause 30 as:

For the purpose of this Part, vegetation clearing means any one or more of the following:

- (a) cutting down, felling, thinning, logging or removing any vegetation, or*
- (b) killing, destroying, poisoning, ringbarking, uprooting or burning vegetation, or*
- (c) severing, topping or lopping branches, limbs, stems or trunks of native vegetation, or*
- (d) substantially damaging or injuring native vegetation in any other way.*

The proposed vegetation clearing and associated earthworks required to establish asset protection zones on Lot 17 would be expected to have an unacceptable adverse impact on local ecosystem dynamics and the integrity of the broader contiguous tract of habitat. More specifically, the disturbance to habitat would likely result in the following:

- Increase in edge effects to adjacent habitat;
- Disruption/impediment to movement corridors;
- Removal/exposure of hollows;
- Reduction of reliable flowering species;
- Increased risk of sediment and erosion.

A plan of management showing how any adverse effects arising from the development are to be mitigated has not been provided in accordance with Clause 28(c). The impact associated with establishment of a dwelling on Lot 17 could be avoided through repositioning of the proposed dwelling and associated building envelope within an existing cleared area of the site. Adequate available cleared areas suitable for a dwelling occur elsewhere onsite.

As such the applicant has not adequately demonstrated that the development meets the objective of the zone.

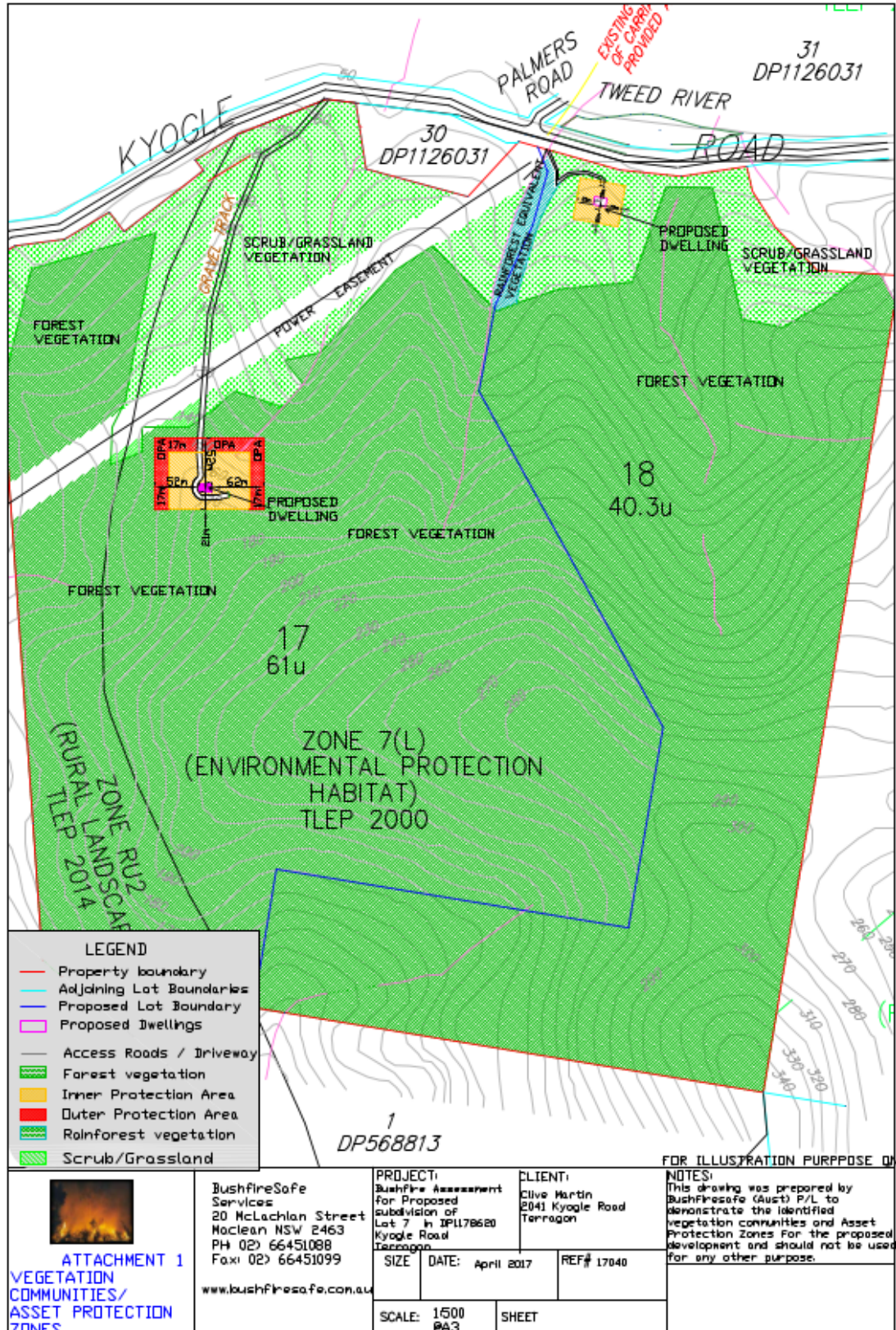
Clause 39A - Bushfire Protection

The objective of this clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

In order to establish recommended APZs to be maintained as Inner Protection Area (IPA) for the existing unauthorised structure (proposed dwelling), the removal

of a significant number of trees would be required within an estimated area of 4,500m² (refer to image below). In addition to vegetation removal required to establish an IPA, steep slopes to the east of the unauthorised structure are to be terraced to allow continued maintenance of the IPA which will result in further habitat destruction.

The application is not compatible with clause 39A (d) or (e) in that alternative sites for the unauthorised structure (proposed dwelling) on proposed Lot 17 was not considered in order to avoid or mitigate the threat from bushfires and that the environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction would be unacceptable.



Proposed APZs for the proposed dwelling site on Lot 18 and the existing unauthorised structure (proposed dwelling) on Lot 17

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:

- (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 application is not consistent with the aims of this plan specifically with regards to the conservation of biological diversity and the protection of suitable habitat for the Tweed Coast Koala.

Clause 2.3 – Zone objectives and Land use table

The objectives of the RU2 Rural Landscape zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The proposal relates to the subdivision of land and the establishment of a residential dwelling. The proposal is consistent with the objectives of the zone in that dwellings are permissible on lots that meet the minimum lot size. However the extensive earthworks undertaken and the proposed clearing of vegetation to achieve a compliant Asset protection zone for the dwelling are not compatible with the objective of maintaining the rural landscape character of the land.

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

Clause 4.1 relates to minimum lots sizes for subdivisions and the objectives of the clause are:

- (a) *to ensure minimum lot sizes are appropriate for the zones to which they apply and for the land uses permitted in those zones,*
- (b) *to minimise unplanned rural residential development.*

The site is mapped as being subject to a minimum lot zone of 40 hectares. The subdivision proposes two lots of 61ha and 40.3ha and so complies with the provisions of this clause.

4.2B - Erection of dwelling houses and dual occupancies on land in certain rural and residential zones

This clause states that consent must not be granted for the erection of a dwelling or dual occupancy on land unless the land is at least the minimum lot size shown on the Lot Size Map.

The application proposes a dwelling on proposed Lot 17 which is 61ha and a proposed dwelling site on proposed Lot 18 which is 40.3ha and so complies with the provisions of this clause.

Clause 4.3 - Height of Buildings

The site is mapped as being subject to a 9m building height limit. The proposed dwelling is a maximum of 4.12m high from ground level and so complies with the provisions of this clause.

Clause 4.4 – Floor Space Ratio

The site is a rural lot and is not mapped as being subject to a maximum floor space ratio and so this clause does not apply.

Clause 4.6 - Exception to development standards

Not applicable as no exception to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as no uses listed under this clause are proposed.

Clause 5.5 – Development within the Coastal Zone

Not applicable as the site is not located within the Coastal zone

Clause 5.9 – Preservation of Trees or Vegetation

This clause relates to prescribed vegetation defined within the Development Control Plan. Whilst some tree clearing is proposed to achieve compliant Asset Protection Zones around the dwelling for the purposes of bush fire management, no trees are proposed to be removed within the RU2 zone under TLEP 2014.

Clause 5.10 - Heritage Conservation

Not applicable as the site is not within a heritage conservation area.

Clause 5.11 - Bush fire hazard reduction

The site is mapped as being bushfire prone and the application was referred to the Rural Fire Service in accordance with Section 91 of the *Environmental Planning and Assessment Act, 1979* (as amended).

The proposal does not impact the provisions of this clause.

Clause 7.1 – Acid Sulfate Soils

The site is not mapped as be affected by acid sulfate soils and so this clause is not applicable.

Clause 7.2 - Earthworks

The objective of this clause is to:

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

Earthworks have been completed without consent prior to the lodgement of this application. However, no earthworks have been complete or are proposed to be completed within an area to which TLEP 2014 applies.

Clause 7.3 – Flood Planning

The site is mapped as being partially within an area that Could Be Affected by flooding. No dwellings or other structures are proposed within the area to which the TLEP 2014 applies and so the proposal is considered to be compliant in this regard.

Clause 7.4 - Floodplain risk management

Not applicable as the subject site is not mapped as being within the area to which this clause applies.

Clause 7.5 - Coastal risk planning

Not applicable as the subject site is not mapped as being within the area to which this clause applies.

Clause 7.6 - Stormwater Management

Not applicable as the subject site is rural land to which this clause does not apply.

Clause 7.7 – Drinking Water Catchments

The site is mapped as being with land identified as Drinking Water Catchment. No development other than the subdivision of land will occur within the area to which TLEP2014 applies and so the application is considered compliant in this regard.

Clause 7.8 – Airspace operations

The development will not impact on airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

The development is not located in an area subject to aircraft noise.

Clause 7.10 - Essential Services

No development other than the subdivision of land will occur within the area to which TLEP2014 applies and so the application is considered compliant in this regard.

Other Specific Clauses

No other specific clauses apply.

State Environmental Planning Policies

SEPP No. 44 - Koala Habitat Protection

The aims of SEPP 44 are:

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:

- (a) *by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and*
- (b) *by encouraging the identification of areas of core koala habitat, and*
- (c) *by encouraging the inclusion of areas of core koala habitat in environment protection zones.*

An ecological assessment was submitted with the initial application for the two lot subdivision which includes an assessment of koala habitat for the development footprint of the two proposed dwelling sites on the northern portion of the site adjacent to Kyogle Road and includes area required for asset protection zones. The assessment determined that whilst Potential Koala Habitat occurs at the subject site, no areas of Core Koala Habitat occurred within the subject site as no koala activity was detected within the development footprint.

Koala habitat is defined for the purposes of the SEPP as being either:

core koala habitat means an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population.

potential koala habitat means areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

An addendum to the ecological assessment was submitted with the amended application for the two lot subdivision and use of the existing unauthorised structure as a dwelling on proposed Lot 17. The addendum provided further assessment with regard to koala habitat focusing on the existing unauthorised structure and required asset protection zones on proposed Lot 17. To achieve a compliant asset protection zone as prescribed for *Planning for Bushfire Protection 2006* vegetation management is required for a distance of 62m to the east; 21m to the south and 52m to the west of the existing dwelling. Excavation to construct several terraces on land east of the dwelling is also recommended by the Bushfire Management Risk Plan to manage areas of the APZ where the slope is greater than 18 degrees.

The ecological assessment determined that the site supports potential koala habitat at the site but did not confirm the presence of core koala habitat only stating:

As per a preliminary assessment based on historical records and recent activities at the site it is considered likely that area of the property would support Koala habitat. However, to be defined as core Koala Habitat a spot assessment would need to be carried out on the impacted area of the subject site.

A spot assessment was conducted at the site by Biolink Pty Ltd focussing vegetation to the south and east of the dwelling and the results reported in a letter submitted with the amended application. The letter reported that no significant koala activity was detected at the site and concluded that whilst the site is an

area of Potential Koala Habitat, the site does not support a resident koala population and as such is not Core Koala Habitat as defined by the SEPP.

Assessing Officers of Council have reviewed the ecological assessment and conducted a site visit of the impacted areas of the development and determined that the disturbance footprint of the site continues to support Core Koala Habitat as defined by the SEPP for the following reasons:

- Potential Koala Habitat was recognised to occur onsite remaining as a significant habitat node within a Regional Wildlife Corridor;
- Evidence of historical records of a population (as specified in the definition for Core Koala Habitat) as indicated in the Addendum to the Ecological Assessment; *“the Tweed Coast Koala Habitat Study shows generational persistence of Koalas around Uki, Kunghur and Byrril Creek and sightings as recent as 2013 and 2015 are recorded within less than one kilometre of the site. Of the total 74 records within the area, greater than 98% have been recorded since 2000 and 35 records since 2013”*;
- Koala pellets were found by Council’s Biodiversity Officer within the study area;
- Indicative koala scratch marks observed on *Eucalyptus propinqua* trees within Tallowood dry grassy forest vegetation (TVMS 2008).

The establishment of compliant APZs would result in the modification and disturbance of approximately 4,500m² of Core Koala Habitat. Clause 9 of the SEPP states that before Council can grant consent to development on land that has been determined to be Core Koala Habitat, a plan of management must be prepared in accordance with the SEPP. A plan of management has not been submitted with the application.

The provisions of the SEPP have not been satisfied.

SEPP No. 55 - Remediation of Land

A Preliminary Site Investigation HMC Environmental (HMC 2016.099) was submitted with the application to enable an assessment against the provisions of this SEPP. This report was revised when the application was amended to include a dwelling on proposed Lot 17.

Council’s Environmental Health Unit has reviewed the application and Site Investigation report and has made the following comments:

A review of Council’s GIS records of historical aerials, ECM data and topo maps did not indicate any intensive agriculture, cropping, dip sites or other potentially contaminating activity.

The amended site investigation report concluded that the site is suitable for the proposed residential use of the land and Council Officers have determined that the conclusions of the report to be valid. The application is considered to be compliant with the provisions of this SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

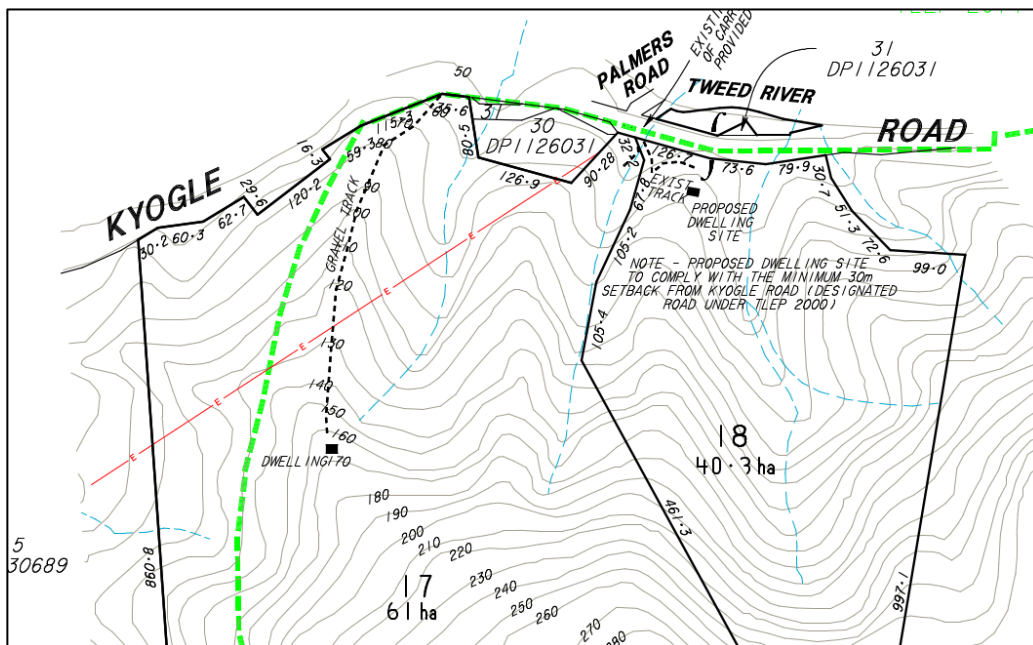
The aim of this policy is to ensure consistency in the implementation of the BASIX scheme for BASIX affected development identified in the *Environmental Planning and Assessment Regulation 2000*. The proposed dwelling is identified as a BASIX affected building for which a BASIX Certificate is required.

No BASIX Certificate was submitted with the application and so the proposal is deemed to be not compliant with the provisions of this SEPP.

