



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

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

Agenda

Planning Committee Meeting Thursday 6 September 2018

held at
Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads
commencing at 5.30pm

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 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 Secretary 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 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, 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.

(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 4.16 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 4.16 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 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

(4) **Consent where an accreditation is in force**

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.

- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) **Definitions**

In this section:

- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
- (b) **non-discretionary development standards** means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA16/0936 for a Bulk Loading/Delivery of Extracted Water and Roadworks at Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek

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 an application for the use of a rural property for the purposes of water extraction for bulk loading and delivery offsite via water tankers in the Rowlands Creek locality.

The proposed development involves the extraction of a maximum of 24 megalitres (ML) of water in any 12 month period. This water would be extracted from the aquifer by underground pumps, stored onsite within two water tanks for subsequent removal in bulk by trucks with a maximum capacity of 28,500 litres.

The bulk extraction will require an average of three trucks per day (6 trip ends) travelling between the subject site on Rowlands Creek Road to Kyogle Road and beyond through the village of Uki. The operations will be from Monday to Saturday over 50 weeks, within a 12 month period, between the hours of 7am to 6pm.

The property has an existing license for the extraction of water for irrigation and industrial purposes of 25ML per year. Water NSW is the regulatory authority for this licence. Water NSW has assessed the appropriateness of the bore and extraction rates of the water prior to issuing the license.

Two 39,000 litre water tanks will be placed on site in the vicinity of the existing bore. Articulated, 15m water tanker trucks will enter the property, park beside the tanks, fill up and exit the property. Only one truck will be onsite as any one time. The existing pump required to extract the water is below the ground and is not audible. A second electric pump will be located adjoining the tanks to transfer water from the tanks into the trucks.

The subject site is a 4.65h parcel of land that currently contains a single dwelling and ancillary outbuildings. The property is surrounded by rural activities and single dwellings. The property is located approximately 3.34km from the intersection of Rowlands Creek Road and Kyogle Road at Uki.

This development application was reported to the Planning Committee on 2 November 2017. At this meeting, it was resolved to defer determination of the application for further assessment having regard to several resolutions. These resolutions relate to issues associated with traffic, road maintenance and advice to Councillors from the Environmental Defenders Office. Council sought legal advice in regards to the assessment of the development against Clause 7.15 of the Tweed Local Environmental Plan, 2014. Council also requested advice from Destination Tweed. This request for advice was followed up by Council officers on 7 November 2017 and again on 20 February 2018. However a response from Destination Tweed has not been received. Since this report to Council (on 2 November 2017), legal advice has been received recommending that Council should independently determine whether it is satisfied that the development will not have an adverse impact on natural water systems or the potential agricultural use of the land, pursuant to Clause 7.15 of the Tweed LEP 2014.

In response to this legal advice, on request of Council, the applicant commissioned the preparation of a Hydrogeological Report. This report was submitted by the applicant to Council on 9 February 2018. Council requested comments of this Hydrogeological Report from Water NSW. Water NSW responded on 9 March 2018 with a recommendation of further testing, pursuant to the recommendations of the Hydrogeological Report. This testing was undertaken on behalf of the applicant and the outcomes provided to Council on 4 May 2018. This further testing was provided to Water NSW on 4 May 2018. On 16 August 2018 a response was received from Water NSW which outlined the hydrogeological assessment, provided by the applicant, is satisfactory in approach, scientific methodology, conclusions drawn from the results and subsequent recommendations made. Therefore, DoI Water is satisfied with the minimal impacts identified by the hydrogeological testing and final report.

A traffic and safety assessment has been provided for the proposed bulk water extraction. This report assessed the ability of Rowlands Creek Road to cater for the trucks between the site and the village of Uki.

A small section of Rowlands Creek Road requires widening to accommodate the Water trucks while other sections require minor tree trimming for sight lines. These road works will be conditions of any consent granted, prior to commencement. These works will be at the applicants cost. A small section of Rowlands Creek Road was damaged during the 2017 flood event. This road will require repair prior to commencement of the operation. This road is currently being repaired by Council with works anticipated to be completed by the end of August 2018.

Council's Roads and Stormwater Unit have reviewed the application's Traffic Assessment and also provided advice in regards to the ongoing cost of maintaining Rowlands Creek Road to cater for repetitive heavy loads.

This report will detail the process that has provided the subject site with a license to permit water extraction. This report will also summarise how the application meets the objectives of the zone and the Tweed Local Environmental Plan (TLEP) 2014, particularly Clause 7.15 specifically relating to water extraction given the existing licence issued by Water NSW.

The development application was notified for 14 days on two separate occasions. Council received 156 submissions during the first public notification process and 44 submissions during the second notification period. These submissions included representations from the Environmental Defenders Office and the Tweed Water Alliance. All submissions objected to the proposal on environmental, traffic and amenity grounds. A 100 person signature was also lodged during this second notification period. These submissions have been summarised and addressed throughout this report. It should be noted that many of the submissions focus on the water extraction component of the business which has already been authorised by Water NSW. These submissions also raise objection to the use of ground water bulk extraction for the purposes of water bottling.

The assessment of the development has concluded, based on the preparation of a Hydrogeological Assessment which has been reviewed by Office of Water NSW that the development meets the objectives of Clause 7.15 of the Tweed Local Environmental Plan 2014 relating to bulk water extraction. Specifically the development will not have an adverse impact on the natural water systems or the potential agricultural use of the land.

While the submitters have objected strongly to the development for various reasons, including the development being contrary to the public interest, this report concludes that the development is satisfactory when assessed against the relevant provisions and worthy of support on planning grounds.

RECOMMENDATION:

That Development Application DA16/0936 for a bulk loading/delivery of extracted water and roadworks at Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 21525 D Sheet 1, prepared by B and P Surveys and dated 17/08/16, and the Rowlands Creek Road Traffic and Safety assessment prepared by Bitzios Consulting, dated 24 May 2017, except where varied by the conditions of this consent.**
[GEN0005]
- 2. The first water truck cannot access the site without the prior written authorisation of the General Manager or his delegate specifically stating that Rowlands Creek road is suitable for the proposed development.**
[GENNS01]

3. This consent authorises:

- (a) water extraction from bore GW304537 to the maximum extraction volume of 24 megalitres of water in any 12 month period**
- (b) infrastructure as identified on the stamped approved Location Plan identified in Schedule 1 of this consent and the provision of two water tanks and an electric pump adjacent to the tanks;**
- (c) Maximum 15m truck with a maximum of three loads of water a day**
- (d) Hours of operation of the business are restricted to the following hours (including pumping operations):**

- * 7am to 6pm - Mondays to Fridays**
- * 7am to 6pm - Saturdays**
- * No operations are to be carried out on Sundays or Public Holidays**
- * All deliveries and pickups relating to the business are to occur within the approved hours**

Note: No truck is to enter/exit the site before/after these hours.

- (e) This use is in conjunction with Approval 30CA314315 issued by Water NSW under the Water Management Act 2000. The use must be undertaken in accordance with the provisions of this Approval.**

4. The development is to be carried out in accordance with Council's Development Design and Construction Specifications and provided with appropriate stormwater management and erosion and sediment control.

[GEN0265]

5. The approved development shall not result in any clearing of native vegetation without prior approval from the relevant authority.

6. The driveway access to 350 Rowlands Creek road is to be constructed to Council's requirements and will be subject to submission and approval via a s138 Roads Act application.

[GENNS02]

7. All vehicles entering the subject allotment must enter and exit in a forward direction.

[GENNS03]

PRIOR TO COMMENCEMENT OF WORK

8. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved Management Plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

9. Prior to commencement of any works on the site, all appropriate erosion and sedimentation control measures are to be installed and maintained throughout the duration of the development.

[PCW0985]

10. Warning signage erected in relation to expected heavy vehicle encounters are to be installed on Rowlands Creek Road and the associated costs borne by the developer.

[PCWNS01]

DURING CONSTRUCTION

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

12. All necessary roadworks including pruning of vegetation as prescribed in the approved Traffic Assessment Report shall be undertaken strictly in accordance with Australian Standards *AS 4372:2007 Pruning of amenity trees* and *AS 4970:2009 Protection of trees on development sites*

[DUR0005]

13. 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]

14. 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]

15. 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]

PRIOR TO COMMENCEMENT OF THE OPERATION

16. Section 7.11 Contributions

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, the use shall not commence unless all Section 7.11 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 Section 7.11 Contribution 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 7.11 Contribution Plan current at the time of the payment.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- (a) Tweed Road Contribution Plan:
- | | |
|--|----------|
| 6 Trips @ \$2529 per Trips | \$15,174 |
| (\$2,239 base rate + \$290 indexation) | |
| S94 Plan No. 4 | |
| Sector12b_4 | |

[POC0395]

17. Prior to the commencement of the approved use on the site, application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include (but not limited to) engineering plans and specifications for the following required works:

(a) Bitumen sealing (or equivalent) of the existing driveway servicing the site to at least the property boundary in accordance with Council's Development Control Plan - Section A2 "*Site Access and Parking Code*" and Council's "*Driveway Access to Property - Design Specification*" (*current version*), including any driveway widening as required to safely accommodate a 15.0m articulated Water Truck, confirmed by swept paths.

(b) Road widening and upgrading of Rowlands Creek Road as recommended in the Bitzios - Traffic and Safety Assessment, dated 24 May 2017. These works are to include any recommended safety signage.

18. Truck warning signage at the approaches of the driveway of the subject site from both directions shall be installed to the satisfaction of the General Manager or delegate.

19. Prior to the commencement of the approved use, vegetative screening shall be provided along the eastern side boundary of the site to screen the proposed Water tanks and trucks from adjoining properties. This vegetative screening shall be to the satisfaction of the General Manager or delegate.
20. Prior to Water Trucks transporting extracted water from site, a Certificate of Practical Completion shall be obtained from Council's General Manager or his delegate for all works required under Section 138 of the Roads Act 1993.

[POCNS01]

USE

21. 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.
22. Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act, the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.
23. 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 (including but not limited to the electric pumps to fill the trucks) 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.
24. 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.
25. 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.

[USE0125]

[USE0155]

[USE0175]

[USE0225]

[USE0245]

26. 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]

27. Any pump used for water extraction and water transfer/ filling operations are to be installed and operated in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.
28. Only one truck shall be permitted to travel along Rowlands Creek Road or be on site at any one time.
29. One truck is permitted to be on the site at any one time for the purposes of transporting water in association with this consent.
30. No truck movements are to take place on Rowlands Creek Road during school bus travel times.
31. No more than three trucks (3 in 3 out of the site) are permitted per day.
32. The movements of truck of the site in accordance with this development consent is to be maintained in a daily log which records the date and time of all inbound and outbound trucks from the subject site.

At any time, Tweed Shire Council Officers may request a copy of the log to be provided for audit of compliance with conditions of this development consent in regard to the times and frequency of truck movements in and out of the subject site.

The submission of the log at the request by Tweed Shire Council is to be accompanied by a Statutory Declaration by the operator declaring that the information contained in the log is true and correct.

33. The extraction of water in accordance with this development consent is to be maintained in a daily log which records the quantity of water being extracted from the subject site.

At any time, Tweed Shire Council Officers may request a copy of the log to be provided for audit of compliance with conditions of this development consent and any approval or license issued by Water NSW.

The submission of the log at the request by Tweed Shire Council is to be accompanied by a Statutory Declaration by the operator declaring that the information contained in the log is true and correct.

[USENS01]

34. No intensification of use beyond:
 - a) The bore water extraction volume is limited to 24 ML / pa:
 - b) A maximum of 3 x bulk water collections per day in accordance with the approved hours of operation;

- c) **No supplementary or additional water collection vehicles are to service the site without the approval of the General Manager or his delegate.**

[USENS02]

35. **Prior to Water Trucks transporting extracted water from site, a Certificate of Practical Completion shall be obtained from Council's General Manager or his delegate for all works required under Section 138 of the Roads Act 1993.**

[USENS03]

REPORT:

Applicant: Jim Glazebrook & Associates Pty Ltd
Owner: Mr Jack R Hallam
Location: Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek
Zoning: RU2 - Rural Landscape
Cost: \$10,000

Background:

Assessment Process

This development application was reported to the Planning Committee on 2 November 2017. It was resolved at this meeting to defer determination of the application for further investigations into the development. The resolutions from this Committee item that required further reporting to Council are provided below:

- 1. This item be deferred to the Planning Committee meeting of 7 December 2017 to allow the concerns raised about the inconsistencies and discrepancies in the traffic report with the Council report to be investigated and to allow Council to consider the advice received by the Councillors from the Environmental Defenders Office to consider the impacts of water extraction and our responsibilities as decision maker on this issue and to allow Council to seek advice from Destination Tweed as to the likely impacts on its experiential tourism initiative.*
- 2. Council establish the cost to ratepayers of maintaining Rowlands Creek Road from Kyogle Road to 350 Rowlands Creek Road as it ages and a projection of the maintenance costs, given it wasn't constructed to withstand the repetitive heavy loads imposed by this application - including pavement failure, pavement edge failure, probable increased land slips as a result of repetitive heavy loads over the life of the DA and as a result of the predicted increase in heavy rainfall events.*

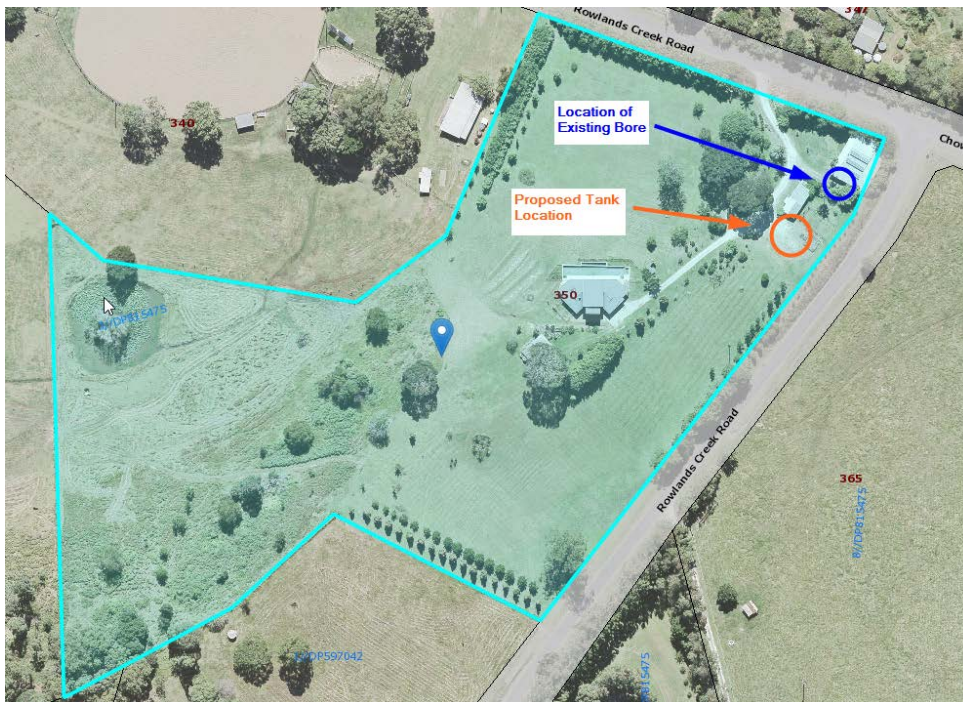
In response to this resolution, legal advice was received recommending Council independently determine whether it is satisfied that the development will not have an adverse impact on natural water systems or the potential agricultural use of the land.

Following this advice, on request of Council, the applicant commissioned the preparation and submission of a hydrogeological report for the subject Water Extraction development. This report was lodged with Council for assessment. Water NSW has also commented on this Hydrogeological Report.

Council's Roads and Stormwater Unit have reviewed the application's traffic report and have also provided advice in regards to the ongoing cost of maintaining Rowlands Creek road to cater for repetitive heavy loads as required by the Resolution of 2 November 2017.

Site Details

The subject property is described as Lot 3 DP 815475 No. 350 Rowlands Creek Road, Rowlands Creek. The land is 4.65ha in area and has a road frontage to Rowlands Creek Road of approximately 150m.



The land slopes up from Rowlands Creek Road to the south-west. An existing dwelling is sited 100m from Rowlands Creek Road and 70m from the proposed tank site. Surrounding land uses comprise rural land holdings used primarily for cattle grazing with associated residences.

The subject site is identified as 350 Rowlands Creek Road and is approximately 3.34km from Kyogle Road, intersecting at the village of Uki. Rowlands Creek Road is a low volume rural road with varying seal width and does not have a weight limit. The relevant section of road has two short single width culvert/bridge sections. These culverts are approximately 4m wide and have the ability to cater for the proposed trucks.

History of Site

The site has a limited history. The existing dwelling was approved in 2004 with an older dwelling being converted to a Studio in conjunction with this approval. An onsite sewerage system to replace a 2004 system is currently being assessed by Council.

The Licence that allows the subject land owner to extract bulk water for irrigation and industrial (water bottling) from the subject site was granted in 2006. The maximum volume of water to be extracted is 25 ML per an amended approval granted by the Department of Primary Industry Water in 2009.

The licence remained current until its conversion under the Water Management Act 2000 on the 1 July 2016 when it became water access licence 30AL314314 and combined approval 30CA314315.

Water NSW is the regulatory authority for this licence.

Proposal

Water Extraction

The proposal involves the extraction of a maximum of 24ML of water in any 12 month period. This water would be extracted from the aquifer by underground pumps, stored onsite within two water tanks. These two 39,000 litre water tanks will be placed on site in the vicinity of the existing bore. Articulated water tanker trucks with a maximum capacity of 28,500 litres and length of 15m will enter the property, park beside the tanks, fill up and exit the property. Trucks will then travel along Rowlands Creek Road onto Kyogle Road through Uki and beyond.

Only one tanker will be onsite as any one time. The existing pump required to extract the water is below the ground and is inaudible. The transfer from the water tanks to the truck will take approximately 15 minutes with the use of a second onsite electric pump above ground.

This bulk extraction will result in an average of three loads per day (6 trip ends) by trucks travelling between the subject site on Rowlands Creek Road to Kyogle Road and beyond through the village of Uki. The operations will be from Monday to Saturday over 50 weeks, within a 12 month period, between the hours of 7am to 6pm.

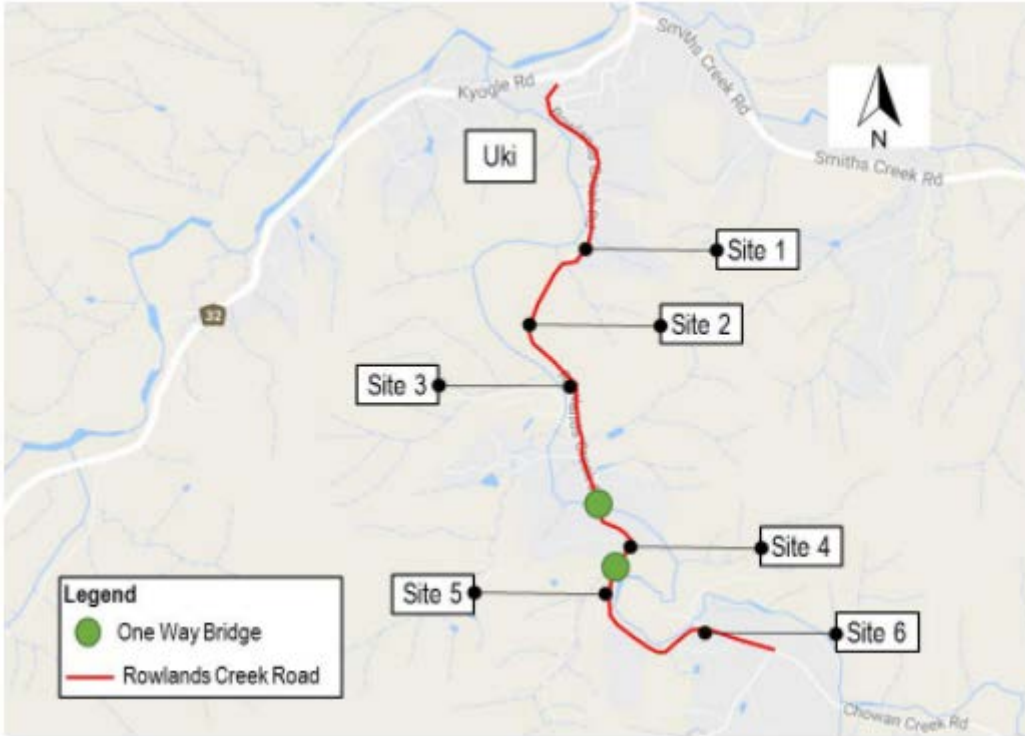
The property has an existing license for the extraction of water for irrigation and industrial purposes of 25 ML per year. Accordingly, Water NSW is the regulatory authority for this licence. However, the implications of bulk exportation of water from the site for water bottling elsewhere will be assessed against the relevant provisions of the Environmental Planning and Assessment Act, 1979 and the Tweed Local Environmental Plan 2014.

Associated Roadworks

The application has been supplemented by a Traffic and Safety Assessment. This assessment concluded that remedial measures are required to address issues identified within this Traffic and Safety Assessment.

These remedial measures were identified within six sites (curves) along the 3.34km route between the site and Uki. These works will be the subject of a condition of any consent granted prior to commencement of the business.

These six sites are identified below:



Site 1 – Works to be undertaken at this Curve

- Minor tree trimming required within shoulder to assist in road width and clearance;
- Minor works on existing road shoulders can be undertaken to provide an unsealed shoulder with gravel as per Councils Standard Drawing 5.0.009 (Class B) to provide additional corridor width.

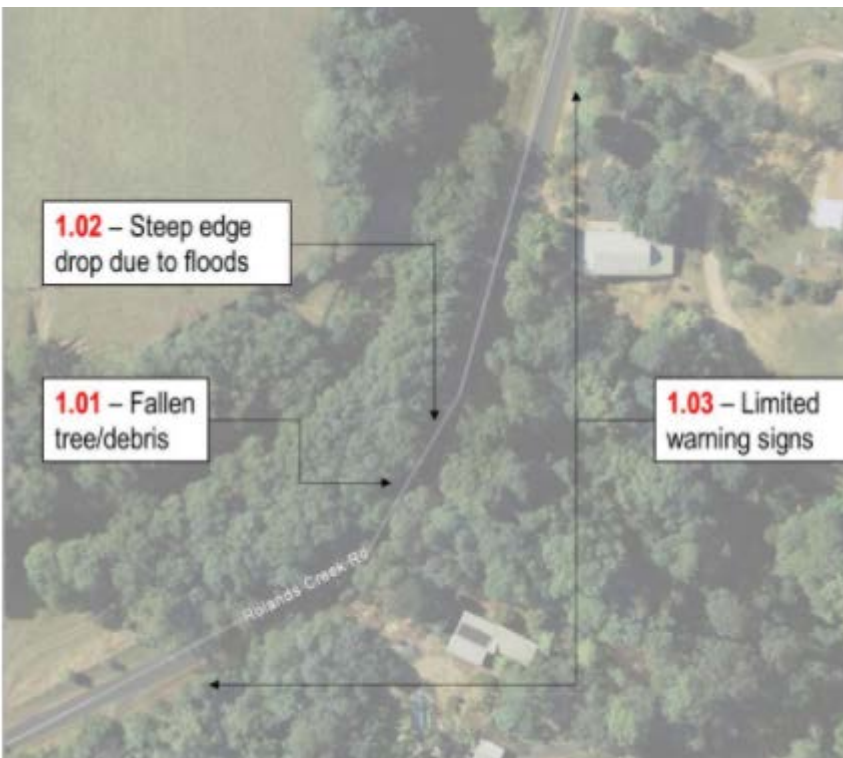


Figure 3.1: Issue Location Curve 1 of 6

Site 2 – Works to be undertaken at this Curve

- Sight distant issues currently exist around bend for cars and trucks. To address this issue, minor civil works would be required to cut the bailers back to provide adequate shoulder width and greater sight lines. Truck and curve warning signage will be installed.

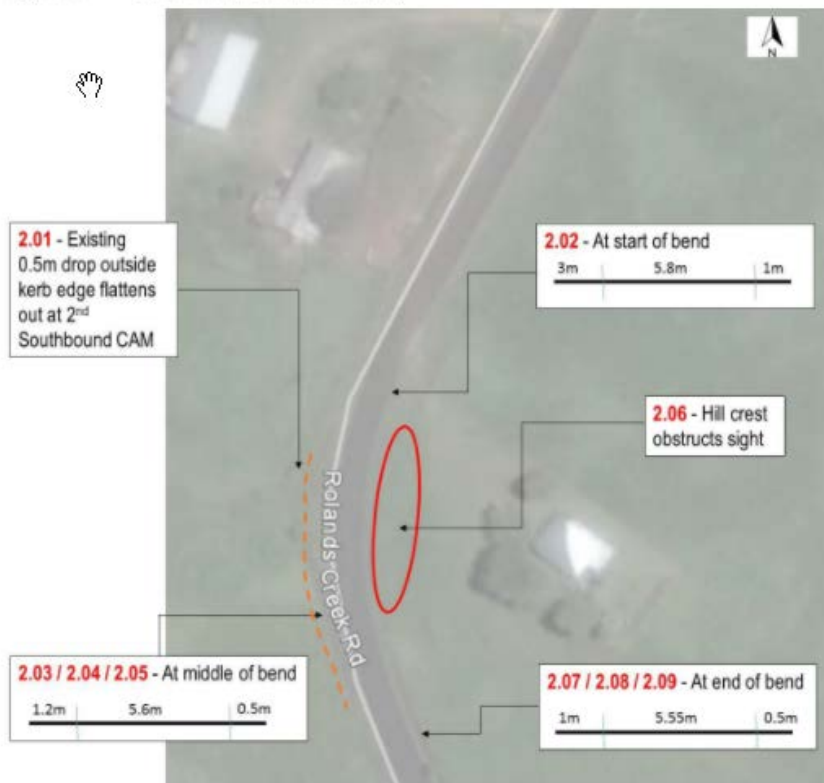


Figure 3.3: Issue Location Curve 2 of 6

Site 3 – Works to be undertaken at this Curve

- Tree trimming along western side of road is required to improve northbound sight lines
- Minor works on existing road shoulders to provide an unsealed shoulder with gravel as per Councils Standard Drawing 5.0.009 (Class B) to provide additional corridor width.



Figure 3.4: Issue Location Curve 3 of 6

Site 4 – Works to be undertaken at this Curve

- Sufficient roadside space is available to widen unsealed road shoulder to 1.3 metres with gravel as per Councils Standard Drawing for Class B rural road;
- Trimming foliage on eastern road side would improve sight lines;
- Minor civil works to flatten part of gently sloped verge along western road edge would allow a wide shoulder for passing vehicles; and
- Installation of curve warning signage approaching the curve and one-way bridges to the north and south of the assessed curve.

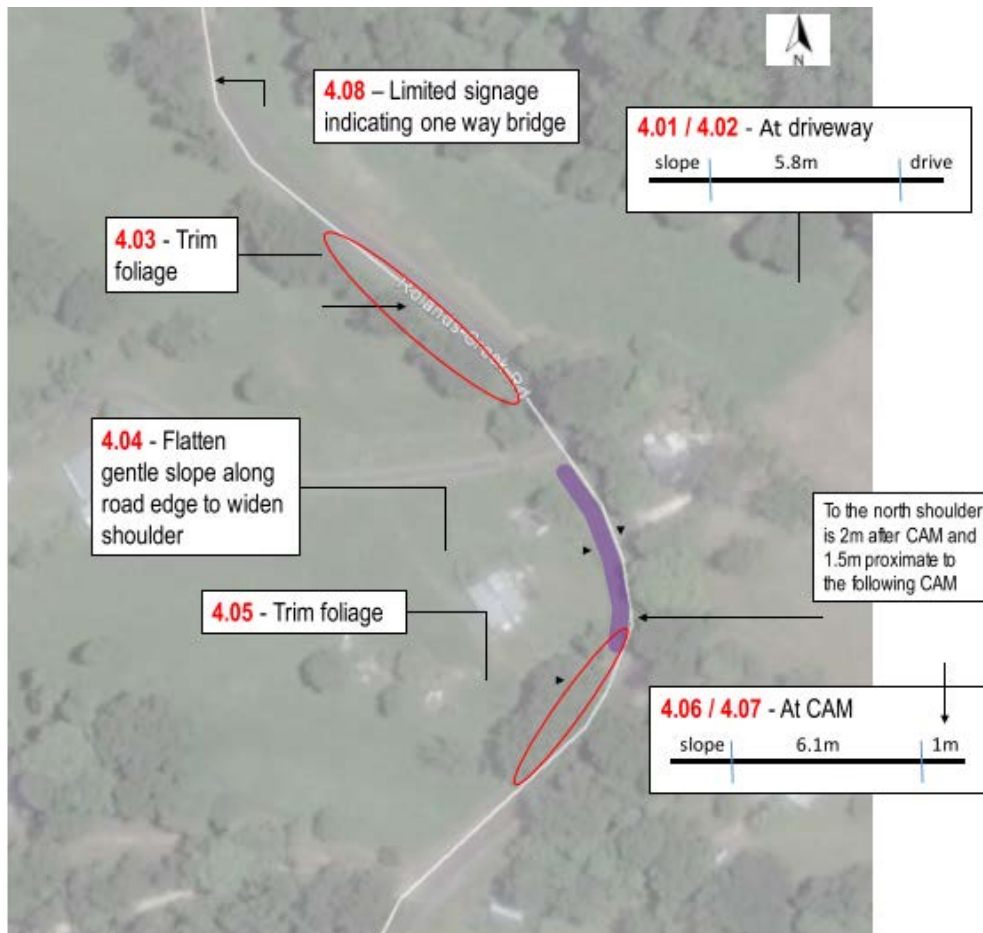


Figure 3.5: Issue Location Curve 4 of 6

Site 5 – Works to be undertaken at this Curve

- Installation of warning signage and give-way line marking on approach to the one-way bridge to the north;
- Clearing of foliage and formalising of western side of road;

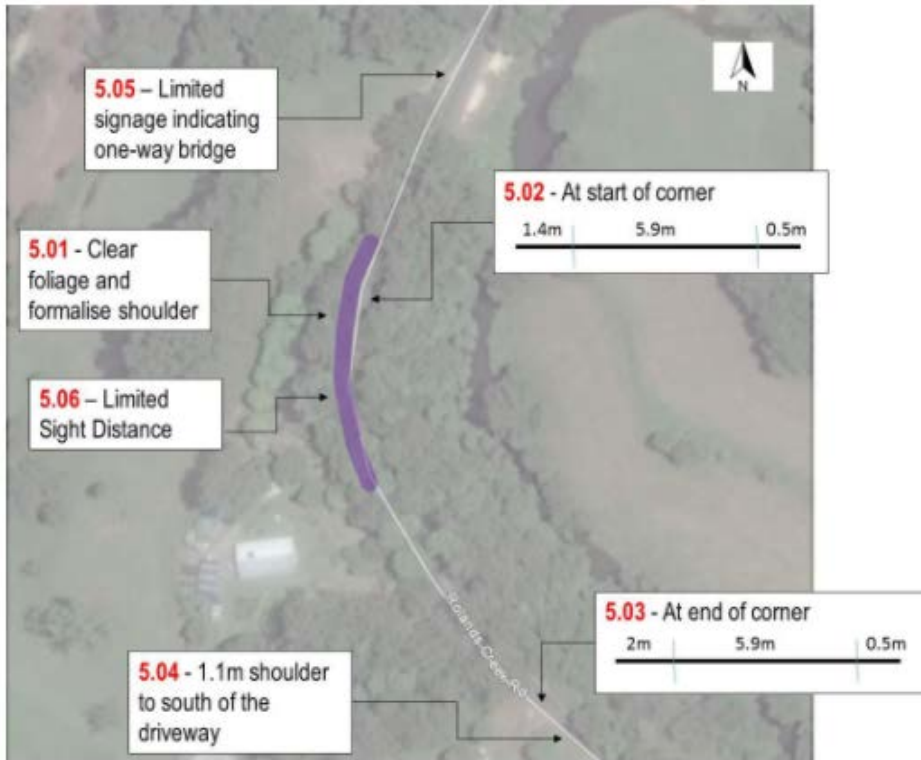


Figure 3.6: Issue Location Curve 5 of 6

Site 6 – Works to be undertaken at this Curve

- Trim trees at the north bend, on north side
- Installation of curve warning signage to the east of the eastern bend.

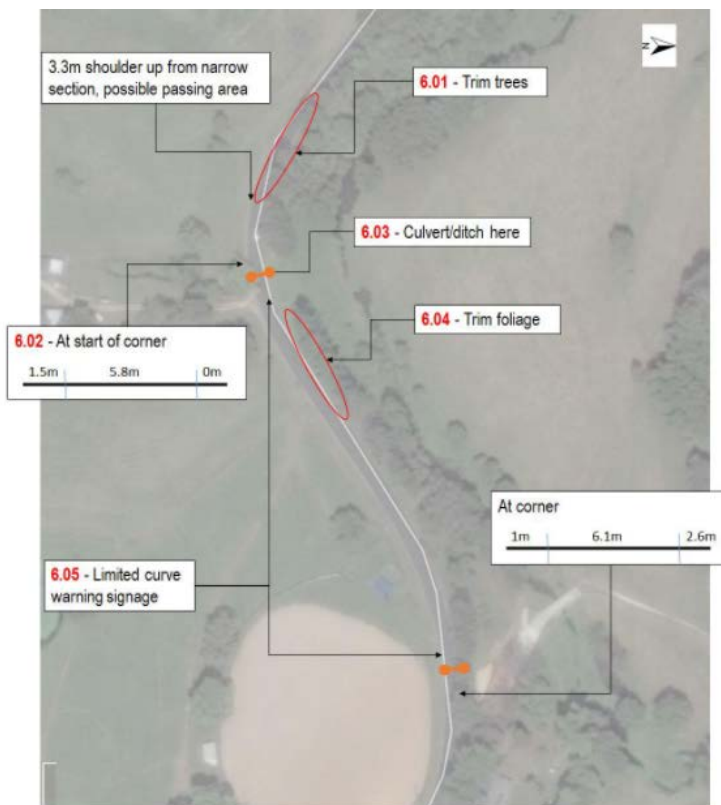


Figure 3.7: Issue Location Curve 6 of 6

SITE DIAGRAM:



SITE LOCATION

Site Plan

Lot 3 DP 815475
No. 350 Rowlands Creek Road ROWLANDS CREEK



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



Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 02/08/2018
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Civic and Cultural Centre
3 Tumbulgun Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

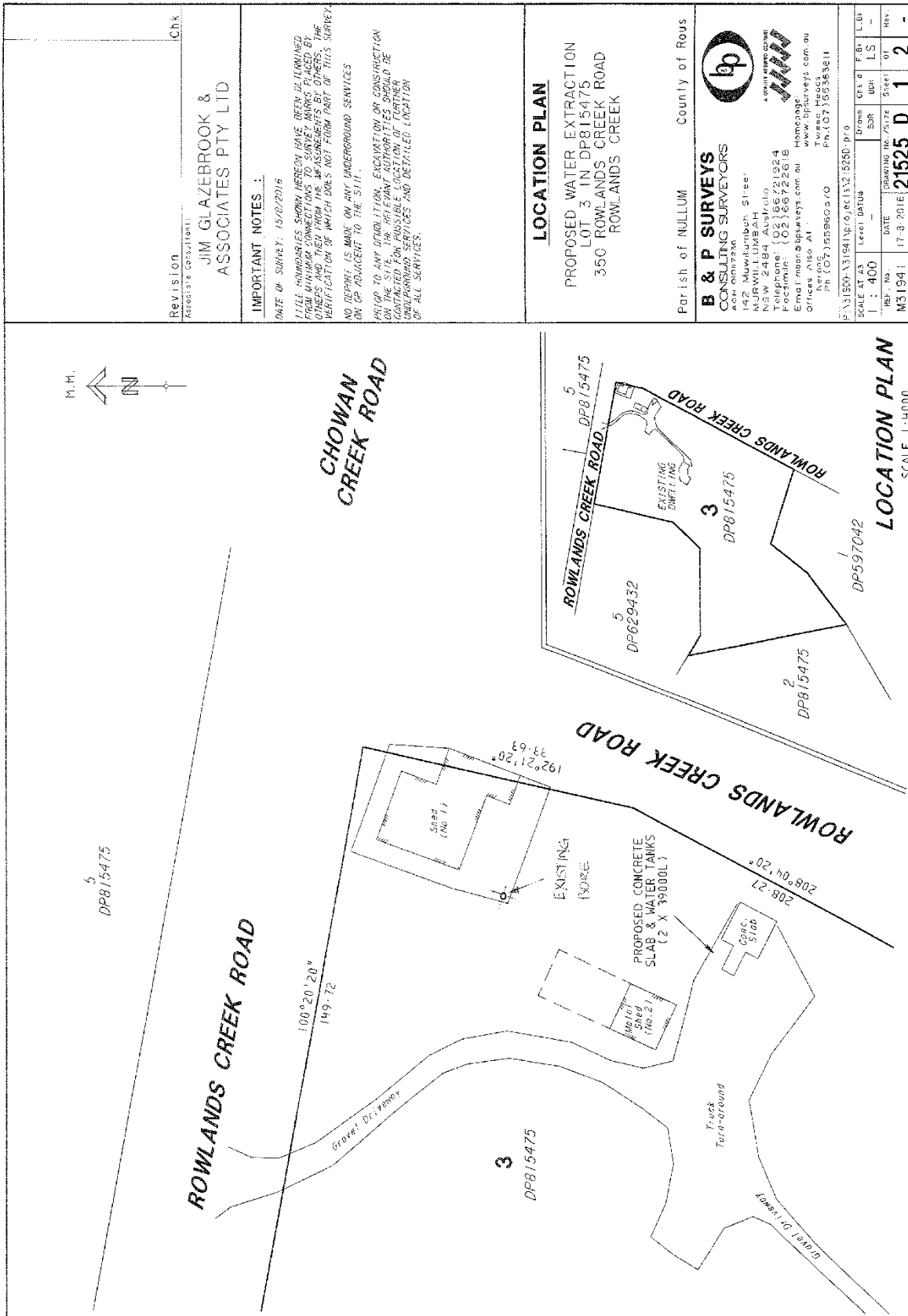
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TWEED
SHIRE COUNCIL

Date Printed: 17 August, 2018

DEVELOPMENT PLANS:



Revision
Associate Consultant: (Chk.)
JIM GLAZEBROOK & ASSOCIATES PTY LTD

IMPORTANT NOTES:
DATE OF SURVEY: 15/02/2016
TITLE: BOUNDARIES SHOWN HEREON HAVE BEEN DETERMINED FROM AIRBORNE PHOTOGRAMMETRY AND SURVEYS CONDUCTED BY THE SURVEYOR. THE SURVEYOR HAS NOT CONDUCTED A VERIFICATION OF WHICH DOES NOT FORM PART OF THIS SURVEY.
NO REPORT IS MADE ON ANY UNDERGROUND SERVICES OR CP ADVISORY TO THE SITE.
PRIOR TO ANY DEMOLITION, EXCAVATION OR CONSTRUCTION ON THE SITE, THE RELEVANT AUTHORITIES SHOULD BE CONTACTED FOR POSSIBLE LOCATION OF FURTHER UNDERGROUND SERVICES AND DETAILED LOCATION OF ALL SERVICES.

LOCATION PLAN
PROPOSED WATER EXTRACTION LOT 3 IN DP815475
350 ROWLANDS CREEK ROAD
ROWLANDS CREEK
Parish of MULLUM County of Rous

B & P SURVEYS
CONSULTING SURVEYORS
142 Murrumbidgee Street
Murrumbidgee NSW 2484 Australia
Telephone: (02) 66721924
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www.bpsurveys.com.au
P.O. Box 107, Murrumbidgee NSW 2484
Ph: (02) 66725536 ext 11

Level	DATE	Drawn	Checked	F.B.	L.B.
M3194	17-8-2016	21525 D	1	2	-

LOCATION PLAN
SCALE 1:4000

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

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.

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 and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) To promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, 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 and geological and ecological integrity of 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 relates to the use of a rural property for the purposes of bulk water extraction offsite and the associated upgrade of Rowlands Creek Road for the tankers transporting the bulk water. This road upgrade will require some minor tree trimming and shoulder widening within the road reserve on land zoned RU2.

The proposal is considered consistent with the aims of this plan for the following reasons:

- The proposal will not have any detrimental impact on the various strategic policies and principles applicable to the Tweed caldera as the use will not be inconsistent with local and cultural values.
- The proposal will add to the local economy and small business through the generation of additional income for the land owner and associated costs of transportation.
- The extraction of water and the recharge of the aquifer as advised by the Office of Water (Department of Industry) will ensure this business is sustainable and will not adversely impact local waterways. The actual extraction process will not have any impact on scenic values as the development requires minimal changes to the existing rural property.
- The use of the road for 6 trip ends a day is consistent with the built environment given the road is capable of accommodating this size vehicle.
- Council has no evidence to suggest that the proposed use would be contrary to ecologically sustainable development. Rather the submission of a hydrogeological assessment that has been reviewed by the Department of Primary Industry has concluded that the extraction rates for this site will not adversely impact the natural water systems or the potential agricultural use of the land.
- The development will not impact the biological diversity or scenic quality of the locality given the development involves the removal of water from the aquifer via water trucks for transportation offsite. The operation consists of two water tanks and the periodic visiting of trucks to the subject site. These trucks and water tanks would be considered consistent with the rural landscape.
- The land is not World Heritage listed, nor is the site of the existing bore state significant farmland.
- The development will not impact or be located within areas of high ecological value.
- The extraction of water will not impact upon the recovery of the Tweed Coast Koala population as no vegetation will be removed to facilitate the development. Rowlands Creek Road does adjoin small pockets of Secondary Koala Habitat. These pockets will not be impacted in anyway by the use of Rowlands Creek road for the trucks. The trees that require trimming are not identified as koala food trees or preferred koala habitat.

Clause 1.4 – Definitions

The bulk transporting of water from the site is defined as water extraction for the purposes of water bottling offsite for commercial purposes.

water bottling facility means a building or place at which groundwater from land in Zone RU2 Rural Landscape is extracted, handled, treated, processed, stored or packed for commercial purposes

This use can be undertaken on RU2 land with consent of Tweed Shire Council in accordance with Clause 7.15 of Tweed Local Environmental Plan 2014.

Under this clause the road component of the development would be defined as a road as follows:

road means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.

A road is permissible with consent in the RU2 zone where the roadworks will take place.

Clause 2.3 – Zone objectives and Land use table

The subject development site is zoned RU2 Rural Landscape under the provisions of this clause. The zone objectives are as follows:

Zone RU2 Rural Landscape

- *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 link to an environmental, agricultural or rural industry use of the land.*

While the site has an existing bore for water extraction up to 25ML per annum with Water NSW, this extraction is not for the purposes of water bottling. Any approval of this bulk extraction for water bottling must ensure that the development does not adversely impacts the natural resource base. Both the submitted hydrogeological plan and advice from the Office of Industry hydrogeologist indicates that the water extraction levels are sustainable and there is negligible impact on the natural resource base. On this basis the Department have not recommended monitoring for water levels. The office of Industry have further advised that the available long-term average annual groundwater extraction limit within the subject water source (New England Fold Belt Coast Groundwater Source) has sufficient assigned volume to support the proposed annual groundwater extraction under the proposed development.

The rural landscape character will not be impacted by this development. The actual process of extracting the water will only be visible on the site due to the presence of water storage tanks and intermittent presence of water trucks. Trucks are considered a common site on rural roads to service properties in regards to garbage and sewer services, bulk tankers for the purposes of dairy and cattle farming and cane harvesting. The use of this rural property for the purposes of water extraction and hauling of this water off site by water tankers is not considered contrary to activities within the rural landscape that require trucks to conduct the business.

A hydrogeological assessment of the proposed bulk water extraction from the bore was commissioned and submitted by the applicant in support of the development. The objectives of this report were to identify whether the groundwater system from where the water will be drawn is connected to the surface water system and if extracted water is likely to be sourced directly from the groundwater or by leakage from Rowlands Creek. This assessment concluded that while some limited leakage of shallow groundwater to the underlying fractured rock aquifer may occur, any flux from Rowlands Creek is negligible, given the distance between the Creek (150m) and the bore and the relatively low extraction rate. The assessment also sought to determine if the bore would impact surrounding existing agricultural bores. Any adverse impact was considered unlikely due to the location of these unlicensed bores relative to the production bore. Accordingly, this hydrological assessment provides evidence that the proposed development will not adversely impact a range of compatible land uses including extensive agriculture. This assessment was also reviewed by the NSW Department of Industry hydrologist that concurred with the findings of this assessment in regards to the adequacy of the report and conclusions.

The water extraction is considered a compatible use with the rural use of the land.

Clause 5.10 - Heritage Conservation

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.*

The proposal will not require earthworks nor result in any buildings or significant change to the existing site. The bulk extraction of the water has been previously approved by the Water NSW. Accordingly, the proposal is not considered to be detrimental to Aboriginal Cultural Heritage.

Clause 5.11 - Bush fire hazard reduction

The subject site is mapped as being bushfire prone. The RFS were advised of the proposal and raised no concerns or issues in relation to bushfire.

Parts of Rowlands Creek Road are mapped as bushfire prone land, any works undertaken in accordance with an approval for roadworks would result in reduced bushfire hazards.

Clause 7.1 – Acid Sulfate Soils

The site is not mapped as having any risk of exposure of Acid Sulfate Soils. No earthworks are proposed other than minor works to Rowlands Creek Road. No further consideration is warranted in this regard.

Clause 7.2 - Earthworks

As a result of the use of Rowlands Creek Road for the transportation of the bulk water, minor roadworks will be required in specific locations. These works are considered to be relatively minor in scale and impact.

Accordingly, the following matters have been considered and concluded to be satisfactory:

- The earthworks will not impact on current drainage patterns,
- The roadworks will not impact any future development given it is occurring within the road reserve,
- The consent would be conditioned to ensure that in the unlikely event of disturbance of relics, such items would be treated in accordance with the provision of the National Parks and Wildlife Act.

The works required in response to a traffic assessment for the development will be detailed in a latter section of this report.

Clause 7.3 – Flood Planning

The subject site has not been mapped as flood prone. Notwithstanding, the use is not flood sensitive. It is noted that there may be occasions that the trucks cannot operate due to flooding along Rowlands Creek Road.

Clause 7.6 - Stormwater Management

The development does not include the erection of buildings or structures that impact upon existing stormwater flows. The trucks will park on an existing gravel driveway that will maintain existing drainage lines.

Clause 7.10 - Essential Services

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

- (a) *the supply of water,*

The proposed water extraction and roadworks do not require water connection.

(b) the supply of electricity,

Electricity services are currently provided to the site for the existing pumps that service the bore. The proposed roadworks do not require specific electrical connection.

(c) the disposal and management of sewage,

The proposed water extraction and roadworks do not require sewer connection.

(d) stormwater drainage or on-site conservation,

Existing stormwater drainage patterns will be maintained. The internal road will be required to be sealed to manage the increased truck movements to the site. Appropriate stormwater management associated with this hard seal driveway.

(e) suitable road access.

Site Access

The application would not be supported if suitable access and egress to the site by the trucks was not available or suitable. The existing driveway to the subject site is 7m at the property boundary and 13m wide at the kerb. The existing driveway will require minor upgrading to Council's specifications in association with any consent granted.

The driveway crossing and internal driveway is not sealed. The crossing will be required to be sealed as a condition of any consent granted, however, the internal driveway is capable of accommodating the trucks in its current state.

Council's Traffic Engineer has concluded that given the low traffic movements and background traffic levels along this section of road, warning signage associated with a sealed and widened driveway crossing will be sufficient to cater for the proposed development.

Flood Damage to Rowlands Creek Road

It is advised that two sections of Rowlands Creek Road were damaged by the April 2017 flood event. Of these two sections one section on Curve 5 has resulted in a partial loss of the pavement, limiting traffic to a single lane which is still evident today. This area is currently under repair and it is anticipated that works will be completed by the end of August 2018.

It is noted that a second flood affected site does not require any further remediation works and is suitable for all traffic.



Photo 1: View looking north across the landslide area



Photo 2: View looking downslope (east) from landslide back scarp

This Section (Curve/Site 5) of road remains open to all traffic, albeit in a single lane formation. However a Geotechnical Investigation of the site commissioned by Council determined that the Assessed Risk Level (ARL) determination for this site was ARL 1. Slopes within the ARL 1 and 2 classes generally require mitigation of the geotechnical hazards.

Given the risk level of this road in its current flood damaged state, the road requires reinstatement before the bulk water trucks can operate in a safe and effective manner. Accordingly, condition 2 of the recommendation reads as follows:

2. *The first water truck cannot access the site without the prior written authorisation of the General Manager or his delegate specifically stating that Rowlands Creek road is suitable for the proposed development.*

Such authorisation will not be issued until Council has undertaken the flood repair work to Curve/Site 5.

It is noted that these repair works are separate from the works required in conjunction with this development. The upgrade works as part of this development will be at the applicant's expense. However, the flood repair works will not be the responsibility of the applicant. The flood repair works will be undertaken in conjunction with Council's road repair schedule and is anticipated that works will be completed by the end of August 2018.

Clause 7.15 – Water bottling facilities in Zone RU2 Rural Landscape

The provision of this Clause is as follows:

- (1) *Despite any other provision of this Plan, development may be carried out with development consent for the purposes of a water bottling facility on land in Zone RU2 Rural Landscape if the consent authority is satisfied that development will not have an adverse impact on natural water systems or the potential agricultural use of the land.***

Council Officer Assessment

Council's role in the bulk extraction of water has historically been unclear as the NSW Government is the licensing authority for the extraction component. Water NSW has already authorised the licenced the extraction of the water volumes proposed by this development.

However, following legal advice, Council has required the applicant to provide further evidence in support of the application having regard to the provisions of Clause 7.15. This evidence has been provided with the preparation and lodgement of a Hydrogeological Assessment for the bulk extraction of water for the subject site.

The assessment was undertaken to identify potential groundwater and surface water related impacts associated with proposed commercial groundwater extraction from an existing bore located at 350 Rowlands Creek Road.

The assessment further states that the findings have been assessed against the NSW Aquifer Policy 2012 and the NSW Water Management Act 2000.

The report has been prepared by Eco logical Australia. Council is duly satisfied that the project manager for this assessment is suitably qualified to prepare and submit this report.

This report has made the following conclusions based on the objectives of this report namely, to identify whether the groundwater system is connected to the surface water system and whether produced water is likely to be sourced directly from the groundwater or by leakage from Rowlands Creek.

- *The site groundwater resources are covered under the Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater source (2016), with the New England Fold Belt Coast Groundwater source;*
- *The proposed groundwater bore was identified within the NSW Office of Water PINEENA groundwater registered bore database under identification number 'GW304537', and is considered to access groundwater within the fractured rock aquifer of the Neranleigh – Femvale Group. This aquifer forms the most significant and productive groundwater resource within the region with groundwater yields up to 10 Us observed (generally in highly fractured areas);*
- *Few hydrogeological data records and information were available for the proposed production bore and site area. Interpretation of the available*

geological data (including drillers logs) and groundwater level and quality data suggests a hydraulic connection between the fractured rock aquifer of the Neranleigh - Fernvale Group and the Rowlands Creek surface water system is unlikely, due to the presence of a clay / weathered rock layer at the top of the Neranleigh - Fernvale formation, with envisaged low permeability. Therefore, no impacts to the Rowlands Creek surface water system are anticipated due to groundwater extraction from the Neranleigh - Fernvale aquifer;

- The low permeability weathered layer may potentially allow some/limited leakage of shallow groundwater to the underlying fractured rock aquifer. This results in the assumption that pumping at GW304537 may potentially cause a flux from the creek to GW304537. This flux is considered to be negligible given the distance between GW304537 and the creek (approximately 200 m) and a low extraction rate (24MUa or <1 Us) associated with limited available drawdown within the bore.
- Two types of potential groundwater receptors were identified for the project; 1) Environmental (GDEs (terrestrial and aquatic) and groundwater - surface water interactions with Rowlands Creek); and 2) Economic (existing groundwater users).
 - Five registered existing groundwater users were identified within 1 km of the site, with the nearest bore (GW300644) located approximately 120 m from the site. These bores provide groundwater supply from the fractured rock aquifer for stock / domestic use, and do not require a water access licence. Available information suggests the proposed production bore is installed within a fractured, transmissive section of the Neranleigh - Fernvale aquifer; therefore, significant drawdowns (which may cause potential impacts to existing groundwater users in terms of groundwater quantity and quality) are not considered likely. However, it should be noted that potential groundwater drawdowns could be confirmed through aquifer testing at the site prior to commencing the project.
 - No 'high' priority GDEs were identified at the site, or within 1.5 km of the site. Terrestrial and aquatic GDEs classified as 'moderate' priority were identified within 1.5km of the site. Groundwater extraction from the Neranleigh - Fernvale Group is unlikely to cause impacts to the identified GDEs, due to the lack of hydraulic connection inferred between the shallow alluvial and deeper groundwater systems.
- Assessment against the NSW AIP and WSP requirements concludes that the proposed extraction from the GW304537 bore does not cause a potential material impact to other groundwater users or GDEs, and does not exceed the WSP requirements. The proposed groundwater extraction is low in magnitude in comparison to the estimated volume of unallocated water within the WSP (less than 0.1 % of the estimated unassigned water available within the WSP requirements).

This assessment has been forwarded to the Department of Industry for comment. This Department provided the following advice (via Water NSW) and recommendations following the assessment of this Report from Eco logical Australia.

“Dol Water finds that the hydrogeological assessment, provided by the applicant, is satisfactory in approach, scientific methodology, conclusions drawn from the results and subsequent recommendations made. Dol Water is satisfied with the minimal impacts identified by the hydrogeological testing and final report.

WaterNSW can advise that the proposed extraction bore (GW304537) has an existing water supply work approval with an existing water access licence of 25 units per year. The proposed take of 24ML/year is within the allocation permitted. The report recommends a pump rate of 0.67 L/s, 24 hrs/day, 7 days per week. This equates to approx. 22ML/year and is within the limits of the existing water access licence. The subject bore is within the New England Fold Belt Coast Groundwater Source and the available long-term average annual groundwater extraction limit within this water source has sufficient assigned volume to support the proposed annual groundwater extraction under the proposed development.

Dol Water have recommended that Water NSW implement the following conditions on the water supply work approval:

- The applicant undertakes regular water quality monitoring to ensure water quality remains suitable for purpose over time.*
- If monitoring indicates that water is not suitable for the intended purpose or the intended purpose changes, and then the applicant is required to implement water treatment to match use requirements or cease using the bore water”.*

The NSW Office of Water has also provided general guidelines for groundwater assessment for bore license applications. Council is satisfied that the Assessment is generally consistent with these guidelines for the purposes of determining if the existing bore will have any impacts on the natural water systems and agricultural use of the land.

Council received the following advice from the Water NSW:

“The Water Act 1912 bore licence 30BL184137 was granted on the 3rd May 2006 for irrigation and industrial (water bottling) purposes. The licence was assessed at that time in accordance with policies and procedures endorsed by the department. The licence holder requested an increase in volume in 2009 to a total of 25 megalitres. No embargoes were in place and as such the applicants request was considered and approved. The licence remained current until its conversion under the Water Management Act 2000 on the 1st July 2016 when it became water access licence 30AL314314 and combined approval 30CA314315.”

Water NSW is the regulatory authority to assess the appropriateness of bore licences having regard to their potential impact on the environment.

A brief summary regarding the evolution of Bore Licenses such as the subject license is detailed below for information purposes:

Water Sharing Plans

Water sharing plans are being progressively developed for rivers and groundwater systems across New South Wales following the introduction of the *Water Management Act 2000* (WMA 2000). This license is part of the *Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources*. http://www.water.nsw.gov.au/__data/assets/pdf_file/0006/679461/background-document-north-coast-fractured-porous-rock-groundwater.pdf

The water sharing plan defines a proportion of rainfall recharge that is available for extraction with the remainder of recharge reserved for the environment. Limiting the volume of extraction to a proportion of recharge is intended to reduce the risk of unsustainable groundwater extraction in the long term.

The subject site is located within the North Coast Volcanic Groundwater Source (NCVGS). The following is an extract of the document "Water Sharing Plan for the North Coast Fractured Rock Groundwater Sources: Background Document".

The aquifer (from where this water is extracted) typically occurs within basalt and rhyolite with groundwater contained within, and moving through, fractures formed as a result of the cooling of the rocks as well as the vesicular structure of basalt flows. Yields are moderate being up to 5 L/s however some bores may obtain yields of up to 10 L/s when associated with highly fractured areas.

Groundwater is typically recharged by direct rainfall infiltration resulting in excellent quality water. Due to the free draining nature of basalt and recharge of hard rock, stream and spring flow is reliant on groundwater discharge during dry periods.

