



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

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

Agenda

Planning Committee Meeting Thursday 5 April 2018

held at
Council Chambers, Murwillumbah Civic & Cultural Centre, Tumbulgum Road, Murwillumbah
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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Items for Consideration of Council:

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ORDERS OF THE DAY



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.2	Engagement
2.2.4	Councillor and Civic Business - To provide assistance to Councillors and support for Council to operate within its legal framework.

ROLE: **Leader**

1 [NOM] Short Term Holiday Letting

NOTICE OF MOTION:

Councillor W Polglase moves that Council defers taking any further action against any unauthorised or non-compliant short term holiday let (STHL) uses, until the release of new, anticipated State Government STHL legislative and planning policy controls, except in those circumstances where it can be demonstrated that such uses are having an unreasonable impact on the amenity of adjoining or surrounding neighbours.

Councillor's Background Notes

Recommended Priority:

Nil.

Description of Project:

Nil.

Management Comments:

Delivery Program:

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Leader**

Budget/Long Term Financial Plan:
Not Applicable.

Legal Implications:

In terms of implementing the recommended motion, it would assist the officers to gain direction from Council on whether or not to continue with investigating and acting upon complaints already received for alleged unauthorised STHLs, including the previously resolved enforcement action for No. 6 Beason Court Casuarina.

In respect of the “demonstration of unreasonable impact” mentioned in the draft motion, Council may wish to consider adding the words “as determined by Council”, to provide a clear and transparent basis for any compliance investigation.

Policy Implications:

Council has previously made a submission on the NSW State Government’s Options Paper on Short-term Holiday Letting in NSW. NSW Councils are currently awaiting a decision on any new statutory or planning policy changes for STHLs.

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 2 [PR-PC] Development Application DA17/0524 for the Use of Existing Building as a Roadside Stall at Lot 101 DP 755702 No. 839 Kyogle 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:

Consent is sought for the use of an existing building as a roadside stall to be operated within the prescribed 30m setback distance to a designated road under Clause 24 of the Tweed Local Environmental Plan 2000 (TLEP 2000). A State Environmental Planning Policy No. 1 (SEPP No. 1) objection has been submitted by the applicant in this regard as the roadside stall is located 2.1m from Kyogle Road, a Council designated road. Planning officers have reviewed the SEPP No. 1 objection and consider that strict application of Clause 24 is unreasonable and unnecessary in the circumstances of the case given the minor nature of the proposed development and consequently the SEPP No. 1 objection should be supported.

Tweed Shire Council has assumed concurrence under SEPP No. 1 for this development standard, however the proposal requires referral to a full Council meeting for determination given the extent of the variation.

Prior to the March 2017 flood, a roadside stall was lawfully operational at the same general area (slightly to the south) under existing use rights. This stall was washed away in the flood and the proponent constructed a new roadside stall approximately 20m to the north east.

The applicant has submitted information advising that the roadside stall benefits from existing use rights provisions under the Environmental Planning and Assessment Regulations 2000. This is detailed further elsewhere in this report.

The application has been reviewed internally by Council's Development Engineering, Environmental Health, Natural Resource Management and Building Services Units, as well as by Council Traffic Engineer and Flooding/Stormwater Engineer. No objections are raised to the development subject to the application of appropriate conditions of consent.

Externally the Development Application has been reviewed by New South Wales Rural Fire Service (NSW RFS) who have also provided a recommended condition of consent.

Conditional approval of the application (inclusive of the SEPP No. 1 objection) is recommended.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 24 of the Tweed Local Environmental Plan 2000 regarding setbacks to designated roads be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- B. That Development Application DA17/0524 for the use of existing building as a roadside stall at Lot 101 DP 755702 No. 839 Kyogle Road, Byangum be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans:**
 - Plan Showing Location of Fruit Stall (Revision D) prepared by Landsurv Pty Ltd and dated 15 January 2018;**
 - Part Site Plan & Site Analysis (Drawing No. 2066C Sheet 1) prepared by Parameter Designs and dated 24 July 2017;**
 - Plans & Elevations (Drawing No. 2066C Sheet 2) prepared by Parameter Designs and dated 24 July 2017; and**
 - Section & Footing Detail (Drawing No. 2066C Sheet 3) prepared by Parameter Designs and dated 24 July 2017,**

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

- 3. Car parking for the roadside stall is to be in accordance with plan titled 'Part site plan and site analysis' prepared by Parameter Designs dated 24 July 2017.**

[GENNS01]

4. A building certificate is to be obtained for the road side stall within 30 days from the issue of this consent. The front awning is to be cut back to a maximum cantilever of 0.6m as indicated on the approved plans prior to the issue of the building certificate.
5. The structure is to be modified so as to only operate to a maximum 20m² area and can therefore be characterised as a roadside stall. An updated plan is to be submitted to Council for the approval of General Manager or delegate identifying how the structure is to be made compliant with the roadside stall definition.

Rural Fire Service Condition

6. The proposed development is to comply with the plan titled 'Part Site Plan & Site Analysis', prepared by Parameter Designs, reference 2066C and dated 24 July 2017, except where modified by conditions of this approval.

[GENNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

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

[POC0205]

9. 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]

10. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

11. Prior to the issue of an occupation certificate a building certificate is to be obtained in respect of the road side stall.

12. Prior to the issue of an occupation certificate the structure is to be modified so as to ensure the roadside stall use only operates to a maximum 20m² area.

[POCNS01]

USE

13. **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]
14. **Hours of operation of the business are restricted to the following hours:**
* 7:00am to 6:00pm
[USE0185]
15. **No intensification of food for sale beyond the provision of whole primary produced food products produced on the subject property is permitted without the approval of the General Manager or his delegate. Food preparation for the purposes of sale is not permitted at the roadside stall. Food preparation includes the cutting-and-wrapping of foods.**
[USE0855]
16. **All commercial / industrial / residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.**
[USE0875]
17. **In the event of an impending flood, if safe to do so, all stock and equipment should be moved to higher ground on the eastern side of Kyogle Road.**
18. **Stormwater collected from the roof of any structure shall not be directed towards a watercourse. Discharge of piped stormwater has the potential to cause scouring, which may result in sedimentation and bank instability.**
[USENS01]

REPORT:

Applicant: Mr AP Guinea
Owner: Mr Anthony P Guinea
Location: Lot 101 DP 755702 No. 839 Kyogle Road, Byangum
Zoning: 7(l) Environmental Protection (Habitat); 7(d) Environmental Protection (Scenic/Escarpment); RU2 - Rural Landscape
Cost: \$1,000

Background:

Proposal

Tweed Shire Council has received a development application for the use of an existing structure as a roadside stall at Lot 101 DP 755702 No. 839 Kyogle Road, Byangum, with road frontage to Kyogle Road. Kyogle Road is a Council designated road. The development application has been submitted in response to compliance action from Council, when Council officers became aware of the structure in the aftermath of the 2017 flood event.

The stall has a total floor area of approximately 24.5m², measuring 5.6m x 4.4m and has a height of 3.19m. Under the Tweed Local Environmental Plan 2000 (TLEP 2000) a roadside stall is defined as follows:

"a building or place not exceeding 20m² in floor space or area, respectively, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail."

Given that a roadside stall cannot exceed the 20m² allowable floor area it would be necessary to apply a condition to any approval requiring the existing structure to be modified so as only a 20m² area can be used as the roadside stall.

A total of four car parking spaces have been supplied to the satisfaction of Council officers.

Stated hours of operation are 7:00am to 6:00pm seven days a week.

A SEPP No. 1 objection has been provided by the applicant in relation to Clause 24 – Setbacks to designated roads of the TLEP 2000. Clause 24 requires development for the purposes of a roadside stall within the 7(l) Environmental Protection (Habitat) zone to be setback a minimum of 30m from the designated road. The roadside stall is proposed located 2.1m from Kyogle Road, a variation of 93%. As such, the application has been reported to Council for determination in accordance with the New South Wales Department of Planning and Infrastructure (DP&I) guidelines.

The development application was notified for a period of 14 days during which time one public submission (supporting the application) was received.

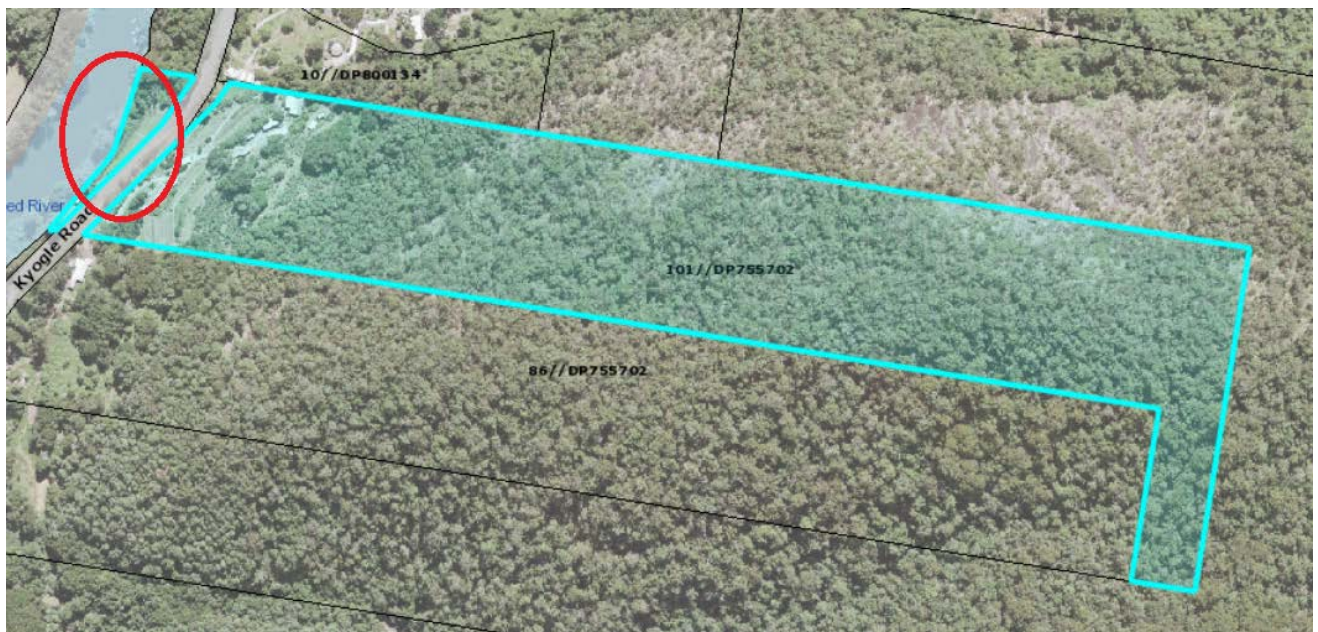
It is considered that the application is suitable for approval, subject to appropriate conditions of consent.

Site

The subject site is legally described as Lot 101 DP 755702 and more commonly referred to as No. 839 Kyogle Road, Byangum. The site is irregular in shape and has an approximate land area of 16.19 hectares.

The site is zoned part RU2 under the Tweed LEP 2014 and part 7(l) Environmental Protection (Habitat) and part 7(d) Environmental Protection (Scenic/Escarpment) under the Tweed Local Environmental Plan 2000.

The development to which this application relates is located on land zoned 7(l) Environmental Protection (Habitat).



Site (area of development in red)

The development is located to the west of the site. At this area, the site is traversed by the formed Kyogle Road, a Council designated road at this location, with a small portion of land between the road reserve and the Tweed River. This is the location of the roadside stall.

History

The subject site displays the following development history, pertinent to this application for a roadside stall.

D96/0435: Development Application – Roadside stall. Approved 11 December 1996.

- Condition No. 1 limited the approval to a period of 5 years from the date of consent.

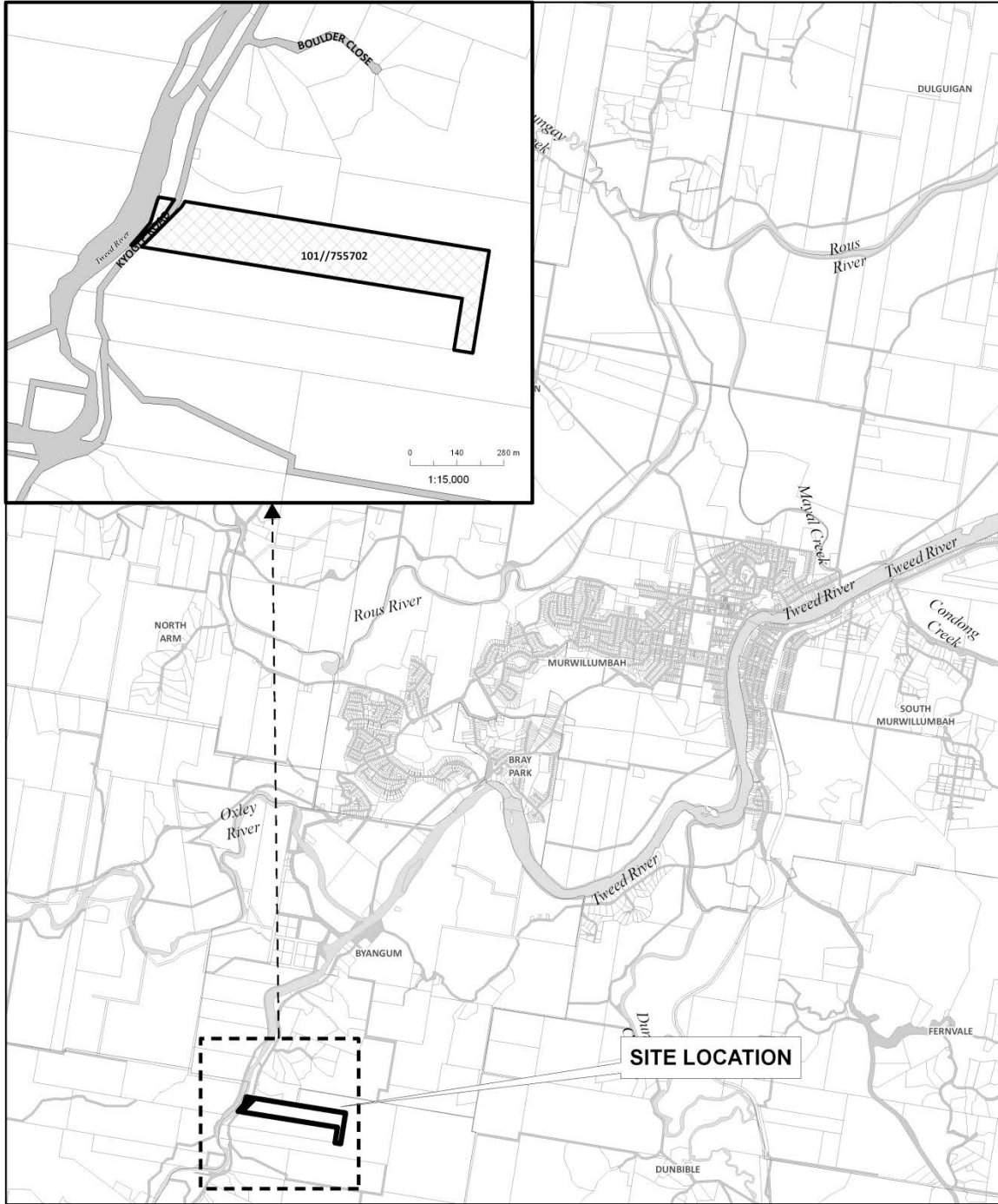
However, previous correspondence with Council indicate that the roadside stall operated after the five year period on existing use rights, as the Tweed Local Environmental Plan 2000 prohibited the use of a roadside stall, despite the roadside stall operating lawfully when the plan came into effect. This was accepted by Council staff (Note: legal advice was provided by applicant at this time).

The roadside stall is considered to have operated lawfully up to the March 2017 flood event, at which time the roadside stall structure was washed away. A new structure was erected in the same general area (although located further north).

Council's Compliance Officer contacted the applicant in April 2017, requiring that clarification be provided as to works undertaken in rebuilding a roadside stall.

The applicant subsequently lodged this development application in order to regularise the use on the site.

SITE DIAGRAM:



Site Plan

Lot 101 DP 755702
No. 839 Kyogle Road, Byangum



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.

 Cadastre: 21/03/2018
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Coordinate System - MGA Zone 56
Datum - GDA 94

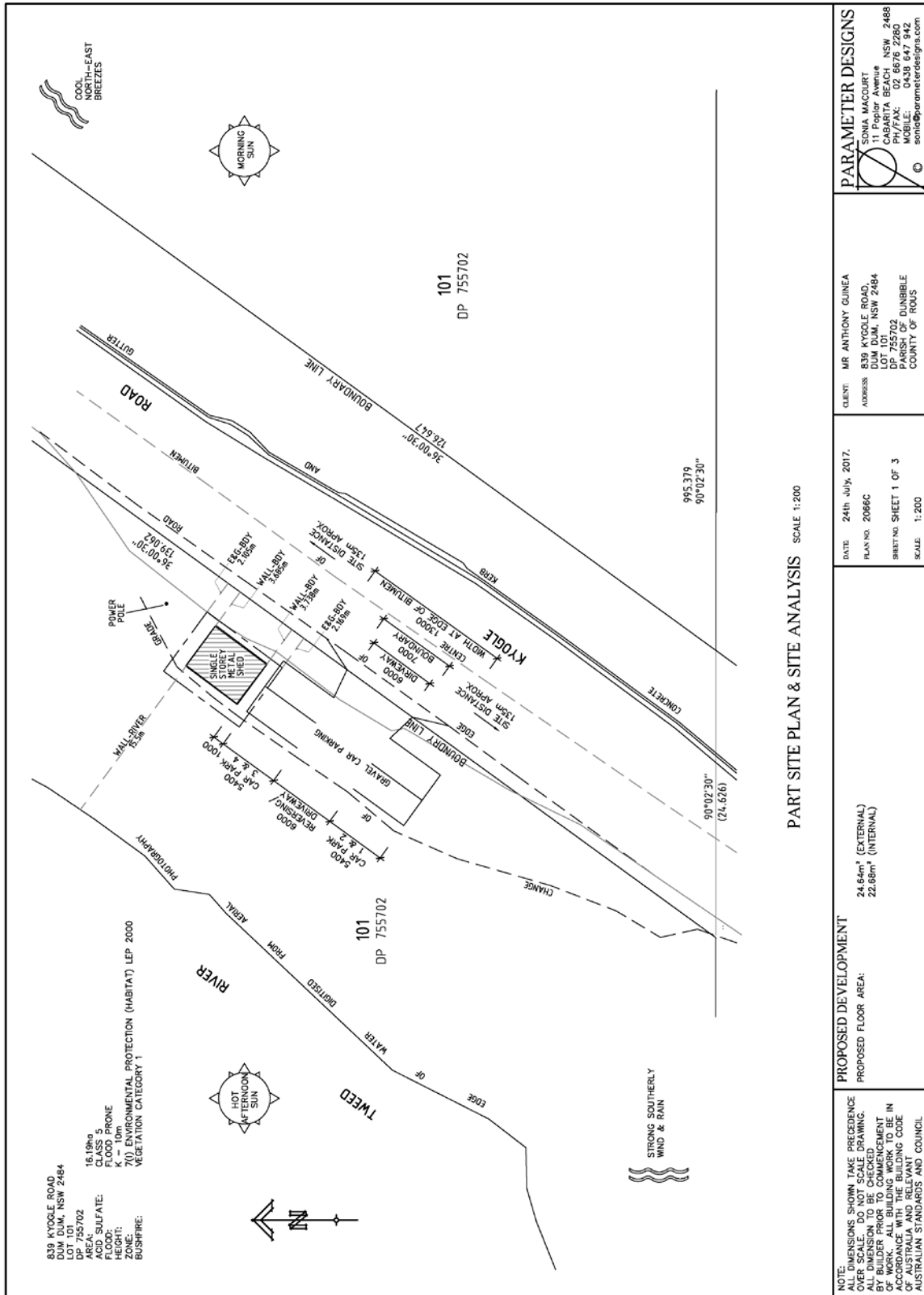
DO NOT SCALE
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Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

T: (02) 6670 2400 / 1300 292 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planning@tweed.nsw.gov.au



Date Printed: 21 March, 2018



PARAMETER DESIGNS
 SONIA MACCOURT
 11 Poplar Avenue
 CAGARITA BEACH NSW 2488
 PH/FAX: 02 8616 2260
 www.parameterdesigns.com
 sonia@parameterdesigns.com