SEPP (Infrastructure) 2007

The plans indicate that overhead electricity powerlines transect the site. Subdivision 2 of the SEPP relates to development likely to affect an electricity transmission of distribution network.

There is no formal easement for electricity purposes noted on the deposited plan and the unauthorised structure proposed as a dwelling is not within 5m of the electricity power line (being located approx. 88m distant) therefore the electricity authority is not required to be notified of the application. The application is considered to be compliant with the provisions of the SEPP.



SEPP (Rural Lands) 2008

The aims of this policy are to: facilitate the orderly and economic use and development of rural lands for rural and related purposes; reduce the potential for land use conflicts by identifying Rural Planning and Rural Subdivisions Principles; and the identification of State Significant Agricultural Land.

The site is not identified as State Significant Agricultural Land.

Clause 10 of the policy applies to rural subdivisions and rural dwelling in rural and environmental protection zones and states that the following matters are to be taken into account:

- (a) *the existing uses and approved uses of land in the vicinity of the development,*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

The site is mapped primarily as bushland with a high ecological status. A small portion of the site, less than 0.03 percent, adjacent to the Tweed River is mapped as being Significant Non-Contiguous Farmland under the Northern Rivers Farmland Protection Project. The site is not currently utilised for agricultural purposes.

Land to the west of the site is bushland bordering the Clarrie Hall Dam and land to the north, south and west of the site contains a mix of bushland and land used for pasture or grazing purposes.

The proposed two lot subdivision and proposed future dwelling site on proposed Lot 18 would not have an impact on the current or future land uses of the site or surrounding land.

The proposal to seek approval for the current unauthorised structure to be used as a dwelling on proposed Lot 17 requires vegetation clearing within a significant habitat to establish APZs. The predicted impact to significant habitat is incompatible with the existing use of the site as bushland with a high ecological status that is within a designated Regional Wildlife Corridor and zoned as Environmental Protection (Habitat) under TLEP 2000.

The application has not considered any measures to avoid or minimise any impact on the current use as an environmental protection zone as required by clause 10(e). The proposal is not considered to be compliant with the provisions of the Rural Lands SEPP.

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

There are no draft environmental planning instruments applicable to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

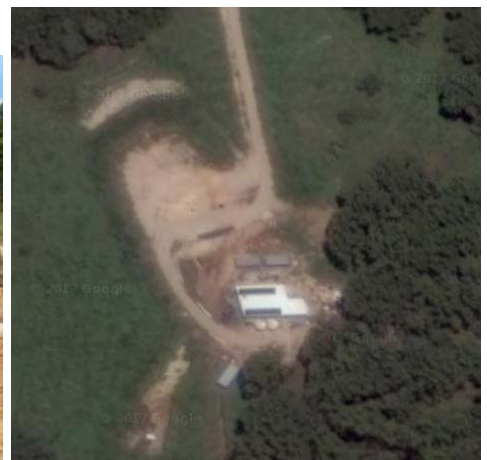
Consent is sought for the use of the existing unauthorised structure as a dwelling. The submitted plans did not provide sufficient detail to enable a comprehensive assessment of the structure against the DCP.

Variation – Earthworks

Earthworks have previously been undertaken without consent prior to the lodgement of this application. Slope of the house site is approximately 23° and the controls allow for a cut allowance of 3m within the footprint of the building for slopes up to 18° or 1m where the slope is greater. Control C2 allows for cut and fill outside of the building footprint to 1m for up to 100m² to achieve flatter outdoor living areas. Cut and fill exceeding this may be permitted on steeper sites with justification.

Although the application does not provide details regarding the volume/extent of the cut and fill undertaken, a site visit revealed that the earthworks previously undertaken without approval are unlikely to comply with the controls. Specifically with regard to the extent of the earthworks undertaken outside the building footprint. Data from aerial imagery suggest approximately 1000m² of land has been disturbed for the construction of the dwelling and associated parking areas.

Further earthworks are required for the establishment of recommended APZs as land with a slope of greater than 18° to the east of the site is required to be terraced to allow for ongoing maintenance of the APZ. No details have been provided of the extent of earthworks required to comply with the recommendations of the submitted Bushfire Risk Management Report and the Rural Fire Service.



Ceiling heights

The plans do not provide sufficient detail to confirm that the area below the mezzanine level, bathrooms, or bedrooms comply with the 2.7m ceiling control.

A2-Site Access and Parking Code

The site provides sufficient parking areas to comply with the control. Plans or details of the constructed driveway access to the existing dwelling on proposed Lot 17 were not provided so it is not possible to determine if the access complies with Council's Driveway Design Specification. Current access is an unsealed track approx. 370m in length and climbing approx. 100m in elevation from Kyogle road.

The Bushfire Risk Management Report submitted with the application has stated that the driveway access to the existing dwelling includes two sections where the gradient is greater than 15° and recommends that the driveway access be sealed with bitumen to provide for safe access in the event of a bush fire.

A3-Development of Flood Liable Land

Part of the site shares a boundary with the upper reaches of the Tweed River and is mapped as "Could be Affected" by flooding in the upper Tweed River catchment. There are a number of lower order streams on the site. The proposed dwelling site on proposed Lot 18 is elevated above these gullies and is unlikely to be affected by flooding.

The existing unauthorised structure (proposed dwelling) on proposed Lot 17 is elevated above the mapped flood levels. The proposal is compliant with respect to the provisions of Section A3.

A5-Subdivision Manual

The proposal meets the minimum lot size of 40ha for the 7(l) and RU2 zones proposing Lot 17 with an area of 61ha and Lot 18 with an area of 40.3ha.

Section A5.5 of the Subdivision Manual sets out the guidelines and development standards for rural subdivisions and also reference the general requirements for subdivisions as outlined in Section A5.4.5.

Section A5.4.5 specifies criteria in relation to environmental constraints as they apply to the subdivision of land. Of particular relevance to this application are the following constraints.

Threatened species, population or ecological communities or their habitats

The criteria states that subdivisions and associated works must be assessed in accordance with section 5A of the Environmental Planning and Assessment Act 1979 to determine if there will be a significant effect on threatened species, population or ecological communities or their habitats. An assessment of threatened species was conducted however the assessment only considered the impact created by the two proposed dwelling sites proposed with the original application. The threatened species assessment was not updated for the amended application in which the current unauthorised structure is proposed to be used as a dwelling.

The threatened species assessment did not provide an assessment of the development footprint for the current unauthorised structure (proposed dwelling) and the impact on threatened species, ecological communities or significant habitat from 4,500m² of vegetation clearing required for the establishment of recommended APZs.

Significant vegetation

The criteria specify that areas of significant vegetation are to be preserved. Significant vegetation is defined as including regionally significant natural areas and corridors. The site is mapped as having a high ecological status and is within a designated Regional Wildlife Corridor.

The controls state that proposal for sites that contain significant vegetation must:

- *Demonstrate that the development proposal does not detract from the ecological scenic landscape or local identity values of the significant vegetation;*
- *Provide a street and lot layout and or lot sizes and shapes that will enable the proposed development to take place whilst also providing sufficient space (outside building platforms) on lots to enable significant individual trees or small stands of vegetation to be retained.*

The area of the proposed dwelling site on proposed Lot 18 is mapped as being highly modified and the Bushfire Risk Management Report indicates that recommended APZs can be established without significantly impacting adjacent forest vegetation.

The current unauthorised structure (proposed dwelling) is located adjacent to significant vegetation (Tallowood forest and rainforest vegetation) and the establishment of the recommended APZs require vegetation clearing of approximately 4,500m² of significant vegetation and so is not compliant with these controls.

Section A5.5.5 specifies the criteria for subdivision of rural lots and states that for residential purposes a building platform must be identified that:

- *has access to a public road that is readily upgraded to all weather two wheel drive standard;*
- *is free from environmental constraints;*
- *is safe from bushfire;*
- *is above Q100 flood level and has high level road and/or pedestrian access to land above probable maximum flood level;*
- *has adequate solar access;*
- *will not impact on rural activities on nearby land;*
- *has appropriate area and dimensions for the siting and construction of a dwelling and any ancillary outbuildings.*

The nominated proposed dwelling site on proposed Lot 18 has been assessed and is considered to be compliant with the above.

The location of the existing unauthorised structure (proposed dwelling) on Lot 17 does not meet the above provisions in that the development footprint is not free from environmental constraints and is not safe from bushfire. The land immediately to the west and south of the existing dwelling is steep and heavily vegetated. To achieve compliant APZs in accordance with *Planning for Bushfire Protection 2006* an approximate 4,500m² of significant habitat within a Regional Wildlife Corridor would have to be modified resulting in:

- Direct loss of Core Koala Habitat;
- Disruption to the movement of fauna/interactions across the site, particularly to the east of the development on Lot 17;
- Improved habitat conditions for invasive species ;
- Loss of critical hollow resources that provide available habitat to an assemblage of fauna known/highly likely to utilise the site for roosting/nesting/refuge;
- Result in increased edge effects/fragmentation of an existing tract of vegetation recognised as a functional wildlife corridor that currently exhibits low levels of disturbance;
- Removal of vegetation from steep slopes (excess of 18°) such as those encountered onsite within the proposed APZ would exacerbate soil erosion;
- Loss of winter flowering Eucalypt species known as a reliable seasonal blossom resource for species such as the Grey headed Flying Fox (*Pteropus poliocephalus*);
- Removal of dead wood and dead trees;
- Loss of hollow-bearing trees – considered significant even where relatively high numbers remain available elsewhere on site given the high conservation value of the tract of vegetation and likely indirect impacts on function suitability of remaining hollows in close proximity to the building envelope preventing occupation through increased activity ;
- Invasion, establishment and spread of *Lantana camara*.

The subject site contains a number of previously cleared areas. The amended application failed to identify alternate dwelling sites on proposed Lot 17 that would result in a more favourable environmental outcome.

A16-Preservation of Trees or Vegetation

Not applicable. No clearing of vegetation is proposed with areas zoned under Tweed Local Environment Plan 2014 to which Section A16 applies.

Section A16 does not apply to the clearing of vegetation within areas identified as Deferred Matter under clause 1.3(a) of Tweed Local Environment Plan 2014. The provisions under Tweed Local Environment Plan 2000 apply to the clearing of vegetation (addressed elsewhere in the report).

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

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

The subject site is not nominated as Coastal Land and therefore this clause is not applicable.

Clause 92(1)(b) Applications for demolition

Not applicable to the subject application as no demolition is proposed as part of this application.

Clause 93 Fire Safety Considerations

The application is seeking consent for the use of a partially completed dwelling. Any approval would be conditioned to ensure compliance with this clause.

Clause 94 Buildings to be upgraded

The application is seeking consent for the use of a partially complete dwelling. Any approval would be conditioned to ensure compliance with this clause.

- (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 site is approximately 6.3km from the coast and not located within a specific area identified under that Plan.

The site is located adjacent to any coastal estuaries covered by this plan.

Coastal Zone Management Plan for the Tweed Coast Estuaries 2013.

The site is located adjacent to any coastal estuaries covered by this plan.

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

The site is not located with the Cobaki or Terranora Broadwater areas to which this plan applies.

- (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/Natural Hazards - Bushfire

The proposal of a two lot rural subdivision in which each lot meets the minimum lot size is consistent with the context of the locality and is permissible development within the zone. As each lot meets the minimum lot size a dwelling is permitted on each lot.

The proposed dwelling site on proposed Lot 18 is located on an area of the site that has been previously cleared and relatively free from environmental

constraints including the risk of bushfire. The Bushfire Risk Management Report and indicates that the recommended 40m x 40m (1,600m²) APZ can be established without significant impact on the surrounding vegetation and habitat.

The unauthorised structure (proposed dwelling) on proposed Lot 17 is located adjacent to vegetation identified as Core Koala Habitat. An APZ of 114m x 43m (8,322m²) is required due to the steepness of the slopes surrounding the dwelling and the vegetation types. Vegetation clearing and terracing of approximately 4,500m² is required within the area identified as Core Koala Habitat.

It is therefore considered that the location of the unauthorised structure (proposed dwelling) is not compatible with the context or setting of the surrounding environment being a significant habitat.

Access, Transport and Traffic

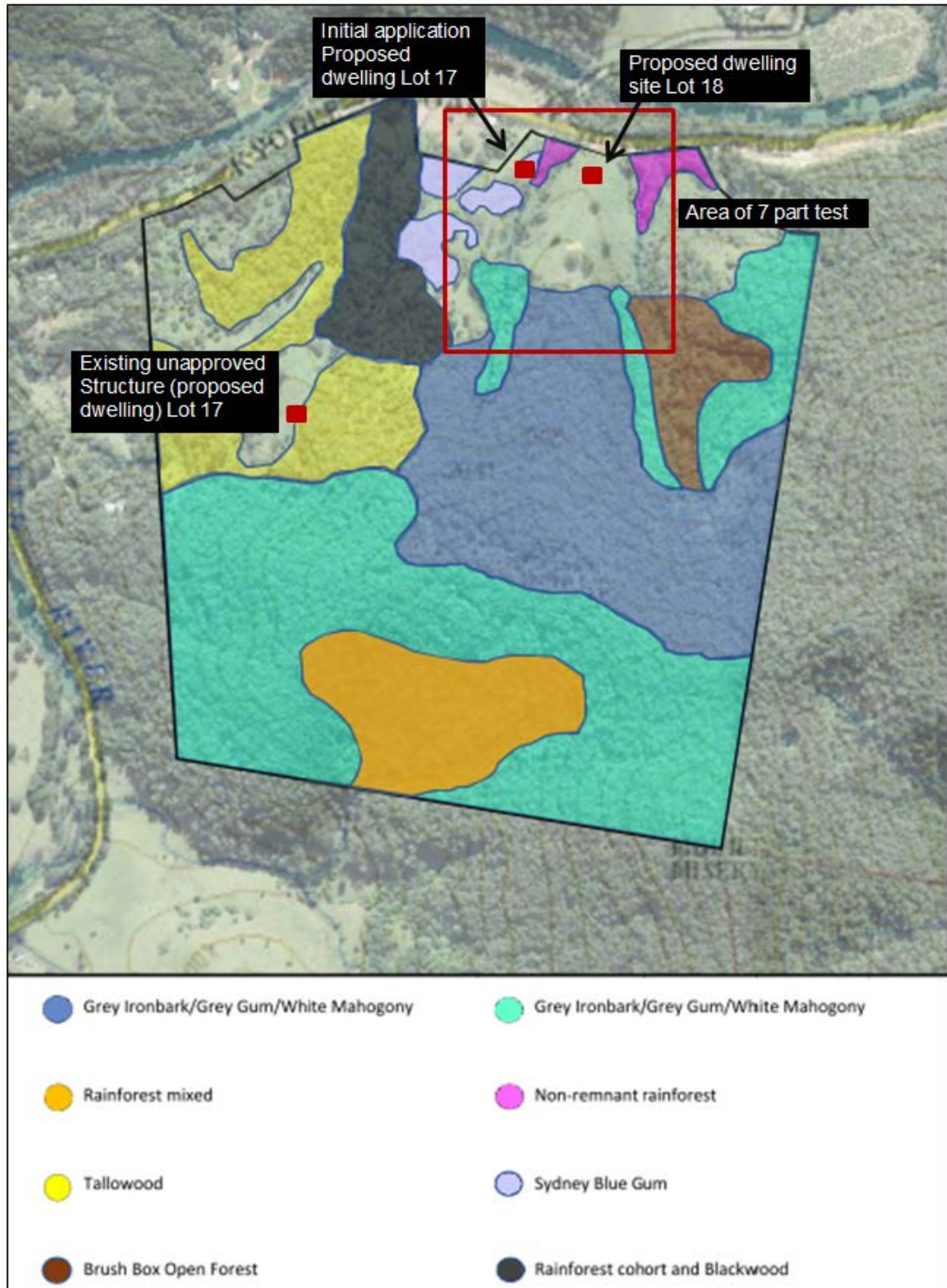
Access to the site is required to comply with *Planning for Bushfire Protection 2006* except where provided with an exemption by the Rural Fire Service for an alternative access. The provisions for access within section 4.1.3(2) *Planning for Bushfire Protection 2006* specify that a minimum carriage way with a width of 4m is required with passing bays with a minimum width of 6m to be provided every 200m. Carriage ways are required to have a 4m clearance above ground level.

