



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

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

Agenda

Planning Committee Meeting Thursday 3 August 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:

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA17/0237 for a Change of Use of an Existing Shed to a Depot at Lot 4 DP 1074375 No. 18 Robinsons Road, Piggabeen

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:

Council is in receipt of a development application to change the use of an existing approved shed to a depot for the purpose of the storage of material and equipment in relation to a trades business (electrician, carpenter, plumber or similar). No works are proposed in relation to this change of use application.

A depot is defined as:

A building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.

The application proposes that the Depot is to be used by a trades business (“plumber or similar trade”) to store general materials. Depots as defined above “support the operations of an existing undertaking”. There is doubt if the proposal is consistent with the definition of a depot as the proposal does not nominate or describe a specific *existing undertaking* that the depot is to support. Sufficient information has not been provided with regard to the proposed use and any existing undertaking to determine if the proposal is consistent with the objectives of the zone specifically with respect to maintaining the rural landscape character and compatible land uses.

The existing shed, approved subject Development Consent DA09/0704 granted 25 January 2010, has been substantially modified without authorisation for habitable residential purposes. The unauthorised works include construction of a bathroom, laundry, kitchen, and timber deck on the ground level and a mezzanine level comprising of three bedrooms, bathroom and timber deck.



The illegal residential use of the site had been registered with Council's Compliance Unit prior to the lodgement of this development application. The property owner (also the applicant on the development application) has been issued with two requests to cease the residential use of the site and to remove the unauthorised works. These requests have not been complied with to Council's satisfaction.

The plans submitted for the proposed change of use to a depot show the current as constructed unauthorised floor plan of the illegal dwelling showing the bathrooms, laundry, kitchen, mezzanine level, bedrooms and decks are to remain.

The plans are not consistent with that for use as a depot and the site is proposed to remain capable as being occupied for use as a dwelling.

The site is subject to ongoing compliance action with respect to the unauthorised works and the illegal residential use.

It is recommended that the application be refused.

RECOMMENDATION:

That:

- A. That Development Application DA17/0237 for a change of use of an existing shed to a depot at Lot 4 DP 1074375 No. 18 Robinsons Road, Piggabeen be refused for the following reasons:**
 - 1. Pursuant to Section 79C (1) (a)(i) the development proposal has not demonstrated compliance with Clause 2.3(1) of Tweed Local Environmental Plan 2014, as the proposed plans enable residential use without consent contrary to the land use table.**

2. Pursuant to Section 79C (1) (c) the site is not considered to be suitable for the proposed depot as sufficient information has not been provided to determine if the use is compatible with the objectives of the zone or surrounding land uses.
 3. Pursuant to Section 79C (1) (d) public submissions made with respect to the proposal raised concerns with unacceptable noise and traffic generation impacts associated with the apparent current use of the site as a depot and the potential increase in these impacts resulting from an approval.
 4. The current building is not consistent with the original plans approved under DA09/0704 and as such represents a non-compliance with advice provided by Country Energy during the assessment of DA09/0704.
- B. The unauthorised modifications are to be removed so that the shed complies with Development Consent DA09/0704 within 60 days from the date of notification or Council will commence legal action with respect to the unauthorised works.

REPORT:

Applicant: Ms FR New and Mr PWE Ferguson
Owner: Mr Phillip WE Ferguson & Ms Felicity R New
Location: Lot 4 DP 1074375 No. 18 Robinsons Road, Piggabeen
Zoning: RU2 - Rural Landscape
Cost: N/A

Background:

Site details

The subject is described as Lot 4 DP 1074375, No. 18 Robinsons Road, Piggabeen. The land has an area of 3.02 hectares with a 166m frontage to Robinsons Road.

The land is relatively steep rising approximately 90m above Robinsons Road to the south west. An existing shed is located on the lower portion of the site approximately 12m from the boundary of the lot with Piggabeen Road. Four shipping containers with an attached awning are located adjacent to the driveway access to the shed approximately 2m from the front boundary.

A 20m wide easement for electricity supply is located on the lower portion of the site approximately 30m from the front boundary. The westernmost corner of the shed encroaches into the electricity easement.

The site is with the RU2 Rural Landscape Zone and benefits from a dwelling entitlement.

Site history

Development Consent DA09/0704 was approved over the site on 25 January 2010 and the installation of a wastewater treatment system was approved 28 January 2010. Condition 25 of DA09/0704 stated that:

The building is not to be used for any habitable, commercial or industrial purpose.

An inspection of the property by Council Rangers (in response to a reported dog attack) revealed that the approved shed had been modified for residential use and was currently being used for habitable purposes. The owners of the site were issued to two letters (10 January 2017 and 13 February 2017) to cease the unauthorised residential use of the site and remove the unauthorised works.

The applicant has not complied with these requests to Council's satisfaction.

Proposal

Development application for a change of use of the existing approved shed to a depot for the use of storage of material and equipment in relation to a trades business (electrician, carpenter, plumber or similar) was lodged 24 April 2017.

A *Depot* as under The Tweed Local Environment Plan 2014 is defined as a place used for storage "*that support the operations of an existing undertaking*". No information has been provided with regard to the *existing undertaking* nor detailed information with regard to type

of equipment or goods to be stored, hours of operation or traffic generation of the proposed depot.

No works are proposed in relation to this change of use application.

The plans of the proposed depot show areas on the lower floor labelled as storage room, wet prep area and wash room and on the upper level are proposed four additional storage rooms and an additional wet prep area.

A site visit conducted on 8 June 2017 revealed that the previously constructed unauthorised works remained and the internal and external appearance of the shed presented as a dwelling and was not consistent with that of a depot for trades or business use. There was also evidence that the site may still being used for residential purposes.

Four unauthorised shipping containers are also located on site which are not shown on the submitted plans.



Figure 1 Unauthorised verandahs at rear



Figure 2 Kitchen/Wet prep area



Figure 3 Upper level ensuite/wet prep area

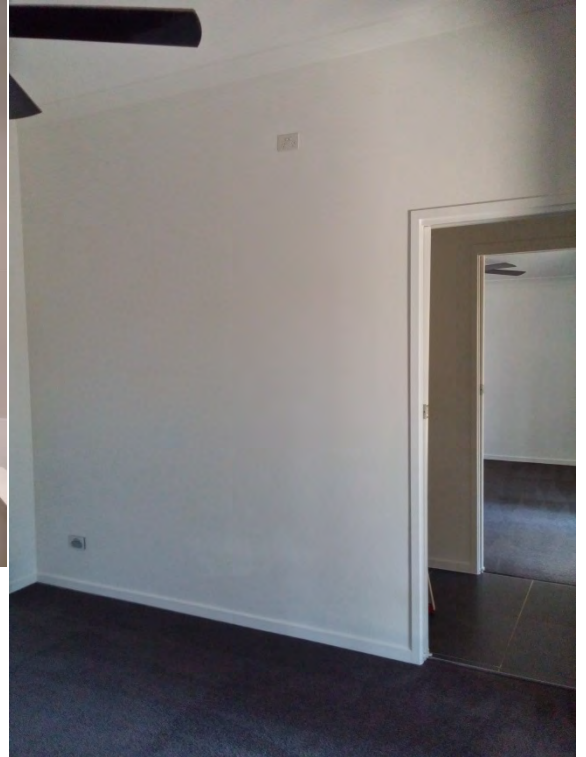


Figure 4 Upper level bedrooms/Storage rooms

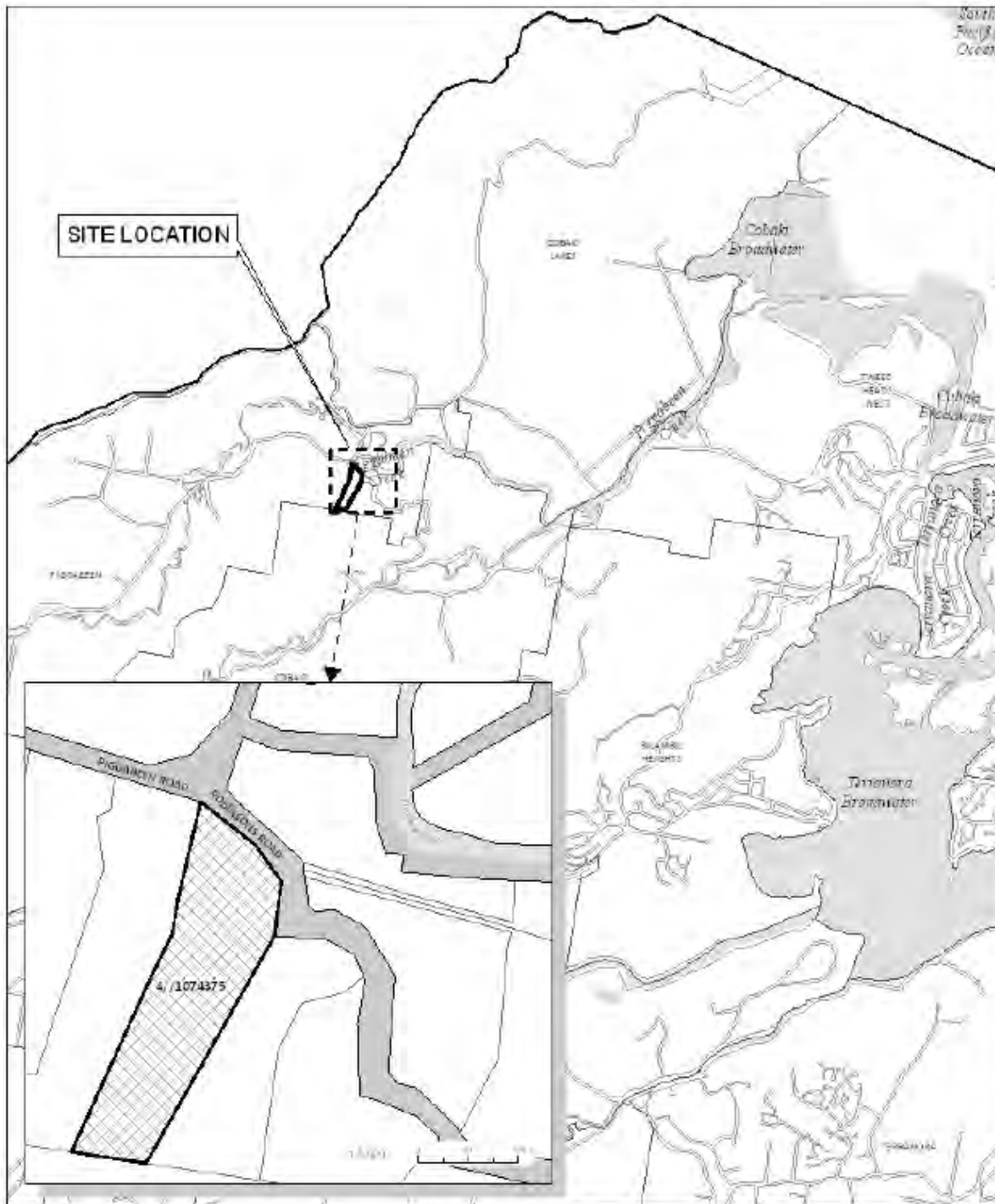


Figure 5 Garage



Figure 6 Four storage containers with awning

SITE DIAGRAM:



Site Plan
 Lot 4 DP 1074375
 18 Robinsons Road FIGGABEEN

<p><small>Information regarding the preparation of this plan is available on the Council's website at www.tweedshire.nsw.gov.au. The Council is not responsible for the accuracy of the information provided. The Council is not responsible for the accuracy of the information provided. The Council is not responsible for the accuracy of the information provided.</small></p>	<p>GDA</p> <p>2005/16 30/11/2016 © Dept. of Lands & Water & the Council</p>	<p>Division Council Code: 10 Council Name: Tweed Shire Council Council Code: 10 Council Name: Tweed Shire Council</p> <p>TWEED SHIRE COUNCIL</p>
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Date Printed: 03/11/2017

FLOOR AND ELEVATION PLANS:



PROPOSED CHANGE OF USE
LOWER FLOOR AS CONSTRUCTED PLAN
SCALE 1:100



PROPOSED CHANGE OF USE
UPPER FLOOR AS CONSTRUCTED PLAN
SCALE 1:100



WESTERN ELEVATION SCALE 1:100



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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

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

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

The development of a depot is considered to be generally in accordance with the aims of this plan having regard to its nature and permissibility in the subject zone. However, the proposed plans are not consistent with that of a depot and therefore not considered to be a sustainable management of the built environment.

Clause 2.3 – Zone objectives and Land use table

The objectives of this 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.*

A depot is a defined use permitted with consent within the RU2 zone of the Land Use Table.

A depot is defined as:

A building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.

The application proposes that the Depot is to be used by a trades business (*“plumber or similar trade”*) to store general materials. Depots as defined above *“support the operations of an existing undertaking”*. There is doubt if the proposal is consistent with the definition of a depot as the proposal does not nominate or describe a specific *existing undertaking* that the depot is to support. Sufficient information has not been provided with regard to the proposed use and any existing undertaking to determine if the proposal is consistent with the objectives of the zone specifically with respect to maintaining the rural landscape character and compatible land uses.

Additionally, the submitted plans and the current building as modified are in appearance a dwelling and not a depot. Dwelling houses are permitted with consent within the zone however there has been no application or approval for a dwelling over this site.

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

The objectives of this clause are:

- (1) *The objectives of this clause are as follows:*
- (a) *to minimise unplanned rural residential development,*
 - (b) *to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and residential zones.*

Under this clause consent must not be granted for the erection of a dwelling house in the RU2 zone unless the land:

- (a) *is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or*
- (b) *is a lot created under this Plan (other than under clause 4.2 (3)), or*
- (c) *is a lot created before this Plan commenced and on which the erection of a dwelling house or a dual occupancy was permissible immediately before that commencement, or*
- (d) *is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or*
- (e) *would have been a lot referred to in paragraph (a), (b), (c) or (d) had it not been affected by:*
 - (i) *a minor realignment of its boundaries that did not create an additional lot, or*
 - (ii) *a subdivision creating or widening a public road or public reserve or for another public purpose, or*
 - (iii) *a consolidation with an adjoining public road or public reserve or for another public purpose.*

The subject site is 3.02ha and the minimum lot size in relation to the land is 40ha. A Dwelling Entitlement search has been undertaken for the lot and found that the lot complies with clauses (c) above and so benefits from a dwelling entitlement.

No application has been lodged with Council for a dwelling on the site. The plans for the proposed depot show that the previously constructed unauthorized works are to remain and the shed will remain capable of being used as a dwelling.

Clause 4.3 - Height of Buildings

The building is approved and no external works are proposed. The existing building remains compliant with the provisions of this clause.

Clause 4.4 – Floor Space Ratio

Not applicable as no changes are proposed to the approved building.

Clause 4.6 - Exception to development standards

Not applicable as no variations to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as the use is not one listed under this clause.

Clause 5.5 – Development within the Coastal Zone

The site is not in area to which the NSW Coastal Policy applies.

Clause 5.11 - Bush fire hazard reduction

The site is mapped as being bushfire prone. The proposal does not negatively impact the provisions of this clause.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as containing Acid Sulfate Soils class 5. No works are proposed with respect to this change of use application and so the proposal is compliant with the provisions of this clause.

Clause 7.2 - Earthworks

No earthworks are proposed as part of this application.

Clause 7.3 – Flood Planning

The subject site is not mapped as flood prone land.

Clause 7.4 - Floodplain risk management

The development does not require a floodplain risk management plan. This clause is considered not applicable.

Clause 7.5 - Coastal risk planning

The subject land is not identified as being subject to coastal risk.

Clause 7.6 - Stormwater Management

Not applicable to the rural zoning.

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

Electricity and telecommunication services are currently available to the site. Water is provided via on-site capture and storage and the existing shed is serviced by an approved on-site sewerage management system.

Sealed driveway access is provided from Robinsons Road.

Other Specific Clauses

There are no other clauses considered applicable to the subject site.

State Environmental Planning Policies

SEPP No. 44 - Koala Habitat Protection

The site is partially within the Tweed Heads Koala Management Area identified in the Tweed Coast Comprehensive Koala Plan of Management (TCCKMoP) prepared with respect to the provisions of SEPP 44.

Council's mapping indicates Preferred Koala Habitat is located approximately 70m from the approved shed and associated access. The application relates to the change of use of an existing building with no external works proposed. As such the proposal is considered to be consistent with the provisions of the TCCKMoP.

SEPP (Rural Lands) 2008

The site is zoned RU2 and so the Rural Lands SEPP applies to the site. It is noted that the site is not identified as regionally significant farmland. The Rural Lands SEPP identifies Rural Planning Principles to assist in the proper management and development of rural lands.

7 Rural Planning Principles

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Note. Under section 117 of the Act, the Minister has directed that councils exercise their functions relating to local environmental plans in accordance with the Rural Planning Principles. Under section 55 of the Act, the Minister may also direct a council to prepare a local environmental plan.

Development for the purposes of a depot is consistent with the rural planning principles with respect to permissibility within the zone and the provision of sustainable economic activities in rural areas. However the proposed development is not consistent with principles relating to the social benefit and welfare of the community as the proposal would enable unregulated residential development of land.

SEPP (Infrastructure) 2007

A 20m wide easement for electricity supply transects the site and the westernmost corner of the approved shed is located within the easement. Clause 45 of the Infrastructure SEPP applies to development within or immediately adjacent to an easement for electricity purposes and states that before the determination of a development application, the consent authority must notify the electricity supply authority and consider any response to that notification.



DA09/0704 was referred to Country Energy and advice was provided with regard to the location of the shed in proximity to the electricity easement and stated:

*Country Energy recommends that no buildings are located within **7.5 metres** of an 11000 volt powerline....However in this instance the proposal is considered acceptable and is approved subject to the following conditions:*

- a) *The proposal is constructed strictly in accordance with the plans forwarded with your application.*

The current building is not consistent with the original plans and as such represents a non-compliance with the advice provided by Country Energy. The Compliance Unit is forwarding this information to the energy authority as part of the ongoing complicate action for the site.

The current application for the proposed depot has not been referred to the Energy authority as the application is being recommended for refusal based on the unapproved alterations resulting in the site being adapted for unauthorised residential use.

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

Draft SEPP (Coastal Management) 2016

The subject site is mapped within the Coastal Use Area under this SEPP and therefore assessment against Divisions 4 and 5 is required.

Division 4 Coastal use area

15 Development on land within the coastal use area

Development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority:

- (a) is satisfied that the proposed development:*
 - (i) if near a foreshore, beach, headland or rock platform—maintains or where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and*
 - (ii) minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and*
 - (iii) will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and*
 - (iv) will not adversely impact on Aboriginal cultural heritage and places, and*
 - (v) will not adversely impact on use of the surf zone, and*
- (b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.*

The proposed development relates to the change of use of an existing approved building with no external works proposed. It is considered that the proposal is consistent with Division 4 of the draft SEPP, in that it will have no significant impacts in relation to overshadowing, wind funnelling or the loss of views, visual amenity and scenic qualities of the coast, Aboriginal cultural heritage and places, and the surf zone.

Division 5 General

16 Development in coastal zone generally—development not to increase risk of coastal hazards

- (1) *Development consent must not be granted to development on land within the coastal zone (other than land to which clause 13 applies) unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Note. *Clause 13 (2) (b) contains a development control provision that substantially mirrors the effect of this provision.*

- (2) *This clause ceases to have effect at the end of 31 December 2021.*

17 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of the following:

- (a) *a coastal management program that applies to the land,*
- (b) *a coastal zone management plan (within the meaning of the Coastal Protection Act 1979) that applies to the land that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016.*

The proposed development relates to the change of use of an existing approved building with no external works proposed. It is considered that the proposal will not result in increased risk of coastal hazards on that land or other land. All relevant coastal management programs (NSW Coastal Policy) have been considered in the assessment of the application.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Section A2 states that staff parking is to be provided at the rate of 10% of the site for parking and access lanes but not driveways, and a minimum of 1 parking space for an Articulated Vehicle.

There is a sealed parking space at the front of the shed for approximately 3 vehicles and an additional unsealed hardstand area is located adjacent to shipping containers to provide parking for an additional two vehicles. The Statement of Environmental Effects states that “*under 5 vehicles*” may be parked

at the site. Given the proposal is for the storage of materials and tools in relation to a trades business and the existing shed has a floor space of 280 metres², it is considered that parking provision is adequate.

All vehicles are required to enter and exit the site in a forward direction and as such a turnaround area would be required. The absence of a turnaround area is not a reason for refusal of this application.

A11-Public Notification of Development Proposals

The application was advertised in accordance with Section A11 with a submission period of fourteen (14) days from Wednesday 7 June 2017 to Wednesday 21 June 2017. During this time three submissions were received which are addressed later in this report.

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

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

The subject site is not in an area to which this Policy applies.

Clause 92(1)(b) Applications for demolition

Not applicable as the application does not propose any demolition.

Clause 93 Fire Safety Considerations

The application is for a change of use of an existing building so this clause applies. The application was reviewed by Council's Building Unit. Fire safety considerations are not a reason for refusal of this application.

Clause 94 Buildings to be upgraded

Not applicable.

(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 proposed development is considered not to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. The Management Plan objectives at Clause 3.1.1 are therefore satisfied.

Tweed Coast Estuaries Management Plan 2004

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

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

The site is located on the westernmost boundary to the Cobaki Broadwater Catchment Area to which this Plan applies. The application relates to relatively minor development being the change of use of an existing building with no works proposed and as such the application is consistent with the aims and provisions of 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 site is zoned RU2 and surrounding development consists primarily of rural residential development and farming land.

Sufficient information has not been provided to adequately determine the impacts of the proposed depot specifically in relation to the intensity of the use. The SEE states that a *“tradesman or farmer will load materials in the morning and will leave the site during the day and may return in the afternoon”* and that the property will have up to five vehicles at the site. To make an adequate determination of impacts of the proposed use as a depot further information would be required including the type of equipment and materials to be stored at the site, number of persons accessing the site and types of vehicles accessing the site.

However the impacts of the proposed depot with respect to the context of the area are not the primary reason for refusal of this application. The application is being refused as the building as modified is considered to be an illegal dwelling and the plans for the proposed depot do not propose to alter the modified building and so would remain capable of habitation.

Access, Transport and Traffic

Sufficient information has not been provided to determine if the level of traffic generation is acceptable or if adequate access is provided in relation to the use as a depot. Further information would be required regarding number and types of vehicles accessing the site.

However access and traffic considerations are not the reason for refusal of this application. As mentioned previously the building as modified is considered to be an illegal dwelling and the plans for the proposed depot do not propose to alter the modified building and so would remain capable of habitation.

Flora and Fauna

The proposal is considered unlikely to impact on flora and fauna.

Noise and Amenity

Sufficient information has not been provided to adequately determine any potential noise and amenity implication of the proposed use of the site as a depot.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Depots are a nominated use permissible with consent under the RU2 zone however with regard to the proposed use of the site as a depot sufficient information has not been provided regarding the specific use of the site to determine suitability of the site for the proposal.

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

The application was advertised in accordance with Section A11 with a submission period of fourteen (14) days from Wednesday 7 June 2017 to Wednesday 21 June 2017. During this time three submissions were received.

The submissions raised issues concerning noise, traffic generation and suitability of the road network associated with the current use of the site which appears to be already operating as a depot. Concerns were raised regarding an increase in the current noise impacts and the suitability of road for use by large trucks which may result from the proposed approval for a depot. Council officers do not contest the issues raised within the submissions.

The application was not referred to any other public authority and as such no submissions were received.

(e) Public interest

The proposal of a depot is permissible with consent within the RU2 zone. The plans of the proposed depot demonstrate that the unauthorised alterations to the shed are to remain and the building will remain capable of habitation as an illegal dwelling. As such the proposal is not considered to be in the public interest.

OPTIONS:

1. Refuse the application in accordance with the recommendation and engage Council's solicitors to continue compliance action to reinstate the structure as originally approved by DA09/0704.
2. Report this matter to the next Planning Committee Meeting with draft conditions of consent to enable consideration for the depot as proposed.

Council Officers have recommended Option 1.

CONCLUSION:

The proposal of a depot is permissible within the zone however this application is being refused as the plans for the proposal are not consistent with the use of the site as a depot. The plans demonstrate that previous unauthorised works are to remain and the site will remain capable of habitation as an illegal dwelling. Furthermore sufficient information regarding the proposed depot use has not been provided to make an adequate assessment of the proposed use.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

The applicant may appeal Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

2 [PR-PC] Development Application DA17/0128 for Alterations and Refurbishment of Existing Imperial Hotel at Lot 2 DP 596914 No. 115 Murwillumbah Street, Murwillumbah

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:

Consent is sought for the refurbishment of and alterations to the existing Imperial Hotel, Murwillumbah. The application seeks consent undertake the following works:

- Alterations to the existing ground floor, including the addition of three (3) new tenancies, resulting in five (5) independent tenancies;
- Refurbishment of the existing bar and hotel;
- Removal of the existing courtyard roof; (ground floor) and replace/re-roof the entire rear of the building at the second level (no change is proposed to the tiled roof over the front of the building);
- Replacement of an entrance door; and
- The use of 16 unauthorised modified Hotel Accommodation rooms on the first floor.

Tenancy/shop 2 will continue to operate as a refreshment room as granted consent under DA12/0042.

Tenancies 4 and 5 will remain operating as the Imperial Hotel and bistro.

The fundamental issues with regard to the subject application are:

- Unauthorised works;
 - Removal of external building component (courtyard roof) within a Heritage Conservation Area;
 - Ensuring appropriate fire separation and structural adequacy for the first floor of the building (in response to illegal works undertaken); and
 - Compliance with BCA requirements for Access for people with a disability (shop 6).
-

The site is within the Murwillumbah Main Street Heritage Conservation Area.

The application was advertised for a period of 14 days from Wednesday 29 March 2017 to Wednesday 12 April 2017. During this time no submissions were received.

The application is being reported to Council in response to the unauthorised works.

The officer's recommendation is for approval.

RECOMMENDATION:

That Development Application DA17/0128 for alterations and refurbishment of existing Imperial Hotel at Lot 2 DP 596914 No. 115 Murwillumbah Street, Murwillumbah be approved subject to the following conditions:

GENERAL

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

Drawing	Dwg. Number	Sheet	Drawn by
Proposed shop layout	882/16 (revision D) 12 July 2017	5	Trevor White Building Design
Upper Level Floor Plan	-	1	Trevor White Building Design
Elevations	882/16 (revision B) 3 February 2017	4	Trevor White Building Design
Roof plan	882/16 (revision B) 3 February 2017	6	Trevor White Building Design

[GEN0005]

2. **Submission of a further Development Application(s) for the first use of the shops, offices and industrial shed use, such to be approved by Council prior to their use or occupation.**

[GEN0055]

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

[GEN0115]

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

[GEN0135]

5. **Sewer manholes are present on this site. Manholes are not to be covered with soil or other material.**

Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application

form accompanied by the required attachments and the prescribed fee. Works will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

[GEN0155]

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

[GEN0190]

7. This development consent does not include demolition of the existing structures on the subject site. A separate approval will need to be obtained for this purpose, as statutorily required.

[GEN0305]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. Prior to the issue of a Construction Certificate the applicant is to submit to Council an application for Building Certificate for all unauthorised building works.

[PCCNS05]

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

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

BELOW IS ADVICE ONLY

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

Water: Nil
Sewer: Nil

10. Prior to the issue of the Construction Certificate a structural engineer report shall be submitted to the Principal Certifying Authority which certifies that the building is structural adequate or specifies the work required to ensure that the building will be structurally adequate.

[PCC1025]

11. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management

system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a Construction Certificate.

[PCC1195]

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

[PCC1255]

13. The building is required to be upgraded to satisfy the requirements of the NCC-BCA to achieve a satisfactory level of fire safety. Due to the complexities associated with an upgrade in accordance with the prescriptive requirements and due to the age of the building it is appropriate to engage an appropriately accredited fire engineer to prepare a report containing alternative solutions addressing the Performance Requirements of Parts C, D and E as contained in Volume 1 of the NCC - Building Code of Australia. The report is to include the staging of BCA upgrading works relating to each tenancy of the ground floor and first floor residential sole occupancy units. This report is to be submitted to the nominated PCA for assessment and determination prior to issue of the Construction Certificate.

[PCCNS01]

14. Access for people with a disability is to be provided to and within the building (in particular tenancies; 1, 2, 4/5 and 7) in accordance with Part D3 of the NCC-BCA 2016 and AS 1428.1 - 2009. Details indicating compliance is to be submitted to the nominated PCA for assessment and determination prior to issue of the Construction Certificate.

[PCCNS02]

15. An accessible facility is to be provided in close proximity with tenancies 4 and 5 in accordance with Part D3 of the NCC-BCA 2016 and AS 1428.1 - 2009. Details indicating compliance is to be submitted to the nominated PCA for assessment and determination prior to issue of the Construction Certificate.

[PCCNS03]

16. Prior to the issue of construction certificate, drawings to a scale of 1:50 detailing the following with regards to those food related areas for shops/tenancies 2 and 5 shall be provided to Council's Environmental Health Section for assessment and approval:

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

[PCCNS04]

PRIOR TO COMMENCEMENT OF WORK

17. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works. [PCW0005]
18. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work. [PCW0215]
19. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing. [PCW0225]
20. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

[PCW0255]

21. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

DURING CONSTRUCTION

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

[DUR0005]

23. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011.

[DUR0165]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

- A. Short Term Period - 4 weeks.**

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background

level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0375]

27. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:

- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.**
- (b) The chute shall be located in a position approved by the Principal Certifying Authority.**
- (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.**

[DUR0385]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

31. Excavation

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.**
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.**

[DUR0425]

32. If the work involved in the erection or demolition of a building:

(a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or

(b) building involves the enclosure of a public place,

a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

33. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

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

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

[DUR1005]

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

[DUR1025]

36. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

37. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia. [DUR1705]
38. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility. [DUR1725]
39. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1875]
40. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times. [DUR2015]
41. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site. [DUR2185]
42. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
 - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - (c) external drainage prior to backfilling.
 - (d) completion of work and prior to occupation of the building. [DUR2485]
43. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
 - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500. [DUR2495]
44. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
45. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.

[DUR2525]

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

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

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

- (a) Surface treatment over the sewer pipe shall be limited to soft landscaping, non-interlocking paving, asphalt or similar treatments as specified by Council officers, to allow ready access to the pipe for excavation. Council will not be responsible for the reinstatement of plantings, unauthorised structures or decorative surfacing in the vicinity of the pipe in the event of pipe excavation or other maintenance works.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

50. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

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

[POC0205]

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

[POC0225]

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

[POC0355]

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

[POC1045]

55. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

USE

56. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

57. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

[USE0145]

58. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{A90}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0165]

59. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

60. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

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

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

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

[USE0315]

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

[USE1055]

63. Footpath dining activities shall not be carried out unless a Footpath Dining License Agreement has been approved by the General Manager or his delegate. Footpath dining activities shall be restricted to the approved footpath dining area and carried out in accordance with Councils adopted Footpath Dining Policy.

[USE1105]

REPORT:

Applicant: Penplay Investments Pty Limited
Owner: Penplay Investments Pty Limited
Location: Lot 2 DP 596914 No. 115 Murwillumbah Street, MURWILLUMBAH
Zoning: B3 - Commercial Core
Cost: \$150,000

Background:

Consent History

The subject site has an extensive history. Development consents issued have been summarised into the following table:

<i>Application Number</i>	<i>Description</i>
<i>DA12/0042</i>	<i>change of use from bottleshop to refreshment room in existing building (Imperial Hotel)</i>
<i>DA08/0124</i>	<i>alterations to existing commercial premises - Imperial Hotel</i>
<i>DA04/0794</i>	<i>hotel alterations & additions</i>
<i>0469/2001DA</i>	<i>additions to an existing hotel</i>
<i>K99/0561</i>	<i>internal alterations to an existing hotel</i>
<i>K99/0486</i>	<i>use of premises (shop q) as a pathology clinic</i>
<i>K98/0566</i>	<i>relocation of male amenities and games room</i>
<i>D92/0095</i>	<i>erection of an advertising structure</i>
<i>D88/0637</i>	<i>establishment of an pawn broker & loans office in an existing shop premises</i>
<i>D87/0121</i>	<i>est. of a pathology collection centre & office</i>

The subject application seeks consent undertake the following works:

- Alterations to the existing ground floor, including the addition of three (3) new tenancies, resulting in five (5) independent tenancies;
- Refurbishment of the existing bar and hotel;
- Removal of the existing courtyard roof; (ground floor) and replace/re-roof the entire rear of the building at the second level (no change is proposed to the tiled roof over the front of the building);
- Replacement of the first floor roof U shaped roof, to cover the entire of the building (including the lower level courtyard area); and
- The use of 16 unauthorised modified Hotel Accommodation rooms on the first floor.

The following plan details the proposed tenancy layout. It should be noted that whilst the existing bistro and bar have been nominated as “shops” 4 and 5, the applicant has advised that this is for lease purposes only. “Shops” 4 and 5 (bistro and bar) will be operated together (as required for liquor licence purposes); conditions with this regard have been applied.



Unauthorised works

A review of the site history has revealed that an initial site inspection was undertaken 21 October 2016 in relation to compliance complaints received by Council. A review of the notes clearly states that the owner was advised that “works were to cease until a development application (consent) has been obtained”.

The subject Development Application was lodged with Council on 13 March 2017.

During the assessment of the subject application multiple inspections were undertaken (8 May 2017, 10 May 2017 and 16 May 2017); at all inspections Council continued to advise that works being undertaken were not exempt development and that no works should be undertaken until such time that consent was issued and the works comply with any applicable conditions.

The extent of unauthorised works is outlined in Councils request for further information, which has been included as Attachment 1 to this report.

A response from the applicant’s solicitor advised the following:

*As Council is aware it is our client’s position that it has not carried out any structural works on the upper story floor of the hotel and it would appear that various works approved under **DA04/0794** were not in fact carried out in accordance with that development approval. Our client maintains that the only works carried out on the upper floor have been cosmetic in nature, for example, tiling works.*

Based on this advice and a review of Councils available records, no Penalty Infringement Notices have been issued, as Council is unable to determine if the works were undertaken illegally by the current owner/applicant.

A condition requiring the submission of a building certificate for all unauthorised building works has been applied.

Following on from Councils last contact with the site owner, it is understood no further works were undertaken.

Further to the above at the onsite meeting held Tuesday 16 May 2017, Council raised concerns in relation to fire safety and structural adequacy of the building in response to works undertaken on the first floor. Conditions with this regard have been applied.

SITE DIAGRAM:



Site Diagram

0 0.35 0.7 Km

DA17/0128 - alterations and refurbishment of existing Imperial Hotel
 Lot 2 DP 596914
 No. 115 Murwillumbah Street, Murwillumbah

1:30,000

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GDA   Cadastral: 30 June, 2010
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 Coordinate System - MGA Zone 56
 Datum - GDA 94 DO NOT SCALE
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Author: S. Scott - GIS

Date Printed: 18 July, 2017

<p>GENERAL NOTE: All work to be done in accordance with the Building Code of Australia and the relevant standards and specifications. The contractor is responsible for obtaining all necessary approvals and permits. The contractor is responsible for ensuring that all work is completed in accordance with the approved plans and specifications. The contractor is responsible for ensuring that all work is completed in accordance with the approved plans and specifications. The contractor is responsible for ensuring that all work is completed in accordance with the approved plans and specifications.</p>	<p>ISSUE: DATE: BY: CHECKED: DATE: BY: APPROVED: DATE: BY: </p>	<p>trevor white - building design 351 rowlands creek road, ulu, NSW, 2574 phone: (02) 66795883 email: trevorb@trevorwhite.com.au b.d.a. membership no. 075-92 accredited building designer no. 505</p> <p style="text-align: center;">bda BUILDING DESIGNERS AUSTRALIA</p>	<p>DATE: DRAWN: 2017 CHECKED: TSW SCALE: 1:50 FLOOR AREA: </p>	<p>CLIENT: INFERRAL HOTEL PROJECT: </p>	<p>PROPERTY DESCRIPTION: </p>	<p>DRAWING TITLE: </p>	<p>DWG. NO. SHEET 1 OF 4</p>
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UPPER LEVEL FLOOR PLAN

GENERAL NOTES
 All work to be carried out in accordance with the Building Code of Australia and the National Fire Protection Association written provisions that precede the building to verify all dimensions on site prior to commencement of any work, and the copyright thereof for the property, not be used, retained or copied in part or in total without the written permission of Trevor White - Building Design

B 2% 19% **PARKING NUMBERS AMENDED**
A 10% 19% **TENANCY LAYOUT & PARKING LAYOUT AMENDED**

Drawn: bdb
 Checked: bdb
 Date: 20/11/2016

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bdb
 BUILDING DESIGNERS AUSTRALIA

date: 20th Nov. 2016
drawn: DDV
checked: TJM
scale: 1:100 @ A1
 1:200 @ A3
floor area:

client: IMPERIAL HOTEL
project: PROPOSED SHOP SPACES TO BE CREATED WITHIN IMPERIAL HOTEL BUILDING & CONSTRUCTION OF NEW ROOF
property description: LOT 2 IN DP 546614 115 MURALLUMBAH STREET MURALLUMBAH

drawing title: EXISTING ELEVATIONS SHOWING EXTERNAL BUILDING INCLUDING DOORS & WINDOWS
sheet: 4 of 7
drawing no.: 362/16 AB

SOUTHERN ELEVATION - (MURALLUMBAH STREET FACADE)

1. EXTERNAL WALLS - GREDY RENDERED GAFFY BRICK PAINTED PINK
 2. DOORS & WINDOWS - UPPER LEVEL - SEE NOTES ON ELEVATION
 3. DOORS & WINDOWS - LOWER LEVEL - SEE NOTES ON ELEVATION

PAINTED TIMBER WINDOWS (ORIGINAL)
 CLEAR SPANNERS IN FACADE WALL
 ROOF TILES THIS SUBJECT
 CONCRETE GALVANIZED IRON ROOFING
 BRICK PARAPET
 ROOF TILES BETWEEN RIDGE & FACADE
 STEEL ROLLER DOOR
 FINE GREDY CLADDING ON TIMBER STUD FRAME

SOUTHERN ELEVATION

EASTERN ELEVATION

1. EXTERNAL WALLS - FACE BRICK OF CAVITY WALL (EXCEPT FOR GARAGE)
 2. DOORS & WINDOWS - ALL PAINTED TIMBER EXCEPT WHERE SHOWN OTHERWISE

CONCRETE GALVANIZED IRON ROOFING
 CLEAR LAGGED NATURAL TIMBER FRAMES

EASTERN ELEVATION

NORTHERN ELEVATION

1. EXTERNAL WALLS - FACE BRICK OF CAVITY WALL EXCEPT WHERE SHOWN AS PAINTED BRICK (PINK)
 2. DOORS & WINDOWS - ALL PAINTED TIMBER
 3. FIRE ESCAPE STAIRS ARE PAINTED STEEL

CONCRETE GALVANIZED IRON ROOFING

NORTHERN ELEVATION

WESTERN ELEVATION

1. EXTERNAL WALLS - FACE BRICK OF CAVITY WALL EXCEPT WHERE SHOWN AS PAINTED BRICK (PINK)
 2. DOORS & WINDOWS - PAINTED TIMBER (ORIGINAL) EXCEPT WHERE SHOWN OTHERWISE
 3. FIRE ESCAPE STAIRS ARE PAINTED STEEL

FIRE ESCAPE DOORS WOULD GO NOT ORIGINAL


WESTERN ELEVATION

DISCLAIMER
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ISSUE	DATE	DETAIL	REVISION
B	20th Nov 2017	PARKING NUMBERS AMENDED	
A	30th Nov 2017	TENANCY LAYOUT & PARKING LAYOUT AMENDED	

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date: 30th Nov 2016
drawn: EPH
checked: TJN
scale: 1:150 & A1
1:200 & A3
floor area:

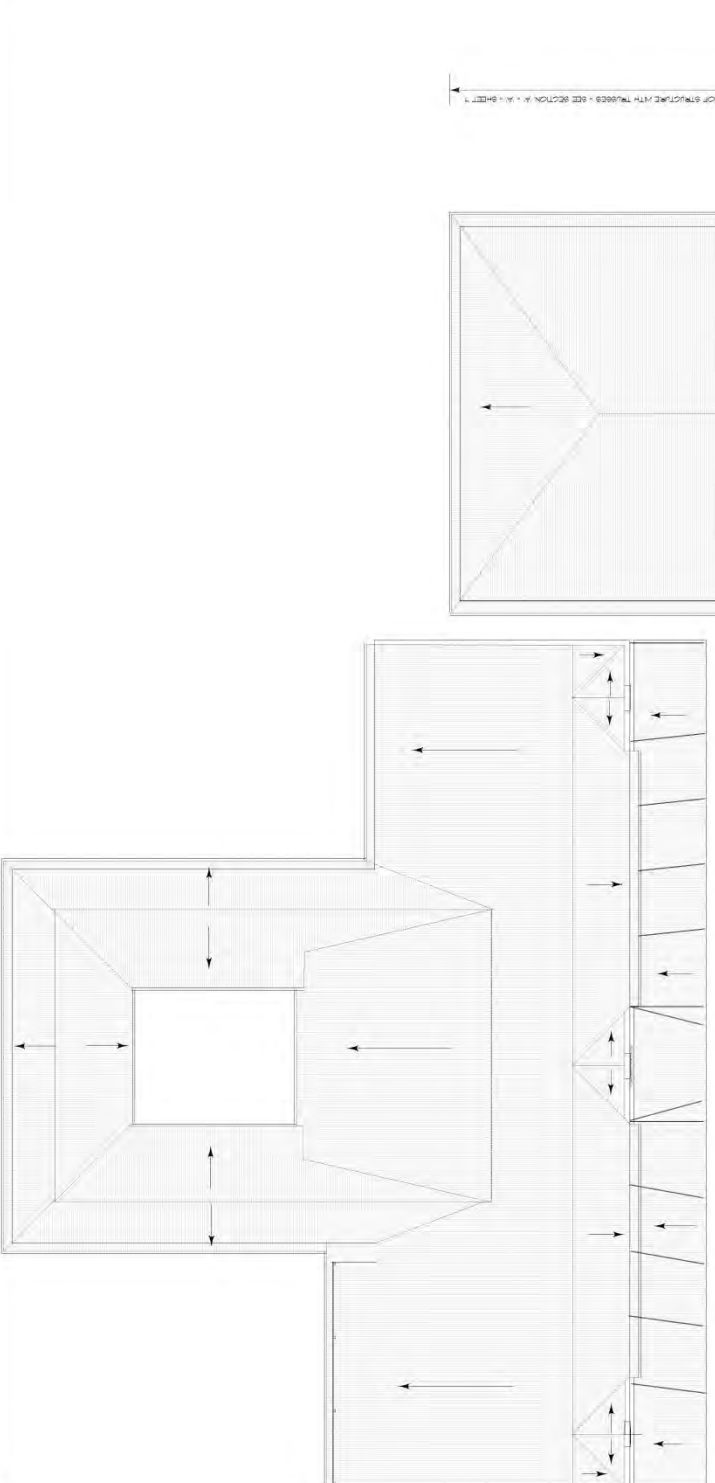
client: IMPERIAL HOTEL

project:
PROPOSED SHOP SPACES
AND
IMPERIAL HOTEL BUILDING
& CONSTRUCTION OF NEW
ROOF

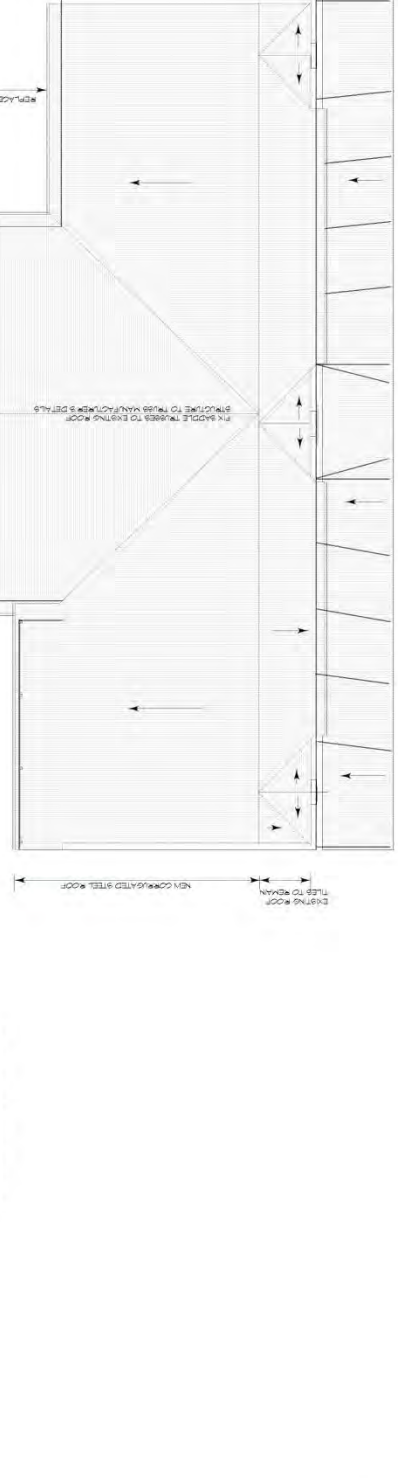
property description:
LOT 2 IN DP 5165114
115 MURALLUMBAH STREET
MURKILLUMBAH

drawing title:
EXISTING & PROPOSED
ROOF PLANS

dwg. no. 882/16 A
sheet 6 of 7



EXISTING ROOF PLAN



PROPOSED ROOF PLAN

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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

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

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

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and the fact that the land use is permissible in the subject zone.