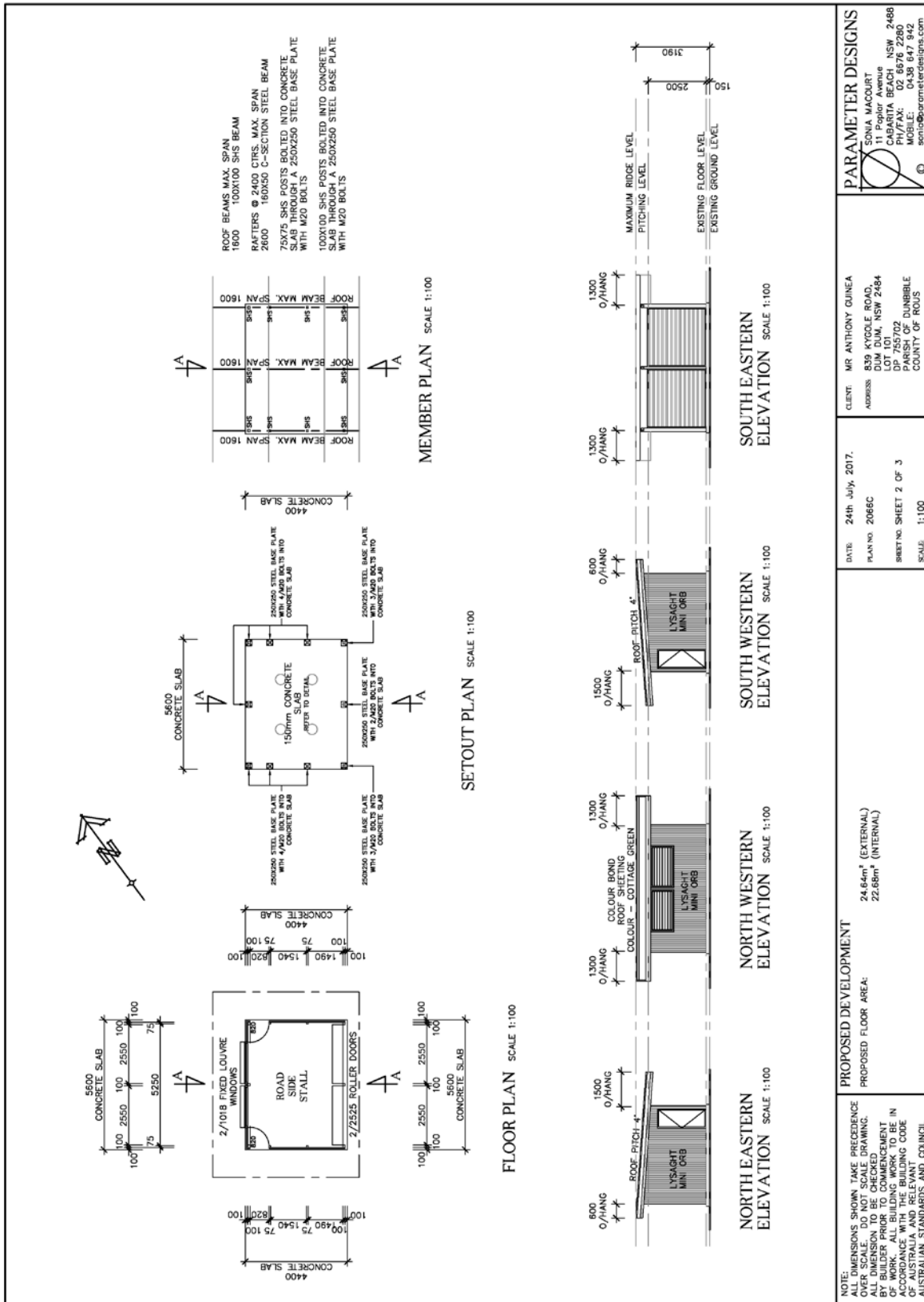
CLIENT: MR ANTHONY GUINEA
 ADDRESS: 839 KYOGLE ROAD,
 DUM DUM, NSW 2484
 LOT 101
 DP 755702
 PARISH OF DUNBILLE
 COUNTY OF ROUS

DATE: 24th July, 2017.
 PLAN NO. 2086C
 SHEETING SHEET 1 OF 3
 SCALE: 1:200

PROPOSED DEVELOPMENT
 PROPOSED FLOOR AREA:
 24.64m² (EXTERNAL)
 22.66m² (INTERNAL)

NOTE:
 ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING.
 DIMENSIONS TO BE CHECKED AND CONFIRMED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND ALL APPLICABLE NATIONAL, STATE AND LOCAL REGULATORY STANDARDS AND COUNCIL

PART SITE PLAN & SITE ANALYSIS SCALE 1:200



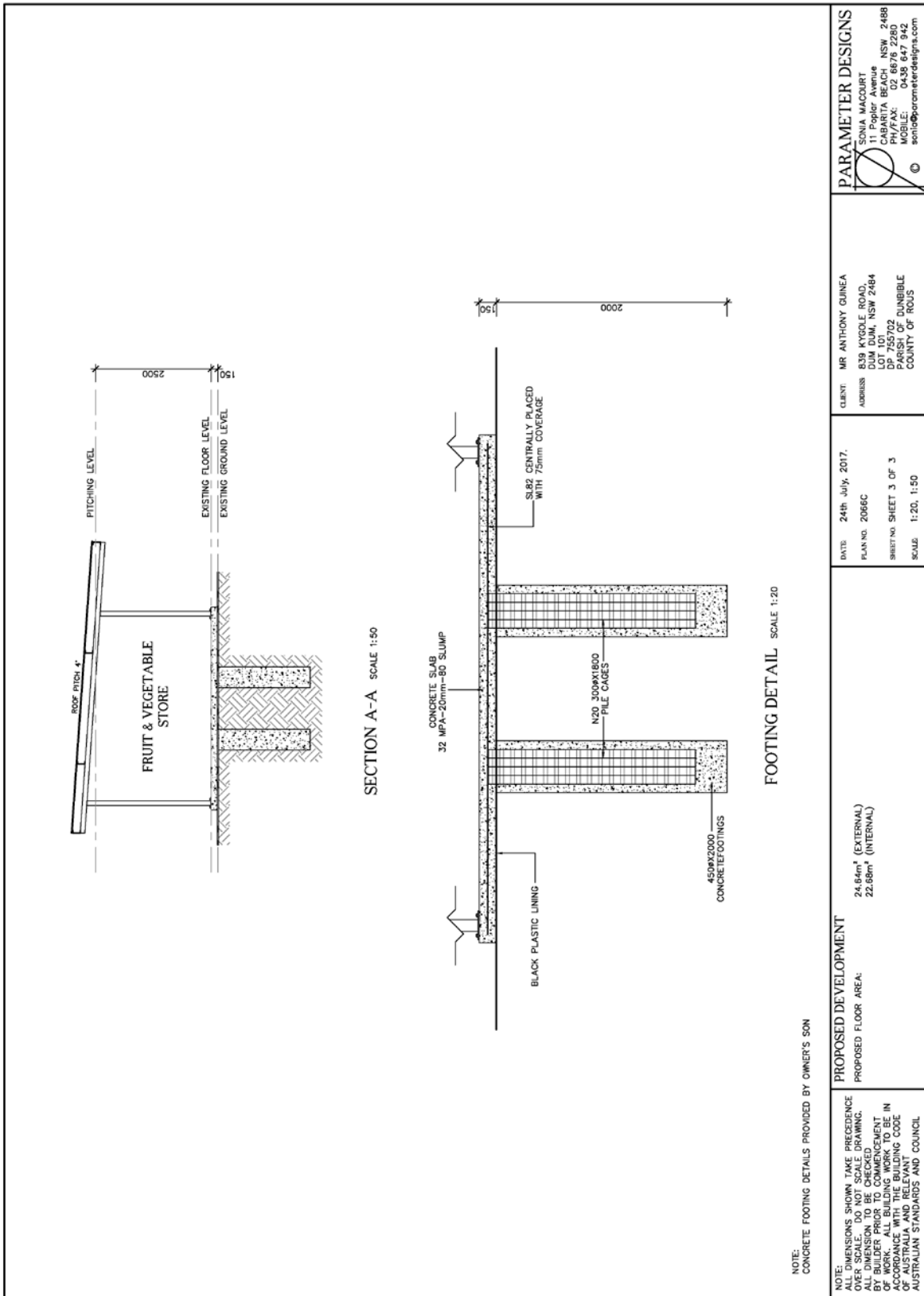
PARAMETER DESIGNS
SONIA MACCOURT
11 Papler Avenue
CABARITA BEACH NSW 2468
PHONE: 02 98 68 7922
MOBILE: 04 38 68 7942
social@parameterdesigns.com

CLIENT: MR ANTHONY GUINEA
839 KYCOLE ROAD,
DUM DUM, NSW 2484
ADDRESS:
DUM DUM NSW 2484
DP 755702
PARISH OF DUNDBLE
COUNTY OF ROUS

DATE: 24th July, 2017.
PLAN NO: 2066C
SHEET NO. SHEET 2 OF 3
SCALE: 1:100

PROPOSED DEVELOPMENT
PROPOSED FLOOR AREA:
24.64m² (EXTERNAL)
22.68m² (INTERNAL)

NOTE:
ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. DIMENSIONS TO BE CHECKED AND CONFIRMED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND THE LOCAL COUNCIL'S AUSTRALIAN STANDARDS AND COUNCIL



PARAMETER DESIGNS
 SONIA MACCOURT
 11 Poplar Avenue
 CABARITA BEACH NSW 2488
 Phone: 02 9377 7282
 Mobile: 04 387 7712
 email: s.mccourt@parameterdesigns.com

CLIENT: MR ANTHONY GUINEA
 ADDRESS: 839 KYGOLE ROAD,
 DUM DUM, NSW 2484
 DISTRICT: DUM DUM
 POSTCODE: 2484
 PARISH: PARISH OF DUNBIBBLE
 COUNTY: COUNTY OF ROUS

DATE: 24th July, 2017.
 PLAN NO. 2066C
 SHEET NO. SHEET 3 OF 3
 SCALE: 1:20, 1:50

PROPOSED DEVELOPMENT
 PROPOSED FLOOR AREA:
 24.64m² (EXTERNAL)
 22.68m² (INTERNAL)

NOTE:
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 THE DRAWING IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND THE RELEVANT AUSTRALIAN STANDARDS AND COUNCIL

FOOTING DETAIL SCALE 1:20

SECTION A-A SCALE 1:50

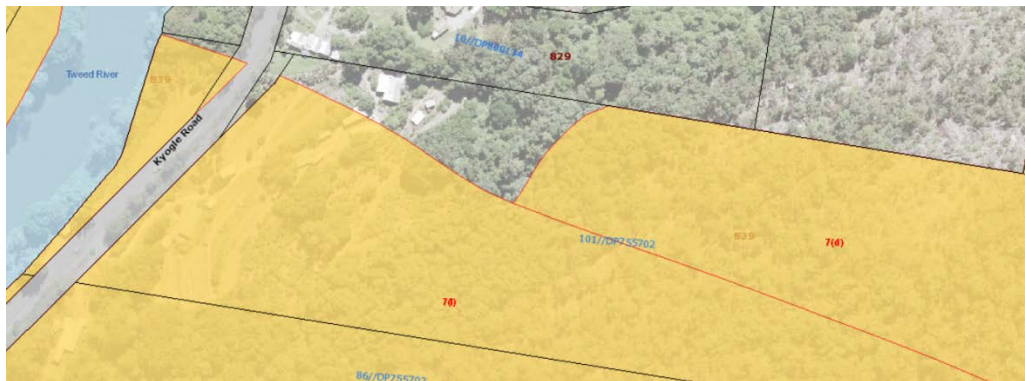
NOTE: CONCRETE FOOTING DETAILS PROVIDED BY OWNER'S SON

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 2000

The subject site exhibits both 7 (l) Environmental Protection (Habitat) and 7 (d) Environmental Protection (Scenic/Escarpment) zoned land under this Local Environmental Plan.



Extent of site zoned 7(l) and 7(d)

While the majority of the site is zoned 7(d) (approximately 67% of overall site area), it is noted that the land to which this application relates is zoned 7(l) (l) Environmental Protection (Habitat) and therefore the below assessment is based on this land zoning.

No development has occurred or is proposed to occur on the extent of land zoned 7 (d) Environmental Protection (Scenic/Escarpment).

Roadside stalls are prohibited in the 7(l) zone. The applicant has submitted information advising that the roadside stall can be undertaken under existing use rights provisions under the Environmental Planning and Assessment Regulations 2000.

Clause 4 - Aims of the Plan

The subject development application is generally in keeping with the aims of the plan as the roadside stall encourages sustainable economic and cultural development whilst maintaining the environmental qualities of the area.

Clause 5 - Ecologically Sustainable Development

The proposal does not contravene the principles of ecologically sustainable development due to its minor scale and the nature of the roadside stall which only allows produce grown on the site to be offered for retail.

Clause 8 – Consent considerations

The consent authority may grant consent to development only if:

- a) it is satisfied that the development is consistent with the primary objectives of the zone within which it is located, and
- b) it has considered those aims and objectives of this plan that are relevant to the development, and
- c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

In this case, consent is sought through the provisions of Existing Use Rights (as outlined elsewhere in this report). It is however considered that the subject proposal is not considered to result in any unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole due to its minor scale and nature. Furthermore, it is noted that prior to the 2017 flood, there was a roadside stall already on site, operating lawfully.

Clause 11 - Zone Objectives

Under the TLEP 2000, the subject land is zoned 7(l) Environmental Protection (Habitat), within which a roadside stall is prohibited (Item 4).

The objectives of this zone are:

Primary objectives

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

Secondary objectives

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

The roadside stall is not considered to contravene the above objectives, given that the area to be used as a roadside stall was previously approved and used for such a use. In any event, as outlined above, the application seeks consent through the provisions of existing use rights.

Clause 16 - Height of Building

The roadside stall has a maximum height of 3.19m which is entirely consistent with the three storey height limit of the subject site outlined under this Clause.

Clause 17 - Social Impact Assessment

The proposal does not require the provision of a social impact assessment and is not considered to result in any significant social impacts, aside from potential economic returns for the owner.

Clause 35 - Acid Sulfate Soils

The subject site displays Class 5 Acid Sulfate Soils which require a management plan for any works within 500m of Class 1, 2, 3 or 4 land that are likely to lower the water table below 1m in adjacent Class 1, 2, 3 or 4 land. The site is not located within 500m of any other class of soils.

As this application relates to the use of an existing building as a roadside stall it is not considered that there would be any impact on Acid Sulfate Soils arising from this development. Council's Environmental Health Unit have reviewed the application in this regard, advising that '*Proposed approval does not trigger the requirement for an ASS Management plan.*'

No further consideration with regard to Acid Sulfate Soils is required.

Other Specific Clauses

Clause 22 – Development near designated roads

Clause 22 of the TLEP 2000 requires Council to protect and improve the capacity, efficiency and safety of designated roads. The proposal relies upon Kyogle Road for access, a Council designated road.

The following comments are offered by the applicant in relation to Clause 22(4):

"Having regard to the modest scale and nature of the development and given that the roadside stall has operated without any known incidents since 1985, it is considered that the proposed development is not inconsistent with this clause."

Council's Traffic Engineer and Development Engineering Section have reviewed the application in this regard and returned no objections. Accordingly, the proposal is considered to satisfy Clause 22 of the TLEP 2000.

Clause 24 – Set backs to designated roads

Clause 24 of the TLEP requires Council to control development along designated roads.

The provisions of Clause 24 require the proposed roadside stall be setback a minimum of 30m from the designated road (Kyogle Road).

The roadside stall is located 2.1m from Kyogle Road, and accordingly a SEPP No. 1 objection has been submitted. The details of the SEPP No. 1 objection have been discussed in detail further in this report, concluding that in this

instance, the 30m setback development standard is considered unreasonable and unnecessary.

Clause 31 – Development adjoining waterbodies

This Clause applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody. The subject roadside stall is located adjacent to Tweed River and so this clause applies.

The clause requires consideration of the impacts of development on adjoining waterbodies, with particular emphasis on scenic quality, water quality, aquatic ecosystems, flora/fauna and public accessibility.

The roadside stall building has been previously established on the site and it is noted that the application has been reviewed by Council’s Natural Resource Management Unit and Flooding/Stormwater Engineer with respect to the above matters, with no issues raised in this regard. It is considered that the proposal is considered to be acceptable. The application is therefore considered satisfactory with respect to the Clause.

Clause 39A – Bushfire protection

The subject site, including the roadside stall location are indicated as being bushfire prone with the roadside stall itself located within the vegetation buffer area. The applicant has submitted the following with respect to this matter:

Table 4 addresses compliance with the aims and objectives of the publication.

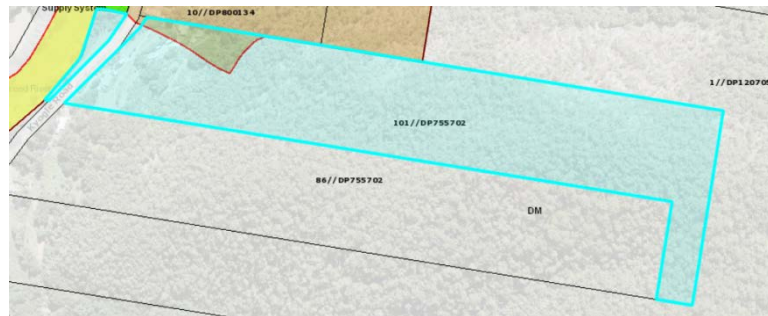
TABLE 4 – BUSHFIRE ASSESSMENT	
PBP 2006 Aims & Objectives	Comment
<i>afford occupants of any building adequate protection from exposure to a bush fire;</i>	The building is constructed of steel and is not habitable.
<i>provide for a defensible space to be located around buildings</i>	The car parking and turning areas provide such a space.
<i>provide appropriate separation between a hazard and buildings which, in combination with other measures, prevent direct flame contact and material ignition</i>	See above – the threat is considered minimal.
<i>ensure that safe operational access and egress for emergency service personnel and residents is available</i>	The existing road network provides adequate access.
<i>provide for ongoing management and maintenance of bush fire protection measures, including fuel loads in the asset protection zone (APZ)</i>	Such measures are not required in the subject circumstances.
<i>ensure that utility services are adequate to meet the needs of firefighters (and others assisting in bush fire fighting)</i>	Reticulated water supply is not available, however access for fire fighting vehicles from Kyogle Road is readily available.

This bushfire assessment which was referred to New South Wales Rural Fire Service (RFS). A response was received providing a recommended condition of

consent. Subject to the application of this condition on any consent, the proposal is considered to be in accordance with this Clause.

Tweed Local Environmental Plan 2014

It is noted that a small portion of the site, being approximately 4% of the total overall area (6,900m²) is zoned RU2 Rural Landscape under Tweed LEP 2014 as identified below;



Extent of site zoned RU2 Rural landscape

No development has occurred or is proposed to occur on this portion of the site and therefore further consideration against the provisions of Tweed LEP 2014 is not required for this development application.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this, it may, with the concurrence of the Director-General, grant consent to the development application

The subject application contains a SEPP No. 1 objection with respect to the 30m setback required by Clause 24 (Setbacks to designated roads) of the TLEP 2000 for development of this nature within the 7(l) Environmental Protection (Habitat) zone. The application proposes a 2.1m setback to Kyogle Road. The proposal

constitutes a 93% variation and as such, the application is being reported to Council.

In *Wehbe v Pittwater Council* (2007) New South Wales Land Environment Court 827, Chief Justice Preston suggests that a consent authority must be satisfied of three matters before a SEPP No. 1 objection can be upheld:

- (1) That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- (2) The granting of consent is consistent with the aims of SEPP 1
- (3) That clause 8 matters (in SEPP 1) are satisfied i.e.
 - Whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning.
 - The public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Each of the three key matters are addressed by the applicant as follows:

- (1) ***That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

We submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard on the following basis:

Clause 24(1) of the Local Environmental Plan provides the following objective in relation to setbacks to designated roads.

- (1) *Objective*
 - *to control development along designated roads.*

The terms of Clause 24(1) of TLEP 2000 are not to preclude any building within 30m, but rather to 'control development'.

The implied objective of the 30m development standard is to facilitate possible future road widening, maintain the rural character of the locality and maintain a rural streetscape.

The relevant questions to properly assess whether the objectives of the standard are achieved notwithstanding non-compliance with the standard are as follows:

- a) *Will the proposed use of the existing building adversely impact on the ability for future widening of Kyogle Road?*

The existing building is setback approximately 3m from the edge of Kyogle Road. Kyogle Road is within a 20m wide road reserve and the eastern edge of the road formation is located approximately 7m to 10m from the alignment of the road reserve.

Having regard to existing zonings and land uses in the locality and the existing road geometry, it is highly unlikely that road widening will be required in the future and therefore the setback is considered to be adequate.

The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Given that the previous roadside stall was approved with a setback of approximately the same distance, it is considered that the 30m standard has been virtually abandoned.

b) *Will the use of the existing roadside stall building as a roadside stall adversely impact on the rural character and amenity of the locality?*

The scale and external cladding of the building blend in with the existing landscape and the building is essentially of the same scale and in the same location as the previous roadside stall. It is therefore considered that the reduced setback will not be inconsistent with the objective of maintaining rural character and amenity.

c) *Will the use of the existing roadside shed as a roadside stall impact on the rural streetscape?*

The design, scale and siting of the existing building are such that it is not prominent and does not impact on the rural streetscape.