It has not been made clear in the application if further additional vegetation removal is required to comply with the provisions. Aerial imagery suggests that the access track to the unauthorised structure (proposed dwelling) has been upgraded in recent times which may have involved the removal of vegetation.

Flora and Fauna

An Ecological Assessment was submitted with the initial application and further information was provided in an addendum to support the amended application for the two lot subdivision and dwelling. The Ecological Assessment addressed the impact of the proposal on threatened species, population or ecological communities listed within the *Threatened Species Conservation Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999*. An assessment with respect to State Environmental Planning Policy 44 Koala Habitat protection was also provided which is discussed in an earlier section of this report.

Threatened fauna and flora species are known to occur on site including Koala, Grey headed flying fox and Quoll. The ecological assessment performed a seven part test of significance in accordance with clause 5A of the Environmental Planning and Assessment Act 1979 on 10 threatened flora species and 16 threatened fauna species. The report concluded that the proposed development was unlikely to significantly impact on any threatened species, populations, ecological communities or their habitat where appropriate mitigation measures are implemented.



Amended Image from Ecological Assessment showing area where 7 part test was conducted in relation to current application which seeks approval for the use of the unapproved structure as a dwelling.

It is noted that the seven part test of significance was performed for the original application for the two lot subdivision and proposed dwellings sites located on the northern portion of the site.

The seven part test did not include an assessment of habitat in the vicinity of the existing unauthorised structure (proposed dwelling) location and does not account for impacts associated with the clearing of vegetation and terracing required for the establishment of an approximate 8000m² APZ.

Furthermore it was noted that flora species known to occur onsite or considered to have a high likelihood of occurrence where not subject to the seven part test as the seven part test did not assess habitat in the vicinity of the existing unapproved structure (dwelling).

As such significant uncertainty remains as to the extent and level of cumulative impact on threatened species, their habitats and Endangered and Threatened Ecological Communities listed under the *Threatened Species Conservation Act 1995*.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The surrounding land use includes rural residential development and agricultural and grazing activities interspersed with areas of natural bushland. The two lot subdivision is permissible within the zone and will not impact existing uses on adjoining lots.

However as the existing unapproved structure (proposed dwelling) requires vegetation removal of Core Koala Habitat within a designated Regional Wildlife Corridor, the proposed dwelling is not considered to be suitable in its current location. Alternate dwelling sites that have less direct impact on significant habitat are available on site.

Farmland of State or Regional significance (Section 117(2) Direction 14 dated 30 September 2005 (Refer to Council resolution of 25 July 2006))

A small portion of the site along the boundary with the Tweed River, being less than 0.03 percent of the site, is mapped as being Significant Non-Contiguous Farmland under the Northern Rivers Farmland Protection Project. This area is within proposed Lot 18 with a maximum width of 3m and it is unlikely that the proposal will impact directly or indirectly on the current or future use of the identified significant farmland. Referral to the Department of Primary Industry is not necessary in this regard.

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

The application for a two lot subdivision was initially referred the Rural Fire Service in accordance with section 100B of the Rural Fires Act 1997. The amended application to for a two lot subdivision and dwelling was referred to the RFS for comment following receipt of the amended plans.

The RFS issued conditions as a bush fire safety authority under section 100B of the Rural Fires Act 1997. The proposal is to comply with the following specified Asset Protection Zones:

- North for a distance of 52 metres as an Inner Protection Zone (IPA);
- South for a distance of 21 meters as an IPA;
- East for a distance of 62 meters as an IPA; and
- West for a distance of 52 meters as an IPA.

The conditions also stated that for APZs on slopes greater than 18°, the property shall be landscaped or managed (e.g. terracing) with suitable access being provided to the APZ for ongoing maintenance of the area. General advice provided by the RFS acknowledged that the establishment of asset protection zones on proposed Lot 17 may require the clearing of vegetation.

Furthermore, clearing of additional vegetation may be required to comply with the requirement for access to satisfy the provisions of *Planning for Bushfire Protection 2006*. The conditions would be applied to any consent issued.

(e) Public interest

The application represents an unacceptable impact on significant habitat and as such the proposal is considered not to be in the public interest.

OPTIONS:

1. Refuse the application in accordance with the recommendation and engage Council's solicitors to provide advice regarding a remedy to the authorised activity.
2. Report this matter to the next Planning Committee Meeting with draft conditions of consent to enable consideration for the application as proposed.

CONCLUSION:

It is considered that the negative ecological impacts likely to be associated with the proposed development, specifically with the approval of the existing unapproved structure for the purposes of a dwelling, cannot be avoided, minimised or managed to an acceptable level through conditions of approval. As such the application is being recommended for refusal.

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.

2 [PR-PC] Development Application DA17/0497 for an Extended Use of a Temporary Structure for a Film Production at Lot 7007 DP 1056645 and Lot 7335 DP 1154509 Tweed Coast Road, Hastings Point

SUBMITTED BY: Building and Environmental Health



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: **Provider**

SUMMARY OF REPORT:

This report details the assessment of the extended use of a temporary structure for a film production, recently conducted and now concluded, on Hastings Point Headland.

By way of background, a Temporary Film Licence Agreement was granted by Council on 30 June 2017 to allow Warner Brothers Feature Productions Pty Ltd to carry out filming and associated construction on a parcel of land located on Hastings Point Headland – Lot 7007 DP1056645 & Lot 7335 DP1154509.

The Temporary Film Licence Agreement permitted the following schedule for the filming process:

5 July to 16 August	Site preparations and Construction
17 August to 18 August	Filming
19 August to 15 September	Main site Deconstruction
16 September to 15 October	Site rehabilitation and restoration.

A subsequent Development Application (DA17/0497) was lodged to Council on the 31/7/2017 due to the fact that the State Environmental Planning Policy (Exempt and Complying Code) 2008, Subdivision 5 – Temporary Structures and alterations or additions to buildings for filming purposes, advises that *construction or installation of a temporary structure (other than a tent or marquee), and a temporary alteration or addition to a building or work, solely for filming purposes is development specified for this code*, where the following development standards are met:

- (a) N/A
- (b) not be at the location for more than 30 days within a 12-month period
- (c) N/A

(d) N/A

Given that it was anticipated that the proposed temporary structure would exceed the abovementioned 30 day period, a development application was lodged by Warner Brothers Pty Ltd, with Council.

As part of the Development Application lodgement, the Tweed Coast Reserve Trust at its meeting dated 20 July, 2017, determined that:

1. To provide owner's consent to Warner Brothers Feature Productions for a development application over Lot 7007 DP 1056645 & Lot 7335 DP1154509 on the condition that community feedback is sought with a modification in the Tweed Link at the cost of the proponent and that any issues raised are brought to the attention of Council.
2. The owner's consent is granted under delegated authority by the Executive Manager.

In accordance with this resolution, a notification was placed in the Tweed Link. A total of 33 submissions were received, and are addressed in more detail in this report. The general themes of the submissions ranged from concerns with the public consultation process, impact on the ecosystem, timeframe of the temporary use, restriction of use to the public reserve, to compliments regarding hospitality of staff on site and the economic and publicity benefits for the Tweed.

In terms of the assessment of this Development Application, it was concluded that the subject of the DA, the erection of a temporary structure, had minimal impacts on the surrounding environment, and has since been removed following the ceasing of the film production (see photos contained in the report below).

Whilst this type of structure would normally have been considered as '*exempt development*' under the codes State Environmental Planning Policy, it was evident that the structure from the time of its erection, to the time of its removal, exceeded 30 days, and therefore it was necessary to gain development consent.

The proponents Warner Brothers have provided the following record of site activity relating to the full cycle of set up and removal of temporary structure and site facilities:

- 7 July - Counter weights brought to site.
- 11 July - Scaffold install commenced.
- 26 July – Installation of walls of set commenced.
- 21 August – Studio Approval for set removal given.
- 22 August - Removal of the set commenced, including awnings.
- 26 August – Walls of set all gone. Commence removal of scaffold.
- 31 August – All scaffold removed from grass area.
- 1 Sept – All scaffold collected and removed from site.
- 5 Sept – Counter weights removed.
- 7 Sept – No infrastructure on headland.
- 15 Sept – Yugari Road open to general public vehicles.

The Codes SEPP provides no clear methodology for calculating the time period for the "*construction or installation of a temporary structure*", and its subsequent removal, nor does it delineate between general site preparations and the commencement of the main

temporary building/awning structure. Therefore, taken from the above events, the maximum and minimum periods of activity could be deduced:

Maximum – 7 July to 15 September – 70 Days

Minimum – 26 July to 26 August – 32 Days

On the basis of State and Council Planning legislation, and taking account of the minimal environmental impacts of the activity, it is considered that this Development Application warrants Council's approval.

RECOMMENDATION:

That Development Application DA17/0497 for the construction and installation of a temporary structure for a film production at Lot 7007 DP 1056645 and Lot 7335 DP1154509 Tweed Coast Road, Hastings Point for a period exceeding 30 days be approved.

REPORT:

Applicant: AHAB Warner Brothers Feature Productions Pty Ltd
Owner: Tweed Shire Council
Location: Lot 7007 DP 1056645 & Lot 7335 DP 1154509 Tweed Coast Road, Hastings Point
Zoning: RE1 - Public Recreation, 6(a) Open Space, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 7(f) Environmental Protection (Coastal Lands)
Cost: \$300,000

Background:

This report details the assessment of the extended use of a temporary structure for a film production, recently conducted and now concluded, on Hastings Point Headland.

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- (a) N/A
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- (c) N/A
- (d) N/A

Given that it was anticipated that the proposed temporary structure would exceed the abovementioned 30 day period, a development application was lodged by Warner Brothers Pty Ltd, with Council.

As part of the Development Application lodgement, the Tweed Coast Reserve Trust at its meeting dated 20 July, 2017, determined that:

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community feedback is sought with a modification in the Tweed Link at the cost of the proponent and that any issues raised are brought to the attention of Council.

2. The owner's consent is granted under delegated authority by the Executive Manager.

In accordance with this resolution, a notification was placed in the Tweed Link. A total of 33 submissions were received, and are addressed in more detail in this report. The general themes of the submissions ranged from concerns with the public consultation process, impact on the ecosystem, timeframe of the temporary use, restriction of use to the public reserve, to compliments regarding hospitality of staff on site and the economic and publicity benefits for the Tweed.

In terms of the assessment of this Development Application, it was concluded that the subject of the DA, being the erection of a temporary structure, had minimal impacts on the surrounding environment, and has since been removed following the ceasing of the film production.

Whilst this type of structure would normally have been considered as '*exempt development*' under the codes State Environmental Planning Policy, it was evident that the structure from the time of its erection, to the time of its removal, exceeded 30 days, and therefore it was necessary to gain development consent.

The proponents Warner Brothers have provided the following record of site activity relating to the full cycle of set up and removal of temporary structure and site facilities:

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Maximum – 7 July to 15 September – 70 Days

Minimum – 26 July to 26 August – 32 Days

On the basis of State and Council Planning legislation, and taking account of the minimal environmental impacts of the activity, it is considered that this Development Application warrants Council's approval.

Natural Resources Management

The original license agreement granted by Council was subject to comment and conditions provided by Councils Natural Resources Management Unit. For the purpose of this report, the following comment was received:

'The NRM Unit's comments and conditions were addressed at the filming permit stage. Please see DWS 4579924 and 4590715 for the conditions and rationale supplied. These would apply to the DA as well.'

'The fencing, monitoring and restoration work has been undertaken as requested in DWS 4579924.'

Aboriginal Cultural Heritage

The application was referred to the Tweed Byron Local Aboriginal Land Council for comment. At the time of finalising this report, no comment has been received.

Submissions

In response to notification in the Tweed Link, a number of submissions were received, which have been summarised in detail below. The general themes of the submissions ranged from concerns with the public consultation process, impact on the ecosystem, timeframe of the temporary use, restriction of use to the public reserve, to compliments regarding hospitality of staff on site and the economic and publicity benefits for the Tweed.

The proposal received a total of 34 submissions, with 27 objecting to the temporary use and 7 complimenting the temporary use.

Submission Themes

Restriction of access to Headland and beach (Restrictive access)

A number of submissions received raised the issue of the restriction of access to the headland and surrounding rocky foreshore and beaches, during the temporary use of the headland.

Additionally, the amount of timeframe of the restriction of access to the headland and surrounding rocky foreshore and beaches was a key theme. It is also noted that submissions raised the point that the temporary structure sat unchanged for a number of weeks, further increasing the amount of time that access to the area was restricted.

The submissions described an impact that the restrictive access had on regular users of the headland and surrounding area as well as tourists and surfers.

Public Consultation

The theme of public consultation was raised in a number of submissions, with many stating that more public consultation was needed as the temporary use of the land was not known until the Temporary Film Licence Agreement was granted.

The submissions also identified that there was confusion as to the exact details of the Temporary Film Licence Agreement, namely the timeframe of the agreement and hours of operation. There was also frustration that the relevant approvals could not be accessed when requested by members of the public, as required by the conditions of the agreement.

Ecological Value – environmental impact

The submissions highlighted the impact that the whole process involved with the Temporary Film Licence Agreement may have on the ecosystem, given the high volumes of traffic (vehicle and foot) and machinery, including the impact on headland grass and rocky shore area.

It was identified that the site is of a high ecological, geological and cultural significance. Concern was raised that none of these aspects were suitably considered and the relevant legislation was not adequately addressed.

It was suggested that no future filming be permitted in environmentally sensitive and public areas of the Tweed shire.

Safety

It was raised that the safety of the public was an issue during the filming process as the restrictive access to the headland forced people to convene in carparks.

Location

The submissions highlighted that alternate locations should have been considered which contained existing lighthouses rather than require a new structure to be built.

Economic

Concern was raised about the economic benefit to the local area that the filming may have, with submissions mentioning that many staff for the project were staying in QLD.

Precedent for future filming

Concern was raised that the processes involved in granting a Temporary Film Licence Agreement and subsequent development application on this site may set a precedent for more filming to take place in the future.

Compliments

The compliments received on the Temporary Film Licence Agreement identified that the steps constructed on the rocky foreshore provided good access to the rocky shoreline area and that the works could be a tourist attraction if left constructed and are great publicity for the area.



The temporary structure once constructed (now removed)





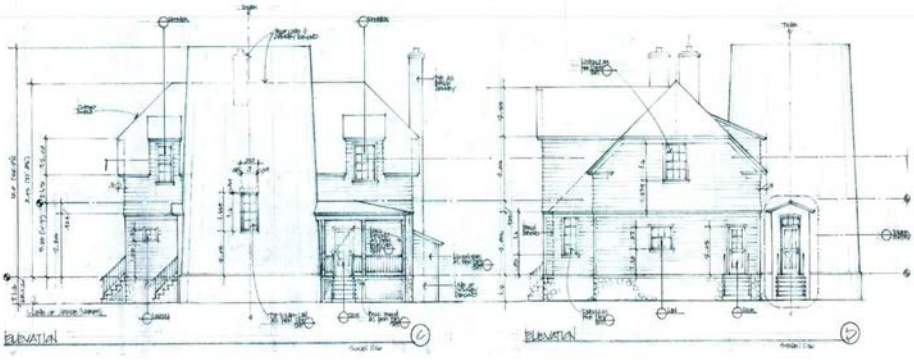
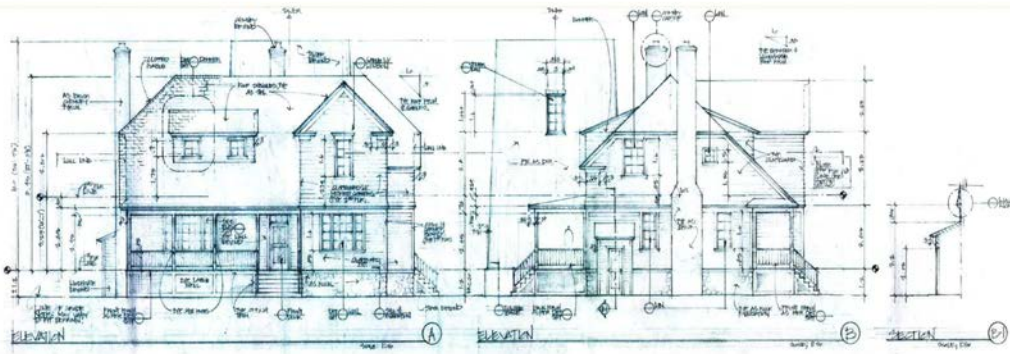
Photos from site visit dated 12/9/2017



Photos of the temporary jetty constructed over the rocky foreshore (now removed)

SITE DIAGRAM:





REV A
170612

ARJAB

PROJECT NO.	170612
DATE	11/07/2017
SCALE	1/8" = 1'-0"
DRAWN BY	ARJAB
CHECKED BY	ARJAB
DATE	11/07/2017
PROJECT NO.	170612
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SCALE	1/8" = 1'-0"
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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 proposal is consistent with the aims of the plan

Clause 2.3 – Zone objectives and Land use table

The land to which this application relates and where the temporary structure is proposed to be sited is predominately zoned RE1 – Public Recreation.