The water sharing plan document provides extraction limits for the NCVGS where the subject bore is located. Currently, the basic landowner rights for water plus all licenses issued in the NCVGS is 5,907 ML/ year. The limit set for the extraction of water by Basic landowner rights and bore licenses is set at 13,000 ML/yr. The total limit set by these Water Sharing plans is a set percentage of the annual recharge dependent upon a number of factors. The limit set by the Water Sharing Plan for the NCVGS is 0.04% of the total recharge of 310,000 ML/year. The current levels of extraction and basic Landowner rights are only 0.02% of the Annual recharge to the aquifer.

Given the low percentage of water extraction permitted within the Water Sharing Plan relative to the annual recharge of the aquifer, Council should be confident that the development will not have an adverse impact on natural water systems nor the ability of the land to be used for agricultural purposes.

Notwithstanding the issue of the license on the basis of Water Sharing Plans, the submission of the hydrogeological assessment on behalf of the applicant has provided Council with additional evidence that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems nor the potential agricultural use of the land. This confidence is supported by the review of the assessment by the Department of Industry hydrologist.

Specifically, the actual extraction levels are considered of a volume that will not cause any long term adverse impacts on the natural water systems as the natural recharge exceeds the overall extraction rate for bores in the NCVGS. Further, as the water from the bore is unlikely to be from surface water leakage from Rowlands Creek, there is little risk of the agricultural use of the land being impacted by the bulk extraction.

Furthermore, Department of Industry have made recommendations to Water NSW for the water supply work approval to secure outcomes for the development in regard to ongoing monitoring of water quality. These terms were reiterated to Council in Water NSW advice dated 15 August 2018.

It is envisaged that that any such terms of approval for water supply work imposed by Water NSW would require water quality monitoring to be undertaken to ensure water quality remains suitably for purpose over time. Furthermore, additional terms of approval as outlined by Water NSW state that if water monitoring indicates that water is not suitable for the intended purpose or if the intended purpose changes, then the applicant is required to implement water treatment measures to match use requirements or cease using the bore water.

It is considered satisfactory that Council rely upon the background work undertaken by both the applicant's consultant and Department of Industry to determine the capability of the aquifer to accommodate basic landholder water rights combined with licenses such as this. These multiple levels of assessment should provide Council with sufficient evidence that Clause 7.15 of the Tweed LEP is duly satisfied and the application is worthy support.

(2) *Despite any other provision of this Plan, development may be carried out with development consent for the construction of a pipe or similar structure on any land for the purposes of conveying groundwater to a water bottling facility.*

The development does not require the construction of a pipe or similar structure on any land to convey the groundwater.

Therefore, Clause 7.15 is considered satisfied for the purposes of this application and the site can still be used for agricultural pursuits.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that

purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject application has been reviewed by Council's Environmental Health Unit
The following advice with respect to contamination:

"The water extraction license was issued by NSW Office of Water. Given that there is no proposal for 'bottling onsite' the standards set in the Australian Drinking Water Guidelines do not apply to the 'extraction activity'. The bottling plant and distribution facility would be regulated by NSW FA (if the bottling plant is located in NSW).

Distance measurements taken from Council's GIS indicate that there is an onsite sewage land application area, servicing the house on the property, located approximately 100m 'across slope' to the existing ground water extraction bore. There is a possibility that the groundwater source could be contaminated by wastewater from the land application area, but the risk is thought to be low. The bottling plant will be responsible for water quality sampling and analysis (including testing for e-coli).

The property has been used for grazing purposes at least as far back as 1970 (ref: Council's Historical Image File – 1970 aerial photograph). The closest cattle dip-site to the property is the now decommissioned (license expiry 2003) Rowlands Creek dip which is/ was approximately 350m from the existing groundwater bore. Residual chemicals from the dip-site, including arsenic and DDT, may have concentrated in the soil adjacent the bath and drip area.

The Australian drinking water guidelines set water quality standards which include residual agrichemicals. It will be the responsibility of the water bottling facility to test water for chemical residues."

Having regard to the advice provided, the subject proposal is considered to be acceptable with respect to contaminated land.

SEPP (Rural Lands) 2008

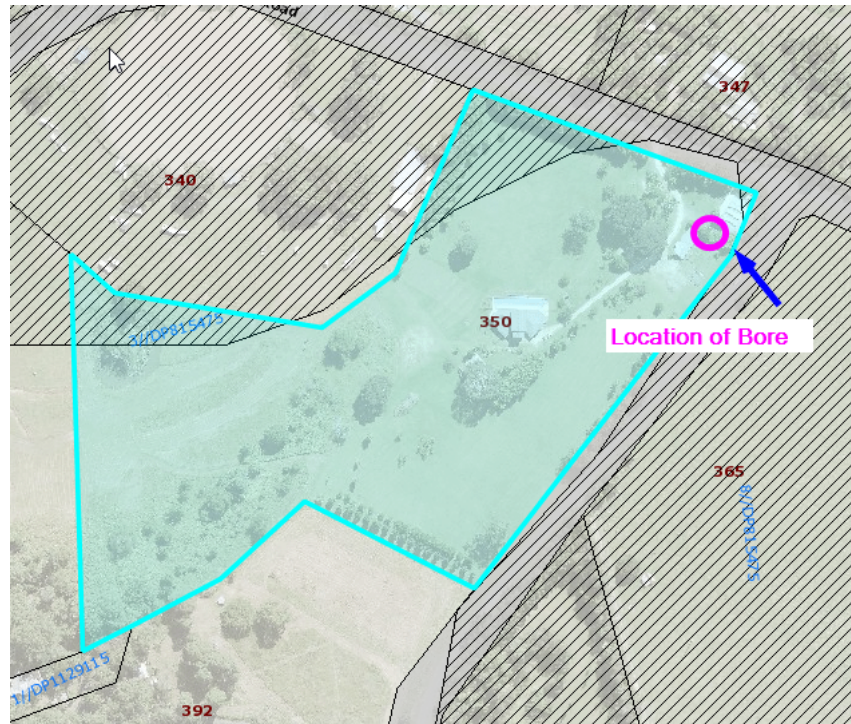
The rural planning principles outlined within this SEPP are as follows:

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*

Planning officer comment

The site is partially identified as State Significant Agricultural Land as per the map extract below (hatched). The location of the water extraction bore and associated water tanks is outside this State significant portion.



Any current or future potentially productive industries in the locality will not be compromised by the transportation of water from the site using the existing bore license. Any changing trends will not be compromised by this use as it does not impact the locality in any way given the source of the water and its method of extraction and transportation.

The rural lifestyle of the Uki village and surrounds will be maintained despite the operation of this development. While additional truck movements will occur along the subject section of road and through the village, such movements would not be considered out of character within the rural locality given the nature of many other activities that do not require any form of development consent to operate such as cattle farming where stock is frequently transported from sites in large trucks. Notwithstanding, hours of operation and frequency restrictions will be placed on any consent granted to protect the amenity of the locality.

No vegetation will be adversely impacted by the use, despite some minor trimming of trees along the relevant section of Rowlands Creek Road. The use will not result in any ongoing adverse impacts to the environment due to any form of noise vibration or air pollution.

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

There are no draft environmental planning instruments of relevance to the subject site.

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

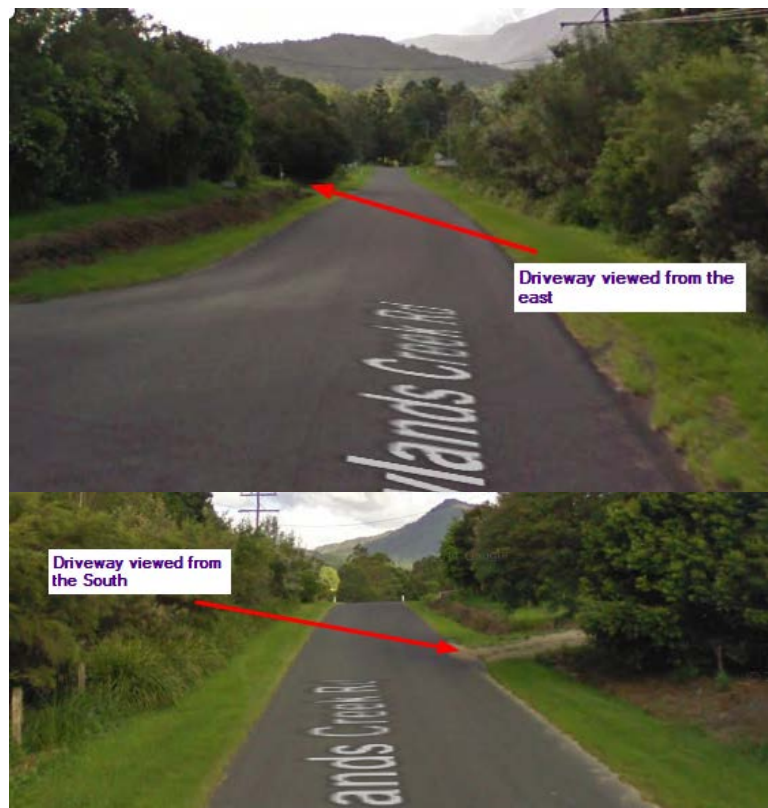
Tweed Development Control Plan

A2-Site Access and Parking Code

The applicant will be required to upgrade the access driveway to the property at No. 350 Rowlands Creek Road according to Council's Design Specification Policy, subject to a Section 138 Roads Act application and approval.

Once onsite, the trucks proceed 60m to a level gravel pad via an unsealed driveway for loading of the water from water tanks. The crossing will be sealed to minimise noise and dust in conjunction with any consent. The internal driveway may remain unsealed however a condition of consent restricting any adverse impacts including dust generation will ensure any future unforeseen dust issues must be addressed.

It is noted that sight distances from the driveway are below the required when an 85th percentile speed of vehicles approaching the driveway from the east is 70km/hour. However, Council's traffic engineer has stated that the installation of appropriate warning signage would adequately address this issue given the very low traffic movements and background traffic.



No formal parking onsite is required for the development as the proposal does not require any employees or visitors to the site. The only vehicles entering the site of the proposal will be the trucks, with only one truck being onsite at any one time. The area available for the trucks adjacent to the onsite water tanks will

suffice for standing and turning so all trucks enter and leave in a forward direction.

A11-Public Notification of Development Proposals

The application was notified on two occasions. The outcomes of these notification periods are detailed in a latter section of this report.

A15-Waste Minimisation and Management

The use of the site for the extraction and bulk exportation of water will not generate waste. A waste management plan is not considered necessary in this instance having regard to the development proposed.

A16-Preservation of Trees or Vegetation

The development upon the site will not require any tree removal. The use of Rowlands Creek road for the 15m trucks will require some minor trimming of vegetation at specified locations along the Rowlands Creek Road route to provide suitable sight distances.

Council's Natural Resource Management Unit has assessed each location that requires the trimming of vegetation to provide these sight distances. The individual trees that will be trimmed are not identified as being trees that form part of an Endangered Ecological Community or threatened species. The trimming will be limited to seven species along the route, three of which are exotic species.

It was concluded that this trimming would be unlikely to have an adverse impact on tree health or architecture. No objection to these minor works is raised by this Unit subject to the works being undertaken in accordance with the Australian Standard.

B20-Uki Village

While the operation is not occurring within the Village, one of the aims of this Section of the DCP is to encourage a broad range of community, commercial and service uses to support the Village Community.

Section B20.3.3 Design Element 3 – Movement and Access aims to limit unnecessary car use within the village and encourage other means of transport to minimise pollution and maximise amenity in the Village. However, this Section also states that the service role of the village extends to the rural community beyond the village boundary and the main street continues to provide a through traffic function vehicles travelling along Kyogle Road between the larger centres of Murwillumbah and Kyogle.

The objectives of this design element reflect the conflicting needs of road users within the Village of Uki. It recognises the use of the roads by larger vehicles such as trucks and has provided acceptable solutions for development within Uki to improve any existing conflicts.

Accordingly the development is not considered to be in conflict with the provision of this Section of the DCP and in fact the aims of this Section are to facilitate rural business in the surrounding locality.

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

The matters identified within the Regulations relating to the coastal policy and demolition of buildings or upgrading are not applicable due to the location of the property and the form of development that does not involve any structures other than water tanks.

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

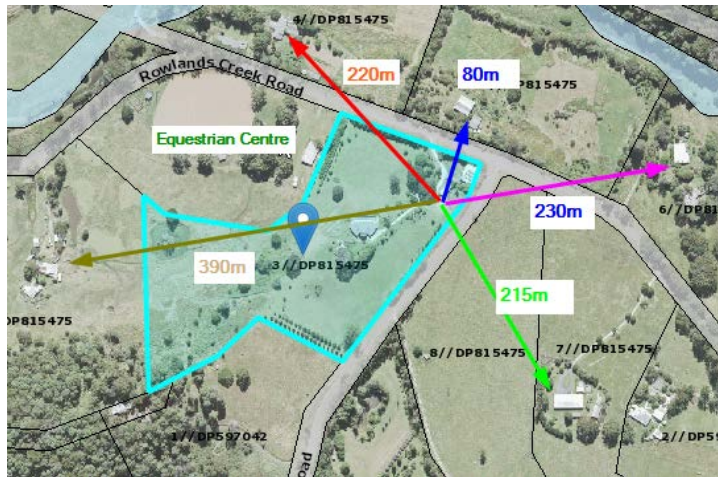
The property is 20km from the coast. These management plans are not applicable or relevant to the subject site or development.

(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 site is surrounded by rural properties and bounded by the Uki equestrian centre to the northwest. The map below provides approximate distances to dwellings in the surrounding locality. The business will involve trucks entering the site, parking on site adjacent to the water tanks for approximately 15 minutes to fill the tanks and exit the site. This process has minimal risk of impacting on adjoining properties given the low intensity and minimal noise generation from the actual operation. The aboveground pumps can be suitably housed so to be inaudible from anywhere beyond the property boundary. The bore pump is underground and is not audible. The trucks will be required to be turned off when on site. Screening of the water tanks from Cowan Creek Road/Rowlands Creek road will be required by appropriate vegetation as a condition of consent, if granted, due to the elevated location of the tanks adjacent to the road frontage.

Therefore, having regard to the low level of noise generated by the extraction of water from the site and export by water trucks, these adjoining properties are unlikely to be impacted.



Amenity

The application has been assessed in terms of its potential impact on nearby residents due to heavy vehicle movements, bore pumps and ancillary equipment; dust, lighting and hours of operation.

The risk of these matters impacting adjoining residents can be readily minimised with the imposition of conditions to protect the amenity of the locality.

The bore water pump is located well underground and has been extracting water prior to this application being lodged. This pump is not audible from the surface. Any pump used for transferring the water from the bore to the tanks and onward to the trucks can also be suitably housed to ensure noise levels do not extend beyond the boundary.

Any consent granted will require the sealing of the site access. This will remove the potential dust generation from these trucks from the existing gravel crossing. While the internal driveway can remain unsealed, any dust generation will be controlled by a condition preventing adverse impacts on the locality by way of air pollution.

The use of 15m trucks to transport the water three times daily along Rowlands Creek Road also has the potential to impact on the amenity of these residents.

Council's Environmental Health Officer has provided the following comments in regards to road noise from these trucks:

"The proposed water transport vehicle will be a 15m (in length) articulated 6 axle truck with a 28,000L (28 tonnes) tanker capacity. The road is bitumen surfaced but neighbouring residents will be subject to increased noise (on and off-road vehicle movements including reversing 'beepers') and possibly dust (from traffic crossing unsealed road edges) and proposed hours of operation 7am to 6pm Monday to Saturday.

The NSW Road Noise Policy provides little comment/ guidance on development which increases traffic on existing local roads, other than to state that the assessment criteria, for road traffic noise for residential land uses is L_{Aeq} , (1 hour) 55dB(A). The relevance of that Policy for this situation

is uncertain given the very low number of proposed vehicle movements each day, and that Rowland's Creek Rd is not a residential area but does include residential dwellings.

Council is not the regulatory authority for vehicle movements on public roads, however has input to road traffic movements/ changes through the Local Traffic Committee. Conditions will be added to the approval to protect local amenity from excessive noise (restrict reversing beepers), and dust on private property, and also limit the number of vehicle movements per day."



Hours of Operation. -Truck Movements will be restricted between 7am and 6pm Monday to Saturday. As mentioned above, these restricted hours will protect the surrounding residents from truck noise outside these hours. As previously mentioned a condition regarding the requirement for a noise report to be undertaken will be inserted within any condition granted. This will provide added protection to the surrounding properties if unforeseen noise issues arise as a result of the development.

Access, Transport and Traffic

The development will be required to undertake certain roadworks prior to commencement. These road works will ensure a 15m long water truck can pass a large car and a heavy ridged vehicle on all constrained curves along the 3.3km section of road.

The Traffic Assessment examined six curves along the route. The most constrained curves include Curves Number 2, 4 and 5. These curves are identified within Attachment 1.

The Traffic Assessment has outlined the following works for the subject curves:

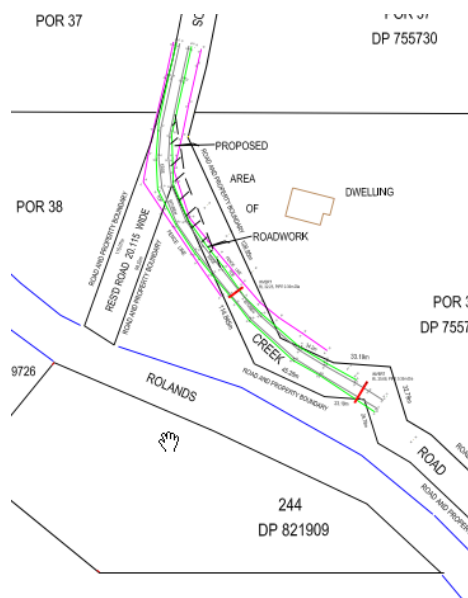
Curve 2: A car and Water Truck can pass one another successfully on the existing road space, however sight distance is limited due to hill crest adjacent to corner. A Water Truck and HRV require further road width. Civil works reducing the crest height and cutting back batters to widen the road corridor would provide a safer cross-section throughout the curve.

Curve 4: A car and Water Truck can pass one another successfully on the existing road space. A Water Truck and HRV require further road width. Minor road and shoulder widening, including passing bays at strategic points, would assist in providing a safe road cross-section throughout the curve (see Section 3); and

Curve 5: A car and Water Truck can pass one another successfully on the existing road space. A Water Truck and HRV require further road width. Minor road and shoulder widening would assist in providing a safe road cross-section throughout the curve (see Section 3. It should be noted that this curve includes some flood damage where the road has collapsed making it effectively one-way for a short section.

The probability of two (2) trucks passing is extremely low. However, to address Council's concerns, in order to accommodate for this unlikely event several recommendations at each curve along the section have been made to alleviate risks.

Councils Traffic Engineer has concurred with this report and recommendations for roadworks. It is noted that the road pavement within the Curve 2 is not completely within the road reserve and encroaches private land. A survey was undertaken and it is confirmed that while the existing road pavement is outside the road reserve, the roadworks will be contained completely within the road reserve. (Applicants will require Section 138 Certificate for the road works- Condition of Consent required- no owners consent). Council will commence action to ensure all aspects of the road in this location are contained wholly within the road reserve.



(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is surrounded by rural properties containing scattered dwellings upon larger lots on either side of Cowan Creek Road and Rowlands Creek Road. The

Uki Equestrian Centre is located immediately adjoining the property to the northwest.

It has been discussed throughout this report that the nature of the developments will not result in adverse impacts on these adjoining residential properties due to the low frequency of truck movements, operating procedures (pump locations and noise mitigation), limits to operating hours and spatial separation.

A condition requiring the preparation and submission of a noise report if Council were to receive substantiated complaints regarding unacceptable noise levels will also be imposed on the development as added protection against unforeseen nuisance noise.

It is noted that the locality is rural and the use of lands for development involving commercial vehicles including trucks such as cattle trucks and the like is not uncommon. Trucks of this size are not restricted from using Rowlands Creek Road or roads beyond this section of rural road, as no load limit is applicable. Rowlands Creek Road has the capacity to cater for the 3 trips per day and subject to some nominated roadworks will safely accommodate these trucks.

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

The development application was notified for 14 days on two separate occasions. Council received 156 submissions during the first public notification process and 44 submissions during the second notification period. All submissions objected to the proposal on environmental, traffic and amenity grounds. A petition with 100 signatures was also lodged during this second notification period. These submissions have been summarised and addressed below.

The issues raised within the submissions received can be categorised into certain subject areas as follows:

- Traffic Impacts

Submissions raise concerns for the locality in regards to the impact the 6 trip ends per day will have on the section of Rowlands Creek road that will accommodate the trucks.

These concerns relate to:

- The inability of Rowlands Creek Road to accommodate these trucks safely having regard to the pavements current condition and the various other users including cars, bikes motorbikes, pedestrians and wildlife.
- Access to the site is dangerous due to sight distances and existing vegetation.
- Concerns regarding the use of the road due to anticipated conflict between the school bus and water trucks if the vehicles were to cross paths.
- The use of the road for the bulk water trucks will damage the road pavement without suitable compensation by the land owner, other than an initial, one off, Section 94 Contribution.

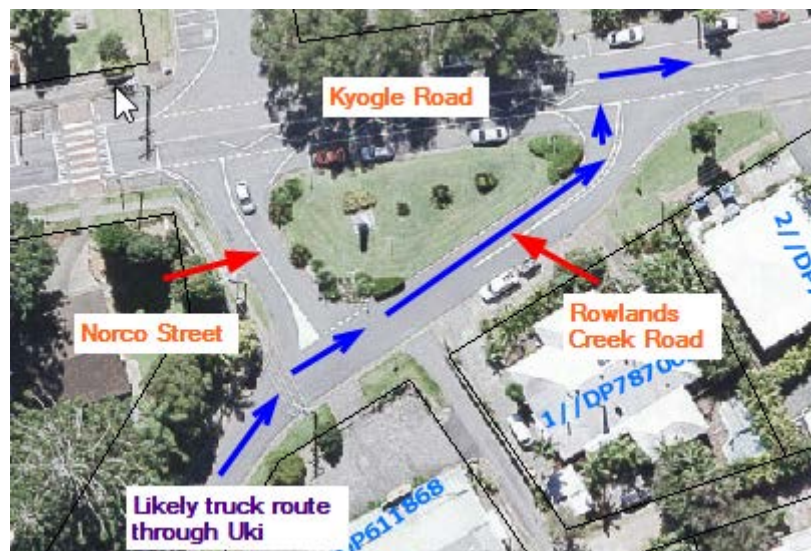
- Submitters do not concur with the traffic assessment that accompanied the application due to incorrect speed estimates.
- Adverse safety and amenity issues will result from the trucks travelling through Uki.
- The tree trimming along the route should not be at the cost of Council.
- Disapproval of the removal of part of the Cenotaph land kerb for vehicles turning right into Rowlands Creek road.

Traffic Engineer Comment

In response to Council's original concerns regarding traffic movements emanating for the subject development, the applicant provided a Traffic and Safety Assessment dated 24 May 2017. Further survey works were also conducted to determine whether the proposed minor road works recommended as a result of this Traffic Assessment could be undertaken within the road reserve.

The assessment has been carried out according to the appropriate standards and guidelines and accordingly there are no further objections to the proposal and no further information is required.

The water carting vehicle is expected to travel north from Rowlands Creek Road through the Village of Uki. Therefore, the route of the truck will be directly onto Kyogle Rd to provide an easy right hand turn rather than through Norco Street. This would also be the reasonable route for trucks coming from the east.



Accordingly, the truck movements would not impact on the section adjacent to the Cenotaph where the current school bus zone is located in Norco Street.

However, it should be noted that the proposed vehicle and larger vehicles are not prohibited from that section of the road and all drivers are expected to drive to the prevailing conditions. Children accessing the bus in this location do so from the School side of the road with limited interaction with all through traffic movements. A condition of consent limiting the water carting during school bus travel times will also address this issue.

The applicant's traffic assessment submitted that a minor modification in the north east section of the Cenotaph kerb would allow heavy vehicles to turn right without impeding left turning vehicles into Rowlands Creek Road. However, the current intersection encourages all vehicles to approach Kyogle Road at a right angle which is best practice. Removing a section of the Cenotaph land to straighten up the angle of approach to Kyogle Road may result in decreased safety as motorists would approach at increased speeds and most likely not comply with the existing "stop" sign.

Planning Officer Comment

Council's Traffic Engineer has had significant input into the assessment of this application as one of the primary issues associated with this development is the ability of Rowlands Creek Road to cater for these trucks exporting the water to a bottling facility out of the Tweed Local Government area.

The conclusions made by the traffic engineer based on the traffic report, the comments above and expertise enable the following conclusions to be made in regard to the traffic generated by the proposed development.

- Rowlands Creek Road will be capable of accommodating these trucks safely notwithstanding various other users including cars, bikes motorbikes, pedestrians and wildlife.
- The road, subject to minor works being undertaken at respective curves in the road and the repair of flood damaged sections prior to commencement of the use will remove any potential conflict between the school bus and water trucks if the vehicles were to cross paths. This would also be the case for other larger vehicles that cross paths with this truck.
- The installation of warning signage at the property address will provide satisfactory safety measures for traffic conflicts at the property entry given the very low traffic movements and background traffic.
- Road users contribute to road maintenance indirectly through the payment of registration fees to the State Government. The State government provide Local Government with road funding grants for the upkeep of rural roads. Council does not have the statutory ability to charge an ongoing levy for the use of the road for these trucks. A section 7.11 monetary contribution will be applied to the development as a one off payment.
- Councils Traffic Engineer has concluded that the trucks travelling through the town as a result of the water extraction will not result in unacceptable safety issues relating to increased traffic through Uki. Kyogle Road has been recognised within the Uki DCP as a service road for rural properties with an expectation that larger vehicles will be required to travel through Uki Village. All drivers must drive to prevailing conditions. It is not a reasonable expectation that larger vehicles will not travel through the village.
- The tree trimming along the route will not be at the cost of Council.

- Amenity Impacts

The submissions raised objection the development due to concerns over adverse amenity impacts as a result of the operation both onsite and as a result of the truck movements along Rowlands Creek road. These amenity issues relate to

increased noise levels, increased pollution from trucks, dust from the property and adverse impacts on the existing rural amenity. Concern is also raised regarding the amenity impacts of the trucks travelling through the Uki village. Site specific issues are also of concern with the noise associated with trucks entering the subject site and noise associated with the pumping of the water into storage tanks and then into the trucks.

Planning Officer Comment

The development does have the potential to impact upon surrounding properties as a result of increased traffic movements by 15m water trucks.

As stated previously within this report, the bore pump is underground and is not audible. The electric pump at ground level to fill the trucks from the water tanks will be suitably housed to prevent any audible noise at surrounding properties, as necessary. In regards to the water trucks, the area is a rural locality and rural industries, including water extraction are permissible and a reality of rural living. The hours of operation will be restricted to 7am rather than 6am (as proposed within the Statement of Environmental Effects) until 6pm Monday to Saturday. Council's Environmental Health Unit is satisfied with these operating hours.

Appropriate preventative and cautionary conditions will be attached to the recommendation for development consent. In addition to restrictions on hours of operations, trip limits and water volume limits will be included with the recommended conditions of consent. Further, precautionary conditions will also be imposed in the unlikely event that the use is not managed appropriately and noise becomes an issue for adjoining property owners.

- Environmental Impacts associated with water extraction

Many of the submissions object to the idea of water being extracted for water bottling in general in a rural landscape with high environmental values, particularly when the water is being transported to another State with little or no benefit to the local economy or locality. The submitters question the methods behind the issue of a water extraction license and the 'science' behind extracting water from the aquifer not impacting on the environment or rural industry. The submissions consider that the extraction of water will have a direct adverse impact on creek and river levels and a public resource should not be used for individual gain.

Submissions also considered that a hydrogeological study should have been submitted to assess the impacts of this water extraction on the aquifer.

Planning Officer Comment

Following legal advice, Council requested of the applicant further information to satisfy Council that the development would not have an adverse impact on natural water systems and the potential agricultural use of the land, pursuant to Clause 7.15 of the Act.

The applicant commissioned the preparation of a hydrogeological assessment by Eco Logical Australia. This assessment has been submitted to Council and also forwarded to the Department of Industry for comment. This Department are the regulatory authority that provide advice to Water NSW in regards to water extraction licenses and have hydrogeologists qualified to assess such assessments. This Department have provided a review of this assessment and have made the following comments to Water NSW which were forwarded to Council on 15 August 2018:

Dol Water finds that the hydrogeological assessment, provided by the applicant, is satisfactory in approach, scientific methodology, conclusions drawn from the results and subsequent recommendations made. Dol Water is satisfied with the minimal impacts identified by the hydrogeological testing and final report.

WaterNSW can advise that the proposed extraction bore (GW304537) has an existing water supply work approval with an existing water access licence of 25 units per year. The proposed take of 24ML/year is within the allocation permitted. The report recommends a pump rate of 0.67 L/s, 24 hrs/day, 7 days per week. This equates to approx. 22ML/year and is within the limits of the existing water access licence. The subject bore is within the New England Fold Belt Coast Groundwater Source and the available long-term average annual groundwater extraction limit within this water source has sufficient assigned volume to support the proposed annual groundwater extraction under the proposed development.

Dol Water have recommended that WaterNSW implement the following conditions on the water supply work approval:

- *The applicant undertakes regular water quality monitoring to ensure water quality remains suitable for purpose over time.*
- *If monitoring indicates that water is not suitable for the intended purpose or the intended purpose changes, and then the applicant is required to implement water treatment to match use requirements or cease using the bore water.*

The use is permissible within the zone and the matters this development is assessed against are limited to those prescribed within the Environmental Planning and Assessment Act 1979 and the Tweed Local Environmental Plan 2014.

Planning Officer Comment

The Tweed Water Alliance commissioned a solicitor to consult a hydrologist to review the Hydrogeological Assessment submitted by the applicant (as provided in Attachment 2). This review did not include any qualifications of this hydrogeologist. The review states that inadequate testing has been done and any conclusions are flawed as no hydrogeological testing has actually been carried out in the area to enable conclusions to be made.

Tweed Council does not have the expertise to peer review this assessment. Accordingly, while the assessment has been taken by an appropriately qualified consultant, Council has referred the report to the NSW Department of Industry for a peer review. Hydrologists within this department have reviewed the assessment and have provided Council with a response as to the adequacy of this report.

- Quality of the Water Being Extracted for Human Consumption

Submissions have questioned the quality of the water being extracted from the source due to the surrounding onsite sewerage systems and past agricultural practices.

Planning Officer Comment


While there is a low risk of the water being contaminated from surrounding sources, the water will not be bottled onsite and the Australian Drinking Water Guidelines do not apply to this development. The distribution facility that receives the water will be regulated by the corresponding guidelines.

The Australian drinking water guidelines set water quality standards which include residual agrichemicals. It will be the responsibility of the water bottling facility to test water for chemical residues.

These issues discussed above were the primary reasons for objection to the proposal. Other reasons for objection have been identified and addressed in the table below.

Issue	Response
No economic benefit for the locality	The landowner and bore operator is a resident of the locality and as such there will be an economic benefit to a resident. It is concurred that the economic benefit resulting from this development within the local economy may be limited due to the nature of the business. Notwithstanding the business will not prejudice any other existing or future economies within the locality.
Office of Water do not undertake satisfactory compliance checks on Licensed operations	The compliance issues relating to another Government Body is not a matter for consideration under this assessment. If the application is approved there are suitable conditions of consent recommended which will enable enforcement action to be taken if necessary.
Details regarding the disposal of sewer and removal of stormwater has not been provided	The development does not require the construction of any structures other than two water tanks. Details of stormwater disposal and sewer removal are not relevant to this application.
Loss of Property Values	There is no evidence to suggest the development will compromise property values.
Not in the public interest	If a development is deemed to result in unacceptable amenity or environmental impacts it could be regarded as not being in the public interest. Despite the public receiving minimal direct benefit from this development,

Issue	Response
	and members of the locality not supporting the concept of water harvesting, the development is considered acceptable based on the applicable legislation applying to this type of business. It is considered in the broader public interest to uphold the planning controls that apply under the Tweed LEP 2014 where water extraction is a permissible use by virtue of Clause 7.15. The above report addresses the relevant provisions and concludes that a recommendation for approval is justified in this instance. The public interest is not considered to be compromised by the use and therefore the application is supported.
Cumulative Impact not addressed	Any further development applications for development in the locality would need to consider the cumulative impact upon the rural locality. It is considered the cumulative impact of the water extraction quantities is suitably addressed within the Water Sharing Plans adopted by the Water Management Act 2000.
The impacts of the development having regard to Climate change have not been addressed	The water license has been issued subject to the provision of the Water Management Act. This Act and the associated Water sharing plans did take into account the impacts of climate change.
The use is not compatible in the rural zone	It is considered that this assessment demonstrates that the development is a compatible use within the rural zone having regard to amenity, traffic and the environment.
Bottling of Water is not environmentally sustainable	As mentioned above, Council is assessing the bulk water extraction for the purposes of water bottling offsite. The proposal is permissible in the zone and Council specifically made provisions for a Clause within the Tweed LEP2014 to permit water extraction.
The proposal is not ethical	Council has determined the merits of the proposal against the Environmental Planning and Assessment Act 1979. The development is deemed acceptable having regard to the relevant matters for consideration.
The water tanks will be elevated and visible from adjoining properties.	A condition of any consent granted will require augmentation of existing vegetation adjacent to the location of the water tanks to screen these structure sand the trucks from adjoining properties.

Issue	Response
	
<p>The adjoining Sporting Horse Association relies on groundwater for families and horses at events</p>	<p>The details provided within this report in regards to the amount of water being used relative to the recharge capabilities of the aquifer provide evidence that water requirement for this land will not be compromised if this proposal is approved.</p>
<p>How will Council address ongoing applications or similar uses?</p>	<p>Any proposal will be addressed on its merits, including cumulative impacts having regard to relevant matters such as traffic.</p>
<p>Can the hours of operation be restricted to weekdays only</p>	<p>The days of operation are reflective of the extraction volumes, truck capacities and daily trips. Council may wish to restrict movements to weekdays by amending the recommended conditions of consent if approval is anticipated.</p>

Rural Fire Service

The site is identified as being bushfire prone. The application was referred to the NSW Rural Fire Service for comment.

Council was advised by letter dated 8 March 2017 that the RFS raise no concerns or issues in relation to bushfire.

Water NSW

Council received advice from Water NSW by email dated 15 February 2017. This correspondence provides some background information on the conditions of the Licence issued for the Water Extraction.

Further consultation through Water NSW with Department of Industry Hydrogeologists has occurred as detailed below.

Department of Industry

This Department was requested to review a Hydrogeological Assessment prepared by Eco Logical Australia on behalf of the applicant. The Department have provided Council with a response following this review. The response has been detailed in an earlier section of this report.

(e) Public interest

The public interest has been described as referring to “considerations affecting the good order and functioning of the community and government affairs for the wellbeing of citizens”. It has also been described as being for the benefit of society, the public or the community as a whole.

The development would not be considered in the public interest if it was contrary to planning legislation applicable to the subject site. It is considered that this report demonstrates that the development is generally consistent with relevant environmental planning instruments and Council policy requirements. The proposal is considered appropriate for the subject site, given its permissibility at this location. The subject site is zoned to permit water extraction if the development does not compromise natural water systems and the agricultural potential of the land. It is considered that the hydrogeological assessment has provided sufficient evidence to satisfy Council that the development will not have an adverse impact on natural water systems and the potential agricultural use of the land.

The public interest should not be confused with personal opinions. Many of the submissions objected to the development on ethical and moral grounds. The use of bulk water extraction methods for water bottling despite some personal views does not equate to the development not being in the public interest.

The public interest should not be confused with parochial interests. Many of the submitters objected to the development due to the immediate proximity of the development and truck route to their residential properties. These interests while valid cannot be considered ‘the public interest’ for the purposes of this Clause on the EPA Act.

Council should however consider if the development would be contrary to the public interest generally and given that the assessment has not found any reason not to support the application it is difficult to conclude that the development is not in the public interest.

It is difficult to identify any issues directly related to the development that will have an adverse impact on the public. The provisions of Clause 7.15 are considered duly satisfied and Council is satisfied that Rowlands Creek Road can cater for the additional truck movements.

While it is claimed that the development will have little benefit for the community, associated benefits from the transport costs, the labour associated with transport, tank supply and pump supply all contribute to the economy. Juxtaposed against this is that the proposed will not have any negative impact on any other business or prevent any persons from conducting any activities that operated prior to the business commencing or future activities that the public may be included to undertake.

This report demonstrates that Council is satisfied that the development will not compromise the land in this regard and there appears to be no justification for not

supporting the removal of the water from an existing licenced bore. As such the proposal is considered to be in the public interest.

OPTIONS:

That Council:

1. Approves the development application subject to recommended conditions of consent;
or
2. Refuses the development application for specified reasons.

Council officers recommend Option 1.

CONCLUSION:

This development has been assessed against the relevant provisions of the Environmental Planning and Assessment Act and child documents such as the Tweed Local Environment Plan 2014. Satisfactory mitigation measures and conditions of consent will ensure the development has a minimal impact on the locality including Rowlands Creek Road. The proposal is supported subject to the application of appropriate conditions of consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Traffic and Safety Assessment prepared by Bitzios Consulting dated May 2017 (ECM 5505304)

Attachment 2. Hydrogeological Report prepared by Eco Logical Australia dated May 2018 (ECM 5505315)

- 2 [PR-PC] Development Application DA17/0573 for a Mixed Use Development Comprising of Creative Industries Precinct over 3 Stages, Establishment of a Bar and Restaurant, Boundary Adjustment/Subdivision and Signage at Lot 1 DP 202712 Brisbane Street, Murwillumbah; Lot 1 DP 439512 No. 1 Brisbane Street, Murwillumbah; Lot 1 DP 123065 & Lots 3 & 4 DP 772263 Wollumbin 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:

Council is in receipt of a staged development application for a mixed use creative arts precinct in the Murwillumbah Town Centre (old Sunrise Ford site) comprising of the following:

- Use of an existing ground level and first floor art gallery accessible via a new lift installation;
- The provision of creative industry/studio spaces ranging from 7m² up to 150m² and commercial spaces (nominated office and retail) forming separate individual tenancies;
- Alterations and additions to an existing ground floor Café and new outdoor dining area;
- Establishment of a 'bar garden' and restaurant;
- The construction of an internal driveway accessible via Proudfoots Lane and incidental use of this area as shared space to be used for 'Special Events' outside of regular business (such events are described to include seasonal and community uses such as food events, artisan markets, workshops, art trails etc) and;
- Consolidation of five lots into two lots.

The application includes the provision of additional public toilets and onsite car parking for 11 vehicles.

The applicant has stated that the precinct will likely attract tenants such as a boutique restaurant operator to deliver fine dining experiences, an award winning Brisbane based bar operator to provide a casual atmosphere for social engagement, local and regional artists utilising individual studio spaces to encourage the public to engage with their processes and products with a strong educational focus (which would lead to the use of shared space for workshops) and the use of the gallery space by Tweed Regional Gallery as a 'satellite gallery'.

Special events are described to be any events or functions which occurs after business hours and utilised the shared internal space (i.e the internal laneway). During these events there may also be access to the studios, restaurant and bar facilities.

The types of events that can be expected are activities in association with events and festivals within the town centre such as Murwillumbah Arts Trail, food festivals, movie and cultural event nights, studio open nights, artesian style markets, fundraising events. It is noted that weddings receptions are described as being part of the special events. The occasional wedding could be considered as ancillary to these approved uses however the applicant would need to ensure that any such event is ancillary to that approved and that weddings do not become the dominant use as they would be defined as a function centre which is prohibited.

During the early stages of the assessment it was requested that further information be provided to Council to clarify how the varying uses would be managed having regard to the limited parking and the potential for traffic impacts.

The applicant has submitted a Preliminary Operational Management Plan which outlines the ongoing operation and use of the site to ensure that appropriate parameters are established to mitigate impacts arising from the development for two key aspects, being; access and parking constraints and noise impacts.

Upon review of the Preliminary Operational Management Plan in consultation with the submitted Environmental Noise Impact Report and the Traffic Impact Assessment; Council can be satisfied that appropriate measures would be employed to ensure that each aspect of the development can operate in a manner that would complement the varying uses occurring on the site and avoid cumulative impacts on Traffic, Parking, Access and Noise.

It is noted that several amendments have been nominated by the applicant during the assessment of this DA, the amendments related to the layout of the site, staging of the development, changes to the location of the new lot boundary and subsequent changes to the hydraulic arrangements having regard to the proposed new boundary location. A full timeline and history of additional information and amendments is provided in the 'Background' section of this report.

The reports and documentation submitted as part of the application have been considered having regard to the relevant plans and instruments which apply to the site, and on merit the development is considered to be worthy of support. Therefore, the proposal is recommended for approval subject to conditions of development consent.

RECOMMENDATION:

A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-

- (d) commercial information of a confidential nature that would, if disclosed:**
- (i) prejudice the commercial position of the person who supplied it; or**
 - (ii) confer a commercial advantage on a competitor of the council; or**
 - (iii) reveal a trade secret**

B. That:

- 1. Development Application DA17/0573 for a mixed use development comprising of creative industries precinct over 3 stages, establishment of a bar and restaurant, boundary adjustment/subdivision, and signage at Lot 1 DP 202712; Brisbane Street, Murwillumbah; Lot 1 DP 439512 No. 1 Brisbane Street, Murwillumbah; Lot 1 DP 123065 & Lots 3 & 4 DP 772263 Wollumbin Street, Murwillumbah be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the following plans and documents except where varied by the conditions of this consent.**

Document/Plan Title	Drawn By	Project Reference	Rev No.	Drawing No.	Dated
Floor Plan - Ground Level - Proposed	Buro Two Architects	M-ARTS Creative Precinct	B	DA 102b	14/06/2018
Floor Plan - Upper Level - Proposed	Buro Two Architects	M-ARTS Creative Precinct	B	DA 104b	14/06/2018
Site Plan - Lot Layout - Proposed	Buro Two Architects	M-ARTS Creative Precinct	B	DA106b	14/06/2018
Floor Plan – Indicative Staging	Buro Two Architects	M-ARTS Creative Precinct	B	DA 107b	13/08/2018
Floor Plan – Indicative Staging – Upper Level	Buro Two Architects	M-ARTS Creative Precinct	-	DA 112	August 2018
Elevations - North	Buro Two Architects	M-ARTS Creative Precinct	B	DA 201b	21/06/2018
Elevations - East	Buro Two Architects	M-ARTS Creative Precinct	B	DA 202b	21/06/2018
Elevations - South	Buro Two Architects	M-ARTS Creative Precinct		DA 203	JULY 2017
Elevations - Advertising Locations	Buro Two Architects	M-ARTS Creative Precinct	B	DA 207b	21/06/2018
Floor Plan - Brisbane Street Gallery Zone - Ground Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 301b	21/06/2018

Document/Plan Title	Drawn By	Project Reference	Rev No.	Drawing No.	Dated
Floor Plan - Brisbane Street Gallery Zone - Upper Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 302b	21/06/2018
Elevations - East and North	Buro Two Architects	M-ARTS Creative Precinct	B	DA 303b	21/06/2018
Floor Plan - Proudfoots Lane Creative Precinct Zone - Ground Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 401b	21/06/2018
Floor Plan - Proudfoots Lane Creative Precinct Zone - Upper Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 402b	21/06/2018
Section A	Buro Two Architects	M-ARTS Creative Precinct	-	DA403	JULY 2017
Section B	Buro Two Architects	M-ARTS Creative Precinct	-	DA404	JULY 2017
Section C	Buro Two Architects	M-ARTS Creative Precinct	-	DA405	JULY 2017
Floor Plan - Proudfoots Lane Bar Zone- Ground Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 501b	21/06/2018
Floor Plan - Proudfoots Lane Bar Zone- Upper Level	Buro Two Architects	M-ARTS Creative Precinct		DA 502	JULY 2017
Floor Plan - Wollumbin Street Zone - Ground Level	Buro Two Architects	M-ARTS Creative Precinct	B	DA 601b	21/06/2018
Floor Plan - Wollumbin Street Zone -Upper Level	Buro Two Architects	M-ARTS Creative Precinct		DA 602	JULY 2017
Section D	Buro Two Architects	M-ARTS Creative Precinct		DA 603	JULY 2017
Existing Site Services Plan - Drainage Services - Water Services	Sedgman Consulting	-	A	17H174-00-0100	18.05.18

[GEN0005]

2. The Development shall be undertaken generally in accordance with the stamped approved indicative staging plan.

The development shall be undertaken generally in accordance with the following elements of the development being included in the relevant stages:

Stage 1a

Construction of the Proudfoots Lane access and internal driveway including associated lighting installations as required by this consent.

Provision of 7 on-site carparking spaces. Construction of bar adjacent to Proudfoots Lane and associates services, including toilets.

Provision / adjustment of services, as applicable to the consolidation.

(Works associated with the provision of entry and exit to and from Proudfoots Lane and 7 on site car parking spaces is to be completed to the satisfaction of Tweed Shire Council prior to the issue of an Occupation Certificate for Stage 1a).

Stage 1b

Construction of creative studios and workshop spaces as nominated in the stamped approved staging plan.

Construction of outdoor café dining space in terrace adjacent to art gallery building.

Stage 1c

Construction of studios adjacent to the gallery/terrace and associated works at the rear of the gallery building as nominated in the stamped approved staging plan.

Lot consolidation and registration of new Lots 1 and 2 with the Lands and Property Information (LPI).

Stage 2:

Provision of additional studios (except for the centralised 'creative Industry space' as identified in the Stage 3 works on the stamped approved staging plan).

Construction of the Wollumbin Street driveway and access.

Provision of 4 car parking spaces and bicycle parking spaces at the Wollumbin Street frontage.

Associated embellishment works at the Wollumbin Street frontage as required by this consent.

Works associated with the vehicular and pedestrian access at Wollumbin Street frontage together with four parking spaces and nominated bicycle parking areas are to be completed to the satisfaction of Council prior to the issue of an Occupation Certificate for Stage 2.

To this extent, a total of 11 on site car parking spaces in accordance with AS2890.1 are to be available by the completion of this Stage of works.

Stage 3:

Provision of centralised restaurant and 'Creative Industry Space' as nominated in the stamped approved staging plan.

[GENNS03]

3. **The use of the site as a function centre is not permitted.**

[GENNS04]
4. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]
5. **The development is to be carried out in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design and Construction Specifications.**

[GEN0125]
6. **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. Any necessary adjustment or modification of existing services is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.**

[GEN0135]
7. **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]
8. **Council advises that the site is flood liable with a Design Flood Level of 3.8-4.2m AHD.**
 - (a) **All new building materials used below Council's Design Flood Level must not be susceptible to water damage.**
 - (b) **Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. for the proposed building should, to the maximum extent possible be located above the Design Flood Level. All new electrical wiring installed below the Design Flood Level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.**
 - (c) **Provide adequate provision for the flood free storage for goods and equipment susceptible to water damage.**

[GEN0195]

9. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines. [GEN0300]
10. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011. [GEN0360]
11. Prior to commencement of construction works all asbestos material in the relevant work area shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request). [GEN0365]
12. Within 6 months of the date of this consent a Contaminated Land Site Management Plan shall be submitted to the satisfaction of the General Manager or his delegate. The site shall be operated and managed in accordance with the adopted Management Plan. A copy of the Management Plan shall be maintained on site and made available to Council officers upon request. The Plan shall address:
- a. Additional groundwater monitoring of the existing monitoring wells, to confirm whether the contamination has reduced in concentration, and/or is not migrating off-site. Ongoing monitoring may be required to evaluate potential offsite migration.
 - b. Potential exposure of subsurface contaminants in the vicinity of the decommissioned underground petroleum storage system to onsite workers
 - c. Limits to permissible site disturbances, having regard for any OH & S or environmental protection requirements. [GENNS01]
13. The Applicant shall ensure that sewer reticulation and water reticulation servicing each of the proposed lots does not encroach adjacent properties including the other lot created as part of this development. The Applicant shall also ensure that any internal reticulation joining the two lots is removed. [GENNS02]
14. All works associated with the new crossover and internal driveway off Proudfoots Lane is to be established as part of the first Building works Construction Certificate obtained for the development. [GENNS05]

15. The internal driveway and all parking is to be constructed in accordance with AS/NZS 2890.1.

[GENNS06]

16. Within 24 months after the date of the First Occupation Certificate for any stage of the development, proposed Lot 1 and proposed Lot 2 are to be consolidated and registered with LPI in accordance with the stamped approved Lot Layout Plan No DA106b dated 14/06/2018.

17. The buildings on each new lot are to be fire separated at the new boundary line for Proposed Lot 1 and Proposed Lot 2 (as identified on the stamped approved plans) in accordance with the BCA.

[GENNS07]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

18. The developer shall provide the following parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council's Development Control Plan Part A2 - *Site Access and Parking Code*.

- A minimum of 7 off street car parking spaces as part of Stage 1a works
- A minimum of 4 off street car parking spaces as part of Stage 2 works

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 for the respective stages of development.

A total of 11 off street car parking spaces are to be provided and maintained on the site prior to the issue of an Occupation Certificate for Stage 2 works.

[PCC0065]

19. Section 7.11 Contributions

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution 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 7.11 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 Section 7.11 Contribution 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 7.11 Contribution Plan current at the time of the payment.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

Stage 1A

(a) Tweed Road Contribution Plan:
10.875 Trips @ \$1488 per Trips \$16,182
(\$1,317 base rate + \$171 indexation)
CP Plan No. 4
Sector9_4

Stage 1B

(a) Tweed Road Contribution Plan:
10.875 Trips @ \$1488 per Trips \$16,182
(\$1,317 base rate + \$171 indexation)
CP Plan No. 4
Sector9_4

Stage 1C

(a) Tweed Road Contribution Plan:
10.875 Trips @ \$1488 per Trips \$16,182
(\$1,317 base rate + \$171 indexation)
CP Plan No. 4
Sector9_4

(b) Extensions to Council Administration Offices
& Technical Support Facilities
0.09 ET @ \$2187.14 per ET \$196.84
(\$1,759.90 base rate + \$427.24 indexation)
CP Plan No. 18

Stage 2

(a) Tweed Road Contribution Plan:
32.626 Trips @ \$1488 per Trips \$48,547
(\$1,317 base rate + \$171 indexation)
CP Plan No. 4
Sector9_4

- (b) **Extensions to Council Administration Offices
& Technical Support Facilities**
 0.36 ET @ \$2187.14 per ET \$787.37
 (\$1,759.90 base rate + \$427.24 indexation)
 CP Plan No. 18

Stage 3

- (a) **Tweed Road Contribution Plan:**
 32.626 Trips @ \$1488 per Trips \$48,547
 (\$1,317 base rate + \$171 indexation)
 CP Plan No. 4
 Sector9_4
- (b) **Extensions to Council Administration Offices
& Technical Support Facilities**
 0.31 ET @ \$2187.14 per ET \$678.01
 (\$1,759.90 base rate + \$427.24 indexation)
 CP Plan No. 18

TRCP contributions applicable for each stage of the development could be levied through a deferred payment incentive in accordance with Councils Business Investment Policy. A written agreement between the applicant and Council is to be entered into for deferred payments of TRCP charges in accordance with the incentive threshold and deferral periods contained in the Business Investment Policy.

[PCC0215]

20. 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:

Stage 1a

Water: 2.9095 ET @ \$13,926 = \$40,517.70
 Sewer: 5.7825 ET @ \$6,690 = \$38,684.90

Stage 1b

Water: 0.507 ET @ \$13,926 = \$7,060.50

Sewer: 0.752 ET @ \$6,690 = \$5,030.90

Stage 1c

Water: 0.059 ET @ \$13,926 = \$821.60

Sewer: 0.059 ET @ \$6,690 = \$394.70

Stage 2

Water: 0.922 ET @ \$13,926 = \$12,839.80

Sewer: 1.208 ET @ \$6,690 = \$8,081.50

Stage 3

Water: 0.743 ET @ \$13,926 = \$10,347.00

Sewer: 1.118 ET @ \$6,690 = \$7,479.40

TOTAL (stages 1a, 1b, 1c, 2 and 3)

Water: 5.1405 ET @ \$13,926 = \$71,586.60

Sewer: 8.9195 ET @ \$6,690 = \$59,671.50

[PCC0265]

21. 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 associated with any stage of the development 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 (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

22. Prior to the issue of a Building Works Construction Certificate for each Stage of works, design detail shall be provided to the PCA to address the flood compatibility of the proposed use of the building including the following specific matters:
- a) All building materials used below Council's design flood level must not be susceptible to water damage.
 - b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.

- c) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage for lower floor tenancies.

[PCC0705]

23. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Subdivision Works for Stage 1a works. Safe public access shall be provided at all times.

[PCC0865]

24. An Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve, including (but not limited to) the construction of a new, vehicular access off Wollumbin Street for Stage 2 of the development, in accordance with Council's Development Control Plan - Section A2 "*Site Access and Parking Code*" and Council's "*Driveway Access to Property - Design Specification*" (current version).

Applications shall include (as applicable) engineering plans and specifications undertaken in accordance with Council's Development Design and Construction Specifications, including:

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic Control Plan

[PCC0895]

25. Prior to the issue of a Subdivision Construction Certificate for Subdivision Works (for Stage 1A), the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) Detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include (but are not limited to) the following, unless approved otherwise by the PCA:

- earthworks
- roadworks/furnishings

- (c) **Construction of two one-way driveway crossovers in Proudfoots Lane to accommodate Stage 1A of the development.**
 - **stormwater drainage**
- (d) **Adjustment of internal drainage, as applicable to ensure drainage associated with the consolidation and creation of proposed Lot 1 and Lot 2 are self-contained and legally discharged, per allotment.**
 - **landscaping works**
 - **sedimentation and erosion management plans**
 - **location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure),**

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

- 26. Permanent stormwater quality treatment shall be provided in accordance with the following:**
- (a) **The first Construction Certificate Application for any stage of works associated with this consent shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.**
 - (b) **Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.**

[PCC1105]

- 27. A Construction Certificate application for any stage of the development containing 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 for works associated with the creation of Proposed Lot 1 and Proposed Lot 2 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]

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

- (a) **The Construction Certificate Application for each stage of works 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]

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

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.

[PCC1185]

30. In accordance with Section 68 of the Local Government Act, 1993 any premises proposing to discharge wastewater into Council's 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]

31. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. grease arrestor, oil separator, basket traps) must be installed in accordance with Tweed Shire

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

[PCC1265]

- 32. If any stage of 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 for that stage or any works commencing, whichever occurs first.**

Applications for these works must be submitted on Council's standard Section 68 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]

- 33. If any stage of the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate for any stage of the development or any works commencing, whichever occurs first.**

The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/developer.

[PCC1325]

- 34. Prior to the issue of building works Construction Certificates for Stage 1a & Stage 3, plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fitout and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:**

- 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**

[PCCNS01]

35. Prior to the issue of building works Construction Certificate for Stage 2 works a plan outlining a high level of landscaping treatment or public art embellishment at the Wollumbin Street frontage to be submitted to Tweed Shire Council for consideration and approval.

The provision of such embellishment is to be located forward of the four car parking spaces at Wollumbin Street interface in an effort to screen views of these spaces from the street and compliment the pedestrian amenity at the public domain and private land interface of the site in this location. Any works to this area of the site are to maintain sight lines for vehicles entering and existing the site in accordance with AS2890.1.

[PCCNS03]

36. Prior to the issue of the first building works Construction Certificate associated with any stage of works approved under this consent, a signage plan is to be provided to Council for consideration and approval. All signage intended for the road reserve is to be installed by Council at the expense of the applicant.

[PCCNS04]

37. Prior to the issue of the first building works Construction Certificate associated with any stage of works under this consent, a pedestrian management plan for the entire site is to be provided to Council for consideration and approval. The pedestrian management plan is to outline physical measures to separate pedestrians and vehicles, include the provision of directional signage, speed humps and pavement treatment. Particular consideration is to be given to the pedestrian safety at the western access off Proudfoots Lane as well as the control of pedestrians (and patrons) spilling out or accessing the Garden Bar.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

38. 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]

39. 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]

- 40. Prior to work commencing for any stage of the development, 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]

- 41. 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]

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

(a) a Construction Certificate for the subdivision work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the Consent Authority, or**
- (ii) an Accredited Certifier, and**

(b) the person having the benefit of the development consent:

- (i) has appointed a Principal Certifying Authority,**
- (ii) has appointed a Certifying Engineer to certify the compliance of the completed works.**

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

- (iii) has notified the Consent Authority and the council (if the council is not the Consent Authority) of the appointment,**
- (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Certifying Engineer is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and**

(c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

[PCW0815]

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

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]

44. 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]

ADVISORY NOTE:

45. 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 associated with any stage of the development to determine the necessity for them to be incorporated within the design.