(2) That the granting of consent is consistent with the aims of SEPP 1

The aims and objectives of SEPP 1 are as follows:

"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."

Compliance with the 30m setback development standard would preclude a logical use of an existing building in an appropriate location which is setback an adequate distance from the alignment of Kyogle Road, consistent with the previous approved roadside stall building.

In this case, where the proposed development would not alter the status-quo, compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

(3) That clause 8 matters (in SEPP 1) are satisfied i.e.

- **Whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning.**
- **The public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

In considering whether the proposal creates any matters of Regional or State planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.

- *A substantial setback of 2.105m to 2.169m is achieved;*
- *The building to be used is existing and is in essentially the same location previous roadside stall which was destroyed in the March 2017 flood;*
- *The existing building is of very modest scale, discreetly located and does not detract from the landscape and scenic quality of the locality generally and Kyogle Road in particular;*
- *Widening of Kyogle Road is unlikely to be required because the existing road reserve is 20m wide and the existing eastern carriageway edge approximately 7m to 10m from the eastern alignment of Kyogle Road;*

We conclude that the proposed development does not raise any matters of Regional planning significance and there is considered to be no public benefit in maintaining the standard.

Development Assessment Unit Comments

In addition to being satisfied that the SEPP No. 1 objection is well founded, the consent authority must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3” and consider the matters in clause 8(a): “whether non-compliance with the development standard raises any matters of significance for State or regional environmental planning; and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

The aims of the policy are as follows:

“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act”.

Sections 5(a) (i) and (ii) are as follows:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests,

minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

- (ii) the promotion and co-ordination of the orderly and economic use and development of land.

(a) (i) and (ii) it is considered that the roadside stall does not hinder the proper management, development and conservation of any resources, in particular land that surrounds the subject site. The proposal is considered to have minimal environmental impacts whilst contributing to the economic welfare of the community and facilitating orderly and economic use of the subject site. It is noted that a roadside stall operated at this general location of the site prior to the March 2017 flood event. Non-compliance with the development standard is not considered to raise any matters of significance for State or regional environmental planning.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with Clause 24 of the TLEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent. As such, the approval of this development application is unlikely to impact upon public benefit and the objection is considered to be well founded.

Based on the above, support of the subject SEPP No. 1 objection is considered appropriate in this instance.

SEPP No. 55 - Remediation of Land

The aim 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.

The subject application has been reviewed by Council's Environmental Health Unit who have raised no issues with respect to contamination. In this regard it is noted that this area of site has been historically used as a roadside stall (file indicates since 1985). The subject application is considered to be acceptable with respect to contaminated land and would not contravene the provisions of this SEPP.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Under Development Control Plan (DCP) A2, no specific requirement for car parking associated with a roadside stall has been specified, with a note applied to 'assess on its merits, but all parking must be on site (off road reserve)'.

The submitted information indicates the provision of four car parking spaces adjacent to the roadside stall.

The development application has been reviewed by Council's Traffic Engineer and Development Engineering Section and comments received have indicated that the parking and access arrangements proposed are acceptable. Council's Development Engineering Section has provided the following comment;

'The applicant has proposed 4 car parking spaces with a gravel car park construction. The DCP allows for a gravel car park located in a rural area provided the development is consistent with the amenity and land use of the development site and surrounding areas. No objections are raised to the construction of a gravel car park or the number of spaces proposed. 4 car parking spaces is considered adequate for the development.'

Further to this a recommended condition of consent with respect to the proposal is provided (requiring parking to be in accordance with submitted plan) and would be applied to any consent issued.

It is considered that the roadside stall has adequate parking and access arrangements and as such the proposal is consistent with DCP A2.

A3-Development of Flood Liable Land

Council does not hold flood modelling for this area, however the application has been reviewed by Council's Flood Engineer, given this area experienced significant flooding through the 2017 flood event referenced in this application. The following comments have been received;

Council does not hold flood modelling for this area of the Valley. However, this assessment is informed by post flood observations, nearby surveyed peak flood levels and knowledge of the local topography.

The stall location is extremely exposed to flooding due to its close proximity to the Tweed River. The previous stall was completely destroyed by the March 2017 flood event. There is a very real risk to property for any structure erected on this site.

If this application was a new DA with no (questionable) existing use rights, the proposal would be discouraged in favour of a more appropriate stall

location due to the flood risk. However, there is no specific control in DCP-A3 that prohibits the proposed use.

The SEE states that "in the event of a flood, all stock will be moved to higher ground on the eastern side of Kyogle Road"

Whilst I have concerns regarding the risk to property posed by the proposal, DCP-A3 does not prohibit the intended use of the site. Therefore, I do not object to the DA.

Based on this information, the proposal is considered to be acceptable in relation to the provisions of DCP Section A3.

A11-Public Notification of Development Proposals

The proposal was notified to nearby landholders for a period of fourteen (14) days from Monday 28 August 2017 to Monday 11 September 2017. One submission was received as a result of the notification process, which supported the development proposal.

A15-Waste Minimisation and Management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development. It is considered appropriate that a standard condition be applied requiring that all waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management. As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this Section of the DCP.

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

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

The subject site is not located on land to which the Government Coastal Policy applies.

Clause 92(1)(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

This application relates to the use of building which was erected without Council consent as a roadside stall. The Development Application was reviewed by Council's Building Services Unit who have indicated that subject to the imposition of appropriate conditions of consent, the proposal would be acceptable. These include the applicant obtaining a Building Certificate and Occupation Certificate.

It is noted that an Engineering report has been submitted with the application which requires that the front awning is to be cut back to a maximum cantilever of 0.6m as indicated on the approved plans. This has also been required by Council's Building Unit.

The proposal is considered to be acceptable having regard to the above Clause.

Clause 94 Buildings to be upgraded

This application does not propose the rebuilding, alteration, enlargement or extension of an existing building. Clause 94 is not relevant to the proposal.

Part 5 Existing uses

A roadside stall was approved on 11 December 1996 under D96/0435, at which time this was a permissible form of development on the site. This consent was time limited to a period of 5 years. As outlined under the LEP assessment above, this use is no longer permissible and as such is considered to constitute an 'existing use' as per the definition under Clause 4.65 of the EP & A Act.

Council have previously issued correspondence February 2007) accepting that the roadside stall was operating lawfully with existing use rights.

It is considered this was the case up until the March 2017 flood event, at which time the roadside stall structure was washed away. A new structure was erected in the same general area (although located further north).

The applicant has submitted the following with respect to the consent sought for this application.

Therefore, in accordance with established practice, DA17/0524 only seeks development consent to authorise the use of the existing building as a roadside stall, in accordance with Section 107(1) of the Act, which authorises the continuance of an existing use.

In addition, and again in accordance with established practice, retrospective authorisation of the existing roadside stall building is sought by way of a Building Certificate under Section 149A of the Environmental Planning and Assessment Act, 1979, for which a separate but concurrent application has been submitted to Council

Section 107(1) of the Act is now referred to as Clause 4.66 (1) Continuance of and limitations on existing use and states the following;

- 4.66 (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*

In this instance, a roadside stall in this area was previously accepted as an existing use.

Consent should have been sought for the rebuilding of the roadside stall prior to construction occurring, however in the aftermath of the flood event it seem that this was overlooked and the proponent simply commenced re-construction of the roadside stall.

In any event, it is considered that the newly constructed roadside stall is located in the same general area as was previously used (being the parking area) as a roadside stall.

In this respect, the proposal is considered to be consistent with the provisions of the legislation, insofar as the area operating at the time of assessment as a roadside stall is the same area which previously operated lawfully under existing use rights.

Therefore, it is considered appropriate that consent be issued for the use of the roadside stall as proposed under this application, through the pathway identified by the applicant, being that nothing in the Act or an environmental planning instrument prevents the continuance of an existing use.

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

Tweed Shire Coastline Management Plan 2005

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

Tweed Coast Estuaries Management Plan 2004

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not applicable to the 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 within the Cobaki or Terranorra Broadwater (within the Tweed Estuary), 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 proposal is minor in scale and in keeping with the non-urban character of the subject locality, offering primary produce grown on the property for sale. No adverse impacts on the natural or built environment are envisaged in the locality, and the proposal has the potential to facilitate economic returns for the landholder and provide for future growth of a farming venture. The proposal is consistent with the context and setting of the locality.

Access, Transport and Traffic

The proposed access and parking arrangements have been reviewed by Councils Development Engineering Section and Traffic Engineer. No objections have been raised with respect to the development in this regard.

From a traffic access perspective, it is noted that a roadside stall at this location has been lawfully established via previous approvals.

A recommended condition has been provided requiring parking to be in accordance with the submitted site plan. This would be attached to any consent for the development application. The proposal is considered to be appropriate from an access and traffic point of view.

Amenity

The application has been reviewed with respect to amenity impacts by Council officers in the Environmental Health Unit. The following comment has been provided in this regard;

The existing stall has operated continuously from approximately 1985 to present as specified in the SEE. Council records indicate there have been no complaints in relation to amenity impacts. Initial approval for the D96/435 approved the use of the road side stall for 5 years. Amenity (including noise) impacts are not considered a constraint for the proposal.

The subject application is considered to be acceptable in this regard.

(c) Suitability of the site for the development

Flora and Fauna

The application was referred to Council's Natural Resource Management Unit, with the following comment being provided:

- *Ecological impacts of the roadside stall are considered minimal as the new stall is the same general size and constructed in the same general location of the previous stall and such works have not required any additional vegetation removal.*
- *As mentioned within Zone 7(l) Management Plan provided by DAC Planning Pty Ltd, potential adverse effects to the habitat area arising from the development include:*
 - *Introduction of weeds.*
 - *Disturbance of vegetation during the operational phase.*
 - *Damage and destruction of habitat.*
 - *Discharge of concentrated stormwater flow into nearby Tweed River.*
- *Management measures proposed include:*
 - *Discharging roof water runoff to the west via an energy dissipater outlet.*
 - *Siting the stall within the existing building footprint.*

- *Ensuring solid waste is collected and disposed of in accordance with Waste Management Plan.*
- *Stormwater runoff was inspected. Some undercutting of the bank was evident as a result of concentrated flow from a section of Kyogle Road and the stall carpark. It was considered that the hardstand associated with the stall carpark area contributes only a minor component of the overall concentrated overland flow into the Tweed River at this point. Therefore specific management measures are not considered warranted as part of this development*
- *The application is not considered to have an adverse environmental impact and NRM do not require any specific conditions of consent given no vegetation removal was/is required and stormwater impacts are generally consistent with previous consent and appear minimal at present.*

Based on this, the application is considered to be generally acceptable having regard to the flora and fauna impacts associated with the development.

Food Premises

The application was referred to Council's Environmental Health Section who provided comments and the following recommended condition of consent with respect to food premises. *'The existing building does not comply with Food Standards Code 3.2.3 or AS 4674-2004 Design, construction and fit-out of food premises. However, the existing building is considered to be adequate for the sale of whole primary produced food (not ready-to-eat) products only. Ready-to-eat food does not include whole raw fruits and vegetables as these are intended to be washed, hulled or peeled before they are consumed (A Guide to the Food Safety Standards, ANZFA, 2001). Appropriate condition recommended restricting intensification.*

Conditions will be applied as recommended.

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

The application was notified to surrounding properties for a period of fourteen days from Monday 28 August 2017 to Monday 11 September 2017. During this time, one submission, in support of the development, was received by Council.

(e) Public interest

The proposed roadside stall is considered to be consistent with all applicable planning controls and the SEPP No. 1 objection is considered to be well founded and warranted based on the circumstances of this particular case. The proposal is considered to be generally in the public interest as it will facilitate economic activity in the subject locality whilst remaining consistent with the non-urban land use of the area and compatible with the natural environment.

OPTIONS:

1. Approve the application in accordance with the recommended conditions; or
2. Refuse the development application for specified reasons.

Council officers recommend option 1.

CONCLUSION:

The subject application is considered to generally comply with statutory and policy requirements. Strict application of Clause 24 – Setbacks to designated roads of the Tweed Local Environmental Plan 2000 was considered unreasonable and unnecessary in this instance and the State Environmental Planning Policy No. 1 objection is considered to warrant support. The proposed development has been assessed against the relevant legislative provisions and standards and is not considered to have a significant impact on the social, cultural and environmental characteristics of the local environment. Therefore the proposed development is recommended for conditional approval.

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 Council determination of this application in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PR-PC] Development Application D91/0266.01 for an Amendment to Development Consent D91/0266 for the Erection of a Three Storey Mixed Development Comprising Seven Shops and Five Flats With Associated Car Parking at Lot 3 SP 64511 No. 3/31-33 Tweed Coast Road, Bogangar

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:

UPDATED REPORT

This Section 96 (1A) application was reported to the Planning Committee meeting on 1 March 2018 with a recommendation for approval subject to conditions. The report also recommended the following actions:

- That Council writes to the Body Corporate for Strata Plan 64511 requesting that the unauthorised works beneath Lot 3 SP64511 within common property be rectified.
- That a Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 for undertaking development without consent.
- That the owner of Lot 3 SP64511 be advised in writing that Unit 3; Lot 3 SP64511 is not to be occupied or used until the amended consent D91/0266.01 and accompanying conditions have been complied with in full.

Following consideration of the application, Council resolved that this item be deferred to the Planning Committee meeting of 5 April 2018 to seek further clarification from the Applicant regarding the fire safety and tenure of this unit.

The applicant has submitted a Certificate of Fire Detection and Alarms Systems for Class 1a buildings certifying that the automatic fire detection and alarm system has been installed by a qualified licensed electrical contractor. On 19 March 2018, the applicant submitted a written response to Council's invitation to submit further information. The letter requests that reference to the toilet be removed from the Council report, seeks clarification on the number of submissions received in relation to the application and requests that the conditions

requiring exclusive use of an additional car parking space for the unit be deleted. The applicant has indicated that he accepts all other draft conditions. The applicant's response is set out in more detail in Attachment 2 to this report.

While the additional toilet installed in the unit no longer forms part of this modification application, the absence of a fire collar on the toilet had raised concerns with regards to fire safety and non-compliance with fire regulations. While it does appear that the applicant has attempted to move forward with this issue, he has been unable to install a fire collar on the toilet as this requires access to both the commercial unit below and to common infrastructure, neither of which is available to him.

An assessment of the risk to life, the risk to the spread of fire and the risk to the asset as a result of the missing fire collar has been undertaken. The risks in all cases are considered to be relatively low given fire brigade intervention (ie the fire brigade would be expected to respond to a fire before there would be a serious risk to life/spread of fire/asset loss) and that the room to be protected is a toilet. On this basis and with the fire alarm(s) now installed, it is considered reasonable to withdraw the recommendation to Council to vacate the unit whilst these works are carried out.

To acknowledge that the unit will not be vacated and that there is no 'prior to occupation' stage or a requirement on the applicant to acquire an occupation certificate within a reasonable period of time, the amended recommendation will require the modification of the following draft conditions:

- Condition 4A (payment of Section 64 Contributions)
- Condition 4B (payment of Section 94 Contributions)
- Condition 10A (exclusive use of additional car parking space)
- Condition 18C (Certification of smoke alarms)
- Condition 18D (Approval of water works associated with kitchen relocation)
- Condition 21 (*previously Condition 23*) (Fire Safety Certificate),
- Condition 22 (*previously Condition 25*) (Final inspection report for plumbing and drainage works)
- Condition 23 (*previously Condition 26*) (Compliance with conditions of consent)

Given that the unit will remain occupied and there would be no deadline for the applicant to obtain an occupation certificate, the draft conditions formerly numbered Conditions 21, 22, 24, 26 and 27 (which related to 'first occupation' or an 'occupation certificate') are now better addressed by way of a modified condition. These four draft conditions which were previously presented to Council have been deleted and replaced with amended draft Condition 23 (*previously Condition 26*) which requires the applicant to provide written evidence (within six months of the date of the modified consent) to the satisfaction of the General Manager or his delegate certifying that all conditions of consent under D91/0266.01 (as they relate to Unit 3) have been met.

The remainder of the draft conditions as reported to Council on 1 March 2018 remain unchanged, as does the recommendation that a Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 and that the Body Corporate be requested to rectify the unauthorised works undertaken by the applicant in connecting a toilet into the common property. However a three month period for rectifying these works has now been recommended.

SUMMARY OF ORIGINAL REPORT

A Section 96 (1A) application was received by Council on 12 December 2017 seeking retrospective approval to modify the development consent issued under D91/0266 which related to the erection of a three (3) storey mixed development comprising seven (7) shops and five (5) flats with associated car parking at No. 3/31-33 Tweed Coast Road Bogangar.

The application as originally submitted sought to modify the governing consent to allow for the retention of works which have been undertaken in Residential Unit 3 (Lot 3 SP 64511). The works in question consist of the following:

- Conversion of a dining area to a kitchen to create an open plan kitchen/dining/living room;
- Enclosure of former open plan kitchen area to create a room which has been identified on the plans as a third bedroom;
- Provision of an additional toilet and connection into the sewerage pipes in the common property.

On 15 February 2018, the applicant advised Council in writing that he did not wish to include the additional toilet as part of the application.

The works have changed an approved two (2) bedroom unit to a three (3) bedroom unit which in turn has increased the car parking requirements associated with the unit from 1.5 car parking spaces to 2 car parking spaces. An assessment of the current car parking requirements for the approved commercial and residential uses on the site indicates that there is currently two car parking spaces surplus to requirements.

To ensure that the residents of Unit 3 have exclusive use of a car parking space on the common property, it is recommended that a condition to attached to any consent issued requiring that a second car parking space (in addition to that in the garage in Lot 3) be identified and allocated to Unit 3 and made available exclusively for the use of residents of Unit 3. This will require the applicant to negotiate with the Owners Corporation to identify and secure an additional space within the common property parking.

The application was not notified however three (3) submissions in relation to the application/unauthorised works have been received. The key planning matters raised related to the following:

- The applicant's entitlement (or lack thereof) to rely on the existing car parking provision on the site with there being a question as to whether the unallocated (common property) car parking spaces were exclusively for the commercial tenancies or could be used by the residential tenancies
- There is no owners consent for work which impact on common property
- Water damage to adjoining property as a result of the additional toilet and inadequate damp-proofing associated with same, and
- A request for Council's equitable application of the planning controls in the assessment the development.

It is therefore recommended that the application (as amended on 15 February 2018 to delete the retention of the toilet) for the internal alternations involving the relocation of the kitchen and dining room and the creation of a third bedroom be approved subject to condition.

The applicant was issued with a building certificate for Lot 3 SP64511 on 18 January 2018 (BC17/0126). The plans submitted with the application highlighted the structural changes to the internal walls within Unit 3, but did not specifically highlight the additional toilet in the bathroom as a modification to the approved plans. Notwithstanding this, the certificate issued provides that the owner of Unit 3 is immune from Council requiring the demolition or rectification of works within Lot 3 SP64511 for a period of seven (7) years. The certificate does not prevent Council from taking proceedings against the applicant under section 125 of the *Environmental Planning and Assessment Act 1979* with respect to a failure to obtain development consent for the works or use of the building or to comply with the conditions of a development consent.

The certificate also does not cover any unauthorised works outside of the lot, which would include works relating to the common property floor slab and common infrastructure: The construction of the additional toilet involved the penetration of the floor slab under Unit 3 and the connection into the sewerage pipes in the common property. This works remains unauthorised.

RECOMMENDATION:

That:

A. Development Application D91/0266.01 for an amendment to Development Consent D91/0266 for the erection of a three storey mixed development comprising seven shops and five flats with associated car parking at Lot 3 SP 64511 No. 3/31-33 Tweed Coast Road, Bogangar be amended set out below:

1. ADD new Condition 4A, which reads as follows:

4A. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council within three (3) months of the date of this modified consent to verify that the necessary requirements for the supply of water and sewerage to the development (specifically Lot 3 SP64511) have been made with the Tweed Shire Council.

All Section 64 Contributions shall be paid within three months of the date of this modified consent.

BELOW IS ADVICE ONLY

The Section 64 Contributions for this development (specifically Lot 3 SP64511) at the date of this modified approval have been estimated as:

Water =	0.2 ET @ \$13,632 =	\$2,726.40
Sewer =	0.25 ET @ \$6,549 =	\$1,637.25

[PCC0265]

2. ADD new Condition 4B, which reads as follows:

4B. Section 94 Contributions – Lot 3 SP64511

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

All Section 94 Contributions must be paid in full within three months of the date of this modified consent.