The objectives of the RE1 Zone are stated below:

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

For the purposes of land use definitions in the Tweed Local Environmental Plan 2014, development for the purposes of temporary film production is not specifically defined and is therefore an innominate use and therefore prohibited in the RE1 zone. However, Clause 2.8A of the TLEP 2014 relates to the Temporary Use of Land and states:

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

- (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*
- (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.*
- (4) *Despite subclause (2), the following types of development may exceed the maximum number of days specified in that subclause:*
 - (a) *temporary use of a dwelling as a sales office for a new release area or a new housing estate,*
 - (b) *filming on land in a rural zone.*
- (5) *Subclause (3) (d) does not apply to the types of development specified in subclause (4).*

In accordance with Clause 2.8A, the temporary use of the land for filming is permissible as a land use.

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

This application does not involve subdivision.

Clause 4.3 - Height of Buildings

The proposed height of the temporary structure equates to 10m.

Clause 4.4 – Floor Space Ratio

FSR is not applicable to this application

Clause 4.6 - Exception to development standards

There are no exceptions to the development standards

Clause 5.4 - Controls relating to miscellaneous permissible uses

This application does not involve any miscellaneous permissible uses.

Clause 5.5 – Development within the Coastal Zone

The site is located within the Coastal Zone.

The Temporary Film Licence Agreement, which included the temporary structure, was subject to conditions of consent relating to the protection of the Coastal Zone, including the monitoring of the site. Given that this development application is for the extended use of the temporary structure, it is considered that the proposal will

maintain the relevant conditions relating to the protection of the Coastal Zone and therefore maintains the objectives of the Clause.

This clause requires 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:

- (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:

It is acknowledged that access was restricted to the Hastings Point Headland by temporary fencing, however this was not a blanket restriction of the entire area, and public access was still afforded to the area.

- (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:

Although a permanent structure of this size and scale within the site would not be a permissible land use under the provisions of the LEP, as discussed above, in accordance with Clause 2.8A, the temporary use of the land for filming is permissible as a land use and therefore the temporary structure is considered to be suitable for the site.

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

Comment:

The proposal may have had some impact on the amenity of the coastal foreshore however given its temporary nature and that it forms part of a Temporary Film Licence Agreement granted by Council, it is considered that the impact would not be any more than what was granted in the previously mentioned license agreement.

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

Comment:

A short term visual impact has occurred as a result of the project, which was anticipated and addressed prior to the issuance of the Temporary Film Licence Agreement. It is considered that the proposed extended use of the temporary structure will maintain the considerations of the license agreement.

- (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:

Short term disturbance on the area has occurred as was anticipated and addressed prior to the issuance of the Temporary Film Licence Agreement. Relevant conditions were included on the license agreement which will ensure the extended use of the temporary structure will maintain any conservation measures. The site is also subject to monitoring by Council's NRM Unit.

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

Comment:

The proposal is for the extended use of a temporary structure which will not result in any cumulative impacts.

- (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:

Access to the coastal foreshore was maintained where practicable and although some restrictions were necessary for safety reasons during the filming, construction and demolition phases of the project, the proposal is considered maintain this provision of the clause.

- (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*

N/A

- (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:

Opportunity for this to be addressed would occur during the site rehabilitation phase of the Temporary Film Licence Agreement.

- (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 temporary nature of the proposal is unlikely to result in any additional risk of coastal hazards to the subject site or to any other surrounding land.

Clause 5.9 – Preservation of Trees or Vegetation

The proposal does not involve the removal of any trees or vegetation.

Clause 5.10 - Heritage Conservation

The site is not located within a heritage conservation area.

Clause 5.11 - Bush fire hazard reduction

Whilst the subject site is located within a nominated bushfire prone area the proposed temporary use of the site to facilitate the production of a feature film will not create any threat in regards to bushfire.

Clause 7.1 – Acid Sulfate Soils

The site has been identified as being affected by Class 5 sulphate soils, as no works are proposed within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the water table is likely to be lowered 1 metres AHD on adjacent class 1, 2, 3 or 4 land, an acid sulphate soil management plan for minor works is not required with this application.

Clause 7.2 - Earthworks

It is considered that the proposed works to accommodate the temporary structure will not have a detrimental impact on the environmental functions and processes, neighbouring uses, cultural or heritage items of the subject site or surrounding lands.

Clause 7.5 - Coastal risk planning

The proposed temporary structure is considered to avoid adverse impacts from coastal hazards, nor is it considered to increase the severity of coastal hazards.

Clause 7.6 - Stormwater Management

It is considered that this proposal will minimise the impacts of urban stormwater on the subject site and adjoining properties, through appropriate conditions contained within the licence agreement.

Clause 7.10 - Essential Services

All essential services are available and adequate.

State Environmental Planning Policies

NSW Coastal Policy, 1997

The maps accompanying the Coastal Policy indicate that the site falls within the area to which the Policy applies.

Table 2 of the Coastal Policy contains a number of strategic actions relevant to development control. Those specifically relevant to this proposal are addresses below:

- Stormwater Quality: The temporary development does not involve the erection of any permanent structures. In this instance it is considered that a Stormwater Management Plan is not required.

- Coastal Hazards: The temporary development is suitable for the location having regard to the hazards that apply to this site.

In summary, approval of the application would not be inconsistent with the Coastal Policy.

SEPP No. 14 – Coastal Wetlands

A portion of lot 7335 DP 1154509 is mapped as being within the Coastal Wetlands buffer. The proposal will not occur within this mapped area and therefore satisfies the considerations of this SEPP.

SEPP No. 26 - Littoral Rainforests

The proposal does not fall within the area mapped as being within the SEPP 26 Littoral Rainforest or 100m buffer and is considered to be consistent with the considerations of this SEPP.

SEPP No 71 – Coastal Protection

The site falls within the area to which the Policy applies. The application is generally consistent with the provisions of State Environmental Planning Policy No. 71 specifically Clause 8 which requires an assessment of matters for consideration. Subject to the conditions of the film licence the application is considered to adequately satisfy this SEPP.

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

Draft Coastal Management SEPP

The proposal falls within the area of the site identified as being within the Coastal Use Area, Coastal Environment Area.

The subject temporary structure in this instance, is considered consistent with the objectives and provisions of this draft SEPP.

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

Tweed Development Control Plan

B23-Hastings Point Locality Based Development Code

DCP B23 applies to dwelling houses, alterations and additions, dual-occupancies, town-houses, and shop-top and residential flat buildings. Given the proposal is for the extended use of a temporary structure, which was granted approval under the relevant Temporary Film Licence Agreement, it does not conflict with the objectives, principles and controls of this DCP.

B25-Coastal Hazards

A portion of the site is mapped as being within the 2100 maximum Coastal hazards line. The temporary structure is clear of this mapped area and is therefore consistent with the provisions of this DCP.

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

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

The site is covered by the Government Coastal Policy (the NSW Coastal Policy 1997). It is considered that the proposal would be consistent with the provisions of the NSW Coastal Policy 1997.

Clause 92(1)(b) Applications for demolition

The application involves demolition and appropriate conditions were imposed on the Film Licence Agreement.

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

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is not on the coastal foreshore and is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the clause.

Tweed Coast Estuaries Management Plan 2004

This proposal is considered to be consistent with the management objectives set out in this Plan.

(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 proposal is for the extended use of a temporary structure for filming purposes due to the original temporary use, granted via a film License Agreement issued by Council, will exceed the timeframe permissible as exempt development. It is unlikely that the proposal will result in a significant impact to the desired context and setting of the locality given that it is temporary in nature and was originally permitted under the Temporary Film Licence Agreement.

Access, Transport and Traffic

Access, Transport and Traffic were addressed as a part of the Temporary Film Licence Agreement, which operates from 5 July to 15 October. The extended temporary use of the structure will still operate within this period and therefore will not generate impacts any greater than what was originally anticipated. The provision of public car parking will still be available within the vicinity of the Hastings Point headland.

Flora and Fauna

The impacts of the structure on the flora and fauna of the locality was addressed as a part of the Temporary Film Licence Agreement. Given the structure is temporary, it is unlikely to generate significant impact on the flora and fauna of the site.

Social and Economic

Given the minimal timeframes associated with the temporary structures for filming no significant negative social or economic impacts are envisaged.

It is acknowledged that the proposal received positive public comment regarding economic benefits and objections regarding negative social impacts associated with restrictive access. These issues have been summarised above in the Background section of this report.

Noise

It is likely that some localised disturbances or inconveniences could be anticipated from the proposal.

(c) Suitability of the site for the development

Surrounding Land uses/Development

Subject to compliance with the recommended conditions of the film licence agreement the subject site is considered suitable for the proposed temporary structure for filming.

Flora and Fauna

Relevant comments and conditions were provided by the NRM Unit as a part of the Film Licence Agreement, which included the temporary structure. The extended use will still operate within the timeframe permitted within the agreement and therefore the site is considered suitable for the proposal.

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

The proposal received a number of submissions which have been summarised under the summary section of this report.

(e) Public interest

The application is not considered contrary to the broad public interest. The temporary nature of the filming is considered reasonable subject to compliance with the terms and conditions detailed within the Temporary Film Licence Agreement.

OPTIONS:

1. Approve the application in accordance with the Film Licence Agreement.
2. Refuse the application.

Option 1 is recommended.

CONCLUSION:

In conclusion, the structure subject to this development application for the extended use, has now been removed and the subject site is currently undergoing rehabilitation and monitoring as required by the conditions of the Film Licence Agreement.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PR-PC] Fingal Head Building Height Review - Outcomes and Recommendations

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: Collaborator Leader

SUMMARY OF REPORT:

The purpose of this report is to respond to Council's resolution of 20 June 2013 that sought a review of the planning controls regulating heights of buildings in the Fingal Head locality. The resolution stemmed from local community concern being raised directly with Councillors and was seemingly related to the transition in measurement of building height from 'storeys' to 'metres' brought about by the *Standard Instrument (Local Environmental Plans) Order 2006*; being the *Tweed Local Environmental Plan 2014 (LEP)*, as well as a several recent approvals for contemporary housing.

The report details the findings of a technical review and local community engagement program, which distilled the community's key concerns, and recommends planning based design or regulatory options to address, as far as is practicable, both the immediate concerns surrounding height of buildings as well as wider concerns for local character and amenity.

The review comprised a desktop analysis of the key features and attributes of the locality and current planning controls. This was assisted by a community engagement program that enabled comprehensive and informative community feedback, distilling the breadth of community concern for the issues as well as being instrumental in the selection or design of the planning solutions, which form the basis of this report's recommendations.

In the final analysis the local community consensus supports an amendment to the current planning controls to enable the height of buildings to be controlled by a 2 storey 'character' design height limit in concert with existing 9 metre height of building limit, for residential development within the R2 Low Density and B4 Local Centre zones. This will ensure the prevailing 2-storey character will be retained while allowing flexibility for this to be achieved on those sites constrained by flooding or steep land. It is proposed that this be incorporated

into the Tweed Development Control Plan in the first instance, and form part of the wider LEP height of building review currently resolved by Council and in progress.

In addition to the concerns surrounding height of buildings there was widespread feedback through the community engagement advocating and arguably necessitating the need for a more holistic community based locality plan. This is also addressed in this report's recommendations.

RECOMMENDATION:

That:

- 1. The Council expresses its gratitude to those community attendees and contributors who participated and assisted staff with the Fingal Head Height of Building Review.**
- 2. The attached Community Conversation 02 Feedback Fingal Head Building Height Review is received and noted.**
- 3. The existing 9 metre building height limit under *Tweed Local Environmental Plan 2014* for Fingal Head is to be retained.**
- 4. *Tweed Development Control Plan 2008, Section A1 Residential and Tourist Development Code* is to be amended to include a 2 storey 'character' design height limit to operate in concert with existing 9 metre height of building limit under the *Tweed Local Environmental Plan 2014*, for all residential or mixed-use development in Fingal Head; and**
- 5. The amendment described above is to include:**
 - a. character statements describing the existing and desired future character of Fingal Head, those elements that distinguish it as a unique place to live and are highly valued by the community that lives there; and**
 - b. planning principles to guide the design of new development, having specific regard to the varying contextual conditions and constraints; including, flood liable land, sloping sites and smaller (village) allotments; and**
- 6. The 2 storey 'character' design height limit described above is to be incorporated into the *Tweed Local Environmental Plan 2014*, at the earliest practicable time.**
- 7. Roof-deck design guidelines are to be prepared for incorporation into the *Tweed Development Control Plan 2008, Section A1 Residential and Tourist Development Code*, as a uniform code for any development in the Shire, at the earliest practicable time.**
- 8. A locality plan be prepared for the Fingal Head and Chinderah localities at the completion of the Kingscliff Locality Plan.**

REPORT:

The purpose of this report is to respond to Council's resolution of 20 June 2013 that sought a review of the planning controls regulating heights of buildings in the Fingal Head locality.

The Fingal Head Height of Building Review is a key project within Council's adopted work program for its Strategic Planning & Urban Design (SP&UD) Unit. It is understood that Council consideration and resolution in respect of this matter originated from community concern regarding the transition in measurement of building height from 'storeys' to 'metres' brought about by the *Standard Instrument (Local Environmental Plans) Order 2006* ("SIO"), being the *Tweed Local Environmental Plan 2014* (LEP), as well as in response to a number of 'larger' recent development applications and approvals.

This report details the findings of a technical review exercise, identifies the primary issues raised through community consultation, and identifies planning based recommendations to address those issues raised and community expectation in relation to future development within Fingal Head.

Planning Framework and Development Controls

Building height within the Fingal Head residential and commercial footprint was confined to 2 storeys via development standards within the *Tweed Local Environmental Plan 2000* (LEP 2000). Under the same instrument the majority of land across the Shire located outside the Fingal Head area had a three-storey height limit. The exceptions were areas within the coastal villages of Pottsville, Black Rocks Estate, Hastings Point, Kingscliff and a section of Terranora Road.

Within the LEP 2000 the definition of a storey enabled a maximum height of up to 4.5 metres per storey for residential buildings and up to 5 metres per storey for commercial buildings. Accordingly, within a 2 storey area, residential buildings had a theoretical maximum height of building of up to 9 metres, and 10 metres for commercial buildings. Correspondingly, a 3 storey residential building could attain a height of 13.5 metres, and 14m for a mixed use building comprising a single level of business, or 15 metres for a 3 storey commercial building. Under the LEP 2000 each of these heights could be further increased by a further 1.5 metres to allow for such matters as; foundation areas, garages, workshops, storerooms or the like; resulting in the present comparison of a 2 storey 10.5 metre overall building height under the LEP 2000 against a 9 metre non regulated storey limit under LEP 2014.

In March 2006 the NSW Department of Planning gazetted the SIO, which directed all Council's to prepare a new local environmental plan in accordance with this standard 'template' instrument. Numerous directions were also published, and amended, to guide the implementation of this new State-wide format. The notable difference in the present context is the that maximum height of buildings was to be mapped within the LEP and Practice Note (PN 08-001) explained that this maximum height of building should be displayed in metres to *provide certainty with respect to this key development standard*. It stated that additional built form provisions, such as maximum number of storeys, may be included in Development Control Plans however, and owing to Council's strategic planning resource capability, this has not been incorporated to-date.

In April 2014 the LEP 2014 was formally gazetted and replaced the LEP 2000, with the exception of certain deferred areas (which largely encompass environmental zoned land), placing the urban areas of Fingal Head under the new LEP 2014 scheme. The current planning controls are therefore a maximum height of buildings within the residential and commercial zoning of Fingal Head being 9 metres, measured from existing ground level.