[PCW0665]

DURING CONSTRUCTION

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

[DUR0005]

47. 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]

48. Commencement of work, including the switching on and operation of plant, machinery and 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]

49. 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 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]

50. 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]

51. Building materials used in any stage of works associated with 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]

52. 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 6.6 of the Environmental Planning and Assessment Act 1979.

[DUR0405]

53. 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]

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

[DUR0815]

55. 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]

56. 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 deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of either the Subdivision Certificate or Occupation Certificate as applicable to each stage of the development.

[DUR0995]

57. All work associated with this approval is to be carried out so as not to impact on the neighborhood, 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]

58. Fire hose reels shall be installed throughout the whole of the building in accordance with the provisions of Part E1.4 of the Building Code of Australia and comply with Australian Standard AS1221 and AS2441.

However, they shall not be installed until the PCA has been furnished with a certificate, signed by a Hydraulics Engineer stating that the design and proposed manner of installation complies with the relevant standards.

[DUR1255]

59. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicant's responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

60. Exits are to be provided so that no point on the floor of the building shall be more than 20 metres from:

- (a) an exit; or
- (b) a point from which travel in different directions to two exits is available in which case the maximum distance to one of those exits shall not exceed 40 metres.

[DUR1285]

61. Exit signs which comply with Part E4.5 of the Building Code of Australia and are designed in accordance with Part E4.8 of the Building Code of Australia and are to be installed throughout the whole of the building. Mounting heights shall be in accordance with AS2293.1.

[DUR1295]

62. Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided throughout the building. Details of the system to be used and a certificate from the electrical engineer to certify that the system will comply with all relevant requirements of Part E4.4 of the Building Code of Australia and AS 2293.1 are to be submitted to the PCA prior to installation.

[DUR1305]

63. Doors forming exits, paths of travel to exits and parts of exits shall comply with the relevant provisions of D2.19 and D2.20 and D2.21 (door latch to operate by single handed, downward action on egress) of the Building Code of Australia.

[DUR1315]

64. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material eg. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 meters.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

65. All flooring materials in the food preparation and storage areas are to be impervious, non-slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

66. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.

[DUR1515]

67. **Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.** [DUR1545]
68. **During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation.** [DUR1575]
69. **Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of any stage of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of an Occupation Certificate associated with the relevant stage of the works.** [DUR1875]
70. **Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:**

Roadworks / Driveway

- (a) Pre-construction commencement erosion and sedimentation control measures**
- (b) Completion of earthworks / "boxing"**
- (c) Pathways, footways, cycleways - formwork/reinforcement**
- (d) Final Practical Inspection - On Maintenance**
- (e) Off Maintenance Inspection**

Council's role is limited to the above mandatory inspections and does NOT include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "Accredited Certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all subdivision works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'. [DUR1895]

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

[DUR1905]

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

[DUR2015]

73. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management.

[DUR2195]

74. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

75. 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]

76. During construction, a "Satisfactory Inspection Report" is required to be issued by Council for all s68h2 permanent Stormwater Quality Control Devices, prior to backfilling. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.

[DUR2445]

77. 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]

78. 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]

- 79. 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]

- 80. 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]

- 81. 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]

- 82. Drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required**

[DUR2565]

- 83. The Applicant shall submit the appropriate 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for proposed Lot 1, from the existing water main in Wollumbin Street. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.**

[DUR2800]

- 84. The maximum depth of excavation in any development stage shall be 1m below ground level, except for connection to existing services. Should excavation greater than 1m in depth be required, prior to those works being undertaken the applicant shall submit to Council an Acid**

Sulfate Soil Management Plan to the satisfaction of the General Manger or his delegate. All works shall comply with the approved plan.

[DURNS01]

85. The exportation of waste (including fill or soil) from the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the Office of Environment and Heritage "*Waste Classification Guidelines*". Excavated material shall be disposed of at an approved landfill facility unless material has been demonstrated to be the subject of a resource recovery exemption under Clause 51A of the *Protection of the Environment Operations (Waste) Regulation 2014*. Any waste-derived material the subject of a resource recovery exemption must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to Council on request.

[DURNS02]

86. As part of the first building works Construction Certificate issued; the existing external western timber frame wall (adjoining the Gym property) is to be upgraded with a fire rated external wall with a fire resistance level (FRL) of 90/90/90 in accordance with the Building Code of Australia. Install fire attenuation screens with a tested minimum heat flux resistance of 20kW/m² to all the external wall opening adjoining the Cinema/ supermarket building (south east) and Gym building (west) OR fire protect the opening in accordance with Part C3.4 of the Building Code of Australia OR infill the openings with a material having a fire resistance equivalent to the existing wall system.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

88. 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 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

89. No part of the building for any stage of works is to be occupied or a final occupation certificate issued for that stage until a fire safety certificate has been issued for that part of the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

90. Prior to commencement of operation of food premises in Stages 1a & Stage 3 and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval. [POC0615]
91. Prior to the issue of an Occupation Certificate for Stage 1a and Stage 2 works, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all works required under Section 138 of the Roads Act 1993, as applicable to each stage of the development. [POC0745]
92. Prior to the issue of the first Occupation Certificate for any stage of development completed as part of this consent, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all s68h2 permanent Stormwater Quality Control Devices. [POC0985]
93. Prior to the issue of any Occupation Certificate for the development a detailed acoustic report from a suitably qualified person shall be provided to the building certifier which assesses music, mechanical plant and compliance with all Part 6 recommendations of the Environmental Noise Impact Report, CRG Acoustics 7 August 2017 (crgref:17102 report rev.1). [POCNS01]
94. Prior to the issue of any Occupation Certificate for any stage of the development, 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, as applicable to each stage of the development. [POCNS02]
95. Prior to the issue of any Occupation Certificate for Stage 2 Works, the location of construction waste storage areas in the approved Car 1 and Car 2 parking spaces (at Wollumbin Street frontage) is to be relocated so to not compromise onsite car parking associated with any other stage of approved works and operations of the site.
- Any relocated construction waste storage areas for other stages of work not yet complete after the finalisation of Stage 2 works shall be provided onsite (not on public land) and be located to avoid impact on the overall operation of the site in regard to vehicle and pedestrian access and manoeuvrability. [POCNS03]
96. Prior to the issue of the First Occupation Certificate for any Stage of works associated with this consent, a lighting system shall be installed for the development to provide uniform lighting across common areas, driveways and pedestrian access points to and from the site. The lighting system is to include an external lighting scheme for illumination of Proudfoots Lane.

97. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 “Control of the obtrusive effects of outdoor lighting” (1997).

[POCNS04]

98. Prior to the issue of any Occupation Certificate for each stage of the development directional signage associated with works within the relevant stage to which the Occupation Certificate is being issued is to be erected within common areas of the site. The signage is to assist way finding and access control for pedestrian entry and exit points in and out of the site.

[POCNS05]

99. 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 Council’s Development Design and Construction Specifications, prior to the issue of an Occupation Certificate, as applicable to each stage of the development.

[POCNS06]

100. Prior to the issue of the first Occupation Certificate for any stage of building works, works associated with the vehicular access and construction of the internal driveway off Proudfoots Lane is to be completed to the satisfaction of Tweed Shire Council.

[POCNS08]

101. Prior to the issue of the last Occupation Certificate for the development or 24 months after the first Occupation Certificate for the development (whichever comes first) the submitted draft Operational Management Plan to be updated and re-submitted to Tweed Shire Council for consideration and approval prior.

The updated Operational Management Plan is to:

- a. outline an obligation for each art studio operator (tenant) to store Material Safety Data Sheets (MSDS) for all classified Dangerous Goods being used within their individual studio spaces, and the detail of such goods in terms of classification and quantity be provided to the site manager so to maintain a common register of classified Dangerous Goods for the site.

To this extent, the common register is to be audited by the site manager on a monthly basis to ensure the cumulative quantity of goods used by the individual tenants do not reach the thresholds which require screening as per the items scheduled in Table 3 of the Department of Planning Hazardous and offensive Development Application Guideline ‘Applying SEPP 33’ (January 2011);

- b. Include a copy of the ongoing use conditions of this consent;

- c. Include all parts of the originally submitted draft operational management plan as considered and approved under this consent.
- d. Include the name of the contact person for community liaison including the telephone number and email address.

[POCNS09]

USE

102. 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]

103. 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]

104. 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]

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

- * Gallery: 10am to 11pm 7 Days.
- * Cafe Restaurant: 6am to 9pm 7 Days
- * Restaurant: 12pm to midnight 7 Days
- * Artist studios: 9am to 6pm 7 Days
- * Bar: 3pm – 10pm Wednesday – Thursday
12pm – 12am Friday
11am – 12am Saturday
11am – 10pm Sunday
- * Shared space for Special Events: Outside of normal business hours but no later than 12am on Friday and Saturday or 10pm on any other night.

[USE0185]

106. All deliveries to the premises and waste collection services are to occur only within the hours of 7am to 6pm unless otherwise approved by Councils General Manager or his delegate. Urgent or medical related deliveries exempted.

[USE0195]

107. A community liaison officer and contact phone number shall be available for the approved operations on the site. Details of the name of the contact person and contact phone number are to be included in the Operational Management Plan, be made available to Tweed Shire Council at the request of the General Manager or his delegates, and be clearly displayed at the site at all times.

[USE0215]

108. 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 including the adjacent roads.

[USE0225]

109. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

110. No items or goods are to be stored or displayed outside the confines of the premises.

[USE0445]

111. The building is not to be used for any habitable purpose.

[USE0455]

112. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act* 2003, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

113. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements.

[USE0845]

114. All commercial / industrial / residential wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.

[USE0875]

115. The premises shall be maintained in a clean and tidy manner. [USE0965]
116. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW. [USE1035]
117. 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]
118. All activities shall be carried out in accordance with the requirements of the NSW Office of Liquor, Gaming and Racing (OLGR). [USE1085]
119. 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]
120. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owners expense. [USE1455]
121. The designated smoking area shall not be external to the building in Proudfoots Lane. [USENS01]
122. Live or amplified music shall not be played external to the building and live music in the 'bar' area shall cease at 10pm on Sundays. [USENS05]
123. The development shall be constructed and operated in accordance with the Part 6 recommendations of the *Environmental Noise Impact Report, CRG Acoustics 7 August 2017 (crgref:17102 report rev.1)*. [USENS06]
124. An appropriate area on the upper floor shall be made available to lower floor tenancies for the temporary storage of goods and equipment prior to, and during, flood events. [USENS02]
125. No A-Frame advertising structures are permitted to be erected on Council owned land as part of this consent. [USENS03]
126. The internal driveway must be closed to vehicular traffic for "special events" where the parking or laneway area is being used for event

purposes. However, the closure of this road is not permitted prior to 6pm Monday - Friday.

127. The closure of internal driveway and associated vehicular access to the site from Proudfoots Lane for use of the internal driveway for 'Special Events' is not permitted until works associated with the provision of four vehicle parking spaces and associated pedestrian access and bicycle parking at the Wollumbin Street frontage have been completed to the satisfaction of Council.

[USENS04]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

128. Prior to issue of a Subdivision Certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like as applicable to the approved lot consolidation into 2 lots shall be completed in accordance with those conditions or plans.

[PSC0005]

129. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate prior to the issue of the Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

130. Prior to the issue of the Subdivision Certificate for Proposed Lot 1 and Proposed Lot 2, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

131. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent associated with the consolidation of lots (and subsequent creation of Proposed Lot 1 and Proposed Lot 2) have been complied with.

[PSC0825]

132. The creation of Easements for services, Rights Of Carriageway and Restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property;**
- (b) Right of Carriageway burdening Lot 1 and benefiting Lot 2;**
- (c) Notation of historic site investigation reports which relate to the land, as listed below:**
 - Validation Report Cavvanba August 2012 (Ref 11014 R03)**
 - Validation Addendum Cavvanba June 2014 (Ref 11014L03 SM03)**
 - Preliminary Site Investigation HMC Environmental August 2017 (HMC2017.108.02)**
 - Groundwater, Soil Vapour and Indoor Air Monitoring Factual Report Precise Environmental, May 2018 (PE2626.18)**
 - The Detailed Site Investigation HMC Environmental, June 2018 (HMC2018.117)**

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right Of Carriageway / or Easement shall make provision for maintenance of the Right Of Carriageway / or Easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis (as applicable).

Any Section 88B Instrument creating Restrictions as to user, Right Of Carriageway or Easements which benefit Council shall contain a provision enabling such Restrictions, Easements or Rights Of Carriageway to be revoked, varied or modified only with the consent of Council.

[PSC0835]

133. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each lot in the new Deposited Plan.

[PSC0845]

134. Prior to registration of the Plan of Subdivision for Proposed Lot 1 and Proposed Lot 2, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) submission of all documentation electronically (in pdf format), plus the original Plan of Subdivision (and Admin Sheets) prepared by a registered surveyor together with any applicable, original 88B**

Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.**

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

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

- (a) Water Reticulation**
- (b) Sewerage Reticulation**
- (c) Drainage**
- (d) Driveway Access.**

Note:

- 1. All compliance certificate applications for Subdivision Works must be accompanied by documentary evidence from the developers Certifying Engineer, certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.**
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "Accredited Certifier".**

[PSC0915]

- 136. The six months Defects Liability Period for the Subdivision Works commences upon the registration of the Plan of Subdivision.**

[PSC0925]

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

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.

[PSC1115]

138. The production of written evidence from the local telecommunications supply authority certifying that the provision of underground telecommunications at the front boundary of both allotments associated with the lot consolidation has been completed.

Unless agreed otherwise by Council, an acceptable form is Telstra's "*Telstra Network Infrastructure Letter*" or NBN's "*Provisioning of Telecommunication Services - Confirmation of final payment*" letter (for small subdivisions) / "*Certificate of Practical Completion of NBN network infrastructure*" letter (for large subdivisions) (as applicable to the development).

The NBN letter must reference:

- Over which Lot and Deposited Plan the agreement applies to,
- Identification of the number of lots to be serviced,

[PSC1165]

139. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity has been provided adjacent to the front boundary of each allotment associated with the Stage 1 consolidation; and

An acceptable form is Essential Energy's "Notice of Arrangement".

Unless agreed otherwise by Council, the form must reference;

- Over which lot and Deposited Plan did the arrangement for the provisioning of electricity (and street lighting, as applicable) apply to,
- Identification of the proposed lots to be created that have been serviced, or the development stage to which the arrangement applies,

140. Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

141. Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

142. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all works required under Section 68 of the Local Government Act 1993 as applicable to the creation of Proposed Lot 1 and Proposed Lot 2 on the approved lot layout plan.

143. The application for a Subdivision Certificate is to include a report from an accredited building surveyor confirming that the building structures adjoining the proposed new boundary fully comply with the National Construction Code Volume 1 (BCA).

[PSCNS01]

C. NSW Police and Roads and Maritime Services be notified of Councils decision and a copy of the consent notice be provided

REPORT:

Applicant: Zask Pty Ltd
Owner: Zask Pty Ltd
Location: Lot 1 DP 202712 Brisbane Street, Murwillumbah; Lot 1 DP 439512 No. 1 Brisbane Street, Murwillumbah; Lot 1 DP 123065 & Lots 3 & 4 DP 772263 Wollumbin Street, Murwillumbah
Zoning: B4 - Mixed Use
Cost: \$1,500,000

Background:

The proposal

The development will be staged and a staging plan has been provided with the DA package.

A summary of the proposed staging is as follows:

Stage 1a

- Construction of the Proudfoots Lane access and internal driveway including associated lighting
- Provision of 7 on-site carparking spaces.
- Construction of bar adjacent to Proudfoots Lane and associates services, including toilets.
- Provision/adjustment of services, as applicable to the consolidation.

Stage 1b

- Construction of creative studios and workshop spaces.
- Construction of outdoor café dining space in terrace adjacent to gallery building.

Stage 1c

- Construction of studios adjacent to the gallery/terrace and associated works at the rear of the gallery building
- Lot consolidation and registration of new Lots 1 and 2 with the Lands and Property Information (LPI).

Stage 2:

- Provision of additional studios (except for the centralised 'creative Industry space' as identified in the Stage 3 works on the staging plan).
- Construction of the Wollumbin Street driveway and access.
- Provision of 4 car parking spaces and bicycle parking spaces at the Wollumbin Street frontage.

Stage 3:

Provision of centralised restaurant and 'Creative Industry Space' as nominated in the indicative staging plan.

Operations/Use

As mentioned in the summary of this report, the proposed development is supported by a Preliminary Operational Management Plan which outlines the ongoing operation and use of the site to ensure that appropriate parameters are established to mitigate impacts arising from the development for two key aspects, being; access and parking constraints and noise impacts.

In addition, the development application includes an Environmental Noise Impact Report and a Traffic Impact Assessment Report which demonstrates that measures would need to be employed to ensure that each aspect of the development can operate in a manner that would complement the varying uses occurring on the site and avoid cumulative impacts on Traffic, Parking, Access and Noise.

The proposed hours of operation for each component of the uses are as follows:

Ground Floor Gallery:	10am –11pm daily
First Floor Gallery:	10am – 11pm daily
Café:	6am – 9pm daily
Restaurant:	12pm – Midnight daily
Art studio/creative industry spaces:	9am – 7pm daily
Bar:	3pm – 10pm Wednesday – Thursday 12pm – 12am Friday 11am – 12am Saturday 11am – 10pm Sunday
Shared Space:	Any time outside of regular business hours but no later than 12am on Friday and Saturday night, or 10pm on any other night.

The applicant has expressed an intention to obtain a Liquor License from NSW Liquor and Gaming for various parts of the site generally in accordance with the submitted plan provided in Figure 1. The Liquor License Areas are associated mainly with the bar which is located at the North West corner of the site (near Proudfoots Lane).

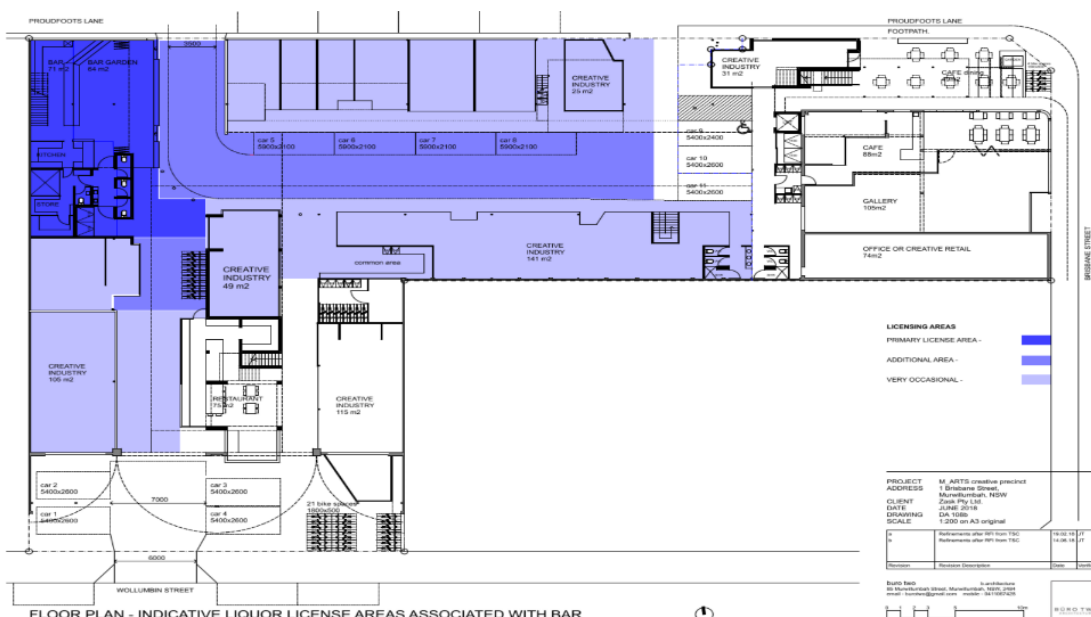


Figure 1: Extract of Indicative Liquor license area

It is noted that the bar garden will be the primary licensed area with additional areas spilling into the 'shared space'. This would facilitate 'Special Events' which are described as being informal or formal gatherings, artisan markets, food festivals, movie nights, fundraising events, workshops and the like.

Council officers have consulted with the NSW Police (Tweed/Byron Local Area Command) in regard to the proposal and copy of their advice is provided in Attachment 1 of this report.

Access

Two vehicular access points will be provided for the site; one is proposed via the existing driveway crossover at Wollumbin Street and the other via a one way in/out access at Proudfoots Lane (vehicle access points highlighted in Figure 2 below).



Figure 2: Extract of proposed Ground Floor Plan highlighting vehicle entry/exit points nominated

Consolidation of Lots

The building straddles 5 lot boundaries and therefore it is proposed the lots be amalgamated into two lots and each lot will have its own separate water and sewer service to respective streets. A copy of the proposed lot layout highlighting service provisions is provided in Figure 3.

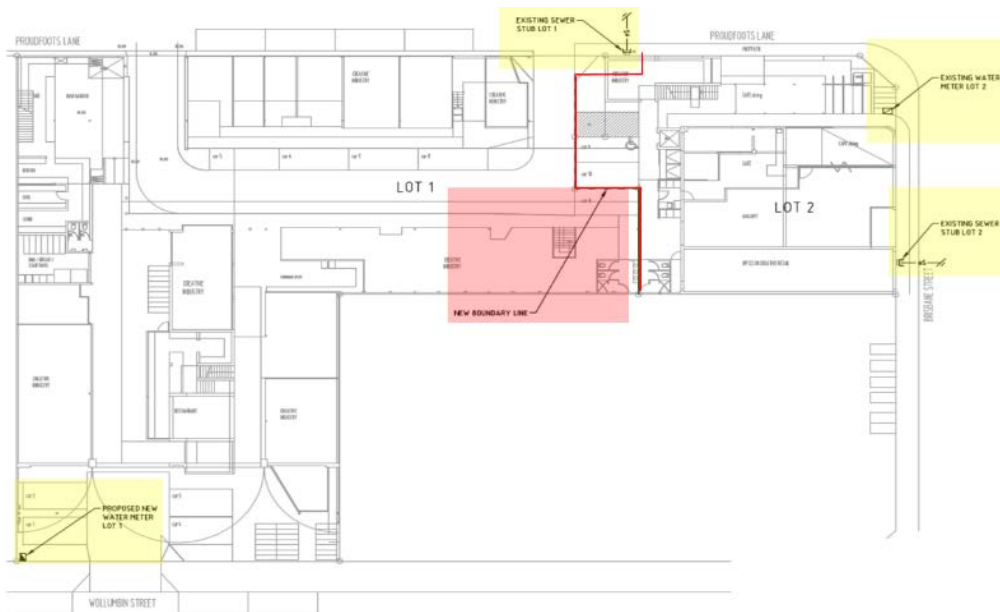


Figure 3: Extract of proposed plan highlighting service provisions and proposed new boundary

Signage

The development includes the provision of nine advertising signs in the form of banner style signs across parapet features of the building at the Proudfoots Lane, Brisbane Street and Wollumbin Street elevation. The signage will be provided in locations where existing parapet, fascia and walls signs for previous uses have been utilised.

The design, font and colour selection for the graphic/logo which selected is consistent with the character of the area and the location of the site adjacent to a heritage item.

A summary of the proposed signage is provided below:

- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Proudfoots Lane elevation.
- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Brisbane Street elevation.
- 1 x 14050mm W x 600mm H (8.43m²) ground floor parapet banner sign wrapped around Brisbane Street and Proudfoots Lane elevation.
- 1 x 3900mm W x 400mm H (1.56m²) slim parapet banner sign at Brisbane Street elevation.
- 1 x 100mm W x 1000mm H (2m²) fascia sign at Brisbane Street elevation.
- 2 x 8000mm W x 900mm H (14.4m²) parapet banner sign at Wollumbin Street elevation.
- 1 x 22850mm W x 1350mm H (30.85m²) parapet banner sign at Wollumbin Street elevation.

An extract of the proposed location of signage together with the graphic is provided in Diagram 1.

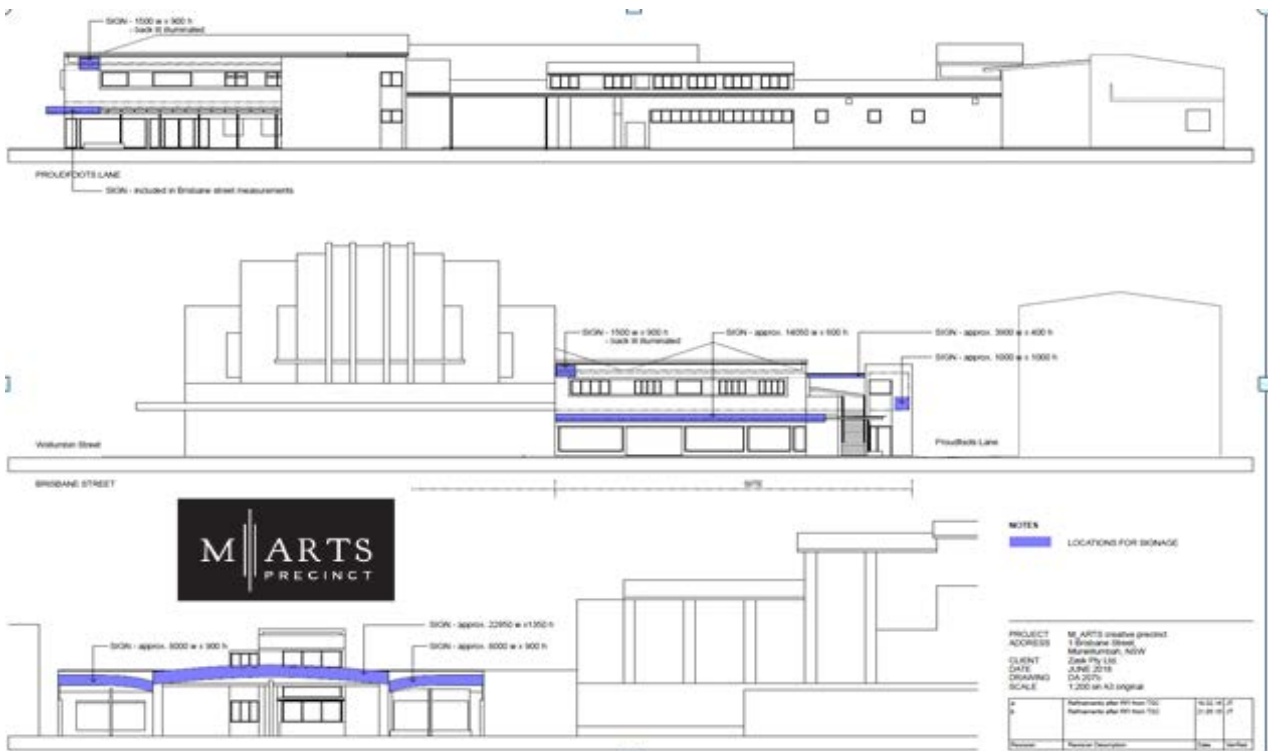


Diagram 1 : Extract of Signage location and 'M Arts' graphic

Site Details

The subject site is located within Murwillumbah Town Centre and features a primary street address to Brisbane Street and secondary frontage to Wollumbin Street as well as Proudfoots Lane. The site is adjacent to the Regent Theatre and opposite Knox Park and close to the round-about intersection of Brisbane Street and Wollumbin Street.

The site is surrounded by a range of uses conducive to the Murwillumbah Town Centre including but not limited to cafés and restaurants to the north of the site, a local gym immediately west, a health food shop, bottle shop and Subway to the east and Sunnyside Mall south east.

The site comprises of five lots which include Lot 1 DP 202712; Lot 1 DP 439512; Lot 1 DP 123065 & Lot 3 DP 772263 & Lot 4 DP 772263 (see site diagram accompanying this report) and is commonly known as the 'Sunrise Ford' site.

Site History

Council records do not provide information on the original construction of this building however the use of the premises by Sunrise Ford for the sale of vehicles (motor showroom) dates back to at least 1948 (see extract of newspaper clipping in Figure 4 below).



Figure 4: Extract of newspaper clipping from Tweed Daily (circa 1948)

Council records indicate the following approvals have been granted in relation to building works and use of the site:

Approval Date	Use/Description	File Reference Number
10 Nov 1978	Altering the showroom area of service station.	Permit Number 45024 and BA Number 772/78
23 April 1980	The use of an existing shop as a 'material remnant' shop.	T4A/2811
6 March 1985	Creation of a new shop and its use for a real estate agency.	T4/3691
16 Feb 1989	Erection of advertising structure (pylon sign).	89/106
8 June 2004	Addition of Staff Amenities.	DA04/0390
1 Sept 2005	Use of existing first floor office and spare parts retail area (associated with sunrise ford operations) for an art gallery and the removal of one car repair station space on the ground floor for loading area associated with art gallery.	DA05/0862
9 June 2006	Conversion of motor showroom into a refreshment room (coffee shop) and conversion of an area of the car repair station to accommodate the existing motor showroom. This DA sought to retain the existing NRMA offices located on the first floor of the development.	DA06/0130
1 Sept 2010	Excavation and removal of disused underground petrol storage systems and remediation of site.	DA10/0420

DA History and timeline

On 14 December 2016, Council officers met with the applicant at a pre development assessment panel (DAP) meeting to discuss the particulars of the subject development application. The discussions were in relation to the establishment of a 'creative arts precinct' and a Supercheap autos store (these discussions sought to retain the existing café and art gallery approved under DA05/0862 and DA06/0130).

During these discussions Council officers highlighted the following:

Carparking, Access and Traffic

- There are limitations on the provision of onsite car parking spaces on the subject site and considerable investigations would be required in regard to traffic, access and parking for the proposal.
- It is noted that the applicant and Councils officers discussed options for parking on the Wollumbin Street frontage and there was a general support for rationalising the site access in this area providing the parking arrangements would provide adequate manoeuvrability within the site and not on the public footpath.
- The applicant was advised that paved footpath for the full frontage of the site would be required and should be integrated into a legible pedestrian movement route through the site.
- It was suggested that use of Proudfoots Lane for HRV loading could be considered due to the nature of the laneway, one way arrangement and the desire to preserve the existing structure.

Heritage

- The applicant was further advised that the land is within a Heritage Conservation Area and adjacent to a Heritage Item therefore would require a Statement of Heritage Impact Statement.

Building & Environment Comments

- The existing building does not comply with the current BCA requirements and therefore any new works would need to achieve compliance and resolve the areas of existing non compliances.
- Compliance with the Disability Discrimination Act would be required.
- Access for disabled would need to comply with AS1428.
- Provision would need to be made on site for storage and collection of waste. Details for collection would need to be determined in conjunction with the waste service provider.

On 31 August 2017 Council received the subject application which included the creative arts precinct however not the Supercheap auto store. On 13 October 2017, Council officers issued a Request for Information (RFI) requiring the following key matters to be further investigated:

- A detailed Car parking and traffic analysis for the Murwillumbah Town Centre together with detail of car parking credits for the site based on previous land uses in light of the likely intensity of the proposed use and associated parking impacts.
- trunk sewer lines within Brisbane Street and Proudfoots Lane having regard to proposed lot 2 not having frontage/ access to existing services in Brisbane Street.
- Statement Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) in regard to groundwater, soil vapour intrusion and indoor air monitoring based on the proposed enclosing of buildings which were otherwise open and

deemed suitable for use under previous Validation reports prepared for the removal of disused underground petrol storage systems.

Council officers met with the applicant and their consultants on several occasions to facilitate discussions in regard to the requested information.

Further to the various discussions between Council officers; the applicant supplied the following additional information on the following respective dates:

- 1 March 2018: Operational Management Plan, car parking and site credit analysis;
- 18 May 2018: Amended Hydraulic Assessment demonstrating the provision of sewer and water services to Proposed Lot 1 (from Proudfoots Lane) and;
- 7 June 2018: A detailed Site Investigation (for contamination) by a suitably qualified environmental consultant addressing the previous validation reports and preliminary site investigations undertaken on the site.

The above reports were considered by relevant officers and were found to satisfy the concerns raised by Council.

On 27 June 2018, the applicant nominated to amend their plans to adjust the layout of the various uses on the site to improve the overall function of the site and satisfy the future tenant needs. These plans were re-considered by internal departments and no objections were raised to the amendments.

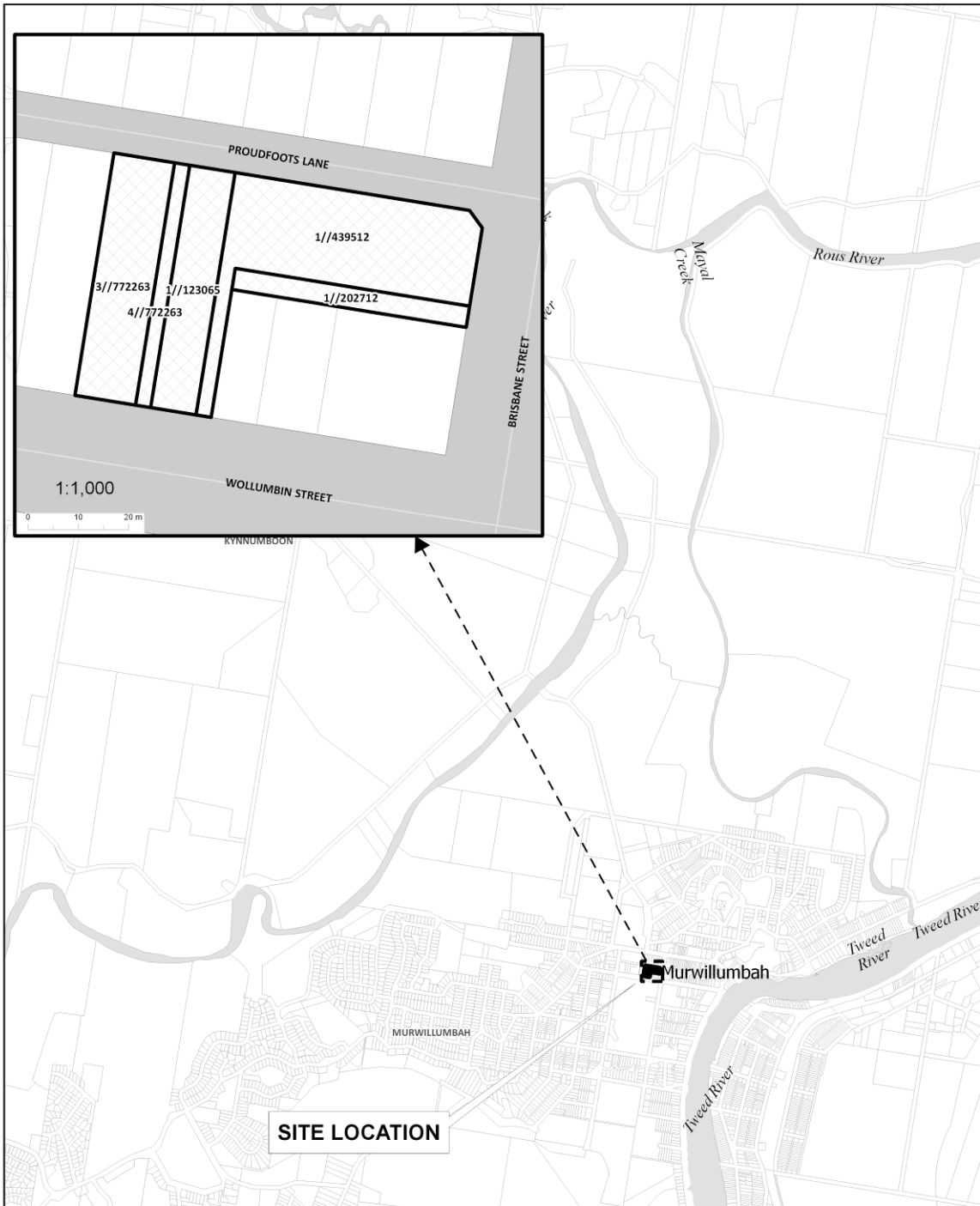
On 13 August 2018, upon completion of the assessment and following further discussions with the applicant; it was identified that whilst the layout of the development resolved the previous constraints on the applicant having regard to commitments for future tenants to occupy particular spaces, the staging of the development would need to be updated to facilitate the timing of occupancy of certain tenancies as part of the initial stages of the development.

Therefore, the applicant sought to further amend their DA to adjust the staging of the development and associated works within the stage.

The amendments to the staging plans were considered by Council officers and found to satisfy the relevant considerations for services, parking, access and fire safety/BCA compliance as relevant for each stage. However, to ensure that essential services that are required to service various parts of the development within each stage can be established at appropriate times, the recommended conditions have been structured to enforce works to be completed prior to the commencement of operations associated with any stage of the development.

A full set of the plans are provided as an attachment to this report and it is this latest version of the plans that form the subject of this report for assessment and determination.

SITE DIAGRAM:



Site Plan

Lot 1 DP 202712, Lot 1 DP 439512,
Lot 1 DP 123065, Lot 3 DP 772263, Lot 4 DP 772263



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 02/08/2018
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Civic and Cultural Centre
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Murwillumbah NSW 2484
PO Box 816
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W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

Date Printed: 02 August, 2018

ZONING PLAN:



Subject Land Tweed Local Environmental Plan 2014

- Subject Land
- B3 Commercial Core
- B4 Mixed Use
- RE1 Public Recreation

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 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geodetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

Site Plan - Local Environmental Plan

Lot 1 DP 202712, Lot 1 DP 439512,
 Lot 1 DP 123065, Lot 3 DP 772263, Lot 4 DP 772263

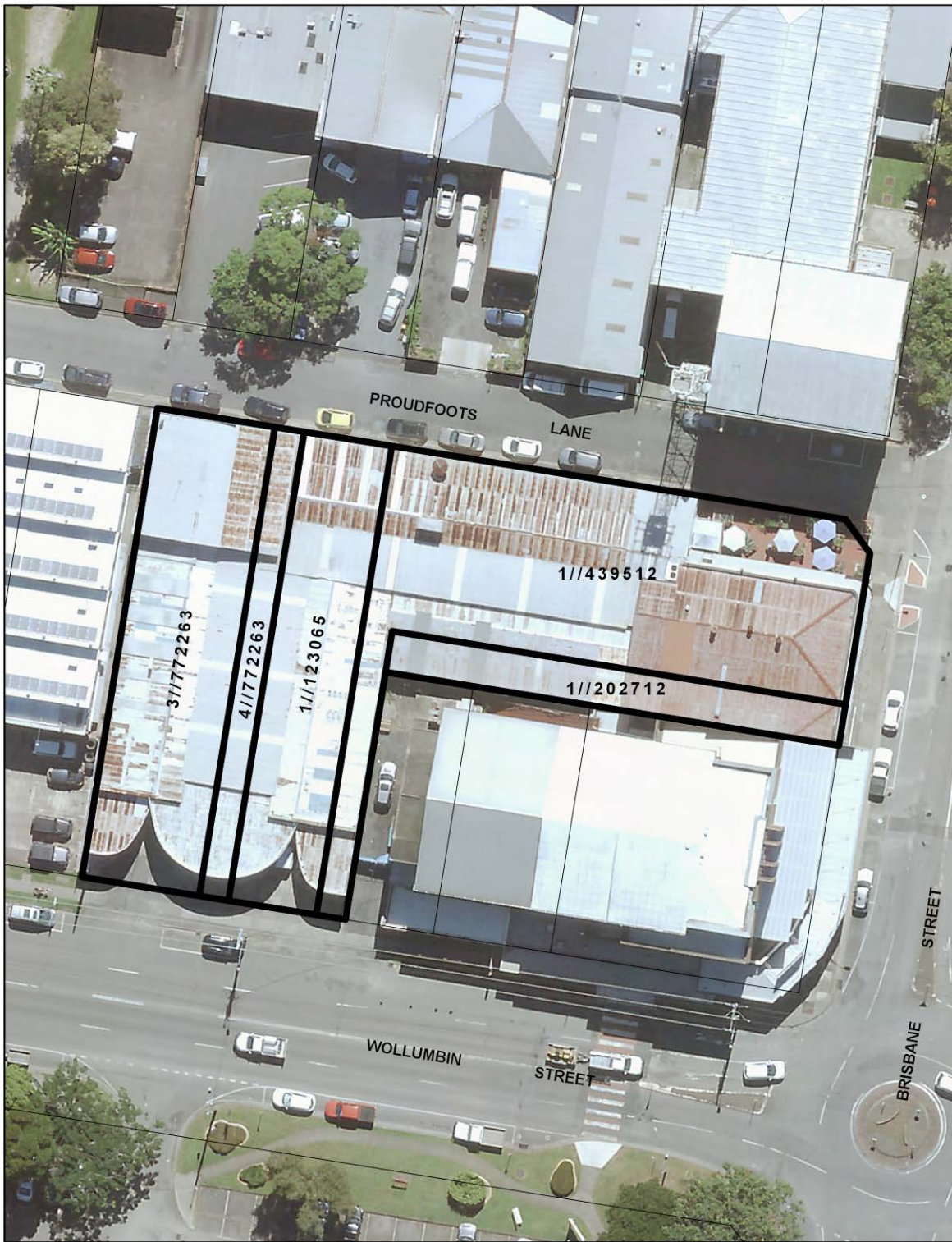
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Date Printed: 02 August, 2018

AERIAL PHOTOGRAPH:



1:500 @ A4 Portrait
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

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Aerial Photography April 2018

Lot 1 DP 202712, Lot 1 DP 439512,
Lot 1 DP 123065, Lot 3 DP 772263, Lot 4 DP 772263

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Boundaries shown should be
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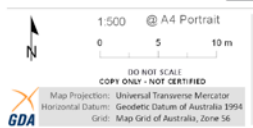
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Author: S.Scott - GIS
Date Printed: 02 August, 2018.

HERITAGE PLAN:



Subject Land Heritage (HER 2014)

- Subject Land
- Conservation Area - General
- Item - General



**Site Plan - Local Environmental Plan 2014
Heritage**

Lot 1 DP 202712, Lot 1 DP 439512,
Lot 1 DP 123065, Lot 3 DP 772263, Lot 4 DP 772263

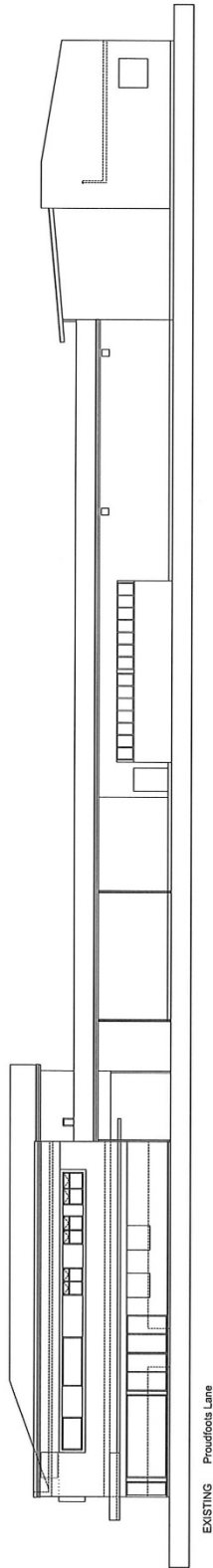
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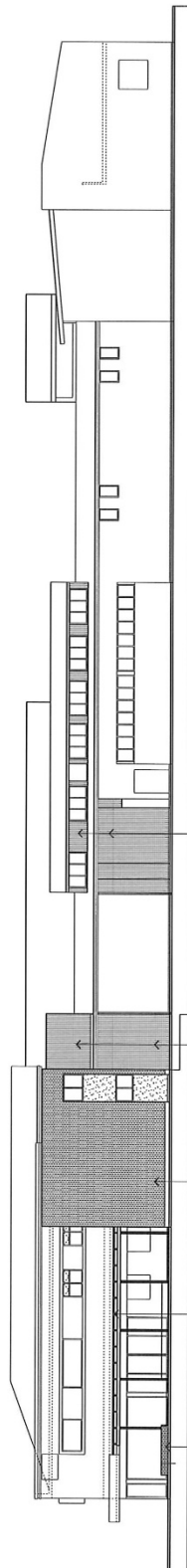
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Date Printed: 02 August, 2018

DEVELOPMENT/ELEVATION PLANS:







EXISTING Proudfoots Lane



PROPOSED Proudfoots Lane

NOTES

-  brickwork garden bed and seat
-  black stained timber pergola like structure
-  brickwork to match existing
-  zincalume metal wall cladding sheet to match existing

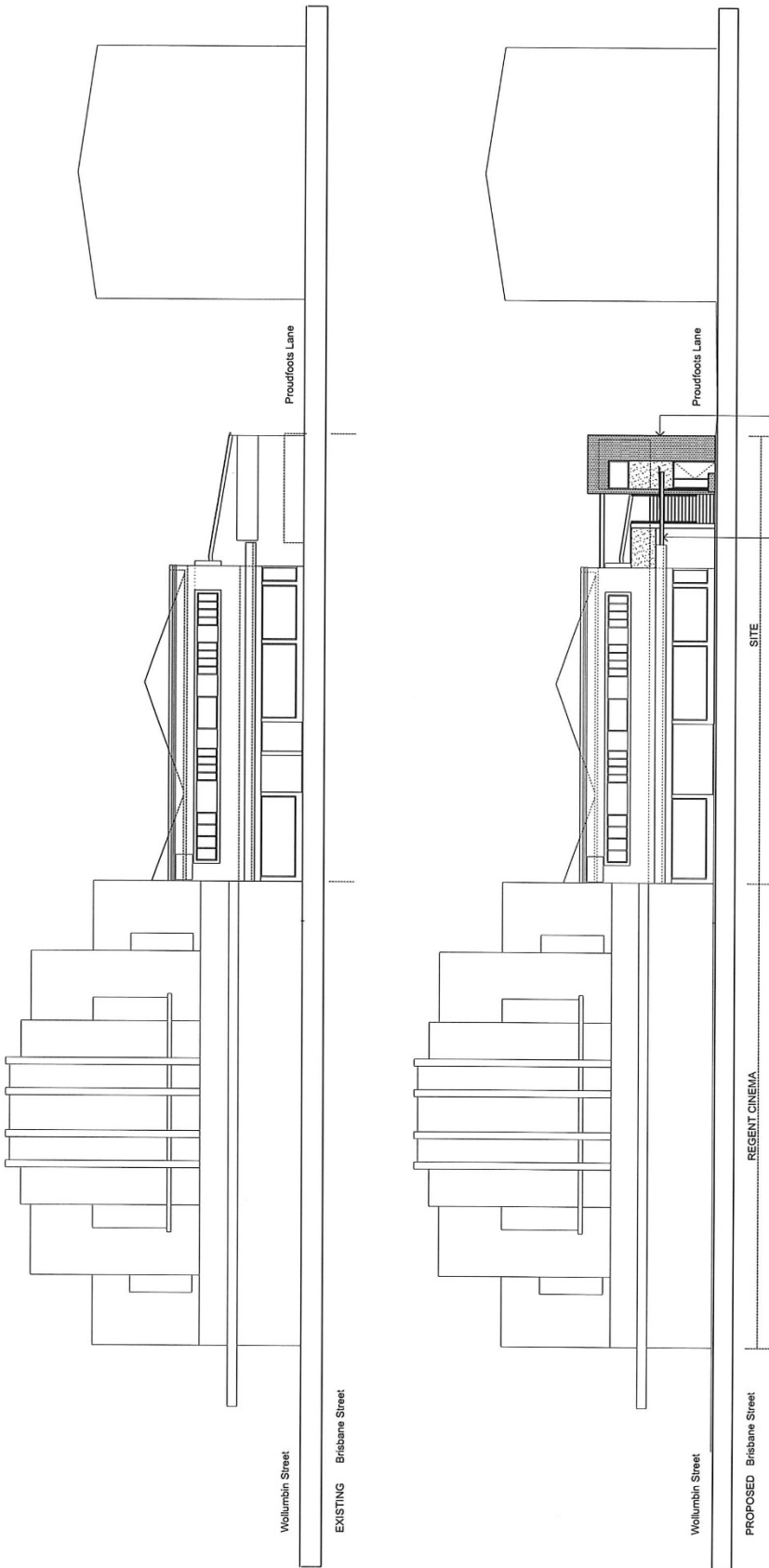
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 ADDRESS 1 Brisbane Street,
 Murwillumbah, NSW
 CLIENT Zane Pty. Ltd.
 DATE 18/08/18
 DRAWING DA 201b
 SCALE 1:200 on A3 original

Revision	Revision Description	Date	Verified
a	Referencing after RFI from TSC	18/08/18 JT	
b	Refinements after RFI from TSC	21/08/18 JT	

BURCO TWO
 85 Murwillumbah Street, Murwillumbah, NSW, 2484
 email: burco2@burco.com mobile: 0415574728



ELEVATIONS - NORTH



PROJECT M ARTS creative precinct
ADDRESS 1 Brisbane Street,
 Murwillumbah, NSW
CLIENT Zask Pty Ltd.
DATE 14/08/18
DRAWING DA 202a
SCALE 1:200 on A3 original

Revision	Revision Description	Date	Verified
a	Reformatting after RFI from TSC	19.02.18	JF
b	Reformatting after RFI from TSC	21.03.18	JF

BURO TWO
 ARCHITECTURE

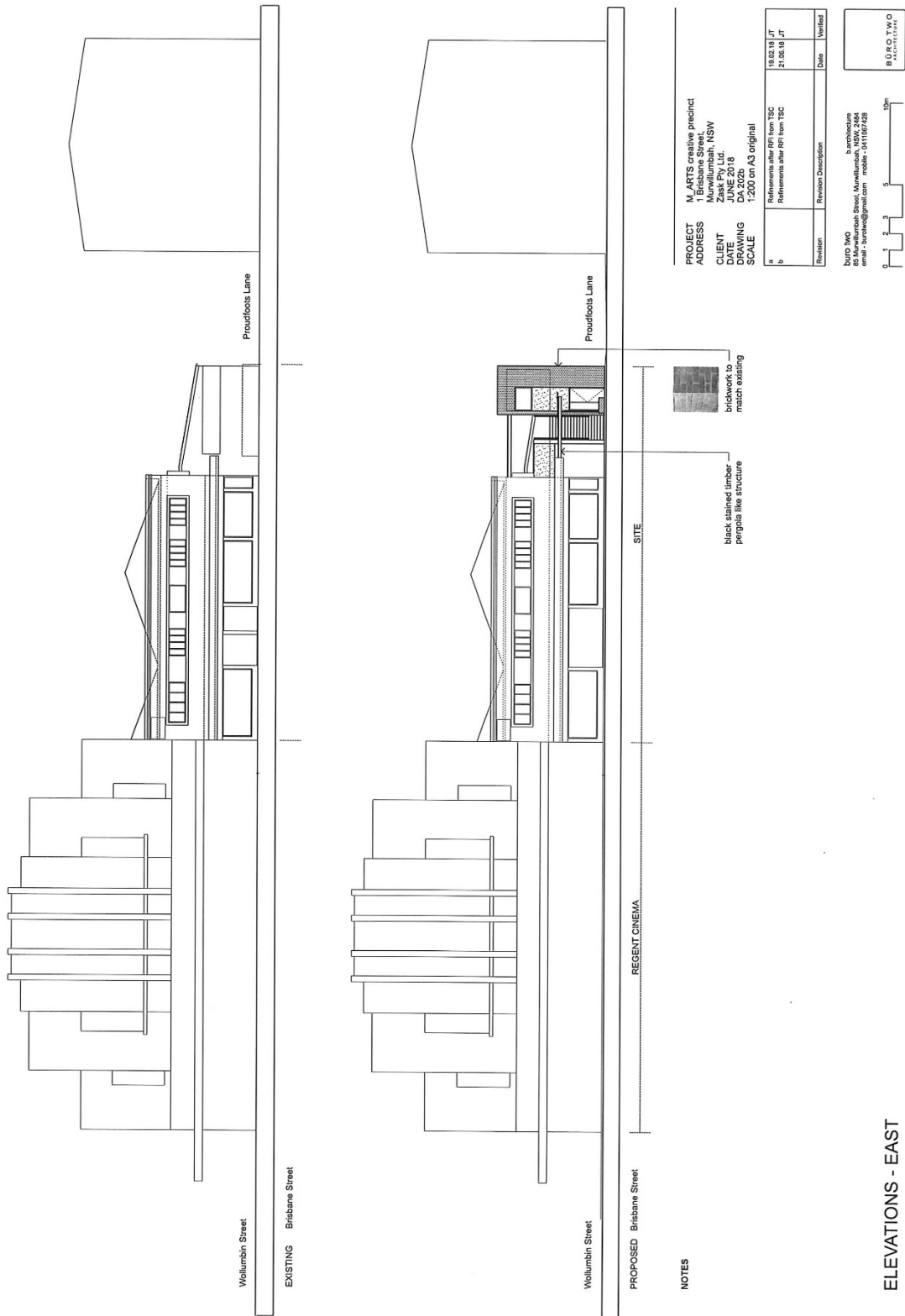
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b architecture
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 email - burotwo@gmail.com mobile - 0411067428

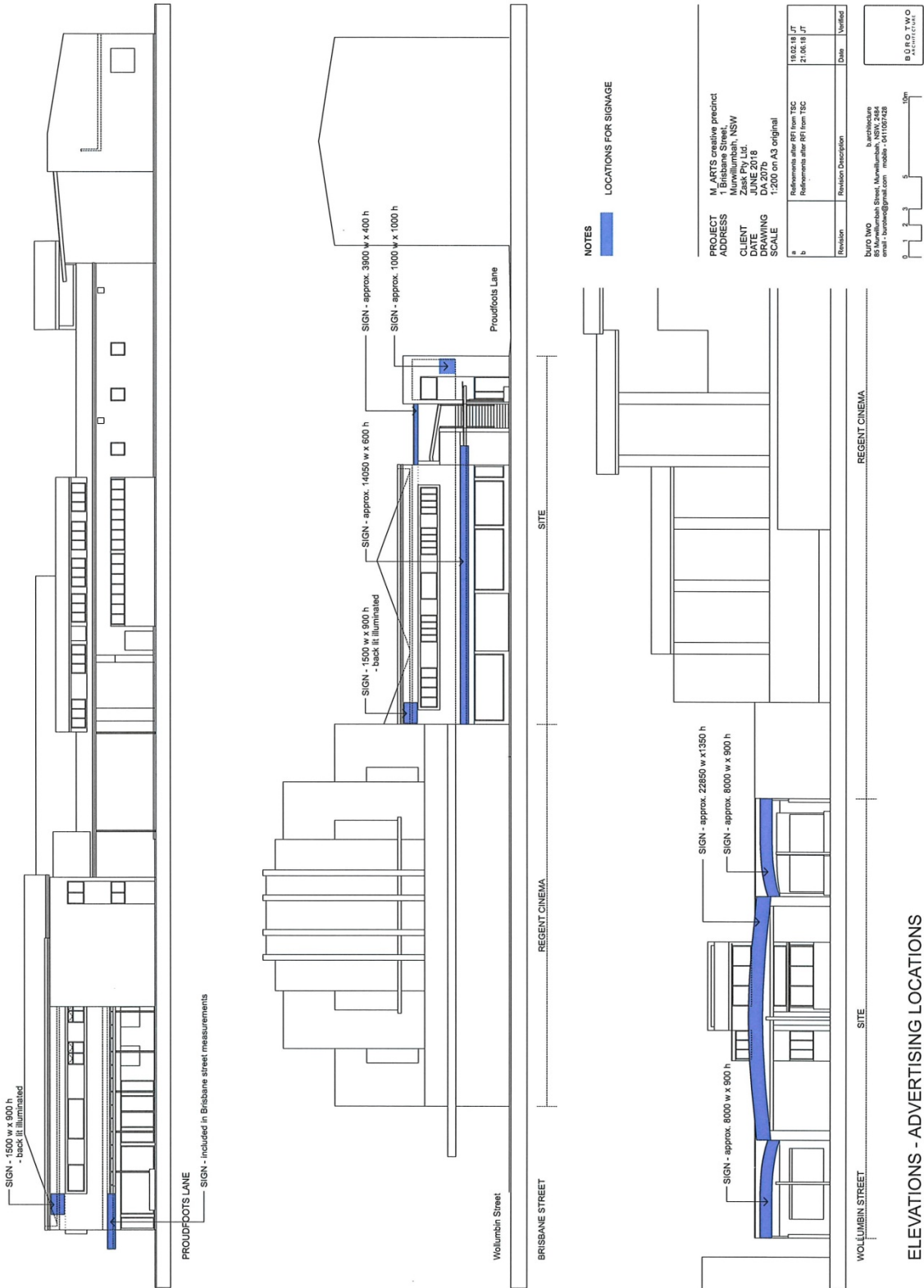
brickwork to match existing
 black stained timber pergola like structure

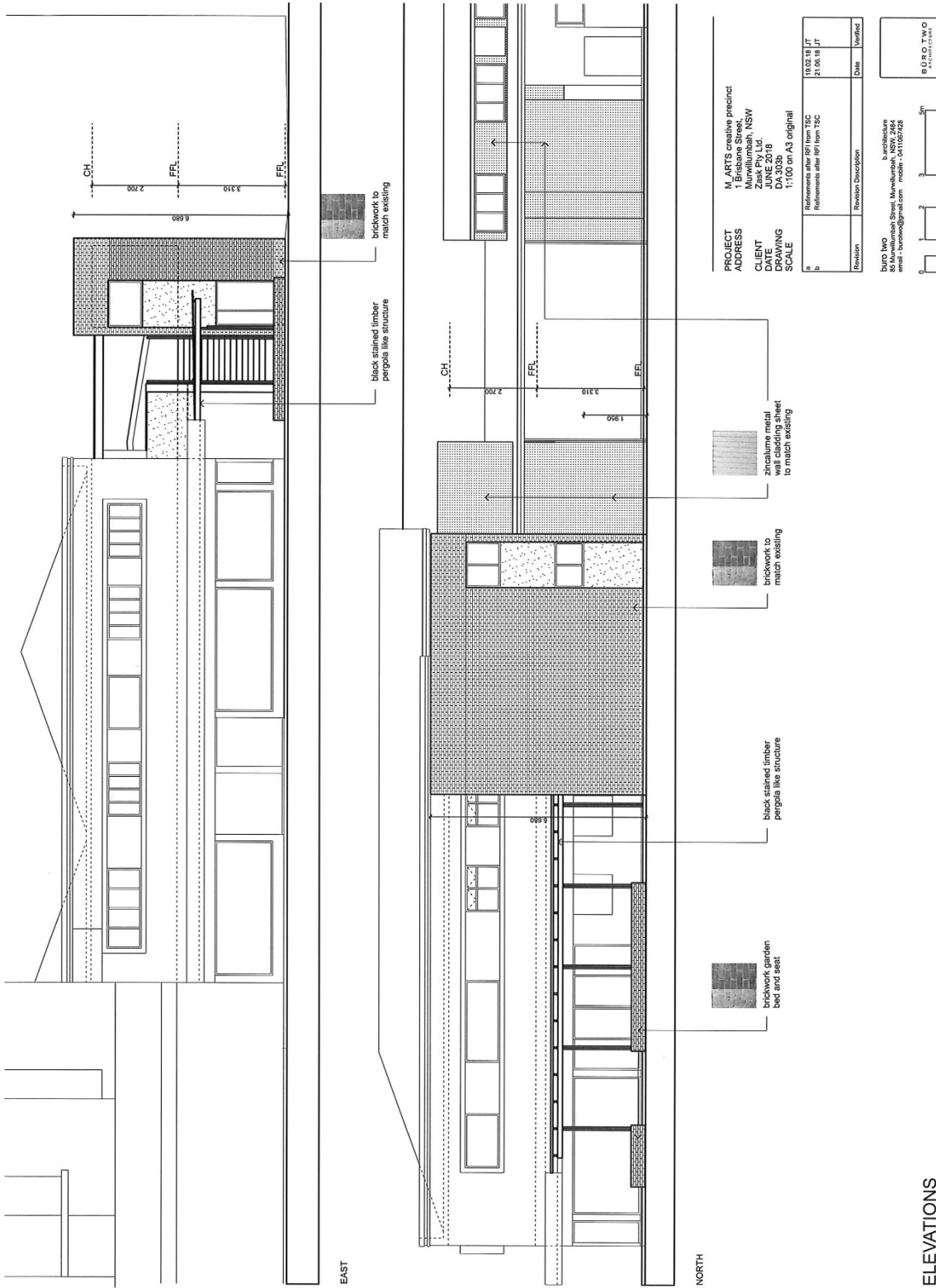
NOTES

ELEVATIONS - EAST



ELEVATIONS - EAST





ELEVATIONS

Considerations under Section 4.15 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:

- (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 proposal relates to a mixed use development within the B4 – Mixed Use zone. The development will further enhance the social, cultural, economic and urban fabric of the Murwillumbah Town Centre thus demonstrating consistency with the aims of the plan having regard to its nature and permissibility in the B4 – Mixed use zone.