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

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

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

- | | |
|--|-------|
| a. Open Space (Casual):
0.1667 ET @ \$564 per ET
(\$502 base rate + \$62 indexation)
S94 Plan No. 5 | \$94 |
| b. Open Space (Structured):
0.1667 ET @ \$645 per ET
(\$575 base rate + \$70 indexation)
S94 Plan No. 5 | \$108 |
| c. Shirewide Library Facilities:
0.1667 ET @ \$869 per ET
(\$792 base rate + \$77 indexation)
S94 Plan No. 11 | \$145 |
| d. Bus Shelters:
0.1667 ET @ \$66 per ET
(\$60 base rate + \$6 indexation)
S94 Plan No. 12 | \$11 |
| e. Eviron Cemetery:
0.1667 ET @ \$127 per ET
(\$101 base rate + \$26 indexation)
S94 Plan No. 13 | \$21 |

f.	Community Facilities (Tweed Coast - North) 0.1667 ET @ \$1457 per ET (\$1,305.60 base rate + \$151.40 indexation) S94 Plan No. 15	\$243
g.	Extensions to Council Administration Offices & Technical Support Facilities 0.1667 ET @ \$1935.62 per ET (\$1,759.90 base rate + \$175.72 indexation) S94 Plan No. 18	\$322.67
h.	Cycleways: 0.1667 ET @ \$490 per ET (\$447 base rate + \$43 indexation) S94 Plan No. 22	\$82
i.	Regional Open Space (Casual) 0.1667 ET @ \$1132 per ET (\$1,031 base rate + \$101 indexation) S94 Plan No. 26	\$189
j.	Regional Open Space (Structured): 0.1667 ET @ \$3974 per ET (\$3,619 base rate + \$355 indexation) S94 Plan No. 26	\$662

[PCC0215/POC0395/PSC0175]

3. ADD new Condition 10A, which reads as follows:

10A. One off street car parking space within the common property (in addition to the car parking space contained in Lot 3 SP64511) shall be designated for the exclusive use of the Unit 3; Lot 3 SP 64511.

Written evidence of same is to be provided to the satisfaction of the General Manager or his delegate within six months of the date of this modified consent.

[GENN001]

4. ADD new Condition 18A, which reads as follows:

18A. The works to Unit 3, Lot 3 SP64511 shall be completed in accordance with the Modification Report prepared by DAC Planning and dated November 2017 and Proposed Floor prepared by Martech Drafting & Building Services and dated December 2017, except where varied by the conditions of this consent.

- **The additional toilet identified on the stamped plan does not form part of this consent.**

[GEN0005]

5. ADD new Condition 18B, which reads as follows:

18B The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

6. ADD new Condition 18C, which reads as follows:

18C. The following works are to be undertaken to ensure that Unit 3; Lot 3 SP64511 is provided with a satisfactory level of fire safety:

- Smoke alarms are to be installed in Unit 3 in accordance with Part E of the NCC - BCA 2016 and AS3786. A certificate from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power is to be submitted to Tweed Shire Council within one month of the date of this modified consent.

[GENNS01]

7. ADD new Condition 18D, which reads as follows:

18D. An application together with certification in respect of Australian Standard 3500 is to be lodged together with any prescribed fees including inspection fees is to be lodged with Council within three months of the date of this modified consent and approved by Tweed Shire Council under Section 68 of the Local Government Act in respect of water works (kitchen relocation) in Unit 3; Lot 3 SP64511.

[PCC1195]

8. ADD new Condition 21, which reads as follows:

21. A fire safety certificate for the unit shall be submitted to Tweed Shire Council within three months of the date of this modified consent to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

9. ADD new Condition 22, which reads as follows:

22. Within six months of the date of this modified consent, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

10. ADD new Condition 23, which reads as follows:

23. Within six months of the date of this modified consent, written evidence is to be provided to the satisfaction of the General Manager or his delegate certifying that all conditions of the modified consent (as they relate to Unit 3, Lot 3 SP64511) have been met.

[POC1055]

B. Council writes to the Body Corporate for Strata Plan 64511 requesting that the unauthorised works beneath Lot 3 SP64511 within common property be rectified within three months of the date of the letter.

C. A Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 for undertaking development without consent.

- D. ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(d) 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.**

REPORT:

Applicant: Mr RP Anderson
Owner: Mr Ross P Anderson & Mrs Mara-Jane A Anderson
Location: Lot 3 SP 64511 No. 3/31-33 Tweed Coast Road, Bogangar
Zoning: B2 – Local Centre
Cost: Retrospective approval to retain works

Background:

Introduction

On 7 July 2017, Council received a complaint in relation to possible unauthorised works at the subject site which had resulted in water penetration to the commercial tenancy below. The complaint was investigated by the Compliance Unit who confirmed that internal works had been undertaken in the unit which were not in accordance with the approved plans. The works were identified as the internal relocation of the kitchen, the creation of an additional bedroom and the installation of an additional toilet. The landowner was issued with a letter requesting a detailed report of all unauthorised works supported by a floor plan, details of the builder and plumber who undertook the works and a copy of the Body Corporate/Strata approval for the unit alterations.

Correspondence from the Compliance team to the landowner has initiated the current Section 96 (1A) application.

Site Details

The site is identified at Lot 3 SP 64511 at 31 - 33 Tweed Coast Road, Bogangar. The site is zoned B2 and accommodates a two storey mixed use commercial development with seven commercial tenancies on the ground floor and five residential units on the first floor.

Four of the residential units are two bed units, with the subject unit having been modified to accommodate a third bedroom.

The commercial units on the ground floor include a medical centre, pathology collection centre, restaurant and a hot yoga centre. Car parking is provided in the forecourt at ground level (6 spaces) and in the basement in the form of 6 garaged spaces and up to 25 car parking spaces – 37 spaces in total. Car parking has not been provided in accordance with the approved car parking plan and so there is a question as to whether all 25 of the basement spaces are accessible and compliant with the minimum dimensions required by the Australian Standards.

There is an extensive planning history associated with the development which is outlined over.

Site History

Governing consent - D91/0266

Development approval was issued on 23 January 1992 (Notice No 91/0266 – PF1190/320) for the erection of three (3) storey mixed development comprising seven (7) shops and five (5) flats with associated car parking at Lots 16 & 17 DP31208.

The consent was amended under Section 102 of the Environmental Planning & Assessment Act (EP&AA) 1979 on 7 May 1992 (D91/9266) with condition 18 of the original consent (now condition 16 of the modified consent) which related to the dedication of a laneway to Council being modified. The modified consent also addressed the erroneous numbering of conditions in the original consent.

The consent was again modified on 4 January 1995 (D91/8266).

Condition 10 of the consent required the provision of 37 off street car parking spaces in accordance with Council's Car Parking Code. In this regard, the site was to be suitably signposted to indicate the availability of on-site parking. Further, a total of five car parking spaces were to be designated for the exclusive use of the residents of the building to the satisfaction of the Director of Development Services. No restrictions or allocation requirements in relation to the use of the remaining 32 spaces were identified in the conditions of the consent:

10. *The provision of thirty seven (37) off street car parking spaces in accordance with Council's Car Parking Code. In this regard the site being suitably signposted to indicate the available (sic) of on-site parking. Further, a total of five (5) car parking spaces being designated for the exclusive use of the residents of the building to the satisfaction of the Director of Development Services.*

In 1996 Council approved the lease of an area at the site's frontage to provide an additional three (3) car parking spaces, bringing the total car parking spaces available on site to 40. However this lease has since expired and has not been renewed.

The plans approved under D91/0266 identified a balcony on both the southern and western elevation of Unit 3 (one balcony accessed from bedrooms 1 and 2 and a second balcony accessed from the dining room). Refer to **Figures 1A** and **1B**. It would appear however that when the unit was constructed the balconies were omitted. The approved strata plan does not identify any balconies in Unit 3.

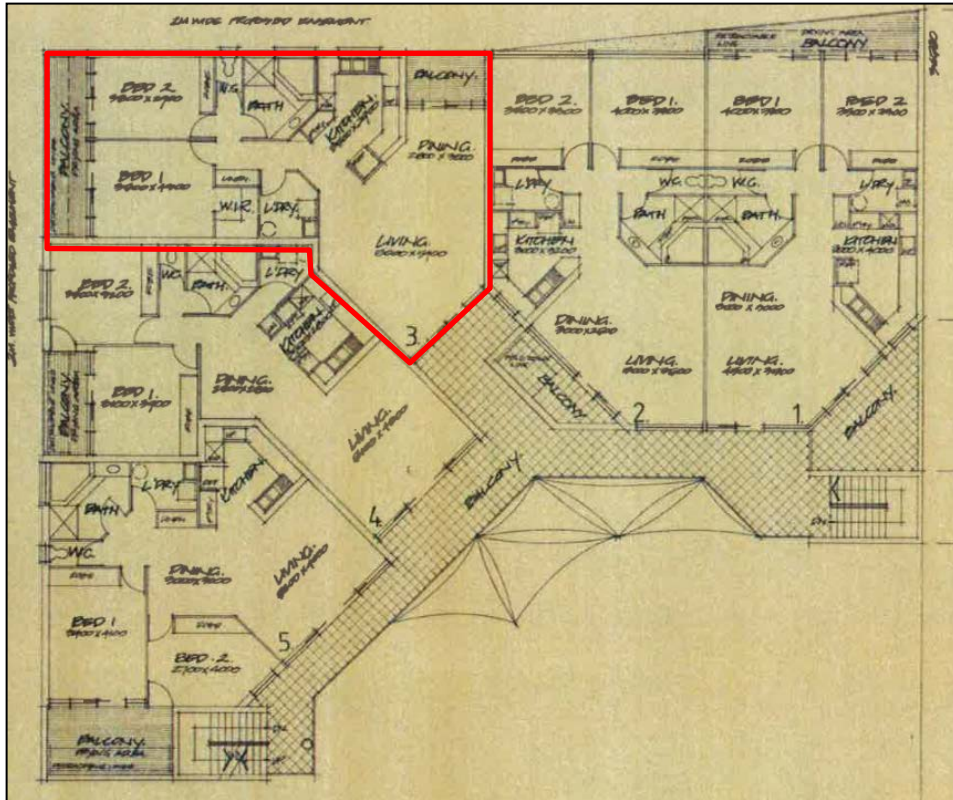


Figure 1A: Approved floor plan

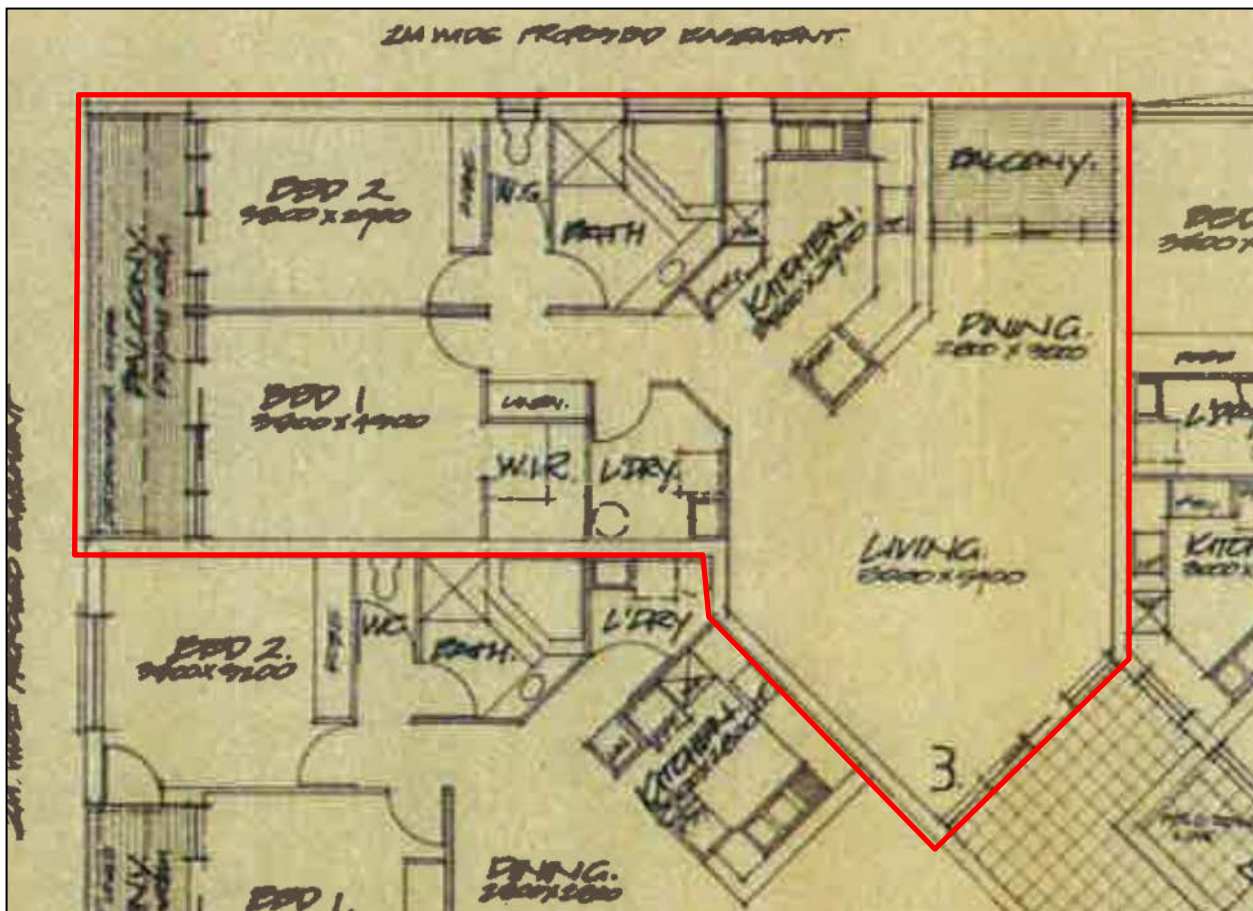


Figure 1B: Approved floor plan – Unit 3 (enlarged)

Strata subdivision of site - 0049/2000SSC

Approval was issued for 13 lot strata subdivision on 29 November 2000. Five car parking spaces on level 1 are allocated to the five residential units. These take the form of enclosed garages.



Figure 2: Approved strata plan

Development Applications on Commercial Tenancies

Unit 6 – Shop 1

0583/2000DA – Development consent issued on 11 August 2000 for the provision of additional seating to an existing restaurant.

DA08/0130 – Development consent issued on 15 December 2008 for extension to existing Thai restaurant with balcony – Consent limited to 40 seats.

Unit 7 – Shop 2

DA11/0421 – Development consent issued on 21 November 2011 for change of use and fitout of a commercial premises (restaurant) to pathology collection centre.

Unit 8 – Shop 3

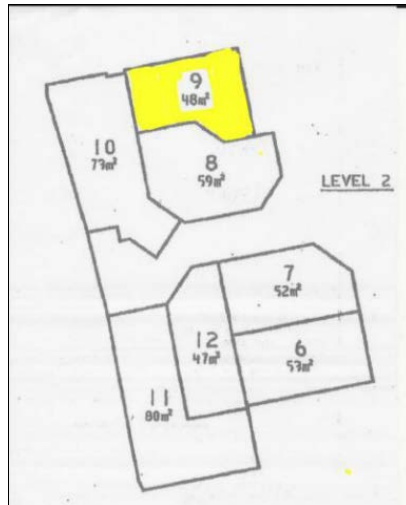
0693/2000DA – Development consent issued on 5 July 2000 for a doctor’s surgery. The approved plans showed one consulting room, one treatment room and one nurse’s room.

CDC15/0078 – A Complying Development Certificate was subsequently issued by AXIS Building Certification for a tenancy fit-out of this unit and Unit 10 (Shop 5) to a medical centre.

Unit 9 - Shop 4

DA16/0093 – Development consent issued on 8 April 2016 for change of use to a barber shop

DA17/0600 – Development consent issued on 26 September 2017 for change of use from barber shop to a coffee shop



Unit 10 - Shop 5

DA04/1322 – Development consent issued on 9 December 2004 for change of use to office

CDC15/0078 – A Complying Development Certificate was subsequently issued by AXIS Building Certification for a tenancy fit-out of this unit and Unit 8 (Shop 3) to a medical centre.

Unit 11 – Shop 6

1178/2000DA – Development consent issued on 7 December 2000 for a community health/early childcare centre in shop 6

DA17/0045 – Development consent issued on 3 May 2017 for change of use to yoga studio

DA17/0045.01 – A modification to development consent DA17/0045 approved on 30 June 2017

Unit 12 - Shop 7

1157/2000DA – Development consent issued on 23 November 2000 for the establishment of an office in shop 7

DA17/0796 – Application for change of use of shop (Shop 7) to health and beauty clinic and for fit-out. This application was subsequently withdrawn

Other

1195/2000DA – Development consent issued on 24 November 2000 for the use of the premises as a retail stationery and copy outlet – unit not identified on files available

D97/0373 - Development consent issued on 13 October 1997 for the establishment of a community radio station - unit not identified on files available

D95/0234 - Development consent issued on 24 August 1995 for a café containing seating for 20 people - unit not identified on files available

Applications relating to subject site

BC17/0126 – An application for a Building Certificate was lodged with Council concurrent with the subject Development Application. The same floor plan was submitted for both applications (refer to *Figure 3* over). The plans specifically highlighted the structural changes to the walls, but not the second toilet. A Building Certificate for the lot (Lot 3 SP64511) was issued on 19 January 2018. This Certificate covers all works within the boundaries of the regardless as to whether they were specifically highlighted on plans or not. It does not however cover any works to common property outside of Lot 3 SP64511.

Application Details

The current application seeks to modify the consent issued under D91/0266.01 to retain some of the works already undertaken on the site:

- Conversion of a dining area to a kitchen with an open plan kitchen/dining/living room; and
- Enclosure of former open plan kitchen area to create a room which has been identified on the plans as a third bedroom and use of this room as a bedroom.

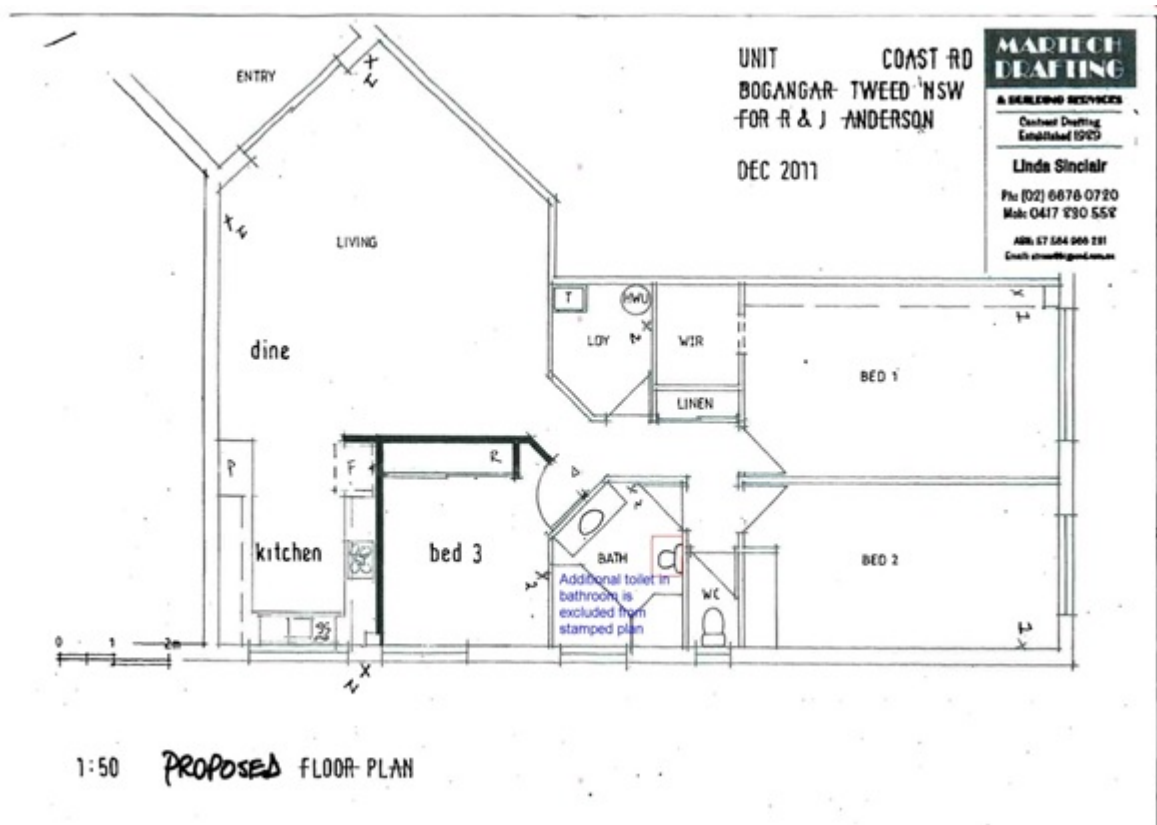


Figure 3: Proposed (existing) floor plan

The application (as modified by the applicant on 15 February 2018) does not include the retention of the additional toilet which has been constructed in the bathroom. The applicant has indicated that he does not believe that this requires development consent.

There are no proposals to provide for additional car parking on site. The applicant responded to a request for further information in relation to the car parking by advising that

the request for a car parking report is unreasonable and unnecessary given that the net increase in car parking demand is 0.5 car parking spaces.