While the previous LEP 2000 definition theoretically enabled 2 storey developments to reach a height of 9 metres it provided sufficient control to ensure that anything greater, regardless of whether there was a breach of the height in metres, could only occur if a formal variation to the development standard, under SEPP1, was first approved. However, with the change to measuring maximum building height in metres rather than storeys, the number of achievable storeys is now determined by design e.g. minimum floor to ceiling heights and requirements for sub floor services. Tweed DCP encourages minimum floor to ceiling heights of 2.7m, whereas the Building Code of Australia stipulates a minimum of 2.4m for habitable rooms. Thus a three-storey building could theoretically be designed within nine metres.

Fingal Head Context

In reviewing the Fingal Head context including recent development applications and different site conditions, the following three broad categories were identified which generally prompted different design responses:

- Flood affected land,
- Sloping sites
- Remainder of (smaller lots) within the village

Flooding

A significant proportion of the Fingal Head locality is identified as being flood liable, including properties fronting Fingal Road, Wommin Lake Crescent, Crown Street, Lagoon Road, Dune Road and Letitia Spit.

Council's flooding policy requires habitable areas of all residential buildings to be at or above Council's adopted floor level for development, which for Fingal Head is 3.1m AHD. The policy permits consideration of an area of up to 50m² of non-habitable space occurring below the design level to be enclosed (such as laundries, stairway entries and double garage spaces).

When considering the existing ground level and the finished floor heights that are required for flood mitigation, development on some properties in Fingal Head requires the bottom floor to be raised between 1m and 1.7m above the existing ground level. This has the effect of either raising the overall height of a building, or limiting the primary component of the building in which people can live to in some cases only 7.2m in height.

Sloping sites

There are many allotments within Fingal Head that are located on 'moderate sloping land' which is described as land greater than 12 degrees (or 21.25%). On a sloping site there is greater likelihood for a building to appear taller when viewed from the lower side (downslope) and therefore increase the perception of building scale or mass.

To address the complications of building on sloping lots, Tweed DCP – Section A1 Residential and Tourist Development Code includes design principles and an objective that a building's form should generally step with the natural topography, to remain under the height limit and avoid excessive cut and fill.

However, the existing framework within the DCP also provides opportunity for overall building height to be increased from nine metres to 10 metres on slopes of greater than 12 degrees (21.25%) to allow flexibility in design to accommodate roof forms and other elements that are difficult to achieve within the standard height limit. Notwithstanding, any Development Application seeking to utilise this additional height provision needs to address Clause 4.6 - Exceptions to development standards, of the LEP 2014.

Remainder of village

Land outside of flood liability and sloping sites is contained within the village centre. These allotments tend to be smaller in terms of street frontage width and land area. Whilst these allotments tend to be flatter and less constrained in terms of site and construction conditions, they also represent part of Fingal Head which is undergoing significant transition as the predominate built form was traditionally very small beach cottages and these are being replaced by larger more contemporary dwellings.

Recent Development Application Trends

As part of the Fingal Building Height Review process, an audit of residential development approved in Fingal Head since the introduction of LEP 2014 was undertaken. The audit revealed there have been no three-storey dwelling proposals or approvals within this timeframe. This trend might be attributed to:

- a significant proportion of the residential zoned land in Fingal Head being environmentally constrained by flooding or steep terrain, which in turn affects building design and specifically overall building height, and
- Increasing market demand and design tendency towards sustainability utilising passive design, which typically incorporates higher ceiling volumes with highlight windows to achieve greater natural light and ventilation.

Thus despite the potential for a three storey building (or part thereof), within the 9 metre building height limit, anecdotal evidence suggests that maximising the number of storeys over other design and liveability considerations is not the driving factor for new development in Fingal Head. Whilst larger and more modern houses with greater floor to ceiling clearances are being built, often replacing the existing smaller cottages, the prevailing trend remains dominated by buildings designed within a 9 metre and 2 storey height limit.

The audit revealed a single variation to the LEP 2014 9 metre height limit, which was approved by Council and related to roof-deck above a 2 storey dwelling. Several community objections were received during the public exhibition of this proposal principally relating to the height variation and associated amenity and design based impact. The audit also revealed a number of other more minor building envelope variations for the most part relating to building line setbacks to property boundaries.

Community Consultation and Feedback (Community identified Issues)

Community Survey and Community Conversation 01

In order to initially understand what concerns the community may have in relation to building height a Community Conversation drop in session and written survey were conducted. Whilst building height was the key issue for this initial public consultation, feedback was also collected on associated issues relating to the appearance of buildings and their visual impact on the broader locality. This information has been very helpful in painting a broader view of the impact of current policy controls and new development and has helped shape the policy response recommendations to Council that are presented in this report.

The Community Conversation was held on 10 March 2016 at the Fingal Head Public School Multi Purpose Hall. Approximately 55 people attended the Community Conversation, and whilst a variety of opinions were expressed throughout the evening, consistent messages included:

- The predominate character defining elements of the Fingal locality relate to its natural and environmental attributes and the small, low-density settlement footprint.
- There is limited to no prevailing or preferred architecture, instead, the 'character' of built form is its eclectic and evolving nature.
- No/limited interest in imposing any form of 'style guide', instead freedom of expression was supported.
- Concerns regarding recent developments (if any) related more to vegetation loss, overlooking and overshadowing as opposed to building height.
- A desire for the Council 'rules' to be more stringently enforced and the community to be notified when an application seeks a variation.

Throughout the conversations the prevailing community view specifically regarding building height was that the current 9 metre provision is an appropriate balance between built form and managing site constraints (flooding and slope). Those community members who expressed concern regarding building height often expressed an opinion that the current control in isolation was acceptable, however too excessive variations were being granted and when height variations are coupled with relaxations to setbacks and / or landscaping controls, the overall appearance of a building begins to change.

Alongside the community conversation, a written survey was conducted, with hard copies provided to landowners and available at the Fingal Trading Post, or on request from Council. The survey was also available on a web based platform for online submissions.

136 responses to the survey were received, along with 106 additional written comments. This level of feedback is considered significant as it represent approximately 25% of the Fingal Head population, and is substantially higher than the response regularly received to Council consultation programs. The survey asked targeted questions about the community's level of satisfaction with a variety of built form characteristics, with results showing that building height itself was ranked fourth important after loss of vegetation, building bulk and loss of privacy or sunlight. These results indicate that building height itself is not necessarily the key element of concern for the majority of the community. They also suggest that if vegetation, privacy and the overall appearance of a building are managed then building height may not be the key issue that requires addressing. This was supported

in part by a significant proportion of survey responses indicating support for introduction of a 2 storey design restriction rather than lowering the 9 metre height control.

A substantial amount of supplementary commentary was also added to the written surveys. Amongst this, the overarching theme was that Fingal Head is unique and that the 'village character' is important and needs to be protected. There also appeared to be a distinct divide within the community between those who believe that the existing development controls surrounding built form (including current building height controls) and landscaping are suitable and performing to expectations, and those who feel that tighter controls around built form, along with increased protection for vegetation on private land, are necessary. An additional theme of concern was that current controls are suitable however that are not being enforced correctly, leading to built form outcomes which deviate from that intended by the existing policy controls.

Community Conversation 02

The Community Conversation 02 session was held at the Fingal Head Primary School Hall on the evening of Wednesday 14 June 2017. It was a targeted consultation specifically for Fingal Head residents and those members of the public who had previously participated in the Community Survey and/or Community Conversation 01. The intent of the invited workshop format was to refine the issues and values that had been raised through the previous consultation sessions with a focus on community input to exploring the building height issue further.

38 members of the community attended, including representatives from the local Aboriginal community. The primary activity evening consisted of facilitated group discussions around three different building height scenarios (8 metre limit and 2 storey restriction; 9 metre limit and two storey restriction; 9 metre limit and no storey restriction) within the three common site context scenarios found within Fingal Head (being flood liable land, steep land and the flatter (smaller lot) village centre land).

The importance of flexibility in design to allow 2 habitable stories above the design flood level was emphasised by many of the attendees and this generally held view at the same time appeared to acknowledge that an 8 metre height limit would be an unreasonable design burden for those landowners affected by the flood constraint. There were also multiple expressions of concern that it would lead to more requests for relaxations and subsequent granting of variations and it followed that a 9 metre height limit with a 2 storey restriction would be the best way to achieve this.

Some questions were asked in relation to the definition of a storey and whether the sacrificial area under the design flood level is regarded as a storey. Were that the case, a two storey restriction would then potentially limit dwellings in flood affected lots to a single habitable storey above the design flood limit. LEP 2014 does not specify a minimum or maximum measurable height for a storey, instead identifying it only as *the space between one floor level and the floor level next above*, and the ability to amend the LEP definition is not straightforward. Thus the successful implementation of a 2 storey limit would to some extent be dependent on identification of a suitable pathway to clarify how a *storey* is measured to ensure that owners of flood affected land are able to achieve 2 storeys above the design flood level.

The majority preference across all three scenarios was to retain the 9 metre limit to embed some flexibility in the design of constrained allotments. Notwithstanding some participants did identify some concerns, particularly regarding building on sloping land, that the 9 metre limit has the potential for new buildings to appear too tall. This is an important issue particularly in the sense of a building's bulk, scale and massing potential to impact locality character. This ultimately highlights the need for careful building design that respects both the existing form of the land and the character of the area.

Discussions around the suitability of and preference for roof decks were also held in an attempt to obtain clarity on whether roof decks should continue to be permitted in Fingal Head. On aggregate there was a preference to retain the opportunity to build a roof deck but there was also overriding support for conditions and/or detailed consideration of the design aspect of roof decks including a focus on visual integration and mitigation against potential privacy and amenity impacts on neighbouring properties and integration with the primary building and roof form.

Additional comments received from some attendees advocated the need for a more holistic community based locality plan be undertaken to identify the village character and guide future development. From a built form perspective, the potential impacts on amenity through overshadowing and reduced privacy were also highlighted as issues of concern rather than the visual impact of building themselves. When considering this in the context of policy development, paying more heed to these amenity-related elements through a more comprehensive approach to the site analysis and building design is considered a more appropriate response than a reduction in building height per se, which may not necessarily result in better outcome for overall amenity.

Concern was also raised by some participants with regards to Council's governance and consistency in the application of the existing built form controls through their regulatory decision making role. Whilst there was a perception that the current planning controls are for the most part effective, approving variations that lack planning justification actually undermines the intent of the controls and can lead to undesirable or poorly designed outcomes, which impacts on character and sets precedence for similar variations.

A comprehensive report detailing the feedback received during the second community consultation workshop is provided as Attachment 1 to this report. This report has been made available to the Fingal Head community and those who attended the workshop.

Tweed Byron Local Aboriginal Land Council (TBLALC) Feedback

Aboriginal cultural heritage is significant throughout Fingal Head and Letitia Spit. The area has a long and rich cultural history and the entire peninsula has been mapped through Council's Draft Aboriginal Cultural Heritage Management Plan process as an area of known and potentially very high likelihood of containing artefacts or other items of aboriginal cultural heritage significance.

On 18 May 2016, Council Officers met with members of the Fingal Aboriginal community specifically to discuss the Fingal Head Building Height Review and to gain feedback on their views regarding recent development trends in the locality.

After significant and helpful discussion during the session itself, a written response representing the views of all who attended was provided to Council which:

- Clearly articulated the cultural significance of, and the strong connection the Aboriginal community have to, the Fingal locality;
- Highlighted its environmental significance;
- Identified and praised the numerous local Aboriginal and non-Aboriginal community groups and individuals who have collaborated to protect the elements of Fingal that are highly valued;
- Expressed concern over the potential for increased density and overbuilding;
- Expressed concern over vegetation removal and illegal encroachment on Crown and TBLALC land by private land owners including the erection of structures.
- Requested Council to take a broader examination of the essence of Fingal Head through the lens of the community, and develop a Locality Plan
- The submission indicated a preference for building height to be lowered to 7m or less.

Further feedback that was provided from the Fingal Head Aboriginal community during the second conversation session, in particular relating to construction and development sloping sites, with one comment stating that 'excavation will cause harm to Aboriginal Cultural Heritage and should be avoided'. Whilst the location and degree of excavation are key considerations in this context, earthworks are unequivocally a significant issue of potential risk to Aboriginal Cultural Heritage, particularly in Fingal Head which is recorded on the NSW Department of Environment and Heritage's Aboriginal Heritage Information Management System (AHIMS) register as a precautionary area, and contains other registered Aboriginal Cultural Heritage sites within the locality.

One of the issues discussed with the community was the possibility that lowering the building height limit, particularly as low as 7 metres, may lead to more instances of proponents seeking to maximise excavation. Notwithstanding that the DCP A1 (2.1) aims to minimise the extent of earthworks associated with residential development, building height is currently measured from existing ground level and therefore there is an apparent advantage in some instance for excavating to achieve greater height within the overall building envelope.

The broader community feedback clearly expressed an overarching view that retaining flexibility with the 9 metre to avoid additional excavation, but including a 2 storey limit to control visual impact, would provide the most holistic response for managing these issues on a site by site basis, and it goes side by side that minimising the potential for excavation is an appropriate method of mitigating against harm to Aboriginal Cultural Heritage.

Council is currently finalising a Draft Aboriginal Cultural Heritage Management Plan that will assist with identifying and addressing matters of cultural significance, across the Shire.

Discussion

Feedback regarding Council's level of consultation and engagement with the Fingal Community throughout the review has been extremely positive. The community's keen participation throughout is credit to their passion for the topic and allowed some very useful discussions to take place.

Whilst the overall objective of has been to examine building heights, broader themes and visions have arisen throughout the review, with more refined aspirations coming out of the

second conversation session. Despite there being some lingering division within the community with regards to the most suitable building height scenario for Fingal Head, on conclusion of the community engagement process it has become clear that the community is united in their recognition that Fingal Head is unique, and that its environmental qualities and 'village character' are important and need to be protected. This value-based feedback has provided evidence that those public value elements that have been repeatedly identified by Fingal head residents as requiring attention are best addressed through the preparation of a locality plan.

The results of the height specific scenario exercises, and the conversations more broadly, collectively demonstrated that the most widely accepted view across the community is retention of the current 9 metre height limit with the introduction of a 2 storey control. The overall preference for a single building height control, when looked at in conjunction with written and verbal commentary, indicates a broader acceptance amongst the community that whilst tweaking the maximum allowable building height in response to specific environmental constraints (e.g. flooding, sloping sites) may achieve more refined design outcomes on some sites, a single height control is a more appropriate approach to avoid the introduction of several site-dependant controls which could cause further confusion, misunderstandings and perception or real inequity across the locality.

Depending on its nature, the application of a standardised building height control across a locality subject to environmental constraints that typically influence building height (such as slope and flood affectation) may appear restrictive for those sites that are both genuinely and atypically constrained. It may also be seen as too liberal on unconstrained land. Thus the challenge for the resolution of the building height issue at Fingal Head, as it is understood from the consultation and feedback, is centred around providing two things:

1. Certainty of the ability to design and build a dwelling to a reasonable expectation or standard on constrained sites,
2. Protection of the valued local character of Fingal Head and its low scale residential qualities through locality specific design control.

The retention of the existing 9m height limit allows for continuation of the same level of flexibility in design for constrained sites as has been available to date, to which little to no community complaints have been made from the perspective that it is too restrictive. It also maintains consistency with the height limits generally applied across low density residential areas throughout the Tweed. Community feedback during the review process showed general support for retention of a 9 metre height limit and acceptance of its suitability on constrained land. In that regard there appears to be suitable justification for maintaining the 9 metre height limit throughout the locality, whereby addressing point number 1 above.

In recognition of the changing nature of dwelling design in response to increasing resident desire for sustainability and internal amenity, and that floor to ceiling heights are becoming increasingly larger resulting in a perceived increase in overall bulk and mass, a locality specific building height design control that responds to the community's concerns about potential impacts on the local character and amenity of Fingal Head is considered appropriate. The building heights nominated in the LEP are firm and are not necessarily calibrated to respond to the intricacies of specific locations. Further, being measured in metres rather than storeys the LEP height control has little ability to influence the character of a building beyond a general typology. As has been deemed appropriate in other small

coastal villages in the Tweed where, in a similar nature to Fingal Head, the protection of small scale character and local amenity is a sensitive issue and fundamental to community value. Therefore an amendment to the LEP 2014, as described earlier in this report, to combine the 9 metre maximum building height with a 2 storey 'character' design height limit is required.