Clause 2.3 – Zone objectives and Land use table

The subject site is zoned B3 Commercial Core. The objectives of the B3 zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To encourage upper floor residential or tourist accommodation that does not compromise the commercial use of the land.*

The proposed development is permitted with consent and is considered to be consistent with the objectives of the B3 zoning, as it contributes to a range of uses in the commercial core and encourages employment opportunities.

Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

- (a) *to establish the maximum height for which a building can be designed,*
- (b) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (c) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (d) *to encourage greater population density in less car-dependant urban areas,*
- (e) *to enable a transition in building heights between urban areas comprised of different characteristics,*
- (f) *to limit the impact of the height of a building on the existing natural and built environment,*
- (g) *to prevent gross overshadowing impacts on the natural and built environment.*

The subject site is mapped as having a maximum height limit of 12.2m. The development includes a new roof, with a maximum height of approximately 9.0m.

Clause 4.4 – Floor Space Ratio

The subject site is mapped as having a FSR of 2:1. The subject application does not increase the existing GFA.

Clause 4.6 - Exception to development standards

Not applicable – the subject application does not seek any exceptions to development standards.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable to the subject application.

Clause 5.5 – Development within the Coastal Zone

Not applicable - the proposed development is not located within the Coastal Zone. It is considered that there will be no impact upon the zone

Clause 5.9 – Preservation of Trees or Vegetation

The subject site is not subject to a TPO and comprises limited vegetation. It is considered that the proposal raises no major implications in respect of this clause.

Clause 5.10 - Heritage Conservation

The subject site is mapped within a Heritage Conservation Zone.

The objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Tweed,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

This clause goes on to state that the consent authority, must before granting consent in respect of an application within a heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

The hotel site is captured within the Retail precinct of the Murwillumbah Main Street Heritage Conservation Area (MMSHCA). The building is not listed as a specific Heritage item under the Tweed LEP 2014, however is noted as a building of cultural heritage significance.

The building is aesthetically significant for its design and form and it contributes importantly to the MMSHCA. The plan form expressing the rear accommodation, kitchen and amenities wings encircling an internal courtyard survives as an important significant and discernible part of the hotel. Notwithstanding this, the area is not visible from outside the site and the subject application does not seek consent to remove the internal courtyard.

The applicant advises that there are ongoing maintenance issues with the existing roofed courtyard. Accordingly, seeks consent to remove the existing

courtyard roof (ground floor) and replace/re-roof the entire site at the second level. No change is proposed to the tiled roof over the front of the building.

The applicant submitted a Statement of Heritage Impact which advised the following:

"The Imperial Hotel at 115 Murwillumbah Street is located within the Murwillumbah main street heritage conservation area. It is not currently a local heritage item for Tweed Shire Council. It has previously been recognised by the NSW Chapter of the Australian Institute of Architects as a 'significant 20th century building' and listed on that organisation's non-statutory register. This statement of heritage impact has assessed that the building and the site has local significance, particularly for Murwillumbah and in relation to its historical, associational and aesthetic values.

The current proposal is for internal alterations to the ground floor area, particularly the bar and former bistro and external works consisting of the replacement of an existing vertical glazed and timber panel to the street with a new entry, of similar design and style. A new rear roof, using the same material as the existing roof, is also proposed.

The internal areas have seen substantial alterations during the 1990s and 2000s, when most of the concrete and tiled floors, as well as the staircase, partition walls and the exterior and interior glazed and timber panels were installed. The current proposed works are part of the 2016 owner's amendments, maintenance and repair which will include repair and exposure of an original ceiling, colour and size matching and installation of the interior 1930s walls tiles and replacement of an original and later bar (within the bar space). These works are acceptable from a heritage perspective and will not adversely affect the identified heritage significance of the building. Internally, apart from the timber floor and early bar, they are taking place in areas that were refurbished or replaced recently. The new works are designed to enhance the existing building and allow its original use to continue.

The new (replacement) roof and new exterior door will not adversely affect the identified heritage significance of the building. In addition, these works will not detract from the identified contributory quality that the subject building has for the mixed historical character of the Murwillumbah Main Street Conservation Area."

Clause 5.11 - Bush fire hazard reduction

The subject site is not mapped as bushfire prone land

Clause 7.1 – Acid Sulfate Soils

Class 5 Acid Sulfate Soils are identified on the subject site.

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Works are located internal to an existing building. No impact on Acid Sulfate Soils is expected.

Clause 7.2 - Earthworks

No earthworks are proposed as part of this application.

Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

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

The site is mapped as being affected by a design flood level of 7.0m AHD and PMF level of 11.5m AHD – 12.5m AHD.

The development does not propose any net increase in GFA and only minor internal alterations to the building in order to accommodate the proposed tenancies. It is considered that the proposal is consistent with the clause.

Clause 7.4 - Floodplain risk management

The objectives of this clause are as follows:

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

This clause goes on to advise that development consent must not be granted for tourist and visitor accommodation unless the consent authority is satisfied that that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land.

The site is mapped as being affected by a design flood level of 7.0m AHD and PMF level of 11.5m AHD.

Topography of the site ranges generally between 5 and 6m AHD, with a minimum habitable floor level of approximately 8.8m AHD.

The proposed development does not seek consent to change the existing use, subject to this clause. The application is rectifying unauthorised works undertaken which have essentially decreased the number of hotel

accommodation rooms. Accordingly, it is not considered to impact the operational capacity of emergency response facilities.

Clause 7.6 - Stormwater Management

The development does not propose any net increase in GFA, whilst the subject application seeks an amended roof design, no additional roofed area is proposed. No stormwater impacts are envisaged as a result of the subject application.

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

All essential services are made available to the subject site

Other Specific Clauses

There are no other clauses specific to this application.

State Environmental Planning Policies

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

There is no draft Environmental Planning Instruments applicable to the subject application.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The subject application seeks consent for the following:

<i>Proposed tenancy</i>	<i>Size</i>
<i>1: Commercial</i>	<i>40.5</i>
<i>2: Refreshment room</i>	<i>83.0</i>
<i>3: Commercial</i>	<i>67.1</i>
<i>4: Bistro</i>	<i>180</i>
<i>5: Bar</i>	<i>230</i>
<i>6: Commercial</i>	<i>42.5</i>
<i>7: Commercial</i>	<i>56.1</i>
<i>Upper Floor Accommodation</i>	<i>16 rooms</i>

The DCP states: Existing use credits shall only be supported by Council where the exiting lawful use/development approval can be demonstrated. Where there is an application for a change of use or redevelopment of an approved/lawful

development site that does not cause any net increase in the demand for car parking spaces.

The site has a long a complex history. Of particular relevance to establish existing lawful use/development approval the following has been concluded:

Application Number	Description
DA12/0042	change of use from bottleshop to refreshment room in existing building (Imperial Hotel)
DA08/0124	alterations to existing commercial premises - Imperial Hotel
DA04/0794	hotel alterations & additions
0469/2001DA	additions to an existing hotel
K99/0561	internal alterations to an existing hotel
K99/0486	use of premises (shop q) as a pathology clinic
K98/0566	relocation of male amenities and games room
D92/0095	erection of an advertising structure
D88/0637	establishment of a pawn broker & loans office in an existing shop premises
D87/0121	est. of a pathology collection centre & office

With this regard it is considered that the previous use of the premises as a Hotel restaurant and commercial premises, fulfils this requirement and existing use credits on the site apply. On this basis it is reasonable to conclude that the subject site following existing use credits.

Proposed tenancy	Size	Existing use credit	Rate applicable
1: Commercial	40.5	DA12/0042 – refreshment room 2.83 spaces	1/50sqm 0.81 spaces required 2.83 credit – 0.81 = 2.02 credit
2: Refreshment room	83.0	DA12/0042 – refreshment room Total = 8.64 spaces – 8.7 spaces (credit) = 0.06 spaces credit	0.06 spaces credit Nil additional required
3: Commercial	67.1	Hotel – DA08/0124 (games room) 6.71 spaces	1/50sqm 1.342 spaces required 6.71 (credit) – 1.342 5.368 credit
4: Bistro	180	DA08/0124 - No change 1/10 = 18 spaces + staff	18 spaces Nil additional required
5: Bar	230	DA08/0124 - No change 1/10 23 spaces + staff	23 spaces Nil additional required
6: Commercial	42.5	DA08/0124 - Hotel kitchen – licenced originally 1/10 = 4.25 spaces	1/50sqm 0.85 spaces required 3.4 spaces

Proposed tenancy	Size	Existing use credit	Rate applicable credit
7: Commercial	56.1	Office – not licenced 1/50sqm (1.122 spaces)	1/50sqm 1.22spaces Nil additional required
Upper Floor Accommodation	16 rooms	DA040794 - Hotel accommodation (originally 23 rooms) 1 x 23 rooms = 23 spaces	Application includes 16 rooms 1 x 16 = 16 23 spaces – 16 = 7 spaces credit

The current DCP A2 requires a refreshment room to provide 1 space per staff member at peak operating times and one space per 7m² of dining area for customers. Please note there is no car parking rate for takeaway facilities and therefore car parking has been determined on the basis of a 'refreshment room'. Based on the current floor plan (discounting the entrance, cool room and existing disabled access and taking into consideration partition wall, counter area and the like) the potential useable dining area equates to approximately 46.5m² (7.75m x 6m).

On the basis of the amended plan, taking into consideration potential commercial uses and existing on-site credit in relation to car parking, there is no net increase in car parking requirement and therefore no charges are generated in relation to Plan No. 23 (Offsite Parking Contributions).

A3-Development of Flood Liable Land

Section A3 of the DCP seeks to regulate development on land affected by flooding however, given the minor nature of the modifications to accommodate the proposed change of use, it would be considered unreasonable to request that further alterations to the building were implemented.

A condition shall be applied to any Development Consent to ensure that electricians are suitably sited above the flood height.

It is otherwise considered that the proposal is compliant with Section A3 of the DCP.

A11-Public Notification of Development Proposals

In accordance with Section A11 the application was advertised for a period of 14 days. During this period no submissions were received.

A18 - Heritage

The hotel (site indicated below) site is captured within the Retail precinct of the MMSHCA and in addition to the retain objectives the general objectives and provisions of the MMSHCA do apply.



Figure 1: MMSHCA (yellow = contributory buildings)

The Murwillumbah Retail Precinct presents a continuous streetscape defined by a number of pre-1939 buildings, with masonry facades featuring distinctive parapets and pedestrian level awnings. It has retained a considerable degree of integrity, within a visually distinct precinct with simple boundaries. The streetscape has well developed townscape qualities with high aesthetic value. There are a number of notable buildings including the Interwar Georgian style BGF House building, the Interwar Free Classical Southern Cross Credit Union, the ANZ building and the Imperial and Murwillumbah Hotels to name only a few.

The DCP lists the following as key features of the MMSHCA:

- 1. Fine grained shop frontage with a zero front and side setback to the retail uses;*
- 2. Northern side is interspersed with a collection of civic buildings with a landscaped setback;*
- 3. Hard surface urban edge to southern side;*
- 4. Mix of single and two stories;*
- 5. Provision and continuity of awnings and parapets, which ties the retail precinct as a group and provides a rich and varied silhouette;*
- 6. Variety of facades, architectural styles and traditional step in shopfront entries with window displays;*
- 7. A material palette of rendered masonry, bagged brickwork, and face brickwork characterise and contribute to a unified retail precinct streetscape;*
- 8. At the shopfront level of these buildings a richer material palette can be found including ceramic tile, terrazzo, detailed glass and joinery. Art deco buildings are characterised by geometric forms, chevrons, sunburst motifs, aluminium, stainless steel, brick, stained glass, vitrolite glass; and*
- 9. Opportunities for taking advantage of the northern solar access*

The Imperial Hotel is nominated as a Contributory building in Part 4.3, MMSHCA Contributory Buildings and Views.

The Part 4.4 Objectives (particularly objective 03, objective 06 and objective 08) are therefore applicable:

- 0.3. Ensure the significance of the contributory items are retained and maintained.*
- 06. Conserve the historic fabric and minimise the collective impact on the significance of the heritage conservation area.*
- 08. Encourage sympathetic, contemporary design of infill development that preserves the grain of the prevailing pattern of development, characteristic building form, materiality and style evident in the streetscape character of the heritage conservation area.*

Councils Heritage Consultant advised the following:

*"These objectives are not demonstrated in the proposed modification to the rear roof. Neither the SOHI nor the design drawings address the objectives outlined in the Tweed DCP Section 18 Part C Section 4, Objective 01 Retain the characteristic roof forms, elements and materials on heritage items and **within heritage conservation areas**. The proposed rear roof does not meet with C1 of the Controls under part C Section 4.*

Review of Significance:

As noted in the SOHI the Imperial Hotel is of cultural heritage significance. The place is aesthetically significant for its design and form and it contributes importantly to the Heritage Conservation area. The plan form expressing the rear accommodation, kitchen and amenities wings encircling an internal courtyard survives as an important significant and discernible part of the hotel. While the internal courtyard has been roofed it remains clearly evident and there is good potential for the space to be re-instated to its original state."

A request for further information included the Heritages Advisors request for amended roof plans for the internal courtyard.

The applicant responded and advised that there are ongoing maintenance issues with the existing roofed courtyard and would not be willing to amend the proposed roof plans. Accordingly, the application as lodged to remove the internal courtyard roof and, re-roof the entire rear of the site stands. There is no change proposed to the tiled roof over the front of the building.

The applicant submitted a Statement of Heritage Impact which advised the following:

"The Imperial Hotel at 115 Murwillumbah Street is located within the Murwillumbah main street heritage conservation area. It is not currently a local heritage item for Tweed Shire Council. It has previously been recognised by the NSW Chapter of the Australian Institute of Architects

as a 'significant 20th century building' and listed on that organisation's non-statutory register. This statement of heritage impact has assessed that the building and the site has local significance, particularly for Murwillumbah and in relation to its historical, associational and aesthetic values.

The current proposal is for internal alterations to the ground floor area, particularly the bar and former bistro and external works consisting of the replacement of an existing vertical glazed and timber panel to the street with a new entry, of similar design and style. A new rear roof, using the same material as the existing roof, is also proposed.

The internal areas have seen substantial alterations during the 1990s and 2000s, when most of the concrete and tiled floors, as well as the staircase, partition walls and the exterior and interior glazed and timber panels were installed. The current proposed works are part of the 2016 owner's amendments, maintenance and repair which will include repair and exposure of an original ceiling, colour and size matching and installation of the interior 1930s walls tiles and replacement of an original and later bar (within the bar space). These works are acceptable from a heritage perspective and will not adversely affect the identified heritage significance of the building. Internally, apart from the timber floor and early bar, they are taking place in areas that were refurbished or replaced recently. The new works are designed to enhance the existing building and allow its original use to continue.

The new (replacement) roof and new exterior door will not adversely affect the identified heritage significance of the building. In addition, these works will not detract from the identified contributory quality that the subject building has for the mixed historical character of the Murwillumbah Main Street Conservation Area.

B22-Murwillumbah Town Centre

This section of the DCP operates to "support the conservation of the rich mix of significant buildings within Murwillumbah generally". The objectives of the DCP are to protect and enhance items of environmental heritage listed in the TLEP 2000 (now LEP 2014) and contributory items and ensure that developments are designed to be compatible with the heritage significance of listed items.

The guidelines for assessment require that proposals involving heritage items must comply with the heritage provisions of the relevant LEP and specify that the onus is on the proponent to demonstrate that the heritage significance of the item would not be compromised by the proposal. Further, onus is on the applicant to demonstrate that the architectural and streetscape value of the building would be retained or enhanced by the proposal.

In this instance, the building itself is not a heritage item however the site is within the Murwillumbah Main Street Heritage Conservation Area. The applicant has submitted a SOHI which advises the following:

The Imperial Hotel at 115 Murwillumbah Street is located within the Murwillumbah main street heritage conservation area. It is not currently a local heritage item for Tweed Shire Council. It has previously been recognised by the NSW Chapter of the Australian Institute of Architects as a 'significant 20th century building' and listed on that organisation's non-statutory register. This statement of heritage impact has assessed that the building and the site has local significance, particularly for Murwillumbah and in relation to its historical, associational and aesthetic values.

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The new (replacement) roof and new exterior door will not adversely affect the identified heritage significance of the building. In addition, these works will not detract from the identified contributory quality that the subject building has for the mixed historical character of the Murwillumbah Main Street Conservation Area."

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

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

The proposed site is not located within the area covered by the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

It is not known exactly what demolition works have occurred at this site, as works have been undertaken without consent.

Clause 93 Fire Safety Considerations and Clause 94 Buildings to be upgraded

Due to the nature of the subject application (change of use) consideration of clauses 93 Fire Safety and 94 Buildings to be upgraded of the *Environmental Planning and Assessment Regulation 2000* must be considered. Consideration of these clauses must include the use and works undertaken on the first floor.

Council's Senior Building Inspector advised the following:

"It was evident that there is a lack of fire separation between the ground and first floor, and between the first floor sole occupancy units. The existing first floor residence, sitting room and private lounge are afforded egress via the existing internal stairs which should be fire isolated. An inspection of the first floor revealed that there have been modifications to the residential sole occupancy units upstairs by the inclusion of ensuite facilities and the removal and installation of walls."

The applicant has advised that the reconfiguration works on the first floor were undertaken prior to purchase (2016). Accordingly, the applicant cannot submit a table of works undertaken, aside from cosmetic works such as painting and tiling.

In order to satisfy Clauses 93 and 94 the following Prior to construction certificate conditions have been applied:

- *Prior to the issue of the Construction Certificate a structural engineer report shall be submitted to the Principal Certifying Authority which certifies that the building is structural adequate or specifies the work required to ensure that the building will be structurally adequate.*
- *The building is required to be upgraded to satisfy the requirements of the NCC-BCA to achieve a satisfactory level of fire safety. Due to the complexities associated with an upgrade in accordance with the prescriptive requirements and due to the age of the building it is appropriate to engage an appropriately accredited fire engineer to prepare a report containing alternative solutions addressing the Performance Requirements of Parts C, D and E as contained in Volume 1 of the NCC - Building Code of Australia. The report is to include the staging of BCA upgrading works relating to each tenancy of the ground floor and first floor residential sole occupancy units. This report is to be submitted to the nominated PCA for assessment and determination prior to issue of the Construction Certificate.*

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

The site is not located under any coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affect by the Tweed Shire Coastline Management Plan 2005.

Tweed Coast Estuaries Management Plan 2004

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

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

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.

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

Context and Setting

The development only includes minor modifications to external of the existing building and will therefore have little impact on the context or setting of the surrounding area. However, the conversion of areas to create additional commercial/retail tenancies has the potential to provide a more active street frontage that will contribute to the character and amenity of this town centre location.

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

Surrounding Landuses/Development

The subject site is located within a town centre location, within an established Hotel that occupies a prominent position within the streetscape. The proposed restaurant is considered to be in keeping with surrounding land uses and will provide an additional eating establishment within locality. Provided the proposal is operated in accordance with the conditions of the consent, it is considered unlikely to impact on the residential amenity of nearby residents or impact on the character or amenity of the area.

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

Nil submissions were received.

- (e) Public interest**

The proposal has been investigated and is considered to be suitable to the site; does not attract any additional Section 64 or Section 94 developer contributions (the existing use is a higher use than the proposed development), unlikely to cause any significant long term negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the TLEP and relevant DCPs. The application has been assessed by Council's technical officers; with no objections being raised subject to the attached

conditions of development consent. The change of use and alterations to the existing hotel is therefore considered to warrant approval.

OPTIONS:

1. Approves the application.
2. Refuses the application for specified reasons.

Option 1 is recommended.

CONCLUSION:

The proposal is now considered acceptable, with appropriate conditions applied to ensure structural adequacy and fire separation is achieved prior to construction works. Accordingly, the revised plans are considered acceptable and consistent with Council's relevant planning provisions. The development will be inspected following completion to ensure compliance with the approved plans.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|---------------|---|
| Attachment 1. | Council request for further information dated 17 May 2017 (ECM 4653845) |
| Attachment 2. | Council request for further information dated 7 July 2017 (ECM 4653846) |
-

3 [PR-PC] Development Application DA17/0084 for a Seniors Living (33 Aged Care Residential Rooms and 36 Independent Living Units) at Lots 2 & 3 NPP 271020 No. 128-130 Leisure Drive, Banora Point

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:

Consent is sought for the construction of a three storey, 69 room Seniors Living development, comprising 33 Residential Aged Care rooms (RAC) (15 of which are special care dementia rooms and 18 are general care rooms) and 36 Serviced Apartments (SA).

The proposed development is within the existing 'Darlington Retirement Community'. The Darlington Retirement Community was approved under DA03/0078 as a 7 stage development. All stages except Stage 6 have been completed. The subject of this proposal is to develop Stage 6 with an alternative built form to that under the original approval. The original approval for Stage 6 involved a single level building consisting of 30 RAC rooms.

The subject application also includes the following ancillary facilities:

- Health and Wellbeing centre;
- Dining rooms;
- 'Café' area for residents, staff and visitors;
- Childrens play area; and
- Communal open space areas including gardens and multi-purpose area

These areas are for the use by staff, residents and their guests. Conditions have been applied in this regard.

To facilitate the proposed works partial demolition is required. It should be noted that some these works are exempt as per the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. These works are discussed further within this report.

The application has been assessed against SEPP (Housing for seniors or People with a Disability) 2004 and SEPP No. 65 - Design Quality of Residential Flat Development and is generally compliant with these Policies.

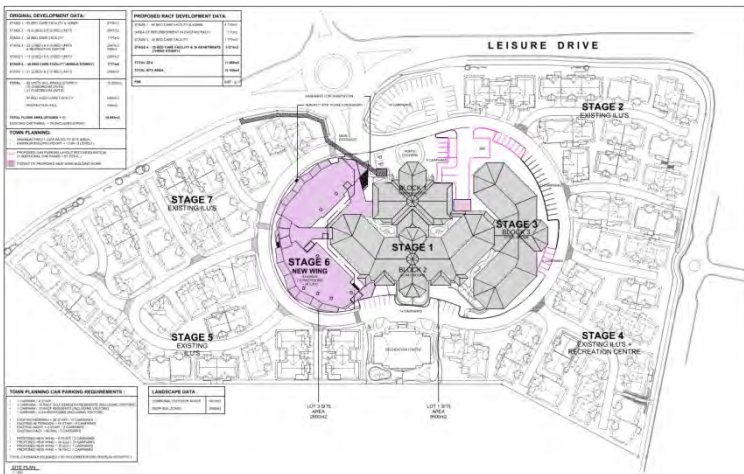
The application was advertised and notified for a period 14 days from Wednesday 29 March 2017 to Wednesday 12 April 2017. During this period 28 submissions were received.

Estimated cost of works for the subject application is \$16,610,000.

The subject site is shown below:



The location of works is shown below (as highlighted):



The subject application is being reported to Council for determination as the estimated cost of works exceeds \$10 million.

The officers recommendation is for approval.

RECOMMENDATION:

That Development Application DA17/0084 for a Seniors Living (33 Aged Care Residential Rooms and 36 Independent Living Units) at Lots 2 & 3 NPP 271020 No. 128-130 Leisure Drive, Banora Point be approved subject to the following conditions:

GENERAL

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

Title	Plan Number	Revision	Dated
Site Plan	DA2.02	F	21/10/2016
Ground Floor Plan/Level 1 Plan	DA2.05	E	21/10/2016
Level 2 Floor Plan	DA2.06	E	21/10/2016
Level 3 Floor Plan	DA2.07	E	21/10/2016
Roof Plan	DA2.08	D	21/10/2016
Services Area Plan	DA2.09	B	21/10/2016
RAC Plans	DA2.10	E	21/10/2016
ILA Plans	DA2.11	E	21/10/2016
ILA Plans	DA2.12	E	21/10/2016
ILA Plans	DA2.13	E	21/10/2016
ILA Plans	DA2.14	E	21/10/2016
ILA Plans	DA2.15	E	21/10/2016
North and West Elevations	DA3.01	F	10/02/2017
South and East Elevations	DA3.02	F	10/02/2017

[GEN0005]

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

[GEN0115]

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

[GEN0135]

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

[GEN0190]

5. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]

6. Any air-handling system, hot water system, humidifying system, warm-water system, water-cooling system or any other 'regulated system' as defined in

Section 26 of the Public Health Act 2010 shall be installed in accordance with the relevant requirements of Part 2 Clause 6 of the Public Health Regulation 2012.

[GEN0315]

7. The development shall take into consideration all existing easements and restrictions burdening the subject allotment.

[GENNS01]

8. Any food handling area that is to be used for the preparation and handling of food for sale shall comply with the provisions of the NSW Food Act, NSW Food Safety Standards and AS 4674 "Design, Construction and fit-out of food premises. Food premise fit-out plans together with a completed application form and payment of the required fee are to be provided drawn to a scale of 1:50 detailing the following with regards to all food related areas to Council's Environmental Health Officers for assessment and approval:

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

[GENNS02]

9. Water and sewerage reticulation for the proposed building shall be connected to the existing internal water and sewerage of the lot. As such applicant is to ensure the building is serviced by the existing water connection to the East of the access driveway from Leisure Drive located in Lot 1 DP 271020 and the sewer junction in the North East corner of Lot 2 NPP 271020.

10. All ancillary facilities are for the use of residents, staff and their guests. No retail sale of products shall be open to the general public.

[GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards.

[PCC0055]

12. The developer shall provide parking spaces in accordance with Drawing DA2.02 Revision F, prepared by Marchese Partners and Tweed Shire Council's Development Control Plan Part A2 - Site Access and Parking Code.

Vehicular parking spaces shall be compliant with the provisions of AS2890.1:2004 Parking Facilities Part 1: Off-Street Car Parking and AS2890.6: Off-Street Car Parking for People with Disabilities.

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

[PCC0065]

13. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

<p>(a) Tweed Road Contribution Plan: 131.5 Trips @ \$1416 per Trips (\$1,318 base rate + \$98 indexation) S94 Plan No. 4 Sector2_4</p>	<p>\$186,204</p>
<p>(b) Shirewide Library Facilities: 36.3704 ET @ \$869 per ET (\$792 base rate + \$77 indexation) S94 Plan No. 11</p>	<p>\$31,606</p>
<p>(c) Bus Shelters: 36.3704 ET @ \$66 per ET (\$60 base rate + \$6 indexation) S94 Plan No. 12</p>	<p>\$2,400</p>
<p>(d) Eviron Cemetery: 36.3704 ET @ \$127 per ET (\$101 base rate + \$26 indexation) S94 Plan No. 13</p>	<p>\$4,619</p>
<p>(e) Community Facilities (Tweed Coast - North) 36.3704 ET @ \$1457 per ET (\$1,305.60 base rate + \$151.40 indexation) S94 Plan No. 15</p>	<p>\$52,992</p>

- (f) Extensions to Council Administration Offices
& Technical Support Facilities
36.3704 ET @ \$1935.62 per ET \$70,399.27
(\$1,759.90 base rate + \$175.72 indexation)
S94 Plan No. 18
- (g) Cycleways:
36.3704 ET @ \$490 per ET \$17,821
(\$447 base rate + \$43 indexation)
S94 Plan No. 22
- (h) Regional Open Space (Casual)
36.3704 ET @ \$1132 per ET \$41,171
(\$1,031 base rate + \$101 indexation)
S94 Plan No. 26
14. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

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

BELOW IS ADVICE ONLY

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

Water: 30.30 ET @ \$13,386 = \$405,595.80
Sewer: 42.25 ET @ \$6,431 = \$271,709.75

15. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.
- [PCC0285]
16. The site shall be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system. At no time shall the development result in additional ponding or runoff impacting on ~~occurring~~ within neighbouring properties.
- [PCC0485]

17. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

18. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

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

(a) The Construction Certificate Application for Building Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.

(b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.

(c) It is encouraged that the stormwater and site works incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management, as proposed by "Water By Design", an initiative for best practice by the South East Queensland Healthy Waterways Partnership, however existing "end of line" proprietary Gross Pollutant Device on site may be utilised where it can be shown that it has been appropriately sized to cater for this additional catchment.

(d) Specific Requirements to be detailed within the Construction certificate application include:

(e) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site, prior to any earthworks being undertaken.

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

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

[PCC1105]

20. A Construction Certificate application for works that involve any of the following:

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

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

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

[PCC1145]

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

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

[PCC1155]

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

The Legal Point Of Discharge for piped stormwater for the development is via connection into the existing pipe drainage network servicing the Darlington Retirement Community where it is shown that the existing piped network has capacity to cater for the additional catchment, unless agreed otherwise by Council.

[PCC1195]

23. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

Applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

The Section 68 Application must be approved by Council prior to the associated Construction Certificate being issued.

[PCC1310]

24. A detailed acoustic assessment by a suitably qualified acoustic consultant with experience in the assessment of aircraft noise impacts on residential premises is to be carried out in accordance with the recommendations and conclusions of the Aircraft Noise Assessment Report prepared by TTm Acoustics Ref: 16BRA0189 R01-1 and dated 19 October 2016 to establish compliance with the provisions of AS2021-2015 Acoustics-aircraft noise intrusion-Building siting and construction prior to the issue of any construction certificate and a Report shall be provided to Council's Environmental Health Officer for assessment and approval. Recommendations included in the Report shall be incorporated into the design of the building and a post construction acoustic assessment shall be carried out to demonstrate compliance with the provisions of AS2021-2015.

[PCCNS01]

25. Prior to the issue of the construction certificate an Acid Sulfate Soils Management Plan shall be prepared in accordance with the provisions of the NSW Acid Sulfate Soil Management Advisory Committee Acid Sulfate Soils Manual 1998 to ensure that any acid sulfate soils are appropriately managed during construction works carried out on the site. The Acid Sulfate Soils Management Plan shall be prepared by an appropriately qualified consultant with experience in the assessment and management of acid sulfate soils. The management Plan shall be submitted to Council's Environmental Health Officer for assessment and approval.

[PCCNS02]

26. The roof must comprise of non-reflective roof surface. Prior to the issue of a Construction Certificate the use of any reflective roof materials must be approved by the Gold Coast Airport Pty Ltd.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

28. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
29. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
30. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council
- [PCW0245]
31. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

[PCW0255]

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

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

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

[PCW0985]

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

[PCW1065]

DURING CONSTRUCTION

34. All proposed works are to be carried out in accordance with the conditions of development consent, approved Management Plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

35. Should any Aboriginal object or cultural heritage (including human remains) be discovered all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer (on 07 5536 1763) are to be notified. The find is to be reported to the Office of Environment and Heritage. No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.

[DUR0025]

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

**Monday to Saturday from 7.00am to 6.00pm
No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0245]

39. The development shall meet the building construction requirements of Australian Standard AS 2021 (*Acoustics - Aircraft Noise Intrusion - Building Siting and Construction*).

[DUR0285]

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

[DUR0415]

41. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

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

[DUR0815]

43. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or his delegate. [DUR0985]
44. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of an Occupation Certificate. [DUR0995]
45. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
 - Dust during filling operations and also from construction vehicles.
 - Material removed from the site by wind.
- [DUR1005]
46. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans. [DUR1045]
47. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be installed in accordance with the requirements of Part 2, Clauses 6, 7 and 8 of the Public Health (Microbial Control) Regulation 2000. [DUR1645]
48. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works. [DUR1795]
49. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to any use or occupation of the buildings. [DUR1875]
50. Where existing kerb or driveway laybacks are to be removed for new driveway laybacks, stormwater connections, pram ramps or for any other reason, the kerb or driveway laybacks must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR1905]
51. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of

construction/demolition to ensure no material is capable of being washed or blown from the site.

[DUR2185]

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

[DUR2195]

53. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

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

[DUR2425]

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

[DUR2625]

56. The development shall ensure that stormwater runoff associated with the development, up to the Q100 storm event can be appropriately conveyed and managed through the Darlington Retirement Community development, to either the drainage canal to the southwest of the site or the Leisure Drive road reserve.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

57. Prior to issue of an Occupation Certificate, all works / actions / inspections etc required at that stage by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

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

[POC0205]

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

[POC0225]

60. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for the building.

[POC0475]

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

[POC0755]

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

[POC1045]

63. Parking located at the rear and immediately east of the existing Residential Aged Care Facility shall be marked as 'Residents parking only'. Evidence of this is to be provided to the satisfaction of the General Manager or delegate prior to occupation.

[POCNS01]

64. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act.

[POCNS01]

USE

65. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

66. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE0875]

68. Any air-handling system, hot water system, humidifying system, warm-water system, water-cooling system or any other 'regulated system' as defined in Section 26 of the Public Health Act 2010 shall be operated and maintained in accordance with the relevant requirements of Part 2 Clauses 7, 8 & 9 of the Public Health Regulation 2012. A certificate to confirm that the regulated system is being maintained shall be submitted to Council on a 12 monthly basis.

[USE0945]

REPORT:

Applicant: RSL Care
Owner: RSL Care Rdns Limited
Location: Lots 2 & 3 NPP 271020 No. 128-130 Leisure Drive, Banora Point
Zoning: R3 - Medium Density Residential
Cost: \$16,610,000

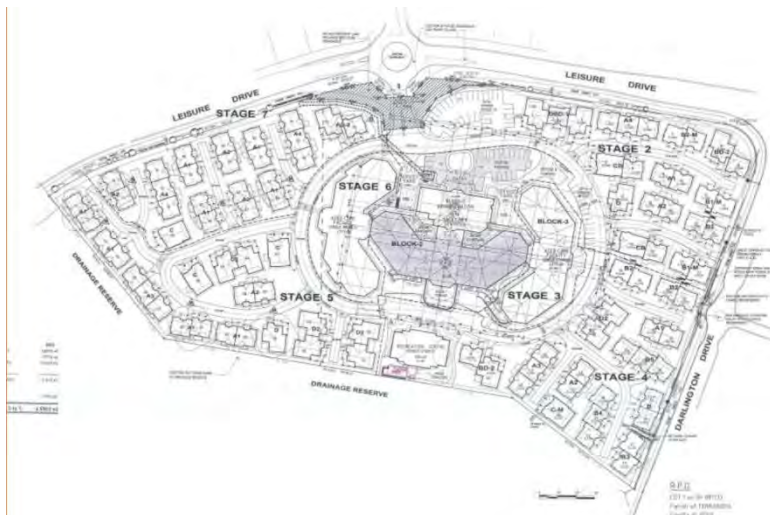
Background:

The existing Darlington Retirement Community was granted consent over 7 stages, under development consent DA03/0078.

DA03/0078 granted consent to occur in seven (7) stages. The development involved the following:

- Residential aged care facility (90 Units) – stage 1;
- independent living units, not be individually titled (96) – stages 2, 4 ,5 and 7);
- a recreation centre – stage 4;
- Residential aged care facility (30 units) – Stage 6;
- administration facilities – stage 1; and
- associated health related and community facilities – stages 1, 3 and 4

Minor modifications have been granted to this application.

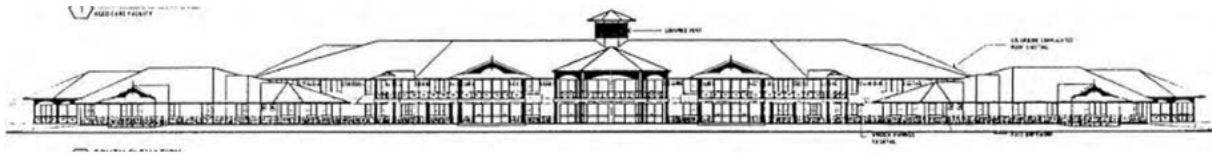


Development Application DA15/0175 for a four lot Community Title subdivision was granted consent 1 June 2015 and registered in 2016.

The vacant land is identified as Stage 6 (Lot 3).

The SEE advises that overtime the demand for both aged care and independent living units has increased with the ageing population. Accordingly, RSL Care seeking consent to provide a higher number of units onsite and a higher level of ancillary facilities.

The below image indicates the footprint approved under DA03/0078.



The application seeks consent for:

- the construction of a three (3) storey, 69 room Seniors Living development, comprising 33 Residential Aged Care rooms (RAC) (15 of which are special care dementia rooms and 18 are general care rooms) and 36 Serviced Apartments (SA).

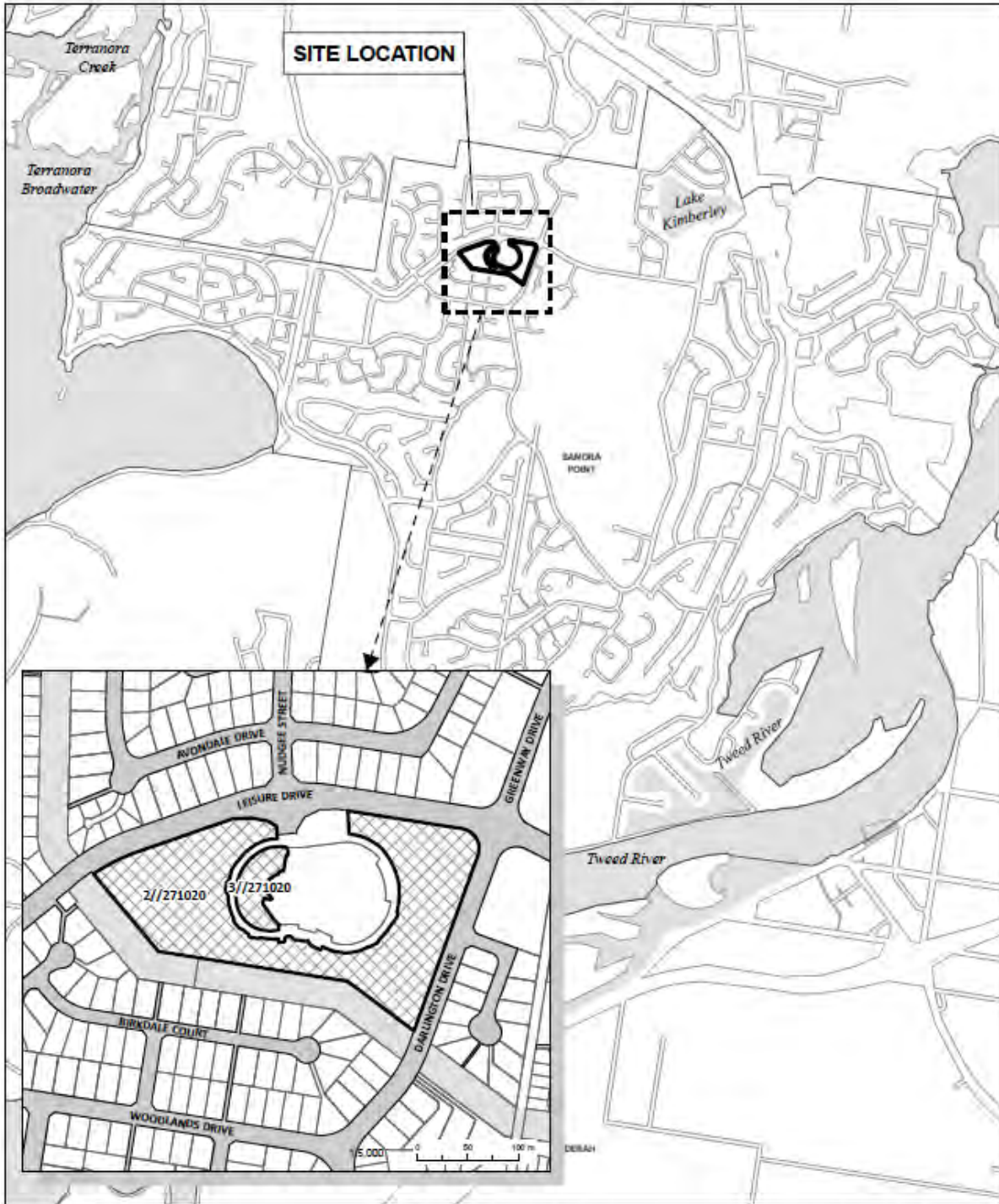
The subject application also includes the following ancillary facilities:

- Health and Wellbeing centre;
- Dining rooms;
- 'Café' area for residents, staff and visitors;
- Children's play area; and
- Communal open space areas including gardens and multi-purpose area

The design has taken into consideration the context of the immediate area and is considered to complement the existing built form of the RACF.

The subject site is zoned R3 Medium Density Residential in the Tweed Local Environmental Plan 2014 (TLEP 2014) and is located within the Banora Point locality. The proposed use is permissible with consent in the in TLEP 2014.