The applicant submits that there is sufficient car parking on the site in that he can either:

- Rely on the existing single garage associated with Lot 3 on the basis that there is no net increase in the total residential car parking requirements for the site (based on the car parking requirements in place in 1992 when the original approval was issued and the previous rounding up of spaces to a whole number), or alternatively
- Rely on the unallocated car parking on the site which is located on common property, is available to both residential and commercial tenancies and to which he has a right (as a lot owner) to access.

The applicant has submitted several documents in response to concerns from Council in relation to adequate car parking provision and owners consent. Of relevance to the assessment of the application are the following documents:

- Calculations of the car parking requirements for the residential units on the site which indicates that based on the car parking requirements in place at the time of the determination of the original consent the residential car parking requirements were 7.5 spaces which would have been rounded up to 8 spaces. Applying the same rates now would result in a demand for 8 spaces and therefore there is no net increase in residential car parking demand.
- Legal advice from an accredited specialist commercial litigation lawyer who advised that he had reviewed the title for the lot and notes *'that there are no exclusive use by-laws that have been registered in respect of any of the car parking spaces on the common property granting exclusive use to any particular lot owner, and therefore those car parking spaces are available for use by all owners, occupier, residents, tenants, guests and customers of both the residential and commercial lots.'* (Refer to Confidential Attachment 3)

Building unit

The application was referred to the Building Unit who advised that should planning approval be recommended for this application it will be necessary for a Building Certificate and a plumbing application to be lodged and issued. It has been noted a Building Certificate (BC17/0126) has since been issued.

Clauses 93 and 94 of the Environmental Planning & Assessment Regulation apply as the proposal includes the change of use of the kitchen to a bedroom and the dining room to a kitchen. The Building Surveyor provided the following comments:

"An inspection of the existing tenancy disclosed that the unit is deficient in a number of BCA-NCC requirements. The unit has no functioning smoke detectors and the additional wc has been installed without a fire rated collar around the plumbing penetration. The current FSD contains smoke and heat detectors – AS3786. Based on my inspection and the age of construction I would conclude

these relate to battery operated smoke detectors in the residential Sole Occupancy Unit.

Accordingly a number of BCA upgrades will be required as conditions of consent as follows;

The following works are to be undertaken to ensure the unit is provided with a satisfactory level of fire safety;

- 1. Smoke alarms are to be installed in Unit 3 in accordance with Part E of the NCC - BCA 2016 and AS3786. A certificate from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power is to be submitted to Tweed Shire Council prior to the issue of an occupation certificate."*

The Building Surveyor has no objection to the proposal subject to the imposition of appropriate conditions.

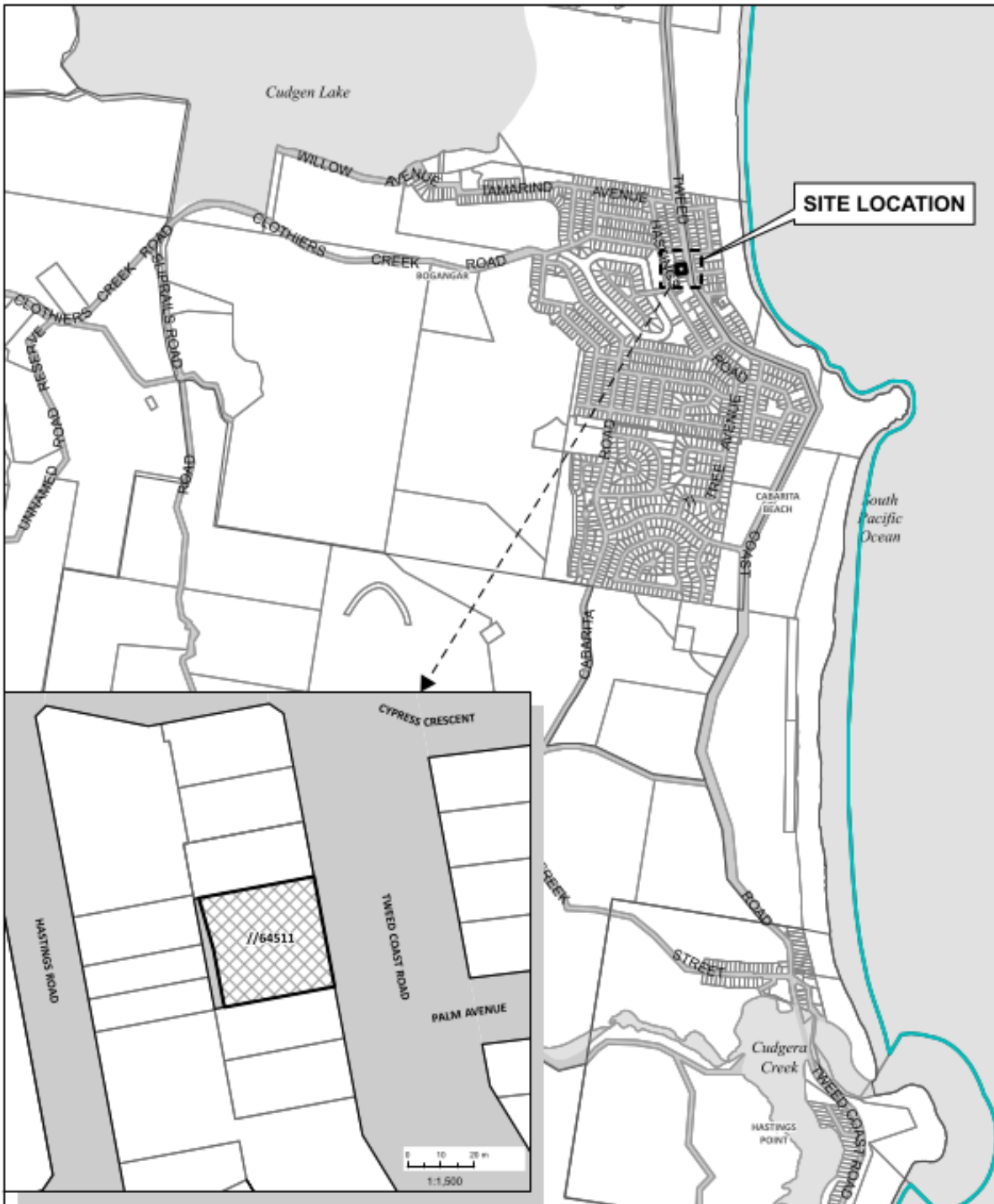
It is noted that the additional toilet does not form part of this application.

On 7 March 2018, the applicant submitted a Certificate of Fire Detection and Alarms Systems for Class 1a buildings certifying that the automatic fire detection and alarm system has been installed by a qualified licensed electrical contractor.

Water and Wastewater unit

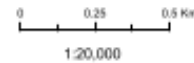
The application was also referred to Council's Water and Wastewater Unit who advised that a change from a two (2) bedroom unit to a three (3) bedroom unit would incur additional S64 charges. If the development is to be approved, a condition requiring additional S64 contributions is to be imposed.

SITE DIAGRAM:



Site Plan

Lot 3 SP 64511
31-33 Tweed Coast Road, Bogangar



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Civic and Cultural Centre
3 Tumbulgun Road
Marvillumbah NSW 2484
PO Box 616
Marvillumbah NSW 2484

T: (01) 6670 2480 / 1300 262 872
F: (01) 6670 2483
W: www.tweed.nsw.gov.au
E: planning@tweed.nsw.gov.au



Date Printed: 09 February, 2018

ZONING MAP



Tweed Local Environmental Plan 2014

Subject Land (indicated by a black border)

Zone

- B2 Local Centre
- R2 Low Density Residential
- R3 Medium Density Residential

Site Plan - Local Environmental Plan

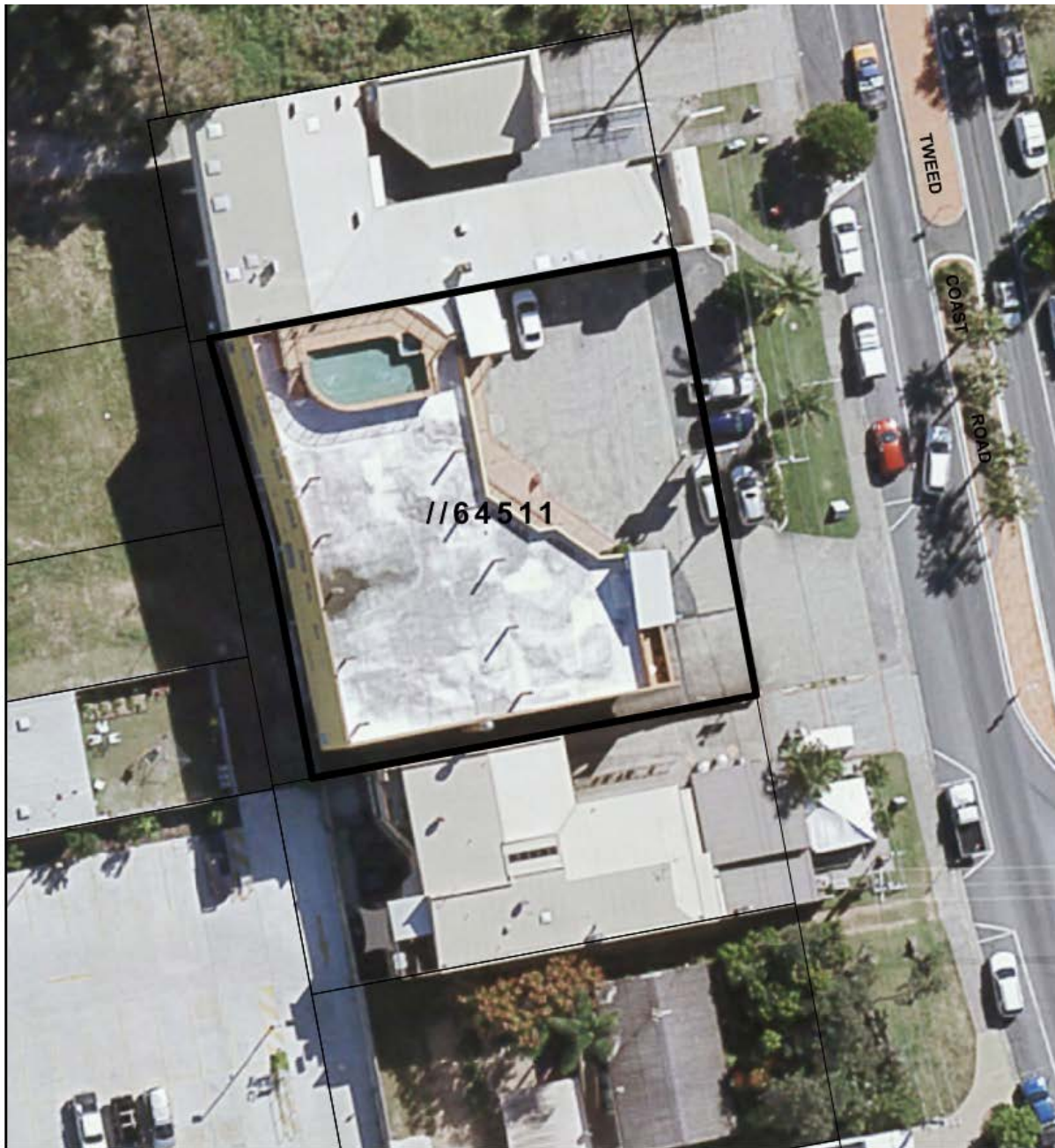
Lot 3 SP 64511
31-33 Tweed Coast Road, Bega

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Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

**Civic and Cultural Centre**
3 Turnbullum Road
Murrumbidgee NSW 2484
PO Box 816
Murrumbidgee NSW 2484
TWEED
SHIRE COUNCIL
T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au

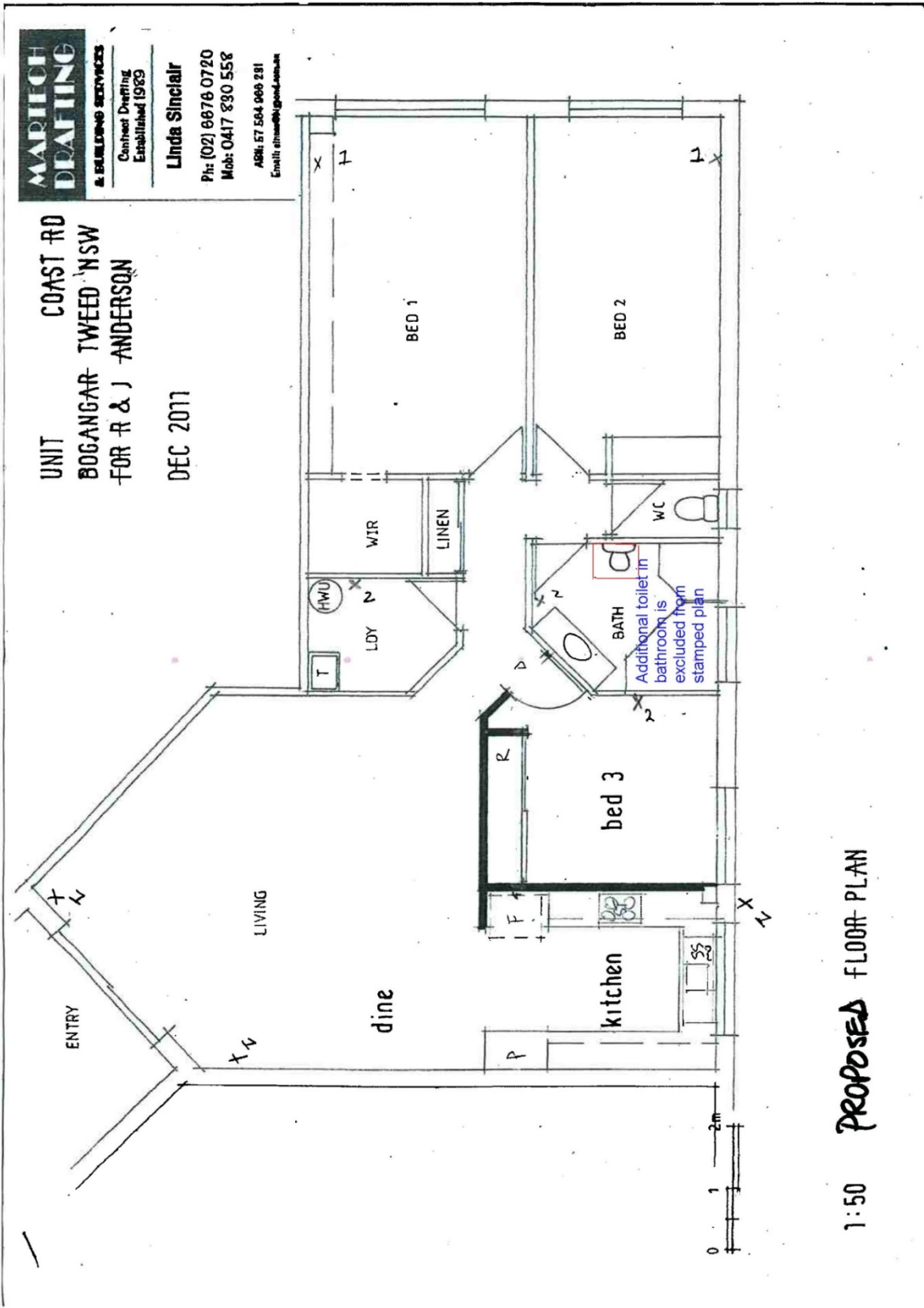
Aerial Photography 2015

Lot 3 SP 64511
31-33 Tweed Coast Road, Boganan

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DEVELOPMENT/ELEVATION PLANS:



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
Section 96 (Modification of consents - generally)

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

1A (a) *It is satisfied that the proposed modification is of minimal environmental impact, and*

Comment:

The minor internal alterations covered by this application and the change from a two bedroom unit to a three bedroom units are in themselves considered to be of minimal environmental impact and as such can be considered under a Section 96 application.

The addition of a bedroom increases the car parking requirements on the site by 0.5 spaces. The 32 unallocated spaces on the common property are available to both the commercial and residential tenants in that they are not dedicated to a specific use (residential or commercial) under the governing consent and are not allocated on the strata plan. An assessment of the existing car parking demand on the site (based on approved uses) indicates that there is sufficient capacity in the existing onsite car parking provision to allow for one of these 'surplus' spaces to be used by Unit 3.

(b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment:

The minor internal alterations covered by this application and the change from a two bedroom unit to a three bedroom unit is considered to fall within the scope of works which can be undertaken under a Section 96 application in that the development as modified would be substantially the same as that approved under D91/0266 (and as previously modified).

(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 application did not require public exhibition given the nature of the modification. However three submissions were received and these are addressed below.

- (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:

Three submissions were received in relation to the application/unauthorised works. The key issues raised are summarised below:

Issue raised in submission	Planning Officer response
<p><i>Impact on common property/private property</i></p> <ul style="list-style-type: none"> • The extra toilet is impacting on common property and has leaked into the tenancy below causing damage to same. The damage has not been repaired affecting the safety and usability of Lot 11 below. 	<p>The applicant has amended the application so that the retention of the toilet does not form part of the scope of works.</p> <p>The matter of water damage is to be resolved between the owner of Lot 3 SP64511 who undertook the work and the Body Corporate. In relation to the fire safety associated with the absence of a fire collar on the toilet, a letter is to be issued to the Body Corporate advising them to rectify the unauthorised works.</p>
<p><i>Car parking</i></p> <ul style="list-style-type: none"> • The approval of the third bedroom would increase car parking requirements and impact on the on-site car parking spaces allocated/used by the commercial tenancies. • The applicant has previously made submissions in relation to other applications/development on the site that there is insufficient car parking for current requirements - Objections to DA17/0045, ILL15/0438. • The approval of the third bedroom would set an undesirable precedent for other residential owners to increase the number of bedrooms, further increasing the demand for car parking. 	<p>Refer to section on car parking later in this report.</p> <p>While there is evidence on file that there has been conflict between residential owners and the commercial tenancies in terms of access to car parking /inadequate car parking onsite, there is adequate car parking on site to meet the needs of both (based on current car parking rates).</p> <p>Previous submissions appear to relate to restrictions on the residential tenants and/or their visitors having access to the unallocated spaces. However this is a matter for the Owners Corporation and the lot owners).</p>

Issue raised in submission	Planning Officer response
<p><i>Appropriate approvals/owners' authorisation</i></p> <ul style="list-style-type: none"> The minor internal alterations which required accessing and modifying the common property floor slab and walls and plumbing works were not approved by the Strata Owners / Owners Corporate. 	<p>The applicant has amended the application so that the retention of the toilet does not form part of the scope of works. However the works to the common property (penetration of the floor slab under Lot 3 SP64511 and connection to the common infrastructure) remain unauthorised.</p>

There were a number of other issues raised in the submissions in relation to the work being undertaken without consent, out-of-standard hours within which the works were undertaken, the unit being advertised for rent as a three bedroom unit, conflicts between owners and tenants, etc which are not considered to be substantive planning matters which would warrant the refusal of the application.

(3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

Section 79C(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*

Comment:

The original application was assessed in accordance with the Tweed LEP 1987. The subject modification is consistent with the aims of both this earlier LEP and the Tweed LEP 2014 and the objectives and permissible land uses in the B2 (Local Centre) Zone in which the site is located.

(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*

Comment:

The subject site is mapped as being affected by LEP Amendment 17 – Short term rental accommodation. This amendment does not have any significant impacts on the proposed development.

(iii) *any development control plan, and*

Comment:

Section A1 – Shop Top Housing

An assessment against the development controls for shoptop housing indicated that there were no changes which were impacted by these controls, with the exception of car parking provision and unit storage.

Section A2 of the Tweed Shire Development Control Plan requires the provision of 2 car parking spaces for a three bedroom unit. One space has been specifically allocated to the subject unit under the governing consent and included as such in the strata plan (included as part of Lot 3). The applicant can avail of one of the surplus spaces on the common property to satisfy the requirement for the second space.

The DCP requires 4sqm storage space (excluding kitchen cupboards and bedroom wardrobes) for a two bedroom unit and 5sqm for a three bedroom unit. The area of available storage has not been identified. However if the application for retention of the bedroom were to be supported, a variation in this regard could be supported.

Section A2 – Site Access and Parking Code

Car Parking Requirements

The car parking requirements for the various approved uses in the mixed use building are set out below:

Shop top housing

- 1 space per each 1 bedroom unit
- 1.5 space per 2 bedroom unit
- 2 spaces for 3 or more bedroom units
- Plus 1 space per 4 units for visitor parking.

Shops

- 1 space per 100 GFA for staff
- 3.5 spaces per 100sqm GFA for customers

Takeaway food and drink premises

- 1 space /staff
- 3.5 spaces per 100sqm for customers

Restaurant and café

- 1 space per staff at peak operating time
- 3.5 spaces per 100sqm dining area

Recreational facilities (indoor)

- 1 space per 0.5 staff
- 5 spaces per 100smq GFA

Medical Centre

- 1.6 spaces per consulting room for staff and
- 3.2 spaces per consulting room (GP)
- 1.6 spaces per consulting room (specialist)

Office

- 1 space per 50sqm GFA

Accordingly, the provision of a third bedroom in Unit 3 will increase the car parking requirements for Unit 3 by 0.5 spaces.