Conclusion

Unlike many coastal towns, Fingal Head has natural barriers to the outward expansion of development as a result of adjacent Crown Land and lands under Native Title; coupled with the land that remains undeveloped being heavily constrained by flooding, high level of bushfire risk and the high ecological sensitivity and value of the area. The present external boundaries of the village are thus unlikely to ever change

However, the built form of development within the existing footprint does have the potential to change as older buildings are replaced with more modern structures, and those parcels capable of being subdivided or supporting dual occupancy or medium density forms become available for redevelopment. No development controls or Council policies can regulate how many older smaller houses are demolished or how many new buildings are constructed. They can, however, particularly through a locality plan, guide developers towards recognising the character elements of the locality that make it unique, and incorporating measures to protect, retain or enhance those elements with each new build. Thus in response to both the unique nature of Fingal Head within the coastal settlements of the Tweed, and the longer term aspirations within the community to shape and guide future development within Fingal Head is the desire for a locality plan to be prepared.

The more immediate planning response is to amend the Tweed DCP to include a character based height control in storeys to work in combination with the LEP's 9 metre maximum building height control, and introduce character statements and design guide for roof-top decks within the DCP.

The measures proposed to address the Fingal Head community's short and longer-term goals and expectations are detailed in the recommendations to this report.

RECOMMENDATION

There is a high level of confidence that the recommendations provided within this report reflect, in so far as the planning system allows, the community's concerns and provide a positive planning response to address these concerns in design terms.

OPTIONS:

The following recommendations are put to Council for their endorsement:

1. Proceed with the recommendations provided within this report.
2. Defer further consideration of this item and seek clarification or a workshop with staff.

In light of the extensive and productive community engagement Council staff recommends proceeding with Option 1.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

No implications anticipated at this point

c. Legal:

Not Applicable.

d. Communication/Engagement:

Involve/Collaborate-

We will and have worked with the community to understand the concerns or issues and taken your ideas and feedback into consideration.

This report provides feedback to Council of the process and proposed reply.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Community Conversation 02 Feedback Fingal Head
Building Height Review (ECM 4782549)

4 [PR-PC] Draft Aboriginal Cultural Heritage Management Plan 2017

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: GT1/LEP2010/Heritage/ACH

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - Plan for sustainable development which balances economic environmental and social considerations.
Promote good design in the built environment.

ROLE: Collaborator Leader

SUMMARY OF REPORT:

This report provides a summary of the background to the development of the draft Aboriginal Cultural Heritage Management Plan (draft ACHMP), outlines the components and intent of the draft ACHMP and seeks the resolution of Council to place the draft ACHMP on public exhibition.

The actions and intent of the draft ACHMP are not new. The draft ACHMP has been prepared consistent with the current legislative framework, premised on avoiding harm. However, this framework is generally not well understood or applied and the consequential effect of established processes for avoiding harm are not being routinely followed, exacerbated by the wider public's limited knowledge or understanding of cultural heritage, what it is and where it may be found.

The draft ACHMP builds on the current heritage legislation through clearer practices and processes integrated with the planning legislation requirements to assist the wider community with an understanding of the sensitivity and occurrence of Aboriginal cultural heritage. It provides clear pathways for ensuring that individuals have the right tools and information at their disposal to meet their obligations under the law and to enable cultural heritage to be properly assessed and managed.

The draft ACHMP is based on shire-wide mapping of known (Aboriginal Place of Heritage Significance) and predictive Aboriginal cultural heritage. The draft ACHMP outlines pathways, actions and requirements tailored to suite the level of assessment that may be required based on whether Aboriginal cultural heritage (ACH) is known or predicted as well as its sensitivity.

The Aboriginal community have freely provided significant cultural knowledge into the mapping and the management plan development. In return Council has an obligation to ensure this information is used in a respectful manner, and as a consideration of all development types, to minimise harm to Aboriginal cultural values.

RECOMMENDATION:

That:

- 1. Council endorses the Draft Aboriginal Cultural Heritage Management Plan 2017 for public exhibition for a minimum 60 days;**
- 2. Community and industry information sessions, as outlined within the report, be held during the exhibition period;**
- 3. The NSW Department of Planning and Environment be requested to provide advice on the best means for implementing or giving effect to an Aboriginal Cultural Heritage Management Plan within the Tweed's Local Environmental Plans, or other State environmental planning instruments; and**
- 4. Following review of submissions received during public exhibition a further report be submitted for Council's consideration detailing the submissions and any proposed amendments.**

REPORT:

Background

In 2012 Council adopted the Community Based Heritage Study (CBHS) and recommendations which, whilst focussed on the European Heritage of the Tweed Shire, acknowledged the need for a similar shire wide study and strategy for the management of Aboriginal cultural heritage.

One of the endorsed recommendations of the CBHS was to investigate the preparation of an Aboriginal cultural heritage management plan for the Tweed Shire.

Council was successful in obtaining a grant from the Heritage Branch of the NSW Department of Planning for the preparation of the Aboriginal Cultural Heritage Management Plan in 2012 and engaged Converge Heritage + Community (Converge) as consultants to undertake the project, known as the draft Aboriginal Cultural Heritage Management Plan 2017 (ACHMP).

The first key step in the project was the signing of a Memorandum of Understanding (MOU) in August 2012 by the members of the Aboriginal Advisory Committee (AAC), the Consultants and Tweed Shire Council (at that time Mayor and General Manager) which articulated the roles and responsibilities of the parties in the preparation of the ACHMP, the communication and sensitivity considerations, access to data and data keeping place requirements.

The draft ACHMP project methodology included a five stage process of:

1. The signing of the MOU and community consultation
2. Research and cultural mapping
3. A Thematic History
4. Landscape based mapping and predictive modelling
5. LEP and implementation Strategy

The cultural mapping and thematic history were endorsed by the AAC in July 2013. Converge worked with Council and the Tweed Aboriginal community, through the Aboriginal Advisory Committee, from 2012 through to the completion of the thematic history and mapping in May 2014. Following the completion of this stage Council staff took responsibility for completion of the project.

The finalisation of the draft ACHMP has been delayed by resourcing, impending legislation amendments and difficulties with integrating the management processes within the established planning statutory framework.

The Aboriginal community have broadly supported the development of the draft ACHMP. The Aboriginal community have freely provided significant cultural knowledge into the mapping, management plan and thematic history. In return Council has an obligation to ensure this information is used in a respectful manner, and as a consideration of all development types, to minimise harm to Aboriginal cultural values. Some of the information may also be confidential and not available for wider public purposes.

Current legislative framework and context

The actions and intent of the draft ACHMP are not new. The draft ACHMP has been prepared consistent with the current legislative framework. However, the current statutory framework for Aboriginal cultural heritage (ACH) is poorly understood and applied.

The draft ACHMP builds on the current heritage legislation through a clearer language, practices and rules to assist the wider community with an understanding of the sensitivity and occurrence of Aboriginal cultural heritage. It provides clear pathways for ensuring that individuals have the right tools and information at their disposal to meet their obligations under the law and to enable cultural heritage to be properly assessed and managed.

OEH Aboriginal cultural heritage legislation reforms

During the same period of the development of the draft ACHMP, the NSW Office of Environment and Heritage (OEH) has been preparing stand-alone Aboriginal cultural heritage legislation to replace the provisions of the National Parks and Wildlife Act, 1974.

A discussion paper "*Reforming the Aboriginal Cultural Heritage System in NSW*" was released along with a range of supporting information in late 2013. Council staff and Aboriginal community members attended a consultation session at Coffs Harbour on 27 November 2013.

Council considered a report on the legislative reforms at their meeting of 23 January 2014 and resolved to endorse a submission to those reforms.

The draft ACHMP is broadly consistent with many of key recommendations of the legislative reforms, including:

- preparation of cultural heritage maps by the Local Aboriginal Land Councils (LALCs), noting the draft ACHMP has been prepared with both the Tweed Byron Local Aboriginal Land Council (TBLALC) and the AAC;
- consideration of the mapping in all statutory planning instruments and processes;
- enabling early engagement with the Aboriginal community by using the mapping and planning framework;
- using the LALC framework for decision making on ACH matters;
- enabling the LALC to negotiate directly with property owners; and
- providing consistency and clarity in consultation processes.

Since this time there had been no further consultation on the reforms by OEH. Council staff have liaised extensively with OEH throughout the development of the draft ACHMP and been advised that the landscape based approach used is in line with the proposed approach of the reform legislation.

On 11 September the OEH released the document titled "*A Proposed New Legal Framework – Aboriginal Cultural Heritage in NSW*", opening consultation from 11 September to 18 December 2017. It is noted this is not a draft bill or legislation, rather a discussion about what is proposed for a future Aboriginal Cultural Heritage Act.

Whilst the timing of this release has not allowed a full review of the proposed legislation to be included within this report, the draft ACHMP is broadly consistent with the intent and draft aims, including:

- Decision making by Aboriginal people: Creating new governance structure to allow Aboriginal people to be involved in decisions about their cultural heritage;
- Broader recognition of Aboriginal cultural heritage values: The narrow definitions of cultural heritage are expanded to be more respectful and include intangible heritage;
- Better information management: improving outcomes for Aboriginal people through processes overseen by Aboriginal people;
- Improved protection, management and conservation of ACH: clarity of the process for involving the Aboriginal community in a meaningful way and up front in the planning process; a better process to prevent harm and drive positive conservation actions; and
- Greater confidence in the regulatory system: clarity in the process, consultation and timeframes for development.

The draft ACHMP addresses all of the above aims and provides a management structure to meet the above aims, notwithstanding of the details of the regulatory framework still to be released.

Staff and members of the Aboriginal community will be attending the upcoming information session at Ballina. A comprehensive review of the proposed legislation and submission will be prepared separately for Council's consideration.

Staff have also been advised by the OEH that new reforms will have a 5-10 year implementation/transition period and there would be no reason to hold back proceeding with our draft ACHMP.

Thematic History

The Thematic History was prepared by Dr Craig Barrett of Converge in consultation with the Aboriginal community and is the second key outcome of the project. This included initial themes consultation with the AAC on 3 August 2012, ongoing consultation with the community representatives during February – April 2013 and a community open day workshop held at Minjungbal Museum on 13 March 2013.

This is not a chronological history; rather it is based around themes identified as important by the Aboriginal community.

The Thematic History is based around the themes of:

- A Point in Time
- Contact
- Continuity

This reflects the Aboriginal community's ideology of Aboriginal cultural heritage as a living thing, comprising both the past and the present.

The Thematic History has informed the mapping components of the project and is provided as Attachment 1 to the draft ACHMP and will be made available separately.

Aboriginal cultural heritage mapping

The third key outcome of the draft ACHMP is the development of the shire wide mapping layers identifying ACH.

ACH has traditionally been identified by 'point data', usually the specific location of an Aboriginal object. Whilst this may provide protection of the object, it does not provide any recognition or understanding of the wider cultural landscape and how that object may have been used or what its context may mean to the Aboriginal community. Important to the understanding of ACH is that the significance does not lie in individual objects or places, rather the significance to the Aboriginal people and the history of Australia is also the context of these objects and places within the landscape.

The Aboriginal community have advocated for a landscape based approach to the identification of ACH, which does not identify 'objects' in isolation of their relationship with how and where the community lived over 40,000 years. This is further supported by the intent of the legislative reforms.

The ACH mapping, also prepared by Converge, has been prepared through:

- Undertaking historic research and extensive consultation with the Aboriginal knowledge custodial representatives;
- Site visits to ground truth ACH; and
- A rigorous 10 step landscape based analysis.

The mapping has been refined into two layers: *Aboriginal place of heritage significance*, being the known areas; and Predictive Aboriginal cultural heritage.

The *Aboriginal place of heritage significance* layer is comprised of:

- Sites registered on the AHIMS database;
- Sites that have been identified by the Community through knowledge and tradition;
- Damaged or destroyed sites in recognition of the continued significance to the Aboriginal people.

Locations of known ACH may be historic, contemporary, tangible, intangible, damaged or destroyed. Of the approximately 340 mapped sites, almost one quarter (22%) have been destroyed or partly destroyed. They are included as a record and to ensure their continued recognition in the cultural landscape. The destroyed sites were once part of a wider landscape and there is a high probability they may be associated with other cultural heritage in the vicinity. The character and landscape context of places and resources of significance to the Aboriginal culture and people has been seriously impacted and continues to be threatened by lack of understanding and by decisions which favour other competing values. As with all heritage, once the physical evidence of continuity of the traditional past to the present is lost it cannot be replaced.

The predictive layer is developed on the high probability of Aboriginal cultural heritage presence based on the following the ten point landscape analysis and requires the presence of a minimum of three of the landscape criteria to be mapped as predictive.

The landscape criteria includes:

- Indigenous oral sources and community knowledge
- Documented sources
- Resource hotspots
- Elevated points for observation
- Suitable campsite locations
- Traditional preferred access routes
- Locations of specific cultural practice
- Proximity to known cultural sites
- Presence of unique landforms
- Understanding of ancient Paleo landscapes

The mapping methodology is outlined in Part B of the draft ACHMP and the consultation undertaken through this process is outlined in Appendix 2 Project Methodology and Consultation.

The mapping development identified an additional 120+ new cultural objects and places. Under the National Parks and Wildlife Act, 1974 (NPW Act) there is a statutory requirement to register new objects or places to the Aboriginal Heritage Inventory Management System (AHIMS) within a reasonable timeframe. The registration of these sites is currently being undertaken with the assistance of the OEH.

The recommendations and actions of the management plan are premised on the management of Aboriginal cultural heritage, based on the understanding and assessment requirements of the *Aboriginal place of heritage significance* and predictive landscape layers.

Draft Aboriginal Cultural Heritage Management Plan

The draft ACHMP is the fourth key component. The Plan builds on the Thematic History, the assessment and identification of ACH through the mapping development and provides a framework, based on the legislation and planning processes.

Aboriginal cultural knowledge is not static, but responds to change through absorbing new information and adapting to its implications. Aboriginal cultural knowledge is bequeathed through oral tradition (song, story, art, language and dance) from generation to generation, and embodies and preserves the relationship to the land. Cultural places and landscapes 'embed' these stories, and protection of these places and landscapes is key to the long-term survival of these stories in Aboriginal culture.

The ACH assessment requirements and considerations are not a new; they are a current requirement of the NPW Act. The draft ACHMP builds on the current heritage legislation through clearer practices and rules linked to the planning legislation to assist the wider community with an understanding of the sensitivity and occurrence of Aboriginal cultural heritage. It provides clear pathways for ensuring that individuals have the right tools and

information at their disposal to meet their obligations under the law and to enable cultural heritage to be properly managed.

The draft ACHMP comprises four parts, supported by a range of appendices. The parts are:

1. An introduction
2. ACH mapping
3. Consultation, assessment and approvals
4. Understanding the legislative context

There a number of key components and directions of the draft ACHMP, as follows:

1. Acknowledgment by Tweed Shire Council (TSC) that Aboriginal people are the primary determinants of the cultural significance of their heritage.
2. A commitment by Council to respect the cultural knowledge shared as part of this project and to protect ACH in an appropriate and sensitive manner.
3. Consultation should occur with the Aboriginal community at the earliest planning and design phase of development or works. This is consistent with the draft recommendations of the "*Reforming the Aboriginal Cultural Heritage System in NSW*" discussion paper, *Directions 16-18 of the North Coast Regional Plan 2036* and the recently released "*A Proposed New Legal Framework – Aboriginal Cultural Heritage in NSW*".
4. Early consultation been built into the process and procedures for development, as outlined in Part C of the draft ACHMP.
5. The plan is premised on the approach of avoiding harm to Aboriginal cultural heritage where possible, and where harm cannot be avoided, to justify this position through an appropriate level of cultural assessment and consultation.
6. The first key point of contact for consultation with the Aboriginal community will be the TBLALC. This approach has been taken as the Local Aboriginal Land Council has the statutory role under the *NSW Aboriginal Land Rights Act, 1983* to take action to protect Aboriginal cultural heritage for the land council area and to promote the awareness of culture and heritage. This approach is also consistent with the draft recommendations of the "*Reforming the Aboriginal Cultural Heritage System in NSW*" discussion paper. The TBLALC will then have a role to consult with and inform the wider Aboriginal community.
7. Aboriginal cultural heritage assessment is not a single action, rather it is a term referring to a range of levels of assessment undertaken to inform an understanding of potential for harm. Assessment pathways are discussed in Part C of the draft ACHMP.
8. Pathways for mapped *Aboriginal place of heritage significance* areas.
9. Pathways for mapped Predictive Aboriginal cultural heritage.
10. Precautionary advice for unmapped area.