SITE DIAGRAM:



Site Diagram


DA17/0084 – seniors living (33 aged care residential rooms and 36 independent living units), Banora Point
 Lot 2 & 3 NPP 271020
 No. 128-130 Leisure Drive, Banora Point

0 0.5 0.8 Km

1:25,000



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GDA  Cadastre: 30 June, 2010
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Coordinate System – MGA Zone 56
 Datum – GDA 94

30 WORKDAYS
 COPY ONLY - NOT CONTRACT

Civic and Cultural Centre
 3 Yambulgan Road
 Murwillumbah NSW 2454
 PO Box 516
 Murwillumbah NSW 2454

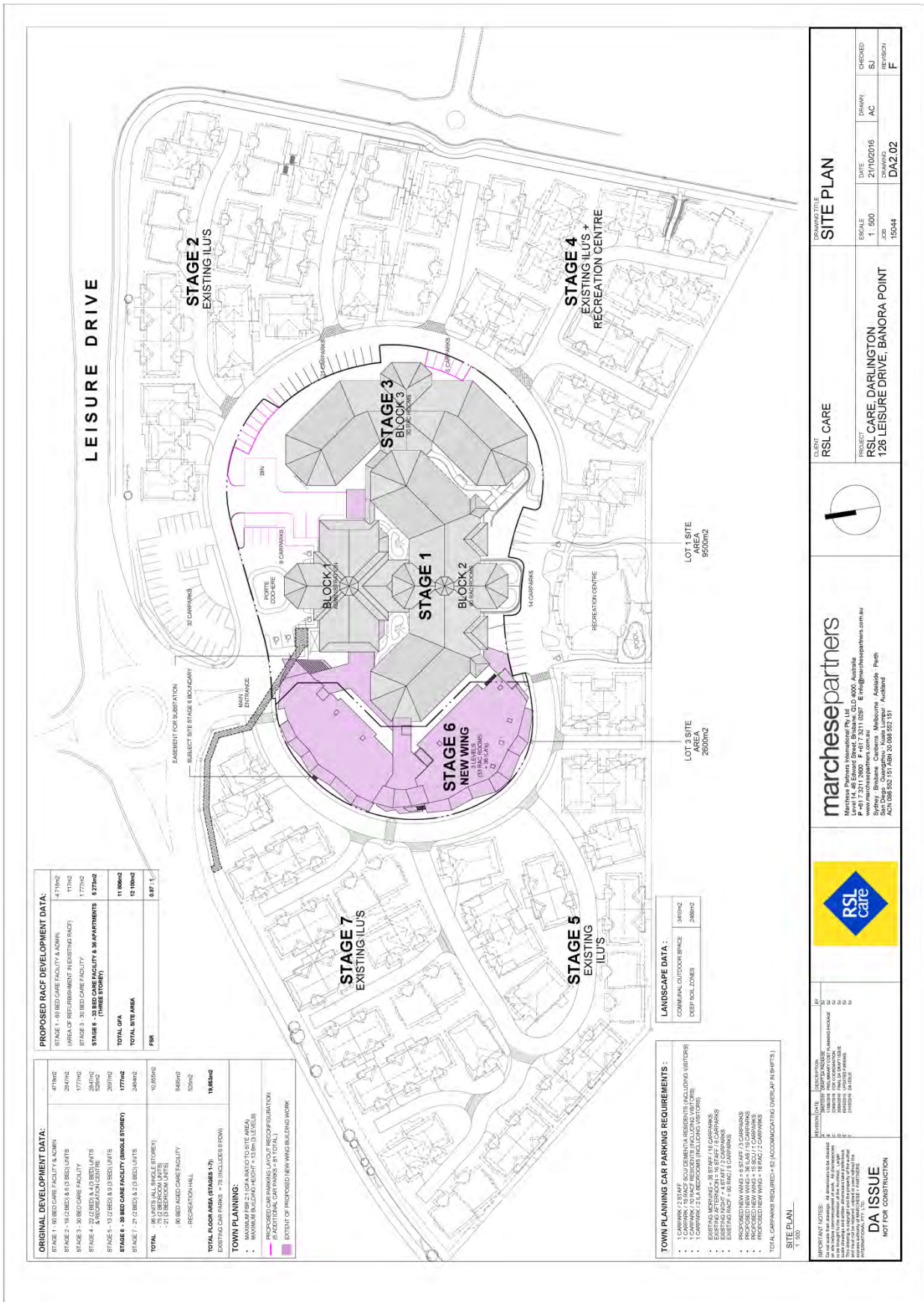
T: (02) 8670 2400 | 1300 250 872
 F: (02) 8670 2403
 W: www.tweed.nsw.gov.au
 E: planning@tweed.nsw.gov.au



Author: E. Scott - GIS

Date Printed: 18 July, 2017

DEVELOPMENT/ELEVATION PLANS:



PROPOSED RACF DEVELOPMENT DATA:

STAGE 1 - 40 BED CARE FACILITY & ADMIN.	4,717sq
(AREA OF REFINEMENT IN EXISTING RACF)	1,777sq
STAGE 3 - 30 BED CARE FACILITY	1,777sq
(THREE STOREY)	8,272sq
STAGE 6 - 33 BED CARE FACILITY & 36 APARTMENTS	8,272sq
TOTAL GFA	11,904sq
TOTAL SITE AREA	12,190sq
FIR	0.97:1

ORIGINAL DEVELOPMENT DATA:

STAGE 1 - 40 BED CARE FACILITY & ADMIN.	4,717sq
STAGE 2 - 19 (2 BEDS) & 13 (3 BED) UNITS	2,847sq
STAGE 3 - 30 BED CARE FACILITY	1,777sq
STAGE 4 - 24 (2 BEDS) & 4 (3 BED) UNITS	2,847sq
STAGE 5 - 19 (2 BEDS) & 13 (3 BED) UNITS	2,847sq
STAGE 6 - 33 BED CARE FACILITY (SINGLE STOREY)	1,777sq
STAGE 7 - 21 (2 BEDS) & 12 (3 BED) UNITS	2,847sq
TOTAL	19,664sq
96 UNITS (ALL SINGLE STOREY)	8,669sq
96 BED AGED CARE FACILITY	5,094sq
- RECREATION HALL	5,901sq
TOTAL FLOOR AREA (STAGES 1-7):	19,664sq
EXISTING CAR PARKING - 75 (INCLUDES 6 SEW)	

TOWN PLANNING:

- MAXIMUM PER 2:1 GFA RATIO TO SITE AREA
- MAXIMUM BUILDING HEIGHT - 15.0M (5 LEVELS)

PROPOSED CAR PARKING LAYOUT RECONFIGURATION

EXTENT OF PROPOSED NEW WING BUILDING WORK

LANDSCAPE DATA:

CONTRIBUTOR OUTDOOR SPACE	547sq
DEEP SOIL ZONES	286sq

- TOWN PLANNING CAR PARKING REQUIREMENTS:**
- 1 CARPARK / 15 SEAF
 - 1 CARPARK / 15 SEAF (SCU/CARIBENTA RESIDENTS INCLUDING VISITORS)
 - 1 CARPARK / 2 LA RESIDENCES (INCLUDING VISITORS)
 - EXISTING MOBTINGLA - 38 STAGE 1 / 4 CARPARKS
 - EXISTING MOBTINGLA - 4 STAGE 2 / 2 CARPARKS
 - EXISTING MOBTINGLA - 4 STAGE 3 / 2 CARPARKS
 - EXISTING MOBTINGLA - 60 RACF / 6 CARPARKS
 - PROPOSED NEW WING - 38 UNITS / 13 CARPARKS
 - PROPOSED NEW WING - 36 UNITS / 12 CARPARKS
 - PROPOSED NEW WING - 18 UNITS / 2 CARPARKS
- TOTAL CARPARKS REQUIRED = 82 (ACCOMMODATIVE OVERLAP IN SHIFTS)

REVISIONS:

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CLIENT
RSL CARE

PROJECT
RSL CARE, DARLINGTON
126 LEISURE DRIVE, BANORA POINT

DATE
27/10/2016

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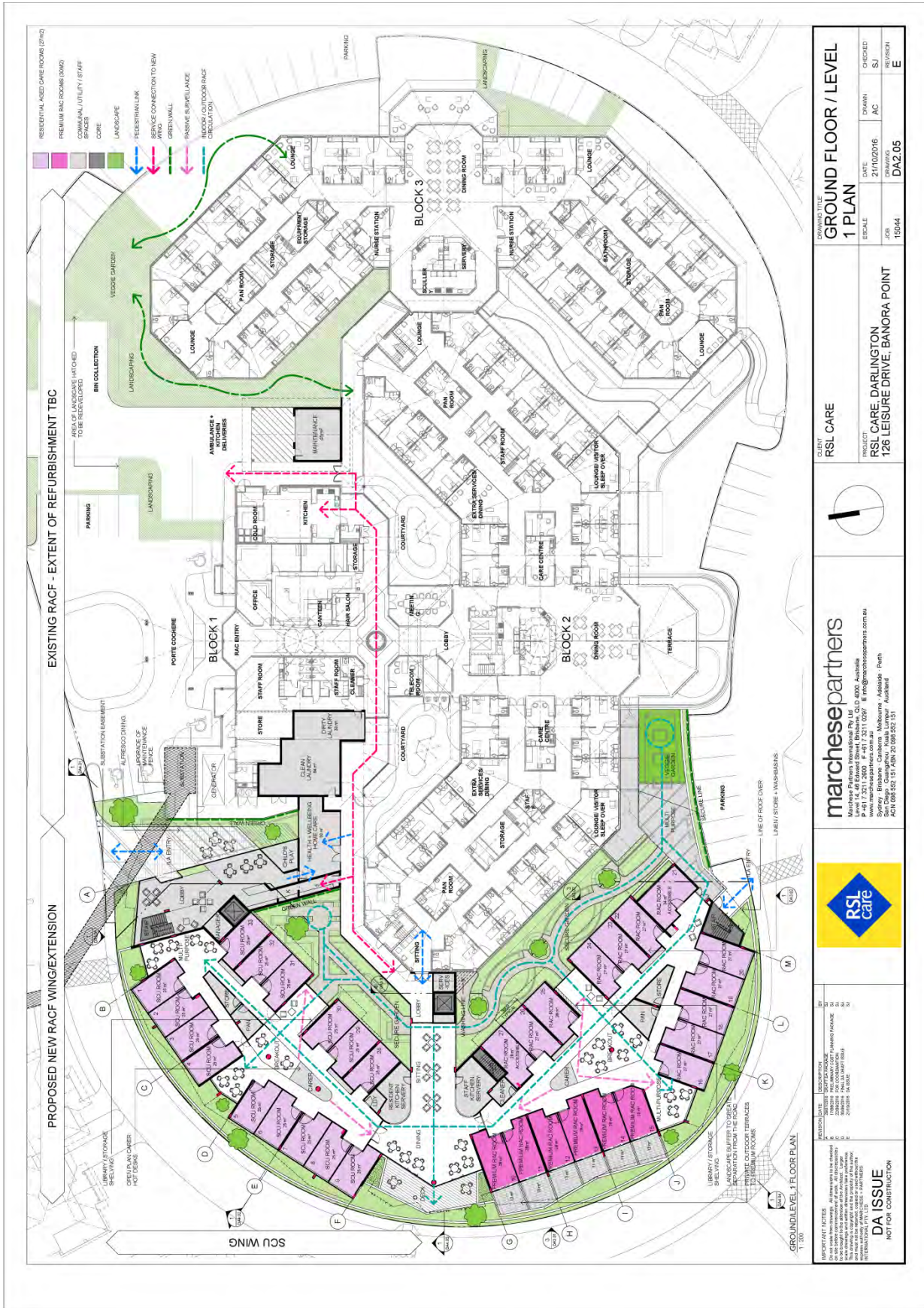
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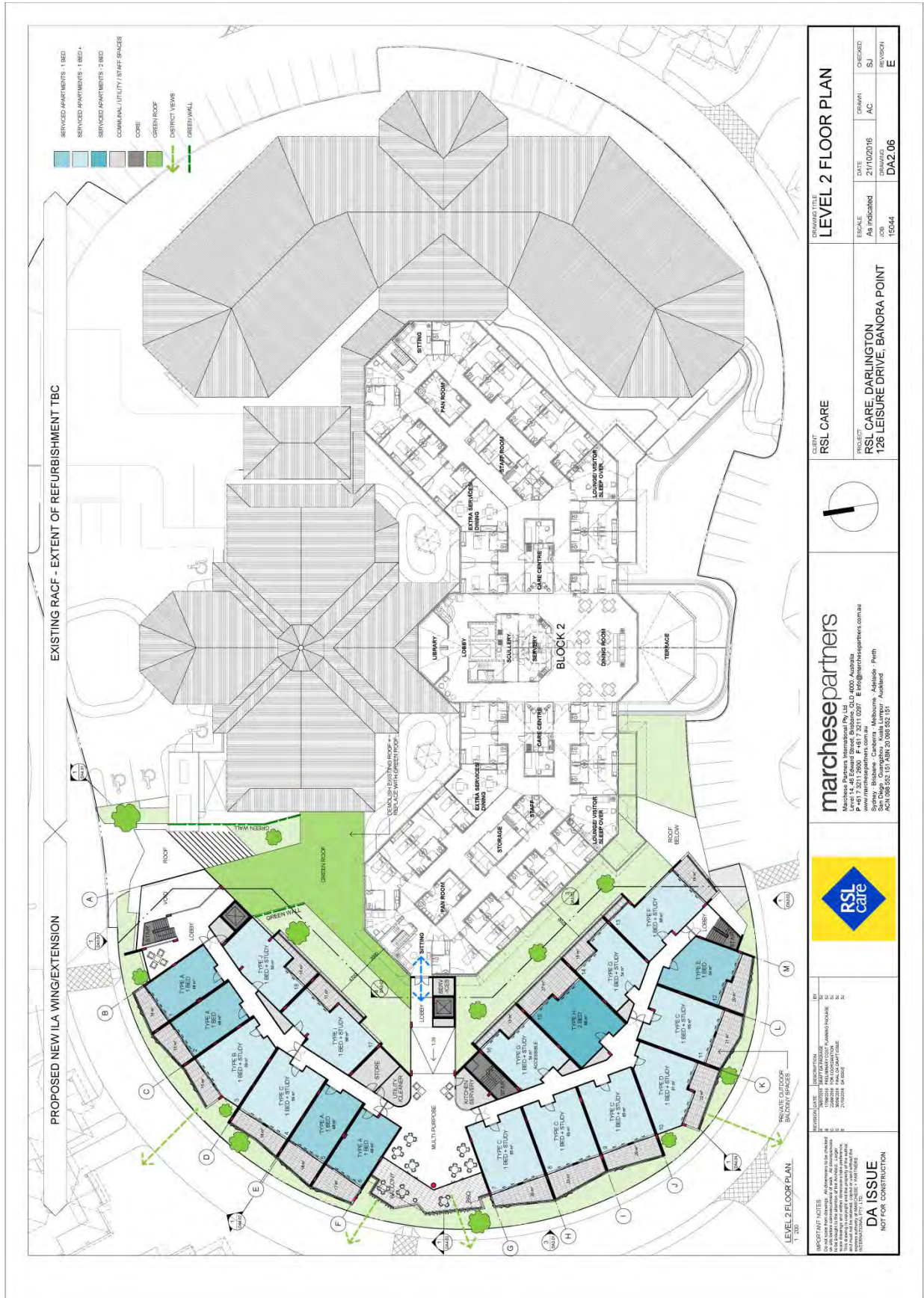
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DRAWING TITLE		LEVEL 2 FLOOR PLAN	
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SCALE	As indicated	DESIGNED BY	SR/MAH
JOB	15044	APPROVED BY	AC
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CLIENT
RSL CARE

PROJECT
RSL CARE DARLINGTON
128 LEISURE DRIVE, BANORA POINT

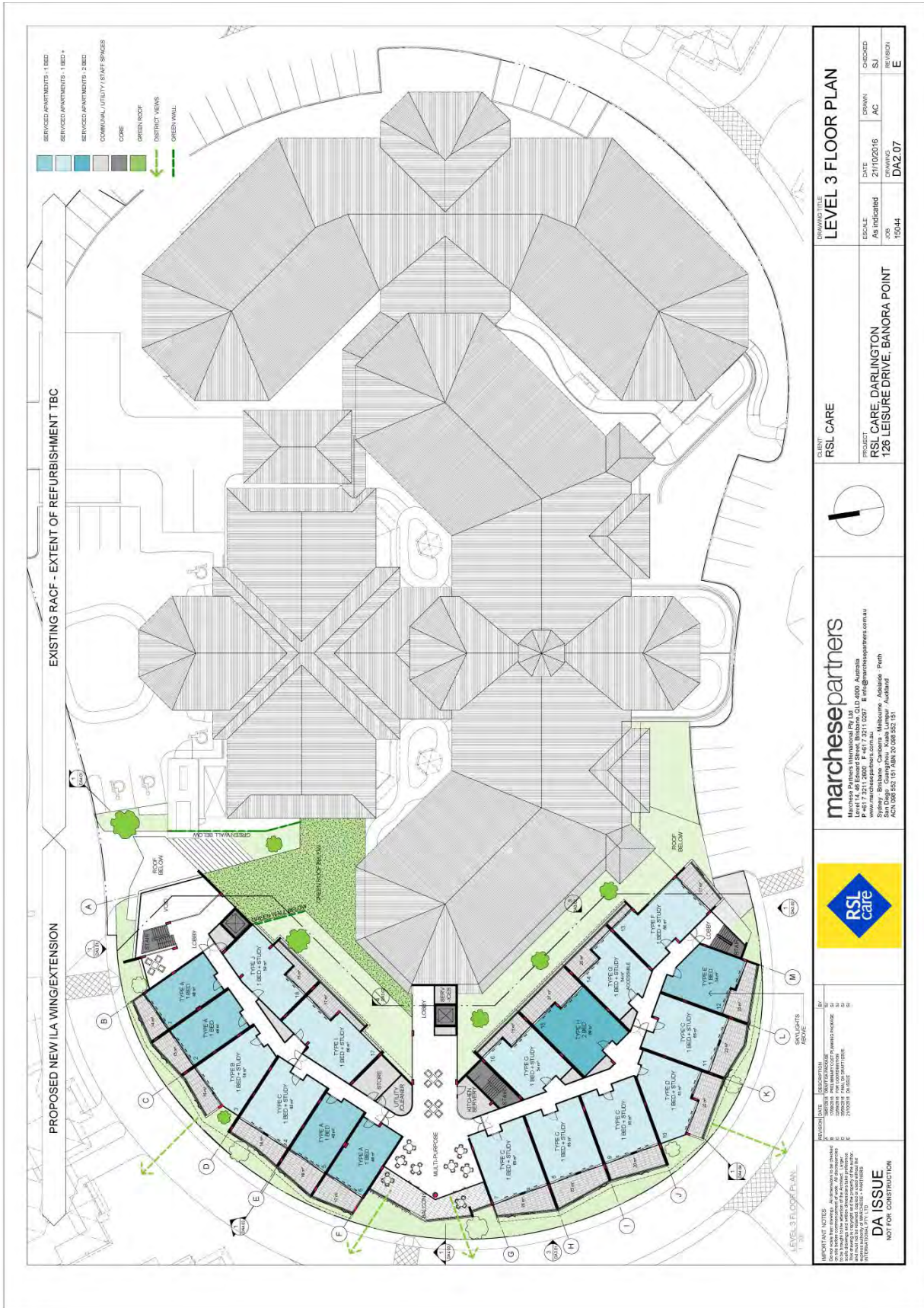


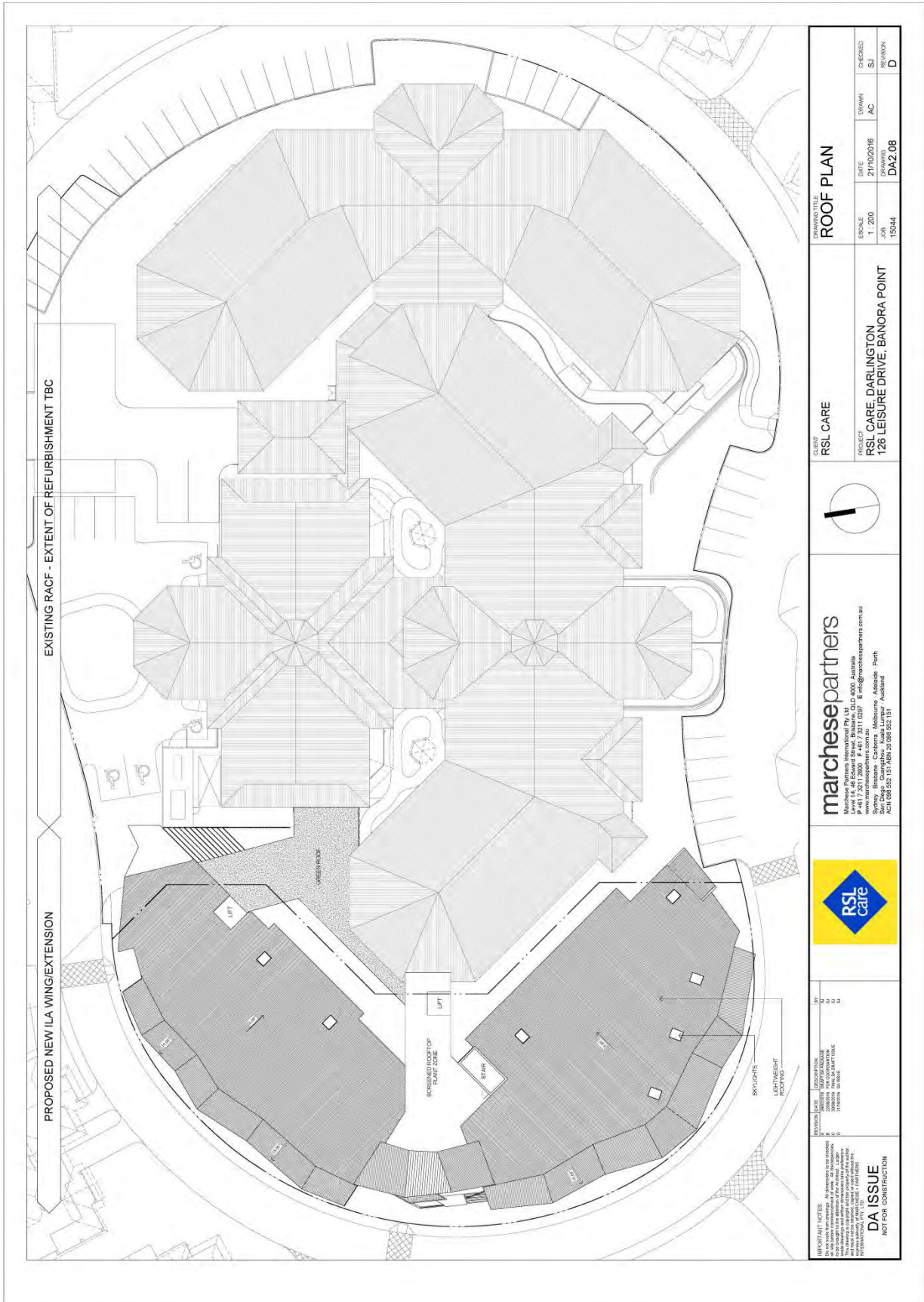
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EXISTING RACF - EXTENT OF REFURBISHMENT TBC

PROPOSED NEW I/LA WING/EXTENSION

DRAWING TITLE		ROOF PLAN	
SCALE	DATE	DRAWN	CHECKED
1:200	21/10/2016	AC	SJ
JOS	DRAWING	REVISION	
15044	DA2.08	D	

CLIENT
RSL CARE

PROJECT
RSL CARE, DARLINGTON
126 LEISURE DRIVE, BANORA POINT

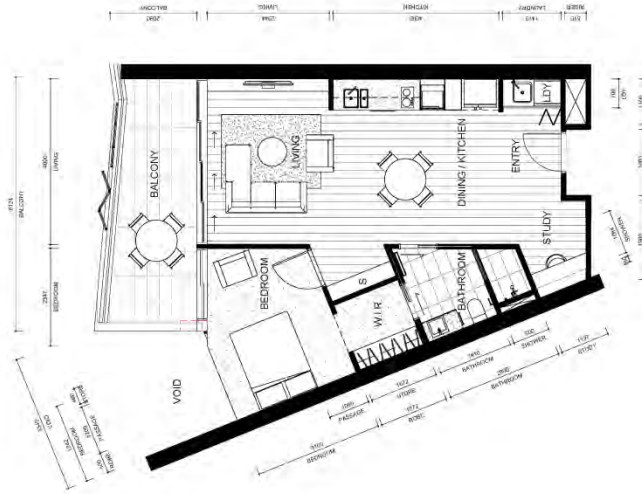


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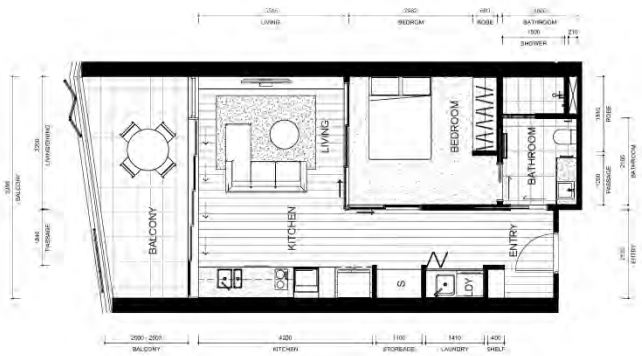


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2 TYPE B-1 BED+STUDY (LA) (B0R2)
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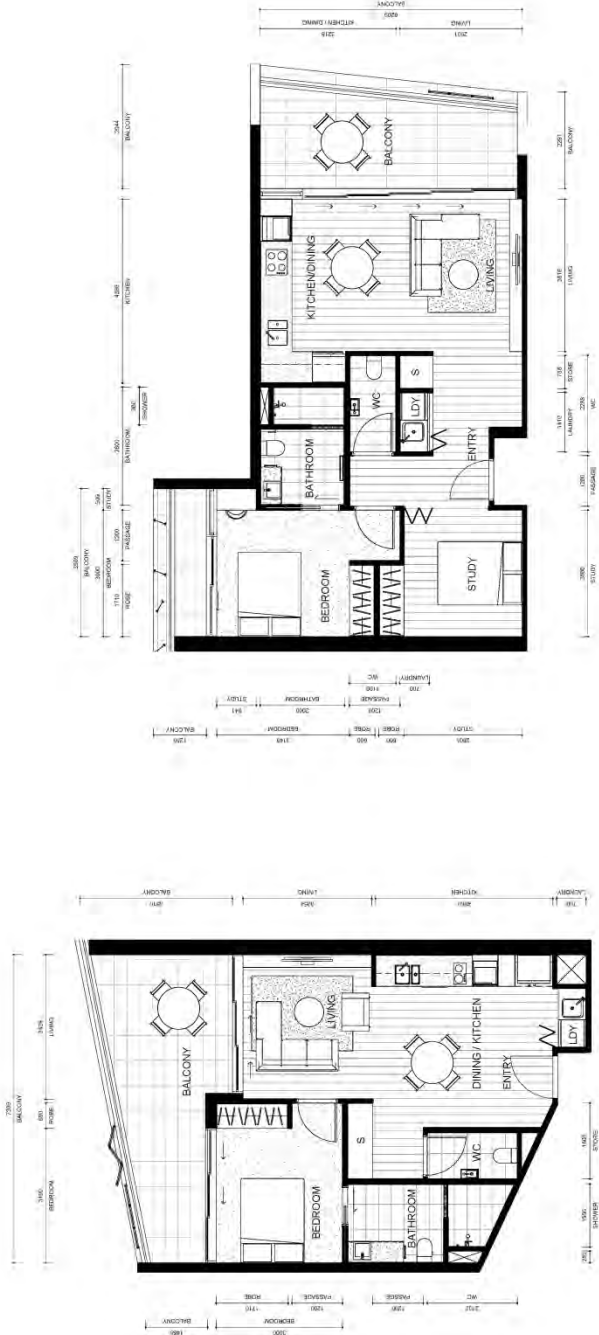
1 TYPE A-1 BED (LA) (B0R2)
1:50

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				<p>PROJECT</p> <p>RSL CARE DARLINGTON 126 LEISURE DRIVE, BANORA POINT</p>	<p>SCALE</p> <p>1:50</p>

1. TYPE C-1 BED + STUDY ILA (5602)
1:50

2. TYPE D-1 BED + STUDY ILA (5602)
1:50

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<p>PROJECT</p> <p>RSL CARE, DARLINGTON 126 LEISURE DRIVE, BANORA POINT</p>									
<p>marchesopartners</p> <p>Marchese Partners International Pty Ltd, 8000 Australia P +61 7 3211 2600 F +61 7 3211 0077 E info@marchesopartners.com.au Sydney Brisbane Canberra Melbourne Adelaide Perth San Diego Chicago Dallas London Auckland PH: 1800 551 111 FAX: 08 8252 1511</p>									
<p>DA ISSUE</p> <p>NOT FOR CONSTRUCTION</p>									



2. TYPE F - 1 BED + STUDY (LA) (88sqm2)

1. TYPE F - 1 BED (LA) (55sqm2)

<p>PROJECT TITLE ILA PLANS</p>	<p>CLIENT RSL CARE</p>	<p>PROJECT RSL CARE DARLINGTON 128 LEISURE DRIVE, BANORA POINT</p>	<p>SCALE 1:50</p>	<p>DATE 27/10/2016</p>	<p>DRAWN AC</p>	<p>CHECKED SJ</p>
			<p>JOB 15944</p>	<p>DATE DA2.13</p>	<p>REVISION E</p>	
<p>CLIENT RSL CARE</p>		<p>PROJECT RSL CARE DARLINGTON 128 LEISURE DRIVE, BANORA POINT</p>		<p>SCALE 1:50</p>		<p>DATE 27/10/2016</p>
<p>CLIENT RSL CARE</p>		<p>PROJECT RSL CARE DARLINGTON 128 LEISURE DRIVE, BANORA POINT</p>		<p>SCALE 1:50</p>		<p>DATE 27/10/2016</p>
<p>CLIENT RSL CARE</p>		<p>PROJECT RSL CARE DARLINGTON 128 LEISURE DRIVE, BANORA POINT</p>		<p>SCALE 1:50</p>		<p>DATE 27/10/2016</p>

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REVISIONS

NO.	DATE	DESCRIPTION	BY
1	27/10/2016	FOR ARCHITECTURAL CONSULTATION	AC
2	27/10/2016	FOR ARCHITECTURAL CONSULTATION	AC
3	27/10/2016	FOR ARCHITECTURAL CONSULTATION	AC
4	27/10/2016	FOR ARCHITECTURAL CONSULTATION	AC

DA ISSUE
NOT FOR CONSTRUCTION

2. TYPE G-1 BED + STUDY (LA) (56sq2)

1. TYPE G-1 BED (56sq2) ACCESSIBLE

3. TYPE H-2 BED (LA) (68sq2)

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DA ISSUE

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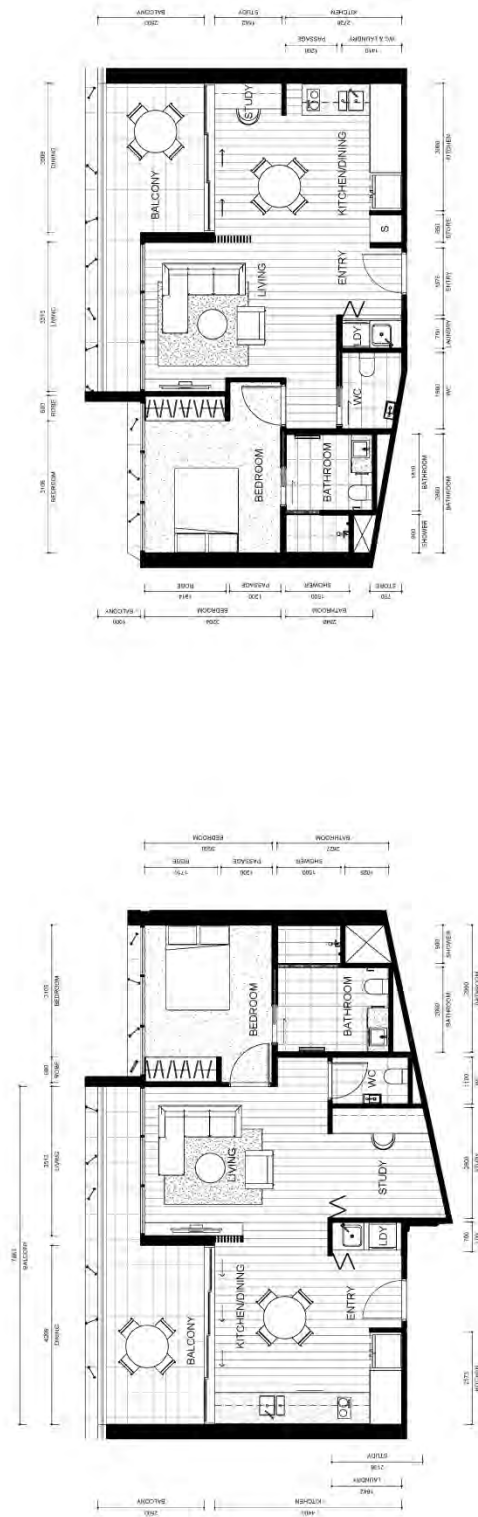
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DATE: 21/10/2016
 SCALE: 1:50
 CHECKED: SJ
 DRAWN: AC
 REVISION: E

CLIENT RSL CARE	DRAWING TITLE ILA PLANS	CHECKED SJ
PROJECT RSL CARE, DARLINGTON 126 LEISURE DRIVE, BANORA POINT	DATE 21/10/2016	DRAWN AC
	SCALE 1:50	CHECKED SJ
	JOB 15044	REVISION E
DA ISSUE		
NOT FOR CONSTRUCTION		

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 San Diego Glasgow Kuala Lumpur Auckland
 A/CN 126/242 171 166 23 2016/25/2/02





1. TYPE L-1 BED + STUDY I.A (69m²)
- 1/50

2. TYPE L-1 BED + STUDY I.A (69m²)
- 1/50

<p>DISCREPANT NOTES:</p> <p>1. All dimensions are in millimetres unless otherwise stated.</p> <p>2. All dimensions are to the face of the wall unless otherwise stated.</p> <p>3. All dimensions are to the centre of the wall unless otherwise stated.</p> <p>4. All dimensions are to the centre of the door unless otherwise stated.</p> <p>5. All dimensions are to the centre of the window unless otherwise stated.</p> <p>6. All dimensions are to the centre of the staircase unless otherwise stated.</p> <p>7. All dimensions are to the centre of the lift unless otherwise stated.</p> <p>8. All dimensions are to the centre of the balcony unless otherwise stated.</p> <p>9. All dimensions are to the centre of the parking space unless otherwise stated.</p> <p>10. All dimensions are to the centre of the driveway unless otherwise stated.</p>	<p>DATE: 21/10/2016</p> <p>SCALE: 1:50</p> <p>JOB: 15044</p>	<p>DATE: 21/10/2016</p> <p>SCALE: 1:50</p> <p>JOB: 15044</p>	<p>DATE: 21/10/2016</p> <p>SCALE: 1:50</p> <p>JOB: 15044</p>
	<p>DA ISSUE</p> <p>NOT FOR CONSTRUCTION</p>	<p>PROJECT:</p> <p>RSL CARE DARLINGTON 126 LEISURE DRIVE, BANORA POINT</p>	<p>CLIENT:</p> <p>RSL CARE</p>
<p>ISSUED FOR:</p> <p>1. APPROVAL</p> <p>2. PERMIT</p> <p>3. CONSTRUCTION</p> <p>4. AS-BUILT</p>	<p>REVISIONS:</p> <p>NO. DESCRIPTION</p>	<p>APPROVED:</p> <p>DATE</p>	<p>REVISIONS:</p> <p>NO. DESCRIPTION</p>

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 San Diego, Queensland, Kuala Lumpur, Auckland, Perth
 ACH 085 503 151 ABN 20 089 952 151



1. NORTH ELEVATION
1:200 @ A1

▼ ROOF PLAN
R1, R2, R3
R4, R5, R6

▼ LEVEL 3 FLOOR PLAN
L3, L4

▼ LEVEL 2 FLOOR PLAN
L2, L3

▼ GROUND LEVEL
G1, G2

MANILLA ENTRY

FORTE COCHERE

STAGE BOUNDARY

FINISHES SCHEDULE

CODE	DESCRIPTION
PN 1	CONCRETE WALL WITH SELECTED POWER COATED ALUMINUM FRAME
PN 2	CONCRETE WALL WITH SELECTED WHITE PAINT FINISH
PN 3	CONCRETE WALL WITH SELECTED GREY PAINT FINISH
PN 4	CONCRETE WALL WITH SELECTED LIGHT GREY PAINT FINISH
PN 5	SELECTED POWER COATED ALUMINUM FINISH
PN 6	SELECTED POWER COATED ALUMINUM FRAME
OS 1	PRE-FINISHED PROFILED ROOF SHEETING WITH SELECTED FINISH
OS 2	PRE-FINISHED PROFILED ROOF SHEETING WITH SELECTED FINISH
OS 3	PRE-FINISHED PROFILED ROOF SHEETING WITH SELECTED FINISH
OS 4	PRE-FINISHED PROFILED ROOF SHEETING WITH SELECTED FINISH
SC 1	SELECTED POWER COATED ALUMINUM SCREENING
SC 2	SELECTED POWER COATED ALUMINUM SCREENING
SC 3	SELECTED POWER COATED ALUMINUM SCREENING
SC 4	SELECTED POWER COATED ALUMINUM SCREENING
TM 1	TIMBER ARBORA PERGOLA

2. NORTH ELEVATION PERSPECTIVE
1:200 @ A1

EXISTING RACE ROOFLINE BEYOND

▼ ROOF PLAN
R1, R2, R3
R4, R5, R6

▼ LEVEL 3 FLOOR PLAN
L3, L4

▼ LEVEL 2 FLOOR PLAN
L2, L3

▼ GROUND LEVEL
G1, G2

STAGE BOUNDARY

3. WEST ELEVATION
1:200 @ A1

▼ ROOF PLAN
R1, R2, R3
R4, R5, R6

▼ LEVEL 3 FLOOR PLAN
L3, L4

▼ LEVEL 2 FLOOR PLAN
L2, L3

▼ GROUND LEVEL
G1, G2

STAGE BOUNDARY

4. WEST ELEVATION PERSPECTIVE
1:200 @ A1

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CODE	DESCRIPTION
FIN 1	CONCRETE WALL WITH SELECTED POWDER COATED ALUMINIUM FRAME
FIN 2	CONCRETE WALL WITH SELECTED WHITE PAINT FINISH
FIN 3	CONCRETE WALL WITH SELECTED GREY PAINT FINISH
FIN 4	CONCRETE WALL WITH SELECTED BLACK PAINT FINISH
ONE 1	SELECTED POWDER COATED ALUMINIUM FENCING
ROF 1	PRE FINISHED PROFILED ROOF SHEETING WITH SELECTED FINISH
ROF 2	SELECTED POWDER COATED ALUMINIUM SCREENING
SCR 1	SELECTED POWDER COATED ALUMINIUM SCREENING
SCR 2	SELECTED POWDER COATED ALUMINIUM SCREENING
SCR 3	COMPOSITE TIMBER CLADDING SYSTEM IN SELECTED FINISH
TM 1	TIMBER ARCHITECTURE

IMPORTANT NOTES
 Do not scale from drawings. All dimensions to be shown on drawings are to be taken from the project's approved architectural drawings. All dimensions are to be taken from the project's approved architectural drawings. All dimensions are to be taken from the project's approved architectural drawings.
 DA ISSUE
 NOT FOR CONSTRUCTION



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REVISION	DATE	DESCRIPTION	BY	CHKD
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Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

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

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

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and the fact that the land use is permissible in the subject zone.

Clause 2.3 – Zone objectives and Land use table

The subject site is mapped as R3 Medium Density Residential under the Tweed Local Environmental Plan 2014. The objectives of the R3 zone are identified as follows:

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

The proposed development is considered to meet the objectives of the zone by meeting housing needs of the community and offering a variety of living arrangements and ancillary facilities for the ageing community.

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

Not applicable as no subdivision is proposed.

Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

- (a) *to establish the maximum height for which a building can be designed,*
- (b) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (c) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (d) *to encourage greater population density in less car-dependant urban areas,*
- (e) *to enable a transition in building heights between urban areas comprised of different characteristics,*
- (f) *to limit the impact of the height of a building on the existing natural and built environment,*
- (g) *to prevent gross overshadowing impacts on the natural and built environment.*

The subject site is mapped as having a maximum building height of 13.6m. The proposed development has a maximum height of 13.5m. Accordingly, complies with clause 4.3.

Clause 4.4 – Floor Space Ratio

The objectives of this clause are as follows:

- (a) *to define the allowable development density of a site and for particular classes of development,*
- (b) *to enable an alignment of building scale with the size of a site,*
- (c) *to provide flexibility for high quality and innovative building design,*
- (d) *to limit the impact of new development on the existing and planned natural and built environment,*
- (e) *to encourage increased building height and site amalgamation at key locations in Tweed.*

This clause goes on to further state that the maximum floor space ratio (FSR) for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. In this instance the applicable floor space ratio is 2:1 (Control J) over the entire site.

The proposed development is for the additions to stage 1 and 3 gross floor area of the proposed addition is approximately 5273m² resulting in a total floor area of 11,999m² the combined site area is 11,806m² equating to a FSR of 0.98:1 which complies with this clause.

Clause 4.6 - Exception to development standards

The subject application does not seek any exception to development standards.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The subject application does not seek consent for any miscellaneous uses.

Clause 5.5 – Development within the Coastal Zone

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

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

The subject site does not impact on the provision of any public access to coastal lands nor is it considered to represent an opportunity for a new public access given there is no through link from the site to public open space.

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

The proposed development is permissible on the subject site and is generally consistent with the prescribed development requirements as outlined throughout this report. As such the proposal is considered to be acceptable at this location.

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

The proposed development is not considered to impact on any of the above, by virtue of its location, away from the coastal foreshore. As such, the proposal will not result in any detrimental impact on the amenity of the coastal foreshore.

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

The proposed development is not considered to compromise the scenic qualities of the coast as it represents an acceptable development on appropriately zoned land. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast.

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

The proposed development is to be undertaken on a site which is currently developed for Seniors Living and is located within an established developed area. It is therefore considered that the proposal will have a minimal impact on the local

biodiversity or ecosystems.

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

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the sites zoning and the permissibility of the development at this location.

This clause goes on to further state:

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

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

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

The proposed development does not propose a non-reticulated sewerage system as Council's sewerage infrastructure is available to the site.

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

The proposal is considered acceptable in this regard.

- (d) *the proposed development will not:*
- (i) *be significantly affected by coastal hazards, or*
- (ii) *have a significant impact on coastal hazards, or*
- (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above.

Clause 5.9 – Preservation of Trees or Vegetation

The subject site is not subject to a TPO and comprises limited vegetation. It is considered that the proposal raises no major implications in respect of this clause.

Clause 5.10 - Heritage Conservation

The subject site is not mapped as being within a Heritage Conservation area.

Clause 5.11 - Bush fire hazard reduction

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

Clause 7.1 – Acid Sulfate Soils

Class 2 Acid Sulfate Soils are identified on the subject site.

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Council's Environmental Health Officer has reviewed this aspect of the proposed development and has not returned any objections, subject to compliance with the submitted Acid Sulfate Soil Management Plan, conditions with this regard have been applied. As such, the proposed development is considered to be acceptable having regard to Acid Sulfate Soils.

Clause 7.2 - Earthworks

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

The proposed development application includes earthworks only to establish foundations and for the elevator shafts. The proposed earthworks are consistent with the objectives of Clause 7.2. General conditions would apply.

Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

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

The site is mapped as being affected by a design flood level of 2.6m AHD and PMF level of 5.8m AHD.

Topography of the site ranges generally between 3 and 4m AHD, with a minimum habitable floor level of 3.1m AHD.

The proposed building has a ground floor level of 4.0m AHD and level 2 (first floor) of 7.5m AHD (levels 2 and 3 meet the requirements of a PMF refuge).

The site is above the design flood level and therefore not in a mapped high flow area.

The development therefore complies with this clause.

Clause 7.4 - Floodplain risk management

The objectives of this clause are as follows:

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

This clause goes on to advise that development consent must not be granted for residential accommodation on land zoned R3 unless the consent authority is satisfied that that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land.

The site is mapped as being affected by a design flood level of 2.6m AHD and PMF level of 5.8m AHD.

Topography of the site ranges generally between 3 and 4m AHD, with a minimum habitable floor level of 3.1m AHD.

As discussed above, the proposed building has a ground floor level of 4.0m AHD and level 2 (first floor) of 7.5m AHD.

Levels 2 (7.5m AHD) and 3 (11.0m AHD) meet the requirements of a PMF refuge.

The site is above the design flood level and not in a mapped high flow area.

The nature of the proposal and the emergency response information provided are sufficient to address the emergency response provisions of Council.

Council's Infrastructure Engineer raised no objection on flooding grounds.

Clause 7.5 - Coastal risk planning

The subject land is not identified as being subject to coastal risk.

Clause 7.6 - Stormwater Management

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

receiving waters.

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

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

The proposed development will connect to an existing internal stormwater system that was designed and built to cater for complete 7 stage development for the site. The existing system incorporates a stormwater treatment device prior to discharge and is capable of accommodating the intensified development as proposed under the subject application for stage 6. The system satisfies the deemed to comply requirements of Council.

It is noted that the application has been reviewed by Council's Infrastructure Engineer, who raised no concerns in relation to stormwater management subject to conditions being applied.

Clause 7.8 – Airspace operations

Not applicable – the subject site is not mapped on the *Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Gold Coast Airport*.

Clause 7.9 - Development in areas subject to aircraft noise

The site is identified as being within the 20-25m contours for aircraft noise.

The objectives of this clause are as follows:

- (a) *to prevent certain noise sensitive developments from being located near the Gold Coast Airport and its flight paths,*
- (b) *to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,*
- (c) *to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.*

In order to satisfy the objectives of this clause, the consent authority:

- (a) must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and
- (b) must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021:2015, and
- (c) must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015.

An Aircraft Noise Assessment Report has been submitted prepared by TTm Acoustics Ref: 16BRA0189 R01-1 and dated 19 October 2016.

This Report has been reviewed against the provisions of AS2021-2015 and Council's 2014 LEP.

The relevant aircraft type assessed under the provisions of the Report is the Boeing 737-800 aircraft which is satisfactory.

The Report concludes that it will be possible to attenuate aircraft noise impacts to comply with the provisions of AS2021 – 2015 however detailed acoustic design will be required to be carried out at the detailed unit design stage in accordance with the provisions of AS2021-2015.

It is also noted that comments have been provided by Ian Rigby on 8 March 2017 of Rigby Consulting Pty Ltd on behalf of the Coolangatta Airport.

Condition required that detailed acoustic assessment by a suitably qualified acoustic consultant with experience in the assessment of aircraft noise impacts on residential premises is carried out in accordance with the recommendations and conclusions of the Aircraft Noise Assessment Report prepared by TTm Acoustics Ref: 16BRA0189 R01-1 and dated 19 October 2016 to establish compliance with the provisions of AS2021-2015 prior to the issue of any construction certificate.

Clause 7.10 - Essential Services

The subject site is located within an established residential area with all requisite essential services considered to be available. These include water and sewer reticulation, stormwater drainage, electricity and adequate vehicular access. Where required, appropriate conditions of consent would be applied to ensure that development is undertaken in accordance with Council requirements. The proposal does not negatively impact upon the provisions of this Clause

Other Specific Clauses

There are no other specific clauses applicable to the subject application.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

Clause 7 of SEPP 55 states that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines (Department of Urban Affairs and Planning, Environment Protection Authority, 1998).

In addition, Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development.

A SEPP 55 assessment has been included in the SEE submitted with the application. This assessment concludes that contamination is not likely to be an issue associated with the application.

Further to the above, consideration of Contamination information as contained on Council GIS indicates that no known contamination has been recorded for the subject site and that no cattle tick dip sites are indicated within 200 meters of the subject site.

In addition given that the site was approved as stage 6 of development under DA03/0078 and that according to the SEE is within an existing residential area and further that the site inspection did not reveal any potentially contaminating activity on the site, it is considered that contamination is not a constraint relevant to this application.

Based on the information provided it is expected that there will be no contamination located on site. It is therefore considered that the development has complied with the provisions of the SEPP.

SEPP No. 65 - Design Quality of Residential Flat Development

SEPP 65 applies to the proposal. The Policy aims to improve the design quality of residential flat development and aims:

- (a) to ensure that it contributes to the sustainable development of New South Wales:
 - (i) by providing sustainable housing in social and environmental terms, and*
 - (ii) by being a long-term asset to its neighbourhood, and*
 - (iii) by achieving the urban planning policies for its regional and local contexts, and**
- (b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*

- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions, and*
- (f) *to contribute to the provision of a variety of dwelling types to meet population growth, and*
- (g) *to support housing affordability, and*
- (h) *to facilitate the timely and efficient assessment of applications for development to which this Policy applies.*

This policy applies to the proposed development by virtue of consisting of the erection of a new residential flat building in accordance with the definition under the SEPP. SEPP 65 states that development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) *the design quality principles, and*
- (b) *the objectives specified in the Apartment Design Guide for the relevant design criteria.*

SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development. This Apartment Design Guide provides greater detail on how residential development proposals can meet these principles through good design and planning practice. The proposed residential flat building has been designed by Registered Architect, Jon Voller (Marchese Partners) who has included a Design Verification Statement that states that the development was designed in accordance with the nine key principles of the SEPP.

Clause 29(2) requires an assessment against the design quality principles; this is provided below, while Attachment 1 to this report contains a detailed assessment against the ADG:

Principle 1 - context

The Darlington Retirement Community has been established for a number of decades and was built over a number of stages. This community currently comprises 96 single storey independent living units, a 90 bed aged care facility and a communal recreational facility. The proposed development is the final stage of the development as originally envisaged.

The “design language” of the existing buildings is typical of the era when these were designed; the roof forms are strongly expressed resulting in high ridge lines

and complicated pitched rooves. A low pitch skillion roof is proposed for the new wing. This will sit comfortably below the overall height of the existing buildings.

Articulation of the façade, the generous provision of balconies and expressed eaves overhangs projecting from an interesting roof-form will become recognisable elements of Australian coastal architecture endearing the completed project with a proper sense of place in coastal, sub-tropical Tweed Heads.