As stated in Section A2.1.3 of this part of the DCP:

The controls prescribed within this Section are a development guideline and represent a possible acceptable solution to meet the stated aims and objectives. It is acknowledged that there will be alternative solutions, which Council may consider within the assessment.

Where a development application seeks an alternative solution to a design control this must be documented within the Statement of Environmental Effects (SEE), and include:

- *Identification of the control being varied;*
- *Justification, supported by a detailed site analysis and any other supplementary material:*
 - *detailing why the control cannot be met; and*
 - *demonstrating how the alternate proposal achieves the aims and objectives of this Section*
- *Justification, supported by a detailed Access, Traffic and Parking Impact Study for any reduction in the prescribed vehicle parking rates.*
- *Upgrading of:*
 - *public transport facilities, and/or*
 - *on-street parking resulting in additional spaces, and/or,*
 - *the streetscape and pedestrian/cyclist amenity.*

The applicant was requested to submit a car parking report from an appropriately qualified person (eg traffic consultant/engineer/town planner) demonstrating that the existing car parking provision on the site is sufficient to cater for this increased demand having regard to the approved uses on the site and the existing demand for car parking.

The applicant responded that such a request was considered to unreasonable and unnecessary given the net increase of 0.5 spaces. It was submitted that the 32 unallocated spaces are available to residents and visitors to the residential units as well as the tenants and customers of the commercial tenancies. As such, the applicant did not submit any assessment of the existing demand for car parking on the site.

Given that the use is residential, the applicant cannot rely on site credits or the payment of contributions in lieu.

Set out in **Table 1** is an assessment of the car parking demand generated by the approved developments on the site.

Table 1: Overview of current car parking requirements - based on approved uses

Unit	Use	Car parking requirement	Comments
Lot 1	Residential - 2 bedroom	1.5 spaces required	1 space dedicated exclusively to unit in strata plan
Lot 2	Residential - 2 bedroom	1.5 spaces required	1 space dedicated exclusively to unit in strata plan
Lot 3	Residential - 2 bedroom	1.5 spaces required	1 space dedicated exclusively to unit in strata plan
Lot 4	Residential - 2 bedroom	1.5 spaces	1 space dedicated exclusively to unit in strata plan
Lot 5	Residential - 2 bedroom	1.5 spaces	1 space dedicated exclusively to unit in strata plan
	Residential visitor parking	1.25 space	
Lot 6	Restaurant – 53sqm indoor leased area & 59sqm outdoor - seating limited to 40 patrons by condition	3.5 spaces for customer plus 3 spaces for staff (estimated to be 3 staff at peak) - 6.5 spaces Total 6.5 spaces reduced to 3.5 spaces based on most recent approved waivers (3 spaces).	Customer car parking based on outdoor seating area of 59sqm and 75% of indoor area (patron restrictions & to allow for kitchen area) 4 car parking spaces previously waived under 95/181 on basis that patronage was limited by condition and operating hours were outside standard commercial operating hours. The development approved under 0583/2000DA allowed the applicant to avail of 6 spaces from the unallocated pool that was surplus to onsite requirements at that time. The development approved under DA08/0130 allowed the applicant to avail of 4 spaces from the unallocated pool that was surplus to onsite requirements at that time. The shortfall of 3 spaces was waived.
Lot 7	Pathology collection – 1 collection room	4.8 spaces required	Assessed as medical centre – 1 GP consulting room. In the assessment of this applicant, the rate was based on office rates (which at that time was 1 space /40sqm) Applicant availed of existing credits of 8 spaces as the previous approval was for a commercial premises (restaurant).
Lot 8	Medical Centre	4.8 spaces	With a consulting room, treatment room and nurse room - this has been assessed as 1 consulting rooms to allow for cross-utilisation

Unit	Use	Car parking requirement	Comments
			between patients seeing the doctor and nurse and use of the treatment room.
Lot 9	Coffee shop – dining area of 27.6sqm	3 spaces	The car parking rate was based on two staff members. A credit of 3 spaces applied based on previous use and there was therefore no increase in the car parking demand.
Lot 10	Medical Centre GFA	4.8 spaces	With a consulting room, pathology room and nurse room - this has been assessed as 1 consulting rooms to allow for cross-utilisation between patients seeing the doctor, nurse and pathologist. This use was approved by way of a complying development certificate
Lot 11	Indoor recreational facility (yoga) – 80sqm	4.5 spaces	Credit of 5 spaces applied in assessment based on previous use
Lot 12	Office – 47sqm	0.94 space	
Total parking required (excluding approved waivers)		35.09 spaces	This figure excludes the car parking requirements previously waived for Unit 6 (restaurant)

The approved uses on the site generate a demand for 35 car parking spaces.

Car parking on the site has not been provided in accordance with the layout shown on approved plan, however provision has been made for 6 surface spaces at street level in the development forecourt, and 6 garaged spaces (5 of which are on the titles of the residential units) and up to 25 car parking spaces at basement level; equating to 37 spaces.

Five spaces (in the form of garages) are exclusively for the use of the tenants of the residential units. Under Condition 10 of the original consent, the remaining 32 spaces are available to both the commercial and residential tenants and customers/visitors. With a demand for 35 spaces from the approved residential and commercial demand (as identified in Table 1 above), there are two (2) spaces on the common property which are surplus to requirements of the approved uses (commercial and residential).

Allowing the applicant to have access to a car parking space on common property which has been provided for the use of residential and commercial units and which is deemed to be surplus to the requirements of the approved uses on the site is considered to be reasonable. However to ensure that the amenity of the residents of Unit 3 is not compromised, this second car parking space (in addition to the existing car parking space allocated to Lot 3) must be allocated and designated for the exclusive use of residents of Unit 3.

The legal advice submitted by the applicant (Confidential Attachment 3) correctly identifies that the 32 unallocated spaces on the site are available to tenants and visitors/customers to both the commercial and residential tenancies. As such the applicant does not need Owners Corporation approval to access a 'surplus' space on the common property. It should be noted however that this would not appear to confer any right on the applicant to have a car

parking space allocated exclusively for use by the tenants/residents of Unit 3 or to be otherwise made unavailable or inaccessible to other users on the site.

It will be a matter for the applicant to secure an additional car parking space on the common property on the site which would be designated to Unit 3. A draft condition has been included requiring that evidence of same be submitted to Council within six months of the date of the modified consent.

(iii) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

Comment:

There are no relevant planning agreements or draft planning agreements.

(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:

Clause 92(1)(a)(ii) Government Coastal Policy – The site is located on land to which Government Coastal Policy applies. However the nature of the works is such that there is no impact on the coastal area.

Clause 93 Fire Safety Considerations – As addressed earlier in this report, as advised by the Building Unit referrals, issues with regard to fire safety could be addressed by way of a condition. The applicant has submitted a Certificate of Fire Detection and Alarms Systems for Class 1a buildings certifying that the automatic fire detection and alarm system has been installed by a qualified licensed electrical contractor. However it is noted that access to the unit below and to the common property will be required to install a fire collar on the additional toilet.

Clause 94 Buildings to be upgraded - As addressed earlier in this report, as advised by the Building Unit referrals, issues with regard to Clause 93 could be addressed by way of a condition.

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

The Tweed Shire Coastline Management Plan 2005 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. While the subject site is impacted by this plan, the works are not of a nature that would impact on the coastal zone area.

(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 outlined above, the proposal will result in a demand for additional car parking which can be met by the existing car parking provision on the site. A condition has been included in the recommendation to ensure the provision of an additional space for use by the residents of Unit 3.

(c) *The suitability of the site for the development,*

Comment:

The site is zoned B2 and there is an existing approval for a mixed use development with shoptop housing on the site. As such there is no issue with the suitability of the site for the works in question.

(d) *Any submissions made in accordance with this Act or the regulations,*

Comment:

The application did not require public exhibition under the provisions of the regulations given the nature of the modification. Notwithstanding this, three submissions were received. The key issues raised are addressed earlier in this report.

(e) *The public interest.*

Comment:

The works in themselves are minor in nature being internal alternations to a residential unit and the development as modified is substantial the same as that approved under the original approval. While the creation of a third bedroom will generate the requirement for an additional car parking space to be allocated to Unit 3, there are surplus spaces on the site to accommodate this. It will be a matter for the applicant to negotiate access to this additional car parking space. On this basis, the works proposed to be retained under this application and the use of the unit as a three bed unit is not be considered to be contrary to the public interest subject to the provision of the required two (2) car parking spaces.

Supplementary Information

This Section 96 (1A) application was reported to the Planning Committee meeting on 1 March 2018 with a recommendation for approval subject to condition. The report also recommended the following actions:

- That Council writes to the Body Corporate for Strata Plan 64511 requesting that the unauthorised works beneath Lot 3 SP64511 within common property be rectified.
- That a Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 for undertaking development without consent.
- That the owner of Lot 3 SP64511 be advised in writing that Unit 3; Lot 3 SP64511 is not to be occupied or used until the amended consent D91/0266.01 and accompanying conditions have been complied with in full.

Following consideration of the application, Council resolved that this item be deferred to 5 April 2018 Planning Committee meeting to seek further clarification from the Applicant regarding the fire safety and tenure of this unit.

On 7 March 2018, the applicant has submitted a Certificate of Fire Detection and Alarms Systems for Class 1a buildings certifying that the automatic fire detection and alarm system has been installed by a qualified licensed electrical contractor. It is noted that this document has been signed by the applicant and not the certifying qualified licensed electrical contractor.

In telephone calls and an email to the assessment officer between 7 March and 13 March 2018, the applicant questioned the legitimacy of applying conditions requiring an Occupation Certificate on a Section 96 Modification application and questioned whether Council would be seeking to have the commercial tenancy below the subject property vacated for fire safety reasons.

On 19 March 2018, the applicant submitted a written response to Council's request for further information. The response extends beyond the fire safety and tenure issues raised by Council in their request for additional information and raises an objection to the inclusion of conditions requiring exclusive use of a second car parking space for Unit 3. The response requests that the toilet not be referenced in the report. Reference is also made to the recommended issue of a Penalty Infringement Notice.

The information submitted on this date can be summarised as follows:

	Issue	Response from assessing officer
1.	Request that references to the toilet be removed from the application: <ul style="list-style-type: none"> • Applicant submitted a section 96 application for retention of 3rd bedroom and separate Building Certificate application for retention of toilet – it was never the intention of the applicant to include toilet in Section 96 application • A Building Certificate was issued for the works within the lot (including the toilet) under BC17-0126 	The retention of the toilet does not form part of this application and this has been acknowledged in the report. However as the absence of a fire collar on same does raise a matter to be considered with regard to fire safety, the issue of the toilet must be acknowledged and addressed in the report. Refer to the commentary below for an assessment of the fire safety risk resulting from the installation of a toilet without a fire collar.
2.	Clarification as to the number of submissions made in relation to the proposal.	Though the application was not notified, three submissions in relation to the proposal/works undertaken in the unit were received after the application was lodged. These submissions are addressed earlier in this report. Two of the submissions specifically referred the application. The third submission referenced the works which had been undertaken in the unit and raised an issue with the impact that the works had at the time that they were undertaken.

Issue	Response from assessing officer
<p>3. Request that Draft conditions relating to allocation and exclusive use of an additional car parking space be deleted:</p> <ul style="list-style-type: none"> • In accordance with EPAA, conditions must be reasonable and relevant; • There is sufficient capacity in the communal unallocated car parking provision to accommodate the additional 0.5 car parking spaces generated by the development; • It would not be in the public interest to allocate a car parking space to the residents of Unit 3 at the exclusion of all other strata owners • There is no case (as submitted by an objector) that the approval of the 3d bedroom would set a precedent as the other units are insufficient in area to accommodate a 3rd bedroom. 	<p>Refer to commentary below.</p>
<p>4. Application details: The retention of the toilet was removed from the Section 96 application but not the Building Certificate application</p>	<p>It is acknowledged that the applicant has been issued with a Building Certificate for the works within the unit, including the toilet. It is noted that a Building Certificate does not remedy unauthorised works, it merely affords a property owner immunity from prosecution for a period of seven (7) years. However, works to the common property are not covered by the Building Certificate. Therefore to resolve the issue with regard to the absence of a fire collar, the Body Corporate (as the owner of the common property) can either seek to remove the connection to the common infrastructure and reinstate the floor or install a fire collar. No action can be taken at this time to require the applicant to remove the toilet bowl and cistern.</p>
<p>5. Penalty Infringement Notice (PIN):</p> <ul style="list-style-type: none"> • The applicant responded to Council's letter requesting he show cause as to why further action should not be taken or a PIN issued. • In response, the current application and a Building Certificate application was submitted. • The applicant has endeavoured to comply with the letter but has been denied access to install the fire collar. 	<p>Division 9.6 (previously Division 4 of Part 6) of the EPAA sets out the provisions with regard to Criminal offences and proceedings.</p> <p>The works in question were undertaken by the applicant circa 2012 and only came to the attention of Council following a complaint in relation to water damage to an adjoining unit.</p>

Issue	Response from assessing officer
<ul style="list-style-type: none"> • However, legal action is being taken to resolve the issue of access. 	<p>The fact that the applicant has submitted the current modification application and applied for and was approved a Building Certificate does not absolve the applicant from having undertaken work with required planning approvals without any such approval in place.</p>

Fire Safety

The applicant has not submitted any information with regard to the tenure of the unit, however as the recommendation to vacate the unit has been withdrawn, any such information is irrelevant.

While the additional toilet installed in the unit no longer forms part of this modification application¹, the absence of a fire collar on the toilet had raised issued concerns with regards to fire safety and non-compliance with fire regulations.

It does appear that the applicant has attempted to move forward with this issue, but that he has been unable to install a fire collar on the toilet as this requires access to both the commercial unit below and to common infrastructure, neither of which is available to him.

An assessment of the risk to life, the risk to the spread of fire and the risk to the asset as a result of the missing fire collar has been undertaken and the risks in all cases are considered to be relatively low given brigade intervention and that the room to be protected is a toilet. On this basis and with the fire alarm(s) now installed, it is considered reasonable to withdraw the recommendation to Council to vacate the unit.

¹ It is noted that there are no planning approvals in place for the installation of the toilet and its connection to the common infrastructure. Had the applicant followed due process, the works could have been undertaken as Complying Development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. However, given that a complying Development Certificate cannot be issued retrospectively, the works are rendered unauthorised under the Planning Legislation. A Building Certificate has been issued for the works within the unit, but this only provides immunity from prosecution to the applicant for a period of seven years – it does not remedy the works.

Modification of draft conditions

To acknowledge that the unit will not be vacated and that there is no 'prior to occupation' stage or a requirement on the applicant to acquire an occupation certificate within a reasonable period of time, the amended recommendation will require the modification of the following draft conditions:

Condition	Summary of modification
Condition 4A - Payment of Section 64 Contributions	Section 64 Contributions to be paid within three months of the date of the modified consent rather than prior to issue of an occupation certificate as initially proposed.
Condition 4B - Payment of Section 94 Contributions	Contributions to be paid within three months of the date of the modified consent rather than prior to occupation or issue of an occupation certificate as initially proposed.

Condition	Summary of modification
Condition 10A - Exclusive use of additional car parking space	Condition amended to incorporate written evidence of compliance with car parking provision (previously included in Draft Condition 27 which is now deleted)
Condition 18C - Certification of smoke alarms	A certificate from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power to be submitted to Council within one (1) month of the date of the modified consent rather than prior to the issue of an occupation certificate as previously proposed.
Condition 18D - Approval of water works associated with kitchen relocation	A time limit (three months) imposed for lodgement of Section 68 application in respect of water works (kitchen relocation)
Condition 21 (previously Condition 23) - Fire Safety Certificate	Condition amended to require fire safety certificate within three (3) months of the date of the modified consent rather than prior to occupation or issue of an occupation certificate as initially proposed.
Condition 22 (previously Condition 25) - Final inspection report for plumbing and drainage works	Condition amended to require applicant to obtain a final inspection report from Council in relation to the plumbing and drainage works within six months of the date of the modified consent rather than prior to occupation or issue of an occupation certificate as initially proposed.
Condition 23 (previously Condition 26) - Compliance with conditions of consent	Condition amended to require applicant to comply with all relevant conditions within six months of the date of the modified consent rather than prior to issue of an occupation certificate as initially proposed.

Given that the unit will remain occupied and there would be no deadline for the applicant to obtain an occupation certificate, the draft conditions formerly numbered Conditions 21, 22, 24, 26 and 27 (which related to 'first occupation' or an 'occupation certificate') are now better addressed by way of a modified condition. These four draft conditions which were previously presented to Council have been deleted and replaced with amended draft Condition 23 (previously Condition 26) which requires the applicant to provide written evidence (within six months of the date of the modified consent) to the satisfaction of the General Manager or his delegate certifying that all conditions of consent under D91/0266.01 (as they relate to Unit 3) have been met.

DELETED Condition 21

Prior to issue of an occupation certificate for Lot 3 SP64511, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans. [POC0005]

DELETED Condition 22

A person must not occupy or use the whole or any part of Unit 3; Lot 3 SP64511 unless an occupation certificate has been issued in relation to this Unit (maximum 25 penalty units). [POC0205]

DELETED Condition 24

A final occupation certificate for Unit 3, Lot 3 SP64511 must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent (as they relate to Unit 3, Lot 3 SP64511) must be satisfied

at the time of issue of a final occupation certificate (unless otherwise specified herein). [POC0355]

DELETED Condition 27 (now incorporated into Condition 10A)

Prior to the occupation or use of Unit 3, Lot 3 SP64511 and prior to the issue of any occupation certificate for same, written evidence is to be provided to the General Manager or his delegate demonstrating that one (1) additional off street car parking space as required by Condition 10A has been designated for the exclusive use of Unit 3; Lot 3 SP 64511 and will be available to the residents of Unit 3; Lot 3 SP 64511 at all times.

The modified conditions will achieve the same outcome but will ensure that the applicant complies with the relevant conditions in a reasonable timeframe (which would not necessarily be the case where the unit is occupied and the deadline for obtaining an occupation certificate is essentially at the discretion of the applicant). The remainder of the draft conditions as reported to Council on 1 March 2018 remain unchanged, as does the recommendation that a Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 and that the Body Corporate be requested to rectify the unauthorised works undertaken by the applicant in connecting a toilet into the common property. However a three month period for rectifying these works has now been recommended.

In specifying the required timeframe for compliance (for both conditions and the letter to the Body Corporate), consideration was given to the period of time that would be reasonable to undertake works to comply with condition. Should the applicant fail to comply with the conditions within the specified time period, the development would be rendered non-compliant with the modified consent.

Car Parking

Despite differing views from the applicant and the objectors with regard to the use of the communal car parking spaces on the site, Council's officers are of the view that the 32 unallocated spaces on the site are available to tenants and visitors/customers to both the commercial and residential tenancies. There is nothing in either the governing consent or the strata plan that states otherwise. Council officers are also of the view, based on the approved uses on the site, that there is spare capacity in the communal car parking provision to cater for the additional car parking generated by the third bedroom in Unit 3.

The first question is therefore whether general access to the communal car parking spaces (subject to availability) is sufficient or whether the residents of Unit 3, as a 3 bed unit, should have exclusive use of two car parking spaces.

The second question is whether a condition requiring dedication of a second car parking space to Unit 3 is in accordance with Clause 4.17 (previously S80A) of the *Environmental Planning and Assessment Act 1979*.

1. Access to a car parking space – subject to availability or reserved for the user

It is an aim of Part A2 (Site Access and Parking Code) of the DCP 2008 to;

'Provide off street parking facilities that satisfy the demand of residents, visitors, staff, customers, servicing, loading and unloading.'

In accordance with Table 2a of the DCP, approving the use of the unit as a three bedroom unit will generate a requirement for two car parking spaces.

It is acknowledged that there could be some scope for cross-utilisation of spaces by the uses within the complex – Demand for residential car parking may be higher outside of standard commercial/rental working hours in the evenings and/or at weekend. While the commercial tenancies such as the yoga centre and the restaurant would typically extend into the evening and weekend hours, uses such as the café, office and medical centre would typically be restricted to standard business hours.

However while the DCP allows for the use of parking credits and contributions in lieu of car parking for commercial uses, it is noted that no such provisions are not in place for residential development, highlighting the intent that the full provision of car parking requirements for residential developments be made available for these users.

In terms of site credits, the DCP in Part A2.2.3 explicitly states that:

‘Existing use parking credits are not available for proposed residential developments or residential components of mixed use developments.’

Further in Part A2.2.4, the DCP states that:

‘Off street car parking areas may contain parking spaces for staff, customers and others. In mixed residential/commercial development proposals, the residential parking areas should be defined as reserved parking.’

When the development was originally approved in 1991, it was a condition of the consent that five car parking spaces be exclusively reserved for the residential units. This is generally reflective of the intent of the current DCP to assign the car parking spaces to the units they serve. At this time, there was no requirement for visitor car parking, and the remaining 0.5 spaces generated by the 5 x 2 bed units (0.5 spaces per unit) were unassigned – It can only be assumed that one space was assigned to each unit based on rounding to whole numbers.