Clause 2.3 – Zone objectives and Land use table

The objectives of the B4 – Mixed Use Zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposed mixed use development comprises of a range of land uses which fall under the group term of ‘commercial premises’ which is permissible in the zone.

The individual land uses within the development proposal comprise of:

- Food and Drink premises (restaurant, café, bar);
- Business premises (studios, flexible space and existing offices);
- Retail premises (markets, shops and retail component of studio space) and;
- Information and Education Facility (art gallery).

It is noted, in order to limit the functions of the site within the scope of permitted uses within the B4 zone, special conditions are recommended in relation to the activities and trade occurring on the site. Where applicable, these special considerations are discussed throughout the report. In particular, please refer to the SEPP 33 discussion on Hazardous and Offensive Development.

In addition, it is recommended that special events be limited to events and activities ancillary to the approved land use as defined in the land use table. To this extent it is recommended that a prohibition for the use of the site as a function centre be outlined in the recommended conditions due to the limitations on noise, traffic and parking (as discussed later in this report).

Subject to compliance with conditions of development consent (which limit uses outside the scope that are permitted in the zone), the proposed development and defined land uses are appropriate within the B4 Mixed use zone given they integrate business, office, retail and food outlets that are consistent with the fabric of the Murwillumbah Town Centre as a hub for general day to day trade and social and cultural activities in a location that is accessible by bus, car and pedestrian orientated transport networks.

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

The subject site is not burdened by a minimum lot size under the LEP and therefore this Clause does not apply.

Clause 4.3 - Height of Buildings

The maximum building height as identified in the Tweed LEP 2014 is Control M being 12.2m.

The proposal seeks to modify the internal components of the building and will not modify the existing height of the building which is a maximum of 6.68m.

Clause 4.4 – Floor Space Ratio

The maximum floor space ratio (FSR) as identified in Tweed LEP 2014 is Control T being 2:1.

The proposed Gross Floor Area (GFA) for the development is 1709m² which represents a FSR of 0.7:1.

Clause 5.10 - Heritage Conservation

The subject site is located within the Murwillumbah Main Street Conservation Area and adjacent to a local heritage item, listed No 51 Commercial premises (former Regent Theatre) under Schedule 5 of the Tweed LEP 2014.

As such, in accordance with the provision of this clause, a Statement of Heritage Impact was submitted with the application to consider and address the impacts of the development on the conservation area as well as the adjacent Heritage Item.

Prior to the lodgement of the subject development application, consultation with Councils Heritage Advisor was undertaken. As part of that consultation, formal comments regarding the proposal were provided to the application to assist with the preparation of the Statement of Heritage Impact.

It is acknowledged that works are required in relation to the existing structure as part of the proposed development, that being; part demolition of roof and associated structures as well as the provision of Signage.

These elements of the development have been addressed in the submitted Statement of Heritage Impact (prepared by Buro Two Architecture). The report highlights that part demolition the existing roof and associated structures will occur in a manner that will retain contributory building fabric and not impact the curtilage of the adjacent heritage item.

The provision of signage is located within areas that have been previous associated with signage so to maintain existing faces and minimise intrusive addition to the current streetscape. The signage has a reduced colour palette (white letters on black background) and font selection is influenced by the Interwar art deco period which is in keeping with the character the building based in its era of construction.

The report has been prepared having regard to the comments received by Councils Heritage Advisor and upon review; no objection was raised in regard to

the proposed development and its impact on the fabric of the Murwillumbah Main Street Conservation Area and adjacent local heritage item (Regent Theatre).

As such, Council can be satisfied the development meets the objectives of Clause 5.10.

Clause 7.1 – Acid Sulfate Soils

The subject site is identified as Class 3 Acid Sulfate Soils (ASS) and therefore works 1m below ground level require an Acid Sulfate Soil Management Plan.

The applicant has demonstrated that no works extend beyond 1m below ground level and therefore at this stage, an Acid Sulfate Soil Management Plan is not required. Council officers have concurred that an Acid Sulfate Soil Management Plan is not necessary at this stage however recommend conditions of consent to be imposed to limit works in the absence of a plan. Therefore, should further engineering detail necessitate works which extend beyond the limitations imposed, an Acid Sulfate Soil Management Plan is to be submitted to Council prior to excavation works occurring on the site.

Subject to compliance with recommended conditions of consent, the objectives of Clause 7.1 have been satisfied.

Clause 7.2 - Earthworks

The subject site comprises of existing structures and concrete driveways and pavement. The development will include minor earthworks for the construction of drainage to existing trunk main lines in Proudfoots lane however those works are considered to minor and therefore are unlikely to impact on the matters relevant for consideration under this Clause.

Notwithstanding the above, the site is located adjacent to a heritage item and the earthworks would necessitate appropriate environmental measures to protect and control sediment run off. As such, conditions of consent have been recommended to ensure that appropriate dilapidation reporting measures are taken for the adjacent Heritage Item and sediment and erosion measures be installed prior to the commencement of works on the site.

Clause 7.3 – Flood Planning

The objectives of this clause is to minimise the flood risk to life and properties associated with the use of land and allow development that is compatible with the land flood hazards without impacting flood behaviour and the environment.

The subject site is mapped as being subject to 1 in 100 year flood event and design flood levels are measured at RL7.5m AHD however the proposal is for commercial use and therefore minimum floor level requirements do not apply. Notwithstanding, in order to satisfy the objectives of this Clause a condition of consent is recommended to ensure the protection of stock, equipment and electrical servicing in times of flood.

Clause 7.4 - Floodplain risk management

This aim of this clause is to minimise the risk to life in a flood event and to protect the operational capacity of emergency response facilities.

The proposed development is a non-habitable land use and is not a land use affected by the provisions of this Clause.

Clause 7.5 - Coastal risk planning

The site is not mapped as being subject to coastal risk planning under this clause.

Clause 7.6 - Stormwater Management

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

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

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

The proposed development will not impact or modify the existing stormwater management measures for the site. Onsite stormwater generated onsite will comprise of roof water which does not require treatment.

The applicant has submitted a stormwater concept plan which includes the redirection of all existing roof water to separate collection points for each proposed lot. This arrangement has been reviewed by Councils Development Engineers who are satisfied with the proposed stormwater drainage concept plan subject to recommended conditions of consent. Therefore, Council can be satisfied the matters for consideration under this Clause can be satisfied.

Clause 7.8 – Airspace operations

Not applicable as the site is not in an area subject to airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable as the site is not within an area subject to aircraft noise.

Clause 7.10 - Essential Services

Water, electricity, sewer and stormwater services

The subject site benefits from existing access to sewer, water and stormwater drainage. Notwithstanding, as a result of the proposed lot amalgamation, Council officers have considered the provision of easement for services between proposed Lot 1 and Proposed Lot 2.

A review of the existing infrastructure within Proudfoots Lane and Brisbane Street suitably demonstrates that each lot will benefit from its separate connection to existing sewer infrastructure.

In addition, the provision of water and stormwater drainage can also be established for each separate lot.

As such, Council can be satisfied that no easements for services are required and that adequate arrangements have been made for the supply of water, electricity, sewer and stormwater drainage.

Vehicular Access

The provision of vehicular access is proposed via a new driveway crossover to the western extent of the site, at the Proudfoots Lane interface. This will facilitate a one-way internal vehicle entry and thoroughfare via an internal driveway which will also provide access to onsite parking within the site. Vehicles will exit the site via the existing driveway crossover at the eastern extent of the Proudfoots Lane frontage, providing a left turn only exit from the site onto Proudfoots Lane (one-way lane).

In addition, secondary two-way access to the site is provided via the existing Wollumbin Street crossover which also contains four car parking spaces and bicycle storage spaces (see Figure 5 below).



Figure 5: Proposed Ground Level Plan demonstrating vehicular access to the site

The proposed access via Wollumbin Street has been considered by the RMS (classified Road) and RMS have advised that no objections are raised subject to compliance with AS2890.

The proposed entry and exit arrangements via Proudfoots Lane was supported by a Traffic Impact Assessment Report (prepared by Bitzios Consulting Pty Ltd dated 31 August 2017). The report includes a swept path analysis for a standard private vehicle moving in and out of the site via the entry and exist points nominated on the above plan (see Figure 5 above and Figure 6 below).

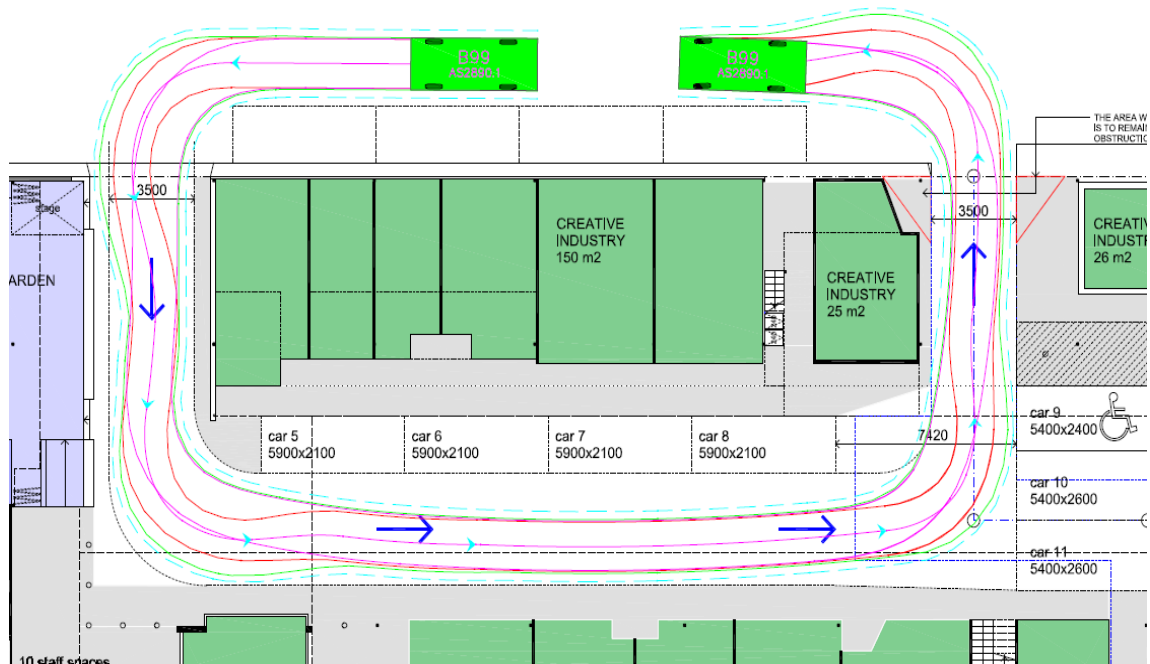


Figure 6: Extract of Swept Path circulation plan submitted by Consultant Traffic Engineer (Bitzios Consulting Pty Ltd)

Based on the information provided by the Traffic Engineering Consultant, Council can be satisfied the proposed vehicular access arrangements comply with AS2890 and are therefore suitable for the subject site. Conditions of consent have been recommended to ensure vehicle access and associated parking is provided at the initial stage of the development.

North Coast Regional Plan 2036 (NCRP)

The subject site is located within a Coastal Zone and mapped to be within a Coastal Environment Area under the NCRP.

Clause 13 of the SEPP states that Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Whilst the subject site is mapped to be contained in a Coastal Environment Area, its locality is not that which has direct access to a public foreshore, surf zone, open space or native wildlife corridor associated with the coastal environment. As such, by virtue of the site locality and the scope of the works, Council can be satisfied the development will have no adverse impact on the matters listed in this section of SEPP.

State Environmental Planning Policies

SEPP No. 33 - Hazardous and Offensive Development

The aim of this policy is to:

- (a) *to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and*
- (b) *to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Policy, and*
- (c) *to require development consent for hazardous or offensive development proposed to be carried out in the Western Division, and*
- (d) *to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and*
- (e) *to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and*
- (f) *to require the advertising of applications to carry out any such development.*

In order to determine whether a development is a hazardous or offensive industry due consideration of guidelines published by the Department of Planning in relation to hazardous and offensive development is to be undertaken.

The *Hazardous and Offensive Development Application Guideline 'Applying SEPP 33'* (January 2011) by NSW Department of Planning further elaborates on the procedural requirements when applying SEPP 33 and also the assessment and risk screening measures for various types of uses.

Such uses, relevant to the proposed development, which could be classified as potentially hazardous include those which involve use of paints and lacquers, resins and other chemicals which are classified Dangerous Goods. In addition, uses such as metal processing and recycling and welding are listed as potentially offensive.

The proposed development includes the use of creative industry studio space which falls within the definition of a 'business premises' under the LEP. Therefore, whilst the above mentioned uses could fall within the categories listed under the Guideline, given the zoning of the land and the defined land use, it is considered that the small scale studio spaces would not reach the screening

thresholds which would require Preliminary Hazard Assessments (PHA) as outlined in the 'Applying SEPP 33 Guideline'.

As such, based on a preliminary review of the development having regard to the 'Applying SEPP 33 Guideline' the provision of further assessment having regard to the Guideline is not required due to the location (greater than 100m from sensitive residential location) and quantity unlikely to be within the screening thresholds listed on Table 3 of the Guideline.

Notwithstanding, a special condition of consent is recommended to require the draft Operational Management Plan to be updated and submitted to Tweed Shire Council prior to the issue of a Construction Certificate for the Stage 1 works.

The updated Operational Management Plan is to outline an obligation for each art studio operator (tenant) to hold Material Safety Data Sheets (MSDS) for all classified Dangerous Goods being use within their individual studio spaces, and the detail of such goods in terms of classification and quantity be provided to the site manager so to maintain a common register of classified Dangerous Goods.

The common register is to be audited by the site manager on a monthly basis to ensure the cumulative quantity of goods used by the individual tenants do not reach the thresholds which require screening as per the items scheduled in Table 3 of the Department of Planning Hazardous and offensive Development Application Guideline 'Applying SEPP 33' (January 2011).

It is considered that the imposition of the above special condition suitably satisfies the aims of the SEPP and provide a measure to ensure that in determining whether a development is a hazardous or offensive industry, appropriate measures are in place to safe guard the development and reduce and minimise potential for adverse impact as a result of the ongoing operation of the site.

Should the development reach a threshold which requires further consideration under the SEPP 33 Guideline and subsequent PHA, the applicant would need to lodge a modification application or new DA in order for an assessment of the proposal having regard to the SEPP 33 Guidelines and the approved land use. It is noted that the provision of 'industries' involving 'industrial activity' is a prohibited land use in the zone and therefore the applicant would need to demonstrate that the modification/new DA maintains its defined land use and is permitted in the zone.

SEPP No. 55 - Remediation of Land

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. The provisions of SEPP 55 specify when consent is required and not required for remediation work and specify certain considerations that are relevant in determining application in general by requiring that remediation work meet certain standard and notification requirements. Clause 7 of the SEPP states that a consent authority must not consent to the carryout of the any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject site was previously used for mechanical repairs which included the refuelling of vehicles on the site. Therefore the site once contained Underground Petroleum Storage Systems (UPSS's). In 2010 development consent (DA10/0420) was sought for the removal of the disuses UPPS's together with the remediation of land. In associated with these works, a Remediation Action Plan was submitted to Council as part of the Development Application (prepared by Cavvanba Consulting, referenced 11014.2 dated May 2010). Consent was granted for the works in September 2010.

In accordance with the SEPP 55 provisions after the removal and remediation works were complete, a Validation Report (referenced 11014 R03 dated August 2012 prepared by Cavvanba Consulting) followed by a Validation Addendum Report, also prepared by Cavvanba in June 2014 (referenced 11014L03 SM 03).

The 2014 Validation Report concluded that post remediation contaminant detections for the soils do not exceed the limitations for drinking water and freshwater ecosystems or health screening levels. Exceedances were observed for the ecological screening levels (ESL's) but not to the extent that it would deem the site unsuitable for commercial land use. No significant groundwater contamination were identified, given the surrounding area is paved, and no immediate sensitive receptor were identified, therefore it was concluded that it is unlikely that there are significant ecological risks associated with the contaminated soil remaining.

The report outlined that as far as vapour intrusion was concerned it is unlikely that there is a vapour intrusion risk associated with the residual contamination, however it stated that more specific information/assessment would be required if an enclosed building was proposed to be constructed overlying the area. It further outlined that the material in-situ is unlikely to present a human health risk, but if the site was to be disturbed through removal of the pavement and/or excavation of soil, management controls will need to be in place to limit the exposure risk to workers.

Having regard to the above site history and remediation works; the subject application was lodged with a Preliminary Site Investigation Report prepared by HMC Environmental dated 21 December 2017. The report referenced the findings from the previous Cavvanba Report (2012) and (2014) (mentioned above) and was based on laboratory analysis of soils. The report mentions slab penetration however concluded that the proposed creative arts precinct is considered suitably for the current and proposed land use and no further investigation or remediation is required.

As such, based on the findings and limitations of the previous Cavvanba report (2014) Council officers deemed it necessary to undertake a more detailed assessment relevant to the scope of the proposed works and use. Therefore Council requested a review of the previous 2012 and 2014 Cavvanba Validation reports. The review would need to address the scope of the proposed work and comment in respect to the need for further investigation, site management plan and suitability of the site for the proposed development.

Following several meetings between Council and the proponent two additional reports were submitted for consideration and review, being:

1. *Groundwater, Soil Vapour and Indoor Air Monitoring Factual Report prepared by Precise Environmental dated May 2018 (reference PE2626.18)*
2. *Detailed Site Investigation prepared by HMC Environmental dated June 2018 (reference HMC2018.117).*

The Groundwater, Soil Vapour and Indoor Air Monitoring Factual Report by Precise Environmental dated May 2018 (referenced PE2626.18) indicates that concentrations of Contaminants of Potential Concern (CoPC's) in groundwater were not restrictive to commercial use of the site and soil vapour and indoor air concentrations of CoPC's were also not restrictive to commercial use of the site.

In addition, the detailed Site Investigation by HMC Environmental (dated June 2018) further addressed that the existing concrete slab floor would be penetrated in areas to install footings and drainage, and therefore to validate any potential contamination impact as a result of these works soil investigations were undertaken. The report suitably demonstrates the results from the laboratory analysis of samples collected are below the adopted investigation criteria for contaminants of potential concern.

In conclusion the report indicates that all soil samples collected during the Preliminary Site Investigation (by HMC in 2017) and the current investigation (for the subsequent HMC Environmental Consulting Report dated 2018) recorded results for CoPC's within the investigation criteria for the proposed commercial land use. In addition the Precise Environmental (2018) investigations for indoor air quality, sub-slab vapour and groundwater quality recorded results that were also below the investigation criteria for the proposed commercial land use.

As such, the site has been deemed suitable for the current and proposed land use subject to the submission of a Site Management Plan within 3 months of the development consent to address:

- a. Additional groundwater monitoring of the existing monitoring wells, to confirm whether the contamination has reduced in concentration, and/or is not migrating off-site. Ongoing monitoring may be required to evaluate potential offsite migration;
- b. Potential exposure of subsurface contaminants in the vicinity of the decommissioned underground petroleum storage system to onsite workers and;

- c. Limits to permissible site disturbances, having regard for any OH & S or environmental protection requirements.

Councils Environmental Health Officer has reviewed the findings of both reports (and considered the originally submitted Preliminary Investigation Report and Cavvanba Validation Report 2012, 2014) and raised no objection subject to the adopted recommendation by HMC Environmental for the submission of a Site Management Plan forming a conditions of consent.

Based on the above explanation and subject to compliance with the recommended conditions, Council can be satisfied that the subject site is suitable for the proposed development pursuant to Clause 7 of SEPP 55.

SEPP No. 64 – Advertising and Signage

The aims of this policy relate to ensuring that signage and advertising are compatible with the desired amenity and visual character of the subject locality. To comply with the policy, signage should be:

1. Compatible with the desired amenity and visual character of the area;
2. Provide effective communication in suitable locations;
3. Signage should be of high quality design and finish.

Clause 8 requires Council to assess whether proposed signage is consistent with the objectives of the policy, and compliant with Schedule 1 of the policy.

The proposal includes the provision of nine advertising signs in the form of banner style signs across parapet features of the building at the Proudfoots Lane, Brisbane Street and Wollumbin Street elevation.

This signage is summarised as follows:

- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Proudfoots Lane elevation.
- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Brisbane Street elevation.
- 1 x 14050mm W x 600mm H (8.43m²) ground floor parapet banner sign wrapped around Brisbane Street and Proudfoots Lane elevation.
- 1 x 3900mm W x 400mm H (1.56m²) slim parapet banner sign at Brisbane Street elevation.
- 1 x 100mm W x 1000mm H (2m²) fascia sign at Brisbane Street elevation.
- 2 x 8000mm W x 900mm H (14.4m²) parapet banner sign at Wollumbin Street elevation.
- 1 x 22850mm W x 1350mm H (30.85m²) parapet banner sign at Wollumbin Street elevation.

Schedule 1 provides 8 assessment criteria, as set out below:

1. Character of the area: The proposed location and design of the signage is compatible with the existing character of the area, the fabric of the streetscape and building itself and is considered to be consistent with the use and function of the site within the Murwillumbah Town Centre B4 Mixed Use zone
2. Special Areas: Being located within the Murwillumbah Town Centre Heritage Conservation Area and adjacent to a heritage Item, due consideration as to the proposed signage suitability and contribution to the themes of the building and fabric of the conservation area has been undertaken.
3. The use of simple black and white colours, on high quality materials with art deco design is considered to be conducive to the era of the adjacent heritage building thus contributing to the fabric and providing a design within the curtilage of the heritage item. As such, the proposal is not considered to detract from the amenity or visual quality of the listed item or conservation area.
4. Views and vistas: The proposal as submitted is not considered to obscure or compromise important views.
5. Streetscape, setting or landscape: The scale of the proposal, including its proportions and form is considered appropriate for the streetscape and setting of the proposal. The proposed signage is consistent with existing signage in the area and utilises locations where predated signage once existed on the building and therefore is not considered to create unsightliness. The signage maintains a sightline which is within the roofline and does not protrude above buildings, structures or tree canopies in the area. It is therefore considered to be consistent with these criteria.
6. Site and building: The proposal as submitted appears compatible with the scale and proportion of both the subject site, and the existing surrounding development which comprises of a range of uses including the 'Regent Theatre' building, post office building and small retail shops across the opposite side of Brisbane Street. It is considered that the proposal's size and design respects the existing building and does not detract from any important features of the subject building or the adjacent Heritage Item. The nature of the proposal does not lend itself to particular innovation, and as such, it is considered that the proposed advertising signage is consistent with the requirements under Schedule 1, part 5.
7. Associated devices and logos with advertisements and advertising structures: The proposed signs are easily accessible for installation and maintenance. No new safety devices or platforms are required. As mentioned above, the proposed signage displays the logo of the applicant's company which is an integral component of the advertising structure.

8. Illumination: The proposal includes 2 illuminated signs. Each sign measures 1.5m x 900mm and having regard to the overall elevation of the buildings, is unlikely to result in unacceptable glare or impact the safety of drivers or pedestrians. Furthermore, the site is suitably located within the commercial zone and would not impact any habitable dwellings. Notwithstanding, a special conditions is recommended to ensure that any impacts resulting from the illumination of signs can be regulated and managed by way of compliance with conditions of consent.
9. Safety: The proposal is not considered to reduce the safety for any public road, pedestrians or cyclists as it does not protrude into the sight lines of the subject site or that of any adjoining lots. It is not considered to obscure any sightlines from public areas and does not encroach onto the footpath or car park of the subject site. The proposal may improve driver safety by way of clearly delineating the subject site from the surrounding environment.

It is considered that the proposal, as submitted is consistent with the aims and objectives of SEPP 64 – Advertising and Signage and the requirements of Schedule 1 of the policy.

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

Draft TLEP No. 17 – Short-term rental accommodation. This draft LEP has no bearing on the subject application.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The objectives of this Section of the DCP are:

1. *To achieve integrated car park design with high levels of amenity for users*
2. *To integrate site landscaping and water sensitive urban design to minimise hardstand areas and address site stormwater flow and pollution*
3. *Provide public domain, comfort and legibility treatments to support the volume of pedestrian movement in and around sites.*
4. *To ensure developments support pedestrian, cycling, vehicle and public transport demand through implementing prescriptive parking supply rates or site specific studies.*
5. *To manage generated traffic volumes and to minimise potential adverse impacts on the local road network.*
6. *Provide a planning framework for considering alternatives to established parking rates for community and business centres which are supported by integrated transport systems.*

An assessment of the proposal having regard to the design principles and controls contained in Section A2 of the DCP as well as the above mentioned objectives is contained herein:

Pedestrian Access and Amenity

The proposed development has been considered having specific regard to pedestrian amenity, safety and access. The submitted Traffic Impact Assessment briefly address' the provision of pedestrian access links and whilst it is accepted that there is ample opportunity to delineate pedestrian and vehicular access to secure pedestrian safety, detail of such has not been provided as part of the proposal. Therefore to ensure an appropriate outcome is achieved in accordance with this section of the DCP as well as the recommendations by NSW Police, it is recommended a condition of consent be imposed to require a pedestrian management plan to be prepared and submitted to Council for consideration and approval.

Subject to compliance with the recommended condition of consent, the proposed development is considered to satisfy the DCP as far as pedestrian access and amenity.

Vehicle Access and Parking Design

The proposed development includes the provision of 11 onsite car parking spaces which is less than the number of spaces normally required for a development of this scale. The subject site contains a limited amount of space for onsite parking and existing buildings constrain the viability to expand onsite car parking to cater for the proposed development. Notwithstanding, based on historic land uses and developments approved for the site, the site benefits from credits for parking spaces.

In addition, the site is also located within the core of the Murwillumbah Town Centre and therefore the provision of cross utilisation of more than one use is likely to occur for customers visiting the subject site as well as other retail and commercial uses within the town centre.

It is further noted that "special events" require the closure of the internal laneway which results in the loss of seven car spaces. This aspect of the proposal has been reviewed by Councils Traffic Engineer whom has advised that given the "special events" only occur outside of normal business hours when on street parking demand is lower, the loss of the car parking spaces for these events is acceptable.

The laneway or parking area is to be used for special events while the internal laneway should be closed to prevent conflicts between vehicles and pedestrians. This has been outlined in the Operational Plan however it is recommended that a special condition of consent be imposed to reiterate this requirement to mitigate any conflict pedestrian and vehicular movement.

The development application is accompanied by a Carparking Analysis and Traffic Impact Statement accompanied by addendum information which details justification for the calculation of the credits for car parking spaces, the current parking demand in the area (and the peak periods), the provision of cross utilisation in this area, and detail of access and manoeuvring for vehicles through the site.

A breakdown of the parking calculation is provided below:

Parking Credit calculation

Parking Credits have been calculated having regard to numerous past uses which have simultaneously occurred at the site. In particular, Council records indicate that in 2005; the site was already occupied by a motor showroom, NRMA office, car repair station and an art gallery (approved under DA05/0862) and in June 2006 DA06/0130 was consented to for the conversion of the existing motor showroom and six car spaces on Proudfoots Lane into a refreshment room (including outdoor dining area). This proposal also involved the conversion of part of the existing car repair station (480m²) to cater for the relocated motor showroom.

An extract of the formula used for the calculation of the refreshment room parking space under DA06/0130 (for additional use on the site for the refreshment room) is provided below:

Development	Standard	Total Car Spaces
<i>Proposed Development</i>		
Refreshment Room (84 seats)	0.5/staff + 1/3 seats (includes 20% ESD reduction)	25

Under DA06/0130; a parking credit was calculated for the mechanical repair workshop at a rate of 9 (work bays) x 4.2 spaces per work bay = 37.8 spaces (round up to 38).

For the new use approved under DA06/0130 for a refreshment room and based on the balance of spaces associated with the changes to the motor show room; only 27 spaces were provided and therefore the short fall or credit was calculated to be 11 parking spaces.

Based on the proposed development; the parking demand will change for the reduced area for the café and increase to the gallery space (first floor) as compared to the approved refreshment room under DA06/0130 which generated a demand for 25 parking spaces. The parking demand changes based on the updated floor area of the cafe are outlined in figure 3 below. In summary, it highlights the reduction in floor space for the café results in a credit of 15.31 parking spaces.

Table 4 - Parking Demand Changes - Change in floor area of coffee shop				
Proposed Land Use	Calculations	Parking Required	Existing parking allocation/credit	Change
Café (71m ² dining area)	3.5 spaces / 100m ² of dining area + 4 Staff	6.485	25 spaces (refer to DA 06/0130 assessment)	6.485- 25 =18.51 space reduction
Additional Ground Floor Gallery Area (105m ²)	3.2 spaces ⁽¹⁾	3.2	Part of the coffee shop floor area (total 25 spaces)	+3.2
Credit resulting from reduced coffee shop floor area				18.51 - 3.2 = 15.31 space credit

Figure 7: Extract of Parking Demand Changes from approved Refreshment Room to additional gallery and reduced cafe use

Having regard to the residue credit of 11 parking spaces calculated under DA06/0130 and the above residue credit of 15.31 for the proposed café and ground floor gallery associated with the subject application; the total parking credits available for the site is 26.21 spaces.

Proposed Demand for Parking

The submitted Table 5 in 'Carparking Analysis' (dated March 2018 prepared by Kellie Shapland Townplanning) (see figure 4 below) contains a breakdown of required parking based on proposed land use in accordance with Section A2 of the DCP.

Table 5 - Required Car Parking		
Proposed Land Use	Calculations	Parking Required
Café (71m ² dining area)	3.5 spaces / 100m ² of dining area + 4 Staff	6.485
Additional Ground Floor Gallery Area (105m ²)	3.2 spaces ⁽¹⁾	3.2
Ground floor office to creative retail (74m ²)	4.5 spaces / 100m ² GFA minus office rate of 1/50m ² GFA 3.3 - 1.48 = 1.82	1.82
Restaurant (30m ² dining area) +3 staff	3.5/100m ² = 1.05 spaces (customer) + 3 staff = 4.05	4.05
Creative Industries 845m ²	90% commercial rate (760.5m ²) 10% ⁽³⁾ retail rate (84.5m ²) 760.5m ² (90%) = 15.21 spaces 84.5 (10%) = 3.8 spaces = 19.01 spaces	19.01
Bar	Refer to Bitzios report dated August 2017	13.5 ⁽¹⁾
Upstairs Gallery	Already Approved	No change ⁽²⁾
Total		48.065 spaces

Figure 8: Parking generation based on Numerical provisions in Table 2, Section A2 of the DCP

A local Parking Analysis was undertaken by Bitzios Consulting (in their supplementary advice provided to Council dated 22.2.2018) and includes a table (see figure 5 below) which shows the actual required spaces based on the time of day parking demand analysis.

The table further outlines the provision of a reduced number of spaces based on the Cross utilisation (15%) of uses between the town centre. This table demonstrates a reduction in the demand for onsite parking spaces from 45.2 spaces to 38.4 spaces.

Table 2.2: Time of Day Car Parking Demand Analysis

Time Starting	Café		Restaurant		Bar		Office ³		Shop ⁴		Total Parking Demand	Total Parking Demand with 15% Cross-Utilisation
	% Use	Demand	% Use	Demand	% Use	Demand	% Use	Demand	% Use	Demand		
1:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
2:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
3:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
4:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
5:00AM	0%	0	0%	0	0%	0	0%	0.0	0%	0	0.0	0.0
6:00AM	25%	4.6	0%	0	0%	0	0%	0.0	0%	0	4.6	3.9
7:00AM	50%	5.2	0%	0	0%	0	10%	2.4	0%	0	7.7	6.5
8:00AM	60%	5.5	0%	0	0%	0	70%	16.9	10%	0.6	23.0	19.6
9:00AM	75%	5.9	0%	0	0%	0	90%	21.8	35%	2	29.6	25.2
10:00AM	85%	6.1	0%	0	0%	0	100%	24.2	65%	3.7	34.0	28.9
11:00AM	90%	6.2	0%	0	0%	0	100%	24.2	85%	4.8	35.2	29.9
12:00PM	100%	6.5	100%	4.1	3%	6.2	90%	21.8	95%	5.4	43.9	37.3
1:00PM	90%	6.2	90%	3.9	4%	6.3	95%	23.0	100%	5.7	45.2	38.4
2:00PM	50%	5.2	50%	3.5	5%	6.4	100%	24.2	95%	5.4	44.7	38.0
3:00PM	45%	5.1	45%	3.5	6%	6.5	100%	24.2	80%	4.6	43.8	37.2
4:00PM	45%	5.1	45%	3.5	10%	6.8	90%	21.8	70%	4	41.1	34.9
5:00PM	75%	5.9	75%	3.8	20%	7.5	80%	19.3	60%	3.4	39.9	33.9
6:00PM	80%	6.0	100%	4.1	25%	7.9	30%	7.3	60%	3.4	28.6	24.3
7:00PM	80%	6.0	100%	4.1	50%	9.8	15%	3.6	15%	0.9	24.3	20.7
8:00PM	80%	6.0	100%	4.1	75%	11.6	7%	1.7	10%	0.6	24.0	20.4
9:00PM	60%	5.5	60%	3.6	100%	13.5	3%	0.7	5%	0.3	23.6	20.1
10:00PM	0%	0	40%	3.4	100%	13.5	1%	0.2	0%	0	17.2	14.6
11:00PM	0%	0	20%	3.2	100%	13.5	0%	0.0	0%	0	16.7	14.2
12:00AM	0%	0	5%	3.1	100%	13.5	0%	0.0	0%	0	16.6	14.1
Maximum Car Parking Demand (Occurs at 1PM)											45.2	38.4

Note 1: indicates that the time of day typical trends have been adjusted to reflect operational hours (i.e. closed)
 Note 2: denotes that the staff car parking component is not affected by time of day factors (i.e. only the customer component is adjusted)
 Note 3: office parking demand profile assumed to be similar to creative industries (commercial) and arts gallery (ground and upper levels)
 Note 4: shop parking demand profile assumed to be similar to creative industries (retail)

Figure 9: Extract of Parking Demand Analysis prepared by Bitzios Consulting Pty Ltd dated 22.2.18

Final Parking calculation

The submitted Carparking Analysis (dated March 2018 prepared by Kellie Shapland Townplanning) contained a summary table of the final car parking calculation. This summary fails to include a parking demand calculation which includes the cross utilisation reduction of 15%.

As such, Council’s Traffic Engineer has used the raw data collected to undertake a more accurate calculation of site credits, parking generation for the proposed development and shortfalls.

The updated calculation figures are noted in Figure 10 below:

Table 7 - Final Parking Calculations	
No. of spaces required (refer Table 5)	48.065 38.4 spaces per table 2.2
No. of spaces provided (refer Table 6)	12 11 onsite parking
Shortfall	36.065 38.4-11 = 27.4 space shortfall
Shortfall using credits from Table 3 and 4	36.065 - 26.31 = 9.755 ie. 10 Calculated credit based on previous discussion = 26.21 spaces spaces.

Figure 10: Extract of applicant’s final parking calculation with Council officers calculation amendments provided

Based on recalculated assessment of the proposed car parking arrangements, there is a residue of 1.19 spaces that have not been accounted for. However, the subject site is located within the Murwillumbah Town Centre and the applicant originally sought to utilise the car parking amnesty policy to offset payment of Section 94 Contributions for car parking spaces under Plan No 23. This would have reduced their calculated parking shortfall from 10 to 7 spaces.

Having regard to the above calculations and given the applicant has sought to claim an amnesty for payment of Section 94 contributions for car parking spaces under Councils contribution Plan No 23 (regardless the number of spaces/their calculation), Council could rely on utilising 1.19 spaces of the 3 spaces under the car parking amnesty policy for Murwillumbah Town Centre to account for this shortfall.

Based on this assessment the 11 spaces proposed on site is considered adequate given the historical uses of the site and theoretical car parking credits which apply to the site.

Traffic Roads Contribution Charges

The submitted Traffic Impact Assessment Report prepared by Bitzios Consulting outlines a daily trip calculation of 320.6 trips/ day (no discounts) for the proposed development as per Councils TRCP (see Figure 11 below).

Table 5.2: TRCP Calculations

Land Use	Quantity (GFA)	Quantity (GLA)	TRCP Trip Rate	Daily Trips
Creative Industry	845m ²	633.75m ²	16/100m ² GLA (Office)	101.4
Art Gallery	106m ²	79.5m ²	10/100m ² GLA (Showroom)	8
Bar	215m ²	161.3m ²	110/100m ² GLA (Pub/Hotel/Tavern)	177.4
Restaurant	75m ²	56.25m ²	60/100m ² GLA (Refreshment Room)	33.8
<i>Sub Total</i>				320.6
<i>Linked Trips Discount</i>				15%
<i>40% Employment Generating Discount</i>				40%
Gross Total				164 trips / day

As shown in Table 5.2, the daily trips generated by the redevelopment is calculated to be 164 trips per day in accordance with Council's TRCP. However, in determining the final TRCP contributions, only the net difference between existing and proposed development daily trips are to be chargeable.

Figure 11: Calculation of daily trips for the proposed development (in accordance with Councils TRCP).

In order to determine the net difference between the existing daily trips and proposed daily trips a review of previous development consents based on uses has been undertaken (noting that the provision of TRCP charges on the first use consents are not available due to the age of the building).

Council officers have calculated the existing trip credit as per the following breakdown:

Land Use	Quantity (GFA)	Quantity (GLA)	TRCP trip rate	Daily Trips
First Floor				
Office	80m ²	60m ²	16/100m ² GLA (office)	9.6
<u>Ground Floor</u>				
Motor Showroom	470.1m ²	352.575m ²	5/100m ² GLA (motor showroom)	17.63
Coffee shop	106m ²	79.5m ²	60/100m ² GLA (refreshment room)	47.7
Mechanical Repairs	1433.19m ²	1074.8925	5/100m ² GLA (Light industry)	53.74
Total trips				128.67
Redevelopment 320.6 trips – existing use 128.67 trips				191.93
Linked trip discount				15%
40% employment generating discount				40%
Total trips generated by redevelopment				97.88 trips

The net difference in trips is 191.93 trips daily which is reduced to 97.88 trips after discounts.

The calculation rate for TRCP is \$1,488.00 per trip (according to current CPI) therefore equating to a total charge of \$145,645.00.

The proposed development is split into three stages with Stage 1 being undertaken in three sub-stages and therefore the levying of TRCP charges will reflect the proposed staging.

Stage 1:

Stage 1A: A charge of \$16,182.66 (10.875 trips) is applicable for this stage.

Stage 1B: A charge of \$16,182.66 (10.875 trips) is applicable for this stage.

Stage 1C: A charge of \$16,182.66 (10.875 trips) is applicable for this stage.

Total \$48,548.00 (32.626 Trips) for Stage 1 works.

Stage 2:

A charge of \$48,548.00 (32.626 Trips) is applicable for this stage.

Stage 3:

A charge of \$48,548.00 (32.626 Trips) is applicable for this stage.

Total for all Stages: 97.88 Trips

A condition of development consent has been recommended for the calculated charge to be payable prior to the issue of a Construction Certificate of each stage of the development.

A3-Development of Flood Liable Land

The aims of this Section of the DCP are:

- Present Council's Flood Mitigation Strategy; and
- Set detailed standards for land development in order to minimise the adverse effect of flooding on the community.
- Progressively implement the provisions of the NSW Floodplain Development Manual (April 2005)
- Implement Part 1 of the Tweed Valley Floodplain Risk Management Plan 2005 – Establish Appropriate Flood Planning Levels for Residential Development.
- Implement Part 2 of the Tweed Valley Floodplain Risk Management Plan 2005 - Planning Controls for High Flow Areas.
- Implement Part 3 of the Tweed Valley Floodplain Risk Management Study – Habitable Land Use on the Floodplain
- Implement the Flood Risk Management Policy

The subject site is located within an area affected by 1 in 100 year flooding and is subject to Probable Maximum Flooding (PMF). Design flood levels for the site are measured at RL7.5m AHD.

In addition to the above; under this Section of the DCP, the subject site is located within the vicinity of Main Street Murwillumbah and as set out in Table 2.1 of the DCP; is subject to 1 in 80 year chance of flooding, with an anticipated warning time of 3-4 hours.

Whilst the subject site is not being used for habitable purposes and therefore is not subject to development standards and controls for 'Residential development in flood liable land' (under A3.8.3 of the DCP), it is still affected by the General Development requirements on Flood Liable Land under Section A3.8.2 of the DCP.

The proposed use involves the adaptive reuse of an existing building and therefore new floor levels and materials cannot be applied to all parts of the building. However, it is recommended that in accordance with Section A3.8.2 of the DCP a condition of consent has been recommended by Councils Flooding Engineer to require an area on the upper floor for downstairs tenants to temporarily store their goods/products during floods.

In addition, a separate condition is recommended to require design detail be provided to the PCA prior to the issue of a Construction Certificate for Stage 1 works to address the flood compatibility of the proposed use of the building including the following specific matters:

- a) All building materials used below Council's design flood level must not be susceptible to water damage.
- b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- c) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage for lower floor tenancies.

Subject to compliance with recommended conditions of consent, the proposal meets the aims of Section A3 of the DCP.

A4-Advertising Signs Code

The proposal includes the provision of nine advertising signs in the form of banner style signs across parapet features of the building at the Proudfoots Lane, Brisbane Street and Wollumbin Street elevation. See extract of proposed signage plan below (shaded areas in Figure 12 highlight location of proposed signs).

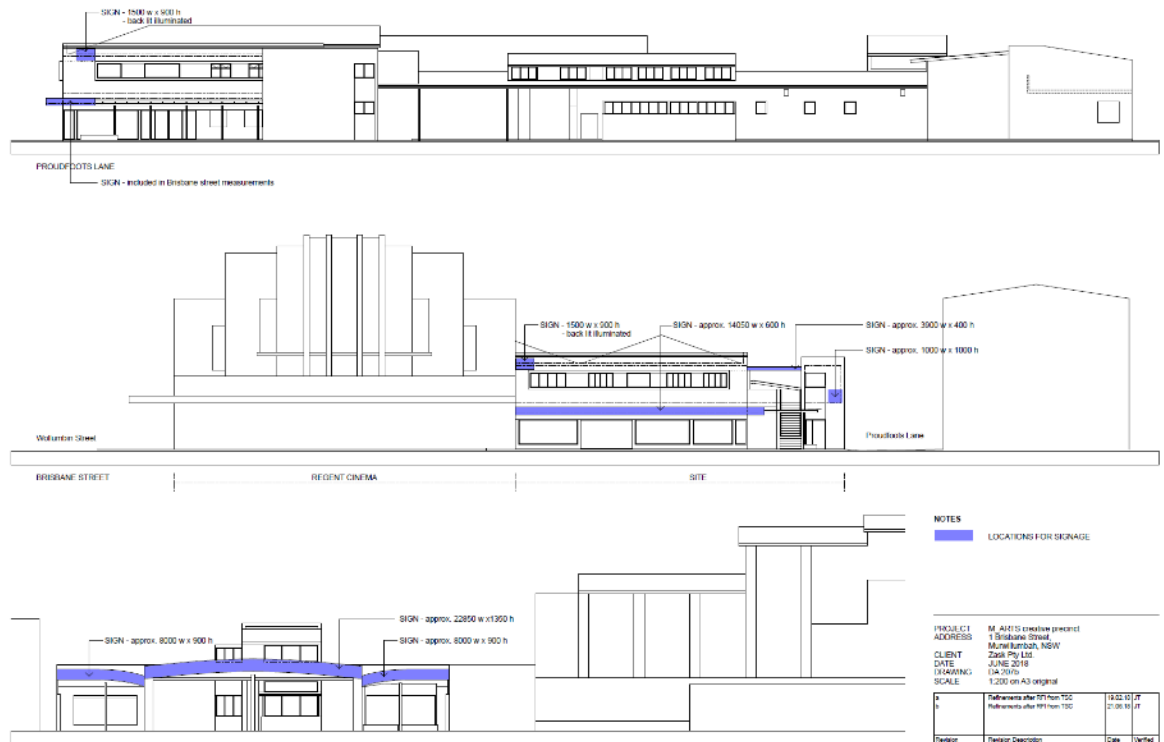


Figure 12: Extract of Proposed Signage location

4.2 General Development Principles and Objectives.

In accordance with A4.2.3, each business may have a maximum of 5 signs to identify / advertise the premises. The proposed location of the overall signage is within the existing parapet features to which previous signage was displayed.

Furthermore, the subject site features three frontages (Brisbane Street, Wollumbin Street and Proudfoots Lane) and given the various exposure points available to the site, it is considered that the proposed signage whilst exceeding the maximum permitted for the overall development, does not result in more than 5 signs per elevation and therefore is still consistent with the intent of this control.

This signage is summarised as follows:

- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Proudfoots Lane elevation.
- 1 x 1500mm W x 900mm H (1.35m²) back lit sign (illuminated) at Brisbane Street elevation.
- 1 x 14050mm W x 600mm H (8.43m²) ground floor parapet banner sign wrapped around Brisbane Street and Proudfoots Lane elevation.
- 1 x 3900mm W x 400mm H (1.56m²) slim parapet banner sign at Brisbane Street elevation.
- 1 x 100mm W x 1000mm H (2m²) fascia sign at Brisbane Street elevation.
- 2 x 8000mm W x 900mm H (14.4m²) parapet banner sign at Wollumbin Street elevation.

- 1 x 22850mm W x 1350mm H (30.85m²) parapet banner sign at Wollumbin Street elevation.

The site (including all street elevations) has a total frontage of approximately 123.9m which is made up of 27.5m for the Wollumbin Street frontage; 20.2m for the Brisbane Street frontage; 72m for the Proudfoots Lane frontage; and a 4.2m splay at the corner of Proudfoots Lane and Brisbane Street.

Using the formula in A4.2.4 (1 x 10m, then 0.5 x 56.95m) the maximum total area of signs permitted for the site is 66.95m². The proposed business identification signage has a total area of 60.31m². The signage is therefore compliant with the DCP.

4.3.1 District Business Centres/Town Centres

The site is identified as a town centre and as such is required to be consistent with the development principles identified within A4.3.1.

Having regard to the aforementioned signage detail and the location and design of the signage, it is considered that:

- The signage will assist in expressing the character of the development and its contribution to the fabric of the Murwillumbah Town Centre;
- The signage is in keeping with the scale and character of the subject building and adjacent Regent Theatre Building (Heritage Listed) and;
- The signage provides a co-ordinated response to advertising.

Based on the above considerations, Council can be satisfied the development meets the specific development principles and objectives for Town Centres as outlined in the DCP.

4.4 Types of Signs

The proposed development includes fascia and banner signs on the parapet of the buildings.

The types of signs proposed on the building are not listed as being prohibited in Section 4.5 of the DCP.

A review of the proposed signage against the design features and limitations outlined in this Section of the DCP has been undertaken and Council can be satisfied the development is consistent with the controls contained in Section A4.4 of the DCP.

A5-Subdivision Manual

The proposal includes the amalgamation of lots with the provision of separate sewer and water for the newly created lots.

Lot amalgamation is not a form of development as defined under the Act however the adjustment of boundaries for Proposed Lot 1 and Lot 2 to reflect the provision of access and utilisation of existing services is relevant to Section A5 of the DCP.

Council officers have considered the proposed lot layout and are satisfied that it is capable of meeting the objectives of the DCP as well as Clause 7.10 of the LEP.

It is however noted that the first floor component of the existing building in the location of the proposed lot boundary will need to satisfy the BCA provisions as far fire separation and safety. A condition of development consent is recommended to require compliance with the National Construction Code (BCA) to be established as part of future construction works and prior to the issue of any Subdivision Certificate for Proposed Lot 1 and Lot 2.

A11-Public Notification of Development Proposals

In accordance with Section A11 of the DCP, the proposal was advertised in the Tweed Link and notified to surrounding land owners. The exhibition period was from Wednesday 20 September 2017 until Wednesday 4 October 2017.

During the exhibition period, one submission was received on behalf of a nearby business owner.

The submission related to appropriate mitigation measures for dust and noise throughout the development and that access to the rear of adjoining properties, at Proudfoots Lane is not obstructed at any time.

Consideration and response to the above mentioned matters is contained later in this report.

A13-Socio-Economic Impact Assessment

The proposed development does not meet any of the thresholds scheduled in the DCP which would necessitate a Social Economic Impact Assessment Report.

A15-Waste Minimisation and Management

The application is accompanied by a Waste Management Plan which outlines the provision of construction and operational waste management requirements for the site in accordance with Section A15 of the DCP.

Construction Waste

It is noted that the initial construction phase of the development will result in temporary waste storage bin being stored in the Car 1 and Car 2 parking space (at Wollumbin Street frontage).

It is recommended a special condition of development consent be imposed to require that the location of construction waste storage not associated with Stage 3 works be relocated so to not compromise onsite car parking during the operations of the Stage 1 and Stage 2 uses for the site.

Operational Waste

The provision of the size, type and location of recycled and general waste mobile bins has been calculated based on an estimated m³/ week waste generation using the maximum guidelines prescribed in the DCP (in the absence of project specific waste generation volumes). The number of bins and waste generation results in threshold of waste collection services to a maximum of twice per week.

The plan outlines this waste collection service will be provided via a private waste contractor (Solo Resource Recovery). It is noted that the site is unlikely to have internal manoeuvrability for the waste collection service however the service lane (Proudfoots Lane) has ample thoroughfare for waste collection with a connection Nullum Street and Brisbane Street.

Based on the detail contained in the Waste Management Plan it is considered that the aims and objectives of Section A15 of the DCP have been satisfied in regard to the ongoing management of construction and operational waste.

A18 - Heritage

The eastern part of the site is located within the Murwillumbah Main Street Heritage Conservation Area (MMSHCA) which contains four key precincts including:

- Churches and Educational Precinct
- Murwillumbah Retail Precinct
- Courthouse and Police Station Precinct. And
- Proudfoots Lane Precinct.

Part of the site is located within the Murwillumbah Retail Precinct and is adjacent to, and also serviced by the Proudfoots Lane Precinct (see Figure 13 below).



Figure 13: Extract of site locality in respect to Heritage Precincts

The subject site is also part of a 'contributory building' within the Murwillumbah Main street HCA (see Figure 14 below).



Figure 14: Extract of site locality in respect to contributory buildings, landscaping and views of the Murwillumbah Main Street HCA:

Murwillumbah Retail Precinct

The key features of the Murwillumbah Retail Precinct are identified as:

- Fine grained shop frontage with a zero front and side setback to the retail uses;
- Northern side is interspersed with a collection of civic buildings with a landscaped setback;
- Hard surface urban edge to southern side;
- Mix of single and two stories;
- Provision and continuity of awnings and parapets, which ties the retail precinct as a group and provides a rich and varied silhouette;
- Variety of facades, architectural styles and traditional step in shopfront entries with window displays;
- A material palette of rendered masonry, bagged brickwork, and face brickwork characterise and contribute to a unified retail precinct streetscape;
- 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
- Opportunities for taking advantage of the northern solar access.

The DCP identifies that intrusive elements that are not supported in the precinct include: uncharacteristic or absence of awnings except on civic buildings; enclosed footpaths spaces or barricades to the footpath; advertising signage above awnings; cabling or air-conditioning damage to the parapet features and significance.

The proposal would not detract from the relevant identified key features of this precinct, and does not contain any of the above listed intrusive elements.

Proudfoots Lane Precinct

The key features of the Proudfoots Lane Precinct are identified as:

- Rear service accessway with a mix of vehicle and pedestrian uses;
- Multiple pedestrian access points through arcades and shops between Murwillumbah Street and Proudfoots Lane ensures pedestrian permeability;
- The Laneway is characterised by a mix of painted and unpainted brickwork, corrugated iron and hard stand surfaces interspersed with small landscaped pedestrian seating areas and scattered vegetation;
- A mix of single and two storey building forms.

The DCP identifies that intrusive elements that are not supported in the precinct include: removal of the vegetation as this provides shade cover for pedestrians, painting of existing non painted brickwork; removal or replacement of traditional painted signage, advertising signage other than business identification and information signage.

The proposal does not contain intrusive elements as described above. Furthermore, the applicant has suitably demonstrated that the proposal maintains the function of Proudfoots Lane as a service access way however the provision of interesting visual links through the site from the laneway to Wollumbin Street provides an improved pedestrian amenity. In addition, the building form and material are maintained which is consistent with the provision of the DCP.

The application is supported by a Statement of Heritage Impact that has been prepared pursuant to Part C of Section A18 of the DCP.

The Statement summarises the following key consideration for each element of the development:

Proudfoots Lane interface

The proposed Proudfoots lane creative precinct zone require part demolition to the existing roof and associated structure. The proposed upper level areas however are located sensitively so to retain contributory building fabric including steel open web trusses and associated columns. The roof penetrations have been informed by the existing roofs both materially (new work to use matching corrugated metal roof profile) and in form. Being located behind the existing Brisbane Street building they do not adversely affect its curtilage.