Principle 2 - scale

Height, bulk and scale are consistent with the existing surrounding nursing home. The proposed new wing will form a transition in scale between the single storey residences across the road on the west and the large bulky scale of the existing nursing home with its exaggerated roof forms. In plan the new wing will be faceted around the curved road frontage reinforcing this transitional approach to fitting the new wing into a largely built-out environment with its many existing buildings of different sizes.

Principle 3 - built form

The built form of the new wing derives from the curvilinear site with a footprint matching that originally envisaged for this final stage. Overall the proposed built form will relate comfortably to that of the existing nursing home with its very large footprint, large roof forms and tight planning arrangements around a series of internal courtyards.

Along the prominent western façade the built form is highly articulated as the building steps around the curve. Further visual interest and richness to facades will be provided by the different window, balustrade and sun control devices proposed. The external materials and finishes proposed are of a high standard that will positively contribute to the contemporary building design.

The contemporary facade language has been developed to create a new identity for the wing extension, whilst complementing the existing buildings adjacent. The orientation of the building has afforded spectacular views towards the Tweed Valley from large balcony spaces, balanced with façade treatments addressing the western aspect.

This is highlighted through the new ILA lobby form, which creates a new entry statement for the development. Screening elements have been distributed & layered throughout the building facade in different combinations. In doing so, the requirements for sun shading, privacy and external articulation have been addressed across the entire building.

Principle 4 - density

The proposal embodies the uses specified by the original approval for this village and thus the density will match that anticipated by the original overall development approval on the site.

The density of the proposal is appropriate for the site given that the FSR is well below the maximum allowable rate of 2:1.

Principle 5 resource energy and water efficiency

Rain water is harvested from roofs and is stored tanks and is to be recycled for irrigation purposed in the landscaping. The development is BASIX compliant and utilizes many of the energy saving technologies such as AAA taps and fittings and 3 star washing machines and clothes dryers along with low energy light bulbs. The majority of apartments will enjoy a minimum of 3 hours of sunlight into their living areas.

From an energy efficient perspective the solid massing of the building and masonry construction results in provision of good thermal mass. The unit layouts are repeated where possible maximising the efficiency in planning, construction and servicing.

Principle 6 - landscape

The communal open space located within the courtyards and around the building will provide both a suitable aesthetic and usable landscaped space for the future residents whilst also creating spaces to promote social interaction. Predominantly subtropical species using 80% local native species will be used to ensure habitat provision and a strong sense of comfort, wellbeing and belonging. Residents will be encouraged to participate in internal community gardens and have opportunities to embrace ownership through use of private balcony planters.

Principle 7 amenity

All units meet the Apartment Design Guide of unit depth, width, cross ventilation, access to natural light, solar access and private open space.

With the building's construction being primarily solid masonry and concrete, all the units will have excellent acoustic and visual privacy. In addition the vertical screening to the façade will provide adjustable sun control as well as privacy for the residents.

A majority of the ILA's enjoy spectacular views towards the Tweed Valley, both from large private outdoor balconies and communal spaces. The planning of the building has included giving thought to maximising the opportunities for natural light to fall within the living areas of each floor plate.

Principle 8 - safety & security

The definition between public and private use has been clearly defined and the design will facilitate casual surveillance of the internal village roads. A clearly defined entrance lobby areas is provided to access the two apartment floors, which will be highly visible from visitor parking areas. All areas will be well lit at night providing safe environments in which to circulate.

Principle 9 - social dimensions & housing affordability

The development allows for a good mix of units, which caters for a greater diversity in residents for the Darlington village and thus will foster social inclusion. The significant improvements in the efficiency of this proposal will allow the finished project to offer up to date accommodation at the appropriate, affordable price point for the locality.

On the ground floor one 15 room section of the aged care facility will become a dementia specific wing in order to satisfy the demand for dementia specific accommodation within the Tweed Heads area.

Principle 10 - aesthetics

The proposal incorporates a range of differing materials and finishes to promote visual interest throughout the façade. Additionally, the natural colours and textures used throughout the building allow for the development to reinforce the natural features present in the surrounding locality

The proposal will present a far superior, modern and contemporary architectural built form to the locality when compared to the current approval. The materials and finishes and attention to details will ensure the aesthetics of the building are or the highest standard, which are Commensurate with the architectural team who have presented this modified design.

The proposal also incorporates numerous breaks in forms, variations in height, and large recesses, which when combined with the architectural detailing [i.e. privacy & sun shading screens], large windows and balconies, and the surrounding vegetation, act to reduce the apparent bulk and scale of the development whilst providing an aesthetically pleasing contemporary built form.

SEPP No 71 – Coastal Protection

SEPP 71 applies as the site is located in the coastal zone, though it is not in proximity to the coastal foreshore (and not within a sensitive coastal location).

(a) *The aims of this Policy set out in Clause 2:*

The proposed development is considered to be consistent with the aims of the policy as set out in clause 2.

(b) *Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.*

The proposed development will not alter or restrict the public's access to the foreshore reserve areas located adjacent to the Pacific Ocean.

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

The proposal does not generate any additional opportunities to improve public access to foreshore reserve areas and the like, nor are there any physical opportunities to do so given the spatial separation between the site and foreshore reserve.

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

Whilst the proposed development is sited and designed in general accord with the relevant Council controls, there are variations sought to the controls to the maximum mapped height limit and visual impacts from the adjoining residential areas. Accordingly, the development is considered likely to have an adverse imposition upon the immediate area in terms of size and scale.

- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.*

The proposal is not considered to generate any detrimental impact on the public foreshore, given its spatial separation.

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

The proposal is unlikely to impact upon the scenic quality of the NSW coast, with the development being spatially separated from the Beach and Ocean. The proposal is consistent with the built environment of the Tweed Heads area and the general desire for future built development in the locality.

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats;*

The proposal will not have an adverse impact upon threatened species. The subject site has been developed over time for urban purposes and contains minimal vegetation or native habitat.

- (h) *measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Act), and their habitats.*

The proposal is unlikely to have an adverse impact upon marine environments or habitats.

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

The proposal will not have an adverse impact upon wildlife corridors or the like.

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

The subject site is not located within an area affected by Coastal Erosion (WBM Coastline Hazard Definition Study), and is inland of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by Coastal Processes.

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

Not applicable.

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

The subject site is not identified as a cultural place or similar.

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

The proposal is unlikely to adversely impact upon the water quality of nearby waterways. Appropriate erosion and sediment controls will be put in place to ensure no sediment impacts on the surrounding area.

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

The subject site is not identified as land containing items of heritage, archaeological or historical significance.

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

Not applicable.

- (p) *only in cases in which a development application in relation to proposed development is determined:*

- (i) *the cumulative impacts of the proposed development on the environment; and*

No cumulative impacts are likely as a result of the proposed development.

- (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

A BASIX certificate has been prepared as part of this application which demonstrates the proposal would be acceptable having regard to the above.

The proposal is considered to be consistent with the matters for consideration within clause 8. The proposal will have no impact on access to and along the foreshore and will not result in overshadowing of the foreshore. It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

SEPP (Housing for Seniors or People with a Disability) 2004

Clause 4 Land to which Policy Applies

The proposal is sited on residential land zoned R3 Medium Density Residential pursuant to Tweed Local Environmental Plan 2014. Accordingly pursuant to the provisions of Clause 4 the policy applies, as the zoning permits residential development.

Clause 13 Self Contained Dwellings

The proposal also incorporates units defined as ‘self-contained dwellings’ pursuant to the provisions of Clause 13(1) of the SEPP. The definition states: ‘In this Policy, a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.’

The following table provides an assessment of the proposed development in accordance with the relevant provisions of the SEPP.

Provision	Assessment
<p>Part 2 – Site Related Requirements</p> <p>Clause 26 Location and access to facilities</p> <p>(1) Consent authority must not grant consent to a development application unless it is satisfied by written evidence that residents of the proposed development will have access to:</p> <ul style="list-style-type: none"> a) shops, banks & other retail & commercial services that residents may reasonably require; b) community services & recreation facilities and c) the practice of a general medical practitioner. 	<p><i>The subject site is located approximately 500 metres from the Tweed Heads Shopping District and 700 metres from the Banora Point Shopping Village.</i></p> <p><i>The Tweed Heads Shopping District provides for a range of shopping, banking, retail & commercial services and medical facilities. Recreational needs are also met with a swim school being located adjacent to the site, a golf course located approximately 400 metres away and the Twin Towns Club Banora Bowls Club being approximately 400 metres away.</i></p>
<p>(2) Access complies with this subclause if:</p> <ul style="list-style-type: none"> a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development, and the overall average gradient along the distance is not more than 1:14, although the following gradients along the distance 	<p><i>The gradients to the bus stop and surrounding services are within acceptable limits prescribed by the SEPP (1:14).</i></p>

Provision	Assessment
<p>are also acceptable:</p> <ul style="list-style-type: none"> • 1:12 for a maximum of 15 metres at a time • 1:10 for a maximum of 5 metres at a time • 1:8 for a maximum of 1.5 metres at a time <p>OR</p> <p>c) there is a transport service available to the residents who will occupy the proposed development.</p>	<p><i>The locality is serviced by public transport with a bus stop being located approximately 150 metres from the site. This bus stop services part of the Tweed Heads Shopping District</i></p>
<p>Clause 27 Bushfire Prone Land</p>	<p><i>The site is not with land identified as prone to bushfire and the provisions of this clause do not apply.</i></p>
<p>Clause 28 Water and Sewer</p>	<p><i>The site has adequate access to existing water and sewer infrastructure.</i></p>
<p>Clause 30 Site Analysis Site Dimensions</p>	<p><i>The property is oval in shape, with a length of 150 metres and width of 90 metres.</i></p>
<p>Topography</p>	<p><i>The site is deemed level from the previous development on the site.</i></p>
<p>Services</p>	<p><i>The site has adequate access to urban infrastructure including water, sewer, stormwater, power and telecommunications. An easement for a substation runs in a line in a small section of the north of the property.</i></p>
<p>Existing Vegetation</p>	<p><i>The site contains little in the way of vegetation other than ornamental garden species and lawn. No removal is required as part of the subject application.</i></p>
<p>Micro Climates</p>	<p><i>The site has good orientation to the North providing suitable solar access into each of the proposed apartments throughout the day. No topographical features or built structures overshadow the property or affect predominant wind patterns. It should be noted however that 50% of the rooms are oriented to the west. Conditions have been applied in relation screens.</i></p>
<p>Location of Building and Other Structures</p>	<p><i>Two single-storey and one two-storey predominantly brick buildings are situated on Lot 1 of the site. Lot 2 also holds 96 single storey units. A fence also runs along part of the border between Lots 1 & 3.</i></p>

Provision	Assessment
Views to and from the Site	<i>The property is within the urban area of Banora Point and is generally surrounded by housing. No views of significance are available to and from the site.</i>
Overshadowing by Neighbouring Structures	<i>As the subject site is bounded by a private road, overshadowing is limited to the adjacent roads and the subject site itself. There has been some minor shadowing of existing ILU located on the site. However the shadowing is minimal and is not considered to significantly affect the amenity afforded to residents. Shadowing is discussed further within the SEPP 65 attachment.</i>
Public open space	<i>An open space that includes a canal runs along the south of the site. Another public open space is also located 400 metres directly north of the site.</i>
Clause 33 Neighbourhood Amenity and Streetscape	<i>The proposed modification is deemed not to compromise this clause as the development incorporates the construction of a multi-level seniors living development consisting of a total of 33 RAC rooms and 36 ILUs. The front setbacks are to be landscaped with native trees and shrubs and turfed accordingly. Landscaping conditions have been applied.</i>
Clause 34 Visual and Acoustic Privacy	<i>Whilst is acknowledged that the subject application is significantly different to that which was approved as Stage 6 under DA03/0078, it is considered the proposed development is of a bulk, scale and height which will not detract from the streetscape or the amenity of the neighbourhood. Suitable noise insulation measures will be installed between each unit to ensure acoustic privacy is maintained. All balconies have been orientated to increase privacy and reduce overlooking.</i>
Clause 35 Solar Access and Design for Climate	<i>The proposal has been architecturally designed to take advantage of the climatic conditions.</i>
Clause 36 Stormwater	<i>The proposed stormwater will be collected and treated in accordance with Council's requirements. Engineers have provided any applicable conditions.</i>
Clause 37 Crime Prevention	<i>The proposal provides for good visual surveillance of the adjacent road, and private open space areas to assist in the prevention of crime.</i>

Provision	Assessment
Clause 38 Accessibility	<i>The site is accessible through both motorist and pedestrian links to local facilities, shopping districts, parks and other recreational opportunities with a public bus service also linking the neighbourhood to the surrounding area. It is noted that all of the required services and facilities are within 1km from the subject site. There is also convenient access and adequate parking for residents and visitors.</i>
Clause 39 Waste Management	<i>Each unit will have access to its own rubbish receptacle with a rubbish storage area also provided.</i>
Minimum Lot Size 1000 m2	<i>The lot size of Lot 1 is 9,500m2 and Lot 3 is 2,600m2.</i>
Clause 40 Waste Management Site Frontage 20 metres	<i>The approximate site frontage is 150 metres across and 90 metres deep.</i>
Height where residential Flat Buildings are prohibited <ul style="list-style-type: none"> • 8 metres • Buildings adjacent to boundary 2 storeys • Buildings in rear 25% of Site 1 storey 	<i>13.5 in height proposed 13.6m maximum height under TLEP 2014</i>
Clause 41 and Schedule 3 Standards for Self-Contained Dwellings Siting Standards <ul style="list-style-type: none"> • Wheelchair Access • Road Access • Common Areas 	<i>All units are designed with direct wheelchair access from the public road with a gradient not exceeding 1:14. Wheelchair access is also freely available to the common areas of the properties.</i>
Security	<i>Suitable garden lighting is to be installed periodically around the site.</i>
Letterboxes	<i>Provided and accessible to deliveries and residents</i>
Private Car Accommodation Car parking space to comply with requirements set out in AS 2890 5% of the total car parking spaces increased to 3.8 metres. Garage must have a power-operated door	<i>The proposal sees the minor reconfiguration and addition of new car spaces with there being a proposed 81 parking spaces around the site. The parking spaces comply with the disability guidelines outlined in AS 2890 and 5% of the total number of parking spaces allow the width to be increased to 3.8 metres.</i>
Accessible Entry Compliant with Clause 4.3.1 and 4.3.2 of AS4299	<i>All units are designed to comply with the gradient requirements. Entrances to comply with the relevant clauses to AS4299 and AS1428 as stipulated.</i>

Provision	Assessment
<p>Interior</p> <p>Internal corridors and circulation must comply with AS1428.1</p>	<p><i>The proposal has been designed to comply with AS1428.1 to ensure suitable width of corridors and manoeuvring areas throughout the development.</i></p>
<p>Living and Dining Room</p> <p>Circulation Space set out in accordance with Clause 4.7 of AS 4299.</p> <p>Provide a telephone jack adjacent to Power outlet.</p>	<p><i>Each unit has been designed with generous proportions in the living and dining room to comply with these requirements. A telephone and power outlet to be installed adjacent to each other and situated in the Living Room.</i></p>
<p>Kitchen</p> <p>Under the provision of this clause various specifications apply to the Kitchen Fitout including width of 2.7 metres and a clear space of at least 1450 mm.</p>	<p><i>The proposal has been designed to comply with the provisions of the SEPP for Kitchen fitout. Further detail to be provided at construction certificate stage.</i></p>
<p>Main Bedroom</p> <p>Sufficient Area to accommodate a Queen Size Bed, Two Double Power points at Bed Head End, Single Power Point opposite Bed Head, Telephone Jack next to power outlet adjacent to bed. Wiring for potential illumination of 300 lux.</p>	<p><i>The main bedroom in each unit is of satisfactory size to accommodate a queen size bed. Wiring to be installed for telephones, power and lighting.</i></p>
<p>Bathrooms and Toilets</p> <p>Bathroom area that complies with AS1428.</p> <p>Slip Resistant surfaces. Shower and wash basin to comply with AS1428 and various other requirements in relation to the siting of washbasins taps, grab rails, seats, power outlets, wall cabinets and shower heads.</p> <p>Visible toilet as per AS 4299</p>	<p><i>Bathrooms and toilets have been designed to comply with the provisions of the SEPP. Further detail to be provided at construction stage with Tender documents</i></p>
<p>Doors</p>	<p><i>All door handles and hardware are provided in accordance to AS 4299</i></p>
<p>Surface Finishes</p>	<p><i>All external paved areas are to have slip resistant surfaces.</i></p>
<p>Ancillary Items</p>	<p><i>All switches and power points are provided in accordance with AS 4299</i></p>
<p>Access to kitchen, main bedroom and toilet</p> <p>In a multi storey dwelling must be located on ground floor.</p>	<p><i>The kitchen, main bedroom, bathroom and toilet are all located on the entry level.</i></p>
<p>Lifts in multi-storey buildings</p> <p>In a multi storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level and is to comply with clause E3.6 of the Building Code of Australia.</p>	<p><i>The proposal has been designed with lift access to dwellings above the ground level that is foreseen to comply with clause E3.6 of the Building Code of Australia.</i></p>

Provision	Assessment
Laundry	<i>Each self-contained dwelling has a laundry that is compliant with the guidelines as set out in the SEPP</i>
Storage Linen Cupboard in accordance with AS4299	<i>Linen storage in accordance with clause 4.11.5 of AS 4299 is provided</i>
Garbage	<i>A garbage storage area is provided in an accessible location. See plans for details.</i>
<p>Clause 50 Standards which cannot be used for grounds as refusal</p> <p>The consent authority must not refuse consent to a development application under this Part on the grounds of:</p> <p>a) building height: if all proposed buildings are 8 metres or less in height, or</p> <p>b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less</p> <p>c) landscaped area: a minimum of 35 m² per dwelling – 210 m² total.</p> <p>d) deep soil zones: A minimum of 15% of the site area with two thirds of the area located at the rear of the site with minimum dimension of 3 metre.</p> <p>e) solar access: Living Rooms and Private Open Space for 70% of the dwellings to receive a minimum of 3 hours direct sunlight between 9 am and 3 pm.</p> <p>f) private open space: Ground Floor Dwellings 15 m² with Dimensions of 3 metres and Upper level Dwellings a balcony of 10 m² with Dimensions of 2 metres.</p> <p>h) parking: One resident space per five dwellings.</p>	<p><i>The proposal is a multi-level development that exceeds 8 metres in height</i></p> <p><i>The proposed development incorporates an FSR of 0.97:1</i></p> <p><i>The proposal allows for 3,410m² of landscaped space.</i></p> <p><i>The adequate amount of deep soil zones is provided at 2,488m²</i></p> <p><i>During midwinter 2 hours of sunlight between 8am-4pm can be achieved for 78% of the dwellings. The application seeks a variation to this control, however in accordance with this clause; this cannot be reasons for refusal of the application.</i></p> <p><i>All units have access to ground level private open space compliant with these requirements and directly accessible from the living area.</i></p> <p><i>In total the development provides a total of 81 parking spaces.</i></p>

SEPP (Exempt and Complying Development Codes) 2008

Subdivision 13 – Demolition of the SEPP advises that demolition of development that would be exempt development under this code if it were being constructed or installed is development specified for this code if it is not carried out on or in a heritage item or a draft heritage item or in a heritage conservation area or a draft heritage conservation area.

The subject application includes the following demolition works which are considered to meet the requirements of the SEPP:

- *Removal of existing maintenance yard and shed*
- *Removal of 15 car parks, bin collection area, and ambulance/kitchen delivery zone*
- *Demolition of dividing wall and door within southern sector of block 2 (central building)*
- *Demolition of internal walls within the western sector of block 1 (main entrance).*

The demolition works are required to comply with AS 2601—2001, the demolition of structures.

North Coast Regional Environmental Plan

In March 2017 the NCRP 2036 was introduced. The NCRP 2036 established the following vision for the area:

The best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities

The NCRP 2036 includes 4 overarching goals to achieve the aforementioned vision:

1. *The most stunning environment in NSW*
2. *A thriving interconnected economy*
3. *Vibrant and engaged communities*
4. *Great housing choices and lifestyle options*

The site is mapped as an Urban Growth area and within the coastal strip.

Consideration of the planning principles, which will guide growth on the North Coast, is required to be undertaken in determining an application.

Principle 1: Direct growth to identified Urban growth areas

Urban growth areas have been identified to achieve a balance between urban expansion and protecting coastal and other environmental assets. They help maintain the distinctive character of the North Coast, direct growth away from significant farmland and sensitive ecosystems and enable efficient planning for infrastructure and services.

Assessment:

Complies - the proposed development is for the construction of a Seniors Living Development. The site is within walking distance of Banora Shopping Centre and public transport. The area is located outside of sensitive coastal and farmland areas.

Principle 2: Manage the sensitive coastal strip

The coastal strip comprises land east of the planned Pacific Highway alignment plus the urban areas of Tweed Heads around the Cobaki Broadwater. The coastal strip is ecologically diverse and contains wetlands, lakes, estuaries, aquifers, significant farmland, and has areas of local, State, national and international environmental significance. Much of this land is also subject to natural hazards, including flooding, coastal inundation, erosion and recession.

Demand for new urban and rural residential land in this area is high. To safeguard the sensitive coastal environment, rural residential development will be limited in this area, and only minor and contiguous variations to urban growth area boundaries will be considered.

Assessment:

The development site is mapped under this plan as being within the sensitive coastal strip. The proposed development not considered to impact on a natural hazards or farmlands.

Principle 3: Provide great places to live and work in a unique environment

Making cities and centres the focus of housing diversity, jobs and activities makes communities more vibrant and active, reduces pressure on the environment, and makes it easier for residents to travel to work and access services.

The Plan guides councils in preparing local growth management strategies and planning proposals to deliver great places to live and work that maximise the advantages of the North Coast's unique environment.

Assessment:

As discussed above the site is located within a five minute walk to the Banora Shopping complex recreation facilities and associated services and also within five minutes' walk of public transport.

The proposed development is considered to comply with the planning principles of the NCRP 2036, goals and overarching vision of being the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.

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

There are no draft SEPPs applicable to the subject application.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 applies when the provisions of SEPP 65 Design Quality of Residential Flat Development and SEPP 64 (Housing for Seniors or People with a Disability) are silent. Accordingly, Design Control is 9 – External Building Elements requires consideration. The proposed development is compliant with this regard.

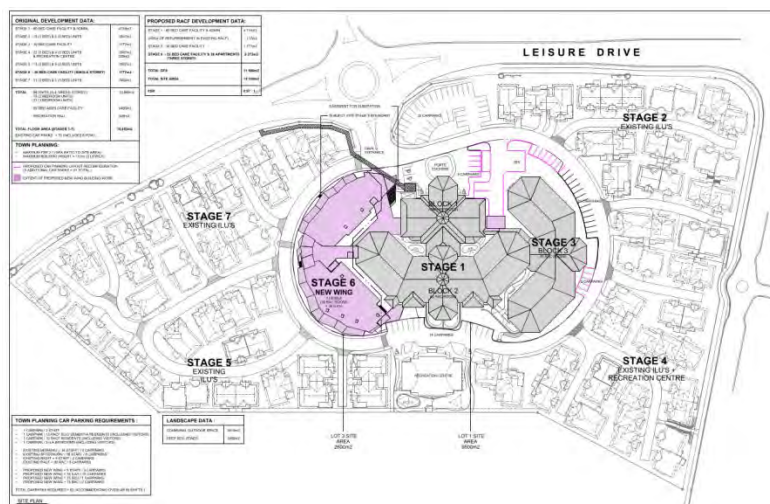
A2-Site Access and Parking Code

Parking:

The subject site is currently comprised of 76 car parks (including 6 disability accessible spaces) broken into 4 areas (shown below) to service the RAC units and provide visitor parking for both the RAC and ILUs (the ILU's provided in Stage 2, 4, 5 and 7 are provided with a total of 96 enclosed garages and 38 tandem spaces).



A review of Councils available records indicated that for Stages 1 and 3 a total of 37 parking spaces were required.



In relation to onsite parking Section A2 refers to the SEPP (Housing for seniors or People with a Disability) 2004. The SEPP requires the following:

Land-Use	No./GFA	Rate	Requirement
Care Facility			
- Residents and visitors	18 beds	1 space per 10 residential care beds	2
- Special care	15 beds	1 space per 15 special care beds	1
- Staff	6 staff	1 space per 2 persons employed	3
- Ambulance	-	1 space suitable for ambulance	1
Sub Total – Care Facility			7
ILU's			
- Residents and visitors	36 units	0.5 spaces for each bedroom	19
Total			28 spaces

The site as viewed as a whole (again excluding ILUs under stages 2, 4, 5 and 7) requires 65 car parks.

The proposed development includes the addition of 5 spaces, resulting in a total of 81 onsite spaces, which exceeds the requirements of the SEPP.

Further to the above a traffic engineering report was submitted with the application.

The report examines existing parking demand (surveys 2009 – 2016) and finds that the proposed parking supply will be adequate for the development.

Notwithstanding the above, it has been noted that the ILU or Serviced Apartments as proposed under this application require 19 spaces. 14 of these spaces are all within 50m, whilst the next closest bank of parking spaces (5) is approximately 190m. However, The SEPP (Housing for seniors or People with a Disability) 2004 does not include requirements in relation maximum distances for parking spaces.

Conditions will be applied to ensure parking in these areas are for the use of residents and visitor parking shall be provided at the front of the site.

Access:

Vehicular access to the site is currently via Leisure Drive where the access is a leg off the roundabout along with Nudgee Street.

A traffic engineering report was submitted with the application and included an analysis of the current roundabout function generalised to future volumes subject to this application.

The report concluded that that there will be no significant impact on the future road networks and no further road works required to accommodate the proposed development.

The application was referred to Councils Traffic Engineer who supported the submitted report and further advised that the proposed service vehicle and ambulance arrangements are appropriate.

A3-Development of Flood Liable Land

The site is mapped as being affected by a design flood level of 2.6m AHD and

PMF level of 5.8m AHD.

Topography of the site ranges generally between 3 and 4m AHD, with a minimum habitable floor level of 3.1m AHD.

The proposed building has a ground floor level of 4.0m AHD and level 2 (first floor) of 7.5m AHD (levels 2 and 3 meet the requirements of a PMF refuge).

The site is above the design flood level and therefore not in a mapped high flow area. The controls of A3.2.5 do not apply.

The nature of the proposal and the emergency response information provided are sufficient to address the emergency response provisions of DCP-A3. Councils Infrastructure Engineer advised there was no objection on flooding grounds.

A11-Public Notification of Development Proposals

In accordance with Section A11, The development application was notified for a period of 14 days, from Wednesday 29 March 2017 to Wednesday 12 April 2017.

During this period a total of 28 submissions (objection) were received.

The matters raised in all submissions are addressed later in this report.

A15-Waste Minimisation and Management

A Waste Management Plan has been submitted with the application and reviewed by Council Officers. The application complies with the requirements of A15. Standard conditions have been applied.

B3-Banora Point West- Tweed Heads South

The subject site is identified by Section B3 - Banora Point West – Tweed Heads South being located on Map B3. B3 identifies the subject site as being for Special Purposes (Retirement Village). The proposal accords with the intent of B3 by providing a Seniors Living building consisting of independent living units and aged care facilities.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises a residential (Seniors Living) development on an appropriately zoned site. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

The application advises that all demolition works are in accordance with the SEPP (Exempt and Complying Development Code) 2008. A review of the information submitted has revealed that not all works are classed as exempt. Accordingly, a condition has been applied advising where works are not exempt a Demolition Works Plan is to be submitted to Council to the satisfaction of the General Manager or delegate prior to construction certificate.

Clause 93 Fire Safety Considerations

The application is not for a change of use.

Clause 94 Buildings to be upgraded

The proposed application includes additions and alterations to an existing building. Clause 94 has been addressed by Councils Building Department and conditions have been applied accordingly.

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

The site is not located under any coastal zone management plans.

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by the Tweed Shire Coastline Management Plan 2005.

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Context and Setting

The proposed development, whilst, at a higher density than the original development approved under DA03/0078 (stage 6) is considered to meet a range

of needs in terms of seniors living accommodation. The design whilst somewhat dissimilar to the existing buildings, it is considered to be of a high quality. A flat roof form provides greater visual interest to the complex and gives greater amenity to the residents.

RSL Management have advised that the intent of the proposed design was to indicate

Bulk and Scale

The proposed development seeks an increase in scale, predominately height in comparison to the previous development approved for Stage 6 of DA03/0078. Notwithstanding this, the development complies with the prescribed FSR and Height controls under the TLEP 2014 and responds to the need for accommodation options for the ageing population.

The height, bulk and scale are consistent with the existing surrounding nursing home. The proposed new wing will form a transition in scale between the single storey residences across the road on the west and the large bulky scale of the existing nursing home.



The character of development is not considered to have a negative impact in terms of bulk and scale, given the developments compliance with the mapped height and FSR controls. Further the maximum height of the proposed building is below the existing RACF roofline.

Design

The proposed development essentially follows the curvilinear footprint, which matches the original approval for this stage and the existing RACF. Whilst the proposed façade differs from the existing RACF the contemporary facade has been intentionally developed to create a new identity for the wing extension, whilst complementing the existing buildings adjacent.

Access, Transport and Traffic

Vehicular access to subject site is off Leisure Drive; via an existing roundabout. Leisure Drive has an 11m wide carriageway at the site frontage.

The subject application does not propose any alterations to the existing site access.

As discussed above, a traffic engineering report was submitted with the application and included an analysis of the current roundabout function, including potential future volumes of traffic subject to this application.

The report concluded that that there will be no significant impact on the future road networks and no further road works were required to accommodate the proposed development.

The application was supported by Councils Traffic Engineer.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The subject application is for addition of a three (3) storey Seniors Living Development to the existing Darlington Retirement Community

The subject site is located with the Banora Point Residential Development area. The site is surrounded generally by detached and semi-detached low rise dwellings.

The land is bound immediately to the south by a canal with a publicly accessible footpath. Other notable nearby land uses include:

- Child care centre and swim school to the north across Leisure Drive;
- An Aveo Retirement Community to the east;
- St Joseph's College to the north;
- Twin Towns Club Banora which includes lawn bowls, tennis, golf and pool;
- Banora Point Shopping Village;
- Community centre and child care to the west; and
- Centaur Primary School.

The proposed development is considered in keeping with the surrounding land uses/development.

Topography

The site is relatively flat and comprised of managed lawn. Minimal earthworks are required for footings and lift shafts.

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

The application was advertised and notified for a period 14 days from Wednesday 29 March 2017 to Wednesday 12 April 2017. During this period 28 submissions were received (from existing residents). The issues raised are outlined below.

Car parking <i>It has been submitted by existing residents of the Darlington facility that the car parking is inadequate for the</i>	Applicants Response: 81 parking spaces (including six PWD spaces) are provided for the existing stages 1 and 3 of the facility and the proposed stage 6. This includes an allocated parking space for each independent
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proposed development.

living unit. The below table, extracted from the Traffic Report prepared by TTM, identifies the statutory requirement under SEPP – Housing for Seniors or People with Disabilities and that proposed by the development.

Table 2: SEPP Car Parking

SEPP Requirement	Required Spaces	Provided
1 space per 2 staff	31	
1 space per 15 beds for persons with dementia	1	
1 space per 10 beds of residential aged care	10.8	
0.5 spaces per bedroom for self-contained dwellings	19	
1 space for an ambulance	1	1
Total (exc Ambulance)	62	81

A parking demand survey has also been undertaken, the results identify the current car parks have an average 56% capacity. With the additional 5 car spaces, it is expected that the future car parking demands can be accommodated on-site.

Existing independent living units within stages 2, 4, 5 and 7 will not be affected. These each contain a single lock up garage with space for a second car in the driveway.

Therefore this issue does not constitute refusal of the application

Councils Response:

The subject site is currently comprised of 76 car parks (including 6 disability accessible spaces) broken into 4 areas to service the RAC units and provide visitor parking for both the RAC and ILUs

The site as viewed as a whole (excluding ILUs under stages 2, 4, 5 and 7, which have garages) requires 65 car parks.

The proposed development includes the addition of 5 spaces, resulting in a total of 81 onsite spaces, which exceeds the requirements of the SEPP.

Further to the above a traffic engineering report was submitted with the application.

The report examines existing parking demand (surveys 2009 – 2016) and finds that the proposed parking supply will be adequate for the development.

Loss of Amenity

The proposal will affect amenity. This includes overshadowing, privacy and noise.

Applicants Response:

Regarding overshadowing, it has been demonstrated by shadow diagrams that there is no discernible impact by overshadowing from the proposed building. The height of the building is similar to that of the building expected of stage 6. The minor overshadowing to the south does not affect the private open space of any existing residents.

Regarding privacy, the new building is separated from existing independent living units by the internal road. This provides good separation from existing residents and overlooking into private living areas will

	<p>not occur.</p> <p>Regarding noise, it is not expected new residents will make any more noise than those existing, given the proposal is for seniors living only. Noise during construction will be managed as per the construction management plan.</p> <p>Therefore this issue does not constitute refusal of the application.</p> <p>Councils Response:</p> <p><i>Shadow diagrams have been submitted with the application and assessed in accordance with SEPP 65. The overshadowing is minimal and not expected to impact the amenity of residents.</i></p> <p><i>The nature of the proposed use is in keeping with the use of the site and the use of the existing approval for stage 6. Council does not anticipate any impact on amenity in terms of noise during the use of the building.</i></p> <p><i>It is acknowledged that during construction there would be a short term impact on the amenity of the adjoining residents. However once construction had ceased it is not considered that the use of the site for would generate a significant impact on the amenity of residents on the adjoining sites. Conditions in regards to construction have been applied.</i></p>
<p>Building Height</p> <p><i>It has been submitted by existing residents of the Darlington facility that the proposed 3 storey building height is out of character for the area.</i></p>	<p>Applicants Response:</p> <p>The maximum height as per Clause 4.3 of the TLEP is 13.6m. The proposal is 13.5m in height. This is slightly lower than the existing adjoining building.</p> <p>Therefore this issue does not constitute refusal of the application.</p> <p>Councils Response:</p> <p><i>The proposed development is consistent with the mapped height limit for the site, is in keeping with the scale of the adjoining RACF building and results in minimal overshadowing. The development is setback approximately 10.0m at the closest point to any adjacent single storey dwellings (separated by internal access road).</i></p> <p><i>In terms of character the Banora Point area includes a range of varying developments and heights. As detailed throughout this report the proposed development is not considered out of context for the area.</i></p>
<p>Design</p> <p><i>It has been submitted by existing residents of the Darlington facility that the contemporary design is out of character with the existing Darlington village.</i></p>	<p>Applicants Response:</p> <p>The proposed design of the building is of a contemporary design. While this is somewhat dissimilar to the existing buildings, it is considered to be of a high quality and includes elements that are superior to that of the existing. A flat roof form provides greater visual interest to the complex and gives greater amenity to the residents. Incorporation</p>

	<p>of balconies with glazing and use of high quality materials and colours softens the built form while complementing the existing buildings. With reference to the architectural statement provided by the designer:</p> <p><i>“The palette of materials proposed for the new wing extension at Darlington responds to the site’s context and in particular to its location & surrounding buildings.</i></p> <p><i>The contemporary facade language has been developed to create a new identity for the wing extension, whilst complementing the existing buildings adjacent. The orientation of the building has afforded spectacular views towards the Tweed Valley from large balcony spaces, balanced with façade treatments addressing the western aspect. This is highlighted through the new ILA lobby form, which creates a new entry statement for the development. Screening elements have been distributed & layered throughout the building facade in different combinations. In doing so, the requirements for sun shading, privacy and external articulation have been addressed across the entire building.</i></p> <p><i>The new wing building is articulated into distinct parts. The upper independent living levels have considered articulation of pop up roofs and framed façade elements. Further framing and expressed recesses will articulate the building along its length. A majority of the ILA’s enjoy spectacular views, both from large private outdoor balconies and communal spaces that can be enjoyed in the coastal climate. The articulation of the building has also included maximising opportunities for natural light within the floor plate over all three levels. The ground level facade comprising of high care suites incorporates predominately glazing to maximise natural light opportunities for residents. This is balanced with low level planters and screening to both soften the facade and provide privacy from the internal road aspect.</i></p> <p><i>The communal outdoor spaces will be provided with shade and trellis structures, meeting and seating points which all add to the human experience and sense of community.”</i></p> <p>Therefore, this issue does not constitute refusal of the application.</p> <p>Councils Response:</p> <p><i>The proposed development follows the curvilinear footprint, which matches the original approval for this stage and the existing RACF. Whilst the proposed façade differs from the existing RACF the contemporary facade has been intentionally developed to create a new identity for the wing extension, whilst complementing the existing buildings adjacent.</i></p>
<p><i>Additional strain on onsite facilities</i></p>	<p>Councils Response:</p>

<p><i>such as Community Hall, Bus service</i></p>	<p><i>This is a management issue. Notwithstanding, this the proposed development includes the following:</i></p> <ul style="list-style-type: none"> • <i>Health and Wellbeing centre;</i> • <i>Dining rooms;</i> • <i>'Café' area for residents, staff and visitors;</i> • <i>Childrens play area; and</i> • <i>Communal open space areas including gardens and multi-purpose area</i>
<p><i>Possible flooding implications as a result of the development</i></p>	<p>Councils Response:</p> <p><i>The site is mapped as being affected by a design flood level of 2.6m AHD and PMF level of 5.8m AHD.</i></p> <p><i>Topography of the site ranges generally between 3 and 4m AHD, with a minimum habitable floor level of 3.1m AHD.</i></p> <p><i>The proposed building has a ground floor level of 4.0m AHD and level 2 (first floor) of 7.5m AHD (levels 2 and 3 meet the requirements of a PMF refuge).</i></p> <p><i>The site is above the design flood level and therefore not in a mapped high flow area.</i></p>
<p><i>Loss of values to residents within the existing Independent Living Units</i></p>	<p><i>The proposed development whilst at a higher density, different building materials and design than the surrounding area, is considered to offer a diversification of housing type to that in the surrounding areas, whilst still be a compatible land use.</i></p>
<p><i>Setback and design appropriateness</i></p>	<p><i>The application has been assessed against SEPP (Housing for seniors or People with a Disability) 2004 and SEPP No. 65 - Design Quality of Residential Flat Development and is compliant with these Policies.</i></p> <p><i>The design has taken into consideration the context of the immediate area and is considered to complement the existing built form of the RACF.</i></p> <p><i>The subject site is zoned R3 Medium Density Residential in the Tweed Local Environmental Plan 2014 (TLEP 2014) and is located within the Banora Point locality. The proposed use is permissible with consent in the in TLEP 2014.</i></p>

(e) Public interest

The proposal has been investigated and is considered to be suitable to the site; unlikely to cause any significant long term negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the TLEP and relevant DCPs. The application has been assessed by Council's technical officers; with no objections being raised subject to the attached conditions of development consent. The proposed Seniors Living development is therefore considered to warrant approval.

OPTIONS:

1. Approve, the application subject to conditions
2. Refuse the application for reasons specified

Council officers recommend Option 1.

CONCLUSION:

It is considered that the development is compatible with the existing residential aged care development, needs of the ageing population and local environment. The assessment has had regard for the SEPP (Housing for Seniors of people with a disability) 2004 and SEPP (Design Quality of Residential Flat Development) and for the issues raised by the public submissions. As a result, the proposed Seniors Living development is considered to be acceptable.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

SEPP 65 Assessment table (ECM 4650150)

4 [PR-PC] Kingscliff Locality Plan Draft Plan Comparison

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: GT1/DCP/B26

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:

At the 6 July 2017 Planning Committee Meeting, Council resolved the following in respect of a report recommending the public exhibition of the Draft Kingscliff Locality Plan documents:

"That:

1. *Council defers this item to the next Planning Committee Meeting on 3 August 2017.*
2. *A summary report identifying the differences between the Draft Kingscliff Locality Plan attached to this agenda and the concept proposals, as exhibited at the shopfront be provided to Councillors with particular regard to:*
 - a. *Provision of structured and casual Open Space per person.*
 - b. *Additional extra population accommodated by the increase to 16.6m and 20m (5 and 6 storey) areas compared to 12.2m/13.6m.*
 - c. *provide a discussion as to how the 'uplift' in development yield may influence the cost of this new housing.*
3. *A workshop is conducted including an on-site visit on the Draft Kingscliff Locality Plan with all Councillors."*

A Councillors Workshop and site visit to Kingscliff was held on 13 July.

The purpose of this report is to provide additional information in response to the requests in the above resolution.

It is recommended that Council receives and notes this report and support the previous recommendation to publicly exhibit the Draft Kingscliff Locality Plan documents that were submitted to the 6 July Planning Committee Meeting.

RECOMMENDATION:

That:

- 1. Council receives and notes the reported titled Kingscliff Locality Plan Draft Plan Comparison; and**
- 2. Council endorses the Draft Kingscliff Locality Plan (Volumes 1 & 2) and Development Control Plan (Volume 3 - Draft Tweed Development Control Plan, Section A26 – Kingscliff), as previously reported to the 6 July 2017 Planning Committee Meeting, is to be publically exhibited for a minimum period of 28 days, in accordance with Section 18 of the *Environmental Planning Assessment Regulation 2000*;**
- 3. During the public exhibition period conduct a public ‘drop-in’ session undertaken by Council staff at Kingscliff; and**
- 4. Following public exhibition a further report is to be submitted to Council detailing the content and response of submissions received.**

REPORT:

At the 6 July 2017 Planning Committee Meeting, Council resolved the following in respect of a report recommending the public exhibition of the Draft Kingscliff Locality Plan documents:

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3. *A workshop is conducted including an on-site visit on the Draft Kingscliff Locality Plan with all Councillors."*

A Councillors Workshop and site visit to Kingscliff was held on 13 July.

Comparison between Draft Kingscliff Locality Plan & Draft DCP and the Kingscliff Shopfront Exhibition Material

The Kingscliff Shopfront Exhibition, which was conducted over a two week period in April 2016, represent a collection of concepts and draft strategies based off of a series of background reports and consultative community and stakeholder workshops. It is important to note that the shopfront exhibition purposefully was not formatted or presented as the draft Kingscliff Locality Plan and Development Control Plan (KLP & DCP). Its focus and intent was based around receiving community feedback on the presented key concepts and draft strategies.

As such, when comparing the shopfront exhibition material to the current KLP & DCP, which represents a more refined and focussed progression of those draft concepts and strategies, a like for like numerical comparison is difficult to extrapolate. For the comparison purposes of this report, the indicative structure plans as represented within the KLP & DCP (Volume 03; page 27) have been used to extrapolate the difference in population and open space yield based on application of different building height and density outcomes. These have been represented and summarised in **Tables 01 Shop front Exhibition** and **Table 02 Draft Kingscliff Locality Plan & DCP** which respond to points (a) and (b) within the Council notice above.

However it is important to note that the draft indicative structure plans, which were exhibited at the shopfront exhibition and are contained within the current draft KLP & DCP represent only one potential urban structure, housing mix and open space network outcome. They do not necessarily represent the final preferred urban structure outcome.

Whilst the indicative structure plans presented within the draft KLP & DCP have been design and grounded in a contextual understanding of the greenfield development site opportunities and constraints, best practice urban design structure planning principles and density targets, the final design will be the outcome of more detailed developer led master planning process. Given the likelihood that these indicative structure plans will be further tested, developed and reviewed as part of future developer led master planning processes, so too will the density and open space yields and outcomes.

Therefore the purpose of the indicative structure plans within the KLP & DCP is to serve as a guide and target rather than as a fixed development cap. The corresponding strategies and design principles within the KLP & DCP provide a framework to master planning processes and staged subdivision plans over Greenfield development sites. These refined principles and strategies have been integrated into the draft strategies and development controls of the draft KLP & DCP.