An assessment of the demand for car parking, has demonstrated that an additional car parking space can be dedicated to Unit 3 without impacting on the car parking requirements of the approved uses on the site.

It would appear that access to car parking on the site has been somewhat of an issue in the past with correspondence submitted in connection to other applications on the site indicating that there is a shortage of car parking on the site for residents due to car parking associated with other businesses in the area (It is noted that there are currently no physical restrictions on access to any of the communal car parking spaces (ground or basement level)).

To allow the applicant to convert his unit from a two bed unit to a three bed unit without securing access for the tenants to two car parking spaces (as required by the DCP) would prejudice the residential amenity that tenants could reasonable expect to enjoy. Therefore draft Condition 10A (as modified) has been included requiring a second car parking space to be designated for the exclusive use of the Unit 3.

It will be the responsibility of the applicant to negotiate with the Body Corporate to secure exclusive use of a second car parking space (as the owners of the common property). If the applicant cannot reach an agreement with the Body Corporate and two car parking spaces cannot be secured for use by the residents of Unit 3, the additional residential car parking demand may be displaced to on-street car parking. This would result in the applicant's intensification of the use of his unit being serviced by on-street car parking, which is not in the public interest.

2. *Is condition requiring exclusive use of an additional space in accordance with the provisions of the EPAA?*

Clause 4.17 (previously S80A) of the EPAA, sets out the provisions for the imposition of conditions.

In accordance with Subsection 1, a condition of development consent may be imposed if:

- (a) *it relates to any matter referred to in section 4.15 (1) of relevance to the development the subject of the consent, or*
- (b) *it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 4.11 in relation to the land to which the development application relates, or*
- (c) *it requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates), or*
- (d) *it limits the period during which development may be carried out in accordance with the consent so granted, or*
- (e) *it requires the removal of buildings and works (or any part of them) at the expiration of the period referred to in paragraph (d), or*
- (f) *it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 4.15 (1) applicable to the development the subject of the consent, or*
- (g) *it modifies details of the development the subject of the development application, or*
- (h) *it is authorised to be imposed under section 4.16 (3) or (5), subsections (5)–(9) of this section or section 7.11, 7.12, 7.24 or 7.32.*

Subsection 4.17(1)(a) is of relevance here. The matters referred to in section 4.15(1) (previously section 79C) include the provisions of any development control plan and the likely impacts of the development. As outlined earlier Part A2 of the DCP requires the provision of 2 car parking spaces for a 3 bedroom shop-top housing unit. Further the DCP specifies that in mixed residential/commercial development proposals, the residential parking areas should be defined as reserved parking. As is also outlined above, a failure to secure car parking for the residents onsite would likely result in this demand being displaced to on-street car parking.

It is therefore considered reasonable to include a condition requiring the applicant to secure the additional car parking space generated by his intensification of the residential use of the site.

OPTIONS:

OPTION 1

- A. Development Application D91/0266.01 for an amendment to Development Consent D91/0266 be APPROVED allowing for the retention (subject to conditions) of the internal alterations including the relocation of the kitchen and the dining room and the creation of a third bedroom at Lot 3 SP 64511 No. 3/31-33 Tweed Coast Road, Bogangar.
- B. Council writes to the Body Corporate for Strata Plan 64511 requesting that the unauthorised works beneath Lot 3 SP64511 within common property be rectified.
- C. A Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 for undertaking development without consent.

Note 1: Though the authorised works to the common property were undertaken by or on behalf of the owner of Lot 3 SP64511, liability to rectify the works remains with the property owner.

OPTION 2

- A. That Development Application D91/0266.01 for an amendment to Development Consent D91/0266 to retain works at Lot 3 SP 64511 No. 3/31-33 Tweed Coast Road, Bogangar be REFUSED.
- B. That Council instruct the applicant to cease from using the third bedroom.
- C. That Council writes to the Body Corporate for Strata Plan 64511 requesting that the unauthorised works beneath Lot 3 SP64511 within common property be rectified within three months of the date of the letter.
- D. That a Penalty Infringement Notice be issued to the owner of Lot 3 SP64511 for undertaking development without consent.

Note 2: As the applicant has a building certificate for the works within Lot 3 SP64511, Council cannot require him to remove the works within the lot for a period of seven years. However he is not immune from prosecution from having breached the *Environmental Planning and Assessment Act 1979* in the first instance.

Option 1 is recommended.

CONCLUSION:

The internal alterations sought to be retained under this application and the creation of a third bedroom is considered to have minimal environmental impact and it is recommended that the modification application be approved subject to conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

No Legal Costs will be incurred for either Options 1 and 2.

c. Legal:

No Legal Advice is required, although the applicant has provided legal advice which is *Confidential* Attachment 3.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Development Consent D91/0266 (as amended) (ECM 5088669)

Attachment 2. Applicant's response to Council's deferral to seek further clarification from the Applicant regarding the fire safety and tenure of unit (ECM 5160593)

(*Confidential*) Attachment 3. Legal advice dated 24 January 2018 (ECM 5088658)

4 [PR-PC] Planning Proposal PP18/0001 for Minor Zoning Amendments to Various Public Land Parcels and a Site-Specific Amendment to Lot 14 and 22 DP 821933 No. 224 Carool Road, Carool

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**

SUMMARY OF REPORT:

As part of ongoing maintenance and management of Tweed Local Environmental Plan (LEP) 2014, the Strategic Planning & Urban Design Unit has identified 10 sites where zoning or/and land use amendments are considered to be necessary. A single planning proposal has been prepared for these sites in order to rationalise the number of amendments to Council's principle planning instrument, and improve cost/resource efficiency. The planning proposal is expected to be forwarded to NSW Planning & Environment subject to Council's endorsement. The sites, which predominantly include public land, are as follows:

- (a) Council land at 5 Yao Street, Kingscliff, where rezoning from RE1 Public Recreation to R2 Low Density Residential is proposed,
- (b) Council land at 10 and 92 Lundberg Drive, South Murwillumbah, where rezoning from RE1 Public Recreation to IN1 General Industrial zone is proposed,
- (c) Council land at 1-7 River Street, South Murwillumbah, where rezoning from B5 Business Development to RE1 Public Recreation is proposed,
- (d) Council land at Urliup Road, Urliup (Lot 8 DP 630567), where rezoning from RU1 Primary Production to RE1 Public Recreation is proposed,
- (e) Council land at Rous River Way, Murwillumbah, where rezoning from RU1 Primary Production to RE1 Public Recreation is proposed,
- (f) Murwillumbah Hospital, where correction to labelling on the Land Zoning Map is sought,

- (g) Public (NSW Transport) land at 10 Laura Street, Banora Point, where rezoning from SP2 Infrastructure to R2 Low Density Residential is proposed,
- (h) Public (NSW Transport) land at Oyster Point Road, Banora Point, where rezoning or change of land use table is proposed to facilitate use of land for recreation,
- (i) Private land at 224 Carool Road, Carool, where amendment to the land use table is sought to facilitate development of a dwelling house.

This report provides the necessary strategic planning justification underpinning the identified need for the proposed amendment to Tweed LEP 2014 with respect to the above sites and seeks Council's endorsement to proceed.

RECOMMENDATION:

That:

- 1. The Local Environmental Plan amendments detailed in this report are endorsed;**
- 2. The planning proposal once finalised is to be referred to the NSW Department of Planning & Environment for a Gateway Determination, in accordance with s3.34 of the *Environmental Planning & Assessment Act 1979*;**
- 3. On receipt of the Minister's Gateway Determination Notice to continue all, if any, Gateway conditions or other identified study or work is to be duly completed and included within the material for public exhibition;**
- 4. Public exhibition is to occur for a period not less than 28 days;**
- 5. Submissions received during public exhibition are to be reported to Council at the earliest time and detailing the issues raised and a recommended planning response.**

REPORT:

Background

The *Tweed Local Environmental Plan 2014* (the "TLEP 2014") is the principal planning instrument affecting land use within the Shire by way of prescribing what purpose land may or may not be used for. It consists of a written component and a suite of maps including the Land Zoning Map.

Review of the TLEP 2014 has identified nine sites remaining in public ownership, where minor zoning amendments are recommended to optimise or enable their use to enhance their public benefit. These sites, described in detail within this report, have been grouped in a single planning proposal seeking specific amendments to the TLEP 2014. In addition to public land, and in order to rationalise the number of amendments to Tweed's principal environmental planning instrument, one private site has been included into this planning proposal, where an amendment to the land use schedule is sought to enable development of a dwelling house.

It is proposed to bring about these amendments to the TLEP 2014 by engaging the statutory planning proposal process. Should Council resolve to proceed with the planning proposal attached to this Report it will be forwarded to the NSW Department of Planning and Environment (DPE) seeking a Gateway Determination and enabling agency consultation and public exhibition. The planning proposal, although prepared by Council in accordance with relevant guidelines, will be reviewed by the NSW Government as part of the Gateway Determination process to ensure its consistency with the *Environmental Planning and Assessment Act 1979* (the "Act"), broader regional and State policy framework, and relevant planning circulars, Ministerial s 9.1 (former s117) Directions and practice notes.

It is anticipated that this planning proposal will take approximately six to nine months to complete.

Land subject to this planning proposal

In total, 10 sites are subject to this planning proposal, with seven of them comprised of single allotments and three comprised of multiple lots. For ease of interpretation and assessment against the local and State planning frameworks, each site is discussed individually and referred to herein as an 'Item'.

As a general principle, Tweed Shire Council seeks to implement the intended outcomes through site-specific amendments to the Land Zoning Map. These changes will by default also trigger amendments to development standards such as; height of buildings, floor space ratio and lot size, to bring these development standards in to corresponding alignment with the amendments made to the land zoning.

A. ZONING AMENDMENTS TO PUBLIC LAND

1. 5 Yao Street, Kingscliff

<p>Item 1 Lot 19 Section 16 DP 758571</p> <p>Street address: 5 Yao Street, Kingscliff</p> <p>Proposed amendment: Rezone RE1 to R2, apply relevant development standards</p>	
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The land located at 5 Yao Street in Kingscliff site is a vacant, undeveloped allotment situated within a low density residential area of Kingscliff.

The land is owned by Council and has previously been identified as unsuitable for public open space and is surplus to public needs, with its prevailing use best described as a pathway linking Yao Street to the bus stop located on Kingscliff Street.

Within the wider area there are several open space and sport fields, including the newly renovated Kingscliff Foreshore parkland, Sand Street Park, Casperson Park, Reg Dalton Oval and Merve Edwards Field. This prevalence of existing open space supports the Council’s divesting of the land for rezoning and sale, consistent with the Council resolution of 11 December 2014, which resolved to rezone the land R2 Low Density Residential.

Whilst the land is already classified as ‘Operational’ and a public hearing, ordinarily associated with reclassification, is not required the public exhibition of the TLEP 2014 amendment will provide the public with an opportunity to review the proposal and provide feedback.

2. 10 Laura Street, Banora Point


<p>Item 2 Lot 569 DP 755740</p> <p>Street address: 10 Laura Street, Banora Point</p> <p>Proposed amendment: Rezone SP2 to R2, apply relevant development standard</p>	
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In late 2017 Council received a request from NSW Government's 'Transport NSW' Department (formerly "Roads and Maritime Services" ("RMS")) seeking a zoning of their property at 10 Laura Street. The land is presently zoned SP2 Infrastructure with a proposal to rezone to R2 Low Density Residential.

The property was acquired by RMS for the Banora Point section as part of the NSW Government's Pacific Highway upgrade program however; its land use remained unchanged throughout and subsequent to construction being completed. The property is now surplus to Transport NSW's requirements and is earmarked for sale, as part of their cost recovery and minimisation practices and will be sold through a subsequent open public tender process.

The property is currently developed with a detached, single storey residential dwelling and the proposed R2 Low Density Residential is best suited to reflect the current and future use of the land. It is proposed that the 'standard' associated planning controls such as; lot size of 450m², height of building at 9 metres and floor space ratio of 0.8:1, be applied.

3. Oyster Point Road, Banora Point

<p>Item 3 Lot 7008 DP 1069422 and Lot 2 DP 1140522</p> <p>Street address: Oyster Point Road, Banora Point</p> <p>Proposed amendment: Permit recreation related land uses on land zoned SP2</p>	
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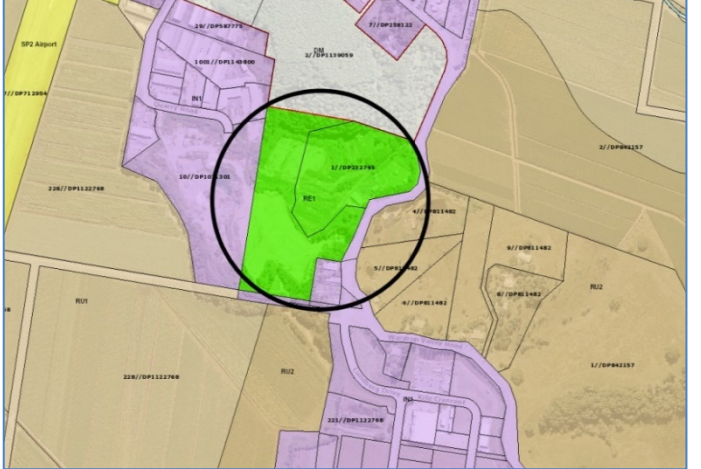
This proposed amendment affects two allotments both of which are owned by the Crown (State of NSW) with Tweed Shire Council as the Reserve Trust Manager.

These lands similarly to the Laura Street property form part of the M1 corridor and were acquired by Transport NSW as part of the Banora Point section of the Pacific Highway upgrade. Both have a dual zoning of SP2 Infrastructure and RE1 Public Recreation.

Council's Recreation Services Unit has requested a TLEP 2014 amendment to enable the residual land on either side of the highway to be used for public recreation and Transport NSW, through consultation with Council staff, have given their support for that use of the land.

Further and ongoing consultation with Transport NSW, as representative of the State as landowner, will continue during the preparation and finalisation of the TLEP 2014 amendment, particularly regarding the ultimate 'method' of amendment (clause or zoning or combination), as the protection of the highway is paramount.

4. Lundberg Drive, South Murwillumbah

<p>Item 4 Lot 1 DP 232745 and part Lot 2 DP 1139059</p> <p>Street address: 10 and 92 Lundberg Drive, South Murwillumbah</p> <p>Proposed amendment: Rezone RE1 to IN1, apply relevant lot size controls</p>	
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The Lundberg Drive property comprises two lots, owned by Council, and situated in Industry Central, Wardrop Valley.

The land was formerly used as a Council quarry and possessed an industrial zoning, which was altered to RE1 Public Recreation as part of the implementation of the Standard Instrument LEP in 2014. That change was brought about by Council who at the time were endeavouring to meet the needs of the Shire's wider recreational user groups by earmarking it for outdoor recreation and specifically for motorcycle usage. The proposal was later abandoned however, the amended zoning remained.

Following the major flood event in March 2017, Council and State government have worked tirelessly on initiatives and strategies to assist those local businesses that not only were affected but stand to be further impacted in future if not relocated. This proposal is part of those initiatives and seeks to enable relocation opportunities for businesses on declared sites on Tweed Valley Way, South Murwillumbah, to relocate into the Wardrop Valley, which is flood safe.

The proposed rezoning will increase the pool of unconstrained land suitable for industrial development and is within a current industrial precinct. The IN1 General Industrial zoning and appropriate lot size standard are sought with respect of the entire Lot 1 DP 232745 and that part of Lot 2 DP 1139059 that is currently zoned RE1 with the remainder of Lot 2 that is currently 'Deferred Matter' being subject to a separate future planning proposal.

The minimum lot size proposed for the land is 2000m², which is consistent with industrial zoning within the Shire. The land is also classified as 'Operational' therefore a reclassification process is not required.

5. 1-7 River Street, South Murwillumbah

Item 5
Lots 1-4 DP 27264

Street address:
1-7 River Street, South Murwillumbah

Proposed amendment:
Rezone B5 to RE1, remove floor space ratio standard



The River Street site comprises four contiguous waterfront lots (the “property”) owned by Council.

The property is zoned B5 Business Development and is classified as ‘Community’ land.

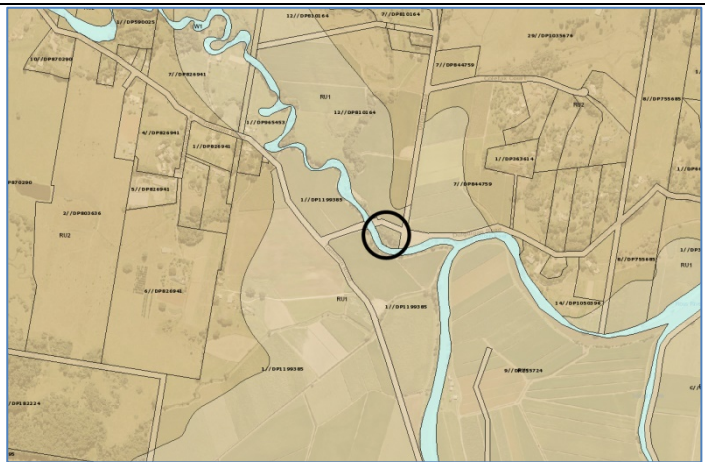
It is proposed that a plan of management will be prepared to guide the future public open space use of the land however, to enable any public open space recreation use the land must first be rezoned from its current commercial zoning to RE1 Public Recreation and the corresponding development standards be simultaneously amended to accord with those adopted for RE1 Public Recreation land.

6. Urliup Road, Urliup

Item 6
Lot 8 DP 630567

Street address:
Urliup Road, Urliup

Proposed amendments:
Rezone RU1 to RE1, remove minimum lot size standard



The Urliup Road property is owned by Council, has an RU1 Primary Production zoning, and is classified as ‘Community’ land. This current zoning is unreflective of the intended purpose of the land for public recreation and precludes many associate land uses.

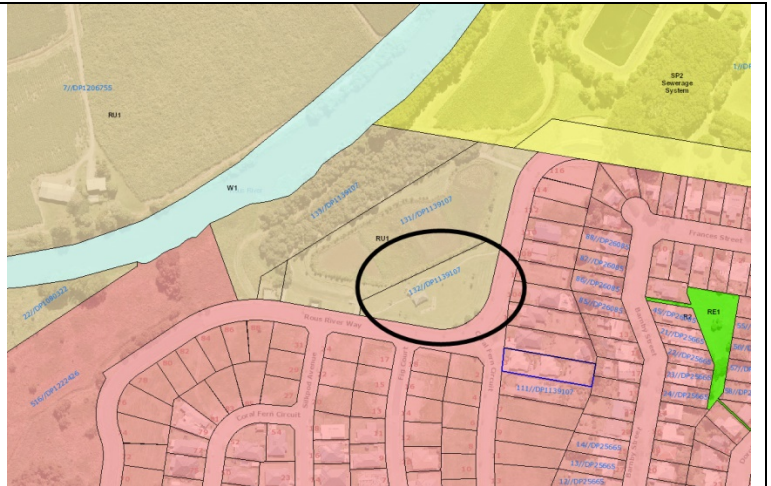
As with the River Street property, it is proposed that a plan of management will be prepared to guide the future public open space use of the land. This also necessitates a rezoning from RU1 Primary Production to RE1 Public Recreation.

While the land is partly vegetated, Council’s Natural Resources Management Unit are supportive of a rezoning for public recreation, as the site is currently mown under the trees and furnished with public (picnic) infrastructure facilities.

The corresponding development standards adopted for the RE1 Public Recreation zoning will be simultaneously amended to reflect the zoning and ultimate use of the land by Council.

7. Rous River Way, Murwillumbah

Item 7
Lot 132 DP 1139107
 Street address:
Rous River Way, Murwillumbah
 Proposed amendments:
Rezone RU1 to RE1, remove minimum lot size standard



Similarly to those properties discussed above (Items 3, 5 and 6) the Rous River property is also owned by Council and classified as ‘Community’ land. Similarly to the Uriup Road property it is also zoned RU1 Primary Production with a corresponding proposal to rezone for a RE1 Public Recreation zoning and associated standards.