Wollumbin Street zone

The proposed Wollumbin street zone requires part demolition to the existing roof and associated structures. The proposed two storey building is located sensitively so to retain contributory building fabric including steel open web trusses and associated columns. The siting occurs within the zone of the joined curved roof

so to maintain the side awnings and keep them intact. The material quality of the new building continues the brick language of the Wollumbin Street façade. The roof form varies from what is on site but is informed by the saw-toothed roofs of the neighbouring buildings and will contribute positively to the roofs capes as seen along Wollumbin Street. Being lower in scale and located some 15m way from the Regent Theatre the proposed building does not adversely affect its curtilage.

Proposed Signage

The proposed signage is located in areas that have been previously associated with signage so to maintain existing facades and minimise intrusive additions to current streetscape. The proposed signage has a reduced colour palette (white letters on black background) and have used a font influenced from the Interwar art deco period so to be in keeping with the character of the buildings.

Adaptive reuse

The proposed adaptive reuse of the old sunrise for site to accommodate a creative industries precinct is not seen to create an adverse effect on the identified heritage significance of the site itself or for its contribution to the Murwillumbah Main Street Heritage Conservation Area.

Councils Heritage Advisor has reviewed the Statement of Heritage Impact prepared by the applicant as well as the architectural plans submitted as part of the DA and provided the following comments:

"The proposed transformation of the site into a creative arts precinct will retain the Brisbane Street fronted art gallery, office and cafe and develop the remainder of the site into artist studios, a restaurant and bar. The proposal is generally consistent with HA-01 and previous heritage comments.

It is considered that the DCP outcomes for the development in the Murwillumbah Conservation Area have been addressed and the proposed is described thoroughly. Therefore no further information regarding the addressing of heritage or conservation area protection is ought. This proposal for a creative arts precinct which will retain the Brisbane Street fronted art gallery, office and café and develop the remainder of the site into artists studios, restaurants and bar is recommended for approval."

Based on the developments performance against the relevant key heritage features of the various precincts to which the site forms part of; and the information provided in the Statement of Heritage Significance, as well as the comments received by Councils Heritage Advisor, Council can be satisfied the development meets the relevant aims and objectives of this section of the DCP.

B22-Murwillumbah Town Centre

Section B22 of the Tweed DCP establishes a vision and key strategies for the development within the Murwillumbah Town Centre (MTC).

The DCP identifies that the adopted MTC vision, will underpin the development that occurs within the precinct.

The vision under this DCP is as follows:

Build on Murwillumbah's lively hinterland village qualities to create a walkable, vibrant, mixed use centre with a successful main street and a balance between building scale and landscape character.

The DCP contains an urban structure plan for the MTC and the proposed development is considered to be affected by the 'Mixed Use' area within the Town Centre Core precinct.

This area forms a principal retail and commercial precinct in the DCP and it is intended that the situation be maintained and consolidated in the future by limiting major retail developments outside of the core and focusing new commercial and retail development with precinct in areas that best support its existing strong urban structure.

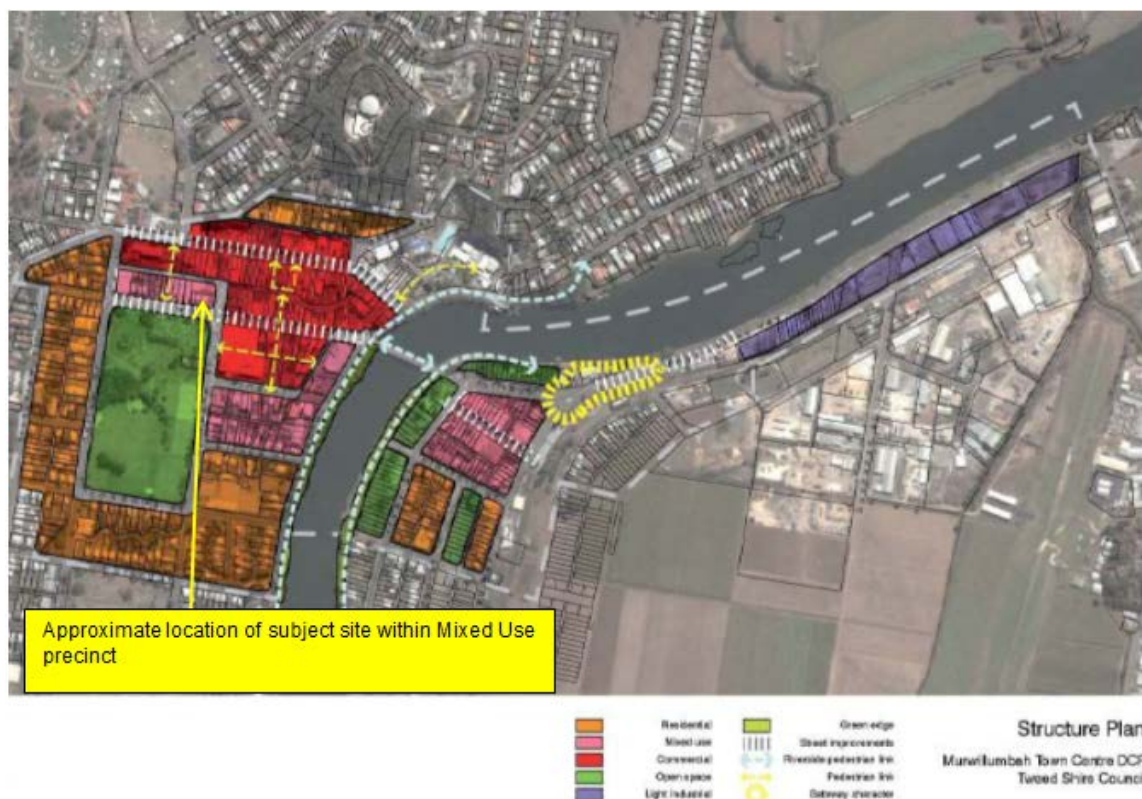


Figure 15: Extract of Structure Plan for Murwillumbah Town Centre DCP (subject site shown with arrow indication)

The proposed use is considered to be consistent with the intention for this area as it further contributes to the mix of land uses occurring in the precinct.

Furthermore, an assessment of the proposal against the relevant guidelines and controls is provided in the compliance table below.

The outcome of this assessment demonstrates the proposed development is consistent with the vision for Murwillumbah Town Centre.

Control	Requirement	Comment	Compliance
Section 4.1. Floor Space Ratio	2:1	The proposed The proposed Gross Floor Area (GFA) for the development is 1709m ² which represents a FSR of 0.7:1.	Yes
Section 4.2. Site Coverage	Max 100% site coverage permitted	The proposed development involves the adaptive reuse of existing buildings as well as activation of internal driveways for car parking and pedestrian circulation. As such, whilst the site will not be fully occupied by buildings, it will meet the objectives of this control by providing for the efficient and cost effective use of land.	Yes
Section 4.3 Building Height	3 Storeys	Adaptive reuse of existing building. Proposed height is maximum two storeys.	Yes
Section 4.4 Street frontage height	Compatible with the average existing street frontage height of adjacent nearby/ building	Adaptive reuse of existing building with no change to existing street frontage height. Street frontage height of the existing building is below the parapet of the adjacent Regent Theatre building.	Yes
Section 4.5 Building Alignment	<p>External facades to be aligned with the street they front.</p> <p>Main 'face' of entrance of buildings is to be orientated toward and be immediately visible from the street directly in front.</p> <p>Where building is located on an allotment that has more than one street frontage, the main pedestrian entry is to be orientated toward the more significant of the street.</p>	<p>The proposed development seeks for the adaptive reuse of existing building with the same building alignment as existing.</p> <p>Pedestrian access is favoured from the Brisbane Street frontage (main street frontage) and vehicle access via Proudfoots Lane (secondary frontage) which suitably delineates the different forms of transport creating a space that is consistent with CPTED principles.</p>	Yes
Section 4.6 Street Setbacks	<p>2.5m setback for sites that do utilise rear lane access.</p> <p>Consistent setback along the street</p>	The proposed adaptive reuse of the existing building will not impact established setbacks at Brisbane Street or Proudfoots Lane.	Yes

Control	Requirement	Comment	Compliance
	<p>(mostly zero setback for retail streets) and in other areas by taking cues from adjoining and adjacent properties.</p> <p>Encroachments into the street setback are allowable only for awnings in the Town Centre Core.</p>	<p>A small addition is proposed at the Wollumbin Street however it is located within the established setback of the existing awning.</p>	
<p>Section 4.7 Active frontage</p>	<p>85% active frontage along Brisbane St and Wollumbin St.</p>	<p>The proposed adaptive reuse will utilise all buildings with frontage to Brisbane St and Wollumbin Street.</p> <p>The existing built form and proposed uses will activate greater than 85% of the Brisbane St frontage.</p> <p>The existing built form at the Wollumbin Street frontage will comprise of creative spaces which are accessible to the public intermittently at the discretion of each individual tenant (to provide retail uses as a result of the display and sale of art material). These areas are accessed via an internal pedestrian links and further activated by a proposed restaurant within the central core of the Wollumbin Street frontage. As such, the combined total of active frontage would be 17m for buildings and 10m for pedestrian areas which translates to the entire frontage at Wollumbin Street.</p>	<p>Yes</p>
<p>Section 4.9 Rear Lanes</p>	<p>Maintain the extensive rear lane system present in the DCP area.</p> <p>Ensure rear lanes are adequately provided for their service function, while also providing a safe and pleasant pedestrian environment.</p>	<p>Proudfoots Lane provides a service and function for the proposed development by way of loading and unloading of service vehicles as well as vehicular and secondary pedestrian access to the site.</p> <p>In order to satisfy CPTED principles, the recommendations of the Tweed Byron LAC as well as this Section of the DCP; is recommended that a condition of development be imposed to require lighting improvements to Proudfoots Lane.</p>	<p>Yes subject to compliance with recommended conditions of consent.</p>

Control	Requirement	Comment	Compliance
		<p>In additional single lane one way traffic is recommended for the entry and exit from the site. This will require appropriate directional signage to facilitate ease of access and wayfinding for vehicles. This matter also forms a recommended condition of consent as far as the signage being installed by Council to Council standards at the expense of the applicant.</p>	
<p>Section 4.10 Awnings</p>	<p>Provide weather protection in areas of high pedestrian traffic.</p> <p>Encourage the use of consistent and continuous awnings within the Town Centre Core.</p>	<p>Use of existing awning along Brisbane St. This is the primary pedestrian entry point and therefore meets the intent of this control.</p>	<p>Yes</p>
<p>4.11 Advertising and Signage</p>	<p>All applications for new buildings or the substantial refurbishment of an existing building shall detail the design provisions made to accommodate future signage;</p> <p>Signs are designed and treated as an extension of the architecture of the building reflecting the building in terms of styling and materials;</p> <p>The scale proportion and form of advertising devices and entry features are appropriate to the streetscape or other setting in which they are located;</p> <p>Signage devices do not obstruct the passage of pedestrians or vehicles. They do not impact on traffic safety and do not obstruct sight lines;</p> <p>Signage devices</p>	<p>Signage detail plan provided.</p> <p>Signage compliments the aesthetics of the building as well as the heritage significant of the adjacent item.</p> <p>Provided. The signage is modest in scale and utilises existing parapet locations which have historically been use for signage banners for previous uses.</p> <p>They are located above eye height and will not compromise sight lines or impact on traffic safety.</p> <p>No A-Frame signs proposed. Condition recommended to restrict the use of A Frame Signs.</p> <p>Provided. See previous SEPP 65 and Section A4 DCP discussion.</p>	<p>Yes</p>

Control	Requirement	Comment	Compliance
	<p>placed on footpaths and street edges (e.g. "A-frame" display boards) are not permitted</p> <p>Signage devices are designed and integrated into the building and landscape design so as to minimise visual clutter;</p> <p>Signage devices are constructed of robust materials so as to minimise ongoing maintenance;</p> <p>Signs will only be permitted above the awning of a building where they are incorporated into the design of the building; and</p> <p>Signs are not to cover windows or detract from the architectural qualities of a building.</p>	<p>Provided. See previous SEPP 65 and Section A4 DCP discussion</p> <p>Provided. See previous SEPP 65 and Section A4 DCP discussion.</p> <p>The heritage significant of the building prevents this and Councils Heritage Advisor has reviewed the planning information for signage and raised no objection.</p>	
<p>Section 6. Mixed Use</p>	<p>Mixed Use development is encouraged in Murwillumbah Town Centre in those areas identified in Figure 6.1.</p> <p>The upper floor uses of mixed use buildings must have clearly defined and separate entrances from the street frontage.</p> <p>The entrances for upper floor activities is not to occupy more than 10%-20% of the street frontage.</p> <p>Mixed use buildings must establish clear sightlines for casual surveillance of the public domain, whilst allowing for suitable privacy for upper storey</p>	<p>The subject site is located within a mixed use precinct identified in Figure 6.1.</p> <p>The upper floor uses of the mixed use building are accessed via internal stairs from the ground floor or via a lift (for the proposed gallery space).</p> <p>Entrance for upper floor activities/uses are separate from the street frontage.</p> <p>No residential proposed. Street frontages suitably activated to provide casual surveillance of the street and internal pedestrian connections.</p>	<p>Yes</p>

Control	Requirement	Comment	Compliance
	<p>residential apartments.</p> <p>Mixed use buildings are to be highly detailed and articulated such that their bulk and scale is reduced and compatible with the fine grained development pattern that surrounds them.</p> <p>All parking is to be located at the rear or in a basement car park, accessed via a rear lane wherever possible.</p>	<p>Window openings are provided in the external elevations of the building to further survey the internal and external domain. Parapet features and variation to materials are provided with the existing façade of the building which articulates its architectural expression and form based on the era of its construction (art deco) as well as the adjacent Regent Theatre building.</p> <p>Primary parking areas are provided with the internal confines of the site with access via the rear lane. The provision of four additional spaces are provided at the Wollumbin Street frontage. Whilst rear lane access and parking is desired, given the nature of the use whereby these areas will be closed for events, the provision of separate parking will allow for the continuation of parking amenities for the site.</p> <p>Notwithstanding, it is recommended a condition of development consent be imposed to require a form of landscaping treatment or public art at the Wollumbin Street frontage forward of the car parking spaces to screen views of these spaces from the street and compliment the pedestrian amenity of the public domain.</p>	
<p>Section 7.11 Heritage and Contributory Buildings</p>	<p>When submitting an application in respect of a heritage item, the onus is on the proponent to demonstrate that the heritage significance of the item would not be compromised by the proposal.</p> <p>When submitting an application in respect of a heritage building, the onus is on the applicant to demonstrate that the architectural and streetscape value of the building would be retained or enhanced</p>	<p>The proposed development meets the requirements of Section 7.11 of the DCP by virtue of the development meeting the provisions of the LEP and Section A18 of the DCP.</p> <p>The architectural and streetscape value of the building is retained by the proposed adaptive reuse of the existing building.</p>	<p>Yes</p>

Control	Requirement	Comment	Compliance
	<p>by the proposal.</p> <p>Where a development involves a heritage building, Council requires that a statement of heritage impact be prepared and lodged with the DA. The statement is to set out the relative merits of the place and the effects that proposed works may have on the significance of the place.</p> <p>When submitting an application in respect of a property within the vicinity of a heritage building, the onus is on the applicant to demonstrate that the architectural and streetscape appearance of the proposal is compatible with the streetscape and urban character established by the heritage building.</p>	<p>A Statement of Heritage Impact has been prepared and submitted with the DA which was found to be satisfactory.</p> <p>The urban character established by the heritage building is maintained by the proposal.</p>	
Section 7.3 Major Retail Options	The subject site is marked as a possible retail (supermarket) option under this Section of the DCP.	The land which has been identified applies to a number of sites and therefore an acquisition and amalgamation of lots would need to occur. This is not considered to be feasible in the short term. Notwithstanding, the adaptive reuse of the existing building would not constrain the viability of future supermarket/retail expansion for the subject site and surrounds in the future.	Yes

(a) (iia) Any planning agreement or any draft planning agreement under section 7.4

Not applicable.

(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 commercial mixed use 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 proposed development includes part demolition of structures and therefore conditions of consent are recommended to address the provisions of this Clause in the Regulation.

Clause 93 Fire Safety Considerations

See discussion below regarding Clause 94 Building to be upgraded and recommended conditions of consent.

Clause 94 Buildings to be upgraded

This clause applies to a development application for development comprising the rebuilding, alteration, enlargement or extension of an existing building where:

- (a) *the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls, or*

Comment: The building works proposed involve an area of less than 50% of the existing volume of the building.

- (b) *the measures contained in the building are inadequate:*

- (i) *to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or*

Comment: It is proposed to reconfigure the existing 5 allotments into 2 which will necessitate fire separation of the existing structures at the new boundary line. This will then allow the current building to be considered as two buildings. With this in mind, it is still considered that the current measures in the existing building are considered inadequate to protect persons using the building and to facilitate their egress in the event of a fire. It is to be noted that the proposed use of the building is an intensification of the occupancy and fuel load from the previous use.

- The exit travel distance do not comply with the part D1.4 of BCA
- Some of the exit doors are not complying with D2.19
- There is no fire hose reel coverage.
- There is no emergency lighting.
- The total floor area of the building on proposed lot 1 will not exceeds the BCA floor are limitations of 2000m² and therefore will be assessed Type C building. Typically walls on the boundary with adjoining lots would require an FRL of 90/90/90.

- The existing building does not comply in this regard.
- (ii) *to restrict the spread of fire from the building to other buildings nearby.*

Comment: The existing measures to protect spread of fire are limited.

- Openings that are less than 3m from the side boundary are not fire protected
 - Part of the western wall does not have the 90/90/90 Fire Resistance Level (FRL) required for Type C Construction as it is timber frame with corrugated iron cladding.
 - There is no fire hose reel coverage.
- 2) *In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia.*

Comment: Having regard to the matters for consideration under this Clause; concerns are raised over the unprotected openings in the external walls adjoining the cinema/supermarket building (South & East) and Gym building (West), and the part non- fire rated wall adjoining the gym on the west. Should a fire occur in the adjoining buildings the Fire Brigade would have greater difficulty preventing the spread of fire to the subject building. Preventing a fire from reaching the subject building would be a high priority for the brigade. The existing external masonry walls are considered to provide reasonable fire protection and should remain largely unchanged.

A total upgrade of the building to comply with external boundary fire resistance would be too onerous.

However it is possible to achieve a reasonable degree of fire protection by requiring:

1. Upgrade of the fire rating of the metal clad timber external wall adjoining the gym to the west to comply with current BCA requirements of Type C construction and FRL of 90/90/90.
2. Fire Attenuation Screens with a minimum heat flux resistance of 20kW/m² to be fitted the openings. This solution is based on the principles of CV1 of the BCA as applied to the existing separation between buildings rather than the boundary setback (*'fire source feature'*). The fire brigade would then be likely to have additional time to control spread of fire, OR fire protect the openings in accordance with Part C3.4 of the BCA, OR infill the opening with a material having a Fire Resistance Level equivalent to the existing wall system.
3. Require total BCA compliance throughout the building of exit signs, emergency lighting, hose reels and exits.

- 3) *The matters prescribed by this clause are prescribed for the purposes of section 79C (1) (a) (iv) of the Act.*

Comment: Having regard to the prescribed matters relevant in Section 94 of the Regulation, it is considered that the provision of Section 79(c)(1)(a)(iv) of the Act and Section 94 of the Regulation can be dealt with via conditions of consent to require:

1. Upgrade of the fire rating of the metal clad timber external wall adjoining the gym to the west to comply with current BCA requirements of Type C construction and FRL of 90/90/90.
2. Install Fire Attenuation Screens with a tested minimum heat flux resistance of 20kW/m² to all the external wall openings adjoining the cinema/supermarket building (South East) and Gym building (West) OR fire protect the openings in accordance with Part C3.4 of the BCA OR infill the openings with a material having a Fire Resistance Level equivalent to the existing wall system.
3. Require total BCA compliance throughout the building of exit signs, emergency lighting, hose reels and exits.

A special condition has been recommended outlining the above mentioned upgrade requirements as part of the approved construction works.

In addition, having regard to the proposed lot boundary, a separate condition of consent is recommended to require the building to be fire separated at the proposed new boundary line in accordance with the BCA.

It is noted that recommended conditions of consent to require fire upgrades of the building and fire separation at the boundary have been referred to the applicant for consideration so to ensure compliance can be achieved. Should compliance be achieved, the applicant would need to consider a revision to the layout or consolidation of the 5 lots into one which would constitute a modification to the development consent under Section 4.55 of the Act.

The consequence of this would be that the fire rated wall on the west side adjoining the gym would need an FRL 240/240/240 due to the lack of separation and thus increased in overall building size on the single allotment (i.e. beyond 2000m² and forming a Type B Construction).

- (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. Given the distance of the site from the coastline and the residential development situated between the site and the coast, the proposed development will not 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. It is noted that the site is not located within a specific area identified under that Plan.

Tweed Coast Estuaries Management Plan 2004

The development is not located within proximity to a Tweed Coast estuary.

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 within 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 subject site is suitably located within the Murwillumbah Town Centre Core and the development is conducive to the function of the Town Centre precinct. The site contains an existing structure which historically has been underutilised and somewhat dilapidated. The provision of a mixed use development that provides a high level of amenity and function that is conducive to the surrounding land uses within the vicinity of the site is considered to provide a positive outcome for the town centre. As such, having regard to the zone of the land and the proposed use of the building, the development will have a positive impact on the social, economic and built environment of the area.

Carparking

Having regard to the findings contained in the submitted Traffic Impact Assessment report, subsequent car parking analysis for the Murwillumbah Town Centre and the car parking analysis report for the subject site (as previously discussed); the proposed development generates a demand of an additional 12.19 spaces beyond the existing site credits for previous land uses which have occurred on the site.

The proposed development includes the provision of 11 spaces and therefore represents a shortfall of 1.19 spaces.

The site is located within the Murwillumbah Town Centre and on 5 July 2018 Council resolved to continue the waiver applying to car parking contributions for Murwillumbah CBD and Prospero Street. The waiver is due to be reviewed on 30 June 2019. Therefore, based on this resolution by Council; the proposed shortfall of 1.19 spaces enjoys an amnesty of payable Section 94 Contribution for 1.19

car parking spaces that would otherwise be levied under the Carparking contribution plan for Murwillumbah CBD.

It is further noted that as per the information contained in the DA and further outlined previously in this report, the development seeks consent for occasional special events which will involve use of existing hard stand parking areas and the internal driveway for entertainment and pedestrian access to the site associated with the special events.

A draft Operational Management Plan is submitted with the DA to demonstrate how the Special Event would be managed having regard to other uses occurring on the site and pedestrian safety. The Plan outlines that on these occasions, the provision of vehicle entry and exit to the site would be cut off so to promote pedestrian safety and movement through the site. In addition, the special events are sought during '*Any time outside of regular business hours but no later than 12am on Friday and Saturday night, or 10pm on any other night*'.

In considering what could be considered 'regular business hours' and the associated impacts resulting from the existing hard stand car parking and internal driveway being limited to pedestrians only (and therefore resulting in a loss of seven car parking spaces), Council officers have relied on the data collection by Bitzios in the submitted addendum information to the Traffic Impact Assessment.

Based on the carparking demand analysis for the subject site (worst case scenario adopted for the purpose of special event) and the supply and uptake of public car parking in the tables contained in the Bitzios report, peak periods appear to cease at 5pm however it is safe to assume that during these times there is an increase in local traffic movement as the parking spaces are being emptied and people are commuting to and from their destinations. Therefore, to ensure that special events do not result in adverse impacts to local traffic and public parking, it is recommended that a special condition of consent be imposed to restrict the closure of the laneway for such events prior to 6pm.

Having regard to these merit based assessment matters, and subject to compliance with recommended conditions of consent, the proposed development is deemed suitable in regard to the provision of carparking.

Access

The provision of vehicular access is proposed via a new driveway crossover to the western extent of the site, at the Proudfoots Lane interface. This will facilitate a one-way internal vehicle entry and thoroughfare via an internal driveway which will also provide access to onsite parking within the site. Vehicles will exit the site via the existing driveway crossover at the eastern extent of the Proudfoots Lane frontage, providing a left turn only exit from the site onto Proudfoots Lane (one-way lane).

In addition, secondary two-way access to the site is provided via the existing Wollumbin Street crossover which also contains four car parking spaces and bicycle storage spaces.

The proposed access via Wollumbin Street has been considered by the RMS (classified Road) and RMS have advised that no objections are raised subject to compliance with AS2890.

The proposed entry and exit arrangements via Proudfoots Lane were supported by a Traffic Impact Assessment Report (prepared by Bitzios Consulting Pty Ltd dated 31 August 2017). The report includes a swept path analysis for a standard private vehicle moving in and out of the site via the entry and exist points nominated on the above plan.

Based on the information provided by the Traffic Engineering Consultant and RMS and subject to recommended conditions of consent, Council can be satisfied the proposed vehicular access arrangements are suitable for the subject site.

Noise

The proposed development involves several individual uses which cumulatively may have potential acoustic impacts. This is particularly the case having regard to the proximity of the nearest residential sensitive receiver locations (see Figure 16 below).



Figure 16: Extract from Environmental Noise Report prepared by CRG Acoustics showing the location of residential sensitive receiver locations

The application has been supported by an Environmental Noise Impact Report (prepared by an appropriate qualified Acoustic Consultant). The report identifies hours of operation for the various uses within the proposal and considers associated impacts resulted from the accumulation of different uses of the site. A review of the hours of operations nominated in the Noise Report and Operational Management Plan has been undertaken to ensure consistency.

In accordance with the NSW Industrial Noise Policy, the report establishes intrusive and amenity criteria and models relevant to the proposed activities such as traffic (including waste collection trucks), pedestrians, plant and music. Background noise was established by site monitoring and detail of the recommendation in Part 6 of the Environmental Noise Impact Report conclude that generally noise levels are predicted to be within the criteria. However, the report acknowledges the background noise levels are low at two of the sensitive receiver locations and therefore allowable noise limits for amplified entertainment are likely to be low, and these allowable noise limits will greatly depend on the finishing time for the acts.

Therefore, in accordance with the constraints highlighted in the Environmental Noise Report, Councils Environmental Health Unit has recommended conditions of consent be imposed that limit any live or amplified music being played external to the building in Proudfoots Lane, that live musical acts cease at 10pm on Sundays and further detail monitoring of music and plant be undertaken prior to detail design.

Subject to compliance with recommended conditions of consent and the findings of the Environmental Noise Report (prepared by CRG Acoustics dated 7 August 2017),

Council can be satisfied the proposed development is unlikely to have detrimental impacts in regard to noise.

Heritage

The proposed adaptive reuse of an existing building which is itemised as a contributory building within a heritage conservation area and adjacent to a local heritage item has been considered in regard to character, streetscape, urban design and function. In addition, ancillary elements of the development such as signage have also formed part of a heritage assessment for the DA.

Based on the findings of the Heritage Impact Statement and the advice provided by Councils Heritage Advisor, Council can be satisfied that the development will not have adverse impact on the fabric of the Heritage Conservation Area or the aesthetics and function of the adjacent Heritage Item (Regent Theatre).

Crime Prevention through Environmental Design (CPTED)

The proposed development was referred to NSW Police Tweed Byron Local Area Command for consideration having regard to principals of Crime Prevention through Environmental Design (CPTED).

Recommendations provided by the NSW Police include the provision of lighting at Proudfoots Lane, appropriate security for night time activities, access control, way finding signage, and control of vehicular movement within the site. A copy of the advice provided by the NSW Police is provided in Attachment 1.

The advice provides a list of matters which are relevant for consideration under *Crime Prevention through Environmental Design* (CPTED) principles and have

formed recommended conditions of consent. In particular, they aim to ensure appropriate measures are employed for lighting, security, access control and directional signage. It is considered that subject to compliance with recommended conditions in relation to CPTED principles, the development would mitigate potential crime related activities through good design and planning outcomes. Outstanding matters raised by the NSW Police would be managed through the separate Liquor License application to Office of Gaming and Liquor (OGL).

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within the Murwillumbah Town Centre B4 Mixed Use Zone. Surrounding land uses include the Regent Cinema immediately south of the subject site, the rear loading area for commercial and retail uses immediately north, a liquor store, health food store and food outlet (Subway) immediately east and gymnasium immediately west of the site. Land opposite the subject site (further south) comprises of Knox Park and associated large public car parking area. The site is approximately 80m east of the closest residential land use and appropriate testing for noise impacts resulting from the proposed use have been undertaken (as previously discussed in this report).

Based on the zoning and the merits of the proposal in regard to operational management and associated car parking and acoustic impacts, the proposed development is considered to be consistent with the zoning of the land and a development which is conducive to the overall function of the Murwillumbah CBD.

As such, subject to recommended conditions of consent, Council can be satisfied that the subject site is suitable for the proposed development having regard to the surrounding land uses and developments within the locality.

Contamination

All works and use associated with the proposed development have been reviewed by appropriately qualified Environmental Consultants and based on the findings of several groundwater, soil vapour, air monitoring and subsequent environmental site investigations, the subject site is suitable for the proposed development. Notwithstanding, to ensure ongoing monitoring and safety of the site for future activities and land uses, a special condition is recommended to require a Site Management Plan to be prepared by a suitably qualified consulting within 3 months of development consent. The Site Management Plan is to address groundwater monitoring and potential exposure of subsurface contaminates in the vicinity of previously decommissioned UPSS's to onsite works who many break through existing surfaces.

Essential Services

The proposed adaptive reuse of buildings will result in the provision of access to existing essential services for the site.

Sewer

The existing site benefits from a sewer connection in Brisbane Street which will be utilised for Proposed Lot 2.

The proposed hydraulic plans for the site indicate there is an existing sewer line within the road reserve of Proudfoots Lane and a sewer stub which could be utilised for this lot. Council officers have undertaken an inspection of the site and identified the sewer stub therefore concur to proposed Lot 1 connecting to this line.

Water

The subject site benefits from an existing water meter within the property boundary at Brisbane Street interface. Proposed Lot 2 will benefit from this meter. Proposed Lot 1 will be accessed by a new Water Meter at Wollumbin Street per Figure 17 below.

Council officers have reviewed the proposed arrangements and raise no objection to the provision of water in this location.

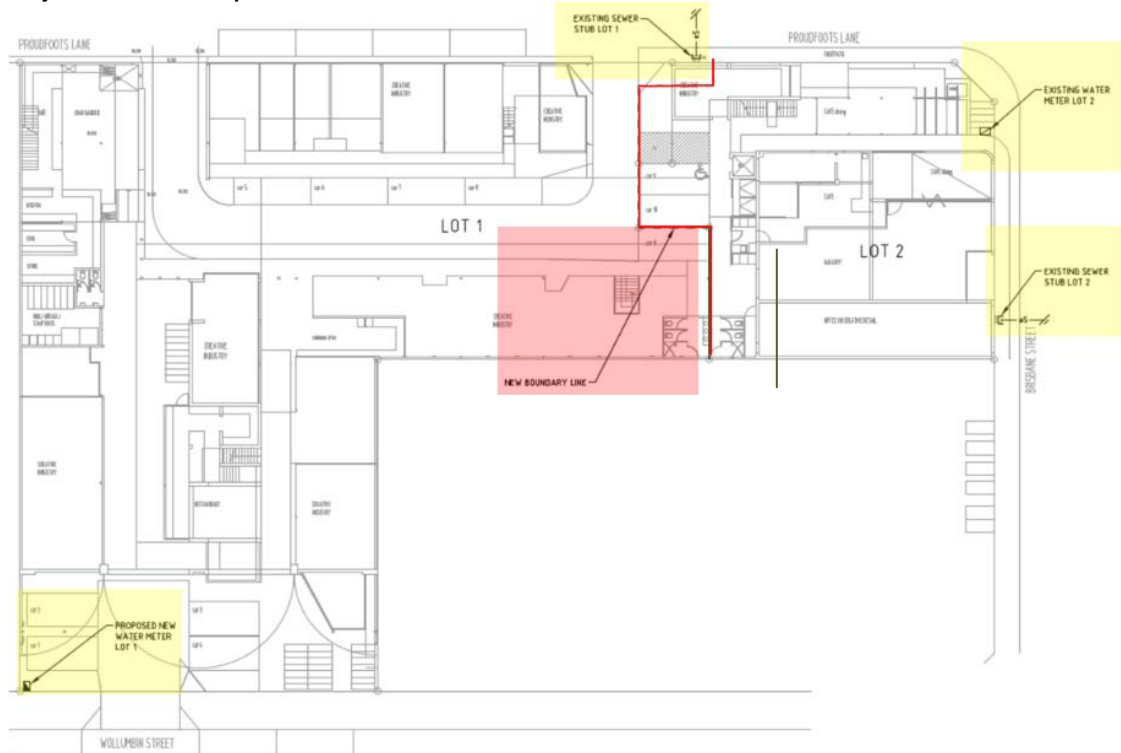


Figure 17: Preliminary Hydraulic (Drainage and Water) Plans (prepared by Sedgman Engineering dated 17 May 2018)

Stormwater Drainage

Given the development seeks for the adaptive reuse of existing buildings; roof water disposal is interconnected over the proposed lot boundary. A stormwater drainage concept diagram has been submitted as part of the application which suitably demonstrates existing lines which cross the proposed boundary will be

capped off at the boundary and a new connection will be established to provide for the separate disposal of stormwater for each lot respectively.

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

In accordance with Section A11 of the DCP, the proposal was advertised in the Tweed Link and notified to surrounding land owners. The exhibition period was from Wednesday 20 September 2017 until Wednesday 4 October 2017.

During the exhibition period, one submission was received on behalf of a nearby business owner.

The submission related to appropriate mitigation measures for dust and noise throughout the development and that access to the rear of adjoining properties, at Proudfoots Lane is not obstructed at any time.

A planning response to the above mentioned matters is below:

Objection Matter	Planning Response
Construction Noise and Dust	<p>Standard conditions of development consent are recommended to ensure the construction of the development is within acceptable hours of construction to mitigate impacts arising from construction noise.</p> <p>Standard conditions of consent are recommended to ensure dust suppression techniques are enabled during any works which are likely to emanate dust.</p>
Operational Noise	<p>The ongoing operation of the site is considered to have an acceptable acoustic impact having regard to the sites location within a commercial zone and suitably buffered from residential land uses.</p> <p>Council officers have considered the proposed use, hours of operation and the acoustic report submitted as part of the DA. Subject to compliance with recommended conditions, it is considered that potential noise impacts arising from the operation of the site are acceptable in this location.</p>
Rear Lane Access (Proudfoots Lane)	<p>The proposed development seeks access to the site via Wollumbin Street and Proudfoots Lane. However the existing no parking/stopping signs located within Proudfoots Lane will remain and the provision of onsite parking within Proudfoots Lane is not included as part of the DA and</p>

Objection Matter	Planning Response
	therefore Proudfoots Lane will remain a thoroughfare road corridor providing rear loading and access points for the subject site and surrounding development.

(e) Public interest

The proposal relates to a mixed use development within the B4 – Mixed Use zone. The development typology is likely to further enhance the social, cultural, economic and urban fabric of the Murwillumbah Town Centre thus demonstrating consistency with the aims of the plan having regard to its nature and permissibility in the B4 – Mixed use zone.

A merit based assessment of the development has been undertaken to consider potential amenity impacts and address concerns raised during the public exhibition and it considered conditions of development consent would resolve any potential impacts. As such, subject to compliance with the recommended conditions of consent, the development is considered to be within the public interest.

OPTIONS:

1. Approves the development subject to recommended conditions of consent and provides the NSW Roads and Maritime Services and NSW Police a copy of the determination notice.
2. Refuses the development.

Council Officers recommend Option 1.

CONCLUSION:

Based on the matters for consideration under Section 4.15 (evaluation) of the Environmental Planning & Assessment Act 1979, the proposed development has suitably demonstrated consistency with the relevant plans and policies that apply to the land. Where potential impacts in regard to traffic, access, parking and noise have been identified, appropriate conditions of development consent are recommended to mitigate such impacts and secure a positive development outcome for the site. As such based on the merits of the proposal the application is considered to be worthy of support and therefore is recommended for approval.

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:

(Confidential) Attachment 1. NSW Police Comments dated 28 May 2018 (ECM 5511065)

3 [PR-PC] Development Application DA18/0111 for a Depot at Lot 9 DP 9563 No. 130 Tweed Coast Road, Chinderah

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 *depot* on a vacant land parcel situated at 130 Tweed Coast Road, Chinderah. The development is comprised of a shed with an internal floor area of 198m² and a roofed area of 420m². The shed is proposed be used for the storage of (the land owners) boats, mower and car etc. and as a *depot* for the storage of concreting equipment associated with the owners business. The shed includes a change room, with shower and WC.

The subject site is legally referred to as Lot 9 DP 9563 (registered in 1919) and more commonly referred to as 130 Tweed Coast Road, Chinderah. The site has an approximate land area of 1214.5m². The site is currently vacant and zoned RU2 Rural Landscape.

The subject site does not enjoy the benefits of a dwelling entitlement; this is discussed further within the background section of this report. If the subject site had the benefit of a dwelling entitlement the nature of the business would be better described as home business given the minor scale of the proposed operations.

The lack of dwelling entitlement has resulted in the land use being described as a depot, but it should be recognised that the proposed depot is of a small scale associated with an individual's storage of equipment, associated with his trade employment.

Ideally the applicant would prefer a dwelling entitlement and erect a house with the necessary home business storage capabilities, however until the applicant applies for a planning proposal (to add an enabling clause for a dwelling entitlement on this block) this is not legally possible.

The application is being reported to Council as there were six objections received during the notification period which raised concerns with the consistency of the depot with the existing

residential character and the possible associated land use conflicts between the depot and houses (trucks, noise etc).

The subject depot has been assessed on its merits and is recommended for approval with strict conditions of consent to limit the size and nature of the operations. For example vehicle size is proposed to be limited to a standard vehicle/utility (5.5m x 1.85m), with access to the site conditioned to be during the hours of 8.30am – 5.00pm. Based on these strict conditions the application is considered suitable for approval.

RECOMMENDATION:

That Development Application DA18/0111 for a depot at Lot 9 DP 9563 No. 130 Tweed Coast Road, Chinderah 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, as amended in red, except where varied by the conditions of this consent.

Plan No.	Plan title	Drawn by	dated
1	130 Tweed Coast Road, Chinderah	-	Received by Council 05/02/2018
171160-055 2 of 2	Elevations	Designer sheds	undated
171160-055 1 of 2	Plan View	Designed sheds	undated

[GEN0005]

2. This consent approves a depot on Lot 9 DP 9563. The approved depot is limited to the following:

Storage of equipment:

- Concreting plant equipment (to be carried in a standard utility vehicle)
- power tools; and
- yard maintenance equipment (including ride on mower etc.)

[GEN0005]

3. The shed is to only be used as a storage facility (as defined under depot in the Tweed Local Environmental Plan 2014). The shed is not to be used to carry out operations, plant maintenance or as a mechanical workshop.

[GEN0005]

4. All equipment/materials are to be stored within the proposed depot.

[GEN0005]

5. This consent does not grant approval for any onsite employees.

[GEN0005]

6. Access to and from the depot is to be by a single standard vehicle/utility (maximum 5.5m x 1.85m).

[GEN0005]

7. Hours of operation are restricted to the following hours:
- * 8.30am - 5.30pm Mondays to Fridays
 - * No operations are to be carried out on Weekends or Public Holidays
 - * All deliveries and pickups relating to the business are to occur within the approved hours.
- [GEN0005]
8. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.
- [GEN0005]
9. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
- [GEN0115]
10. 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. Any necessary adjustment or modification of existing services is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.
- [GEN0135]
11. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.
- [GEN0300]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

BELOW IS ADVICE ONLY

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

Water: 1.0 ET @ \$13,632 x 20% = \$2,726.40
Sewer: Nil

[PCC0265]

13. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional runoff or ponding occurring within neighbouring properties.

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

[PCC0485]

14. A detailed Plan of Landscaping containing no priority weed species and with a minimum 80% of total plant numbers comprised of local native species to the Tweed Shire is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

The plan shall be consistent with the stamped plans under condition 1 of this consent.

Local native species are to comprise appropriate species selected from the Tweed Shire Native Species Planting Guide available online at: <http://www.tweed.nsw.gov.au/Controls/NativeSpeciesPlanting/Landing.aspx>

[PCC0585]

15. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimising the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.

[PCC0675]

16. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

- a) Design flood level of RL 3.3m AHD.
- b) Maximum fill level within the lot to be at 2.2m AHD
- c) All building materials used below Council's design flood level must not be susceptible to water damage.
- d) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should be suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- e) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

17. Fencing detail is to be provided detailing a form that will either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of floodwater or debris.

[PCC0725]

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. 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]

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

- (a) The Construction Certificate Application must include a detailed Erosion and Sediment Control Plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

21. 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]

22. Prior to the issue of a construction certificate for the dwelling the applicant shall obtain approval to install an onsite sewerage management system under Section 68 of the Local Government Act 1993. Any approval to install an onsite sewage treatment and disposal system shall comply with the recommended onsite sewage treatment and disposal method as detailed in the On-site Sewage Management Design Report (TE170577D), prepared by Taylor Environmental TE170577D dated 5 July 2018 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or delegate.

[PCC1285]

23. A certificate of structural adequacy, by a qualified structural/civil engineer, with regard to the stability of the dwelling as a result of flooding shall be submitted to Council during Construction Certificate phase.

[PCCNS01]

24. The area under the covered awning section of the proposed shed is to be kept clear of obstructions that could interfere with flood waters flows. Only vehicles are to be parked in this area and it is not to be used as storage.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

25. 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]

26. 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]

27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

32. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new (or modification of the existing) driveway access (or modification of access).

Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

DURING CONSTRUCTION

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

[DUR0005]

34. Commencement of work, including the switching on and operation of plant, machinery and 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]

35. 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]

36. 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]

37. 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 6.6 of the Environmental Planning and Assessment Act 1979. [DUR0405]
38. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
39. 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]
40. Landscaping of the site shall be carried out in accordance with the submitted/approved Landscaping Plans. [DUR1045]
41. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. [DUR1685]
42. 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]
43. 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]
44. 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]
45. 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]

46. 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]

47. 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]

48. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management.

[DUR2195]

49. 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]

50. 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]

51. 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]

52. 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]

53. 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]

54. The Applicant shall submit the appropriate 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for proposed Lot 9 DP 9563, from the existing water main in Tweed Coast Road. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

55. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DUR2835]

56. The exportation or importation of waste (including VENM, ENM and General Solid Waste) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW Environmental Protection Authority "Waste Classification Guidelines".

[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 any 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 6.9 and 6.10 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. 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]

61. 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]

62. Prior to the occupation and prior to the issue of any occupation certificate for the depot, the applicant shall obtain approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993.

[POC1040]

63. 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]

64. Prior to the issue of a final Occupation Certificate, all conditions of consent are to be met.

[POC1055]

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 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]

67. Hours of operation are restricted to the following hours:

- * 8.30am - 5.30pm Mondays to Fridays
- * No operations are to be carried out on Weekends or Public Holidays
- * All deliveries and pickups relating to the business are to occur within the approved hours.

[USE0185]

68. 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]

69. 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 delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the

recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

70. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

71. All 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 delegate.

[USE0875]

72. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.

[USE1035]

73. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USE1510]

74. The shed is to only be used as a storage facility as defined under *depot* in the Tweed Local Environmental Plan 2014. The shed is not to be used to carry out operations, plant maintenance or as a mechanical workshop without written approval from Council's General Manager or delegate.

[USENS01]

75. The use of the depot is to be by a single operator only, no employees shall work from the depot.

[USENS01]

76. Access to and from the depot is to be by a single standard vehicle/utility (maximum 5.5m x 1.85m).

[USENS02]

REPORT:

Applicant: Mr JD Cramp
Owner: Mr Joel D Cramp
Location: Lot 9 DP 9563 No. 130 Tweed Coast Road, Chinderah
Zoning: RU2 - Rural Landscape
Cost: \$90,000

Background:

Consent is sought for the construction of a *depot* on a vacant land parcel situated at 130 Tweed Coast Road Chinderah. The development is comprised of a shed with an internal floor area of 198m² and a roofed area (including carport) of 420m². The shed is proposed be used for the storage of (the land owners) boats, mower and car etc. and as a *depot* for the storage of concreting equipment associated with the owners business.

The shed is proposed to be setback:

- 6.0m to the front carport and 11.936m to the shed from the eastern/front boundary;
- 1.5m from the southern side boundary; and
- 26m to the covered awning and 29.603m to the shed from the western/rear boundary;
- 3.5m to the covered awning and 7.742m to the shed from the northern side boundary.



No previous consents could be located on the subject site.

Development summary:

Business:

The Statement of Environmental Effects advises that the proposed depot is for safely storing expensive plant and machinery equipment utilised for the land owners concreting business.

Employees:

No employees are proposed. The *depot* will be for the storage of equipment used for a concreting business.

Hours of operation:

The proposed hours of operation are 8.30am to 5.00pm (Monday to Friday).

The proposed development will include a standard vehicle (utility) entering the site at 8.30am, loading concreting equipment (e.g. mixer and tools) into the tray of the Utility and leaving the site.

The vehicle will re-enter the site at a later time and unload and store the concreting equipment in the proposed shed and leave the site (prior to 5.00pm). The applicant has confirmed that no plant maintenance or works will be undertaken on the site.

Vehicles:

As detailed above, the proposed development will result in four trips per day (less than the average for a dwelling house). The development seeks consent for a standard utility to enter after 8.30am load equipment and leave the site, returning to the site later within the day (prior to 5.00pm) to unload equipment and then leave site for the day.

Storage of equipment within the proposed depot

- concreting plant equipment;
- power tools; and
- yard maintenance equipment (including ride on mower etc.)

All materials on site will be stored within the proposed depot.

The subject site is shown below:



The location of works is shown below:



As advised previously the subject site does not enjoy the benefits of a dwelling entitlement.

Dwelling Entitlement:

The subject site was purchased by the current landowner in 2017.

The subject application was lodged to Council with the understanding that the site did not have a dwelling entitlement.

Upon receipt of the subject application a review of Councils available records was undertaken to determine the status of a dwelling entitlement on the subject site. It was acknowledged that an application for a Dwelling Entitlement Search (DE13/0087) was lodged with Council in 2013. This search was never finalised as further “testing” was requested from the applicant to determine if Lot 9 DP 9563 had a dwelling entitlement.

In this regard Clause 12(d) of the Interim Development Order No. 2 (IDO No. 2) provides the “test” that was to be undertaken.

The essence of Clause 12 is that if the subject lot **could** have been created via Clause 11 subdivision provisions, then a dwelling entitlement exists.

The first step in satisfying the “test” is to determine the ownership of the land at 30 September 1966. Council does not have records of ownership at this date. Accordingly, the outstanding historical title searches were requested from the applicant of the subject application to determine the extent of the holding at 30 September 1966 (land is defined as the aggregation of all adjoining or adjacent land held in the same ownership at 30 September 1966).

Following review of this information submitted to Council by the applicant it was determined that as the land area of the subject lot did not meet the minimum size requirement of 10.1 hectares in accordance with Clause 11(4) (of the Interim Development Order No.2 (IDO2)) and given the number of lots that could have been created under Clause 11(5) (IDO2) is

exceeded (at present the holding is comprised of at least 2 allotments) the lot could not have been created and therefore does not have a dwelling entitlement under clause 12(d).



The second lot which formed the *holding* (Lot 8) is currently comprised of a single dwelling house. Additionally, all remaining lots (8, 10-12) registered under D9563 contain dwelling houses and ancillary structures. Similarly to the subject site Lot 8 does not enjoy the benefits of a dwelling entitlement, though based on Aerial Imagery may have contained a dwelling house prior to the introduction of the IDO 1 in 1964. Accordingly, the dwelling may have existing use rights. Alternatively, under past interpretation of the dwelling entitlement provisions may have exhausted the “entitlement” for the holding.

The above information is a **summary** of the dwelling entitlement history for the subject site and is contextual to the subject application. Should the site have enjoyed the benefits of a dwelling entitlement the nature of the business would be better described as home business given the minor scale of the proposed operations.

As advised previously, the lack of dwelling entitlement has resulted in the land use being described as a depot, but it should be recognised that the proposed depot is of a small scale associated with an individual’s storage of equipment, associated with their trade employment.

It is noted for reference that a shed ancillary to a dwelling (dependent on size and location) may be exempt development under the State Environmental Planning Policy (Exempt and Complying Development) Codes 2008.

Assessment summary:

Following review of the proposed application it was determined that further information to allow assessment was required. Accordingly, Council wrote to the applicant seeking further advice on the below matters.

Zoning:

The subject site is zoned RU2 Rural Landscape under the *Tweed Local Environmental Plan 2014*. The objectives of the RU2 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.*
1. The Statement of Environmental Effects does not address the objectives of the zone. Please provide a response to Council demonstrating how the proposed development of a depot (not associated with agricultural use, but for the storage of plant and machinery equipment utilised for a concreting business) meets the zone objectives.

Flooding

2. Please further address the following clause from Tweed Development Control Plan Section A3.4.4:
- (i) Flow obstructions (defined as fill, structures, buildings, stockpiles and the like above RL 2.2m AHD) are to be located so that at least 50% of any cross section of the lot, transverse to the direction of flood flow, is clear of flow obstructions. This is to provide a local flood path on each allotment.

It is noted that for the lot in question flood flow is from the south west to north east direction. As the lot is approximately 20 metres wide, then approximately 10 metres of width across the lot is required to be kept clear for potential flood flow. The submitted application shows a proposed building side setback totalling 5 metres which is less than half the minimum required. The proposed covered awning area may be able to be considered part of this flow obstruction clear zone if the use for this area is provided to Council and if this use is deemed acceptable, its future use can then be conditioned accordingly. Otherwise please amend your design to satisfy this requirement of A3.

Environment Health

3. The following further considerations are required relating to noise.
- (i) Considering the close proximity to adjacent residences it is recommended that the proposed operating hours be modified to restrict use on Saturdays, Sundays and Public Holidays.
- Please advise if the application will be amended to seek hours of operation as 8.30am – 5.00pm Monday – Friday.

- (ii) The coming and going of vehicles has the potential to create noise impacts. Predicted traffic movements must be provided to allow for an informed assessment of potential noise impacts.

Please provide additional detail to Council depicting the expected time the site will be entered and exited each day i.e. will the operator be arriving onsite at 7.00, but not starting a work vehicle and leaving the site til 8.30am; and advise an estimate in the approximate number of trips to and from the site per day. This should include any comings and goings throughout the day, in addition to entering the site of a morning and leaving the site at the conclusion of the day.

- (iii) The proposal does not indicate whether plant maintenance and works will be undertaken on-site. Generally with this nature of development, this would be an ancillary use of the site. This may lead to noise impacts on the residences that are located immediately adjacent to the development.

Please provide to Council further detailed information regarding the use of the site.

4. The applicant is requested to amend the onsite sewage management design report to reflect the configuration and footprint of the proposed shed structure. The submitted report has the location of the shed in the location of the land application area and a conflict exists.

Development Engineering

5. The proposed location of the shed is 6m from the front property boundary, which may restrict truck turnaround to exit in a forward direction. Please demonstrate with turning templates that trucks may enter, turnaround and exit in a forward direction.

Traffic Engineering

Councils Traffic Engineer has advised the following:

"Tweed Coast Road is a major road connecting the Tweed Coast to the Pacific Highway and carries over 17,000 vehicles per day.

The application has not provided sufficient information in relation to expected vehicle usage (size and volume) to the site and any proposed works within the road reserve to achieve safe access, including other road users".

6. Please provide further detail to Council including the following:
- The type (size) of vehicle and frequency of access (this will determine the required driveway widths as per AS2890.2 Parking Facilities – Off Street commercial vehicle facilities and Councils Driveway Access to Property Design Specification);
 - Any proposed works within the road reserve to achieve safe access, including other road users

The applicant provided a response to Council satisfying the above matters. These matters are discussed further within this report.

The application was considered by the following units:

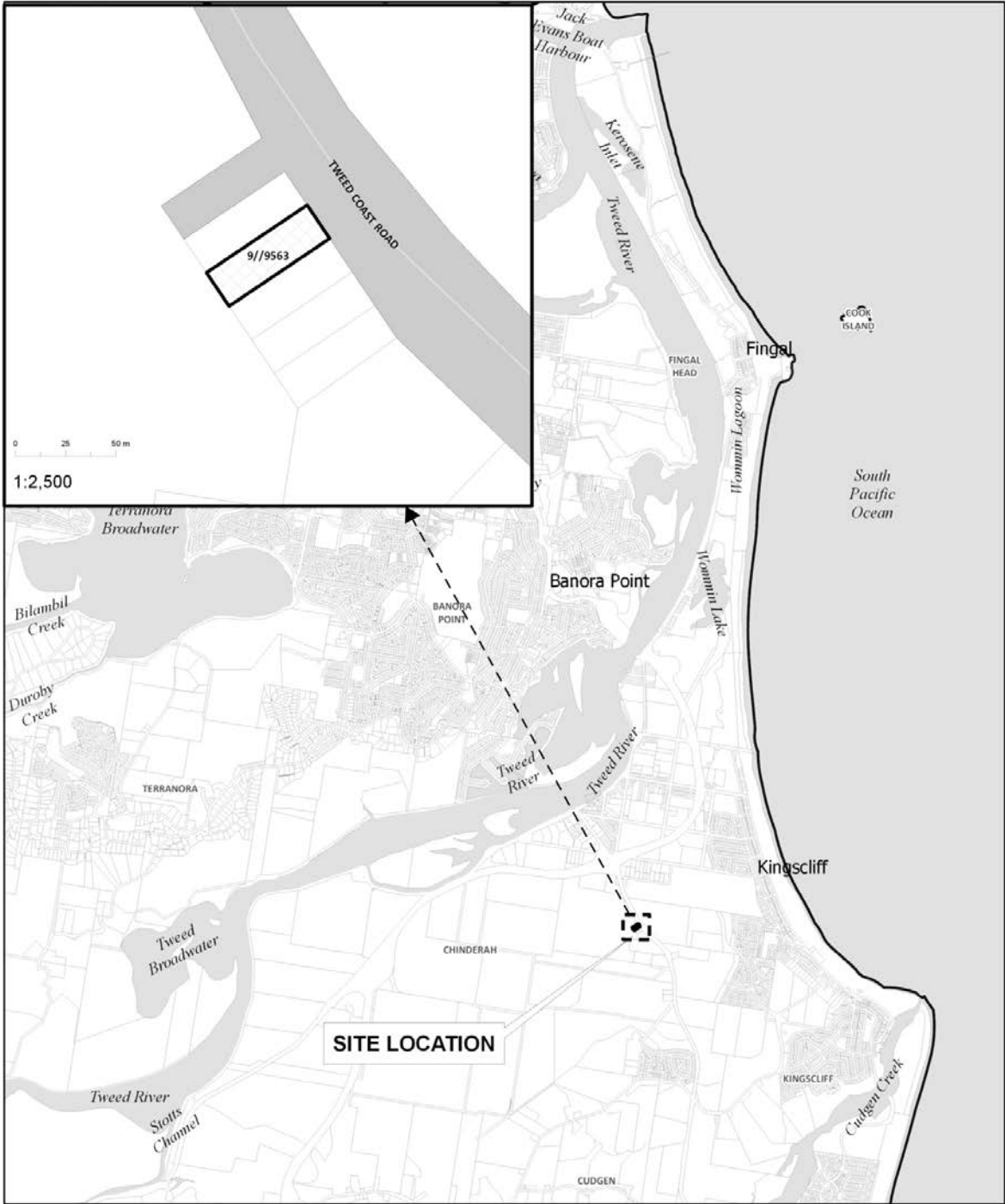
- Development Assessment;
- Building;
- Environmental Health (including OSSM);
- Development Engineering;
- Water and Waste Water Engineering;
- Flooding and Stormwater Engineering; and
- Traffic Engineering

No objections were raised, subject to appropriate conditions being applied.

The subject application was advertised and notified for a period of 14 days from Wednesday 28 February 2018 to Wednesday 14 March 2018. During this period six submissions were received. Further details and response to the submissions is provided further within this report.

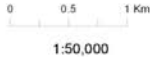
The estimated cost of works for the subject application is \$90,000.