Table 01 - Shop front Exhibition					
Greenfield Site	Net Residential Developable Area	Approximate Dwellings / Population	Indicative Land Use/ Housing type	Area	Target / Yield
Turnock Street	16.2ha	1090 dw +2058 people	Shop top residential (16.6m) (Density@ 80dw/ha)	3.5ha	280 units
			Residential flat buildings (16.6m) (Density@ 120dw/ha)	5.5ha	660 units
			Small lot and low rise medium density (9.0m) @ 30dw/ha	2.5ha	75 dw/units
			Low density residential (450-600sqm) lots @ 16 dph	4.7ha	75 dw
West Kingscliff	8.1ha	343 dw +651 people	Residential flat buildings (13.6m) (Density@ 80dw/ha)	2.75ha	220 units
			Small lot and low rise medium density (9.0m) @ 30dw/ha	2.75ha	82 dw / units
			Low density residential (450-600sqm) lots @ 16 dph	2.6ha	41 dw
North Kingscliff	15.1ha	420 dw +902 people	Residential flat buildings (12.2m) (Density@ 50dw/ha)	3.4ha	170 units
			Small lot and low rise medium density (9.0m) @ 30dw/ha	3.5ha	105 dw / units
			Low density residential (450-600sqm) lots @ 16 dph	7.8ha	125 dw
Business and Knowledge Precinct	10.8ha	1032 dw +1857 people	Shop top residential (20m) (Density@ 120dw/ha)	2 ha	240 units
			Residential flat buildings (20m) (Density@ 150dw/ha)	4.4ha	660 units
			Small lot and low rise medium density (9.0m) @ 30dw/ha	4.4ha	132 dw / units
			Low density residential (450-600sqm) lots @ 16 dph	-	-
Cudgen	11.7ha	248 dw +523 people	Small lot and low rise medium density (9.0m) @ 30dw/ha	4.4ha	132 dw / units
			Low density residential (450-600sqm) lots @ 16 dph	7.3ha	116 dw
Total	61.9ha	3133 dw +5716 people	Note: Population and density rates based on indicative structure plan within the draft KLP & DCP (July 2017). Density rates derived from indicative building modelling.		
S.94	\$20 000 per dw	\$62.6m			

Open space based on additional 5716 people				
Open space rates	Required	Indicative Plan (ha)	structure	Difference (ha)
DCP A5 – Active 1.7ha / 1000	9.7ha	8.1ha		-1.6ha
DCP A5 – Passive 1.13ha / 1000	6.5ha	11.7ha		+5.2ha
DCP A5 District Park	>1ha	1.4ha		+0.4ha
Total	17.2ha	21.2ha		+4ha

Table 02 – Draft KLP & DCP					
Greenfield Site	Net Residential Developable Area	Approximate Dwellings / Population	Indicative Land Use/ Housing type	Area	Target / Yield
Turnnock Street	16.2ha	600 dw +1140 people	Shop top residential (13.6m) (Density@ 50dw/ha)	3.5ha	175 units
			Residential flat buildings (12.2m) (Density@ 50dw/ha)	5.5ha	275 units
			Small lot and low rise medium density (9.0m) @ 30dw/ha	2.5ha	75 dw/units
			Low density residential (450-600sqm) lots @ 16 dph	4.7ha	75 dw
West Kingscliff	8.1ha	260 dw +500 people	Residential flat buildings (12.2m) (Density@ 50dw/ha)	2.75ha	137 units
			Small lot and low rise medium density (9.0m) @ 30dw/ha	2.75ha	82 dw / units
			Low density residential (450-600sqm) lots @ 16 dph	2.6ha	41 dw
North Kingscliff	15.1ha	420 dw +902 people	Residential flat buildings (12.2m) (Density@ 50dw/ha)	3.4ha	170 units
			Small lot and low rise medium density (9.0m) @ 30dw/ha	3.5ha	105 dw / units
			Low density residential (450-600sqm) lots @ 16 dph	7.8ha	125 dw
Business and Knowledge Precinct	10.8ha	452 dw +814 people	Shop top residential (13.6m) (Density@ 50dw/ha)	2 ha	100 units
			Residential flat buildings (12.2m) (Density@ 50dw/ha)	4.4ha	220 units
			Small lot and low rise medium density (9.0m) @ 30dw/ha	4.4ha	132 dw / units
			Low density residential (450-600sqm) lots @ 16 dph	-	-
Cudgen	11.7ha	248 dw +523 people	Small lot and low rise medium density (9.0m) @ 30dw/ha	4.4ha	132 dw / units
			Low density residential (450-600sqm) lots @ 16 dph	7.3ha	116 dw
Total	61.9ha	1980 dw +3879 people	Note: Population and density rates based on indicative structure plan within the draft KLP & DCP (July 2017). Net density rates derived from indicative building modelling.		
S.94	\$20 000 per dw	\$39.6m			

Open space based on additional 3879 people			
Open space rates	Required	Indicative structure Plan (ha)	Difference (ha)
DCP A5 – Active 1.7ha / 1000	6.6ha	8.1ha	+1.5ha
DCP A5 – Passive 1.13ha / 1000	4.4ha	11.7ha	+7.3ha
DCP A5 District Park	>1ha	1.4ha	+0.4ha
Total	11.0ha	21.2ha	+9.2ha

Uplift in development influence on cost of new housing

Housing affordability has garnered significant national interest of recent years with industry experts and government policy generally concurring that increasing housing supply and housing diversity is a key strategy to achieving more affordable housing outcomes. Understanding the influence that an increase in housing supply would have on the cost of new housing in Kingscliff is a more complex market driven consideration; one in which is in itself influenced by a number of contributing factors including the development and housing type, standard and the overall supply and timing of staged development releases. Whilst the land use, housing type and density outcomes are all key locality planning considerations, the development cost and ultimate pricing of land and delivered housing is typically beyond the scope of locality based planning processes and planning frameworks generally.

Broadly speaking, a variety of dwelling types and dwelling sizes is highly desired as this provides housing choice appealing to a broader socioeconomic sector of the community. Planning policy promoting housing diversity is thereby an enabler of increased housing affordability. This however is not the same as 'social housing' which is typically heavily subsidised, procured and managed by government and or social housing provider agencies.

As reported within the *draft Kingscliff Locality Plan Volume 01: Context and Locality Wide Strategies* Kingscliff has a higher proportion of residents over 60 years, representing 12.28% of the population compared to the regional NSW average of 10.3%. This corresponds with a higher proportion of single and couple households (without children) 60.2% compared to the state average of 51.2%. Despite this higher proportion of elderly single and couple households, the prevailing dwelling structures for Kingscliff is 'separate houses' (50.2%) indicating a high proportion of family homes being occupied by single or couple households.

This prevalent housing type is followed by 'flat, unit or apartment in a three storey block' (15.3%) and 'caravan, cabin, houseboat' (12.9%) represented by the Noble park manufactured housing estate. Outside of these housing types there is a distinct lack of low rise medium density housing stock (row housing, terrace houses, manor houses, multiunit dwellings, small lot housing) generally known as 'the missing middle' which generally appeal to first home owners and empty nesters. In terms of housing affordability, it is also material to note that Kingscliff has the highest proportion of renters within the Shire. Further, a recent analysis of demographic and market trend conducted by On Track Community Programs (2014) also indicates that there is also a high degree of income, rent and mortgage stress for households within the locality.

In consideration of the above, future subdivision and dwelling design will need to be responsive to these demographic and housing trends to ensure housing supply meets housing demand. This includes increasing supply for first home owners, empty nesters, singles accommodation through increased supply of residential flat buildings and missing middle medium density housing types, more seniors living and aged care housing as well as more typical suburban lots for families. To meet these needs there should also be a strong focus on promoting more diverse housing types and increased density through low rise medium density housing types and residential flat buildings within walkable proximity of Kingscliff's town centre.

Section 2.8 of the Draft KLP DCP (page 52) identifies and addresses this housing diversity need which is also supported by a housing affordability development control which states:

C3. Prepare an affordable housing strategy over each of the identified greenfield development areas which allocates a proportion of housing types to specifically meet affordable housing need. The affordable housing strategy is to be prepared through co-ordinated negotiations between Council, the developer and affordable housing providers to set and meet agreed affordable housing benchmarks (quantity), development yields and housing types.

Whilst actual quantum of affordable housing provision across Greenfield development sites is not specified as a percentage, the draft strategies and controls establish the need to consider affordable housing as a key Greenfield development, master planning and subdivision consideration which can be factored into the overall understanding and planning of likely development types and development yields. Achieving higher order development across other development sites is often one way in which developers can offset costs associated with providing affordable housing options. As such the supply and provision of additional affordable housing types across Greenfield development sites will require the collaboration between Council (policy maker), developer (landowner) and affordable housing providers (facilitator and manager).

OPTIONS:

Option 1

That:

- 1. Council receives and notes the report titled Kingscliff Locality Plan Draft Plan Comparison; and**
- 2. Council endorses the Draft Kingscliff Locality Plan (Volumes 1 & 2) and Development Control Plan (Volume 3 - Draft Tweed Development Control Plan, Section A26 – Kingscliff), as previously reported to the 6 July 2017 Planning Committee Meeting, is to be publically exhibited for a minimum period of 28 days, in accordance with Section 18 of the *Environmental Planning Assessment Regulation 2000*;**
- 2. During the public exhibition period conduct a public ‘drop-in’ session undertaken by Council staff at Kingscliff; and**
- 3. Following public exhibition a further report is to be submitted to Council detailing the content and response of submissions received.**

Option 2

That Council further defers this matter to the September Planning Committee Meeting to enable a further report to be submitted to provide guidance on the required actions under Council’s Code of Meeting Policy, and a revision of the documentation that support the advancement of revised Draft Kingscliff Locality Plan documentation to be publicly exhibited, consistent with the concepts that were previously publicly on

display in the Kingscliff Shopfront exhibition in March 2016, and revised to respond to the feedback received during this exhibition.

Option 1 is recommended.

CONCLUSION:

It is important that long term housing development outcomes respond to the attributes, locational advantages and infrastructure capacity available within a locality such as Kingscliff whilst strengthening civic and landscape amenity and character. This can be achieved through a number of planning policy strategies including the facilitation of a higher density of housing closer to business centres, open space and public transport nodes to foster more housing supply and diversity within an active and walkable catchment. Conversely, the underdevelopment of well-located Greenfield development sites would potentially lead to a future undersupply increasing housing demand and increasing market driven housing cost. Under development in well serviced areas (water and sewer) could also lead to the latent capacity of existing infrastructure which reduces the ability to recoup capital expenditure and increases cost of service.

The shift from more traditional larger lot residential dwellings to smaller more dense forms of housing places a heightened importance and usage of public domain and open space in lieu of reduced private open space. Outside of tradition casual and structured open space this also includes the provision of well-located social and community infrastructure (library, community centre, community meeting rooms), civic and public domain spaces in step with population growth and community expectation.

The ability to provide these public benefits is directly dependent on funding mechanisms through developer contribution plans and consultative master planning processes. In this way the calibration or limiting of a settlements overall development potential by way of land use zoning, density and building height directly influences development yield and thereby developer contributions to fund public benefit, open space, community and social infrastructure opportunity.

COUNCIL IMPLICATIONS:

a. Policy:

Community Engagement Strategy v1.1

b. Budget/Long Term Financial Plan:

A revised consultation budget will be prepared based on Council resolved consultation option.

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.

Copy of the report to the 6 July 2017 Planning Committee Meeting relating to the Draft Kingscliff Locality Plan (ECM 4646396)

5 [PR-PC] Micro Brewery at No. 592 Cudgen Road, Cudgen - Designated Development

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:

Council has received a request to provide an opinion on the assessment pathway for a proposed microbrewery at No. 592 Cudgen Road, Cudgen. An avocado farm has been operated by the owners at the site since 2009 and they now wish to diversify their enterprise. A copy of the submission is provided in the attachments.

Agricultural produce industries are permissible in the RU1 Primary Production zone with development consent from Council. The other key consideration is the designated development provisions of the NSW Environmental Planning and Assessment Act Regulations. Schedule 3 of the Regulations lists the types of the development that fall into designated development. The distinguishing feature of designated development is that the development application must be accompanied by an environmental impact statement (EIS) and there are third party (objector) merit appeal rights. The thresholds set out in the Regulations for a brewery are as follows:

Breweries or distilleries producing alcohol or alcoholic products:

- (a) that have an intended production capacity of more than 30 tonnes per day or 10,000 tonnes per year, or*
- (b) that are located within 500 metres of a residential zone and are likely, in the opinion of the consent authority, to significantly affect the amenity of the neighbourhood by reason of odour, traffic or waste, or*
- (c) that release effluent or sludge:*
 - (i) in or within 100 metres of a natural waterbody or wetland, or*

- (ii) *in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils.*

The proponents have indicated they won't trigger part "a" or "c" but part "b" requires an opinion from Council as the consent authority.

The site is within 500 metres of the south western extremity of the Cudgen Village R2 Low Density Residential zoning with approximately four existing dwellings within 500 metres and the closest approximately 400 metres from the site.

For the proposed microbrewery to fall into the designated development category, Council has to be of the opinion that the amenity of the residential neighbourhood within 500m metres of the site will be significantly affected by odour, traffic or waste.

It is considered that the micro brewery will not have a significant impact on the amenity of the residential zone neighbourhood given its scale, proposed management and distance from the residential zone.

Only 300 litres of brewed beer per week is proposed. A litre of beer weighs about one kilogram which equates to about 15 tonnes per year (42kg per day) which is significantly within the 10,000 tonne per year (30t per day) threshold listed in the Schedule for triggering designated development. The development application will be required to address all the relative impacts through a comprehensive statement of environmental effects and the application would be publicly exhibited.

The owners are not in any way trying to circumvent any rigorous assessment or public scrutiny and are only looking to minimise start-up costs.

The proposal is considered to be of a very small scale and does not warrant being classified as designated development. The standard development application process is more than adequate for Council and the community to consider and assess the proposal and its relative impacts.

RECOMMENDATION:

That in respect of a request submitted to Council by the owner of No. 592 Cudgen Road, Cudgen, seeking an opinion on the assessment pathway for a proposed microbrewery:

- 1. Council is of the opinion that the microbrewery will not have a significant effect on the amenity of residential zone neighbourhood that is located within 500 metres of the proposed site by reason of odour, traffic or waste and as such will only require a standard Development Application to be submitted; and**
- 2. The General Manager or a delegate advises the owners in writing of this opinion.**

REPORT:

Agricultural produce industries are permissible in the RU1 Primary Production zone with development consent from Council.

An agricultural produce industry is defined as follows under the Tweed Local Environmental Plan 2014:

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry

The other key consideration is the designated development provisions of the NSW Environmental Planning and Assessment Act Regulations. Schedule 3 of the Regulations lists the types of the development that fall into designated development. The distinguishing feature of designated development is that the development application must be accompanied by an environmental impact statement (EIS) and there are third party (objector) merit appeal rights. The thresholds set out in the Regulations for a brewery are as follows:

Breweries or distilleries producing alcohol or alcoholic products:

- (a) that have an intended production capacity of more than 30 tonnes per day or 10,000 tonnes per year, or*
- (b) that are located within 500 metres of a residential zone and are likely, in the opinion of the consent authority, to significantly affect the amenity of the neighbourhood by reason of odour, traffic or waste, or*
- (c) that release effluent or sludge:*
 - (i) in or within 100 metres of a natural waterbody or wetland, or*
 - ii) in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils.*

The proponents have indicated they won't trigger part "a" or "c" but part "b" requires an opinion from Council as the consent authority.

The other relevant category under Schedule 3 of the Regulation is agricultural produce industries with the thresholds as follows:

Agricultural produce industries (being industries that process agricultural produce, including dairy products, seeds, fruit, vegetables or other plant material):

- (a) that crush, juice, grind, mill, gin, mix or separate more than 30,000 tonnes of agricultural produce per year, or*
- (b) that release effluent, sludge or other waste:*

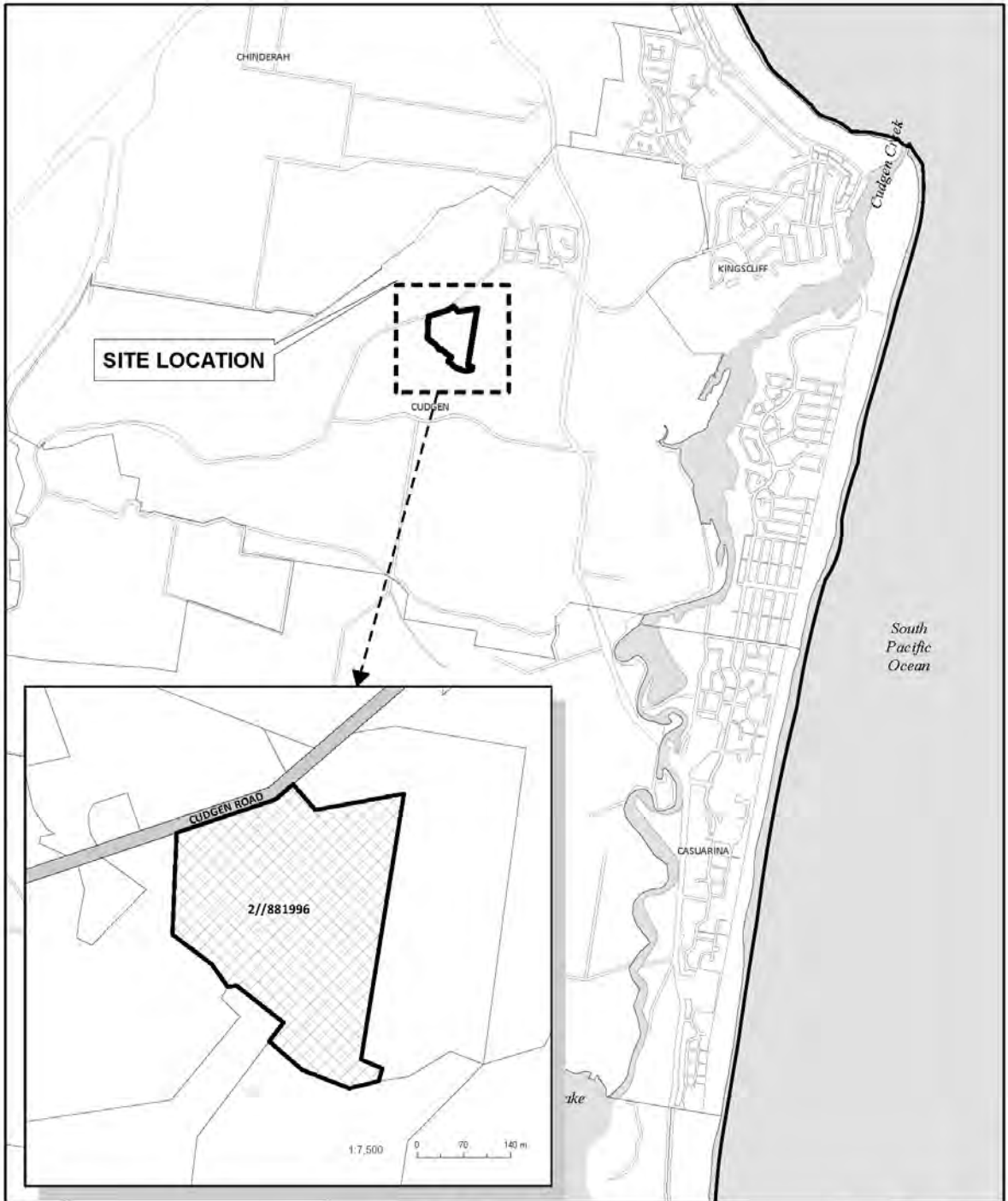
- (i) *in or within 100 metres of a natural waterbody or wetland, or*
- (ii) *in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils*

It considered that because the proposal is a microbrewery the brewery listing should be used and in any case the threshold is much lower in the brewery listing.

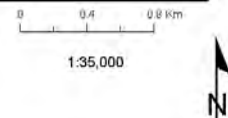
The proposal is very small scale and does not warrant being classified as designated development. The standard development application process is more than adequate for Council and the community to consider and assess the proposal and its impacts.

If something about the proposal changes or the assessment process reveals different thresholds or unanticipated impacts the proposal could be reclassified as designated development, and that process for this type of development would have to be followed. It should be noted that if a third party considers that a breach of the Act has occurred, an appeal option is available to that party for a point of law (not merit) in the standard development application process. The owners are aware of these possibilities.

SITE DIAGRAM:




SiteDiagram



Lot 2 DP 881996
592 Cudgen Road, Cudgen

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Datum - GDA94 **DO NOT SCALE COPY ONLY - NOT CERTIFIED**

Civic and Cultural Centre
3 Tumbulgum Road
MURUMBidgee NSW 2484
MURUMBidgee NSW 2484

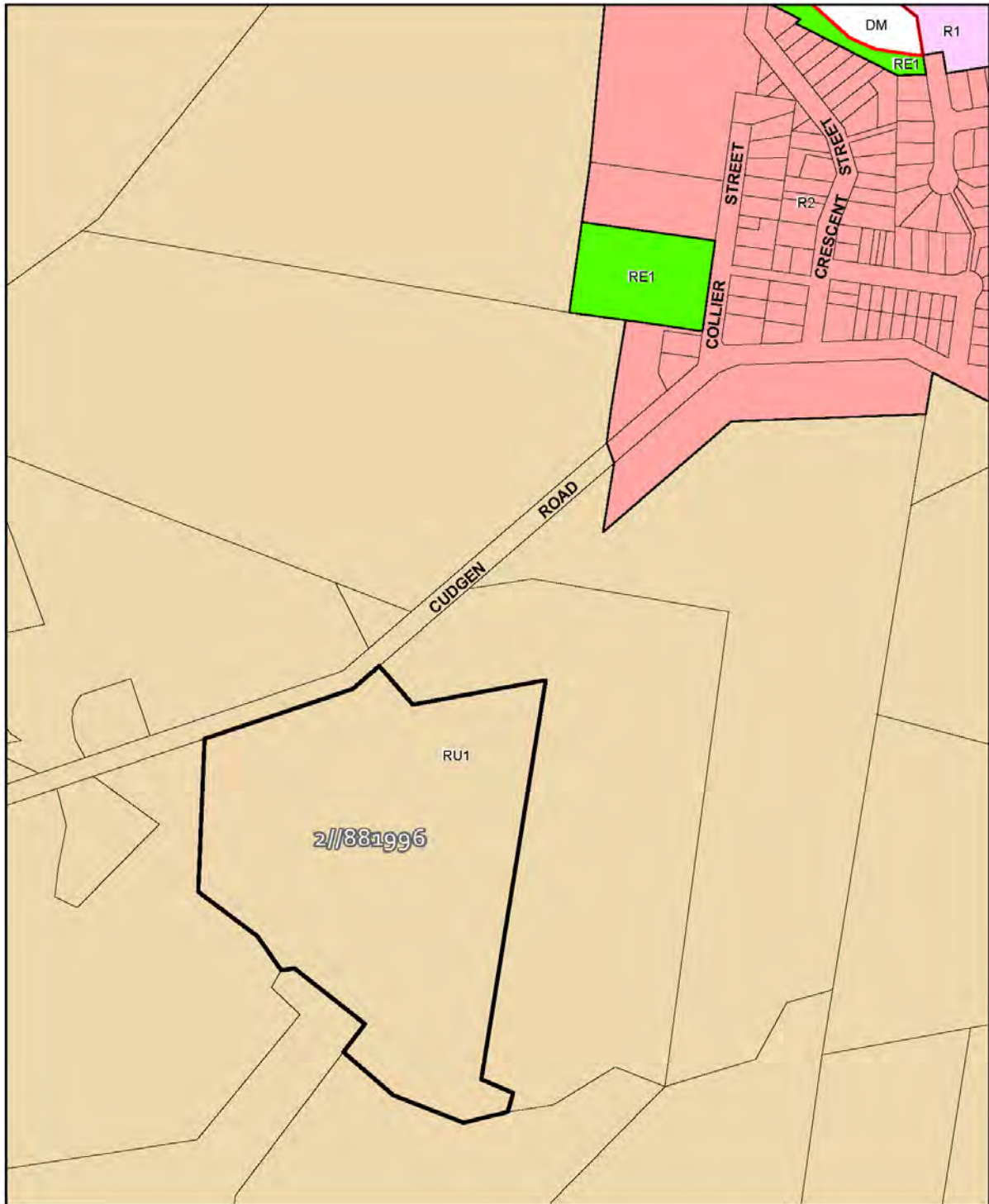
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Author: S.Scott - GIS

Date Printed: 18 July, 2017

ZONING MAP:



Local Environmental Plan 2014

Lot 2 DP 881996
 592 Cudgen Road, Cudgen

TWEED
 SHIRE COUNCIL
 Civic and Cultural Centre
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Date Printed: 10 July 2017

AERIAL PHOTOGRAPH:



1:2,500 © AA Photos
0 10 20 30 40M
AA Photos
Map File Size: 1609KB, 1609KB
Metadata: 2015-08-18 10:41:00
Date: 18/08/2015 10:41:00

GDA

Aerial Photography 2015

Lot 2 DP 881996
592 C Edge 1 Road, C Edge 1

Queensland Government
Department of Transport and Main Roads
Queensland Department of Environment and Heritage Protection

PC66000
1: 10/08/2015 10:41:00
2: 10/08/2015 10:41:00
3: 10/08/2015 10:41:00

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OPTIONS:

1. Advises the owners of No. 592 Cudgen Road, Cudgen that Council is of the opinion for the purposes of Schedule 3 Part 1 (6) (b) of the NSW Environmental Planning and Assessment Act Regulation 2000 that the proposed microbrewery will not have a significant effect on the amenity of residential zone neighbourhood that is located within 500 metres of the proposed site by reason of odour, traffic or waste.
2. Advise the owners of No. 592 Cudgen Road, Cudgen that Council is of the opinion for the purposes of Schedule 3 Part 1 (6) (b) of the NSW Environmental Planning and Assessment Act Regulation 2000 that the proposed microbrewery will have a significant effect on the amenity of residential zone neighbourhood that is located within 500 metres of the proposed site by reason of odour, traffic or waste and the proposed development is designated development and the development application will be required to be accompanied by an Environmental Impact Statement.

Option 1 is recommended

CONCLUSION:

The proposal is very small scale and does not warrant being classified as designated development. The standard development application process is more than adequate for Council and the community to consider and assess the proposal and its impacts.

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Letter from the owner dated 4 July 2017 (ECM 4645241)

6 [PR-PC] Pocket Herb Noise Assessment - Lot 3 DP 1191598 No. 67 Howards Road, Burringbar

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: DA13/0712

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
- 3.1.6 Environmental (Public) Health - To support public health and environmental safety through education, inspections and enforcement of government rules and regulations.

ROLE: Advocate

SUMMARY OF REPORT:

Background

On 1 April 2014 consent was granted under delegated authority for DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar, for the purpose of a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks.

The facility has been operating since 2016 and noise concerns have been raised with Council by adjacent residences as a result of the operation of fans inside the greenhouse on a 24hr and 7 day basis. In response to the community concerns the applicant was required by Council's Environmental Health section to commission a Noise Impact Study. The Noise impact Study indicates that the operation needed to implement a number of measures to minimise noise impacts and protect the amenity of adjacent residences.

The concerns raised by effected residences were validated by the Noise Impact Study (NIS). The NIS has also proposed mitigation and management measure to ensure noise emissions are reduced to compliant levels, (however the noise may still be audible).

In response to Council's investigation and as recommended by the Noise Impact Study the operator of the micro herb production facility has undertaken proactive measures to ensure noise impacts are minimised including the installation of new and quieter fans on the 22 June 2017 with capabilities to program speed and groupings so that noise emissions can be controlled out of the approved hours of operation.

Subject to further validation of the noise impact assessment results and the application of the proposed management strategies it is anticipated that the operation will not exceed the

adopted noise criteria for daytime and night time periods. The site will be subject to an ongoing monitoring program to ensure compliance with the recommendations of this report.

Council's Response to Concerns

In response to community concerns raised from neighbouring residential properties the operator was requested to submit a Noise Impact Study (NIS) carried out by a suitably qualified and experienced acoustic consultant.

The report was requested in accordance with Condition 48 of Development Consent DA13/0712 which states that:

“Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.”

Council's Assessment

The initial Noise Impact Study was provided to Council on 18 May 2017. The report was considered to be deficient and further information was requested.

An amended Noise Impact Study was submitted and after consideration was assessed as being prepared in accordance with the NSW Industrial Noise Policy and by a suitably experienced and qualified consultant.

The amended report predicts that, subject to the application of mitigation measures proposed, there will be no exceedances of the adopted noise criteria, including night time periods external to the closest residence (No. 75 Howards Road), and will not be audible with habitable rooms of adjacent residences. The assessment was only undertaken at 75 Howards Road as this represents the closest adjacent residence and the worst case scenario. Council acknowledges that there are other effected residences and this will be incorporated into the compliance program undertaken by the Environmental Health Unit.

It has been determined that the requirements of Condition 48 have now been satisfied, however, to ensure the ongoing protection of amenity through the application of mitigation verification and management measures, it is recommended that the Operator provide to Council the following additional measures:

- Preparation and submission of an Operation Management Plan reflecting the requirements identified in the Environmental Noise Impact Report (Reference: 17053 report REV 1) dated 16 May 2017.
- Verification testing of the new fans installed on the 22 June 2017 for greenhouse 1 including recommendations for further mitigation where identified (To be undertaken and submitted to Council within 60 days from the commencement of operation of Greenhouse 1).

- Completion of a Noise Impact Assessment must be undertaken prior to the operation of Greenhouse 2. The assessment is to include the potential cumulative impacts (additive impacts) from the operation of both greenhouses.
- Verification testing for operation of both greenhouses including recommendations for further mitigations where required (To be undertaken and submitted to Council within 60 days from the commencement of operation of Greenhouse 2).

Further to the above recommendations, there are statutory tools for the management of noise that Council can apply to the management and regulation of the noise impact. At this stage the operator has been cooperative and therefore statutory options are not being pursued or recommended.

The statutory tools include either the use of a Noise Control Notice or Prevention Notice in accordance with the Protection of Environment Operations (POEO) Act 1997.

Should the residents affected be dissatisfied with the response from Council they have the option of seeking a noise abatement order through the local court.

Subject to further validation of the noise impact assessment results and the application of the proposed management strategies it is anticipated that the operation will not exceed the adopted noise criteria for daytime and night time periods. The site will be subject to an ongoing monitoring program to ensure compliance with the recommendations of this report.

Compliance Monitoring Capacity

Council's Environmental Health team have the technical ability and equipment to undertake a proactive noise monitoring program to ensure compliance with the recommendation of this report.

It is proposed to undertake ongoing noise monitoring of the facility to validate the outcomes of the Noise Impact Assessment and to validate any future concerns raised by all adjacent residences. Our focus has been on the nearest affected premises and this will be expanded.

RECOMMENDATION:

That Council, in respect of the compliance actions taken in respect of DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar, receives and notes this report on the alleged noise impacts from the operation and endorses the following:

- (a) Operator to prepare and submit an Operation Management Plan reflecting the requirements identified in the Noise Impact Assessment;**
- (b) Operator to provide verification testing for greenhouse 1 including recommendations for further mitigation where identified and submit this to Council within 60 days of the commencement of operation of Greenhouse 1);**
- (c) Operator to submit to the satisfaction of the General Manager or his delegate a Noise Impact Assessment undertaken prior to the operation of Greenhouse 2.**

The assessment is to include the potential cumulative impacts (combined impacts) from the operation of both greenhouses; and

- (d) Operator to provide verification testing for the operation of both greenhouses including recommendations for further mitigations where required and submit this to Council within 60 days of the commencement of operation of Greenhouse 2).**

REPORT:

Background

On 1 April 2014 consent was granted for DA13/0712 relating to land described as Lot 3 DP 1191598 for the purpose of a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks. The original proposal did not include the operation of fans inside of the greenhouses on a 24hr and 7 day basis. However general conditions were applied to the consent to allow Council to respond to any noise concerns in a manner that is currently underway.

The operation of fans 24hrs a day does not breach the hours of operation which are currently 7am – 5pm (in the same way an ice machine remains on in a club). However, a noise nuisance cannot be created. This is why action is being taken under POEO Act, by the Environmental Health section, rather than a planning compliance action by Compliance.

The facility has been in operating since 2016 and has been the subject of ongoing noise complaints relating to the 24hr operation of fans inside of the greenhouses. It has been alleged that the noise is impacting on adjacent residences during night time hours outside of the approved operation hours.

As a result of complaints Noise Impact Study was requested in accordance with Condition 48 of Development Consent DA13/0712 which states that:

“Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council’s authorised officer.”

A Noise Impact Study (NIS) (attached) was provided to Council on 18 May 2017. The NIS was considered to be deficient and further information was requested. The operator was requested on Tuesday the 23 May 2017 to submit an amended report.

An amended NIS (attached) was submitted on the 6 June 2017 and a summary of the report and the Officers assessment is provided within this report.

Description of Subject Site

The subject site is known as Lot 3 DP 1191598, Parish Murwillumbah. The site is accessed from Howards Road, via Cudgera Creek Road. Under Tweed Local Environmental Plan the land is zoned RU2 Rural Landscape.

The site is generally surrounded by rural holdings, rural residential and agricultural uses.

The location of the operation in the context of adjacent dwellings is provided in Photo Plate 1. The closest dwelling is located at 75 Howards Rd and is located within 50m of the subject property.

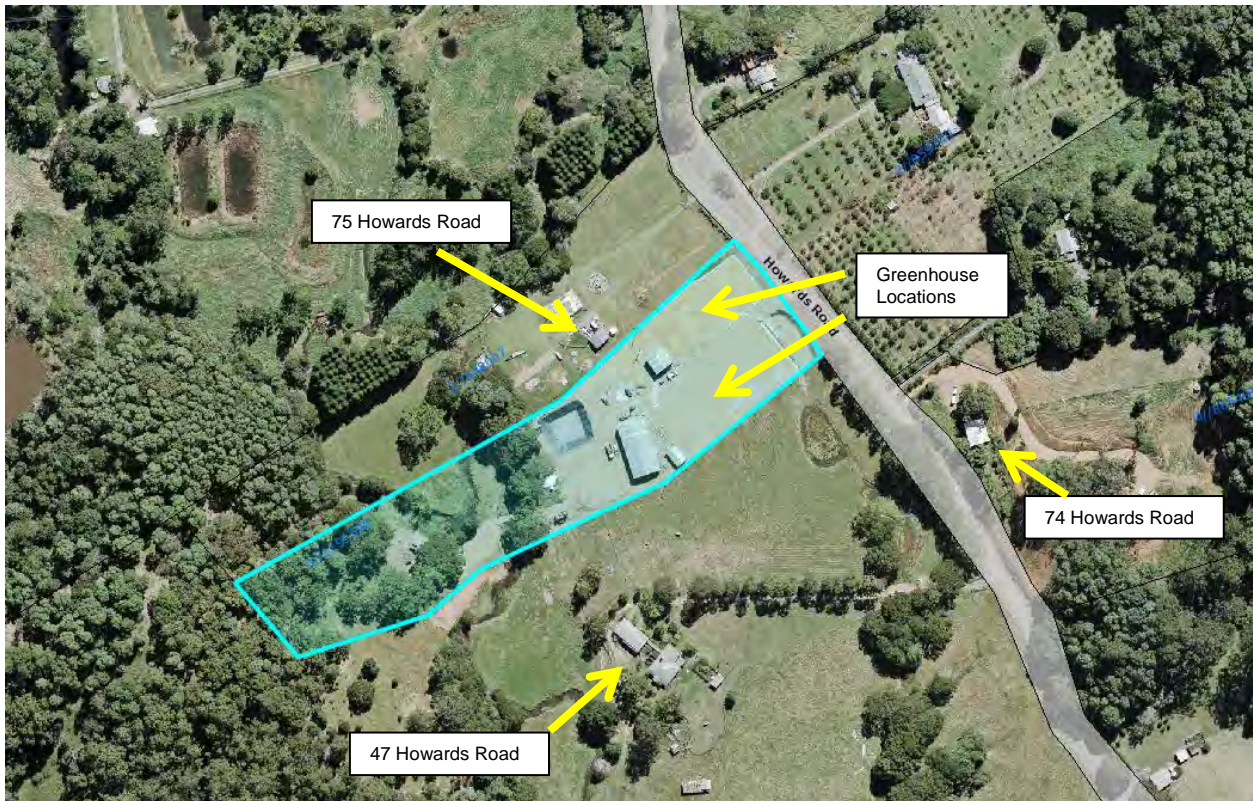


Photo Plate 1. Location of the operation and closest adjacent dwellings.

Summary of Complaints Raised by Adjacent Receptors

A search of Council records demonstrates that the operations have been the subject of ongoing noise concerns since November 2016. The concerns have been largely relating to noise generated by the facility on a 24hr and 7 day basis.

Other matters raised including alleged water pollution and the operation of plant are being dealt with separately to this report. Considering the close proximity of adjacent dwellings Council has taken the concerns of adjacent property owners very seriously and the proposed recommendations are considered adequate to protect their ongoing amenity.

Summary of Noise Impact Report

The NIS has been prepared in general accordance with the NSW Industrial Noise Policy and by a suitably experienced and qualified consultant.

The main points concluded in the amended report include the following:

- The assessment determined that the noise from the previously installed ventilation system exceeded the determined noise limit criteria and further mitigation was required.
- Recommendations were placed in regards to the replacement of the entire fan system with capabilities to program speed and groupings.
- The amended report specifies that the new fans are to operate as below:
 - between 6pm to 7am fans are to be run at low speed in separate groupings running only half the fans
 - between 7am to 6pm all fans may be in operation at low speed

- between 7am to 6pm fans are to can be run at high speed in separate groupings with limited fans as detailed in the amended report
- Predicted noise modelling indicates that the recommended fan speeds and groupings of new fans will meet the adopted noise limits of 35dB(A) Leq at nights and 40dB(A) Leq in the daytime.
- The adopted noise limits are in accordance with limits established in the industrial Noise Policy and are considered adequate for the protection of amenity.
- Following installation of the new fans and controller, it is recommended that a noise level test be undertaken to confirm noise emissions are within the adopted noise criteria.
- Further acoustical analysis will be required to determine the additive impact of the second greenhouse. The consultant identified that as the second greenhouse is closer to the nearest dwelling and the additive effect of the existing ventilation system more stringent controls will apply. This will form the basis of a separate assessment.

Important Note: Works have now been completed by the operator with the installation of new fans on the 22 June 2017 with capabilities to program speed and groupings.

Important Note: The amended report states '*Rating Background Levels were not calculated in accordance with the "NSW Industrial Noise Policy" due to weather effects*'. The consultant assessed background measurements against the minimum background noise levels using single readings from the 15min measurement blocks that the logger was set to record. It is considered that the 30dB background level is conservative and adequately represents background noise levels experienced in rural areas.

Environmental Health Officers Assessment Notes

Key discussion points are listed below:

- The recommended Amenity Criteria (adopted criteria) for rural daytime periods is 50dBA and night time is 40dBA as determined from *Table 2.1* of the NSW Industrial Noise Policy.
- The resulting criterion for the development in the amended report was determined by comparing the amenity and intrusive noise criteria and applying the lower of the 2 criteria. The criteria for the night time period is 35dBA. Predicted noise modelling suggests that the noise impact at the façade of the building during the night time hours will be 35dBA. The apparent loudness at 5dBA above the background is audible at the façade. The NSW Noise Guide for Local Government states '*The level of attenuation across a building façade with an open window is generally around 10dB(A). It may vary several DB either side of this, mainly depending upon the size of any window*'. The amended report applies a conservative 7dB(A) difference inside the building with the predicted noise inside the building being 28dB(A) which is under the recorded background. Therefore noise is not anticipated to be audible internal to the buildings.
- The predicted noise of the new fans will not exceed the determined noise limit criteria however the predicted noise level will be audible 1m from the façade of the nearest dwelling during both daytime and night time periods and outside of the approved operating hours of the facility.
- Greenhouse 2 is not operational, the report states '*once ventilation requirements are determined, further acoustical analysis will be required to determine the additive impact of both greenhouse ventilation systems in operation*'. The report recognises

that the 2nd greenhouse is closer to the nearest dwelling and that more stringent controls will be required.

Following the assessment of the NIS it is proposed to pursue the following information from the operator.

- a. Operator to prepare and submit an Operation Management Plan reflecting the requirements identified in the Noise Impact Assessment;
- b. Operator to provide verification testing for greenhouse 1 including recommendations for further mitigation where identified and submit this to Council within 60 days of the commencement of operation of Greenhouse 1);
- c. Operator to submit to the satisfaction of the General Manager or his delegate a Noise Impact Assessment undertaken prior to the operation of Greenhouse 2. The assessment is to include the potential cumulative impacts (combined impacts) from the operation of both greenhouses; and
- d. Operator to provide verification testing for the operation of both greenhouses including recommendations for further mitigations where required and submit this to Council within 60 days of the commencement of operation of Greenhouse 2).

Further to the above, there are statutory tools for the management of noise that Council can apply to the management and regulation of the noise impact. At this stage the operator has been cooperative and therefore statutory options are not being pursued or recommended.

The statutory tools include either the use of a Noise Control Notice or Prevention Notice in accordance with the Protection of Environment Operations (POEO) Act 1997.

Subject to further validation of the noise impact assessment results and the application of the proposed management strategies it is anticipated that the operation will not exceed the adopted noise criteria. The site will be subject to an ongoing monitoring program to ensure compliance with the recommendations of this report.

What happens if the affected residents are not supportive of Councils decision?

Should the residents affected be dissatisfied with the response from Council they have the option of seeking a noise abatement order through the local court.

Compliance Monitoring Capacity

Council's Environmental Health Officers have the technical ability and equipment to undertake a proactive program to ensure compliance with the recommendation of this report. It is proposed to undertake ongoing monitoring of the facility to validate the outcome of the Noise Impact Assessment and any future concerns raised by adjacent residences.

OPTIONS:

1. Council receives and notes this report on the alleged noise impacts from the operation and that the Operator provides the following information:
 - a. Operator to prepare and submit an Operation Management Plan reflecting the requirements identified in the Noise Impact Assessment.

- b. Operator to provide Verification testing for greenhouse 1 including recommendations for further mitigation where identified (To be undertaken and submitted to Council within 60 days from the commencement of operation of Greenhouse 1).
 - c. Operator to submit to the satisfaction of the General Manager or his delegate a Noise Impact Assessment undertaken prior to the operation of Greenhouse 2. The assessment is to include the potential cumulative impacts (additive impacts) from the operation of both greenhouses.
 - d. Operator to provide Verification testing for the operation of both greenhouses including recommendations for further mitigations where required (To be undertaken and submitted to Council within 60 days from the commencement of operation of Greenhouse 2).
2. Council resolves to seek a further report on the options for more stringent enforcement action under the provisions of the Protection of the Environment Operations Act 1997.

The Council officers recommend Option 1 because of the ongoing cooperation received from the operator of the facility.

CONCLUSION:

The Environmental Noise Impact Report identified that the previous fans were intrusive and clearly created a noise impact to the adjacent residences.

The amended report has been prepared in general accordance with the NSW Industrial Noise Policy and by a suitably experienced and qualified consultant. Mitigation measures include the proposal of new fans which were installed by the Operator on the 22 June 2017.

Verification testing of the new fans and further consultation with the noise consultant is required prior to the installation of the fans in greenhouse 2 have been recommended. An operational management plan reflecting the requirements in the Noise Impact Report dated 16 May 2017 is also recommended.

Further to the above, there are statutory tools for offensive noise that Council can apply to the management and regulation of the noise impact. The statutory tools include either the use of a Noise Control Notice or Prevention Notice in accordance with the Protection of Environment Operations (POEO) Act 1997. Should the residents affected be dissatisfied with the response from Council they have the option of seeking a noise abatement order through the local court.

Subject to further validation of the noise impact assessment results and the application of the proposed management strategies it is anticipated that the operation will not exceed the adopted noise criteria.

The site and all affected premises will be subject to an ongoing monitoring program by Council's Environmental Health Section to ensure compliance with the recommendations of this report. It is important to note that it is possible that the noise will be reduced to accepted standards, but this may still be audible and remain a concern to residents.

To date the site owner has been cooperative with Council and has completed works to mitigate noise impacts from the operation. No enforcement action is recommended unless cooperation is no longer forthcoming or accepted noise standards are not achieved.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Protection of the Environment Operations Act 1997

d. Communication/Engagement:

Throughout the assessment process consultation has been ongoing with all effected parties and the operator of the facility and this will continue with the aim to resolve matters to the satisfaction of all parties.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Environmental Noise Impact Report submitted on 18 May 2017 (ECM 4647037)

Attachment 2. Amended Environmental Noise Impact Report submitted on 6 June 2017 (ECM 4647039)

7 [PR-PC] Kings Forest Project Application Modification (Council Reference DA11/0565.03 Department's Reference MP08/0194 MOD 4) which Seeks Approval for a Revised Koala Plan of Management for Kings Forest Development No. 86 Melaleuca Road, Kings Forest

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:

On 21 June 2017 Council received a request from the NSW Department of Planning & Environment to review a proposed Modification to the Kings Forest Project Application that seeks to revise the Koala Plan of Management (KPoM) for Kings Forest. The proposed Modification also seeks to make amendments to various State Conditions for the Project Approval. The proposed changes were advertised as follows:

The KPOM seeks to amend the location and quantity of koala habitat offsets within development precincts 1 to 14 by decreasing the area of koala habitat offsets from 71.12 hectares (to be planted with 10,294 koala food trees and 10,294 non-koala food trees) to 56.71 hectares (to be planted with 21,864 koala food trees only).

This includes planting of koala food trees within a 50 metre wide portion of the east-west wildlife corridor required under Term B4 of the Kings Forest Concept Plan Approval.

The Modification Request also seeks approval to amend conditions A13, 3, 45, 46 and 147 and Statement of Commitment 18 of the Project Approval to:

- *Remove the requirement to plant koala food trees on a 27-hectare parcel of land within the Cudgen Nature Reserve;*
- *Revise the 'commencement of works' definition to provide consistency with the approval issued under sections 130 and 133 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Approval 2012/6328);*
- *Revise the locations of the koala fencing and fauna underpasses, and amend the timing for the construction of this infrastructure;*

- *Remove the requirement to provide traffic calming devices to manage potential koala movements across the site;*
- *Remove references to the KPOM dated August 2012 and insert references to the revised KPOM.*

Note: the existing State approval is internally inconsistent. Existing Project Condition 41(1) Buffer Management Plans refers to a Koala Plan which has 71ha of koala tree planting but the existing Project Condition 45(1)(c) Koala Plan of Management refers to different plan with 54.9ha of koala compensatory habitat.

It is considered that the changes can be further summarised as follows:

- removing the requirement to plant koala food trees on a 27 hectare parcel of land within the Cudgen Nature Reserve;
- partially implementing the required 100m E-W corridor with plantings in 50m;
- making changes to the location of other koala habitat offsets within the environmental protection areas and ecological buffers on the site;
- making changes to the timing of the development to allow offsetting and other works to proceed without triggering the commencement of the proposed KPOM; and
- removing the requirement for fauna exclusion fencing and underpasses for roads through environmental areas and amending the timing for the construction of this infrastructure.

The proponent argues that these changes are consistent with a separate approval they were required to obtain for the koala under the Commonwealth *Environmental Protection and Biodiversity Conservation Act*.