8. 8-10 York Street, Murwillumbah

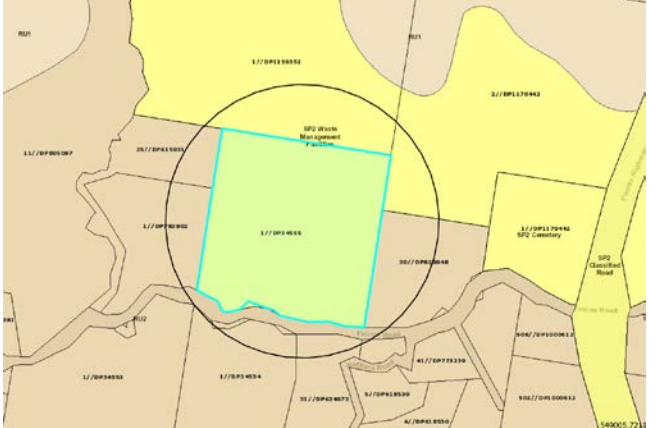
Item 8
 Lot 1 DP 722529, 7-9 DP 8520
 Street address:
8-10 York Street, Murwillumbah
 Proposed amendments
Change labelling on the Land Zoning Map to “hospital”



The York Street site comprises four lots that have been developed as part of the Murwillumbah District Hospital. The site was inadvertently described as “Emergency Services Facility” during the conversion of the TLEP 2000 to TLEP 2014. The labelling should more correctly state “Hospital”. This label appears on the Land Zoning Map and, in accordance with the land use table of the SP2 Infrastructure zone, “hospital” is recognised as the principal land use of the site.

While development for the purpose of hospital is still permitted through provisions of the State Environmental Planning Policy (Infrastructure) 2007, Council has been requested by the hospital to correct this labelling anomaly, with this proposed housekeeping TLEP 2014 amendment providing that opportunity.

9. Environ Road

<p>Item 9 Lot 1 DP 34555</p> <p>Street address: 719 Environ Road, Environ</p> <p>Proposed amendments Schedule 1 amendment enabling the use of a Council Pound on the site</p>	
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The Environ Road site is owned by Council and has been identified as suitable for the relocation of the Council's existing Animal Pound facilities at Stotts Creek for the purposes of a new Council Pound and Rehoming Centre.

The land is currently zoned SP2 Infrastructure (Waste Management Facilities) under Tweed Local Environmental Plan 2014 (TLEP 2014).

To enable the permissibility of the relocation and establishment of the Council Pound and Rehoming Centre the proposal is to amend TLEP 2014, Schedule 1, to permit an additional permitted use (Council Pound & Rehoming Facility) as well as to amend the description of the zoning map to reflect the designation of that use. This will not cause amendment to any other development standard applying to this land.

The definition of "council pound" is provided in the *Companion Animals Act 1998* and subject to the instructions and advice of Parliamentary Counsel may be referenced in the proposed Schedule 1 amendment.

Further background:

Council is currently developing a Masterplan for the Stotts Creek Resource Recovery Centre (SCRRC) that will provide guidance on future development at the site. As part of a program of works identified through the Masterplan process, the relocation of the current Animal Pound facilities is required prior to a significant number of the early works being able to commence.

The Environ Road property is considered to have a number of significant superior site location advantages when compared to the current Pound site, which is a major safety and liability risk in terms of its deteriorating state of buildings and services, susceptibility to being cut off from access during major weather and flood incidents as well as its general incompatibility of safety and welfare for both Council staff and volunteers and the impounded animals, as well as poor access and amenity for the public visiting the site.


The site is located in a much higher position (flood free) and rural setting, and provides a great opportunity to provide a more contemporary and functional facility to accommodate both Council's companion animal regulatory service, as well as an enhanced rehoming centre for Council's not-for-profit partner, Friends of the Pound (FOP), who have provided an important volunteer assistance to the day-to-day running of the existing Pound and care for the animals over several decades.

Council is interested in establishing a co-located Council Pound/FOP Rehoming Centre facility similar to that operated by the Gold Coast City Council and the Australian Welfare League Queensland at Coombabah.

Funding is currently being sought to cover the full range of approvals, construction and project management to the point of hand over to Council of the new facility.

B. Schedule 1 amendment (Additional Permitted Uses) affecting a private land

10. 224 Carool Road, Carool

<p>Item 9 Lot 22 DP 821933, Lot 14 DP 821933</p> <p>Street address: 224 Carool Road, Carool</p> <p>Proposed amendments Schedule 1 amendment enabling development of a dwelling house</p>	
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The Carool Road property is privately owned and the landowner has requested a TLEP 2014 amendment to enable a dwelling-house. This can be achieved utilising Schedule 1 Additional Permitted Uses.

It is not unusual in Tweed for rural properties not to have a dwelling entitlement and this has arisen over many years and for varied reasons. In this instance the allotments were created from Lot 4 DP 8579 in 1916 and subdivided by way of a *natural subdivision* (that is bisected by a road) in 1971. The Interim Development Order No 2 that was in place at the time of that subdivision did not include corresponding provisions regulating residential development.

Through the nuances in the planning rules that then existed and the passage of time this remains as the only property from that original subdivision that has no dwelling entitlement and is undeveloped. This is despite it being wholly consistent with the established surrounding rural character.

Having reviewed the site and its surrounds from a town planning perspective Staff consider the proposal to be justified. The land is relatively unconstrained and erection of a dwelling house is not likely to involve removal of vegetation. The proposal is consistent with aim of and actions identified in the publically exhibited draft Tweed Rural Land Strategy,

specifically those relating to development on allotments split by infrastructure (Action 92) and small lot clusters (Action 95).

Amending Schedule 1 to permit an additional use (dwelling-house) will not cause amendment to any other development standard applying to this land.

OPTIONS:

1. Proceed with the recommendations provided in this report which is to endorse the proposed TLEP 2014 amendment for a Gateway Determination, or
2. Proceed with part or none of the recommended TLEP 2014 amendments.

CONCLUSION:

This report seeks Council support to carry out a number of minor housekeeping amendments to the TLEP 2014, in particular, but not limited to, the Land Zoning Map and additional permitted uses schedule.

The amendments endeavour to bring clarity and certainty for the intended or desired use of the land opposed to enabling significant development uplift. In most instances this correlates with the intended public use of the land or in the case of the Carool property to enable a logical planning outcome.

The amendments have been 'bundled' into a 'housekeeping' TLEP 2014 amending planning proposal as this is a more efficient and cost effective use of resources.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The planning proposal is funded through budgeted revenue streams and externally by other public or private (non-Council) landowners.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Draft Planning Proposal PP18/0001 for Minor zoning amendments to various public land and a site-specific amendment to Lot 22 DP 821933 No. 224 Carool Road, Carool (ECM 5167971)

5 [PR-PC] Submission to the Public Exhibition of the Hotel Major Development Plan for the Gold Coast Airport

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

SUMMARY OF REPORT:

This report has been prepared to inform Council about the Gold Coast Airport's public exhibition of their Hotel Major Development Plan (Hotel Plan) and includes a recommended draft submission. Submissions on the Hotel Plan are due by 4 May 2018.

Gold Coast Airport is a major domestic and international transport facility and economic contributor for both NSW and Queensland on whose borders it crosses into both the Tweed and Gold Coast City Council local government areas.

Overall the proposal for a hotel is a logical step in the growth of the Airport and its wider service function, with the hotel being an integral part of any modern international standard airport facility and which is consistent with the adopted Gold Coast Airport Master Plan 2017. This new addition and expansion will include quality accommodation and conference facilities and will further enhance the economic drivers and benefits already provided by the airport and harnessed in the Tweed region. It is consistent with the Council's adopted *Tweed Economic Development Strategy* of March 2014.

Notwithstanding that the proposed hotel is wholly within that part of the site situated within Queensland, the impacts of development on the NSW/QLD border require consideration and reply, not least from a broad strategic view. It is recommended that a submission be submitted in reply to the exhibition of the Hotel Plan as provided as an attachment to this report or as further embellished by way of Council resolution.

RECOMMENDATION:

That:

- 1. The attached submission on the public exhibition of the Gold Coast Airport draft Hotel Major Development Plan is endorsed; and**
- 2. The endorsed submission be submitted to the Gold Coast Airport Limited as Tweed Shire Council's reply prior to the closing date of 4 May 2018.**

REPORT:

The Gold Coast Airport has released for public exhibition a Hotel Major Development Plan (Hotel Plan) for a proposed hotel addition to the current Airport facility. The exhibition and related submission period closes on 4 May 2018.

A copy of the Hotel Plan is provided as Attachment 1 ‘Gold Coast Airport draft Hotel Major Development Plan’ to this report.

The hotel is proposed to be located on land wholly situated in Queensland and within the Gold Coast City Council local government area. The development site is about 11,000sqm and is immediately adjacent to land within the Tweed Shire Council local government area, within New South Wales and as shown in Figure 2 – ‘Location of Hotel Proposal’.

Gold Coast Airport’s public summary of the proposal describes the hotel as:

A \$50 million Rydges branded hotel with a rooftop bar and viewing deck will be the jewel in the crown of Gold Coast Airport when complete in 2019. The four star hotel will include 192 rooms and suites over seven storeys with sweeping views over Kirra beach, and across the runway to the hinterland. As well as its rooftop amenity, the hotel will boast a restaurant, resort-style swimming pool, and substantial function, conference and meeting facilities.



Figure 1 – Photo Montage: Source, Gold Coast Airport Limited 2018.

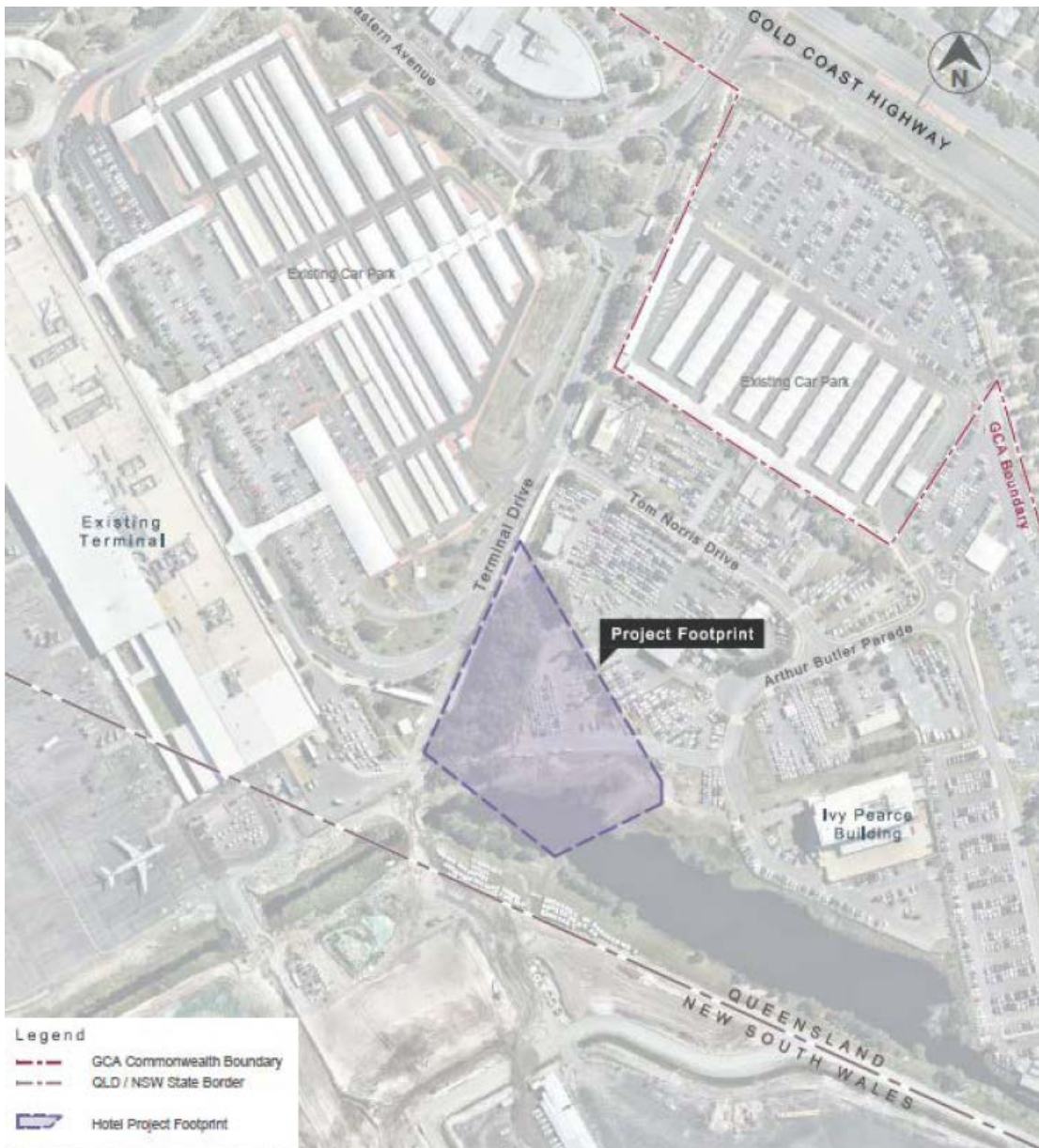


Figure 2 – Location of Hotel Proposal: Source Gold Coast Airport Limited 2018.

Legislative context summary

The Hotel Plan must be consistent with the *Federal Airports Act 1996*, which regulates the activities on the airport site. Under this legislation (clause 91) a Major Development Plan (MDP) must, amongst other things, be consistent with an adopted 'Airport Master Plan' and must consider the likely impact on a range of economic, social and environmental criteria.

The *Gold Coast Airport 2017 Master Plan* was approved on 15 July 2017 and as stated in the public information prepared by Gold Coast Airport was:

"...prepared to support the continued growth of Gold Coast Airport as an economic and aviation gateway to the region. The document will ensure that Gold Coast Airport can meet the changing demand for aviation and airport related services over the next five years and plan strategically for the next 20 years."

The hotel proposal is consistent with the approved Master Plan.

The consideration of impacts against relevant legislative requirements is included in Section 6 of the Hotel Plan and this in highlights the need for local planning legislation and requirements to be considered. Although the discussion within the Hotel Plan focuses on the Queensland regulatory context there is also a need for it to address any likely impact on the surrounding area within NSW.

Review of the draft Hotel MDP and submission summary

Council staff have reviewed the Hotel Plan and prepared a submission proposal for Council's consideration. This is provided as Attachment 2.

It is noted the airport hotel development is proposed on land that is wholly within Queensland and despite this the inclusion of a major hotel facility will benefit our NSW region through a strengthening of the Airport's capability to service the needs and expectations of the projected growth in passenger numbers and will assist with capturing greater visitation and spend in both our regions.

Commercial and retail development

While the proposed hotel is generally perceived to be of economic and employment benefit to the wider locality the matters required to be addressed are not seemingly done so or not least in a coherent way with clear linkages to those aspects of s 91 of the *Airports Act 1996*, as would seemingly be required to discharge the genuine consideration of that legislation.

It would therefore benefit the reader if the matters listed under s 91, as tabulated in the Hotel Plan, were adequately described under a heading dealing specifically with those, and evidentially demonstrating the benefits we presume to exist, along with any likely negative aspects, so that there is a balanced discussion of the advantages and disadvantages supporting the hotel proposal. For example, there is no discussion of how the proposal 'fits' within the current long-term strategic planning established within the airports wider surrounds and how it may impact (positively or otherwise) both current and planned commercial and retail centres. There is no related reference to the Tweed's Economic Development Strategy and consequently no explanation (consideration) as to what the likely affect might be.

Tweed's economic development strategy provides a range of key economic 'directions' which would seemingly be supported by the growth and development of the Airport, specifically a quality hotel, and includes the following:

- 4.3.2 *Tweed Heads City Centre revitalisation, and*
- 9.3.2 *Education, Research and Business Park leveraging from Tweed Heads Geographic Location, including:*

- 44 *Feasibility study into establishment of a business and research park on sites in proximity to Gold Coast Airport and Southern Cross University.*

State and Local Planning (Section 4.4)

The submission recommends greater clarification, discussion and consideration of NSW and Tweed Shire Council planning requirements, specifically with regard to the "deferred matter", zoning and flooding, as there are some seemingly erroneous or misleading statements.

Consultation regarding Aboriginal cultural heritage

The airport site contains a significant number of registered Aboriginal objects and sites and sits within a known and sensitive traditional Aboriginal landscape.

The *Airport Master Plan 2017 Section 11.10 Cultural Heritage* contains objectives and targets for encouraging ongoing proactive consultation with the Aboriginal community and management of cultural heritage as part of the development process.

The submission recommends stronger actions for consultation with the Aboriginal community.

OPTIONS:

1. Resolve to endorse recommendations proposed within the report, which is to endorse the attached draft submission; or
2. Resolve to amend the staff prepared submission; or
3. Resolve to receive and note and take no further action.

Option 1 is recommended, particularly as the benefits derived throughout the Tweed and regional NSW from the Gold Coast Airport are significant and advantageous to a prosperous economy.

CONCLUSION:

The proposed hotel development is consistent with Gold Coast Airport's adopted Master Plan 2017 and is seen as a significant beneficial addition to this international airport.

As discussed with the proposed submission attached to this report there are several minor matters that should be brought to the attention of the Airport for consideration as to the appropriateness or adequacy of its consideration of the likely impacts.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Gold Coast Airport draft Hotel Major Development Plan (ECM 5165304)

Attachment 2. Tweed Shire Council draft Submission to the Gold Coast Airport draft Hotel Major Development Plan (ECM 5165089)

6 [PR-PC] Information from NSW Fire and Rescue

SUBMITTED BY: Building and Environmental Health

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
2.1.1	Building Certification - To control and regulate the built environment to achieve good housing design and compliant buildings.

ROLE: Provider

SUMMARY OF REPORT:

Two separate reports (letters) have been received from Fire & Rescue NSW relating to fire safety matters for properties in the Tweed Shire and are tabled for Council's information as required by the Schedule 5 17 (2) of the Environment Planning and Assessment Act 1979.

RECOMMENDATION:

That the reports received from Fire & Rescue (NSW BFS16/1986 (0082) Anchorage Island) and STN/00468F-2 Storz Hose Connections) be received and noted.

REPORT:

Two separate reports have been received from Fire & Rescue NSW relating to fire safety matters for properties in the Tweed Shire and are tabled for Council's information as required by the Schedule 5 17 (2) of the Environment Planning and Assessment Act 1979.

Report BFS16/1986 (0082) Anchorage Island is a request from Fire & Rescue NSW for a Council officer to inspect some residential buildings in Mariners Drive East and Mariners Drive West to determine if the properties have compliant fire hydrant coverage.

The inspection has been carried out and the following response which outlines the finding has been forwarded to Fire & Rescue NSW on 8 March 2018:

"Attention Paul

I refer to BFS16/1986 (0082) inspection request for properties in the Tweed.

The properties involves are: 1 Mariners Drive West "Discovery Cove". 1 Harbour Drive "Figtree Place", and 6 Mariners Drive East "The Isle".

I have inspected all properties and reviewed Council files going back to 1993.

Council's Water Unit have conducted tests on the most disadvantaged public street hydrant in Mariners Drive East and found that it exceeds the minimum requirements for flow and the area and is also part of upcoming scheduling for air scouring and hydrant maintenance.

The following information is provided for your review:

1. 1 Mariners Drive West "Discovery Cove".

- a) *Internal street hydrants were provided as part of the original approval BA883/95 for the complex and the recent inspection revealed they are in the locations as approved. The original plans did not specify a hydrant booster. A letter will be sent to body corporate to seek their cooperation in having the hydrants serviced to ensure they operate in accordance the standards in force in 1995.*
- b) *No hydrants had been removed and discussion with a resident Mr Joe Brain revealed that some time ago he had concerns that a hydrant was to be removed and it turns out he was referring to a hose reel on the boardwalk and it remains in place.*

2. 6 Mariners Drive East "The Isle"

- a) *A private internal street hydrant exists in a slightly different location than submitted plans submitted as part a past subdivision approval GS4/94/13 but provides coverage in accordance with Fire & Rescue NSW guideline for hydrants in minor residential development version 02.*

3. 1 Harbour Drive "Figtree Place"

- a) *This property is serviced by a private access road and has no internal hydrants.*

- b) *Past development consent 93/406 and building application 4/94 did not have any requirements for hydrants to be provided on the private access.*
- c) *Council hydrants in Harbour drive could be utilised but it would involve laying hoses accessing between dwellings through in most cases locked garden fences.*

In conclusion I advise that a letter will be sent to body corporate for No 1 Mariners Cove "Discovery Cove" requiring maintenance of the existing private hydrants and no further action for the other two developments. The report will be tabled at Council as soon as possible.

Regards Barry"

Report STN/00468F-2 Storz Hose Connections is an advice stating that the Brigade have inspected properties in the Tweed and identified 23 premises without Storz hose connections and have issued Notice of Intention to Serve an Order on seven premises seeking the installation of storz hose adapters.

Further information from the Brigade is expected and will be actioned when received.

OPTIONS:

1. Note the tabled report; or
2. Note and require further action.

CONCLUSION:

A letter will be sent to the body corporate for No. 1 Mariners Crescent West "Discovery Cove" requiring maintenance of the existing private hydrants.

No further action required for *1 Harbour Drive "Figtree Place", and 6 Mariners Drive East "The Isle"*.

Council officers will await further advice from Fire & Rescue NSW in regard to the Storz hose connection Notices.

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:

Attachment 1. Report BFS16/1986 (0082) Anchorage Island (ECM 5155421)

Attachment 2 Report STN/00468F-2 Storz Hose Connections (ECM 5155432)

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

SUBMITTED BY: Director

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 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 March 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.