SITE PLAN:



Site Plan

Lot 9 DP 9563
130 Tweed Coast Road, Chinderah



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastral: 18/07/2018
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PRINT DATE
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Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2404
PO Box 816
Murwillumbah NSW 2484

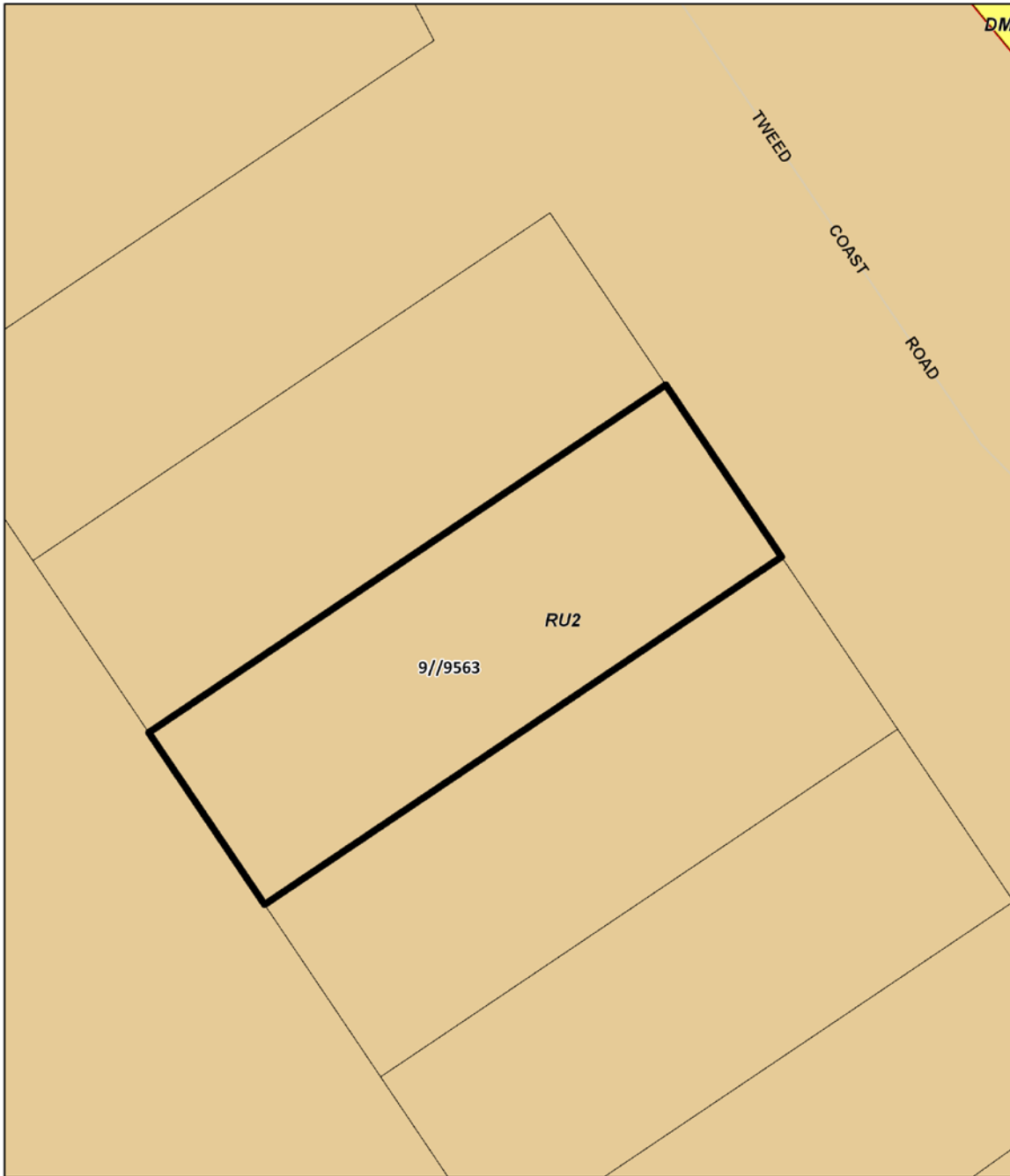
T: (02) 6670 2400 / 1300 292 872
F: (02) 6670 2483
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E: planningforms@tweed.nsw.gov.au



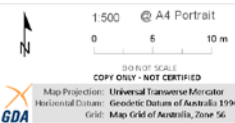
TWEED
SHIRE COUNCIL

Date Printed: 09 August, 2018

ZONING MAP:



- Subject Land DM, Deferred Matter
- Subject Land
- Tweed Local Environmental Plan 2014 LEP 2000 (as at 2014)
- RU2 Rural Landscape 5(a) Special Uses



Site Plan - Local Environmental Plan

Lot 9 DP 9563
130 Tweed Coast Road, Chinderah

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Date Printed: 03 August 2018

AERIAL IMAGE:



1:500 @ A4 Portrait
 0 5 10 m
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 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56
GDA

TWEED SHIRE COUNCIL
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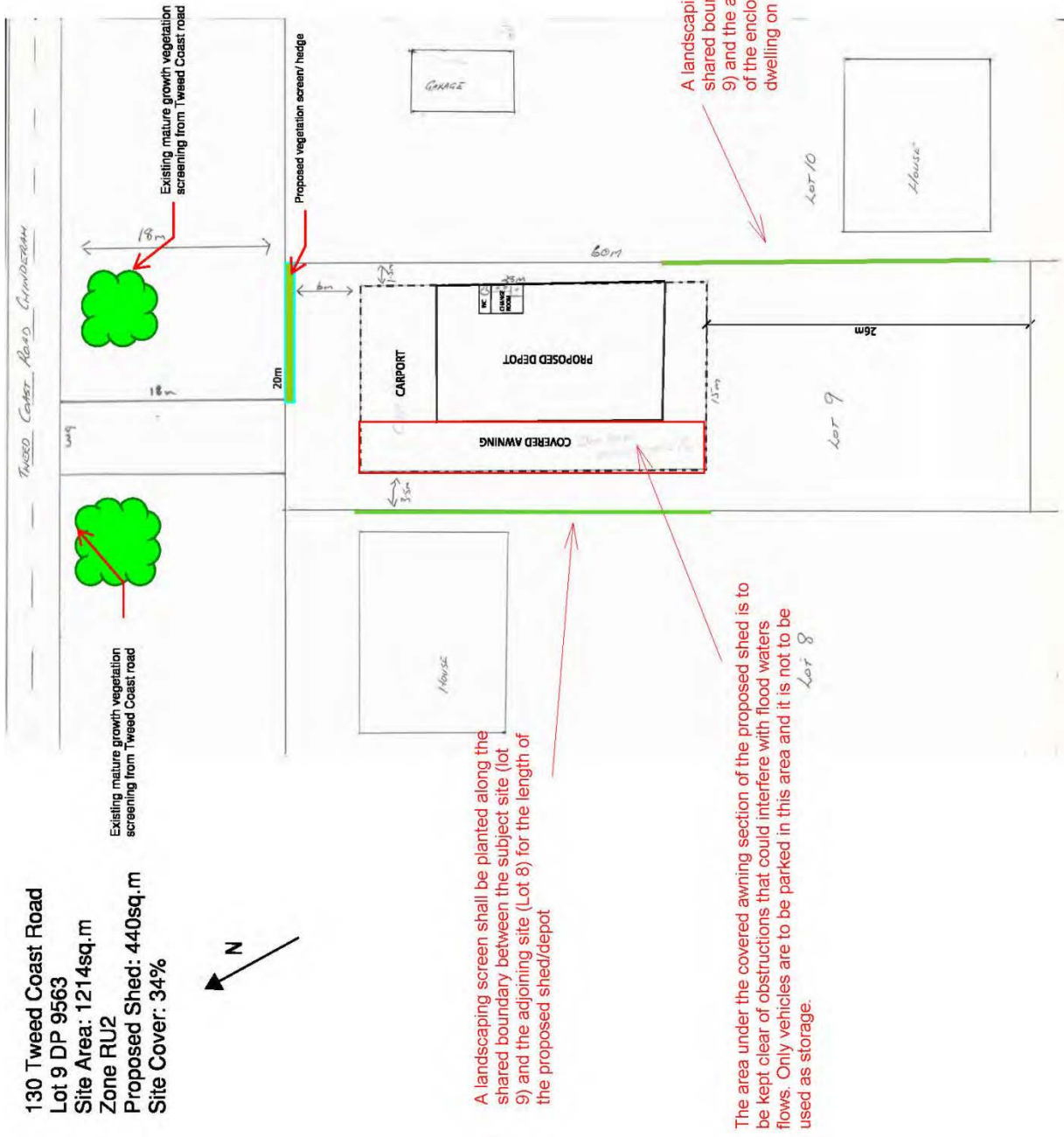
Aerial Photography April 2018
 Lot 9 DP 9563
 130 Tweed Coast Road, Chinderah

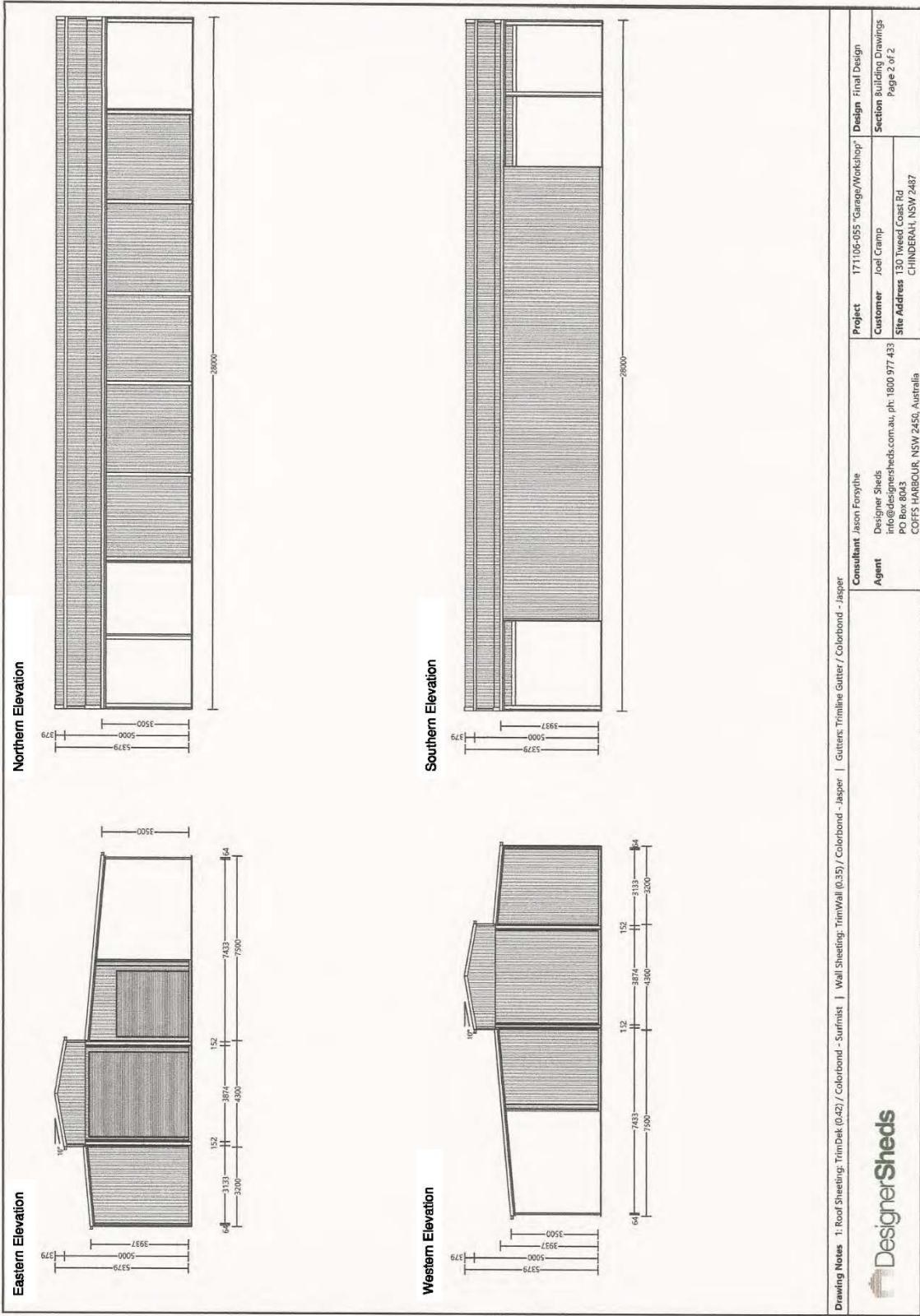
© 2018 Imagery - Tweed Shire Council
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 Boundaries shown should be considered approximate only.

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 Author: S Scott - GIS Date Printed: 09 August, 2018

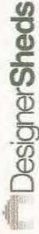
DEVELOPMENT PLANS:

Plan title: 130 Tweed Coast Road, Chinderah
 Plan 1
 received by Council 05/02/2018





Drawing Notes 1. Roof Sheeting, Trim Bek (0.42) / Colorbond - Surfist Wall Sheeting, Trim Wall (0.35) / Colorbond - Jasper Gutters, Trimline Gutter / Colorbond - Jasper		Project 171105-055 "Garage/Workshop"	Design Final Design
Designer Sheds info@designersheds.com.au, ph. 1800 977 433 PO Box 8043 COFFS HARBOUR, NSW 2450, Australia		Customer Joel Cramp	Section Building Drawings
Agent Jason Forsythe		Site Address 130 Tweed Coast Rd CHINDERAH, NSW 2487	Page 2 of 2



Considerations under Section 4.15 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 RU2 Rural Landscape under the Tweed Local Environmental Plan 2014. The objectives of the RU2 zone are identified as follows:

- *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.*

Whilst the subject site is zoned RU2 Rural Landscape the size and location of the site; and surrounding land uses are generally not conducive to rural use. Accordingly, any proposed development on the subject site would be challenged to achieve compliance with the zone objectives.

Notwithstanding the above, as detailed within the background section of this report, a request for further information was sent to the applicant asking them to demonstrate how the proposed development of a depot (not associated with agricultural use, but for the storage of plant and machinery equipment utilised for a concreting business) meets the zone objectives.

Applicant's response:

- *Depots are permissible development within the zone.*
- *The proposed shed does not deter from the rural character of the land and maintaining a shed for the storage of equipment associated with concreting is inobtrusive and allows for the provision of compatible land uses.*
- *It was on advice from a Tweed Shire Council development support that the development be described as a depot. The site has a total area of 1200sq.m with no dwelling entitlement and the owner of the site proposes to utilise the site to its potential to store equipment for a concreting business and other vehicles including 3 boats. The small size of the lot within an RU2 zone, with no dwelling entitlement, has limited any definable use of the site and it is currently used as an open-air storage yard. The size of the lot being 1200sq.m does not allow for intended uses within the zone being sustainable primary production, extensive agriculture and tourist and visitor-*

based accommodation land uses. As such this development application for a shed has been presented to Tweed Shire Council as a depot, being a permissible use within zone RU2 with consent. The objectives of the EP&A Act include "to promote the orderly and economic use and development of land". The current zone restrictions on this site are impeding the objectives of the EP&A Act.

The proposed small scale of operation of the proposed depot is considered to justify the presence of a standalone depot with residential houses surrounding the property. The proposed conditions of consent have been drafted to reflect this small scale nature to protect the amenity of adjoining properties and the character of the areas. The proposed development is permissible with consent on land zoned RU2 and is considered suitable development given Clause 2.3 of the LEP.

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 10m. The proposed development has a maximum height of 5.379m. Accordingly, complies with clause 4.3.

Clause 4.4 – Floor Space Ratio

Not applicable the subject site is zoned RU2.

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 5.10 - Heritage Conservation

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

Clause 5.11 - Bush fire hazard reduction

No bushfire hazard reduction work is proposed. The site is located within land mapped as bushfire buffer and is comprised of non-combustible materials.

Clause 7.1 – Acid Sulfate Soils

Class 3 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 a driveway and foundations. 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 subject site is mapped as having a design flood level of 3.3m RL, with an adopted habitable floor level of 3.8m RL and is affected by the Probable Maximum Flood.

The development is not considered result in any significant adverse impacts on flood behaviour as the development is include a site coverage of approximately 34% which is well below the allowable coverage of 50%.

The building is proposed to be built at RL 2.0 metres AHD. The proposed development is considered to be commercial in nature and is therefore not subject to minimum flood related floor levels.

Clause 7.4 - Floodplain risk management

Not applicable, the proposed development is not a development type referred to under Clause 7.4

Clause 7.5 - Coastal risk planning

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

Clause 7.6 - Stormwater Management

The land is zoned RU2. Accordingly, Clause 7.6 is not applicable.

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

Not applicable – the subject site is not mapped within the ANEF contours.

Clause 7.10 - Essential Services

All essential services are made available to the subject site.

The development includes an On-Site Sewage Management system.

Other Specific Clauses

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

North Coast Regional Plan 2036 (NCRP)

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 being 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:

The site is not nominated within an urban growth area under this plan

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:

Not applicable to the subject site.

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

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject site is vacant. Based on Aerial Imagery dating back to 1970, the site has always been vacant and adjoined by dwelling allotments (as registered in 1919).

A search of Council records indicates the following:

- An examination of the topographical map did not indicate any potentially contaminating activities.
- Council's mapping GIS Enlighten indicates that there are no cattle dip-sites in the immediate area of the proposed development
- Council historical aerial photos (1970 and 2000-2015) did not indicate any identifiable potentially contaminating activities within the proposed site or immediate properties.

Given the above information it is considered that contamination of the land is unlikely. No further consideration of contaminated land required.

SEPP (Infrastructure) 2007

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:

- (a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- (b) providing greater flexibility in the location of infrastructure and service facilities, and*
- (c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- (d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
- (e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- (f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.*

Clause 101 Development with frontage to classified road

- (1) The objectives of this clause are:*
 - (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
 - (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

- (2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
 - (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

This clause applies to the development Tweed Coast Road is mapped as a local classified road. The development is considered to result in less trips than for a

standard dwelling house (conditions restricting the type of vehicle to be used in conjunction with the proposed development and hours of operation have been applied). Accordingly, the development is not considered to compromise the effective and ongoing operation and function of Tweed Coast Road.

The development is not a type that is sensitive to traffic noise or emissions.

Notwithstanding the above, the application has been reviewed by Councils Traffic Engineer who has raised no concerns, subject to conditions.

SEPP (Rural Lands) 2008

The site is located in land zoned RU2 Rural Landscape and is also identified as being regionally significant farm land.

Clause 2 Aims of Policy

The aims of this Policy are as follows:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) to implement measures designed to reduce land use conflicts,*
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

Part 2 Rural Planning Principles *Clause 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.*

The proposal is considered unlikely to impact on potential rural economic uses of the land. The site has an approximate land area of 1214.5sqm and is adjoined each side by single dwelling houses and fronts the Tweed Coast Road (future 4 lanes). Accordingly, any rural use even small scale production of agricultural produce is considered unviable.

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

There are no draft LEP amendments applicable to the subject application.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Access:

As referenced in the background section of this report, further information in relation to vehicle use was requested from the applicant.

The Request for further information advised the following:

“Tweed Coast Road is a major road connecting the Tweed Coast to the Pacific Highway and carries over 17,000 vehicles per day.

The application has not provided sufficient information in relation to expected vehicle usage (size and volume) to the site and any proposed works within the road reserve to achieve safe access, including other road users”.

- Please provide further detail to Council including the following:
 - The type (size) of vehicle and frequency of access (this will determine the required driveway widths as per AS2890.2 Parking Facilities – Off Street commercial vehicle facilities and Councils Driveway Access to Property Design Specification);
 - Any proposed works within the road reserve to achieve safe access, including other road users
- The proposed location of the shed is 6m from the front property boundary, which may restrict truck turnaround to exit in a forward direction. Please

demonstrate with turning templates that trucks may enter turnaround and exit in a forward direction.

The applicant provided the following response:

“Predicted Traffic Movement

The owner works as a concreter and in addition, works away for months at a time in the fishing industry. Only minor traffic movement is predicted, with the truck leaving in the morning and returning in the afternoon when the owner is conducting his concreting work.

The site will be predominately entered and exited only 2 times a day with one trip from site per day.

No plant maintenance and works will be undertaken on-site. All concreting work is off-site”.

Following review of the above information Councils Traffic Engineer has supported the subject application.

The following condition with this regard has been applied:

Access to and from the depot is to be by a single standard vehicle/utility. The site is not approved to be accessed by a Medium Rigid vehicle (MRV), an Articulate Vehicle (AV), Heavy rigid vehicle (HRV) or Special Purpose Vehicles (SPV)

Parking:

In accordance with Section A2 a depot is required to include an area suitable of accommodating 1AV and 10% of site for parking and access lanes, but, not driveways.

Whilst the subject application is defined as ‘depot’ under the TLEP 2014 as there is no dwelling onsite, to enable the development to be ancillary, the development is not consistent with the usual scale or intensity of a depot. Accordingly, the rates prescribed under Section A2 are not considered appropriate in this instance.

The application states that a standard single vehicle will enter the site on a daily basis. No employees or an onsite office is proposed as part of the subject application. Conditions with this regard have been applied.

The development includes a double carport attached to the proposed shed and there is ample room onsite for a single vehicle.

The application has been reviewed by Councils Traffic Engineer who was satisfied that sufficient on-site parking and manoeuvrability is available.

The development is considered to comply with the provisions of A2.

A3-Development of Flood Liable Land

The subject site is mapped as having a design flood level of 3.3m RL, with an adopted habitable floor level of 3.8m RL and is affected by the Probable Maximum Flood. Accordingly, Section A3 applies; notably including:

- (i) On each allotment a maximum of 50% of the plan area of the lot may be occupied by structures, buildings, stockpiles and/or fill that exceed RL 2.2m AHD.
- (ii) On each allotment. Flow obstructions (defined as fill, structures, buildings, stockpiles and the like above RL 2.2m AHD) are to be located so that at least 50% of any cross section of the lot, transverse to the direction of flood flow, is clear of flow obstructions. This is to provide a local flood path on each allotment.

Commercial and industrial development will be required to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage.

The building is proposed to be built at around RL 2.0 metres AHD and although this is well below the design flood level of RL 3.3 metres AHD, the proposed development is considered to be commercial in nature and is therefore not subject to minimum flood related floor levels.

The application was referred to Councils Flooding and Stormwater Engineer who advised the following:

- (i) the proposed development encompasses 420sqm on a 1214sqm lot which is a site coverage of 34% and therefore adequately below the 50% allowable maximum.
- (ii) a request for further information was originally sent to the applicant:

“the development includes sides of lot setbacks of 1.5m and 3.5m totalling 5 metres of cross section in the south west to north east direction of flood flow to enable unobstructed flood flow. As the lot is approximately 20m wide this is considered an inadequate provision when 50% of open cross section is required by Section A3.4.4 and only 25% is provided. The development also includes a 4.24m wide awning area running longitudinally across the lot which if kept clear could provide an adequate clear and open cross section for flood flow, however further information would be required to ascertain what is proposed to be stored in this area and then conditions be applied in the DA consent to limit storage in this awning area if the types of stored items are acceptable”.

The applicant advised the following:

“The covered awning section of the proposed shed is to be kept clear of obstructions that could interfere with flood flow. Only vehicles are to be parked in this area, it is not intended to be used as a storage area.”

The development now nominates the area below the covered awning as area for parking vehicles (moveable in the event of a flood). This area is not and it is not to be used as storage. The following condition has been applied:

The area under the covered awning section of the proposed shed is to be kept clear of obstructions that could interfere with flood waters flows. Only vehicles are to be parked in this area and it is not to be used as storage.

The development will provide adequate provision of flood free storage for stock and equipment susceptible to water damage, the flood impact report submitted by NCBS has mentioned that adequate provisions will be made which is considered acceptable. The following condition with this regard has been applied.

Provision to be made for a flood free storage area for stock and equipment susceptible to water damage.

The proposed development is considered to comply with the requirements of A3.

A4-Advertising Signs Code

Signage is not proposed.

A11-Public Notification of Development Proposals

In accordance with Section A11 of the Tweed Development Control Plan 2008, the subject application was advertised and notified for a period of 14 days. During this period six submissions were received. These are discussed further within this report.

A13-Socio-Economic Impact Assessment

The development is not listed as requiring a socio-economic impact assessment.

A15-Waste Minimisation and Management

Council officers have reviewed that proposal and raise no concerns with regards to the proposal and the policy.

B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast. The proposal is consistent with B9 and does not contravene the intended urban structure, centres hierarchy or design principles relating to the Tweed Coast or specific provisions relating to riparian buffers to Cudgen Creek and the mean high water mark, as the site is not located within these buffers.

(a) (iii) **Any planning agreement or any draft planning agreement under section 7.4**

Not applicable to the subject application.

(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 depot on a rural 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

Not applicable. The subject site is currently vacant.

Clause 93 Fire Safety Considerations

Not applicable. The subject site is currently vacant.

Clause 94 Buildings to be upgraded

Not applicable. The subject site is currently vacant.

(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)

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 site is located within a cluster of small lots (approximately 1214.5sqm), situated along Tweed Coast Road. Each of these lots (excluding the subject site) is comprised of a single dwelling and ancillary structures.

Many of the nearby sites include large detached garages and multiple onsite sheds. The site is also adjoined by the Chinderah Golf course and is located approximately 450m from the Chinderah industrial area.

Access, Transport and Traffic

Access to and from the site is via Tweed Coast Road. Given the development is to be accessed via a standard vehicle only (conditions with this regard have been applied) no concerns have been raised in relation to the proposed development. A section 138 will be required for any works within the road reserve.

Noise and Amenity

As advised within the background section of this report Council sought further information from the applicant in relation to the proposed hours of operation to ensure that no impact on the amenity of surrounding land parcels would.

The following information was requested from the applicant; please see the applicant's response and assessment under each point:

- (i) Considering the close proximity to adjacent residences it is recommended that the proposed operating hours be modified to restrict use on Saturdays, Sundays and Public Holidays.

Please advise if the application will be amended to seek hours of operation as 8.30am – 5.00pm Monday – Friday.

Applicant's response:

"The intended purpose of the shed is as a storage facility for vehicles and equipment relating to concreting. The classification of the application as a Depot is a response to there being no dwelling entitlement on the lot. The intended purpose for the site is inobtrusive and will not interfere with the acoustic privacy of neighbours.

The intended use of the shed is as a storage facility as defined in the Tweed LEP "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". No large trucks will be entering and existing and as such these details are not required with this proposal".

Assessment comments:

The applicant has stated that the shed will be used only for storage. It is considered that potential impacts to amenity could be managed with appropriate conditions.

- (ii) The coming and going of vehicles has the potential to create noise impacts. Predicted traffic movements must be provided to allow for an informed assessment of potential noise impacts.

Please provide additional detail to Council depicting the expected time the site will be entered and exited each day i.e. will the operator be arriving onsite at 7.00, but not starting a work vehicle and leaving the site til 8.30am; and advise an estimate in the approximate number of trips to and from the site per day. This should include any comings and goings throughout the day, in addition to entering the site of a morning and leaving the site at the conclusion of the day.

Applicant's response:

"The owner works as a concreter and in addition, works away for months at a time in the fishing industry. Only minor traffic movement is predicted, with the truck leaving in the morning and returning in the afternoon when the owner is conducting his concreting work. The site will be predominately entered and exited only 2 times a day with one trip from site per day".

Assessment comments:

As stated by the applicant, vehicle movement would primarily consist of "the truck" entering and exiting the subject site in the morning and afternoon two times per day. The "truck" referenced by the applicant is a standard utility see image below. No other "trucks" or vehicles are required for the depot.

The vehicle type and number of movements are considered to be consistent with the typical daily pattern of movement for residents of rural and residential areas. It is considered that potential noise impacts could be managed with appropriate conditions.



- (iii) The proposal does not indicate whether plant maintenance and works will be undertaken on-site. Generally with this nature of development, this would be an ancillary use of the site. This may lead to noise impacts on the residences that are located immediately adjacent to the development.

Please provide to Council further detailed information regarding the use of the site.

Applicant's response:

"The intended use of the shed is as a storage facility as defined in the Tweed LEP.

No plant maintenance and works will be undertaken on-site. All concreting work is off-site".

Assessment comments:

The applicant has stated that the intended use of the shed is as a storage facility and that no plant maintenance or works would be conducted on site. It is considered that potential impacts could be managed with appropriate conditions.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The subject site is located within a cluster of small lots (approximately 1214.5m²), situated along Tweed Coast Road. Each of these lots (excluding the subject site) is comprised of a single dwelling and ancillary structures.

The subject site is adjoined on its side boundaries by single dwelling houses, its rear boundary by the Chinderah Golf Club and the Tweed Coast Road at its frontage. Additionally, the site is located approximately 450m south of the existing Chinderah industrial area.

Lighting

General conditions to apply with respect to lighting including security lighting.

Onsite Waste Management

As detailed within the summary section of this report, Council sought further information in relation to the proposed onsite waste management system. The following was advised:

- The applicant is requested to amend the onsite sewage management design report to reflect the configuration and footprint of the proposed shed structure. The submitted report has the location of the shed in the location of the land application area and a conflict exists.

In response the applicant provided an amended onsite sewage management design report.

Comments have been received from Council's On-Site Sewage Management Officer dated 23/07/18:

"An On-site Sewage Management Design report by Taylor Environmental TE170577D dated 5 July 2018 provides design and recommendations an on-site sewage management system to service the proposed shed and dwelling. (AWTS and ETA bed)

It is considered the recommended wastewater treatment system, effluent land application area; size and location are adequate for the proposed development when assessed in accordance with AS 1547/2012 and NSW Environment and Health Protection Guidelines On-site Sewage Management for Single Households."

Appropriate conditions with this regard have been applied.

Topography

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

Flora and Fauna

Upon inspection it was noted that a tree had been removed from site at some point. A response with this regard was sought from the applicant, who advised the following:

"The owners acknowledge that a large tree has been removed. The tree in question was an old Fig tree which had become a safety hazard, having dropped a large limb that subsequently damaged the fence of the neighbouring property at 132 Tweed Coast Road. Council contractors have already cleared some large trees within the council reserve area along the front boundary of lot 9.

The day that this clearing was undertaken, the owner of lot 9 approached the council contractors and alerted them to the potential hazard of the tree. The contractors advised the owner that this was their responsibility to have removed. The owners overlooked the process of applying for any required tree removal permit from Tweed Shire Council, believing they were acting accordingly under a duty of care to protect the safety of all residing within the proximity of the dangerous tree. The neighbour at 132 Tweed Coast Road was compensated for fence repairs and can substantiate that the tree was dangerous to residents. The residents in neighbouring property 128 Tweed Coast Road call also substantiate that they felt that their safety and the safety of their children playing near the tree had been compromised and were supportive of its removal".

The site is zoned RU2, a single tree was removed; no permit would have been required from Council.

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

The application was notified for a period of 14 days from Wednesday 28 February 2018 to Wednesday 14 March 2018. During this period six submissions were received. The issues are outlined below.

Issue	Council Response
The development is out of context with the area and will set a precedence for development	<p><i>The site is located within a cluster of small lots (approximately 1214.5sqm), situated along Tweed Coast Road. Each of these lots (excluding the subject site) is comprised of a single dwelling and ancillary structures.</i></p> <p><i>Many of the nearby sites include large detached garages and multiple onsite sheds. The site is also adjoined by the Chinderah Golf course and is located approximately 450m from the Chinderah industrial area.</i></p> <p><i>The minor nature of the depot is considered in keeping with the varied character of the area.</i></p>
The site is flood prone land	<p><i>The application has been considered by Councils Flooding and Stormwater Engineer. The proposed development is considered to satisfy Clause 7.3 Flood Planning of the TLEP 2014 and Section A3 development of flood liable land of the Tweed DCP 2008. Conditions with this regard have been applied.</i></p>
The road is a safety issue, increases in truck movement will cause further risk of accident	<p><i>The subject application seeks consent to access the site via a standard vehicle/ute. The application has been reviewed by Councils Traffic Engineer who raised no objections. Conditions limited the size of vehicle to be used in association with the proposed depot has been applied.</i></p>
The development proposes more than 20 car spaces	<p><i>This is incorrect. The subject application seeks consent for access to the site by a single vehicle. As advised above, the application has been reviewed by Councils Traffic Engineer who raised no objections. Conditions limited the size of vehicle to be used in association with the proposed depot has been applied.</i></p>
The development is industrial and for use by large trucks	<p><i>Please refer to comment above. Access is by a standard vehicle.</i></p>
Development should be in an industrial area	<p><i>The subject depot has been assessed on its merits and is recommended for approval with strict conditions of consent to limit the size and nature of the operations.</i></p>

Issue	Council Response
Development is not in keeping with the Kingscliff Locality Plan	<i>The site is not mapped under the Kingscliff Locality Plan</i>
Additional trucks require a service road for the lot and adjacent properties/4 lanes	<i>Please refer to comment above. Access is by a standard vehicle.</i>
The site has a 40HA limit for a house, to approve a shed larger than a house on a lot of 1214sqm is considered without an entitlement should not be permitted	<i>As detailed within this report, the subject site does not enjoy the benefits of a dwelling entitlement. If the subject site had the benefit of a dwelling entitlement the nature of the business would be better described as home business given the minor scale of the proposed operations. Notwithstanding this the minimum size for a dwelling house is not applicable to the assessment of the proposed depot. The subject depot has been assessed on its merits and is recommended for approval with strict conditions of consent to limit the size and nature of the operations.</i>
The depot, where heavy industrial vehicles will be stored is better suited to an industrial area where issues such as hours of operation, traffic movement limits; and overall development	<i>Please refer to comment above. Access is by a standard vehicle.</i>
The development presents conflicts with the objectives of the RU2 zone in that:	
<ul style="list-style-type: none"> It does not have a relationship to any primary industry or rural industry being conducted on the site or in the area. 	Noted, however a depot is still permissible with Council consent if on merit the application is consistent with the varied character of the area. The report concludes that the application on merit is capable of being approved with conditions to limit the nature of the development.
<ul style="list-style-type: none"> The site is only 1,214sqm in area with the proposed shed having a floor area of 440sqm + extensive awnings. The zone generally requires a lot be a minimum of 40ha to construct a house. The development is proposed on a site that is a small fraction 	<i>The subject site is zoned RU2. Accordingly, under the TLEP 2014 does not have a Floor Space Ratio. Additionally, the minimum size for a dwelling house is not applicable to the assessment of the proposed depot. The subject depot has been assessed on its merits and is recommended for approval with strict conditions of consent to limit the size and nature of the operations.</i>

Issue	Council Response
<p>of the normal 40ha (only 0.3%) yet it proposes a shed, that is significantly larger than a normal house. Based on these calculations, the size of the structure and its very high site coverage represents an intensity of built form that is excessive in a rural zone and is not in keeping with the zone intent to maintain a rural character.</p>	
<ul style="list-style-type: none"> The proposed shed and its use is industrial in nature which conflicts with the LEP's intent to maintain a rural character for this area. 	<p><i>The proposed depot is restricted to the following:</i> <u><i>Storage of equipment within the proposed depot</i></u></p> <ul style="list-style-type: none"> <i>concreting plant equipment;</i> <i>power tools; and</i> <i>yard maintenance equipment (including ride on mower etc.)</i> <p><i>All materials on site will be stored within the proposed depot.</i></p> <p><i>Considering the minor nature of the development and applied conditions of consent the development is not considered to conflict with surrounding uses.</i></p>
<ul style="list-style-type: none"> It is acknowledged that the size of the lot and adjacent lots would not be of sufficient size to sustain rural production. As a consequence, however land use and the character of development has evolved and would be better described as rural residential with large modern houses. Houses on these lots are adjacent to Chinderah Golf Course and have a reasonable expectation that the 	<p><i>The subject site does not enjoy the benefits of a dwelling entitlement. If the subject site had the benefit of a dwelling entitlement the nature of the business would be better described as home business given the minor scale of the proposed operations.</i></p> <p><i>The lack of dwelling entitlement has resulted in the land use being described as a depot, but it should be recognised that the proposed depot is of a small scale associated with an individual's storage of equipment, associated with his trade employment.</i></p> <p><i>Ideally the applicant would prefer a dwelling entitlement and erect a house with the necessary home business storage capabilities, however until the applicant applies for a planning proposal this is not legally possible.</i></p> <p><i>The subject depot has been assessed on its merits and is recommended for approval with strict</i></p>

Issue	Council Response
<p>rural residential nature of the area should be maintained. In particular houses located either side of the subject lot would be in very close proximity to the proposed depot meaning that their visual amenity would be significantly affected and in the general locality there is potential for noise, odour and other associated impacts.</p>	<p><i>conditions of consent to limit the size and nature of the operations. For example vehicle size is proposed to be limited to a standard vehicle/utility (5.5m x 1.85m), during the hours of 8.30am – 5.00pm, please refer to the recommended conditions a full suite.</i></p>
<p>No assessment has been carried out to demonstrate that any traffic, in particular heavy vehicles, generated by the development will not impact on the safety and efficiency of Tweed Coast Road. In this location on Tweed Coast Road the carriageway is narrow and it does not have the benefit of acceleration / deceleration lanes or sheltered right turn lanes. Council should have significant concerns about heavy vehicles turning into and out of an 80km/hr road in this location.</p>	<p><i>As detailed within this report a further information request was sent with this regard.</i></p> <p><i>The subject application seeks consent to access the site via a standard vehicle/ute. The application has been reviewed by Councils Traffic Engineer who raised no objections. Conditions limited the size of vehicle to be used in association with the proposed depot has been applied.</i></p> <p><i>No heavy vehicles will access the site.</i></p>
<p>Whilst a depot is permitted with consent in the zone an assessment of the nature of the use in the context of adjacent development indicates that it is not compatible in terms of its impact on the character of the area and its potential to impact on the amenity of dwellings located in very close proximity to the use.</p>	<p><i>The site is located within a cluster of small lots (approximately 1214.5sqm), situated along Tweed Coast Road. Each of these lots (excluding the subject site) is comprised of a single dwelling and ancillary structures.</i></p> <p><i>Many of the nearby sites include large detached garages and multiple onsite sheds. The site is also adjoined by the Chinderah Golf course and is located approximately 450m from the Chinderah industrial area.</i></p>

Issue	Council Response
<p>No assessment of noise, stormwater runoff or visual impact has been carried out to support the development application. The development as proposed would be unable to satisfy the provisions of Section 79c of the Environmental Planning and Assessment Act</p>	<p><i>As detailed within this report a further information request was sent seeking further detail in relation use, flooding and stormwater and hours of operation.</i></p> <p><i>The response to Councils request has resulted in conditional approval being issued by Councils: Environmental Health and Flooding and Stormwater Engineering Units.</i></p>
<p>The most recent indication of the Councils policy for development in this area is the draft Kingscliff Locality Plan (KLP). The proposal could be considered to be in conflict with the draft KLP documents because:</p>	
<ul style="list-style-type: none"> • The KLP does not contemplate development of an industrial nature in this area. Instead drafts of the document indicate a desire to maintain a green buffer to Tweed Coast Road and to discourage non-agricultural development outside of the urban footprint because of its impact on the landscape and visual character. 	<p><i>The subject site is not nominated under a specific land use within the draft KLP.</i></p> <p><i>Additionally, as discussed the development is not considered to be of a useable industrial nature. If the subject site had the benefit of a dwelling entitlement the nature of the business would be better described as home business given the minor scale of the proposed operations.</i></p>
<ul style="list-style-type: none"> • The development is in conflict with the objectives of the “green edge precinct” and will conflict with the KLP’s intention to retain views to farmland and the border ranges from Tweed Coast Road. 	<p><i>The subject site is adjoined by dwelling houses and associated structures and the Chinderah Golf Club, accordingly, the area is currently not creating a “green edge”. The site is not considered to restrict views to farmland or the border ranges.</i></p>
<ul style="list-style-type: none"> • Plans to widen Tweed Coast Road will bring the proposed depot closer to passing 	<p><i>As advised the development whilst defined as a depot, is minor in nature. If the subject site had the benefit of a dwelling entitlement the nature of the business would be better described as home</i></p>

Issue	Council Response
<p>motorists, will further undermine the above objective and affect the character of this key entry to Kingscliff and the Tweed Coast.</p>	<p><i>business given the minor scale of the proposed operations. The structure is setback an appropriate distance from the front boundary and Councils Traffic Engineering Unit has raised no objections with this regard.</i></p>
<ul style="list-style-type: none"> • Council is intending that a high quality regionally significant business park / mixed use precinct establish on the eastern side of Tweed Coast Road. Development of an industrial character on the western side of the road will create an undesirable precedent that could give rise to pressure to permit further industrial development. This outcome has the potential to cause amenity impacts to future planned development and would generally undermine Councils planning for the area. 	<p><i>As advised the development whilst defined as a depot, is minor in nature. If the subject site had the benefit of a dwelling entitlement the nature of the business would be better described as home business given the minor scale of the proposed operations.</i></p> <p><i>All and any future applications are assessed on merit. The approval of the subject application is not considered to set a precedent for the area.</i></p>
<ul style="list-style-type: none"> • Council is encouraging the Chinderah industrial area to transition to a business park / creative industries hub. The proposed development is industrial in character and is not compatible with this strategy. 	<p><i>Please refer to the comment above.</i></p>
<p>The most recent indication of the Councils policy on the appropriate use of rural land is included in the Policy Directions Paper for the preparation of a Rural Land Strategy. The proposal could be considered to be in</p>	

Issue	Council Response
<p>conflict with the Policy Directions Paper because:</p> <ul style="list-style-type: none"> Policy Direction 1 encourages sustainable agricultural production and the protection of agricultural land. Specifically it seeks to ensure that small properties are used for agricultural purposes where possible and that allotment and property amalgamation is facilitated and encouraged. Approval of the application would be contrary to these outcomes and would mean that the site is unlikely to ever become available for agricultural production. 	<p><i>Whilst the subject site is zoned RU2 Rural Landscape the size and location of the site; and surrounding land uses are generally not conducive to rural use.</i></p> <p><i>The RLS nominates that small properties are to be used agricultural purposes where possible. The site has a land area of 1214.5sqm.</i></p> <p><i>The site is adjoined by residential dwellings and the Chinderah Golf Club. Amalgamation is not considered possible for the subject site.</i></p> <p><i>The small nature of the proposal is considered to be consistent with the varied character of the area.</i></p>
<ul style="list-style-type: none"> The document states that the RU2 Rural Landscape area is intended for commercial primary production that is compatible with ecological or scenic landscape qualities. The Council has identified a specific scenic landscape quality purpose for this land as described in the draft KLP- to create a green edge and protect views to farmland and the border ranges. Approval of the application would be in conflict with achieving this objective. 	<p><i>Please refer to comments above in relation to point 1 in relation to using the land for primary production that is compatible with ecological or scenic landscape qualities. The site is 1214.5sqm and adjoined by similar size allotments containing dwellings and the Chinderah Golf Club.</i></p> <p><i>The development is not considered to diminish views to farmland and the border ranges. The site is adjoined by similar size allotments containing dwellings and the Chinderah Golf Club.</i></p>

Issue	Council Response
<ul style="list-style-type: none"> Policy Direction 2 seeks to protect and improve environmental values. Specifically it seeks an outcome whereby scenic landscape is protected and development does not adversely impact on the amenity or desired future character of the locality. As noted in the KLP this area is intended to contribute to the creation of a high quality landscape associated with future mixed use development at the gateway to Kingscliff and the Tweed Coast. The proposed development would be in conflict with achieving this outcome. 	<p><i>Please refer to the comments above.</i></p>
<p>The development application has failed to adequately consider environmental matters required to be addressed under the LEP and State Planning Policies including:</p>	
<ul style="list-style-type: none"> The impact of the development on flooding and flood flow paths due to the size of the structure and any associated filling. The submitted flood assessment is considered inadequate to confirm no adverse impact on adjacent development or the locality. 	<p><i>The subject site is mapped as having a design flood level of 3.3m RL, with an adopted habitable floor level of 3.8m RL and is affected by the Probable Maximum Flood.</i></p> <p><i>The development is not considered result in any significant adverse impacts on flood behaviour as the development is include a site coverage of approximately 34% which is well below the allowable coverage of 50%</i></p> <p><i>The building is proposed to be built at RL 2.0 metres AHD. The proposed development is considered to be commercial in nature and is therefore not subject to minimum flood related floor levels.</i></p>

Issue	Council Response
<ul style="list-style-type: none"> Whether there has been past activities that may have given rise to soil contamination or whether there is evidence of soil contamination on the site 	<p><i>Councils Environmental Health Officer has reviewed the proposed development and has raised no concerns in relation to contamination.</i></p>
<p>Devalue adjoining properties</p>	<p><i>This is not a planning consideration</i></p>
<p>Shed will be blocking adjoining dwelling</p>	<p><i>The proposed shed has a maximum height of 5.379m. The development is contained wholly within Lot 9 and no shared access arrangements are proposed.</i></p>
<p>Reflective light directed into adjoining dwelling</p>	<p><i>The proposed shed is to be constructed of colorbond. Roof is surfmest, gutter and walls Jasper. No reflectivity is anticipated as part of the development. Conditions have been applied to ensure all spill from any lighting is contained within the subject site.</i></p>
<p>Paid premium amount for dwelling to have a depot/shed next door</p>	<p><i>Development Applications are assessed against Clause 4.15 of the Act. The depot is small in nature and has been conditioned to ensure the amenity of adjoining properties is protected.</i></p>
<p>No plan for landscaping screen</p>	<p><i>The application includes front landscape hedge and landscaping along the proposed driveway for the length of the proposed development. Conditions with this regard have been applied.</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 depot 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:

The proposed depot has been considered in accordance with the relevant provisions of the NSW Environmental Planning and Assessment Act 1979 and on balance is suitable to be determined by way of approval.

The development is not considered to result in a significant impact to the amenity or uses of the surrounding sites. Appropriate conditions have been applied.

Adequate documentation has been provided by the applicant, and a full assessment has been undertaken based on all relevant issues. The proposal is considered suitable and appropriate for the subject site, given its permissibility under the sites zoning.

Community views were considered as part of the assessment in accordance with Council's Development Control Plan and the NSW Environmental Planning and Assessment Act 1979 requirements for public notification.

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.

4 [PR-PC] Development Application DA12/0215.01 for an Amendment to Development Consent DA12/0215 for Change of Use to Daytime Respite Care Centre with Associated Signage, Car Parking and Landscaping at Lot 23 DP 8100 No. 9 Boyd Street, Tweed Heads

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 section 4.55 modification to DA12/0215.

Development Application DA12/0215 was granted consent on 29 October 2012 for a change of use of a former residence to a daytime respite care centre with associated signage, car parking and landscaping.

The subject Section 4.55 modification proposes the following amendments to DA12/0215:

- amend the hours of operation (condition 75), including the provision for a maximum 12 “events”* a year outside of the normal hours of operation (as proposed) throughout the year; and
- amend the current onsite parking arrangement (condition 9); to retain the approved six onsite parking spaces, however restrict these spaces to staff only.

*An event as referred to within the applicant’s Statement of Environmental Effects includes events within the broader community that increases needs for a short while. An example of an “event” would be weather “cold snaps”, or an event such as the recent Commonwealth Games (in the area) and the like.

St Vincent de Paul is seeking the flexibility to extend services a maximum of 12 times a year during the above hours when there are “spikes” in demand, but on a limited basis, not hold actual “events” on the premises.

The site is legally referred to as Lot 23 DP 8100 and more commonly referred to as 9 Boyd Street, Tweed Heads. The site has an approximate land area of 758.78m² and is zoned R3 Medium Density Residential under the Tweed City Centre LEP 2012.

A complaint was received by Councils Compliance Unit in March 2018 in relation to clients accessing the site outside of the approved hours of operation.

A further review of review of Councils records has revealed that since the approval of the facility in 2012, two complaints have been registered into Councils system, in July 2017 and March 2018.

Notwithstanding this, included within a submission for the subject application was a copy of correspondence (numerous communications) between an adjoining land owner and the facilities management which dates back as early as January 2017.

The subject modification has been lodged in response to advice provided to the applicant by Council.

The applicant has advised that the proposed modifications are entirely driven by a desire to minimise impacts on adjoining residents from the existing approved facility.

The application has been assessed on its merits and is recommended for approval with a **12 month trial period** for the change in hours of operation only. The proposed amendment to onsite parking **has not been supported**; this is discussed further within this report.

A trial period of 12 months is recommended as this allows sufficient time to trial the proposed hours and gather data; and allow the applicant time to prepare and lodge a new modification application (if required).

Any proposal to permanently amend the hours of operation is to be the subject of a further modification application which will provide Council the opportunity to further assess any impacts of the proposal following the trial period.

RECOMMENDATION:

That Development Application DA12/0215.01 for an amendment to Development Consent DA12/0215 for change of use to daytime respite care centre with associated signage, car parking and landscaping at Lot 23 DP 8100; No. 9 Boyd Street, Tweed Heads be approved for a 12 month trial period subject to the following conditions:

1. Delete condition 75 and replace with Condition 75A which reads as follows:

75A. Hours of operation of the business for a maximum period of 12 months from the date of this amended consent are restricted to the following hours:

- * Mondays to Fridays: 8am to 5pm (staff access); 8.00am to 4.00pm (client access).**
- * Weekends and Public Holidays: 8am to 5pm (staff access); 9.00am to 2.00pm (client access); and**

- * **Maximum 12 'events' per year permitted to operate anytime between 8am and 5.30pm, or between 8am and 7.00pm during Daylight Savings Time.**

Following the lapse of the 12 month period the hours of operation shall be restricted to:

- * **Mondays to Fridays: 9am to 5pm (staff access); 10am to 4pm (client access)**
- * **Weekends and Public Holidays: 9:30am to 2:30pm (staff access); 10am to 2pm (client access).**

REPORT:

Applicant: Wakefield Planning
Owner: The Trustees of The Society of St Vincent De Paul (NSW)
Location: Lot 23 DP 8100 No. 9 Boyd Street, Tweed Heads
Zoning: R3 Medium Density Residential
Cost: N/A

Background:

The facility:

The facility is operated by a not-for-profit organisation and monitored by a Diocesan Advisory Board. The facility is exclusively operated to assist physical, social and cultural development and welfare of homeless persons or persons at risk of homelessness.

The existing facility responds to a recognised demand for such a facility within the Tweed Shire.

The existing development operates under a best practice model, with the operation of the facility monitored by a Diocesan Advisory Board. The Statement of Environmental Effects advises that a key aspect of the best practice model is the adaption of operations based on experience. This includes opening hours and other aspects of site management including parking management.

Two full time staff are employed to manage the day to day operation of the facility, and they are specifically trained in the needs of the homeless, similar to an outreach worker. A team of trained volunteers assist the paid staff. These are drawn from the St Vincent de Paul Advisory Board, St Joseph's Youth Services, Friends in the Park; You Have a Friend and Our Lady of the Rosary Lunch with Friends. These groups contribute food donations, life style skills and human capital which assist the homeless.

Development consent DA12/0215:

DA12/0215 sought consent to establish the subject site as a daytime respite care centre. The proposal included demolition and alterations to an existing dwelling in order to facilitate the change of use.

The existing floor plan was modified to allow for functional operational areas and office space. Car parking, landscaping and business identification signage was included in the application.

The development included:

- Operation of a daytime respite care centre from an existing dwelling to cater predominantly for the support needs of homeless people or people at risk of homelessness, including youths over 16 years of age;
- A safe meeting place, access to advice and the ability to socialise;
- Supervision/operation of the facility by two full-time trained staff with a team of trained volunteers to assist paid staff;
- Availability of meals, storage, laundry and bathroom facilities with access to computer, internet and telephone;

- Operation hours - Mondays to Fridays: 9am to 5pm (staff access); 10am to 4pm (client access) with Weekends and Public Holidays: 9:30am to 2:30pm (staff access); 10am to 2pm (client access)
- Onsite parking for staff and clients, providing 6 parking spaces in accordance with Section A2 – Site Access and Parking Code of the Tweed DCP.

The proposed modification:

Council is in receipt of a Section 4.55(2) Application to amend the development consent for an existing daytime respite centre, commonly referred to as “Fred’s Place” at 9 Boyd Street Tweed Heads. The application seeks consent to amend the approved hours of operation and onsite parking arrangements.

The subject Section 4.55 modification proposes the following amendments to DA12/0215:

- amend the hours of operation (condition 75), including the provision for a maximum 12 “events”* a year outside of the normal hours of operation (as proposed) throughout the year; and
- amend the current onsite parking arrangement (condition 9); to retain the approved six onsite parking spaces, however restrict these spaces to staff only.

*An event as referred to within the applicant’s Statement of Environmental Effects includes events within the broader community that increases needs for a short while. An example of an “event” would be weather “cold snaps”, or an event such as the recent Commonwealth Games (in the area) and the like.

St Vincent de Paul is seeking the flexibility to extend services a maximum of 12 times a year during the above hours when there are “spikes” in demand, but on a limited basis, not hold actual “events” on the premises.

No residential accommodation is proposed as part of this application.

The subject site is zoned R3 Medium Density Residential and is surrounded predominately by Medium Density residential development. Notwithstanding this, the adjoining site to the north includes a butcher with upper floor residential accommodation and the site opposite is comprised of a masonic hall and lodge.

The applicant has advised that the proposed modifications are entirely driven by a desire to minimise impacts on adjoining residents from the existing approved facility.

Hours of operation:

The following hours of operation were applied under condition 75 of development consent DA12/0215:

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

- * *Mondays to Fridays: 9am to 5pm (staff access); 10am to 4pm (client access)*
- * *Weekends and Public Holidays: 9:30am to 2:30pm (staff access); 10am to 2pm (client access).*

The hours proposed under the Subject 4.55 modification are:

- Mondays to Fridays: 8am to 5pm (staff access); 8.00am to 4.00pm (client access).
 - *This results in an increase in staff access by 1 hour.
The modification seeks consent for staff access to be permitted 1 hour earlier than the current approved hours, see above)*
 - *This results in an increase in client access by 2 hours.
The modification seeks consent for client access to be permitted 2 hours earlier than the current approved hours, see above)*
- Weekends and Public Holidays: 8am to 5pm (staff access); 9.00am to 2.00pm (client access): and
 - *This results in an increase in staff access by 4 hours.
The modification seeks consent for staff access to be permitted 1.5 hours earlier than the current approved hours and 2.5 hours later than the current approved hours, see above)*
 - *This results in an increase in client access by 1 hour.
The modification seeks consent for client access to be permitted 1 hour earlier than the current approved hours, see above)*
- Maximum 12 'events*' per year permitted to operate anytime between 8am and 5.30pm, or between 8am and 7.00pm during Daylight Savings Time.

*An event as referred to within the applicant's Statement of Environmental Effects includes events within the broader community that increases needs for a short while. An example of an "event" would be weather "cold snaps", or an event such as the recent Commonwealth Games (in the area) and the like.

St Vincent de Paul is seeking the flexibility to extend services a maximum of 12 times a year during the above hours when there are "spikes" in demand, but on a limited basis, not hold actual "events" on the premises.

Onsite parking:

The subject application seeks consent to modify condition 9 of development consent DA12/0215, which currently states:

9. *The developer shall provide six (6) parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. The disabled car park shall be designed in accordance with Australian Standard AS2890.6.*

The developer shall provide two (2) bicycle parks in accordance with Australian Standard AS2890.3.

Full design detail of the proposed parking and manoeuvring 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.

The application seeks consent to retain the six onsite parking spaces, for staff, volunteers and sessional service providers only. No onsite parking is to be provided for clients.

The application was considered by the following units:

- Development Assessment;
- Environmental Health; and
- Traffic Engineering

Council's Environmental Health unit raised no objections subject to appropriate conditions being applied including a **12 month trial period**.

Council's Traffic Engineering unit, raised concerns in relation to the proposed amendment to onsite parking arrangements. Accordingly, this component of the application has not been supported for approval.

The application was referred to the Tweed Byron Local Area Command for comment (Tweed Heads Police Station); a verbal response advised that the command raised no concerns in relation to the subject application.