A similar Modification to the Project Application was lodged in July 2015 with an associated Modification to the Concept Application in an attempt to align the Federal Approval with the previously issued State Approvals. However it is commonly acknowledged that both the State Approvals and the Federal Approvals apply independently of one another. Subsequently these applications did not proceed to public exhibition in their previous format as Council, the NSW Office of Environment & Heritage and the NSW Department of Planning & Environment were all concerned that the proposal did not appropriately address the State Conditions of approval.

The current Modification to the Project Application is NOT accompanied by a Modification to the Concept Plan and therefore needs to be assessed having regard to the existing conditions within the State Approved Concept Plan.

In its current form the proposed modification is fundamentally inconsistent with the State conditions of approval, and if approved, it is considered that this would see a worse outcome for koalas.

Some of the more substantive concerns include:

- A substantially reduced area for koala habitat offsets.
- Many areas proposed as koala offsets overlap with existing habitat. Such areas do not represent genuine offsets.

- The proposed koala offsets include a large proportion of secondary rather than primary koala habitat. This will do little to increase koala numbers. Koala offsetting should focus on creating primary koala habitat which involves creating vegetation communities that support a high proportion of preferred koala food trees.
- The proposal only partially implements the required E-W wildlife corridor.
- The proposal removes fencing and underpasses where roads traverse environmental areas. These measures will make koalas and other fauna vulnerable to road strike.
- The proposed KPOM does not provide for any management of existing koala habitat.
- The proposed KPOM does not adequately consider issues arising from a number of related environmental management plans that need to be considered. For example, there are no specific provisions to manage the potential impacts of bushfire on koala even though this is a major threat to the Tweed Coast koalas.
- The proposed KPOM does not acknowledge or reconcile the relevant conditions of approval.
 - The proponent also seeks to amend the timing and sequencing of koala habitat offsets. This would potentially allow these works to commence before the KPOM and the related environmental management plans were finalised. These changes would potentially also permit clearing to occur in advance of the delivery of the required offsets.
 - As the requirements to manage and restore habitat within the environmental protection zones and ecological buffers exist independently of the koala plan under the existing State approval, the proposed changes also represents an opportunity to achieve a good environmental outcome and build positive relationships with the community at little additional cost.

Nonetheless, Council and the State agencies are of the view that a sound ecological outcome can be achieved for koalas (and other flora and fauna) at Kings Forest that is generally consistent with both the State and Commonwealth approvals without adversely affecting the approved development envelope.

A comprehensive recommendation is made within this report to help facilitate a more integrated outcome.

This report seeks endorsement of the Officer's Assessment enclosed in this report.

RECOMMENDATION:

That Council endorse that a copy of this report be provided to the NSW Department of Planning as Council's submission on the Kings Forest Project Application Modification (Council Reference DA11/0565.03 Departments Reference Number MP08/0194 MOD 4) which seeks approval for a revised Koala Plan of Management for the Kings Forest Development No. 86 Melaleuca Road, Kings Forest.

REPORT:

Applicant: Project 28 Pty Limited

Owner: Project 28 Pty Limited

Location: Lot 6 DP 875446 Depot Road, Kings Forest; Lot 2 DP 819015 No. 102 Melaleuca Road, Duranbah; Lot 38A DP 13727 No. 102 Melaleuca Road, Kings Forest; Lot 37A DP 13727 No. 126 Melaleuca Road, Kings Forest; Lot 7 DP 875447 No. 231 Tweed Coast Road, Kings Forest; Lot 1 DP 781633 & Lot 272 DP 755701 & Lot 323 DP 755701 & Lot 326 DP 755701 & Lot 76 DP 755701 & Part Lot 1 DP 129737 & Part Lot 38B DP 13727 & Part Lot 40 DP 7482 No. 86 Duranbah Road, Kings Forest; Part Lot 1 DP 706497 No. 86 Melaleuca Road, Kings Forest

Zoning: State Environmental Planning Policy (State Significant Precincts) 2005 zones the subject site as follows: 2(c) Urban Expansion, 7(a) Env Prot (Wetlands & Littoral Rainforests and 7(l) Environmental Protection (habitat), Agricultural Buffer (150m) and Ecological Buffer (50m)

Proposal:

The NSW Department of Planning & Environment advertised the application as follows:

The KPOM seeks to amend the location and quantity of koala habitat offsets within development precincts 1 to 14 by decreasing the area of koala habitat offsets from 71.12 hectares (to be planted with 10,294 koala food trees and 10,294 non-koala food trees) to 56.71 hectares (to be planted with 21,864 koala food trees only).

This includes planting of koala food trees within a 50 metre wide portion of the east-west wildlife corridor required under Term B4 of the Kings Forest Concept Plan Approval.

The Modification Request also seeks approval to amend conditions A13, 3, 45, 46 and 147 and Statement of Commitment 18 of the Project Approval to:

- *Remove the requirement to plant koala food trees on a 27-hectare parcel of land within the Cudgen Nature Reserve;*
- *Revise the 'commencement of works' definition to provide consistency with the approval issued under sections 130 and 133 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Approval 2012/6328);*
- *Revise the locations of the koala fencing and fauna underpasses, and amend the timing for the construction of this infrastructure;*
- *Remove the requirement to provide traffic calming devices to manage potential koala movements across the site;*
- *Remove references to the KPOM dated August 2012 and insert references to the revised KPOM.*

Note: the existing State approval is internally inconsistent. Existing Project Condition 41(1) Buffer Management Plans refers to a Koala Plan which has 71ha of koala tree planting but the existing Project Condition 45(1)(c) Koala Plan of Management refers to different plan with 54.9ha of koala compensatory habitat.

It is considered that the changes can be further summarised as follows:

- removing the requirement to plant koala food trees on a 27 hectare parcel of land within the Cudgen Nature Reserve;
- partially implementing the required 100m E-W corridor with plantings in 50m;
- making changes to the location of other koala habitat offsets within the environmental protection areas and ecological buffers on the site;
- making changes to the timing of the development to allow offsetting and other works to proceed without triggering the commencement of the proposed KPOM; and
- removing the requirement for fauna exclusion fencing and underpasses for roads through environmental areas and amending the timing for the construction of this infrastructure.

Background:

In August 2013 the Planning Assessment Commission (PAC) issued an amended approval for Kings Forest Concept Plan 06_1318 MOD 2 and Kings Forest Stage 1 Project Application MP08/0194. The assessment process identified numerous outstanding issues relating to koalas and other flora and fauna. At the time Council provided very detailed comment noting the need for significant review of environmental provisions and management plans. The PAC conditioned the approval to resolve these issues at a later stage.

One of the outstanding issues for the proponent was an independent approval required under the Commonwealth *Environmental Protection and Biodiversity Conservation (EPBC) Act* for the koala and wallum sedge frog. The proponent sought EPBC approval 2013. Unfortunately Council and the State agencies of the Department of Planning and Environment (DoPE) and the Office of Environment and Heritage (OEH) had very little input into this process. In May 2015, Commonwealth approval was granted, however it soon became apparent that there were numerous inconsistencies in the State and Commonwealth approvals which would need to be reconciled at some point in time.

In July 2015 the proponent submitted a proposed modification insisting that the Commonwealth approved koala plan of management should prevail over the revisions that were still required under the State Approval. However it is commonly acknowledged that both the State Approval's and the Federal Approvals apply independently of one another. Furthermore, Council, OEH and DoPE were all concerned that the proposal did not appropriately address the State conditions of approval.

In an effort to progress the resolution of these issues Council convened a number of workshops and teleconferences with relevant agencies (DoPE, OEH and the Commonwealth Department of Environment) over the period from May 2016 to February 2017 with a view to considering how to one or both approvals could be rationalised to achieve a consistent and clear way forward. The proponent was advised that these discussions were occurring and that the agencies would hold further discussions with them in due course.

Some of the issues of particular concern included the following:

- differences between the State and Commonwealth approvals regarding the proposed impact on koala and wallum sedge frog habitat due to the development;
- the overall area of koala habitat offsets proposed under the State and Commonwealth approvals;
- appropriate location for koala offsets;
- overlaps with existing native vegetation;
- the need to accommodate the retention and revegetation of heathland which was not considered by the Commonwealth; and
- the requirement for an E-W wildlife corridor which was not considered by the Commonwealth.

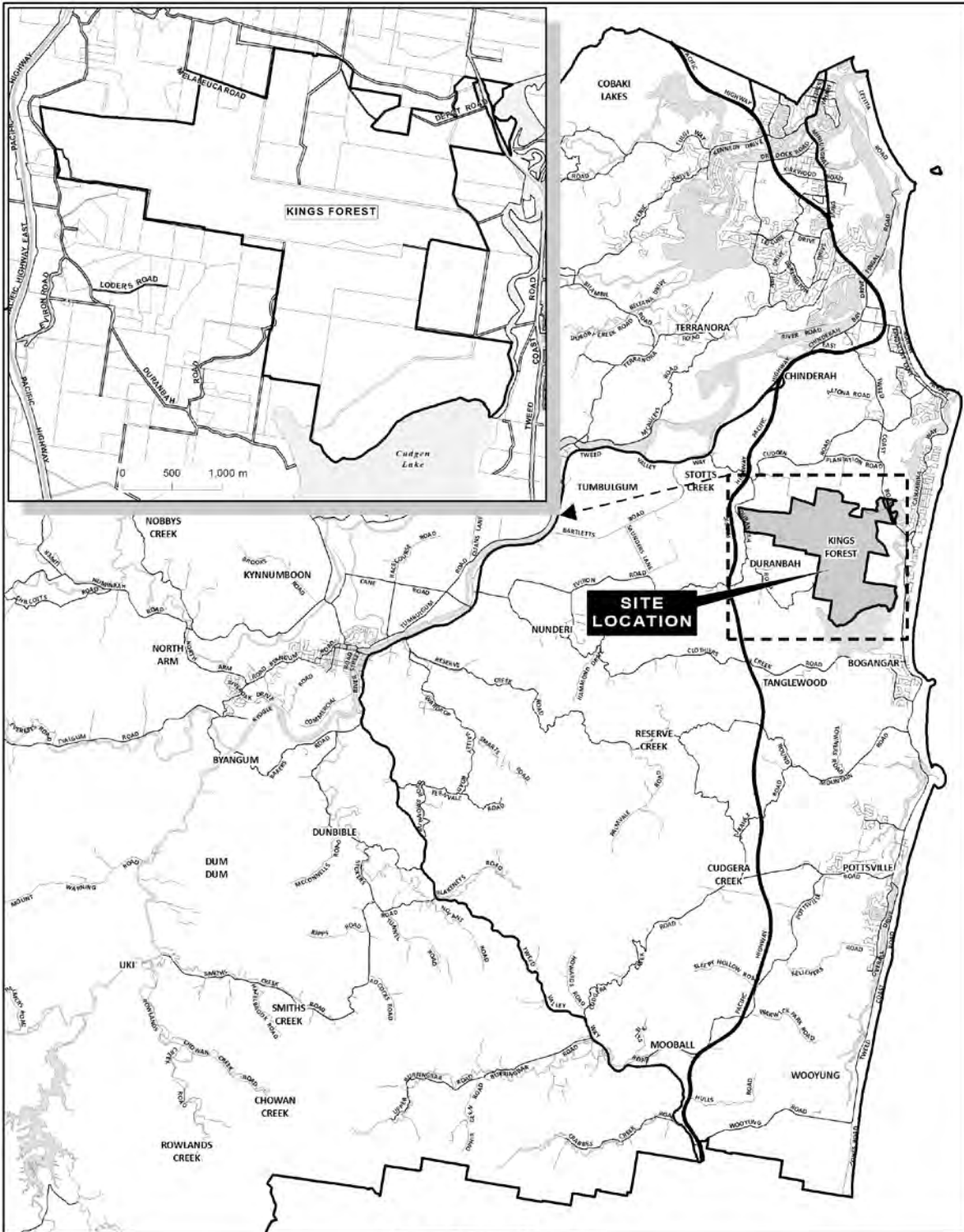
As part of these investigations DoPE wrote to the proponent on 2 August 2016 requesting certain mapping information which would allow all of the relevant requirements to be met. Despite numerous exchanges of information the proponent only partly provided the information requested. Nonetheless the information provided, and additional analysis carried out, suggested that after accounting for swampy areas needed for the creation of wallum sedge frog habitat offsets, there was up to 93ha potentially available for offsetting of koala habitat and heathland onsite within environmental protection zones, the ecological buffers and the proposed E-W wildlife corridor without inappropriate habitat overlaps or encroachment into the development envelope.

Following on from these discussions DoPE wrote again to the proponent (22/2/17; See **Appendix 1**) reminding them that both approvals operate independently and providing additional advice on a future modification. However, rather than continuing to work through the issues, the proponent decided to submit the current modification which does not adequately address the State conditions of approval, justify the proposed changes to them or fully accept the advice provided by the Department.

Nonetheless, Council and the State agencies are of the view that a sound ecological outcome can be achieved for koalas (and other flora and fauna) at Kings Forest that is generally consistent with both the State and Commonwealth approvals without adversely affecting the approved development envelope.

The following report outlines a number of outstanding concerns related to the proposed KPOM and the associated proposed modification of the State conditions of approval. The proposed KPOM has not been assessed against the Commonwealth EPBC approval as Council has no jurisdiction on this matter.

LOCALITY PLAN:



Locality Plan
KINGS FOREST

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Map Projection: Universal Transverse Mercator
Geoid: Datum of Australia 1994
Grid: Map grid of Australia, Zone 56

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E | planning@tweed.nsw.gov.au

GDA

© Data Provider: 30 August Planning & Urban Design Unit
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AERIAL 2015:



AERIAL PHOTO - April 2015
KINGS FOREST

SOURCE:
Aerial imagery was captured
April 2015 © AAM Pty Ltd and NSW LPI

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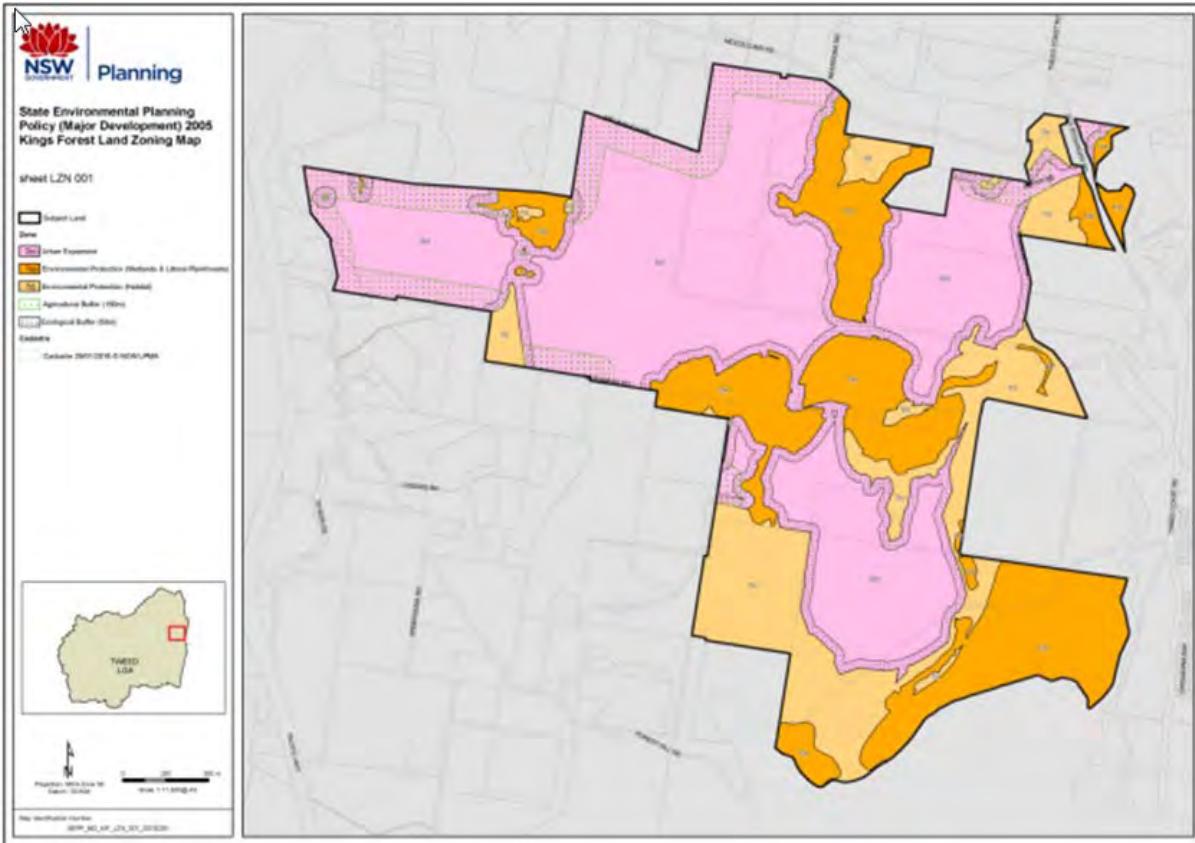
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Author: J. Batheiser - Strategic Planning & Urban Design Unit

Date Printed: 28 October, 2015

EXISTING ZONING MAP:



EXISTING CONCEPT PLAN:



	CLIENT PROJECT 28 Pty Ltd	KINGS FOREST STAGE 1 PROJECT APPLICATION REVISED CONCEPT PLAN	REVISIONS	 RPS Australia East Pty Ltd ACN 140 292 762 25th Floor, 110 Sturges Street Suite 4, (Riverside Quay) Corner Park Street, Brisbane, QLD 4000 PO Box 1068 Brisbane, QLD 4000 T: +61 7 555 9890 F: +61 7 555 9899 W: rpsgroup.com.au
	Date 5 DECEMBER 2013		DATE / TIME	
	Drawn -		21.03.12 (SAB)	
	Checked BUB		5.12.13 (BUB)	
	Project CUDGEN			
County ROUS	SCALE: 1:20000 (N3)	Local Authority Tweed S.C.	DWG Ref 113651-PPS-40(CONCEPT PLAN)	PLAN No. 01

Assessment Considerations

Reduced area for koala habitat offsets

The existing Project Application Condition 45 (PC 45) of the State approval (See also Appendix 2 which contains a list of relevant State approval conditions) includes a package of measures designed to offset the loss of koala habitat on the site:

Koala Plan of Management

- 45 The Koala Plan of Management shall be amended as follows:
- 1) A revised offset strategy for the loss of Koala food trees incorporating the following:
 - a. the restoration and planting of Koala food trees offsite (a 27ha area of land has been nominated by OEH and identified in Map 1 (attached)).
 - b. planting of Koala food trees in the new east-west corridor as required by Term B4 of the Concept Plan approval.
 - c. planting of Koala food trees in other suitable locations across the site within each relevant precinct of the development in general accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014", and as modified by any approval of the revised Koala Plan of Management under this condition. The timing of plantings shall be in accordance with the approved revised Koala Plan of Management required by Condition 45(2).
 - d. Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating
 - 2) The amended KPoM approval shall include details of the Koala food tree planting schedule with numbers and staging and be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environmental Protection and Biodiversity Conservation Act* or prior to issue of any construction certificate, whichever occurs first.
 - 3) The amended KPoM shall have regard to any determination of the NSW Scientific Committee established by the *Threatened Species conservation Act 1995*.

This offset strategy was derived after careful consideration of the issues raised during the assessment of the Project Application (see Director General's report 2013 pp 35-40) and includes the planting of koala food trees (and associated habitat restoration) in the following locations:

- offsite at Cudgen Nature Reserve (45(1)a; 27ha; see Fig 1)
- within the new east-west corridor (45(1)b; 11ha approx.; see Fig 2)
- at other suitable locations onsite as per (45(1)c; 54.9ha; see Fig 3)



Map 1: Location of ex-Banana Land, nominated by OEH as potential land for Koala food tree planting (condition 45).

Figure 2 Offsite Koala offset area required under Project Condition 45(1)a

ATTACHMENT A

EAST-WEST WILDLIFE CORRIDOR



Potential route of new southern east-west corridor, as required by modified term B4 of the concept plan approval

Figure 3 E-W Wildlife Corridor required under Concept Plan Condition B4 and Project Condition 45(1)b

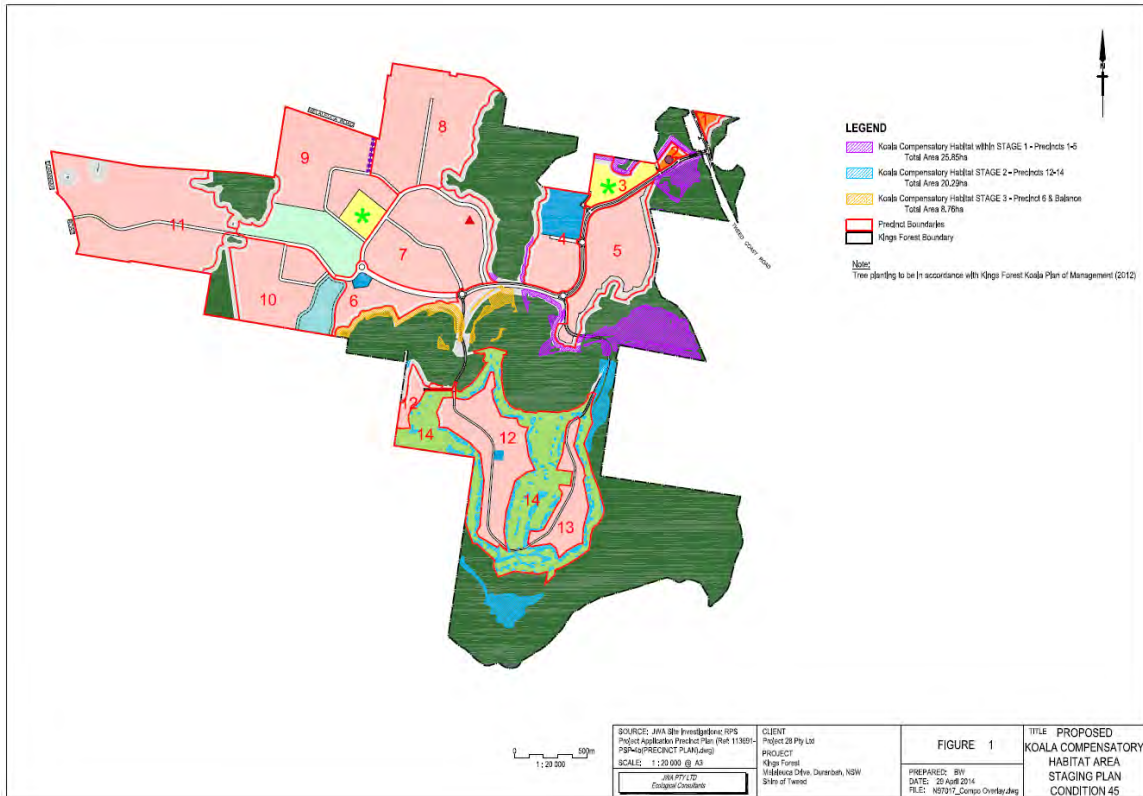


Figure 4 Koala compensatory habitat required under the existing Project Condition 45(1)c

It is also important to note that the existing offset package was based on 6.68ha of loss. Further analysis carried out for under the Commonwealth EPBC documentation now indicates that some 15ha of koala habitat will be removed (Fig 4). The existing Project Condition 45 does not account for this increase in the amount of koala habitat to be cleared.

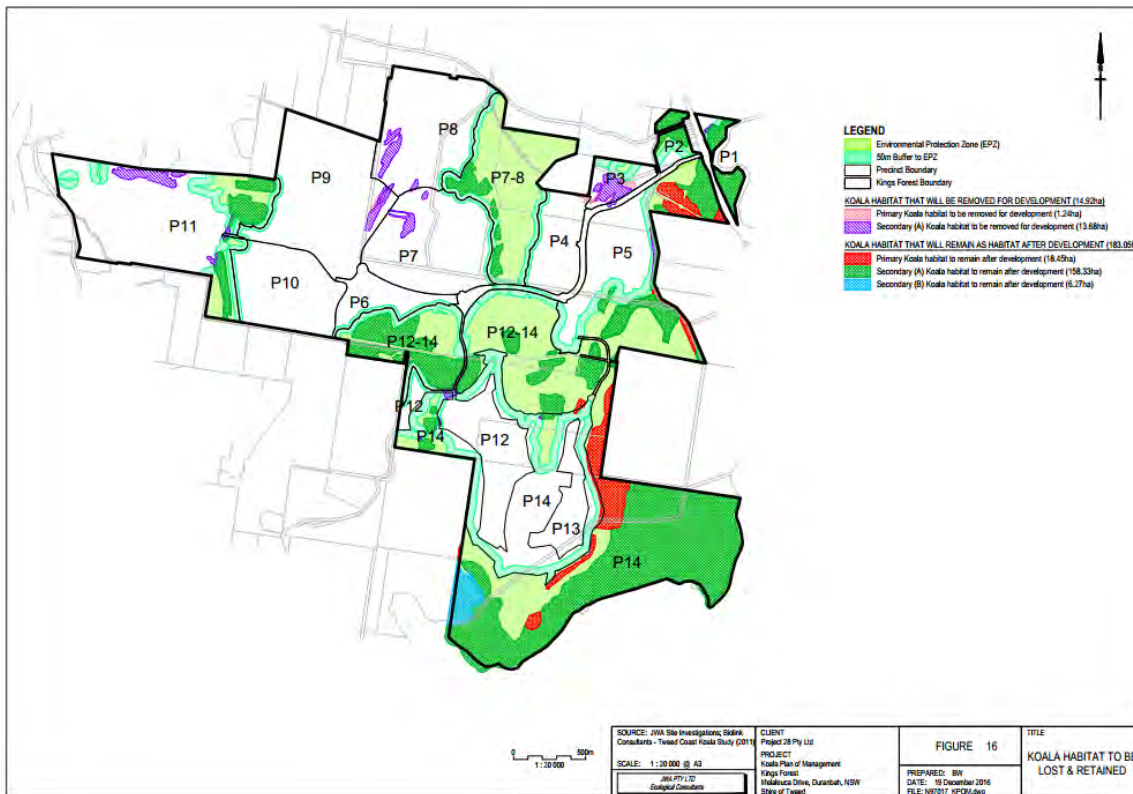


Figure 5 Areas of existing koala habitat (14.92ha) to be removed for the development (purple and pink hatch)

The proponent proposes amending Project Condition 45 as follows:

Koala Plan of Management

45.

- 1) a. **All compensatory Koala habitat plantings shall be carried out in accordance with the Revised Koala Plan of Management dated 19 May 2017 (Issue 9).**
 - b. Planting of Koala food trees in the new east-west corridor as required by Term B4 of the Concept Plan approval;
 - c. planting of Koala food trees in other suitable locations across the site within each relevant precinct of the development in general accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014", and as modified by any approval of the revised Koala Plan of Management under this condition. The timing of plantings shall be in accordance with the approved revised Koala Plan of Management required by Condition 45(2);
 - d. Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating.
- 2) The amended KPoM approval shall include details of the Koala food tree planting schedule with numbers and staging and be prepared in consultation with council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act or prior to issue of any construction certificate, whichever occurs first.

- 3) The amended KPOM shall have regard to any determination of the NSW Scientific Committee established by the Threatened Species Conservation Act 1995

Based on the content of the proposed KPOM it appears the proponent is seeking to reduce the overall koala habitat offset requirement, to the creation of 56.7ha of koala habitat onsite. This compares to an estimated total of 93ha of koala habitat to be re-established under the existing State approval.

The proposed amendment to Project Condition 45:

- removes the requirement for offsite planting of 27ha at Cudgen Nature Reserve;
- only partially implements the proposed E-W corridor; and
- refers to a different map for onsite offsets (Fig 5)

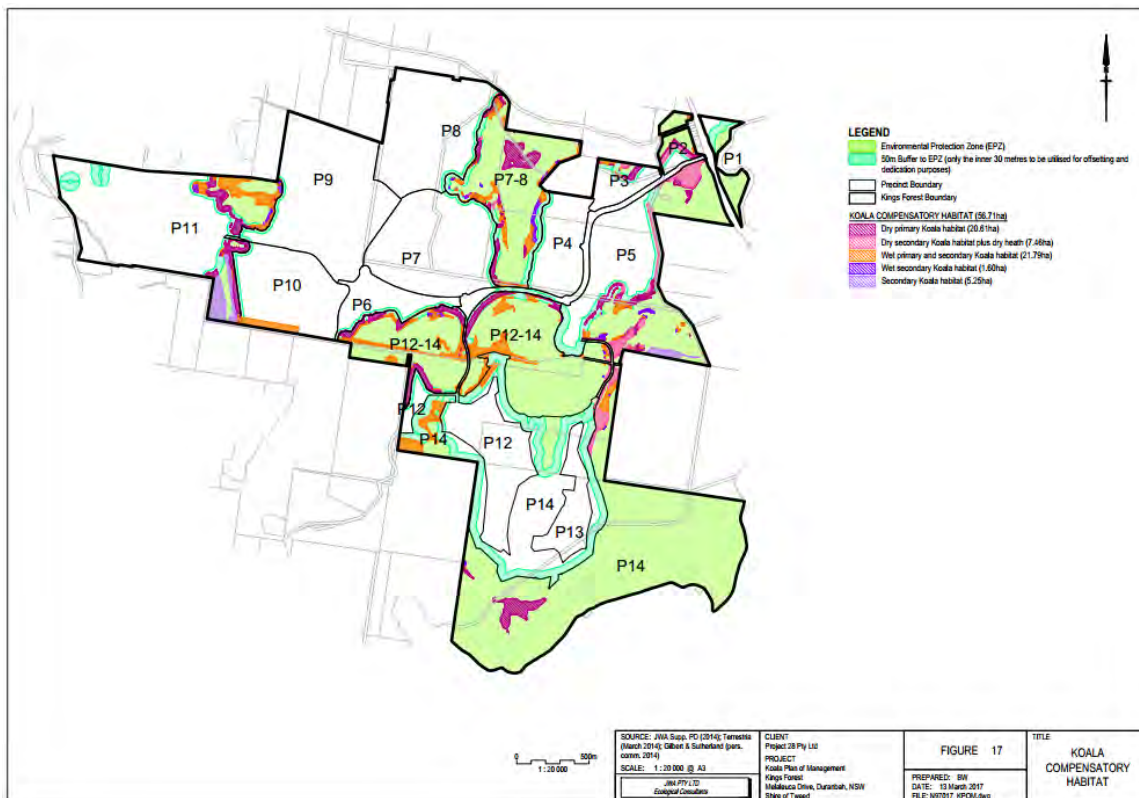


Figure 6 Proposed koala habitat offset areas (56.7ha; shown in pink, purple and orange hatching)

The proponent argues these changes on basis of the following:

1. The total koala offset package under the State approval represents an impact to offset ratio of “nearly 7 times the loss” (actually $93/14.92 = 6.23$) which is excessive considering the Commonwealth approval only required 43.45ha of koala habitat to be created.
2. The required offsite offset at Cudgen Nature Reserve is onerous, unreasonable and there is insufficient nexus between the impact and the offset to justify the condition.

3. The proponent will comply with the requirement under Concept Plan Condition B4 for the proposed E-W corridor.
4. Areas selected for onsite offsets are, in the opinion of the proponents consultants, "suitable for offset purposes".

The following points are made in relation to these arguments:

1. Since the time of the Concept Plan and Project Approvals, the Tweed Coast koalas have been listed as an Endangered Population and there has been an increased focus on koala conservation through the implementation of the Tweed Coast Comprehensive Koala Plan of Management. It is highly unlikely that a contemporary development application to clear 15ha of koala habitat would be supported by Council. It should also be recalled that at the time of the Project Approval the proponent claimed that only 6.68ha of koala habitat would be cleared.
2. The 27ha offsite offset at Cudgen Nature Reserve is part of the overall package under Project Condition 45(1). While it is preferable for offsets to be close to the impact, it is common practice for offsets to be offsite, sometimes hundreds of kilometres from the impact. From this perspective the "nexus" is related to the quantum of the impact not the location of the offset. It should also be noted that although, some of the 27ha was planted under an unrelated grant program, much of this has not progressed well and there is still likely to be land available at Cudgen Nature Reserve for offsetting.
3. E-W corridor is another part of the overall offset strategy under Project Condition 45(1) but is only partially implemented under the proposed KPOM. This issue is addressed in more detail below.
4. Based on the proponent's own mapping many of the areas proposed as offsets appear to be existing native vegetation. The argument that such areas are "suitable for offset purposes" is not accepted. This issue is addressed in more detail below.
5. Perhaps, most importantly, it must also be recognised that koala habitat and other offsets have been allowed to occur within the environmental protection areas and the ecological buffers at the Kings Forest site when these areas needed to be restored in any case. For example the Major Projects SEPP (Part 6 Kings Forest site) requires:
 - (3) Development on land within an ecological buffer is to:
 - (a) incorporate effective measures to manage wetlands or areas of particular habitat significance, and
 - (b) be designed and sited to maintain connectivity of vegetation and minimise vegetation clearing, soil disturbance and alterations to the rate, volume or quality of surface and ground-water flows, and

- (c) retain and maintain all existing native vegetation outside the area immediately required for the development, and
- (d) incorporate measures to regenerate native vegetation for all disturbed areas within the buffer, and
- (e) incorporate appropriate stormwater and erosion control measures to protect the buffer from surface water run-off or other disturbance.

Similarly, the Director General's Requirements for the original Concept Plan in 2007 required the proponent to "demonstrate the development footprint will not adversely impact on native flora and fauna" and ensure that "there is no net loss of native vegetation values" This resulted in the Concept Plan approval in 2010 which contained Condition C2 that required (among other things):

- (1) the short, medium and long term measures to be implemented to rehabilitate degraded areas, and manage remnant vegetation and habitat within the buffers and Environmental Protection zoned land within the site,
- (7) the design, regeneration/revegetation and management of the east-west wildlife corridor/s.

This was followed by Director General' Requirements for the Stage 1 Project Approval (e.g. DGR 9.10) and conditions of approval which reinforced this requirement to restore and manage the environmental values of the site over the long term.

The inclusion of offsets in these areas already represents a very significant compromise to what was originally envisaged for the site.

Under these circumstances it is difficult to understand how the koala offset package could be seen as onerous and unreasonable.

Other aspects of the proposed amendment to Project Condition 45 are also problematic:

- The proposed Condition 45(1)b appears superfluous as it refers to the planting of koala food trees in accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014" (Fig 3) but goes on to imply that this would be overridden by Condition 45(1)a. Given that the plan referred to (i.e. Fig 3) is not included in the proposed KPOM, it would appear that this subclause has no work to do.
- The existing Project Condition 45(3) requires the proposed KPOM to "have regard to any determination of the NSW Scientific Committee established by the Threatened Species Conservation Act 1995." The Final Determination for the Tweed Coast koala population was gazetted as an Endangered Population under the *Threatened Species Conservation Act 1995* on 22 April 2016. The proposed KPOM does not acknowledge this increase in the conservation status of the Tweed Coast koalas.

Koala offsets overlap with existing habitat

The fundamental purpose of a habitat offset is to compensate for the planned loss of habitat. In the case of koalas, this involves the creation of new areas of their preferred forest habitat. While the proponent has identified some 56ha of land to offset (Fig5) the 14.92ha of koala habitat that will be lost to urban development (Fig 4), analysis of these areas using the proponents own vegetation mapping suggests that 19.8 ha is existing native vegetation of one type or another (Fig 6). As noted previously, such areas are required to be managed in their own right and should not be claimed as an “offset”. Areas suitable for koala habitat offsets should be existing cleared or otherwise highly disturbed land.

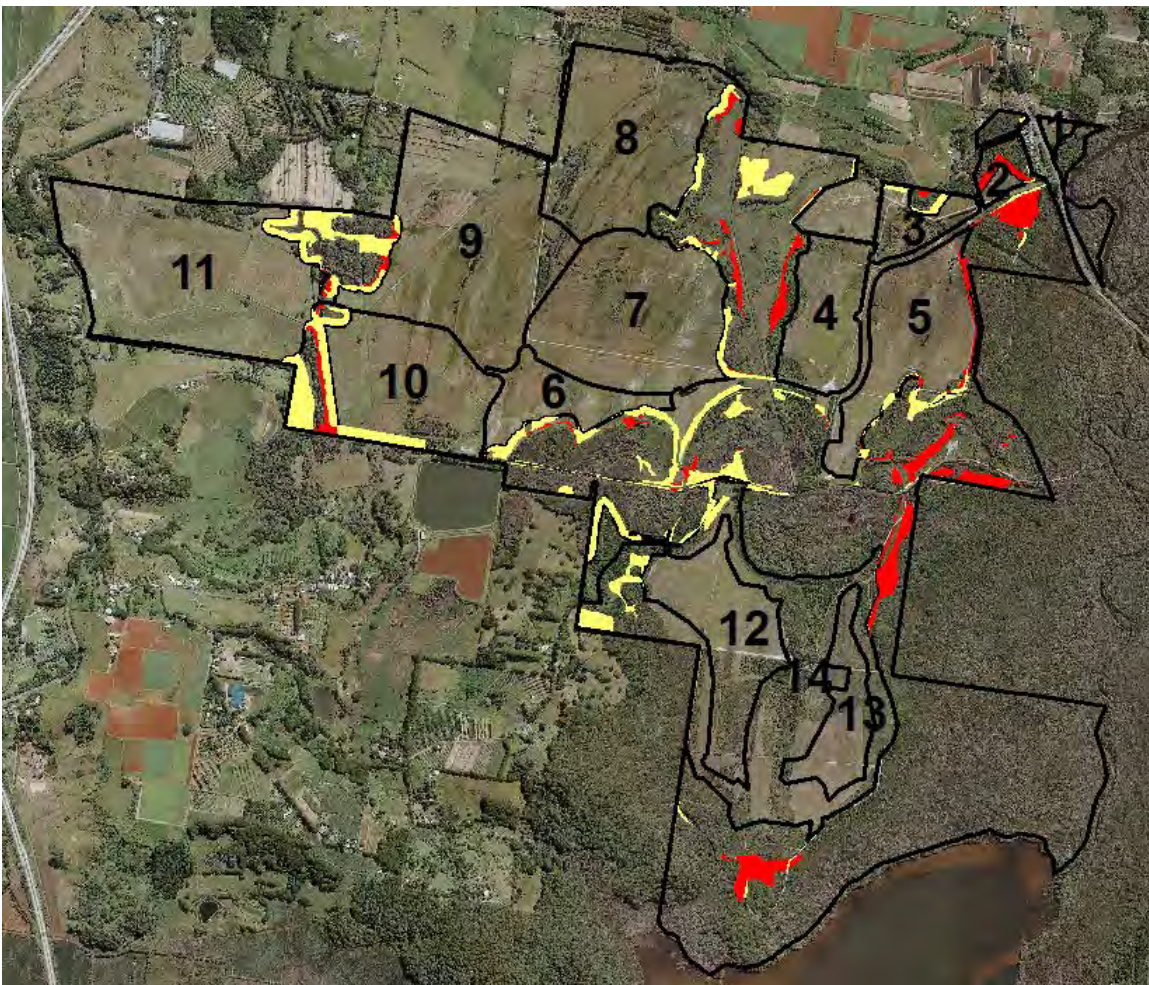


Figure 7 Proposed koala habitat offset areas (56.7ha) showing 19.8ha mapped by the proponent as existing native vegetation (red fill). The pale yellow areas are mapped as cleared or highly disturbed.

The issue of habitat overlaps was canvassed at length during the initial Project Approval process (2013) resulting numerous conditions of consent which sought to minimise any habitat overlaps including Project Conditions 45(1)d, 41(1), 41(2) and 43(2). Unfortunately this issue was not picked up by the Commonwealth during the EPBC assessment process and many of the areas they approved for “koala habitat creation” were in fact existing areas of forest or heathland habitat.

As noted previously, the issue of habitat overlaps was key issue under consideration in the recent workshop discussions among the agencies. On 22 February 2017 the DoPE wrote to the proponent (see Appendix 1) advising them that such overlaps were not appropriate and

highlighted some 57.3ha of cleared land already set aside for environmental purposes that should be considered for koala habitat offsets (Fig 7):

- JWA's mapping shows approximately 19.9 hectares (ha) of proposed Koala habitat and 7.2ha of proposed heathland within existing habitat. Offsets within existing habitat areas that are naturally regenerating are not supported by the Department; and.....

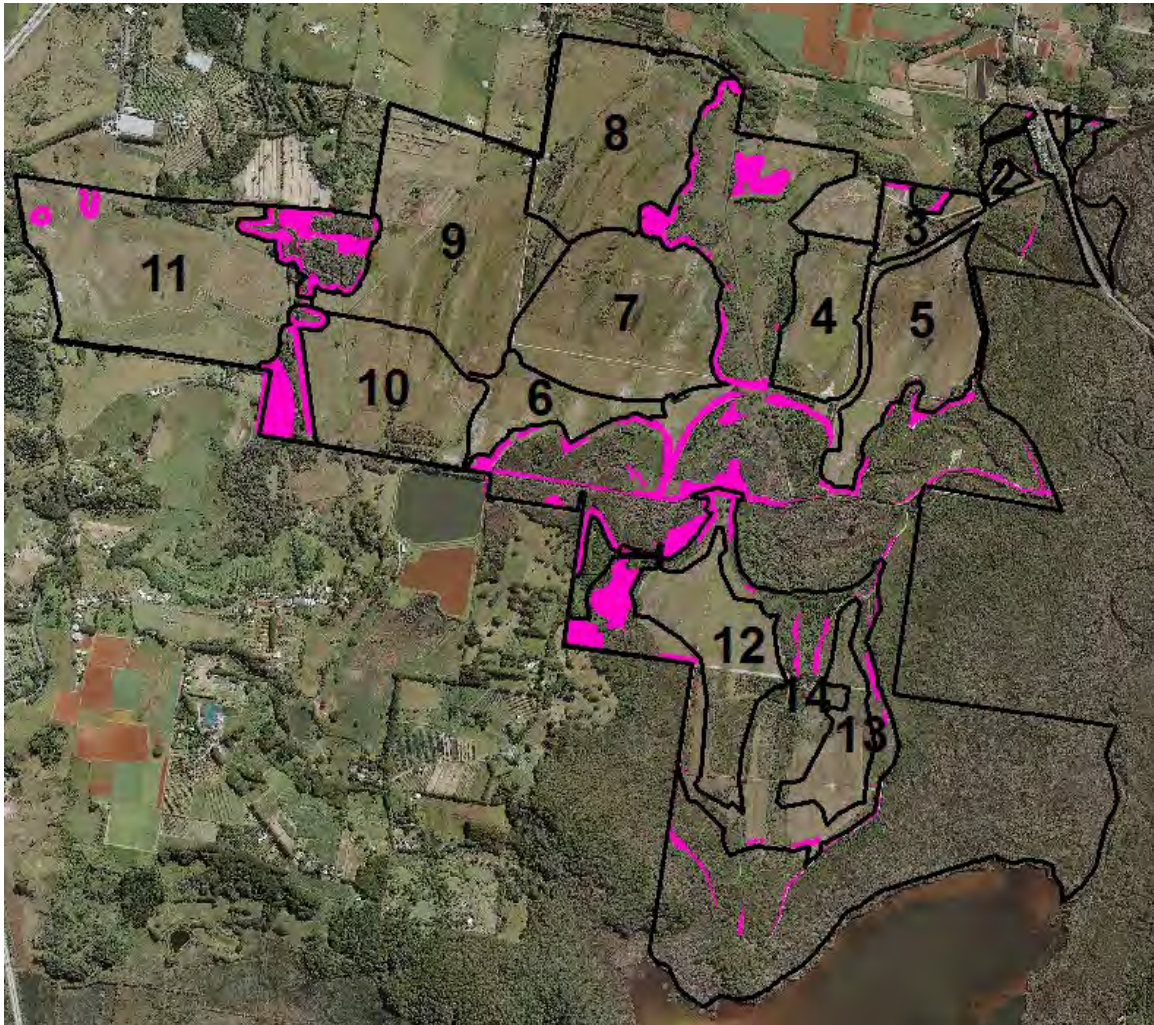


Figure 8 Cleared and “highly modified” areas (pink, 57.3ha) within the environmental zones and the inner 30m of the ecological buffers that are potentially available for the creation of koala habitat.

Some examples of areas of existing habitat proposed as koala habitat offsets in Figure 5 are shown in Figure 8



Figure 9 Examples of existing native vegetation that have been proposed as for the creation of new koala habitat. In this case, these areas have been mapped as Swamp Sclerophyll Floodplain Forest and clearly show a well-developed existing forest structure.

In relation to the concern that offsets were proposed to be located in existing habitat (Fig 6) the proponent simply states: “JWA consider that these areas are suitable for offset purposes”.

In relation to the suggestion that there are other cleared areas outside of the development envelope that are potentially available for koala offsets (Fig 7), the proponent has included some of the suggested areas but rejected others stating that they were existing koala habitat or were otherwise needed for bushfire protection purposes.

As the analysis carried out by the agencies was based on the proponents’ own vegetation mapping (which explicitly identifies cleared and highly disturbed vegetation) there are clearly some issues to resolve. On the one hand, there appears to be around 20ha of the 56.7ha that the proponent has mapped as existing native vegetation and which is claimed to be “suitable for koala offsets”. On the other hand, it is also claimed that areas they mapped as cleared land or highly modified are actually existing koala habitat.

It is possible that at least some of their vegetation mapping is incorrect, but if this is the case the vegetation mapping needs to be revised and any changes justified. It should also be noted that the vegetation mapping underpins many of the other environmental management plans for the site. On the basis of the information provided to date Council cannot be sure that the areas proposed for koala habitat offsetting are in fact new areas of preferred koala habitat.