There are a range of recommendations arising from the draft ACHMP and requiring further action. Key recommendations of note include:

- Continued liaison and advocacy with the Department of Planning and Environment for greater consistency of statutory definitions and integration with the e-planning actions;
- Future amendment (planning proposal) to the LEPs to effect the actions;
- Development of service agreements between the TSC and the TBLALC;
- Adoption of related policy and procedures;
- Ongoing resourcing and training requirements; and
- Ongoing monitoring, engagement and promotion of the draft ACHMP.

The first point of contact for consultation as part of development is identified as the TBLALC. This level of consultation arising from this draft ACHMP will be significant increase on current practices. The TBLALC have committed to working with Council to ensure an adequate level staff with suitable legislative qualifications and skills to be able to respond in an efficient, timely and legislatively correct manner within the development legislation and requirements. The TBLALC have commissioned new GIS mapping software (to ensure TBLALC and TSC are operating from the same information), new website, a range of supporting information and fact sheets etc.

The TBLALC Statement of Commitment recognises the importance of the ACHMP as a local government policy and procedural document that assists in meeting the community's cultural and statutory obligations and has made a strong commitment to work cooperatively with TSC to meet all the ACHMP objectives. The TBLALC Statement of Commitment also commits to represent the interests of the broader Aboriginal community where those interests are in accord with their local knowledge and practices, and are accepted as established local cultural protocols.

It is also noted that where a comprehensive Aboriginal cultural heritage assessment is required the requirements of the OEHL with regard to consultation remain in force, giving the wider Aboriginal community the opportunity to nominate as a 'registered party'.

Planning legislation

A number of the recommendations of the draft ACHMP may require minor amendments to the applicable Local Environmental Plan (LEP) and potentially to the Standard Instrument (Local Environmental Plans) and/or other legislation (such as State Environmental Planning Policies) to accommodate the recommendations of the Draft ACHMP to avoid harm to Aboriginal cultural values.

It is recommended planning staff continue to liaise with the Department of Planning and Environment to advocate for these changes.

Consultation

Consultation with the Aboriginal community through the Aboriginal Advisory Committee (AAC), with the Tweed Byron Local Aboriginal Land Council (TBLALC) and on a few occasions, broader community workshops, has been a constant focus of the development of

the draft ACHMP over the last five years. Consultation is outlined in Appendix 2 Project Methodology and Consultation.

The following Figure 1 outlines the timeframe of the project and the consultation undertaken as part of its preparation.

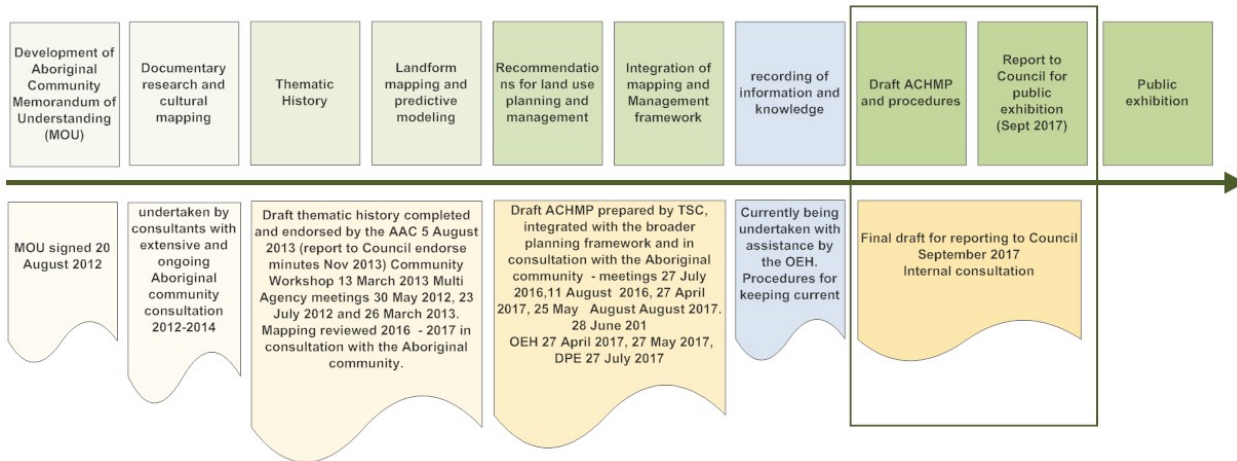


Figure 1 Timeline and consultation undertaken

During the preparation of the draft ACHMP a number of workshops on the project have been held with Councillors, including:

- An outline of the project and the legislative reforms on 7 November 2013;
- An overview as part of the Aboriginal cultural awareness training on 16 May 2014;
- An update of the project at the Aboriginal cultural awareness training on 23 May 2017; and
- An overview of the intent of the draft ACHMP was presented to a Councillor workshop on 29 June 2017.

An introductory overview of the draft ACHMP was presented to a wide range of key staff on 9 and 10 August 2017.

Given the complex nature of the draft ACHMP and its shire-wide application, it is recommended that the draft ACHMP be placed on public exhibition for a minimum 2 month (60 day) period.

A range of information fact sheets are currently being prepared to explain the draft ACHMP and what this will mean for development.

As part of the community consultation it is proposed that community information sessions be held in the following locations:

1. Tweed Heads / Banora Point / Bilambil / Terranora
2. Fingal Head / Chinderah
3. Kingscliff / Bogangar
4. Hastings Point / Pottsville
5. Burringbar / Mooball / Stokers Siding
6. Murwillumbah

7. Chillingham
8. Tyalgum
9. Uki

The draft ACHMP will be introduced at the Industry breakfast meeting of 26 September 2017. This is a brief introduction and it is proposed to hold a number of industry professional and private certifier information sessions at Tweed Heads and/or Murwillumbah.

It is gratefully acknowledged that members of the Aboriginal community will also be attending the information sessions.

OPTIONS:

1. Proceed with the recommendations provided within this report and endorse the draft ACHMP for public exhibition; or
2. Defer further consideration of the draft ACHMP for clarification or a workshop.

Option 1 is recommended.

CONCLUSION:

The Tweed Aboriginal community and the AAC have been advocating for the appropriate and upfront consideration of Aboriginal cultural heritage values for many years now. The preparation of the draft ACHMP and mapping in consultation with the Aboriginal community, through the AAC, has been developed based on the community wishes to adopt a landscaped approach which considers both tangible and intangible cultural values, and that encourages consultation with the Aboriginal community early in the development process.

In tandem with these wishes the draft ACHMP has been prepared to reflect the current legislative requirements of both the Environmental Planning and Assessment Act, 1979 and the National Parks and Wildlife Act, 1974.

The management plan provides a number of pathways for development reflective of the mapped sensitivity. The plan is premised on the approach of avoiding harm to Aboriginal cultural heritage, and where harm cannot be avoided, to justify this position through an appropriate level of cultural assessment and consultation.

The Aboriginal community have broadly supported the development of the draft ACHMP. The Aboriginal community have freely provided significant cultural knowledge into the mapping and the management plan. In return Council has an obligation to ensure this information is used in a respectful manner, and as a consideration of all development types, to minimise harm to Aboriginal cultural values.

It is recommended that the draft ACHMP be publicly exhibited for broader consultation.

COUNCIL IMPLICATIONS:

a. Policy:

Aboriginal Statement v1.3

b. Budget/Long Term Financial Plan:

Whilst there are no immediate budget implications, there are a number of resourcing recommendations within the draft ACHMP. The implementation and ongoing review, monitoring and management will require dedicated staff resources beyond the current capacity of the Strategic Planning and Urban Design Unit.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Draft Aboriginal Cultural Heritage Management Plan 2017 (ECM 4785884)

Attachment 2 Aboriginal cultural heritage mapping (ECM 4781839)

5 [PR-PC] Short-term Holiday Letting - Tweed Council's Submission Reply to the NSW Department of Planning and Environment's Option Paper

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - Plan for sustainable development which balances economic environmental and social considerations.
Promote good design in the built environment.

ROLE: Leader

SUMMARY OF REPORT:

The purpose of this report is to provide an analysis and recommendations as the basis for a Council submission in response to the currently exhibited NSW State Government's Options Paper on Short-term Holiday Letting in NSW. The Options Paper is the NSW Government's response to the Parliamentary Inquiry into the regulation of short-term holiday letting.

The report and submission also addresses the following resolution of Council at its meeting of 15 June 2017:

"That Council provides a report on the:

- 1. Impact of current and predicted levels of short term holiday letting on available housing in Tweed Shire.*
- 2. Implications of potentially allowing licensed short term holiday letting to occur in tourist and rural zones only, and the issues involved in requiring licenses for all short term holiday letting."*

The response represents Council's approach towards short-term holiday letting, formulated during an earlier attempt to regulate this matter through a Shire-wide amendment to the Tweed Local Environmental Plan 2014 which also included preparation of a draft policy addressing the spontaneous character of this form of commercial use of residential dwellings.

The deadline for submissions to the Options Paper is 31 October 2017.

RECOMMENDATION:

The attached draft submission attached to this report, is endorsed and forwarded to the NSW Government in response to their Options Paper on Short-Term Holiday Letting.

REPORT:

Background

Tourists holidaying in the Tweed Shire area choose increasingly to stay in short-term holiday letting. The supply side of this market is responding by a rapid growth of properties advertised online for short-term rental. In a wider context, short-term accommodation is an outcome of the growing popularity of the “sharing economy” or “do-it-yourself economy”, facilitated by changing lifestyle preferences and advances in technology, resulting in the growth of self-employment, home based businesses, online platforms for crowdfunding or shared transport, such as Uber.

According to the NSW Government, short-term holiday letting is estimated to be worth \$31.3 billion nationally, providing income for property owners and creating jobs through the establishment of new businesses. It also has the potential to impact on local neighbourhoods if not adequately managed. These impacts include noise, traffic and parking, safety and security, but most of all, the cumulative impact of short-term holiday letting is anticipated to influence housing affordability. In addition, short-term holiday letting does not fit into the regulatory framework and is not adequately recognised and regulated under the planning system in NSW.

The need to regulate short-term holiday letting through specific policies and amendments to local environmental plans has been identified and acted upon by a number of councils in New South Wales, including Tweed Shire Council. In 2015, the Strategic Planning and Urban Design Unit initiated preparation of a planning proposal and associated draft policy, with the intention to develop a regulatory framework for short-term holiday letting in the Tweed Local Government Area (LGA). Tweed’s regulatory policy was intended to facilitate short-term holiday letting of the owner-occupied properties where either part of a property is used for that purpose or the entire property is let during the owners’ absence. At the same time, the proposed policy approach sought to regulate permanent use of properties for short-term holiday letting through development assessment processes. Extensive community consultation was carried out in 2016 and was instructive for gauging the public’s receptiveness to the draft policy framework.

In September 2015, the NSW Government announced a *Parliamentary inquiry into adequacy of the regulation of short-term holiday letting in New South Wales*. Tweed Shire Council has been actively involved in the inquiry process: a detailed submission was sent to the inquiry, describing Council’s approach taken under the draft planning proposal and the draft policy and, as a follow-up to this submission, the NSW Government held a public hearing in Tweed Heads on 7 March 2016 where Council staff discussed the submission with the Environment and Planning Committee, conducting the inquiry.

The Parliamentary Committee’s inquiry was finalised in October 2016, with publication of the Recommendations Report. The Government response to the Committee’s report, released on 20 April 2017, generally supported their findings and recommendations. In the next step, the NSW Government released an Options Paper with the aim of determining a policy framework by engaging with stakeholders, industry and the general public to discuss what level of regulation is required to best meet the needs of the NSW community.

A submission has been prepared by Strategic Planning and Urban Design that supports options that are consistent with the approach proposed under the draft planning proposal and draft policy prepared by Council in early 2016. It also acknowledges Council's resolution of 21 September to lobby Local Government New South Wales at their annual conference in December 2017 to consider a 'booking tax or tariff' raising additional funds towards local infrastructure that supports and underpins tourism.

The report and submission also addresses the following resolution of Council at its meeting of 15 June 2017:

"That Council provides a report on the:

1. *Impact of current and predicted levels of short term holiday letting on available housing in Tweed Shire.*
2. *Implications of potentially allowing licensed short term holiday letting to occur in tourist and rural zones only, and the issues involved in requiring licenses for all short term holiday letting."*

1. Impact of current and predicted levels of short term holiday letting on available housing in Tweed Shire.

The Tourism Industry is a significant driver of the Tweed Economy. In estimates provided by National Economics (2015/16) tourism in the Tweed employs 942 people and generates \$212 million worth of sales. That same year saw over 3.5 million visitors come to the Tweed with 2.17 million domestic visitor nights. This is the market that will be seeking short term holiday letting (STHL) accommodation. Below is a breakdown of the visitor types.

Visitor nights - Numbers			
Tweed Shire - 2008/09 to 2015/16			
Year	Tweed Shire		
	International Visitor Nights□	Domestic Visitor Nights□	Domestic Daytrips□
2015/16	192,563	2,175,150	1,152,646
2014/15	204,207	1,795,238	1,157,964
2013/14	230,644	1,802,142	1,022,258
2012/13	363,690	2,194,421	838,519
2011/12	188,149	1,475,886	940,495
2010/11	220,322	1,919,184	765,053
2009/10	262,230	1,769,663	905,948
2008/09	578,719	1,759,499	987,804

Source: Tourism Research Australia , Unpublished data from the National Visitor Survey and International Visitor Survey 2016.

The impacts of STHL on the industry are not clearly reported as it is currently unregulated in New South Wales. A major online booking company in the STHL sector is Airbnb. A private web site insideairbnb (www.insideairbnb.com) has been developed to privately track certain metrics that are published through Airbnb's web listings. Although not directly published by Airbnb, these are the only available figures which give some indication of the size and scale of Airbnb in the Tweed.

AirBNB Listings				
@ 3/8/2017 (www.insideairbnb.com)				
		Tweed	Northern Rivers	Sydney
Total Listings at		359	2,350	24,038
Room Type				
Price/night (Average Entire Home)		A\$182	A\$203	A\$206
Entire home/apartments		253 (70.5%)	1,522 (64.8%)	14,605 (60.8%)
Private rooms		105 (29.5%)	813 (34.6%)	9,084 (37.8%)
Shared rooms		1 (0.3%)	15 (0.6%)	349 (1.5%)
Airbnb guests may leave a review after their stay, and these can be used as an indicator of airbnb activity.	estimated nights/year	65	68	61
The minimum stay, price and number of reviews have been used to estimate the occupancy rate, the number of nights per year and the income per month for each listing.	reviews/listing/month	0.9	1.0	0.8
reviews		2,866	24,952	225,418
How does the income from Airbnb compare to a long-term lease?	price/night	A\$182	A\$203	A\$206
Do the number of nights booked per year make it impossible for a listing to be used for residential housing?	estimated occupancy	17.7%	18.7%	16.6%
And what is renting to a tourist full-time rather than a resident doing to our neighbourhoods and cities?	estimated income/month	A\$772	A\$871	A\$821

The 2016 Census has seen a very slight down turn in rental accommodation in the Tweed but this is matched in the increase in home ownership (fully owned or mortgaged).

Housing tenure				
Tweed Shire - Households (Enumerated)	2016		2011	
Tenure type	Number	%	Number	%
Fully owned	14,809	33.2%	14,011	32.2%
Mortgage	10,046	22.5%	9,484	21.8%
Rented	19,346	43.3%	19,646	45.2%
Other tenure type	467	1.0%	367	0.8%
Total households	44,668	100.0	43,508	100.0

Source: Australian Bureau of Statistics, Census of Population and Housing 2011 and 2016. Compiled and presented by .id, the population experts

Note: that this table does not include the “Not Stated” category which was available at this question in the 2016 Census.

From the figures presented above it is impossible to tell what impact STHL is having on the available housing stock in the Tweed. To reach a conclusion on this question an independent research report would need to be undertaken that reviews the available stock of tourism accommodation as well as total available housing. Given the complexity of this research it would need to be undertaken based on primary research.

The Department of Planning & Environment Options Paper on Short Term Holiday Letting (STHL) July 2017 estimates that STHL is worth \$31.3 billion nationally, of which approximately 50% is within NSW. The inference being that STHL is a significant new input into the economy. It questioned how much of the \$31.3 billion is a new spend, that is money that if not for STHL would not have been spent. It can be speculated that the majority of this sum is a reallocation away from traditional forms of accommodation into online STHL booking platforms.