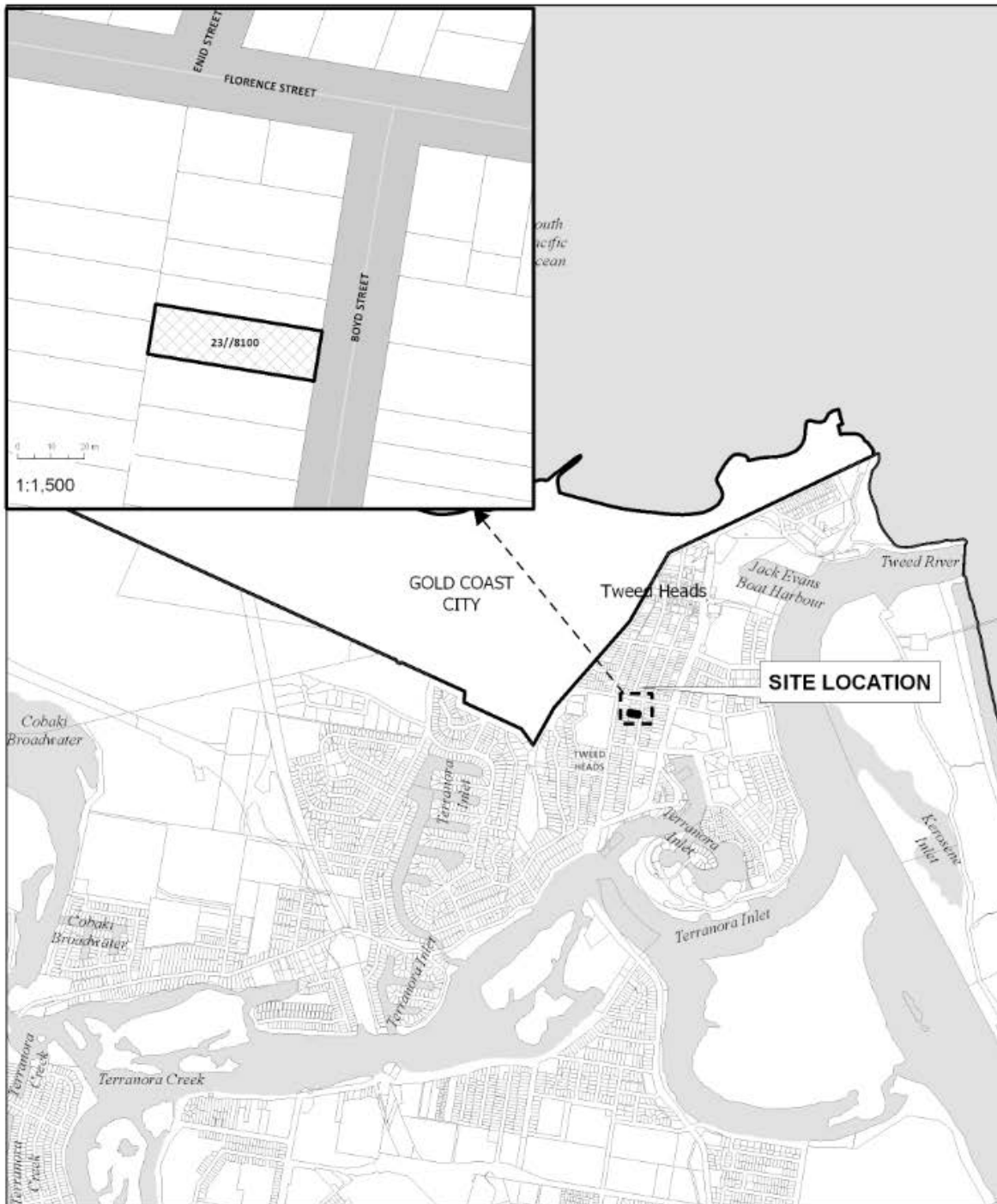
The subject application was notified for a period of 14 days from Wednesday 23 May 2018 to Wednesday 6 June 2018. During this time seven submissions were received.

Concerns raised within the submissions (discussed further within this report) relate to a range of issues including anti-social behaviour, accessing the site outside of the approved hours, noise, impacts of the existing facility on property values, parking and amenity. Many activities appear to be external to the premise (and should be regulated by respective agencies).

The application is being reported to Council due to the sensitive nature of the proposal and the site's history. Strong objections received during the exhibition period maintained that the proposal would result in a negative impact upon the community.

It is considered that the application is suitable for approval, subject to conditions for a 12 month trial period.

SITE DIAGRAM:



Site Plan

Lot 23 DP 8100
9 Boyd Street TWEED HEADS

0 0.3 0.6 Km
1:25,000



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GDA  Cadastre: 17/07/2018
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Coordinate System - MGA Zone 56
Datum - GDA94

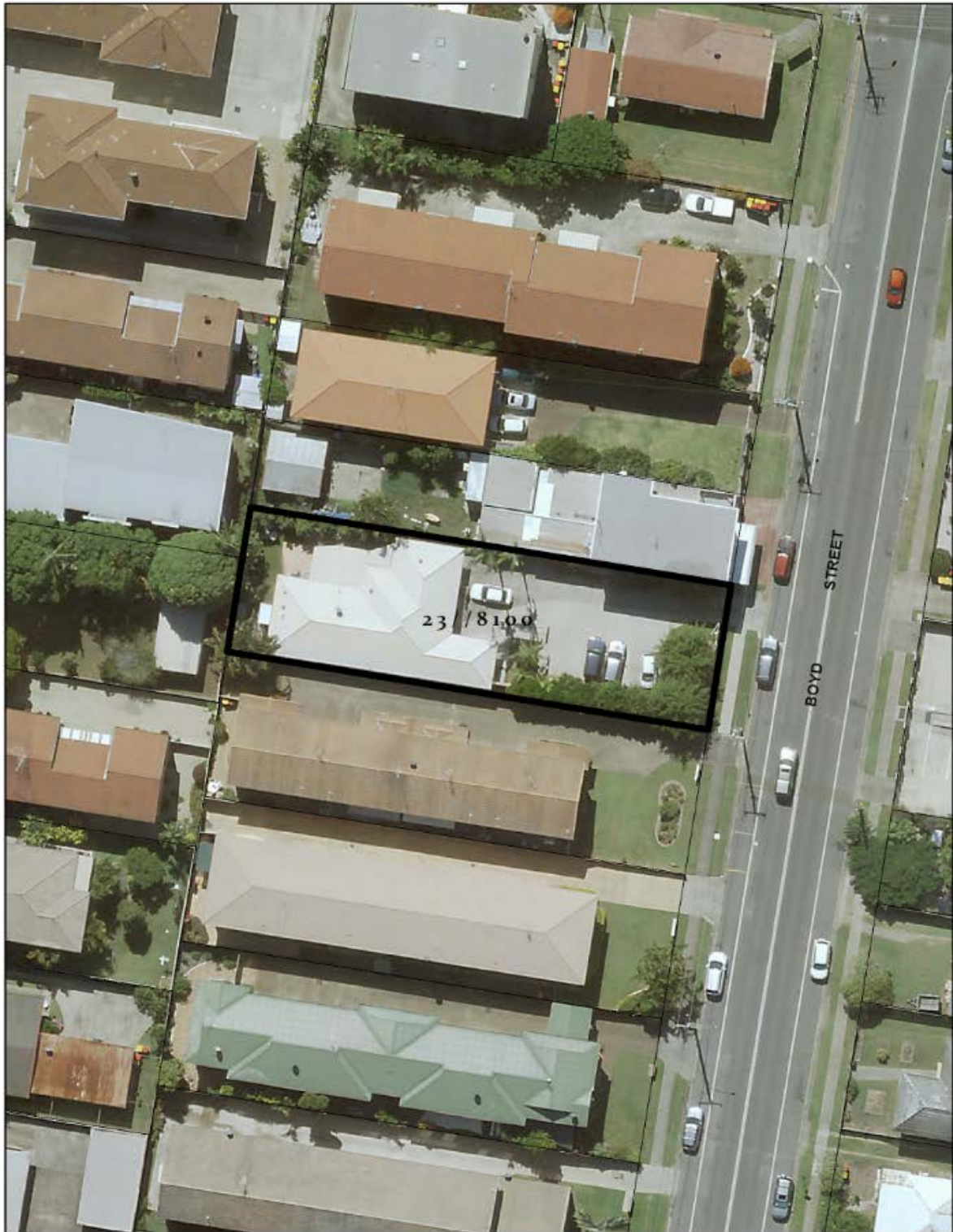
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COPY ONLY - NOT CERTIFIED

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Tweed Heads NSW 2484
PO Box 810
Mullumbidgee NSW 2494
T: (02) 6670 2400 / 1300 292 372
F: (02) 6670 2882
W: www.tweed.nsw.gov.au
E: planning@tweed.nsw.gov.au



Date Printed: 17 July, 2018

AERIAL PLAN:



1:500 A4 Portrait
 0 5 10m
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GDA Map Information: Universal Transverse Mercator
 National Grid - Geoid Datum of Australia 1996
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TWEED SHIRE COUNCIL
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Aerial Photography April 2018




**Lot 23 DP 8100
 9 Boyd Street TWEED HEADS**


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 Author: G. Scott - GIS Date Printed: 17 July 2018

ZONING PLAN:



-  Subject Land
-  B3 Commercial Core
-  R3 Medium Density Residential

1:750 @ A4 Portrait
 0 6.5 10 m
 DO NOT SCALE
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 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

**Site Plan - Local Environmental Plan
 LEP 2012 - City Centre**
 Lot 23 DP 8100
 9 Boyd Street TWEED HEADS

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Date of Review: 17 July 2019

Considerations under Section 4.55(2) of the Environmental Planning and Assessment Act 1979:

2 Other Modifications

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and***

Comment:

Development Application DA12/0215 granted consent for a change of use to daytime respite care centre with associated signage, car parking and landscaping.

The proposal included demolition and alterations to an existing dwelling in order to facilitate the change of use.

The existing floor plan was modified to allow for functional operational areas and office space. Car parking, landscaping and business identification signage was included in the application.

The development included:

- Operation of a daytime respite care centre from an existing dwelling to cater predominantly for the support needs of homeless people or people at risk of homelessness, including youths over 16 years of age;
- A safe meeting place, access to advice and the ability to socialise;
- Supervision/operation of the facility by two full-time trained staff with a team of trained volunteers to assist paid staff;
- Availability of meals, storage, laundry and bathroom facilities with access to computer, internet and telephone;
- Operation hours - Mondays to Fridays: 9am to 5pm (staff access); 10am to 4pm (client access) with Weekends and Public Holidays: 9:30am to 2:30pm (staff access); 10am to 2pm (client access)
- Onsite parking for staff and clients, providing 6 parking spaces in accordance with Section A2 – Site Access and Parking Code of the Tweed DCP.

The subject Section 4.55 Modification seeks consent to:

- amend the hours of operation (condition 75), including the provision for a maximum 12 “events” a year outside of the normal hours of operation (as proposed) throughout the year; and
- amend the current onsite parking arrangement (condition 9); to retain the approved six onsite parking spaces, however restrict these spaces to staff only.

The proposed development is considered to be substantially the same development for the following reasons:

- The development remains as previously granted consent;
- The proposed amendment does not raise any significant environmental issues;
- The appearance of the buildings will remain the same;

- The development includes additional hours of operation for staff and client access in an effort to minimise impacts on surrounding properties; any potential impacts on amenity are considered to be mitigated by the recommended conditions.

Additionally, under the assessment of DA12/0215 the following was noted:

“The proposed change of use to daytime respite care centre with associated signage, car parking and landscaping is generally consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered that the site is suitable for the development”.

And

“The proposed development, generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan, is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general”.

The subject application is still considered consistent with the above.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and**

Comment:

Not applicable to the subject application.

- (c) it has notified the application in accordance with:**
 - (i) the regulations, if the regulations so require, or**
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**

Comment:

The subject application was notified in accordance with Section A11 Public Notification of Development Proposals of the Tweed Development Control Plan 2008.

- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.**

Comment:

The subject application was notified for a period of 14 days from Wednesday 23 May 2018 to Wednesday 6 June 2018. During this time seven submissions were received.

The issues raised in the submissions have been summarised in the below table.

Objection
<p>Disassociation with the surrounds: <i>Lack of regard to anything that happens "outside" the doors of the facility, e.g:</i> <i>Fights;</i> <i>Screaming/yelling;</i> <i>Long term parking in 2 hours zones;</i> <i>Drug deals;</i> <i>Litter (to adjoining sites and public area);</i> <i>Public urination</i> <i>Clients sleeping on neighbouring properties</i></p>
<p>Loss of amenity: <i>Noise from clients in the street from 8.00am, including dogs barking, yelling obscenities</i> <i>Litter (cans, bottles, cigarette butts)</i></p>
<p>Security: <i>Lack of security to deal with traffic flow of clients</i></p>
<p>Loitering outside of hours: <i>Clients loiter before (from 6.30am) and after the centres hours (using offensive language, fighting etc) making nearby residents feel unsafe and causing amenity issues</i> <i>Clients loiter throughout the day on nearby properties and affect business operations</i></p>
<p>Trespassing: <i>Clients accessing the site via 11 Boyd Street (private property) and causing damage</i> <i>Clients loiter throughout the day on nearby properties and affect business operations</i> <i>Clients sleeping on neighbouring properties</i></p>
<p>Events: <i>Any time events are held they result in violence and impacts on amenity.</i> <i>The site/area is zoned residential and any events should not be supported as there are enough issues with the regular operations of the facility.</i></p>
<p>Parking: <i>Many clients parking their vehicles and reside in them for days at a time in the immediate areas surrounding the site.</i></p>
<p>Safety of surrounding residents: <i>The clientele are generally affected by mental health problems and can be unstable and quiet volatile. There needs to be stricter management (control language, animals, litter etc)</i></p>
<p>Increased traffic: <i>Illegal parking,</i> <i>Illegal u-turns</i> <i>Site vehicles blocking off access to the site</i></p>
<p>Misuse of NSW and QLD Police <i>The local officers regular collect homeless from the area and drop them off at Freds Place in the early hours of the morning.</i></p>

The applicant responded advising the following:

"We would like to acknowledge issues experienced, in particular by the directly adjoining property occupants, and stress the Society's commitment to a proactive approach to continuous improvement. There are frequent meetings, especially with directly adjoining property occupants and the Society is willing to commit to a regular meeting schedule should this be of assistance.

Placing the requested changes within context, we are seeing the overall situation as falling into several main categories. These are:

- *Overall demand for the facility*
- *Management and operational protocols, including complaint protocols, by the facility itself*
- *The need for appropriate integration between all relevant services including St Vincent de Paul, Council, Police, NSW Health, and other service providers to better manage clients, most of whom have complex needs.*

Overall Demand

St Vincent de Paul acknowledge that the demands on the facility have been much higher than originally anticipated, and this as a clear indicator of a worsening homelessness situation on the far North Coast. This area is a "homeless hotspot" on the NSW Coast. The definition of homelessness does not just include people "sleeping rough" but also includes people in insecure accommodation. Some people who are homeless or at risk are in employment, but this does not cover the costs of secure housing.

We also acknowledge that a facility of this type will have some impacts. The site is located in a mixed area, with a variety of non-residential uses so the service is not the sole contributor to issues such as traffic and parking. The aim is to ensure that, insofar as is possible, impacts are at a level that is consistent with the range of land uses within the zone.

Management and Operational Protocols

The Service operates on a continuous improvement model. Where there is a clear need for improved clarity of, and further development of the management and operating protocols, including the complaints protocol, this is undertaken. St Vincent de Paul commits to working with Council and residents to ensure that, as far as is possible, the negative impacts of the operation of the facility, both on-site and off, are minimised to the greatest practicable degree. The response to submissions outlines the "chain of responsibility" for the facility with senior staff heavily involved in the oversight of the facility and in resolving complex issues.

Better Integration of Services

St Vincent de Paul are already working with the Police to ensure that they understand the limits and purpose of the service, and also to seek their assistance in the better management of street behaviour. There is an ongoing need to work with other

organisations who are tasked with and better able to address some of the broader issues, including drug usage and mental health. Council also has a role in policing street parking. St Vincent de Paul are willing to take part in any interagency opportunities to ensure that the integration of services is more effective.

This Application

At the end of the day it need to be acknowledged that this amendment is dealing solely with two distinct issues. The changes proposed are both based on operational experience as being key tools to better manage client impacts. This is part of the Society's continuous improvement model.

Hours

St Vincent de Paul would like to continue at least with the hours as per exhibition, but again are of the view that the ability to start earlier would be of significant advantage in management of issues. This is supported by comments from some of the residents and staff experiences.

Parking

This was extensively reviewed in the response to submissions. There are clear improvements in terms of issues with clients being generally excluded from the parking onsite, and there is ample street parking available to meet the demands of the facility.

In our submission the two changes proposed are both significant elements in improving the overall management and operation of the facility. Accordingly we request the support of Council for these changes. We would be willing to accept a 12 month formal trial period, noting that if the expected improvements are maintained, then we would seek a permanent change to the conditions."

No.	Issue – single mention unless indicated	Response
1	Hours a. Existing hours to be maintained (4) b. Need for certainty with no discretion over hours c. No objection to earlier opening hours as this seems to assist to lessen loitering (2)	The proposal to vary the approved hours is to better address concerns that have been expressed. See other responses to detailed issues. Management of client issues can only occur when the facility is staffed for the broadest time possible during operating day, particularly in the morning. The strong evidence from when opening hours have been earlier is that there is a reduction in loitering and also in anti-social issues. While resident desire for certainty of hours is noted and understood, there is also a benefit when specific issues and problems arise in being able to open in response.
2	Noise issues including: a. Barking and whining of dogs – up to 6-8 on the premises at one time (4) b. Loud music/karaoke (2) c. Yelling/swearing of clients (8) d. Fights (4)	The noise issues are acknowledged. Recently there have been fewer noise issues for several reasons. Firstly, clients are now discouraged from parking on-site. This minimizes the noise from dogs, which often react to other dogs, and also minimizes the use of car stereos. This approach has been proven to significantly reduce issues. In addition, there are regular staff patrols of both the yard area and the immediate street area to assist to manage behaviours. This includes where clients may be in dispute and staff will actively intervene to de-escalate situations that might arise. It is noted that some client do have mental health issues, and at times this leads to behaviours that need to be managed. Staff have specific training in management of clients, including the types of issues that regularly present. It needs to be noted that the service deals with clients with complex issues. It is for people who have “fallen out” of society. Sometimes behaviours do become antisocial. Although there are mentions, in particular, of yelling/swearing by clients, and it is acknowledged that this does happen, it is not as if this is a regular daily occurrence. Repeated behavioural issues may lead to exclusion from the service for a period of time, noting that exclusion is a last resort, as it often generates more severe behavioural issues.
3	Neighbouring and public property issues – General amenity and neighbourhood “tone”: a. People jumping fence between No. 9 and 11 causing damage.	A number of these issues have not been raised with management of the facility, and a number appear to be historical incidents, not current problems. For example the dog faeces issues has not been reported to management, nor has urination or bottles thrown into yards or issues with needles. The issue with toasted sandwiches appears to be a “one off”. The

	<ul style="list-style-type: none"> b. Urinating on the fence etc (2) c. Smoking, second hand smoke and throwing butts over fence (3) d. Toasted sandwiches thrown over fence e. Parking over neighbouring driveway f. Dog faeces on front lawn/street lawn (2) g. Alcohol bottles thrown into yard (2) h. People loitering in the street and awaiting opening from approx. 6-6:30 am. i. People sleeping in doorstep of adjoining property (shop) j. Fights and other antisocial behavior interfering with trade -dependent on "window" when FP not open. k. Use of window as "mirror" l. Needles in the street/on the footpath m. Spitting in the street n. Abandoned shopping trolleys 	<p>facility provides toilets and early access would reduce any incidents of urination. Needle containers will be sourced and made available on the premises. It should be noted that the site is drug and alcohol free, and people with high levels of intoxication are not permitted on site. People affected by drugs are monitored for their own safety.</p> <p>The adjoining premises does have an awning which provides shelter. The regular staff patrols encourage people not to stay in the street. In terms of comments regarding people sleeping nearby and in adjoining properties, there is regular contact with crisis accommodation providers to assist to address this issue.</p> <p>It is noted that there is an ongoing client education program about respecting neighbours. This includes behaviours on and off the premises. People are encouraged to look after dogs and respect public spaces.</p> <p>The service is no smoking inside the building, and in the courtyard. It is noted that clients have tended to smoke on the perimeter. A smoking area will be allocated, and marked, adjoining the solid brick wall on one side of the premises which is remote from other boundaries and windows. This should assist to manage this issue.</p> <p>The issue of people jumping the fence was resolved some time ago, by increasing the height of the side fence in discussion with the neighbours.</p> <p>Issues in the street are essentially are a police issue. A key management approach is regular "street patrols" which can assist. This is in addition to working with the Police and Council in areas which are their responsibility. Regular contact is, and will continue to be made with the Police, and improved contact with Council staff will also occur.</p> <p>The adjoining business commenced operations after the facility opened. Observations suggest that the business operates at a fairly low level.</p>
4	<p>Other social impacts</p> <ul style="list-style-type: none"> a. Need to accompany children to school/limit use of footpath by children; general unease due to danger and aggression from facility clients (3) b. Problems were foreseeable c. Operator's responsibility to address (Rylands v Fletcher) 	<p>This is part of the "street management" issue. St Vincent de Paul accept their responsibility as operators. The area is a mixed residential area with a number of non-residential uses. St Vincent de Paul operates a continuous improvement model, with complaints reviewed and operational changes made where possible/necessary to improve management of issues.</p>
	<ul style="list-style-type: none"> d. Need to better manage mental health issues with clients e. Homeless people entering and at times setting up on adjoining/nearby properties 	<p>Based on experiences elsewhere, the issues at FP are not untypical of other facilities. Those facilities generally have low levels of complaint.</p> <p>There have been no recorded instances of children being accosted outside the premises. Some clients do look a bit "rough". One aim with the earlier opening hours is to get clients into the premises prior to school hours.</p> <p>Mental health is both a trigger for and a consequence of homelessness. There are clear protocols around supporting people with mental health issues, with people referred to appropriate organisations.</p>
5	<p>Breaches of current approved hours</p> <ul style="list-style-type: none"> a. Clients from 8 am not 10 am. Notes also "first wave" of clients usually through by 10 am; clients arriving later often stay longer. b. Incorrect advice on the phone message regarding hours c. 	<p>It is acknowledged that hours have been breached. This is why the DA amendment has been lodged. Several submitters have mentioned that extended hours have gone some way to addressing loitering and the associated negative issues. The experience of staff is that earlier opening significantly reduces complaints.</p>
6	<p>Objection to "events" being held:</p> <ul style="list-style-type: none"> a. Problem with existing "events" 	<p>There is a misunderstanding here as to what is happening with "events". These are not events held at FP, but refers to issues in the broader community that increase needs for a short while. Examples include the Commonwealth Games, weather "cold snaps" and the like. St Vincent de Paul is seeking the flexibility to extend services when there are "spikes" in demand, but on a limited basis.</p>
7	<p>Traffic and Parking (3):</p> <ul style="list-style-type: none"> a. Increased traffic and danger – cars from 8am; b. "Convoy" arrivals. Unexpected "U" turns from south-bound traffic especially when parking area is full. c. Existing pressure on on-street parking – including issues for Masonic Lodge and existing shop. d. Concern over parking reduction putting more pressure on street parking. At least 50% of clients arriving by car. e. Workers not parking appropriately. f. Vans parking in the street and running power cords (including permanently occupied vans) 	<p>A parking review has been conducted, based on Google Earth imagery. This is appended at Appendix B. A specific parking study is also being undertaken. This will be submitted shortly.</p> <p>The parking reviews do not indicate any systematic shortfall in parking, nor excessive volumes of traffic, noting the mixed character of the street. It is noted that there may have been inappropriate driver behaviour at times however staff have not observed any systemic issues, including parking across driveways. The instance of Jim's Mowing was unrelated to the service as they were working at other premises.</p> <p>It should be noted that there are a number of uses which generate parking in the vicinity including the Masonic Lodge, the commercial premises to the north and the nearby day surgery. It should not be assumed that all parking or driver issues are related to the service. At least 10 spaces are available nearly all the time, within 40m of the service. People will</p>

	<p>g. Staff should all park remotely (Council carpark) and use all on-site parking for clients. Parking demand much higher than forecast. Far exceed 15 trips/day.</p> <p>h. Diversion of, and inconvenience for pedestrians</p>	<p>typically walk up to 130m in a regional town location. This means that in practice many more spaces are available within close walking distance.</p> <p>A clear benefit of not having clients park on-site is a significant reduction in on-site client issues. One space is reserved for people with disabilities, and charging of vehicles (usually where people are sleeping in them) is limited to one hour at a time, and one space only. Power cords are not permitted to be run to vehicles in the street.</p>
8	<p>Misuse of centre by other bodies/groups including police</p> <p>a. Police dropping off homeless people to the centre – early hours</p> <p>b. Tweed Mall Centro apparently have informal arrangement with police</p> <p>c. Commonwealth Games led to more drop-offs including people from QLD by QLD police</p> <p>d. Use by grey nomads and backpackers, not genuine homeless people.</p>	<p>a. b. and c. Police have been contacted previously and this will be monitored on an ongoing basis. Police have agreed not to drop people off at FP. Discussions have also occurred with QLD police.</p> <p>d. The issue of who is homeless is complex. St Vincent de Paul have no evidence of people other than entitled client groups making use of the premises. This includes some people who do live in houses, but have no access to (for example) washing machines. There is regular discussion with police regarding the situation. Drop-offs are not encouraged. Grey nomads, at times, do also have needs similar to homeless people and many of these people would technically meet the homeless definition. The place is not one where people would just “hang out”.</p>
9	<p>Concern over motives:</p> <p>a. Motive to extend hours driven by funding not need.</p>	<p>a. St Vincent de Paul is a not-for-profit organization. There is no financial incentive to increase hours. Instead, it comes at an additional staffing cost. Extended hours have been demonstrated to reduce loitering.</p>
10	<p>Existing management failings:</p> <p>a. Complaints process ineffective and not local</p> <p>b. History of numerous complaints</p> <p>c. Frequent change of managers</p> <p>d. Concern about staff effectiveness/qualifications</p> <p>e. Lack of effective oversight by Diocesan Advisory Board – and clarification sought as to what this body is.</p> <p>f. Time limits are and would be ineffective</p> <p>g. Drug and alcohol use not effectively controlled. Use in the street before entering premises; Drug and alcohol trading/dealing in the street. Concentration of users. (3)</p> <p>h. No security cameras despite promises.</p> <p>i. St V de P must take more responsibility</p>	<p>The service is run by the Service Manager. There has only been one change in this position since opening the service. When they are on leave, an acting manager is appointed from the existing staff. The Service Manager is the first point of contact for any complaints. A contact phone number is available and will be re-supplied to nearby residents. The Service Manager is always happy to meet with residents to discuss any issues.</p> <p>As per best practice, complaints are handled initially at the lowest level of the organization to ensure full local input. The Service Manger reports to the Special Works Manager, who is based in Lismore. The Special Works Manager, Linda Williams, is also available to meet with residents if required, and if residents have any concerns about the local complaint handling process. Ms Williams has overall responsibility for the service and reports to the Executive Officer of the Diocese, which covers from Tweed Heads to Port Macquarie. The Executive Officer reports to the Executive Director in Sydney who has state-wide responsibility.</p>
		<p>All staff are experienced and qualified and have police and working with children checks. Professional development is ongoing and regular planning and review meetings occur with senior management.</p> <p>Time limits within the site are enforced. Over-stay in the street parking is a Council issue as they administer the 2 hr parking zones.</p> <p>There is no evidence available to St Vincent de Paul of drug dealing or systemic drug taking either within the premises or in the adjoining street. Some clients may consume items prior to entering the site noting the policy of excluding highly intoxicated clients. Issues in the street are a Police matter.</p> <p>CCTV has been installed (6 cameras) however there are complex legal issues associated with coverage of a public street. CCTV is monitored continuously during operating hours.</p>
11	<p>Contrary to the objectives of the zone, in that does not support local residents</p>	<p>Many of the clients have been or are local residents. Homelessness is not just living on the street, but includes local residents in insecure housing (couch surfing, relying on friends, inadequate accommodation etc). We accept that a residential environment places higher requirements on the management of the facility than, say, in an industrial zone.</p>
12	<p>Lower property values – independent valuation provided</p>	<p>Proven, effective management is critical in ensuring that amenity impacts are minimized and therefore impacts on property are also minimized.</p>
13	<p>Request that the matter be considered by the elected representatives</p>	<p>This would be expected, given the level of submissions.</p>

Based on the nature of the submissions, the applicants response and a merit assessment of the issues raised the application is recommended to be granted approval for a 12 month trial period.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified

Section 4.15(1) (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 draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft 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 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and**
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,**

Comment:

The original application was assess in accordance with the Tweed Local Environmental Plan 2000. The development was defined as a respite care centre.

respite care centre:

"land used for the provision of respite care for aged persons or people who are physically, mentally or socially disadvantaged."

The site was zoned 2(b) Medium Density Residential under the TLEP 2000. The primary objective of the zone was:

- *to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.*

The secondary objectives included:

- *to allow for non-residential development which supports the residential use of the locality.*
- *to allow for tourist accommodation that is compatible with the character of the surrounding locality.*
- *to discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.*

The development was permissible with consent in the 2(b) zone, with the assessment report advising the following:

“The subject site is located within the 2(b) Medium Density Residential zone. The primary objective of that zone and consistency of the proposal with that objective has been outlined above.

Secondary objectives allow for non-residential development that supports the residential use of the locality and tourist accommodation that is compatible with the character of the surrounding locality. The under-utilisation of land for residential purposes is discouraged.

It is submitted that the proposal is a form of non-residential development within an established residential area that is suitable in scale, form and purpose. Services provided by the respite daytime care centre will approximate those of a residential use (eg. meals, washing, mail collection, recreation, use of bathroom facilities etc.).

The proposal does not increase the existing density of the site and the alterations to facilitate the change of use are not considered to have an adverse effect on the residential character and amenity of the area.”

The subject site is now mapped as R3 Medium Density Residential under the Tweed City Centre LEP 2012.

The development is defined as a *respite day care centre* under the Tweed City Centre LEP 2012 and is permissible with Council consent on land zoned R3.

A *respite day care centre* means a building or place that is used for the care of seniors or people who have a disability and that does not provide overnight accommodation for people other than those related to the owner or operator of the centre.

The objectives of the R3 zone are:

- *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 objectives are in keeping with those under the Tweed LEP 2000. The subject modification only relates to the approved car parking and hours of operation (as approved under DA12/0215). As consistent with the assessment of DA12/0215 the subject land is considered to be suitable for the proposed development.

The subject application makes no amendments to the nature of the approved facility.

Additionally, as there are no physical changes to the proposed development no further consideration of specific clauses under the Tweed City Centre LEP 2012 are required the subject modification.

Applicable DCPs as considered under the assessment of DA12/0215 were:

Section A2 – Site Access and Parking Code
Section A3 – Development of Flood Liable Land
Section A4 – Advertising Signs Code
Section A11 - Public Notification of Development Proposals
B2 – Tweed Heads
Tweed Heads Master Plan
Tweed City Centre Draft DCP 2011

The proposed modification includes a proposed amendment to the approved onsite parking. Accordingly, consideration of DCP Section A2 is required.

Section A2 – Site Access and Parking Code:

Assessment comments under DA12/0215:

“DCP A2 does not provide parking rates for respite centres. The most suitable rate is that of 'office' which specifies a rate of 1 parking space per 40m² (staff parking inclusive of customer parking). The existing dwelling has an area of approximately 130m² (excluding the garage area) which generates a requirement for 3.25 (4) spaces. The proposal provides six spaces inclusive of disabled parking requirements. A condition of development consent regulates the provision of disabled access/parking in accordance with Australian Standards.

A minimum of two bicycle parking spaces are to be supplied to the site”.

Accordingly, the following condition was applied:

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. The developer shall provide six (6) parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. The disabled car park shall be designed in accordance with Australian Standard AS2890.6.

The developer shall provide two (2) bicycle parks in accordance with Australian Standard AS2890.3.

Full design detail of the proposed parking and manoeuvring 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.

The application seeks consent to retain the six onsite parking spaces, for staff, volunteers and sessional service providers only. No onsite parking is to be provided for clients.

The SEE advises that *no client parking is now proposed due to issues with client congregation onsite*. It further advises that *clients generally arrive by bus or foot car drivers would park elsewhere in the vicinity, including in the street outside of the development*.

The applicant has submitted a parking review and study, the summary has been included below.

Summary:

APPENDIX B

Parking Review – 9 Boyd St, Tweed Heads

Google Earth Review (Note: A specific parking study is being conducted commencing Tuesday 10 July, and the results will be forwarded to Council early next week)

Parking occupied within 40m of the premises (notional spaces available 24 Spaces)

	Date	Day of Week	On-Site parking used	Spaces Occupied	Spaces Available (40m) – 24
1	22 July 2017	Saturday	N	2	22
2	19 July 2017	Friday	Y	8	16
3	3 July 2017	Thursday	Y	10	14
4	15 May 2017	Monday	Y	11	13
5	4 February 2017	Saturday	N	5	19
6	26 September 2016	Monday	Y	10	14
7	4 September 2016	Sunday	N	4	20
8	10 August 2016	Wednesday	N	10	14
9	2 July 2016	Saturday	N	5	19
10	16 May 2016	Monday	N	7	17
11	25 March 2016	Friday	Y	6	18
12	24 March 2016	Thursday	Y	3	21
13	29 January 2016	Friday	Y	3	21
14	20 November 2015	Friday	Y	9	15
15	13 July 2015	Monday	Y	5	19
16	2 June 2015	Tuesday	Y	6	18
17	24 November 2014	Monday	Y	5	19
18	23 November 2014	Sunday	N	6	18
19	16 September 2014	Tuesday	Y	6	18
20	23 July 2014	Tuesday	Y	2	22
21	4 July 2014	Friday	Y	9	15
22	6 May 2014	Tuesday	Y	8	16
23	4 March 2014	Tuesday	Y	14	10
24	25 February 2014	Tuesday	Y	17	7
25	8 November 2013	Friday	Y	13	11

Notes:

1. The weekdays where on-site spaces are not occupied would likely be times outside operating hours.
2. Parking is counted on both sides of the street. There is parking regularly associated with the Masonic Lodge. Also, a the same vehicle is frequently observed parked either adjoining or near to the commercial premises to the north.
3. Occupancy of the on-site parking area is generally fairly full.
4. When operating: Less than 10 spaces – 4%; 10-15 spaces 32%; 16-22 spaces – 44%.
5. Saturday/Sunday typically have 18-22 spaces available. This constitutes 20% of the sample.

In accordance with Section A2 the following rates currently apply:

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (class)	Delivery/ Service Vehicle parking	Resident Parking	Staff parking	Customer car parking
G5	Respite day care centres			Residents: 1/7 beds (1). Visitors: 1/60 beds (3)	1 ambulance SRV + truck parking HRV	1/6 bed	0.5/staff	

Whilst the DCP includes rates, there are no beds within the facility (nor are any proposed).

The SEE advises that there are two full time employees and rotational volunteers.

The subject application does not seek consent to intensify the use, as such the existing 6 onsite parking spaces are satisfactory.

Notwithstanding the above, Council is not in support of the proposed removal of onsite parking for clients.

The application was referred to Councils Traffic Engineering Unit who has advised the following:

“The client congregation issues should be managed internally and restricting parking on-site may push the “over stay” issues on to Boyd Street and become a compliance issue for Council. Adequate parking on-site is required to minimise impacts of the development to residents and other business in the vicinity.

For these reasons, the proposal to restrict the six on-site parking spaces to ‘staff only’ is not supported from a traffic engineering perspective as it is contrary to the requirements of A2-Site Access and Parking Code”.

Accordingly, the amendment to condition 9 has not been supported by Council.

Reasons for granting the original consent

Reason 1

The proposed change of use to daytime respite care centre with associated signage, car parking and landscaping is generally consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies.

How the proposed modification continues to satisfy Reason 1 above.

The proposed modification continues to satisfy Reason 1 as detailed above, for the following reasons:

The subject site is now mapped as R3 Medium Density Residential under the Tweed City Centre LEP 2012.

The development is defined as a *respite day care centre* under the Tweed City Centre LEP 2012 and is permissible with Council consent on land zoned R3.

A *respite day care centre* means a building or place that is used for the care of seniors or people who have a disability and that does not provide overnight accommodation for people other than those related to the owner or operator of the centre.

The objectives of the R3 zone are:

- *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 objectives are in keeping with those under the Tweed LEP 2000. The subject modification only relates to the approved car parking and hours of operation (as approved under DA12/0215). As consistent with the assessment of DA12/0215 the subject land is considered to be suitable for the proposed development.

The subject application makes no amendments to the nature of the approved facility.

Additionally, as there are no physical changes to the proposed development no further consideration of specific clauses under the Tweed City Centre LEP 2012 are required the subject modification.

Additionally, as there are no physical changes to the proposed development no further consideration of specific clauses under the Tweed City Centre LEP are required the subject modification.

Applicable DCPs as considered under the assessment of DA14/0582 were:

Section A2 – Site Access and Parking Code
Section A3 – Development of Flood Liable Land
Section A4 – Advertising Signs Code
Section A11 - Public Notification of Development Proposals
B2 – Tweed Heads
Tweed Heads Master Plan
Tweed City Centre Draft DCP 2011

The proposed modification as recommended for approval is for amended hours of operation only (12 month trial). Accordingly, the development is consistent with any original assessment comments in relation to the above controls.

Reason 2

The proposed use responded to a recognised demand for such a facility within the Tweed Shire.

How the proposed modification continues to satisfy Reason 2 above.

The development seeks amended hours of operation to the existing service. There is still a demand for the facility. The proposed amendment seeks to extend the hours that clients are able to access services within the facility. This is intended to reduce impacts on the surrounding properties and enable the facility to provide a service to those in need.

Reason 3

The proposal would not result in adverse cumulative impacts.

How the proposed modification continues to satisfy Reason 3 above.

The amendment seeks consent to extend the hours of operation for facility for both staff and clients. The amendments include:

Hours of operation:

The following hours of operation were applied under condition 75 of development consent DA12/0215:

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

- * *Mondays to Fridays: 9am to 5pm (staff access); 10am to 4pm (client access)*
- * *Weekends and Public Holidays: 9:30am to 2:30pm (staff access); 10am to 2pm (client access).*

The hours proposed under the Subject 4.55 modification are:

- Mondays to Fridays: 8am to 5pm (staff access); 8.00am to 4.00pm (client access).
 - *This results in an increase in staff access by 1 hour. The modification seeks consent for staff access to be permitted 1 hour earlier than the current approved hours, see above)*
 - *This results in an increase in client access by 2 hours. The modification seeks consent for client access to be permitted 2 hours earlier than the current approved hours, see above)*
- Weekends and Public Holidays: 8am to 5pm (staff access); 9.00am to 2.00pm (client access): and
 - *This results in an increase in staff access by 4 hours. The modification seeks consent for staff access to be permitted 1.5 hours earlier than the current approved hours and 2.5 hours later than the current approved hours, see above)*
 - *This results in an increase in client access by 1 hour. The modification seeks consent for client access to be permitted 1 hour earlier than the current approved hours, see above)*
- Maximum 12 'events' per year permitted to operate anytime between 8am and 5.30pm, or between 8am and 7.00pm during Daylight Savings Time.

The proposed hours are still within general business hours. The SEE advises that modifications are entirely driven by a desire to minimise impacts on adjoining residents from the existing approved facility. It is considered that the proposed amendments have the potential to reduce impacts on surrounding properties. Notwithstanding this, a 12 month trial period has been recommended.

(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,*

Comment:

As discussed above, the proposed changes are considered not to create any adverse impact on the natural or built environments or an impact on the social or economic environments in the locality.

(c) *The suitability of the site for the development,*

Comment:

As discussed above, the proposed changes are minor in nature, the development is permissible under the R3 zone, with the site considered suitable for the proposed changes.

As detailed previously, the SEE advises that modifications are entirely driven by a desire to minimise impacts on adjoining residents from the existing approved facility.

(d) *Any submissions made in accordance with this Act or the regulations,*

Comment:

Referrals to other agencies were not required. Accordingly, no public authority comments were received in relation to this application.

The subject application was notified in accordance with Section A11 of the Tweed DCP 2008. Seven submissions were received. These submissions and the applicant's response have been discussed previously within this report.

(e) *The public interest.*

Comment:

The subject application seeks consent to modify the hours of operation and parking arrangements to an existing approved facility. The intention of the subject modification application is to minimise impacts on adjoining residents from the existing approved facility.

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan.

The amended hours of operation are considered to potentially reduce impacts on surrounding land uses as clients are expected to enter the site earlier and not congregate outside the site. Accordingly, this component of the proposed modification application is considered in the interest of the public.

The application has been assessed on its merits and is recommended for approval with a **12 month trial period** for the change in hours of operation only.

A trial period of 12 months is recommended as this allows sufficient time to trial the proposed hours and gather data; and allow the applicant time to prepare and lodge a new modification application (if required).

The proposed amendment to onsite parking is not considered in the public's interest as there is the potential for a flow on effect on neighbouring landuses.

The proposed amendment to onsite parking **has not been supported**.

OPTIONS:

1. Approves the modification application in accordance with the recommended conditions; or
2. Refuses the application for specified reasons.

Council officers recommend Option 1.

CONCLUSION:

The proposed section 4.55 modification has been considered in accordance with the relevant provisions of the NSW Environmental Planning and Assessment Act 1979 and on balance is suitable to be determined by way of approval.

The development is not considered to result in a significant impact to the amenity or uses of the surrounding sites, considering the existing approved use. Appropriate conditions have been applied, in particular a 12 month trial period.

Community views were considered as part of the assessment in accordance with Council's Development Control Plan and the NSW Environmental Planning and Assessment Act 1979 requirements for public notification.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Rural Land Strategy - For Adoption

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider** **Leader**

SUMMARY OF REPORT:

At its meeting of 5 July 2018 Council resolved to defer a determination of the draft Rural Land Strategy (the Strategy), and for a workshop to be held with the Department of Primary Industries (DPI). A Councillor workshop was held with Council on 18 July 2018, and an additional meeting between a DPI representative and Council officers was held on 1 August 2018.

As a result of this meeting minor changes have been made to the draft Strategy which now satisfies DPI concerns raised within their original submission; such that, a formal response from the DPI is attached to this report and states the “proposed changes and acknowledgements are supported” and they go further to “welcome ongoing involvement during the implementation phases”.

Changes to actions in response to the meeting with the DPI representative include opening each action with the word “investigate” to signify the need to complete further reporting as is the existing process when preparing planning proposals for changes to Tweed Local Environmental Plan 2014 (LEP). The wording of Action 61 which refers to the preparation of a rural tourism strategy has “Agri-business” included for consideration.

In response to recent changes to State Environmental Planning Policy (Rural Land) 2008 (Rural Land SEPP) which saw rural land sharing community provisions transferred in from SEPP (Integration & Repeals) 2016, Council resolved on 16 August 2018 to defer consideration of rural land sharing communities until dealt with as part of the implementation phase of the Rural Land Strategy.

In response to these recent developments, several changes are proposed to be consistent with Council’s resolution and changes to the Rural Land SEPP and include changing the wording of Action 94: Rural land sharing communities – local provision, to include opening with the word “investigate” to signify the need to complete further reporting, and updated

wording in Appendix 9 under the heading of Multiple Occupancy and rural land sharing communities (Page 118) to reflect recent changes in legislation.

The draft Strategy proposes 143 actions as part of a balanced approach to the future of rural land consistent with the 9 policy directions previously endorsed by Council, to be implemented on a priority basis.

Implementation of some actions will need to occur simultaneously, for example, any action which supports a diversification or potential for additional rural housing will require an initial supply and demand analysis which would inform any future amendment to LEP through the planning proposal process, and development of guidelines and controls within Tweed Development Control Plan 2008 (DCP), before the LEP amendment can be finalised.

Any future amendments to the LEP and DCP would require further community engagement and public exhibition prior to seeking endorsement from Council; the process is summarised in the report below.

The draft Rural Land Strategy is consistent with the Policy Directions endorsed by the Council in 2016 which seek a balanced approach to the future planning, development and management of rural land, and provides the certainty needed to guide future land-use decisions concerning the Shire's rural lands; it is recommended for adoption.

A detailed response to submissions received during public exhibition, and amendments resulting from internal review, and the recent meeting with DPI are included in the attachments to this report.

RECOMMENDATION:

That:

- 1. The Draft Rural Land Strategy ("Tweed Rural Land Strategy 2036") as attached to this report be adopted;**
- 2. An implementation plan ("Implementation Plan 2018/36") be prepared and reported on annually;**
- 3. Public notice of the Council's decision to adopt the *Tweed Rural Land Strategy 2036* and preparation and annual reporting of the *Implementation Plan 2018/36* is published in the Tweed Link; and**
- 4. A copy of *Tweed Rural Land Strategy 2036* is made available to the Director-General of the Department of Planning and Environment or their delegate for endorsement in accordance with Section 9.1 (Ministerial Direction 1.2) of the *Environmental Planning and Assessment Act 1979*.**

REPORT:

On 3 May 2018 Council resolved to defer the report on adoption of the draft Rural Land Strategy (“the Strategy”) for a workshop with the Combined Tweed Rural Industry Association. A Councillor workshop was held on 15 June 2018.

A subsequent report was presented to the Planning Committee meeting held 5 July 2018 for adoption. Council resolved to defer the report for a workshop with the Department of Primary Industries (DPI).

A Councillor workshop was held with DPI on 18 July 2018, and an additional meeting was convened between DPI and Council officers on 1 August 2018.

This report provides an update on discussion held with DPI and proposes that the attached draft Strategy be adopted.

Amendments relating to meeting with DPI

While many of the issues raised in the DPI submission to the public exhibition of the draft Strategy have already been integrated into the draft Strategy previously reported to Council, several minor amendments were agreed at the recent officer-level meeting. This included the amendment of the wording of some of the actions to reiterate process led outcomes to be pursued as part of the implementation plan.

Details of changes made as a result of the recent meeting with the representative of DPI along with additional comments can be seen in Attachment 4, and are summarised below:

Action	Theme	Proposed changes
11	Subdivision for primary production purposes	wording of the action commences with “Investigate...”
61	Rural Tourism Strategy	wording of the action concludes with the addition of “...including agri-business”
82	Dual Occupancy (detached) on greater than 40ha	Wording of action commences with “Investigate...”, and lot size changed from “greater than 40ha” to ‘equal to or greater than 40ha’
83	Secondary dwellings on properties greater than 10ha	Wording of action commences with “Investigate...”, and lot size changed from “greater than 40ha” to ‘equal to or greater than 10ha’
84	Rural Workers’ dwellings	Wording of action commences with “Investigate...”,

One of the key outcomes from the meeting was that Council will work closely with DPI when developing any guidelines, and during the drafting any proposed changes to the Tweed Local Environmental Plan 2014 (“the LEP”) or Tweed Development Control Plan 2008 (“the DCP”).

In correspondence dated 13 August 2018 (see Attachment 5), the DPI acknowledges and supports the changes made and advises that DPI has no further comments at this time, but looks forward to working with Council during the implementation phase.

Protection of agricultural land is a key policy direction endorsed by Council, which is reinforced across all of the other policy directions, it is the intention of the Strategy to ensure that agricultural land is protected and as such actions and implementation outcomes highlight the need to consider the impact of any development proposal on the productive or potentially productive use of rural land.

Notwithstanding the intention to protect agricultural land and seek to ensure it is used for productive agricultural purposes, the Strategy also supports the protection and enhancement of the natural environment and seeks to provide opportunities for innovation, diversification, and value adding within a landscape that balances a diverse range of landuses without damaging the very attributes which make rural Tweed such a desirable destination.

The crafting of actions proposed within the Strategy seek to ensure that this balanced approach is reflected in implementation outcomes.

The changes proposed in this report seek to clarify the process through which amendments to the LEP or DCP are made. As seen by the example in Figure 1, while an action might propose an amendment to the LEP or DCP, this triggers a series of planning process steps which provide opportunity for further consideration by Council, the community and the Department of Planning and Environment (DPE) prior to being finalised.

Amendments relating to rural land sharing communities

In addition to those changes agreed by DPI, a further minor amendment is proposed in relation to rural land sharing communities. On 16 August 2018 Council resolved to defer consideration of rural land sharing communities until it can be dealt with as part of a broader rural housing investigation to be undertaken as part of the implementation phase of the Strategy.

Action 94 in the Strategy had proposed that a local clause be included in the LEP which established Council's position on rural land sharing communities; however, to be consistent with Council's resolution of 16 August 2018 it is proposed that the wording of this action be amended to reference the need to investigate options to amend the LEP, which would ensure consistency with Council's resolution and any outcomes of the investigations which would ensue.

Due to recent advice from the DPE relating to transfer of legislation relating to rural land sharing communities to the Rural Land SEPP, the 4th paragraph on page 118 of the Strategy under the heading of 'Multiple Occupancy and rural land sharing communities' has been updated to reflect this change in legislation.

Details of changes made as a result of Council's resolution of 16 August and changes in legislation affecting rural land sharing communities along with additional comments can be seen in Attachment 4, and are summarised below:

Action	Theme	Proposed changes
94	Rural land sharing communities – local provision	wording of the action commences with "Investigate options to..."
	Paragraph 4 on page	Wording of the paragraph changed to read:

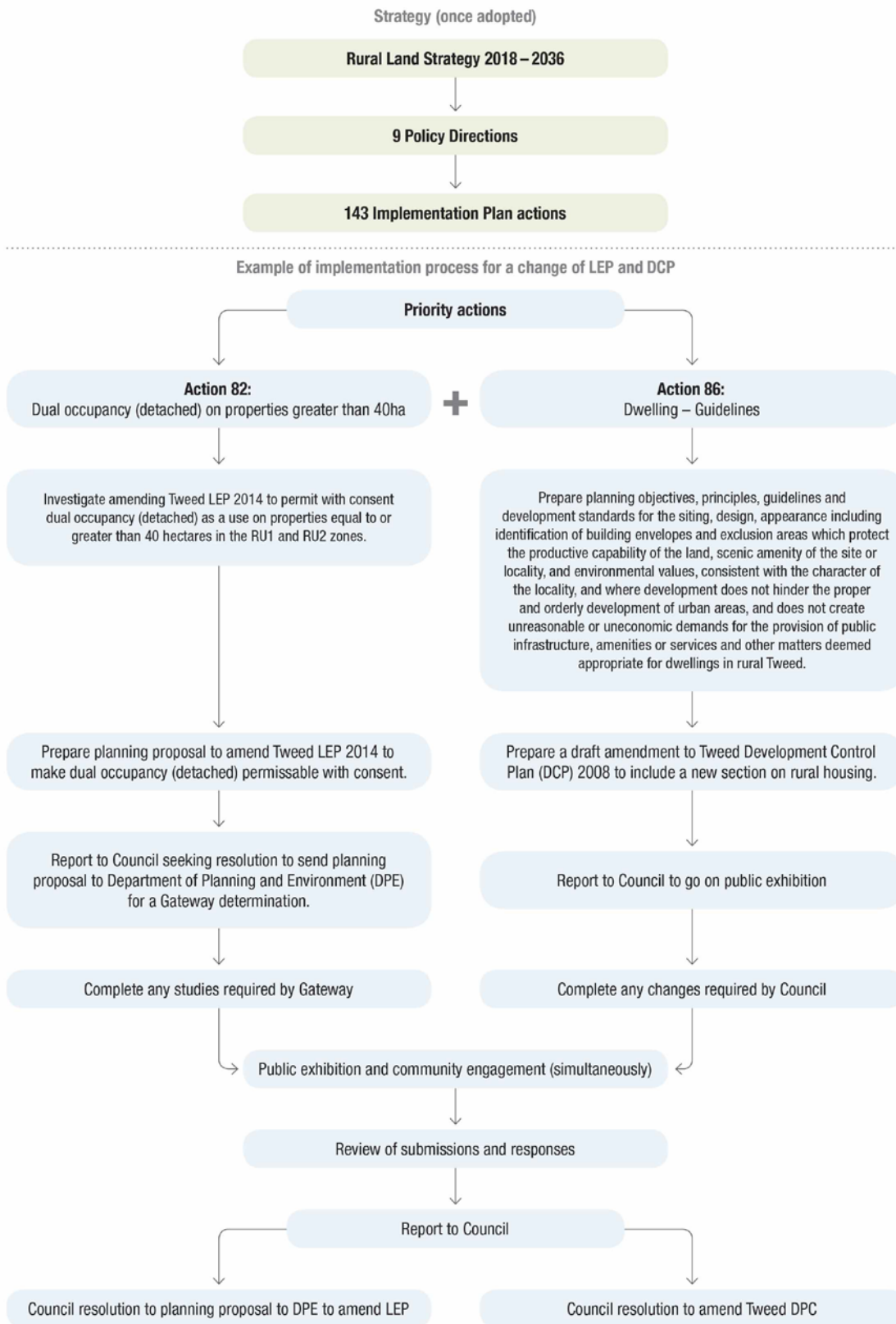
	118 under the heading Multiple Occupancy and rural landsharing communities	“The new SEPP provided transitional arrangements where communities had been approved under SEPP 15; however, the SEPP was only a temporary arrangement giving councils time to include a local provision for rural landsharing communities in their LEPs or, where this has not occurred, for the clause to be transferred to another planning instrument. On 6 August 2018 provisions relating to rural land sharing communities were transferred into SEPP (Rural Land) 2008.”
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Previously reported to Council

The Strategy has previously been reported to Council and presented detailed discussions of a range of matters which can be referenced in conjunction with this report. Discussion of the following items can be viewed in reports to Council of 3 May and 5 July 2018 includes:

- Public consultation and submission review
- The '40 hectare Rule'.
- Increased flexibility in the RU1 and RU2 zones.
- Small lot clusters.
- R5 Large Lot Residential and subdivision.
- Subdivision for primary production purposes.
- Allotments split by infrastructure.
- Dwellings constructed without consent.

Figure 1 Example of key pathways to amendment of Tweed LEP 2014 and Tweed DCP 2008



OPTIONS:

1. Adopts the recommendations of this report and in doing so adopts the draft Tweed Rural Land Strategy 2036, prepares an Implementation Plan 2018/36 and notifies the public via the Tweed Link about the decision to do so, or
2. Defers consideration of the report.

Council officers recommend Option 1.

CONCLUSION:

Following deferral of the Strategy to a workshop with the Department of Primary Industries, both a Councillor workshop, and further staff-level meeting were held with the department.

Because the majority of issues raised by DPI had previously been addressed in response to their submission to exhibition of the Strategy only minor changes are now proposed to ensure that the process for amending the LEP or DCP is clarified.

A minor amendment to the wording of Action 94 is proposed to ensure that consideration of rural land sharing communities is consistent with Council's resolution of 16 August 2018 which resolved to defer consideration of this issue for consideration as part of the implementation phase of the Strategy.

Consistent with recent changes in legislation, paragraph 4 on page 118 relating to rural land sharing communities has been updated.

Any amendments to the LEP or DCP will require reporting to both Council and the Department of Planning and Environment, the community will be consulted, and a resolution of Council will be required prior to recommendations being implemented and actions completed.

The Strategy has undergone a comprehensive staged and diverse public engagement process undertaken by Council, and provides a blend of options which support the nine policy directions previously endorsed by Council.

The Strategy is attached to this report and is suitable for adoption by Council.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Implementation of the strategy will be both time consuming and may require additional resources and coordination between Council divisions and government agencies. An estimate of the budgetary implications and scheduling of each proposed action has been identified in the Implementation Plan to the Strategy.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|---------------|---|
| Attachment 1. | Tweed Rural Land Strategy 2036 (ECM 5228599) |
| Attachment 2. | Draft Tweed Rural Land Strategy response to submissions received during public exhibition – 17 November 2017 – 28 February 2018 (ECM 5227704) |
| Attachment 3. | Rural Strategy – Additional amendments (ECM 5227706) |
| Attachment 4. | Rural Land Strategy – Additional amendments resulting from meeting with DPI and relating to rural land sharing communities (ECM 5508625) |
| Attachment 5. | Department of Primary Industries letter in response to recent changes to the draft Rural Land Strategy (ECM 5508666) |
-

6 [PR-PC] Request to amend Tweed Development Control Plan 2008 Section B15 Seabreeze Estate Pottsville 'Potential School Site' (Lot 1747 DP 1215252)

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Leader

SUMMARY OF REPORT:

Council has received a request from the landowner of the land marked as 'potential school site' within Tweed Development Control Plan 2008, Section B15 Seabreeze Estate to amend the DCP to allow residential development of the land.

This is not the first request of the landowner, who has also lodged and had refused prior development applications for residential subdivision of this land. This includes the more recent 72 lot residential subdivision (DA18/0133) that was refused by Council on 16 August 2018; a decision that was consistent with Council's successful defence of the Applicant's appeal against Council's 2016 refusal of DA15/0422 in the NSW Land and Environment Court.

The Tweed coast community has maintained strong opposition to the removal of the 'potential school site' designation of the land, in recognition of the desire to have a secondary school built.

This report highlights two potential points of contention that are seemingly relied on by the proponent as their basis for developing the land for residential uses;

1. That School Infrastructure NSW has provided consistent advice in recent years of there being no intention to acquire the land for a school, and
2. No private school provider has taken steps that would lead to the land being acquired for that purpose.

The assessment of the request considered in this report is premised on what the Officers' considered to be an indispensable factor, and one that is open to the proponent to rebut; that is, the designation of the land is a representation of the developers original commitment to provide a public net benefit, whether or not that ultimately materialises in a school. This is a common practice whereby community net benefit is 'traded' as a share of the developable uplift and value in the developers land resulting from the Council's support for the change in zoning; it is a redistribution of a portion of the 'profit' to the community as an offset for the loss or impact arising with a new development.