The argument that some areas within the ecological buffers are required for bushfire asset protection zones and the like is noted, however, the outer 20m of the ecological buffers are generally available for this purpose. The inner 30m of the ecological buffers should be used strictly for ecological purposes.

As both koalas and humans are vulnerable to bushfire there is clearly a need for the issue of bushfire management to be properly integrated into the proposed KPOM. Indeed, this is a requirement of existing Project Approval Condition 34 which has not been adequately addressed:

Bushfire Risk Management Plan

- 34 The Bushfire Risk Management Plan (BRMP) shall be amended to address the following:
- 1) Co-operative relations between neighbours to minimise the potential for wildfires and work towards fire frequencies and intensities that do not impact on Koala populations
 - 2) Management actions required for future ongoing fire related Koala management in environmental protection zones.
 - 3) The revised BRMP shall be endorsed by OEH prior to the issue of a construction certificate for civil works

Further comment on the integration of related environmental management plans is provided below.

Koala offsets do not focus on creating primary koala habitat

The proposed KPOM divides the koala habitat offsets into five koala habitat subtypes (Fig 5):

1. Dry primary koala habitat	20.61ha
2. Dry secondary koala habitat plus dry heath	7.46ha
3. Wet primary and secondary koala habitat	21.79ha
4. Wet secondary koala habitat	1.60ha
5. Secondary koala habitat	5.25ha

The following points are made with respect to these categories:

- The split between “wet” and ‘dry” subtypes reflecting groundwater levels is supported however no evidence is provided to justify the thresholds of 0.2m - 1m for the “wet” subtypes and > 1m for the dry types (see Table 6 of the proposed KPOM). For example what are the pre-development groundwater levels in areas currently supporting swamp mahogany forest?
- It is considered that all areas used to offset koala impacts should be replaced with primary koala habitat. The creation of secondary koala habitat is not supported as a koala habitat offset. At the Kings Forest site, secondary koala habitat is typically dominated by paperbark *Melaleuca quinquenervia* which has a much lower koala strike rate than species such as swamp mahogany *Eucalyptus robusta*, indicating non-preferential / opportunistic browsing only. Koala habitat

offsets based on secondary habitat are unlikely to contribute very much (if anything) to increasing the carrying capacity for koalas at King Forest.

- Based on the NSW Koala Recovery Plan, primary koala habitat should comprise at least 50% of preferred koala food trees in the overstorey. For the Kings Forest site this implies only two types of koala habitat; one dominated by swamp mahogany in the proposed “wet” habitat areas and the other dominated by forest red-gum *E. tereticornis* in the “dry” habitat areas.
- The recommended species mix for the two proposed koala habitat types is as follows:

Wet Primary Compensatory Koala habitat:

Trees – *E. robusta* +/- *E. tereticornis* (50% min for *E.rob.* and *E.teret* combined), *M. quinquenervia*, *L. suaveolens*, *Callistemon salignus*, *Corimbia intermedia*

Small trees/Shrubs – *Elaeocarpus reticulatus*, *Syzygium oleosum*, *Acmena smithii*, *Melicope elleryana*, *Omalanthus populifolius*, *Glochidion sumatranum*, *Melastoma malabathricum*, *Leptospermum polygalifolia*

Ground – *Gahnia clarkei*, *G. seiberiana*, *Blechnum indicum*, *Baloskion tetraphyllum*, *Smilax australis*, *Dianella caerulea*, *Calochlaena dubia*, *Pteridium esculentum*, *Hypolepis muelleri*, *Cyperus exaltatus*, *Baumea species*, *Lomandra longifolia*, *Carex appressa*, *Pandorea jasminoides*, *Entolasia stricta*, *Lygodium microphyllum*, *Oplismenus aemulus*, *Leersia hexandra*.

Dry Primary Koala habitat:

Trees – *E. tereticornis* (50% min) +/- *Corymbia intermedia*, *Lophostemon suaveolens*, *L. confertus*, *Callistemon salignus*,

Small trees/Shrubs – *Acacia melanoxylon*, *A. disparrima*, *Cupaniopsis anacarnoides*, *Persoonia adenantha*, *Guioa semiglaucula*, *Endiandra sieberi*, *Acronychia imperforata*, *Allocasuarina littoralis*, *Glochidion ferdinandi*, *Breynia oblongifolia*, *Ozothamnus diversifolius*, *Banksia integrifolia*, *Syzygium oleosum*, *Dodonea triquetra*, *Austromyrtus dulcis*, *Elaeocarpus reticulatus*, *Acacia concurrens*.

Ground – *Pteridium esculentum*, *Imperata cylindrica*, *Panicum simile* *Ischaemum austral*, *Ottochloa gracillima*, *Paspalum orbiculare*, *Calochlaena dubia*, *Lomandra longifolia*, *Dianella caerulea*

Koala offsets do not fully implement the required E-W wildlife corridor

Concept Plan Condition B4 requires the creation of a “fully revegetated east-west wildlife corridor generally 100m wide...” as shown in Fig 2:

B4 East-West Wildlife Corridors

- 1) A fully revegetated east-west wildlife corridor generally 100 metres wide (with a minimum of 50 metres at any one point) shall be constructed between the existing central east-west wildlife corridor and the existing native vegetation separating Precinct 9 and 10 from Precinct 11 (as identified in the plan, entitled “East West Wildlife Corridor”, at Attachment A to this approval) and extending to the north of the site between the existing vegetation and ecological buffers separating Precinct 9 and 10 from Precinct 11. The corridor shall be designed to maximise fauna use (especially koalas), continuity with existing vegetation and should consider restoration works on surrounding properties. The details of this

modification, including regeneration / revegetation of the corridor and the preferred long term protection mechanism are to be submitted to the satisfaction of the Secretary 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environment Protection and Biodiversity Conservation Act or prior to the lodgment of the first development application for the project or prior to the issue of the first construction certificate for the project, whichever occurs first.

As noted previously, the requirement to implement the E-W corridor is also included in Project Condition 45(1)b as part of the koala habitat offset package.

This issue was identified by the joint Agency workshop as an important consideration and the DoPE subsequently provided the following guidance to the proponent in relation to this on 22 February 2017 (see Appendix 1) referring to an earlier version of the current modification submitted in April 2016 which completely omitted the E-W Corridor:

- the deletion of Term B4 of the Concept Plan and the removal of the requirement for the southern east-west corridor extension is not supported. When the Department assessed the original Concept Plan application, the Department formed the view that the northern east-west corridor enhancement provided resources were relocated to establish the a superior functional southern east-west corridor. This corridor would provide connectivity for all wildlife not just Koalas, Wallum Sedge frogs and Wallum Froglets. The removal of the southern east-west corridor extension would significantly undermine the wildlife offsets and impact on fauna movements and habitat connectivity on a regional scale

Despite this clear advice from the Department, the proposed KPOM includes only a 50m wide by 400m long section of the southern E-W corridor which does not actually provide a contiguous habitat link (Fig 9; compare with Fig 2). This amounts to an area of 2ha.

Concept Plan Condition B4 requires the corridor to be generally 100m wide, extending along the southern boundary of Precincts 6 and 10 and north to connect the existing vegetation separating Precincts 9, 10 and 11. A rough calculation of minimum area required to satisfy this condition (based on a 100m wide corridor extending along southern boundary of Precinct 10 including around the perimeter of the proposed lake) indicates that approximately of 11.2ha of land would be involved. The amount proposed is less than one fifth of the minimum area required to complete the corridor.

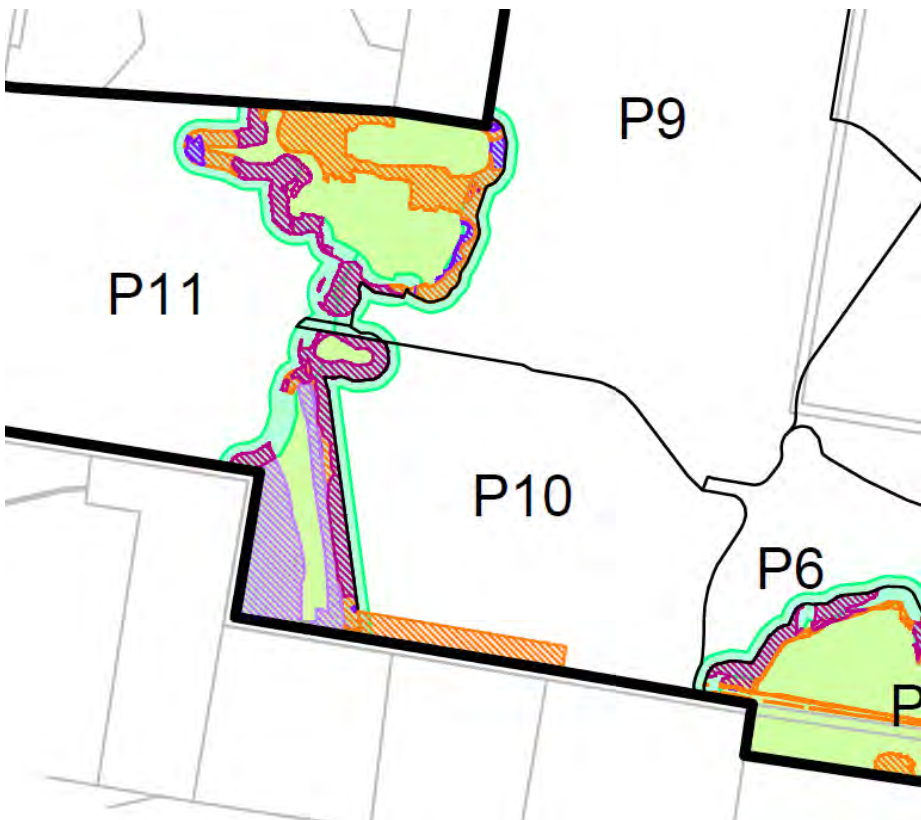


Figure 10 Partial implementation of E-W Corridor required under Project condition 45(1)(b) showing 400 x 50m section along the southern boundary of Precinct 10. This compares to the requirement under B4 a 100m wide corridor across as shown in Fig 2

Inadequate fencing and underpasses

The existing Project Approval Condition 46 sets out a number of requirements relating to fauna fencing and underpasses:

Koala Infrastructure

46

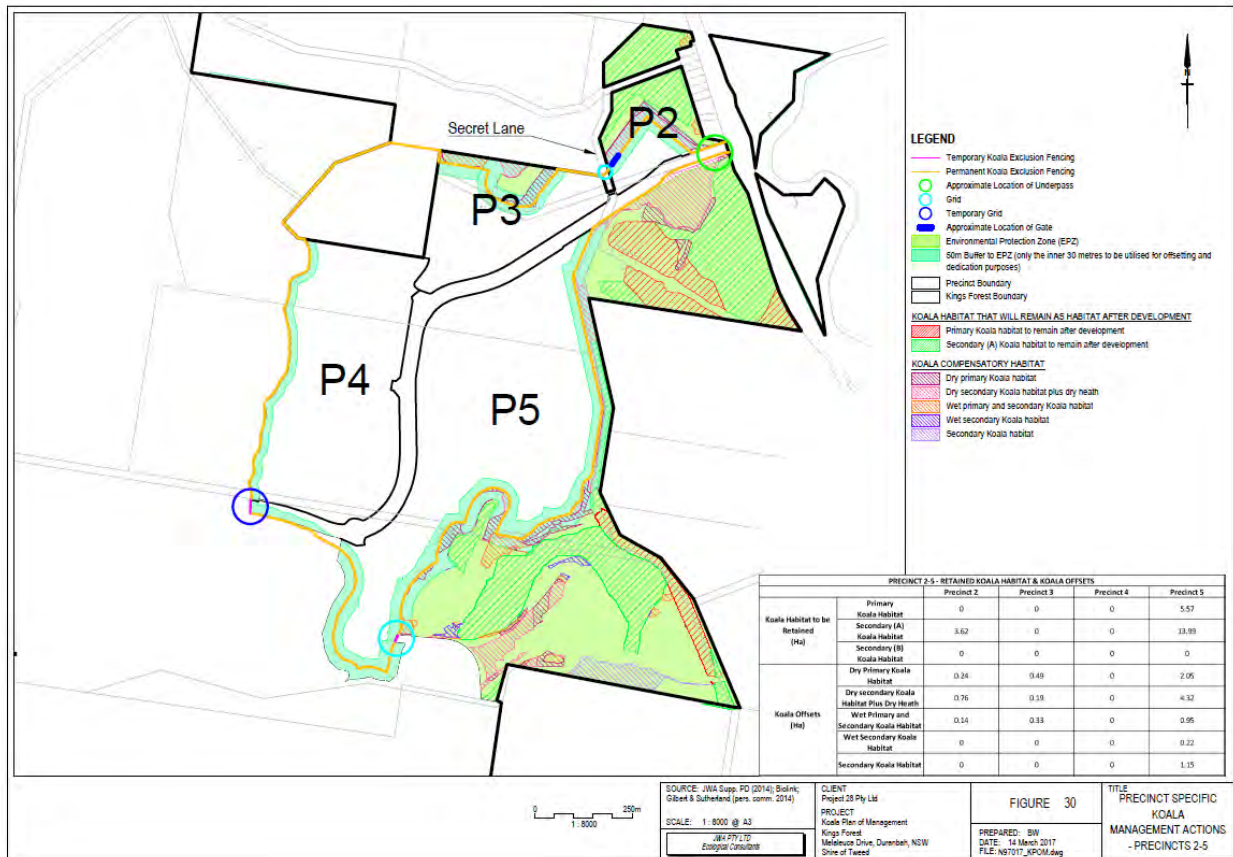
- 1) Any roads through the environmental areas of the site must include:
 - a. fencing on both sides of the road of a design that will prevent the crossing by dogs and koalas;
 - b. fauna underpasses installed at intervals sufficient to allow unimpeded movement by wildlife including koalas across roads. Such fencing and underpasses within Environmental Protection Areas are to be constructed prior to the commencement of bulk earthworks in the southern and/or western development precincts.
- 2) Precinct 1 and 5 Fauna exclusion fencing must be integrated with fencing at Tweed Coast Road. Such fencing is to be constructed at the completion of bulk earthworks.
- 3) The design and precise location of fauna exclusion fencing must ensure that the buffer area available to fauna is maximised and makes provision for a functional maintenance zone each side of the fencing in order to allow sufficient room for replacement and maintenance of the infrastructure.
- 4) Precinct 1 fauna exclusion fencing should be sited at the outer edge of the 50m ecological buffer.

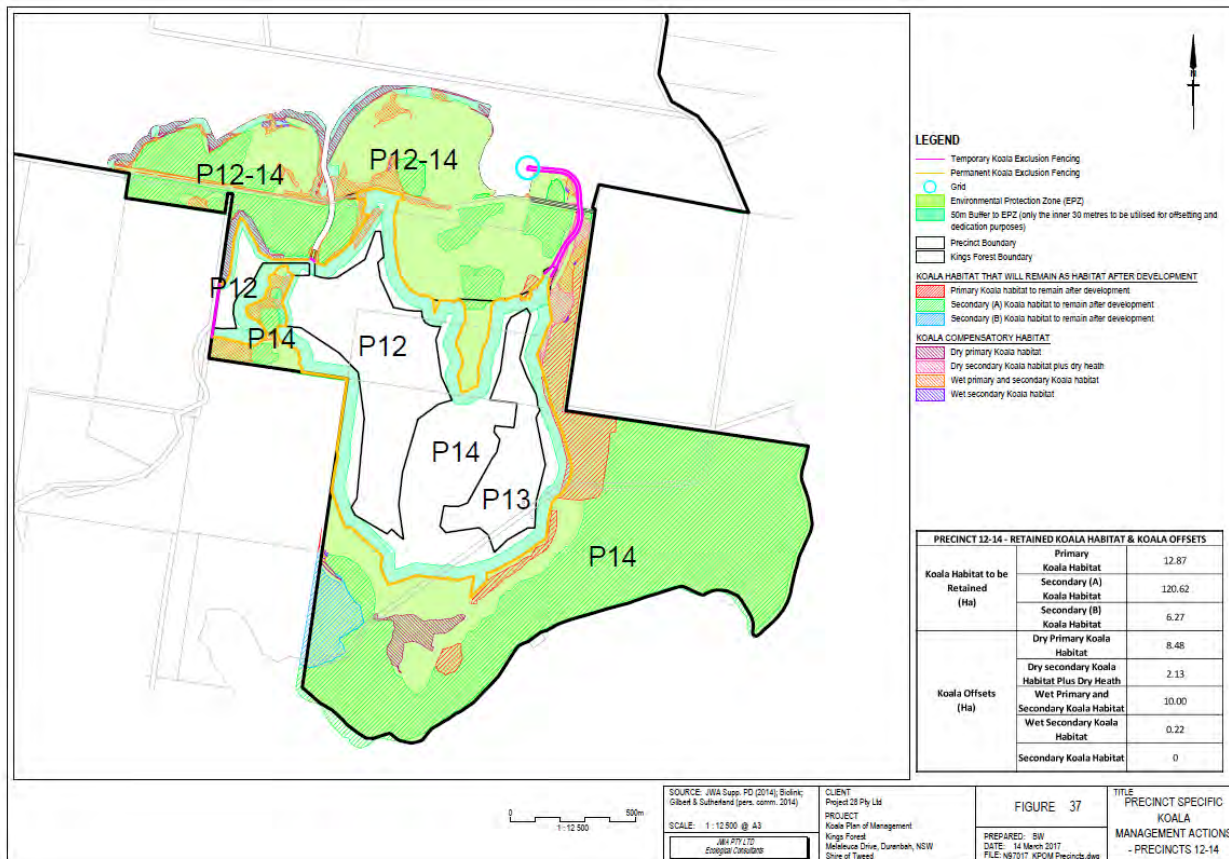
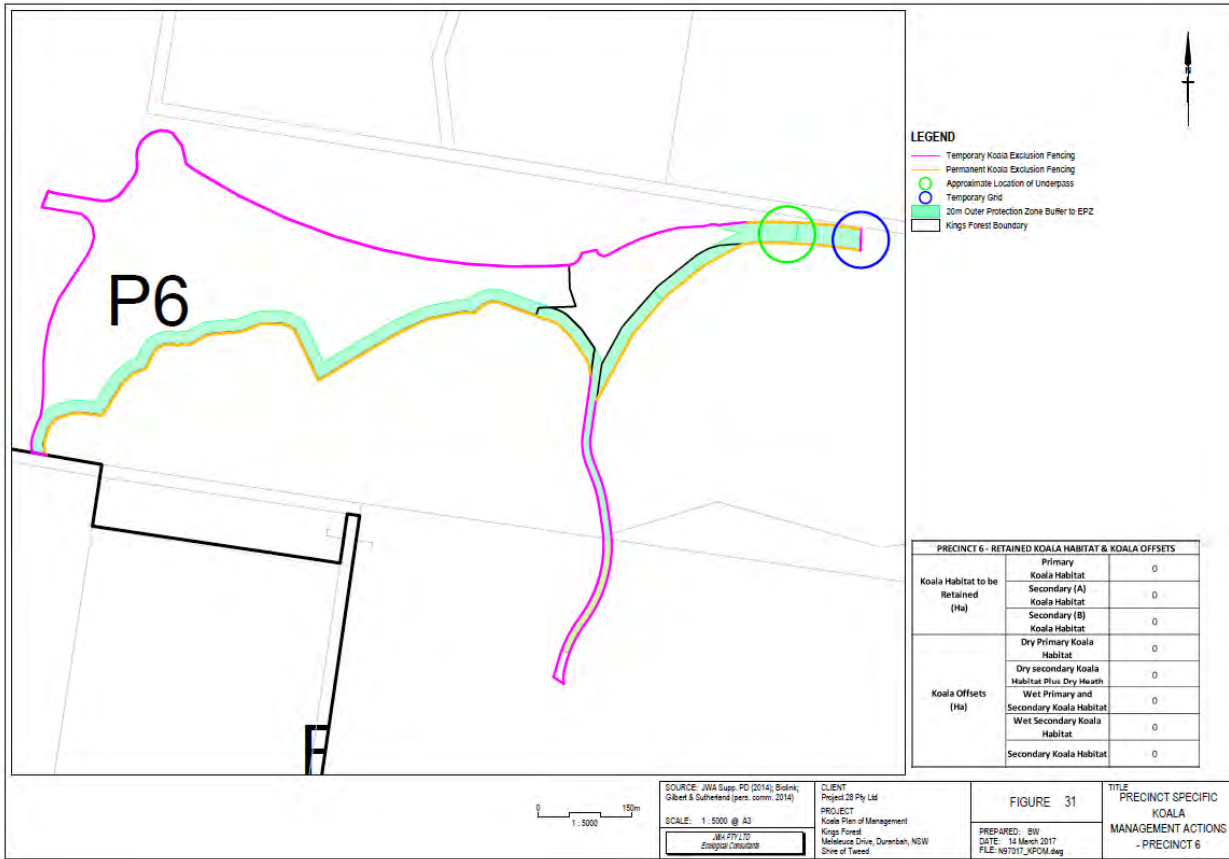
- 5) Signage shall be erected in strategic locations within Precincts 1, 2, 3, 4 and 5, such as in the public open space areas within Precinct 5 and at fauna underpasses, advising residents that Koalas are active in the area and dogs should be kept on a leash at all times and encourage residents to keep dogs in enclosed yards between the hours of 6pm and 6am.
- 6) Erection of permanent vandal proof signs shall be erected at regular intervals to inform people about the purpose of the Koala exclusion fencing and the importance of maintaining the fence.

In relation to sub-clause 46(1), the proponent states that:

....the revised KPOM is based on the agreed approach which is to exclude Koalas from the urban areas and therefore fencing on both sides of the road is not required nor are fauna underpasses.

The proposed KPOM includes underpasses at the entrance to the development site (near Tweed Coast Rd) and between Precincts 4/5 and 6/7 (see Fig 30 and 31 of the proposed KPOM) but does not include any such structures under either of the roads through the environmental areas leading to the southern Precincts 12-14. It also appears that only temporary fencing is proposed on either side of the roads for these areas (see Figs 31 and 37 of the proposed KPOM).





It appears that the proponent is seeking to use grids in these areas to prevent koalas from accessing the development site. There are at least two major problems with this approach:

1. grids will not prevent dogs from accessing environmental protection areas; and
2. koalas (or other wildlife) that attempt to cross an unfenced road to get from one side of the environmental protection area to another will be vulnerable to motor vehicle road strike.

This is not considered an acceptable outcome.

It is also noted that permanent koala exclusion fencing is required behind the existing houses on Old Bogangar Road from the Depot Rd intersection north to integrate with existing fauna fencing on the western side of Tweed Coast Road. Under the proposed KPOM animals remain vulnerable to road strike on Tweed Coast Road by exiting the environmental area of Precinct 2 through the existing residential blocks.

In relation to the sizing of the koala underpasses the following statement is made on p47 of the proposed KPOM:

All underpasses will be constructed in accordance with the design features shown in FIGURES 26A and 26B. Koala underpasses will be 1.8 m high x 2.4 m wide reinforced concrete box culverts in accordance with the design recommended in the Koala-sensitive Design Guideline (DEHP 2012) (i.e. a minimum of 1.5 m high x 1.5 m wide when length of under-road traverse is less than 40 m long) and Phillips pers. comm. March 2016.

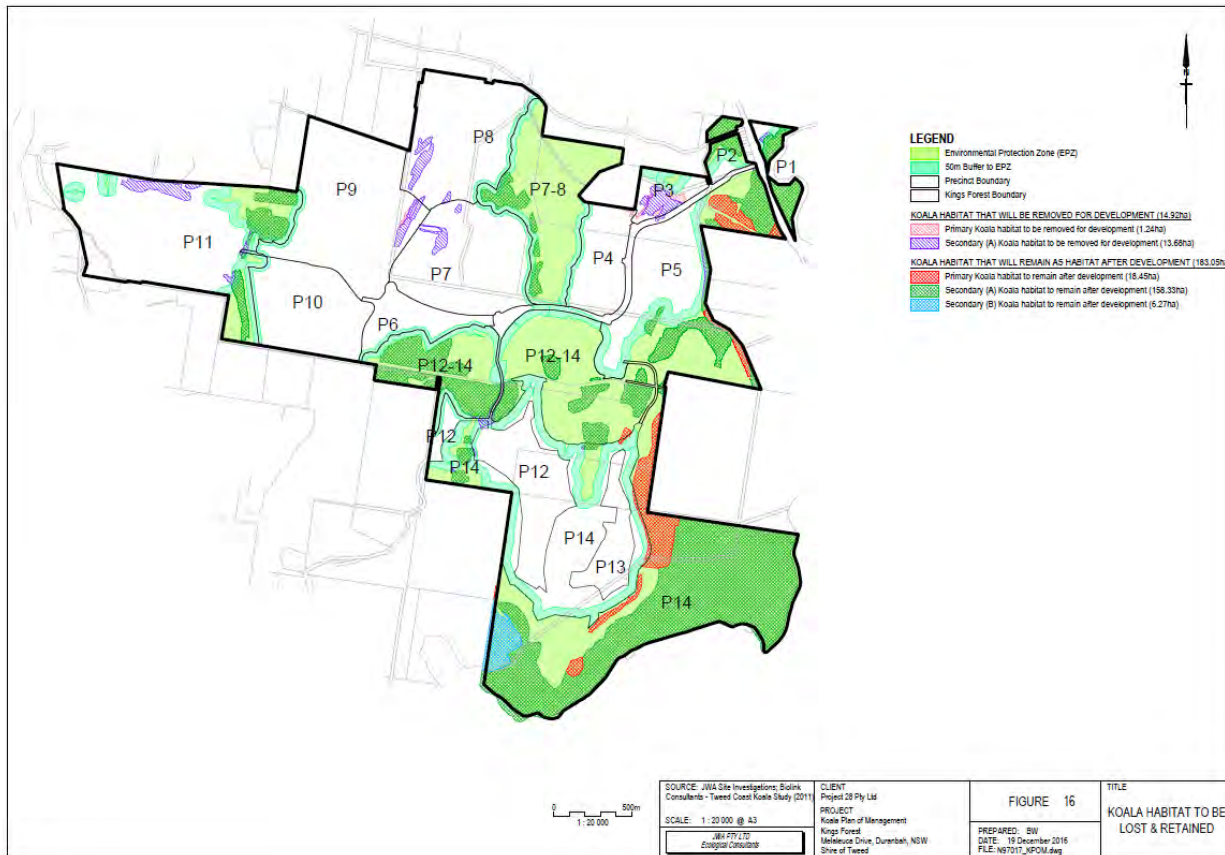
It is not clear from this if the proposed underpasses are to be “1.8m high X 2.4m wide” or “a minimum of 1.5 m high x 1.5 m wide when length of under-road traverse is less than 40 m long”. It is recommended that any underpasses required at Kings Forest be a minimum of 1.8m high X 2.4m wide with light wells for any dual carriageway roads.

The proponent also suggests Project Condition 147 (Now Condition 148 since MOD 3), which requires confirmation that all necessary koala management measures (underpasses, fencing etc.) in the approved KPOM are in place prior to the issue of a subdivision certificate for Precinct 5, needs to be amended to refer to the current proposed KPOM.

Given the major issues arising from the proposed KPOM including its general inconsistency with the State conditions of approval, this proposed modification is considered premature. It should also be noted that there are numerous other conditions in the Concept Plan (e.g. C2 - Management Plans and C8 – Traffic and Wildlife Protection Measures) and project conditions (e.g. 23 - Road Design and 64 - Exclusion Fencing and Underpasses) that relate to exclusion fencing and underpasses.

No management of existing koala habitat

One of the more concerning aspects of the proposed KPOM is the failure to make any commitment toward the management of areas of some 183ha (see Fig 16 of the proposed KPOM) of existing koala habitat on the Kings Forest site. Tables 7, 8 and 9 of the proposed KPOM detail the proposed implementation measures for the pre-construction, construction and operational phases of the development. None of these tables identify management of the existing koala habitat as an issue although the monitoring methodology includes both koala and koala habitat monitoring



It is possible that this omission is due to the fact that the existing koala habitat will be managed under the relevant Vegetation Management Plan (s) which must include the ongoing management of all existing habitat under Concept Plan Condition C2 which states in part:

Each Vegetation Management Plan update is to provide details on:

- (1) the short, medium and long term measures to be implemented to rehabilitate degraded areas, and manage remnant vegetation and habitat within the buffers and Environmental Protection zoned land within the site.
- (2) revegetation and regeneration including establishment of appropriate canopy (including koala feed trees), sub-canopy, understorey and ground strata.
- (3) rehabilitation of creeks and drainage lines.
- (4) conserving and re-using, where appropriate, the soil seed bank where good quality native vegetation is being removed.
- (5) collection and propagation of endemic native seed for revegetation on the site.
- (6) monitoring of water quality and vegetation health within buffers and environmental protection zoned areas; and
- (7) the design, regeneration/revegetation and management of the east-west wildlife corridor/s.
- (8) Measurable performance criteria are to be based on appropriate reference sites within the adjacent Cudgen Nature Reserve.

If this is indeed the case that the proponent intends to cover this issue under the relevant vegetation management plan, it is essential that the proposed KPOM:

1. makes it clear that the relevant vegetation management plan provides the relevant precinct specific detail on this matter; and;
2. provides any relevant guidance on matters specific to the restoration and management of existing koala habitat.

The proposed KPOM does neither.

Relationship to related environmental management plans not clear

As noted above, the proposed KPOM does not adequately address the ways in which bushfire can be managed to protect koalas on site. It has also been previously observed the proposed KPOM makes no provision for the management of existing koala habitat onsite, perhaps because the restoration and maintenance of existing habitat will be fall within the scope of the precinct specific vegetation management plans. These examples highlight the need for the proposed KPOM to make clear how it relates to other environmental management plans and *vice versa*.

This is the intent of Concept Plan Condition C2 which states (in part):
C2 Management Plans

All future applications are to include precinct-specific management plans providing details on timelines for implementation of recommended works including both establishment and maintenance periods and measurable performance criteria. Each plan is to include an annual maintenance schedule of works following the initial establishment period and ongoing monitoring requirements. It is not necessary for new plans to be prepared if an application relies on, and does not affect the plan that was included with an earlier application relating to the same period.

Each plan is to consider all other existing plans for the site to ensure management strategies do not conflict and that each plan can be implemented without negatively impacting on the objectives of another.

Final plans are to be prepared in consultation with Council and endorsed by the Secretary prior to the lodgement of the relevant development application for each stage.

It is recommended that the proposed KPOM be revised to specifically acknowledge any management actions in other related environmental management plans that contribute to koala conservation. For example, if weed control and habitat restoration actions covered by the relevant vegetation management plan contribute to the management of existing koala habitat, this should be noted and cross-referenced in the relevant implementation tables of both plans.

Relevant conditions of approval not acknowledged

Before the proposed KPOM can be approved it needs to be reconciled against all relevant State and Commonwealth conditions of approval. In its current form the proposed KPOM does not acknowledge the relevant conditions and the link between the conditions and the

content of the KPOM remains unclear. This is especially important if the plan is to address both State and Commonwealth approvals.

It is recommended an overview of the relevant conditions of the approval is presented in the KPOM and that a reconciliation table is provided in an appendix to clearly demonstrate how the KPOM addressed each relevant State and Commonwealth condition.

Under the current modification proposal, the proponent claims that the proposed KPOM is “not inconsistent” with the Concept Plan Approval and seeks only to modify the following Project Approval Conditions:

- A13 - Management of Potential Council Land and Future OEH Land
- 3 - Environmental Offset Areas
- 45 - Koala Plan of Management
- 46 - Koala Infrastructure
- 147 - Koala Plan of Management

Appendix 2 contains a list of State approval conditions likely to apply to the proposed KPOM.

If the proposed KPOM was to be approved in its current form a significant number of additional conditions would need to be amended. For example the proposed KPOM is inconsistent with Concept Plan Conditions B4 – East-West Wildlife Corridors, B3 – Further Protection of Heathland and Project Approval Conditions 41 – Buffer Management Plans and 50 – Bond for Environmental Restoration and Maintenance works to name a few.

Timing and sequencing of koala habitat offsets

Under Project Condition A13 (and Concept Plan Condition B7 which is identical) the proponent is required to start to implement the environmental management plans on “commencement” of the project:

Management and Maintenance of Environmental Lands

A13. The proponent is responsible for the management of all Potential Council Land and Future OEH Land for conservation purposes and the implementation of all establishment period and maintenance period works specified in all Environmental Management Plans from the date of the commencement of the project, or at another time directed by the Secretary, until such time that an agreement is reached with OEH and /or Tweed Shire Council regarding the dedication of that land.

Note: For the purpose of this condition, commencement is taken to mean any physical works including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project.

The proponent seeks to redefine “commencement”, based on the Commonwealth approval, to permit habitat creation and offsetting work to proceed without triggering the commencement of the environmental management plans, in this case the proposed KPOM.

The proponent goes on to acknowledge management of the lands to be set aside for environmental purposes cannot proceed until all relevant environmental management plans have been amended claiming that these amendment are not required until prior to the issue of a construction certificate.

The issue here is that habitat creation and similar works are a fundamental part of the environmental management plans and that it is essential under Concept Plan Condition C2 (quoted in part previously) that all environmental management plans work together.

Although the proponent asserts that the management plans are not required to be finalised “until prior to the issue of a construction certificate”, the construction certificate referred to is for bulk earthworks. This means that all environmental management plans need to be finalised before bulk earthworks are permitted to proceed. In any case, Concept Plan Condition C2, (which prevails over the any inconsistent Project Condition) requires the management plans to be prepared and endorsed prior to the lodgement of a development application for each stage.

Notwithstanding these technicalities, the existing conditions do not prevent these works from occurring in a staged manner as set out in the management plans themselves. Council does not interpret Project Condition A13 to mean that all offsetting in all management plans should commence at the same time.

The recommended approach is for any offsetting to occur in stages associated with precinct-specific bulk earthworks such that the offsets are established:

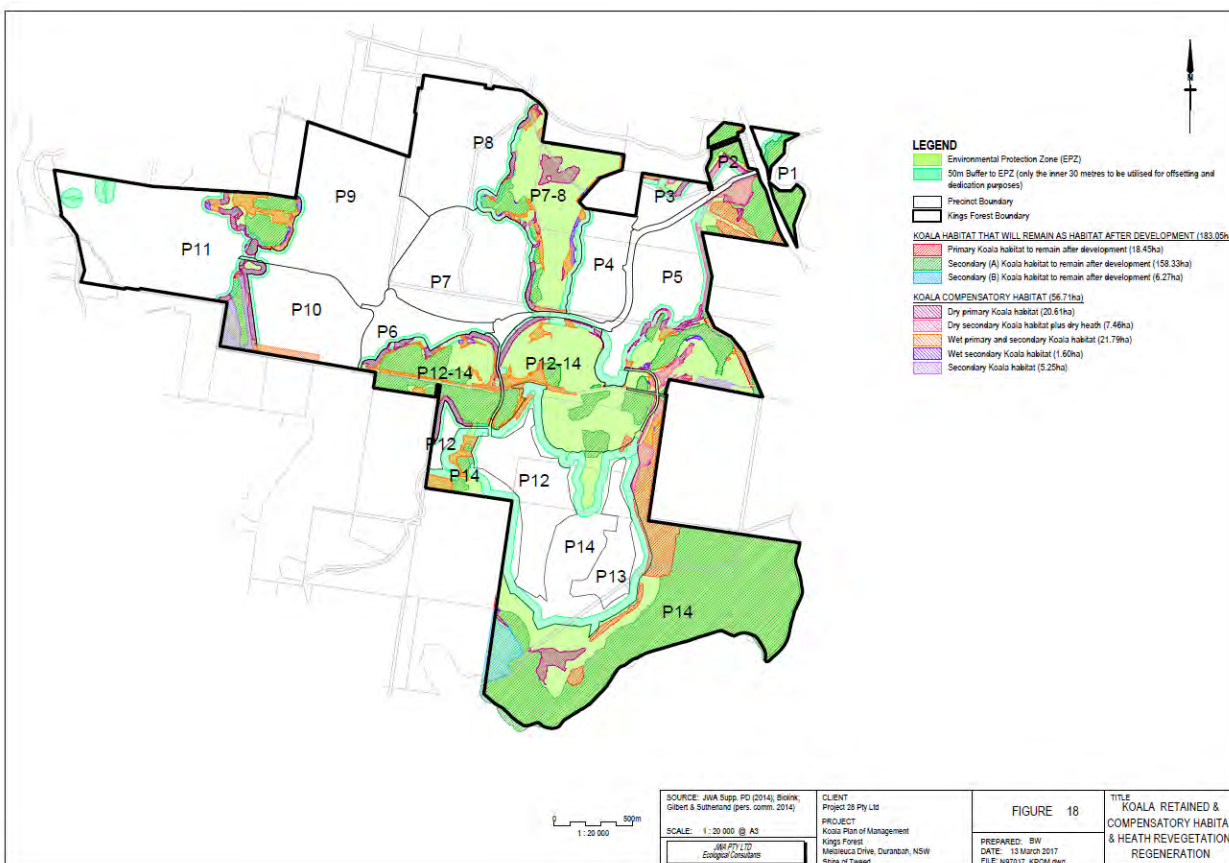
1. prior to the impact (clearing) being allowed to occur; and
2. in proportion the overall offset ratio (i.e. area of total offset area : total impact area).

This means that if, say 2ha is to be cleared in Precinct 6 and the offset ratio is 5:1 then, 10ha of new habitat should be established before any clearing of the 2ha is allowed to take place. This ensures that the offsets keep ahead of the impact.

The proposed KPOM does not adopt this approach to staging of the offsets, but appears to link the offset to the adjacent precinct (see Table 5 and Figure 18 of the proposed KPOM). Depending on what precincts are commenced first, this potentially allows the offsets to fall behind the impact. This is further complicated by the fact that bulk earthworks will need to be carried out in parts of the site not under immediate development, and it is not yet clear how this will be achieved. Such information is necessary to support and justify the proposed staging of the koala habitat offsets.

TABLE 5
PRECINCT SPECIFIC OFFSETS

Precinct	Koala Habitat to be Retained (ha)	Koala Habitat to be Removed (ha)	Koala Offset Created Habitat (ha)
Precinct 1	5.82	0.25	0
Precinct 2	3.62	0	1.14
Precinct 3	0	3.66	1.01
Precinct 4	0	0.19	0
Precinct 5	19.56	0.41	8.70
Precinct 6	0	0	0
Precinct 7	1.89	1.33	3.93
Precinct 8	3.71	2.32	5.51
Precinct 9	0	1.56	0
Precinct 10	0	0	2.05
Precinct 11	8.68	3.82	13.55
Precincts 12-14	139.76	1.39	20.82
TOTAL	183.05	14.92	56.71



The criteria for “establishment” should be in accordance Establishment Period criteria set out in the relevant management plan consistent with Concept Plan Condition C2 (see above) and Project Approval Condition 39:

Environmental Management Plans

39

- 1) All Environmental Management Plans shall be revised to address management actions to be undertaken throughout the life of the project as relevant to the development precincts that the plan covers. This includes a detailed set of agreed establishment and maintenance phase performance completion criteria, ongoing

monitoring and an annual maintenance schedule of works following the initial establishment period. This includes the following plans:

- a. Flora and Fauna Monitoring Report
 - b. Buffer Management Plan
 - c. Vegetation Management Plan
 - d. Koala Plan of Management
 - e. Feral Animal Management Plan
 - f. Weed Management Plan
 - g. Threatened Species Management Plan
- 2) Performance criteria for all management plans are reviewed to ensure they are specific to each precinct and action, measurable, achievable, relevant and timely
- 3) The implementation schedule of all Environmental Management Plans shall be revised to include the following details as relevant to the precincts that the plan covers:
- a. Actions that are specific to the precinct for which they are addressing
 - b. Specific map references to identify locations of works for all actions
 - c. Total areas to be planted (m²)
 - d. Planting density (per m²)
 - e. Number of permanent signs to be erected and maintained
 - f. Total areas for weed management activities (m²)
 - g. Length of any fencing (temporary and permanent)
 - h. Total areas for heath regeneration and revegetation (m²)
 - i. Locations and areas (m²) of proposed threatened species habitat
 - j. Timing and frequency of actions
 - k. Monitoring requirements (frequency) that are specific to the action

For the purposes of these considerations Establishment Period has the following meaning within both the concept plan and project approval:

Establishment Period means the period commencing with the implementation of the relevant approved environmental management plan(s) and ending when the works specified in that plan meet the establishment period performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the Secretary. The establishment period represents the time necessary to carry out initial environmental repair, restoration and monitoring prior to ongoing maintenance.

The proponent also seeks to avoid the need to carry out survey work to accurately mark out environmental areas to be dedicated to Council or OEH as required under Project Condition 3 Environmental Offset Areas, by defining such works as “preliminary”.

Again, being able to identify such areas on the ground prior to commencing bulk earthworks is fundamental to ensuring the implementation of the environmental management plans including the proposed KPOM. Indeed, proposed KPOM itself should ensure that all koala habitat offset areas are appropriately marked and identified on the ground. This is essential for the purpose monitoring the progress of such plantings.

Opportunities lost

From the time of the gazettal of Kings Forest as a State Significant site and its inclusion in the Major Projects SEPP in 2006 there have been clear requirements, reinforced through the Concept Plan and Stage 1 Project Approvals to restore and manage the conservation values within the environmental protection zones, the 50m ecological buffers that surround these areas, and the proposed wildlife corridors. This means that most of the provisions relating to koala habitat offsets actually occur on land that needs to be managed and restored in any case.

However, the Council and the agencies are confident that a sound ecological outcome can be achieved for koalas (and other flora and fauna) at Kings Forest that is generally consistent with both State and Federal approval without adversely affecting the approved development envelope.

Given these circumstances and the following points, the requirement to revise the KPOM for the site represents a substantial opportunity to achieve a good outcome for koalas, build trust and good-will with the local community with little additional cost to the development:

1. the very high level of community interest in protecting koalas at Kings Forest (as evidenced by over 3000 public submissions to earlier stages of the approval process);
2. the fact that much more koala habitat is to be cleared for the development than originally revealed during the State approval process; and
3. the Endangered Population listing in 2016 by the NSW Scientific Committee of the Tweed Coast koalas.

In its current state the proposed modification is fundamentally inconsistent with the State conditions of approval, and that if approved would see a worse outcome for koalas.

Additional Issues

The following points are made in relation to a number of specific issues arising from the proposed KPOM. However, as there are numerous issues of fundamental concern discussed above, the following points should not be considered as a comprehensive review of the proposed KPOM;

- Section 1.1 Background (para 4) - The KPOM needs to comply with the relevant State conditions of approval as well as Commonwealth conditions.
- Section 1.2 Aims and Objectives – An objective is needed to address the need for the restoration and ongoing maintenance of existing koala habitat.
- Section 1.4 Statutory Regulations – Need to address the Endangered Population listing for the Tweed Coast Koalas which should also be included in Appendix 3
- Section 1.6 Other Relevant Management Plans – See previous comments regarding the integration of these plans.

- Section 2.3 Conservation Reserves – SEPP 14 and 26 are not particularly relevant to the KPOM, particularly the maps. There are better ways of summarising the conservation values of the site.
- Section 4.2 Koala Population – Should make reference to Council's 2015 repeat survey of Tweed Coast koalas including mapping.
- Figure 13 Wildlife Corridors and Section 5.2 – Should include the E-W wildlife corridor required under Concept Plan Condition B4
- Section 5.2 Kings Forest Dispersal and Connectivity – Should acknowledge the E-W corridor required under Concept Plan Condition B4 and the influence of the Pacific Motorway as noted in the Endangered Population Final Determination. The last paragraph of this section adds very little and should be deleted including Figs 14 and 15
- Section 6 Threatening Processes – Should focus on processes affecting Kings Forest koalas. Threats from foxes, eucalypt dieback and over browsing are not relevant. Probably the most significant climate change impact for koalas will be from increased wildfire due to climatic extremes and rising water tables that will affect their preferred habitat. The issue of bushfire needs to be more specifically addressed. For example, mention needs to be made about optimal burning regimes and hazard for the koala including the possible effects of intense fire in heathlands adjacent to koala habitat.
- Section 7.3 Indirect Impacts – Mention should be made of accidental ignitions and inadequate bushfire hazard management.
- Section 7.3. 2 Alteration to Water Table Levels – There appears to be no analysis of the impact of changing water tables due to the development on existing koala habitat. Is it reasonable to assume that existing habitat will remain unaffected? How has this informed the proposed “wet” and “dry” koala habitat types?
- Section 7.3. 2 Increased Risk of Vehicle Strike – This section needs to acknowledge the threat posed by roads within the Kings Forest development not just the surrounding road network.
- 7.3.4 Increased Risk of Fire – Need to identify the ongoing issue for koalas not just the fact that there have been bushfires in the past.
- 7.3.5 Increased Risk of Dog Attack – see Tweed Coast KPOM for an overview.
- Section 8.5.2 Proposed Offset Strategy – see previous comments with regard to staging and timing above.
- Figures 17 and 18 – As discussed previously ensure that all areas proposed for offsets are not existing native vegetation. Ensure all compensatory koala habitat is primary koala habitat suited to the location on the site.
- Section 8.5.2 Proposed Offset Strategy (top of page 39) - This approach to ensuring compliance is not supported. See previous comments with regard to

staging and timing above. The requirement to meet “establishment period” criteria under Project Condition 39 and bonding under Project Condition 50 are considered adequate to address this issue.