Whilst flexibility and competition are desirable, this should not be without consideration of impacts to the broader community.

For example, those businesses in the traditional accommodation sector, such as hotels and motels, need to operate at a certain occupancy level to break even. If an online STHL company takes meaningful market share from these businesses it is likely that employment in this sector will reduce commensurate with lower profitability and/or businesses in this sector may fail.

Council has a responsibility to its community to provide a management framework for STHL.

Below is a list of matters that Council should consider:

1. Licencing all STHL operators including all relevant details of the property,
2. Specifying a maximum number of nights the property can be let each year,
3. Specifying a maximum number of nights the property can be let in any 1 letting,
4. Require the operator to endorse and implement a Code of Conduct,
5. Require the operator to provide details of 24 hour contact numbers and those of the engaged security company to Council and neighbours,
6. Allow no more than 2 occupants per bedroom,
7. Detail arrangements for car parking,
8. Advise whether the operator is in residence during letting or not,
9. Stipulate that if there are X or more validated complaints about the STHL per annum the property can have its licence revoked,

Council should also charge a licence fee to cover the administrative cost, and impose a cost recovery charge in the event regulatory staff have to answer a complaint.

Additional questions arise from Council and State Government's role as the authority to regulate noise, nuisance etc. arising from a STHL.

2. Summary of Council submission to the Options Paper

The submission discusses the following themes:

- 1) Owner-occupied vs permanent STHL.** The submissions calls for regulatory measures in the policy framework for STHL based on a distinction between short-term holiday letting of a principal place of residence and use of an investment property for STHL on a permanent basis. Tweed supports the "San Francisco scenario" provided on page 21 of the Options Paper, where the registration of properties being used for STHL has been introduced predominantly to address the issue of housing affordability. This approach, facilitating STHL of principal residences of the owners, should be

based upon a thorough understanding (supported and evidenced by extensive research) of the cumulative impacts of STHL on housing supply and affordability.

- 2) **Self-regulation.** Tweed supports NSW Government's consideration outlined within Section 4 of the Options Paper to develop a mechanism enabling self-regulation of STHL based on a broad membership approach, with the ability to ensure compliance through self-regulatory measures. Self-regulation should be based on a Code of Conduct prepared jointly by the STHL industry members and the NSW Government.
- 3) **The planning system.** Tweed advocates for a consistent definition of STHL across the State. Such definition should be introduced into the planning system through an amendment to the Standard Instrument LEP Template and/or other relevant EPIs (including the Housing Code).
- 4) **Strata schemes.** Tweed supports an option allowing strata schemes to prohibit or restrict STHL in their schemes (Section 5 of the Options Paper). This would further facilitate self-regulation of STHL by enabling owners' corporations to formulate their own by-laws.
- 5) **Flexibility.** Whilst Tweed advocates for a consistent, State-wide approach to the issue, we are of the view that the proposed regulatory framework should be flexible enough to respond to a variety of scenarios brought about by the growth of STHL to metropolitan and regional parts of the state.
- 6) **Matters to be raised with the Local Government New South Wales.** At their meeting of 21 September 2017, Council formulated several themes for consideration at the upcoming 2017 Local Government NSW Annual Conference. One of these themes is a proposal for the LGNSW to lobby the Federal and State/Territory Governments to consider instituting into the appropriate taxation systems a 'Booking Tax or tariff' for online accommodation brokers. Funds raised be distributed by way of formula to Local Government Authorities and National Parks to fund public infrastructure that supports and underpins tourism.
- 7) **Further research needed.** Tweed calls for a further, detailed research into the growth of STHL sector to better understand its contribution to the local economy, employment opportunities and impact on local amenity and housing affordability.

The deadline for submissions to the Options Paper is 31 October 2017.

OPTIONS:

1. Adopt the recommendation to this report and endorse the officers' submission reply to the Options Paper, in form as attached to this Report, or
2. Defer consideration of or amend the officers' submission reply.

Council staff recommend Option 1.

CONCLUSION:

The proposed response to the Options Paper represents Council approach formulated during an earlier attempt to regulate short-term holiday letting through a planning proposal and a draft policy. As the scope of proposed regulation affects the planning system in New South Wales, the current process of regulating short-term holiday letting by State Government is supported.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Draft Submission on Short-Term Holiday Letting Options Paper to the NSW Department of Planning and Environment (ECM 4784570)

**6 [PR-PC] Unlawful Development and Land Use - Lot 5 DP 631620 No. 656
Upper Crystal Creek Road Upper Crystal Creek**

SUBMITTED BY: Development Assessment & Compliance

mhm



People, places and moving around
Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.4 Compliance Services - To support a safe and healthy built and natural environment through the enforcement of local government rules and regulations.

ROLE: Provider

SUMMARY OF REPORT:

Development Without Consent

Council has received a number of complaints regarding unauthorised building works and subsequent unlawful use of structure for short term holiday accommodation at No. 656 Upper Crystal Creek Road, Upper Crystal Creek.

The property is a multiple-occupancy (MO) with approval for three dwellings via development consent **D93/155** (ECM No. 2816730). The subject illegal development constitutes a fourth dwelling, in contravention of the consent. The structure has never been privately occupied and appears therefore to have been built solely for the purposes of unlawful short term holiday rental.

The unlawful structure also fails to comply with Councils policies and other regulations as follows:

1. No consent was ever sought or obtained prior to constructing the building. Consequently the building is non-compliant with the Environmental Planning & Assessment Act (EP&A) 1979 as well as Councils Development Control Plan (DCP) and Local Environmental Plan (LEP) 2014. Accordingly the building is considered to be non-compliant with the National Construction Codes (NCC);
2. The building was not constructed to engineering specifications and consequently its structural integrity is unknown;
3. No on-site sewerage management (OSSM). Raw human waste and grey water generated by guests is simply piped into an unlined pit a short distance from the building and the pristine Upper Crystal Creek that is used as a water source by neighbouring properties;

4. Non-compliance with Australian Standard 3959 (Construction of buildings in bushfire prone areas 2009). The surrounding topography is steep and heavily forested therefore rendering the building susceptible to unmanageable Bushfire Attack Levels (BAL). Moreover the construction methods and materials used afford potential occupants minimal if any protection in the event of a bushfire; and
5. The unlawful building was used without consent for short term holiday accommodation via Air BnB.

<https://www.airbnb.com.au/rooms/14751210?location=Upper%20Crystal%20Creek%20C%20New%20South%20Wales&s=2SYgYQR5#reviews>

On the basis of this illegal activity, it is recommended that action be taken to require the demolition of the dwelling and that Penalty Infringement Notices be issued.

RECOMMENDATION:

That in relation to the unlawful construction at No. 656 Upper Crystal Creek Road, Upper Crystal Creek:

1. **Council endorse the issuing an Order (Order No.2) for *demolition* via Section 121B of the Environmental Planning and Assessment Act 1979 No 203;**
2. **Council endorse the issue of a Penalty Infringement Notice for *Development Without Development Consent* via Section 76A(1)(A) of the Environmental Planning and Assessment Act 1979 No 203 for the unlawful *construction* of the building without consent; and**
3. **Council endorse the issue of a Penalty Infringement Notice for *Development Without Development Consent* via Section 76A(1)(A) of the Environmental Planning and Assessment Act 1979 No 203 for the unlawful *use* of the building without consent.**

REPORT:

Council received a number of complaints regarding illegal building development and subsequent use of the unlawful structure at the subject property. Most recently complaints were received regarding potential contamination of the water supply due to an almost complete lack of on-site sewage management.

Inspections were carried out by Council officers accompanied by the property owner on the 11 May and 15 June 2017.

The existing consent D93/155 allows for three habitable dwellings on the multiple occupancy property with the illegal structure constituting a fourth.

No On Site Sewage Management System has been constructed/commissioned and raw sewage and grey water generated by guests is simply piped to an unlined pit a short distance from the building and the Upper Crystal Creek watercourse.

Additionally, during an initial inspection on 11 May 2017 the property owner was found to be renovating a pre-existing shed on the property presumably again for via short term holiday accommodation. A verbal Stop Work Notice was issued via Section 121B (1) of the Environmental Planning and Assessment Act 1979.

OPTIONS:

Option 1

1. Council endorse the issuing an Order (Order No.2) for *demolition* via Section 121B of the Environmental Planning and Assessment Act 1979 No 203;
2. Council endorse the issue of a Penalty Infringement Notice for *Development Without Development Consent* via Section 76A(1)(A) of the Environmental Planning and Assessment Act 1979 No 203 for the unlawful *construction* of the building without consent; and
3. Council endorse the issue of a Penalty Infringement Notice for *Development Without Development Consent* via Section 76A(1)(A) of the Environmental Planning and Assessment Act 1979 No 203 for the unlawful *use* of the building without consent.

Option 2

Decommission the building so that it cannot be used for human habitation.

Option 1 is recommended as the structure is grossly non-compliant with multiple Statutes as well as Council and other policies. Most importantly the potential for future habitation exists as long as the structure remains in-situ as does the unacceptable level of risk from bushfire.

CONCLUSION:

Council has received a number of complaints regarding unauthorised building works and subsequent unlawful use of structure for short term holiday accommodation at No. 656 Upper Crystal Creek Roadm Upper Crystal Creek.

Whilst the recommendations may appear severe, the level and nature of the non-compliance is extreme and wilful. Additionally the associated risk to guests, neighbouring property owners and the environment is unacceptable.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Legal expenses may be incurred as the property owners have the right to appeal the Order.

c. Legal:

Enforcement action is recommended under relevant sections of the Environmental Planning and Assessment Act 1979.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Images of unlawful structure (ECM 4768938)

7 [PR-PC] Unauthorised Land Use and Development at Lot 5 DP 871177 No. 102 Crooks Valley Road, Crystal Creek

SUBMITTED BY: Development Assessment & Compliance

mhm



People, places and moving around
Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

3	People, places and moving around
3.1	People
3.1.4	Compliance Services - To support a safe and healthy built and natural environment through the enforcement of local government rules and regulations.

ROLE: Provider

SUMMARY OF REPORT:

Council recently received a number of complaints regarding two events held at 102 Crooks Valley Road, Crystal Creek on 6 - 8 September inclusive and 16 September 2017. The purpose of the event was to *officially launch our "Heart of Love" volunteer-based program and activities* and between 200 -230 people were present each day of the event.

Council received correspondence from the event organisers dated 24 August 2017 advising of the event and planning advice they received indicated the event was consistent with the provisions of *the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - Part 2 Division 3 Temporary Uses and Structures Exempt Development Code* and Part 2 - Clause 2.8A of the Tweed LEP 2014.

Upon review of the event organiser's submission, officers issued correspondence on 6, 8 & 13 September 2017 advising the proposed land use is unauthorised and does not comply with the provisions referred to above. The organisers were therefore directed to cease the unauthorised land use immediately and failure to do so would result in enforcement action being initiated.

Inspections of the subject site undertaken by Council officers over the four days revealed the event proceeded as proposed. It was also noted as part of the inspection a large deck/stage had been constructed on site and may not be compliant with the State Environmental Planning Policy (Exempt & Complying Development) 2008, specifically:

- *Subdivision 6 Balconies, decks, patios, pergolas, terraces and verandahs*

On the basis that the event organisers were advised the land use was unauthorised and required development approval and the use did not cease immediately and unauthorised works have been undertaken, it is recommended that legal advice be sought regarding options for action against the owners of the site.

RECOMMENDATION:

That in relation to the unauthorised land use and development at Lot 5 DP 871177 No. 102 Crooks Valley Road, Crystal Creek, legal advice be sought regarding options for action (including but not limited to Orders to prevent continued unauthorised activities and possible punitive action for the events already carried out and the unauthorised works/structure) against the owners of Lot 5 DP 871177 No. 102 Crooks Valley Road, Crystal Creek.

REPORT:

Council recently received a number of complaints from local residents regarding two events held at 102 Crooks Valley Road, Crystal Creek on 6 - 8 September inclusive and 16 September 2017. The purpose of the event was to officially launch our "Heart of Love" volunteer-based program and activities and between 200 -300 people were present. The concerns raised by local residence included:

- Lack of consultation regarding the event
- Traffic and access issues along Crooks Road
- Trespassing onto private property
- Adverse amenity impacts on the neighbourhood and rural environment

Council received correspondence from the event organisers dated 24 August 2017 advising of the event and planning advice they received indicated the event was consistent with the provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - Part 2 Division 3 Temporary Uses and Structures Exempt Development Code and Part 2 - Clause 2.8A of the Tweed LEP 2014.

A review of the applicable legislation revealed the following:

- To be exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - Part 2 Division 3 Temporary Uses and Structures Exempt Development, the purpose of the proposed Temporary Use must be related to the approved use of the land, unless the use of the temporary structure is specified as exempt development or is ancillary to the principal use of the land. A review of Council's records revealed there are no approvals for the event or works/structure (stage). Therefore, compliance with the applicable provisions of the Policy was not met.

It is noted that the subject site is zoned RU2 (Rural Landscape) under Tweed Shire Council Local Environmental Plan 2014 and furthermore, events such as the one undertaken required the submission and approval of a development application.

- Part 2 - Clause 2.8A *Use of land for temporary periods* of the Tweed LEP 2014 states:
 - (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.*
 - (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.*
 - (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*
- (b) *the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
- (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.*

Therefore, compliance with the applicable provisions of the LEP was not met.

- Part 4 Division 1 Section 76 (2) of the Environmental Planning and Assessment Act 1979 states:

Exempt development. An environmental planning instrument may provide that development of a specified class or description that is of minimal environmental impact is exempt development.

Given the complaints received it is evident the event had a significant environmental impact by way of noise, vehicular and pedestrian movement. Therefore, compliance with the applicable provisions of the Act was not met.

- State Environmental Planning Policy (Exempt & Complying Development) 2008, specifically; Subdivision 6 Balconies, decks, patios, pergolas, terraces and verandahs requires the structure must not have an area more than 25m², not have an enclosing wall higher than 1.4m and be no higher than 3m at its highest point above ground level (existing).

The deck/stage does not comply with the applicable provisions of the Policy.

Upon review of the event organiser's submission, Council officers issued correspondence on 6, 8 & 13 September 2017 advising the proposed land use was unauthorised and does not comply with the provisions referred to above and the organisers were directed to cease the unauthorised land use immediately, failure to do so would result in enforcement action being initiated. Council received numerous complaints regarding the event and inspections of the subject site undertaken by Council officers over the four days revealed the event proceeded as proposed.

On the basis that the event organisers were advised the land use was unauthorised and required development approval and the use did not cease immediately and unauthorised works have been undertaken, it is recommended that legal advice be sought regarding options for action against the owners of the site.

OPTIONS:

Option 1

Legal advice be sought regarding options for action (including but not limited to Orders to prevent continued unauthorised activities and possible punitive action for the events already

carried out and the unauthorised works/structure) against the owners of Lot 5 DP 871177 No. 102 Crooks Valley Road, Crystal Creek.

Option 2

Warning letters for the unauthorised land use be issued.

Option 1 is recommended.

CONCLUSION:

Council recently received a number of complaints regarding two events held at 102 Crooks Valley Road, Crystal Creek on 6 - 8 September inclusive and 16 September 2017. The purpose of the event was to officially launch our "Heart of Love" volunteer-based program and activities and between 200 -230 people were present each day of the event.

Upon review of the event organiser's submission, Council officers issued correspondence on 6, 8 & 13 September 2017 advising the proposed land use was unauthorised and does not comply with the provisions referred to above and the organisers were directed to cease the unauthorised land use immediately, failure to do so would result in enforcement action being initiated. Council received numerous complaints regarding the event and inspections of the subject site undertaken by Council officers over the four days revealed the event proceeded as proposed.

On the basis that the event organisers were advised the land use was unauthorised and required development approval and the use did not cease immediately and unauthorised works have been undertaken, it is recommended that legal advice be sought regarding options for action against the owners of the site.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Legal expenses may be incurred.

c. Legal:

Legal advice is sought regarding options for punitive action against the owners and possible enforcement action under relevant sections of the Environmental Planning and Assessment Act 1979.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Letters from the owner regarding the event (ECM 4787538)

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

SUBMITTED BY: Director



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development assessment - To assist people to understand the development process and assess applications lodged with Council to achieve quality development outcomes and land use decisions.

ROLE: **Provider**

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes there are no variations for the month of August 2017 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