The report recommends options that consist of evaluating the possibility of utilising Clause 3.14 (3A) of the *Environmental Planning and Assessment Act 1979* to rezone the identified school site for a specified time and with a zoning that more closely reflects the intended purpose (commitment) and use of the land or a review of the DCP or both.

Should Council consider the temporal rezoning an appropriate response the first step in the process should be an independent land valuation that compares the market value of the land in its current form as compared to the same land if it had a non-residential Special Purpose - Education zoning (SP1) applied. This would assist with understanding whether the residential zoning is biasing the value of the land to the point where it is cost prohibitive for non-residential use. This might provide insight as to why the land has not been acquired by a private school provider.

The report's key recommendation is to defer a review of the DCP and proceed with a planning proposal to rezone the land from its current R2 Low density zoning to a more appropriate 'SP' infrastructure based zoning, underpinned, should the proponent agree to pay Council's costs, by the independent comparative market valuation.

RECOMMENDATION:

That:

- 1. The request to remove reference to 'potential school site' from Tweed Development Control Plan 2008 section B15 is not supported;**
- 2. The General Manager is to investigate options through a planning proposal to change the zoning of the site to a zone which more closely aligns with the Developer's original commitment, which was to provide a public net benefit by way of allocation of land for educational purposes, as depicted in Tweed Development Control Plan 2008 section B15; and**
- 3. An independent valuation to determine market valuation difference between the existing R2 Low Density Residential and an applied Special Purpose - Education zoning (SP1) would assist with Council's consideration of the potential use or uptake of the land and is to be undertaken only if the Proponent agrees to pay Council's costs of having one prepared.**

REPORT:

In correspondence dated 7 August 2018, Council received a request to amend Tweed Development Control Plan 2008 (DCP) Section B15 Seabreeze Estate, Pottsville to delete reference to what is referred to as the 'potential school site' (on Lot 1747 DP 1215252).

The site (see Figure 1) has been the subject of an appeal in the NSW Land and Environment Court and several development applications, each seeking the development of the land for residential purposes, and which to date have all been refused.

This report provides a succinct history of the site and recommends that the request to amend the DCP be responded to in a consistent way and maintaining the community's desire to see the site utilised for a school. This could include investigation about the potential to rezone the land to a zone more consistent with the Developer's original commitments, which the Council has continued to uphold.

Original intent for the site

From the inception and rezoning of the land for the Seabreeze housing estate the subject site has been nominated as a potential school site. It signifies the net community benefit commitment traded in lieu of the rezoning from rural and the associated windfall uplift in developable capability of the land and the resulting uplift in market value to the developer.

An extract from the DCP is provided as Figure 1 below.

Advice from School Infrastructure NSW (Formerly Department of Education)

In recent advice to Council as reported to Council's 2 August 2018 Planning Committee Meeting (relating to DA18/0133 discussed below), the Department advised in part:

"In relation to existing facilities, it is noted that a construction project is underway at Pottsville Beach Public School to deliver permanent accommodation to meet long-term enrolment demand. Secondary students from Pottsville are zoned to Kingscliff High School which has 17 surplus teaching spaces in 2018.

The Department of Education has been working toward the completion of an overarching strategy for educational facilities within the Tweed. This includes a detailed review of demographic forecasts and existing assets. Although the strategy has not been completed, our work to date supports previous advice that the department does not wish to acquire the school site identified through Council's Development Control Plan.

Our discussions with the proponent for Dunloe Park Estate have indicated that a school site will be identified which will be acquired through the Voluntary Planning Agreement provisions as part of the rezoning process."

As a local government non-school education service provider it is difficult to maintain an argument for the provision or maintenance of land for a State government school when the responsible agency has given consistent advice against acquiring land for that purpose. There are numerous reasons why they might do so, such as forming a view about demand that in their opinion does not support that outcome, price or location or condition of the land

or the like. It might also be that the Tweed has quite a few State high schools and they are either under enrolled or have the capacity for expansion.

Whatever the reason, the Department's advice has seemingly built confidence in the Proponent that the land is not required for educational purposes and this is likely reinforced by there being no private school provider making a commitment to acquire the land either.

The Officers' are of the view, based on the information available to them, that the zoning of the land might be biasing this outcome by giving rise to an inherent 'residential' based market value of the land rather than one that is more aligned or dedicated to serve the purpose of educational use. Council is naturally at a disadvantage when assessing the potential impact this might have simply because it is not privy to the commercial and in confidence dealings between the landowner and those private school providers that have approached the landowner, or would likely approach the landowner if the market value was in conformity with the intended use of the land.

While the advice from School Infrastructure NSW may be accepted to mean that under prevailing circumstances or those that are reasonably foreseeable they do not want this land, it does nothing to add to the analysis and consideration of the desirability or demand for the land by the private sector. Based on anecdotal information it is reasonably likely that the market land price is cost prohibitive – biased by its residential zoning designation. The cure for this bias cannot be found in the status quo and if there is therefore no demand for this site for school purposes it could only ever be truly tested if the market value bias is removed. An independent land valuation to determine the current market value difference between the existing R2 Low Density Residential and an applied Special Purpose - Education zoning (SP1) would clarify whether a significant valuation disincentive precluding viable school expressions of interest exists. A rezoning would provide the only surety to the open market that the land would be available for acquisition at the market value for that special purpose use.

For completeness, it is noted that the demographic study commissioned by Council as evidence in support of a 2016 Land and Environment Court appeal against Council's refusal of DA15/0422 (further discussed below) did suggest that School Infrastructure NSW had not considered the overall need for education land in the Tweed.

The study found that Council's population forecasts are highly conservative and if developments were to develop more quickly than assumed (such as in the Dunloe Park release area, west of Pottsville), then there would be a 'gap in capacity' and the potential need for additional education land in the near future. The study goes on to say that it is not a matter of 'if' education land is required; it is a matter of 'when' the land will be required. This review may need to be reviewed and updated if the DCP is to be re-assessed.

Zoning and land valuation

As discussed above, anecdotal evidence suggests that a factor operating to potentially affect the attractiveness of the site to be acquired by a private school provider is the inherent price bias brought about by the misalignment of the intended (designated) use of the land and the zoning of it; one is for education whereas the other is for residential.

While the site was originally intended to be utilised for a school, valuations would most likely reflect the primary purpose of the land being residential and not its secondary purposes,

which includes among others educational uses. A valuation would therefore bias the value of the land to the highest and best use – it would likely make purchase by non-government party prohibitive and or leading to an unviable project. A comparative land valuation between the existing R2 Low Density Residential and a zone more closely aligned with the intended use of the land (as a school) would further clarify this position.

Under the NSW planning system, the State Government has previously required land zoning for infrastructure to reflect the zoning of adjoining land (LEP Practice Note PN 10-001 Zoning for Infrastructure in LEPs), which in this case is Low Density Residential.

The intent of this zoning approach was designed to provide greater flexibility and adaptive management of land used for the provision of public and private infrastructure, and was a move away from the previous approach of zoning infrastructure land as ‘special use’ or ‘special purpose’ which restricted the ability of infrastructure providers to respond to changing demographic trends and provide infrastructure outside existing locations. It also made the selling off or repurposing of State owned school land more challenging, particularly where there was community opposition to a school closure.

Council could however prepare a planning proposal to rezone the Seabreeze school site from its current residential zoning designation to a zoning that is more reflective of the intended use of the land and as committed by the developer. This would likely be an ‘SP’ infrastructure zone of one kind or other.

The first step in that process would be designing the proposal and liaising with the Department of Planning and Environment (DPE) to reach an agreed approach. It may be possible, and appropriate, to utilise Clause 3.14 (3A) of the *Environmental Planning and Assessment Act 1979* to rezone the identified school site for a specified time period, following which it could default back to the residential zoning.

Brief history

On 14 February 2013 Council resolved unanimously that:

1. *Receives and notes the further advice received from NSW Department of Education and Communities that the site is not required for departmental education purposes at this time; and*
2. *Rejects the proponent’s request to amend the Development Control Plan thereby retaining the existing Section B15 of the Tweed Development Control Plan; and*
3. *Reviews the education infrastructure strategies and controls contained within Tweed Development Control Plan, Section B21 Pottsville Locality Based Development Code and this be undertaken as part of the Planning Reform Unit’s general maintenance program endorsed in its Work Program 2012-2015, and*
4. *Notes the earmarking of the ‘Potential Future School Site’ in the existing Section B15 to be reviewed, if requested, no earlier than 2018.*

On 21 March 2013 Council resolved unanimously that:

1. *The request of Darryl Anderson Consulting Pty Ltd in respect of preparing an amendment to the Tweed Development Control Plan 2008, Section B15 - Seabreeze Estate Pottsville, which comprises the retention of a 6ha future school site and the inclusion of suitable planning provisions to enable and guide the development of the residual residentially zoned balance land, as required to satisfy the provision of the Tweed Local Environmental Plan 2000; cl 53E Specific provisions for Seabreeze Estate—Stage 2, be accepted; and*
2. *The Development Control Plan amendment be prepared in accordance with Option 3 of the Council report of 14 February 2013 in respect of this matter; and*
3. *The amended Development Control Plan includes a new provision detailing the review timeframe for the future school site, which is to accord with Resolution No.4 of the Council report of 14 February 2013 in respect of this matter.*

On 20 June 2013 Council unanimously resolved that:

1. *The report on Tweed Development Control Plan - Section B15 - Seabreeze Estate, Pottsville be received and noted.*
2. *Council requires the proponent pay Development Control Plan Amendment fees detailed within Council's fees and charges.*
3. *Upon receipt of these fees, publicly exhibit the amended Tweed Development Control Plan, Section B15 – Seabreeze Estate, Pottsville, for a minimum period of 30 days, in accordance with section 74E of the Environmental Planning Assessment Act 1979 be endorsed.*
4. *Following public exhibition of Draft Tweed Development Control Plan, Section B15 – Seabreeze Estate, Pottsville, a further report is submitted to Council.*

On 19 September 2013 Council resolved in part:

1. *Endorses the Tweed Development Control Plan - Section B15 Seabreeze Estate, as amended, and provided as an attachment to this report.*

Most recently, on 16 August 2018 Council resolved unanimously to refuse DA18/0133, a development application for a 72 lot residential subdivision of the site.

Notwithstanding Council resolutions to retain the 'potential school site', should Council wish, a review of the DCP could occur at the proponent's expense and would need to include consideration of Council's resolutions and existing position, and evidence provided in support of previous litigation brought about by the proponent.

As discussed above, so long as the residential zoning of the land is likely having a substantial impact on the affordability of the land for education purposes within the private sector, a review of the DCP will always be susceptible to conjecture about the 'real' demand for it for the intended purpose. The only way to truly test the demand for the land is to

remove the price bias altogether by undertaking a comparative land valuation and zoning and in doing so do away with speculation and guesswork.

If that is done and the status quo remains the options for the future of the land could then be viewed on different terms. The Council would then need to consider whether it should purchase the land and hold it in perpetuity for a school or alternatively it could consider options for an alternate public net benefit as the developers commitment would still need to be fulfilled. That should only occur following a real and genuine attempt to attract a school on 'school land' not 'residential land'.

Figure 1: Extract from Tweed DCP 2008 Section B15 showing location of 'potential school site'

SECTION B15 – SEABREEZE ESTATE, POTTSVILLE

B15 – Map 7A – Structure Plan – Stage 2



Plate 1: Extract from Tweed DCP 2008, section B15 referring to the school site.

B15.2.9 Indicative Layout for the Estate

The Structure Plan shows the Indicative Layout for development of this estate (B15 – Map 7). The purpose of the Structure Plan is to indicate the preferred location and siting of the major elements of the estate, including open space, principal roads, landscape features, neighbourhood shopping facilities and medium density housing. This Structure Plan is indicative only, and is subject to detailed design in accordance with the objectives, performance criteria, and performance measures / acceptable solutions contained within this Section.

B15 – Map 7A provides an evolution of the previous Structure Plan, specifically addressing the development of Stage 2 of the Seabreeze Estate. As discussed above, the Structure Plan is 'high level' and indicative only; nonetheless the broad principles detailed should be investigated and embodied wherever possible into future development applications.

B15 - Map 7A includes the specific designation of the Potential School Site. The Potential School Site shown appears to be the only suitable location in Stage 2 of Seabreeze, based on the requirement for 6ha and the Department of Education and Communities advisory notes for new education facility sites.

The potential school site is, however, severed by an existing open stormwater channel which is located within a drainage reserve vested in Tweed Shire Council.

In the event that the 6ha site is required, the open drain will be relocated to the western boundary at no cost to Council. Should the open drain be located to the western boundary, the open drain is required to provide the equivalent performance and function as the existing drain. Engineering detail of the open drain relocation is to be submitted with the first Development Application within Seabreeze Estate 'Stage 2'.

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

OPTIONS:

1. Retain the existing provisions of the DCP and advise the proponent that at this time the DCP will not be amended to remove reference to the 'potential school site'; and/or
2. Review the zoning of the site to ensure that the most appropriate zone and planning provisions are applied reflecting Council's desire for development of the site for a school, or
3. Advise the proponent that a review of the DCP may occur but at no cost to Council and must consider at least previous resolutions of Council and evidence presented in support of previous court appeals.

CONCLUSION:

Council is in receipt of a request to remove reference to 'potential school site' from Tweed DCP 2018 section B15 Seabreeze Estate thereby facilitating use of the site for residential purposes which is inconsistent with Council's intent for the site.

The potential school site within Seabreeze Estate has existed since the conceptual stages in development of the Estate, with early marketing used the schools site as an attraction to the area.

Since that time a number of approaches to Council have sought to develop the site for residential purposes, and remove the label of 'potential school site' thereby facilitating development for residential purposes, contrary to the original intent of the site.

Council has consistently held its position on the site, successfully defended against an appeal in the Land and Environment Court and refused development applications for residential development.

Anecdotal evidence suggests that one of the key factors impacting the potential of the site for a school is the R2 Low Density Residential zoning which inflates the land value such that the viability of the site for a school, public or private is impeded. A comparative land valuation between the existing R2 Low Density Residential and a zone more closely aligned with the intended use of the land (as a school) would further clarify this position.

This report proposes that investigations commence into the potential to rezone the site a more appropriate zone facilitating use for a school, and that a sunset clause be included which establishes a timeframe within which the ability of the site to be developed as a school can be reasonably tested. Should work on a school not commence within this time, a sunset clause would facilitate the zoning reverting back to Low Density Residential allowing consideration of housing and landuses other than a school.

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 of DAC Consulting Pty Ltd - Request to Amend
Section B15 of Tweed Development Control Plan 2008, 7
August 2018 (ECM 5509685)

7 [PR-PC] Work Priorities Plan 2018-19 - Strategic Planning & Urban Design Unit

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Behind the scenes
Providing support to make it happen

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Behind the scenes
4.2	Support Services
4.2.2	Human Resources and Work Health and Safety - To support a productive, respectful and safe work environment.

ROLE: Collaborator

SUMMARY OF REPORT:

This is a report to provide a review and update of Council's current Strategic Planning and Urban Design (SPUD) Work Priorities until 2019. Given the current work priorities and staffing, the resourcing commitment projected to June 2019 is 153.9%. This report provides an update to a Councillor Workshop presentation on 9 May 2017 which then set out the SPUD projects and priorities for the two years that would follow. It is anticipated a further more detailed review will be undertaken in July 2019.

SPUD Unit has recently reviewed project priorities in the context recent Council resolutions including the requirement an additional community consultation events, staff movements, resourcing capabilities and management of pre-existing project commitments.

Based on this review the key project priorities until June 2019 are:

- Finalisation of the Rural Land Strategy.
- Exhibition and finalisation of the Kingscliff Locality Plan including round table event.
- Exhibition of the Scenic Landscape Strategy.
- Progressing the Wardrop Valley Masterplan and Planning Proposal.
- Progressing the Dunloe Park Masterplan and Planning Proposal.
- Progressing the Aboriginal Cultural Heritage Planning Proposal.
- Implementation of the Rural Villages Actions.
- Commencement of the E-Zone Review pre-gateway consultation (Jan 2019).
- Local Heritage Assistance Funding.
- Initiate and report on the Private Native Forestry Workshop.
- Initiate and report on Water Extraction Industry Workshop.
- Advancing Council's Affordable Housing Policy Statement.

In addition to these major strategic planning projects, SPUD are currently processing 18 planning proposals as well as being involved in a number of TSC commitments in providing ongoing technical advice and support including the Tweed Heads Action Plans being managed by the Department of Planning and Environment and the Tweed Valley Hospital being managed by NSW Health Infrastructure. Council will also be required to commence the preparation of Local Strategic Planning Statements as an action of the North Coast Regional Plan to be in place by 1 July 2020.

In consideration of the current and ongoing priorities, the following projects which have yet to commence include:

- Fingal Head/Chinderah Locality Plan.
- Review of the Murwillumbah DCP (both region-wide and Woolworths).
- Review of the DCP A1 (learnings from L&E Court decisions & Fingal Head controls).
- Review of the Tweed Urban and Employment Land Release Strategy.
- Commencement of a Local Growth Management Plan.
- Progressing E-Zone Planning Proposal (following pre-gateway consultation).
- Evaluation and Reporting on 'Green Buildings – Walls & Roofs'.

Compiling a work plan of priorities requires an evaluation of all current and proposed future projects. This necessitates that the elected Council identify its strategic land-use planning priorities, which assists the Unit's Coordinator in the allocation of resources, to give effect to those strategic outcomes.

In the prevailing environment where demand for projects far exceeds the Council's ability to resource each the inevitability of project culling or re-prioritisation occurs. This report has sought to identify those projects that should be reprioritised, and those that are best placed to form the basis of a Work Priorities Plan 2018-19.

RECOMMENDATION:

That:

- 1. The Work Priorities Plan 2018-19 for the Strategic Planning and Urban Design Unit, provided as Table 1 to this report is adopted.**
- 2. Any new planning proposals not be accepted until July 2019 and the Department of Planning and Environment to be duly notified.**
- 3. A further Councillor workshop and work plan report be initiated in July 2019.**

REPORT:

As part of the on-going project management of Council's strategic town planning resources the Strategic Planning and Urban Design Unit's Work Priorities Plan ("the Plan") is reviewed annually and where appropriate revised to reflect and 'match' resource-to-commitment. It is a project management tool of the elected Council to communicate their priorities, and is used by staff to guide the Unit's allocation of resources.

This report provides an update to the work plan priorities as presented at a Councillor workshop on 9 May 2017 which outlined options for allocating resources to projects based on Councillor priorities and perceived public benefit or their strategic importance. The objective of the work plan is to allocate the Council's strategic land-use planning resources efficiently; to both ensure that commitment is matched by available resources and that priority projects are those delivering the most gain to the Tweed's regional identity, economy and social needs. This includes projects that: protect the environment, create business and employment growth, delivers housing choice through diversity, design and affordability, and has the potential to deliver other public benefit trade-offs.

Following this workshop, a re-evaluation of the current plan priorities has been undertaken based on the following:

- Uncertainty as to passage of the recommended planning actions through Council and hence the predictability of the outcome and resource allocation reasonable needed;
- Resource availability owing to staff vacancy and leave entitlements;
- The volume of significant projects in or coming to Council;
- Requests to undertake additional community and stakeholder consultation (Kingscliff round table, private native forestry, water extraction);
- The volume of project already being processed, held in abeyance or deferred;
- Volatility in the project management/resource capability necessitating short term forecasting on a quarterly basis.

Whilst it is anticipated a more detailed work plan re-evaluation be undertaken in July 2019 for a further two year period, the following work plan seeks to confirm Council endorsed SPUD priorities until that time.

Draft Work Priorities 2018 – July 2019

Based on an evaluation of current projects, recent Council resolutions and the feedback from various Councillors Workshop, the current projects and their priority have been summarised in Figure 1.

In the left column of the table to Figure 1 is the list of projects. These have been categorised under the headings of; Planning Proposals, Locality/Master Plans/Site Specific Plans, Strategic Policy, In-house Support, Programs Implementation and General Tasks. The 'code' column in the table reflects the level of resources currently assigned to the respective project which has been allocated to date based on the current level of commencement and Council resolution, with the nomination of "1" representing a high level of resourcing and "5" representing minimal resourcing and "0" as no allocation.

Figure 1 – Project Work Plan 2018-19



As derived from the table, projects which have received a higher resourcing priority (1, 2 or 3 grading) combined with current commencement status or level of activity form the basis on SPUD work Plan commitments until June 2019, which are included in the table below.

Table 1: Draft Work Priorities Plan 2018-19

Work Plan Priorities		
Locality Plans / Master Plans / Site Specific Plans	Project	Status
Master Plans / Site Specific Plans	Kingscliff Locality Plan	PRIORITY 1
	Wardrop Valley Masterplan	PRIORITY 2
	Dunloe Park Masterplan	PRIORITY 2
Planning Proposals	Wardrop Valley Area 6 Extension	PRIORITY 2
	Winchelsea Way	PRIORITY 2
	Palms Village Caravan Park	PRIORITY 3
	Review of Development Standards	PRIORITY 2
	Bob Whittle Murwillumbah Airfield	PRIORITY 2
	Zoning Amendments – Height	PRIORITY 2
	Water Extraction (Cllr Resolution – workshop)	PRIORITY 3
	Stokers Road, Dunbible	PRIORITY 3
	MO Conversion, Round Mountain Rd	PRIORITY 3
	Rail Trail	PRIORITY 1
	Aboriginal Cultural Heritage Planning Proposal	PRIORITY 3
	E-Zone Review (From 1 st quarter 2019)	PRIORITY 3
	Strategic Policy	Rural Land Strategy (Final endorsement)
Scenic Landscape Strategy (Exhibition)		PRIORITY 3
Programs Implementation	Implementation of the Rural Villages Actions	PRIORITY 1
	Implementation of the Rural Land Strategy	PRIORITY 3
	Local Heritage Assistance Funding	PRIORITY 3
Consultation / Workshops	Kingscliff Roundtable	PRIORITY 1
	Water Extraction Stakeholders Workshop	PRIORITY 2
	Private Native Forestry Stakeholders Workshop	PRIORITY 2
Ongoing Tasks	Inter-unit coordination and advice	PRIORITY 3
	Tweed Valley Hospital coordination / advice	PRIORITY 3
	Tweed City Action Plans coordination / advice	PRIORITY 3

Projects which may have a high grading but yet to commence due to competing priorities include:

- Fingal Head/Chinderah Locality Plan (2)
- Review of the Murwillumbah DCP (1)
- Review of the DCP A1 (0)
- Commencement of a Local Growth Management Plan (0)
- Review of the Tweed Urban and Employment Land Release Strategy
- Progressing E-Zone Planning Proposal (including pre-gateway consultation).

Unit Resourcing

As illustrated in the bottom right corner of Figure 1, at the current rate of staff resourcing there is a sustained programme over commitment (153.9%). This assessment of resourcing includes the recruitment of a planning officer to backfill Council's Urban Designer while he is Acting in the capacity of Unit Coordinator and takes into account a current position vacancy and general staff leave entitlements. Given these staff movements and availability the impact on the Unit results with the following operational risks:

- Reduced service levels and inability to accept additional projects or work commitments;
- Project delays of current projects and commitments;
- Delays in implementing tasks as identified within the Delivery Program.

SPUD in coordination with ELT is actively pursuing options to seek the replacement of the vacant Strategic Planner position to best meet the current and ongoing work commitments of the Unit. The future appointment to this position will have the effect of improving the Unit's overall resource commitment percentage rating.

Temporary Moratorium on new planning proposals

Given there are currently 18 planning proposals at varying levels of processing, one option for Council's consideration is to defer accepting any new planning proposal requests until July 2019. The intended effect would be to either deter or alleviate additional project commitments until such time as a number of existing projects can be finalised and staff resourcing can be facilitated.

The implications of such a Council endorsed moratorium should however also consider the likely unintended effects of such a moratorium. This includes the ability of a proponent to alternatively submit a planning proposal to the Department of Planning for review. If a planning proposal were to receive a gateway determination through this process, Council may still be called upon to facilitate consultation and provide a technical review. This resource impost may however be without the benefit of being able to recover the costs or part thereof through an endorsed cost and expenses agreement, as is the usual practice.

E-Zone Review Process and Timing

It is acknowledged that the implementation of the E-Zone review as undertaken by Council's Natural Resource Management Unit (NRM) has been a long standing Councillor priority. An overview of the methodology and mapping outcomes by applying the DP&E E-Zone review criteria to the Tweed Coast area was reported to a Councillor Workshop on 9 August 2017.

Despite the significant body of work which has been undertaken to apply the criteria, collect data and update GIS mapping, there remains a substantial body of coordinated work which needs to be undertaken prior to the initiation of a pre-gateway consultation event. This includes:

- Peer review from Department of Planning and Environment and Office of Environment and Heritage;
- Refinement and review of land use tables;
- Preparation of a communication and engagement plan;
- Allocation of a budget for community consultation;
- Preparation of support material including mapping, web-interface, factsheets and exhibition panels.

It is likely that this body of work will take 6 months to complete. Whilst SPUD will have a pivotal role in the peer review, refinement of land use tables and consultation, much of the exhibition supporting material is best placed to be coordinated from NRM Unit who to date have maintained the central role of undertaking the E-Zone review. For this reason SPUD staff resources have not been allocated to this project in the short term. It is however likely that SPUD will have capacity in the first quarter of 2019 to have input into this priority project.

OPTIONS:

That Council:

1. Adopts Table 1 (Draft Work Priorities Plan 2018-19) and in so doing express the collective view of the Council on the priority level of each project therein, or
2. Amends or defers the Draft Work Priorities Plan 2018-19, provided as Table 1.
3. Council consider imposing a moratorium on accepting new planning proposals until July 2019.

CONCLUSION:

There is an essential need for the elected Council to indicate its collective preference with regard to the strategic planning priorities within the Tweed Shire, and without which the Operational Division of the Council has no overriding guidance as to where the Strategic Planning and Urban Design Unit should best allocate its resources, to further the Council's objectives.

It is well known and understood that the strategic land-use planning priorities of the council are established by the elected body of the Council, whereas the allocation of resources remains an operational activity under the jurisdiction of the General Manager and their delegates. These two functions are each a dependant on the other for the efficient and effective delivery of policy that can effectuate tangible outcomes.

Using the information gathered from the Councillor workshop held in May 2017, more recent Council resolutions and in consideration of the current SPUD staff resourcing, a list of projects and their relative strategic priority has been compiled (see Figure 1), and is used to

form the basis of a prioritised work plan (Table 1) until July 2019. Both are presented in the body of this report.

In addition to those plans proposed, there is a corresponding need to manage those projects that cannot proceed within the short term (before July 2019). In summary, there is a significant body of work that cannot be progressed with the level of Council resources and existing work commitments.

Whilst there is opportunity to impose a moratorium on accepting new planning proposals until July 2019, this needs to be carefully considered against the opportunity for proponents to continue to pursue a planning proposal through the DP&E. This alternate process would still require Council's technical input without the ability to recover costs as part of an endorsed cost and expenses agreement.

Table 1 comprising the draft Work Priorities Plan 2018-19 is recommended for adoption and the Unit Coordinator's corresponding Figure 1 Draft Work Priorities (Unit Resourcing) Plan 2018-19 should be noted and tabled for reviewed in July 2019.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Under provision of staff resourcing in proportion to the existing and scheduled projects risks the delay in the delivery of projects. Escalation of strategic planning strategies and the introduction of new strategies may have implications for the long term financial plan if they require funding. This includes additional community consultation which introduces significant additional staff resourcing and financial costs.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

8 [PR-PC] Dwelling Entitlement DE17/0102 - Lot 1 DP 183130 No. 294 Bakers Road, Byangum

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:

In December 2017 Council received an enquiry to determine if Lot 1 DP 183130, No. 294 Bakers Road, Byangum benefits from a Dwelling Entitlement. This report seeks direction on how to determine the Dwelling Entitlement enquiry (DE17/0102) having regard to past Senior Counsel advice (2010) on the Dwelling Entitlement process.

A Dwelling Entitlement permits an applicant to lodge a Development Application for a dwelling on an allotment of land that does not meet the minimum allotment size for a dwelling under the current Local Environmental Plan. Such Development Application still needs to be assessed on its merits and accordingly a Dwelling Entitlement does not necessarily result in the right to build a house but merely the right to seek approval for a house.

In April 2010 a report to explain the Dwelling Entitlement provisions contained in the Tweed LEP 2000 as per Senior Counsel advice. That report is attached to explain the process that is currently undertaken with Dwelling Entitlements. Since this report was written the Tweed LEP 2014 was adopted which incorporates Clause 4.2B which operates in a similar manner to the old LEP 2000. The process is an examination of the history of the lot regarding how or why it was created, when it was created, and what the holding ownership history was on 30 September 1966.

It has taken many months to obtain all of the historical title searches necessary to investigate the extent of the holding Lot 1 in DP 183130. Having now obtained all the relevant data it appears that the subject site was part of a large group of land holdings (145.49ha) all owned by George Thomson Baker in September 1966.

A subdivision application in 1977 under Interim Development Order (IDO) 2 was lodged with Council and it approved three new undersized allotments but failed to recognise the subject

site as part of the holding which would have resulted in a fourth undersized allotment. In accordance with IDO 2 at the time this subdivision should have only approved three undersized allotments and all other parcels that formed the holding should have been turned into compliant 40 hectare (ha) allotments or a combined residue parcel greater than 40ha in size. If the subdivision had of been processed as required by IDO 2 the subject site would have been amalgamated with the rest of the holding and would not have existed today. Instead the subject site was not considered in the holding in 1977, which has resulted in an undersized lot that may not benefit from a dwelling entitlement.

The applicant (and their solicitors) are of the view that Clause 35 of IDO 2 could and should apply which states:

35. *If an application for permission under this Order could, but for provisions of this Order specifying minimum requirements as to the area or the frontage of any land, be granted by Council, such application may be so granted where the area or frontage of the land to which the application relates departs only to a **minor extent** from those minimum requirements.*

The subject parcel is 38.64ha in size and the applicant has argued that Clause 35 would have allowed the existence of this lot and thus should be considered to have an entitlement today.

Previous Senior Counsel advice (as shown in the attached report from 2010) has not previously considered Clause 35 as part of the official dwelling entitlement test and therefore Council is unsure on its validity and how the discretionary test of "minor extent" could be considered.

Council could acknowledge Clause 35 and determine that the subject site does meet the dwelling entitlement test by virtue of Clause 35 (however, some advice would be sought from Council on how any future applications are tested against the discretionary "minor extent" assessment is to occur).

Council could refuse the Clause 35 consideration and declare that the subject site does not meet the dwelling entitlement test given that the subject site should not have existed if the 1977 subdivision was carried out in accordance with IDO 2.

Council could seek clarifying advice from Senior Counsel on the relevance of Clause 35 having regard to IDO 2 and Dwelling Entitlements specifically having regard to DE17/0102.

The third option of seeking legal advice is recommended in this instance.

It is also recommended that a review of dwelling entitlement savings provisions and an updated Clause in Tweed LEP 2014, Tweed City Centre LEP 2012, and Tweed LEP 2000 be considered to remove the need for the complex, and cumbersome dwelling entitlement process. Previous advice from Mr Tim Robertson SC stated:

"It is clearly productive of complexity, and the results of applying the words of the various planning instrument will sometimes be unexpected and the planning purpose of recognising them is obscure. The application of cl.11 to the creation of lots over a century ago is faintly absurd but it must be applied because it is the legal test for determining saved dwelling entitlements."

RECOMMENDATION:

- A. ATTACHMENT 1 & 2 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- B. That Council:**
- 1. Seeks clarifying advice from Senior Counsel Mr Tim Robertson SC on the relevance of Clause 35 of IDO 2 in regards to DE17/0102 Lot 1 DP 183130 294 Bakers Road, Byangum; and**
 - 2. Reviews the dwelling entitlement savings provisions clauses in Tweed LEP 2014, Tweed City Centre LEP 2012 and Tweed LEP 2000 to remove the need for the complex and cumbersome historic dwelling entitlement searches be added to the Strategic Planning and Urban Design Work Program.**

REPORT:

Council is in receipt of a request to determine if Lot 1 DP 183130, No. 294 Bakers Road, Byangum benefits from a Dwelling Entitlement. The subject site is 38.64 hectares and is currently zoned RU2 Rural Landscape under Tweed Local Environmental Plan 2014. The lot was created in 1930 and the site is currently used for agricultural purposes and does not contain a dwelling.

Clause 4.2B of Tweed Local Environment Plan 2014 (TELP 2014) contains the provisions relating to the erection of dwellings in rural and residential zones. The subject lot does not meet the minimum 40 hectare lot size required for the erection of a dwelling house as per the Lot Size Map. As the lot was created before TLEP 2014 commenced, an investigation is required to determine if the erection of a dwelling house was permissible under the previous environmental planning instrument in accordance with clause 4.2B(3)(c):

- (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,*

An examination of the savings provisions for the preservation of a Dwelling Entitlement under previous the local environment plans, Tweed Local Environment Plan 2000 and Tweed Local Environment Plan 1987 ultimately lead to the provisions for the erection of a dwelling house under Interim Development Order No. 2 (IDO No. 2).

Clause 12(d) of IDO No. 2 applies to rural zoned land and provides the test to be undertaken to determine if the subject lot enjoys the benefit of a Dwelling Entitlement.

- 12(1)A dwelling-house shall not be erected on a parcel of land within Zone 1(a) or 1(b) unless the parcel –*

- (d) comprises an allotment lawfully created and upon which a dwelling house could have been created prior to the appointed day, which allotment could have been created in accordance with the provisions of clause 11 if those provisions were in force at the time such allotment was created;*

The essence of Clause 12 is that if the subject lot **could** have been created via Clause 11 subdivisions provisions, then a Dwelling Entitlement exists. The appointed day is the 30 September 1966 being the day IDO No. 2 commenced.

Clause 11 details the provisions within subclause (3) in which a lot less than a minimum of 40 hectares may be created on which a dwelling house could have been permitted.

- (3) subject to subclause 5 an allotment of land having an area of not less than 1000 square meters may be created in a subdivision of land within Zone 1(a) or 1(b) where the Council is satisfied that such an allotment is required for the erection of a dwelling-house for actual occupation by –*
- (a) the owner of the land contained in such an allotment;*
 - (b) a relative of such owner; or*
 - (c) a person employed or engaged by such owner in the use of land of the owner adjoining or adjacent to such allotment, for the purpose of agriculture.*

Subclause 5 referenced above provides limits on how many such allotments may be created and states:

- (5) *Total number of allotments of the types referred to in subclause (2) or (3) that may be created by subdivision of land in accordance with either of those subclauses shall not exceed –*
- (i) *nil where the land has an area of less than 10 hectares;*
 - (ii) *one where the land has an area of not less than 10 hectares but less than 20 hectares;*
 - (iii) *two where the land has an area of not less than 20 hectares but less than 30 hectares; or*
 - (iv) *three where the land has an area of not less than 30 hectares.*

Clause 6 defines “**land**” as being “*the aggregation of all adjoining or adjacent land held in the same ownership at the appointed day*”.

In other words, land in the same ownership with a minimum area of 30 hectares may be subdivided to create up to three new lots with a minimum area of 1,000m² on which the erection of a dwelling house is permitted. The balance of the “land” from which the new lots were created is left as a residue lot of greater than 40 ha.

At the appointed day of 30 September 1966 the subject lot was owned by George Thomson Baker who also owned a number of adjoining lots as described below:

Map ref.	Land parcel	Area (ha)
A	Part portion 36 (subject lot)	38.64
B	Portion 2	16.18
C	Portion 3	60.43
D	Lot 2 DP 217440	29.39
E	Instrument of Transfer No. 216063	0.8447
	Total area of “land”	145.49 ha

At the appointed day a total of 145.5 hectares was in the same ownership. Only one of the lots, Portion 3, met the provision for the erection of a dwelling house under IDO No. 2 being greater than 40 hectares whilst four of the lots were less than 40 hectares and therefore did not meet the provisions for the erection of a dwelling house.

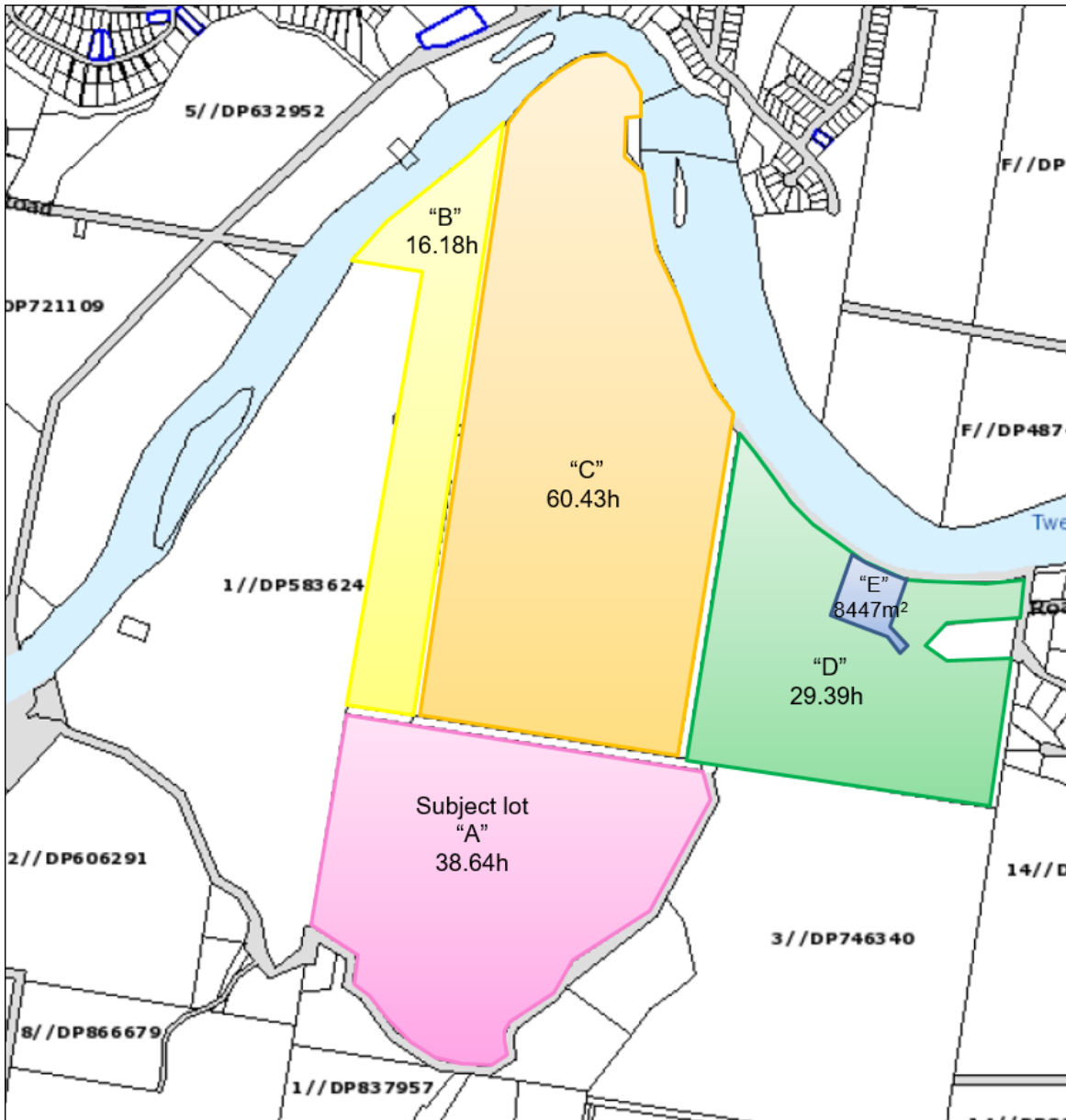


Figure 1 Land in the same ownership at the appointed day

As the area of “land” was greater than 30 hectares, Clause 11 **could** have been used to create three new lots of less than 40 hectares on which a dwelling house was permitted and one residue portion of greater than 40ha. That is the “land” could have possessed four Dwelling Entitlements (3 x new undersized lots and a compliant residue lot). This is the basis for determining how many Dwelling Entitlements exist over a portion of land.

The current lot layout of the subject “land” suggests a subdivision to create three small undersized lots, as permitted by Clause 11(3) of IDO No. 2, has previously been approved.

The “land” that is the subject of this dwelling entitlement currently comprises of the following lots:

Map ref.	Land parcel	Area (ha)
A	Lot 1 DP 183130 (subject lot)	38.64
S	Lot 10 DP 1131920	83.41
T	Lot 11 DP 1131920	13.9

X	Lot 5 DP 605943	1,057m ²
Y	Lot 2 DP 590522	1,012m ²
Z	Lot 7 DP 1077444	1,012m ²

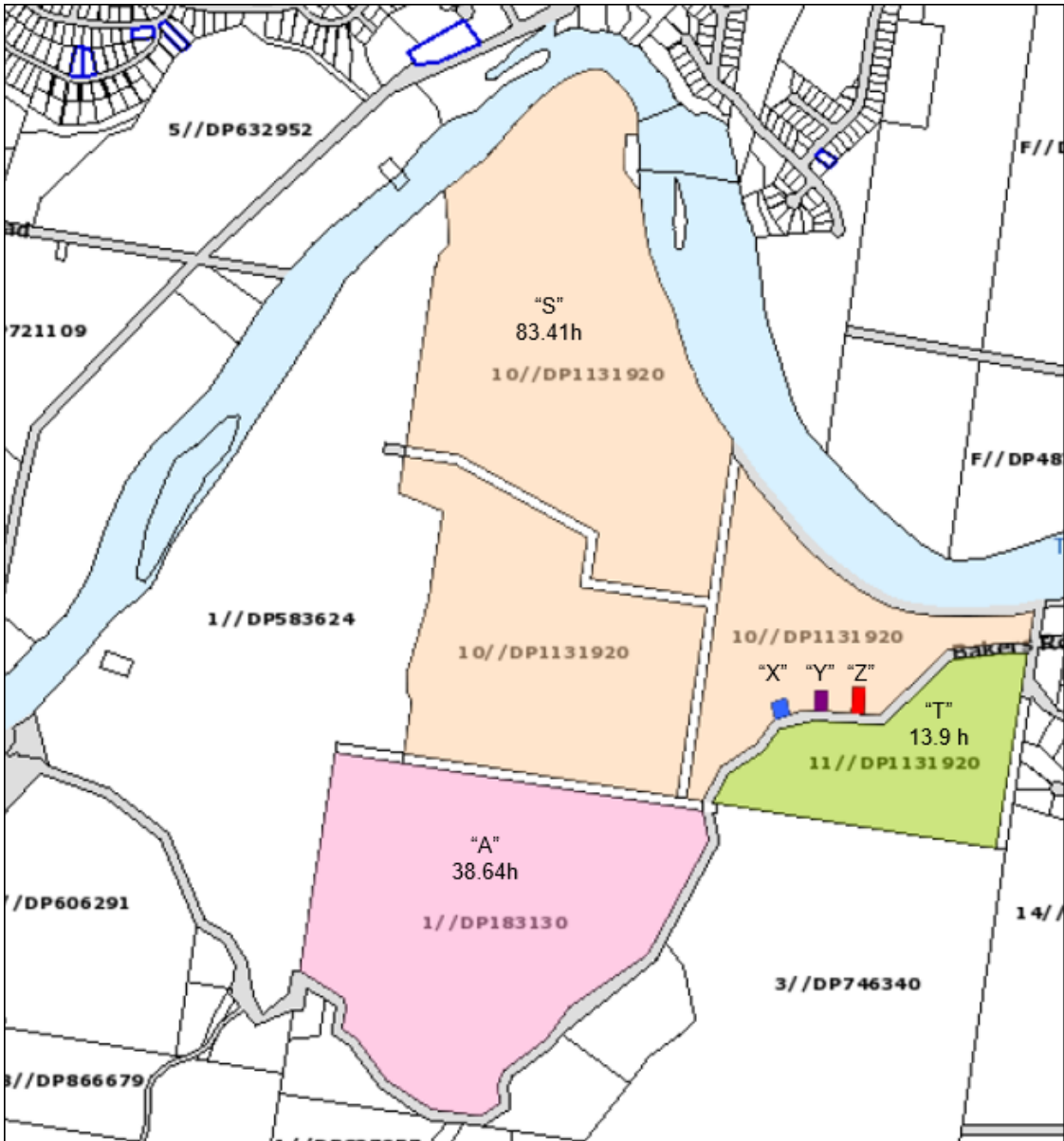
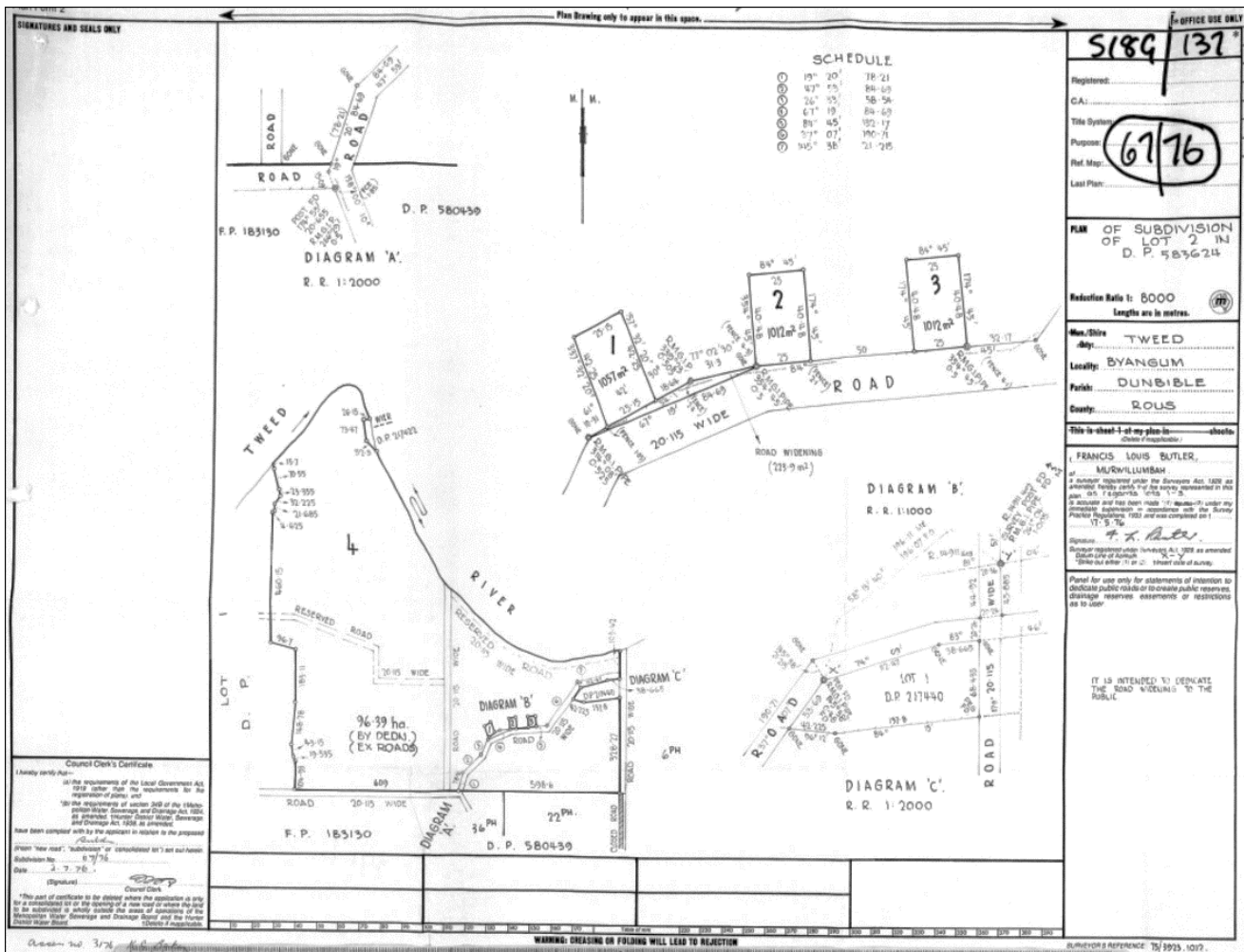


Figure 2 Current lot configuration of the "land" in the same ownership at the appointed day

The three small lots of approximately 1,000m² ("X", "Y", "Z" on the above map) were created in 1977 under IDO No. 2 subject to subdivision No. 67/76 approved at the Council Meeting of 10 December 1975.



OFFICE USE ONLY

S18G/137

Registered: _____

CA: _____

Title System: **67/76**

Purpose: _____

Ref. Map: _____

Last Plan: _____

PLAN OF SUBDIVISION OF LOT 2 IN D.P. 580450

Reduction Ratio: 8000
Lengths are in metres.

Map/Sheet: TWEED

Locality: BYANGUM

Parish: DUNDEE

County: ROUS

This is sheet 1 of my plan in sheets _____

FRANCIS LOUIS BUTLER,
of MURRUMBLIDGEE
is owner registered under the Conveyance Act 1928 as amended
and entitled to the estate of fee simple in the land shown in this plan and is authorised by the Registrar of Land to execute this plan and to do all things necessary in connection therewith.
Signed: *F. L. Butler*
Witness: _____
Deputy Registrar under Conveyance Act 1928 as amended
District of Murrumbidgee

Panel for use only for statements of intention to dedicate public roads or to create public reserves, drainage reserves, easements or restrictions as to user.

IT IS INTENDED TO DEDICATE THE ROAD SHOWN TO THE PUBLIC.

BUREAU REFERENCE: TS/3925.1037

Figure 3 Subdivision No. 67/76

The subdivision approved the following lots:

- Lot 1 – 1,057m²
- Lot 2 – 1,012m²
- Lot 3 – 1,012m²
- Lot 4 – 96.39 hectares (residue lot).

The application for subdivision No. 67/76 as included in the file (S18G/137) states that the subdivision was required “for members of family and farmworkers” which was intended to be in accordance with the provision of Clause 11(3).

Each of the new lots created by the subdivision, Lots 1, 2 and 3 in the above plan, benefits from a Dwelling Entitlement as they were created by a Council subdivision under IDO 2 (albeit apparently contrary to the maximum allotments allowed given the subject lot was excluded from consideration). Lot 4 (the residue) also has the benefit of an entitlement as it exceeds the minimum allotment size.

However, the subdivision application did not include all the land in the same ownership at the appointed day and only the area comprising of the land parcels described approximately as B, C, D and E in Figure 1 (96.24ha) which were under the same ownership were included in the application which was lodged 21 November 1975. As a result the subdivision approval appears to have extinguished the dwelling entitlement for the subject lot.

Had the subdivision at the time included the subject lot within the residue lot, the resulting larger residue lot (approximately 135 hectares) would have been of sufficient size to enable further subdivision to create compliant sized lots on which a dwelling would have been permissible.

The applicant has presented legal advice (attached) asserting that in this instance the subject lot **does** benefit from a Dwelling Entitlement under Clause 35 of Interim Development Order No. 2.

35. *If an application for permission under this Order could, but for provisions of this Order specifying minimum requirements as to the area or the frontage of any land, be granted by Council, such application may be so granted where the area or frontage of the land to which the application relates departs only to a minor extent from those minimum requirements.*

The applicant's consultant has also stated that in their view the following matters are of relevance:

1. *As at 27/04/1977 (date of registration of DP583624), the land as defined by Clause 11 (6) of IDO 2 comprised only two allotments namely Lot 1 in DP 183130 (the subject lot and Lot 2 DP 583624) both of which at that stage enjoyed a Dwelling Entitlement.*
2. *A subsequent subdivision of this land was approved by Council on 10/12/75 and was registered as DP590522 on 18/7/1977. As the subdivision contained undersized allotments the provision of Clause 11(5) applied and the subdivision included either tacitly or by default the innominate Lot 1 DP 183130 as required by Clause 11(6).*
3. *DP590522 created three undersized allotments (Lots 1-3) being the maximum number of undersized allotments permitted under Clause 11(5)(iv) for an area of land as defined by Clause 11(6). One allotment (Lot 4) comprising 96.39 ha as permitted under Clause 11(1)(a) and by default a residue area (the innominate Lot 1 in DP 183130) comprising 38.64ha the entirety of the lot, in terms of title, shape or area were unchanged by the subdivision.*
4. *For subdivision 67/76 to be "lawfull" it is necessary to recognise Lot 1 in DP 183130 as an allotment meeting Clause 12(1)(a) status under the further provisions of Clause 35. A subsequent subdivision cannot rescind an entitlement of an existing allotment.*
5. *If Lot 1 DP183130 is not recognised as meeting Clause 12(1)(a) criteria then Council Approved subdivision 67/76 would be unlawfull as it would have created one too many undersized allotments.*

It is therefore our view that the application of Clause 35 to the present Dwelling Entitlement Application is entirely appropriate. Precedent for such application has already been set albeit advertently by subdivision 67/76. This interpretation would then validate the lawfulness of subdivision 67/76. Most importantly to us it would permit the issue of a certification for DE17/0102 to issue forthwith.

In response to the above analysis the applicant has not entirely recognised that the Dwelling Entitlement test is about looking back from today to 1966. Whether the subject site had a dwelling entitlement pre 1966 (under IDO 1) is irrelevant as IDO 1 had no savings provisions. The test today is about whether the subject site had a dwelling entitlement based on looking back to IDO 2 only.

The applicant's analysis is therefore reliant on Clause 35 which states that an application could be made over a lot even though the lot does not meet the minimum lot size requirement provided the variation from the minimum size is only to a **minor extent**. In this instance the minimum lot size for a dwelling is 40 hectares and the lot that is the subject of this Dwelling Entitlement query is 38.64 hectares (a variation of 3.4%).

The applicant has argued that a planning instrument created in 1980 (SEPP 1 – Objection to Development Standards) used the reference of 10% to determine if a variation was minor or not. This provision did not exist at the relevant time (1966) and cannot be considered to formally apply. However the applicant wants the Council to consider this document as an informal reference to determine what may have been considered a minor extent at the time (1966).

This clause has not previously been used to determine if a lot benefits from a Dwelling Entitlement. The interpretation and the applicability of this clause to Dwelling Entitlements are uncertain. Furthermore, if clause 35 is applied to establish Dwelling Entitlements, the specific term "*to a minor extent*" requires some level of quantification.

If Council were to accept the applicant's analysis of IDO 2 a dwelling entitlement could be acknowledged.

However, Council has historically taken a precautionary approach to dwelling entitlements (due to their complexity and potential to set precedent) and it is therefore recommended to obtain legal advice in this instance.

OPTIONS:

1. That Council acknowledges Clause 35 and determines that Lot 1 DP 183130, No. 294 Bakers Road, Byangum does meet the dwelling entitlement test by virtue of Clause 35 of IDO 2; and Council advises how any future applications are tested against the discretionary "minor extent" assessment; **OR**
2. That Council refuses Clause 35 consideration and declares that Lot 1 DP 183130, No. 294 Bakers Road, Byangum does not meet the dwelling entitlement test; **OR**
3. That Council seeks clarifying advice from Senior Counsel Mr Tim Robertson SC on the relevance of Clause 35 of IDO 2 generally and in regards to DE17/0102 Lot 1 DP 183130, No. 294 Bakers Road, Byangum.

and

4. That Council reviews the dwelling entitlement savings provisions clauses in Tweed LEP 2014, Tweed City Centre LEP 2012 and Tweed LEP 2000 to remove the need for

the complex and cumbersome historic dwelling entitlement searches and bring back a report on options for reviewing the dwelling entitlement process.

Options 3 **and** 4 are recommended.

CONCLUSION:

If Council decides that Clause 35 cannot be utilised, then the subject lot, Lot 1 DP 183130, No. 294 Bakers Road, Byangum, **does not** benefit from a Dwelling Entitlement.

Should Council decide that Clause 35 may be used, then this Clause could provide justification for determining that the subject lot, Lot 1 DP 183130, No. 294 Bakers Road, Byangum benefits from a Dwelling Entitlement. However for future reference the extent of the permissible variation from the minimum lot size would need to be quantified to establish what constitutes a "*minor extent*" for future applications.

COUNCIL IMPLICATIONS:

a. Policy:

The interpretation of Clause 35 of IDO 2 will affect future dwelling entitlement searches.

b. Budget/Long Term Financial Plan:

Any legal advice sought will affect the legal budget.

c. Legal:

Any legal advice sought will affect the legal budget.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Dwelling Entitlement report from April 2010 (ECM 5514926)

(Confidential) Attachment 2. Applicant's legal advice on DE17/0102 dated 15 July 2018 (ECM 514927)

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

SUBMITTED BY: Director

mhm



Making decisions with you

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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:

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

RECOMMENDATION:

That Council notes there are no variations for the month of August 2018 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.