- Section 8.6 Transfer of Land to Public Ownership – Needs to be consistent with Concept Plan Condition B5 which includes the ecological buffers. See also Fig 21 of the proposed KPOM which includes the ecological buffers.
- Section 8.7 Fire Management – This is an important consideration and as discussed previously needs to be finalised prior to approval of the proposed KPOM.
- Section 8.8 Improving Habitat Connectivity – This section needs to acknowledge the E-W corridor requirement under Concept Plan Condition B4 which should also be shown on Figure 22. The discussion on p43 on the northern E-W corridor is irrelevant and should be deleted. If the proponent wishes to include offsite areas such as Turner’s sand quarry to facilitate the E-W corridor, it needs to be formally included in the approval process.
- Section 8.9.3 Fauna Exclusion Fencing – See previous comments on underpasses and fencing above.
- Section 8.9.5 Road Crossing Infrastructure - See previous comments on underpasses and fencing above.
- Section 8.10 Preventing Koala Contact with Dogs – Given the size of the development, provision should be made for off-leash dog exercising within the development footprint. The control of wild dogs is an ongoing issue at Kings Forest and needs to be included in the proposed KPOM and the Feral Animal Management Plan. See previous comments on integrating the relevant environmental management plans in accordance with Concept Plan Condition C2.
- Section 8.11 Disease Management – Reporting and management procedures needs to be addressed and specified for all stakeholders not just ecologists engaged in monitoring. Friends of the Koala need to be mentioned as the primary contact in relation to koala disease and welfare.
- Section 8.12 Reduction of Impacts of Hydrological Change – As noted previously, there appears to be no analysis of the impact of changing water table due to the development on existing koala habitat. Is it reasonable to assume that existing habitat will remain unaffected? How has this informed the proposed “wet’ and “dry” koala habitat types?
- Section 8.13 Increase in Carrying Capacity – As noted above, the focus on secondary koala habitat is not likely to do very much (if anything) to increase the carrying capacity of the site.
- Section 8.14 Engaging with Local Government – The reference to Biolink being engaged to prepare the Tweed Coast Comprehensive Koala Plan of Management is irrelevant as they were not responsible for completing the plan.

Council does not support the formal inclusion of proponent (or a representative nominated by the proponent) on the Koala Management Committee. The Kings Forest KPOM operates independently as an individual KPOM under the Tweed Coast Comprehensive Koala Plan of Management. This is also the case for the Koala Beach and Black Rocks KPOMs. Notwithstanding this, the Koala Management Committee may make itself available to advise and liaise with the proponent on issues of mutual concern such as community engagement. The Koala Management Committee however will not be in a position to accept responsibility for the engagement obligations of the proponent. Under Concept Plan Condition B7 it is anticipated that Council will eventually take on this responsibility. Much of Section 8.14 of the proponents proposed KPOM needs to be rewritten.

- It is suggested that the monitoring chapter (Section 10) should precede the implementation chapter (Section 9). Monitoring and reporting is an integral part of the implementation of the plan and should be included in the implementation tables alongside other management actions.

Recommendation to the NSW Department of Planning & Environment

That the NSW Department of Planning and Environment is requested to:

1. Advise the proponent of the major issues raised during this consultation and reinforce the need to ensure a sound ecological outcome for koalas (and other biodiversity) that is practical and generally meets the existing requirements of both consents.
2. Offer to continue to work co-operatively with the proponent and relevant agencies (i.e. Council, OEH and the Commonwealth) to address the deficiencies in the proposed KPOM and consider any necessary adjustments to either or both approvals as required.
3. Consider engaging a consultant to review all of the offsetting and habitat restoration obligations for the site with a view to preparing an integrated environmental plan of management to cover (1) the existing environmental zones, (2) the ecological buffers and (3) the areas affected by the new E-W corridor. Such a review would address all relevant environmental management obligations for these parts of the site arising from the existing separate management plans for the koala, buffers, vegetation, weeds, threatened species, bushfire, and feral animals and associated conditions of approval under both State and Commonwealth legislation.
4. Develop clear terms of reference in consultation with Council, OEH and Commonwealth to underpin 2 and 3 above including but not limited to the following:
 - a. The creation of at least 43.45ha of koala habitat (as per the Commonwealth approval) onsite within the existing environmental zones and ecological buffers.

- b. All koala habitat and heathland offsets shall occur on cleared/or highly modified land (i.e. not existing native habitat).
- c. All koala habitat offsets shall comprise primary (not secondary) koala habitat suited to the location on the site.
- d. Heathland offsets shall comprise wet or dry heath sub-types according to post development groundwater modelling thresholds used to justify the wallum sedge frog creation areas.
- e. All existing heathland within the environmental protection zones and the full width of the ecological buffers shall be retained.
- f. The E-W wildlife corridor shall be fully implemented of in accordance with the existing Concept Plan Condition B4 and Project Condition 45(1)b
- g. There shall be no spatial overlap between offsets required for the wallum sedge frog, the koala, or heathland.
- h. Offsets for koala habitat and heathland should (where possible) be located adjacent to existing habitat of that type, with individual areas being no smaller than 500m²
- i. The timing and staging of offset delivery shall be configured to ensure that offsets are established (in accordance with establishment period performance criteria) prior to the impact (clearing) being allowed to occur; and in proportion the overall offset ratio (i.e. area of total offset area : total impact area).
- j. In accordance with Project Condition 43(1) no “melon holing” or similar habitat interventions shall be carried to “improve” wallum sedge frog habitat.
- k. The location and timing of fauna fencing and underpasses shall be consistent with the existing State approval including Concept Plan Condition C9 and Project Condition 46.

Appendix 1 Letter from DPE providing guidance on a number of outstanding issues to be addressed in relation to the proposed Koala plan of Management



Contact: Anthony Witherdin
Phone: 02 9274 6173
Email: anthony.witherdin@planning.nsw.gov.au

Mr Michael Geale
Senior Development Consultant
Project 28 Pty Ltd
PO Box 1914
Surfers Paradise QLD 4217

cc: James Warren

Dear Mr Geale

Subject: Kings Forest – Koala Plan of Management, Additional Information and Modification Requests

I refer to JWA's correspondence (including the letter dated 8 December 2016) prepared in response to the Department's letter of 1 August 2016 which outlined additional information required in order to assess whether the State and Commonwealth approvals could be reconciled in relation to the Koala offsets.

Koala Plan of Management

The Department has considered this information in consultation with Tweed Shire Council, the Office of Environment and Heritage (OEH) and the Commonwealth and has determined there are still outstanding issues with the mapping and the approach to the east-west wildlife corridor. In particular:

- JWA's mapping excludes a number of highly disturbed areas within the Environmental Protection Zone and ecological buffers for habitat creation (see **Attachment 1**). The Department is of the view that all highly disturbed areas on the site should be utilised for habitat creation;
- JWA's mapping shows approximately 19.9 hectares (ha) of proposed Koala habitat and 7.2 ha of proposed heathland within existing habitat. Offsets within existing habitat areas that are naturally regenerating are not supported by the Department; and
- the deletion of Term B4 of the Concept Plan and removal of the requirement for the southern east-west wildlife corridor extension is not supported. When the Department assessed the original Concept Plan application, the Department formed the view that the northern east-west corridor did not require enhancement provided resources were relocated to establish a superior functional southern east-west wildlife corridor. This corridor would provide connectivity for all wildlife not just Koalas, Wallum Sedge Frogs and Wallum Froglets. The removal of the southern east-west wildlife corridor extension would significantly undermine the wildlife offsets and impact on fauna movements and habitat connectivity on a regional scale.

In addition, the OEH has provided comments on the mapping please see **Attachment 2**

Offsets

As you are aware, the Project Approval requires a 27 ha off-site offset within the Cudgen Nature Reserve. The modification requests and Koala Plan of Management will need to address this issue.

Department of Planning & Environment

Level 22, 320 Pitt Street Sydney NSW 2000 | GPO Box 39 Sydney NSW 2001 | T 02 9228 6111 | F 02 9228 6455 | www.planning.nsw.gov.au

Any changes to the offsets will have flow on effects to other environmental management plans. It is strongly recommended that a holistic approach to the management plans is adopted and each plan be reviewed and updated to ensure a consistent approach is maintained.

Next Steps

It is recommended you consider withdrawing the current modification requests and lodge a new modification request which addresses the matters outlined in this letter. The request should also include the revised Koala Plan of Management.

Finally, the Department reiterates the Commonwealth approval does not override the State approval and that the Commonwealth conditions of approval are additional to the State approval. The State approval considers wildlife holistically not just threatened and endangered species.

I have arranged for Mr Anthony Witherdin, Director, Modification Assessments to assist you should you have any enquires. He can be contacted on (02) 9274 6173 or via email at anthony.witherdin@planning.nsw.gov.au

Yours sincerely



Chris Ritchie 22/2/17
Director
Industry Assessments

Appendix 2 Conditions of approval relevant to the proposed Koala Plan of Management

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PART B - modifications to the concept plan

Koala Plan of Management – Ongoing Review

The Koala Plan of Management, and the measures contained therein to offset the impact of the development on existing and future koala populations, shall be updated at each stage of development so that these measures remain relevant and effective and based on contemporary scientific data throughout the development of the Project the subject of this concept plan.

Each stage update shall be prepared in accordance with the requirements in C2 and subject to independent review by a suitably qualified person/s to the satisfaction of the **Secretary**.

Annual Flora and Fauna Monitoring Report

Within 12 months of this approval, or as otherwise determined by the Secretary, the Proponent shall prepare a draft outline of a Flora and Fauna Monitoring Report to the satisfaction of the Secretary. The aim of the report is to collate and synthesise all monitoring and reporting requirements contained in the documents listed in A3.

The draft outline of the Flora and Fauna Monitoring Report shall set out the proposed timeframe and duration for ongoing monitoring with reference to locations within Kings Forest, stages of development and the specific issues listed below.

The Flora and Fauna Monitoring Report shall be prepared by a suitably qualified person/s and include, but not be limited to:

- (1) Aims, objectives and methodology for monitoring and reporting;
- (2) Baseline monitoring data focusing on existing populations of threatened species, including Wallum frog species and koalas;
- (3) Performance criteria against which the effectiveness of the various separate management plans required as part of this approval dealing with koalas, threatened species, buffers, weeds, vegetation and feral animals can be measured. Relevant benchmark reference vegetation communities are to be nominated from within surrounding conservation estates;
- (4) Actual performance against the above criteria;
- (5) Any required corrective actions;
- (6) Monitoring and reporting of fauna usage within the Environmental Projection zones, ecological buffers and the golf course;
- (7) Adaptive management procedures to ensure that the various separate management plans remain relevant and effective;
- (8) Monitoring and reporting of koala injury and mortality; and
- (9) Specific monitoring to measure any impact of the development on the adjacent Cudgen Nature Reserve and adaptive management procedures to ensure impacts are minimised.

The Monitoring Reports are to be provided to the Department of Planning, OEH, Tweed

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Shire Council and Industry and Investment - Fisheries.

Further Protection of Heathland

Heathland is to be provided with long-term protection and allowed to naturally regenerate on the site.

The heathland to be protected is to be that contained within the 50m ecological buffer in the locations depicted as 'Heath to be Naturally Regenerated' in Figure 12 of the Buffer Management Plan for Precinct 1 & 5 titled 'Revised Heath Regeneration and Revegetation Areas' drawn by James Warren and Associates and dated 20 August 2012 and Figure 9 of the Buffer Management Plan for Precincts 2-4 & 6-14 titled 'Revised Heath Regeneration and Revegetation Areas' drawn by James Warren and Associates and dated 20 August 2012. The heathland in these locations is to be protected and regenerated for the full 50m width of the ecological buffer.

East-West Wildlife Corridors

- 1) A fully revegetated east-west wildlife corridor generally 100 metres wide (with a minimum of 50 metres at any one point) shall be constructed between the existing central east-west wildlife corridor and the existing native vegetation separating Precinct 9 and 10 from Precinct 11 (as identified in the plan, entitled "East West Wildlife Corridor", at Attachment A to this approval) and extending to the north of the site between the existing vegetation and ecological buffers separating Precinct 9 and 10 from Precinct 11. The corridor shall be designed to maximise fauna use (especially koalas), continuity with existing vegetation and should consider restoration works on surrounding properties. The details of this modification, including regeneration / revegetation of the corridor and the preferred long term protection mechanism are to be submitted to the satisfaction of the Secretary within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environment Protection and Biodiversity Conservation Act or prior to the lodgement of the first development application for the project or prior to the issue of the first construction certificate for the project, whichever occurs first.

B5 Dedication of Land to Tweed Shire Council

- 1) The Potential Council Land Plan shall be amended to identify each precinct (as shown in term A2, Drawing No. 4 Revised Plan (Rev B)) and the land to be dedicated to the Council for each precinct. The amended plan is to include a reconciliation table showing each precinct and the corresponding land to be dedicated to the Council. The Potential Council Land Plan shall be amended such that the extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages.
- 2) The amended Potential Council Land Plan shall be reviewed by Council and submitted to the Secretary for approval prior to the issue of the first construction certificate for the project of the date of the first project approval (MP08_0194) or prior to the lodgement of the first development application for the project or prior to the issue of the first construction certificate for the project, whichever occurs first.

Note: If no agreement is reached the land to be dedicated to Council in the future will not be dedicated to Council and term B7 will continue to apply.

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B7 Implementation of Environmental Management Plans

- 1) The proponent is responsible for the management of all Potential Council Land and the Future OEH Land for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the commencement of the project or at another time directed by the Secretary, until such time that an agreement is reached with OEH and /or Tweed Shire Council regarding the dedication of that land.

Note: For the purpose of this condition, commencement is taken to mean “any preparatory works required to be undertaken including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project.

C2 Management Plans

All future applications are to include precinct-specific management plans providing details on timelines for implementation of recommended works including both establishment and maintenance periods and measurable performance criteria. Each plan is to include an annual maintenance schedule of works following the initial establishment period and ongoing monitoring requirements. It is not necessary for new plans to be prepared if an application relies on, and does not affect the plan that was included with an earlier application relating to the same period.

Each plan is to consider all other existing plans for the site to ensure management strategies do not conflict and that each plan can be implemented without negatively impacting on the objectives of another.

Final plans are to be prepared in consultation with Council and endorsed by the Secretary prior to the lodgement of the relevant development application for each stage.

Koala Plan of Management

For each stage of development an update to the KPOM shall be provided to the satisfaction of the Secretary, confirming that the measures identified and proposed in the KPOM to offset the impact of the development on existing and future Koala populations are adequate.

- (1) The update should take into account:
 - (a) contemporary data/literature on koala management;
 - (b) the results of the monitoring of management measures operating as part any approved stage/s, in accordance with B2;
 - (c) the role of additional koala habitat created in protecting koala numbers, and
 - (d) the provision of any additional koala management measures, specifically those relating to dogs.
- (2) The update should include, but not be limited to, the following:
 - (a) The identification of dog breeds known to present a significant threat to koalas;
 - (b) Measures to effectively mitigate the threat posed to koalas by dogs. Such measures may include prohibitions/restrictions on particular breeds; limitations on the number of dogs per property; and specifications on the

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way dogs are to be housed from dusk to dawn.

- (3) The update must provide stage specific detail on the following:
 - (a) revegetation and rehabilitation measures;
 - (b) measures to ensure that no identified koala food trees are removed within adjacent ecological buffers or identified core koala habitat within adjacent Environmental Protection zoned land;
 - (c) all obligations regarding the keeping of dogs, including regulatory and enforcement measures;
 - (d) specific road design, lighting and signage requirements aimed at protecting koalas and maintaining their safe passage between habitat areas. These requirements shall include fencing to road verges, fauna underpasses and like measures;
 - (e) detail of procedures to be adopted in the event that koalas are sighted within construction zones or the urban areas;
 - (f) specifications for any off-leash dog exercise areas to ensure appropriate separation from koala habitat;
 - (g) the detail of the location and construction specification of dog exclusion fencing to any adjacent Environmental Protection Zones and the timing of its completion;
 - (h) the detail, content and distribution of koala education and awareness measures aimed in particular at contractors and staff engaged in construction and at future residents of that stage; and
 - (i) a protocol for the reporting of any deaths or injuries to any koala within Kings Forest including collection and recording procedures and where necessary autopsy procedures or laboratory tests to identify the cause of death to any koala.

Vegetation Management Plan

Each Vegetation Management Plan update is to provide details on:

- (1) the short, medium and long term measures to be implemented to rehabilitate degraded areas, and manage remnant vegetation and habitat within the buffers and Environmental Protection zoned land within the site.
- (2) revegetation and regeneration including establishment of appropriate canopy (including koala feed trees), sub-canopy, understorey and ground strata.
- (3) rehabilitation of creeks and drainage lines.
- (4) conserving and re-using, where appropriate, the soil seed bank where good quality native vegetation is being removed.
- (5) collection and propagation of endemic native seed for revegetation on the site.
- (6) monitoring of water quality and vegetation health within buffers and environmental protection zoned areas; and
- (7) the design, regeneration/revegetation and management of the east-west wildlife corridor/s.

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- (8) Measurable performance criteria are to be based on appropriate reference sites within the adjacent Cudgen Nature Reserve.

Feral Animal Management Plan

Each Feral Animal Management Plan update is to provide further details on collaboration with adjoining land owners and the incorporation of measures which include shooting and baiting.

Weed Management Plan

Each Weed Management Plan update is to detail ongoing weed management measures for each relevant stage.

Buffer Management Plan

Each Buffer Management Plan update is to detail bushfire protection measures, access control, signage and fencing.

Threatened Species Management Plan

Each Threatened Species Management Plan update is to provide further details on specific habitat management measures to safeguard existing populations of the two threatened Wallum frog species that occur within the Environmental Protection zones, Ecological buffers and the golf course. These measures are to be determined with reference to contemporary scientific literature and current best practice.

Golf Course Management Plan

The Golf Course Management Plan is to demonstrate consistency with the Koala Plan of Management and the Threatened Species Management Plan.

C4 Dedication of Land to OEH

Prior to the release of the first subdivision certificate for the project, or as otherwise determined by the Secretary (at the request of the Proponent), the Proponent must provide evidence of an agreement for the dedication by Project 28 Pty Ltd to the OEH of the Future OEH Land being no less than approximately 150ha of land as addition to the Cudgen Nature Reserve.

Such an agreement must outline the proponent's commitment to establish boundary fences and trails to the satisfaction of the OEH prior to the Future OEH Land being added to Cudgen Nature Reserve. The Proponent must ensure suitable funding for the amendment of existing reserve specific fire, pest, weed and management plans. The funding should be sufficient to ensure actions within the amended plans relevant to the new additions are able to be completed.

C9 Traffic and Wildlife Protection Measures

All future development applications are to demonstrate that:

- (1) Provision has been made to maintain the safe passage of wildlife between habitat areas through specific road design, lighting and signage requirements and, where considered appropriate, fencing to road verges, fauna underpasses and like measures; and
- (2) Road crossings of waterways maintain existing fish passage.

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C15 Bushfire Assessment

In order to ensure the protection of property and assets, a detailed bushfire assessment and management plan prepared by a suitably qualified person must be submitted with each future development application for subdivision. The assessment must, at a minimum, demonstrate consistency with the requirements of *Planning for Bushfire Protection 2006*. All asset protection zones must be clearly specified on the Plan of Development and all affected lots are to be encumbered with a Section 88B instrument under the *NSW Conveyancing Act 1919*.

C29 East West Wildlife Corridors

The development application for subdivision in Precinct 6, 7, 9 or 10 (whichever occurs first) must include a detailed Management Plan to include the precise location, restoration methodology, schedule and timing of works to be undertaken, maintenance and monitoring schedule, completion criteria and a mechanism for long-term protection of the new southern east-west corridor as required by term B4 of this approval.

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ADMINISTRATIVE CONDITIONS

Management and Maintenance of Environmental Lands

A13. The proponent is responsible for the management of all Potential Council Land and Future OEH Land for conservation purposes and the implementation of all establishment period and maintenance period works specified in all Environmental Management Plans from the date of the commencement of the project, or at another time directed by the Secretary, until such time that an agreement is reached with OEH and /or Tweed Shire Council regarding the dedication of that land.

Note: For the purpose of this condition, commencement is taken to mean any physical works including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project.

PART ONE – SUBDIVISION OF ENTIRE SITE

Environmental Offset Areas

3. Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and the Secretary, the Proponent shall:
 - a) engage a registered surveyor to prepare survey plan(s) and permanently mark the boundaries of the:
 - i) the contiguous area of Potential Council Land; and
 - ii) the contiguous area of Future OEH Landimmediately adjacent to the Precinct (unless the relevant contiguous area has already been marked due to the earlier commencement of Bulk Earthworks in another Precinct). A staging plan for the survey works is to be submitted to the Department prior to the commencement of the project.

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- b) where relevant, submit amended plans of proposed subdivision to the Secretary for approval that show the relevant contiguous Potential Council Land and the relevant contiguous Future OEH Land as separate lots;
- c) ensure that the boundaries marked by the surveyor remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries; and
- d) submit for the Secretary's approval, a form of dealing(s) to be registered on the title to the Potential Council Land and the Future OEH Land that must:
 - i. bind all future landowners;
 - ii. provide for the management of the Potential Council Land and the Future OEH Land for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;
 - iii. permit access to the Potential Council Land and the Future OEH Land by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the Environmental Management Plans; and
 - iv. provide for a release of any registered dealings in circumstances where all or part of the Potential Council Land or the Future OEH Land are transferred to a public authority.
- e) Where the Potential Council Land or the Future OEH Land is not subject to any amended plans of subdivision, the Proponent must within 1 month of the Secretary's approval of the dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to the Potential Council Land or the Future OEH Land and provide to the Secretary evidence of such registration within 10 days of the dealing(s) being registered.
- f) Where Potential Council Land or the Future OEH land is subject to any amended plans of subdivision, the Proponent must within 3 months of the later of the Secretary's approval of the amended plans of subdivision under condition 3(b) or the Secretary's approval of dealing(s) referred to in condition 3(d), lodge for registration the dealing(s) on the relevant titles to the Potential Council Land or the Future OEH Land to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.

Note: For the purpose of this condition, commencement is taken to mean any physical works including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project.

PART TWO – BULK EARTHWORKS AND CIVIL WORKS (ALL PRECINCTS)
PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

Bushfire Risk Management Plan

The Bushfire Risk Management Plan (BRMP) shall be amended to address the following:

Co-operative relations between neighbours to minimise the potential for wildfires and work towards fire frequencies and intensities that do not impact on Koala populations

Management actions required for future ongoing fire related Koala management in

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environmental protection zones.

The revised BRMP shall be endorsed by OEH prior to the issue of a construction certificate for civil works.

Baseline Monitoring

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Prior to the issue of the first Construction Certificate, the proponent must demonstrate to the satisfaction of the Department that sufficient baseline monitoring has commenced in accordance with the relevant Environmental Management Plans, including the following:

- a. Flora and Fauna Monitoring Report;
- b. Groundwater Management Plan;
- c. Overall Water Management Plan; and
- d. Stormwater Management Plan.

The Proponent must ensure that all monitoring bores and works that intersect groundwater are licensed, if relevant, from the NSW Office of Water.

Environmental Management Plans

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- 1) All Environmental Management Plans shall be revised to address management actions to be undertaken throughout the life of the project as relevant to the development precincts that the plan covers. This includes a detailed set of agreed establishment and maintenance phase performance completion criteria, ongoing monitoring and an annual maintenance schedule of works following the initial establishment period. This includes the following plans:
 - a. Flora and Fauna Monitoring Report
 - b. Buffer Management Plan
 - c. Vegetation Management Plan
 - d. Koala Plan of Management
 - e. Feral Animal Management Plan
 - f. Weed Management Plan
 - g. Threatened Species Management Plan
- 2) Performance criteria for all management plans are reviewed to ensure they are specific to each precinct and action, measurable, achievable, relevant and timely
- 3) The implementation schedule of all Environmental Management Plans shall be revised to include the following details as relevant to the precincts that the plan covers:
 - a. Actions that are specific to the precinct for which they are addressing
 - b. Specific map references to identify locations of works for all actions
 - c. Total areas to be planted (m2)

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- d. Planting density (per m2)
- e. Number of permanent signs to be erected and maintained
- f. Total areas for weed management activities (m2)
- g. Length of any fencing (temporary and permanent)
- h. Total areas for heath regeneration and revegetation (m2)
- i. Locations and areas (m2) of proposed threatened species habitat
- j. Timing and frequency of actions
- k. Monitoring requirements (frequency) that are specific to the action

Vegetation Management Plans

40

- 1) The Works Schedule of all Vegetation Management Plans shall be amended to include "Assisted natural regeneration" as the preferred Proposed Measure for Works Areas 2, 13 and Additional Work Areas and wherever significant natural regeneration is occurring within the EPZ and/or ecological buffer areas. This approach should be adopted in preference to revegetation or rehabilitation programs, incorporated as a guiding principle in the Statement of Commitments and relevant plans.
- 2) The final Vegetation Management Plans shall be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act, or prior to issue of any construction certificate, whichever occurs first.

Buffer Management Plans

41

- 1) Figures 10 and 10A to 10L shall be revised as necessary to ensure that spatial overlap of heath revegetation, Koala food tree planting and Wallum Sedge Frog compensatory habitat is minimised.
- 2) Tree plantings are to be minimised in areas that are identified as naturally regenerating.
- 3) The final Buffer Management Plans shall be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act of this approval or prior to issue of any construction certificate, whichever occurs first.

Weed Management Plans

42 The Weed Management Plans shall be amended to ensure that:

- 1) Control of all weeds will occur:

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- a. in Environmental Protection Zones located on the Kings Forest site; and
 - b. for a distance of 20 metres into the adjacent Cudgen Nature Reserve.
- 2) Control of Slash Pine only will occur for a further distance of 80 metres into Cudgen Nature Reserve.
 - 3) Weed management activities should be undertaken utilizing bush regeneration techniques including stem injection.

Threatened Species Management Plans

43

- 1) Proposed “melon hole” creation shall not be permitted in Acid Frog Compensatory Areas 5, 6, 7 and 8. Details of alternative offsetting arrangements for the loss of Wallum Froglet Habitat across the site must be included in the final Threatened Species Management Plan.
- 2) Tree plantings are to be minimised in areas that are identified as naturally regenerating.
- 3) The species list in Appendix 3 of the Threatened Species Management Plan – Precincts 1 and 5, James Warren & Associates, August 2012, for restoration works within the Precinct 1 ecological buffer shall be revised to demonstrate that species used in restoration works within and adjacent to the Littoral Rainforest within Precinct 1 to include only those species known from the patch or other locally-occurring rainforest species.
- 4) Details of whether and how the proposed removal of sediment from Blacks Creek may impact upon threatened wetland bird species (black necked stork, black bittern) must be included in the Plan, including any proposed mitigation measures.

The final Threatened Species Management Plans shall be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act or prior to issue of any construction certificate, whichever occurs first.

Feral Animal Management Plan

44

- 1) The implementation schedule of the Feral Animal Management Plan shall be revised to include the following details as relevant to the Precincts that the plan covers:
 - a. Estimated number of resources required for trapping activities, capture activities and habitat removal activities
 - b. Estimated resources required for monitoring actions
- 2) The Feral Animal Management Plan is to be revised to include mitigation and management actions for the control of Biting Insects, and consistent with Section A6 Biting Midge and Mosquito Controls of the Tweed DCP 2008.

The final Feral Animal Management Plan shall be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the

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application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act or prior to issue of any construction certificate, whichever occurs first.

Koala Plan of Management

1. The Koala Plan of Management shall be amended as follows:
 - 1) A revised offset strategy for the loss of Koala food trees incorporating the following:
 - a. the restoration and planting of Koala food trees offsite (a 27ha area of land has been nominated by OEH and identified in Map 1. (attached)).
 - b. planting of Koala food trees in the new east-west corridor as required by Term B4 of the Concept Plan approval.
 - c. planting of Koala food trees in other suitable locations across the site within each relevant precinct of the development in general accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014", and as modified by any approval of the revised Koala Plan of Management under this condition. The timing of plantings shall be in accordance with the approved revised Koala Plan of Management required by Condition 45(2).
 - d. Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating
 - 2) The amended KPoM approval shall include details of the Koala food tree planting schedule with numbers and staging and be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act or prior to issue of any construction certificate, whichever occurs first.
 - 3) The amended KPoM shall have regard to any determination of the NSW Scientific Committee established by the Threatened Species Conservation Act 1995.

Koala Infrastructure

46

- 1) Any roads through the environmental areas of the site must include:
 - a. fencing on both sides of the road of a design that will prevent the crossing by dogs and koalas;
 - b. fauna underpasses installed at intervals sufficient to allow unimpeded movement by wildlife including koalas across roads. Such fencing and underpasses within Environmental Protection Areas are to be constructed prior to the commencement of bulk earthworks in the southern and/or western development precincts.
- 2) Precinct 1 and 5 Fauna exclusion fencing must be integrated with fencing at Tweed Coast Road. Such fencing is to be constructed at the completion of bulk earthworks.

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- 3) The design and precise location of fauna exclusion fencing must ensure that the buffer area available to fauna is maximised and makes provision for a functional maintenance zone each side of the fencing in order to allow sufficient room for replacement and maintenance of the infrastructure.
- 4) Precinct 1 fauna exclusion fencing should be sited at the outer edge of the 50m ecological buffer.
- 5) Signage shall be erected in strategic locations within Precincts 1, 2, 3, 4 and 5, such as in the public open space areas within Precinct 5 and at fauna underpasses, advising residents that Koalas are active in the area and dogs should be kept on a leash at all times and encourage residents to keep dogs in enclosed yards between the hours of 6pm and 6am.
- 6) Erection of permanent vandal proof signs shall be erected at regular intervals to inform people about the purpose of the Koala exclusion fencing and the importance of maintaining the fence.

Flora and Fauna Monitoring Report

- 47 The Flora and Fauna Monitoring Report (FFMR) should be revised to the satisfaction of OEH as follows:
- 1) The FFMR framework should be revised to ensure that monitoring of impacts in relation to threatened wetland bird species (black-necked stork, black bittern) takes suitable account of any measures proposed in relation to drainage maintenance of Blacks Creek.
 - 2) Table 4 – Threatened Fauna shall include the requirement to report fauna monitoring results to Council and OEH
 - 3) The discussion of methodology in relation to monitoring of Koala should be more fully developed than that provided in Table 5 and Section 5.3, to the satisfaction of OEH
 - 4) The monitoring of impacts in relation to threatened wetland bird species (Table 12) should take suitable account of any measures proposed in relation to drainage maintenance of Blacks Creek, and be consistent with actions specified in the Drain Maintenance Management Plan and Threatened Species Management Plans.
 - 5) The results of all monitoring of feral animals (Table 13) shall be additionally reported to OEH to assist in efforts to co-manage any feral animal problems on and adjacent to the site.
 - 6) The final Flora and Fauna Monitoring Report shall be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act or prior to issue of any construction certificate, whichever occurs first.

Summary of Management Plans

- 48 The Summary of Management Plans (SOMP) shall be revised to ensure consistency with all relevant management plans to the satisfaction of the Secretary within 6 months

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of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act or prior to issue of any construction certificate, whichever occurs first.

Environmental Audit Reports

49

- 1) Within 3 months of the establishment period, the proponent must conduct an environmental audit ("Initial Audit") for each part of the Potential Council Land to confirm that the establishment period and any relevant maintenance period criteria have been met. The Initial Audit(s) must be prepared by a suitably qualified independent environmental consultant, reviewed by Council and approved by the Secretary.
- 2) Within 3 months after each of the first and third anniversaries, and then subsequently every 2 years, of the Secretary's approval of the Initial Audit(s) for each part of the Potential Council Land, the Proponent shall submit to Council for review, and the Secretary for approval, environmental audits prepared by a suitably qualified independent environmental consultant. Those environmental audits must review the condition of the Potential Council Land against the agreed maintenance period performance criteria specified in each Environmental Management Plan until the affected lands have been transferred into public ownership. Environmental audit reports shall itemize all costs associated with the implementation, monitoring and reporting of all maintenance period works and include audited financial statements.
- 3) Within 6 weeks of completing this audit, or as otherwise agreed by the Secretary, the Proponent shall submit a copy of the audit report to the Secretary with a response to any recommendations contained in the audit report.
- 4) Within 3 months of submitting an audit report to the Secretary, the Proponent shall review and if necessary revise the relevant management plans and undertake additional mitigation measures as required under this approval to the satisfaction of the Secretary.

Bond for Environmental Restoration and Maintenance Works

50

- a) Prior to commencement of bulk earth works for each precinct a cash bond or bank guarantee shall be lodged with Council to ensure that the relevant environmental management plans for the associated Potential Council Land (as outlined by the Potential Council Land Plan detailed in condition B5 of the concept plan) is implemented. The amount of such bond will be based on 135% of the cost of the environmental works (repair and/or enhancement) for the associated precinct/Potential Council Land for the establishment period specified in the approved environmental management plans. Two written quotes from suitably experienced and qualified contractors must be submitted to the Council which detail the cost of all works required.

The cash bond or bank guarantee will be refunded, following the written approval from the Secretary of the environmental audit for the associated Potential Council Land as per condition 49(1).

- b) Once the establishment period has been completed, every 2 years the Proponent shall

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lodge a cash bond or bank guarantee with Council to ensure that the relevant environmental management plans for the Potential Council Land are implemented for that 2 year maintenance period. The amount of such bond will be based on 135% of the cost of the environmental maintenance works for the associated precinct/Potential Council Land (as outlined by the Potential Council Land Plan detailed in condition B5 of the concept plan) for that 2 year period, or until the completion criteria specified in the environmental management plans are met as required by Condition 39, and the land is transferred to public ownership. Two written quotes from suitably experienced and qualified contractors must be submitted to the Council which detail the cost of all works required in the relevant 2 year maintenance period.

- c) The cash bond or bank guarantee will be refunded at the end of each two year maintenance period subject to the Audit Report confirming that the requirements of the approved environmental management plans have been implemented by the Proponent.
- d) Monitoring of the effectiveness of the environmental works (repair, enhancement and/or maintenance) is to be undertaken in accordance with Condition 49. Any supplementary or approved adaptive management works deemed necessary by the independent contractor shall be promptly undertaken once the need is identified.

Bi-annual bonding will no longer be required following the Proponent providing evidence to the Secretary that the final audit has been conducted in accordance with Condition 49 which demonstrates that the relevant works have been completed and written evidence is provided to the Secretary that the lands have been transferred into public ownership.

PRIOR TO COMMENCEMENT OF CONSTRUCTION WORKS

Construction Environmental Management Plan

52

- 1) Prior to the commencement of construction works for each stage of the project a Construction Environmental Management Plan (CEMP) shall be prepared that covers the area of works. The CEMP shall be consistent with the Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004). The CEMP shall include details sufficient to understand and avoid, mitigate and remedy all potential environmental impacts of the project during construction. The CEMP shall include, but not be limited to:
 - a. a description of all relevant activities to be undertaken on the site during construction (including an indicative timeline);
 - b. a description of relevant environmental management objectives for the site;
 - c. a detailed construction management strategy for each sequence / stage of the bulk earthworks;
 - d. details of measures to be installed to separate construction areas from publicly accessible areas;
 - e. statutory and other obligations that the Proponent is required to fulfil during construction including all relevant approvals, licences and consultations;
 - f. a description of the roles and responsibilities for all relevant employees

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- involved in construction
- g. hours of work (including standard hours of work for the Environmental Officer);
 - h. a 24-hour contact telephone number shall be provided to all adjoining owners and occupants. Note: the nominated telephone number may contain provision for a voice message service outside of normal working hours.
 - i. Measures to be implemented during bulk earthworks operations to ensure the existing 600mm trunk water main is protected
 - j. Details of the Aboriginal Cultural Heritage Program for personnel and contractors (the program should be developed and implemented in collaboration with the local Aboriginal community)
 - k. A subset of the following management plans:
 - i. traffic and pedestrian management (see condition 55);
 - ii. noise and vibration management (see condition 56);
 - iii. construction waste management (including the proposed method and location of excess spoil from bulk earthworks) (see condition 57);
 - iv. erosion and sediment control for the entire Kings Forest Estate (see condition 54);
 - v. dust management to include:
 - identification of all dust emission/sources for each stage of the project;
 - identification of appropriate air quality goals/management criteria; and
 - details of all dust management and/or dust mitigation measures required to achieve the air quality goals/criteria for the construction works.
 - l) Note: other conditions in this approval may specify relevant objectives or requirements for or in addition to any of the matters listed directly above.
- 2) Bulk earthworks are limited to one sequence area at a time, with the maximum exposed disturbed area (that has not been permanently vegetated) not exceeding a maximum of 5 hectares unless otherwise approved as part of this approval in Condition 9, at any time to reduce exposed areas.
 - 3) The CEMP shall be prepared in consultation with the Council and submitted for the approval by the Secretary no later than one month prior to the commencement of construction works. Notwithstanding, where construction work is to be undertaken in stages, the Proponent may, subject to the agreement of the Secretary, stage the submission of the CEMP consistent with the staging of activities relating to that work. The Proponent shall also forward copy of the CEMP to the Secretary and Council for information. Construction shall not commence until written approval has been received from the certifying authority.

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Construction Management Measures

53 All measures contained in the Construction Environmental Management Plan under Condition 52 and the Sediment and Erosion Control Plan under Condition 54 are to be implemented prior to the commencement of construction and be maintained throughout construction. A copy of the approved Plans shall be maintained on site and made available upon request.

SEPP14 Wetlands

63 Prior to the commencement of works for any stage of the project, the environmental protection zones and buffers and Cudgen Nature Reserve boundaries must be clearly delineated on-site to prevent unauthorised access to these areas. Staging Plans shall be submitted to the satisfaction of the Secretary, prior to the issue of a Construction Certificate for bulk earthworks within each relevant Precinct, showing the area of works to be undertaken and with the boundaries of adjoining environmental protection zones and buffers being clearly delineated within each Precinct. Temporary signage should be erected to ensure that construction workers are aware of the need to avoid and protect these sensitive areas. Design of the temporary fence should allow movement of native fauna present in the area. Temporary fencing and signage should incorporate all Environment Protection Zones including any of the ecological buffers proposed for dedication as part of Cudgen Nature Reserve.

Exclusion Fencing and Underpasses

64 Fauna exclusion fencing and underpasses (including any temporary fencing and underpasses) for roads traversing Environmental Protection Areas are to be constructed prior to the commencement of bulk earthworks in any of the southern and/or western development precincts

Community Liaison

- 70
- 1) Details of the contact person and telephone number shall be clearly displayed at the site entry.
 - 2) A sign is to be erected at the entry of the site to clearly advise the community liaison officer's details and contact number.
 - 3) These details are to be documented in the Construction Environmental Management Plan.

Environmental and Community Liaison Officer(s)

- 71
- 1) An appropriately qualified Environmental Officer(s), that is to receive the prior approval of the department, must be engaged by the Proponent for the duration of works. Their role shall be to oversee environmental compliance of the project until completion conditions have been satisfied.
 - 2) A community liaison officer shall be available during construction works.
 - 3) The Environmental Officer(s) may also act as the community liaison officer required by 2) above, to consult with potentially affected property owners and the

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department before and during construction works and shall respond to complaints of an environmental impact nature.

- 4) The Environmental Officer(s) must submit a report to the ~~Secretary Director-General~~ in accordance with reporting timetables in the management plans and within 3 weeks of the completion of each earthworks stage detailing the project's compliance with relevant conditions, management plans and progress on-site.
- 5) A sign is to be erected at the entry of the site to clearly advise the environmental/community liaison officer's details and contact number. These details are to be documented in the CEMP required by Condition 0.

Implementation of Environmental Management Plans

72

- 1) Evidence of commencement of implementation of all Environmental Management Plans shall be provided to the Secretary prior to commencement of bulk earthworks.

DURING CONSTRUCTION

Approved Plans to be On-site

- 73 A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by any officer of the Department, Council or the PCA.

Complaints Procedure

75

- 1) At the commencement of construction the Proponent shall ensure that the following are available for community complaints during construction:
 - a) A 24 hour telephone number on which complaints about construction activities at the site may be registered.
 - b) A postal address to which written complaints may be sent.
 - c) An email address to which electronic complaints may be transmitted.
 - d) Name, address, contractor licence number and telephone number of the principal contractor, including a telephone number at which the person may be contacted outside working hours.
 - e) Name, address and telephone number of the Project Manager and PCA
 - f) The telephone number, the postal address, email address, the name of the site/project manager and the approved hours of work, shall be displayed on a sign near the entrance to the site, in a position that is clearly visible to the public.
- 2) The Proponent shall record details of all complaints received through the means listed under this condition of this approval in an up-to-date Complaints Register.

The Proponent shall provide an initial response to any complaints made in relation to the project during construction within 48 hours of the complaint being made. The response and

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any subsequent action taken shall be recorded in the Complaints Register.

Incident Reporting

76 Within 24 hours of detecting any incidents during construction that causes (or may cause) significant harm to the environment, the Proponent shall notify the Council and other relevant agencies of the incident and identify the following:

- 1) Describe the date, time, and nature of the incident.
- 2) Identify the cause (or likely cause) of the incident.
- 3) Describe what action has been taken to date.
- 4) Describe any proposed measures to address the incident.

Fauna Spotter-Catcher

96 A registered Fauna spotter-catcher is to be present during all vegetation clearing works to ensure safe dispersal of fauna as required by the Environmental Management Plans.

Protection of the Environment

97 All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction and operation of the development.

Monitoring

98 All monitoring shall be undertaken in accordance with the site Environmental Management Plans, including, but not limited to, the following:

- 1) Flora and fauna
- 2) Groundwater quality and levels
- 3) Groundwater seepage
- 4) Surface water quality
- 5) Sediment and erosion control
- 6) Acid sulfate soils
- 7) Dust monitoring (as required)

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE FOR SERVICE STATION AND FOOD AND DRINK PREMISES - PRECINCT 1

Koala Plan of Management

121

- 1) All Koala exclusion fencing must:
 - a. be installed along the eastern and northern boundary of the service station/food and drink premises as identified in 'Proposed Site Plan' prepared by Push (ref: Job No. 738.12, Drawing 1000, Issue P3, dated December 2016); and
 - b. be constructed in accordance with the with the revised Koala Plan of

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Management approved by the Secretary in accordance with MP06_0318 Condition C2 and MP08_0194 Condition 45.

- 2) The Koala fence must be constructed and functional prior to the issue of an Occupation Certificate for any building in Precinct 1. Evidence must be obtained from a suitably qualified ecological professional that certifies management measures have been constructed in accordance with the approved Koala Plan of Management.

Environmental Works

- 125F. Prior to the issue of the Occupation Certificate, evidence is to be submitted to the Secretary by a suitably qualified person verifying that all works have been undertaken in accordance with the approved Environmental Management Plans as per Condition 39.

PART FOUR – SUBDIVISION OF PRECINCT 5 (LOT 2)

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

Bushfire Management

141

- 1) Prior to the issue of a Subdivision Certificate for any stage of the subdivision of Precinct 5, the Proponent shall engage a suitably qualified bushfire consultant to certify that the site layout complies with the following:
 - a) The asset protection zones (APZ) required by *Planning for Bushfire Protection 2006* are to be provided in accordance with the Bushfire Risk Assessment prepared by Bushfiresafe (Aust) Pty Ltd dated August 2012. Details of the APZs (as it relates to each stage of the project) are to be provided to the satisfaction of the Certifying Authority prior to the release of the Construction certificate for each stage of the project.
 - b) Water, Electricity and Gas shall comply with the requirements of Section 4.2.7 of *Planning for Bushfire Protection 2006*.
 - c) The internal road shall comply with the requirements of Section 4.2.7 of *Planning for Bushfire Protection 2006* and the entrance way to the parking area shall be a minimum of 6.5 metres in width.
 - d) Landscaping shall comply with the principles of Appendix 5 of *Planning for Bushfire Protection 2006*.
 - e) An Emergency Evacuation Plan is to be prepared in line with NSW RFS document *Guidelines for the Preparation of an Emergency/Evacuation Plan*.
- 2) A fire trail is to be provided around Lot 1001 to provide access to the APZ and bushland interface for fire fighting purposes. The fire trail shall comply with section 4.1.3(3) of *Planning for Bushfire Protection 2006*.
- 3) Notwithstanding 2) above, the Proponent may provide alternate access to the APZ and bushland interface within the future development of Lot 1001 where such a trail affects the design layout of the future townhouse development on Lot 1001. Any such proposal to delete the fire trail should be referred to the RFS for

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consideration and approval.

- 4) Certification shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate for each stage of the subdivision in Precinct 5.
- 5) A Plan of Management shall be prepared by a suitably qualified bushfire consultant for the future ongoing maintenance of asset protection zones prior to the release of the Subdivision Certificate for each relevant stage of the subdivision of Precinct 5.

Koala Plan of Management

148 All necessary management measures relevant to Precinct 5 (exclusion fencing, road grids, traffic calming devices, underpasses etc) required by the approved Koala Plan of Management prepared by James Warren and Associates dated August 2012, must be constructed and functional prior to the release of a Subdivision Certificate for the first stage of the subdivision in Precinct 5. Evidence is to be obtained from a suitably qualified ecological professional that certifies management measures have been constructed in accordance with the approved Koala Plan of Management, and submitted to the Secretary for approval.

OPTIONS:

That Council:

1. Endorse this report as Council's submission to the NSW Department of Planning.
2. Endorse changes to this report.

Option 1 is recommended.

CONCLUSION:

Council's assessment of the Modification has raised a number of concerns for the proposed revised Koala Plan of Management for the Kings Forest development site. It is considered appropriate to forward these concerns to the NSW Department of Planning for consideration.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Consolidated 4659584)	Project	Application	Conditions	(ECM
Attachment 2.	Consolidated 4659585)	Concept	Application	Conditions	(ECM

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 June 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.
